



## Final Text

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Part I

Definitions, Purpose and Administration

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

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

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

"Additive" means either a (i) "food additive" having the meaning stated in the Federal Food, Drug, and Cosmetic Act, § 201(s) and 21 CFR Part 170 or (ii) "color additive" having the meaning stated in the Federal Food, Drug, and Cosmetic Act, § 201(t) and 21 CFR Part 70.

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

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

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

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

"Approved water supply" means a waterworks which has a valid waterworks operation permit from the department or a nonpublic water supply which is evaluated, tested and if found in reasonable compliance with the construction standards of the Private Well Regulations (12VAC5-630) and the bacteriological water quality standards of the Virginia Waterworks Regulations (12VAC5-590), accepted and approved by the director or the director's designee.

"Asymptomatic" means without obvious symptoms; not showing or producing indication of a disease or other medical condition, such as an individual infected with a pathogen but not exhibiting or producing any signs or symptoms of vomiting, diarrhea, or jaundice. Asymptomatic includes not showing symptoms because symptoms have resolved or subsided, or because symptoms never manifested.

" $a_w$ " 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  $a_w$ .

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

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

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

"Board" means the State Board of Health.

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

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

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

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

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

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

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

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

"Commingle" means:

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

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

"Commissary" means a catering establishment, restaurant, or any other place in

which food, food containers or supplies are kept, handled, prepared, packaged or stored for distribution to satellite operations.

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

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

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

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

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

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

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

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

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

"Dealer" means a person who is authorized by a shellfish control authority for the activities of a shellstock shipper, shucker-packer, repacker, reshipper, or depuration processor of molluscan shellfish according to the provisions of the National Shellfish Sanitation Program.

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

"Department" means the State Health Department.

"Director" means the district or local health director.

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

"Drinking water" means water that meets the water quality standards for bacteria of the Virginia Waterworks Regulations (12VAC5-590). Drinking water is traditionally known as "potable water." Drinking water includes the term water except where the

term used connotes that the water is not potable, such as "boiler water," "mop water," "rainwater," "wastewater," and "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~~ avian species such as chicken, duck, goose, guinea, quail, ratites, or turkey. Egg does not include a balut; egg of the reptile species such as alligator; or an egg product.

"Egg product" means all, or a portion of, the contents found inside eggs separated from the shell and pasteurized in a food processing plant, with or without added ingredients, intended for human consumption, such as dried, frozen, or liquid eggs. Egg product does not include food that contains eggs only in a relatively small proportion such as cake mixes.

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

"Enterohemorrhagic *Escherichia coli* (EHEC)" means *E.coli* that cause hemorrhagic colitis, meaning bleeding enterically or bleeding from the intestine. The term is typically used in association with *E.coli* that have the capacity to produce Shiga toxins and to cause attaching and effacing lesion in the intestine. EHEC is a subset of STEC, whose members produce additional virulence factors. Infections with EHEC

may be asymptomatic but are classically associated with bloody diarrhea (hemorrhagic colitis) and hemolytic uremic syndrome (HUS) or thrombotic thrombocytopenic purpura (TTP). Examples of serotypes of EHEC include: *E. coli* O157:H7; *E. coli* O157:NM; *E. coli* O26:H11; *E. coli* O145:NM; *E. coli* O103:H2; or *E. coli* O111:NM. Also see Shiga toxin-producing *E. coli*.

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

"Equipment" means an article that is used in the operation of a food establishment.

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

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

"F" means degrees Fahrenheit.

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

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

"Food" means a raw, cooked, or processed edible substance, ice, beverage, or ingredient used or intended for use or for sale in whole or in part for human consumption.

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

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

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

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

"Food establishment" includes (a) an element of the operation such as a transportation vehicle or a central preparation facility that supplies a vending location or satellite feeding location; (b) an operation that is conducted in a mobile, stationary, temporary, or permanent facility or location; where consumption is on or off the premises; and regardless of whether there is a charge for the food; and (c) a facility that does not meet the exemption criteria identified in subdivision 6 of this definition or a facility that meets the exemption requirements but chooses to be regulated under [www.townhall.virginia.gov/ViewXML.cf...](http://www.townhall.virginia.gov/ViewXML.cf...)

these regulations.

"Food establishment" does not include:

1. An establishment that offers only prepackaged foods that are not potentially hazardous;
2. A produce stand that only offers whole, uncut fresh fruits and vegetables;
3. A food processing plant; including those that are located on the premises of a food establishment;
4. A kitchen in a private home if only food that is not potentially hazardous is prepared for sale or service at a function such as a religious or charitable organization's bake sale if allowed by law and if the consumer is informed by a clearly visible placard at the sales or service location that the food is prepared in a kitchen that is not subject to regulation and inspection by the regulatory authority;
5. An area where food that is prepared as specified in subdivision 4 above is sold or offered for human consumption;
6. A kitchen in a private home, such as, but not limited to, a family day-care provider or a home for adults, serving 12 or fewer recipients; or a bed-and-breakfast operation that prepares and offers food only to guests if the home is owner occupied, the number of available guest bedrooms does not exceed six, breakfast is the only meal offered, the number of guests served does not exceed 18, and the consumer is informed by statements contained in published advertisements, mailed brochures, and placards posted at the registration area that the food is prepared in a kitchen that is, by these regulations, exempt from this chapter; or
7. A private home that receives catered or home-delivered food.

For the purpose of implementing this chapter, the following are also exempt from the definition of a "food establishment" in this chapter, as defined in §§ 35.1-25 and 35.1-26 of the Code of Virginia:

1. Boarding houses that do not accommodate transients;
2. Cafeterias operated by industrial plants for employees only;
3. Churches, fraternal, school and social organizations and volunteer fire departments and rescue squads that hold dinners and bazaars not more than one time per week and not in excess of two days duration at which food prepared in homes of members or in the kitchen of the church or organization and is offered for sale to the public;
4. Grocery stores, including the delicatessen that is a part of a grocery store, selling exclusively for off-premises consumption and places manufacturing or selling packaged or canned goods;
5. Churches that serve meals for their members as a regular part of their religious observance; and
6. Convenience stores or gas stations that are subject to the State Board of Agriculture and Consumer Services' Retail Food Establishment Regulations (2VAC5-585) or any regulations subsequently adopted and that (i) have 15 or fewer seats at which food is served to the public on the premises of the convenience store or gas station and (ii) are not associated with a national or regional restaurant chain. Notwithstanding this exemption, such convenience stores or gas stations shall remain responsible for collecting any applicable local meals tax.

"Food processing plant" means a commercial operation that manufactures, packages, labels, or stores food for human consumption and ~~does not provide food directly to a consumer~~ provides food for sale or distribution to other business entities such as food processing plants or food establishments. Food processing plant does not include a food establishment.

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

"Game animal" includes mammals such as reindeer, elk, deer, antelope, water buffalo, bison, rabbit, squirrel, opossum, raccoon, nutria, or muskrat and nonaquatic reptiles such as land snakes.

"Game animal" does not include ratites such as ostrich, emu, and rhea.

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

"Grade A standards" means the requirements of the USPHS/FDA "Grade A Pasteurized Milk Ordinance" and "Grade A Condensed and Dry Milk Ordinance" with which certain fluid and dry milk and milk products comply.

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

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

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

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

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

"Highly susceptible population" means persons who are more likely than other people in the general population to experience foodborne disease because they are:

1. Immunocompromised, preschool age children, or older adults; and
2. Obtaining food at a facility that provides services such as custodial care, health care, or assisted living, such as a child or adult day care center, kidney dialysis center, hospital or nursing home, or nutritional or socialization services such as a senior center.

"Hot water" means water at a temperature of 100°F or higher unless otherwise stated.

"Imminent health hazard" means a significant threat or danger to health that is considered to exist when there is evidence sufficient to show that a product, practice, circumstance, or event creates a situation that requires immediate correction or cessation of operation to prevent injury based on the number of potential injuries, and the nature, severity, and duration of the anticipated injury.

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

"Juice;" ~~when used in the context of food safety,~~ means the aqueous liquid expressed or extracted from one or more fruits or vegetables, ~~purées purées~~ of the edible portions of one or more fruits or vegetables, purées of the edible portions of one or more fruits or vegetables, or any concentrate of such liquid or purée. ~~Juice includes juice as a whole beverage, an ingredient of a beverage and a purée as an ingredient of a beverage. Juice does not include, for purposes of HACCP, liquids, purées, or concentrates that are not used as beverages or ingredients of beverages.~~

"Kitchenware" means food preparation and storage utensils.

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

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

"Major food allergen" means milk, egg, fish (such as bass, flounder, cod, and including crustacean shellfish such as crab, lobster, or shrimp), tree nuts (such as almonds, pecans, or walnuts), wheat, peanuts, and soybeans; or a food ingredient that contains protein derived from one of these foods. Major food allergen does not include any highly refined oil derived from a major food allergen in this definition and any ingredient derived from such highly refined oil; or any ingredient that is exempt under the petition or notification process specified in the Food Allergen Labeling and Consumer Protection Act of 2004 (P. L. 108-282).

"Meat" means the flesh of animals used as food including the dressed flesh of cattle, swine, sheep, or goats and other edible animals, except fish, poultry, and wild game animals as specified under 12VAC5-421-330 A 3 and 4.

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

"Mobile food unit" means a food establishment that is mounted on wheels that is readily moveable from place to place and shall include pushcarts, trailers, trucks, or vans. There is no size limit to mobile food units but they must be mobile at all times during operation and must be on wheels (excluding boats in the water) at all times. The unit, all operations, and all equipment must be integral to and be within or attached to the unit.

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

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

"Organization" means any one of the following:

1. A volunteer fire department or rescue squad or auxiliary unit thereof which has been recognized in accordance with § 15.2-955 of the Code of Virginia by an ordinance or resolution of the political subdivision where the volunteer fire department or rescue squad is located as being a part of the safety program of such political subdivision;

2. An organization operated exclusively for religious, charitable, community or educational purposes;
3. An association of war veterans or auxiliary units thereof organized in the United States;
4. A fraternal association or corporation operating under the lodge system;
5. A local chamber of commerce; or
6. A nonprofit organization that raises funds by conducting raffles which generate annual gross receipts of less than \$75,000, provided such gross receipts from the raffle, less expenses and prizes, are used exclusively for charitable, educational, religious or community purposes.

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

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

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

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

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

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

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

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

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

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

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

1. Cleaners and sanitizers, which include cleaning and sanitizing agents and agents such as caustics, acids, drying agents, polishes, and other chemicals;
2. Pesticides which include substances such as insecticides and rodenticides;

3. Substances necessary for the operation and maintenance of the establishment such as nonfood grade lubricants, paints, and personal care items that may be deleterious to health; and

4. Substances that are not necessary for the operation and maintenance of the establishment and are on the premises for retail sale, such as petroleum products and paints.

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

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

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

~~Potentially hazardous food does not include:~~

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

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

1. Potentially hazardous food (time/temperature control for safety food) includes an animal food that is raw or heat-treated; a plant food that is heat-treated or consists of raw seed sprouts, cut melons, cut tomatoes, or mixtures of cut tomatoes that are not modified in a way so that they are unable to support pathogenic microorganism growth or toxin formation, or garlic-in-oil mixtures that are not modified in a way that results in mixtures that do not support pathogenic microorganism growth or toxin formation; and except as specified in subdivision 2 of this definition, a food that

because of the interaction of its  $A_w$  and pH values is designated as Product Assessment Required (PA) in Table A or B of this definition:

Table A. Interaction of pH and  $A_w$  for control of spores in food heat-treated to destroy vegetative cells and subsequently packaged.

<u><math>A_w</math> values</u>	<u>pH values</u>		
	<u>4.6 or less</u>	<u>&gt;4.6-5.6</u>	<u>&gt;5.6</u>
<u>&lt;0.92</u>	<u>non-PHF*/non-TCS food**</u>	<u>non-PHF/non-TCS food</u>	<u>non-PHF/non-TCS food</u>
<u>&gt; 0.92-0.95</u>	<u>non-PHF/non-TCS food</u>	<u>non-PHF/non-TCS food</u>	<u>PA***</u>
<u>&gt;0.95</u>	<u>non-PHF/non-TCS food</u>	<u>PA</u>	<u>PA</u>

\*PHF means Potentially Hazardous Food

\*\*TCS means Time/Temperature Control for Safety Food

\*\*\*PA means Product Assessment required

Table B. Interaction of pH and  $A_w$  for control of vegetative cells and spores in food not heat-treated or heat-treated but not packaged.

<u><math>A_w</math> values</u>	<u>pH values</u>			
	<u>&lt; 4.2</u>	<u>4.2 - 4.6</u>	<u>&gt; 4.6 - 5.0</u>	<u>&gt; 5.0</u>
<u>&lt;0.88</u>	<u>non-PHF*/non-TCS food**</u>	<u>non-PHF/non-TCS food</u>	<u>non-PHF/non-TCS food</u>	<u>non-PHF/non-TCS food</u>
<u>0.88-0.90</u>	<u>non-PHF/non-TCS food</u>	<u>non-PHF/non-TCS food</u>	<u>non-PHF/non-TCS food</u>	<u>PA***</u>
<u>&gt;0.90-0.92</u>	<u>non-PHF/non-TCS food</u>	<u>non-PHF/non-TCS food</u>	<u>PA</u>	<u>PA</u>
<u>&gt;0.92</u>	<u>non-PHF/non-TCS food</u>	<u>PA</u>	<u>PA</u>	<u>PA</u>

\*PHF means Potentially Hazardous Food

\*\*TCS means Time/Temperature Control for Safety Food

\*\*\*PA means Product Assessment required

2. Potentially hazardous food (time/temperature control for safety food) does not include:

a. An air-cooled hard-boiled egg with shell intact, or an egg with shell intact that is not hard-boiled, but has been pasteurized to destroy all viable *Salmonellae*;

b. A food in an unopened hermetically sealed container that is commercially

processed to achieve and maintain commercial sterility under conditions of nonrefrigerated storage and distribution:

c. A food that because of its pH or  $A_w$  value, or interaction of  $A_w$  and pH values, is designated as a non-PHF/non-TCS food in Table A or B of this definition;

d. A food that is designated as Product Assessment required (PA) in Table A or B of this definition and has undergone a Product Assessment showing that the growth or toxin formation of pathogenic microorganisms that are reasonably likely to occur in that food is precluded due to:

(1) Intrinsic factors including added or natural characteristics of the food such as preservatives, antimicrobials, humectants, acidulants, or nutrients,

(2) Extrinsic factors including environmental or operational factors that affect the food such as packaging, modified atmosphere such as reduced oxygen packaging, shelf-life and use, or temperature range of storage and use, or

(3) A combination of intrinsic and extrinsic factors; or

e. A food that does not support the growth or toxin formation of pathogenic microorganisms in accordance with one of the subdivisions 2 a through 2 d of this definition even though the food may contain a pathogenic microorganism or chemical or physical contaminant at a level sufficient to cause illness or injury.

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

"Premises" means the physical facility, its contents, and the contiguous land or property under the control of the permit holder; or the physical facility, its contents, and the land or property which are under the control of the permit holder and may impact food establishment personnel, facilities, or operations, if a food establishment is only one component of a larger operation such as a health care facility, hotel, motel, school, recreational camp, or prison.

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

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

"Pushcart" means any wheeled vehicle or device other than a motor vehicle or trailer that may be moved with or without the assistance of a motor and that does not require registration by the department of motor vehicles. A pushcart is limited to the sale and/or service of hot dogs and frankfurter-like foods.

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

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

1. Is in a form that is edible without additional preparation to achieve food safety, as specified under 12VAC5-421-700 A through C, 12VAC5-421-710, or 12VAC5-421-730;

2. Is a raw or partially cooked animal food and the consumer is advised as specified under 12VAC5-421-700 D 1 and 2; or

3. Is prepared in accordance with a variance that is granted as specified under 12VAC5-421-700 D 1 and 2.

Ready-to-eat food may receive additional preparation for palatability or aesthetic, epicurean, gastronomic, or culinary purposes.

"Ready-to-eat food" includes:

1. Raw animal food that is cooked as specified under 12VAC5-421-700, or frozen as specified under 12VAC5-421-730;
2. Raw fruits and vegetables that are washed as specified under 12VAC5-421-510;
3. Fruits and vegetables that are cooked for hot holding as specified under 12VAC5-421-720;
4. All potentially hazardous food that is cooked to the temperature and time required for the specific food under 12VAC5-421-700 and cooled as specified in 12VAC5-421-800;
5. Plant food for which further washing, cooking, or other processing is not required for food safety, and from which rinds, peels, husks, or shells, if naturally present, are removed;
6. Substances derived from plants such as spices, seasonings, and sugar;
7. A bakery item such as bread, cakes, pies, fillings, or icing for which further cooking is not required for food safety;
8. The following products that are produced in accordance with USDA guidelines and that have received a lethality treatment for pathogen: dry, fermented sausages, such as dry salami or pepperoni; salt-cured meat and poultry products, such as prosciutto, country cured ham, and Parma ham; and dried meat and poultry products, such as jerky or beef sticks; and
9. Food manufactured according to 21 CFR Part 113, Thermally Processed Low-Acid Foods Packaged in Hermetically Sealed Containers.

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

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

is modified so that until the package is opened, its composition is different from air, and continuous control of that atmosphere is maintained, such as by using oxygen scavengers or a combination of total replacement oxygen, nonrespiring food, and impermeable packaging material;

4. Cook chill packaging, in which cooked food is hot filled into impermeable bags that have the air expelled and are then sealed or crimped closed. The bagged food is rapidly chilled and refrigerated at temperatures that inhibit the growth of psychrotrophic pathogens; or

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

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

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

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

"Reservice" means the transfer of food that is unused and returned by a consumer after being served or sold and in the possession of the consumer, to another person.

"Restrict" means to limit the activities of a food employee so that there is no risk of transmitting a disease that is transmissible through food and the food employee does not work with exposed food, clean equipment, utensils, linens, and unwrapped single-service or single-use articles.

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

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

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

"Safe material" means an article manufactured from or composed of materials that shall not reasonably be expected to result, directly or indirectly, in their becoming a component or otherwise affecting the characteristics of any food; an additive that is used as specified in § 409 or 706 of the Federal Food, Drug, and Cosmetic Act; or other materials that are not additives and that are used in conformity with applicable regulations of the Food and Drug Administration.

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

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

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

"Servicing area" means an operating base location to which a mobile food

establishment or transportation vehicle returns regularly for such things as vehicle and equipment cleaning, discharging liquid or solid wastes, refilling water tanks and ice bins, and boarding food.

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

"Shellfish control authority" means a state, federal, foreign, or other government entity legally responsible for administering a program that includes certification of molluscan shellfish harvesters and dealers for interstate commerce such as the Virginia Department of Health Division of Shellfish Sanitation.

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

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

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

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

"Single-use articles" means utensils and bulk food containers designed and constructed to be used once and discarded. Single-use articles includes items such as wax paper, butcher paper, plastic wrap, formed aluminum food containers, jars, plastic tubs or buckets, bread wrappers, pickle barrels, ketchup bottles, and number 10 cans which do not meet the materials, durability, strength and cleanability specifications contained in 12VAC5-421-960, 12VAC5-421-1080, and 12VAC5-421-1100 for multiuse utensils.

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

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

"Substantial compliance" shall mean that details of equipment or structure design or construction and/or food preparation, handling, storage, transportation and/or cleaning procedures will not substantially affect health consideration or performance of the facility or its employees.

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

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

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

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

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

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

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

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

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

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

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

## Part II

### Management and Personnel

#### Article 1

##### Supervision

#### **12VAC5-421-50. Assignment of responsibility.**

The 1. Except as specified in subdivision 2 of this section, the permit holder shall be the person in charge or shall designate a person in charge and shall ensure that a person in charge is present at the food establishment during all hours of operation.

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

#### **12VAC5-421-60. Demonstration of knowledge.**

Based on the risks of foodborne illness inherent to the food operation, during

inspections and upon request the person in charge shall demonstrate to the regulatory authority knowledge of foodborne disease prevention, and the requirements of these regulations. The person in charge shall demonstrate this knowledge by: ~~being a certified food protection manager who has shown proficiency of required information through passing a test that is part of an accredited program; or by responding correctly to the environmental health specialist's questions as they relate to the specific food operation.~~ The areas of knowledge may include:

1. Complying with the Food Regulations by having no violations of critical items during the current inspection;

2. Being a certified food protection manager who has shown proficiency of required information through passing a test that is part of an accredited program; or

3. Responding correctly to the environmental specialist's questions as they relate to the specific food operation. The areas of operation may include:

4. a. Describing the relationship between the prevention of foodborne disease and the personal hygiene of a food employee;

2. b. Explaining the responsibility of the person in charge for preventing the transmission of foodborne disease by a food employee who has a disease or medical condition that may cause foodborne disease;

3. c. Describing the symptoms associated with the diseases that are transmissible through food;

4. d. Explaining the significance of the relationship between maintaining the time and temperature of potentially hazardous food (time/temperature control for safety food) and the prevention of foodborne illness;

5. e. Explaining the hazards involved in the consumption of raw or undercooked meat, poultry, eggs, and fish;

6. f. Stating the required food temperatures and times for safe cooking of potentially hazardous food (time/temperature control for safety food) including meat, poultry, eggs, and fish;

7. g. Stating the required temperatures and times for the safe refrigerated storage, hot holding, cooling, and reheating of potentially hazardous food (time/temperature control for safety food);

8. h. Describing the relationship between the prevention of foodborne illness and the management and control of the following:

a. (1) Cross contamination,

b. (2) Hand contact with ready-to-eat foods,

e. (3) Handwashing, and

d. (4) Maintaining the food establishment in a clean condition and in good repair;

i. Describing the foods identified as major food allergens and the symptoms that a major food allergen could cause in a sensitive individual who has an allergic reaction;

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

a. (1) Sufficient in number and capacity, and

b. (2) Properly designed, constructed, located, installed, operated, maintained, and cleaned;

~~40.~~ k. Explaining correct procedures for cleaning and sanitizing utensils and food-contact surfaces of equipment;

~~41.~~ l. Identifying the source of water used and measures taken to ensure that it remains protected from contamination such as providing protection from backflow and precluding the creation of cross connections;

~~42.~~ m. Identifying poisonous or toxic materials in the food establishment and the procedures necessary to ensure that they are safely stored, dispensed, used, and disposed of according to law;

~~43.~~ n. Identifying control points in the operation from purchasing through sale or service that may contribute to the transmission of foodborne illness and explaining steps taken to ensure that the points are controlled in accordance with the requirements of this chapter;

~~44.~~ o. 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

~~45.~~ p. Explaining the responsibilities, rights, and authorities assigned by this chapter to the:

a. (1) Food employee,

b. (2) Person in charge, and

e. (3) Regulatory authority; and

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

#### **12VAC5-421-70. Person Duties of person in charge.**

The person in charge shall ensure that:

1. Food establishment operations are not conducted in a private home or in a room used as living or sleeping quarters as specified under 12VAC5-421-2990;

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

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

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

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

6. Employees are properly cooking potentially hazardous food, being particularly careful in cooking those foods known to cause severe foodborne illness and death,

such as eggs and comminuted meats, through daily oversight of the employees' routine monitoring of the cooking temperatures;

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

8. (Reserved); Consumers who order raw or partially cooked ready-to-eat foods of animal origin are informed as specified under 12VAC5-421-930 that the food is not cooked sufficiently to ensure its safety;

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

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

11. ~~Employees~~ Except when approval is obtained from the regulatory authority as specified in 12VAC5-421-450 B, employees are preventing cross-contamination of ready-to-eat food with bare hands by properly using suitable utensils such as deli tissue, spatulas, tongs, single-use gloves, or dispensing equipment; ~~and~~

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

13. Food employees and conditional employees are informed of their responsibility to report in accordance with law, to the person in charge, information about their health and activities as they relate to diseases that are transmissible through food, as specified under 12VAC5-421-80.

## Article 2

### Employee Health

#### **12VAC5-421-80. Responsibility of the permit holder, person in charge to require reporting by food employees and applicants, and conditional employees.**

~~The permit holder shall require food employee applicants to whom a conditional offer of employment is made and food employees to report to the person in charge, information about their health and activities as they relate to diseases that are transmissible through food. A food employee or applicant shall report the information in a manner that allows the person in charge to prevent the likelihood of foodborne disease transmission, including the date of onset of jaundice or of an illness specified in subdivision 2 of this section, if the food employee or applicant:~~

~~1. Is diagnosed with an illness due to:~~

~~a. Salmonella typhi;~~

~~b. Shigella spp.;~~

~~c. Escherichia coli O157:H7, or~~

~~d. Hepatitis A virus;~~

~~2. Has a symptom caused by illness, infection, or other source that is:~~

~~a. Associated with an acute gastrointestinal illness such as (i) diarrhea; (ii) fever; (iii)~~

vomiting; (iv) jaundice; or (v) sore throat with fever; or

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

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

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

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

3. Had a past illness from an infectious agent specified in subsection A of this section; or

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

a. Is suspected of causing, or being exposed to, a confirmed disease outbreak caused by *S. typhi*, *Shigella* spp., *E. coli* O157:H7, or hepatitis A virus including an outbreak at an event such as a family meal, church supper, or festival because the food employee or applicant:

(1) Prepared food implicated in the outbreak;

(2) Consumed food implicated in the outbreak; or

(3) Consumed food at the event prepared by a person who is infected or ill with the infectious agent that caused the outbreak or who is suspected of being a shedder of the infectious agent; or

b. Lives in the same household as a person who is diagnosed with a disease caused by *S. typhi*, *Shigella* spp., *E. coli* O157:H7, or hepatitis A virus; or

c. Lives in the same household as a person who attends or works in a setting where there is a confirmed disease outbreak caused by *S. typhi*, *Shigella* spp., *E. coli* O157:H7, or hepatitis A virus.

A. The permit holder shall require food employees and conditional employees to report to the person in charge information about their health and activities as they relate to diseases that are transmissible through food. A food employee or conditional employee shall report the information in a manner that allows the person in charge to reduce the risk of foodborne disease transmission, including providing necessary additional information, such as the date of onset of symptoms and an illness, or of a diagnosis without symptoms, if the food employee or conditional employee:

1. Has any of the following symptoms:

a. Vomiting;

b. Diarrhea;

c. Jaundice;

d. Sore throat with fever; or

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

(1) On the hands or wrists, unless an impermeable cover such as a finger cot or stall

protects the lesion and a single-use glove is worn over the impermeable cover:

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

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

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

a. Norovirus;

b. Hepatitis A virus;

c. Shigella spp.;

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

e. Salmonella Typhi;

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

4. Has been exposed to, or is the suspected source of, a confirmed disease outbreak, because the food employee or conditional employee consumed or prepared food implicated in the outbreak, or consumed food at an event prepared by a person who is infected or ill with:

a. Norovirus within the past 48 hours of the last exposure;

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

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

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

5. Has been exposed by attending or working in a setting where there is a confirmed disease outbreak, or living in the same household as, and has knowledge about an individual who works or attends a setting where there is a confirmed disease outbreak, or living in the same household as, and has knowledge about, and individual diagnosed with an illness caused by:

a. Norovirus within the past 48 hours of exposure;

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

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

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

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

1. Jaundiced; or

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

C. The person in charge shall ensure that a conditional employee:

1. Who exhibits or reports a symptom, or who reports a diagnosed illness as specified under subdivision A 2 a through e of this section, is prohibited from

becoming a food employee until the conditional employee meets the criteria for the specific symptoms or diagnosed illness as specified under 12VAC5-421-100; and

2. Who will work as a food employee in a food establishment that serves a highly susceptible population and reports a history of exposure as specified under subdivision A 4 through 5 of this section, is prohibited from becoming a food employee until the conditional employee meets the criteria specified under subdivision 9 of 12VAC5-421-100.

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

1. Excluded as specified under subdivisions 1 through 3 of 12VAC5-421-90, and subdivisions D 1, E 1, F 1, or G 1 of 12VAC5-421-90 and in compliance with the provisions specified under subdivision 1 through 7 of 12VAC5-421-100; or

2. Restricted as specified under subdivisions 4 b, 5 b, 6 b, or 7 b of 12VAC5-421-90, or subdivisions 8 or 9 of 12VAC5-421-90 and in compliance with the provisions specified under subdivisions 4 through 9 of 12VAC5-421-100.

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

F. A food employee shall:

1. Comply with an exclusion as specified under subdivisions 1 through 3 of 12VAC5-421-90 and subdivisions 4 a, 5 a, 6 a, or 7 a of 12VAC5-421-90 and with the provisions specified under subdivisions 1 through 7 of 12VAC5-421-100; or

2. Comply with a restriction as specified under subdivisions 4 b, 5 b, 6 b, or 7 b of 12VAC5-421-90, or subdivisions 8 or 9 of 12VAC5-421-90 and comply with the provisions specified under subdivisions 4 through 9 of 12VAC5-421-100.

### **12VAC5-421-90. Exclusions and restrictions.**

~~A. The person in charge shall exclude a food employee from a food establishment if the food employee is diagnosed with an infectious agent specified in subdivision 1 of 12VAC5-421-80;~~

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

~~1. Suffering from a symptom specified in 12VAC5-421-80 subdivision 2 a (1), (2), (3) or (5) or subdivision 2 b; or~~

~~2. Not experiencing a symptom of acute gastroenteritis specified in subdivision 2 a of 12VAC5-421-80, but has a stool that yields a specimen culture that is positive for Salmonella typhi, Shigella spp., or E. coli O157:H7.~~

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

~~1. Is experiencing a symptom of acute gastrointestinal illness specified in 12VAC5-421-80 subdivision 2 a (1), (2), (3) or (5) and meets a high-risk condition specified in subdivision 4 of 12VAC5-421-80;~~

~~2. Is not experiencing a symptom of acute gastroenteritis specified in subdivision 2 a~~

~~of 12VAC5-421-80, but has a stool that yields a specimen culture that is positive for *S. typhi*, *Shigella* spp., or *E. coli* O157:H7;~~

~~3. Had a past illness from *S. typhi* within the last three months; or~~

~~4. Had a past illness from *Shigella* spp. or *E. coli* O157:H7 within the last month.~~

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

~~1. If the onset of jaundice occurred within the last seven calendar days, the person in charge shall exclude the food employee from the food establishment; or~~

~~2. If the onset of jaundice occurred more than seven calendar days before, the person in charge shall:~~

~~a. Exclude the food employee from a food establishment that serves a highly susceptible population; or~~

~~b. Restrict the food employee from activities specified in subdivision 2 of 12VAC5-421-90, if the food establishment does not serve a highly susceptible population.~~

The person in charge shall exclude or restrict a food employee from a food establishment in accordance with the following:

1. Except when the symptom is from a noninfectious condition, exclude a food employee if the food employee is:

a. Symptomatic with vomiting or diarrhea; or

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

2. Exclude a food employee who is:

a. Jaundiced and the onset of jaundice occurred within the last seven calendar days, unless the food employee provides to the person in charge written medical documentation from a health practitioner specifying that the jaundice is not caused by Hepatitis A virus or other fecal-orally transmitted infection;

b. Diagnosed with an infection from Hepatitis A virus within 14 calendar days from the onset of any illness symptoms, or within seven calendar days of the onset of jaundice; or

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

3. Exclude a food employee who is diagnosed with an infection from *Salmonella Typhi*, or reports a previous infection with *Salmonella Typhi* within the past three months as specified in 12VAC5-421-80 A 3.

4. If a food employee is diagnosed with an infection from Norovirus and is asymptomatic:

a. Exclude the food employee who works in a food establishment serving a highly susceptible population; or

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

5. If a food employee is diagnosed with an infection from *Shigella* spp. and is asymptomatic:

a. Exclude the food employee who works in a food establishment serving a highly susceptible population; or

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

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

a. Exclude the food employee who works in a food establishment serving a highly susceptible population; or

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

7. If a food employee is ill with symptoms of acute onset of sore throat with fever:

a. Exclude the food employee who works in a food establishment serving a highly susceptible population; or

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

8. If a food employee is infected with a skin lesion containing pus such as a boil or infected wound that is open or draining and not properly covered as specified under 12VAC5-421-80 A 1 e, restrict the food employee.

9. If a food employee is exposed to a foodborne pathogen as specified under 12VAC5-421-80 A 4 or 5, restrict the food employee who works in a food establishment serving a highly susceptible population.

### **12VAC5-421-100. Removal, adjustment, or retention of exclusions and restrictions.**

~~A. The person in charge may remove an exclusion specified under 12VAC5-421-90 A if:~~

~~1. The person in charge obtains approval from the regulatory authority; and~~

~~2. The person excluded as specified under 12VAC5-421-90 A provides to the person in charge written medical documentation from a physician licensed to practice medicine or, if allowed by law, a nurse practitioner or physician assistant, that specifies that the excluded person may work in an unrestricted capacity in a food establishment, including an establishment that serves a highly susceptible population, because the person is free of the infectious agent of concern as specified in 12VAC5-421-4070.~~

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

~~1. 12VAC5-421-90 B 1 if the restricted person:~~

~~a. Is free of the symptoms specified under 12VAC5-421-80 subdivision 2 a (1), (2), (3) or (5) and no foodborne illness occurs that may have been caused by the restricted person;~~

~~b. Is suspected of causing foodborne illness but (i) is free of the symptoms specified under 12VAC5-421-80 subdivision 2 a (1), (2), (3) or (5) and (ii) provides written medical documentation from a physician licensed to practice medicine or, if allowed by law, a nurse practitioner or physician assistant, stating that the restricted person is free of the infectious agent that is suspected of causing the person's symptoms or~~

causing foodborne illness, as specified in ~~12VAC5-421-4070~~; or

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

~~2. 12VAC5-421-90 B 2 if the restricted person provides written medical documentation from a physician, licensed to practice medicine, or, if allowed by law, a nurse practitioner or physician assistant, according to the criteria specified in 12VAC5-421-4070 that indicates the stools are free of Salmonella typhi, Shigella spp., or E. coli O157:H7, whichever is the infectious agent of concern.~~

~~C. The person in charge may remove an exclusion specified under 12VAC5-421-90 C if the excluded person provides written medical documentation from a physician licensed to practice medicine or, if allowed by law, a nurse practitioner or physician assistant:~~

~~1. That specifies that the person is free of the infectious agent of concern as specified in 12VAC5-421-4070.~~

~~2. If the person is excluded under 12VAC5-421-90 C 1, that the symptoms experienced result from a chronic noninfectious condition such as Crohn's disease, irritable bowel syndrome, or ulcerative colitis.~~

~~D. The person in charge may remove an exclusion specified under 12VAC5-421-90 D 1 and 12VAC5-421-90 D 2 a and a restriction specified in 12VAC5-421-90 D 2 b if:~~

~~1. No foodborne illness occurs that may have been caused by the excluded or restricted person and the person provides written medical documentation from a physician licensed to practice medicine stating that specifies that the person is free of hepatitis A virus as specified in subdivision 4 a of 12VAC5-421-4070; or~~

~~2. The excluded or restricted person is suspected of causing foodborne illness and complies with subdivision 4 a and 4 b of 12VAC5-421-4070.~~

The person in charge shall adhere to the following conditions when removing, adjusting, or retaining the exclusion or restriction of a food employee:

1. Except when a food employee is diagnosed with an infection from Hepatitis A virus or Salmonella Typhi:

a. Reinstate a food employee who was excluded as specified under subdivision 1 a of 12VAC5-421-90 if the food employee:

(1) Is asymptomatic for at least 24 hours; or

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

b. If a food employee was diagnosed with an infection from Norovirus and excluded as specified under subdivision 1 b of 12VAC5-421-90:

(1) Restrict the food employee, who is asymptomatic for at least 24 hours and works in a food establishment not serving a highly susceptible population until the conditions for reinstatement as specified in subdivision 4 a or b of this section are met; or

(2) Retain the exclusion for the food employee, who is asymptomatic for at least 24 hours and works in a food establishment that serves a highly susceptible population,

until the conditions for reinstatement as specified in subdivision 4 a or b of this section are met.

c. If a food employee was diagnosed with an infection from Shigella spp. and excluded as specified under subdivision 1 b of 12VAC5-421-90:

(1) Restrict the food employee, who is asymptomatic, for at least 24 hours and works in a food establishment not serving a highly susceptible population, until the conditions for reinstatement as specified in subdivision 5 a or b of this section are met; or

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

d. If a food employee was diagnosed with an infection from Enterohemorrhagic or Shiga-toxin producing Escherichia coli and excluded as specified under subdivision 1 b of 12VAC5-421-90:

(1) Restrict the food employee, who is asymptomatic for at least 24 hours and works in a food establishment not serving a highly susceptible population, until the conditions for reinstatement as specified in subdivision 6 a or b of this section are met; or

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

2. Reinstate a food employee who was excluded as specified under subdivision 2 of 12VAC5-421-90 if the person in charge obtains approval from the regulatory authority and one of the following conditions is met:

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

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

c. The food employee provides to the person in charge written medical documentation from a health practitioner stating that the food employee is free of a Hepatitis A virus infection.

3. Reinstate a food employee who was excluded as specified under subdivision 3 of 12VAC5-421-90 if:

a. The person in charge obtains approval from the regulatory authority; and

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

4. Reinstate a food employee who was excluded as specified under subdivision 1 b or 4 a of 12VAC5-421-90, who was restricted under subdivision 4 b of 12VAC5-421-90 if the person in charge obtains approval from the regulatory authority and one of the following conditions is met:

a. The excluded or restricted food employee provides to the person in charge written medical documentation from a health practitioner stating that the food employee is free of a Norovirus infection;

b. The food employee was excluded or restricted after symptoms of vomiting or diarrhea resolved, and more than 48 hours have passed since the food employee became symptomatic; or

c. The food employee was excluded or restricted and did not develop symptoms and more than 48 hours have passed since the food employee was diagnosed.

5. Reinstate a food employee who was excluded as specified under subdivision 1 b or 5 a of 12VAC5-421-90 or who was restricted under subdivision 5 b of 12VAC5-421-90 if the person in charge obtains approval from the regulatory authority and one of the following conditions is met:

a. The excluded or restricted food employee provides to the person in charge written medical documentation from a health practitioner stating that the food employee is free of a Shigella spp. infection based on test results showing two consecutive negative stool specimen cultures that are taken:

(1) Not earlier than 48 hours after discontinuance of antibiotics, and

(2) At least 24 hours apart;

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

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

6. Reinstate a food employee who was excluded or restricted as specified under subdivision 1 b or 6 a of 12VAC5-421-90 or who was restricted under subdivision 6 b of 12VAC5-421-90 if the person in charge obtains approval from the regulatory authority and one of the following conditions is met:

a. The excluded or restricted food employee provides to the person in charge written medical documentation from a health practitioner stating that the food employee is free of an infection from Enterohemorrhagic or Shiga-toxin producing Escherichia coli based on test results that show two consecutive negative stool specimen cultures that are taken:

(1) Not earlier than 48 hours after the discontinuance of antibiotics; and

(2) At least 24 hours apart;

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

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

7. Reinstate a food employee who was excluded or restricted as specified under subdivision 7 a or b of 12VAC5-421-90 if the food employee provides to the person in charge written medical documentation from a health practitioner stating that the food employee meets one of the following conditions:

a. Has received antibiotic therapy for Streptococcus pyogenes infection for more than 24 hours;

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

infection; or

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

8. Reinstate a food employee who was restricted as specified under subdivision 8 of 12VAC5-421-90 if the skin, infected wound, cut, or pustular boil is properly covered with one of the following:

a. An impermeable cover such as a finger cot or stall and a single-use glove over the impermeable cover if the infected wound or pustular boil is on the hand, finger, or wrist;

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

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

9. Reinstate a food employee who was restricted as specified under subdivision 9 of 12VAC5-421-90 and was exposed to one of the following pathogens as specified under 12VAC5-421-80 A 4 or 5:

a. Norovirus and one of the following conditions is met:

(1) More than 48 hours have passed since the last day the food employee was potentially exposed; or

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

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

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

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

c. S. Typhi and one of the following conditions is met:

(1) More than 14 calendar days have passed since the last day the food employee was potentially exposed; or

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

d. Hepatitis A virus and one of the following conditions is met:

(1) The food employee is immune to Hepatitis A virus infection because of prior illness from Hepatitis A;

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

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

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

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

(6) The food employee does not use an alternative procedure that allows bare hand contact with ready-to-eat food until at least 30 days after the potential exposure, as specified in subdivisions 9 d (4) and (5) of this section, and the food employee receives additional training about:

(a) Hepatitis A symptoms and preventing the transmission of infection;

(b) Proper handwashing procedures; and

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

### **12VAC5-421-110. Responsibility of a food employee or an applicant to report to the person in charge. (Repealed.)**

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

~~1. In a manner specified in 12VAC5-421-80, report to the person in charge the information specified in 12VAC5-421-80; and~~

~~2. Comply with exclusions and restrictions that are specified in 12VAC5-421-90.~~

### **12VAC5-421-120. Reporting by the person in charge. (Repealed.)**

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

### **12VAC5-421-140. Cleaning procedure of hands and arms.**

~~A. Except as specified in subsection B-D of this section, food employees shall clean their hands and exposed portions of their arms (or surrogate prosthetic devices for hands or arms) for at least 20 seconds, using a cleaning compound in a lavatory that is equipped as specified under 12VAC5-421-2190 A.~~

~~B. Food employees shall use the following cleaning procedure:~~

~~1. Vigorous friction on the surfaces of the lathered fingers, finger tips, areas between the fingers, hands and arms (or by vigorously rubbing the surrogate prosthetic devices for hands or arms) for at least 10 to 15 seconds, followed by thorough rinsing under clean, running warm water; and~~

~~2. Immediately follow the cleaning procedure, thorough drying of cleaned hands and arms (or surrogate prosthetic devices) using a method as specified under 12VAC5-421-3030.~~

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

1. Rinse under clean, running warm water;

2. Apply an amount of cleaning compound recommended by the cleaning compound manufacturer;

3. Rub together vigorously for at least 10 to 15 seconds while:

a. Paying particular attention to removing soil from underneath the fingernails during the cleaning procedure; and

b. Creating friction on the surfaces of the hands and arms or surrogate prosthetic devices for hands and arms, finger tips, and areas between the fingers;

4. Thoroughly rinsing under clean, running warm water; and

5. Immediately follow the cleaning procedure with thorough drying using a method as specified under 12VAC5-421-3030.

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

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

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

### **12VAC5-421-150. [Reserved] (Repealed.)**

### **12VAC5-421-180. Hand sanitizers Antiseptics.**

~~A. A hand sanitizer and a chemical hand sanitizing solution used as a hand dip shall antiseptic used as a topical application, a hand antiseptic solution used as a hand dip, or a hand antiseptic soap shall:~~

1. Comply with one of the following:

~~a. Be an FDA-approved drug based on safety and effectiveness approved drug that is listed in the FDA publication Approved Drug Products with Therapeutic Equivalence Evaluations as an approved drug based on safety and effectiveness; or~~

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

2. Consist of components that are Comply with one of the following:

~~a. Listed for such use in contact with food in 21 CFR Part 178 – Indirect Food Additives: Adjuvants, Production Aids, and Sanitizer;~~

~~b. Exempt from regulation as food additives under 21 CFR 170.39 – Threshold of regulation for substances used in food-contact articles;~~

~~c. Generally recognized as safe (GRAS) for the intended use in contact with food within the meaning of the Federal Food, Drug and Cosmetic Act (FFDCA); or~~

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

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

b. Comply with and be listed in:

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

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

3. Be applied only to hands that are cleaned as specified under 12VAC5-421-140.

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

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

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

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

#### **12VAC5-421-360. Shell eggs.**

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

#### **12VAC5-421-370. Eggs and milk products, pasteurized.**

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

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

1. Be obtained pasteurized; and

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

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

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

#### **12VAC5-421-400. Shucked shellfish, packaging and identification.**

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

1. Name, address, and certification number of the ~~shucker-packer~~ shucker, packer, or repacker of the molluscan shellfish; and

2. The "sell by" or "best if used by" date for packages with a capacity of less than one-half gallon (1.87 L) or the date shucked for packages with a capacity of one-half gallon (1.87 L) or more.

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

#### **12VAC5-421-410. Shellstock identification.**

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

1. Except as specified under subsection C of this section, on the harvester's tag or label, the following information in the following order:

a. The harvester's identification number that is assigned by the shellfish control authority,

b. The date of harvesting,

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

d. The type and quantity of shellfish, and

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

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

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

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

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

d. The following statement in bold, capitalized type: "THIS TAG IS REQUIRED TO BE ATTACHED UNTIL CONTAINER IS EMPTY AND THEREAFTER KEPT ON FILE FOR 90 DAYS."

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

C. If a place is provided on the harvester's tag or label for a dealer's name, address, [www.townhall.virginia.gov/l/ViewXML.cf...](http://www.townhall.virginia.gov/l/ViewXML.cf...)

and certification number, the dealer's information shall be listed first.

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

### **12VAC5-421-430. Molluscan shellfish; original container.**

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

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

1. The source of the shellstock on display is identified as specified under 12VAC5-421-410 and recorded as specified under 12VAC5-421-440; and

2. The shellstock are protected from contamination.

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

1. The labeling information for the shellfish on display as specified under 12VAC5-421-400 is retained and correlated to the date when, or dates during which, the shellfish are sold or served; and

2. The shellfish are protected from contamination.

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

1. The labeling information for the shellfish is on each consumer self-service container as specified under 12VAC5-421-400 and 12VAC5-421-900 A and B 1 through 5;

2. The labeling information as specified under 12VAC5-421-400 is retained and correlated with the date when, or dates during which, the shellfish are sold or served;

3. The labeling information and dates specified under subdivision D 2 of this section are maintained for 90 days; and

4. The shellfish are protected from contamination.

### **12VAC5-421-440. Shellstock; maintaining identification.**

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

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

~~1. Using an approved recordkeeping system that keeps the tags or labels in chronological order correlated to the date when, or dates during which, the shellstock are sold or served; and~~

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

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

~~b. Ensuring that shellstock from one tagged or labeled container are not commingled with shellstock from another container being ordered by the consumer.~~

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

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

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

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

a. Preserving source identification by using a recordkeeping system as specified under subdivision C 1 of this section, and

b. Ensuring that shellstock from one tagged or labeled container are not commingled with shellstock from another container with certification numbers, different harvest dates, or different growing areas as identified on the tag or label before being ordered by the consumer.

### Article 3

#### Protection from Contamination after Receiving

#### **12VAC5-421-450. Preventing contamination.**

A. Food employees shall wash their hands as specified under 12VAC5-421-140.

B. Except when washing fruits and vegetables as specified under 12VAC5-421-510 or as specified in subsection ~~C~~ D of this section, food employees shall not contact exposed, ready-to-eat food with their bare hands and shall use suitable utensils such as deli tissue, spatulas, tongs, single-use gloves or dispensing equipment.

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

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

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

D. Food employees not serving a highly susceptible population may contact exposed, ready-to-eat food with their bare hands if:

1. The permit holder obtains prior approval from the regulatory authority;

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

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

b. Diagrams and other information showing that handwashing facilities, installed,

located, equipped, and maintained as specified under 12VAC5-421-2230, 12VAC5-421-2280, 12VAC5-421-2310, 12VAC5-421-3020, 12VAC5-421-3030, and 12VAC5-421-3045 are in an easily accessible location and in close proximity to the work station where the bare hand contact procedure is conducted;

3. A written employee health policy that details how the food establishment complies with 12VAC5-421-80, 12VAC5-421-90, and 12VAC5-421-100 including:

a. Documentation that the food employees and conditional employees acknowledge that they are informed to report information about their health and activities as they relate to gastrointestinal symptoms and diseases that are transmittable through food as specified under 12VAC5-421-80 A.

b. Documentation that food employees and conditional employees acknowledge their responsibilities as specified under 12VAC5-421-80 E and F, and

c. Documentation that the person in charge acknowledges the responsibilities as specified under 12VAC5-421-80 B, C, and D, and 12VAC5-421-90 and 12VAC5-421-100;

4. Documentation that the food employees acknowledge that they have received training in:

a. The risks of contacting the specific ready-to-eat foods with their bare hands.

b. Proper handwashing as specified under 12VAC5-421-140.

c. When to wash their hands as specified under 12VAC5-421-160.

d. Where to wash their hands as specified under 12VAC5-421-170.

e. Proper fingernail maintenance as specified under 12VAC5-421-190.

f. Prohibition of jewelry as specified under 12VAC5-421-200, and

g. Good hygienic practices as specified under 12VAC5-421-220 and 12VAC5-421-230;

5. Documentation that hands are washed before food preparation and as necessary to prevent cross-contamination by food employees as specified under 12VAC5-421-130, 12VAC5-421-140, 12VAC5-421-160, and 12VAC5-421-170 during all hours of operation when the specific ready-to-eat foods are prepared;

6. Documentation that food employees contacting ready-to-eat food with bare hands use two or more of the following control measures to provide additional safeguards to hazards associated with bare hand contact:

a. Double handwashing.

b. Nail brushes.

c. A hand antiseptic after handwashing as specified under 12VAC5-421-180.

d. Incentive programs such as paid sick leave that assist or encourage food employees not to work when they are ill, or

e. Other control measures approved by the regulatory authority; and

7. Documentation that corrective action is taken when subdivision D 1 through 6 of this section are not followed.

### **12VAC5-421-490. Pasteurized eggs; substitute for shell eggs for certain**

**recipes and populations.**

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

1. Cooked as specified in 12VAC5-421-700 A 1 or 2; or
2. Included in 12VAC5-421-700 D. ~~The eggs are held before service following cooking.~~

**12VAC5-421-500. Protection from unapproved additives.**

A. ~~As Food, as~~ specified in 12VAC5-421-350, ~~food~~ shall be protected from contamination that may result from the addition of:

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

B. A food employee shall not:

1. Apply sulfiting agents to fresh fruits and vegetables intended for raw consumption or to a food considered to be a good source of vitamin B<sub>1</sub>; or
- ~~2. Serve or sell food specified in subdivision 1 of this subsection that is treated with sulfiting agents before receipt by the food establishment, except that grapes need not meet the provisions of this subsection.~~
2. Except for grapes, serve or sell food specified under subdivision B 1 of this section that is treated with sulfiting agents before receipt by the food establishment.

**12VAC5-421-540. Food contact with equipment and utensils.**

~~Food shall only contact surfaces of equipment and utensils that are cleaned as specified under 12VAC5-421-1770 through 12VAC5-421-1870 and sanitized as specified under 12VAC5-421-1880 through 12VAC5-421-1900.;~~

1. Equipment and utensils that are cleaned as specified under 12VAC5-421-1770 through 12VAC5-421-1870, and sanitized as specified under 12VAC5-421-1880 through 12VAC5-421-1900; or
2. Single-service and single-use articles.

**12VAC5-421-570. Wiping cloths; used for one purpose.**

~~A. Cloths that are in use for wiping food spills shall be used for no other purpose: in use for wiping food spills from tableware and carry-out containers that occur as food is being served shall be:~~

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

~~B. Cloths used for wiping food spills shall be:~~

- ~~1. Dry and used for wiping food spills from tableware and carry-out containers; or~~
- ~~2. Wet and cleaned as specified under 12VAC5-421-1920 D, stored in a chemical sanitizer at a concentration specified in 12VAC5-421-3380, and used for wiping spills from food-contact and nonfood-contact surfaces of equipment.~~

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

~~D. Wet wiping cloths used with a freshly made sanitizing solution and dry wiping cloths shall be free of food debris and visible soil.~~

~~E. Working containers of sanitizing solutions for storage of in-use wiping cloths shall be placed above the floor and used in a manner to prevent contamination of food, equipment, utensils, linens, single-service or single-use articles.~~

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

1. Held between uses in a chemical sanitizer solution at a concentration specified in 12VAC5-421-3380; and

2. Laundered daily as specified under 12VAC5-421-1920 D.

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

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

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

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

#### **12VAC5-421-680. Returned food and reservice of food.**

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

B. ~~A~~ Except as specified in subdivision 8 of 12VAC5-421-950, ~~a~~ container of food that is not potentially hazardous (time/temperature control for safety food) may be ~~transferred~~ reserved from one consumer to another if:

1. The food is dispensed so that it is protected from contamination and the container is closed between uses such as a narrow-neck bottle containing catsup, steak sauce, or wine; or

2. The food, such as crackers, salt or pepper, is in an unopened original package and maintained in sound condition.

#### Article 4

#### Destruction of Organisms of Public Health Concern

#### **12VAC5-421-700. Raw animal foods.**

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

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

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

b. Except as specified under subdivisions A 2 and 3 and subsection B and C of this section, fish; and meat, and ~~pork~~ including game animals commercially raised for food as specified under 12VAC5-421-330 A 1 and game animals under a voluntary inspection program as specified under 12VAC5-421-330 A 2;

2. 155°F (68°C) for 15 seconds or the temperature specified in the following chart that corresponds to the holding time for ratites and injected meats; the following if they are comminuted: fish, meat, game animals commercially raised for food as specified under 12VAC5-421-330 A 1, and game animals under a voluntary inspection program as specified under 12VAC5-421-330 A 2; and raw eggs that are not prepared as specified under subdivision 1 a of this subsection:

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

3. 165°F (74°C) or above for 15 seconds for poultry, wild game animals as specified under 12VAC5-421-330 A 3, stuffed fish, stuffed meat, stuffed pasta, stuffed poultry, stuffed ratites, or stuffing containing fish, meat, or poultry.

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

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

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

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

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

Temperature °F (°C)	Time <sup>1</sup> in Minutes	Temperature °F (°C)	Time <sup>1</sup> in Seconds
130 (54.4)	112	147 (63.9)	134
131 (55.0)	89	149 (65.0)	85

133 (56.1)	56	151 (66.1)	54
135 (57.2)	36	153 (67.2)	34
136 (57.8)	28	155 (68.3)	22
138 (58.9)	18	157 (69.4)	14
140 (60.0)	12	158 (70.0)	0
142 (61.1)	8		
144 (62.2)	5		
145 (62.8)	4		

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

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

1. The food establishment serves a population that is not a highly susceptible population;
2. The steak is labeled, as specified under 12VAC5-421-270 E, to indicate that it meets the definition of "whole-muscle, intact beef"; and
3. The steak is cooked on both the top and bottom to a surface temperature of 145°F (63°C) or above and a cooked color change is achieved on all external surfaces.

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

1. (i) As specified under subdivisions 3 a and b of 12VAC5-421-950 the food establishment serves a population that is not a highly susceptible population and (ii) the consumer is informed as specified under 12VAC5-421-930 that to ensure its safety, the food should be cooked as specified under subsections A or B of this section; or
2. The regulatory authority grants a variance from subsection A or B of this section as specified in 12VAC5-421-3570 based on a HACCP plan that:
  - a. Is submitted by the permit holder and approved as specified under 12VAC5-421-3570;
  - b. Documents scientific data or other information that shows that a lesser time and temperature regimen results in a safe food; and
  - c. Verifies that equipment and procedures for food preparation and training of food employees at the food establishment meet the conditions.

#### **12VAC5-421-730. Parasite destruction.**

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

~~1. 4°F (-20°C) or below for 168 hours (seven days) in a freezer; or~~

~~2. -35°C (-31°F) or below for 15 hours in a blast freezer.~~

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

2. Frozen at -31°F (-35°C) or below until solid and stored at -31°F (-35°C) or below for a minimum of 15 hours; or

3. Frozen at -31°F (-35°C) or below until solid and stored at -4°F (-20°C) or below for a minimum of 24 hours.

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

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

1. Molluscan shellfish;

2. Tuna of the species *Thunnus alalunga*, *Thunnus albacares* (Yellowfin tuna), *Thunnus atlanticus*, *Thunnus maccoyii* (Bluefin tuna, Southern), *Thunnus obesus* (Bigeye tuna), or *Thunnus thynnus* (Bluefin, Northern); or

3. Aquacultured fish, such as salmon, that:

a. If raised in open water, are raised in net-pens; or

b. Are raised in land-based operations such as ponds or tanks; and

c. Are fed formulated feed, such as pellets, that contains no live parasites infective to the aquacultured fish.

#### **12VAC5-421-740. Records, creation and retention.**

A. Except as specified in 12VAC5-421-730 B and subsection B of this section, if raw, marinated, raw-marinated, partially cooked, or marinated-partially cooked fish are served or sold in ready-to-eat form, the person in charge shall record the freezing temperature and time to which the fish are subjected and shall retain the records at the food establishment for 90 calendar days beyond the time of service or sale of the fish.

B. If the fish are frozen by a supplier, a written agreement or statement from the supplier stipulating that the fish supplied are frozen to a temperature and for a time specified under 12VAC5-421-730 may substitute for the records specified under subsection A of this section.

C. If raw, raw-marinated, partially cooked, or marinated-partially cooked fish are served or sold in ready-to-eat form, and the fish are raised and fed as specified in 12VAC5-421-730 B 3, a written agreement or statement from the supplier or aquaculturist stipulating that the fish were raised and fed as specified in 12VAC5-421-730 B 3 shall be obtained by the person in charge and retained in the records of the food establishment for 90 calendar days beyond the time of service or sale of the fish.

#### **12VAC5-421-750. Reheating for immediate service. (Repealed.)**

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

#### **12VAC5-421-760. Reheating for hot holding.**

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

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

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

~~D. Reheating for hot holding shall be done rapidly and the time the food is between the temperature specified under subdivision 2 of 12VAC5-421-820 and 165°F (74°C) shall not exceed two hours as specified under subsections A through C of this section shall be done rapidly and the time the food is between 41°F (5°C) and the temperatures specified under subsections A through C of this section may not exceed two hours.~~

E. Remaining unsliced portions of meat roasts that are cooked as specified under 12VAC5-421-700 B may be reheated for hot holding using the oven parameters and minimum time and temperature conditions specified under 12VAC5-421-700 B.

#### **12VAC5-421-780. Potentially hazardous food, slacking.**

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

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

#### **12VAC5-421-790. Thawing.**

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

1. Under refrigeration that maintains the food temperature at 41°F (5°C) or less; or
2. Completely submerged under running water:
  - a. At a water temperature of 70°F (21°C) or below;
  - b. With sufficient water velocity to agitate and float off loose particles in an overflow; and
  - c. For a period of time that does not allow thawed portions of ready-to-eat food to rise above 41°F (5°C); or
  - d. For a period of time that does not allow thawed portions of a raw animal food

requiring cooking as specified under 12VAC5-421-700 A or B to be above 41°F (5°C) for more than four hours including:

- (1) The time the food is exposed to the running water and the time needed for preparation for cooking; or
  - (2) The time it takes under refrigeration to lower the food temperature to 41°F (5°C);
3. As part of a cooking process if the food that is frozen is:
- a. Cooked as specified under 12VAC5-421-700 A or B or 12VAC5-421-710; or
  - b. Thawed in a microwave oven and immediately transferred to conventional cooking equipment, with no interruption in the process; or
4. Using any procedure if a portion of frozen ready-to-eat food is thawed and prepared for immediate service in response to an individual consumer's order.

### **12VAC5-421-800. Cooling.**

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

1. Within two hours, from 135°F (57°C) to 70°F (21°C); and
- ~~2. Within an additional four hours, from 70°F (21°C) to 41°F (5°C) or less.~~
2. Within a total of six hours from 135°F (57°C) to 41°F (5°C) or less.

B. Potentially hazardous food (time/temperature control for safety food) shall be cooled within four hours to 41°F (5°C) or less if prepared from ingredients at ambient temperature, such as reconstituted foods and canned tuna.

C. Except as specified in subsection D of this section, a potentially hazardous food (time/temperature control for safety food) received in compliance with laws allowing a temperature above 41°F (5°C) during shipment from the supplier as specified in 12VAC5-421-340 B, shall be cooled within four hours to 41°F (5°C) or less.

D. Raw shell eggs shall be received as specified under 12VAC5-421-340 C and immediately placed in refrigerated equipment that maintains an ambient air temperature of 45°F (7°C) or less.

### **12VAC5-421-820. Potentially hazardous food; hot and cold holding.**

A. Except during preparation, cooking, or cooling, or when time is used as the public health control as specified under 12VAC5-421-850, potentially hazardous food (time/temperature control for safety food) shall be maintained:

1. At 135°F (57°C) or above, except that roasts cooked to a temperature and for a time specified under 12VAC5-421-700 B or reheated as specified in 12VAC5-421-760 E may be held at a temperature of 130°F (54°C) or above; or
2. At 41°F (5°C) or less.

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

C. Potentially hazardous food (time/temperature control for safety food) in a homogenous liquid form may be maintained outside the temperature control requirements, as specified in subsection A of this section, while contained within

specialty designed equipment that complies with the design and construction requirements as specified under subdivision 5 of 12VAC5-421-1230.

### **12VAC5-421-830. Ready-to-eat, potentially hazardous food, date marking.**

~~A. Except as specified in subsection D of this section, refrigerated, ready-to-eat, potentially hazardous food prepared and held in a food establishment for more than 24 hours shall be clearly marked to indicate the food shall be consumed on the premises, sold, or discarded within seven calendar days or less from the day the food is prepared. The day of preparation shall be counted as day 1 when packaging food using a reduced oxygen packaging method as specified under 12VAC5-421-870, and except as specified in subsections D and E of this section, refrigerated ready-to-eat potentially hazardous food (time/temperature control for safety food) prepared and held in a food establishment for more than 24 hours shall be clearly marked to indicate the date or day by which the food shall be consumed on the premises, sold, or discarded when held at a temperature of 41°F (5°C) or less for a maximum of seven days.~~

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

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

~~C. A refrigerated, ready-to-eat potentially hazardous food that is frequently rewrapped, such as lunchmeat or a roast, or for which date marking is impractical, such as soft serve mix or milk in a dispensing machine, may be marked as specified in subsection A or B of this section, or by an alternative method acceptable to the regulatory authority.~~

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

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

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

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

C. A refrigerated, ready-to-eat, potentially hazardous food (time/temperature control for safety food) ingredient or a portion of a refrigerated, ready-to-eat, potentially hazardous food (time/temperature control for safety food) that is subsequently combined with additional ingredients or portions of food shall retain the date marking of the earliest-prepared or first-prepared ingredient.

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

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

2. Marking the date or day of preparation, with a procedure to discard the food on or before the last date or day by which the food must be consumed on the premises, sold, or discarded as specified in subsection A of this section;

3. Marking the date or day the original container is opened in a food establishment, with a procedure to discard the food on or before the last date of day by which the food must be consumed on the premises, sold, or discarded as specified under subsection B of this section; or

4. Using calendar dates, days of the week, color-coded marks, or other effective marking methods, provided that the marking system is disclosed to the regulatory authority upon request.

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

F. Subsection B of this section does not apply to the following foods prepared and packaged by a food processing plant inspected by a regulatory authority:

1. Deli salads, such as ham salad, seafood salad, chicken salad, egg salad, pasta salad, potato salad, and macaroni salad, manufactured in accordance with 21 CFR Part 110 Current good manufacturing practice in manufacturing, packing or holding food;

2. Hard cheeses containing not more than 39% moisture as defined in 21 CFR Part 133 Cheeses and related cheese products, such as cheddar, gruyere, parmesan and reggiano, and romano;

3. Semi-soft cheese containing more than 39% moisture, but not more than 50% moisture, as defined in 21 CFR Part 133 Cheeses and cheese related products, such as blue, edam, gorgonzola, gouda, and monterey jack;

4. Cultured dairy products as defined in 21 CFR Part 131 Milk and cream, such as yogurt, sour cream, and buttermilk;

5. Preserved fish products, such as pickled herring and dried or salted cod, and other acidified fish products as defined in 21 CFR Part 114 Acidified foods;

6. Shelf stable, dry fermented sausages, such as pepperoni and Genoa salami that are not labeled "Keep Refrigerated" as specified in 9 CFR Part 317 Labeling, marking devices, and containers, and that retain the original casing on the product; and

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

**12VAC5-421-850. Time as a public health control.**

~~A. Except as specified under subsection B of this section, if time only, rather than time in conjunction with temperature, is used as the public health control for a working supply of potentially hazardous food before cooking, or for ready-to-eat potentially hazardous food that is displayed or held for service for immediate consumption:~~

~~1. The food shall be marked or otherwise identified to indicate the time that is four hours past the point in time when the food is removed from temperature control;~~

~~2. The food shall be cooked and served, served if ready to eat, or discarded, within four hours from the point in time when the food is removed from temperature control;~~

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

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

~~a. Subdivisions 1, 2 and 3 of this section; and~~

~~b. 12VAC5-421-800 for food that is prepared, cooked, and refrigerated before time is used as a public health control.~~

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

A. Except as specified under subsection D of this section, if time without temperature control is used as the public health control for a working supply of potentially hazardous food (time/temperature control for safety food) before cooking or for ready-to-eat potentially hazardous food (time/temperature control for safety food) that is displayed or held for sale or service, written procedures shall be prepared in advance, maintained in the food establishment, and made available to the regulatory authority upon request that specify:

1. Methods of compliance with subdivisions B 1 through 3 or C 1 through 5 of this section; and

2. Methods of compliance with 12VAC5-421-800 for food that is prepared, cooked, and refrigerated before time is used as a public health control.

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

1. The food shall be marked or otherwise identified to indicate the time that is four hours past the point in time when the food is removed from temperature control;

2. The food shall be cooked and served, served at any temperature if ready-to-eat, or discarded, within four hours from the point in time when the food is removed from temperature control; and

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

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

1. The food shall have an initial temperature of 41°F (5°C) or less when removed from temperature control and the food temperature may not exceed 70°F (21°C) within a

maximum time period of six hours:

2. The food shall be monitored to ensure the warmest portion of the food does not exceed 70°F (21°C) during the six-hour period, unless an ambient air temperature is maintained that ensures the food does not exceed 70°F (21°C) during the six-hour holding period;

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

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

b. The time that is six hours past the point in time when the food is removed from 41°F (5°C) or less cold-holding temperature control;

4. The food shall be:

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

b. Cooked and served, served at any temperature if ready-to-eat, or discarded within a maximum of six hours from the point in time when the food is removed from 41°F (5°C) or less cold-holding temperature control; and

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

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

#### **12VAC5-421-860. Variance requirement.**

A food establishment shall obtain a variance from the regulatory authority as specified in 12VAC5-421-3570 and 12VAC5-421-3580 before:

1. Smoking food as a method of food preservation rather than as a method of flavor enhancement;

2. Curing food;

3. Using food additives or adding components such as vinegar:

a. As a method of food preservation rather than as a method of flavor enhancement; or

b. To render a food so that it is not potentially hazardous;

4. Packaging food using a reduced oxygen packaging method except as specified under 12VAC5-421-870 where a barrier to *Clostridium botulinum* in addition to refrigeration exists;

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

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

~~7. Preparing food by another method that is determined by the regulatory authority to require a variance. Sprouting seeds or beans; or~~

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

**12VAC5-421-870. Reduced oxygen packaging; criteria.**

A. Except for a food establishment that obtains a variance as specified under ~~12VAC5-421-860~~, a food establishment that packages food using a reduced oxygen packaging method and *Clostridium botulinum* is identified as a microbiological hazard in the final packaged form shall ensure that there are at least two barriers in place to control the growth and toxin formation of *Clostridium botulinum*.

B. A food establishment that packages food using a reduced oxygen packaging method and *Clostridium botulinum* is identified as a microbiological hazard in the final packaged form shall have a HACCP plan that contains the information specified under subdivision 4 of ~~12VAC5-421-3630~~ and that:

1. Identifies the food to be packaged;
2. Limits the food packaged to a food that does not support the growth of *Clostridium botulinum* because it complies with one of the following:
  - a. Has an  $a_w$  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 12VAC5-421-3630.~~

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

A. Except for a food establishment that obtains a variance as specified under 12VAC5-421-860 and except as specified under subsections C and E of this section, a food establishment that packages potentially hazardous food (time/temperature control for safety food) using a reduced oxygen packaging method shall ensure that there are at least two barriers in place to control the growth and toxin formation of Clostridium botulinum and the growth of Listeria monocytogenes.

B. A food establishment that packages potentially hazardous food (time/temperature control for safety food) using a reduced oxygen method shall have a HACCP plan that contains the following information specified under 12VAC5-421-3630 D:

1. Identifies food to be packaged;

2. Except as specified in subsections C and E and as specified in subsection D of this section, requires that the packaged food shall be maintained at 41°F (5°C) or less and meet at least one of the following criteria:

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

b. Has a pH of 4.6 or less.

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

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

3. Describes how the package shall be prominently and conspicuously labeled on the principal display panel in bold type on a contrasting background, with instructions to:

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

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

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

5. Includes operational procedures that:

a. Prohibit contacting food with bare hands,

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

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

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

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

6. Describes the training program that ensures that the individual responsible for the

reduced oxygen packaging operation understands the:

a. Concepts required for safe operation,

b. Equipment and facilities, and

c. Procedures specified under subdivision B 5 of this section and 12VAC5-421-3630 D.

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

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

1. The food establishment implements a HACCP plan that contains the information as specified under 12VAC5-421-3630 D:

2. The food is:

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

b. Cooked to heat all parts of the food to a temperature and for a time as specified under 12VAC5-421-700.

c. Protected from contamination after cooking as specified in 12VAC5-421-450 through 12VAC5-421-690.

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

e. Cooled to 41°F (5°C) in the sealed package or bag as specified under 12VAC5-421-800, and subsequently:

(1) Cooled to 34°F (1°C) within 48 hours of reaching 41°F (5°C) and held at that temperature until consumed or discarded within 30 days after the date of preparation;

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

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

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

f. Held in a refrigeration unit that is equipped with an electronic system that continuously monitors time and temperature and is visually examined for proper operation twice daily.

g. If transported off-site to a satellite location of the same business entity, equipped with verifiable electronic monitoring devices to ensure that times and temperatures are monitored during transportation, and

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

3. The records required to confirm that cooling and cold holding refrigeration

time/temperature parameters are required as part of the HACCP plan, are maintained and are:

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

b. Held for six months; and

4. Written operational procedures as specified under subdivision B 5 of this section and a training program as specified under subdivision B 6 of this section are implemented.

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

1. Limits the cheeses packaged to those that are commercially manufactured in a food processing plant with no ingredients added in the food establishment and that meet the Standards of Identity as specified in 21 CFR 133.150 Hard Cheeses, 21 CFR 133.169 Pasteurized process cheese, or 21 CFR 133.187 Semi-soft cheeses;

2. Has a HACCP plan that contains the information specified in 12VAC5-421-3630 D;

3. Except as specified under subdivision B 2 , B 3 b, and B 4, complies with subsection B of this section;

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

5. Discards the reduced oxygen packaged cheese if it is not sold for off-premises consumption or consumed within 30 calendar days of its packaging.

### **12VAC5-421-900. Food labels.**

A. Food packaged in a food establishment, shall be labeled as specified in accordance with all applicable laws and regulations, including 21 CFR Part 101 - Food Labeling, and 9 CFR Part 317 - Labeling, Marking Devices, and Containers.

B. Label information shall include:

1. The common name of the food, or absent a common name, an adequately descriptive identity statement;

2. If made from two or more ingredients, a list of ingredients in descending order of predominance by weight, including a declaration of artificial color or flavor and chemical preservatives, if contained in the food;

3. An accurate declaration of the quantity of contents;

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

~~5. Except as exempted in the Federal Food, Drug, and Cosmetic Act § 403(Q)(3)–(5), nutrition labeling as specified in 21 CFR Part 101 – Food Labeling, and 9 CFR Part 317 Subpart B – Nutrition Labeling.~~

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

5. The name of the food source for each major food allergen contained in the food

unless the food source is already part of the common or usual name of the respective ingredient:

6. Except as exempted in the Federal Food, Drug, and Cosmetic Act § 403(Q)(3) - (5), nutrition labeling as specified in 21 CFR Part 101 - Food Labeling, and 9 CFR Part 317 Subpart B - Nutrition Labeling; and

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

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

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

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

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

## Article 8

### Special Requirements for Highly Susceptible Populations

#### **12VAC5-421-950. Pasteurized foods, prohibited reservice, and prohibited food.**

In a food establishment that serves a highly susceptible population:

1. The following criteria apply to juice:
  - a. For the purposes of this paragraph only, children who are age nine or less and receive food in a school, day care setting, or similar facility that provides custodial care are included as highly susceptible populations;
  - b. Prepackaged juice or a prepackaged beverage containing juice, that bears a warning label as specified in 21 CFR 101.17(g) Food Labeling, or packaged juice or beverage containing juice, that bears a warning label as specified under subdivision 2 of 12VAC5-421-765 shall not be served or offered for sale; and
  - c. Unpackaged juice that is prepared on the premises for service or sale in a ready-to-eat form shall be processed under a HACCP plan that contains the information specified in subdivisions 2 through 5 of 12VAC5-421-3630 and as specified under 21 CFR 120.24, Process controls.
2. Pasteurized shell eggs ~~or pasteurized liquid, frozen, or dry eggs~~ or egg products shall be substituted for raw shell eggs in the preparation of:
  - a. Foods such as Caesar salad, hollandaise or biarnaise sauce, mayonnaise, meringue, eggnog, ice cream, and egg-fortified beverages; and

b. Except as specified in subdivision ~~5~~ 6 of this section, recipes in which more than one egg is broken and the eggs are combined.

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

a. Raw animal foods such as raw fish, raw-marinated fish, raw molluscan shellfish, and steak tartare;

b. A partially cooked animal food such as lightly cooked fish, rare meat, soft-cooked eggs that are made from raw shell eggs, and meringue; and

c. Raw seed sprouts.

4. Food employees shall not contact ready-to-eat food as specified in 12VAC5-421-450 B.

~~5. Subdivision 2 b of this section does not apply if:~~

~~a. The raw eggs are combined immediately before cooking for one consumer's serving at a single meal, cooked as specified under 12VAC5-421-700 A 1, and served immediately, such as an omelet, soufflé, or scrambled eggs;~~

~~b. The raw eggs are combined as an ingredient immediately before baking and the eggs are thoroughly cooked to a ready-to-eat form, such as a cake, muffin, or bread; or~~

~~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.~~

5. Time only, as the public health control as specified under 12VAC5-421-850, may not be used for raw eggs.

6. Subdivision 2 b of this section does not apply if:

a. The raw eggs are combined immediately before cooking for one consumer's serving at a single meal, cooked as specified under 12VAC5-421-700 A 1, and served immediately, such as an omelet, soufflé, or scrambled eggs;

b. The raw eggs are combined as an ingredient immediately before baking and the eggs are thoroughly cooked to a ready-to-eat form, such as a cake, muffin, or bread; or

c. The preparation of the food is conducted under a HACCP plan that:

(1) Identifies the food to be prepared;

(2) Prohibits contacting ready-to-eat food with bare hands;

(3) Includes specifications and practices that ensure:

(a) Salmonella Enteritidis growth is controlled before and after cooking; and

(b) Salmonella Enteritidis is destroyed by cooking the eggs according to the temperature and time specified in 12VAC5-421-700 A 2;

d. Contains the information specified under subdivision 4 of 12VAC5-421-3630 including procedures that:

(1) Control cross contamination of ready-to-eat food with raw eggs; and

(2) Delineate cleaning and sanitization procedures for food-contact surfaces; and

e. Describes the training program that ensures that the food employee responsible for the preparation of the food understands the procedures to be used.

7. Except as specified in subdivision 8 of this section, food may be reserved as specified under 12VAC5-421-680 B 1 and 2.

8. Foods may not be reserved under the following conditions:

1. Any food served to patients or clients who are under contact precautions in medical isolation or quarantine, or protective environment isolation may not be reserved to others outside.

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

#### **12VAC5-421-980. Lead in ceramic, china, and crystal utensils, use limitation.**

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

Utensil Category	Description	
Hot beverage mugs	coffee mugs	0.5 mg/l
Large hollowware	bowls 1.16 qt. (1.1 liter)	1.0 mg/l
Small hollowware	bowls < 1.16 qt. (1.1 liter)	2.0 mg/l
Flat utensils	plates, saucers	3.0 mg/l

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

<u>Flat tableware</u>	<u>Plates, Saucers</u>	<u>3.0</u>
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B. Pewter alloys containing lead in excess of 0.05% may not be used as a food contact surface.

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

**12VAC5-421-1020. Lead in pewter alloys, use limitation. (Repealed.)**

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

**12VAC5-421-1030. Lead in solder and flux, use limitation. (Repealed.)**

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

**12VAC5-421-1200. Pressure measuring devices, mechanical warewashing equipment.**

Pressure measuring devices that display the pressures in the water supply line for the fresh hot water sanitizing rinse shall have increments of 1 pounds per square inch (7 kilopascals) or smaller and shall be accurate to  $\pm 2$  pounds per square inch ( $\pm 14$  kilopascals) ~~in the 1525 pounds per square inch (100170 kilopascals) range~~ in the range indicated on the manufacturer's data plate.

**12VAC5-421-1230. Dispensing equipment, protection of equipment and food.**

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

1. The delivery tube, chute, orifice, and splash surfaces directly above the container receiving the food shall be designed in a manner, such as with barriers, baffles, or drip aprons, so that drips from condensation and splash are diverted from the opening of the container receiving the food;
2. The delivery tube, chute, and orifice shall be protected from manual contact such as by being recessed;
3. The delivery tube or chute and orifice of equipment used to vend liquid food or ice in unpackaged form to self-service consumers shall be designed so that the delivery tube or chute and orifice are protected from dust, insects, rodents, and other contamination by a self-closing door if the equipment is:
  - a. Located in an outside area that does not otherwise afford the protection of an enclosure against the rain, windblown debris, insects, rodents, and other contaminants that are present in the environment, or
  - b. Available for self-service during hours when it is not under the full-time supervision of a food employee; and
4. The dispensing equipment actuating lever or mechanism and filling device of consumer self-service beverage dispensing equipment shall be designed to prevent contact with the lip-contact surface of glasses or cups that are refilled.

5. Dispensing equipment in which potentially hazardous food (time/temperature control for safety food) in homogenous liquid form is maintained outside of the temperature control requirements as specified in 12VAC5-421-820 C shall:

a. Be specifically designed and equipped to maintain the commercial sterility of aseptically packaged food in a homogenous liquid form for a specified duration from the time of opening the packaging within the equipment; and

b. Conform to the requirements for this equipment as specified in NSF/ANSI 18-2006 Manual Food and Beverage Dispensing Equipment.

#### **12VAC5-421-1260. Beverage tubing, separation.**

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

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

#### **12VAC5-421-1310. Vending machines, automatic shutoff.**

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

1. If there is a power failure, mechanical failure, or other condition that results in an internal machine temperature that can not maintain food temperatures as specified under Part III (12VAC5-421-260 et seq.) of this chapter; and
2. If a condition specified under subdivision 1 of this subsection occurs, until the machine is serviced and restocked with food that has been maintained at temperatures specified under Part III.

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

1. In a refrigerated vending machine, the ambient temperature shall not exceed 41°F (5°C) for more than 30 minutes immediately after the machine is filled, serviced, or restocked; or
2. In a hot holding vending machine, the ambient temperature shall not be less than 135°F (57°C) for more than 120 minutes immediately after the machine is filled, serviced, or restocked.

#### **12VAC5-421-1420. Case lot handling equipment apparatuses, movability.**

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

#### **12VAC5-421-1440. Food equipment, certification and classification. (Repealed.)**

~~Food equipment that is certified or classified for sanitation by an American National Standards Institute (ANSI) accredited certification program will be deemed to comply with Articles 1 (12VAC5-421-960 et seq.) and 2 (12VAC5-421-1080 et seq.) of this part.~~

#### **12VAC5-421-1550. Fixed equipment, spacing or sealing.**

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

is:

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

B. ~~Table-mounted~~ Counter-mounted equipment that is not easily movable shall be installed to allow cleaning of the equipment and areas underneath and around the equipment by being:

1. Sealed to the table; or
2. Elevated on legs as specified under 12VAC5-421-1560 D.

#### **12VAC5-421-1560. Fixed equipment, elevation or sealing.**

A. Except as specified in subsections B and C of this section, floor-mounted equipment that is not easily movable shall be sealed to the floor or elevated on legs that provide at least a 6 inch (15 centimeter) clearance between the floor and the equipment.

B. If no part of the floor under the floor-mounted equipment is more than 6 inches (15 centimeters) from the point of cleaning access, the clearance space may be only 4 inches (10 centimeters).

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

D. Except as specified in subsection E of this section, ~~table-mounted~~ counter-mounted equipment that is not easily movable shall be elevated on legs that provide at least a 4-inch (10 centimeter) clearance between the table and the equipment.

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

1. Three inches (7.5 centimeters) if the horizontal distance of the table top under the equipment is no more than 20 inches (50 centimeters) from the point of access for cleaning; or
2. Two inches (5 centimeters) if the horizontal distance of the table top under the equipment is no more than 3 inches (7.5 centimeters) from the point of access for cleaning.

#### **12VAC5-421-1690. Mechanical warewashing equipment, sanitization pressure.**

~~The flow pressure of the fresh hot water sanitizing rinse in a warewashing machine shall not be less than 15 pounds per square inch (100 kilopascals) or more than 25 pounds per square inch (170 kilopascals) as measured in the water line immediately downstream or upstream from the fresh hot water sanitizing rinse control valve.~~

The flow pressure of the fresh hot water sanitizing rinse in a warewashing machine, as measured in the water line immediately downstream or upstream from the fresh hot water sanitizing rinse control valve, shall be within the range specified on the

machine manufacturer's data plate and may not be less than five pounds per square inch (35 kilopascals) or more than 30 pounds per square inch (200 kilopascals).

~~Article 7-~~

~~Sanitization of Equipment and Utensils~~

**~~12VAC5-421-1880. Food-contact surfaces and utensils. (Repealed.)~~**

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

Article 7

Sanitization of Equipment and Utensils

**12VAC5-421-1890. Before use after cleaning.**

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

**12VAC5-421-1980. Food-contact surfaces.**

Lubricants as specified in 12VAC5-421-3420 shall be applied to food-contact surfaces that require lubrication in a manner that does not contaminate food-contact surfaces.

**12VAC5-421-2040. Preset tableware.**

~~If tableware is preset:~~

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

A. Tableware that is preset shall be protected from contamination by being wrapped, covered, or inverted.

B. When tableware is preset, exposed, unused settings shall be:

1. Removed when a consumer is seated; or
2. Cleaned and sanitized before further use if the settings are not removed when a consumer is seated.

**12VAC5-421-2190. Handwashing lavatory sink, water temperature, and flow.**

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

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

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

**12VAC5-421-2230. Handwashing lavatory sinks, numbers, and capacities.**

A. Except as specified in subsection B of this section, at least one handwashing lavatory sink, or the number of handwashing lavatories sinks necessary for their convenient use by employees in areas specified under 12VAC5-421-2280, and not fewer than the number of handwashing lavatories sinks required by law shall be

provided.

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

#### **12VAC5-421-2280. Handwashing lavatory sinks, location.**

A handwashing lavatory sink shall be located:

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

#### **12VAC5-421-2310. Using a handwashing lavatory sink.**

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

B. A handwashing lavatory sink shall not be used for purposes other than handwashing.

#### **12VAC5-421-2510. ~~Establishment drainage system. (Repealed.)~~**

~~Food establishment drainage systems, including grease traps, that convey sewage shall be designed and installed as specified under 12VAC5-421-2180 A.~~

#### **12VAC5-421-2520. Backflow prevention.**

~~A. Except as specified in subsections B and C of this section, a direct connection shall not exist between the sewage system and a drain originating from equipment in which food, portable equipment, or utensils are placed.~~

~~B. If allowed by law, a warewashing machine may have a direct connection between its waste outlet and a floor drain when the machine is located within 5 feet (1.5 m) of a trapped floor drain and the machine outlet is connected to the inlet side of a properly vented floor drain trap.~~

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

A. Except as specified in subsections B, C, and D of this section, a direct connection may not exist between the sewage system and a drain originating from equipment in which food, portable equipment, or utensils are placed.

B. Subsection A of this section does not apply to floor drains that originate in refrigerated spaces that are constructed as an integral part of the building.

C. If allowed by law, a warewashing machine may have a direct connection between its waste outlet and a floor drain when the machine is located within five feet (1.5 meters) of a trapped floor drain and the machine outlet is connected to the inlet side of a properly vented floor drain trap.

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

~~Article 5-~~

~~Refuse, Recyclables, and Returnables~~

#### **12VAC5-421-2590. ~~Indoor storage area. (Repealed.)~~**

~~If located within the food establishment, a storage area for refuse, recyclables, and returnables shall meet the requirements specified under 12VAC5-421-2790, 12VAC5-421-2810 through 12VAC5-421-2880, 12VAC5-421-2930, and 12VAC5-421-2940.~~

#### Article 5

#### Refuse, Recyclables, and Returnables

#### **12VAC5-421-2600. Outdoor storage surface.**

An outdoor storage surface for refuse, recyclables, and returnables shall be constructed of nonabsorbent material such as concrete or asphalt and shall be smooth, durable, and sloped to drain.

#### **12VAC5-421-2630. Receptacles in vending machines.**

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

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

#### Part VI

#### Physical Facilities

#### Article 1

#### Materials for Construction and Repair

#### **12VAC5-421-2790. Indoor areas; surface characteristics.**

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

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

B. In a temporary food establishment:

1. A floor may be concrete, if graded to drain, machine-laid asphalt, or dirt or gravel if it is covered with mats, removable platforms, duckboards, or other suitable approved materials that are effectively treated to control dust and mud; and
2. Walls and ceilings may be constructed of a material that protects the interior from the weather and windblown dust and debris.

#### Article 2

#### Design, Construction, and Installation

#### **12VAC5-421-2810. Floors, walls, and ceilings -- cleanability.**

~~Except as specified under 12VAC5-421-2840, the floors, floor coverings, walls, wall coverings, and ceilings shall be designed, constructed, and installed so they are smooth and easily cleanable, except that antislip floor coverings or applications may~~

~~be used for safety reasons.~~

Except as specified under 12VAC5-421-2840 and except for anti-slip floor coverings or applications that may be used for safety reasons, floors, floor coverings, walls, wall coverings, and ceilings shall be designed, constructed, and installed so they are smooth and easily cleanable.

#### **12VAC5-421-2920. Toilet rooms, enclosed.**

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

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

#### **12VAC5-421-2950. Outdoor food vending areas, overhead protection.**

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

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

#### **12VAC5-421-2960. Outdoor servicing areas, overhead protection.**

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

Except for areas used only for the loading of water or the discharge of sewage or other liquid waste, through the use of a closed system of hoses, servicing areas shall be provided with overhead protection.

~~Article 3~~

~~Numbers and Capacities~~

#### **12VAC5-421-3010. Handwashing lavatories, minimum number. (Repealed.)**

~~Handwashing lavatories shall be provided as specified under 12VAC5-421-2230.~~

~~Article 3~~

~~Numbers and Capacities~~

#### **12VAC5-421-3020. Handwashing cleanser, availability.**

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

#### **12VAC5-421-3030. Hand drying provision.**

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

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

**12VAC5-421-3040. Handwashing aids and devices, use restrictions.**

A sink used for food preparation or utensil washing shall not be provided with the handwashing aids and devices required for a handwashing ~~lavatory sink~~ as specified under 12VAC5-421-3020 and 12VAC5-421-3030 and 12VAC5-421-2650 C.

**12VAC5-421-3045. Handwashing signage.**

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

**12VAC5-421-3050. Disposable towels, waste receptacle. (Repealed.)**

~~A handwashing lavatory or group of adjacent lavatories that is provided with disposable towels shall be provided with a waste receptacle as specified under 12VAC5-421-2650 C.~~

**12VAC5-421-3060. Toilets and urinals, minimum number. (Repealed.)**

~~Toilets and urinals shall be provided as specified under 12VAC5-421-2240.~~

**12VAC5-421-3080. Lighting, intensity.**

The light intensity shall be:

1. At least 10 foot candles (~~110 lux~~) (108 lux) at a distance of 30 inches (75 cm) above the floor, in walk-in refrigeration units and dry food storage areas and in other areas and rooms during periods of cleaning;
2. At least 20 foot candles (~~220 lux~~): (215 lux):
  - a. At a surface where food is provided for consumer self-service such as buffets and salad bars or where fresh produce or packaged foods are sold or offered for consumption;
  - b. Inside equipment such as reach-in and under-counter refrigerators;
  - c. At a distance of 30 inches (75 cm) above the floor in areas used for handwashing, warewashing, and equipment and utensil storage, and in toilet rooms; and
3. At least 50 foot candles (540 lux) at a surface where a food employee is working with food or working with utensils or equipment such as knives, slicers, grinders, or saws where employee safety is a factor.

**12VAC5-421-3110. Service sinks, availability. (Repealed.)**

~~A service sink or curbed cleaning facility shall be provided as specified under 12VAC5-421-2250.~~

Article 4-

Location and Placement

**~~12VAC5-421-3120. Handwashing lavatories, conveniently located. (Repealed.)~~**

~~Handwashing lavatories shall be conveniently located as specified under 12VAC5-421-2280.~~

Article 4

Location and Placement

**12VAC5-421-3130. Toilet rooms, convenience and accessibility.**

Toilet rooms shall be conveniently located and accessible to employees during all hours of operation. Toilet rooms intended for use by customers shall not necessitate travel through food preparation or handling areas.

**~~12VAC5-421-3160. Refuse, recyclables, and returnables -- receptacles, waste handling units, and designated storage areas. (Repealed.)~~**

~~Units, receptacles, and areas designated for storage of refuse and recyclable and returnable containers shall be located as specified under 12VAC5-421-2680.~~

**12VAC5-421-3180. Cleaning, frequency and restrictions.**

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

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

B. Except for cleaning that is necessary due to a spill or other accident, cleaning shall be done during periods when the least amount of food is exposed such as after closing.

**~~12VAC5-421-3240. Maintaining and using handwashing lavatories~~ Cleaning of Plumbing Fixtures.**

~~Handwashing lavatories shall be kept clean, and maintained and used as specified under 12VAC5-421-2310. Plumbing fixtures such as handwashing sinks, toilets, and urinals shall be cleaned as often as necessary to keep them clean and maintained and used as specified under 12VAC5-421-2310.~~

**12VAC5-421-3460. Medicines -- restriction and storage.**

~~A. Only those medicines that are necessary for the health of employees shall be allowed in a food establishment. This section does not apply to medicines that are stored or displayed for retail sale.~~

~~B. Medicines that are in a food establishment for the employees' use shall be labeled as specified under 12VAC5-421-3320 and located to prevent the contamination of food, equipment, utensils, linens, and single service and single use articles.~~

A. Except for medicines that are stored or displayed for retail sale, only those medicines that are necessary for the health of employees shall be allowed in a food establishment.

B. Medicines that are in a food establishment for the employees' use shall be labeled as specified under 12VAC5-421-3320 and located to prevent the contamination of food, equipment, utensils, linens, and single-service and single-use articles.

**12VAC5-421-3750. Responsibilities of the permit holder.**

Upon acceptance of the permit issued by the regulatory authority, the permit holder in order to retain the permit shall:

1. Post the permit in a location in the food establishment that is conspicuous to consumers;
2. Comply with the provisions of this chapter including the conditions of a granted variance as specified under 12VAC5-421-3590, and approved plans as specified under 12VAC5-421-3610;
3. If a food establishment is required under 12VAC5-421-3620 to operate under a HACCP plan, comply with the plan as specified under 12VAC5-421-3590;
4. Immediately contact the regulatory authority to report an illness of a food employee as specified under ~~12VAC5-421-120~~ 12VAC5-421-80 B;
5. Immediately discontinue operations and notify the regulatory authority if an imminent health hazard may exist as specified under 12VAC5-421-3910;
6. Allow representatives of the regulatory authority access to the food establishment as specified under 12VAC5-421-3820;
7. Replace existing facilities and equipment specified in 12VAC5-421-3510 with facilities and equipment that comply with this chapter if:
  - a. The regulatory authority directs the replacement because the facilities and equipment constitute a public health hazard or nuisance or no longer comply with the criteria upon which the facilities and equipment were accepted;
  - b. The regulatory authority directs the replacement of the facilities and equipment because of a change of ownership; or
  - c. The facilities and equipment are replaced in the normal course of operation;
8. Comply with directives of the regulatory authority including time frames for corrective actions specified in inspection reports, notices, orders, warnings, and other directives issued by the regulatory authority in regard to the permit holder's food establishment or in response to community emergencies;
9. Accept notices issued and served by the regulatory authority according to law; and
10. Be subject to the administrative, civil, injunctive, and criminal remedies authorized in law for failure to comply with this chapter or a directive of the regulatory authority, including time frames for corrective actions specified in inspection reports, notices, orders, warnings, and other directives.

**12VAC5-421-3815. Competency of environmental health specialists.**

An authorized representative of the commissioner who inspects a food establishment or conducts plan review for compliance with this chapter shall have the knowledge, skills, and ability to adequately perform the required duties.

**12VAC5-421-3860. Documenting information and observations.**

The regulatory authority shall document on an inspection report form:

1. Administrative information about the food establishment's legal identity, street and mailing addresses, type of establishment and operation as specified under 12VAC5-421-3700, inspection date, and other information such as type of water supply and

sewage disposal, status of the permit, and personnel certificates that may be required; and

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

a. Failure of the person in charge to demonstrate the knowledge of foodborne illness prevention, application of HACCP principles, and the requirements of this chapter specified under 12VAC5-421-60;

b. Failure of food employees and the person in charge to demonstrate their knowledge of their responsibility to report a disease or medical condition as specified under ~~12VAC5-421-110 and 12VAC5-421-120~~ 12VAC5-421-80 B and D;

c. Nonconformance with critical items of this chapter;

d. Failure of the appropriate food employees to demonstrate their knowledge of, and ability to perform in accordance with, the procedural, monitoring, verification, and corrective action practices required by the regulatory authority as specified under 12VAC5-421-60;

e. Failure of the person in charge to provide records required by the regulatory authority for determining conformance with a HACCP plan as specified under subdivision 4 f of 12VAC5-421-3630; and

f. Nonconformance with critical limits of a HACCP plan.

#### **12VAC5-421-4040. Investigation and control, obtaining information: personal history of illness, medical examination, and specimen analysis.**

~~The regulatory authority shall act when it has reasonable cause to believe that a food employee has possibly transmitted disease; may be infected with a disease in a communicable form that is transmissible through food; may be a carrier of infectious agents that cause a disease that is transmissible through food; or is affected with a boil, an infected wound, or acute respiratory infection, by:~~

The regulatory authority shall act when it has reasonable cause to believe that a food employee or conditional employee has possibly transmitted disease; may be infected with a disease in a communicable form that is transmissible through food; may be a carrier of infectious agents that cause a disease that is transmissible through food; or is affected with a boil, an infected wound, or acute respiratory infection, by:

1. Securing a confidential medical history of the employee suspected of transmitting disease or making other investigations as deemed appropriate; and

2. Requiring appropriate medical examinations, including collection of specimens for laboratory analysis, of a suspected employee and other employees.

#### **12VAC5-421-4050. Restriction or exclusion of food employee, or summary suspension of permit.**

Based on the findings of an investigation related to a food employee or conditional employee who is suspected of being infected or diseased, the regulatory authority may issue an order to the suspected food employee, conditional employee, or permit holder instituting one or more of the following control measures:

1. Restricting the food employee or conditional employee;

2. Excluding the food employee or conditional employee; or

3. Closing the food establishment by summarily suspending a permit to operate in accordance with law.

**12VAC5-421-4070. Release of food employee from restriction or exclusion.**

~~The regulatory authority shall release a food employee from restriction or exclusion according to law and the following conditions:~~

~~1. A food employee who was infected with Salmonella typhi if the food employee's stools are negative for S. typhi based on testing of at least three consecutive stool specimen cultures that are taken:~~

~~a. Not earlier than one month after onset;~~

~~b. At least 48 hours after discontinuance of antibiotics; and~~

~~c. At least 24 hours apart; and~~

~~2. If one of the cultures taken as specified in subdivision 1 of this section is positive, repeat cultures are taken at intervals of one month until at least three consecutive negative stool specimen cultures are obtained.~~

~~3. A food employee who was infected with Shigella spp. or Shiga toxin producing Escherichia coli if the employee's stools are negative for Shigella spp. or Shiga toxin-producing Escherichia coli based on testing of two consecutive stool specimen cultures that are taken:~~

~~a. Not earlier than 48 hours after discontinuance of antibiotics; and~~

~~b. At least 24 hours apart.~~

~~4. A food employee who was infected with hepatitis A virus if:~~

~~a. Symptoms cease; or~~

~~b. At least two blood tests show falling liver enzymes.~~

The regulatory authority shall release a food employee, or conditional employee from restriction or exclusion according to law and the conditions specified under 12VAC5-421-100.