



Exempt Action Final Regulation Agency Background Document

Agency name	Department of Health (State Board of)
Virginia Administrative Code (VAC) citation	12 VAC 5-130, 12 VAC 5-140, 12 VAC 5-160 (-160-60 through -160-1080), 12 VAC 5-180
Regulation title	Notice and Description of Shellfish Area Condemnation, Notices of Establishment and Description of Seasonally Condemned Areas at Marina Facilities, Regulations for the Sanitary Control of the Picking, Packing and Marketing of Crab Meat for Human Consumption, State Plan for the Administration of the Virginia Shellfish Sanitation Program
Action title	Remove unnecessary material, standards for picking, packing and marketing of crab meat that were not properly promulgated, and a plan
Final agency action date	July 14, 2009
Document preparation date	June 24, 2009

When a regulatory action is exempt from executive branch review pursuant to § 2.2-4002 or § 2.2-4006 of the Virginia Administrative Process Act (APA), the agency is encouraged to provide information to the public on the Regulatory Town Hall using this form.

Note: While posting this form on the Town Hall is optional, the agency must comply with requirements of the Virginia Register Act, the *Virginia Register Form, Style, and Procedure Manual*, and Executive Orders 36 (06) and 58 (99).

Summary

Please provide a brief summary of all regulatory changes, including the rationale behind such changes. Alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation.

Chapters 130 and 140 actually contain no text. At the advent of the VAC, some confusion existed on what should be included as regulations of the Commonwealth. Inexplicably, these chapters were created in connection with the Commissioner's authority to, on a case by case basis, issue condemnations pursuant to law, perhaps out of a desire to err on the side of being overly inclusive.

Certain provisions in Chapter 160 were “adopted” in 1965. The outcome of the adoption process ended with five general, non-controversial rules adopted as “regulations”, and numerous specific details, some of which were controversial and adopted as “standards,” although they appear as regulatory requirements. When the Virginia Administrative Code (VAC) was set up, the “standards” and the “regulations” were combined together and all were put forward as regulations. At the advent of the VAC, some confusion existed on what should be included. In short, the agency sought to be overinclusive in what it determined to be “regulation.” It is time to remove these “standards” (parts II through XVIII) from the VAC since they do not have the force of law. Following a court case in which the regulations Chapter 160 were challenged, and upon advice of the Office of the Attorney General (OAG), received October 20, 2008, the agency has determined that text purporting to be regulations contained in 12 VAC 5-160-60 through 12 VAC 5-160-1080 were never properly promulgated or adopted. This text was, in fact, erroneously certified to the Registrar of Regulations as being effective regulations when the VAC was compiled. This erroneous certification was a technical error, pursuant to Virginia Code § 2.2-4006 (A)(3), and, based on OAG advice is qualified for exemption from the Administrative Process Act.

Chapter 180 contains a plan of correction that VDH entered into with federal authorities. The agency has long achieved and maintained compliance with the federal requirements at issue and, like the texts discussed above, this plan’s inclusion was brought about by an overly inclusive net in determining what is regulation, and should be deleted from the VAC in this housekeeping step.

Statement of final agency action

Please provide a statement of the final action taken by the agency including (1) the date the action was taken, (2) the name of the agency taking the action, and (3) the title of the regulation.

On July 14, 2009, the chief deputy health commissioner, delegated with sufficient authority from the state health commissioner, who is vested with the authority of the state board of health when it is not in session (pursuant to Va. Code Sections 32.1-20 and 32.1-22), acted to repeal the subject regulations."

Family impact

Assess the impact of this regulatory action on the institution of the family and family stability.

- 1) The proposed modification of these regulations will neither strengthen nor erode the authority and rights of parents in the education, nurturing, and supervision of their children.
- 2) The proposed modification of these regulations will neither encourage nor discourage economic self-sufficiency, self-pride, nor the assumption of responsibility for oneself, one’s spouse, and one’s children and/or elderly parents.
- 3) The proposed modification of these regulations will neither strengthen nor erode the marital commitment.

4) The proposed modification of these regulations will neither increase nor decrease disposable family income.