

**BOARD OF AGRICULTURE AND CONSUMER SERVICES**

**Patrick Henry Building  
East Reading Room  
1111 E. Broad Street  
Richmond, Virginia**

**Thursday, May 23, 2024**

**9 A.M.**

1. Call to order
2. Roll call
3. Approval of draft Board meeting minutes from March 21, 2024
4. Election of officers
5. Board member reports
6. Commissioner's Report to Board – Joseph Guthrie, Commissioner of Agriculture and Consumer Services
7. Legislative update – Kevin Schmidt, Director, Office of Policy, Planning, and Research
8. Budget update – Dewey Jennings, Director, Administration and Finance
9. Proposed stage – 2 VAC 5-455 (Regulations for Tradespersons Installing Invasive Plant Species) – David Gianino, Program Manager, Office of Plant Industry Services
10. Proposed fast-track action to repeal 2 VAC 5-336 (Regulations for Enforcement of the Virginia Tree and Crop Pests Law - Spotted Lanternfly Quarantine) – David Gianino, Program Manager, Office of Plant Industry Services
11. Proposed fast-track action to amend 2 VAC 5-510 (Rules and Regulations Governing the Production, Processing, and Sale of Ice Cream, Frozen Desserts, and Similar Products) – Hunter Moyer, Dairy Program Supervisor
12. Virginia Beer Distribution Company update – Joseph Guthrie, Commissioner of Agriculture and Consumer Services
13. New business
14. Future Board meetings
15. Public comment period
16. Adjourn

**DRAFT MINUTES**

Board of Agriculture and Consumer Services  
Patrick Henry Building  
East Reading Room  
1111 E. Broad St  
Richmond, Virginia

Thursday, March 21, 2024

The meeting of the Board of Agriculture and Consumer Services (Board) convened at approximately 9:01 a.m. on Thursday, March 21, 2024, at the Patrick Henry Building. President Horsley called the meeting to order.

**ROLL CALL**

The Board Secretary called the roll:

**PRESENT**

Keith Harris  
Donald Horsley  
Raymond Keating  
Brittany Jones  
Margaret Ann Smith  
Jacquelin Easter  
James S Huffard, III  
Tyler Wegmeyer  
Richard Sellers  
Neil Houff  
Dr. Robert Corley

Lonnie Johnson

**CONGRESSIONAL DISTRICT**

1<sup>st</sup>  
2<sup>nd</sup>  
3<sup>rd</sup>  
4<sup>th</sup>  
6<sup>th</sup>  
7<sup>th</sup>  
9<sup>th</sup>  
10<sup>th</sup>  
11<sup>th</sup>  
Pesticides – Commercial Agricultural  
Representing Dr. Makola Abdullah, President,  
Virginia State University  
Representing Dr. Timothy D. Sands, President,  
Virginia Tech

**ABSENT**

Cecil Shell  
Kailee Tkacz Buller  
Charles Church

5<sup>th</sup>  
8<sup>th</sup>  
Pesticides – Commercial Structural

**STAFF PRESENT**

Joseph Guthrie, Commissioner, Virginia Department of Agriculture and Consumer Services (VDACS)  
Kevin Schmidt, Secretary, Board of Agriculture and Consumer Services  
Nicolas Robichaud, Policy Assistant, VDACS

**APPROVAL OF MINUTES**

Mr. Sellers moved that the draft minutes of the meeting on December 7, 2023, be approved as distributed. Mr. Harris seconded the motion. The Board voted unanimously to approve the motion.

**REPORTS FROM BOARD MEMBERS**

**Neil Houff**

Mr. Houff remarked that he will be exiting the Board in the next six months and reflected on his vocal support for over-the-top (OTT) dicamba for corn and soybeans at the time of his initial appointment and how the U.S. District Court of Arizona's decision against the U.S. Environmental Protection Agency may now make it unavailable. He noted that spring in western Virginia has opened early for the year and there is some stress in fertilizer movement, particularly in phosphates. He anticipates the supply chain opening up and being plentiful for the season.

**Keith Harris**

Mr. Harris echoed Mr. Houff's concerns regarding OTT dicamba and the supply chain, noting difficulty in finding alternative pesticides for corn and soybeans and general fertilizer pricing issues. He reported that spring has come early in the 1<sup>st</sup> District and that wheat and barley have grown in well.

**Margaret Ann Smith**

Ms. Smith noted that the winter was mild and that spring has come early. The cattle markets are at an all-time high, which has made things difficult for those in the stocker and feeder business. Prices are about 20 percent higher than they were in 2012-2013, which was the last high point. There has been heavy rain in the West, which has helped the region rebound from wildfire issues.

**Lonnie Johnson**

Mr. Johnson shared that will be a celebration for Dr. Alan Grant's retirement after 15 years of service on May 3. The search committee for his replacement has narrowed down applicants and will begin interviewing in April. Since Dr. Michael Gutter's arrival as Director of the Virginia Cooperative Extension Office in November 2023, 41 new extension agents have been hired. There is strain on their training mechanisms, though this wave of recruitment has helped offset turnover.

**Dr. Robert Corley**

Dr. Corley extended his appreciation for Dr. Alan Grant, commending his years of service and dedication. As a part of Virginia State University's (VSU) advocacy efforts, Dr. Corley shared his experience participating in Virginia Agriculture Literacy week, reading to elementary school children alongside Commissioner Guthrie at Pleasants Lane Elementary School in Petersburg. VSU's AgFest recently took place, which enjoyed strong turnout both from the community and the University. VSU has recently reintroduced its International Agriculture Certificate Program, a unique opportunity for students to gain experience with international agriculture markets. Both VSU's small farm and urban agriculture efforts have been successful, with their urban agriculture program gaining recognition on the national scale through its work with the U. S. Department of Agriculture (USDA).

**Richard Sellers**

Mr. Sellers wished the Board a happy National Agriculture Week. He also shared his experience participating in Virginia Agriculture Literacy Week, during which he read to a class of kindergarteners. He noted the early bloom of cherry blossoms in Northern Virginia and that the earlier-than-anticipated spring has many people in his area ready to plant earlier than expected.

**Tyler Wegmeyer**

Mr. Wegmeyer shared his hope that recent chills have not negatively impacted crops in his region. He also recognized the value of reminding the public of agriculture's importance during National Agriculture Week, which agritourism farms, such as his own, accomplish daily during their operating seasons. Christmas tree farms were very successful this past season, with many farms sold out well before Christmas. He noted that several Christmas tree lots still had supply after the holiday, potentially showing families' preference to buy their trees directly from farms. The mild winter meant strong moisture over the season, which has pushed strawberry season earlier. A new disease has affected the strawberry industry, though growers are able to avoid the worst outcomes with early preventative work. Mr. Wegmeyer commended the work of Extension Agent Roy Flanagan in this area, which President Horsley reiterated.

**James S. Huffard, III**

Mr. Huffard reported that though generally colder than other regions, Southwest Virginia also had a mild winter. Dairy prices have fallen recently, and commodity prices have been below international prices. Mr. Huffard hopes that the export market continues to improve. The total number of dairies in his area has steadily decreased, leaving the dairy market slim. Duchess Dairy continues to operate at capacity and hopes to accommodate additional customers. He noted the importance of marketing, particularly in all-jersey milks, in the dairy industry.

**Jacquelin Easter**

Ms. Easter reported the success of her county's Tractor Parade in celebration of National Agriculture Week and thanked Commissioner Guthrie for his participation. Local farmers were honored as a part of the parade. She noted how the erratic weather recently has led to unpredictable soil conditions in her region. She attended a crop insurance meeting at the Truck and Tractor Museum in Colonial Heights, which she noted as a great opportunity to learn more about a variety of farm equipment. A primary focus of the meeting was concern over commodity prices.

**Donald Horsley**

President Horsley reiterated the impact of commodity prices, with recent indications projecting a 25 percent decrease in income from last year. While last year was strong from a production standpoint, Mr. Horsley noted that it was not as strong from a selling standpoint. He noted the recent volatility of prices and expressed concern over potential increases in production due to upswings in prices considering the sizable supply of corn and beans. He also noted a trend of developing farmland in his area and worries that Virginia Beach's Agriculture Reserve Program may be scaled back with a new City Council. President Horsley reiterated Mr. Johnson and Dr. Corley's sentiments regarding Dean Alan Grant and his upcoming retirement.

**Raymond Keating**

Mr. Keating introduced himself to the Board as an international merchandiser at Perdue AgriBusiness in Chesapeake.

**Brittany Jones**

Ms. Jones introduced herself to the Board as both a dairy farmer at Richlands Dairy and a teacher of Dairy Sciences at VSU.

**COMMISSIONER’S REPORT**

During Commissioner Guthrie’s presentation of his report, he briefed the Board on personnel changes, recent events, and other matters relating to VDACS. A copy of the written report on which his presentation was based was included in the Board meeting agenda and materials.

After Commissioner Guthrie delivered his report to the Board, he shared written reports from Cecil Shell and Kailee Tkacz Buller, who could not attend the meeting but submitted reports to be shared.

Commissioner Guthrie also brought to the Board’s attention a flyer from Herman Ellison, Virginia State Statistician, USDA - National Agricultural Statistics Service. The flyer, included in the meeting materials, highlighted information from the 2022 Census of Agriculture.

**Cecil Shell**

Mr. Shell sent his apologies for not being able to make it to the meeting today in person. He reports that weather in his district has been erratic, though generally very wet in late 2023 into 2024 and dry recently. Wheat, timber, and tobacco crops have been generally strong.

**Kailee Tkacz Buller**

Ms. Buller sent her regards to the Board, sharing that she could not attend today’s meeting due to the recent birth of their third child. She shared news of her recent appointment as President and C.E.O of the National Oilseed Processors Association. She provided an update on the federal government shutdown, which has been avoided by a recent agreement on government funding through the fiscal year ending on September 30. There is uncertainty regarding forward movement on the federal Farm Bill that expires on the same date. A significant number of regulations are expected from the Biden Administration leading up to federal elections in the fall. Among these, Ms. Buller anticipates Food and Drug Administration regulations defining “healthy”; front of pack labeling guidelines; definitions of processed/ultra processed; and regulations on heavy metals, additives, and chemicals in food. Geopolitical tensions continue to effect federal agriculture policy.

**PROPOSED FAST-TRACK ACTION TO AMEND 2 VAC 6-675 (REGULATIONS GOVERNING PESTICIDE FEES CHARGED BY THE DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES)**

President Horsley called on Liza Fleeson-Trossbach, Program Manager, Office of Pesticide Services, to brief the Board on the proposed fast-track action.

Mr. Sellers moved that the Board of Agriculture and Consumer Services adopt 2 VAC 5-675, Regulations Governing Pesticide Fees Charged By the Department of Agriculture and Consumer Services, as presented by staff today, and that the Board authorize staff to take any and all steps necessary to amend this regulation through a fast-track regulatory action. Mr. Houff second the motion. The Board voted unanimously in favor of the motion.

**FINAL STAGE – 2 VAC 5-317 (REGULATIONS FOR ENFORCEMENT OF THE NOXIOUS WEEDS LAW)**

President Horsley called on David Gianino, Program Manager, Office of Plant Industry Services, to brief the Board on the final stage for 2 VAC 5-317.

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Mr. Harris asked Mr. Gianino how these regulations affect the use of kudzu. After Mr. Gianino addressed the question, Commissioner Guthrie asked Mr. Gianino to brief the Board on the general function of each tier of noxious weed.

Mr. Sellers moved that the Board Agriculture and Consumer Services adopt 2 VAC 5-317, Regulations for Enforcement of the Noxious Weeds Law, as presented by staff today, and that the Board authorize staff to take any and all steps necessary to have this regulation become a final regulation of the Board. Ms. Easter seconded the motion. The Board voted unanimously in favor of the motion.

### **MEETING RECESS**

At 10:13 a.m., President Horsley recessed the meeting.

### **OFFICE OF PESTICIDE SERVICES – CASE DECISION – THIBAUT ENTERPRISES, LLC. (CASE #73148)**

At 10:24 a.m., President Horsley resumed the meeting.

President Horsley introduced Kate Kulbok, Assistant Attorney General, as the Board's legal counsel regarding the case decision for Office of Pesticide Services Case #73148. Ms. Kulbok briefed the Board on its roles and responsibilities pertaining to the review of the case decision and the recommendation of the hearing officer for the formal hearing held in this case.

President Horsley called on Justin Bell, attorney representing VDACS, to present his case. Mr. Bell explained that he typically would represent the Board in legal matters, though as he has represented VDACS in the legal proceedings for Case #73148 to this point, he has asked Ms. Kulbok to advise the Board in his place. He then noted that the appellate is typically given first opportunity to present their argument, at which point Mr. Nate Scaggs, legal counsel for Thibault Enterprises, addressed the Board. Mr. Scaggs provided geographical context regarding the location of the case and, after reiterating his arguments presented to the hearing officer, asked that the Board follow the recommendation of the hearing officer.

Mr. Bell then presented on behalf of VDACS, asking that the Board strike portions of the hearing officer's recommendation and reiterating his arguments as presented to the hearing officer.

Several Board members directed questions to Ms. Kulbok, Mr. Bell, Mr. Scaggs, and a member of Thibault Enterprises who was present. These questions included clarification of wind direction, VDACS testing capabilities and methods, sampling methods, Thibault's licensing status, and the ability of the Board to amend the recommendation of the hearing officer.

Ms. Kulbok advised the Board that they could not amend the hearing officer's recommendation and that it could only move to adopt the recommendation or determine its own motion.

After discussion, Mr. Sellers introduced a motion that the Board of Agriculture and Consumer Services (i) accept the report and findings of the hearing officer, (ii) find that Thibault Enterprises LLC acted in compliance with Va. Code § 3.2-3939(B), (iii) direct VDACS to vacate the \$120 penalty VDACS issued for this case, and (iv) direct VDACS to vacate any points assessed to Thibault Enterprises, LLC, as a result of this case. Mr. Houff seconded the motion. The Board voted unanimously in favor of the motion.

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Following the acceptance of the motion, the Board shared its rationale for the vote and advised Mr. Thibault on best practices moving forward to show good faith to the complainants.

**VIRGINIA WINERY DISTRIBUTION COMPANY BOARD APPOINTEE**

President Horsley called on Commissioner Guthrie, who brought to the Board's attention the resignation, effective March 22, 2024, of Doug Zerbst from the Board of Directors of the Virginia Winery Distribution Company (VWDC). Commissioner Guthrie indicated that he received a letter dated February 23, 2024, from Jay Colston, President, Virginia Wine Wholesalers Association, recommending that Ken Tambaschi from Republic National Distribution Company be appointed to fill Mr. Zerbst's unexpired term on the VWDC Board of Directors.

Mr. Sellers moved that the Board of Agriculture and Consumer Services, effective March 22, 2024, appoint Ken Tambaschi, Republic National Distribution Company, to fill the remainder of Doug Zerbst's unexpired term through June 30, 2027, on the board of directors of the Virginia Winery Distribution Company as an owner or manager of a wine wholesaler licensee. Vice President Smith seconded this motion. The Board voted unanimously in favor of the motion.

**NEW BUSINESS**

There was no new business brought before the Board.

**FUTURE BOARD MEETINGS**

President Horsley noted the upcoming 2024 Board meeting dates of May 23 and December 12 in Richmond. He then called on Vice President Smith and Neil Houff to announce the upcoming July 31 – August 1, 2024, Board meeting dates in Staunton. Further details regarding the summer meeting and tour will be announced in May.

Commissioner Guthrie also alerted the Board that VDACS will likely request a brief special Board meeting in early July to appoint members to the newly established Virginia Beer Distribution Company Board of Directors. Commissioner Guthrie mentioned that he will provide additional details at the May Board meeting.

**PUBLIC COMMENT PERIOD**

The Board did not receive any public comment.

**ADJOURNMENT**

There being no further business, the Board adjourned at approximately 11:26 a.m.

Respectfully submitted,

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Donald Horsley  
Board President

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Kevin Schmidt  
Board Secretary

**BOARD OF AGRICULTURE AND CONSUMER SERVICES**

**APPOINTED BOARD MEMBER TERMS**

*As of May 9, 2024*

**Elected Officers**

*For the term July 1, 2023 – June 30, 2024*

**President:** Don Horsley  
**Vice- President:** Margaret Ann Smith  
**Secretary:** Kevin Schmidt

<b><i>MEMBER'S NAME</i></b>	<b><i>DISTRICT</i></b>	<b><i>TERM EXPIRES</i></b>
<b>Keith Harris</b>	<b>1<sup>st</sup></b>	<b>June 30, 2027 (1<sup>st</sup> term)</b>
<b>Don Horsley</b>	<b>2<sup>nd</sup></b>	<b>June 30, 2025 (2<sup>nd</sup> term)</b>
<b>Raymond Keating</b>	<b>3<sup>rd</sup></b>	<b>June 30, 2027 (1<sup>st</sup> term)</b>
<b>Brittany Jones</b>	<b>4<sup>th</sup></b>	<b>June 30, 2025 (Unexpired term)</b>
<b>Cecil Shell</b>	<b>5<sup>th</sup></b>	<b>June 30, 2025 (1<sup>st</sup> term)</b>
<b>Margaret Ann Smith</b>	<b>6<sup>th</sup></b>	<b>June 30, 2027 (2<sup>nd</sup> term)</b>
<b>Jacquelin Easter</b>	<b>7<sup>th</sup></b>	<b>June 30, 2025 (1<sup>st</sup> term)</b>
<b>Kailee M. Tkacz Buller</b>	<b>8<sup>th</sup></b>	<b>June 30, 2027 (1<sup>st</sup> term)</b>
<b>James S. Huffard, III</b>	<b>9<sup>th</sup></b>	<b>June 30, 2025 (2<sup>nd</sup> term)</b>
<b>Tyler Wegmeyer</b>	<b>10<sup>th</sup></b>	<b>June 30, 2025 (1<sup>st</sup> term)</b>
<b>Richard Sellers</b>	<b>11<sup>th</sup></b>	<b>June 30, 2025 (2<sup>nd</sup> term)</b>
<b>Neil A. Houff</b>	<b>Pesticide – Commercial - Agricultural</b>	<b>June 30, 2024 (2<sup>nd</sup> term)</b>
<b>Charles Church</b>	<b>Pesticide – Commercial - Structural</b>	<b>June 30, 2024 (1<sup>st</sup> term)</b>



COMMISSIONER'S REPORT TO  
BOARD OF AGRICULTURE AND CONSUMER SERVICES  
May 23, 2024

PERSONNEL NEWS

Nikeya Thomas was hired as the first Program Manager for the Office of Hemp Enforcement in April. Nikeya has worked in the food safety and hemp field for over 10 years. She had served as the VDACS Industrial Hemp Program Coordinator regulating hemp growers. Prior to that, she was Regional Manager and Manufactured Foods Coordinator in the Office of Food Safety.

GOVERNOR'S PRIORITIES

In March, Office of Agriculture and Forestry Development (OAFD) staff organized tours of several Virginia Controlled Environment Agriculture (CEA) agribusinesses for Secretary Lohr to celebrate CEA Month recognizing the companies' contributions to making Virginia a world leader in indoor agriculture.

On April 9 in Frederick County, Governor Youngkin announced the expansion of HP Hood, a nationally-branded dairy processor, representing over \$83.5 million in new capital investment. The Governor's announcement included a \$50,000 Agriculture and Forestry Industry Development Fund (AFID) Infrastructure Grant, which Frederick County will match.

AGENCY OPERATIONS

*Commissioner's Office*

Commissioner Guthrie, State Veterinarian Dr. Broaddus, and staff from Office of Veterinary Services (OVS) have been closely monitoring the finding of highly pathogenic avian influenza (HPAI) virus in lactating dairy cattle in eight states. HPAI virus leads to decreased feed intake, decreased milk production, and thickened milk. This condition has not been found in Virginia. OVS has worked with the dairy industry and food animal veterinarians to increase awareness of signs. The Office of Laboratory Services (OLS) has the capability to test milk for avian influenza virus. At this time, VDACS has not added any movement restrictions other than those already in place through the Certificate of Veterinary Inspection. USDA announced it would require pre-movement testing on lactating dairy cattle moving interstate beginning on April 29. OVS staff and the State Veterinarian are working closely with USDA partners and OLS staff to communicate this new testing requirement to dairy producers. Dr. Broaddus led a discussion in a virtual meeting hosted by Secretary Lohr for legislators in the agriculture committees of both chambers of the General Assembly.

The Commissioner's Office is preparing to host the Southern Association of State Departments of Agriculture (SASDA) annual meeting in Williamsburg June 15-19. Commissioner Guthrie is currently SASDA president. SASDA is comprised of the Commissioners and Secretaries of Agriculture from 14 states, Puerto Rico, and the U.S. Virgin Islands. The organization provides

a platform for state agricultural leaders to discuss important policy priorities and program initiatives that impact agriculture.

The First Lady of Virginia, the Secretary of Agriculture and Forestry, the Secretary of Education, Miss Virginia, and Commissioner Guthrie were among the officials and dignitaries who read to students during Agriculture Literacy Week. The Commissioner and Dean Corley of Virginia State University College of Agriculture read to students at Pleasants Lane Elementary in Petersburg.

Commissioner Guthrie presided over a meeting of the Virginia Agricultural Council (VAC) on March 26-27 in Staunton, Virginia. The Virginia Agricultural Council was established by the General Assembly to provide a mechanism for financing agricultural research and education. Funding is generated from assessments levied on certain agricultural supplies used by farmers.

Since the last meeting of the Board of Agriculture and Consumer Services, Commissioner Guthrie has attended stakeholder events in Amelia, Virginia Beach, Ashland, Augusta County, Rockingham County, Nelson County, Washington County, and Washington, DC.

On April 8, Deputy Commissioner Green chaired a meeting of the Southern U.S. Trade Association's (SUSTA) Operations Committee. SUSTA a non-profit trade association largely funded provided by the USDA's Market Access Program. Through the Market Access Program, the USDA's Foreign Agricultural Service partners with SUSTA and small businesses in member states to share the costs of overseas marketing and promotional activities that help build commercial export markets for U.S. agricultural products. VDACS utilizes federal funding provided through SUSTA to conduct certain international trade projects. The SUSTA Operations Committee makes strategic decisions about the association's organizational structure, personnel, budget, and operating policy.

### *Division of Marketing and Development*

The Spring 2024 AFID Infrastructure grant round was open from March 25 – May 6. After OAFD receives and reviews applications, it will award reimbursable grants for capital projects at new and existing food hubs, farmers' markets, commercial kitchens, and other value-added facilities, such as those used for processing and packaging Virginia-grown products.

On April 11, OAFD staff hosted the Spring 2024 Virginia Agricultural Development Officers (VADO) group meeting in Richmond. Secretary Lohr, Commissioner Guthrie, Virginia Farm Bureau Federation (VFBB) President Wayne F. Pryor, other VDACS staff, and industry partners spoke to economic development professionals from across the Commonwealth. Many helpful resources from presenters and information on future VADO and OAFD initiatives were shared.

From March to April, the Office of Domestic Marketing and Promotions (ODMP) participated in several agriculture promotional, marketing, and educational events Danville, South Hill, Grayson County, the Eastern Shore, Fauquier County, Franklin County, Surry County, Spotsylvania County, and more.

In March, ODMP staff participated in the Southeast Produce Council's Southern Exposure Trade Show in Tampa, Florida.

On March 25, ODMP hosted the Virginia Specialty Food and Beverage Expo in Richmond. Over 200 Virginia-based specialty food and beverage businesses and Virginia Grown producers exhibited. The event included sections featuring new start-up businesses, emerging businesses that are ready for full retail expansion, the Virginia Spirits Board Beverage Garden, and blue catfish. The Office of International Marketing (OIM) also participated in the Expo and developed a survey for Virginia companies interested in expanding into international markets.

OIM attended the International Food & Drink Event (IFE) in London, England. This is the largest annual food and beverage show, with over 25,000 visitors from 90 countries. Jody's Gourmet Popcorn exhibited. Additionally, OIM assisted in distributing products from Virginia Diner and Island Treasures Gourmet.

The Office of Food Distribution (OFD) awarded five organizations a sub grant of \$4 million for the Farmers to Families Food Box Program, funded by the American Rescue Plan Act. Grantees work with local farmers to purchase agricultural products and distribute to the food insecure.

Virginia Food Banks ordered \$20 million of goods from OFD for distribution through the USDA Emergency Food Assistance Program. This was part of a bonus offering and will be distributed to food insecure Virginians through Virginia Food Banks' partner agencies.

OFD received applications for grant funding to administer the Local Food Purchase Assistance Program LFPA+. Successful applicants will receive grant funding to support families needing food assistance while stimulating the local food economies by prioritizing food purchases from Virginia farmers. The LFPA + grant funding totals \$7.2 million.

### *Division of Commodity Services*

Since March, CS Staff:

- Conducted Terminal Market and Shipping Point Inspections on 1,467,461 pounds of fresh fruits and vegetables and Processed Food Inspections on 282,281 pounds of processed products and completed 3 Good Agricultural Practices Audits.
- Inspected and certified grain commodities including soybeans, corn, wheat, soybean meal, and soybean hull pellets with a value of over \$61 million destined for 24 countries.
- Coordinated eight grain classes (wheat, soybean, corn) with industry participants; conducted approximately 30 compliance visits with grain dealers.
- Provided livestock evaluation services on over 25,395 cattle and 850 lambs/goats; provided 41 Market News Reports on 18,786 head of livestock at livestock markets.

- Inspected and certified approximately 46,145,145 pounds of Farmers' Stock peanuts and regrades, approximately 29,047,051 pounds of shelled and in-shell milled peanuts, and 1,165,510 pounds of imported peanuts from Argentina.
- Analyzed approximately 728 samples of peanuts for the presence and levels of aflatoxin to determine if the peanuts were safe for human consumption.
- Certified 1,200,439 pounds of various poultry parts for the USDA Feeding Program for School Lunch Products.
- Graded, via contracted full-time grading services, 31,652,6358 pounds of chicken and 13,159,968 pounds of turkey for the Virginia poultry and egg industry.
- Provided non-contract fee grading and certification services for 1,329,952 pounds of poultry based on U.S. Consumer Grades to fulfill necessary specifications and contract requirements for the Virginia poultry and egg industry.
- Performed 2 USDA Food Defense Audits.

#### *Division of Consumer Protection*

Office of Pesticide Services (OPS) staff attended the Week in Residence Training hosted by the U. S. EPA Region 3 in Pennsylvania. This training is for new Pesticide Investigators seeking credentials as Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) Inspectors. FIFRA credentials authorize inspectors to conduct inspections and investigation on behalf of EPA.

In March, OPS staff attended the 2024 Association of American Pesticide Control Officials Annual Board of Directors Meeting and Conference 6 in Alexandria. Attendees represented state/tribal/territorial pesticide regulatory officials, federal agencies, pesticide safety educators, and the regulated industry.

In March, OPS staff attended the biannual EPA Region III Grants & Pre-State FIFRA Issues Research & Evaluation Group Biannual Meeting in Philadelphia, Pennsylvania. The meeting provides an opportunity to provide the state's input on pesticide-related matters to EPA.

The Horticultural Inspection Society – Southern Chapter hosted an inspector training at two production nurseries in Virginia. About 25 plant protection inspectors from state departments of agriculture attended.

On March 25, OPIS staff notified 10 homeowners that plants they received from an online marketplace may have been infested with a regulated plant pathogen that causes sudden oak death. On April 5, staff notified an additional five homeowners who had also received plants from the same online nursery. All plants were shipped directly to homeowners in Virginia. VDACS staff will follow up with homeowners if they receive a report.

On March 27, OPIS staff presented an update on the box tree moth to the Virginia Nursery and Landscape Association, including an update on the federal quarantine for box tree moth.

On April 1, OPIS staff received notification from USDA that OPIS's proposal for a 2024-25 Spotted Lanternfly Survey, Treatment, and Outreach Grant was approved at \$350,000 rather than the requested \$750,000.

From March 19-21, OWM Metrology Laboratory staff attended the 2024 Regional Measurement Assurance Program (RMAP) in Annapolis, Maryland. This event provided participants in the U.S. RMAPs with an overview of how proficiency testing programs are conducted and an explanation of how laboratory performance is evaluated. There was also discussion on Electric Vehicle Supply Equipment and how those devices will be evaluated by metrology laboratories.

On April 4, OWM staff participated in a virtual meeting of the Virginia Farmers Market Association. OWM provided information to the participants regarding the regulatory requirements of each represented office.

On April 12, OWM staff participated in a meeting with representatives from the Walmart Governmental Affairs Department. Walmart requested the meeting to understand the pricing requirements for retail point-of-sale merchandise in Virginia.

#### *Division of Animal and Food Industry Services*

In March, the USDA Food Safety Inspection Program (FSIS) Federal State Audit Branch (FSAB) conducted the audit of the Office of Meat and Poultry Services (OMPS) Civil Rights and Budget components via a virtual meeting. OMPS is audited by the USDA FSIS FSAB annually.

On April 4, Office of Dairy and Food (ODF) staff presented at the Virginia Farmer's Market Association's virtual Food Safety Summit. Presentations included overviews of the Food Safety, Produce Safety, and Dairy Services Programs as well as legislative updates.

On April 12, the ODF Rapid Response Team held a tabletop exercise with core team members from the Virginia Department of Health and the Division of Consolidated Laboratory Services in Henrico. The exercise worked through a scenario that involved a foodborne illness outbreak that originated in food obtained from a grocery store.

The ODF Dairy Services Program (DSP) worked with Country Corner Dairy, LLC, a cheese manufacturing plant in Charlotte County, which initiated a voluntary recall after regulatory pasteurization equipment checks showed that proper pasteurization timing requirements were not met. About 11,400 pounds of cheese and skyr products were affected and recalled as a result. DSP was able to achieve subsequent satisfactory pasteurizer equipment function. DSP and the VDACS Communications Office generated a press release and social media post to alert the public of the recall.

On April 17, DSP permitted a Grade "A" dairy, Serenity Meadows, in Rockingham County. Dairy Services staff assisted the farm in meeting regulatory requirements. There are currently 365 permitted dairy farms in Virginia.

ODF Produce Safety Program (PSP) staff attended several grower events across the state to engage producers about the U.S. FDA federal Produce Safety Rule, online farm registration portal, and new harvest and post-harvest agricultural water requirements. On March 26, the PSP, in conjunction with Virginia Tech Cooperative Extension and the FDA, held a "Cleaning and Sanitizing" workshop for produce growers at Virginia Farm Bureau Federation's headquarters.

On March 21 and 22, OVS staff presented at the Virginia Federation of Humane Societies annual conference on animal shelter inspections and veterinary protocols. OVS inspects the 165 animal shelters and interacts with animal control officers throughout the Commonwealth.

AFIS staff, along with James Madison University project managers, continues to meet with architects to discuss the schematic design phase of the Capital Expansion Project affecting the Harrisonburg, Lynchburg, and Warrenton Regional Animal Health Laboratories (RAHL). The project will add about 8,800 sq feet of laboratory and conference space, including a small BSL-3 necropsy space in Harrisonburg.

OLS has received approval to certify the Warrenton RAHL as a Level 1 Branch Laboratory of the National Animal Health Laboratory Network (NAHLN). This completes all four of VDACS' RAHLs certification as members. Infrastructure funding associated with NAHLN participation enhances capacity for sample testing with dedicated high-through-put equipment and a stockpile of reagents and supplies, building epidemiology capabilities and addressing the One Health principles for zoonotic diseases.

Seasonal fish testing has resumed in Wytheville. Fish are collected from Virginia's Department of Wildlife Resources with some assistance from Wytheville staff. Initial submission covered eight lots (60 fish each) that will be tested in the NAHLN laboratory.

Avian metapneumovirus has been detected in multiple states, with multiple companies and species affected in Virginia's commercial poultry industry. This disease causes high mortality in affected flocks. Turkeys are most affected. Serology testing has been brought into the Harrisonburg RAHL and is regularly utilized.

**BOARD: 2024 Acts of Assembly**

Composite view

<b>Bills</b>	<b>Committee</b>	<b>Last action</b>	<b>Date</b>
<b>HB 223</b> - Orrock - Cruelty to animals; possession and ownership of animals.	(H) Committee for Courts of Justice (S) Committee on Agriculture, Conservation and Natural Resources	(G) Acts of Assembly Chapter text (CHAP0179)	03/28/24
<b>HB 320</b> - Bulova - Pesticide control exemptions; herbicide applications by unpaid volunteers.	(H) Committee on Agriculture, Chesapeake and Natural Resources (S) Committee on Agriculture, Conservation and Natural Resources	(G) Acts of Assembly Chapter text (CHAP0720)	04/08/24
<b>HB 330</b> - Orrock - Dog or cat; financing.	(H) Committee on Agriculture, Chesapeake and Natural Resources (S) Committee on Agriculture, Conservation and Natural Resources	(G) Acts of Assembly Chapter text (CHAP0382)	04/04/24
<b>HB 580</b> - Simonds - Animal testing facilities; DACR shall convene task force to identify potential deficiencies.	(H) Committee on Appropriations (S) Committee on Agriculture, Conservation and Natural Resources	(G) Acts of Assembly Chapter text (CHAP0693)	04/08/24
<b>HB 759</b> - Freitas - Food inspections; pickles and acidified vegetables, gross sales.	(H) Committee on Agriculture, Chesapeake and Natural Resources (S) Committee on Agriculture, Conservation and Natural Resources	(G) Acts of Assembly Chapter text (CHAP0131)	03/25/24
<b>HB 804</b> - Rasoul - Dangerous dog; extending the time for adjudication.	(H) Committee on Agriculture, Chesapeake and Natural Resources (S) Committee on Agriculture, Conservation and Natural Resources	(G) Acts of Assembly Chapter text (CHAP0145)	03/26/24
<b>HB 892</b> - Bulova - Farmland Preservation, Office of; transfers Office to Dept. of Forestry.	(H) Committee on Appropriations (S) Committee on Finance and Appropriations	(G) Acts of Assembly Chapter text (CHAP0146)	03/26/24
<b>HB 1135</b> - Hodges - Blue catfish; DACS, et al., to review efforts to create a market.	(H) Committee on Appropriations (S) Committee on Rules	(G) Acts of Assembly Chapter text (CHAP0218)	03/28/24
<b>HB 1354</b> - Martinez - Cats; prohibition on declawing.	(H) Committee on Agriculture, Chesapeake and Natural Resources (S) Committee on Agriculture, Conservation and Natural Resources	(G) Acts of Assembly Chapter text (CHAP0748)	04/08/24
<b>HB 1377</b> - Webert - Soybean Board; assessment from sale of soybeans.	(H) Committee on Agriculture, Chesapeake and Natural Resources (S) Committee on Agriculture, Conservation and Natural Resources	(G) Acts of Assembly Chapter text (CHAP0149)	03/26/24

<p><b>HB 1399</b> - Bloxom - Potato Board; reduces membership.</p>	<p>(H) Committee on General Laws</p> <hr/> <p>(S) Committee on General Laws and Technology</p>	<p>(G) Acts of Assembly Chapter text (CHAP0223)</p>	<p>03/28/24</p>
<p><b>HB 1460</b> - Webert - Virginia Verified Meat; certification, labeling of product.</p>	<p>(H) Committee on Appropriations</p> <hr/> <p>(S) Committee on Finance and Appropriations</p>	<p>(G) Acts of Assembly Chapter text (CHAP0420)</p>	<p>04/04/24</p>
<p><b>HB 1531</b> - Tran - Cruelty to elephants; pain-inflicting training tools prohibited, civil penalty.</p>	<p>(H) Committee on Agriculture, Chesapeake and Natural Resources</p> <hr/> <p>(S) Committee on Agriculture, Conservation and Natural Resources</p>	<p>(G) Acts of Assembly Chapter text (CHAP0333)</p>	<p>04/02/24</p>
<p><b>SB 11</b> - Favola - Cruelty to animals; possession and ownership of animals.</p>	<p>(H) Committee on Agriculture, Chesapeake and Natural Resources</p> <hr/> <p>(S) Committee on Agriculture, Conservation and Natural Resources</p>	<p>(G) Acts of Assembly Chapter text (CHAP0489)</p>	<p>04/04/24</p>
<p><b>SB 402</b> - Stuart - Blue catfish; DACS, et al., to review efforts to create a market.</p>	<p>(H) Committee on Appropriations</p> <hr/> <p>(S) Committee on Rules</p>	<p>(G) Acts of Assembly Chapter text (CHAP0240)</p>	<p>03/28/24</p>
<p><b>SB 411</b> - Boysko - Animal testing facilities; DACR shall convene task force to identify potential deficiencies.</p>	<p>(H) Committee on Appropriations</p> <hr/> <p>(S) Committee on Finance and Appropriations</p>	<p>(G) Acts of Assembly Chapter text (CHAP0675)</p>	<p>04/08/24</p>
<p><b>SB 412</b> - Boysko - Rabies clinics; animal vaccination and microchip services.</p>	<p>(H) Committee on Agriculture, Chesapeake and Natural Resources</p> <hr/> <p>(S) Committee on Agriculture, Conservation and Natural Resources</p>	<p>(G) Acts of Assembly Chapter text (CHAP0241)</p>	<p>03/28/24</p>
<p><b>SB 616</b> - Pillion - Farmland Preservation, Office of; transfers Office to Dept. of Forestry.</p>	<p>(H) Committee on Agriculture, Chesapeake and Natural Resources</p> <hr/> <p>(S) Committee on Finance and Appropriations</p>	<p>(G) Acts of Assembly Chapter text (CHAP0010)</p>	<p>03/08/24</p>



### **HB 223 Cruelty to animals; possession and ownership of animals.**

*Chief patron:* Orrock

*Patron:* Orrock

An Act to amend and reenact § 3.2-6570 of the Code of Virginia, relating to cruelty to animals; possession and ownership of animals.

*Summary as passed:*

**Cruelty to animals; possession and ownership of animals.** Provides that any person convicted of felony cruelty to animals may be prohibited by the court from possession or ownership of companion or equine animals for life and any person convicted of misdemeanor cruelty to animals may be prohibited by the court from possession or ownership of such animals for a period of up to five years. Under current law, such prohibition is limited to companion animals and a period equal to the statutory maximum period of incarceration. The bill also specifies that a court may order that any animal possessed or owned by such person may be disposed of by a local governing body or delivered to another person with a right of property in the animal.

The bill further provides that any person who has his rights to possession or ownership of companion or equine animals prohibited pursuant to a felony conviction may petition the court where such conviction occurred for a restoration of his rights after five years from the date of conviction. This bill is identical to SB 11.

### **HB 320 Pesticide control exemptions; herbicide applications by unpaid volunteers.**

*Chief patron:* Bulova

*Patron:* Bulova

An Act to amend and reenact § 3.2-3931 of the Code of Virginia, relating to pesticide control exemptions; herbicide applications by unpaid volunteers.

*Summary as passed House:*

**Pesticide control exemptions; herbicide applications by unpaid volunteers.** Exempts from the provisions of state pesticide laws and regulations any unpaid volunteer who uses any nonrestricted herbicide with the express authorization of a local political subdivision for the sole purpose of controlling invasive plants or noxious weeds on properties owned by such local political subdivision. The bill provides that such unpaid volunteer shall use such herbicide under the direct supervision of a certified commercial applicator and the local political subdivision shall provide instruction by a certified commercial applicator to the unpaid volunteer prior to application on (i) the risks associated with the herbicide utilized, (ii) the proper use of equipment used to apply the herbicide, (iii) the proper use of personal protective equipment, (iv) other information to prevent an unreasonable adverse effect on the environment, and (v) any other information relevant to the specific herbicide utilized.

### **HB 330 Dog or cat; financing.**

*Chief patron:* Orrock

*Patrons:* Orrock and Simonds

An Act to amend and reenact § 3.2-6513.2 of the Code of Virginia, relating to financing of a dog or cat.

*Summary as passed House:*

**Financing of a dog or cat.** Prohibits the financing of a dog or cat unless such financing complies with the provisions of state and federal law related to consumer credit.

## **HB 580 Animal testing facilities; DACR shall convene task force to identify potential deficiencies.**

*Chief patron:* Simonds

*Patrons:* Simonds; Senator: Boysko

An Act to direct the Department of Agriculture and Consumer Services to convene the Task Force on Transparency in Publicly Funded Animal Testing Facilities; report.

*Summary as passed House:*

**Task Force on Transparency in Publicly Funded Animal Testing Facilities; report.** Requires the Department of Agriculture and Consumer Services to convene a Task Force on Transparency in Publicly Funded Animal Testing Facilities, consisting of legislators and stakeholders, for the purpose of identifying potential deficiencies in publicly funded animal testing facilities in the Commonwealth and recommending methods and context for making certain information about such animal testing facilities publicly available. The bill requires the Task Force to report its findings to certain committees of the General Assembly no later than November 1, 2024. This bill is identical to SB 411.

## **HB 759 Food inspections; pickles and acidified vegetables, gross sales.**

*Chief patron:* Freitas

*Patrons:* Freitas, Cherry, Earley, Green, Griffin, Leftwich, Lovejoy, Oates, Scott, P.A. and Walker

An Act to amend and reenact § 3.2-5130 of the Code of Virginia, relating to food inspections; private homes; pickles and acidified vegetables; gross sales.

*Summary as passed House:*

**Food inspections; private homes; pickles and acidified vegetables; gross sales.** Increases from \$3,000 to \$9,000 the gross sales annual revenue cap for sales of pickles and other acidified vegetables that have an equilibrium pH value of 4.6 or lower and are processed and prepared in a private home without an inspection as otherwise required to operate a food establishment. The bill expands the exemption for private homes where the resident processes and prepares certain food products to allow for such person to sell the food at a temporary event that operates for a period of no more than 14 consecutive days. The bill also clarifies that such person may advertise such food products over the Internet provided that the sale takes place in person and complies with certain restrictions.

## **HB 804 Dangerous dog; extending the time for adjudication.**

*Chief patron:* Rasoul

*Patron:* Rasoul

An Act to amend and reenact §§ 3.2-6540 and 3.2-6540.03 of the Code of Virginia, relating to dangerous dogs; extending the time for adjudication.

*Summary as introduced:*

**Dangerous dog; extending the time for adjudication.** Requires the court, unless good cause is determined by the court, to hold the evidentiary hearing pursuant to the dangerous dog summons within 30 days or as soon as practicable from the issuance of the summons. Under current law, the court is required to hold such hearing not more than 30 days from the issuance of the summons.

## **HB 892 Farmland Preservation, Office of; transfers Office to Dept. of Forestry.**

*Chief patron:* Bulova

*Patrons:* Bulova, Webert and Maldonado

An Act to amend and reenact §§ 2.2-1509.4, 3.2-102, as it is currently effective and as it shall become effective, 10.1-1105.1, 46.2-749.102, and 58.1-512 of the Code of Virginia; to amend the Code of Virginia by adding in Chapter 11 of Title 10.1 an article numbered 2.1, consisting of sections numbered 10.1-1119.2 through 10.1-1119.7; and to repeal Chapter 2 (§§ 3.2-200 through 3.2-205) of Title 3.2 of the Code of Virginia, relating to Department of Agriculture and Consumer Services; Department of Forestry; Office of Farmland Preservation transferred.

*Summary as passed House:*

**Department of Agriculture and Consumer Services; Department of Forestry; Office of Farmland Preservation transferred.**

Transfers from the Department of Agriculture and Consumer Services to the Department of Forestry the Office of Farmland Preservation and its powers and duties and reporting requirements, the Virginia Farm Link Program, the Century Farm Program, and the Virginia Farmland and Forestland Preservation Fund. The bill renames the Office as the Office of Working Lands Preservation. The bill makes technical amendments to effectuate the transfer and requires the Department of Environmental Quality to report to the Department of Forestry by July 1 of each year certain enumerated information about nonpoint source nutrient credits certified in the previous year that involve land use conversion. This bill is identical to SB 616.

**HB 1135 Blue catfish; DACS, et al., to review efforts to create a market.**

*Chief patron:* Hodges

*Patrons:* Hodges, Cole and Simonds; Senator: Stuart

An Act to direct the Department of Agriculture and Consumer Services to convene a work group relating to blue catfish; report.

*Summary as passed House:*

**Department of Agriculture and Consumer Services; blue catfish work group; report.** Requires the Department of Agriculture and Consumer Services to convene a work group of relevant stakeholders in order to support and encourage coordination regarding efforts to create a robust and resilient market for blue catfish. The work group shall (i) review past and ongoing efforts to promote the creation of a market for blue catfish, (ii) identify and explore potential sectors for the blue catfish market, and (iii) identify any actions that the Commonwealth can take to promote and expand the market for blue catfish. The Department shall submit a report of the findings and recommendations of the work group to the Governor, the Secretary of Agriculture and Forestry, the Secretary of Natural and Historic Resources, and relevant committees of the General Assembly no later than September 1, 2025. This bill is identical to SB 402.

**HB 1354 Cats; prohibition on declawing.**

*Chief patron:* Martinez

*Patrons:* Martinez, Shin and Seibold; Senators: Roem, Stanley, Boysko, Perry and Subramanyam

An Act to amend the Code of Virginia by adding in Chapter 38 of Title 54.1 a section numbered 54.1-3814, relating to declawing cats; prohibition.

*Summary as passed:*

**Declawing cats; prohibition.** Makes unlawful the practice of declawing cats for any person engaged in the practice of veterinary medicine except as necessary for a therapeutic purpose, as defined in the bill.

**HB 1377 Soybean Board; assessment from sale of soybeans.**

*Chief patron:* Webert

*Patrons:* Webert and Lopez

An Act to amend and reenact §§ 3.2-2307 and 3.2-2312 of the Code of Virginia, relating to Soybean Board; assessment from sale of soybeans.

*Summary as introduced:*

**Soybean Board; assessment from sale of soybeans.** Changes the amount of the assessment for research, education, publicity, and the promotion of the sale and use of soybeans, currently at \$0.02 per bushel, to a rate of one half of one percent of the net market price per bushel.

**HB 1399 Potato Board; reduces membership.**

*Chief patron:* Bloxom

*Patron:* Bloxom

An Act to amend and reenact § 3.2-1801 of the Code of Virginia, relating to Department of Agriculture and Consumer Services; Potato Board; membership.

*Summary as introduced:*

**Department of Agriculture and Consumer Services; Potato Board; membership.** Reduces from seven to five the number of members that serve on the Potato Board. The bill provides that the terms of persons serving as members of the Potato Board prior to the effective date of the bill shall expire on the effective date of the bill and that five members shall be appointed in accordance with the staggered terms set out in the bill.

**HB 1460 Virginia Verified Meat; certification, labeling of product.**

*Chief patron:* Webert

*Patrons:* Webert, Clark, Glass and Wilt

An Act to amend the Code of Virginia by adding in Chapter 34 of Title 3.2 a section numbered 3.2-3403, relating to Virginia Verified Meat certification.

*Summary as passed House:*

**Virginia Verified Meat certification.** Prohibits any person from labeling any product as Virginia Verified Meat if it does not meet the definition of that term in the bill and allows any person not employed by the Department of Agriculture and Consumer Services to be eligible to certify Virginia Verified Meat claims if approved by the Commissioner of Agriculture and Consumer Services.

**HB 1531 Cruelty to elephants; pain-inflicting training tools prohibited, civil penalty.**

*Chief patron:* Tran

*Patrons:* Tran, Price, Rasoul, Shin, Cousins and Gardner

An Act to amend the Code of Virginia by adding a section numbered 3.2-6589.1, relating to elephants; pain-inflicting training tools prohibited; actions for attachment; civil penalty.

*Summary as passed:*

**Cruelty to elephants; pain-inflicting training tools prohibited; actions for attachment; civil penalty.** Prohibits using devices such as a bullhook, axe handle, or block and tackle or engaging in certain practices in order to discipline, train, or control the behavior of an elephant. The bill provides that any person who uses such devices or engages in certain practices that inflict fear or pain on or cause physical injury to an elephant is subject to a civil penalty not to exceed \$2,500 for the first offense and not to exceed \$5,000 for subsequent violations. Finally, the bill provides that an action in equity may be brought to request an attachment for any devices prohibited by the bill against a person violating the provisions of the bill.

**SB 11 Cruelty to animals; possession and ownership of animals.**

*Chief patron:* Favola

*Patrons:* Favola and Boysko

An Act to amend and reenact § 3.2-6570 of the Code of Virginia, relating to cruelty to animals; possession and ownership of animals.

*Summary as passed Senate:*

**Cruelty to animals; possession and ownership of animals.** Provides that any person convicted of felony cruelty to animals may be prohibited by the court from possession or ownership of companion or equine animals for life and any person convicted of misdemeanor cruelty to animals may be prohibited by the court from possession or ownership of such animals for a period of up to five years. Under current law, such prohibition is limited to companion animals and a period equal to the statutory maximum period of incarceration. The bill also specifies that a court may order that any animal possessed or owned by such person may be disposed of by a local governing body or delivered to another person with a right of property in the animal.

The bill further provides that any person who has his rights to possession or ownership of companion or equine animals prohibited pursuant to a felony conviction may petition the court where such conviction occurred for a restoration of his rights after five years from the date of conviction. This bill is identical to HB 223.

#### **SB 402 Blue catfish; DACS, et al., to review efforts to create a market.**

*Chief patron:* Stuart

*Patrons:* Stuart; Delegate: Milde

An Act to direct the Department of Agriculture and Consumer Services to convene a work group relating to blue catfish; report.

*Summary as introduced:*

**Department of Agriculture and Consumer Services; blue catfish work group; report.** Requires the Department of Agriculture and Consumer Services to convene a work group of relevant stakeholders in order to support and encourage coordination regarding efforts to create a robust and resilient market for blue catfish. The work group shall (i) review past and ongoing efforts to promote the creation of a market for blue catfish, (ii) identify and explore potential sectors for the blue catfish market, and (iii) identify any actions that the Commonwealth can take to promote and expand the market for blue catfish. The Department shall submit a report of the findings and recommendations of the work group to the Governor, the Secretary of Agriculture and Forestry, the Secretary of Natural and Historic Resources, and relevant committees of the General Assembly no later than September 1, 2025. This bill is identical to HB 1135.

#### **SB 411 Animal testing facilities; DACR shall convene task force to identify potential deficiencies.**

*Chief patron:* Boysko

*Patrons:* Boysko and Stanley

An Act to direct the Department of Agriculture and Consumer Services to convene the Task Force on Transparency in Publicly Funded Animal Testing Facilities; report.

*Summary as passed:*

**Task Force on Transparency in Publicly Funded Animal Testing Facilities; report.** Requires the Department of Agriculture and Consumer Services to convene a Task Force on Transparency in Publicly Funded Animal Testing Facilities, consisting of legislators and stakeholders, for the purpose of identifying potential deficiencies in publicly funded animal testing facilities in the Commonwealth and recommending methods and context for making certain information about such animal testing facilities publicly available. The bill requires the Task Force to report its findings to certain committees of the General Assembly no later than November 1, 2024. This bill is identical to HB 580.

#### **SB 412 Rabies clinics; animal vaccination and microchip services.**

*Chief patron:* Boysko

*Patron:* Boysko

An Act to amend and reenact § 3.2-6521 of the Code of Virginia, relating to rabies clinics; animal vaccination and microchip services.

*Summary as passed Senate:*

**Rabies clinics; animal vaccination and microchip services.** Allows rabies clinics approved by local health departments and governing bodies to offer microchipping and additional animal health vaccines at the discretion of the licensed veterinarian or veterinarians participating in the clinic. The bill requires any licensed veterinarian who administers animal health vaccinations at the clinic to provide the owner or custodian of an animal a vaccination record for each vaccinated animal and ensure that a licensed veterinary establishment retains a copy of each vaccination record. The bill allows licensed veterinary technicians to administer animal health vaccines at a rabies clinic under the immediate and direct supervision of a licensed veterinarian on the premises unless otherwise provided by regulations. The bill requires local health departments to submit a report to the Department of Health no later than December 31 of each year that includes (i) the number and location of rabies clinics approved and (ii) the number and type of vaccinations administered, the number of microchips administered, and the number of veterinarians and veterinary technicians in attendance at each clinic to determine the type of service utilized.

### **SB 616 Farmland Preservation, Office of; transfers Office to Dept. of Forestry.**

*Chief patron:* Pillion

*Patron:* Pillion

An Act to amend and reenact §§ 2.2-1509.4, 3.2-102, as it is currently effective and as it shall become effective, 10.1-1105.1, 46.2-749.102, and 58.1-512 of the Code of Virginia; to amend the Code of Virginia by adding in Chapter 11 of Title 10.1 an article numbered 2.1, consisting of sections numbered 10.1-1119.2 through 10.1-1119.7; and to repeal Chapter 2 (§§ 3.2-200 through 3.2-205) of Title 3.2 of the Code of Virginia, relating to Department of Agriculture and Consumer Services; Department of Forestry; Office of Farmland Preservation transferred.

*Summary as passed Senate:*

**Department of Agriculture and Consumer Services; Department of Forestry; Office of Farmland Preservation transferred.** Transfers from the Department of Agriculture and Consumer Services to the Department of Forestry the Office of Farmland Preservation and its powers and duties and reporting requirements, the Virginia Farm Link Program, the Century Farm Program, and the Virginia Farmland and Forestland Preservation Fund. The bill renames the Office as the Office of Working Lands Preservation. The bill makes technical amendments to effectuate the transfer and requires the Department of Environmental Quality to report to the Department of Forestry by July 1 of each year certain enumerated information about nonpoint source nutrient credits certified in the previous year that involve land use conversion. This bill is identical to HB 892.

**Counts:** HB: 13 SB: 5

# VIRGINIA ACTS OF ASSEMBLY -- 2023 SESSION

## CHAPTER 153

*An Act to amend and reenact §§ 3.2-800, 3.2-802, and 3.2-804 of the Code of Virginia and to amend the Code of Virginia by adding in Article 1 of Chapter 1 of Title 10.1 a section numbered 10.1-104.6:2, relating to noxious weeds; invasive plant species.*

[H 2096]

Approved March 22, 2023

**Be it enacted by the General Assembly of Virginia:**

**1. That §§ 3.2-800, 3.2-802, and 3.2-804 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Article 1 of Chapter 1 of Title 10.1 a section numbered 10.1-104.6:2 as follows:**

**§ 3.2-800. Definitions.**

As used in this chapter, unless the context requires a different meaning:

"Certificate" means a document issued or authorized by the Commissioner indicating that a regulated article is not contaminated with a noxious weed.

"Infested" means the establishment of a noxious weed or exposure to such weed, which would be reasonable cause to believe that establishment could occur.

"Move" means to ship, offer for shipment, receive for transportation, carry, or otherwise transport, move, or allow to be moved, *except for bona fide agricultural purposes including the management, tilling, planting, or harvesting of agricultural products.*

"Noxious weed" means any living plant, or part thereof, declared by the Board through regulations under this chapter to be detrimental to crops, surface waters, including lakes, or other desirable plants, livestock, land, or other property, or to be injurious to public health, the environment, or the economy, except when in-state production of such living plant, or part thereof, is commercially viable or such living plant is commercially propagated in Virginia.

"Permit" means a document issued or authorized by the Commissioner to provide for movement of regulated articles to restricted destinations for limited handling, utilization, processing, or for scientific purposes.

"Person" means the term as defined in § 1-230. The term also means any society.

"Quarantine" means a legal declaration by the Board that specifies: (i) the noxious weed; (ii) the articles to be regulated; (iii) conditions governing movement; and (iv) exemptions.

"Regulated article" means any article of any character as described in this chapter or in the quarantine carrying or capable of carrying a noxious weed against which this chapter or the quarantine is directed.

**§ 3.2-802. Powers and duties of Board; quarantine.**

A. The Board shall establish by regulation, after a public hearing, those weeds deemed to be noxious weeds not otherwise so declared by the terms of this chapter. Prior to designating a living plant or part thereof as a noxious weed, the Board shall review the recommendations of an advisory committee established by the Commissioner to conduct a scientific risk assessment of the proposed plant. The assessment shall include the degree to which the plant is detrimental to crops; surface waters, including lakes; other desirable plants; livestock; land or other property; public health; the environment; and the economy. The advisory committee shall also include in its recommendations to the Board an analysis of the current and potential in-state commercial viability of the specific plant species and the economic impact on industries affected by the designation of the plant as a noxious weed.

B. The Board may establish a statewide quarantine and adopt regulations pertaining to regulated articles and conditions governing movement, under which the Commissioner shall proceed to eradicate or suppress and prevent the dissemination of noxious weeds in the Commonwealth, and shall adopt other regulations as are necessary to carry out the purpose of this chapter. *The Board may adopt regulations governing the conditions under which a permit is required to move, transport, deliver, ship, offer for shipment, sell, or offer for sale into or within the Commonwealth any noxious weed or part thereof.* The Board may adopt regulations governing the movement of regulated articles entering the Commonwealth from without. Following the establishment of a quarantine, no person shall move any noxious weed or any regulated article described in the quarantine from any regulated area without a valid permit or certificate, *if required.*

Subsequent to the declaration of a quarantine by the Board, the Commissioner shall limit the application of the regulations pertinent to such quarantine to the infested portion of the Commonwealth and appropriate environs, which would be known as the regulated area and may, without further hearing, extend the regulated area to include additional portions of the Commonwealth upon publication of a notice to that effect in a newspaper distributed in the extended area or by direct written notice to those

concerned.

*C. The Board shall develop and adopt regulations requiring tradespersons involved with proposing or installing plants to provide written notification to property owners for all plants proposed for installation that are included on the list of invasive plants established in § 10.1-104.6:2.*

**§ 3.2-804. Prohibited acts; noxious weeds.**

No person shall violate any provisions of this chapter or any regulation adopted hereunder. ~~No person shall move, transport, deliver, ship, or offer for shipment into or within the Commonwealth any noxious weed, or part thereof, without first obtaining a permit from the Commissioner. If the Board requires a person to obtain a permit pursuant to subsection B of § 3.2-802, such person shall obtain such permit prior to moving, transporting, delivering, shipping, offering for shipment, selling, or offering for sale into or within the Commonwealth a noxious weed or part thereof. Such permit shall be issued only after it has been determined that the noxious weed is generally present already or it is for scientific purposes subject to prescribed safeguards.~~

**§ 10.1-104.6:2. Invasive plant species.**

*A. The Department shall create a list of invasive plant species no later than January 1, 2024, and shall update such list at least every four years thereafter.*

*B. No agency of the Commonwealth shall plant, sell, or propagate any plant on the list of invasive plants established in subsection A except when doing so is necessary for scientific or educational purposes or bona fide agricultural purposes including the management, tilling, planting, or harvesting of agricultural products.*

**2. That the Department of Conservation and Recreation shall convene the Virginia Invasive Species Working Group to develop industry resources and recommendations to be sent to the Chairmen of the Senate Committees on Agriculture, Conservation and Natural Resources and Finance and Appropriations and the House Committees on Agriculture, Chesapeake and Natural Resources and Appropriations for the 2024 Regular Session of the General Assembly to support full implementation of the Virginia Invasive Species Working Group's existing Virginia Invasive Species Management Plan.**



**Project 7681**

**Department of Agriculture And Consumer Services**

**Promulgate regulations governing the installation of invasive plant species by  
tradespersons in Virginia**

Chapter 455

Regulations for Tradespersons Installing Invasive Plant Species

**2VAC5-455-10. Definitions.**

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

"Installing" or "installation" means the placement, replacement, or otherwise planting of outdoor plants.

"Invasive plant species" means a plant species included on the Virginia Invasive Plant Species List, established pursuant to § 10.1-104.6:2 of the Code of Virginia and maintained by the Virginia Department of Conservation and Recreation, effective January 1, 2024.

"Notification" means a communication provided by a tradesperson at the time of delivery of a proposal that includes an invasive plant species or prior to the installation of any invasive plant species that is acknowledged in writing by the property owner, manager, custodian, or other person responsible for the property on which an invasive plant species is proposed to be installed or is installed.

"Proposal" means a written landscape design plan.

"Propose" means to provide a proposal to a property owner, manager, custodian, or other person responsible for a property.

"Tradesperson" means any person who, for compensation, proposes plants for installation or installs plants.

**2VAC5-455-20. Notification requirements.**

A. A tradesperson shall provide written notification to the property owner, manager, custodian, or other person responsible for the property when the tradesperson proposes for installation or installs an invasive plant species.

B. A tradesperson who is required to provide notification pursuant to subsection A shall provide the notification (i) at the time that the tradesperson proposes an invasive plant species for installation or (ii) prior to the installation of an invasive plant species. However, if the tradesperson who proposes an invasive plant species also installs the proposed invasive plant species, notification is only required at the time that the tradesperson proposes the invasive plant species.

C. A notification shall:

1. List each invasive plant species proposed for installation or being installed, identify the species as invasive, and state the species' invasiveness rank on the Virginia Invasive Plant Species List; and
2. State that general information on the characteristics and management of invasive plant species is available in Virginia Cooperative Extension's Exotic Invasive Plants publication.

**2VAC5-455-30. Recordkeeping.**

A. A tradesperson who proposes plants for installation shall maintain a copy of the notification provided to a property owner, manager, custodian, or other person responsible for the property for a period of not less than two years from the date on which a proposal is accepted.

B. A tradesperson who installs plants shall maintain a copy of the notification provided to a property owner, manager, custodian, or other person responsible for the property for a period of not less than two years from the date of the installation of an invasive plant species.

C. A tradesperson shall make notifications that the tradesperson provides pursuant to this chapter available for inspection by the Commissioner upon request.

Documents Incorporated by Reference (2VAC5-455)

[Virginia Invasive Plant Species List, effective January 1, 2024, Virginia Department of Conservation and Recreation.](#)

[Exotic Invasive Plants, 2020, Virginia Cooperative Extension.](#)

**Project 7880**

**Department of Agriculture And Consumer Services**

**Repeal of 2 VAC 5-336**

Chapter 336

Regulations for Enforcement of the Virginia Tree and Crop Pests Law - Spotted Lanternfly

Quarantine (REPEALED)

**2VAC5-336-10. ~~Declaration of quarantine.~~ (Repealed.)**

~~A quarantine is hereby established to restrict the movement of certain articles capable of transporting Spotted Lanternfly, *Lycorma delicatula*, unless such articles comply with the conditions specified in this chapter.~~

**2VAC5-336-20. ~~Purpose of quarantine.~~ (Repealed.)**

~~The purpose of this quarantine is to help prevent the artificial spread of Spotted Lanternfly to uninfested areas of the Commonwealth by regulating the movement of articles that are capable of transporting the Spotted Lanternfly. The Spotted Lanternfly is a new pest to the United States and has become established in the Commonwealth. The Spotted Lanternfly has the potential to spread to uninfested areas by natural means or through the movement of infested articles.~~

~~The Spotted Lanternfly is not native to the Commonwealth or the United States and is a threat to forests, ornamental trees, orchards, and grapes. It is not yet widely prevalent or distributed within or throughout the Commonwealth. The Board of Agriculture and Consumer Services has determined that the Spotted Lanternfly is dangerous and destructive to the agriculture, horticulture, and forests of this Commonwealth.~~

**2VAC5-336-30. Definitions. (Repealed.)**

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

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

~~"Commonwealth" means the Commonwealth of Virginia.~~

~~"Compliance agreement" means a written agreement between a person engaged in growing, handling, receiving, or moving regulated articles and the department, wherein the former agrees to comply with the requirements of the compliance agreement and comply with the provisions of this chapter.~~

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

~~"Infestation" means the presence of the Spotted Lanternfly or the existence of circumstances that make it reasonable to suspect that the Spotted Lanternfly is present.~~

~~"Inspection statement" means an official document provided by the department that must be completed and accompany regulated articles moving out of the regulated area.~~

~~"Inspector" means an employee of the department or other person authorized by the commissioner to enforce the provisions of this chapter.~~

~~"Moved," "move," or "movement" means shipped; offered for shipment; received for transportation; transported; carried; or allowed to be moved, shipped, transported, or carried.~~

~~"Permit" means a document issued by the commissioner to a person to allow the movement of regulated articles out of the regulated area under conditions specified within the permit.~~

~~"Person" means the term as defined in § 1-230 of the Code of Virginia, which includes any individual, corporation, partnership, association, cooperative, limited liability company, trust, joint~~

~~venture, government, political subdivision, or any other legal or commercial entity and any successor, representative, agent, agency, or instrumentality thereof.~~

~~"Regulated area" means the localities listed in 2VAC5-336-50.~~

~~"Spotted Lanternfly" means the live insect, *Lycorma delicatula*, in any life stage.~~

~~"Training credentials" means documentation verifying successful completion of department-approved Spotted Lanternfly training.~~

~~"Virginia Tree and Crop Pests Law" means Chapter 7 (§ 3.2-700 et seq.) of Title 3.2 of the Code of Virginia.~~

**2VAC5-336-40. Regulated articles. (Repealed.)**

~~A. Any life stage of the Spotted Lanternfly, *Lycorma delicatula*, is regulated under the provisions of this chapter.~~

~~B. The following articles, when such articles have been stored, packed, or handled in a manner that poses a risk of Spotted Lanternfly infestation, are regulated under the provisions of this chapter:~~

~~1. All plants or plant parts, including the following: live or dead trees; nursery stock; green lumber; firewood; logs; perennial plants; garden plants or produce; stumps; branches; mulch; or composted or uncomposted chips, bark, or yard waste.~~

~~2. Outdoor industrial or construction materials or equipment; concrete barriers or structures; stone, quarry material, ornamental stone, or concrete; or construction, landscaping, or remodeling waste.~~

~~3. Shipping containers, such as wood crates or boxes.~~

~~4. Outdoor household articles, including the following: recreational vehicles; lawn tractors or mowers; grills; grill or furniture covers; tarps; mobile homes; tile; stone; deck boards; or any equipment, trucks, or vehicles not stored indoors.~~

~~5. Any means of conveyance utilized for movement of an article listed in subdivisions 1 through 4 of this subsection; any vehicle; or any trailer, wagon, or other equipment attached thereto.~~

~~C. Any other article or means of conveyance that an inspector determines presents a risk of spreading Spotted Lanternfly is regulated under the provisions of this chapter.~~

**2VAC5-336-50. Regulated areas. (Repealed.)**

~~The following areas in Virginia are quarantined for Spotted Lanternfly:~~

~~1. The entire following counties:~~

~~a. Albemarle;~~

~~b. Augusta;~~

~~c. Carroll;~~

~~d. Clarke;~~

~~e. Frederick;~~

~~f. Page;~~

~~g. Prince William;~~

~~h. Rockbridge;~~

~~i. Rockingham;~~

~~j. Shenandoah;~~

~~k. Warren; and~~

~~i. Wythe.~~

~~2. The entire following Cities of:~~

~~a. Buena Vista;~~

~~b. Charlottesville;~~

~~c. Harrisonburg;~~

~~d. Lexington;~~

~~e. Lynchburg;~~

~~f. Manassas;~~

~~g. Manassas Park;~~

~~h. Staunton;~~

~~i. Waynesboro; and~~

~~j. Winchester.~~

**~~2VAC5-336-60. Conditions governing the intrastate movement of regulated articles by a person conducting business. (Repealed.)~~**

~~A. A person conducting business may move a regulated article from a regulated area to an unregulated area under the following conditions:~~

~~1. The person moving the regulated article has been issued a permit in accordance with 2VAC5-336-80;~~

~~2. The person has inspected the regulated article and found the regulated article to be free of all life stages of Spotted Lanternfly; and~~

~~3. The shipment of the regulated article is accompanied by a Spotted Lanternfly permit and completed inspection statement.~~



~~B. A person conducting business may move a regulated article solely within a regulated area after the person has inspected the regulated article and found it to be free of all life stages of the Spotted Lanternfly. A Spotted Lanternfly permit and completed inspection statement are not required for the movement of a regulated article within a regulated area.~~

~~C. From April 1 through December 31, a person conducting business may move a regulated article that originates in an unregulated area through a regulated area under the following conditions:~~

~~1. The shipment of the regulated article is accompanied by a waybill that indicates the point of origin of the regulated article;~~

~~2. The shipment of the regulated article moves directly through the regulated area without stopping, except for refueling or due to traffic conditions, or the regulated article has been stored, packed, or handled in a manner so as to not pose a risk of infestation; and~~

~~3. The regulated article has not been combined or commingled with other articles so as to lose its individual identity.~~

~~D. During January through March, a person conducting business may move a regulated article that originates in an unregulated area through a regulated area without restriction.~~

~~E. The commissioner may issue a permit to a person moving a regulated article from a regulated area to an unregulated area or from an unregulated area through a regulated area who does not meet the requirements of this chapter when the commissioner determines the movement poses no risk of spreading Spotted Lanternfly.~~

~~F. The department may enter into a compliance agreement with a person to allow the movement of regulated articles to states or countries that have additional shipping requirements and where the compliance agreement is needed to comply with such requirements.~~

**~~2VAC5-336-70. Conditions governing the intrastate movement of regulated articles by a person not conducting business. (Repealed.)~~**

~~A. A person who is not conducting business may move the regulated article from a regulated area to an unregulated area under the following conditions:~~

- ~~1. The person has inspected the regulated article and found it to be free of all life stages of Spotted Lanternfly; and~~
- ~~2. The regulated article is accompanied by a completed inspection statement.~~

~~B. A person who is not conducting business may move the regulated article within a regulated area after the person has inspected the regulated article and found it to be free of all life stages of Spotted Lanternfly. A permit and completed inspection statement are not required for the movement of a regulated article within a regulated area.~~

**~~2VAC5-336-80. Issuance and cancellation of permits. (Repealed.)~~**

~~A. A person conducting business that requires the movement of a regulated article from a regulated area must obtain a permit from the commissioner.~~

~~B. To obtain a permit, a person conducting business that requires the movement of a regulated article from a regulated area shall:~~

- ~~1. Successfully complete department-approved training regarding identification of Spotted Lanternfly and compliance with this quarantine;~~
- ~~2. Submit to the department:
  - ~~a. A completed Spotted Lanternfly permit application on a form provided by the department; and~~
  - ~~b. Training credentials indicating successful completion of department-approved training;~~~~

- ~~3. Agree to train employees who move a regulated article out of a regulated area regarding identification of Spotted Lanternfly and compliance with this chapter;~~
- ~~4. Agree that before a regulated article is transported out of a regulated area, the person will require the regulated article to be inspected by a person who has completed Spotted Lanternfly training to ensure such article is free of Spotted Lanternfly;~~
- ~~5. Ensure the regulated article is moved in compliance with any additional condition deemed necessary under the Virginia Tree and Crop Pests Law to prevent the artificial spread of Spotted Lanternfly; and~~
- ~~6. Ensure the regulated article is eligible for unrestricted movement under all other domestic plant quarantines and regulations applicable to the regulated article.~~

~~C. An inspector may withdraw a permit orally or in writing if the inspector determines that the holder of the permit has not complied with all conditions for the use of the permit. If the withdrawal is oral, the inspector shall confirm the withdrawal and the reasons for the withdrawal in writing and communicate such to the permit holder as promptly as circumstances allow.~~

**~~2VAC5-336-90. Training requirements. (Repealed.)~~**

~~A. Any person responsible for moving a regulated article under a Spotted Lanternfly permit issued by the commissioner pursuant to 2VAC5-336-80 must successfully complete department-approved training.~~

~~B. The person training employees regarding the identification of Spotted Lanternfly and compliance with this quarantine shall have successfully completed department-approved training regarding the identification of Spotted Lanternfly and compliance with this chapter.~~

~~C. All training must be documented and training records made available to the department upon request. Training records must be maintained for all current employees and include employee name, date of training, and name of person conducting the training.~~

**~~2VAC5-336-100. Inspection, treatment, and disposal of regulated articles and pests. (Repealed.)~~**

~~Upon presentation of official credentials, an inspector is authorized to stop and inspect and to seize, destroy, or otherwise dispose of or require treatment or disposal of a regulated article as provided in the Virginia Tree and Crop Pests Law.~~

**~~2VAC5-336-110. Prohibited entry into Virginia. (Repealed.)~~**

~~A. The movement into Virginia of a regulated article from any area outside of the Commonwealth where a federal or state plant regulatory official has determined Spotted Lanternfly to be present is prohibited unless:~~

- ~~1. Prior written approval is issued by the commissioner; or~~
- ~~2. The regulated article is being moved under a Spotted Lanternfly permit issued by the state plant regulatory official of a state where Spotted Lanternfly is known to occur.~~

~~B. The movement into Virginia of a regulated article for research purposes is permissible with the commissioner's prior written approval.~~

**~~2VAC5-336-120. Nonliability of the department. (Repealed.)~~**

~~The department shall not be liable for any costs incurred by third parties whose costs result from or are incidental to inspections required under the provisions of this chapter.~~

**~~2VAC5-336-130. Repeal of this quarantine. (Repealed.)~~**

~~This quarantine may be repealed by the commissioner when the commissioner is satisfied that the need for this quarantine no longer exists. Such repeal shall take place upon the date specified by the commissioner in the order that repeals this chapter.~~

FORMS (2VAC5-336)

[Inspection Statement for Businesses, OPIS-SLF-2 \(eff. 5/2019\)](#)

[Spotted Lanternfly Permit Application Form, OPIS SLF-1 \(eff. 5/2019\)](#)

**Project 7817 - Fast-Track**

**Department of Agriculture And Consumer Services**

**Action to amend Regulations Governing the Production, Processing, and Sale of Ice Cream, Frozen Desserts, and Similar Products**

Chapter 510

Rules and Regulations Governing the Production, Processing, and Sale of Ice Cream, Frozen Desserts, and Similar Products

**2VAC5-510-10. Definitions.**

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

"3-A Accepted Practices" means the accepted practices published by 3-A Sanitary Standards, Incorporated and indexed in the 3-A Sanitary Standards and 3-A Accepted Practices, effective March 1, 2024.

"3-A Sanitary Standards" means the standards for dairy equipment published by 3-A Sanitary Standards. Incorporated and indexed in the 3-A Sanitary Standards and 3-A Accepted Practices, effective March 1, 2024.

"Adulterated milk, milk products, and frozen desserts" means any milk, milk products, other frozen dessert ingredient, frozen desserts, or frozen desserts mix ~~which:~~ that meets one or more of the conditions specified in 21 USC § 342.

- ~~1. Bears or contains any poisonous or deleterious substance in a quantity which may render it injurious to health;~~
- ~~2. Bears or contains any added poisonous or deleterious substance for which no safe tolerance has been established by state or federal regulation, or in excess of such tolerance if one has been established;~~
- ~~3. Consists, in whole or in part, of any substance unfit for human consumption;~~
- ~~4. Has been produced, processed, prepared, packed, or held under insanitary conditions;~~
- ~~5. Container is composed, in whole or in part, of any poisonous or deleterious substance which may render the contents injurious to health; or~~
- ~~6. Any substance has been added thereto or mixed or packed therewith so as to increase its bulk or weight, or reduce its quality or strength, or make it appear better or of greater value than it is.~~

~~"Commissary or depot" means any place, premise, or establishment in which pasteurized mix, ingredients, containers, or supplies are prepared or stored for the servicing of one or more mobile units, and where facilities are provided for cleaning the vehicle and the cleaning and bactericidal treatment of equipment and utensils.~~

"Cleaned in place" or "C-I-P" means the procedure by which equipment is mechanically cleaned in place by circulation of wash, rinse, and sanitizer solutions.

"Frozen dessert" means any or all of the following: ice cream, frozen custard, french ice cream, french custard ice cream, ice milk, fruit sherbet, water ice, non-fruit sherbet, non-fruit water ice, artificially sweetened ice cream or frozen dietary dairy dessert, artificially sweetened ice milk, frozen yogurt, quiescently frozen confection, quiescently frozen dairy confection, mellorine, parevine, lowfat parevine, freezer made milk shake, freezer made shake, those products

manufactured or sold in semblance to or as substitutes for the foregoing frozen desserts, and any mix used in the freezing of the foregoing frozen desserts.

~~"Frozen desserts manufacturer" means any person who manufactures, processes, converts, partially freezes, or freezes any mix or frozen desserts for distribution or sale.~~

"Frozen desserts plant" means any place or premises where frozen desserts or mix are manufactured, processed, pasteurized, or frozen for distribution or sale at wholesale.

~~"Frozen desserts retail establishment" means any place or premises including retail stores, stands, hotels, restaurants, and vehicles or mobile units where frozen desserts are frozen or partially frozen or dispensed for sale at retail.~~

"Harmless" means that a food or substance is generally recognized as safe, as prescribed in 21 CFR Parts 181 through 186.

~~"Misbranded" means a milk, milk products product, other frozen desserts ingredients dessert ingredient, frozen desserts dessert, and or frozen desserts dessert mix are misbranded when that:~~

- ~~1. Their containers bear~~ The container for which bears or ~~accompany~~ accompanies any false or misleading written, printed, or graphic matter;
- ~~2. Such milk and products do~~ Does not conform to their definitions as contained ~~the~~ product's definition established in this chapter; and
- ~~3. Such products are~~ is not labeled in accordance with ~~Part VI (2VAC5-510-430 et seq.)~~ Section 430 of this chapter.

~~"Mobile unit" means any vehicle or temporary establishment that shall travel from place to place in which a frozen desserts processor freezes, partially freezes, or dispenses frozen desserts for sale.~~

~~"Official methods" means Official Methods of Analysis of the Association of Official Analytical Chemists AOAC International, a publication of the Association of Official Analytical Chemists Collaboration International. A modified Roesse-Gottlieb test, such as the Mojonnier' or Dietert, may be used in making official determination of the butterfat and total solids content of frozen dairy food products.~~

"Pasteurization" or "pasteurized" means the process of heating, in approved and properly operated equipment, every particle of mix to any one of the following temperatures and holding at the temperature for the specified time:

1. Vat Pasteurization: 155°F (68.3°C) and holding at such temperature for at least 30 minutes.
2. HTST (High-Temperature-Short-Time) Pasteurization: 175°F (79.4°C) and holding at such temperature for at least 25 seconds.

Nothing contained in this definition shall be construed as barring any other method of process, or combination of times and temperatures, as may be demonstrated to be equally efficient.

~~"Permit" means authority issued under the Act by the regulatory agency the document issued by the Commissioner of Agriculture and Consumer Services pursuant to Va. Code § 3.2-5214 that authorizes a person to operate a frozen desserts plant.~~

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

"Person" means any individual, partnership, corporation, company, firm, trustee, or association.

"Plant" means any place, premise, or establishment where milk or dairy products are received or handled for processing or manufacturing the products defined ~~herein~~ in this chapter.

"Powder" or "dry frozen desserts mix" means a frozen desserts mix in a dry form.

"Standard methods" means Standard Methods for the Examination of Dairy Products, a publication of the American Public Health Association.

~~"3-A Sanitary standards and accepted practices" means the standards for dairy equipment and accepted practices formulated by the 3-A Sanitary Standards Committees representing the International Association for Food Protection, the United States Public Health Service, and the Dairy Industry Committee, Published by the 3-A Sanitary Standards, Incorporated.~~

"State Regulatory Agency" means the Commissioner of Agriculture and Consumer Services or his agent or the State Health Commissioner or his agent when such person is carrying out any duty assigned to such commissioner in the Milk, Milk Products, and Dairies Law (§ 3.2-5200 et seq. of the Code of Virginia).

"Summarily suspend" means the immediate suspension of a permit issued by the State Regulatory Agency without the opportunity for the permit holder to contest the suspension prior to the effective date and time of the suspension.

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

## **2VAC5-510-20. Uniformity of enforcement.**

A. The Virginia Board of Agriculture and Consumer Services hereby finds and declares that a uniform regulation is needed to govern the production, processing, labeling, and distribution of ice cream and similar products within the Commonwealth of Virginia. This chapter relating to ice cream and similar products shall be applicable throughout the Commonwealth of Virginia and shall be enforced on a statewide basis. Products produced, processed, or manufactured under the provisions of this chapter ~~may~~ can be sold in all counties, cities, and towns in this state. They shall not be subject to regulations by ordinance or otherwise to supervision, or to inspection by any political subdivision.

B. No regulation shall be construed to prohibit the sale of any imported dairy product within this state, if the laws and regulations of the exporting state or political subdivision thereof are substantially the same as this chapter, and if they are enforced with equal effectiveness as determined by ~~Virginia Department of Agriculture and Consumer Services~~ VDACS or State Health Department.

C. Unless otherwise provided by state law or by regulation of the Virginia Board of Agriculture and Consumer Services, this chapter shall be interpreted and enforced where applicable with administrative procedures and recommended regulations of the United States Department of Health and Human Resources and the United States Department of Agriculture.

### Part III

#### Standards of Identity Standardized Frozen Desserts and Related Products

## **2VAC5-510-30. ~~Ice cream; identity; label statement of optional ingredients~~ Ice cream and frozen custard.**

~~A. Ice cream is the food prepared by freezing, while stirring, a pasteurized mix composed of one or more of the optional ingredients specified in subsection C of this section, sweetened with one or more of the optional sweetening ingredients specified in subsection D of this section. One or more of the optional characterizing ingredients specified in subsection B of this section and one or more of the optional ingredients specified in subdivisions 5 to 10 of subsection D may be used to characterize the ice cream. One or more of the optional caseinates specified in subsection E and one or more of the optional ingredients specified in subsection F of this section may be used, subject to the conditions hereinafter set forth. The mix may be seasoned with salt, and may~~



~~be homogenized. The kind and quantity of optional dairy ingredients used, as specified in subsection C of this section, and the content of milk fat and nonfat milk solids therein, are such that the weights of milkfat and total milk solids are not less than 10% and 20%, respectively, of the weight of the finished ice cream; but in no case shall the content of milk solids not fat be less than 6.0%, except that when one or more of the bulky optional ingredients as specified in subdivisions 3 to 8 of subsection B, inclusive, of this section, are used, the weights of milkfat and total milk solids (exclusive of such fat and solids in any malted milk used) are not less than 10% and 20%, respectively, of the remainder obtained by subtracting the weight of such optional ingredients, modified as prescribed in this subsection, from the weight of the finished ice cream; but in no case is the weight of milkfat or total milk solids less than 8.0% and 16%, respectively, of the weight of the finished ice cream. The optional caseinates specified in subsection E of this section are not deemed to be milk solids. In calculating the reduction of milkfat and total milk solids from the use of bulky optional ingredients, chocolate and cocoa solids used shall be considered the bulky ingredients of subdivision 3 of subsection B of this section. In order to make allowance for additional sweetening ingredients needed when bulky ingredients are used, the weight of chocolate or cocoa solids may be multiplied by 2.5; the weight of fruit or nuts used may be multiplied by 1.4; and the weight of partially or wholly dried fruits or fruit juices may be multiplied by appropriate factors to obtain the original weights before drying and this weight multiplied by 1.4. The finished ice cream contains not less than 1.6 pounds of total solids to the gallon and weighs not less than 4.5 pounds to the gallon; except that when the optional ingredient microcrystalline cellulose specified in subdivision 6 of subsection F of this section is used, the finished ice cream contains not less than 1.6 pounds of total solids to the gallon and weighs not less than 4.5 pounds to the gallon exclusive, in both cases, of the weight of the microcrystalline cellulose. Artificial flavoring in any chocolate, cocoa, confectionary, or other ingredient used is an optional ingredient of the finished ice cream. Coloring, including artificial coloring, may be added.~~

~~B. The optional characterizing ingredients referred to in subsection A. of this section are:~~

- ~~1. Ground spice, ground vanilla beans, infusion of coffee or tea, or any natural food flavoring.~~
- ~~2. Artificial food flavoring.~~
- ~~3. Chocolate or cocoa, which may be added as such or as a suspension in sirup, and which may contain disodium phosphate or sodium citrate in such quantity that the finished ice cream contains not more than 0.2% by weight of disodium phosphate or sodium citrate. For the purposes of this section, the term "cocoa" means one or any combination of two or more of the following: Cocoa, breakfast cocoa, lowfat cocoa, and the unpulverized residual material prepared by removing part of the fat from ground cacao nibs.~~
- ~~4. Mature fruit or the juice of mature fruit, either of which may be fresh, frozen, canned, concentrated, or partially or wholly dried. The fruit may be whole, shredded, or comminuted; it may be sweetened, thickened with pectin or with one or more of the ingredients named in subdivision 2 of subsection F of this section, subject to the restriction on the total quantity of such substances in ice cream prescribed in that subdivision, and it may be acidulated with citric acid, ascorbic acid, or phosphoric acid. The fruit is prepared by the removal of pits, seeds, skins, and cores, where such removal is used in preparing that kind of fruit for consumption as fresh fruit. In the case of fruit or fruit juice from which part of the water is removed, the substances contributing flavor volatilized during water removal may be condensed and reincorporated in the concentrated fruit or fruit juice. In the case of the citrus fruits the whole fruit, including the peel but excluding the seeds, may be used, and in the case of citrus juice or concentrated citrus juice, cold-pressed citrus oil may be added in an amount not exceeding that which would have been obtained if the peel from the whole fruit had been used. For the purposes of this section the flesh of the coconut shall be considered a fruit.~~

5. Nut meats, which may be roasted, cooked in an edible fat or oil, or preserved in sirup, and which may be salted.
6. Malted milk.
7. Confectionary. For the purposes of this section, the term "confectionery" means candy, cakes, cookies, and glazed fruits.
8. Properly prepared and cooked cereal.
9. Distilled alcoholic beverage, including liqueurs or wine, in an amount not to exceed that required for flavoring the ice cream.

C. ~~The optional dairy ingredients referred to in subsection A of this section are: cream, dried cream, plastic cream (sometimes known as concentrated milkfat), butter, butter oil, milk, concentrated milk, evaporated skim milk, condensed skim milk, superheated condensed skim milk, sweetened condensed skim milk, sweetened condensed part skim milk, nonfat dry milk, sweet cream buttermilk, condensed sweet cream buttermilk, dried sweet cream buttermilk, skim milk that has been concentrated and from which part of the lactose has been removed by crystallization, skim milk in concentrated or dried form which has been modified by treating the concentrated skim milk with calcium hydroxide and disodium phosphate, concentrated cheese whey, and dried cheese whey. Water may be added, or water may be evaporated from the mix. The sweet cream buttermilk and the concentrated sweet cream buttermilk or dried sweet cream buttermilk, when adjusted with water to a total solids content of 8.5%, has a titratable acidity of not more than 0.17%, calculated as lactic acid. The term "milk" as used in this section means cow's milk. Any concentrated cheese whey and dried cheese whey used contribute not more than 25% by weight of the total nonfat milk solids content of the finished food. Dried cheese whey is uniformly light in color, free from brown and black scorched particles, and has an alkalinity of ash, not more than 225 milliliters 0.1N HCl per 100 grams, a bacterial count of not more than 50,000 per gram, and, as adjusted with water to a total solids content of 6.5%, a titratable acidity of not more than 0.16%, calculated as lactic acid. Concentrated cheese whey has an alkalinity of ash, not more than 115 milliliters 0.1N HCl per 100 grams, a bacterial count of not more than 50,000 per gram, and as adjusted with water to a total solids content of 6.5%, calculated as lactic acid. The modified skim milk, when adjusted with water to a total solids content of 9%, is substantially free of lactic acid as determined by titration with 0.1N NaOH and it has a pH value in the range of 8.0 to 8.3.~~

D. ~~The optional sweetening ingredients referred to in subsection A of this section are:~~

1. ~~Sugar (sucrose) or sugar sirup.~~
2. ~~Dextrose.~~
3. ~~Invert sugar (in paste or sirup form).~~
4. ~~Corn sirup, dried corn sirup, glucose sirup, dried glucose sirup.~~
5. ~~Maple sirup, maple sugar.~~
6. ~~Honey.~~
7. ~~Brown sugar.~~
8. ~~Malt sirup, maltose sirup, malt extract.~~
9. ~~Dried malt sirup, dried maltose sirup, dried malt extract.~~
10. ~~Refiner's sirup.~~
11. ~~Molasses (other than black strap).~~
12. ~~Lactose.~~
13. ~~Fructose.~~

~~E. The optional caseinates referred to in subsection A of this section which may be added to ice cream mix containing not less than 20% total milk solids are: casein prepared by precipitation with gums, ammonium caseinate, calcium caseinate, potassium caseinate, and sodium caseinate. Caseinates may be added in liquid or dry form, but must be free of excess alkali.~~

~~F. Other optional ingredients referred to in subsection A of this section are:~~

~~1. Liquid eggs, frozen eggs, dried eggs, egg yolks, frozen egg yolks, and dried egg yolks. Any egg ingredient used is added to the mix before it is pasteurized. The total weight of egg yolk solids in the finished ice cream from one or a combination of two or more such ingredients is less than the minimum prescribed for frozen custard by 2VAC5-510-50 (1.4%).~~

~~2. Agar-agar, algin (sodium alginate), calcium sulfate, gelatin, gum acacia, guar seed gum, gum karaya, locust bean gum, oat gum, gum tragacanth, carrageenan, salts of carrageenan, furcelleran, salts of furcelleran, lecithin, psyllium seed husk, sodium carboxymethylcellulose. The total weight of the solids of any such ingredient used singly or of any combination of two or more such ingredients used (including any such ingredient and pectin added separately to the fruit ingredient) is not more than 0.5% of the weight of the finished ice cream. Such ingredients may be added in admixture with dextrin, propylene glycol, or glycerin.~~

~~3. Monoglycerides or diglycerides or both of fat forming fatty acids. The total weight of such ingredients is not more than 0.2% of the weight of the finished ice cream. If the preparation used is one having a high proportion of monoglycerides (over 90%), it may be preblended with edible fat, but the amount of such fat does not exceed 20% by weight of the blend, and the total amount of the blend used does not exceed 0.2% of the weight of the finished ice cream.~~

~~4. Polysorbate 65, polysorbate 80, or both may be used, with a limit on either, used separately or both used in combination, of not more than 0.1% by weight of the finished frozen dessert.~~

~~5. Propylene glycol alginate limit of not more than 0.5% by weight of the finished frozen dessert.~~

~~6. Microcrystalline cellulose, in a quantity not to exceed 1.5% by weight of the finished frozen dessert.~~

~~7. When one or more of the optional thickening ingredients in subdivision 2 or 5 of this subsection are used, dioctyl sodium sulfosuccinate may be used in a quantity not in excess of 0.5% by weight of such ingredients.~~

~~8. a. Sodium citrate, disodium phosphate, tetrasodium pyrophosphate, sodium hexametaphosphate, or any combination of two or more of these; but the total quantity of the solids of such ingredients (exclusive of any disodium phosphate or sodium citrate present in chocolate or cocoa, as permitted by subdivision 3 of subsection B of this section) is not more than 0.2% by weight of the finished ice cream.~~

~~b. Calcium oxide, magnesium oxide, calcium hydroxide, magnesium hydroxide, calcium carbonate, magnesium carbonate, or any combination of two or more of these; but the total quantity of the solids of such ingredients is not more than 0.04% of the weight of the finished ice cream.~~

~~G. 1. The name of the food is "ice cream."~~

~~2. a. If the food contains no artificial flavor, the name on the principal display panel or panels of the label shall be accompanied by the common or usual name of the characterizing flavor, e.g., "vanilla," in letters not less than one-half the height of the letters used in the words "ice cream."~~

- ~~b. If the food contains both a natural characterizing flavor and an artificial flavor simulating it, and if the natural flavor predominates, the name on the principal display panel or panels of the label shall be accompanied by the common name of the characterizing flavor, in letters not less than one half the height of the letters used in the words "ice cream," followed by the word "flavored," in letters not less than one half the height of the letters in the name of the characterizing flavor, e.g., "VANILLA flavored," or "PEACH flavored," or "VANILLA flavored STRAWBERRY flavored."~~
- ~~c. If the food contains both a natural characterizing flavor and an artificial flavor simulating it, and if the artificial flavor predominates, or if artificial flavor is used alone, the name on the principal display panel or panels of the label shall be accompanied by the common name of the characterizing flavor, in letters not less than one half the height of the letters used in the words "ice cream," preceded by "artificial" or "artificially flavored," in letters not less than one half the height of the letters in the name of the characterizing flavor, e.g., "artificial VANILLA," or "artificially flavored STRAWBERRY" or "artificially flavored VANILLA and artificially flavored STRAWBERRY."~~
3. ~~a. If the food is subject to the requirements of subdivision 2 b of this subsection or if it contains any artificial flavor not simulating the characterizing flavor, the label also shall bear the words "artificial flavor added" or "artificial \_\_\_\_\_ flavor added," the blank being filled with the common name of the flavor simulated by the artificial flavor in letters of the same size and prominence as the words that precede and follow it.~~
- ~~b. When the optional ingredient microcrystalline cellulose specified in subdivision 6 of subsection F of this section is used, the label shall bear the statement "microcrystalline cellulose added" or "with microcrystalline cellulose."~~
- ~~c. When two or more of the optional ingredients specified in subdivision 2 of subsection B and subdivision 6 of subsection F of this section are used, such words may be combined; for example, "microcrystalline cellulose and artificial flavor added."~~
- ~~d. Wherever the name of the characterizing flavor appears on the label so conspicuously as to be easily seen under customary conditions of purchase, the words prescribed by this subparagraph shall immediately and conspicuously precede or follow such name, in a size reasonably related to the prominence of the name of the characterizing flavor and in any event the size of the type is not less than 6 point on packages containing less than one pint, not less than 8 point on packages containing at least one pint but less than one half gallon, but less than one gallon, and not less than 12 point on packages containing one gallon or over; however, that where the characterizing flavor and a trademark or brand are presented together, other written, printed, or graphic matter that is a part of or is associated with the trademark or brand, may intervene if the required words are in such relationship with the trademark or brand as to be clearly related to the characterizing flavor: And provided further, that if the finished product contains more than one flavor of ice cream subject to the requirements of this subparagraph, the statements required by this subparagraph need appear only once in each statement of characterizing flavors present in such ice cream, e.g., "VANILLA flavored, CHOCOLATE and STRAWBERRY flavored, artificial flavors added."~~
4. ~~If the food contains both a natural characterizing flavor and an artificial flavor simulating the characterizing flavor, any reference to the natural characterizing flavor, except as otherwise authorized by this subsection, shall be accompanied by a reference to the artificial flavor, displayed with substantially equal prominence, e.g., "strawberry and artificial strawberry flavor."~~
5. An artificial flavor simulating the characterizing flavor shall be deemed to predominate:

a. ~~In the case of vanilla beans or vanilla extract used in combination with vanillin if the amount of vanillin used is greater than one ounce per unit of vanilla constituent.~~

b. ~~In the case of fruit or fruit juice used in combination with artificial fruit flavor, if the quantity of the fruit or fruit juice used is such that, in relation to the weight of the finished ice cream, the weight of the fruit or fruit juice, as the case may be (including water necessary to reconstitute partially or wholly dried fruits or fruit juices to their original moisture content) is less than 2.0% in the case of citrus ice cream, 6.0% in the case of berry or cherry ice cream, 10% in the case of ice cream prepared with other fruits.~~

c. ~~In the case of nut meats used in combination with artificial nut flavor, if the quantity of nut meats used is such that, in relation to the finished ice cream, the weight of the nut meats is less than 2.0%.~~

d. ~~In the case of two or more fruit or fruit juices, or nut meats, or both, used in combination with artificial flavors simulating the natural flavors and dispersed throughout the food, if the quantity of any fruit or fruit juice or nut meat is less than one half the applicable percentage specified in subparagraphs b or c of this paragraph. For example, if a combination ice cream contains less than 5.0% of bananas and less than 1.0% of almonds it would be "Artificially flavored banana almond ice cream." However, if it contains more than 5.0% of bananas and more than 1.0% of almonds it would be "Banana almond flavored ice cream."~~

6. ~~If two or more flavors of ice cream are distinctively combined in one package, e.g., "Neapolitan" ice cream, the applicable provisions of this subsection shall govern each flavor of ice cream comprising the combination.~~

H. ~~Optional ingredients other than those included in subsections B, C, D and F may be used when permitted for use in ice cream by the Federal Food and Drug Administration.~~

A. Ice cream or frozen custard is the food prepared from the same ingredients and in the same manner, including labeling, as prescribed in 21 CFR 135.110 or 21 CFR 135.115.

B. Ice cream mix is the pasteurized unfrozen combination of ingredients that, when frozen while stirring, produces a product conforming to the description of "ice cream" in 21 CFR 135.110 or "goat's milk ice cream" in 21 CFR 135.115.

C. Frozen custard mix, french ice cream mix, or french custard ice cream mix is the pasteurized unfrozen combination of ingredients that, when frozen while stirring, produces products conforming to the description of "frozen custard," "french ice cream," or "french custard ice cream" in 21 CFR 135.110 or "goat's milk frozen custard," "goat's milk french ice cream," or "goat's milk french custard ice cream" in 21 CFR 135.115.

#### **2VAC5-510-40. Ice cream mix. (Repealed.)**

~~Ice cream mix is the pasteurized unfrozen combination of ingredients which when frozen while stirring will produce a product conforming to the definition of ice cream.~~

#### **2VAC5-510-50. Frozen custard, french ice cream, french custard ice cream; identity; label statement of optional ingredients; frozen custard mix, french ice .... (Repealed.)**

~~A. Frozen custard, french ice cream, french custard ice cream conforms to the definition and standard of identity, and is subject to the requirements for label statement of optional ingredients, prescribed for ice cream by 2VAC5-510-30, except that one or more of the optional egg ingredients permitted by 2VAC5-510-30 F 1 are used in such quantity that the total weight of egg yolk solids therein is not less than 1.4% of the weight of the finished frozen custard; Provided, however, that when the ingredients named in subdivisions 3 through 8 of 2VAC5-510-30 B, inclusive, are used the content of egg yolk solids may be reduced in proportion to the bulky ingredient or ingredients added, under the conditions prescribed by 2VAC5-510-30 A for reduction in milkfat and total milk solids; but in no case is the content of egg yolk solids less than 1.12%.~~

~~B. Frozen custard mix, french ice cream mix, and french custard ice cream mix are the pasteurized unfrozen combinations of ingredients that when frozen while stirring will produce products conforming to the definition of frozen custard, french ice cream, and french custard ice cream.~~

**2VAC5-510-90. Fruit sherbets; identity; label statement of optional ingredients; fruit sherbet mix Sherbets.**

~~A. Fruit sherbets are the foods each of which is prepared by freezing, while stirring, a mix composed of one or more of the optional characterizing fruit ingredients specified in subsection B of this section and one or more to the optional ingredients specified in subsection C of this section, sweetened with one or more of the optional sweetening ingredients specified in subsection D of this section. One or more of the optional ingredients specified in subsection E of this section may be used, subject to the conditions hereinafter set forth. The mix of combined dairy ingredients, with or without other ingredients, is pasteurized. The titratable acidity of the finished fruit sherbet, calculated as lactic acid, is not less than 0.35%. The mix with or without added water may be seasoned with salt, and may be homogenized. The optional dairy ingredients used and the content of milkfat and nonfat milk solids therein are such that the weight of milkfat is not less than 1.0% and not more than 2.0%, and the weight of total milk solids is not less than 2.0% and not more than 5.0% of the weight of the finished fruit sherbet. The optional caseinates specified in subdivision 7 of subsection E of this section are not deemed to be milk solids. The finished fruit sherbet weighs not less than six pounds to the gallon; except that when the optional ingredient microcrystalline cellulose specified in subdivision 11 of subsection E of this section is used, the finished fruit sherbet weighs not less than six pounds to the gallon, exclusive of the weight of the microcrystalline cellulose.~~

~~B. The optional fruit characterizing ingredients referred to in subsection A of this section are any mature fruit or the juice of any mature fruit. The fruit or fruit juice used may be fresh, frozen canned, concentrated, or partially or wholly dried. The fruit may be thickened with pectin or other of the optional ingredients named in subdivision 2 of subsection E of this section, subject to the restriction on the total quantity of such substances in fruit sherbets prescribed in that subsection. The fruit is prepared by the removal of pits, seeds, skins, and cores, where such removal is usual in preparing that kind of fruit for consumption as fresh fruit. The fruit may be screened, crushed, or otherwise comminuted. It may be acidulated with citric acid, ascorbic acid, or phosphoric acid. In the case of concentrated fruit or fruit juices from which part of the water is removed, substances contributing flavor volatilized during water removal may be condensed and reincorporated in the concentrated fruit or fruit juice. In the case of citrus fruits, the whole fruit, including the peel but excluding the seeds, may be used, and in the case of citrus juice or concentrated citrus juices, cold pressed citrus oil may be added thereto in an amount not exceeding that which would have been obtained if the whole fruit had been used. The quantity of fruit ingredients used is such that, in relation to the weight of the finished sherbet, the weight of fruit or fruit juice, as the case may be, including water necessary to reconstitute partially or wholly dried fruits or fruit juices to their original moisture content, is not less than 2.0% in the case of citrus sherbets, 6.0% in the case of berry sherbets, and 10% in the case of sherbets prepared with other fruits. For the purposes of this section, tomatoes and rhubarb are considered as kinds of fruit.~~

~~C. The optional dairy ingredients referred to in subsection A of this section are: cream, dried cream, plastic cream, (sometimes known as concentrated milkfat), butter, butter oil, milk, concentrated milk, evaporated milk, superheated condensed milk, sweetened condensed milk, dried milk, skim milk, concentrated skim milk, evaporated skim milk, condensed skim milk, superheated condensed skim milk, sweetened condensed skim milk, sweetened condensed part-skim milk, nonfat dry milk, sweet cream buttermilk, condensed sweet cream buttermilk, dried sweet cream buttermilk, skim milk that has been concentrated and from which part of the lactose has been removed by crystallization, concentrated cheese whey, and dried cheese whey. Water~~

may be added, or water may be evaporated from the mix. The sweet cream buttermilk and the concentrated sweet cream buttermilk or dried sweet cream buttermilk, when adjusted with water to a total solids content of 8.5% has a titratable acidity of not more than 0.17%, calculated as lactic acid. The term "milk" as used in this section means cow's milk. Dried cheese whey is uniformly light in color, free from brown and black scorched particles, and has an alkalinity of ash, not more than 225 milliliters 0.1 N HCl per 100 grams, a bacterial count of not more than 50,000 per gram, and, as adjusted with water to a total solids content of 6.5%, a titratable acidity of not more than 0.16% calculated as lactic acid. Concentrated cheese whey has an alkalinity of ash, not more than 115 milliliters 0.1 N HCl per 100 grams, a bacterial count of not more than 50,000 per gram, and, as adjusted with water to a total solids content of 6.5%, a titratable acidity of not more than 0.18%, calculated as lactic acid.

D. The optional sweetening ingredients referred to in subsection A of this section are: sugar (sucrose), dextrose, invert sugar (paste or sirup), glucose sirup, dried glucose sirup, corn sirup, dried corn sirup, malt sirup, malt extract, dried malt sirup, dried malt extract, maltose sirup, dried maltose sirup.

E. Other optional ingredients referred to in subsection A of this section are:

1. Liquid eggs, frozen eggs, dried eggs, egg yolks, frozen yolks; dried yolks; but the weight of the egg yolk solids therein is less than 0.5% of the weight of the finished fruit sherbet.
2. Agar-agar, algin (sodium alginate), calcium sulfate, egg white, gelatin, gum acacia, guar seed gum, gum karaya, locust bean gum, oat gum, gum tragacanth, hydroxypropyl methylcellulose, carrageenan, salts of carrageenan, furcelleran, salts of furcelleran, lecithin, pectin, psyllium seed husk, sodium carboxymethylcellulose. The total weight of the solids of any such ingredient used singly or of any combination of two or more such ingredients used (including any such ingredient added separately to the fruit ingredient) is not more than 0.5% of the weight of the finished fruit sherbet. Such ingredients may be added in admixture with dextrin, propylene glycol, or glycerin.
3. Monoglycerides or diglycerides or both of fat-forming fatty acids. The total weight of such ingredients is not more than 0.2% of the weight of the finished fruit sherbet. If the preparation used is one of having a high proportion of monoglycerides (over 90%), it may be preblended with edible fat, but the amount of such fat does not exceed 20% by weight of the blend, and the total amount of the blend used does not exceed 0.2% of the weight of the finished fruit sherbet.
4. Polysorbate 65, polysorbate 80, or both (the limit on either used separately or both used in combination of not more than 0.1% by weight of the finished frozen dessert).
5. Propylene glycol alginate (limit of not more than 0.5% by weight of the finished frozen dessert).
6. Citric acid, tartaric acid, malic acid, lactic acid, ascorbic acid, phosphoric acid, or any combination of two or more of these in such quantity as seasons the finished food.
7. Casein prepared by precipitation with gums, ammonium caseinate, calcium caseinate, potassium caseinate, sodium caseinate.
8. Any natural food flavoring.
9. Any artificial flavoring.
10. Coloring, including artificial coloring.
11. Microcrystalline cellulose, in a quantity not to exceed 0.5% of the weight of the finished fruit sherbet.

~~12. When one or more of the optional thickening ingredients in subdivision 2 or 5 of this subsection are used, dioctyl sodium sulfosuccinate may be used in a quantity not in excess of 0.5% by weight of such ingredients.~~

~~F. The name of each such fruit sherbet is "\_\_\_\_\_ sherbet," the blank being filled in with the common name of the fruit or fruits from which the fruit ingredients used are obtained. When the names of two or more fruits are included, such names shall be arranged in order of predominance, if any, by weight of the respective fruit ingredients used.~~

~~G. When the optional ingredients artificial coloring or artificial flavorings are used in fruit sherbet they shall be named on the labels as follows:~~

~~1. The label shall designate artificial coloring by the statement "artificially colored," "artificial coloring added," "with added artificial coloring," or "\_\_\_\_\_ an artificial color added," the blank being filled in with the name of the artificial coloring used.~~

~~2. The label shall designate artificial flavoring by the statement "artificially flavored," "artificial flavoring added," "with added artificial flavoring," or "\_\_\_\_\_ an artificial flavor added," the blank being filled in with the name of the artificial flavoring used.~~

~~3. Whenever artificial flavoring is not added as such but as a component of some other ingredient, the label shall include the statement "\_\_\_\_\_ artificially flavored," the blank being filled in with the name of such other ingredient.~~

~~4. When the optional ingredient microcrystalline cellulose specified in subdivision 11 of subsection E of this section is used, the label shall bear the statement "microcrystalline cellulose added" or "with added microcrystalline cellulose." Label statements may be combined, as for example, "with added artificial flavoring and artificial coloring."~~

~~H. Where one or more of the optional ingredients artificial coloring or artificial flavoring are used and there appears on the label any representation as to the fruit or fruits in the sherbet, such representation shall be immediately and conspicuously accompanied by appropriate label statements as prescribed in subsection G of this section, showing the optional ingredients used.~~

~~I. Wherever the name of the food appears on the label so conspicuously as to be easily seen under customary conditions of purchase, the statements specified in this section, showing the optional ingredients used, shall immediately and conspicuously precede or follow such name without intervening written, printed, or graphic matter.~~

~~J. Fruit sherbet mix is the pasteurized unfrozen combination of ingredients that when frozen while stirring will produce a product conforming to the definition of fruit sherbet.~~

~~A. Sherbet is the food prepared from the same ingredients and in the same manner, including labeling, as prescribed in 21 CFR 135.140.~~

~~B. Sherbet mix is the pasteurized unfrozen combination of ingredients that, when frozen while stirring, produces a product conforming to the description of "sherbet" in 21 CFR 135.140.~~

**2VAC5-510-110. Water ices; identity; label statement of optional ingredients; water ice mix** **Water ices.**

~~A. Water ices are the foods, each of which is prepared by freezing, while stirring, a mix composed of one or more of the optional characterizing fruit ingredients specified in subsection B of this section, sweetened with one or more of the optional sweetening ingredients specified in subsection C of this section. One or more of the optional ingredients specified in subsection D of this section may be used, subject to the conditions hereinafter set forth. The titratable acidity of the finished water ice, calculated as lactic acid, is not less than 0.35%. The mix, with or without added water, may be seasoned with salt, and may be homogenized. The finished water ice weighs not less than six pounds to the gallon.~~



~~B. The optional fruit ingredients referred to in subsection A of this section are any mature fruit or the juice of any mature fruit. The fruit or fruit juice used may be fresh, frozen, canned, concentrated, or partially or wholly dried. The fruit may be thickened with pectin or other of the optional ingredients named in subdivision 1 of subsection D of this section subject to the restriction on the total quantity of such substances in water ices prescribed in that subdivision. The fruit is prepared by the removal of pits, seeds, skins, and cores where such removal is usual in preparing that kind of fruit for consumption as fresh fruit. The fruit may be screened, crushed, or otherwise comminuted. It may be acidulated with citric acid, ascorbic acid, or phosphoric acid. In the case of fruit or fruit juices from which part of the water is removed, substances contributing flavor volatilized during water removal may be condensed and reincorporated in the concentrated fruit or fruit juice. In the case of citrus fruits, the whole fruit, including the peel but excluding the seeds, may be used, and in the case of citrus juice or concentrated citrus juices, cold-pressed citrus oil may be added thereto in an amount not exceeding that which would have been obtained if the whole fruit had been used. The quantity of fruit ingredients used is such that in relation to the weight of the finished water ice, the weight of fruit or fruit juice as the case may be, including water necessary to reconstitute partially or wholly dried fruits or fruit juices to their original moisture content, is not less than 2.0% in the case of citrus ices, 6.0% in the case of berry ices, and 10% in the case of ices prepared with other fruits.~~

~~C. The optional sweetening ingredients referred to in subsection A of this section are: Sugar (sucrose), dextrose, invert sugar (paste or sirup), glucose sirup, dried glucose sirup, corn sirup, dried corn sirup, malt sirup, malt extract, dried malt sirup, dried malt extract, maltose sirup, dried maltose sirup.~~

~~D. Other optional ingredients referred to in subsection A of this section are:~~

~~1. a. Agar agar, algin (sodium alginate), egg white, gelatin, gum acacia, guar seed gum, gum karaya, locust bean gum, oat gum, gum tragacanth, hydroxypropyl methyl cellulose, carrageenan, salts of carrageenan, furcelleran, salts of furcelleran, propylene glycol alginate, pectin, psyllium seed husk, sodium carboxymethylcellulose. The total weight of the solids of any such ingredient used singly, or of any combination of two or more such ingredients used, including any such ingredient added separately to the fruit ingredient, is not more than 0.5% of the weight of the finished water ice. Such ingredients may be added in admixture with dextrin, propylene glycol, or glycerin.~~

~~b. When one or more of the optional thickening ingredients in subdivision a of this subdivision are used, dioctyl sodium sulfosuccinate may be used in a quantity not in excess of 0.5% of weight of such ingredients.~~

~~2. Citric acid, tartaric acid, malic acid, lactic acid, ascorbic acid, phosphoric acid, or any combination of two or more of these in such quantity as seasons the finished food.~~

~~3. Any natural flavoring.~~

~~4. Any artificial flavoring.~~

~~5. Coloring, including artificial coloring.~~

~~E. The name of each such water ice is "\_\_\_\_\_ ice," the blank being filled with the common name of the fruit or fruits from which the fruit ingredient used is obtained. When the names of two or more fruits are included such names shall appear in the order of predominance, if any, by weight of the respective fruit ingredients used.~~

~~F. When the optional ingredients artificial coloring and artificial flavoring are used in water ices they shall be named on the labels as follows:~~

~~1. The label shall designate artificial flavoring by the statement "artificially flavored," "artificial flavoring added," "with added artificial flavoring," or "\_\_\_\_\_, an artificial flavor added," the blank being filled in with the name of the artificial flavoring used.~~

~~Label statements may be combined, as for example, "flavoring and artificial coloring added."~~

~~G. Where one or more of the optional ingredients artificial coloring or artificial flavoring are used and there appears on the labeling any representation as to the fruit or fruits in the ice, such representation shall be immediately and conspicuously accompanied by appropriate label statements as prescribed in subsection F of this section, showing the optional ingredients used.~~

~~H. Wherever the name of the food appears on the label so conspicuously as to be easily seen under customary conditions of purchase, the statements set out in this section showing the optional ingredients used shall immediately and conspicuously precede or follow such name, without intervening written, printed, or graphic matter.~~

~~I. Water ice mix is the unfrozen combination of ingredients that when frozen while stirring will produce a product conforming to the definition of water ice.~~

~~A. Water ices are the foods that are prepared from the same ingredients and in the same manner, including labeling, as prescribed in 21 CFR 135.160.~~

~~B. Water ice mix is the unfrozen combination of ingredients that, when frozen while stirring, produces a product conforming to the description of "water ices" in 21 CFR 135.160.~~

**~~2VAC5-510-130. Nonfruit sherbets; identity; label statement of optional ingredients; nonfruit sherbet mix. (Repealed.)~~**

~~A. Nonfruit sherbets are the foods each of which is prepared by freezing, while stirring, a mix composed of one or more of the optional characterizing ingredients specified in subsection B of this section and one or more of the optional dairy ingredients specified in subsection C of this section, sweetened with one or more of the optional sweetening ingredients specified in subsection D of this section. One or more of the optional ingredients specified in subsection E of this section may be used, subject to the conditions hereinafter set forth. The mix of combined dairy ingredients, with or without other ingredients, is pasteurized. The mix, with or without added water, may be seasoned with salt and may be homogenized. The optional dairy ingredients used and the content of milkfat and nonfat milk solids therein are such that the weight of milkfat is not less than 1.0% and not more than 2.0% and their weight of total milk solids is not less than 2.0% and not more than 5.0% of the weight of the finished nonfruit sherbets. The optional caseinates specified in subdivision 7 of subsection E of this section are not deemed to be milk solids. The finished nonfruit sherbet weighs not less than six pounds to the gallon; except that when the optional ingredients microcrystalline cellulose specified in subdivision 9 of subsection E of this section is used, the finished nonfruit sherbet weighs not less than six pounds to the gallon, exclusive of the weight of the microcrystalline cellulose.~~

~~B. The optional characterizing ingredients referred to in subsection A of this section are:~~

- ~~1. Ground spice or infusion of coffee or tea.~~
- ~~2. Chocolate or cocoa, including sirup.~~
- ~~3. Confectionery.~~
- ~~4. Distilled alcoholic beverage, including liqueurs or wine, in an amount not to exceed that required for flavoring the sherbet.~~
- ~~5. Any natural or artificial food flavoring, except any having a characteristic fruit or fruit-like flavor.~~

~~C. The optional dairy ingredients referred to in subsection A of this section are: cream, dried cream, plastic cream (sometimes known as concentrated milkfat), butter, butter oil, milk, concentrated milk, evaporated milk, super-heated condensed milk, sweetened condensed milk, dried milk, skim milk, concentrated skim milk, evaporated skim milk, condensed skim milk, superheated condensed skim milk, sweetened condensed skim milk, sweetened condensed part-~~

skim milk, nonfat dry milk, sweet cream buttermilk, condensed sweet cream buttermilk, dried sweet cream buttermilk, skim milk that has been concentrated and from which part of the lactose has been removed by crystallization, concentrated cheese whey, and dried cheese whey. Water may be added or water may be evaporated from the mix. The sweet cream buttermilk and the concentrated sweet cream buttermilk or dried sweet cream buttermilk, when adjusted with water to a total solids content of 8.5%, has a titratable acidity of not more than 0.17% calculated as lactic acid. The term "milk" as used in this section means cow's milk. Dried cheese whey is uniformly light in color, free from brown and black scorched particles, and has an alkalinity of ash not more than 225 milliliters 0.1 N HC1 per 100 grams, a bacterial count of not more than 50,000 per gram, and, as adjusted with water to a total solids content of 6.5%, a titratable acidity of not more than 0.16% calculated as lactic acid. Concentrated cheese whey has an alkalinity of ash not more than 115 milliliters of 0.1 N HC1 per 100 grams, a bacterial count of not more than 50,000 per gram, and, as adjusted with water to a total solids content of 6.5%, a titratable acidity of not more than 0.18% calculated as lactic acid.

D. The optional sweetening ingredients referred to in subsection A of this section are: sugar (sucrose), dextrose, invert sugar (paste or sirup), glucose sirup, dried glucose sirup, corn sirup, dried corn sirup, malt sirup, malt extract, dried malt sirup, dried malt extract, maltose sirup, dried maltose sirup.

E. Other optional ingredients referred to in subsection A of this section are:

1. Liquid eggs, frozen eggs, dried eggs, egg yolks, frozen yolks, dried yolks; but the weight of egg yolk solids therein is less than 0.5% of the weight of the finished nonfruit sherbet.
2. Agar-agar, algin (sodium alginate), calcium sulfate, egg white, gelatin, gum acacia, guar seed gum, gum karaya, locust bean gum, oat gum, gum tragacanth, hydroxypropyl methylcellulose, carrageenan, salts of carrageenan, furcelleran, salts of furcelleran, lecithin, pectin, psyllium seed husk, sodium carboxymethylcellulose. The total weight of the solids of any such ingredient used singly or of any combination of two or more such ingredients used is not more than 0.5% of the weight of the finished nonfruit sherbet. Such ingredients may be added in admixture with dextrin, propylene glycol, or glycerin.
3. Monoglycerides or diglycerides or both of fat-forming fatty acids. The total weight of such ingredients is not more than 0.2% of the weight of the finished nonfruit sherbet. If the preparation used is one having a high proportion of monoglycerides (over 90%), it may be preblended with edible fat, but the amount of such fat does not exceed 20% by weight of the blend and the total amount of the blend used does not exceed 0.2% of the weight of the finished nonfruit sherbet.
4. Polysorbate 65, polysorbate 80, or both (limit on either used separately or both used in combination of not more than 0.1% by weight of the finished frozen dessert).
5. Propylene glycol alginate (limit of not more than 0.5% by weight of the finished frozen dessert).
6. Citric acid, tartaric acid, malic acid, lactic acid, ascorbic acid, phosphoric acid, or any combinations of two or more of these in such quantity as seasons the finished food.
7. Casein prepared by precipitation with gums, ammonium caseinate, calcium caseinate, potassium caseinate, sodium caseinate.
8. Coloring, including artificial color.
9. Microcrystalline cellulose, in a quantity not to exceed 0.5% of the weight of the finished nonfruit sherbet.
10. When one or more of the optional thickening ingredients in subdivision 2 or 5 of this subsection are used, dioctyl sodium sulfosuccinate may be used in a quantity not in excess of 0.5% by weight of such ingredients.

~~F. Except as provided for in subsection G of this section, the name of each such nonfruit sherbet is "... sherbet," the blank being filled in with the common or usual name or names of the characterizing flavor or flavors; for example, "peppermint."~~

~~G. If the characterizing flavor is vanilla, the name of the food is "... sherbet," the blank being filled in as specified by 2VAC5-510-30 G 2 and 5 a.~~

~~H. When the optional ingredients artificial flavoring, artificial coloring, or microcrystalline cellulose are used in nonfruit sherbet, they shall be named on the label as follows:~~

- ~~1. If the flavoring ingredient or ingredients consists exclusively of artificial flavoring, the label designation shall be "artificially flavored."~~
- ~~2. If the flavoring ingredients are a combination of natural and artificial flavors, the label designation shall be "artificial and natural flavoring added."~~
- ~~3. The label shall designate artificial coloring by the statement "artificially colored," "artificial coloring added," "with added artificial coloring," or "..., an artificial color added," the blank being filled in with the name of the artificial coloring used.~~
- ~~4. When the optional ingredient microcrystalline cellulose is used, the label shall bear the statement "microcrystalline cellulose added" or "with added microcrystalline cellulose."~~

~~I. Wherever there appears on the label any representation as to the characterizing flavor or flavors of the food and such flavor or flavors consist in whole or in part of artificial flavoring, the statement required by subdivision 1 or 2 of subsection H of this section, as appropriate, shall immediately and conspicuously precede or follow such representation, without intervening written, printed, or graphic matter, except that the word "sherbet" may intervene, in a size reasonably related to the prominence of the name of the characterizing flavor and in any event the size of the type is not less than 6 point on packages containing less than one pint, not less than 8 point on packages containing at least one pint but less than one half gallon, not less than 10 point on packages containing at least one half gallon but less than one gallon, and not less than 12 point on packages containing one gallon or over.~~

~~J. Except as specified in subsection I of this section, the statements required by subsection H of this section shall be set forth on the principal display panel or panels of the label with such prominence and conspicuousness as to render them likely to be read and understood by the ordinary individual under customary conditions of purchase and use.~~

~~K. Nonfruit sherbet mix is the unfrozen combination of ingredients that when frozen while stirring will produce a product conforming to the definition of nonfruit sherbet.~~

**~~2VAC5-510-150. Nonfruit water ices; identity; label statement of optional ingredients; nonfruit water ice mix. (Repealed.)~~**

~~A. Nonfruit water ices are the foods each of which is prepared by freezing, while stirring, a mix composed of one or more of the optional characterizing ingredients specified in subsection B of this section, sweetened with one or more of the optional sweetening ingredients specified in subsection C of this section. One or more of the optional ingredients specified in subsection D of this section may be used, subject to the conditions hereinafter set forth. The mix, with or without added water, may be seasoned with salt and may be homogenized. The finished nonfruit water ice weighs not less than six pounds to the gallon.~~

~~B. The optional characterizing ingredients referred to in subsection A of this section are:~~

- ~~1. Ground spice or infusion of coffee or tea.~~
- ~~2. Chocolate or cocoa, including sirup.~~
- ~~3. Confectionery.~~
- ~~4. Distilled alcoholic beverage, including liqueurs or wine, in an amount not to exceed that required for flavoring the water ice.~~

~~5. Any natural or artificial food flavoring, except any having a characteristic fruit or fruit-like flavor.~~

~~C. The optional sweetening ingredients referred to in subsection A of this section are: Sugar (sucrose), dextrose, invert sugar (paste or sirup), glucose sirup, dried glucose sirup, corn sirup, dried corn sirup, malt sirup, malt extract, dried malt sirup, dried malt extract, maltose sirup, dried maltose sirup.~~

~~D. Other optional ingredients referred to in subsection A of this section are:~~

~~1. Agar-agar, algin (sodium alginate), egg white, gelatin, gum acacia, guar seed gum, gum karaya, locust bean gum, oat gum, gum tragacanth, hydroxypropyl methylcellulose, carrageenan, salts of carrageenan, furcelleran, salts of furcelleran, propylene glycol alginate, pectin, psyllium seed husk, sodium carboxymethylcellulose. The total weight of the solids of any such ingredient used singly, or of any combination of two or more such ingredients used, is not more than 0.5% of the weight of the finished nonfruit water ice. Such ingredients may be added in admixture with dextrin, propylene glycol, or glycerin.~~

~~When one or more of the optional thickening ingredients in this subdivision are used, dioctyl sodium sulfosuccinate may be used in a quantity not in excess of 0.5% by weight of such ingredients.~~

~~2. Citric acid, tartaric acid, malic acid, lactic acid, ascorbic acid, phosphoric acid, or any combination of two or more of these in such quantity as seasons the finished food.~~

~~3. Coloring, including artificial coloring.~~

~~E. Except as provided for in subsection F of this section, the name of each such nonfruit water ice is "... ice," the blank being filled in with the common or usual name or names of the characterizing flavor or flavors; for example, "peppermint."~~

~~F. If the characterizing flavor used is vanilla, the name of the food is ".... ice," the blank being filled in as specified by 2VAC5-510-30 G 2 and 5.~~

~~G. When the optional ingredients artificial flavoring or artificial coloring are used in nonfruit water ice, they shall be named on the label as follows:~~

~~1. If the flavoring ingredient or ingredients consist exclusively of artificial flavoring, the label designation shall be "artificially flavored."~~

~~2. If the flavoring ingredients used are a combination of natural and artificial flavors, the label designation shall be "artificial and natural flavoring added."~~

~~3. The label shall designate artificial coloring by the statement "artificially colored," "artificial coloring added," "with added artificial coloring," or "...., an artificial color added," the blank being filled in with the name of the artificial coloring used.~~

~~H. Wherever there appears on the label any representation as to the characterizing flavor or flavors of the food and such flavor or flavors consist in whole or in part of artificial flavoring, the statement required by subdivision 1 or 2 of subsection G of this section, as appropriate, shall immediately and conspicuously precede or follow such representation, without intervening written, printed, or graphic matter, except that the word "ice" may intervene, in a size reasonably related to the prominence of the name of the characterizing flavor and in any event the size of the type is not less than 6 point on packages containing less than one pint, not less than 8 point on packages containing at least one pint but less than one half gallon, not less than 10 point on packages containing at least one half gallon but less than one gallon and not less than 12 point on packages containing one gallon or over.~~

~~I. Except as specified in subsection H of this section, the statements required by subsection G of this section shall be set forth on the principal display panel or panels of the label with such~~

prominence and conspicuousness as to render them likely to be read and understood by the ordinary individual under customary conditions of purchase and use.

J. Nonfruit water ice mix is the unfrozen combination of ingredients that when frozen while stirring will produce a product conforming to the definition of nonfruit water ice.

**~~2VAC5-510-170. Artificially sweetened ice cream or frozen dietary dairy dessert; identity; label statement of optional ingredients; artificially sweetened ice .... (Repealed.)~~**

~~A. Artificially sweetened ice cream or frozen dietary dairy dessert means ice cream manufactured, prepared, or processed for consumption by persons who wish to restrict their intake of ordinary sweetening ingredients and shall conform to the definition and standard of identity prescribed for ice cream in 2VAC5-510-30, except that it shall be sweetened with an artificial sweetening agent and contains edible carbohydrates other than sugar. The artificial sweetening agent and the edible carbohydrates shall be approved by the Federal Food and Drug Administration and no sugars other than those naturally present in the milk solids or flavoring agent shall be added thereto.~~

~~B. The manufacturer shall place the product in packages or containers which shall be conspicuously labeled either "artificially sweetened" immediately preceding the words "ice cream" in similar type at least one-half the size of the type used for the words "ice cream" and on the same contrasting background, or "frozen dietary dairy dessert."~~

~~C. The label shall also contain a statement in terms of percentage by weight of protein, fat, and carbohydrates, the total number of calories per ounce, the number of calories contributed by carbohydrates and any carbohydrates other than lactose, and the name of each ingredient entering into the composition other than flavors.~~

~~D. The following statement shall appear conspicuously following the declaration of the artificial sweetener used, such as "Contains.... % saccharine, (or sodium salt of saccharine, as the case may be), a non-nutritive artificial sweetener which should be used only by persons who must restrict their intake of ordinary sweets." The blank is to be filled in with the percent by weight of saccharine or other artificial sweetener in said product.~~

~~E. The product shall not be sold in any manner other than in sealed or unbroken packages or containers from one or more separate compartments of a refrigerated container or cabinet.~~

~~F. Artificially sweetened ice cream mix or frozen dietary dairy dessert mix is the pasteurized unfrozen combination of ingredients that when frozen while stirring will produce a product conforming to the definition of artificially sweetened ice cream or frozen dietary dairy dessert.~~

**~~2VAC5-510-190. Artificially sweetened ice milk; identity; label statement of optional ingredients; artificially sweetened ice milk mix. (Repealed.)~~**

~~A. Artificially sweetened ice milk means ice milk manufactured, prepared, or processed for consumption by persons who wish to restrict their intake of ordinary sweetening ingredients and shall conform to the definition and standard of identity prescribed for ice milk in 2VAC5-510-70, except that it shall be sweetened with an artificial sweetening agent and contains edible carbohydrates other than sugar. The artificial sweetening agent and the edible carbohydrates must be approved by the Federal Food and Drug Administration and no sugars other than those naturally present in the milk solids or flavoring agent shall be added thereto.~~

~~B. The manufacturer shall place the product in packages or containers which shall be conspicuously labeled "artificially sweetened" immediately preceding the words "ice milk" in similar type at least one-half the size of the type used for the words "ice milk" and on the same contrasting background.~~

~~C. The label shall also contain a statement in terms of percentage by weight of protein, fat, and carbohydrates, the total number of calories per ounce, the number of calories contributed by~~

~~carbohydrates and any carbohydrates other than lactose, and the name of each ingredient entering into the composition other than flavors.~~

~~D. The following statement shall appear conspicuously following the declaration of the artificial sweetener used, such as "contains... % saccharine, (or sodium salt of saccharine, or other artificial sweetener, as the case may be), a nonnutritive artificial sweetener which should only be used by persons who must restrict their intake of ordinary sweets." The blank is to be filled in with the percent by weight of saccharine or other artificial sweetener in said product.~~

~~E. The product shall not be sold in any manner other than in sealed or unbroken packages or containers from one or more separate compartments of a refrigerated container or cabinet.~~

~~F. Artificially sweetened ice milk mix is the pasteurized unfrozen combination of ingredients that when frozen while stirring will produce a product conforming to the definition of artificially sweetened ice milk.~~

**2VAC5-510-210. Frozen yogurt; identity; label statement of optional ingredients; frozen yogurt mix; shipping frozen yogurt mix.**

A. Frozen yogurt is a food ~~which~~ that is prepared by freezing while stirring a pasteurized mix, containing one or more of the following ingredients, whole milk, partially defatted milk, skim milk, other milk products, and with or without fruits, nuts, flavoring materials, sweeteners, stabilizers, emulsifiers, and any other safe and suitable approved ingredient which is cultured after pasteurization by one or more strains of ~~Lactobacillus bulgaricus~~ Lactobacillus delbrueckii subsp. bulgaricus and ~~Streptococcus thermophilus~~ Streptococcus thermophilus provided however, fruits, nuts, or other flavoring materials may be added before or after the mix is pasteurized and cultured. The standard plate count requirement for frozen desserts shall apply only to the mix prior to culturing. The finished frozen yogurt shall weigh not less than 5 pounds per gallon. The name of the product is "frozen yogurt." The label on a package of frozen yogurt, in addition to other required information, shall include a complete list of all ingredients in descending order or predominance; for the purposes of Part III (2VAC5-510-30 et seq.) of this chapter the strains of bacteria may be collectively referred to as yogurt culture.

B. Frozen yogurt mix is the pasteurized unfrozen combination of ingredients that when frozen while stirring will produce a product conforming to the definition of frozen yogurt.

~~C. Frozen yogurt mix may be shipped in a frozen state to plants and frozen desserts retail establishments.~~

**2VAC5-510-240. Quiescently frozen confection; identity; label statement of optional ingredients; quiescently frozen confection mix.**

A. Quiescently frozen confection means the frozen, sweetened, flavored product in the manufacture of which freezing has not been accompanied by stirring or agitation, generally known as quiescent freezing. This confection may be acidulated with harmless organic acid, may contain milk products, may be made with or without added harmless natural or artificial flavoring, with or without added harmless coloring. The finished product ~~may contain not~~ shall not contain more than one-half of 1.0% by weight of stabilizing agents. The finished product shall contain not less than 17% by weight of total food solids. This confection must be manufactured in the form of servings, individually packaged, bagged or otherwise wrapped, properly labeled and purveyed to the consumer in its original factory-filled package. In the production of this quiescently frozen confection no processing or mixing prior to quiescent freezing shall be used that develops in the finished confection mix any physical expansion in excess of 10%.

B. Quiescently frozen confection mix is the unfrozen combination of ingredients that, when frozen, will produce a product conforming to the definition of quiescently frozen confection.

**2VAC5-510-260. Quiescently frozen dairy confection; ~~identity; label statement of optional ingredients; quiescently frozen dairy confection mix.~~**

A. Quiescently frozen dairy confection means the frozen product made from water, pasteurized milk products and sweetening agents, with added harmless coloring, with or without added stabilizing and emulsifying ingredients, and in the manufacture of which freezing has not been accompanied by stirring or agitation, generally known as quiescent freezing. It contains not less than 13% by weight of total milk solids, not less than 33% by weight of total food solids, not more than one-half of 1.0% by weight of stabilizing agents, not more than one-fifth of 1.0% by weight of monoglycerides or diglycerides or a combination of both, not more than one-tenth of 1.0% by weight of polysorbate 65 or polysorbate 80 or a combination of both. This confection must be manufactured in the form of servings individually packaged, bagged or otherwise wrapped, properly labeled and purveyed to the consumer in its original factory-filled package. In the production of this quiescently frozen dairy confection no processing or mixing prior to quiescent freezing shall be used that develops in the finished confection mix any physical expansion in excess of 10%.

B. Quiescently frozen dairy confection mix is the pasteurized unfrozen combination of ingredients that when frozen will produce a product conforming to the definition of quiescently frozen dairy confection.

**2VAC5-510-280. Manufactured desserts mix; ~~identity; label statement of optional ingredients.~~**

Manufactured desserts mix, whipped cream confection, or bisque tortoni means a pasteurized frozen dessert made with milk products, sweetening agents, flavoring agents, stabilizing agents, emulsifying agents, with or without harmless coloring. It contains not less than 18% by weight of milkfat, not more than one-half of 1.0% by weight of stabilizing agents, not more than two-tenths of 1.0% by weight of monoglycerides or diglycerides of fat forming fatty acids or a combination of both, not more than one-tenth of 1.0% by weight of polyoxyethylene (20) sorbitan tristearate or polysorbate eighty (polyoxyethelene (20) sorbitan monooleate) or a combination of both, not more than 12% of milk solids not fat, and may be packaged with ~~harmless gas,~~ as prescribed in 21 CFR Part 184, causing it to fluff upon ejection from the package or container.

**2VAC5-510-290. Mellorine; ~~identity; label statement of ingredients; mellorine mix.~~**

~~A. Mellorine conforms to the definition and standard of identity, and is subject to the requirements for optional ingredients, prescribed for ice cream by 2VAC5-510-30, except that in place of optional dairy ingredients containing butterfat as permitted pursuant to 2VAC5-510-30-C, edible fats or oils other than milkfat are used, and provided further that the weight of edible fats or oils other than milkfat, is not less than 10% of the weight of the finished mellorine and the weight of the milk solids not fat is not less than 10% of the weight of the finished mellorine, except that when one or more of the bulky optional ingredients as specified in 2VAC5-510-30-B 3, 4, 5, 6, 7, or 8 are used, the weight of the edible fats or oils other than milkfat and the combined weight of edible fats or oils other than milkfat and milk solids not fat, exclusive of any fat and milk solids not fat in any malted milk used, are not less than 10% and 20% respectively, of the remainder obtained by subtracting the weight of such optional ingredients as provided in 2VAC5-510-30-A, from the weight of the finished mellorine, but in no case is the weight of edible fats or oils other than milkfat, or the combined weight of edible fats and oils other than milkfat and milk solids not fat to be less than 8.0% and 16% respectively of the weight of the finished mellorine, and that whenever provisions appear in 2VAC5-510-30 referring to milkfat, it shall be understood to be edible fats or oils other than milkfat in the case of mellorine.~~

~~B. The name of the product is "mellorine."~~

~~C. When any artificial color is used in mellorine, directly or as a component of any other ingredient, the label shall bear the statement, "artificially colored," "artificial coloring added," "with~~



~~added artificial color," or "...., an artificial color added," the blank to be filled in with the common or usual name of the artificial color; or in lieu thereof, in case the artificial color is a component of another ingredient, "...., artificially colored."~~

~~D. If both artificial color and artificial flavoring are used, the label statements may be combined.~~

~~E. Mellorine shall be manufactured in the form of servings individually packaged, bagged, or otherwise wrapped, properly labeled and purveyed to the consumer in its original plant sealed container.~~

~~F. The label on a package of mellorine shall conform to the provisions of 2VAC5-510-30-G and in addition to other required information shall include the name "Mellorine" in a conspicuous manner. Mellorine may not be designated by the use of the word "cream" or its phonetic equivalent.~~

Mellorine is the food prepared from the same ingredients and in the same manner, including labeling, as prescribed in 21 CFR 135.130.

~~G. B.~~ Mellorine mix is the pasteurized unfrozen combination of ingredients that when frozen while stirring will produce a product conforming to the ~~definition~~ description of mellorine in 21 CFR 135.130.

#### **2VAC5-510-310. Parevine; parevine mix.**

A. Parevine is the food prepared by freezing, while stirring, a pasteurized mix composed of: (i) one or more edible vegetable fats; (ii) any optional sweetening ingredient except lactose; and (iii) protein or any other source of carbohydrate food solids. Parevine shall not contain any milk or meat products or any derivatives of such products.

B. ~~Its~~ The fat content of parevine shall not be less than 10%, except that when bulky optional characterizing ingredients are used, the fat content may be reduced, as a result of the addition of such ingredients, but shall in no case be less than 8.0%.

C. ~~Its~~ The content of food solids in parevine shall not be less than 1.3 pounds per gallon of the finished product.

D. The weight of the finished product shall not be less than 4.5 pounds per gallon.

E. Parevine shall be offered in the form of servings individually packaged, bagged, or wrapped and properly labeled and purveyed to the consumer in original plant sealed container. When any artificial color or flavor is used in parevine directly or indirectly as a component of any other ingredient, then ~~it must be declared in the label~~ must bear the statement; "Artificial color and flavor added," or words of like import.

F. Parevine mix is the pasteurized unfrozen combination of ingredients that when frozen while stirring will produce a product conforming to the ~~definition~~ description of parevine in this section.

#### **2VAC5-510-330. Lowfat parevine; lowfat parevine mix.**

A. Lowfat parevine is the food prepared by freezing, while stirring, a pasteurized mix composed of: (i) one or more edible vegetable fats; (ii) any optional sweetening ingredient except lactose; and (iii) protein or any other source of carbohydrate food solids. Lowfat parevine shall not contain any milk or meat products nor any derivatives of such products.

B. ~~Its~~ The fat content of lowfat parevine shall not be more than 6.0%.

C. ~~Its~~ The content of food solids in lowfat parevine shall not be less than 1.3 pounds per gallon of the finished product.

D. The weight of the finished product shall not be less than 4.5 pounds per gallon.

E. Lowfat parevine shall be offered in the form of servings individually packaged, bagged, or wrapped and properly labeled and purveyed to the consumer in original plant sealed container.

When any artificial color or flavor is used in lowfat parevine directly or indirectly as a component of any other ingredient, then ~~it must be declared in the label~~ must bear the statement; "Artificial color and flavor added," or words of like import.

F. Lowfat parevine mix is the pasteurized unfrozen combination of ingredients that when frozen while stirring will produce a product conforming to the ~~definition~~ description of lowfat parevine in this section.

**2VAC5-510-350. Freezer made milk shake; ~~identity; label statement of optional ingredients; freezer made milk shake mix.~~**

A. Freezer made milk shake means a pure, clean, wholesome semi-viscous drink prepared by stirring while freezing in a dispensing freezer a pasteurized mix obtained from an approved source consisting of milkfat, milk solids not fat, water, optional sweetening ingredients, with or without egg or egg products, with harmless flavoring, with or without harmless coloring, and with or without approved stabilizer or approved emulsifier. It shall contain not less than three and one-fourth percent milkfat. It shall contain not less than 10% milk solids not fat, it shall contain not more than one-half percent by weight of stabilizer and not more than one-fifth of 1.0% of emulsifier. ~~Freezer made milk shakes may only be sold or served from a dispensing freezer and may not be sold hard frozen.~~

B. Other freezer made shakes including jumbo shake, thick shake, T.V. shake, or any coined or trade name containing the word "shake" shall meet the requirements of subsection A of this section, except that the minimum percent of milkfat may be less than three and one-fourth percent.

C. "Shakes" not meeting the requirement for "milk" shakes shall not be advertised, sold, or served as a milk shake.

D. Freezer made milk shake mix is the pasteurized unfrozen combination of ingredients that when frozen while stirring will produce a product conforming to the ~~definition~~ description of freezer made milk shake in this section.

**2VAC5-510-370. Freezer made shake mix. (Repealed.)**

~~Freezer made shake mix is the pasteurized unfrozen combination of ingredients which when frozen while stirring will produce a product conforming to the definition of freezer made shake.~~

**2VAC5-510-380. Frozen desserts; identity. (Repealed.)**

~~Frozen desserts mean any or all of the following: Ice Cream, Frozen Custard, French Ice Cream, French Custard Ice Cream, Ice Milk, Fruit Sherbets, Water Ices, Non-Fruit Sherbets, Non-Fruit Water Ices, Artificially Sweetened Ice Cream or Frozen Dietary Dairy Dessert, Artificially Sweetened Ice Milk, Frozen Yogurt, Quiescently Frozen Confection, Quiescently Frozen Dairy Confection, Mellorine, Parevine, Lowfat Parevine, Freezer Made Milk Shakes and Freezer Made Shakes. Frozen desserts shall also mean the mix used in the freezing of the preceding list of frozen desserts. Powder or dry frozen dessert mixes are not required to be repasteurized when reconstituted with water as described in 2VAC5-510-540 A.~~

**2VAC5-510-390. Imitation frozen desserts; identity; prohibitions, exceptions, filings confidential.**

A. Imitation frozen dessert is any frozen substance, mixture or compound regardless of the name under which it is represented, which that is made in imitation or semblance of ice cream, or is prepared or frozen as ice cream is customarily prepared or frozen, and which that is not Ice Cream; Frozen Custard; French Ice Cream; and French Custard Ice Cream; Ice Milk; Fruit Sherbets; Water Ices; Non-Fruit Sherbets; Non-Fruit Water Ices; Artificially Sweetened Ice Cream or Frozen Dietary Dessert; Artificially Sweetened Ice Milk; Frozen Yogurt; Quiescently Frozen Confection; Quiescently Frozen Dairy Confection; Mellorine; Parevine; Lowfat Parevine; and Freezer Made Milk Shakes; and Freezer Made Shakes ice cream; frozen custard; french ice cream; french custard ice cream; ice milk; fruit sherbet; water ice; non-fruit sherbet; non-fruit water

ice; artificially sweetened ice cream or frozen dietary dessert; artificially sweetened ice milk; frozen yogurt; quiescently frozen confection; quiescently frozen dairy confection; mellorine; parevine; lowfat parevine; or freezer made milk shake, as established by definitions and standards of identity in Part III (2VAC5-510-30 et seq.) of this chapter.

B. Powder or dry imitation frozen desserts mixes ~~which~~ that contain no milk or other dairy product ingredients but contain dry whey, reduced minerals whey, whey protein concentrate, reduced lactose whey, ~~and/or~~ or optional caseinates specified in 2VAC5-510-30 ~~are~~ are exempted from the pasteurization requirements of Part XII (2VAC5-510-550 et seq.) of this chapter. The wheys, caseinates, ~~and~~ egg ingredients used in the formulation of these mixes shall have been pasteurized or subjected to any other method of process demonstrated to be equally efficient. Powder or dry imitation frozen dessert mixes shall contain no ingredients except those ~~which~~ that are generally recognized as safe by the Federal Food and Drug Administration or those ~~which~~ that are permitted by this chapter in a frozen dessert.

~~C. Imitation frozen desserts sold at the retail level may be drawn from a dispensing freezer and a sign must be plainly marked "Imitation....," the blank being filled in with the name of the frozen dessert imitated, in a manner conspicuous to the public in letters at least three inches in height. Imitation frozen desserts shall not be dispensed for sale from packages or containers. "Dispensed" shall mean dipping and scooping from packages or containers.~~

~~D. C.~~ No imitation frozen desserts shall be manufactured, sold, advertised, offered, ~~or~~ exposed for sale in this Commonwealth unless 30 days prior to such manufacture, advertisement, offer, exposure for sale, ~~or~~ sale, the manufacturer, offeror, ~~or~~ dealer shall file with the commissioner such intent. The filing herein required shall be on forms supplied by the commissioner and shall include such information as the name under which the imitation frozen dessert is to be advertised or offered for sale, ingredients including any optional ingredients, proportion of ingredients expressed in a percentage, method of preparation, and any other relevant information the commissioner may require.

~~E. D.~~ Information filed pursuant to this section shall be confidential and used solely for administration and enforcement of this chapter.

F. ~~E.~~ Imitation frozen desserts shall be considered as frozen desserts in the enforcement of Parts IV (2VAC5-510-410) through XIV (2VAC5-510-630 et seq.) of this chapter.

#### **2VAC5-510-415. Recall plan.**

A. Each permit holder shall develop a recall plan that, when implemented, will effectively protect the public from frozen dessert products that present a risk of illness, injury, or gross deception, or are otherwise defective. Each permit holder shall submit a recall plan to VDACS prior to the issuance of any frozen desserts plant permit. VDACS shall review the recall plan or require the recall plan to be modified by the permit holder. A permit holder shall review the permit holder's recall plan annually and each time the permit holder introduces a new product. Within the 60 days following a recall plan review, if the permit holder determines that modifications to the recall plan are necessary, the permit holder shall revise the recall plan and submit the revised plan to VDACS for approval.

B. A recall plan shall include provisions to provide the following information to VDACS:

1. Identity of the product involved in the recall;
2. Reason for the recall and the date and circumstances under which the product deficiency or possible deficiency was discovered;
3. Evaluation of the risk associated with the deficiency or possible deficiency;
4. Total amount of identified products produced and the time span of the production;
5. Total amount of identified products estimated to be in distribution channels;

6. Distribution information, including the identity of each person to which the identified product was sold and the number of identified products sold to each person;

7. Draft copy of the permit holder's proposed recall communication;

8. Proposed strategy for conducting the recall; and

9. Name and telephone number of the permit holder's representative who should be contacted concerning the recall.

C. Each permit holder shall promptly notify each of its affected direct accounts about a recall and shall prepare a recall communication to:

1. Clearly identify the product, size, lot number, code or serial number, and any other descriptive information to enable accurate and immediate identification of the recalled product;

2. Explain concisely the reason for the recall and the hazard involved, if any;

3. Provide specific instructions on what should be done with respect to the recalled product;

4. Require the affected direct account to report to the recalling firm the quantity of the recalled product that the affected direct account has in its possession;

5. State that further distribution or use of any remaining product should cease immediately; and

6. Where appropriate, state that the affected direct account should notify its customers who received the recalled product.

D. Each permit holder shall provide recall status reports to VDACS as requested by the VDACS until the recall is terminated. Each permit holder shall include in each recall status report the following information:

1. The number of affected direct accounts notified of the recall, and the date and method of notification;

2. The number of affected direct accounts responding to the recall communication and the quantity of products in the affected direct account's possession at the time the recall communication was received;

3. The number and identity of the affected direct accounts that did not respond to the recall communication;

4. The number of products returned or corrected by each affected direct account that was contacted and the quantity of products that are accounted for;

5. The number of effectiveness checks that were made and the results of those checks; and

6. The estimated time frame for completion of the recall.

E. Each permit holder shall implement its recall plan within eight hours after receipt of written notification to do so by VDACS. If the permit holder fails to implement its recall plan within the eight hours, VDACS may prepare and issue the recall communication.

#### **2VAC5-510-420. Issuing, suspension, and revocation of permits.**

A. It shall be unlawful for any person who does not possess a permit from the Virginia Department Commissioner of Agriculture and Consumer Services to ~~bring into, send into, or receive into the Commonwealth of Virginia for sale, or to sell, or offer for sale therein, or to have in storage with intent to offer for sale or sell frozen desserts or frozen desserts mix identified in this chapter: Provided, that grocery stores, restaurants, soda fountains, and similar establishments where frozen desserts or frozen desserts mix are regularly served or sold at retail,~~

but not processed, may be exempt from the requirements of this chapter manufacture in the Commonwealth of Virginia any food listed in § 3.2-5212 of the Code of Virginia.

B. Only a person who complies with the requirements of this chapter shall be entitled to receive and retain such a permit. Permits shall not be transferable with respect to persons or locations.

C. The State Regulatory Authority Agency may immediately temporarily suspend such permit, without notice of hearing, whenever it has reason to believe that a public health hazard exists or is imminent, or in case of willful refusal to permit authorized inspection; provided that a formal notice and hearing shall be afforded such suspended permit holder within 72 hours of such suspension. In all other cases of violation of this chapter, the State Regulatory Authority Agency may serve upon the holder a written notice of intent to suspend permit. This notice shall specify the violations in question and may afford the holder a reasonable opportunity to correct the violations; or the State Regulatory Authority Agency shall afford the permit holder the opportunity for a formal hearing pursuant to § 2.2-4020 of the Code of Virginia before taking action to suspend or revoke a permit. A suspension of permit shall remain in effect until the violation has been corrected to the satisfaction of the State Regulatory Authority Agency.

D. Upon gross or repeated violations, the State Regulatory Authority Agency may revoke the permit following reasonable notice to the permit holder and an opportunity for a hearing. Part V (2VAC5-510-420 et seq.) of this chapter is not intended to preclude the institution of court action.

E. The State Regulatory Agency may cancel, suspend, revoke, or deny the permit of any person if:

1. The permit holder does not daily or on a regular basis produce, provide, manufacture, sell, offer for sale, or store in the Commonwealth of Virginia ice cream, frozen desserts, or similar products;
2. The permit holder fails to provide at no cost to the State Regulatory Agency samples of ice cream, frozen desserts, or similar products in the permit holder's possession for testing by the State Regulatory Agency;
3. A public hazard exists that affects the permit holder's ice cream, frozen dessert, or similar products;
4. The permit holder or any agent of the permit holder has obstructed or interfered with the State Regulatory Agency in the performance of its duties;
5. The permit holder or any agent of the permit holder knowingly supplies false or misleading information to the State Regulatory Agency (i) in the person's application for a permit, (ii) concerning the identity of the person or persons who will control the facility that is the subject of the permit, (iii) concerning any investigation conducted by the State Regulatory Agency, or (iv) concerning the location of any part of the permit holder's operation that is subject to a permit;
6. The permit holder fails to correct any deficiency that the State Regulatory Agency has cited in a written notice of intent to suspend the permit holder's permit, as a violation of this chapter;
7. The permit holder sells or offers to sell ice cream, frozen desserts, or similar products that violate any requirement of this chapter;
8. The most recent phosphate test on the permit holder's ice cream, frozen desserts, or similar products containing dairy violates the standard specified in this chapter;
9. The person manufactures, freezes, sells, offers or exposes for sale, or has in his possession with the intent to sell any milk product, frozen dessert ingredients, or frozen dessert mix that is adulterated or misbranded or that does not conform to the product definition or of any regulation made and promulgated under these regulations; or

10. The State Regulatory Agency determines that conditions exist in a frozen desserts plant that would render such entity significantly out of compliance with an applicable provision of this chapter.

The State Regulatory Agency may summarily suspend a permit for violation of any of the following subdivisions of this subsection: 4, 6, 7, 8, or 9.

F. The Commissioner of Agriculture and Consumer Services may suspend from sale or seize any frozen dessert product in violation of this chapter that is processed by any frozen desserts plant permit holder in lieu of suspending the frozen desserts plant permit holder's permit.

G. The Commissioner of Agriculture and Consumer Services may exempt a person who makes a frozen dessert and sells that frozen dessert directly to the consumer from the requirement to obtain a permit issued pursuant to § 3.2-5214 of the Code of Virginia. However, a person who pasteurizes the milk, milk products, or eggs used as ingredients in the frozen dessert is not eligible for this exemption.

**2VAC5-510-430. Name and address of manufacturer, statement of quantity, and product identity and optional ingredients.**

A. Any frozen dessert or frozen dessert mix in which a standard of identity has been established under Part III of this chapter (2VAC5-510-30 et seq.) shall be deemed to be misbranded if in container or package form unless it bears a label containing:

1. The name and address of the frozen desserts plant or retail establishment in which the frozen dessert or frozen dessert mix is manufactured, or the name and address of the manufacturer's principal office and a code designation approved by the Commissioner of Agriculture and Consumer Services identifying the plant or establishment in which the food was manufactured.
2. An accurate statement of the quantity of content in terms of liquid measure.
3. The name of the frozen dessert or frozen dessert mix defined under the standards of identity of Part III of this chapter (2VAC5-510-30 et seq.), ~~and~~
4. ~~The label statement of optional ingredients as required under Part III of this chapter (2VAC5-510-30 et seq.).~~

B. Where the frozen dessert or frozen dessert mix is not manufactured by the person whose name appears on the label, the label must identify the manufacturer by a code designation approved by the ~~Virginia~~ Commissioner of Agriculture and Consumer Services.

C. All labels must comply with the applicable requirements of 21 CFR Part 101 and any applicable requirements of 21 CFR Part 135.

Part VII

~~Inspection of Frozen Desserts Plants and Frozen Desserts Retail Establishments~~

**2VAC5-510-440. Frequency, filing of inspection reports and confidentiality.**

~~A. Each frozen desserts plant or frozen desserts establishment in this state whose products are intended for consumption within the Commonwealth of Virginia, shall be inspected by the State Regulatory Authority Agency prior to the issuance of a permit. Following the issuance of a permit, each frozen desserts plant or retail establishment shall be inspected at least once every three months. Should the violation of any requirement set forth in Part VIII (2VAC5-510-450 et seq.) or Part X (2VAC5-510-480 et seq.) of this chapter be found on any inspection, a second inspection shall be required after the time deemed necessary to remedy the violation, but not before three days have passed. This second inspection shall determine compliance with the requirements of Part VIII (2VAC5-510-450 et seq.) and Part X (2VAC5-510-480 et seq.). Any violation of the same requirement of Part VIII (2VAC5-510-450 et seq.) or Part X (2VAC5-510-~~

480 et seq.) on such second inspection shall be cause for permit suspension according to Part V of this chapter (2VAC5-510-420 et seq.), or court action, or both.

B. ~~One~~ A copy of each inspection report shall be ~~handed~~ provided to the operator or other responsible person, or be posted in a conspicuous place ~~on an inside wall of~~ inside the establishment. This inspection report shall not be defaced, and shall be made available to the State Regulatory Authority Agency upon request. ~~An identical copy of the inspection report shall be filed with the State Regulatory Authority.~~ Every plant or frozen desserts establishment operator shall, upon request of the State Regulatory Authority Agency, permit access of officially designated persons to all parts of his plant, establishment, or facilities, at any reasonable time, to determine compliance with the provisions of this chapter.

C. It shall be unlawful for any person who in an official capacity obtains any information under the provisions of this chapter to use such information to his own advantage or to reveal it to any unauthorized person.

**2VAC5-510-450. Product test procedures and the examination of frozen desserts and their ingredients.**

A. At irregular intervals during any six month period, at least four samples of frozen desserts and pasteurized mix from each plant shall be taken and examined by the State Regulatory Authority Agency. Samples of the frozen desserts or mix may be taken at any time prior to final delivery.

~~B. Frozen desserts establishments operating seasonally shall be sampled once every six weeks.~~

~~C. Freezer made milk shakes and freezer made shakes shall be sampled once every three months, with check samples of violations to be taken promptly.~~

~~D. Frozen desserts and mixes imported and offered for sale in the Commonwealth of Virginia shall~~ may be sampled and tested as deemed necessary for the State Regulatory Authority Agency.

~~E. C.~~ The products shall be tested in accordance with tests and examinations contained in Standard Methods for the Examination of Dairy Products or Official Methods of Analysis of the Association of Official Analytical Chemists AOAC International. A modified Roesse-Gottlieb test, such as the Mojonnier or Dietert, may be used in making an official determination of the butterfat and total solids content of frozen dairy food products.

~~F. D.~~ The bacterial quality of commingled milk and cream, and other dairy products for use in the manufacture of frozen desserts and mix, shall comply with ~~the Commonwealth of Virginia regulations for Milk for Manufacturing Purposes and its Production and Processing Regulations Governing Milk for Manufacturing Purposes~~ (2VAC5-531).

**2VAC5-510-460. ~~Quality standards~~ Maximum allowable microbiological and temperature limits for pasteurized dairy ingredients, pasteurized and unpasteurized mixes or frozen desserts.**

Pasteurized<sup>5</sup> mix, dairy ingredients, frozen desserts, and unpasteurized<sup>5</sup> imitation mixes and imitation frozen desserts shall comply with the following standards:

Bacteria Count			
	Standard Plate Count Not More Than <sup>1</sup>	Coliform <del>Determ</del> <u>Presence</u> Not More Than <sup>1</sup>	Storage Temp.
Milk	50,000/ml	10/ml	45°F <u>(7.2°C)</u>
Cream	50,000/ml	10/ml	45°F <u>(7.2°C)</u>

Fluid Dairy Ingredient	50,000/ml	10/ml	45°F (7.2°C)
Mix	50,000/gr	10/gr	45°F (7.2°C) <sup>2, 3, 6</sup>
Frozen Dessert (plain)	50,000/gr	10/gr <sup>4</sup>	

<sup>1</sup>In three out of the last five consecutive samples taken by the Regulatory Agency.

<sup>2</sup>This does not preclude holding mix at higher temperatures for a short period of time immediately prior to freezing where applicable to particular manufacturing or processing practices.

<sup>3</sup>This does not apply to sterilized mix in hermetically sealed containers.

<sup>4</sup>20/gr. for chocolate, fruit, nuts, or other bulky flavored frozen desserts.

<sup>5</sup>The phenol value shall be no greater than the minimum specified for the particular product, as determined by the phosphatase test of the latest edition of "Standard Methods."

<sup>6</sup>This does not apply to powder or dry frozen desserts mix.

**2VAC5-510-470. Written notices, removal of products from sale and permit suspension.**

A. Whenever two of the last four consecutive bacteria counts, coliform determinations, or cooling temperatures taken on separate days exceed the limit of the standard for milk, cream, fluid dairy ingredients, frozen dessert mix, or frozen desserts, the State Regulatory Authority Agency shall send a written notice thereof to the person concerned. This notice shall be in effect so long as two of the last four consecutive samples exceed the limit of the standard. An additional sample of the product in violation shall be taken within 44 21 days of the sending of such notice, but not before the lapse of three days. Immediate suspension of permit or court action shall be instituted whenever the standard is violated by three of the last five bacteria counts, coliform determinations, or cooling temperatures.

B. The State Regulatory Authority Agency may forego suspension of the permit, provided that the product or products in violation are not sold or offered for sale.

C. Whenever a phosphatase test is positive, the cause shall be determined. Where the cause is improper pasteurization, it shall be corrected, and any product involved shall not be offered for sale.

**2VAC5-510-490. Building.**

A. Construction, maintenance, and plants.

1. Buildings shall be of sound construction. The exterior and interior shall be kept clean and in good repair to protect against dust, dirt, and mold, and to prevent the entrance or harboring of insects, rodents, vermin and other animals.

2. In processing areas, outside doors, windows, skylights, and transoms shall be screened or otherwise covered. Such outside doors shall not open inward and shall be self-closing; and doors leading to processing rooms shall be sound and tight fitting. Windowsills on new construction shall be sloping. Outside conveyor openings and other special type outside openings for sanitary pipelines shall be covered when not in use; and service-pipe openings shall be completely cemented around the pipe opening or have tight metal collars.

3. All rooms, compartments, coolers, freezers and dry storage space in which any raw material packaging, ingredient supplies, or finished products are handled, processed, manufactured, packaged, or stored shall be designed and constructed to assure clean and orderly operations. Rooms for receiving milk shall be separated from the processing area by a partition or suitable arrangement of equipment or facilities to avoid contamination of milk or dairy products. Boiler and tool rooms shall be separated from other rooms. Toilet and dressing rooms shall be conveniently located and shall not open



directly into any room in which milk, dairy products, or ingredients are handled, processed, packaged, or stored. Doors of all toilet rooms shall be self-closing; and fixtures shall be kept clean and in good repair.

4. Plans for new plant construction or major remodeling of existing plants shall be submitted to the State Regulatory ~~Authority~~ Agency for approval prior to such new construction or remodeling.

B. Interior finishing.

1. In all rooms in which milk or dairy products are received and processed and where mix and frozen desserts are manufactured, packaged, or stored, (except dry storage of packaging materials), or in which equipment or utensils are washed, the walls, ceilings, partitions, and posts shall be smoothly finished with a washable material of light color that is substantially impervious to moisture. A wainscoting of a suitable material in a darker color may be used to a height not exceeding 60 inches from the floor.

2. The floors in these rooms shall be of concrete or other impervious material and shall be smooth, properly graded to drain, and have drains trapped; except that freezers used for storing frozen desserts, frozen fruits, frozen eggs, and comparable ingredients need not be provided with floor drains; but the floors shall be sloped to drain to one or more exits, and shall be kept clean. The plumbing shall be installed to prevent backup of sewage into the plant. On new construction or extensive remodeling, the floors shall be joined and coved with the walls to form watertight joints. Sound, smooth, wood floors may be used in certain packaging rooms where the nature of the product permits. Toilet and dressing rooms shall have impervious floors and smooth walls.

C. Ventilation and lighting.

1. All rooms and compartments (including storage space and toilet and dressing rooms) shall be ventilated to maintain sanitary conditions, prevent undue condensation of water vapor, and minimize or eliminate objectionable odors.

2. Lighting, whether natural or artificial, shall be of good quality and well distributed in all rooms and compartments. All rooms where milk, dairy products, or mix and frozen desserts are handled, processed, manufactured, or packaged, or where equipment or utensils are washed, shall have at least 30 foot-candles of light intensity on all working surfaces; areas where dairy products are examined for condition and quality, at least 50 foot-candles of light intensity; and all other rooms, at least five foot-candles or intensity measured 30 inches above the floor. Light bulbs and fluorescent tubes shall be protected against breakage.

**2VAC5-510-500. Facilities.**

A. Water supply.

1. Both hot and cold water of safe and sanitary quality shall be available in sufficient quantity for all plant operations and facilities. Water from other lines, when officially approved, may be used for boiler feed water and condenser water, if such water lines are completely separated from the water lines carrying the sanitary water supply, and if the equipment is constructed and controlled to prevent contamination of any product or product contact surface. There shall be no cross-connections between safe and unsafe water lines or between private and public supply.

2. Bacteriological examination shall be made of the plant ~~sanitary~~ private water supply at least once every six months by the appropriate State Regulatory ~~Authority~~ Agency to determine purity and safety for use in processing or manufacturing dairy products.

3. The results of all plant private water supply tests shall be kept on file at the plant for at least one year. Public water supply tests shall be made available to the State Regulatory Agency if requested.

B. Employee facilities.

1. In addition to toilet and dressing rooms, the plant shall provide the following employee facilities:

a. ~~Conveniently located sanitary drinking water;~~

b. ~~A locker or other suitable facility for each employee;~~

c. b. Hand washing facilities, including hot and cold running water under pressure and connected to the sewage system, soap or other detergents, and single service towels or approved hand drying device, and sanitary rooms and at other places where necessary for the cleanliness of all personnel handling products; and

d. c. Self-closing containers for used towels and other wastes.

2. A durable, legible sign shall be posted conspicuously in each toilet and dressing room directing employees to wash their hands before returning to work.

C. Steam. Steam shall be supplied in sufficient volume and pressure for satisfactory operation of each applicable piece of equipment. Steam that may come into direct contact with milk or dairy products shall be culinary steam. Culinary steam shall comply with the ~~3-A Accepted Practices, "Method of Producing Steam of Culinary Quality," Number 609-02 (3-A Sanitary Standards, Incorporated)~~ 3-A Accepted Practices, "Method of Producing Steam of Culinary Quality," Number 609-03 (3-A Sanitary Standards, Incorporated, adopted November 21, 2004).

D. Disposal of wastes. The plant sewage system shall have sufficient slope and capacity to remove readily all waste from processing operations. Where a public sewer is not available, wastes shall be disposed of by methods approved by the State Regulatory Authority Agency. Containers for the collection and holding of wastes ~~other than dry waste paper~~ shall be constructed of metal or other equally impervious material, kept covered with tight-fitting lids, and placed outside the plant on a concrete slab or on a rack raised at least 12 inches; however, waste containers may be kept inside a suitable enclosed, clean, and fly-proof room. Solid wastes shall be disposed of regularly in an approved manner, and the containers cleaned before reuse. ~~Dry waste paper shall be burned at the plant in an approved incinerator, or compressed or bagged and disposed of in an approved manner.~~

**2VAC5-510-505. Rooms used for domestic purposes.**

A. No facility, equipment, storage, or processing area that requires inspection may be accessed through any room used for domestic purposes or part of any room used for domestic purposes.

B. A toilet room used for domestic purposes shall be approved as complying with the requirements of this chapter only if (i) the toilet room is located within 300 feet of the processing facility and (ii) all labor utilized in the processing facility is provided by the permit holder's immediate family.

**2VAC5-510-510. Equipment and utensils.**

A. Construction and installation.

1. New equipment shall meet applicable 3-A Sanitary Standards. Equipment and utensils coming in contact with milk, dairy products, mix or frozen desserts, including sanitary pumps, piping, fittings, and connections, shall be constructed of stainless steel or other equally corrosion-resistant and easily cleanable material. Where the use of stainless steel is not practicable, or in old equipment, other properly coated or plated metals may be approved temporarily. Nonmetallic parts having product contact surfaces shall be of

materials that meet 3-A Sanitary Standards, "Multiple-Use Rubber and Rubber-Like Materials Used as Product Contact Surfaces in Dairy Equipment," Number 18-03 (3-A Sanitary Standards, Incorporated, effective August 21, 1999), and "Multiple-Use Plastic Materials Used as Product Contact Surfaces for Dairy Equipment," Number ~~20-24~~ 20-27 (3-A Sanitary Standards, Incorporated, effective July 7, 2011).

2. Bulk storage and distribution equipment for handling liquid sweetening agents shall consist of suitable metals, alloys, or other materials ~~which~~ that will withstand corrosive action by the ingredient; and the equipment and ingredients shall be protected from contamination.

3. All equipment and piping shall be designed and installed to be easily accessible for cleaning, shall be kept in good repair, and free from cracks and corroded surfaces. Milk pumps shall be of a sanitary type and easily dismantled, for cleaning or shall be of specifically approved construction to allow cleaning in place. New or rearranged equipment shall be set away from any wall or spaced in such a manner as to facilitate proper cleaning and to maintain good housekeeping. All parts or interior surfaces or equipment, pipes (except certain piping cleaned-in-place), or fittings, including valves and connections, shall be accessible for inspection. Cleaned-in-place sanitary piping and welded sanitary pipeline systems will be acceptable if properly engineered and installed according to 3-A Accepted Practices, "Permanently Installed Product and Solution Pipelines and Cleaning Systems Used in Milk and Milk Product Processing Plants," Number 605-04 (3-A Sanitary Standards, Incorporated, effective August 20, 1994).

#### B. Pasteurization equipment.

1. Pasteurization equipment shall comply with 3-A Accepted Practices, "Sanitary Construction, Installation, Testing, and Operation of High Temperature Short-Time and Higher-Heat Shorter-Time Pasteurizer Systems," Number ~~603-06~~ 603-07 (3-A Sanitary Standards, Incorporated, effective November 21, 2005) and 3-A Sanitary Standards, "Non-Coiled Type Batch Pasteurizers for Milk and Milk Products," Number ~~24-02~~ 24-03 (3-A Sanitary Standards, Incorporated, effective July 16, 2010).

2. Heat treatment equipment used to reach temperatures higher than commonly used for pasteurization shall comply with appropriate sanitary construction and operating procedures approved by the State Regulatory ~~Authority~~ Agency.

3. Whenever it is necessary to break a seal on such equipment, this equipment shall be properly adjusted and placed in correct operation immediately. The breaking of the seal and the adjustment made shall be reported immediately to the State Regulatory ~~Authority~~ Agency in order that the equipment can be officially checked and resealed.

#### C. Cleaning and sanitizing.

1. Equipment, sanitary piping, and utensils used in receiving, storing, processing, manufacturing, packaging, and handling milk, dairy products, mix or frozen desserts, and all product contact surfaces of homogenizers, high-pressure pumps, and high-pressure lines shall be kept clean.

2. The packing glands on all agitators, pumps, and vats shall be inspected at regular intervals and kept clean.

3. After being cleaned, and immediately before use, all equipment coming in contact with milk, dairy products, mix or frozen desserts shall have an effective bactericidal or sanitizing treatment.

4. Before use, equipment not designed for C-I-P cleaning shall have been disassembled and thoroughly cleaned and sanitized. Dairy cleaners, wetting agents, detergents, sanitizing agents, or other similar material may be used that will not contaminate or

adversely affect dairy products. Steel wool or metal sponges shall not be used in the cleaning of any dairy equipment or utensils.

5. C-I-P cleaning shall be used only on equipment and pipeline systems that are designed and engineered for that purpose. Installation and cleaning procedures shall comply with 3-A Accepted Practices, "Permanently Installed Product and Solution Pipelines and Cleaning Systems Used in Milk and Milk Processing Plants," Number 605-04 (3-A Sanitary Standards, Incorporated, effective August 20, 1994). An outline of the cleaning procedures to be followed shall be posted near the C-I-P equipment.

6. Applicable equipment and areas in the plant shall be thoroughly vacuumed regularly with a heavy-duty industrial vacuum cleaner. The material picked up shall be disposed of ~~by burning or other means~~ in a manner to destroy any insects present.

7. Exhaust stacks, elevators, and conveyors shall be inspected at regular intervals and kept clean.

8. Storage or holding tanks used to store milk, milk products, frozen desserts, or frozen desserts mix shall be cleaned and sanitized when empty and shall be emptied at least every 72 hours.

## Part XI

### Vehicles; ~~Frozen Dessert Retail Establishments~~; Reconstitution of Powder or Dry Frozen Desserts Mix

#### **2VAC5-510-520. Vehicles.**

A. ~~All vehicles~~ A vehicle used to transport mix, frozen desserts, cream, milk, and dairy products shall be constructed and operated to protect ~~their~~ the vehicle's contents from heat, sun, and contamination. ~~Such vehicles~~ The vehicle shall be kept clean; and no substance capable of contaminating mix, frozen desserts, cream, milk, and dairy products shall be transported in ~~them~~ the vehicle. ~~Vehicles~~ A vehicle transporting frozen desserts or mix to wholesale ~~or retail outlets~~ shall have the name of the distributor prominently displayed on ~~them~~ the vehicle.

B. A covered or enclosed dock for loading, unloading, and washing tank trucks, and other facilities shall be available at all plants that receive or ship milk, fluid dairy ingredients, or frozen desserts mix in tanks. A plant shall provide approved equipment when deemed necessary by the State Regulatory Authority Agency to prevent contamination of products while being loaded or unloaded in tank trucks.

C. Milk transport tanks, sanitary piping, fittings, and pumps shall be cleaned and sanitized after each use. Tanks and equipment shall be washed promptly after use and ~~given bactericidal treatment immediately~~ sanitized before use. After being washed and sanitized, each tank shall be identified by a tag that is attached to the outlet valve, ~~having~~ and that states the following information: (i) plant and specific location where cleaned, (ii) date and time of day of washing and sanitizing, and (iii) name of persons who washed and sanitized the tank. The tag shall not be removed until the tank is again washed and sanitized.

#### **2VAC5-510-530. ~~Frozen desserts retail establishments.~~ (Repealed.)**

~~Frozen desserts retail establishments, including commissaries and depots, shall comply with applicable provisions of Part X of this chapter (2VAC5-510-480 et seq.).~~

#### **2VAC5-510-540. ~~Frozen desserts retail establishments which~~ plants that reconstitute powder or dry frozen desserts mix.**

A. Powder or dry frozen desserts mix shall be reconstituted with potable water in one of the following ways:

1. If the ~~retail establishment~~ frozen desserts plant possesses and uses a mechanical means capable of cooling the reconstituted mix to 45°F (7.2°C) within four hours, cold tap water may be used.

2. If the ~~retail establishment~~ frozen desserts plant does not possess or use a mechanical means capable of cooling the reconstituted mix to 45°F (7.2°C) within four hours, only potable water at a temperature of 40°F (4.4°C) or below shall be used.

B. Powder or dry frozen desserts mix is not required to be re-pasteurized after being reconstituted with water.

C. Powder or dry frozen desserts mix may be reconstituted with pasteurized milk at a temperature of 40°F (4.4°C) or below.

### **2VAC5-510-550. Pasteurization of frozen dessert mix.**

A. Except for flavoring ingredients, the entire mix shall be pasteurized after formulation. A frozen dairy dessert mix must be re-pasteurized at the receiving plant before being offered for sale, unless the State Regulatory Agency grants permission for the frozen dairy dessert mix to be sold without re-pasteurization. Pasteurized mix or frozen desserts shall not be permitted to come in contact with equipment or containers with which unpasteurized mix, frozen desserts, milk, or milk products have been in contact, unless such equipment has first been properly washed and subjected to a satisfactory bactericidal treatment. Powdered or dry frozen dessert mixes are not required to be re-pasteurized after being reconstituted with water as described in 2VAC5-510-540 of this chapter sanitized.

B. All milk, milk products, eggs, egg products, cocoa, cocoa products, emulsifiers, stabilizers, vitamins, and liquid sweeteners shall be added to the frozen dessert before it is pasteurized except when:

1. The frozen desserts plant demonstrates to the State Regulatory Agency's satisfaction that the addition of these ingredients prior to pasteurization will negatively impact the ability to produce the product or the quality of the product;

2. The frozen desserts plant maintains records that demonstrate to the State Regulatory Agency's satisfaction the science proving that the ingredients that are added after pasteurization are safe and suitable; and

3. The ingredients are safely and sanitarily added to the frozen dessert product.

C. Flavoring and coloring ingredients may be added after pasteurization when:

1. The ingredient has been subjected to a prior heat treatment sufficient to destroy pathogenic microorganisms;

2. The ingredient has 0.85 per cent water activity ( $a_w$  of 0.85) or less when the water activity is calculated by dividing the water vapor pressure of the ingredient by the vapor pressure of pure water when at the same temperature as the ingredient;

3. The ingredient has a high acid content (pH level of 4.6 or below when measured at 75°F (23.9°C)) or high alkalinity (pH level greater than 11 when measured at 75°F (23.9°C));

4. The ingredient's alcohol content is sufficient to assure that pathogenic microorganisms will not be transferred to the final product;

5. The ingredient consists of safe and suitable bacterial cultures or enzymes;

6. The ingredient is dry sugar or salt; or

7. The ingredient is subjected to any process acceptable to the State Regulatory Agency that will assure that the ingredient is free of pathogenic microorganisms.

### **2VAC5-510-560. Cooling.**

After heat treatment or pasteurization, processed fluid milk products including mix (except for sterilized mix in hermetically sealed containers) shall be cooled promptly to 45°F (7.2°C) or lower and maintained ~~there~~ at that temperature until used, provided that storage or holding tanks used to store milk, milk products, frozen desserts, or frozen desserts mix shall be cleaned and sanitized when empty and shall be emptied at least every 72 hours. Fluid milk products may be held at higher temperatures for a short time immediately prior to freezing when applicable to particular manufacturing or processing practices.

### **2VAC5-510-570. Storage.**

A. Utensils and portable equipment used in processing operations shall be stored above the floor in clean, dry locations, and in self-draining positions on racks constructed of impervious, corrosion-resistant material.

B. Dripped or spilled products or ingredients shall not be sold for human consumption.

C. Dairy products, mix or frozen dessert ingredients in dry storage shall be arranged in aisles, rows, sections, or lots, or in such other manner as to be orderly and easily accessible for inspection, and to permit adequate cleaning of the room. Dunnage or pallets shall be used when appropriate. Dairy products, mix or frozen dessert ingredients shall not be stored with any product that would damage them or impair their quality. Open containers shall be carefully protected from contamination.

D. All products requiring refrigeration, except where otherwise specified, shall be stored under optimum temperatures and humidity to maintain their quality and condition. Products shall not be placed directly on wet floors, ~~or be~~ exposed to foreign odors, or subjected to conditions, such as dripping or condensation, that might cause package or product damage.

E. Items in supply storage rooms shall be kept clean and protected, and be arranged to permit inspection of supplies and cleaning and spraying of the room. Insecticides and rodenticides shall be properly labeled, segregated, and stored in a separate room or cabinet away from milk or dairy products or packaging supplies. Caps, parchment papers, wrappers, liners, gaskets, and single service sticks, spoons, covers, and containers for frozen desserts, mix or their ingredients shall be purchased and stored only in sanitary tubes, wrappings, or cartons. ~~These~~; shall be kept in a clean, dry place until used; and shall be handled in a sanitary manner.

### **2VAC5-510-600. Lubricants.**

Lubricants approved for use on milk product contact surfaces that are applied to filling machine pistons, cylinders, pumps, and valves shall be ~~sterile~~, approved for food grade use and shall be applied in a sanitary manner.

### **2VAC5-510-610. Cleanliness.**

A. Plant employees shall wash their hands before beginning work, and upon returning to work after using toilet facilities, eating, smoking, or otherwise soiling their hands. They shall keep their hands clean and follow good hygienic practices while on duty. Expectorating or use of tobacco in any form shall be prohibited in rooms and compartments where milk, dairy products, mix or frozen desserts are unpacked or exposed. Clean white or light colored washable outer-garments and ~~caps (paper caps or hairnets are acceptable)~~ adequate hair restraints shall be worn by all persons engaged in processing milk, dairy products, mix or frozen desserts.

B. ~~In addition, employees~~ Employees engaged in manual molding, wrapping, and touching any product contact surface shall ~~treat their clean hands with a bactericide of approved strength~~ wash their hands with hot, soapy water and dry their hands with single-use paper towels or an approved hand drying device before beginning such work and after each interruption. ~~Rubber Disposable, single-use rubber~~ or plastic gloves may be used ~~if sanitized as above.~~

**2VAC5-510-620. Health.**

~~A. No person afflicted with a communicable disease shall be permitted in any room or compartment where milk, dairy products, mix or frozen desserts are prepared, processed, or otherwise handled. A person who is affected with any disease in a communicable form or who is a carrier of a communicable disease may not work at any frozen desserts plant in any capacity that would bring him in contact with the production, handling, storage, or transportation of milk, milk products, other frozen dessert ingredients, frozen desserts, or frozen desserts mix containers, equipment, or utensils.~~ No person who has a discharging or infected wound, sore, or lesion on hands, arms, or other exposed portions of the body shall work in any plant processing or packaging rooms or in any other capacity resulting in contact with milk, dairy products, mix or frozen dessert.

~~B. Each employee whose work brings him in contact with the processing or handling of milk, dairy products, mix or frozen desserts, containers or equipment shall have a medical and physical examination by a registered physician or by the local department of health, and shall furnish a satisfactory medical certificate prior to employment. An employee returning to work following illness from a communicable disease shall have a certificate from his attending physician to establish proof of complete recovery.~~

**2VAC5-510-630. Availability.**

~~All records herein required to be kept by plants shall be available for examination by the State Regulatory Authority at reasonable times. A plant shall, at reasonable times, make available for examination by the State Regulatory Agency all records that this chapter and 21 CFR Part 117 Subpart C, if applicable, require the plant to maintain.~~

**2VAC5-510-640. Water supply test records. (Repealed.)**

~~The results of all plant water supply tests shall be kept on file at the plant for at least one year.~~

**2VAC5-510-650. Pasteurization, temperature, and C-I-P recorder charts.**

Recorder charts showing the pasteurization record for each day shall be appropriately marked with the name of the product for each batch, date, time, and signature of the operator, and the markings made by the recording device shall not overlap. Recorder charts showing the C-I-P record for each day shall be appropriately marked, and the markings made by the recording device shall not overlap. Temperature recording charts shall be labeled with the name of the product for each batch, date, time, and signature of the operator, and the markings made by the recording device shall not overlap. ~~The charts~~ Charts shall be kept on file at the plant for at least six months. Electronic records or records in a format designated by the State Regulatory Agency may be used in lieu of recording charts with prior State Regulatory Agency approval.

**2VAC5-510-660. Employee medical certificates. (Repealed.)**

~~Current employee medical certificates shall be kept on file at the plant.~~

FORMS (2VAC5-510)

~~Virginia Department of Agriculture and Consumer Services Permit Application-~~

[Dairy Manufacturing Permit Application Part I \(rev. 04/22\)](#)

[Dairy Manufacturing Permit Application Part II \(rev. 04/22\)](#)

[Dairy Manufacturing Plant Inspection Report \(rev. 02/18\)](#)

[Milk Plant Equipment Test Report \(rev. 11/23\)](#)

[Vat Pasteurizer Equipment Test Report \(rev. 02/18\)](#)

[Official Warning Notice \(rev. 04/22\)](#)

[Official Suspension Notice \(rev. 04/22\)](#)

Documents Incorporated by Reference (2VAC5-510)

~~3-A Accepted Practices, Method of Producing Steam of Culinary Quality, Number 609-02, 3-A Sanitary Standards, Inc.~~

[3-A Accepted Practices for a Method of Producing Culinary Steam, Number 609-03, adopted November 21, 2004, 3-A Sanitary Standards, Inc.](#)

~~3-A Sanitary Standards, Multiple-Use Rubber and Rubber-Like Materials Used as Product Contact Surfaces in Dairy Equipment, Number 18-03, 3-A Sanitary Standards, Inc.~~

[3-A Sanitary Standards for Multiple-Use Rubber and Rubber-Like Materials Used as Product Contact Surfaces in Dairy Equipment, Number 18-03, effective August 21, 1999, 3-A Sanitary Standards, Inc.](#)

~~3-A Sanitary Standards, Multiple-Use Plastic Materials Used as Product Contact Surfaces for Dairy Equipment, Number 20-21, 3-A Sanitary Standards, Inc.~~

[3-A Sanitary Standards for Multiple-Use Plastic Materials, Number 20-27, effective July 7, 2011, 3-A Sanitary Standards, Inc.](#)

~~3-A Accepted Practices, Permanently Installed Product and Solution Pipelines and Cleaning Systems Used in Milk and Milk Product Processing Plants, Number 605-04, 3-A Sanitary Standards, Inc.~~

[3-A Accepted Practices for Permanently Installed Product and Solution Pipelines and Cleaning Systems Used in Milk and Milk Product Processing Plants, Number 605-04, effective August 20, 1994, 3-A Sanitary Standards, Inc.](#)

~~3-A Accepted Practices, Sanitary Construction, Installation, Testing, and Operation of High Temperature Short-Time and Higher-Heat Shorter-Time Pasteurizer Systems, Number 603-06, 3-A Sanitary Standards, Inc.~~

[3-A Accepted Practices for the Sanitary Construction, Installation, Testing, and Operation of High Temperature Short-Time and Higher-Heat Shorter-Time Pasteurizer Systems, Number 603-07, effective November 21, 2005, 3-A Sanitary Standards, Inc.](#)

~~3-A Sanitary Standards, Non-Coiled Type Batch Pasteurizers for Milk and Milk Products, Number 24-02, 3-A Sanitary Standards, Inc.~~

[3-A Sanitary Standards for Non-Coiled Type Batch Pasteurizers for Milk and Milk Products, Number 24-03, effective July 16, 2010, 3-A Sanitary Standards, Inc.](#)



**BOARD OF AGRICULTURE AND CONSUMER SERVICES  
Future Meeting Dates**

**MARK YOUR CALENDARS**

**Wednesday, July 31, 2024**

Hotel Madison  
710 S. Main Street  
Harrisonburg, VA 22801

**Thursday, December 12, 2024**

TBD  
Richmond, VA