



COMMONWEALTH of VIRGINIA

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MEMORANDUM

TO: Marissa J. Levine, MD, MPH
Commissioner, Department of Health

FROM: Grant E. Kronenberg
Assistant Attorney General *GEK*

DATE: September 1, 2017

SUBJECT: Periodic Review of Regulations
Regulations for the Sanitary Control of Storing, Processing, Packing or Repacking
of Oysters, Clams and Other Shellfish, 12VAC5-150-10 *et seq.*

In accordance with Code of Virginia § 2.2-4017 and Executive Order 17 (2014), I have reviewed the Regulations for the Sanitary Control of Storing, Processing, Packing or Repacking of Oysters, Clams and Other Shellfish, 12VAC5-150-10 *et seq.* These regulations are undergoing periodic review.

In my opinion, the Board of Health had the statutory authority under Chapter 8 of Title 28.2 of the Code of Virginia, including Code of Virginia § 28.2-801, to adopt the current regulations with one exception. Code of Virginia § 28.2-823 provides requirements for “[a]ll shellfish in the shell imported into Virginia for processing or consumption within the Commonwealth....” 12VAC5-150-60 provides a different standard for the importation of shellfish that is inconsistent with Code of Virginia § 28.2-823, including setting out a particular standard for Maryland shellfish imported by certified Virginia dealers for shucking that is different from the universally applicable language in Code of Virginia § 28.2-823.

I do not find statutory authority for 12VAC5-150-60 providing a different requirement with respect to the importation of shellfish than is required under the statute. I recommend that the regulation be amended so that the regulatory requirements for importation of shellfish align with the statutory requirements.