



COMMONWEALTH of VIRGINIA
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MEMORANDUM

FROM: Michael A. Jagels
Senior Assistant Attorney General

TO: Colin M. Greene, MD, MPH
Commissioner, Virginia Department of Health

DATE: September 16, 2022

RE: Review of State Board of Health Final Regulation — 12 VAC 5-421

Please note that this memorandum does not constitute an opinion, formal or informal, of the Attorney General. Rather, this memorandum contains the legal analysis of the individual staff member providing it.

In response to a request from the Department of Health, I have reviewed the above-referenced final regulation of the Virginia Board of Health.

The Board of Health has the authority to amend its regulations. See Va. Code §§ 35.1-11 and 35.1-14. After reviewing the proposed amendments, it is my opinion that the Board of Health has the authority to amend 12 VAC 5-421. The State Health Commissioner, pursuant to his authority in § 32.1-20 of the Code of Virginia, approved this final exempt action to amend the Food Regulations (12VAC5-421) while the Board was not in session on July 15, 2022.

It is also my view that the final regulation is exempt from the Administrative Process Act pursuant to Va. Code § 2.2-4006(A)(4)(a), because if is necessary to conform to changes in Virginia statutory law or the appropriations act where no agency discretion is involved.