

TITLE 140: COMMONWEALTH HEALTHCARE CORPORATION

SUBCHAPTER 140-20.3 FOOD HANDLERS RULES AND REGULATIONS

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Subchapter Authority: 1 CMC §§ 2603 and 2605; 3 CMC § 2123.

Subchapter History: Amdts Adopted 24 Com. Reg. 19033 (Feb. 28, 2002); Amdts Proposed 23 Com. Reg. 18359 (Sept. 24, 2001); Adopted 21 Com. Reg. 16446 (Jan. 18, 1999); Proposed 20 Com. Reg. 16163 (Oct. 15, 1998).

Commission Comment: PL 1-8, tit. 1, ch. 12, codified as amended at 1 CMC §§ 2601-2633, created the Department of Public Health and Environmental Services (DPHES) within the Commonwealth government. See 1 CMC § 2601. 1 CMC § 2603(a) grants the Department the power and duty to maintain and improve health and sanitary conditions in the CNMI. 1 CMC § 2605 directs the Department to adopt rules and regulations regarding those matters over which it has jurisdiction.

Executive Order 94-3 (effective August 23, 1994) reorganized the Commonwealth government executive branch, changed agency names and official titles, and effected numerous other revisions. According to Executive Order 94-3 § 105:

Section 105. Department of Public Health.

The Department of Public Health and Environmental Services is re-designated the Department of Public Health.

The full text of Executive Order 94-3 is set forth in the commission comment to 1 CMC § 2001.

PL 12-48 (effective Apr. 26, 2001), the “Commonwealth Environmental Health and Sanitation Act of 2000,” codified at 3 CMC §§ 2121-2147, revised the Commonwealth statutes related to environmental health and sanitation. PL 12-48 § 3 repealed former 3 CMC §§ 2121-2126 and enacted new sanitation provisions. PL 12-48 § 3 (§ 2122), 3 CMC § 2122, requires a sanitary permit to operate enumerated establishments, including any establishment or activity involving food or drink service, food retail, wholesale and transportation operations, or food manufacturing, processing, etc. PL 12-48 § 3 (§ 2123), 3 CMC § 2123, directs the Secretary of Public Health to promulgate rules and regulations required to ensure the sanitary operation of listed establishments.

Public Law 16-51 (effective Jan. 15, 2010), the “Commonwealth Healthcare Corporation Act of 2008,” codified at 3 CMC § 2801 et seq., established the Commonwealth Healthcare Corporation, which assumed the duties of the Department of Public Health as of January 15, 2011.

Part 001 - General Provisions

[Reserved.]

Part 100 - Food and Drinking Establishments

[Reserved.]

History: Amdts Adopted 24 Com. Reg. 19033 (Feb. 28, 2002); Amdts Proposed 23 Com. Reg. 18359 (Sept. 24, 2001); Adopted 21 Com. Reg. 16446 (Jan. 18, 1999); Proposed 20 Com. Reg. 16163 (Oct. 15, 1998).

Part 200 - Food Retail/Wholesale Establishments

[Reserved.]

History: Amdts Adopted 24 Com. Reg. 19033 (Feb. 28, 2002); Amdts Proposed 23 Com. Reg. 18359 (Sept. 24, 2001); Adopted 21 Com. Reg. 16446 (Jan. 18, 1999); Proposed 20 Com. Reg. 16163 (Oct. 15, 1998).

Part 300 - Screening of Food Handlers

§ 140-20.3-301 Definitions

As used throughout this part, the following terms shall have the meaning set forth below:

(a) “Ameba” means clinical or laboratory evidence of an infection caused by the known human intestine protozoan pathogen *Entamoeba histolytica*.

(b) “Campylobacter” means clinical or laboratory evidence of an infection caused by any species of the genus *Campylobacter*.

(c) “Food, retail store, and beverage establishment” means a bakery, restaurant, cafeteria, lunchroom, luncheonette, lunch counter, ice cream/soda fountain, soft drink dispenser, bar, tavern, nightclub, karaoke club, liquor/water dispenser, food stand, food store, snack mobile, caterer, kitchen, or any other establishment where food and beverages, (canned, perishable, prepackaged - betelnut, leaves, apigigi, etc.) are prepared, packaged, handled, cooked, processed, or served to the public as part of a service of an institution or for sale.

(d) “Food handler” means any person who prepares, packages, handles, cooks, processes, or serves food or beverages, or uses cooking utensils in a food, retail store, and beverage establishment.

(e) “Food handlers certificate” means an authorization issued by the Secretary to a food-handler certifying that the food-handler has been examined and found to be in good health, and free of specific food-borne diseases as specified in the rules and regulations in this part.

(f) “Food handlers education” means a seminar conducted by Bureau of Environmental

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Health. This training course will cover sanitation, sanitary food preparation, and the transmission of food-borne diseases.

(g) “Giardia” means clinical or laboratory evidence of an infection caused by the known human pathogen *Giardia lamblia*.

(h) “Salmonella” means clinical or laboratory evidence of an infection caused by any species of the genus *Salmonella*, including *S. typhi*, the cause of typhoid fever.

(i) “Shigella” means clinical or laboratory evidence of an infection caused by any species of the genus *Shigella*.

(j) “Tuberculosis” means clinical, PPD skin test, laboratory, or radiological evidence of an infection or active disease process caused by *Mycobacterium tuberculosis*.

(k) “Yersinia” means clinical or laboratory evidence of an infection caused by any species of the genus *Yersinia*.

Modified, 1 CMC § 3806(d), (f), (g).

History: Amdts Adopted 24 Com. Reg. 19033 (Feb. 28, 2002); Amdts Proposed 23 Com. Reg. 18359 (Sept. 24, 2001); Adopted 21 Com. Reg. 16446 (Jan. 18, 1999); Proposed 20 Com. Reg. 16163 (Oct. 15, 1998).

Commission Comment: The 2002 amendments readopted and republished part 300 in its entirety. The Commission, therefore, cites the 2002 amendments in the history sections throughout this part. The 2002 amendments amended subsections (c), (d), (e) and (f).

The Commission inserted quotation marks around terms defined. In subsection (e), the Commission inserted the final period. The Commission inserted commas after the words “store” and “processed” in subsection (c), “store” in subsection (d),

§ 140-20.3-305 Physical Examination

(a) Obtaining a Physical Examination. A physician authorized by the Division will obtain a clinical history and perform a physical examination of all food handlers prior to commencing employment as a food handler in the CNMI and then annually. A record of the physical examination shall be completed by the physician on a physical examination form approved by the Division. Annual physical examination for food handlers shall be performed at least forty-five days prior to the expiration of the food handlers certificate and/or alien health certificate.

(b) Filing of Forms. The physician performing the physical examination shall provide the complete physical examination form to the Division within forty-five days from the date of the food handler’s initial physical examination, and forty-five days from the date of each annual physical examination thereafter.

Modified, 1 CMC § 3806(e), (f).

History: Amdts Adopted 24 Com. Reg. 19033 (Feb. 28, 2002); Amdts Proposed 23 Com. Reg.

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18359 (Sept. 24, 2001); Adopted 21 Com. Reg. 16446 (Jan. 18, 1999); Proposed 20 Com. Reg. 16163 (Oct. 15, 1998).

Commission Comment: The 2002 amendments amended subsection (a).

§ 140-20.3-310 **Screening for Communicable Disease**

All food handlers shall be screened for specified food-borne diseases, which not only jeopardize the health and life of the food handlers, but also threaten their family, the resident CNMI population, and tourists visiting the CNMI. Screening shall be limited to those food-borne diseases which can be easily tested and monitored, including tuberculosis, salmonella, shigella, campylobacter, intestinal parasites, and any other communicable disease specified by the Secretary through health advisories as being a potential risk to the CNMI community.

(a) **Procedures for Screening.** Concurrent with the performance of the physical examination, the food handler shall obtain health screening tests for the food-borne disease specified in the rules and regulations in this part, and any others required by the Secretary through health advisories. All chest radiographs required by these rules and regulations shall be read by a physician, or may be sent to the Center for Tuberculosis and Lung Disease at the Commonwealth Health Center for reading.

(b) **Filing of Screening Test Results with the Division.** The food handler's physician shall provide the Division with a copy of all screening test results required by this section and by the Secretary's health advisories within forty-five days from the date of the food handler's initial physical examination, and forty-five days from the date of each annual physical examination thereafter.

(c) **Required Screening Test for Food-borne Diseases.** At a minimum, all food handlers shall obtain screening test for the following diseases:

(1) **Tuberculosis Screening.** Every food handler shall obtain a single view PA chest radiograph prior to commencing work as a food handler in the CNMI, and then annually thereafter. The yearly chest radiograph shall be performed at least forty-five days prior to renewal of the employment contract, or forty-five days prior to the anniversary of the expiration of the food handler certificate, whichever date is first.

(2) **Stool Culture.** Every food handler shall obtain a stool culture from a CLIA certified laboratory as part of the initial screening, and then annually thereafter. The yearly test shall be performed at least forty-five days prior to the renewal of the employment contract, or forty-five days prior to the anniversary of the expiration of the food handler certificate, whichever date is first. Food handlers who have a positive stool culture for salmonella, shigella, yersinia, campylobacter or any other bacteria considered pathogenic shall be treated and cured by the food handler's physician. Failure to provide documentation of cure shall result in non-issuance of the food handler certificate.

(3) **Stool for Ova and Parasite (O&P).** Every food handler shall obtain a stool ova and parasite screen from a CLIA certified laboratory prior to commencing employment as a food handler as part of the initial screening, and then annually thereafter. The yearly test shall be performed at least forty-five days prior to the anniversary of the expiration of the food handler

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certificate whichever is first.* Food handlers who have a positive stool O&P for giardia, ameba, or any other intestinal parasite shall be treated and cured by the food handler's physician(s). Failure to provide documentation of cure shall result in non-issuance of the food handler certificate.

(4) Other Food-borne Diseases. All food handlers who contract other infectious or food-borne diseases should be seen promptly by a physician. Any physician who diagnoses a food handler as having a communicable disease shall immediately report the food handler to the Division.

*So in original.

Modified, 1 CMC § 3806(d), (e), (f).

History: Amdts Adopted 24 Com. Reg. 19033 (Feb. 28, 2002); Amdts Proposed 23 Com. Reg. 18359 (Sept. 24, 2001); Adopted 21 Com. Reg. 16446 (Jan. 18, 1999); Proposed 20 Com. Reg. 16163 (Oct. 15, 1998).

Commission Comment: The 2002 amendments amended subsections (c)(2) and (c)(3).

The Commission inserted a comma after the word "population" in the initial paragraph pursuant to 1 CMC § 3806(g).

§ 140-20.3-315 Food Handler Education

(a) Obtaining Food Handler Education. After the food handler's physician has submitted the physical examination and screening test result to the Division, the food handler shall attend a food handler education seminar scheduled by Bureau of Environmental Health. A record of the food handler's attendance at the seminar shall be submitted to the Division. The food handler must attend this seminar annually at least forty-five days prior to expiration of the food handlers certificate and/or alien health screening.

(b) Filing of Forms. The food handler shall provide a record of attendance to the Division within forty-five days from the date of the initial food handler education seminar prior to commencing employment as a food handler in the CNMI, and forty-five days from the date of each annual seminar thereafter.

Modified, 1 CMC § 3806(e), (f).

History: Amdts Adopted 24 Com. Reg. 19033 (Feb. 28, 2002); Amdts Proposed 23 Com. Reg. 18359 (Sept. 24, 2001); Adopted 21 Com. Reg. 16446 (Jan. 18, 1999); Proposed 20 Com. Reg. 16163 (Oct. 15, 1998).

Commission Comment: The 2002 amendments amended subsection (a).

§ 140-20.3-320 Issuance of Food Handler Certificate

(a) Food Handler Certificate. Within forty-five working days of receiving the food handler's physical examination form, all necessary documentation of screening test results, and record of attendance of the food handler education seminar, the food handler shall request a food handler certificate from the Division. If the food handler has been found to be physically fit, in good health, and free from communicable diseases covered by the rules and regulations in this part,

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the Secretary shall issue the food handler certificate. The food handler certificate shall be valid for a period of one year from the date of issue.

(b) Duplicate Food Handler Certificate.

(1) Food handlers who have been issued a valid food handler certificate, but who work in more than one food, retail store, and beverage establishment owned and operated by the same employer may request a duplicate food handler certificate(s) to be kept in a file and shall be easily accessible for inspector(s).

(2) Food handlers who have been issued a valid food handlers certificate, but who work in more than one food and beverage establishment owned and operated by the different employer may request duplicate food handlers certificate(s) and kept* in a file and shall be easily accessible for inspector(s).

*So in original.

(c) Suspension of Issuance of Food Handler Certificate for Food Handlers Found to Have a Communicable Disease. Food handlers who test positive for a communicable disease covered by the rules and regulations in this part shall not be issued a food handler certificate unless documentation of cure has been submitted to the Division. The food handler shall refrain from preparing, cooking, and serving food or beverage until such time he/she has been cured of communicable disease.

(d) Cost of Food Handler Certificates. The cost of a food handler certificate shall be twenty dollars, payable to the CNMI Treasury upon issuance of the food handler certificate. The food handler or the employer of non-resident worker shall be responsible for the cost of the certificate.

(e) Cost of Duplicate Food Handler Certificates. The cost of a duplicate food handler certificate shall be ten dollars for each additional food handler certificate, payable to the CNMI Treasury. The food handler or the employer of non-resident worker shall be responsible for the cost of all duplicate certificates.

(f) Cost of Replacement Food Handler Certificates. In the event of a lost (non-expired) food handler certificate, the food handler may request a replacement. The cost of a replacement food handler certificate shall be twenty dollars, payable to the CNMI Treasury upon issuance of the food handler certificate. The food handler or the employer of non-resident worker shall be responsible for the cost of the certificate.

(g) Employer to Maintain Files. Upon receipt, the food handler shall provide the food handler certificate to his or her employer. The employer shall keep food handler certificates for all food handlers under his/her employment filed in a location that is easily accessible while maintaining confidentiality. The employer shall be prepared to show these food handler certificates to a duly authorized representative upon request during an inspection. Food handler certificates will only be valid at the food, retail store, and beverage establishment at which the food handler is employed. Food handler certificates are not transferable. In the event that a food handler is employed to work at more than one food, retail store, and beverage establishment owned and operated by the same or different employer, then a duplicate food handler certificate

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shall be kept on file at each separate establishment.

Modified, 1 CMC § 3806(d), (e), (f), (g).

History: Amdts Adopted 24 Com. Reg. 19033 (Feb. 28, 2002); Amdts Proposed 23 Com. Reg. 18359 (Sept. 24, 2001); Adopted 21 Com. Reg. 16446 (Jan. 18, 1999); Proposed 20 Com. Reg. 16163 (Oct. 15, 1998).

Commission Comment: The 2002 amendments added a new subsection (b)(2) and amended subsections (b)(1), (c), (d), (e), (f), and (g).

In subsection (a), the Commission changed “from” to “form” to correct a manifest error. The Commission inserted commas after the word “store” in subsections (b)(1) and (g) pursuant to 1 CMC § 3806(g).

§ 140-20.3-325 Division Record Keeping and Tracking Measures

(a) Database Records. The Division shall develop a food handler health database. The database shall be used to track all food handlers for compliance with the screening requirements established in the rules and regulations in this part, and assist the environmental health inspectors in the inspections of food establishments.

(b) Notice of Noncompliance. If a review of the Division’s database indicates that a food handler has not been issued a food handler certificate within twenty days from the previous expiration date, Division staff shall send a written notice to the food handler, with a copy provided to the employer, of noncompliance with the rules and regulations in this part. The food handler shall have twenty days from the date of the notice to come into compliance with the requirements of these rules and regulations. Failure to respond to the Division’s notice shall subject the food handler and the employer to penalties as set forth in § 140-20.3-340 of this subchapter. This section shall not apply to those food handlers who have not been issued food handler certificates because they are undergoing treatment for a communicable disease (§ 140-20.3-330(b)) and who remain fully compliant with the Division’s or their physician’s prescribed treatment regimen for the duration of treatment. Food handlers undergoing treatment shall be issued a letter by the Division setting forth the date treatment is anticipated to be complete and when a food handler certificate can be issued.

(c) Inspections by Duly Authorized Representatives. From time to time, a duly authorized representative of the Department may inspect an employer’s place of employment, as provided in 3 CMC § 2123. Upon request by the duly authorized representative, the employer or person-in-charge shall grant the duly authorized representative access to the food handlers’ certificates. Any food handler who does not have a valid food handler certificate in his or her employment file shall cease handling, preparing, cooking, or serving food and shall be reported to the Division.

Modified, 1 CMC § 3806(c), (d), (e), (f), (g).

History: Amdts Adopted 24 Com. Reg. 19033 (Feb. 28, 2002); Amdts Proposed 23 Com. Reg. 18359 (Sept. 24, 2001); Adopted 21 Com. Reg. 16446 (Jan. 18, 1999); Proposed 20 Com. Reg. 16163 (Oct. 15, 1998).

Commission Comment: The Commission changed “access to the food handlers’ certificate” to “access to the food handlers’ certificates” to correct a manifest error. The 2002 amendments amended subsections (b) and (c).

§ 140-20.3-330 Food Handlers with Positive Test Results

(a) Handling of Food Handlers with Positive Test Results. If a food handler is found to have a communicable disease covered by the rules and regulations in this part, the Division shall establish a treatment regimen for the food handler to the extent treatment is available within the CNMI. The Division shall prepare a written advisory to the employer instructing that such food handler be immediately prevented from any activity involving the preparation, handling, cooking, or serving of food and beverages until the Division has determined that the food handler has been cured and issued a food handler certificate. If said food handler is terminated from employment, the Division shall bare* no responsibility for the financial costs or liability for the termination. The Division shall handle positive test results as follows:

*So in original.

(1) Pathogenic Bacteria. Food handlers found to have pathogenic bacteria, including salmonella, shigella, yersinia, campylobacter, and vibrio in the stool shall be required to comply with the Division's recommendation for treating and eradicating such pathogens. The food handler must show proof of eradication of carriage of stool pathogens by means of subsequent stool culture after treatment before the Division issues a food handler certificate.

(2) Stool Parasites. Food handlers found to have stool parasites, including ameba, giardia, round worms, tapeworms, or any other intestinal parasite, shall be required to comply with the Division's recommendation for treating and eradicating such parasites. The food handler must show proof of eradication of carriage of parasites by means of subsequent stool culture after treatment before the Division issues a food handler certificate.

(3) Tuberculosis. Food handlers found to have active tuberculosis shall be required to comply with the Center for Tuberculosis and Lung Disease protocol for treating active tuberculosis. Food handlers who have an abnormal chest radiograph suspicious of tuberculosis shall be referred to the Center for Tuberculosis and Lung Disease for further evaluation and treatment as needed. The food handler shall be required to cooperate with any tuberculosis therapy prescribed by the Center for Tuberculosis and Lung Disease. The employer of any food handler diagnosed with active tuberculosis shall be notified.

(b) Procedure When Infection Is Suspected. When the Secretary has probable cause to suspect disease transmission by a food handler, the Secretary may require a medical history, physical examination, and any necessary screening tests required to determine whether the suspected food handler has a communicable disease. If the food handler is confirmed to have a communicable disease, the Secretary may require any or all of the following measures:

(1) Restriction of the food handler's services to an area of the establishment where there would be no danger of him or her transmitting the disease;

(2) Physical examinations and health screening tests of other employees working in the same establishment as the food handler;

(3) The immediate exclusion of the food handler from employment until such time that the food handler is considered non-communicable;

(4) The immediate closing of the place of employment concerned until, in the opinion of the Secretary, no further danger of disease outbreak exists;

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(5) Confinement of the food handler in the Commonwealth Health Center or the food handler's is considered noncommunicable.*

(6) If applicable, referrals of the food handler to the Department of Labor and Immigration for immediate deportation back to his or her country of origin.

*So in original; see the commission comment to this section.

Modified, 1 CMC § 3806(d), (f), (g).

History: Amdts Adopted 24 Com. Reg. 19033 (Feb. 28, 2002); Amdts Proposed 23 Com. Reg. 18359 (Sept. 24, 2001); Adopted 21 Com. Reg. 16446 (Jan. 18, 1999); Proposed 20 Com. Reg. 16163 (Oct. 15, 1998).

Commission Comment: The 2002 amendments amended subsection (b)(5). The change to subsection (b)(5) appears to be an error. Compare 20 Com. Reg. at 16181 (Oct. 15, 1998) ("Confinement of the food handler in the Commonwealth Health Center or the food handler's place of residence until such time as the food handler is considered non-communicable;") and 23 Com. Reg. at 18378 (Sept. 24, 2001) ("Confinement of the food handler in the Commonwealth Health Center or the food handler's is considered non-communicable.")

Section 702 of the Consolidated Natural Resources Act of 2008 (Pub. L. No. 110-229, codified at 48 U.S.C. § 1806) removed the CNMI's authority to create and manage its own immigration laws. On March 22, 2010, the Governor signed PL 17-1, removing all references to immigration and deportation functions from the Commonwealth Code. To the extent this section conflicts with Pub. L. No. 110-229 or PL 17-1, it is superseded.

In subsection (a), the Commission changed "follow" to "follows" to correct a manifest error.

§ 140-20.3-335 Application of These Rules and Regulations to Food Handlers Currently Working in the CNMI

Upon the effective date of the rules and regulations in this part, all food handlers currently working in the CNMI shall have ninety days to obtain a food handlers certificate in order to be in compliance with the requirements of these rules and regulations. The clinic shall be required to bring the physical examination and/or screening results to the Division. The food handler shall provide documentation of completion of the food handler education seminar to the Division for entry into the database and for issuance of the food handler certificate.

Modified, 1 CMC § 3806(d), (e), (f), (g).

History: Amdts Adopted 24 Com. Reg. 19033 (Feb. 28, 2002); Amdts Proposed 23 Com. Reg. 18359 (Sept. 24, 2001); Adopted 21 Com. Reg. 16446 (Jan. 18, 1999); Proposed 20 Com. Reg. 16163 (Oct. 15, 1998).

§ 140-20.3-340 Penalties for Violation of These Rules and Regulations

(a) Penalties for Food Handlers. Food handlers who are found to be in violation of the rules and regulations in this part shall be reported to the Division and recommended for restriction from food handling activities and shall be subject to the following penalties.

(1) For first time violations, the food handler shall receive a warning letter from the Division setting forth a date of compliance for obtaining a food handlers certificate;

(2) For repeated violations, the food handler shall be subject to a fine of up to \$500.00, as provided in 3 CMC § 2126.

(b) Penalties for Employers. An employer found to be employing a food handler who has not

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been issued a food handlers certificate by the Secretary and is not undergoing treatment at the Division or their physician, or an employer otherwise violating the provisions of these rules and regulations shall be subject to the following penalties:

- (1) For first time violations, the employer shall receive a warning letter from the Division setting a forth a compliance date for obtaining a food handlers certificate for the food handlers who have not obtained physical examination and screening tests;
- (2) For repeat violations, the employer shall be subject to a fine a fine of up to \$500.00 for each food handler who have* a valid food handler certificate and is not undergoing treatment at the Division, as provided in 3 CMC § 2126.

*So in original; see the commission comment to this section.

(c) Penalties for Other Violations. Any person found by the Department to have obtained a food handler certificate by fraudulent means; forged or altered information on a physical examination form or screening test; refused or failed to comply with any order issued by the Secretary or duly authorized representative pursuant to the rules and regulations in this part, or violated these rules and regulations in any other manner, shall be liable for a civil penalty of up to \$1,000.00 for each violation of the rules and regulations in this part.

Modified, 1 CMC § 3806(d), (f), (g).

History: Amdts Adopted 24 Com. Reg. 19033 (Feb. 28, 2002); Amdts Proposed 23 Com. Reg. 18359 (Sept. 24, 2001); Adopted 21 Com. Reg. 16446 (Jan. 18, 1999); Proposed 20 Com. Reg. 16163 (Oct. 15, 1998).

Commission Comment: The 2002 amendments amended the opening paragraph of subsection (b) and subsections (a)(2) and (b)(2).

The starred language in subsection (b)(2) probably should read “who does not have.” Compare 20 Com. Reg. at 16182 (Oct. 15, 1998) and 23 Com. Reg. at 18380 (Sept. 24, 2001).

In subsection (a)(2), the Commission inserted the final period. In the opening paragraph of subsection (b), the Commission changed “regulation” to “regulations” and in subsection (b)(2), the Commission changed “handlers” to “handler” to correct manifest errors.