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Exempt Action Proposed Regulation Agency Background Document

Agency name	Board of Agriculture and Consumer Services
Virginia Administrative Code (VAC) citation(s)	2 VAC 5-490
Regulation title(s)	Regulations Governing Grade "A" Milk
Action title	Amendments to adopt the U.S. Food and Drug Administration's 2017 Pasteurized Milk Ordinance (PMO) by reference and revise state-specific provisions to clarify requirements.
Date this document prepared	May 24, 2019

While a regulatory action may be exempt from executive branch review pursuant to § 2.2-4002 or § 2.2-4006 of the *Code of Virginia*, the agency is still encouraged to provide information to the public on the Regulatory Town Hall using this form. However, the agency may still be required to comply with the Virginia Register Act, Executive Order 14 (as amended, July 16, 2018), the Regulations for Filing and Publishing Agency Regulations (1 VAC7-10), and the *Virginia Register Form, Style, and Procedure Manual for Publication of Virginia Regulations*.

Brief Summary

Please provide a brief summary (preferably no more than 2 or 3 paragraphs) of this regulatory change (i.e., new regulation, amendments to an existing regulation, or repeal of an existing regulation). Alert the reader to all substantive matters. If applicable, generally describe the existing regulation.

2 VAC 5-490, Regulations Governing Grade "A" Milk, details the standards that must be met and the processing requirements necessary for milk to be considered grade A in Virginia. Much of the language in the existing regulation originated from the requirements and guidelines set out in the 2013 Pasteurized Milk Ordinance (PMO), which is promulgated and periodically amended by the U.S. Food and Drug Administration (FDA). The FDA last revised the PMO in 2017, and Virginia's milk-related regulations must reflect the requirements of the most recent edition of the PMO in order for the Virginia dairy industry to ship milk interstate. This regulatory action proposes the adoption of the 2017 PMO by reference, the repeal of text that is duplicative of the language in the PMO, and the revision of state-specific regulatory requirements to ensure clarity among regulants.

The PMO sets guidelines for minimum regulatory standards with which state dairy inspection programs must comply. The formal adoption of the 2017 PMO by reference will bring Virginia in line with most other states. The primary amendments made to the 2013 PMO, on which 2 VAC 5-490 is currently based, that are included in the 2017 PMO are as follows:

- Extension of the time that tankers must be evaluated from 24 months to 24 months plus the remaining days in the month in which the inspection is due (revision made in 2015 PMO and retained in 2017 PMO).
- Clarification provided regarding electronic record keeping on farm bulk tanks (revision made in 2015 PMO and retained in 2017 PMO).
- Additional requirements established and clarification provided regarding the operation of Automatic Milking Installations and their computer systems' verification and functions (revision made in 2015 PMO and retained in 2017 PMO).
- Establishment of a definition for "universal" sample (i.e. any sample taken by any permitted sampler or regulatory personnel) and provisions regarding the evaluation of the collection of a universal sample (revision made in 2017 PMO).
- Clarification provided regarding the term "first use" and how long a tanker can remain washed and empty before being filled with milk again (revision made in 2017 PMO).
- Establishment of requirements for the frequency of taking regulatory milk samples from grade A dairies that operate seasonally, as opposed to year-round (revision made in 2017 PMO).

In addition to the minimum requirements established in the PMO, 2 VAC 5-490 also includes provisions that establish certain additional regulatory requirements. These state-specific provisions address Virginia's regulatory authority over adulterated or misbranded milk or milk products, permits, labeling requirements, standards, milk or milk products that may be sold, construction plans for dairy farms and milk plants, personnel health, the voluntary Hazard Analysis and Critical Control Point (HACCP) program, and interpretation and enforcement. The proposed amendments to such state-specific provisions are intended to clarify these requirements, ensure consistency, and eliminate duplicative language and are as follows:

- The addition of a definition for "summarily suspend" to clarify the enforcement process.
- The addition of language to clarify when producers that operate multiple milking herds or operate milking herds at separate locations must obtain multiple grade A permits.
- The addition of language establishing the agency's ability to administratively cancel any permit that has been under voluntary suspension for more than 24 months in order to ensure the accuracy of the list of Virginia dairy farms.
- The addition of a specific date by which dairy plants must submit all results of tests on samples of raw milk so that VDACS can submit required reports to the FDA in a timely manner.
- The elimination of the requirement to cool milk to 40 degrees within two hours of milking, to be replaced with the addition of the requirement that milk be cooled to 45 degrees within two hours, which is to create consistency with the 2017 PMO.
- The addition of language to clarify the existing requirement that all bulk tanks shall be equipped with a temperature recording device.

Mandate and Impetus

Please identify the mandate for this regulatory change, and any other impetus that specifically prompted its initiation (e.g., new or modified mandate, internal staff review, petition for rulemaking, periodic review, board decision, etc.). "Mandate" is defined as "a directive from the General Assembly, the federal government, or a court that requires that a regulation be promulgated, amended, or repealed in whole or part."

There is no mandate for the proposed regulatory change. The current regulation is based on the provisions of the 2013 PMO, and FDA last revised the PMO in 2017. Virginia's milk-related regulations

must reflect the requirements of the most recent edition of the PMO in order for the Virginia dairy industry to ship milk interstate. As such, the proposed amendments adopt by reference the 2017 PMO.

**Periodic Review
Small Business Impact Review Announcement**

This agency background document is not being used to announce a periodic review or a small business impact review.