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## Exempt Action Final Regulation Agency Background Document

<b>Agency name</b>	Board of Agriculture and Consumer Services
<b>Virginia Administrative Code (VAC) citation(s)</b>	2 VAC 5-490
<b>Regulation title(s)</b>	Regulations Governing Grade "A" Milk
<b>Action title</b>	Amendments to reflect the changes in the federal 2013 Grade "A" Pasteurized Milk Ordinance. The new regulations will assist the Commonwealth's Dairy Services program in providing optimal public health protection.
<b>Final agency action date</b>	December 11, 2014
<b>Date this document prepared</b>	December 28, 2014

When a regulatory action is exempt from executive branch review pursuant to § 2.2-4002 or § 2.2-4006 of the Virginia Administrative Process Act (APA) or an agency's basic statute, the agency is not required, however, is encouraged to provide information to the public on the Regulatory Town Hall using this form. Note: While posting this form on the Town Hall is optional, the agency must comply with requirements of the Virginia Register Act, Executive Orders 17 (2014) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

### Brief summary

*Please provide a brief summary of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed. Alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation.*

"Regulations Governing Grade "A" Milk", 2 VAC 5-490 *et seq.*, is being updated to reflect the changes in the federal *Grade "A" Pasteurized Milk Ordinance (PMO), 2013 Revision*. Virginia's regulation must remain current with and reflect the requirements of the PMO in order for the dairy industry to ship milk interstate. "Regulations Governing Grade "A" Milk" contains the framework necessary to regulate Grade "A" milk and milk products. The regulation ensures that milk is obtained from safe sources and is processed in a manner that will ensure that illness-causing bacteria are not consumed by the citizens of

the Commonwealth. The regulation addresses important issues such as adulterated or misbranded milk or milk products, permits, the authority to impound milk and milk products, written warning and suspension notices for violations of certain milk standards, personnel health, and animal health.

The proposed amendments include the following significant regulatory modifications:

- The addition of definitions to address new developments in the industry, including a definition for "aseptic processing and packaging systems", a definition for "clean in place", a definition for "contaminated milk", and a definition for "food allergen".
- The elimination of the requirement for official cryoscope (added water) testing in milk. Since this testing is already performed by the dairy cooperatives as well as the fluid milk processing plants, the agency determined that the testing was redundant, was not the best use of taxpayer money, and was an additional burden on the industry. Additionally, this test is not included in nor is it required to be in conformance with the 2013 PMO.
- The elimination of regulatory action requirements (warnings, suspension, and reinstatement) for volatile cryoscope results. Cryoscope testing will no longer be required.
- The addition of minimum frequencies for inspections of dairy farms, milk tank trucks, and milk hauler/samplers. This amendment is proposed in order to reflect current PMO requirements and to ensure the safety of milk products on dairy farms by frequent monitoring of those farms by Dairy Inspectors.
- The addition of a section requiring that all tests for pasteurized milk and milk products requiring sampling and testing be performed only when there are test methods available that are validated by the Food and Drug Administration and accepted by the National Conference on Interstate Milk Shipments. This addition reflects current changes/requirements in the 2013 PMO.
- The addition of requirements for screening or testing of raw milk transported in containers other than bulk milk tankers (i.e. milk cans). This reflects changes in the industry regarding bulk milk containers.
- The addition of information regarding the processing requirements for heat treated cream. Cream is under the jurisdiction of the Virginia Department of Agriculture and Consumer Services and the additional requirements reflect the requirements in the 2013 PMO. The requirements help to ensure safe dairy products.
- The addition of Grade "A" pasteurized condensed standards for temperature and coliform to the Grade "A" milk and milk products standards section to reflect the requirements of the 2013 PMO.
- The elimination of certain standards applying to nonfat dry milk. These standards are quality based and not dairy safety related. These standards have been removed from the 2013 PMO.
- The addition of provisions authorizing the utilization of electronic temperature recording charts on dairy farm bulk tanks. This reflects changes in the industry as well as the 2013 PMO. This will allow the industry to legally utilize electronic temperature monitoring systems.
- The addition of provisions relating to temperature requirements for "milk product flavoring slurries" and cultured cottage cheese. This will enable the Dairy Program to provide specific temperature requirements for these products and processes and will further ensure the safety of the milk supply.

- The incorporation by reference of Appendices H and S from the 2013 PMO into the regulation. Appendix H relates to regulatory requirements at the dairy farm level (temperature, etc.) and Appendix S addresses aseptic processing requirements at the Grade “A” fluid milk processing plant. These additions provide a more inclusive regulatory framework at both the dairy farm and the fluid milk plant level and reflect requirements of the 2013 PMO.
- The addition of provisions allowing for the use of hand drying devices. Previously, only sanitary towels were approved to dry hands. This language will allow additional flexibility for the dairy industry.
- The addition of certain requirements relating to block-bleed-block or mix proof valves for Automatic Milking Installations. This is to ensure that these machines have proper valves. This will further ensure that the milk supply remains safe. This reflects the requirements of the 2013 PMO.

Following the required public comment period, the only additional amendments made to the regulation added to the Forms list the forms that are currently used to administer the regulation and corrected the Official Methods of Analysis of AOAC International listing in the Documents Incorporated by Reference list.

Statutory Authority and Exemption from Administrative Process Act

The Board of Agriculture and Consumer Services is authorized by § 3.2-5206 of the Code of Virginia to establish definitions and standards of quality and identity and to adopt and enforce regulations dealing with the issuance of permits, production, importation, processing, grading, labeling, and sanitary standards for milk, milk products, and those products manufactured or sold in semblance to or as substitutes for milk or milk products. Any regulation adopted pursuant to § 3.2-5206 shall, unless a later effective date is specified in the regulation, be effective upon filing with the Registrar of Regulations, who shall publish the regulation as a final regulation in the Virginia Register of Regulations. Neither the provisions of the Administrative Process Act (Va Code § 2.2-4000 *et seq.*) nor public participation guidelines adopted pursuant thereto shall apply to the adoption of any regulation pursuant to § 3.2-5206. Prior to promulgating any regulation pursuant to § 3.2-5206, the Board shall publish a notice of opportunity to comment in the Virginia Register of Regulations. The notice of opportunity to comment shall be made at least 90 days in advance of the last date prescribed in the notice for submittals of public comment. The legislative review provisions of § 2.2-4014 shall apply to the promulgation or final adoption process of regulations under section § 3.2-5206. The Board shall consider and keep on file all public comments received for any regulation adopted pursuant to § 3.2-5206.

The required public comment period began on August 11, 2014, and ended on November 9, 2014.

Commenter	Comment	Agency response
Virginia Agribusiness Council: Brad Copenhaver, Director of Government Affairs	Supports proposed revisions to the regulation to keep Virginia in compliance with the federal milk ordinance and to preserve the dairy industry's ability to ship milk interstate.	Agency is in support of this comment.
Virginia State Dairyman's Association: Eric Paulson, Executive Secretary	Supports proposed amendments to ensure that state regulations remain consistent with Federal Milk Ordinance. Board voted unanimously to support revisions to ensure dairy farmer's access to milk markets.	Agency is in support of this comment.

### Statement of final agency action

*Please provide a statement of the final action taken by the agency including: 1) the date the action was taken; 2) the name of the agency taking the action; and 3) the title of the regulation.*

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The Board of Agriculture and Consumer Services adopted the amendments to 2 VAC 5 - 490 *et seq.*, Regulations Governing Grade “A” Milk, as final on December 11, 2014.

### Family impact

*Please assess the impact of this regulatory action on the institution of the family and family stability including to what extent the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one’s spouse, and one’s children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.*

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The proposed regulatory modifications are science-based and provide guidance and manageable, enforceable provisions for mitigating dairy-related risk factors known to cause foodborne illness. It is a goal of all government food safety agencies within the United States to reduce the occurrence of foodborne illness and ensure that foods available to consumers are safe to consume. Ensuring the safety of the dairy products and reducing the level of foodborne illness have direct impacts on the family and family stability by positively affecting a family’s disposable income, improving family health, reducing medical care costs, reducing absences from the work place, and reducing mental, physical, and emotional pain and suffering.

### Periodic review/small business impact review report of findings

*This section may be used to report the results of a periodic review/small business impact review. Otherwise, delete this section.*

*Please (1) summarize all comments received during the public comment period following the publication of the Notice of Periodic Review and (2) indicate whether the regulation meets the criteria set out in Executive Order 17 (2014), e.g., is necessary for the protection of public health, safety, and welfare, and is clearly written and easily understandable. In addition, as required by 2.2-4007.1 E and F, please include a discussion of the agency’s consideration of: (1) the continued need for the regulation; (2) the nature of complaints or comments received concerning the regulation from the public; (3) the complexity of the regulation; (4) the extent to which the regulation overlaps, duplicates, or conflicts with federal or state law or regulation; and (5) the length of time since the regulation has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the regulation.*

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This regulatory action was not the result of a periodic review. Below, please find the analysis required by Va Code § 2.2-4007.1 E and F.

The agency has determined that this regulation is necessary for the protection of public health, safety and welfare and is clearly written and understandable.

Va Code § 2.2-4007.1 E and F:

(1) There is a continued need for this regulation in order to comply with the federal milk standards and the National Conference on Interstate Milk Shippers (NCIMS). Compliance is required to permit dairy farmers to sell milk to interstate markets and dairy processors to sell finished product Grade "A" fluid milk and dairy products into interstate commerce.

(2) No negative comments pertaining to the revisions were received from the public.

(3) The regulation is detailed but is easily understandable and is closely aligned with the federal Pasteurized Milk Ordinance. The Pasteurized Milk Ordinance is a model federal document that is intended to be adopted as regulations by all states.

(4) The regulation does not overlap, duplicate, or conflict with federal or state law or regulations.

(5) The regulation was last amended on December 10, 2010. Although there have been some technology enhancements within the dairy industry since that time, these developments have not changed the basic nature of the industry. Technological developments that have occurred within the industry are addressed by these regulations.