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Exempt Action: Proposed Regulation
Agency Background Document

Agency name	Board of Agriculture and Consumer Services
Virginia Administrative Code (VAC) Chapter citation(s)	2 VAC 5-490
VAC Chapter title(s)	Regulations Governing Grade "A" Milk
Action title	Amendments to adopt the U.S. Food and Drug Administration's 2023 Pasteurized Milk Ordinance by reference and revise state-specific provisions to clarify requirements.
Date this document prepared	December 12, 2025

This information is required for executive branch review pursuant to Executive Order 19 (2022) (EO 19), any instructions or procedures issued by the Office of Regulatory Management (ORM) or the Department of Planning and Budget (DPB) pursuant to EO 19. In addition, this information is required by the Virginia Registrar of Regulations pursuant to the Virginia Register Act (§ 2.2-4100 et seq. of the Code of Virginia). Regulations must conform to the Regulations for Filing and Publishing Agency Regulations (1 VAC 7-10), and the *Form and Style Requirements for the Virginia Register of Regulations and Virginia Administrative Code.*

Brief Summary

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.

Regulations Governing Grade "A" Milk (2 VAC 5-490) details the standards that must be met and the processing requirements necessary for milk to be considered grade "A" in Virginia. The current regulation reflects the requirements and guidelines set out in the 2017 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 2023, 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 2023 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 2023 PMO by reference will bring Virginia in line with most other states. The primary amendments to the PMO that the FDA has adopted since the 2017 PMO that will be incorporated into 2 VAC 5-490 through this regulatory action's adoption by reference of the 2023 PMO, are as follows:

- Allowing for the use of new technology by establishing requirements and clarification to allow for on-tanker farm bulk tank aseptic milk sampling devices (revision made in 2019 PMO and retained in 2023 PMO).
- Clarifying and streamlining the protocols regarding the testing for antibiotic residues in the milk supply and the disposition of loads found to be positive for residues (revision made in 2023 PMO).
- Establishing and clarifying that the operation of Automatic Milking Installations (robotic milking systems) and their computer systems' verification and functions should be evaluated no differently than any other type of conventional milking system (revision made in 2019 PMO and retained in 2023 PMO).
- Providing clarification for the use and validation of ultraviolet (UV) treatment to disinfect water used in dairy plants to reflect the most recent science and standards regarding its application (revision made in 2023 PMO).
- Allowing for the production of high-acid, shelf stable products (i.e., dairy protein beverages and certain types of yogurts) to be processed under the provisions of the PMO, as requested by industry processors, by establishing requirements and clarifications (revision made in 2019 PMO and retained in 2023 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 the agency'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, and interpretation and enforcement. The proposed amendments to these state-specific provisions in this action are intended to clarify these requirements, ensure consistency, and eliminate language that is duplicative of the PMO. These changes are as follows:

- Combining two sections regarding impounding of dairy products into one section (amend 2 VAC 5-490-25 and repeal 2 VAC 5-490-32)
- Updating the definition of "state regulatory agency" in order to remain consistent with other dairy related regulations (amend 2 VAC 5-490-10).
- Eliminating regulations regarding voluntary HACCP (Hazard Analysis Critical Control Point) programs (repeal 2 VAC 5-490-131 and 2 VAC 5-490-132).
- Eliminating parts of regulations that pertain to signatures and where they should be placed on certain documents (amend 2 VAC 5-490-30).
- Eliminating duplicative text that is already present within the 2017 or 2023 PMO (amend 2 VAC 5-490-40).

Mandate and Impetus

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, or board decision). For purposes of executive branch review, "mandate" has the same meaning as defined in the ORM procedures, "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."

The impetus for this regulatory change is the FDA's promulgation of the latest version of the PMO in 2023. The current regulation is based on the provisions of the 2017 PMO. and the proposed amendments adopt by reference the 2023 PMO.

The FDA audits state regulatory programs on a regular basis regarding the effectiveness of their enforcement and established policies and procedures. The FDA uses the PMO as a standard during its evaluation. If a state has not adopted the PMO, or regulations similar to the PMO, it will not be able to achieve conformity with the audit. Failure to pass the audit could have serious consequences for both the regulatory program, the Virginia dairy industry, and the industry's ability to ship milk interstate.