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Periodic Review and Small Business Impact Review Report of Findings

Agency name	Board of Agriculture and Consumer Services
Virginia Administrative Code (VAC) Chapter citation(s)	2 VAC 5-501
VAC Chapter title(s)	Regulations Governing the Cooling, Storing, Sampling and Transporting of Milk
Date this document prepared	September 14, 2020

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Order 14 (as amended, July 16, 2018), the Regulations for Filing and Publishing Agency Regulations (1VAC7-10), and the *Form and Style Requirements for the Virginia Register of Regulations and Virginia Administrative Code*.

Acronyms and Definitions

Define all acronyms used in this Report, and any technical terms that are not also defined in the "Definitions" section of the regulation.

"Milk" means the whole, fresh, clean lacteal secretion obtained by the complete milking of one or more healthy cows, goats, sheep, water buffalo, or other mammal (except humans) intended for human consumption excluding that obtained before and after birthing, for such a period as may be necessary to render the milk practically colostrum free.

"PMO" means the Grade "A" Pasteurized Milk Ordinance, 2017 Revision. This is a federal ordinance defining milk and milk products and pasteurization; regulating the inspection of dairy farms and milk plants; and the examination, labeling, pasteurization, distribution and sale of milk and milk products. The PMO provides requirements for dairy farms and milk plants.

"VDACS" means the Virginia Department of Agriculture and Consumer Services.

Legal Basis

Identify (1) the promulgating agency, and (2) the state and/or federal legal authority for the regulatory change, including the most relevant citations to the Code of Virginia or Acts of Assembly chapter number(s), if applicable. Your citation must include a specific provision, if any, authorizing the promulgating agency to regulate this specific subject or program, as well as a reference to the agency's overall regulatory authority.

Section 3.2-109 of the Code of Virginia (Code) establishes the Board of Agriculture and Consumer Services (Board) as a policy board with the authority to adopt regulations in accordance with the provisions of Title 3.2 of the Code.

Section 3.2-5206 of the Code authorizes the Board 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, market milk, market milk products, and those products manufactured or sold in semblance to or as substitutes for milk, milk products, market milk, or market milk products.

Section 3.5-5206 of the Code also authorizes the Board to adopt (i) any regulation or part thereof under federal law that pertains to milk or milk products, amending the federal regulation as necessary for intrastate application and (ii) any model ordinance or regulation issued under federal law, including the PMO and the U.S. Department of Agriculture's Milk for Manufacturing Purposes.

Alternatives to Regulation

Describe any viable alternatives for achieving the purpose of the regulation that were considered as part of the periodic review. Include an explanation of why such alternatives were rejected and why this regulation is the least burdensome alternative available for achieving its purpose.

The agency has determined that no viable alternatives exist to achieve the purpose of this regulation. This regulation is based on the PMO, a federal ordinance used by the U.S. Department of Health and Human Services and the U.S. Food and Drug Administration (FDA) to ensure the safety and wholesomeness of milk and milk products for human consumption. The regulation is continually updated to conform to FDA requirements.

The regulation was most recently amended, effective September 4, 2020, to adopt the 2017 PMO and update Virginia-specific provisions in order to bring the regulation in line with current federal standards. In addition to providing for consistency with current federal standards and existing Virginia regulations, these amendments will ensure that Virginia maintains its own authority to oversee its state-level regulatory program. This will continue to provide sufficient flexibility for the Virginia dairy industry while continuing to protect the public's health, safety, and welfare by ensuring the safety and wholesomeness of all milk shipped from Virginia dairy farms. The recent amendments will facilitate interstate sales of Virginia milk producers by providing a level playing field with surrounding states in regards to the storage and transportation of milk.

Public Comment

Summarize all comments received during the public comment period following the publication of the Notice of Periodic Review, and provide the agency response. Be sure to include all comments submitted:

including those received on Town Hall, in a public hearing, or submitted directly to the agency. Indicate if an informal advisory group was formed for purposes of assisting in the periodic review.

The agency did not receive any comments during the public comment period following the publication of the Notice of Periodic Review on April 27, 2020. An informal advisory group was not formed for the purpose of assisting in the periodic review.

Effectiveness

Pursuant to § 2.2-4017 of the Code of Virginia, indicate whether the regulation meets the criteria set out in Executive Order 14 (as amended, July 16, 2018), including why the regulation is (a) necessary for the protection of public health, safety, and welfare, and (b) is clearly written and easily understandable.

This regulation is necessary to ensure the safety and wholesomeness of milk and milk products for human consumption, which protects the public health, safety, and welfare. The regulation is clearly written and easily understandable.

Decision

Explain the basis for the promulgating agency's decision (retain the regulation as is without making changes, amend the regulation, or repeal the regulation).

The agency recommends that this regulation be retained without changes.

Small Business Impact

As required by § 2.2-4007.1 E and F of the Code of Virginia, discuss the agency's consideration of: (1) the continued need for the regulation; (2) the nature of complaints or comments received concerning the regulation; (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. Also, discuss why the agency's decision, consistent with applicable law, will minimize the economic impact of regulations on small businesses.

(1) The regulation, continues to be needed because provides important safeguards to ensure the safe manufacture and distribution of milk and milk products in the Commonwealth.

(2) The agency has not received any comments or complaints about the regulations from the public.

(3) The regulations are clearly written and not unnecessarily complex and allow for the safe manufacture of various forms of milk and milk products

(4) There is minimal overlap with existing related state regulations and statutes. The minimal overlap occurs because the regulations and statutes all address various types of dairy products (i.e. many manufactured milk products addressed in 2 VAC 5-531 and Grade "A" milk, which is addressed in 2-VAC 5-490, are both required to be sampled and transported by a hauler/sampler who has been issued a permit through VDACS). However, the regulation is necessary to appropriately ensure the safety of milk and milk products. There is no significant duplication or overlap relative to existing federal statutes and regulations, as the regulation is based heavily on the PMO.

5) The regulation is continually evaluated at a programmatic level to ensure that it is adequate to address issues and concerns within the dairy industry. Although certain portions of the industry have evolved, the regulations are still current and relevant, and help to ensure the safe production of milk and milk products.

Since the agency is electing to retain its current regulation, there will be no impact on small businesses.

