



Exempt Action Final Regulation Agency Background Document

Agency name	Virginia Department of Agriculture and Consumer Services
Virginia Administrative Code (VAC) citation	2 VAC 5 - 490
Regulation title	Regulations Governing Grade "A" Milk
Action title	Amend 2 VAC 5 – 490 to adopt the requirements contained in the 2009 Pasteurized Milk Ordinance (PMO)
Final agency action date	December 6, 2010
Document preparation date	December 1, 2010

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), the agency 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 14 (2010) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Summary

Please provide a brief summary of all regulatory changes, including the rationale behind such changes. Alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation.

Description

The final regulation adopts the requirements contained in the 2009 Pasteurized Milk Ordinance (PMO). The PMO is a federal model regulation for adoption by the states governing the production, processing, distribution and sale of milk and milk products in the United States.

There are just two changes between the proposed regulation and the final regulation. The first change involves adopting by reference the 2009 version of "Evaluation of Milk Laboratories" published by the Food and Drug Administration Laboratory Quality Assurance Team, HFH-450, 6502 South Archer Road, Summit-Argo, Illinois 60501 rather than the 2007 version referenced under the proposed regulation. The second change involves correcting a typographical error to make the last sentence in section 2VAC5-490-35 D read correctly.

The final regulation continues existing regulations governing: (1) the requirements to produce and sell Grade “A” milk for pasteurization; the requirements to process and sell fluid milk products (milk, yogurt, and cottage cheese); (2) that milk used for Grade “A” purposes be pasteurized; (3) the requirement for a permit to produce or process Grade “A” milk; and (4) minimum standards that dairy farms and dairy plants must meet in producing and processing Grade “A” milk, including pasteurization, cooling, storage, quality-control tests, packaging, and labeling requirements.

The most important change concerns the definition of “grade “A” milk product” because this definition determines which milk products will fall under the grade “A” regulation. For the first time the definition establishes a clear line between those milk products that will be regulated as grade “A” and those that will not. The new definition establishes that grade “A” milk products must be composed of at least 65% by weight milk and milk products and contain at least 2% milk protein. This definition will cause some cultured milk products currently produced in non-grade “A” plants in Virginia and other states to fall under the grade “A” regulations once they are adopted. The proposed regulation includes an exemption for Virginia processors currently making these cultured milk products to continue to do so after the regulation goes into effect. The exemption will allow these Virginia processors to market their cultured milk products in Virginia, but the cultured milk products will still be considered in violation if found in interstate channels.

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 (1950), as amended to establish definitions, 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 (§ 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 contain (i) a summary of the proposed regulation; (ii) instructions on how to obtain the complete text of the proposed regulation; and (iii) the name, address, and telephone number of the agency contact person responsible for receiving public comments. The notice of opportunity to comment shall be made at least ninety 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.

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.

The Board of Agriculture and Consumer Services adopted final regulation 2 VAC 5 – 490, Regulations Governing Grade “A” Milk on December 6, 2010.

Family impact

Assess the impact of this regulatory action on the institution of the family and family stability.

The final regulation has no impact on the institution of the family or on family stability.