



VIRGINIA

REGISTER OF REGULATIONS

VOL. 36 ISS. 14

PUBLISHED EVERY OTHER WEEK BY THE VIRGINIA CODE COMMISSION

MARCH 2, 2020

TABLE OF CONTENTS

| | |
|---|------|
| Register Information Page | 1969 |
| Publication Schedule and Deadlines | 1970 |
| Petitions for Rulemaking | 1971 |
| Periodic Reviews and Small Business Impact Reviews | 1972 |
| Regulations | 1974 |
| 2VAC5-490. Regulations Governing Grade "A" Milk (Final)..... | 1974 |
| 12VAC30-70. Methods and Standards for Establishing Payment Rates - Inpatient Hospital Services (Notice of Extension of Emergency Regulation)..... | 2016 |
| 12VAC30-80. Methods and Standards for Establishing Payment Rates; Other Types of Care (Notice of Extension of Emergency Regulation)..... | 2016 |
| 12VAC30-160. Hospital Assessment (Notice of Extension of Emergency Regulation)..... | 2016 |
| 12VAC35-105. Rules and Regulations for Licensing Providers by the Department of Behavioral Health and Developmental Services (Notice of Extension of Emergency Regulation) | 2017 |
| 18VAC48-30. Condominium Regulations (Forms) | 2017 |
| 20VAC5-315. Regulations Governing Net Energy Metering (Final) | 2018 |
| Governor | 2028 |
| Guidance Documents | 2029 |
| General Notices/Errata | 2034 |

Virginia Code Commission

<http://register.dls.virginia.gov>

THE VIRGINIA REGISTER OF REGULATIONS (USPS 001-831) is published biweekly for \$263.00 per year by Matthew Bender & Company, Inc., 3 Lear Jet Lane, Suite 102, P.O. Box 1710, Latham, NY 12110. Periodical postage is paid at Easton, MD and at additional mailing offices. POSTMASTER: Send address changes to The Virginia Register of Regulations, 4810 Williamsburg Road, Unit 2, Hurlock, MD 21643.

VIRGINIA REGISTER INFORMATION PAGE

THE VIRGINIA REGISTER OF REGULATIONS is an official state publication issued every other week throughout the year. Indexes are published quarterly, and are cumulative for the year. The *Virginia Register* has several functions. The new and amended sections of regulations, both as proposed and as finally adopted, are required by law to be published in the *Virginia Register*. In addition, the *Virginia Register* is a source of other information about state government, including petitions for rulemaking, emergency regulations, executive orders issued by the Governor, and notices of public hearings on regulations.

ADOPTION, AMENDMENT, AND REPEAL OF REGULATIONS

An agency wishing to adopt, amend, or repeal regulations must first publish in the *Virginia Register* a notice of intended regulatory action; a basis, purpose, substance and issues statement; an economic impact analysis prepared by the Department of Planning and Budget; the agency's response to the economic impact analysis; a summary; a notice giving the public an opportunity to comment on the proposal; and the text of the proposed regulation.

Following publication of the proposal in the *Virginia Register*, the promulgating agency receives public comments for a minimum of 60 days. The Governor reviews the proposed regulation to determine if it is necessary to protect the public health, safety and welfare, and if it is clearly written and easily understandable. If the Governor chooses to comment on the proposed regulation, his comments must be transmitted to the agency and the Registrar no later than 15 days following the completion of the 60-day public comment period. The Governor's comments, if any, will be published in the *Virginia Register*. Not less than 15 days following the completion of the 60-day public comment period, the agency may adopt the proposed regulation.

The Joint Commission on Administrative Rules (JCAR) or the appropriate standing committee of each house of the General Assembly may meet during the promulgation or final adoption process and file an objection with the Registrar and the promulgating agency. The objection will be published in the *Virginia Register*. Within 21 days after receipt by the agency of a legislative objection, the agency shall file a response with the Registrar, the objecting legislative body, and the Governor.

When final action is taken, the agency again publishes the text of the regulation as adopted, highlighting all changes made to the proposed regulation and explaining any substantial changes made since publication of the proposal. A 30-day final adoption period begins upon final publication in the *Virginia Register*.

The Governor may review the final regulation during this time and, if he objects, forward his objection to the Registrar and the agency. In addition to or in lieu of filing a formal objection, the Governor may suspend the effective date of a portion or all of a regulation until the end of the next regular General Assembly session by issuing a directive signed by a majority of the members of the appropriate legislative body and the Governor. The Governor's objection or suspension of the regulation, or both, will be published in the *Virginia Register*. If the Governor finds that changes made to the proposed regulation have substantial impact, he may require the agency to provide an additional 30-day public comment period on the changes. Notice of the additional public comment period required by the Governor will be published in the *Virginia Register*.

The agency shall suspend the regulatory process for 30 days when it receives requests from 25 or more individuals to solicit additional public comment, unless the agency determines that the changes have minor or inconsequential impact.

A regulation becomes effective at the conclusion of the 30-day final adoption period, or at any other later date specified by the promulgating agency, unless (i) a legislative objection has been filed, in which event the regulation, unless withdrawn, becomes effective on the date specified, which shall be after the expiration of the 21-day objection period; (ii) the Governor exercises his authority to require the agency to provide for additional public comment, in which event the regulation,

unless withdrawn, becomes effective on the date specified, which shall be after the expiration of the period for which the Governor has provided for additional public comment; (iii) the Governor and the General Assembly exercise their authority to suspend the effective date of a regulation until the end of the next regular legislative session; or (iv) the agency suspends the regulatory process, in which event the regulation, unless withdrawn, becomes effective on the date specified, which shall be after the expiration of the 30-day public comment period and no earlier than 15 days from publication of the readopted action.

A regulatory action may be withdrawn by the promulgating agency at any time before the regulation becomes final.

FAST-TRACK RULEMAKING PROCESS

Section 2.2-4012.1 of the Code of Virginia provides an exemption from certain provisions of the Administrative Process Act for agency regulations deemed by the Governor to be noncontroversial. To use this process, Governor's concurrence is required and advance notice must be provided to certain legislative committees. Fast-track regulations will become effective on the date noted in the regulatory action if no objections to using the process are filed in accordance with § 2.2-4012.1.

EMERGENCY REGULATIONS

Pursuant to § 2.2-4011 of the Code of Virginia, an agency, upon consultation with the Attorney General, and at the discretion of the Governor, may adopt emergency regulations that are necessitated by an emergency situation. An agency may also adopt an emergency regulation when Virginia statutory law or the appropriation act or federal law or federal regulation requires that a regulation be effective in 280 days or less from its enactment. The emergency regulation becomes operative upon its adoption and filing with the Registrar of Regulations, unless a later date is specified. Emergency regulations are limited to no more than 18 months in duration; however, may be extended for six months under certain circumstances as provided for in § 2.2-4011 D. Emergency regulations are published as soon as possible in the *Register*. During the time the emergency status is in effect, the agency may proceed with the adoption of permanent regulations through the usual procedures. To begin promulgating the replacement regulation, the agency must (i) file the Notice of Intended Regulatory Action with the Registrar within 60 days of the effective date of the emergency regulation and (ii) file the proposed regulation with the Registrar within 180 days of the effective date of the emergency regulation. If the agency chooses not to adopt the regulations, the emergency status ends when the prescribed time limit expires.

STATEMENT

The foregoing constitutes a generalized statement of the procedures to be followed. For specific statutory language, it is suggested that Article 2 (§ 2.2-4006 et seq.) of Chapter 40 of Title 2.2 of the Code of Virginia be examined carefully.

CITATION TO THE VIRGINIA REGISTER

The *Virginia Register* is cited by volume, issue, page number, and date. **34:8 VA.R. 763-832 December 11, 2017**, refers to Volume 34, Issue 8, pages 763 through 832 of the *Virginia Register* issued on December 11, 2017.

The Virginia Register of Regulations is published pursuant to Article 6 (§ 2.2-4031 et seq.) of Chapter 40 of Title 2.2 of the Code of Virginia.

Members of the Virginia Code Commission: **John S. Edwards**, Chair; **James A. "Jay" Leftwich**, Vice Chair; **Ryan T. McDougle**; **Nicole Cheuk**; **Rita Davis**; **Leslie L. Lilley**; **Thomas M. Moncure, Jr.**; **Christopher R. Nolen**; **Charles S. Sharp**; **Samuel T. Towell**; **Malfourd W. Trumbo**.

Staff of the Virginia Register: **Karen Perrine**, Registrar of Regulations; **Anne Bloomsburg**, Assistant Registrar; **Nikki Clemons**, Regulations Analyst; **Rhonda Dyer**, Publications Assistant; **Terri Edwards**, Senior Operations Staff Assistant.

PUBLICATION SCHEDULE AND DEADLINES

This schedule is available on the Virginia Register of Regulations website (<http://register.dls.virginia.gov>).

March 2020 through May 2021

| <u>Volume: Issue</u> | <u>Material Submitted By Noon*</u> | <u>Will Be Published On</u> |
|----------------------|-------------------------------------|-----------------------------|
| 36:16 | March 11, 2020 | March 30, 2020 |
| 36:17 | March 25, 2020 | April 13, 2020 |
| 36:18 | April 8, 2020 | April 27, 2020 |
| 36:19 | April 22, 2020 | May 11, 2020 |
| 36:20 | May 4, 2020 (Monday) | May 25, 2020 |
| 36:21 | May 20, 2020 | June 8, 2020 |
| 36:22 | June 3, 2020 | June 22, 2020 |
| 36:23 | June 17, 2020 | July 6, 2020 |
| 36:24 | July 1, 2020 | July 20, 2020 |
| 36:25 | July 15, 2020 | August 3, 2020 |
| 36:26 | July 29, 2020 | August 17, 2020 |
| 37:1 | August 12, 2020 | August 31, 2020 |
| 37:2 | August 26, 2020 | September 14, 2020 |
| 37:3 | September 9, 2020 | September 28, 2020 |
| 37:4 | September 23, 2020 | October 12, 2020 |
| 37:5 | October 7, 2020 | October 26, 2020 |
| 37:6 | October 21, 2020 | November 9, 2020 |
| 37:7 | November 4, 2020 | November 23, 2020 |
| 37:8 | November 16, 2020 (Monday) | December 7, 2020 |
| 37:9 | December 2, 2020 | December 21, 2020 |
| 37:10 | December 14, 2020 (Monday) | January 4, 2021 |
| 37:11 | December 28, 2020 (Monday) | January 18, 2021 |
| 37:12 | January 13, 2021 | February 1, 2021 |
| 37:13 | January 27, 2021 | February 15, 2021 |
| 37:14 | February 10, 2021 | March 1, 2021 |
| 37:15 | February 24, 2021 | March 15, 2021 |
| 37:16 | March 10, 2021 | March 29, 2021 |
| 37:17 | March 24, 2021 | April 12, 2021 |
| 37:18 | April 7, 2021 | April 26, 2021 |
| 37:19 | April 21, 2021 | May 10, 2021 |

*Filing deadlines are Wednesdays unless otherwise specified.

PETITIONS FOR RULEMAKING

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

BOARD OF COUNSELING

Agency Decision

Title of Regulation: 18VAC115-20. Regulations Governing the Practice of Professional Counseling.

Statutory Authority: § 54.1-2400 of the Code of Virginia.

Name of Petitioner: Robin Usher.

Nature of Petitioner's Request: To accept 1,500 direct or indirect service hours, 50 hours of supervision, and one year from a master's level internship so long as the internship hours were acquired after 30 course hours from a Council for Accreditation of Counseling and Related Educational Programs accredited counseling program and in not more than three years of study.

Agency Decision: Denied.

Statement of Reason for Decision: At the board's February 7, 2020, meeting, the board decided not to initiate rulemaking based on the request. In doing so, the board was particularly concerned about the reduction in supervisory hours and noted that regulations already allow up to 900 hours of an internship to be counted towards a residency. Therefore, it determined that the current requirement is necessary to ensure competency in counselors serving Virginia clients.

Agency Contact: Jaime Hoyle, Executive Director, Board of Counseling, 9960 Mayland Drive, Suite 300, Richmond, VA 23233, telephone (804) 367-4406, or email jaime.hoyle@dhp.virginia.gov.

V.A.R. Doc. No. R20-17 Filed February 7, 2020, 1:58 p.m.

PERIODIC REVIEWS AND SMALL BUSINESS IMPACT REVIEWS

TITLE 17. LIBRARIES AND CULTURAL RESOURCES

DEPARTMENT OF HISTORIC RESOURCES

Agency Notice

Pursuant to Executive Order 14 (as amended July 16, 2018) and §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the following regulations are undergoing a periodic review: **17VAC10-11, Public Participation Guidelines**, and **17VAC10-30, Historic Rehabilitation Tax Credit**. The review of these regulations will be guided by the principles in Executive Order 14 (as amended July 16, 2018).

The purpose of this review is to determine whether these regulations should be repealed, amended, or retained in their current forms. Public comment is sought on the review of any issue relating to these regulations, including whether each regulation (i) is necessary for the protection of public health, safety, and welfare or for the economical performance of important governmental functions; (ii) minimizes the economic impact on small businesses in a manner consistent with the stated objectives of applicable law; and (iii) is clearly written and easily understandable.

Public comment period begins March 2, 2020, and ends March 23, 2020.

Comments must include the commenter's name and address (physical or email) information in order to receive a response to the comment from the agency.

Following the close of the public comment period, a report of both reviews will be posted on the Virginia Regulatory Town Hall and published in the Virginia Register of Regulations.

Contact Information: Stephanie Williams, Deputy Director, Department of Historic Resources, 2801 Kensington Avenue, Richmond, VA 23221, telephone (804) 482-6082, or email stephanie.williams@dhr.virginia.gov.

current form. Public comment is sought on the review of any issue relating to this regulation, including whether the regulation (i) is necessary for the protection of public health, safety, and welfare or for the economical performance of important governmental functions; (ii) minimizes the economic impact on small businesses in a manner consistent with the stated objectives of applicable law; and (iii) is clearly written and easily understandable.

Public comment period begins March 2, 2020, and ends March 23, 2020.

Comments must include the commenter's name and address (physical or email) information in order to receive a response to the comment from the agency.

Following the close of the public comment period, a report of both reviews will be posted on the Virginia Regulatory Town Hall and published in the Virginia Register of Regulations.

Contact Information: Wanda Stevenson, NAP Program Technician, Department of Social Services, 801 East Main Street, Richmond, VA 23219, telephone (804) 726-7924, FAX (804) 726-7088, or email wanda.stevenson@dss.virginia.gov.

DEPARTMENT FOR THE BLIND AND VISION IMPAIRED

Agency Notice

Pursuant to Executive Order 14 (as amended July 16, 2018) and §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the following regulation is undergoing a periodic review: **22VAC45-20, Regulations to Govern the Operation of Vending Facilities in Public Buildings and Other Property**. The review of this regulation will be guided by the principles in Executive Order 14 (as amended July 16, 2018).

The purpose of this review is to determine whether this regulation should be repealed, amended, or retained in its current form. Public comment is sought on the review of any issue relating to this regulation, including whether the regulation (i) is necessary for the protection of public health, safety, and welfare or for the economical performance of important governmental functions; (ii) minimizes the economic impact on small businesses in a manner consistent with the stated objectives of applicable law; and (iii) is clearly written and easily understandable.

Public comment period begins March 2, 2020, and ends March 23, 2020.

Comments must include the commenter's name and address (physical or email) information in order to receive a response to the comment from the agency.

Following the close of the public comment period, a report of both reviews will be posted on the Virginia Regulatory Town Hall and published in the Virginia Register of Regulations.

TITLE 22. SOCIAL SERVICES

STATE BOARD OF SOCIAL SERVICES

Agency Notice

Pursuant to Executive Order 14 (as amended July 16, 2018) and §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the following regulation is undergoing a periodic review: **22VAC40-41, Neighborhood Assistance Tax Credit Program**. The review of this regulation will be guided by the principles in Executive Order 14 (as amended July 16, 2018).

The purpose of this review is to determine whether this regulation should be repealed, amended, or retained in its

Periodic Reviews and Small Business Impact Reviews

Contact Information: Susan K. Davis, Regulatory Coordinator, Department for the Blind and Vision Impaired, 397 Azalea Avenue, Richmond, VA 23227, telephone (804) 371-3184, FAX (804) 371-3157, TDD (804) 371-3140, or email susan.davis@dbvi.virginia.gov.

REGULATIONS

For information concerning the different types of regulations, see the Information Page.

Symbol Key

Roman type indicates existing text of regulations. Underscored language indicates proposed new text. Language that has been stricken indicates proposed text for deletion. Brackets are used in final regulations to indicate changes from the proposed regulation.

TITLE 2. AGRICULTURE

BOARD OF AGRICULTURE AND CONSUMER SERVICES

Final Regulation

REGISTRAR'S NOTICE: The Board of Agriculture and Consumer Services is claiming an exemption from the Administrative Process Act in accordance with § 2.2-4002 A 13 of the Code of Virginia, which excludes the board when promulgating regulations pursuant to § 3.2-5206 of the Code of Virginia.

Title of Regulation: 2VAC5-490. Regulations Governing Grade "A" Milk (amending 2VAC5-490-10, 2VAC5-490-25, 2VAC5-490-30, 2VAC5-490-31, 2VAC5-490-32, 2VAC5-490-35, 2VAC5-490-36, 2VAC5-490-37, 2VAC5-490-38, 2VAC5-490-39.2, 2VAC5-490-40, 2VAC5-490-50, 2VAC5-490-103, 2VAC5-490-105, 2VAC5-490-110, 2VAC5-490-131, 2VAC5-490-132, 2VAC5-490-140; adding 2VAC5-490-5; repealing 2VAC5-490-15, 2VAC5-490-20, 2VAC5-490-33, 2VAC5-490-34, 2VAC5-490-39, 2VAC5-490-39.4, 2VAC5-490-60, 2VAC5-490-70, 2VAC5-490-73, 2VAC5-490-80, 2VAC5-490-90, 2VAC5-490-100, 2VAC5-490-120, 2VAC5-490-133 through 2VAC5-490-138).

Statutory Authority: § 3.2-5206 of the Code of Virginia.

Effective Date: March 2, 2020.

Agency Contact: Ryan Davis, Program Manager, Office of Dairy and Foods, Department of Agriculture and Consumer Services, P.O. Box 1163, Richmond, VA 23218, telephone (804) 786-8899, FAX (804) 371-7792, TTY (800) 828-1120, or email ryan.davis@vdacs.virginia.gov.

Summary:

The amendments (i) incorporate the U.S. Food and Drug Administration 2017 Pasteurized Milk Ordinance (PMO) by reference into the regulation; (ii) repeal text that is duplicative of the language in the PMO; (iii) adjust state-specific regulatory requirements for clarity, consistency, and elimination of duplicative language; and (iv) update one additional document incorporated by reference and two forms.

The primary changes resulting from the revised 2017 PMO include:

- An 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.

- Clarification regarding electronic recordkeeping on farm bulk tanks.

- Additional requirements and clarification for the operation of automatic milking installations and associated computer system verification and functions.

- 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.

- Clarification of the term "first use" and the length of time a tanker can remain washed and empty before being filled with milk again.

- Requirements for the frequency of taking regulatory milk samples from grade A dairies that operate seasonally, as opposed to year-round.

The amendments to state-specific provisions include:

- Adding a definition for "summarily suspend" to clarify the enforcement process.

- Clarification of when producers that operate multiple milking herds or operate milking herds at separate locations must obtain multiple grade A permits.

- Provisions 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.

- Adding a specific date by which dairy plants must submit all results of tests on samples of raw milk so that the department can submit required reports to the FDA in a timely manner.

- Clarifying that all bulk tanks shall be equipped with temperature recording devices.

Changes to the proposed regulation include:

- Clarifying that in the event the 2017 PMO or the provisions in 2VAC5-490 conflict with the requirements of Title 32.1 of the Code of Virginia regarding waterworks, private wells, or onsite sewage systems, Title 32.1 shall control to the extent of the conflict.

- Restoring the requirement to cool milk to 40 degrees within two hours of milking.

2VAC5-490-5. Grade "A" Pasteurized Milk Ordinance.

A. Any person permitted in accordance with Chapter 52 (§ 3.2-5200 et seq.) of Title 3.2 of the Code of Virginia regarding milk, milk products, and dairies shall comply with the provisions of the "Grade "A" Pasteurized Milk Ordinance, 2017 Revision."

B. Section 1 of the "Grade "A" Pasteurized Milk Ordinance, 2017 Revision" regarding definitions shall be used to determine the meanings of the words or terms used in this chapter or in the "Grade "A" Pasteurized Milk Ordinance, 2017 Revision" unless the context clearly indicates otherwise. If any definition in Section 1 of the "Grade "A" Pasteurized Milk Ordinance, 2017 Revision" conflicts with a definition in 2VAC5-490-10, 2VAC5-490-10 shall control to the extent of the conflict.

C. If any provision of the "Grade "A" Pasteurized Milk Ordinance, 2017 Revision" conflicts with a provision in 2VAC5-490-10 through 2VAC5-490-140 of this chapter, the provision in 2VAC5-490-10 through 2VAC5-490-140 of this chapter shall control to the extent of the conflict.

[D. If any provision of the "Grade "A" Pasteurized Milk Ordinance, 2017 Revision" or this chapter conflicts with a regulation pertaining to waterworks or private wells adopted by the State Board of Health pursuant to § 32.1-170 or 32.1-176.4 of the Code of Virginia, the regulation adopted by the State Board of Health shall control to the extent of the conflict.

E. If any provision of the "Grade "A" Pasteurized Milk Ordinance, 2017 Revision" or this chapter conflicts with a regulation pertaining to onsite sewage systems adopted by the State Board of Health pursuant to § 32.1-164 of the Code of Virginia, the regulation adopted by the State Board of Health shall control to the extent of the conflict.]

Part I**Definitions and Standards of Identity****2VAC5-490-10. Definitions and standards of identity Definitions.**

The following words and terms when used in this chapter shall have the following meanings unless the context clearly indicates otherwise:

~~"A hazard that is reasonably likely to occur" means a hazard for which a prudent milk plant, receiving station or transfer station operator would establish controls because experience, illness data, scientific reports, or other information provide a basis to conclude that there is a reasonable possibility that, in the absence of these controls, the hazard will occur in the particular type of milk, milk product, condensed milk, condensed milk product, dry milk, or dry milk product being processed.~~

~~"Abnormal milk" means milk that is visibly changed in color, odor, or texture and is not suitable for sale for grade A purposes.~~

~~"Acidified milk" means "acidified milk" as defined in 21 CFR 131.111.~~

~~"Acidified milk product" means a product with an acidity of not less than 0.50% expressed as lactic acid, which product is obtained by the addition of food grade acids to pasteurized cream, half and half, heavy cream, light cream, lowfat milk, milk, skim milk, or sour cream.~~

~~"Acidified sour cream" means "acidified sour cream" as defined in 21 CFR 131.162.~~

~~"Adulterated milk" or "adulterated milk product" means any milk, milk product, condensed milk product, or dry milk product that meets one or more of the conditions specified in Section 402 of the Federal Food, Drug, and Cosmetic Act, as amended (21 USC § 342).~~

~~"Aseptically processed milk or milk product" means milk that is hermetically sealed in a container and so thermally processed before or after packaging in conformance with 21 CFR Parts 108, 110, and 113 and the provisions of this chapter so as to render the product free of microorganisms capable of reproducing in the product under nonrefrigeration conditions of storage and distribution and that is free of viable microorganisms (including spores) capable of causing disease in humans.~~

~~"Aseptic processing and packaging" means that the product has been subjected to sufficient heat processing and packaged in a hermetically sealed container, to conform to the applicable requirements of 21 CFR Parts 108, 110, and 113 and the provisions of this chapter and to maintain the commercial sterility of the product under normal nonrefrigerated conditions. Aseptic processing and packaging includes low acid grade A aseptic and packaged milk products.~~

~~"Aseptic processing and packaging system" or "APPS" means the aseptic processing and packaging system in a milk plant that is comprised of the processes and equipment used to process and package aseptic grade A milk or milk products. The APPS shall be regulated in accordance with the applicable requirements of 21 CFR Parts 108, 110, and 113. The APPS shall begin at the constant level tank and end at the discharge of the packaging machine, provided that the process authority may provide written documentation that will clearly define additional processes or equipment that are considered critical to the commercial sterility of the product.~~

~~"Audit" means an evaluation of the entire milk plant, receiving station, or transfer station facility and HACCP system to ensure compliance with the voluntary HACCP program requirements of this chapter, with the exception of~~

Regulations

~~the APPS for aseptic processing and packaging of milk plants.~~

~~"Automatic milking installation" means the entire installation of one or more automatic milking units, including the hardware and software utilized in the operation of individual automatic milking units, the animal selection system, the automatic milking machine, the milk cooling system, the system for cleaning and sanitizing the automatic milking unit, the teat cleaning system, and the alarm systems associated with the process of milking cooling, cleaning, and sanitation.~~

~~"Boiled custard" means "eggnog" as defined in 21 CFR 131.170.~~

~~"Bulk milk hauler sampler" means any person who holds a permit issued by the Virginia Department of Agriculture and Consumer Services to collect official milk samples and transport (i) raw milk from a dairy farm to a milk plant, receiving station, or transfer station; or (ii) raw milk products from one milk plant, receiving station, or transfer station to another milk plant, receiving station, or transfer station.~~

~~"Bulk milk pickup tanker" means a vehicle, including the truck, tank, and those appurtenances necessary for its use, used by a bulk milk hauler sampler to transport bulk raw milk for pasteurization, ultra pasteurization, aseptic processing and packaging, or retort processed after packaging from a dairy farm to a milk plant, receiving station, or transfer station.~~

~~"Buttermilk" means the fluid milk product that remains after the manufacture of butter from milk or cream and contains not less than 8.25% of milk solids not fat.~~

~~"Cancel" means to permanently nullify, void, or delete a grade A permit issued by the State Regulatory Authority.~~

~~"Centralized deviation log" means a centralized log or file identifying data detailing any deviation of critical limits and the corrective actions taken as referred to in Appendix K of the "Grade "A" Pasteurized Milk Ordinance, 2013 Revision."~~

~~"CFR" means the Code of Federal Regulations.~~

~~"Clean" means the surfaces of equipment and facilities have had an effective and thorough removal of product, soils, and contaminants.~~

~~"Clean in place" or "CIP" means the removal of soil from product contact surfaces in the surface's process position by circulating, spraying, or flowing chemical solutions and water rinses onto and over the surfaces to be cleaned. Components of the equipment that are not designed to be CIP are removed from the equipment to be cleaned out of place (COP) or manually cleaned. Product contact surfaces shall be inspectable, except when the cleanability by CIP has been documented and accepted by the State Regulatory Authority. In such accepted equipment, all product and solution contact surfaces are not required to be readily accessible for~~

~~inspection (i.e., permanently installed pipelines and silo tanks).~~

~~"Cleaned out of place" or "COP" means manually cleaned or not designed to be CIP.~~

~~"Coffee cream" means "light cream."~~

~~"Commercially sterile" means (i) the food has been thermally processed by the application of heat to render the food free of viable microorganisms (including spores) of public health significance and microorganisms capable of reproducing in the food under normal nonrefrigerated conditions of storage and distribution; or (ii) the food has been processed with the application of heat, and the water activity of the food has been controlled to render the food free of microorganisms capable of reproducing in the food under normal nonrefrigerated conditions of storage and distribution.~~

~~"Common name" means the generic term commonly used for domestic animals (i.e., cattle, goats, sheep, water buffalo).~~

~~"Concentrated milk" means "concentrated milk" as defined in 21 CFR 131.115.~~

~~"Concentrated milk product" means any of the following foods: homogenized concentrated milk, homogenized concentrated skim milk, concentrated lowfat milk, concentrated milk, and concentrated skim milk, which when combined with potable water according to the instructions printed on the food's container, conforms to the definition of the corresponding milk product in this chapter.~~

~~"Concentrated or condensed buttermilk" means product resulting from the removal of a considerable portion of water from buttermilk and complies with all applicable requirements of this chapter.~~

~~"Condensed and dry milk product" means grade A condensed milk, grade A condensed and dry whey, grade A dry milk product, or grade A dry milk and whey product.~~

~~"Condensed milk" means concentrated milk as defined in 21 CFR 131.115. This definition does not include:~~

- ~~1. Any sterilized milk or milk product, when the sterilized milk or milk product is hermetically sealed in a container and processed, either before or after sealing, so as to prevent microbial spoilage; or~~
- ~~2. Any evaporated milk or sweetened condensed milk, except when the evaporated milk or sweetened condensed milk is combined with other substances in the commercial preparation of any pasteurized, ultra-pasteurized, or aseptically processed and packaged milk or milk product.~~

~~"Condensed whey" means "condensed whey" as defined in 21 CFR 184.1979(a)(2).~~

~~"Consumer" means any person who uses any grade A milk, grade A milk product, or milk product.~~

"Contaminated milk" means milk that is unsaleable or unfit for human consumption following treatment of the animal with veterinary products (i.e., antibiotics that have withhold requirements or treatment with medicines or insecticides not approved for use on dairy animals by FDA or the Environmental Protection Agency).

"Corrective action" means procedures followed when a deviation occurs.

"Cottage cheese" means "cottage cheese" as defined in 21 CFR 133.128.

"Cottage cheese dry curd" means "dry curd cottage cheese."

"Cream" means "cream" as defined in 21 CFR 131.3(a).

"Critical control point" or "CCP" means a step at which control can be applied and is essential to prevent or eliminate a milk, milk product, condensed milk, condensed milk product, dry milk, or dry milk product safety hazard or reduce it to an acceptable level.

"Critical limit" means a maximum value or a minimum value to which a biological, chemical, or physical parameter shall be controlled at a critical control point to prevent, eliminate, or reduce to an acceptable level the occurrence of a milk, milk product, condensed milk, condensed milk product, dry milk, or dry milk product safety hazard.

"Cultured half and half" means "sour half and half."

"Cultured milk" means "cultured milk" as defined in 21 CFR 131.112.

"Cultured sour cream" means "sour cream."

"Dairy farm" means any place or premises (i) where any cow, goat, sheep, water buffalo, or other mammal (except humans) is kept for milking purposes; or (ii) from which cow, goat, sheep, water buffalo, or other mammal (except humans) milk or any milk product is sold or offered for sale for human consumption or provided to a milk plant, cheese plant, frozen desserts plant, transfer station, or receiving station.

"Deficiency" means an element that is inadequate or missing from the requirements of a HACCP system or with the voluntary HACCP program requirements of this chapter.

"Deny" means the State Regulatory Authority will not issue a grade A permit to the applicant.

"Deviation" means a failure to meet a critical limit.

"Drug" means: (i) articles recognized in the official United States Pharmacopeia, official Homeopathic Pharmacopeia of the United States, or official National Formulary, or any supplement to any of them; (ii) articles intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or other animals; (iii) articles other than food intended to affect the structure or any function of the body of man or other animals; and (iv) articles intended for use as a

component of any articles specified in clause (i), (ii), or (iii) of this definition, but does not include devices or their components, parts, or accessories.

"Dry buttermilk" means "dry buttermilk" as defined in 7 CFR 58.251.

"Dry buttermilk product" means "dry buttermilk product" as defined in 7 CFR 58.251.

"Dry cream" means "dry cream" as defined in 21 CFR 131.149.

"Dry curd cottage cheese" means "dry curd cottage cheese" as defined in 21 CFR 133.129.

"Dry milk product" means a product resulting from the drying of any milk or milk product and any product resulting from the combination of a dry milk product with other safe and suitable dry ingredients.

"Dry whey" means "dry whey" as defined in 21 CFR 184.1979.

"Dry whey product" means a product resulting from the drying of whey or whey products and any product resulting from the combination of dry whey products with other wholesome dry ingredients.

"Dry whole milk" means "dry whole milk" as defined in 21 CFR 131.147.

"Eggnog" means "eggnog" as defined in 21 CFR 131.170.

"Eggnog-flavored milk" means a milk product, to which an emulsifier and a maximum of 0.5% stabilizer may have been added consisting of a mixture of (i) at least 3.25% butterfat, (ii) at least 0.5% egg yolk solids, (iii) sweetener, and (iv) flavoring.

"FDA" means the United States Food and Drug Administration.

"Flavored milk" means milk to which a flavor or sweetener has been added.

"Flavored milk product" means any milk product to which a flavor or sweetener has been added.

"Food allergen" means the proteins in foods that are capable of inducing an allergic reaction or response in some individuals and means "food allergen" as defined in the Food Allergen Labeling and Consumer Protection Act of 2004 (21 USC § 301 et seq.).

"Fortified milk" means milk, other than vitamin D milk, the vitamin or mineral content of which milk has been increased.

"Fortified milk product" means any milk product, other than a vitamin D milk product, the vitamin or mineral content of which milk product has been increased.

"Frozen milk concentrate" means the frozen milk product that when water is added in accordance with instructions on

Regulations

the package containing the frozen milk product, the reconstituted milk product contains the percentage of milkfat and the percentage of milk solids not fat of milk. Frozen milk concentrate is stored, transported, and sold in a frozen state.

"Goat milk" means the normal lacteal secretion, practically free of colostrum, obtained by the complete milking of one or more healthy goats that when sold in retail packages, contains not less than 2.5% milkfat and not less than 7.5% nonfat milk solids not fat.

"Grade A buttermilk" or "grade A buttermilk product" means buttermilk from butter made from grade A cream, which has been pasteurized prior to use in accordance with item 16p of the "Grade "A" Pasteurized Milk Ordinance, 2013 Revision," provided that this requirement shall not be construed as barring any other heat treatment process that has been recognized by FDA to be equally efficient in the destruction of staphylococcal organisms and that is approved by the State Regulatory Authority.

"Grade A condensed and dry whey" means condensed or dry whey that complies with the provisions of the "Grade "A" Pasteurized Milk Ordinance, 2013 Revision" and this chapter.

"Grade A condensed milk" means condensed milk that complies with the provisions of the "Grade "A" Pasteurized Milk Ordinance, 2013 Revision" and this chapter.

"Grade A dry milk product" means any dry milk product that complies with the provisions of the "Grade "A" Pasteurized Milk Ordinance, 2013 Revision" and this chapter.

"Grade A dry milk and whey product" means any dry milk or whey product that has been produced for use in any grade A pasteurized, ultra pasteurized, or aseptically processed and packaged milk product and that has been manufactured under the provisions of the "Grade "A" Pasteurized Milk Ordinance, 2013 Revision" and this chapter.

"Grade A permit" means the written document issued by the State Regulatory Authority to the person who operates a (i) dairy farm to produce raw milk for pasteurization, ultra pasteurization, or aseptic processing; (ii) milk plant; (iii) receiving station; (iv) transfer station; (v) milk condensing plant; (vi) milk drying plant; (vii) whey condensing plant; or (viii) whey drying plant after the State Regulatory Authority has inspected and approved the person's operation and determined the person's compliance with the provisions of this chapter for the operations specified in this definition.

"Grade A whey" means whey from cheese made from grade A raw milk for pasteurization, ultra pasteurization, aseptic processing and packaging, or retort processed after packaging, that has been manufactured under the provisions of the "Grade "A" Pasteurized Milk Ordinance, 2013 Revision" and this chapter.

"HACCP plan" means the written document, which is based upon the principles of HACCP and delineates the procedures to be followed.

"HACCP system" means the implemented HACCP plan and prerequisite programs, including other applicable requirements of the voluntary HACCP program of this chapter.

"Half and half" means "half and half" as defined in 21 CFR 131.180.

"Hazard" means a biological, chemical, or physical agent that is reasonably likely to cause illness or injury in the absence of its control.

"Hazard analysis" means the process of collecting and evaluating information on hazards associated with the milk, milk product, condensed milk, condensed milk product, dry milk, or dry milk product under consideration, to decide which are reasonably likely to occur and must be addressed in the HACCP plan.

"Hazard analysis critical control point" or "HACCP" means a systematic approach to the identification, evaluation, and control of significant milk and milk product safety hazards.

"Heavy cream" means "heavy cream" as defined in 21 CFR 131.150.

"Lactose reduced lowfat milk" means the product resulting from the addition of safe and suitable enzymes to convert enough lactose to glucose or galactose so that less than 30% of the lactose remains in the lowfat milk from which the product is made.

"Lactose reduced milk" means the product resulting from the addition of safe and suitable enzymes to convert enough lactose to glucose or galactose so that less than 30% of the lactose remains in the milk from which the product is made.

"Lactose reduced skim milk" means the product resulting from the addition of safe and suitable enzymes to convert enough lactose to glucose or galactose so that less than 30% of the lactose remains in the skim milk from which the product is made.

"Light cream" means "light cream" as defined in 21 CFR 131.155.

"Light whipping cream" means "light whipping cream" as defined in 21 CFR 131.157.

"Low acid aseptic milk and retort milk and milk products" means milk or milk products having a water activity (aw) greater than 0.85 and a finished equilibrium pH greater than 4.6 and that are regulated under 21 CFR Parts 108, 110, and 113. Low acid aseptic milk and retort milk and milk products are stored under normal nonrefrigerated conditions. Excluded from this definition are low acid milk and milk products that are labeled for storage under refrigerated conditions.

~~"Lowfat dry milk" means "lowfat dry milk" as defined in 21 CFR 131.123.~~

~~"Lowfat yogurt" means "lowfat yogurt" as defined in 21 CFR 131.203.~~

~~"Low sodium lowfat milk" means the milk product resulting from the treatment of lowfat milk by a process of passing the lowfat milk through an ion exchange resin process, or by any other process that has been recognized by the Food and Drug Administration that effectively reduces the sodium content of the product to less than 10 milligrams in 100 milliliters.~~

~~"Low sodium milk" means the milk product resulting from the treatment of milk by a process of passing the milk through an ion exchange resin process, or by any other process that has been recognized by the Food and Drug Administration that effectively reduces the sodium content of the product to less than 10 milligrams in 100 milliliters.~~

~~"Low sodium skim milk" means the milk product resulting from the treatment of skim milk by a process of passing the skim milk through an ion exchange resin process, or by any other process that has been recognized by the Food and Drug Administration that effectively reduces the sodium content of the product to less than 10 milligrams in 100 milliliters.~~

~~"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.~~

~~"Milk condensing plant" means any plant in which milk or any milk product is condensed or dried, or in which milk or any milk product is received, separated, or otherwise processed for drying and packaging.~~

~~"Milk distributor" means any person who offers for sale or sells to another any milk or milk product.~~

~~"Milk drying plant" means any plant in which milk or any milk product is condensed or dried, or in which milk or any milk product is received, separated, or otherwise processed for drying and packaging.~~

~~"Milkfat" means the fat of milk.~~

~~"Milkhouse" means the building or room in which there is conducted on a grade A dairy farm (i) the cooling, handling, and storing of milk and (ii) the washing, sanitizing, and storing of milk containers and utensils.~~

~~"Milk plant" means any place, premises, or establishment where any milk or milk product is collected, handled, processed, stored, pasteurized, ultra pasteurized, aseptically processed and packaged, retort processed after packaged, condensed, dried, packaged, bottled, or prepared for distribution.~~

~~"Milk producer" means any person who operates a dairy farm and who provides, sells, or offers milk for sale for human consumption or to a milk plant, receiving station, or transfer station.~~

~~"Milk product" means grade A milk and grade A milk products meeting the requirements of 2VAC5-490-15.~~

~~"Misbranded milk" or "misbranded milk product" means any milk, milk product, or condensed and dry milk product that (i) satisfies any of the conditions specified in § 403 of the Federal Food, Drug, and Cosmetic Act, as amended (21 USC § 343); (ii) does not conform to its definition; or (iii) is not labeled in accordance with 2VAC5-490-40.~~

~~"Monitor" means to conduct a planned sequence of observations or measurements to assess whether a CCP is under control or to assess the conditions and practices of all required prerequisite programs.~~

~~"NCIMS" means the National Conference on Interstate Milk Shipments.~~

~~"Nonconformity" means a failure to meet specified requirements of the HACCP system.~~

~~"Nonfat dry milk" means "nonfat dry milk" as defined in 21 CFR 131.125.~~

~~"Nonfat dry milk fortified with vitamins A and D" means "nonfat dry milk fortified with vitamins A and D" as defined in 21 CFR 131.127.~~

~~"Nonfat yogurt" means "nonfat yogurt" as defined in 21 CFR 131.206.~~

~~"Normal storage" means storage at a temperature of 45°F or cooler, but does not include freezing.~~

~~"Official laboratory" means a biological, chemical, or physical laboratory operated by the Commonwealth of Virginia.~~

~~"Officially designated laboratory" means: (i) a commercial laboratory authorized by the State Regulatory Authority to examine milk, milk product, condensed and dry milk product, producer samples of Grade "A" raw milk for pasteurization, or commingled milk tank truck samples of raw milk or milk products or (ii) a milk industry laboratory authorized by the State Regulatory Authority to examine milk producer samples of raw milk for pasteurization, and for drug residues and bacterial limits, samples of raw milk commingled in a tank truck.~~

~~"Pasteurization" or "pasteurized" means the process of heating every particle of milk or milk product in equipment designed and operated in conformance with this chapter, to one of the temperatures given in the following table and held continuously at or above that temperature for at least the corresponding specified time for the equipment indicated:~~

Regulations

| Temperature | Time | Equipment |
|-------------|-------------|-----------------------------|
| 145°F* | 30 minutes | Vat Pasteurization |
| 161°F* | 15 seconds | High Temperature Short Time |
| 191°F | 1.0 second | High Temperature Short Time |
| 194°F | 0.5 second | High Temperature Short Time |
| 201°F | 0.1 second | High Temperature Short Time |
| 204°F | 0.05 second | High Temperature Short Time |
| 212°F | 0.01 second | High Temperature Short Time |

*If (i) the fat content of the milk or milk product is 10% or greater; (ii) the total solids content of the milk or milk product is 18% or greater; or (iii) the milk or milk product contains added sweeteners, then pasteurization means increasing the specified temperature by 5°F.

*If the dairy product is cream for butter making, then "pasteurization" means heating to at least 165°F and holding continuously in a vat pasteurizer for not less than 30 minutes or pasteurizing by the High Temperature Short Time method at a minimum temperature of not less than 185°F for not less than 15 seconds.

*If the milk product is eggnog, then "pasteurization" means heating to at least the following temperatures for the corresponding time specifications and equipment:

| Temperature | Time | Equipment |
|-------------|------------|-----------------------------|
| 155°F | 30 minutes | Vat Pasteurization |
| 175°F | 25 seconds | High Temperature Short Time |
| 180°F | 15 seconds | High Temperature Short Time |

Nothing in this definition shall be construed as barring any other process that has been recognized by the Food and Drug Administration as being equally efficacious as pasteurization, so long as that other process has been approved by the State Regulatory Authority.

"Person" means any individual, plant operator, partnership, corporation, company, firm, trustee, or institution.

"Prerequisite programs" means procedures, including good manufacturing practices, that address operational conditions that provide the foundation for the HACCP system.

"Process authority" means a certified microbiologist who has expert knowledge of thermal processing requirements for

low acid foods, acquired through appropriate education, training, and experience. The process authority must possess advanced testing equipment that will allow them to conduct necessary testing.

"Public" means any person in the Commonwealth.

"Pull date" means the date affixed to a consumer package or container of grade A pasteurized milk or grade A pasteurized milk product that is the date after the day of manufacturing and processing of the package or container and the last day on which the grade A pasteurized milk or grade A pasteurized milk product as determined by the milk plant may be offered for sale to consumers under normal storage.

"Raw milk" means any milk or any milk product that has not been pasteurized, ultra pasteurized, aseptically processed and packaged, or retort processed after packaging.

"Receiving station" means any place, premises, or establishment where raw milk is (i) received, collected, handled, stored, or cooled; and (ii) prepared for further transporting.

"Recombined milk" means the food that when combined with potable water according to the instructions printed on the food's container, conforms to the milk fat and nonfat milk solids requirements for milk, as specified in the definition of "milk."

"Recombined milk product" means the food that when combined with potable water according to the instructions printed on the food's container, conforms to the milk fat and milk nonfat solids requirements for the milk product designated on the food's container.

"Reconstituted milk" means "recombined milk."

"Reconstituted milk product" means "recombined milk product."

"Reduced lactose whey" means "reduced lactose whey" as defined in 21 CFR 184.1979a.

"Reduced minerals whey" means "reduced minerals whey" as defined in 21 CFR 184.1979b.

"Retort processed after packaging" means the milk and or milk product has been subjected to sufficient retort heat processing after packaged in a hermetically sealed container, to conform to the applicable requirements of 21 CFR Parts 108, 110, and 113 and to maintain the commercial sterility of the milk and milk product under normal nonrefrigerated conditions.

"Retort processed after packaging system" or "RPPS" means the processes and equipment used to retort process after packaging low acid grade A milk and milk products. The RPPS shall be regulated in accordance with the applicable requirements of 21 CFR Parts 108, 110, and 113. The RPPS shall begin at the container filler and end at the palletizer,

~~provided that the process authority may provide written documentation that will clearly define additional processes and equipment that are considered critical to the commercial sterility of the milk and milk products.~~

~~"Revoke" means to permanently annul, repeal, rescind, countermand, or abrogate a grade A permit issued by the State Regulatory Authority.~~

~~"Safe and suitable" means "safe and suitable" as defined in 21 CFR 130.3(d).~~

~~"Sanitization" means the application of any effective method or substance to a clean surface for the destruction of pathogens, and of other organisms as far as is practicable, and when used does not adversely affect (i) the equipment that comes in contact with milk, milk product, or condensed and dry milk product; (ii) the milk, milk product, or condensed and dry milk product; or (iii) the health of consumers.~~

~~"Septage" means material accumulated in a pretreatment system or privy.~~

~~"Sewage" means water carried and nonwater carried human excrement; kitchen, laundry, shower, bath, or lavatory wastes separately or together with such underground, surface, storm and other water and liquid industrial wastes as may be present from residences, buildings, vehicles, industrial establishments or other places.~~

~~"Sheep milk" means the normal lacteal secretion, practically free of colostrum, obtained by the complete milking of one or more healthy sheep.~~

~~"Sour cream" means "sour cream" as defined in 21 CFR 131.160.~~

~~"State Regulatory Authority" regulatory agency means the Commissioner of Agriculture and Consumer Services or his agent when carrying out any duty specified in § 3.2-5207 of the Code of Virginia or the State Health Commissioner or his agent when carrying out any duty specified in § 3.2-5208 of the Code of Virginia.~~

~~"Summarily suspend" means the immediate suspension of a permit issued by the state regulatory agency without the permit holder being granted the opportunity to contest the action prior to the effective date and time of the suspension.~~

~~"Suspend" means to temporarily nullify, void, debar, or cease for a period of time a grade A permit issued by the State Regulatory Authority.~~

~~"Sweetened condensed milk" means "sweetened condensed milk" as defined in 21 CFR 131.120.~~

~~"Table cream" means "light cream" as defined in 21 CFR 131.155.~~

~~"Transfer station" means any place, premises, or establishment where milk or milk products are transferred directly from one milk tank truck to another.~~

~~"Trim" means to shorten the hair on the udder and tail of milking cows and goats by clipping, singeing, cutting, or other means.~~

~~"Ultra pasteurized" means, when used to describe any milk or milk product, that the milk or milk product has been thermally processed at a temperature of 280°F (138°C) or hotter for at least two seconds, either before or after packaging, so as to produce a product that has an extended shelf life under refrigerated conditions as defined in 21 CFR 131.3.~~

~~"Undesirable milk" means milk that, prior to the milking of the animal, is expected to be unsuitable for sale, such as milk containing colostrum.~~

~~"Validation" means the element of verification focused on collecting and evaluating scientific and technical information to determine whether the HACCP plan, when properly implemented, will effectively control the hazards.~~

~~"Verification" means those activities, other than monitoring, that determine the validity of the HACCP plan and that the HACCP system is operating according to the plan.~~

~~"Vitamin A milk" means milk, the vitamin A content of which has been increased to at least 2000 International Units per quart.~~

~~"Vitamin A milk product" means a milk product, the vitamin A content of which has been increased to at least 2000 International Units per quart.~~

~~"Vitamin D milk" means milk, the vitamin D content of which has been increased to at least 400 International Units per quart.~~

~~"Vitamin D milk product" means a milk product, the vitamin D content of which has been increased to at least 400 International Units per quart.~~

~~"Water buffalo milk" means the normal lacteal secretion, practically free of colostrum, obtained by the complete milking of one or more healthy water buffalo.~~

~~"Whey" means "whey" as defined in 21 CFR 184.1979.~~

~~"Whey condensing plant" means a plant in which whey is condensed or in which whey is received and processed for drying and packaging.~~

~~"Whey drying plant" means a plant in which whey is dried or in which whey is received and processed for drying and packaging.~~

~~"Whey product" means any fluid product removed from whey, or made by the removal of any constituent from whey, or by the addition of any wholesome substance to whey or parts thereof.~~

Regulations

"Whipped cream" means "heavy cream" as defined in 21 CFR 131.150 or "light whipping cream" as defined in 21 CFR 131.157, into which air or gas has been incorporated.

"Whipped light cream" means "light whipped cream" as defined in 21 CFR 131.155, into which air or gas has been incorporated.

"Whipping cream" means "light whipping cream" as defined in 21 CFR 131.157.

"Yogurt" means "yogurt" as defined in 21 CFR 131.200.

Part II

Grade A Milk and Milk Products

~~2VAC5-490-15. Grade A milk and milk products. (Repealed.)~~

~~A. Grade A milk and milk products regulated under this chapter include:~~

~~1. All grade A raw milk or milk products for pasteurization, ultra pasteurization, aseptic processing and packaging, or retort processed after packaging, and all grade A pasteurized, ultra pasteurized, aseptically processed and packaged, or retort processed and packaged milk and milk products;~~

~~2. All milk and milk products with a standard of identity provided for in 21 CFR Part 131, with the exception of 21 CFR 131.120 sweetened condensed milk;~~

~~3. Cottage cheese as defined by 21 CFR 133.128 and dry curd cottage cheese as defined by 21 CFR 131.129;~~

~~4. Whey and whey products as defined in 21 CFR 184.1979, 21 CFR 184.1979a, 21 CFR 184.1979b, and 21 CFR 184.1979c; whey product; dry whey product; and grade A condensed and dry whey and whey products;~~

~~5. Modified versions of these foods listed in subdivisions 2 and 3 of this subsection, pursuant to 21 CFR 130.10 Requirements for foods named by use of a nutrient content claim and a standardized term;~~

~~6. Milk and milk products as defined in subdivisions 2, 3, 4, and 5 of this subsection, packaged in combination with other food or foods not included in this section that are appropriately labeled with a statement of identity to describe the food in final package form (e.g., "cottage cheese with pineapple" or "fat free milk with plant sterols"); and~~

~~7. Products not included in subdivisions 2 through 6 of this subsection shall be grade A milk products if they contain a minimum of (i) 2.0% milk protein as determined by total Kjeldahl Nitrogen (TKN) X 6.38; and (ii) a minimum of 65% by weight milk, milk product, or a combination of milk products.~~

~~B. Safe and suitable, as defined in 21 CFR 130.3(d), nongrade A dairy ingredients may be utilized in the production of grade A milk and milk products included under 2VAC5 490 15 A when added to a level needed for a functional or technical effect; limited by good manufacturing practices (GMPs); and are either (i) prior sanctioned or otherwise approved by the federal Food and Drug Administration, (ii) generally recognized as safe, or (iii) an approved food additive listed in the Code of Federal Regulations with the exception that for those grade A milk and milk products for which a federal standard of identity has been established only ingredients provided for under the standard of identity for each grade A milk or milk product may be utilized. Nongrade A dairy ingredients shall not be used to increase the weight or volume of grade A milk or milk products or to displace any grade A dairy ingredients nor shall using nongrade A dairy ingredients to increase the weight or volume of grade A milk or milk products be considered a suitable functional or technical effect.~~

~~C. Grade A milk and milk products shall also include those milk and milk products included under 2VAC5 490 15 A and 2VAC5 490 15 B that have been aseptically processed and then packaged.~~

~~D. Grade A milk and milk products shall not include:~~

~~1. A milk or milk product in which the milkfat of the milk or milk product has been substituted in part or in whole by any other animal or vegetable fat; provided that other fat sources may be included when they are used for purposes currently accepted in any other grade A milk or milk product, such as carriers for vitamins and as an ingredient in emulsifiers and stabilizers;~~

~~2. Coffee based products where coffee or water is the primary ingredient as indicated in the ingredient statement;~~

~~3. Tea based products where tea or water is the primary ingredient as indicated in the ingredient statement;~~

~~4. Dietary products (except as defined in 21 CFR 130.10);~~

~~5. Infant formula;~~

~~6. Ice cream or other frozen desserts;~~

~~7. Butter;~~

~~8. Standardized cheese with the exception of cottage cheese as defined under 21 CFR 133.128 and dry curd cottage cheese as defined under 21 CFR 131.129 and nonstandardized cheese; or~~

~~9. Puddings.~~

~~E. Milk and milk products that have been retort processed after packaging or that have been concentrated (condensed) or dried shall conform to the requirements of 2VAC5 490 15 A and 2VAC5 490 15 B if they are utilized as an ingredient in~~

any grade A milk or milk product, or if they are labeled as grade A under 2VAC5-490-15 A 5.

F. Powdered dairy blends may be labeled grade A and used as ingredients in grade A milk and milk products, such as cottage cheese dressing mixes or starter media for cultures used to produce various grade A cultured milk and milk products, if they meet the requirements of this chapter. If powdered dairy blends are used as an ingredient in grade A milk and milk products, blends of dairy powders must be blended under conditions that meet all applicable grade A powdered dairy blends requirements. Grade A powder blends must be made from grade A powdered milk and milk products, except that small amounts of functional ingredients not to exceed 10% by weight of the finished blend that are not grade A are allowed in grade A blends when the finished ingredient is not available in grade A form (e.g., sodium caseinate).

G. Grade A milk and milk products include the following: acidified lowfat milk, acidified nonfat milk, acidified milk, acidified milk product, acidified reduced fat milk, acidified skim milk, acidified sour cream, acidified sour half and half, aseptically processed milk, aseptically processed milk product, boiled custard, buttermilk, coffee cream, concentrated milk, concentrated milk product, condensed buttermilk, cottage cheese, cottage cheese dry curd, cream, cultured half and half, cultured milk, cultured lowfat milk, cultured nonfat milk, cultured reduced fat milk, cultured skim milk, cultured sour cream, cultured sour half and half, dry buttermilk, dry buttermilk product, dry cream, dry curd cottage cheese, dry whole milk, eggnog, eggnog flavored milk, flavored milk, flavored milk product, fortified milk, fortified milk product, frozen milk concentrate, goat milk, half and half, heavy cream, heavy whipping cream, lactose-reduced lowfat milk, lactose-reduced nonfat milk, lactose-reduced milk, lactose-reduced reduced fat milk, lactose-reduced skim milk, light cream, light whipping cream, lowfat cottage cheese, lowfat dry milk, lowfat milk, lowfat yogurt, low sodium lowfat milk, low sodium nonfat milk, low sodium milk, low sodium reduced fat milk, low sodium skim milk, milk, nonfat milk, nonfat dry milk, nonfat dry milk fortified with vitamins A and D, nonfat yogurt, recombined milk, recombined milk product, reconstituted milk, reconstituted milk product, reduced lactose whey, reduced fat milk, reduced minerals whey, sheep milk, skim milk, sour cream, sour half and half, table cream, vitamin A milk, vitamin A milk product, vitamin D milk, vitamin D milk product, whipped cream, whipped light cream, whipping cream, and yogurt.

Part III

Adulterated or Misbranded Milk or Milk Products

2VAC5-490-20. Adulterated or misbranded milk or milk products. (Repealed.)

A. No person may produce, provide, sell, offer, expose for sale, or possess with intent to sell any adulterated or misbranded condensed milk product, dry milk product, milk, or milk product.

B. Each person who produces, provides, sells, offers, exposes for sale, or possesses any adulterated or misbranded condensed milk product, dry milk product, milk, or milk product shall be subject to having the person's adulterated or misbranded condensed milk product, dry milk product, milk, or milk product impounded by the State Regulatory Authority.

C. No person may provide, sell, offer, or expose for sale any condensed milk product, dry milk product, milk, or milk product to any milk plant for use in any grade A milk or grade A milk product if the person does not possess a permit from the State Regulatory Authority, unless the Commissioner of Agriculture and Consumer Services makes a finding in writing (which the Commissioner of Agriculture and Consumer Services may renew for terms not to exceed 90 days per term, without limitation) that (i) the supply of grade A raw milk for pasteurization, ultra-pasteurization, or aseptic processing is not adequate to meet the nutritional needs of any person who secures milk in the Commonwealth; or (ii) the supply of pasteurized, ultra-pasteurized, or aseptically processed milk or milk product at retail is not available for purchase by any person who secures milk in the Commonwealth.

D. No person may produce, provide, sell, offer, expose for sale, or possess any condensed milk product, dry milk product, milk, or milk product under the provision of subsection C of this section unless the condensed milk product, dry milk product, milk, or milk product is labeled "ungraded."

2VAC5-490-25. Impounding of adulterated or misbranded condensed milk, condensed milk product, dry milk, dry milk product, milk, or milk product.

The State Regulatory Authority state regulatory agency shall comply with the following administrative procedures when impounding any adulterated or misbranded condensed milk, condensed milk product, dry milk, dry milk product, milk, or milk product to prevent movement of these products until such violations of critical processing elements have been corrected:

1. The State Regulatory Authority state regulatory agency shall serve the person with a written impoundment notice. The written impoundment notice shall specify the violations and inform the person of the opportunity to

Regulations

appear before the ~~State Regulatory Authority~~ state regulatory agency in person, by counsel, or by other qualified representative at a fact-finding conference for the informal presentation of factual data, arguments, and proof to contest the written notice of violation.

2. The written impoundment notice shall include:

a. The name of the adulterated or misbranded condensed milk, condensed milk product, dry milk, dry milk product, milk, or milk product;

b. The size and number of separate units in the lot being impounded;

c. The product code and sell by date for the lot of product, if each exists; and

d. A statement directing the person to:

(1) Immediately remove from sale the entire lot of adulterated or misbranded condensed milk, condensed milk product, dry milk, dry milk product, milk, or milk product;

(2) Isolate and identify as not for sale the entire lot of adulterated or misbranded condensed milk, condensed milk product, dry milk, dry milk product, milk, or milk product in the person's storage area in a location separate from any storage accessible from a retail sales area; and

(3) Comply with one of the following options:

(a) If the condensed milk, condensed milk product, dry milk, dry milk product, milk, or milk product is adulterated: (i) the entire lot shall be destroyed or (ii) the entire lot shall be held and returned to the manufacturer, distributor, or producer; or

(b) If the condensed milk, condensed milk product, dry milk, dry milk product, milk, or milk product is misbranded: (i) the entire lot shall be destroyed; (ii) the entire lot shall be held and returned to the manufacturer, distributor, or producer; or (iii) the entire lot shall be held and new labels affixed to each container in the lot that comply with all provisions for labeling of condensed milk, condensed milk product, dry milk, dry milk product, milk, or milk product contained in this chapter prior to being offered for sale.

~~Part IV~~ Permits

2VAC5-490-30. Permits.

A. No person may produce, provide, manufacture, sell, offer for sale, or store in the Commonwealth, or bring, send, or receive into the Commonwealth, any milk, milk product, or condensed and dry milk product for use in the commercial preparation of grade A pasteurized, ultra-pasteurized, aseptically processed and packaged, or retort processed after packaging milk or milk product unless the person possesses a

grade A permit from the ~~State Regulatory Authority~~ state regulatory agency. Nothing in this chapter shall be deemed to require a person who is a broker, agent, or distributor's representative to have a grade A permit if the person buys condensed and dry milk product for, or sells condensed and dry milk product to, a milk plant that has a valid grade A permit from any state.

B. Only a person who complies with the requirements of this chapter shall be entitled to receive and retain a grade A permit. Permits shall not be transferable with respect to persons or locations. Each person whose name appears on a grade A permit shall be at least 18 years of age. Each person requesting a grade A permit shall provide the ~~State Regulatory Authority~~ state regulatory agency with the following information:

1. The name of the person ~~or persons~~ to whom the permit is to be issued;

2. If the person ~~or persons are~~ is requesting a permit for a partnership, corporation, firm, trustee, or institution, the person ~~or persons~~ shall provide the articles of incorporation, partnership agreement, trust document, or other document identifying the names, titles, and mailing addresses of all responsible officials for the partnership, corporation, firm, trustee, or institution;

3. The address of the facility being permitted, including the street and number, city, state, and zip code. Addresses containing post office box designations shall not be permitted;

4. The trade name the permit holder will use if the permit holder will not be trading in the name to which the grade A permit is issued;

5. The name, mailing address, and telephone number for one responsible person designated by the grade A permit holder to receive all sample reports and official correspondence from the ~~State Regulatory Authority~~ state regulatory agency;

6. If the permit application is for a grade A dairy farm, the name of the milk marketing organization or milk marketing cooperative to which the permit holder belongs or the buyer of its milk;

7. The names and phone numbers of responsible persons to contact at the grade A dairy farm or plant;

8. If the permit application is for a grade A dairy farm, the name, address, and telephone number of the owner of the dairy farm;

9. The printed name, signature, title, and date signed for each person whose name appears on the permit;

10. The printed name, signature, title, and date signed by the most responsible official for the partnership, corporation, firm, trustee, or institution if the permit is to

be issued in the name of a partnership, corporation, company, firm, trustee, or institution; and

11. If the permit application is for a grade A plant permit, the plant code embossed or printed on packages of milk, milk product, condensed milk, condensed milk product, dry milk, or dry milk product packaged by the plant to identify the plant in lieu of printing the plant's name and address on the packages of milk, milk product, condensed milk, condensed milk product, dry milk, or dry milk product, if one has been assigned.

C. Each person who holds a grade A permit and who requests a change in the name ~~or names~~ on an existing grade A permit shall provide the ~~State Regulatory Authority~~ state regulatory agency with the following information:

1. A written statement requesting that the existing grade A permit be canceled that has been signed by each person whose name appears on the existing grade A permit; except that when a person whose name on an existing grade A permit is deceased, the request for cancellation shall be made in writing by the executor or administrator of the permit holder's estate. A copy of the qualification as executor or administrator shall accompany the request for cancellation along with a statement identifying the name of the deceased and the date of death. Each signature shall be made next to or above the person's printed name and shall be dated with the date on which the written statement was signed by the grade A permit holder;

2. If the existing grade A permit is held in the name of a partnership, corporation, company, firm, trustee, or institution, the written statement requesting the existing grade A permit be canceled shall be signed by a person who is authorized to sign on behalf of the partnership, corporation, company, firm, trustee, or institution. Each signature shall be made next to or above the person's printed name and official title for the partnership, corporation, company, firm, trustee, or institution and shall be dated with the date on which the written statement was signed by the person who is authorized to sign on behalf of the partnership, corporation, company, firm, trustee, or institution; and ~~3. All of the information required by 2VAC5-490-50 B for the State Regulatory Agency to issue a grade A permit.~~

D. No person may hold a grade A dairy farm permit if any part of his facilities, equipment, storage, or surroundings (except toilet rooms) requiring inspection is accessed through any room used for domestic purposes or part of any room used for domestic purposes. Toilet rooms used for domestic purposes may be approved as complying with the requirements of this chapter only if (i) the toilet room is located within 300 feet of the milkroom and (ii) all labor utilized in the milking parlor, milking barn, and milkroom is provided by members of the permit holder's immediate family.

E. No person who holds a grade A permit shall use or allow anyone else to use his facilities and equipment for any purpose other than that for which the grade A permit was issued.

F. Each person who holds a grade A dairy farm permit shall display his permit in the milkroom on his dairy farm.

G. Each person who holds a grade A dairy plant permit shall display his grade A plant permit in his facilities where it is accessible for inspection.

H. No grade A permit holder may transfer any grade A permit to another person or another location.

I. No permit holder who has had his grade A dairy farm permit or dairy plant permit revoked by the ~~State Regulatory Authority~~ state regulatory agency shall be eligible to hold a grade A dairy farm or dairy plant permit at any time after the permit holder's permit is revoked.

~~J. No grade A dairy farm may hold more than one grade A dairy farm permit. Multiple milking facilities or milk tanks on a grade A dairy farm shall not be issued separate grade A dairy farm permits for any reason. If multiple grade A dairy farms with separate herds and bulk holding tanks exist at the same physical mailing address or are under different ownership, each facility must have a separate grade A permit.~~

K. If a dairy farm owner has more than one grade A dairy farm at more than one separate physical mailing address, each facility must have a separate permit.

2VAC5-490-31. Authority to cancel, suspend, revoke, or deny a permit.

A. The ~~State Regulatory Authority~~ state regulatory agency may cancel, suspend, or revoke the grade A permit of any person; or may deny to any person a grade A permit if:

1. The grade A permit holder fails to engage daily in the business for which the grade A permit is issued;
2. The grade A permit holder does not daily produce, provide, manufacture, sell, offer for sale, or store in the Commonwealth, or bring, send, or receive into the Commonwealth milk, milk product, condensed milk product, or dry milk product;
3. The grade A permit holder fails to provide at no cost to the ~~State Regulatory Authority~~ state regulatory agency samples of milk, milk product, condensed milk product, and dry milk product in the person's possession for testing by the ~~State Regulatory Authority~~ state regulatory agency;
4. The grade A permit holder fails to provide on a daily basis milk, milk product, condensed milk product, or dry milk product in the person's possession for sampling and testing by the ~~State Regulatory Authority~~ state regulatory agency;

Regulations

5. The grade A permit holder fails to comply with any requirement of this chapter, or of §§ 3.2-5200 through 3.2-5211 or 3.2-5218 through 3.2-5233 of the Code of Virginia;

6. A public health hazard exists that affects the grade A permit holder's milk, milk product, condensed milk product, or dry milk product;

7. The grade A permit holder or any agent of the grade A permit holder has obstructed or interfered with the ~~State Regulatory Authority~~ state regulatory agency in the performance of its duties;

8. The person supplies false or misleading information to the ~~State Regulatory Authority~~ state regulatory agency (i) in the person's application for a grade A permit; (ii) concerning the identity of the person who will control the facility that is the subject of the grade A permit; (iii) concerning the amount of milk, milk product, condensed milk product, or dry milk product that the person produces, provides, manufactures, sells, offers for sale, or stores in the Commonwealth, or brings, sends, or receives into the Commonwealth and the distribution of the person's milk, milk product, condensed milk product, or dry milk product; (iv) concerning any investigation conducted by the ~~State Regulatory Authority~~ state regulatory agency; or (v) concerning the location of any part of the person's operation that is subject to a grade A permit;

9. The grade A permit holder engages in fraudulent activity regarding (i) the amount of milk, milk product, condensed milk product, or dry milk product the person offers to sell or sells; or (ii) the collection of samples of the person's milk, milk product, condensed milk product, or dry milk product used to determine compliance with any provision of this chapter or as a basis for payment for milk, milk product, condensed milk product, or dry milk product;

10. Three of the most recent five bacteria counts, somatic cell counts, or cooling temperature determinations conducted on the grade A permit holder's raw milk exceed the standards specified in this chapter;

11. Three of the most recent five bacteria counts, coliform determinations, or cooling temperature determinations conducted on the grade A permit holder's milk, milk product, condensed milk product, or dry milk product exceed the standards specified in this chapter;

12. The most recent aflatoxin or drug residue test on the grade A permit holder's milk, milk product, condensed milk product, or dry milk product violates the standards specified in this chapter;

~~13. The most recent phosphatase test on the grade A permit holder's milk, milk product, condensed milk product, or dry milk product violates the standard specified in this chapter;~~

~~14.~~ 13. The most recent chemical residue test or pesticide residue test on the grade A permit holder's milk, milk product, condensed milk product, or dry milk product exceeds the actionable level, tolerance level, or safe level for any chemical residue or pesticide residue specified in 40 CFR Part 180 and 21 CFR Parts 70, 71, 73, 74, 80, 82, 130, 131, 133, 170, 172, 173, 174, 175, 176, 177, 178, 189, 556, 570, 573, 589. In the event that no actionable level, tolerance level, or safe level for a chemical residue or pesticides residue has been established in 40 CFR Part 180 and 21 CFR Parts 70, 71, 73, 74, 80, 82, 130, 131, 133, 170, 172, 173, 174, 175, 176, 177, 178, 189, 556, 570, 573, 589, the tolerance level shall be deemed to be zero;

~~15.~~ 14. The grade A permit holder fails to correct any (i) violation of this chapter documented as a result of an inspection or (ii) deficiency or nonconformity documented as a result of a HACCP audit that the ~~State Regulatory Authority~~ state regulatory agency has cited in a written notice of intent to suspend the person's grade A permit, as a violation of this chapter;

~~16. The grade A permit holder's raw milk for pasteurization is warmer than 50°F two hours after the completion of the first milking or the grade A permit holder's raw milk for pasteurization is warmer than 50°F during or after any subsequent milking;~~

~~17.~~ 15. The grade A permit holder's equipment is covered or partially covered by an accumulation of milk solids, milk fat, or other residue so that the milk, milk product, condensed milk product, or dry milk product is adulterated;

~~18.~~ 16. The grade A permit holder sells or offers for sale milk, milk product, condensed milk product, or dry milk product that violates any requirement of this chapter;

~~19.~~ 17. The grade A permit holder's permit is suspended three times within a 12-month period;

~~20.~~ 18. The ~~authority~~ agency in another state responsible for issuing grade A permits has denied, suspended, or revoked the permit of the person in that state for any act or omission that would violate this chapter or the statutes under which this chapter was adopted, had the act or omission occurred in the Commonwealth; or

~~21.~~ 19. The ~~Virginia Department of Agriculture and Consumer Services~~ state regulatory agency has previously revoked the person's grade A permit.

B. The ~~State Regulatory Authority~~ state regulatory agency may summarily suspend a grade A permit for violation of any of the following subdivisions of subsection A of this section: 6, 9, 10, 11, 12, 13, 14, 15, ~~16~~, ~~17~~, or ~~18~~ 16.

C. The ~~State Regulatory Authority~~ state regulatory agency may suspend from sale any condensed milk, condensed milk product, dry milk, dry milk product, milk, or milk product in violation of the requirements of this chapter processed by any

grade A dairy plant permit holder in lieu of suspending the grade A dairy plant permit holder's permit.

D. If the ~~State Regulatory Authority~~ state regulatory agency suspends a permit holder's permit more than three times within any 12-month period, the permit holder's permit shall not be reinstated for a period of three days on the fourth suspension within any 12-month period and six days on the fifth suspension within any 12-month period with three days being added to the required suspension period for each additional suspension thereafter within any 12-month period.

E. If the ~~State Regulatory Authority~~ state regulatory agency issues two written notices of intent to suspend a person's permit for failure to correct the same deficiency within any 12-month period, the ~~State Regulatory Authority~~ state regulatory agency may issue and enforce a written notice of intent to summarily suspend the person's permit at any time within six months after the date the written notice of intent to summarily suspend is issued, to summarily suspend the person's permit if the same violation exists on any inspection during the six-month period specified in the written notice of intent to summarily suspend.

F. The state regulatory agency shall revoke any permit that has been under voluntary suspension for more than 24 months.

2VAC5-490-32. Authority to impound milk and milk products.

The ~~State Regulatory Authority~~ state regulatory agency may impound any condensed milk, condensed milk product, aseptically processed and packaged milk or milk product, retort processed after packaged milk or milk product, dry milk, dry milk product, milk, or milk product if it is in violation of any requirement of this chapter.

2VAC5-490-33. Written warning and suspension notices for violations of quality standards; required procedures. (Repealed.)

~~A. Whenever two of the last four consecutive cooling temperature checks, bacteria counts, or somatic cell counts taken on separate days for a grade A dairy farm permit holder exceed the standard established for grade A raw milk, the State Regulatory Agency shall send a written warning notice to the permit holder or to the person identified by the permit holder to receive sample reports and official correspondence. The warning notice shall inform the permit holder or his representative (i) concerning which quality standards the permit holder has violated; (ii) that another sample will be collected within 21 days to determine compliance with the requirements; and (iii) that the permit holder's grade A dairy farm permit will be suspended whenever three out of the last five consecutive cooling temperature checks, bacteria counts, or somatic cell counts exceed the standards. The warning notice shall be in effect so long as two out of the last four consecutive samples exceed the standard for grade A raw~~

~~milk. An additional sample shall be collected to determine compliance with the standards for grade A raw milk within 21 days after sending the warning notice, but not before the lapse of three days.~~

~~B. Whenever two of the last four consecutive cooling temperature checks or bacteria counts taken on separate days from a grade A permit holder's dairy plant exceed the standard established for commingled grade A raw milk for pasteurization, ultra pasteurization, or aseptically processed and packaged milk or milk product, the State Regulatory Agency shall send a written warning notice to the permit holder or to the person identified by the permit holder to receive sample reports and official correspondence. The warning notice shall inform the permit holder or his representative (i) concerning which quality standards the permit holder has violated; (ii) that another sample will be collected within 21 days to determine compliance with the requirements of this chapter; and (iii) that the permit holder's grade A permit will be suspended whenever three out of the last five consecutive cooling temperature checks or bacteria counts exceed the quality standards. The warning notice shall be in effect so long as two out of the last four consecutive samples exceed the standard for grade A commingled raw milk for pasteurization, ultra pasteurization, or aseptically processed and packaged milk or milk product. An additional sample shall be collected to determine compliance with the standards for grade A raw milk within 21 days after sending the warning notice, but not before the lapse of three days.~~

~~C. Whenever two of the last four consecutive cooling temperature checks, bacteria counts, or coliform counts taken on separate days from a grade A permit holder's dairy plant exceed the standard established for grade A pasteurized or ultra pasteurized milk or milk products in retail containers, the State Regulatory Agency shall send a written warning notice to the permit holder or to the person identified by the permit holder to receive sample reports and official correspondence. The warning notice shall inform the permit holder or his representative (i) concerning which quality standards the permit holder has violated for each grade A pasteurized or ultra pasteurized milk or milk product in retail containers; (ii) that another sample will be collected within 21 days to determine compliance with the requirements of this chapter; and (iii) that the permit holder's grade A pasteurized or ultra pasteurized milk or milk product in retail containers will be suspended from sale whenever three out of the last five consecutive cooling temperature checks, bacteria counts, or coliform counts exceed the quality standards. The warning notice shall be in effect so long as two out of the last four consecutive samples exceed the standard for grade A pasteurized or ultra pasteurized milk or milk products in retail containers. An additional sample shall be collected to determine compliance with the standards for grade A raw milk within 21 days after sending the warning notice, but not before the lapse of three days.~~

Regulations

D. Whenever two of the last four consecutive cooling temperature checks or bacteria counts taken on separate days from a grade A permit holder's dairy plant exceed the standard established for grade A bulk shipped heat treated milk products, the State Regulatory Agency shall send a written warning notice to the permit holder or to the person identified by the permit holder to receive sample reports and official correspondence. The warning notice shall inform the permit holder or his representative (i) concerning which quality standards the permit holder has violated for each grade A bulk shipped heat treated milk product; (ii) that another sample will be collected within 21 days to determine compliance with the requirements of this chapter; and (iii) that the permit holder's grade A permit will be suspended whenever three out of the last five consecutive cooling temperature checks or bacteria counts exceed the quality standards. The warning notice shall be in effect so long as two out of the last four consecutive samples exceed the standard for grade A bulk shipped heat treated milk products. An additional sample shall be collected to determine compliance with the standards for grade A raw milk within 21 days after sending the warning notice, but not before the lapse of three days.

E. Whenever three out of the last five consecutive cooling temperature checks, bacteria counts, or somatic cell counts taken on separate days for a grade A dairy farm permit holder exceed the standard established for grade A raw milk, the State Regulatory Agency shall send a written suspension notice to the permit holder or to the person identified by the permit holder to receive sample reports and official correspondence. The suspension notice shall inform the grade A dairy farm permit holder (i) why the permit holder's grade A permit is being suspended; (ii) that he will be contacted by the State Regulatory Authority to establish a date on which the suspension of his permit will be effective; and (iii) that his grade A permit will not be reinstated until laboratory analysis determine that his raw milk is in compliance with the quality standards.

F. Whenever three out of the last five consecutive cooling temperature checks or bacteria counts taken on separate days from a grade A permit holder's dairy plant exceed the standard established for commingled grade A raw milk for pasteurization, ultra pasteurization, or aseptically processed milk or milk products, the State Regulatory Authority shall send a written suspension notice to the permit holder or to the person identified by the permit holder to receive sample reports and official correspondence. The suspension notice shall inform the grade A dairy plant permit holder that (i) the permit holder's grade A dairy plant permit is suspended and (ii) should the grade A dairy plant permit holder desire to have his grade A dairy plant permit reinstated, he must make his request in writing to the State Regulatory Authority detailing the actions he has taken and will take to avoid violating the standard he exceeded for commingled grade A

raw milk in the future, establishing a date and time by which these actions will be fully implemented and stating the reasons why his request should be granted.

G. Whenever three out of the last five consecutive cooling temperature checks, bacteria counts, or coliform counts taken on separate days from a grade A permit holder's dairy plant exceed the standard established for grade A pasteurized or ultra pasteurized milk or milk products in retail containers, the State Regulatory Authority shall send a written suspension notice to the permit holder or to the person identified by the permit holder to receive sample reports and official correspondence. The suspension notice shall inform the grade A dairy plant permit holder (i) that the pasteurized or ultra pasteurized milk and dairy products in violation of the quality standard are suspended from sale; (ii) why the pasteurized or ultra pasteurized milk and dairy products are suspended from sale; (iii) that the permit holder must contact the State Regulatory Authority when corrections have been made to bring his pasteurized or ultra pasteurized milk and milk products into compliance before any action will be taken to reinstate sales of his suspended pasteurized or ultra pasteurized milk and milk products; and (iv) that his pasteurized or ultra pasteurized milk and milk products will not be reinstated for sale until laboratory analysis determine that the pasteurized or ultra pasteurized milk and milk products are in compliance with the quality standards.

H. Whenever three out of the last five consecutive cooling temperature checks or bacteria counts taken on separate days from a grade A permit holder's dairy plant exceed the standard established for grade A bulk shipped heat treated milk products, the State Regulatory Authority shall send a written suspension notice to the permit holder or to the person identified by the permit holder to receive sample reports and official correspondence. The suspension notice shall inform the grade A dairy plant permit holder that (i) the permit holder's grade A dairy plant permit is suspended and (ii) should the grade A dairy plant permit holder desire to have his grade A dairy plant permit reinstated, he must make his request in writing to the State Regulatory Authority detailing the actions he has taken and will take to avoid violating the standard he exceeded for grade A bulk shipped heat treated milk products in the future, establishing a date and time by which these actions will be fully implemented and stating the reasons why his request should be granted.

2VAC5-490-34. Inspection of dairy farms, milk plants, condensing plants, and drying plants; HACCP audits of dairy plants. (Repealed.)

A. No person who operates a dairy farm, milk plant, receiving station, transfer station, milk tank truck cleaning facility, condensing plant, or drying plant within the Commonwealth may hold a grade A permit until his dairy farm, milk plant, receiving station, transfer station, milk tank truck cleaning facility, condensing plant, or drying plant has

been inspected and approved by the State Regulatory Authority.

B. After permitting, each person's dairy farm, milk plant, receiving station, transfer station, milk tank truck cleaning facility, condensing plant, or drying plant within the Commonwealth shall be inspected at the minimum frequency as outlined in Section 5 of the "Grade "A" Pasteurized Milk Ordinance, 2013 Revision," or at a greater frequency as deemed necessary by the State Regulatory Authority.

C. After permitting, each person's milk plant, receiving station, transfer station, milk tank truck cleaning facility, condensing plant, or drying plant within the Commonwealth participating in the voluntary HACCP program shall be HACCP audited at the minimum frequency as outlined in Section 5 of the "Grade "A" Pasteurized Milk Ordinance, 2013 Revision," or at a greater frequency as deemed necessary by the State Regulatory Authority.

2VAC5-490-35. The examination of milk and milk products.

A. ~~The State Regulatory Authority shall collect during any consecutive six months at least four samples of raw milk, collected in at least four separate months, except when three months show a month containing two sampling dates separated by at least 20 days for pasteurization, ultra-pasteurization, aseptic processing and packaging, or retort processed after packaging, from each dairy farm that holds a grade A permit.~~

B. ~~After receipt of the milk by the milk plant and prior to pasteurization, ultra pasteurization, aseptic processing and packaging, or retort processed after packaging the State Regulatory Authority shall collect during any consecutive six months at least four samples of raw milk, collected in at least four separate months, except when three months show a month containing two sampling dates separated by at least 20 days for pasteurization, ultra pasteurization, aseptic processing and packaging, or retort processed after packaging, from each milk plant located within the Commonwealth that holds a grade A permit.~~

C. ~~The State Regulatory Authority shall collect during any consecutive six month period at least four samples of each heat treated, pasteurized, ultra pasteurized, milk, flavored milk, flavored reduced fat milk or low fat milk, flavored nonfat milk, each fat level of reduced fat or low fat milk, and milk products collected in at least four separate months, except when three months show a month containing two sampling dates separated by at least 20 days, from each milk plant located in the Commonwealth and holding a grade A permit.~~

D. ~~All pasteurized and ultra pasteurized milk and milk products required sampling and testing shall be conducted only when there are test methods available that are validated by FDA and accepted by NCIMS. Milk and milk products~~

~~that do not have validated and accepted methods are not required to be tested. Aseptically processed and packaged milk and milk products and retort processed after packaged milk and milk products shall be exempt from the sampling and testing requirements of subsection C of this section.~~

E. ~~A. The State Regulatory Authority~~ state regulatory agency shall, except when the production is not on a yearly basis, during each month collect from each milk condensing plant, milk drying plant, whey condensing plant, or whey drying plant holding a grade A permit at least one sample of raw milk for pasteurization, after receipt of the milk by the plant and before pasteurization, and at least one sample of each grade A condensed milk product, grade A dry milk product, grade A condensed whey, and grade A dry whey manufactured. If the production of grade A dry milk products or grade A dry whey is not on a yearly basis, the ~~State Regulatory Authority~~ state regulatory agency shall collect at least five samples within a continuous production period.

F. ~~B. The State Regulatory Authority~~ state regulatory agency may collect samples of milk and milk products as it deems necessary from retail establishments selling milk or milk products to determine compliance with ~~2VAC5-490-20, 2VAC5-490-40, and 2VAC5-490-50, and 2VAC5-490-80.~~ Each person who operates the retail establishment shall furnish the ~~State Regulatory Authority~~ state regulatory agency, upon the request of the ~~State Regulatory Authority, state regulatory agency,~~ with the names of all distributors from whom the person has obtained milk or milk products.

G. ~~C. The State Regulatory Authority~~ state regulatory agency shall provide the remaining portion of the original raw milk sample from each grade A dairy farm that has been screened positive for animal drug residues by a milk plant, receiving station, or transfer station to the grade A dairy farm's milk marketing organization upon request.

H. ~~D. Each grade A permit holder operating a milk plant within the Commonwealth shall provide to the State Regulatory Authority~~ state regulatory agency laboratory determinations of the quantity of vitamin A and vitamin D present in each of the milk plant's milk and milk products to which vitamin A or vitamin D has been added. Each grade A permit holder who operates a milk plant shall provide these laboratory determinations at least annually from a laboratory certified to determine the amount of vitamin A and vitamin D in milk and milk products under the requirements established in "Evaluation of Milk Laboratories," ~~2011~~ 2017 revision, available from the Food and Drug Administration, Center for Food Safety and Applied Nutrition, Office of Field Programs, Division of HACCP, Laboratory Quality Assurance Branch, HFH-450, 6502 South Archer Road, Summit-Argo, Illinois 60501, USA. Each grade A permit holder who operates a milk plant shall pay for the cost of the laboratory determinations.

Regulations

2VAC5-490-36. Drug residue monitoring, farm surveillance and follow up.

A. Each grade A permit holder operating a milk plant, receiving station, or transfer station shall:

~~1. Prior to processing any raw milk from bulk tanks on farms, test for residues of beta lactam drugs all raw milk that the milk plant, receiving station, or transfer station receives for pasteurization, ultra pasteurization, aseptic processing and packaging, or retort processed after packaging;~~

~~2. Test each shipment of bulk tank raw milk or a raw milk supply that has not been transported in bulk milk pickup tankers received for pasteurization, ultra pasteurization, aseptic processing and packaging, or retort processed after packaging by screening tests methods that have been Association of Official Analytical Chemists (AOAC) reviewed and Food and Drug Administration (FDA) accepted. In lieu of any test specified in this subdivision a grade A permit holder may use AOAC first action and AOAC final action tests methods. Nothing in this subdivision shall be deemed to require the testing of individual raw milk samples prior to processing collected from each grade A dairy farm included in any shipment of bulk tank raw milk for pasteurization, ultra pasteurization, aseptic processing and packaging, or retort processed after packaging;~~

~~3. Implement a random sampling program when the Commissioner of the Food and Drug Administration determines that a potential problem exists with animal drug residues or other contaminants in the milk supply. Each grade A permit holder operating a milk plant, receiving station, or transfer station shall analyze the samples for the contaminant by a method determined by FDA to be effective in determining compliance with actionable levels or established tolerances. Each grade A permit holder operating a milk plant, receiving station, or transfer station shall continue the random sampling program until such time that the Commissioner of the Food and Drug Administration is reasonably assured that the problem has been corrected. The sampling program shall represent and include during any consecutive six months, at least four samples collected in at least four separate months, except when three months show a month containing two sampling dates separated by at least 20 days; 1. Comply with all regulations set forth in Appendix N of the "Grade "A" Pasteurized Milk Ordinance, 2017 Revision";~~

~~4. 2. Retain each sample found to be positive for drug residues for a period of 120 hours after the sample test result is positive for drug residues for the use of the State Regulatory Authority state regulatory agency unless directed otherwise by a representative of the State Regulatory Authority state regulatory agency;~~

~~5. Abstain from selling or offering for sale any pasteurized, ultra pasteurized, aseptically processed and packaged, or retort processed after packaged milk, milk product, or condensed and dry milk product processed from raw milk for pasteurization, ultra pasteurization, aseptic processing and packaging, or retort processed after packaging before results of drug screening tests are available and which raw milk later tests positive for drug residues. All of the grade A permit holder's milk commingled with any raw milk that tests positive for drug residues shall be deemed adulterated. Any grade A permit holder operating a milk plant, receiving station, or transfer station shall report to the State Regulatory Authority instances of adulteration immediately;~~

~~6. Record the results of tests on samples of raw milk and retain such records for a period of six months; report records of all results of tests on samples of raw milk to the State Regulatory Authority by the fifteenth day of each month for the preceding month; and maintain and make available to the State Regulatory Authority for inspection and review at the permitted facility records of results of tests on samples of raw milk. Each record of results of tests on samples of raw milk required by this subdivision shall include:~~

~~a. The analyst's signature, date, time, and place where the test was performed;~~

~~b. The registration identification of each pickup tanker of bulk raw milk or raw milk sampled;~~

~~e. The test method used;~~

~~d. The Interstate Milk Shipper Bulk Tank Unit identification number of each grade A milk supply included on each pickup tanker of bulk raw milk tested; and~~

~~e. A 3. Report records of all results of tests on samples of raw milk to the state regulatory agency by the 15th day of each month for the preceding month to include a statement as to whether the test results were are positive or negative. If the results were are positive, the grade A permit holder shall also record: (1) The (i) the identity of each producer contributing to the load from which the positive sample of raw milk was taken; (2) The (ii) the name of the person notified at the State Regulatory Authority state regulatory agency of the positive test results; (3) The (iii) the date and time of day the person at the State Regulatory Authority state regulatory agency was notified of the positive test results; and (4) The (iv) the method of notification of the State Regulatory Authority state regulatory agency;~~

~~7. 4. Immediately notify the State Regulatory Authority state regulatory agency and the milk marketing cooperative or broker of any shipment of bulk tank raw milk for pasteurization, ultra-pasteurization, aseptic processing and packaging, or retort processed after packaging milk and~~

milk products when the shipment of bulk tank raw milk is found to be positive for drug residues. Nothing in this subdivision shall be deemed to include individual raw milk samples collected from each grade A dairy farm included in any shipment of bulk tank raw milk for pasteurization, ultra-pasteurization, aseptic processing and packaging, or retort processed after packaging milk and milk products; and

~~8. Test each producer sample of raw milk to determine the farm of origin represented by any sample of raw milk that tests positive for drug residues and immediately report to the State Regulatory Authority the result of each producer sample representing the raw milk for pasteurization, ultra-pasteurization, aseptic processing and packaging, or retort processed after packaging milk and milk products found to be positive for drug residues;~~

~~9. 5. Provide by facsimile machine or other electronic means to the Virginia Department of Agriculture and Consumer Services state regulatory agency copies of load manifests, producer weight tickets, laboratory worksheets where the results of laboratory tests are originally recorded, and records from electronic readers documenting the results for samples tested for all positive loads; and 10. Immediately discontinue receiving shipments of raw milk from the grade A permit holder whose milk tests positive for drug residues, until subsequent tests are no longer positive for drug residues.~~

B. Each grade A dairy farm permit holder's milk marketing cooperative or milk marketing agent shall be responsible for the collection and testing of follow-up milk samples for animal drug residues required for permit reinstatement and resumption of milk shipment from the dairy farm each time the grade A dairy farm permit holder's milk test positive for animal drug residues.

C. Each grade A dairy farm permit holder's milk marketing cooperative or milk marketing agent shall comply with the following when following up on a producer's dairy farm after a positive animal drug residue:

1. Only persons who hold valid permits to weigh, sample, and collect milk issued by the ~~Virginia Department of Agriculture and Consumer Services~~ state regulatory agency shall collect and deliver follow-up milk samples to laboratories for official testing for the purpose of permit reinstatement and the resumption of milk shipments from the dairy farm; and

2. Reports of laboratory testing shall be provided from officially designated laboratories for each milk sample tested for animal drug residues and shall include the following information:

a. The name of the grade A dairy farm permit holder;

b. The patron number of the grade A dairy farm permit holder;

c. The date, time, and temperature of the milk sample when collected;

d. The name of the person who collected the milk sample;

e. The name of the test method used to test the milk sample; and

f. The test result for the milk sample; ~~and 3. Only confirmation test methods approved under MI 96-10 (Revision #8) dated March 22, 2012, and titled "Drug Residue Test Methods for Confirmation of Presumptive Positive Results and Initial Producer Trace Back" may be used for follow up milk sample testing.~~

2VAC5-490-37. Laboratory certification.

A. Each grade A permit holder operating a dairy plant that receives any milk that could require load confirmation or producer ~~trace back~~ traceback as a result of a positive animal drug residue on a load of milk delivered at the plant shall provide to the ~~Virginia Department of Agriculture and Consumer Services~~ state regulatory agency results of animal drug residue tests from an officially designated laboratory. Each officially designated laboratory shall maintain a listing in the IMS List – Sanitation Compliance and Enforcement Ratings of Interstate Milk Shippers as an approved milk laboratory certified to test load and producer samples. All laboratory results from officially designated laboratories shall be reported to the ~~Virginia Department of Agriculture and Consumer Services~~ state regulatory agency within six hours of the initial presumptive positive result at the plant.

B. Each officially designated laboratory shall comply with the requirements contained in the "Evaluation of Milk Laboratories, ~~2011~~ 2017 revision" for certification and listing in the "IMS List – Sanitation Compliance and Enforcement Ratings of Interstate Milk Shippers."

2VAC5-490-38. Disposal of adulterated milk.

Each grade A permit holder whose milk tests positive for drug residues or has been otherwise adulterated as defined in this chapter shall dispose of such milk in a manner that removes it from the human food chain or in any manner approved by the U.S. Food and Drug Administration.

2VAC5-490-39. Records of milk purchased or sold; list of sources. (Repealed.)

~~Each grade A permit holder who operates a milk plant, receiving station, or transfer station, and any person who distributes milk or milk products shall furnish the State Regulatory Authority upon request:~~

~~1. A true statement of the quantities of milk and milk products of each grade purchased or sold by the milk plant;~~

Regulations

~~receiving station, transfer station, or distributor of milk or milk product; and~~

~~2. A list of all sources from which the milk plant, receiving station, transfer station, or distributor of milk or milk product, received milk or milk products.~~

2VAC5-490-39.2. Milk that may be held in a milk storage tank.

No person who holds a grade A permit may place or hold in his milk storage tank: (i) any milk except ~~that milk which that~~ was obtained from cows, sheep, goats, water buffalo, or other hooved mammal milked at the grade A permit holder's dairy farm; (ii) any milk ~~which that~~ did not enter the milk storage tank through the milking and milk-handling equipment on the grade A permit holder's dairy farm during the milking of the grade A permit holder's cows, sheep, goats, water buffalo, or other hooved mammal; (iii) any milk ~~which that~~ has been held without refrigeration; or ~~which~~ (iv) any milk that has been exposed to chemical or physical contamination.

~~2VAC5-490-39.4. Feeding poultry litter and unprocessed body discharges prohibited. (Repealed.)~~

~~No person holding a grade A permit to produce milk for pasteurization, ultra-pasteurization or aseptic processing shall feed their lactating cows, goats, sheep, water buffalo, or other milking mammals any unprocessed poultry litter or other unprocessed body discharges from any animal.~~

Part V Labeling

2VAC5-490-40. Labeling.

No person may produce, provide, manufacture, sell, offer for sale, or store in the Commonwealth or bring into, send into, or receive into the Commonwealth any milk, milk product, or condensed and dry milk product for use in the commercial preparation of grade A pasteurized, ultra-pasteurized, aseptically processed and packaged, or retort processed after packaged milk or milk products that are not labeled in compliance with the following:

1. Each grade A permit holder's bottles, containers, and packages enclosing any milk or milk products shall be labeled in accordance with the requirements of the Federal Food, Drug, and Cosmetic Act, as amended; the Nutrition Labeling and Education Act (NLEA) of 1990, and regulations developed thereunder; and the Food Allergen Labeling and Consumer Protection Act of 2004;

2. The grade A permit holder shall label or mark all bottles, containers, and packages enclosing any milk or milk products with:

a. The name of a defined milk product, if there is a definition, and if there is no definition, a name that is not false or misleading;

b. The word "reconstituted" or "recombined" if the milk product is made by reconstitution or recombination;

c. The term "grade A" located on the exterior of the package on the principal display panel, the secondary or informational panel, or the cap or cover;

d. The identity of the plant where the grade A permit holder's milk or milk product is pasteurized, ultra-pasteurized, aseptically processed and packaged, or retort processed after packaged by specifying:

(1) The street address, city, state, and zip code of the plant; or

(2) The code assigned the plant under the National Uniform Coding System for Packaging Identification of Milk and Milk Product Processing Plants;

e. In the case of concentrated milk or concentrated milk products the volume or proportion of water to be added for recombining;

f. The name of the milk product that the concentrated milk product will produce, which name shall be preceded by the term "concentrated." In the case of flavored milk or flavored reconstituted milk, the grade A permit holder shall substitute the name of the principal flavor for the word "flavored";

g. In the case of aseptically processed and packaged milk and milk products or retort processed after packaged milk and milk products, the words "keep refrigerated after opening";

h. In the case of aseptically processed and packaged milk or milk products, the term "UHT" ultra-high-temperature;

i. The term "ultra-pasteurized" if the milk or milk product has been ultra-pasteurized;

j. The term "goat" preceding the name of the milk or milk product when the milk or milk product is goat milk or is made from goat milk;

k. The term "sheep" preceding the name of the milk or milk product when the milk or milk product is sheep milk or is made from sheep milk;

l. The term "water buffalo" preceding the name of the milk or milk product when the milk or milk product is water buffalo milk or is made from water buffalo milk;

m. As in the case of cow's milk, goat's milk, sheep's milk, and water buffalo's milk, the common or usual name of the mammal from which the milk was obtained shall precede the name of the milk, milk product, condensed milk, condensed milk product, dry milk, or dry milk product;

n. The information appearing on the label of any bottle, container, or package of milk or milk product shall contain no marks, pictures, graphics, endorsements, or words that are misleading;

o. The "pull date" shall not interfere with the legibility of other labeling required for the milk or milk product and shall be expressed by the first three letters in the name of the month, followed by or preceded by the numeral or numerals constituting the calendar date after which the product shall not be sold or expressed numerically by the number of the month followed by the number of the day. For example, June 1 shall be expressed "JUN 1," "1 JUN," "06 01," or "06-01";

p. The grade A permit holder who operates a milk plant and offers for sale milk or milk product within the Commonwealth shall file and certify with the ~~State Regulatory Authority~~ state regulatory agency the maximum number of days after manufacturing or processing the grade A permit holder's milk or milk products that will be used to determine the "pull date." The grade A permit holder shall establish a "pull date" that under normal storage the milk or milk product meets for a minimum of 96 hours after the "pull date," standards set by this chapter;

q. No person may sell or offer for sale any packaged grade A pasteurized milk, grade A pasteurized milk product, or milk product after the date of the "pull date" on the package;

r. No person may sell or offer for sale any grade A pasteurized milk, grade A pasteurized milk product, or milk product in a package that does not bear the "pull date";

s. Nothing in this chapter shall apply to containers of grade A pasteurized milk, grade A milk products, or milk products that are not to be sold in the Commonwealth; and

t. In the case of condensed or dry milk products, the label shall also contain (i) the identity of the ~~State Regulatory Authority~~ state regulatory agency issuing the processing plant's permit; (ii) the identity of the distributor if the condensed or dry milk products are distributed by a party other than the processing plant, the name and address of the distributor shall also be shown by a statement such as "distributed by"; (iii) the code or lot number identifying the contents with a specific date, run, or batch of the product; and (iv) a statement of the quantity of the contents of the container.

Part VI

Standards for Milk and Milk Products

2VAC5-490-50. Quality standards for milk and milk products.

A. No person may produce, provide, manufacture, sell, offer for sale, or store in the Commonwealth, or bring, send, or receive into the Commonwealth, ~~any milk, milk product, condensed milk product, or dry milk product for use in the commercial preparation of grade A pasteurized, ultra-pasteurized, or aseptically processed milk or milk products that do not comply with the following:~~ 1. Grade A raw milk for pasteurization or ultra pasteurization, aseptic processing and packaging, or retort processed after packaging and all grade A pasteurized, ultra pasteurized, aseptically processed and packaged, or retort processed after packaged milk or milk products shall be produced, processed, manufactured and pasteurized, ultra pasteurized, aseptically processed and packaged, or retort processed after packaged to conform with the following chemical, physical, bacteriological, somatic cell, and temperature standards, and with the requirements of this chapter; 2. No process or manipulation other than (i) pasteurization; (ii) ultra pasteurization; (iii) aseptic processing and packaging; (iv) retort processed after packaging; or (v) processing methods integral with pasteurization, ultra pasteurization, aseptic processing and packaging, or retort processed after packaging; and refrigeration may be applied to milk or milk products for the purpose of removing or deactivating microorganisms provided that filtration, bactofugation, or filtration and bactofugation may be performed in the plant in which the milk or milk product is pasteurized, ultra-pasteurized, aseptically processed and packaged, or retort processed after packaged. Nothing in this chapter is deemed to prohibit any grade A permit holder who operates a milk plant from preparing bulk shipments of cream, skim milk, reduced fat or lowfat milk labeled as "heat treated"; if the raw milk, raw cream, skim milk, reduced fat or lowfat milk is heated, one time, to a temperature warmer than 125°F but cooler than 161°F for separation purposes. In the case of heat treated cream, the cream may be further heated to less than 166°F in a continuing heating process and immediately cooled to 45°F or less when necessary for enzyme deactivation (such as lipase reduction) for a functional reason; 3. Grade ~~grade~~ A raw milk ~~and or~~ milk products product for pasteurization, ultra-pasteurization, aseptic processing and packaging, or retort processed after packaging shall that does not comply with the following standards:

a. [1. The temperature of the raw milk shall be cooled to 40°F or cooler, but not frozen, within two hours after milking and the temperature after the first or any subsequent milking shall not be warmer than 50°F;]

b. [~~1.~~ 2.] The bacteria count of raw cow's milk shall not exceed 50,000 bacteria per milliliter prior to commingling

Regulations

with any other milk; and the bacteria count of raw cow's milk that is commingled shall not exceed 300,000 bacteria per milliliter prior to pasteurization;

e. [~~2. 3.~~] The bacteria count of raw sheep's milk, raw goat's milk, raw water buffalo's milk, or raw milk from any other hooved mammal shall not exceed 100,000 bacteria per milliliter prior to commingling with any other milk; and the bacteria count of raw sheep's milk, raw goat's milk, raw water buffalo's milk, or raw milk from any other hooved mammal that is commingled shall not exceed 300,000 bacteria per milliliter prior to pasteurization; and

d. ~~Raw milk shall freeze at or below 0.530° Hortvet;~~

e. ~~Raw milk shall have no positive results of tests for drug residues by detection methods reported to the State Regulatory Authority by official laboratories, officially designated laboratories, milk plants, receiving stations, or transfer stations;~~

f. [~~3. 4.~~] The somatic cell count of raw cow's milk shall not exceed 500,000 somatic cells per milliliter. The somatic cell count of raw water buffalo's milk, raw sheep's milk, or raw milk from any other hooved mammal shall not exceed 750,000 somatic cells per milliliter. The somatic cell count of raw goat's milk shall not exceed 1,500,000 somatic cells per milliliter;

g. ~~Raw milk shall not exceed the actionable level, tolerance level, or safe level for any chemical residue or pesticide residue specified in 40 CFR Part 180 and 21 CFR Parts 70, 71, 73, 74, 80, 82, 130, 131, 133, 170, 172, 173, 174, 175, 176, 177, 178, 189, 556, 570, 573, and 589. In the event that no actionable level, tolerance level, or safe level for a chemical residue or pesticides residue has been established in 40 CFR Part 180 and 21 CFR Parts 70, 71, 73, 74, 80, 82, 130, 131, 133, 170, 172, 173, 174, 175, 176, 177, 178, 189, 556, 570, 573, and 589, the tolerance level shall be deemed to be zero; and~~

h. ~~Raw milk shall not contain aflatoxin residues equal to or greater than 0.50 parts per billion as determined by the Charm II aflatoxin test or other equivalent method;~~

4. ~~Grade A pasteurized or ultra-pasteurized milk and milk products shall comply with the following standards:~~

a. ~~The temperature of milk products shall be cooled to 45°F or cooler (but not frozen) and maintained at that temperature;~~

b. ~~The bacteria count for any milk or milk products (except acidified or cultured milk or milk products, eggnog, cottage cheese, and other milk or milk products as identified in FDA M a 98) shall not exceed 20,000 bacteria per milliliter;~~

e. ~~Except for commingled milk shipped in a transport tank the coliform count for any milk or milk products shall not exceed 10 coliform organisms per milliliter. Commingled milk shipped in a transport tank shall not exceed 100 coliform organisms per milliliter;~~

d. ~~The phenol value of test samples of pasteurized finished product shall be no greater than the maximum specified for the particular product as determined and specified by (i) any phosphatase test method prescribed in the Official Methods of Analysis, 19th Edition, 2012, published by the Association of Official Analytical Chemists; (ii) the Fluorometer test method; (iii) the Charm ALP test method; or (iv) other equivalent method as determined by the Virginia Department of Agriculture and Consumer Services. A phenol value greater than the maximum specified for the particular product shall mean that the product was not properly pasteurized. A phenol value less than the maximum specified for the particular product shall not be deemed to mean that the product was properly pasteurized, unless there is evidence of proper pasteurization equipment in conformance with this chapter and records to determine an adequate pasteurization process has been completed for each separate batch or lot of milk, milk product, condensed milk, condensed milk product, dry milk, or dry milk product;~~

e. ~~Milk or milk products shall have no positive results of tests for drug residues by detection methods reported to the State Regulatory Authority by official laboratories, officially designated laboratories, milk plants, receiving stations, or transfer stations;~~

f. ~~Milk or milk products shall not exceed the actionable level, tolerance level, or safe level for any chemical residue or pesticide residue specified in 40 CFR Part 180 and 21 CFR Parts 70, 71, 73, 74, 80, 82, 130, 131, 133, 170, 172, 173, 174, 175, 176, 177, 178, 189, 556, 570, 573, and 589. In the event that no actionable level, tolerance level, or safe level for a chemical residue or pesticides residue has been established in 40 CFR Part 180 and 21 CFR Parts 70, 71, 73, 74, 80, 82, 130, 131, 133, 170, 172, 173, 174, 175, 176, 177, 178, 189, 556, 570, 573, and 589, the tolerance level shall be deemed to be zero; and~~

g. ~~Milk or milk products shall not contain aflatoxin residues equal to or greater than 0.50 parts per billion as determined by the Charm II aflatoxin test or other equivalent method;~~

5. ~~Grade A pasteurized concentrated (condensed) milk or milk product shall comply with the following standards:~~

a. ~~The temperature of milk products shall be cooled to 45°F or cooler (but not frozen) and maintained thereat~~

~~unless drying is commenced immediately after condensing; and~~

~~b. Except for commingled milk shipped in a transport tank, the coliform count for any milk or milk product shall not exceed 10 coliform organisms per gram. Commingled milk shipped in a transport tank shall not exceed 100 coliform organisms per gram;~~

~~6. Grade A aseptically processed and packaged milk and milk products shall comply with the following standards:~~

~~a. Aseptically processed and packaged milk and milk products shall be commercially sterile;~~

~~b. Aseptically processed and packaged milk and milk products shall have no positive results of tests for drug residues by detection methods reported to the State Regulatory Authority by official laboratories, officially designated laboratories, milk plants, receiving stations, or transfer stations;~~

~~c. Aseptically processed and packaged milk and milk products shall not exceed the actionable level, tolerance level, or safe level for any chemical residue or pesticide residue specified in 40 CFR Part 180 and 21 CFR Parts 70, 71, 73, 74, 80, 82, 130, 131, 133, 170, 172, 173, 174, 175, 176, 177, 178, 189, 556, 570, 573, and 589. In the event that no actionable level, tolerance level, or safe level for a chemical residue or pesticides residue has been established in 40 CFR Part 180 and 21 CFR Parts 70, 71, 73, 74, 80, 82, 130, 131, 133, 170, 172, 173, 174, 175, 176, 177, 178, 189, 556, 570, 573, and 589, the tolerance level shall be deemed to be zero; and~~

~~d. Aseptically processed and packaged milk and milk products shall not contain aflatoxin residues equal to or greater than 0.05 parts per billion;~~

~~7. Grade A nonfat dry milk and dry milk or milk products shall comply with the following standards:~~

~~a. The bacteria count shall not exceed 10,000 bacteria per gram, and~~

~~b. The coliform count shall not exceed 10 coliform organisms per gram;~~

~~8. Grade A whey for condensing or drying shall be maintained at a temperature of 45°F (7°C) or less, or 135°F (57°C) or greater; provided that, acid type whey with a titratable acidity of 0.40% or above or a pH of 4.6 or below shall be exempt for the requirements of this subdivision;~~

~~9. Grade A pasteurized condensed whey and whey products shall be cooled to 50°F (10°C) or less during crystallization and within 72 hours of condensing. The coliform count of grade A pasteurized condensed whey and whey products shall not exceed 10 coliform organisms per gram; and~~

~~10. The coliform count of grade A dry whey, grade A dry whey products, grade A dry buttermilk, and grade A dry buttermilk products shall not exceed 10 coliform organisms per gram.~~

~~B. Sanitation requirements for grade A raw milk. 1. Each person who holds a grade A permit to produce raw milk for pasteurization, ultra-pasteurization, aseptic processing and packaging, or retort processed after packaging shall comply with:~~

~~a. The following administrative procedures contained in the "Grade "A" Pasteurized Milk Ordinance, 2013 Revision": Section 4; Section 7, Items 1r, 2r, 3r, 4r, 5r, 6r, 7r, 8r, 9r, 10r(1), 10r(2), 11r, 12r, 13r, 14r, 15r, 16r, 17r, 18r(2), 18r(3), and 19r; Section 8; Section 10; and Section 13;~~

~~b. The following appendices contained in the "Grade "A" Pasteurized Milk Ordinance, 2013 Revision": Appendices A, B, C, D, F, G, H, N, Q, and R;~~

~~c. Item 1r. Abnormal milk. Each person who holds a grade A permit to produce raw milk for pasteurization, ultra pasteurization, aseptic processing and packaging, or retort processed after packaging shall:~~

~~(1) Milk last or with separate equipment cows, sheep, goats, water buffalo, or other mammals that show evidence of the secretion of abnormal milk in one or more quarters (based upon bacteriological, chemical, or physical examination) and discard the milk obtained from cows, sheep, goats, water buffalo, or other mammals that show evidence of the secretion of abnormal milk in one or more quarters based upon bacteriological, chemical, or physical examination; and~~

~~(2) Milk last or with separate equipment cows, sheep, goats, water buffalo, or other mammals treated with, or that have consumed, chemical, medicinal, or radioactive agents that are capable of being secreted in the milk and that may be deleterious to human health; and dispose of in a manner that will not pollute the environment or any human food the milk obtained from cows, sheep, goats, water buffalo, or other mammals treated with, or that have consumed, chemical, medicinal, or radioactive agents that are capable of being secreted in the milk and that may be deleterious to human health;~~

~~d. Item 2r. Milking barn, stable, or parlor; construction. Each person who holds a grade A permit to produce raw milk for pasteurization, ultra pasteurization, aseptic processing and packaging, or retort processed after packaging shall:~~

~~(1) Provide on the person's dairy farm a milking barn, stable, or parlor in which the milking herd shall be housed during milking time;~~

Regulations

~~(2) Provide on the grade A permit holder's dairy farm a milking barn, stable, or parlor, which milking barn, stable, or parlor shall:~~

~~(a) Have floors constructed of concrete or equally impervious material;~~

~~(b) Have walls and ceiling that are smooth, painted, or finished in an approved manner, and in good repair and have a ceiling which is dust tight;~~

~~(c) Have separate stalls or pens for horses, calves, and bulls;~~

~~(d) Have natural or artificial light, well distributed for day or night milking;~~

~~(e) Have sufficient air space and air circulation to prevent condensation and excessive odors;~~

~~(f) Have dust tight covered boxes or bins, or separate storage facilities for ground, chopped, or concentrated feed; and~~

~~(g) Not be overcrowded; and~~

~~(3) Provide and use only an "automatic milking installation" that complies with the requirements of Appendix Q of the "Grade "A" Pasteurized Milk Ordinance, 2013 Revision" if the person milks any cows, goats, sheep, water buffalo, or other mammals (except humans) using robots or other automated means in the absence of any human;~~

~~e. Item 3r. Milking barn, stable, or parlor; cleanliness. Each person who holds a grade A permit to produce raw milk for pasteurization, ultra pasteurization, aseptic processing and packaging, or retort processed after packaging shall:~~

~~(1) Keep the interior of the milking barn, stable, or parlor clean;~~

~~(2) Keep the floors, walls, ceilings, windows, pipelines, and equipment in the milking barn, stable, or parlor free of filth or litter and clean;~~

~~(3) Keep swine and fowl out of the milking barn, stable, and parlor;~~

~~(4) Keep surcingles, belly straps, milk stools, and antikickers clean and stored above the floor; and~~

~~(5) Store feed in a manner that will not increase the dust content of the air or interfere with the cleaning of the floor;~~

~~f. Item 4r. Cow yard, sheep yard, goat yard, water buffalo yard, or other milking mammal yard. Each person who holds a grade A permit to produce raw milk for pasteurization, ultra pasteurization, aseptic processing and packaging, or retort processed after packaging shall:~~

~~(1) Provide and maintain the cow yard, sheep yard, goat yard, water buffalo yard or other milking mammal yard, to be graded and drained, and to have no standing pools of water or accumulations of organic wastes;~~

~~(2) In the cow loafing, goat loafing, sheep loafing, water buffalo loafing, or other milking mammal loafing, cattle housing, sheep housing, goat housing, water buffalo housing, or other milking mammal housing areas remove cow droppings, sheep droppings, goat droppings, water buffalo droppings, and other milking mammal droppings and remove soiled bedding or add clean bedding at sufficiently frequent intervals to prevent the soiling of the cow's, sheep's, goat's, water buffalo's, or other milking mammal's udder and flanks;~~

~~(3) Assure that waste feed does not accumulate in the goat yard, cow yard, sheep yard, water buffalo yard, other milking mammal yard, cow loafing, sheep loafing, goat loafing, water buffalo loafing, other milking mammal loafing, cattle housing, sheep housing, goat housing, water buffalo housing, or other milking mammal housing area;~~

~~(4) Maintain any manure packs so as to be properly drained and so as to provide a reasonably firm footing; and~~

~~(5) Keep swine and fowl out of the cow yard, sheep yard, goat yard, water buffalo yard, other milking mammal yard, cow loafing, sheep loafing, goat loafing, water buffalo loafing, other milking mammal loafing, cattle housing, sheep housing, goat housing, water buffalo housing, or other milking mammal housing area;~~

~~g. Item 5r. Milkhouse or room; construction and facilities. Each who holds a grade A permit to produce raw milk for pasteurization, ultra pasteurization, aseptic processing and packaging, or retort processed after packaging shall:~~

~~(1) Provide a milkhouse or milkroom of sufficient size in which the cooling, handling, and storing of milk and the washing, sanitizing, and storing of milk containers and utensils shall be conducted except as provided under subdivision 1 n of this subsection;~~

~~(2) Provide a milkhouse with a smooth floor, constructed of concrete or equally impervious material graded to drain, and maintained in good repair;~~

~~(3) Dispose of in a sanitary manner all liquid waste generated in the milkhouse;~~

~~(4) Provide one or more floor drains in the milkhouse, which floor drains shall be accessible, and if connected to a sanitary sewer system trapped;~~

(5) Provide in the milkhouse walls and ceilings constructed of a smooth material, in good repair, well painted, or finished in an equally suitable manner;

(6) Provide adequate natural or artificial light and ventilation in the milkhouse;

(7) Use the milkhouse for no other purpose than milkhouse operations;

(8) Provide no direct opening from the milkhouse into any barn, stable, or into any room used for domestic purposes, other than a direct opening between the milkhouse and milking barn, stable, or parlor provided with a tight fitting, self closing, solid door, which door has been hinged to be single or double acting. Screened vents in the wall between the milkhouse and a breezeway, which separates the milkhouse from the milking parlor, are permitted, provided animals are not housed within the milking facility;

(9) Provide in the milkhouse water under pressure which has been piped into the milkhouse;

(10) Provide in the milkhouse a two compartment wash vat and adequate hot water heating facilities;

(11) Except as provided for under subdivision 1 g (12) of this subsection provide a suitable shelter for the receipt of milk when the grade A permit holder uses a transportation tank for the cooling or storage of milk on the grade A permit holder's dairy farm, which shelter adjacent to, but not a part of, the milkroom; and with the requirements of the milkroom shall comply with respect to construction, light, drainage, insect and rodent control, and general maintenance. In addition to providing a suitable shelter as required by this subsection, the grade A permit holder shall:

(a) Install an accurate, accessible temperature recording device in the milk line used to fill the transportation tank downstream from an effective cooling device capable of cooling the milk to 40°F or less before the milk enters the transportation tank. Electronic records that comply with the applicable provisions as referred to in Sections IV and V of Appendix H of the "Grade "A" Pasteurized Milk Ordinance, 2013 Revision," with or without hard copy, may be used in place of temperature recording records;

(b) Install an indicating thermometer as close as possible to the temperature recording device in the milk line used to fill the transportation tank to be used for verification of recording temperatures, which indicating thermometer shall:

(i) Have a temperature span of not less than 50°F including normal storage temperatures plus or minus 5°F, with an extension of the scale on either side permitted and graduated in not more than 2°F divisions;

(ii) Have temperature scale divisions spaced not less than 0.0625 inches apart between 35°F and 55°F;

(iii) Have an accuracy within plus or minus 2°F throughout the scale range; and

(iv) Have the stem fitting installed in a pressure tight seat or other sanitary fitting with no threads exposed;

(e) Provide an effective means to agitate the transport tank or an approved in line sampling device in order to collect a representative milk sample;

(12) If the State Regulatory Authority determines conditions exist whereby the milk transport tank may be adequately protected and sampled without contamination, a shelter need not be provided if the grade A permit holder:

(a) Provides a means to make all milk hose connections to the transport tank accessible from within the milkhouse;

(b) Provides a means to completely protect the milk hose connection to the transport tank from the outside environment. With approval of the State Regulatory Authority, the direct loading of milk from the milkhouse to the milk tank truck may be conducted through a properly designed hose port that adequately protects the milkhouse opening or by stubbing the milk transfer and associated CIP cleaned lines outside the milkhouse wall in accordance with Item 5r, Administrative Procedure #15, of the "Grade "A" Pasteurized Milk Ordinance, 2013 Revision";

(c) Ensures only milk transport tanks the manholes of which have been sealed after cleaning and sanitizing are utilized;

(d) Ensures only milk transport tanks that have been washed and sanitized at permitted dairy plants or a permitted milk tank truck cleaning facilities acceptable to the State Regulatory Agency are utilized;

(e) Installs an accurate, accessible temperature recording device in the milk line used to fill the transportation tank downstream from an effective cooling device capable of cooling the milk to 40°F or less before the milk enters the transportation tank. Electronic records that comply with the applicable provisions as referred to in Sections IV and V of Appendix H of the "Grade "A" Pasteurized Milk Ordinance, 2013 Revision," with or without hard copy, may be used in place of temperature recording records;

(f) Installs an indicating thermometer as close as possible to the temperature recording device in the milk line used to fill the transportation tank to be used for verification of recording temperatures, which indicating thermometer shall:

Regulations

~~(i) Have a temperature span of not less than 50°F including normal storage temperatures plus or minus 5°F, with an extension of the scale on either side permitted and graduated in not more than 2°F divisions;~~

~~(ii) Have temperature scale divisions spaced not less than 0.0625 inches apart between 35°F and 55°F;~~

~~(iii) Have an accuracy within plus or minus 2°F throughout the scale range; and~~

~~(iv) Have the stem fitting installed in a pressure tight seat or other sanitary fitting with no threads exposed;~~

~~(g) Provides an effective means to agitate the transport tank or an approved in line sampling device in order to collect a representative milk sample; and~~

~~(h) Provides a self draining concrete or equally impervious surface on which the transport tank can be parked during filling and storage;~~

~~h. Item 6r. Milkhouse or milkroom; cleanliness. Each person who holds a grade A permit to produce raw milk for pasteurization, ultra pasteurization, aseptic processing and packaging, or retort processed after packaging shall:~~

~~(1) Keep clean the floors, walls, ceilings, windows, tables, shelves, cabinets, wash vats, nonproduct contact surfaces of milk containers, utensils, equipment, and other milkroom equipment in the milkroom;~~

~~(2) Place in the milkroom only those articles directly related to milkroom activities; and~~

~~(3) Keep the milkroom free of trash, animals, and fowl;~~

~~i. Item 7r. Toilets. Each person who holds a grade A permit to produce raw milk for pasteurization, ultra pasteurization, aseptic processing and packaging, or retort processed after packaging shall:~~

~~(1) Provide on the person's grade A dairy farm one or more toilets, which shall be conveniently located and properly constructed, and operated, and maintained in a sanitary manner;~~

~~(2) Prevent the access of flies to the waste contained in or from the toilet;~~

~~(3) Prevent the waste contained in or from the toilet from polluting the soil surface or contaminating any water supply; and~~

~~(4) Assure that there is no direct opening from the toilet into any milkroom;~~

~~j. Item 8r. Water supply. Each person who holds a grade A permit to produce raw milk for pasteurization, ultra pasteurization, aseptic processing and packaging, or retort processed after packaging shall:~~

~~(1) Provide water for milkhouse and milking operations from a water supply properly located, protected, and operated. The water supply shall be easily accessible, adequate, of a safe, sanitary quality, and meet the construction standards of Appendix D of the "Grade "A" Pasteurized Milk Ordinance, 2013 Revision";~~

~~(2) Construct the water supply so that no cross connections between a safe water supply and any unsafe or questionable water supply or other source of pollution exists; and~~

~~(3) Construct the water supply so that no submerged inlets exist through which a safe water supply may be contaminated;~~

~~k. Item 9r. Utensils and equipment construction. Each person who holds a grade A permit to produce raw milk for pasteurization, ultra pasteurization, aseptic processing and packaging, or retort processed after packaging shall:~~

~~(1) Provide multiuse containers, equipment, and utensils for use in the handling, storage, or transportation of any milk, which multiuse containers, equipment, and utensils, shall be made of smooth, nonabsorbent, corrosion-resistant, and nontoxic materials; constructed as to be easily cleaned; and maintained in good repair;~~

~~(2) Provide milk pails that are constructed to be seamless and of the hooded type if the grade A permit holder does hand milking and stripping;~~

~~(3) Abstain from using multiple use woven material for straining any milk;~~

~~(4) Use only single service articles that have been manufactured, packaged, transported, stored, and handled in a sanitary manner and that comply with the requirements of subdivision C 1 l of this section;~~

~~(5) Abstain from reusing any article intended for single-service use; and~~

~~(6) Provide farm holding or cooling tanks, welded sanitary piping, and transportation tanks that comply with the requirements of subdivisions C 1 l and C 1 m of this section on any grade A dairy farm;~~

~~l. Item 10r. Utensils and equipment; cleaning. Each person who holds a grade A permit to produce raw milk for pasteurization, ultra pasteurization, aseptic processing and packaging, or retort processed after packaging shall:~~

~~(1) Clean after each use, or once every 24 hours in the case of continuous operations, the product contact surfaces of all multiuse containers, multiuse equipment, and multiuse utensils used in the handling, storage, or transportation of any milk;~~

~~(2) 1. Offer for sale or sell no milk that has passed through any equipment if the milk-contact surfaces of the~~

equipment are no longer visible or are covered or partially covered by an accumulation of milk solids, milk fat, cleaning compounds, or other soils. Any milk that passes through equipment, the milk-contact surfaces of which are no longer visible, or are covered or partially covered by an accumulation of milk solids, milk fat, cleaning compounds, or other soils, shall be deemed adulterated (Item 10r); and

~~(3) Construct a separate wash manifold for all CIP cleaned milk pipelines in all new or extensively remodeled facilities;~~

~~m. Item 11r. Utensils and equipment; sanitization. Each person who holds a grade A permit to produce raw milk for pasteurization, ultra pasteurization, aseptic processing and packaging, or retort processed after packaging shall sanitize before each use the product contact surfaces of all multiuse containers, equipment, and utensils used in the handling, storage, or transportation of any milk;~~

~~n. Item 12r. Utensils and equipment; storage. Each person who holds a grade A permit to produce raw milk for pasteurization, ultra pasteurization, aseptic processing and packaging, or retort processed after packaging shall store containers, utensils, and equipment used in the handling, storage, or transportation of any milk in a sanitizing solution or store the containers, utensils, and equipment used in the handling, storage, or transportation of any milk to assure complete drainage, and protected from contamination prior to use. Nothing in this requirement shall be deemed to prohibit a grade A permit holder from storing in a milking barn or milking parlor a milk pipeline, or the following pipeline milking equipment: milker claw, inflation, weigh jar, meter, milk hose, milk receiver, tubular cooler, plate cooler, or milk pump; if the milk pipeline or pipeline milking equipment specified in this subdivision is designed for mechanical cleaning; and designed, installed, and operated to protect the milk product and solution contact surfaces from contamination at all times;~~

~~o. Item 13r. Milking; flanks, udders, and teats. Each person who holds a grade A permit to produce raw milk for pasteurization, ultra pasteurization, aseptic processing and packaging, or retort processed after packaging shall:~~

~~(1) Milk all cows, sheep, goats, water buffalo, and other mammals in a milking barn, stable, or parlor;~~

~~(2) Trim the hair from the udder and tail of all milking cows, sheep, goats, water buffalo, and other mammals to facilitate cleaning of the udder and tail;~~

~~(3) Keep the flanks, udders, bellies, and tails of all milking cows, sheep, goats, water buffalo, and other mammals free of visible dirt;~~

~~(4) Keep the hair on the udders of all milking cows, sheep, goats, water buffalo, and other mammals to a~~

~~length that the hair on the udder of any cow, sheep, goat, water buffalo, or other mammal cannot be incorporated with the teat in the inflation during milking;~~

~~(5) Abstain from milking any cow, sheep, goat, water buffalo, or other mammal whose udder or teats is not clean and dry;~~

~~(6) Treat with a sanitizing solution, just prior to milking, the teats of each milking cow, sheep, goat, water buffalo, and other mammal and dry the teats of each milking cow, sheep, goat, water buffalo, and other mammal before milking; and~~

~~(7) Milk all cows, sheep, goats, water buffalo, and other mammal with dry hands;~~

~~p. Item 14r. Protection from contamination. Each person who holds a grade A permit to produce raw milk for pasteurization, ultra pasteurization, aseptic processing and packaging, or retort processed after packaging shall:~~

~~(1) Locate and operate the milking and milkhouse operations, equipment, and facilities to prevent any contamination of the milk, equipment, containers, or utensils;~~

~~(2) Transfer immediately from the milking barn, stable, or parlor to the milkhouse each pail or container of milk;~~

~~(3) Strain, pour, transfer, or store any milk unless it is protected from contamination;~~

~~(4) Handle all containers, utensils and equipment that have been sanitized in such a manner as to prevent contamination of any product contact surfaces;~~

~~(5) Transport from the grade A permit holder's dairy farm to a milk plant or receiving station all milk in cans, using vehicles that are constructed and operated to protect the milk from sun, freezing, and contamination;~~

~~(6) Keep clean the inside and outside of each vehicle used to transport from the grade A permit holder's dairy farm to a milk plant or receiving station any milk in cans; and~~

~~(7) Transport no substance capable of contaminating the milk when transporting milk;~~

~~q. Item 15r. Drug and chemical control. Each person who holds a grade A permit to produce raw milk for pasteurization, ultra pasteurization, aseptic processing and packaging, or retort processed after packaging shall:~~

~~(1) Store all drugs and medicinals in such a manner that neither the drugs nor the medicinals can contaminate any milk or the milk product contact surface of any equipment, containers, or utensils;~~

~~(2) Abstain from using unapproved or improperly labeled medicinals or drugs to treat any dairy animals or store~~

Regulations

unapproved or improperly labeled medicinals or drugs in the milkhouse, milking barn, stable or parlor. Except for topical antiseptics, wound dressings (unless intended for direct injection into the teat), vaccines and other biologics, and dosage form vitamins and mineral products, a drug or medicinal is properly labeled only if the drug or medicinal is labeled with the following:

(a) For over the counter medicinals or drugs, the name and address of the manufacturer or distributor, or for prescription and extra-label use medicinals or drugs, the name of the veterinary practitioner dispensing the product;

(b) Directions for use of the drug or medicinal and the prescribed holding time;

(c) Any cautionary statement for the drug or medicinal, if needed; and

(d) The active ingredient or ingredients in the drug or medicinal;

(3) Except for topical antiseptics, wound dressings (unless intended for direct injection into the teat), vaccines and other biologics, and dosage form vitamins and mineral products, segregate all medicinals and drugs used for lactating dairy animals from any medicinals and drugs used for nonlactating dairy animals to include dairy calves, dairy heifers, and dairy bulls;

(4) Except for topical antiseptics, wound dressings (unless intended for direct injection into the teat), vaccines and other biologics, and dosage form vitamins and mineral products, provide separate shelves in a cabinet, refrigerator, or other storage facility for the storage of all medicinals and drugs for treatment of nonlactating dairy animals, to include dairy calves, dairy heifers, and dairy bulls, separate from those medicinals or drugs used for lactating dairy animals; and

(5) Store topical antiseptics, wound dressings (unless intended for direct injection into the teat), vaccines and other biologics, and dosage form vitamins and mineral products in a manner that does not contaminate any milk or the milk product surfaces of any containers or utensils;

r. Item 16r. Personnel; hand washing facilities. Each person who holds a grade A permit to produce raw milk for pasteurization, ultra-pasteurization, aseptic processing and packaging, or retort processed after packaging shall provide hand washing facilities that are convenient to the milkhouse, milking barn, stable, or parlor, and flush toilet and that include separate hot and cold running water; soap or detergent; and individual sanitary towels or other approved hand drying devices. When individual sanitary towels are used, covered trash containers shall be provided;

s. Item 17r. Personnel; cleanliness. Each person who holds a grade A permit to produce raw milk for pasteurization, ultra-pasteurization, aseptic processing and packaging, or retort processed after packaging shall:

(1) Wash clean and dry with an individual sanitary towel or other approved hand drying device the person's hands immediately before milking, before performing any milkhouse function, and immediately after the interruption of milking or performing any milkhouse function; and

(2) Wear clean outer garments while milking or handling any milk, milk containers, utensils, or equipment. Bulk milk haulers shall wear clean outer garments while handling any milk, milk containers, utensils, or equipment;

t. Item 18r. Cooling. Each person who holds a grade A permit to produce raw milk for pasteurization, ultra-pasteurization, aseptic processing and packaging, or retort processed after packaging shall:

(1) Cool to 40°F or cooler (but not freeze) all raw milk for pasteurization, ultra-pasteurization, aseptic processing and packaging, or retort processed after packaging within two hours after the grade A permit holder completes milking and assure that the temperature of the grade A permit holder's raw milk is not warmer than 50°F after the first milking or any subsequent milking. Raw milk for pasteurization that is warmer than a temperature of 50°F after the first milking or any subsequent milking shall be deemed a public health hazard and shall not be offered for sale or sold;

(2) Assure that circular recording charts are operated continuously and maintained in a properly functioning manner. Circular charts shall not overlap; and

(3) 2. Provide covered trash containers when individual sanitary towels are used (Item 16r);

3. [Cool to 40°F or cooler (but not freeze) all raw milk for pasteurization, ultra-pasteurization, aseptic processing and packaging, or retort processed after packaging within two hours after the grade A permit holder completes milking and ensure that the temperature of the grade A permit holder's raw milk is not warmer than 50°F after the first milking or any subsequent milking. Raw milk for pasteurization that is warmer than a temperature of 50°F after the first milking or any subsequent milking shall be deemed a public health hazard and shall not be offered for sale or sold (Item 18r);

4.] Agitate all raw milk for pasteurization for not less than five minutes at least once every hour; assure that the milk in the farm's bulk milk cooling or holding tank covers the agitator paddle sufficiently to facilitate proper cooling and sampling after the completion of the first milking; and

abstain from selling or offering for sale milk that does not cover the agitator paddle sufficiently to facilitate proper cooling and sampling after the completion of the first milking (Item 18r);

[4. 5.] Equip all farm bulk milk tanks with an approved temperature-recording device (Item 18r); and

~~u. Item 19r. Insect and rodent control. Each person who holds a grade A permit to produce raw milk for pasteurization, ultra pasteurization, aseptic processing and packaging, or retort processed after packaging shall:~~

~~(1) Take effective measures to prevent the contamination of any milk, containers, equipment, and utensils by insects, rodents, and other animals, and by chemicals used to control insects, rodents, and other animals;~~

~~(2) [5. 6.] Maintain the milkroom free of insects, rodents, and other animals; (Item 19r).~~

~~(3) Keep the areas surrounding the milkhouse; milking barn; milking stable; milking parlor; cattle, sheep, water buffalo, other mammal, or goat housing; cattle, sheep, water buffalo, other mammal, or goat loafing area; water supply; or other facilities on the grade A permit holder's dairy farm neat, clean, and free of conditions that might harbor or be conducive to the breeding of insects and rodents; and~~

~~(4) Store all feed in such a manner that the feed will not attract birds, rodents, or insects.~~

~~C. Sanitation requirements for grade A pasteurized, ultra-pasteurized, aseptically processed and packaged, or retort processed after packaged milk or milk products.~~

~~1. Each person who holds a grade A permit to produce grade A pasteurized, ultra pasteurized, aseptically processed and packaged, or retort processed after packaged milk or milk products shall comply with:~~

~~a. The following administrative procedures contained in the "Grade "A" Pasteurized Milk Ordinance, 2013 Revision": Section 7, Items 1p, 2p, 3p, 4p, 5p, 6p, 7p, 8p, 9p, 10p, 11p, 12p, 13p, 14p, 15p, 16p, 17p, 18p, 19p, 20p, 21p, and 22p (provided in the case of milk plants or portions of milk plants that are IMS Listed to produce aseptically processed and packaged milk or milk products, the APPS or RPPS, respectively, as defined in the "Grade "A" Pasteurized Milk Ordinance, 2013 Revision," shall be exempt from Items 7p, 10p, 11p, 12p, 13p, 15p, 16p, 17p, 18p, and 19p of the "Grade "A" Pasteurized Milk Ordinance, 2013 Revision" and shall comply with the applicable portions of 21 CFR Parts 108, 110, and 113); Section 13; and Section 14;~~

~~b. The following appendices contained in the "Grade "A" Pasteurized Milk Ordinance, 2013 Revision": Appendices D, F, G, H, I, J, K, L, N, O, R, and S;~~

~~e. Item 1p. Floors; construction. Each person who holds a grade A permit to produce grade A pasteurized, ultra-pasteurized, aseptically processed and packaged, or retort processed after packaged milk or milk products shall:~~

~~(1) Except as specified in subdivision C 1 c (2) of this section, provide floors for all rooms in which milk or milk products are processed, handled, packaged, or stored, or in which milk containers, equipment, or utensils are washed, constructed of concrete or other equally impervious and easily cleaned material and that are smooth, properly sloped, provided with trapped drains, and kept in good repair; and~~

~~(2) The floor in any cold storage room used for storing milk and milk products need not be provided with floor drains if the floors are sloped to drain to one or more exits from the cold storage room. The floor in any storage room used for storing dry ingredients or packaging materials need not be provided with drains, and the floor in any storage room used for storing dry ingredients or packaging materials may be constructed of tightly joined wood;~~

~~d. Item 2p. Walls and ceilings; construction. Each person who holds a grade A permit to produce grade A pasteurized, ultra pasteurized, aseptically processed and packaged, or retort processed after packaged milk or milk products shall provide walls and ceilings of rooms in which milk or milk products are handled, processed, packaged, or stored, or in which milk containers, utensils, or equipment are washed, that have a smooth, washable, light colored surface, and that are in good repair;~~

~~e. Item 3p. Doors and windows. Each person who holds a grade A permit to produce grade A pasteurized, ultra-pasteurized, aseptically processed and packaged, or retort processed after packaged milk or milk products shall provide:~~

~~(1) Effective means to prevent the access of insects and rodents to any part of a milk plant, receiving station, or transfer station; and~~

~~(2) Solid doors or glazed windows for all openings to the outside of any milk plant, receiving station, or transfer station and keep the doors and windows closed during dusty weather;~~

~~f. Item 4p. Lighting and ventilation. Each person who holds a grade A permit to produce grade A pasteurized, ultra pasteurized, aseptically processed and packaged, or retort processed after packaged milk or milk products shall provide rooms in which any milk or milk products are handled, processed, packaged, or stored, or in which any milk containers, equipment, or utensils are washed, that are well lighted and well ventilated;~~

Regulations

g. Item 5p. ~~Separate rooms. Each person who holds a grade A permit to produce grade A pasteurized, ultra-pasteurized, aseptically processed and packaged, or retort processed after packaged milk or milk products shall:~~

~~(1) Provide separate rooms for: (i) pasteurizing, processing, cooling, reconstituting, condensing, drying, and packaging of milk, dry milk, and milk products; (ii) cleaning milk cans, containers, bottles, cases, and dry milk or dry milk product containers; (iii) the fabrication of containers and closures for milk and milk products, except for aseptically processed and packaged milk and milk products, or retort processed after packaging milk and milk products in which the containers and closures are fabricated within the APPS or RPPS, respectively; (iv) cleaning and sanitizing facilities for bulk milk transport tanks if the grade A permit holder receives any milk or milk product in bulk milk transport tanks; and (v) receiving cans of milk and milk products separate from clauses (i), (ii) and (iii) of this subdivision, unless all of the grade A permit holder's milk or milk products are received in bulk milk transport tanks;~~

~~(2) Not use any room with a direct opening into any stable or room used for domestic purposes to handle, process, or store any milk or milk products or to wash or store any milk containers, utensils, or equipment;~~

~~(3) Use rooms of sufficient size so as not to be crowded to handle, process, or store any milk or milk products or to wash or store any milk containers, utensils, or equipment; and~~

~~(4) Provide designated areas or rooms for the receiving, handling, and storage of returned packaged milk and milk products if the permit holder receives any returned packaged milk or milk products;~~

h. Item 6p. ~~Toilet sewage disposal facilities. Each person who holds a grade A permit to produce grade A pasteurized, ultra pasteurized, aseptically processed and packaged, or retort processed after packaged milk or milk products shall provide each milk plant with toilet facilities conforming with the regulations of the Commonwealth and the following requirements: no toilet room may open directly into any room in which milk or milk products are processed; the toilet room shall be completely enclosed and shall have tight fitting, self-closing doors; the dressing room, toilet room, and fixtures shall be kept in a clean condition, in good repair, and shall be well ventilated and well lighted; and sewage and other liquid wastes from the toilet room shall be disposed of in a sanitary manner;~~

i. Item 7p. ~~Water supply. Each person who holds a grade A permit to produce grade A pasteurized, ultra-pasteurized, aseptically processed and packaged, or retort processed after packaged milk or milk products shall:~~

~~(1) Provide water for each milk plant from a supply that is properly located, protected, and operated; and~~

~~(2) Provide water from a supply that is easily accessible for inspection by the State Regulatory Authority, adequate, and of a safe, sanitary quality;~~

j. Item 8p. ~~Hand washing facilities. Each person who holds a grade A permit to produce grade A pasteurized, ultra-pasteurized, aseptically processed and packaged, or retort processed after packaged milk or milk products shall:~~

~~(1) Provide hand washing facilities, including separate hot and cold running water, mix valve, soap, and individual sanitary towels or other approved hand-drying devices, convenient in any area where milk or milk products are handled, processed, or stored, and any area where containers, utensils, or equipment, are washed or stored; and~~

~~(2) Keep the hand washing facilities clean and in good repair;~~

k. Item 9p. ~~Milk plant cleanliness. Each person who holds a grade A permit to produce grade A pasteurized, ultra-pasteurized, aseptically processed and packaged, or retort processed after packaged milk or milk products shall:~~

~~(1) Keep clean, neat, and free of any evidence of animals, insects, or rodents all rooms in which milk or milk products are handled, processed, or stored or in which containers, utensils, or equipment are washed or stored; and~~

~~(2) Permit only equipment directly related to processing operations or to the handling of containers, utensils, and equipment, in pasteurizing, processing, cooling, condensing, drying, packaging, bulk milk, or milk product storage rooms;~~

l. Item 10p. ~~Sanitary piping. Each person who holds a grade A permit to produce grade A pasteurized, ultra-pasteurized, aseptically processed and packaged, or retort processed after packaged milk or milk products shall:~~

~~(1) Use only sanitary piping, fittings, and connections consisting of smooth, impervious corrosion resistant, nontoxic, easily cleanable materials that are exposed to any milk or milk products, or from which liquids may drip, drain, or be drawn into any milk or milk products;~~

~~(2) Keep all piping in good repair;~~

~~(3) Except as specified in subdivision 1-1 of this subsection, use only sanitary piping to transfer any pasteurized or ultra-pasteurized milk or milk products from one piece of equipment to another piece of equipment; and~~

(4) Transport cottage cheese, cheese dressings, or cheese ingredients by methods that protect the product from contamination;

m. Item 11p. Construction and repair of containers and equipment. Each person who holds a grade A permit to produce grade A pasteurized, ultra pasteurized, aseptically processed and packaged, or retort processed after packaged milk or milk products shall:

(1) Use only multiuse containers and equipment, that may come in contact with any milk or milk products constructed of smooth, impervious, corrosion resistant, and nontoxic materials; constructed for ease of cleaning; and kept in good repair;

(2) Use only single service containers, closures, gaskets, and other articles that may come in contact with any milk or milk products that are nontoxic and have been manufactured, packaged, transported, and handled in a sanitary manner;

(3) Abstain from using more than once any articles intended for single service use; and

(4) Use only single service containers, closures, caps, gaskets, and similar articles manufactured, packed, transported, and handled in a manner that complies with the requirements of Appendix J, "Standards for the Fabrication of Single-Service Containers and Closures for Milk and Milk Products" contained in the "Grade "A" Pasteurized Milk Ordinance, 2013 Revision";

n. Item 12p. Cleaning and sanitizing of containers and equipment. Each person who holds a grade A permit to produce grade A pasteurized, ultra pasteurized, aseptically processed and packaged, or retort processed after packaged milk or milk products shall:

(1) Effectively clean and sanitize before each use the product contact surfaces of all multiuse containers and equipment, utensils, and equipment used in the transportation, processing, handling, and storage of any milk or milk products;

(2) Use only multiuse containers for packaging pasteurized milk and milk products that comply with the following: (i) the residual bacteria count on multiuse containers may not exceed one per milliliter of capacity when the rinse test is used, or the residual bacteria count on multiuse containers shall not exceed 50 colonies per eight square inches (one per square centimeter) of product contact surface when the swab test is used; in three out of four samples taken at random on a given day; and (ii) all multiuse containers shall be free of coliform organisms; and

(3) Use only single service containers for packaging pasteurized milk and milk products that comply with the following: (i) the residual bacteria count of single service

containers shall not exceed 50 per container when the rinse test is used, except that in containers less than 100 milliliters, the count shall not exceed 10, or the residual bacteria count of single service containers shall not exceed 50 colonies per eight square inches (one per square centimeter) of product contact surface when the swab test is used; in three out of four samples taken at random on a given day; and (ii) all single service containers shall be free of coliform organisms;

o. Item 13p. Storage of cleaned containers and equipment. Each person who holds a grade A permit to produce grade A pasteurized, ultra pasteurized, aseptically processed and packaged, or retort processed after packaged milk or milk products, shall after cleaning any multiuse milk or milk product containers, utensils, or equipment, transport or store the multiuse milk or milk product containers, utensils, or equipment in a manner that assures complete drainage and in a manner that protects the multiuse milk or milk product containers, utensils, or equipment from contamination before use;

p. Item 14p. Storage of single service containers, utensils, and materials. Each person who holds a grade A permit to produce grade A pasteurized, ultra pasteurized, aseptically processed and packaged, or retort processed after packaged milk or milk products shall:

(1) Purchase all single service caps, cap stock, parchment paper, containers, gaskets, and other single service articles for use in contact with milk or milk products in sanitary tubes, wrappings, or cartons;

(2) Store in a clean dry place until used, single service caps, cap stock, parchment paper, containers, gaskets, and other single service articles for use in contact with milk or milk products;

(3) Store single service caps, cap stock, parchment paper, containers, gaskets, and other single service articles for use in contact with milk or milk products in sanitary tubes, wrappings, or cartons; and

(4) Handle single service caps, cap stock, parchment paper, containers, gaskets, and other single service articles for use in contact with milk or milk products in a sanitary manner;

q. Item 15p. Protection from contamination. Each person who holds a grade A permit to produce grade A pasteurized, ultra pasteurized, aseptically processed and packaged, or retort processed after packaged milk or milk products shall:

(1) Locate the person's equipment and facilities and conduct milk plant operations to prevent any contamination of any milk or milk products, ingredients, equipment, containers, or utensils;

Regulations

(2) Discard all milk, milk products, or ingredients that have been spilled, overflowed, or leaked;

(3) Perform the processing and handling of products other than grade A milk and milk products in the person's milk plant to preclude the contamination of any grade A milk or milk products;

(4) Store, handle, or use any poisonous or toxic material to preclude the contamination of any milk, milk product, or ingredient and the milk product contact surfaces of all equipment, containers, or utensils; and

(5) Clean, prior to use, all multiuse cases used to encase packaged milk or milk product containers;

r. Item 16p. Pasteurization and ultra-pasteurization. Each person who holds a grade A permit to produce grade A pasteurized, ultra pasteurized, aseptically processed and packaged, or retort processed after packaged milk or milk products shall:

(1) Perform pasteurization or ultra pasteurization as defined in 2VAC5-490-10, and Item 16p of the "Grade "A" Pasteurized Milk Ordinance, 2013 Revision"; and

(2) Perform aseptic processing and packaging and retort processed after packaging in accordance with the applicable requirements of 21 CFR Parts 108, 110, and 113;

s. Item 17p. Cooling of milk. Each person who holds a grade A permit to produce grade A pasteurized, ultra-pasteurized, aseptically processed and packaged, or retort processed after packaged milk or milk products shall:

(1) Maintain all raw milk and milk products at a temperature of 45°F or cooler, but not frozen, until processed;

(2) Maintain all whey and whey products for condensing, drying, or condensing and drying at a temperature of 45°F (7°C) or cooler; or 135°F (57°C) or greater until processed, except that acid type whey with a titratable acidity of 0.40% or above, or a pH of 4.6 or below, is exempted from these temperature requirements;

(3) Completely empty and clean the tanks and vessels used to blend and hold all milk or milk product flavoring slurries that contain milk and milk products after each four hours of operation or less if such tanks are not intended to be injected within a HTST pasteurization system as part of a liquid ingredient injection system as outlined in Appendix H of the "Grade "A" Pasteurized Milk Ordinance, 2013 Revision" or unless the slurry is stored at a temperature of 45°F (7°C) or cooler, or at a temperature of 150°F (66°C) or greater and maintained thereat;

(4) Immediately cool, except for the following milk or milk products, all pasteurized or ultra pasteurized milk or

milk products prior to filling or packaging in approved cooling equipment to a temperature of 45°F or cooler, but not frozen, unless drying is commenced immediately after condensing:

(a) Those milk or milk products to be cultured;

(b) Cultured sour cream at all milkfat levels with a pH of 4.70 or below;

(c) Acidified sour cream at all milkfat levels with a pH of 4.60 or below;

(d) All yogurt products at all milkfat levels with an initial pH of 4.80 or below at filling;

(e) Cultured buttermilk at all milkfat levels with a pH of 4.60 or below;

(f) All condensed whey and whey products shall be cooled during the crystallization process to 50°F (10°C) or less within 72 hours of condensing, including the filling and emptying time, unless filling occurs above 135°F (57°C), in which case, the 72 hour time period begins when cooling started; and

(g) All cultured cottage cheese at all milkfat levels with a pH of 5.2 or below shall be cooled as per specifications of Item 17p (6a-6e) of the "Grade "A" Pasteurized Milk Ordinance, 2013 Revision";

(5) Store, transport, and deliver at a temperature of 45°F or cooler, but not frozen, all pasteurized or ultra-pasteurized milk or milk products with the following exceptions:

(a) Cultured sour cream at all milkfat levels with a pH of 4.70 or below shall be cooled to 45°F (7°C) or cooler within 168 hours of filling;

(b) Acidified sour cream at all milkfat levels with a pH of 4.60 or below shall be cooled to 45°F (7°C) or cooler within 168 hours of filling;

(c) All yogurt products at all milkfat levels with an initial pH of 4.80 or below at filling and with a subsequent pH of 4.60 or below within 24 hours after filling shall be cooled to 45°F (7°C) or cooler within 96 hours after filling;

(d) Cultured buttermilk at all milkfat levels with a pH of 4.60 or below shall be cooled to 45°F (7°C) or cooler within 24 hours after filling; and

(e) Cultured cottage cheese at all milkfat levels with a pH of 5.2 or below shall be stored as per specifications of item 17p (5a-5d) of the "Grade "A" Pasteurized Milk Ordinance, 2013 Revision";

(6) Store all pasteurized milk and milk products to be condensed, dried, or condensed and dried at a

temperature of 50°F (10°C) or cooler until further processed;

(7) Equip with an accurate indicating thermometer each of the rooms or tanks in which any milk, milk products, whey, or whey products are stored;

(8) Maintain the temperature on delivery vehicles of milk and milk products at 45°F (7°C) or cooler. Aseptically processed and packaged milk and milk products and retort processed after packaged milk and milk products to be packaged in hermetically sealed containers shall be exempt from the cooling requirements of this item; and

(9) Provide ready access at the plant to cleaning records and product storage temperature records stored electronically for review by the State Regulatory Authority. Electronic records of cleaning shall comply with the applicable provisions of Appendix H, Sections IV and V of the "Grade "A" Pasteurized Milk Ordinance, 2013 Revision";

t. Item 18p. Bottling and packaging. Each person who holds a grade A permit to produce grade A pasteurized, ultra pasteurized, aseptically processed and packaged, or retort processed after packaged milk or milk products shall:

(1) Bottle or package all milk or milk products at the place of pasteurization in the grade A permit holder's milk plant and in approved mechanical equipment;

(2) Package and store in a sanitary manner all dry milk products in new containers, which protect the contents from contamination; and

(3) Transport and store in a sanitary manner all condensed and dry milk products in sealed containers from one milk plant to another milk plant for further processing or packaging;

u. Item 19p. Capping. Each person who holds a grade A permit to produce grade A pasteurized, ultra pasteurized, aseptically processed and packaged, or retort processed after packaged milk or milk products shall:

(1) Cap or close all milk or milk product containers in a sanitary manner by use of approved mechanical capping or closing and sealing equipment; and

(2) Use only caps or closures for all milk or milk products that protect the pouring lip of a milk or milk product container to at least its largest diameter and, use with respect to fluid product containers, only caps or closures that the removal of the cap or closure cannot be made without detection;

v. Item 20p. Personnel; cleanliness. No person who holds a grade A permit to produce grade A pasteurized, ultra pasteurized, aseptically processed and packaged, or retort processed after packaged milk or milk products shall:

(1) Permit any person in a milk plant to commence any plant function before the person has thoroughly washed the person's hands to remove soil and contamination or to permit any person in a milk plant to continue any plant function if the person's hands are not clean;

(2) Permit any person in a milk plant to resume work after the person has visited the toilet room before the person has thoroughly washed the person's hands;

(3) Permit any person in a milk plant to engage in the processing, pasteurization, handling, storage, or transportation of any milk, milk products, containers, equipment or utensils, unless the person is wearing clean outer garments;

(4) Permit any person in a milk plant to engage in the processing of any milk or milk products unless the person wears adequate hair covering; or

(5) Permit any person in a milk plant to engage in the processing of any milk or milk products if the person is using tobacco;

w. Item 21p. Vehicles. Each person who holds a grade A permit to produce grade A pasteurized, ultra pasteurized, aseptically processed and packaged, or retort processed after packaged milk or milk products shall use vehicles to transport pasteurized and ultra pasteurized milk and milk products that are constructed and operated so that the milk or milk products are maintained at a temperature of 45°F or cooler, but not frozen, and protected from sunlight, from freezing, and from contamination;

x. Item 22p. Surroundings. Each person who holds a grade A permit to produce grade A pasteurized, ultra pasteurized, aseptically processed and packaged, or retort processed after packaged milk or milk products shall keep neat, clean, and free from conditions that might attract or harbor flies, other insects, rodents, or other pests that otherwise constitute a nuisance, the area surrounding any milk plant;

y. Each grade A permit holder's receiving station shall comply with subdivisions C 1 a through q of this section, inclusive, and subdivisions C 1 s, v, and x of this section, except that the partitioning requirement of subdivision C 1 g of this section shall not be deemed to apply;

z. Each grade A permit holder's transfer station shall comply with subdivisions C 1 e, f, h through n, p, q, s, v, and x of this section, and as climatic and operating conditions require, the provisions of subdivisions C 1 d and e of this section; except that each person shall provide overhead protection for a transfer station; and

a1. Each grade A permit holder's facilities for the cleaning and sanitizing of bulk tanks that transport milk and milk products shall comply with subdivisions C 1 a, f, h through n, p, q, v, and x of this section, and as

Regulations

climatic and operating conditions require, the provisions of subdivisions C 1 d and e of this section except that each grade A permit holder shall provide overhead protection for facilities for the cleaning and sanitizing of bulk tanks which transport milk and milk products in the grade A permit holder's milk plant, receiving station, or transfer station:

~~D. Minimum facilities requirements for milk processing plant. Each person who holds a grade A permit to produce grade A pasteurized, ultra pasteurized, aseptically processed and packaged, or retort processed after packaging milk or milk products shall:~~

- ~~1. Provide a separate receiving room meeting the requirements of subdivision C 1 y of this section from any other area of the plant for the receipt of milk or milk products in bulk if the plant receives any milk or milk products in bulk;~~
- ~~2. Provide cleaning and sanitizing facilities for milk tank trucks as part of the plant's receiving room facilities if the plant receives any milk or milk products in bulk;~~
- ~~3. Provide a separate receiving room from any other area of the plant for the receipt of milk or milk product in cans or other containers if the plant receives any milk or milk product in cans or other containers;~~
- ~~4. Provide a separate room from any other area of the plant for the cleaning of milk cans or containers, bottles, milk cases, and dry milk or milk product containers if the plant receives any milk in cans or containers or washes any bottles, milk cases, or dry milk or milk product containers;~~
- ~~5. Provide a separate room for the fabrication of containers and closures for milk and milk products if the plant fabricates any containers or closures;~~
- ~~6. Provide a separate room for the packaging of dry milk or milk products if the plant packages any dry milk or milk product; and~~
- ~~7. Provide separate rooms from any other area of the plant for each of the following operations performed on any milk, milk product, or condensed and dry milk product: (i) pasteurization; (ii) processing; (iii) cooling; (iv) reconstitution; (v) condensing; (vi) drying; and (vii) packaging, if the operation is performed in the plant.~~

~~Part VII Animal Health~~

~~2VAC5-490-60. Animal health. (Repealed.)~~

~~A. No person may produce, provide, manufacture sell, offer for sale, store in the Commonwealth, or bring, send, or receive into the Commonwealth any milk, milk product, or condensed and dry milk product for use in the commercial preparation of grade A pasteurized, ultra pasteurized, aseptically processed and packaged, or retort processed after~~

~~packaged milk or milk product unless the person complies with the following requirements:~~

~~1. Milk for pasteurization, ultra pasteurization, aseptic processing and packaging, or retort processed after packaging from cows, goats, sheep, water buffalo, and other mammals shall (i) be from a herd or flock that complies with the "Bovine Tuberculosis Eradication: Uniform Methods and Rules, effective January 1, 2005," 9 CFR Part 77, and each herd or flock shall be located in a Modified Accredited Advanced Tuberculosis Area or an Area Accredited Free of Bovine Tuberculosis as defined in "Bovine Tuberculosis Eradication: Uniform Methods and Rules, effective January 1, 2005"; (ii) be accredited as a tuberculosis free herd by the U.S. Department of Agriculture; (iii) have passed an annual tuberculosis test; or (iv) be located in an area that has established a tuberculosis testing protocol for livestock that assures tuberculosis protection and surveillance of the dairy industry within the area and that is approved by FDA, USDA, and the State Regulatory Authority;~~

~~2. Milk for pasteurization, ultra pasteurization, aseptic processing and packaging, or retort processed after packaging from bison and cattle shall be from a herd that complies with "Brucellosis Eradication: Uniform Methods and Rules, effective October 1, 2003," 9 CFR Part 78, and the following:~~

~~a. Each herd shall be located in a Certified Brucellosis-Free Area as defined in "Brucellosis Eradication: Uniform Methods and Rules, effective October 1, 2003," or shall be a certified brucellosis free herd by the United States Department of Agriculture;~~

~~b. Each herd shall meet the requirements for an individually certified herd as defined in "Brucellosis Eradication: Uniform Methods and Rules, effective October 1, 2003";~~

~~c. Each herd shall participate in a milk ring testing program meeting the requirements specified in "Brucellosis Eradication: Uniform Methods and Rules, effective October 1, 2003," in an area that conducts a milk ring testing program at least two times per year at approximately equal intervals, and any herd with a positive milk ring test result shall be blood tested within 30 days from the date of the positive milk ring test; or~~

~~d. Each cow, bull, heifer, calf, and bison in the herd shall be individually tested by an "official" blood test as defined in "Brucellosis Eradication" for the detection of brucellosis annually;~~

~~3. Goat's milk, sheep's milk, water buffalo milk, and milk from other mammals (except bison and cattle) for pasteurization, ultra pasteurization, aseptic processing and packaging, or retort processed after packaging shall be from a herd or flock that:~~

a. ~~Has an annual whole herd brucellosis test as recommended by the State Veterinarian or USDA Area Veterinarian in Charge;~~

b. ~~Has passed an initial whole herd or flock brucellosis test, followed by the testing of all replacement animals or any animals entering the milking group or sold as dairy animals on a continuing basis;~~

c. ~~Has passed an annual random blood testing program sufficient to provide a confidence level of 99% with a P value of 0.05. Any herd or flock with one or more confirmed positive animals shall go to 100% testing until the whole herd tests show no positive animals are found. The following table provides the random sampling size needed to achieve a 99% confidence with a P value of 0.05:~~

| Herd/Flock Size | Sampling Size | Herd/Flock Size | Sampling Size |
|-----------------|---------------|-----------------|---------------|
| 20 | 20 | 500 | 82 |
| 50 | 41 | 600 | 83 |
| 100 | 59 | 700 | 84 |
| 150 | 67 | 800 | 85 |
| 200 | 72 | 1000 | 86 |
| 250 | 75 | 1400 | 87 |
| 300 | 77 | 1800 | 88 |
| 350 | 79 | 4000 | 89 |
| 400 | 80 | 10000 | 89 |
| 450 | 81 | 100000 | 90 |

~~;~~ or

d. ~~Has passed a USDA approved bulk milk brucellosis test certified for use in each species of mammal and at the USDA recommended frequency for testing with an implementation date based on the availability of the test; and~~

4. ~~For diseases of cows, sheep, goats, water buffalo, or other mammals that might affect human health, other than brucellosis and tuberculosis, the State Regulatory Authority may require physical, chemical, or bacteriological examinations or other tests as may be deemed necessary by a licensed veterinarian or a veterinarian in the employ of the State Regulatory Authority to diagnose the disease. Each grade A permit holder shall dispose of any diseased animal disclosed by testing in a manner that prevents the spread of the disease to other animals or humans.~~

B. ~~Each grade A dairy farm permit holder shall test his whole herd of milking mammals for brucellosis using a test~~

method acceptable to a licensed veterinarian or a veterinarian in the employ of the State Regulatory Authority within 30 days after each positive screening test result on a milk ring test.

Part VIII

Milk and Milk Products That May Be Sold

2VAC5-490-70. Milk or milk products that may be sold. (Repealed.)

A. ~~Except as specified in subsection B of this section from and after September 10, 1993, a person may sell, offer for sale, or expose for sale in the Commonwealth only grade A pasteurized, ultra pasteurized, aseptically processed and packaged, or retort processed after packaged milk or milk products to the final consumer, or to restaurants, soda fountains, and grocery stores or similar establishments, provided only grade A milk and milk products shall be sold to milk plants for use in the commercial preparation of grade A milk and milk products.~~

B. ~~No person may sell, offer for sale, or expose for sale in the Commonwealth any pasteurized, ultra pasteurized, aseptically processed and packaged, or retort processed after packaged milk or milk products that have not been graded or the grade of which is not known to the final consumer, or to restaurants, soda fountains, and grocery stores or similar establishments unless the Commissioner of Agriculture and Consumer Services makes a finding in writing (which the Commissioner of Agriculture and Consumer Services may renew for terms not to exceed 90 days per term, without limitation) that the supply of grade A raw milk for pasteurization, ultra pasteurization, aseptic processing and packaging, or retort processed after packaging is not adequate to meet the nutritional needs of any person who secures milk in Virginia; or the supply of pasteurized, ultra pasteurized, aseptically processed and packaged, or retort processed after packaged milk or milk product at retail is not available for purchase by any person who secures milk in Virginia.~~

C. ~~No person may sell, offer for sale or expose for sale or possess in the Commonwealth any pasteurized, ultra pasteurized, aseptically processed and packaged, or retort processed after packaged milk or milk products under the provision of subsection B of this section unless the milk or milk product is labeled "ungraded."~~

2VAC5-490-73. Mandatory pasteurization for all milk, milk products, condensed milk, condensed milk products, aseptically processed and packaged milk and milk products, retort processed after packaged milk and milk products, dry milk, and dry milk products in final package form intended for direct human consumption. (Repealed.)

~~No person shall sell or hold with intent to sell or offer to sell in intrastate commerce any milk, milk product, condensed milk, condensed milk product, aseptically processed and~~

Regulations

~~packaged milk and milk products, retort processed after packaged milk and milk products, dry milk, or dry milk product in final package form for direct human consumption unless the product has been pasteurized or is made from milk, milk product, condensed milk, condensed milk product, aseptically processed and packaged milk and milk products, retort processed after packaged milk and milk products, dry milk, or dry milk product that has all been pasteurized, except where alternative procedures to pasteurization are provided for under 21 CFR Part 133 for curing of certain cheese varieties.~~

2VAC5-490-80. Transferring, delivery containers, cooling. (Repealed.)

~~A. No person, except as authorized in this chapter, may transfer any milk or any milk product from one container or tank truck to another container or tank truck in any place except a milk plant, receiving station, transfer station, or milkhouse especially used for that purpose and no person may dip or ladle any milk or milk product;~~

~~B. No person may sell or serve to the public any pasteurized or any ultra pasteurized milk or milk product which has not been maintained at a temperature of 45°F or cooler, but not frozen. No person may store any pasteurized or ultra-pasteurized containers of milk or milk products in ice unless the container is properly drained.~~

2VAC5-490-90. Milk and milk products from beyond the limits of routine inspection. (Repealed.)

~~No person may provide, sell, offer for sale, or store in the Commonwealth or bring, send, or receive in the Commonwealth any condensed milk, condensed milk product, aseptically processed and packaged milk or milk products, retort processed after packaged milk or milk products, dry milk, dry milk product, or milk or milk product from outside the Commonwealth unless the condensed milk, condensed milk product, aseptically processed and packaged milk or milk products, retort processed after packaged milk or milk products, dry milk, dry milk product, or milk or milk product are produced and pasteurized, ultra pasteurized, aseptically processed and packaged, or retort processed after packaged under regulations that are substantially equivalent to this chapter and the supply of the milk and the milk plant that produced the condensed milk, condensed milk product, aseptically processed and packaged milk or milk products, retort processed after packaged milk or milk products, dry milk, dry milk product, or milk or milk product has been awarded a milk sanitation compliance rating of at least 90 and an enforcement compliance rating of at least 90, or awarded an acceptable HACCP listing made by a state milk sanitation listing officer certified by the United States Public Health Service. The State Regulatory Authority may impound any condensed milk, condensed milk product, aseptically processed and packaged milk or milk products, retort processed after packaged milk or milk products, dry milk, dry~~

~~milk product, or milk or milk product within the Commonwealth of Virginia if it does not comply with the requirements of this section.~~

2VAC5-490-100. Construction plans for dairy farms and milk plants. (Repealed.)

~~No grade A permit holder may construct, reconstruct, or modify a milkhouse, milking barn, stable, parlor, milk tank truck cleaning facility, transfer station, receiving station, or milk plant regulated under this chapter without submitting to the State Regulatory Authority written plans for review and approval before construction work is begun.~~

Part IX

Construction Plans for Dairy Farms and Milk Plants

2VAC5-490-103. Equipment and facilities; accessibility for inspection.

Each grade A permit holder shall ensure that his facilities and equipment are accessible for inspection by complying with the following:

1. Concrete lids, covers and access doors to each well house, water supply, or pump house shall be easily lifted or opened by a single person and require the person to lift no more than 80 pounds to gain free access to the facilities for inspection;
2. If the permit holder locks any portion of his facilities requiring inspection, the permit holder, upon request, shall provide the ~~State Regulatory Authority~~ state regulatory agency with keys to open the facilities, or the combination code for each lock to unlock the facilities, or the permit holder shall ensure that he or his agent is always available on the premises to provide access to the locked facilities during all normal inspection times;
3. If the permit holder installs floor mats on cow standing surfaces in the milking parlor or barn, the entire area of the floor underneath of the floor mats shall be accessible for inspection by a single person working continuously for 20 minutes including the time necessary to lift and replace the floor mats on the floor;
4. If the permit holder installs any equipment that requires a ~~tool or~~ tools to be disassembled for inspection, the permit holder shall provide the ~~tool or~~ tools freely accessible to the ~~State Regulatory Authority~~ state regulatory agency during all normal inspection times;
5. If the permit holder installs any equipment requiring inspection in an attic, loft, pit, or other area requiring a ladder for access, the permit holder shall provide a ladder convenient to each of these areas during all normal inspection times; and
6. If the permit holder installs any milk lines or other milking equipment, milk transfer or wash solution lines in an attic, loft, pit, or other area not visible from below by

the ~~State Regulatory Authority~~ state regulatory agency, the permit holder shall ensure that all fittings and joints are welded and contain no gaskets or joints that could leak and that the interior surfaces of all milk lines or other milking equipment, milk transfer or wash solution lines is fully accessible for inspection from outside the attic, loft, pit, or other area not visible from below.

2VAC5-490-105. New or test facilities and equipment; equipment design, construction, and approval process.

A. At the request of any grade A permit holder, the ~~State Regulatory Authority~~ state regulatory agency may allow the temporary installation of equipment or the temporary construction of dairy facilities that the ~~State Regulatory Authority~~ state regulatory agency has no or limited regulatory experience with, on a trial basis, to determine if the equipment or dairy facilities can comply with the requirements of this chapter under normal conditions of use. The ~~State Regulatory Authority~~ state regulatory agency will at a minimum evaluate the equipment or facilities for compliance with the requirements of this chapter when newly installed, as well as, complete a separate evaluation of the inspection record during the trial of the equipment or facilities to comply with the requirements of this chapter over time under normal conditions of use.

B. At the conclusion of each trial, the ~~State Regulatory Authority~~ state regulatory agency shall inform the grade A permit holder in writing if the equipment or facilities or both the equipment and facilities comply with the requirements of this chapter. If the equipment or facilities do not comply or both the equipment and facilities do not comply with the requirements of this chapter, the ~~State Regulatory Authority~~ state regulatory agency shall inform the grade A permit holder in writing to alter or remove his equipment or facilities or to alter or remove both his equipment and facilities within a maximum of six months from the date of receipt of the written decision by the permit holder.

C. The ~~State Regulatory Authority~~ state regulatory agency may renew or extend any temporary installation of equipment or the temporary construction of dairy facilities beyond the time specified in the written agreement between the grade A permit holder and the ~~State Regulatory Authority~~ state regulatory agency.

D. If the ~~State Regulatory Authority~~ state regulatory agency agrees to allow the temporary installation of equipment or the temporary construction of dairy facilities, the ~~State Regulatory Authority~~ state regulatory agency and the grade A permit holder installing the equipment or constructing the facilities shall each sign a written agreement that at a minimum includes:

1. A description of the equipment or facilities and detailed plans for their installation acceptable to the ~~State Regulatory Authority~~ state regulatory agency;

2. The name of the grade A permit holder and the physical address where the equipment or facilities will be installed;

3. The name and contact information for the person ~~or persons~~ who will be installing the equipment or constructing the facilities;

4. A detailed plan including:

a. A description of the items to be evaluated by the ~~State Regulatory Authority~~ state regulatory agency;

b. Criteria to judge the acceptability of performance by which each item being evaluated will be measured by the ~~State Regulatory Authority~~ state regulatory agency;

c. A time table specifying the length of the trial, the minimum number of inspections, and time periods between inspections;

d. How inspection findings will be documented and reviewed with the permit holder and at what frequency;

e. A provision for the ~~State Regulatory Authority~~ state regulatory agency to end the temporary installation agreement before the completion of the timeline and reject the equipment or facilities as not complying with the requirements of this chapter if continuation of the trial will not substantially affect the decision of the ~~State Regulatory Authority~~ state regulatory agency;

f. A provision that at the end of the timeline specified in the agreement, the permit holder will remove or alter the equipment or facilities within a maximum of six months from the date ~~he~~ the permit holder receives written instruction to do so from the ~~State Regulatory Authority~~ state regulatory agency to comply with the requirements of this chapter if the ~~State Regulatory Authority~~ state regulatory agency does not approve the equipment or facilities; and

g. A provision that the permit holder's failure to remove or alter the equipment or facilities to comply with the requirements of this chapter within six months after receipt of written instructions from the ~~State Regulatory Authority~~ state regulatory agency shall be considered sufficient cause for permit suspension.

Part X

Personnel Health

2VAC5-490-110. Personnel health.

A. No person affected with any disease in a communicable form, or while a carrier of a communicable disease, may work at any dairy farm or milk plant in any capacity ~~which that~~ brings the person into contact with the production, handling, storage, or transportation of milk or milk products, or into contact with milk or milk product containers, equipment, or utensils.

Regulations

B. No person holding a grade A permit may employ any person having, or suspected of having, any disease in a communicable form, or of being a carrier of a communicable disease.

C. Any grade A permit holder who produces or distributes milk or milk products, or condensed or dry milk products upon whose dairy farm, or in whose milk plant any communicable disease occurs, or who suspects that any employee has contracted any disease in a communicable form, or has become a carrier of a communicable disease, shall notify the ~~State Regulatory Authority~~ state regulatory agency immediately.

2VAC5-490-120. Procedure when infection is suspected. (Repealed.)

~~When reasonable cause exists to suspect the possibility of transmission of infection of a communicable disease from any person concerned with the handling of milk or milk products to any other person, the person concerned with the handling of milk or milk products and the person holding the grade A permit shall comply with the following measures:~~

- ~~1. The immediate exclusion of that person from milk handling;~~
- ~~2. No grade A permit holder may sell or offer for sale any milk or milk products that have been handled by or exposed to a person who is suspected of having a communicable disease or being a carrier of a communicable disease; and~~
- ~~3. Each person who is suspected of having a communicable disease or being a carrier of a communicable disease and his associates, at the discretion of the State Regulatory Authority, shall submit to medical and bacteriological examination by a licensed physician in the Commonwealth sufficient to make a medical diagnosis.~~

Part XI
Voluntary HACCP Program

Article 4
Program Participation

2VAC5-490-131. HACCP program participation voluntary.

A. Participation in the HACCP program is voluntary for each person who operates a dairy plant, receiving station, or transfer station and the State Regulatory Authority responsible for the permitting and auditing of each person's dairy plant, receiving station, or transfer station. No person operating a milk plant, receiving station, or transfer station may participate in the voluntary HACCP program unless the State Regulatory Agency responsible for the permitting and auditing of each person's dairy plant agrees to participate in the voluntary HACCP program also.

~~B. Each person volunteering to operate his milk plant, receiving station, or transfer station under the voluntary HACCP program shall provide a written commitment to the State Regulatory Authority responsible for his milk plant, receiving station, or transfer station that he will supply the necessary resources to support participation in the voluntary HACCP program.~~

~~C. Each State Regulatory Authority volunteering to participate in the voluntary HACCP program shall provide a written commitment to the person requesting to operate a milk plant, receiving station, or transfer station under the voluntary HACCP program that the State Regulatory Authority will supply the necessary resources to support participation in the voluntary HACCP program.~~

D. Each person operating a milk plant, receiving station, or transfer station and participating in the voluntary HACCP program shall have a minimum of 60 days of HACCP system records prior to a HACCP listing audit. Each milk plant, receiving station, or transfer station shall be inspected and permitted initially by the ~~State Regulatory Authority~~ state regulatory agency and shall be regulated initially under the requirements of this chapter without taking into consideration the provisions of this part until the ~~State Regulatory Authority~~ state regulatory agency conducts an acceptable HACCP listing audit documenting the successful implementation of a fully functioning HACCP system in the person's milk plant, receiving station, or transfer station.

E. Each person operating a milk plant, receiving station, or transfer station and participating in the voluntary HACCP program shall:

- ~~1. Comply with all of the provisions applicable to the voluntary HACCP program contained in the "Grade "A" Pasteurized Milk Ordinance, 2013 Revision" to include:~~
 - ~~a. Section 7;~~
 - ~~b. Items 16p, 16p(A), 16p(B), 16p(C), and 16p(D);~~
 - ~~c. Section 13;~~
 - ~~d. Section 14;~~
 - ~~e. Appendix H;~~
 - ~~f. Appendix I;~~
 - ~~g. Appendix K;~~
 - ~~h. Appendix R; and~~
 - ~~i. Appendix S.~~
- ~~2. Prepare their HACCP plan based on the following HACCP principles:~~
 - ~~a. Conduct a hazard analysis;~~
 - ~~b. Determine the critical control points;~~
 - ~~c. Establish critical limits;~~

- d. Establish monitoring procedures;
 - e. Establish corrective actions;
 - f. Establish verification procedures; and
 - g. Establish recordkeeping and documentation procedures;
3. Prior to the implementation of a HACCP plan develop, document, and successfully implement written prerequisite programs that provide the basic environment and operating conditions that are necessary for the production of safe, wholesome food.

Article 2

Implementation of a HACCP System

2VAC5-490-132. Prerequisite programs.

A. Each person operating a milk plant, receiving station, or transfer station and participating in the voluntary HACCP program shall: 1. Provide ~~provide~~ complete, up-to-date process flow diagrams for all grade A milk, milk products, condensed milk, condensed milk products, dry milk, or dry milk products prior to developing the HACCP plan;

2. Provide a brief written description or checklist for each prerequisite program that can be audited against to ensure compliance. Each prerequisite program shall include procedures that can be monitored, records that specify what is monitored, and how often it will be monitored;

3. Develop and implement prerequisite programs that address conditions and practices before, during, and after processing;

4. Develop and implement prerequisite programs that address:

- a. Safety of the water that comes into contact with milk, milk products, condensed milk, condensed milk products, dry milk, dry milk products, or product contact surfaces, including steam and ice;
- b. Condition and cleanliness of equipment product contact surfaces;
- c. Prevention of cross contamination from unsanitary objects or practices to milk, milk products, condensed milk, condensed milk products, dry milk, dry milk products, or product contact surfaces, packaging material, and other food contact surfaces, including utensils, gloves, outer garments, etc., and from raw product to processed product;
- d. Maintenance of hand washing, hand sanitizing, and toilet facilities;
- e. Protection of milk, milk products, condensed milk, condensed milk products, dry milk, dry milk products, packaging material, and product contact surfaces from adulteration with lubricants, fuel, pesticides, cleaning

compounds, sanitizing agents, condensate, and other chemical, physical, and biological contaminants;

f. Proper labeling, storage, and use of toxic compounds;

g. Control of employee health conditions, including employee exposure to high risk situations, that could result in the microbiological contamination of milk, milk products, condensed milk, condensed milk products, dry milk, dry milk products, packaging materials, and product contact surfaces; and

h. Pest exclusion from the milk plant, receiving station, or transfer station;

5. In addition to the required prerequisite programs specified in this section, any other prerequisite programs that are being relied upon in the hazard analysis to reduce the likelihood of hazards such that they are not reasonably likely to occur shall also be monitored, audited, and documented as required prerequisite programs; and

6. Comply with the requirements of Appendix K of the "Grade "A" Pasteurized Milk Ordinance, 2013 Revision."

B. Each person operating a milk plant, receiving station, or transfer station and participating in the voluntary HACCP program shall:

1. Monitor the conditions and practices of all required prerequisite programs with sufficient frequency to ensure conformance with those conditions and that are appropriate both to the milk plant, receiving station, or transfer station and to the safety of the milk, milk products, condensed milk, condensed milk products, dry milk, or dry milk products being processed;

2. Document the correction of those conditions and practices that are not in conformance with all prerequisite programs;

3. Determine the frequency of calibration for indicating thermometers, recording thermometers, and other devices used to monitor prerequisite programs and ensure that they are properly calibrated to assure accuracy at the determined frequency; and

4. Maintain records that document the monitoring and corrections required by their prerequisite programs for review by the State Regulatory Authority.

2VAC5-490-133. Hazard analysis. (Repealed.)

A. Each person operating a milk plant, receiving station or transfer station and participating in the voluntary HACCP program shall:

1. Develop, or have developed for it, a written hazard analysis to determine whether there are hazards that are reasonably likely to occur for each type of milk, milk product, condensed milk, condensed milk product, dry milk, dry milk product processed or handled by the milk

Regulations

plant, receiving station or transfer station and to identify the control measures that the milk plant, receiving station or transfer station can apply to control those hazards;

~~2. Include in the hazard analysis, hazards that can be introduced both within and outside the milk plant, receiving station or transfer station environment, including hazards that can occur during handling, transportation, processing and distribution;~~

~~3. Evaluate milk, milk product, condensed milk, condensed milk product, dry milk or dry milk product hazards that are reasonably likely to occur and at a minimum, giving consideration to the following:~~

- ~~a. Microbiological contamination;~~
- ~~b. Parasites;~~
- ~~c. Chemical contamination;~~
- ~~d. Unlawful drug and pesticide residues;~~
- ~~e. Natural toxins;~~
- ~~f. Unapproved use of food or color additives;~~
- ~~g. Presence of undeclared ingredients that may be allergens; and~~
- ~~h. Physical hazards.~~

2VAC5-490-134. HACCP plan. (Repealed.)

~~A. Each person operating a milk plant, receiving station or transfer station and participating in the voluntary HACCP program shall develop and implement a written HACCP plan whenever a hazard analysis reveals one or more hazards that are reasonably likely to occur.~~

~~B. Each person operating a milk plant, receiving station or transfer station and participating in the voluntary HACCP program shall ensure the person's HACCP plan complies with the following:~~

- ~~1. The HACCP plan shall be developed by one or more individuals who have been trained in accordance with the requirements of this chapter;~~
- ~~2. The HACCP plan shall be subject to the recordkeeping requirements of this chapter; and~~
- ~~3. The HACCP plan shall be specific to each location and milk, milk product, condensed milk, condensed milk product, dry milk or dry milk product;~~

~~C. Each person operating a milk plant, receiving station or transfer station and participating in the voluntary HACCP program shall ensure the person's HACCP plan shall at a minimum:~~

- ~~1. Include complete up to date process flow diagrams for all milk, milk products, condensed milk, condensed milk products, dry milk and dry milk products manufactured;~~

~~2. List all hazards that are reasonably likely to occur as identified in the hazard analysis and that must be controlled for each type of milk, milk product, condensed milk, condensed milk product, dry milk or dry milk product;~~

~~3. List the Critical Control Points for each of the identified hazards, including:~~

- ~~a. Critical Control Points designed to control hazards that could occur or could be introduced in the milk plant, receiving station or transfer station environment;~~
- ~~b. Critical Control Points designed to control hazards introduced outside the milk plant, receiving station or transfer station environment, including hazards that occur before arriving at the milk plant, receiving station or transfer station; and~~
- ~~c. A list of Critical Limits that shall be met at each of the Critical Control Points;~~

~~4. List the procedures and the frequency with which they are to be performed that will be used to monitor each of the Critical Control Points to ensure compliance with the Critical Limits;~~

~~5. Include any corrective action plans that have been developed in accordance with the corrective action requirements as described in this chapter, and that are to be followed in response to deviations from Critical Limits at Critical Control Points;~~

~~6. List the verification and validation procedures, and the frequency with which they are to be performed, that the milk plant, receiving station or transfer station will use in accordance with verification and validation requirements as described in this chapter;~~

~~7. Provide a recordkeeping system that documents the monitoring of the Critical Control Points in accordance with the record requirements as described in this chapter; and~~

~~8. Create records that contain only actual values and observations obtained during monitoring.~~

2VAC5-490-135. Corrective actions. (Repealed.)

~~A. Each person operating a milk plant, receiving station or transfer station and participating in the voluntary HACCP program shall take corrective action as described in subsection B or subsection C of this section whenever a deviation from a Critical Limit occurs.~~

~~B. Before a deviation occurs each person operating a milk plant, receiving station or transfer station and participating in the voluntary HACCP program:~~

- ~~1. May develop written corrective action plans, which become a part of their HACCP plan. These corrective action plans may predetermine the corrective actions that~~

milk plants, receiving stations and transfer stations will take whenever there is a deviation from a Critical Limit;

2. Shall develop corrective action plans that are appropriate for each particular deviation and that:

- a. Describes the steps to be taken;
- b. Assigns responsibility for taking those steps to ensure that:

(1) No milk, milk product, condensed milk, condensed milk product, dry milk or dry milk product is allowed to enter commerce that is either injurious to health or is otherwise adulterated as a result of the deviation; or

(2) If such milk, milk product, condensed milk, condensed milk product, dry milk or dry milk product has entered commerce, it is expeditiously removed; and

(3) The cause of the deviation is corrected.

C. When a deviation from a critical limit occurs and a corrective action plan that is appropriate for that deviation does not exist, each person operating a milk plant, receiving station or transfer station and participating in the voluntary HACCP program shall:

1. Segregate and hold the affected milk or milk product, at least until the requirements of subdivisions 2 and 3 of this subsection have been met;

2. Perform or obtain a review to determine the acceptability of the affected milk, milk product, condensed milk, condensed milk product, dry milk or dry milk product for distribution. The review shall be performed by an individual or individuals qualified by training or experience to perform such a review;

3. Take corrective action, when necessary, with respect to the affected milk, milk product, condensed milk, condensed milk product, dry milk or dry milk product to ensure that no milk, milk product, condensed milk, condensed milk product, dry milk or dry milk product is allowed to enter commerce that is either injurious to health or is otherwise adulterated as a result of the deviation;

4. Take corrective action, when necessary, to correct the cause of the deviation; and

5. Perform or obtain timely validation by a qualified individual or individuals to determine whether modification of the HACCP plan is required to reduce the risk of recurrence of the deviation and modify the HACCP plan as necessary.

D. Each person operating a milk plant, receiving station or transfer station and participating in the voluntary HACCP program shall ensure that all corrective actions taken in accordance with this section are fully documented in records that are subject to verification.

2VAC5-490-136. Verification and validation. (Repealed.)

A. Each person operating a milk plant, receiving station, or transfer station and participating in the voluntary HACCP program shall verify that the HACCP system is being implemented according to design, except that critical factors for aseptically processed and packaged grade A milk and milk products, as determined by the process authority and listed on the scheduled process under 21 CFR Part 113 shall be managed separately from the voluntary HACCP program, even if identified as a critical control point in the hazard analysis. Critical factors identified in the scheduled process shall be monitored under the operating supervision of an individual who has successfully completed an approved course of instruction in low acid canned foods as required by 21 CFR 108.35.

B. Each person operating a milk plant, receiving station or transfer station and participating in the voluntary HACCP program shall include in their verification activities:

1. The calibration of critical control point process-monitoring instruments;

2. At the option of the person operating a milk plant, receiving station, or transfer station, the performance of periodic end product or in process testing;

3. A review, including signing and dating, by an individual who has been trained in accordance with the training requirements of this chapter, of the records that document:

- a. The monitoring of critical control points;
- b. The taking of corrective action; and

e. The calibrating of any process monitoring instruments used at critical control points and the performance of any periodic end product or in process testing that is part of HACCP plan verification activities;

4. The taking of corrective action procedures whenever any verification procedure establishes the need to take a corrective action; and

5. The calibration of critical control point process-monitoring instruments, and the performance of any periodic end product and in process testing, in accordance with subdivisions 3 a and b of this subsection, shall be documented in records and maintained as required by this chapter.

C. Each person operating a milk plant, receiving station, or transfer station and participating in the voluntary HACCP program shall:

1. Validate that the HACCP plan is adequate to control hazards that are reasonably likely to occur at least once within 12 months after implementation of the HACCP system and annually thereafter or whenever any changes in

Regulations

the process occur that could affect the hazard analysis or alter the HACCP plan;

2. Ensure the validation is performed by a qualified individual or individuals trained in accordance with the requirements of this chapter;

3. Ensure the validation is documented and the records maintained as required by this chapter; and

4. Ensure the HACCP plan is modified immediately whenever a validation reveals that the HACCP plan is no longer adequate.

D. Whenever a milk plant, receiving station, or transfer station does not have a HACCP plan, because a hazard analysis has revealed no hazards that are reasonable likely to occur, the person operating the milk plant, receiving station, or transfer station and participating in the voluntary HACCP program shall reassess the adequacy of the hazard analysis whenever there are any changes in the process that could reasonably affect whether a hazard exists.

2VAC5-490-137. Records. (Repealed.)

A. Each person operating a milk plant, receiving station or transfer station and participating in the voluntary HACCP program shall:

1. Use consistent terminology to identify each piece of equipment, record, document, or other program throughout their written HACCP system;

2. Maintain the following records documenting the HACCP system:

a. Records documenting the ongoing application of the prerequisite programs, including a brief written description, monitoring and correction records;

b. The written hazard analysis;

c. The written HACCP plan;

d. A table of contents and centralized list of the HACCP program records, by title, documenting the ongoing application of the HACCP system;

e. A document change log;

f. Records documenting the ongoing application of the HACCP plan that include:

(1) Monitoring of Critical Control Points and their Critical Limits, including the recording of actual times, temperatures, or other measurements, as prescribed in the HACCP plan;

(2) Corrective actions, including all actions taken in response to a deviation;

(3) A centralized deviation log; and

(4) Plan validation dates;

g. Required HACCP documents and forms specified in subdivisions 2 a through e of this subsection shall be dated or identified with a version number and each page shall be marked with a new date or version number whenever that page is updated; and

h. Records documenting verification and validation of the HACCP system, including the HACCP plan, hazard analysis and the prerequisite programs.

B. Each person operating a milk plant, receiving station or transfer station and participating in the voluntary HACCP program shall ensure all required records include:

1. The identity of the milk plant, receiving station or transfer station;

2. The date and time of the activity that the record reflects;

3. The signature or initial of the person or persons performing the operation or creating the record;

4. Where appropriate, the identity of the milk or milk product and the production code, if any;

5. Processing and other information entered on the records at the time that it is observed; and

6. Only the actual values and observations obtained during monitoring.

C. Each person operating a milk plant, receiving station or transfer station and participating in the voluntary HACCP program shall ensure all required records specified in subdivisions A 2 a through e of this section:

1. Have been signed and dated by the most responsible individual onsite at the milk plant, receiving station or transfer station to signify that the records have been accepted by the firm; and

2. Are signed and dated upon initial acceptance;

a. Upon any modification; and

b. Upon verification and validation.

D. Each person operating a milk plant, receiving station or transfer station and participating in the voluntary HACCP program shall:

1. Ensure all records required by this section for perishable or refrigerated products are retained for one year after the date that such products were prepared, and in the case of frozen, preserved, or shelf stable products, for two years after the date that the products were prepared or the for the shelf life of the product, whichever is greater;

2. Ensure all records that relate to the adequacy of equipment or processes used, such as commissioning or process validation records, including the results of scientific studies and evaluations, shall be maintained at the milk plant, receiving station or transfer station facility

~~for a least two years after the date that the milk plant, receiving station or transfer station last used such equipment or process;~~

~~3. Ensure that all processing records stored off site are a minimum of six months old from the date that the monitoring occurred and can be retrieved and provided on-site within 24 hours after a request by the State Regulatory Authority. Electronic records shall be considered accessible on-site if they can be accessed on-site; and~~

~~4. Ensure all records required by this subsection shall be available for review by the State Regulatory Authority at all reasonable hours.~~

2VAC5-490-138. Training. (Repealed.)

~~Each person operating a milk plant, receiving station, or transfer station and participating in the voluntary HACCP program shall ensure that each person who is responsible for (i) developing a hazard analysis; (ii) delineating control measures; (iii) developing a HACCP plan that is appropriate for the specific milk plant, receiving station, or transfer station; (iv) validating and modifying the HACCP plan; or (v) performing required HACCP plan record reviews has received basic HACCP training and an orientation to the HACCP requirements contained in Appendix K of the "Grade "A" Pasteurized Milk Ordinance, 2013 Revision."~~

Part XII

Interpretation and Enforcement

2VAC5-490-140. [Interpretation and enforcement. Enforcement.]

~~A. This chapter is based on the "Grade "A" Pasteurized Milk Ordinance, 2013 Revision." Except as otherwise provided in this chapter, the provisions of this chapter shall be interpreted in a manner consistent with interpretations accorded the "Grade "A" Pasteurized Milk Ordinance, 2013 Revision." B. The administrative procedures used to conduct case decisions under this chapter shall conform to the provisions of the Virginia Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia).~~

~~C. B. The State Regulatory Authority state regulatory agency shall comply with the following administrative procedures when summarily suspending a grade A permit as specified in 2VAC5-490-31 B:~~

~~1. The State Regulatory Authority state regulatory agency shall serve upon the grade A permit holder a written notice of suspension. The written notice of suspension shall specify the violations in question and inform the grade A permit holder of the right to appear before the State Regulatory Authority state regulatory agency in person, by counsel, or by other qualified representative at a fact-finding conference for the informal presentation of factual data, arguments, and proof to appeal this determination of violation;~~

2. Upon receipt of written application from any person whose grade A permit has been summarily suspended (within 30 days after the effective date of the summary suspension) the ~~State Regulatory Authority~~ state regulatory agency shall within seven days after the date of receipt by the ~~State Regulatory Authority~~ state regulatory agency of a written application from any person whose grade A permit has been summarily suspended proceed to hold an informal fact-finding conference to ascertain the facts of the violations in question and upon evidence presented at the informal fact-finding conference shall affirm, modify, or rescind the summary suspension;

3. The ~~State Regulatory Authority~~ state regulatory agency shall, unless the parties consent, ascertain the fact basis for their decisions of cases through informal conference proceedings. Such conference proceedings include the rights of parties to the case to have reasonable notice thereof, to appear in person or by counsel or other qualified representative before the ~~State Regulatory Authority~~ state regulatory agency for the informal presentation of factual data, argument, or proof in connection with any case, to have notice of any contrary fact basis or information in the possession of the agency that can be relied upon in making an adverse decision, to receive a prompt decision of any application for license, benefit, or renewal thereof, and to be informed, briefly and generally in writing, of the factual or procedural basis for an adverse decision in any case;

4. No person whose grade A permit has been summarily suspended may be granted an informal fact-finding conference by the ~~State Regulatory Authority~~ state regulatory agency unless the ~~State Regulatory Authority~~ state regulatory agency receives the person's written application within 30 days after the effective date of the summary suspension;

5. From any adverse decision of an informal fact-finding conference, the grade A permit holder may request a formal hearing under § 2.2-4020 of the Code of Virginia by writing the Program Manager of the Office of Dairy and Foods within 30 days stating the request and by providing the ~~State Regulatory Authority~~ state regulatory agency with a statement of the issues in dispute. If the request for a formal ~~conference hearing~~ hearing is denied, the ~~State Regulatory Authority~~ state regulatory agency shall notify the grade A permit holder in writing and further may affirm or modify the decision of the informal fact-finding conference; and

6. If a formal ~~fact finding conference hearing~~ hearing is denied, the ~~State Regulatory Authority~~ state regulatory agency shall notify the grade A permit holder of the right to file an appeal in the circuit court.

NOTICE: Forms used in administering the regulation have been filed by the agency. The forms are not being published; however, online users of this issue of the Virginia Register of Regulations may click on the name of a form with a hyperlink

Regulations

to access it. The forms are also available from the agency contact or may be viewed at the Office of the Registrar of Regulations, 900 East Main Street, 11th Floor, Richmond, Virginia 23219.

FORMS (2VAC5-490)

~~Dairy Farm Inspection Report, ODF-DS-102 (rev. 2/06)~~

~~Application for a Dairy Farm Permit, ODF-DS-100 (rev. 6/12)~~

~~[Dairy Farm Inspection Report, ODF-DS-102 \(rev. 2/2018\)](#)~~

~~[Application for a Dairy Farm Permit, ODF-DS-100 \(rev. 4/2018\)](#)~~

DOCUMENTS INCORPORATED BY REFERENCE (2VAC5-490)

~~Bovine Tuberculosis Eradication: Uniform Methods and Rules, effective January 1, 2005, available from U.S. Department of Agriculture, Animal and Plant Health Inspection Service, Veterinary Services, Federal Center Building, Hyattsville, Maryland 20782, or Assistant District Director, USDA/APHIS-VS, Virginia Area Office, 7th Floor, Federal Building, 400 North 8th Street, Richmond, Virginia 23240~~

~~Brucellosis Eradication: Uniform Methods and Rules, effective October 1, 2003, available from U.S. Department of Agriculture, Animal and Plant Health Inspection Service, Veterinary Services, Federal Center Building, Hyattsville, Maryland 20782, or Assistant District Director, USDA/APHIS-VS, Virginia Area Office, 7th Floor, Federal Building, 400 North 8th Street, Richmond, Virginia 23240~~

~~Drug Residue Test Methods for Confirmation of Presumptive Positive Results and Initial Producer Trace Back, M-I-96-10 (Revision #8), March 22, 2012, published by the Food and Drug Administration, Dairy and Egg Branch (HFS-316), 5100 Paint Branch Parkway, College Park, Maryland 20740-3835~~

~~Evaluation of Milk Laboratories, 2011 Revision, published by the Food and Drug Administration Laboratory Proficiency and Evaluation Team, HFH-450, 6502 South Archer Road, Bedford Park, Illinois 60501~~

~~Grade "A" Pasteurized Milk Ordinance, 2013 Revision, published by the Food and Drug Administration, Milk Safety Branch (HFS-626), 5100 Paint Branch Parkway, College Park, Maryland 20740-3835~~

~~Official Grade "A" Pasteurized Milk Ordinance Regulatory Laboratory Tests for Grade "A" Milk and Milk Products and Grade "A" Dairy Farm and Milk Plant Water, "M-a-98", March 1, 2013~~

~~Official Methods of Analysis of AOAC International, 19th Edition, 2012, published by AOAC International, 481 North Frederick Avenue, Suite 500, Gaithersburg, Maryland 20877-2417~~

[Evaluation of Milk Laboratories, 2017 Revision, published by the Food and Drug Administration Laboratory Proficiency and Evaluation Team, HFH-450, 6502 South Archer Road, Bedford Park, Illinois 60501](#)

[Grade "A" Pasteurized Milk Ordinance, 2017 Revision, published by the Food and Drug Administration, Milk Safety Branch \(HFS-626\), 5100 Paint Branch Parkway, College Park, Maryland 20740-3835](#)

VA.R. Doc. No. R20-5960; Filed February 11, 2020, 12:07 p.m.



TITLE 12. HEALTH

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

Notice of Extension of Emergency Regulation

Titles of Regulations: **12VAC30-70. Methods and Standards for Establishing Payment Rates - Inpatient Hospital Services (adding 12VAC30-70-411, 12VAC30-70-429).**

12VAC30-80. Methods and Standards for Establishing Payment Rates; Other Types of Care (amending 12VAC30-80-20).

12VAC30-160. Hospital Assessment (adding 12VAC30-160-10).

Statutory Authority: § 32.1-325 of the Code of Virginia; 42 USC § 1396 et seq.

Expiration Date Extended Through: September 30, 2020.

The Governor approved the request of the Department of Medical Assistance Services to extend the expiration date of the emergency regulation for six months as provided by § 2.2-4011 D of the Code of Virginia. Therefore, the emergency regulation will continue in effect through September 30, 2020. The emergency regulation enforces the legislative mandate of §§ 3-5.15 and 3-5.16 and Item 303 XX 6 c of the 2018 Appropriation Act (Chapter 2 of the 2018 Acts of Assembly, Special Session I), which requires levy of assessments and establishment and sunset of certain supplemental payments related to the funding of Medicaid expansion. The emergency regulation was published in [35:3 VA.R. 419-426 October 1, 2018](#).

Agency Contact: Emily McClellan, Regulatory Supervisor, Policy Division, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 371-4300, FAX (804) 786-1680, or email emily.mcclellan@dmas.virginia.gov.

VA.R. Doc. No. R19-5591; Filed February 19, 2020, 3:40 p.m.

STATE BOARD OF BEHAVIORAL HEALTH AND DEVELOPMENTAL SERVICES

Notice of Extension of Emergency Regulation

Title of Regulation: 12VAC35-105. Rules and Regulations for Licensing Providers by the Department of Behavioral Health and Developmental Services (amending 12VAC35-105-20, 12VAC35-105-30, 12VAC35-105-50, 12VAC35-105-120, 12VAC35-105-150, 12VAC35-105-155, 12VAC35-105-160, 12VAC35-105-170, 12VAC35-105-320, 12VAC35-105-330, 12VAC35-105-400, 12VAC35-105-440, 12VAC35-105-450, 12VAC35-105-460, 12VAC35-105-520, 12VAC35-105-580, 12VAC35-105-590, 12VAC35-105-620, 12VAC35-105-650, 12VAC35-105-660, 12VAC35-105-665, 12VAC35-105-675, 12VAC35-105-691, 12VAC35-105-800, 12VAC35-105-830, 12VAC35-105-1140, 12VAC35-105-1250, 12VAC35-105-1360; adding 12VAC35-105-1245).

Statutory Authority: §§ 37.2-302 and 37.2-400 of the Code of Virginia.

Expiration Date Extended Through: August 28, 2020.

The Governor approved the request of the State Board of Behavioral Health and Developmental Services to extend the expiration date of the emergency regulation for six months as provided by § 2.2-4011 D of the Code of Virginia. Therefore, the emergency regulation will continue in effect through August 28, 2020. The emergency regulation addresses several items necessary for compliance with the U.S. Department of Justice's Settlement Agreement with Virginia, including facilitating the submission of necessary information by providers after a serious incident occurs, establishing the required quality and risk management processes, and strengthening case management services. The emergency regulation was published in [34:25 VA.R. 2497-2519 August 6, 2018](#).

Agency Contact: Emily Bowles, Legal Coordinator, Office of Licensing, Department of Behavioral Health and Developmental Services, 1220 Bank Street, P.O. Box 1797, Richmond, VA 23218, telephone (804) 225-3281, FAX (804) 692-0066, TTY (804) 371-8977, or email emily.bowles@dbhds.virginia.gov.

VA.R. Doc. No. R18-4381; Filed February 19, 2020, 3:34 p.m.



TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

COMMON INTEREST COMMUNITY BOARD

Forms

REGISTRAR'S NOTICE: Forms used in administering the regulation have been filed by the agency. The forms are not being published; however, online users of this issue of the Virginia Register of Regulations may click on the name of a form with a hyperlink to access it. The forms are also available from the agency contact or may be viewed at the Office of the Registrar of Regulations, 900 East Main Street, 11th Floor, Richmond, Virginia 23219.

Title of Regulation: 18VAC48-30. Condominium Regulations.

Contact Information: Joseph C. Haughwout, Jr., Regulatory Administrator, Department of Professional and Occupational Regulation, 9600 Mayland Drive, Perimeter Center, Suite 400, Richmond, VA 23233, telephone (804) 367-2684, or email joseph.haughwout@dpor.virginia.gov.

FORMS (18VAC48-30)

~~Condominium Registration Application, A492-0517REG-v2 (rev. 8/2015)~~

~~Declarant Annual Report - Condominium, A492-0517ANRPT v3 (rev. 8/2015)~~

~~Condominium Bond/Letter of Credit Verification Form, A492-0517BNDLOC v1 (rev. 9/2013)~~

~~Exhibit H - Bond to Insure Payment of Assessments, A492-0517BOND v2 (rev. 11/2013)~~

~~Condominium Registration Application - Exhibit H, Sample Form, A492-0517LOC v2 (eff. 11/2013)~~

[Condominium Registration Application, A492-0517REG-v4 \(rev. 1/2020\)](#)

[Condominium Registration Application - Exhibit G - Bond to Insure Payment of Assessments, Sample Form, A492-0517BOND-v4 \(rev. 1/2020\)](#)

[Condominium Registration Application - Exhibit G - Irrevocable Letter of Credit, Sample Form, A492-0517LOC-v4 \(rev. 1/2020\)](#)

[Declarant Annual Report - Condominium, A492-0517ANRPT-v4 \(rev. 1/2020\)](#)

[Condominium Bond/Letter of Credit Verification Form, A492-0517BNDLOC-v2 \(rev. 1/2020\)](#)

VA.R. Doc. No. R20-6303; Filed February 11, 2020, 10:03 a.m.



TITLE 20. PUBLIC UTILITIES AND TELECOMMUNICATIONS

STATE CORPORATION COMMISSION

Final Regulation

REGISTRAR'S NOTICE: The State Corporation Commission is claiming an exemption from the Administrative Process Act in accordance with § 2.2-4002 A 2 of the Code of Virginia, which exempts courts, any agency of the Supreme Court, and any agency that by the Constitution is expressly granted any of the powers of a court of record.

Title of Regulation: 20VAC5-315. Regulations Governing Net Energy Metering (amending 20VAC5-315-10 through 20VAC5-315-50; adding 20VAC5-315-77).

Statutory Authority: §§ 12.1-13 and 56-594 of the Code of Virginia.

Effective Date: March 1, 2020.

Agency Contact: David Essah, Utilities Engineer, Division of Public Utility Regulation, State Corporation Commission, P.O. Box 1197, Richmond, VA 23218, telephone (804) 371-9336, FAX (804) 371-9350, or email david.essah@scc.virginia.gov.

Summary:

To implement the provisions of Chapter 763 of the 2019 Acts of Assembly, the amendments (i) introduce new caps on participation in net metering by customers of electric cooperatives; (ii) authorize electric cooperatives to vote to increase these caps up to a cumulative total of 7.0% of their system peak; (iii) permit third-party partial requirements power purchase agreements for those retail customers and nonjurisdictional customers of an electric cooperative that are exempt from federal income taxation; (iv) establish registration requirements for third-party power purchase agreement providers, including a self-certification system whereby such providers would be added to a registry maintained by the Division of Public Utility Regulation; and (v) make updates necessary for existing text to be consistent with those changes.

Changes to the proposed regulation clarify that third-party power purchase providers may establish financial fitness through an irrevocable guaranty from a creditworthy corporate parent of the applicant in addition to the surety bond or irrevocable letter of credit.

AT RICHMOND, FEBRUARY 12, 2020

COMMONWEALTH OF VIRGINIA, ex rel.

STATE CORPORATION COMMISSION

CASE NO. PUR-2019-00119

Ex Parte: In the matter of amending regulations governing net energy metering

ORDER ADOPTING REGULATIONS

The Regulations Governing Net Energy Metering, 20 VAC 5-315-10 et seq. ("Net Energy Metering Rules"), adopted by the State Corporation Commission ("Commission") pursuant to § 56-594 of the Virginia Electric Utility Regulation Act, Chapter 23 (§ 56-576 et seq.) of Title 56 of the Code of Virginia, establish the requirements for participation by an eligible customer-generator in net energy metering in the Commonwealth. The Net Energy Metering Rules include conditions for interconnection and metering, billing, and contract requirements between net metering customers, electric distribution companies, and energy service providers.

On August 27, 2019, the Commission entered an Order Establishing Proceeding ("Order") to consider revisions to the Net Energy Metering Rules to reflect statutory changes enacted by Chapter 763 of the 2019 Acts of Assembly, which amended § 56-594 of the Code and added new §§ 56-585.4 and 56-594.01 to (1) introduce new caps on participation in net metering by customers of electric cooperatives; (2) authorize electric cooperatives to vote to increase these caps up to a cumulative total of seven percent of their system peak; (3) permit third-party partial requirements power purchase agreements for those retail customers and nonjurisdictional customers of an electric cooperative that are exempt from federal income taxation; and (4) establish registration requirements for third-party partial requirements power purchase agreements ("PPAs"), including a self-certification system whereby such providers would be added to a registry maintained by the Commission's Division of Public Utility Regulation ("Division").

The Commission appended to its Order proposed amendments ("Proposed Rules") revising the Net Energy Metering Rules, which were prepared by the Staff of the Commission to reflect the revisions mandated by Chapter 763.

Notice of the proceeding and the Proposed Rules were published in the Virginia Register of Regulations on September 16, 2019. Additionally, each Virginia electric distribution company was directed to serve a copy of the Order upon each of their respective net metering customers. Interested persons were directed to file any comments and requests for hearing on the Proposed Rules on or before October 11, 2019.¹

Maryland-DC-Delaware-Virginia Solar Energy Industries Association ("MDV-SEIA"), Kentucky Utilities Company d/b/a Old Dominion Power Company, Appalachian Voices, Secure Futures, LLC ("Secure Futures") and the Virginia Electric Cooperatives ("Virginia Cooperatives")² filed comments. The Commission also received electronic comments from 219 interested persons. No one requested a hearing on the Proposed Rules.

MDV-SEIA, the Virginia Cooperatives and Secure Futures each proposed that 20 VAC 3-315-77 be revised to provide that if a parent entity executes individual PPAs through one or more special purpose entities ("SPEs"), then only the parent need register with the Division. We are mindful of the concerns expressed by the MDV-SEIA, the Virginia Cooperatives and Secure Futures; however, as the registration is a one-time process with no continuing obligation, we do not believe that requiring SPEs to register will present an unreasonable burden. In addition, as one purpose of the legislation is to provide an assessment of PPA providers operating in Virginia, permitting parental registration would only represent a portion of these operating providers. As discussed below, we will expand the form of permitted security to include a parental guaranty to SPEs, which should alleviate any financial burden on these entities.

Appalachian Voices and the Virginia Cooperatives recommend that the Commission add language to the Proposed Rules to clarify that changes to the systemwide net energy metering cap initiated by a Cooperative Board of Directors pursuant to Va. Code § 56-594.01(G) or § 56-585.4 will override the caps as set forth in the Proposed Rules. This modification is superfluous, as the Proposed Rules already reference §§ 56-594.01(G) and 56-585.4 in 20 VAC 5-315-40.

Secure Futures recommends that 20 VAC 5-315-77 be revised. The Proposed Rules require registering PPA Providers to have one of (1) an investment-grade credit rating of BBB+ or higher; (2) liquid assets of at least \$150,000; or (3) a \$50,000 continuous performance surety bond. Secure Futures argues that these requirements would place an unreasonable burden on SPEs, which are unlikely to have a credit rating or \$150,000 in liquid assets. The Commission has revised 20 VAC 5-315-77 to provide that PPA providers may provide a continuous or renewable performance or surety bond, an irrevocable letter of credit, or an irrevocable guaranty from a creditworthy corporate parent of the applicant, in a minimum amount of \$50,000.

The Commission also received a number of comments requesting that the net metering cap be extended from 1% to 7% for all customers, including customers of investor-owned utilities. These caps were established by statute, and any revisions to the statute would have to come from the legislature, not the Commission.

NOW THE COMMISSION, upon consideration of this matter, is of the opinion and finds that the revised regulations attached hereto as Appendix A should be adopted as final rules, as discussed herein.

Accordingly, IT IS ORDERED THAT:

(1) The Regulations Governing Net Energy Metering, as shown in Appendix A to this Order, are hereby adopted and are effective as of March 1, 2020.

(2) A copy of this Order with Appendix A including the Regulations Governing Net Energy Metering shall be forwarded to the Registrar of Regulations for publication in the Virginia Register of Regulations.

(3) On or before May 1, 2020, each utility in the Commonwealth subject to Chapter 10 (§ 56-232 et seq.) of Title 56 of the Code of Virginia shall file with the Clerk of the Commission, in this docket, one (1) original document containing any revised tariff provisions necessary to implement the regulations adopted herein and also shall file a copy of the document containing the revised tariff provisions with the Commission's Division of Public Utility Regulation. The Clerk of the Commission need not distribute copies but shall make such filings available for public inspection in the Clerk's Office and post them on the Commission's website at: <http://www.scc.virginia.gov/case>.

(4) This docket shall remain open to receive the filings from electric utilities pursuant to Ordering Paragraph (3).

AN ATTESTED COPY hereof shall be sent by the Clerk of the Commission to all persons on the official Service List in this matter. The Service List is available from the Clerk of the State Corporation Commission, c/o Document Control Center, 1300 East Main Street, First Floor, Tyler Building, Richmond, Virginia 23219. A copy shall be sent to the Commission's Office of General Counsel and Division of Public Utility Regulation and Utility Accounting and Finance.

¹By order entered October 18, 2019, the Commission extended the time for filing written comments for net metering customers of Appalachian Power Company to October 28, 2019, due to an error in providing notice to these customers.

²The filing entitled "Comments of the Virginia Electric Cooperatives" was submitted jointly on behalf of: A&N Electric Cooperative, BARC Electric Cooperative, Central Virginia Electric Cooperative, Community Electric Cooperative, Craig-Botetourt Electric Cooperative, Mecklenburg Electric Cooperative, Northern Neck Electric Cooperative, Northern Virginia Electric Cooperative, Prince George Electric Cooperative, Rappahannock Electric Cooperative, Shenandoah Valley Electric Cooperative, and Southside Electric Cooperative, as well as the Virginia, Maryland & Delaware Association of Electric Cooperatives.

20VAC5-315-10. Applicability and scope.

~~These regulations are~~ This regulation is promulgated pursuant to the provisions of §§ 56-594, 56-594.01, and 56-594.2 of the Virginia Electric Utility Regulation Act (§ 56-

Regulations

576 et seq. of the Code of Virginia). ~~They establish~~ This chapter establishes requirements intended to facilitate net energy metering for customers owning and operating, or contracting with persons to own or operate, or both, electrical generators that use specific types of renewable energy as the total fuel source. ~~These regulations~~ This chapter will standardize the interconnection requirements for such facilities and will govern the metering, billing, payment, and contract requirements between net metering customers, electric distribution companies, and energy service providers. Agricultural net metering customers are subject to the same provisions as nonagricultural net metering customers unless otherwise specified. On or after July 1, 2019, interconnection of eligible agricultural customer-generators shall cease for member-owned electric cooperatives only, and such facilities shall interconnect solely as small agricultural generators. For member-owned electric cooperatives, agricultural net metering customers whose agricultural renewable fuel generators were interconnected before July 1, 2019, may continue to participate in net energy metering for a period not to exceed 25 years from the date of their agricultural renewable fuel generator's original interconnection.

~~These regulations~~ This chapter also ~~establish~~ establishes requirements for the interconnection of small agricultural generators. Small agricultural generators or agricultural renewable fuel generators may elect to interconnect as a net metering customer or as small agricultural generators pursuant to 20VAC5-315-75, but not both. Existing eligible agricultural renewable fuel generators may elect to become small agricultural generators, but may not revert to being an agricultural renewable fuel generator after such election.

20VAC5-315-20. Definitions.

The following words and terms when used in this chapter shall have the following meanings unless the context clearly indicates otherwise:

"Agricultural business" means any sole proprietorship, corporation, partnership, electing small business (Subchapter S) corporation, or limited liability company engaged primarily in the production and sale of plants and animals, products collected from plants and animals, or plant and animal services that are useful to the public.

"Agricultural net metering customer" means a customer that operates an electrical generating facility consisting of one or more agricultural renewable fuel generators having an aggregate generation capacity of not more than 500 kilowatts as part of an agricultural business under a net metering service arrangement. An agricultural net metering customer may be served by multiple meters of one utility that are located at separate but contiguous sites and that may be aggregated into one account. This account shall be served under the appropriate tariff.

"Agricultural renewable fuel generator" or "agricultural renewable fuel generating facility" means one or more electrical generators that:

1. Use as their sole energy source solar power, wind power, or aerobic or anaerobic digester gas;
2. The agricultural net metering customer owns and operates, or has contracted with other persons to own or operate, or both;
3. Are located on land owned or controlled by the agricultural business;
4. Are connected to the agricultural net metering customer's wiring on the agricultural net metering customer's side of the agricultural net metering customer's interconnection with the distributor;
5. Are interconnected and operated in parallel with an electric company's distribution facilities; and
6. Are used primarily to provide energy to metered accounts of the agricultural business.

"Billing period" means, as to a particular agricultural net metering customer or a net metering customer, the time period between the two meter readings upon which the electric distribution company and the energy service provider calculate the agricultural net metering customer's or net metering customer's bills.

"Billing period credit" means, for a nontime-of-use agricultural net metering customer or a nontime-of-use net metering customer, the quantity of electricity generated and fed back into the electric grid by the agricultural net metering customer's agricultural renewable fuel generator [~~or generators~~] or by the net metering customer's renewable fuel generator [~~or generators~~] in excess of the electricity supplied to the customer over the billing period. For time-of-use agricultural net metering customers or time-of-use net metering customers, billing period credits are determined separately for each time-of-use tier.

"Competitive service provider" means a person, licensed by the State Corporation Commission, that sells or offers to sell a competitive energy service within the Commonwealth. This term includes affiliated competitive service providers but does not include a party that supplies electricity or natural gas, or both, exclusively for its own consumption or the consumption of one or more of its affiliates. For the purpose of this chapter, competitive service providers include aggregators.

"Contiguous sites" means a group of land parcels in which each parcel shares at least one boundary point with at least one other parcel in the group. Property whose surface is divided only by public right-of-way is considered contiguous.

"Customer" means a net metering customer or an agricultural net metering customer.

"Demand charge-based time-of-use tariff" means a retail tariff for electric supply service that has two or more time-of-use tiers for energy-based charges and an electricity supply demand (kilowatt) charge.

"Electric cooperative" means an electric distribution company organized pursuant to Chapter 9.1 (§ 56-231.15 et seq.) of Title 56 of the Code of Virginia, owned by its members.

"Electric distribution company" means the entity that owns or operates the distribution facilities delivering electricity to the premises of an agricultural net metering customer or a net metering customer.

"Energy service provider (supplier)" means the entity providing electricity supply service, either tariffed or competitive service, to an agricultural net metering customer or a net metering customer.

"Excess generation" means the amount of electrical energy generated in excess of the electrical energy consumed by the agricultural net metering customer or net metering customer over the course of the net metering period. For time-of-use agricultural net metering customers or net metering customers, excess generation is determined separately for each time-of-use tier.

"Generator" or "generating facility" means an electrical generating facility consisting of one or more renewable fuel generators or one or more agricultural renewable fuel generators that meet the criteria under the definition of "net metering customer" and "agricultural net metering customer," respectively.

"Net metering customer" means a customer owning and operating, or contracting with other persons to own or operate, or both, an electrical generating facility consisting of one or more renewable fuel generators having an aggregate generation capacity of not more than 20 kilowatts for residential customers and not more than one megawatt for nonresidential customers. The generating facility shall be operated under a net metering service arrangement.

"Net metering period" means each successive 12-month period beginning with the first meter reading date following the final interconnection of an agricultural net metering customer or a net metering customer's generating facility consisting of one or more agricultural renewable fuel generators or one or more renewable fuel generators, respectively, with the electric distribution company's distribution facilities.

"Net metering service" means providing retail electric service to an agricultural net metering customer operating an agricultural renewable fuel generating facility or a net metering customer operating a renewable fuel generating facility and measuring the difference, over the net metering period, between the electricity supplied to the customer from

the electric grid and the electricity generated and fed back to the electric grid by the customer.

"Nonprofit customer" or "not-for-profit customer" means a person that is exempt from federal income taxation, including (without limitation) schools, hospitals, institutions of higher education, public charities, and churches and other houses of religious worship, as determined by the Internal Revenue Service.

"Person" means any individual, sole proprietorship, corporation, limited liability company, partnership, association, company, business, trust, joint venture, or other private legal entity, the Commonwealth, or any city, county, town, authority, or other political subdivision of the Commonwealth.

"Purchase power agreement provider" or "PPA provider" means, in an electric cooperative service territory, a person registered with the commission's Division of Public Utility Regulation pursuant to 20VAC5-315-77 to offer third-party partial requirements power purchase agreements to customers.

"Registry" means, in reference to a PPA provider, the list of those persons registered with the commission's Division of Public Utility Regulation as PPA providers.

"Renewable Energy Certificate" or "REC" represents the renewable energy attributes associated with the production of one megawatt-hour (MWh) of electrical energy by a generator.

"Renewable fuel generator" or "renewable fuel generating facility" means one or more electrical generators that:

1. Use renewable energy, as defined by § 56-576 of the Code of Virginia, as their total fuel source;
2. The net metering customer owns and operates, or has contracted with other persons to own or operate, or both;
3. Are located on the net metering customer's premises and connected to the net metering customer's wiring on the net metering customer's side of its interconnection with the distributor;
4. Are interconnected pursuant to a net metering arrangement and operated in parallel with the electric distribution company's distribution facilities; and
5. Are intended primarily to offset all or part of the net metering customer's own electricity requirements. The capacity of any generating facility installed on or after July 1, 2015, shall not exceed the expected annual energy consumption based on the previous 12 months of billing history or an annualized calculation of billing history if 12 months of billing history is not available.

"Small agricultural generating facility" means an electrical generating facility that:

Regulations

1. Has a capacity of not more than 1.5 megawatts and does not exceed 150% of the customer's expected annual energy consumption based on the previous 12 months of billing history or an annualized calculation of billing history if 12 months of billing history is not available;
2. Uses as its total source of fuel renewable energy;
3. Is located on the customer's premises and is interconnected with the utility's distribution system through a separate meter;
4. Is interconnected and operated in parallel with an electric utility's distribution system but not transmission facilities;
5. Is designed so that the electricity generated is expected to remain on the utility's distribution system; and
6. Is a qualifying small power production facility pursuant to the Public Utility Regulatory Policies Act of 1978 (P.L. 95-617).

"Small agricultural generator" means a customer that:

1. Is not an eligible agricultural customer-generator pursuant to § 56-594 of the Code of Virginia;
2. Operates a small agricultural generating facility as part of an agricultural business;
3. May be served by multiple meters that are located at separate but contiguous sites;
4. May aggregate the electricity consumption measured by the meters, solely for purposes of calculating 150% of the customer's expected annual energy consumption but not for billing or retail service purposes, provided that the same utility serves all of its meters;
5. Uses not more than 25% of the contiguous land owned or controlled by the agricultural business for purposes of the renewable energy generating facility; and
6. Provides the electric utility with a certification, attested under oath, as to the amount of land being used for renewable generation.

"System peak" for an electric cooperative, means the highest peak, based on the noncoincident peak of the electric cooperative or the coincident peak of all of the electric cooperative's customers of the past three years listed in Part O, Line 20 of Form 7 (Financial And Operating Report - Electric Distribution) filed with the U.S. Department of Agriculture's Rural Utilities Service (RUS), or an equivalent form if a cooperative is not an RUS borrower, less any portion of the cooperative's total load that is served by a competitive service provider or by a market-based rate.

"Third-party partial requirements power purchase agreement" or "third-party PPA" means, for an electric cooperative, an agreement entered into pursuant to § 56-

594.01 K of the Code of Virginia between a customer engaging in net energy metering and a registered PPA provider pursuant to 20VAC5-315-77.

"Time-of-use customer" means an agricultural net metering customer or net metering customer receiving retail electricity supply service under a demand charge-based time-of-use tariff.

"Time-of-use period" means an interval of time over which the energy (kilowatt-hour) rate charged to a time-of-use customer does not change.

"Time-of-use tier" or "tier" means all time-of-use periods given the same name (e.g., on-peak, off-peak, critical peak, etc.) for the purpose of time-differentiating energy (kilowatt-hour)-based charges. The rates associated with a particular tier may vary by day and by season.

20VAC5-315-30. Company notification.

A. A prospective agricultural net metering customer, a prospective net metering customer, or a prospective small agricultural generator (hereinafter referred to as "customer") shall submit a completed commission-approved notification form to the electric distribution company and, if different from the electric distribution company, to the energy service provider, according to the time limits in this subsection. If the electric distribution company or energy service provider has an electronic notification submittal system in place that captures identical information and implements the same process flow as the commission-approved form then such electronic system shall be acceptable for use in place of the commission-approved form for the purposes of this section.

If the prospective customer has contracted with another person to own or operate, or both, the generator [~~or generators~~], then the notice will include detailed, current, and accurate ~~contract~~ contact information for the owner or operator, or both, including without limitation, the name and title of one or more individuals responsible for the interconnection and operation of the generator ~~or generators~~, a telephone number, a physical street address other than a post office box, a fax number, and an email address for each such person.

1. A residential customer shall notify its supplier ~~and prior to starting any construction or installation of an electrical generating facility, or adding capacity to an existing electrical generating facility. The residential customer shall receive approval to interconnect from the electric distribution company prior to installation or adding capacity to an interconnecting the new or expanded electrical generating facility.~~ The electric distribution company shall have 30 days from the date of notification to determine whether the requirements contained in 20VAC5-315-40 have been met. The date of notification shall be considered to be the third day following the mailing of the notification form by the prospective customer.

2. A nonresidential customer shall notify its supplier ~~and prior to starting any construction or installation of an electrical generating facility or adding capacity to an existing electrical generating facility.~~ The nonresidential customer shall receive approval to interconnect from the electric distribution company prior to installation or adding capacity to an interconnecting the new or expanded electrical generating facility. The electric distribution company shall have 60 days from the date of notification to determine whether the requirements contained in 20VAC5-315-40 have been met. The date of notification shall be considered to be the third day following the mailing of the notification form by the prospective customer.

B. Thirty-one days after the date of notification for a residential customer, and 61 days after the date of notification for a nonresidential customer, the prospective customer may interconnect and begin operation of the generating facility unless the electric distribution company or the energy service provider requests a waiver of this requirement under the provisions of 20VAC5-315-80 prior to the 31st or 61st day, respectively. In cases where the electric distribution company or energy service provider requests a waiver, a copy of the request for waiver must be mailed simultaneously by the requesting party to the prospective customer and to the commission's Division of Public Utility Regulation.

C. The electric distribution company shall file with the commission's Division of Public Utility Regulation a copy of each completed notification form within 30 days of final interconnection.

20VAC5-315-40. Conditions of interconnection.

A. A prospective customer may begin operation of the generating facility on an interconnected basis when:

1. The customer has properly notified both the electric distribution company and energy service provider (in accordance with 20VAC5-315-30) of the customer's intent to interconnect.
2. If required by the electric distribution company's tariff, the customer has installed a lockable, electric distribution company accessible, load breaking manual disconnect switch at each of the facility's generators.
3. The licensed electrician who installs the customer's generator ~~or generators~~ certifies, by signing the commission-approved notification form, that any required manual disconnect switch ~~or switches are~~ is being installed properly and that the generator ~~or generators have~~ has been installed in accordance with the manufacturer's specifications as well as all applicable provisions of the National Electrical Code. If the customer or licensed Virginia Class A or B general contractor installs the customer's generator ~~or generators~~, the signed final electrical inspection can be used in lieu of the licensed electrician's certification.

4. The vendor certifies, by signing the commission-approved notification form that the generator ~~or generators~~ being installed ~~are~~ is in compliance with the requirements established by Underwriters Laboratories or other national testing laboratories in accordance with IEEE Standard 1547, Standard for Interconnecting Distributed Resources with Electric Power Systems, July 2003.

5. In the case of static inverter-connected generators with an alternating current capacity in excess of 10 kilowatts, the customer has had the inverter settings inspected by the electric distribution company. The electric distribution company may impose a fee on the customer of no more than \$50 for each generator that requires this inspection.

6. In the case of nonstatic inverter-connected generators, the customer has interconnected according to the electric distribution company's interconnection guidelines and the electric distribution company has inspected all protective equipment settings. The electric distribution company may impose a fee on the customer of no more than \$50 for each generator that requires this inspection.

7. The following requirements shall be met before interconnection may occur:

- a. Electric distribution facilities and customer impact limitations. A customer's generator shall not be permitted to interconnect to distribution facilities if the interconnection would reasonably lead to damage to any of the electric distribution company's facilities or would reasonably lead to voltage regulation or power quality problems at other customer revenue meters due to the incremental effect of the generator on the performance of the electric distribution system, unless the customer reimburses the electric distribution company for its cost to accommodate the interconnection, including the reasonable cost of equipment required for the interconnection.
- b. Secondary, service, and service entrance limitations. The capacity of the generators at any one service location shall be less than the capacity of the electric distribution company-owned secondary, service, and service entrance cable connected to the point of interconnection, unless the customer reimburses the electric distribution company for the reasonable cost of equipment required for the interconnection.
- c. Transformer loading limitations. A customer's generator shall not have the ability to overload the electric distribution company's transformer, or any transformer winding, beyond manufacturer or nameplate ratings, unless the customer reimburses the electric distribution company for the reasonable cost of equipment required for the interconnection.
- d. Integration with electric distribution company facilities grounding. The grounding scheme of each generator shall

Regulations

comply with IEEE 1547, Standard for Interconnecting Distributed Resources with Electric Power Systems, July 2003, and shall be consistent with the grounding scheme used by the electric distribution company. If requested by a prospective customer, the electric distribution company shall assist the prospective customer in selecting a grounding scheme that coordinates with its distribution system.

e. Balance limitation. The generator ~~or generators~~ shall not create a voltage imbalance of more than 3.0% at any other customer's revenue meter if the electric distribution company transformer, with the secondary connected to the point of interconnection, is a three-phase transformer, unless the customer reimburses the electric distribution company for the reasonable cost of equipment required for the interconnection.

B. ~~A~~ For an investor-owned electric distribution company, a prospective customer or small agricultural generator shall not be allowed to interconnect a generator to the distribution system if doing so will cause the total rated generating alternating current capacity of all interconnected net metered generators, as defined in 20VAC5-315-20, within that customer's electric distribution company's Virginia service territory to exceed 1.0% of that company's Virginia peak-load forecast for the previous year. In any case where a prospective customer has submitted a notification form required by 20VAC5-315-30 and that customer's interconnection would cause the total rated generating alternating current capacity of all interconnected net metered generators, as defined in 20VAC5-315-20, within that investor-owned electric distribution company's service territory to exceed 1.0% of that company's Virginia peak-load forecast for the previous year, the electric distribution company shall, at the time it becomes aware of the fact, send written notification to the prospective customer and to the commission's Division of Public Utility Regulation that the interconnection is not allowed. In addition, upon request from any customer, the electric distribution company shall provide to the customer the amount of capacity still available for interconnection pursuant to § 56-594 D of the Code of Virginia.

C. For an electric cooperative, a prospective customer shall not be allowed to interconnect a generator to the distribution system if doing so will cause the total rated generating alternating current capacity of all interconnected net metered generators, as defined in 20VAC5-315-20, within the cooperative's Virginia service territory to exceed the following percentages of system peak: (i) for nonjurisdictional and nonprofit customers, 2.0% of the cooperative's system peak; (ii) for residential customers, 2.0% of the cooperative's system peak; or (iii) for other nonresidential customers, 1.0% of the cooperative's system peak. Such caps shall not decrease but may increase if the system peak in any year exceeds the previous year's system

peak. For purposes of calculating the caps established in this subsection, all net energy metering shall be counted, whenever interconnected, and shall include net energy metering interconnected pursuant to § 56-594 of the Code of Virginia, agricultural net energy metering, and any net energy metering entered into with a third-party PPA provider registered pursuant to § 56-594.01 K of the Code of Virginia. Net energy metering with nonjurisdictional customers entered into prior to July 1, 2019, may be counted toward the caps, in the discretion of the cooperative, as net energy metering if the nonjurisdictional customer takes service pursuant to a cooperative's net energy metering rider. Net energy metering with nonjurisdictional customers entered into on or after July 1, 2019, shall be counted toward the caps by default unless the cooperative has reason to exclude such net energy metering as subject to a separate contract or arrangement. Each electric cooperative governed by this section shall publish information regarding the calculation and status of its caps, or the electric cooperative's systemwide cap established via § 56-585.4 or 56-594.01 G of the Code of Virginia if applicable, on the electric cooperative's website. In any case where a prospective customer has submitted a notification form required by 20VAC5-315-30 and that customer's interconnection would cause the total rated generating alternating current nameplate capacity of all interconnected net metered generators to exceed the percentages stated in this subsection, the electric cooperative shall, at the time it becomes aware of the fact, send written notification to the prospective customer and to the commission's Division of Public Utility Regulation that the interconnection is not allowed and shall update its website. In addition, upon request from any customer, the electric distribution company shall provide to the customer the amount of capacity still available for interconnection pursuant to § 56-594.01 F of the Code of Virginia.

~~C. D.~~ Neither the electric distribution company nor the energy service provider shall impose any charges upon a customer for any interconnection requirements specified by this chapter, except as provided under subdivisions A 5, A 6, and A 7 of this section, 20VAC5-315-50, and 20VAC5-315-70 as related to additional metering.

~~D. E.~~ A customer shall immediately notify the electric distribution company of any changes in the ownership of, operational responsibility for, or contact information for any of the customer's generators.

20VAC5-315-50. Metering, billing, payment and contract or tariff considerations.

Net metered energy shall be measured in accordance with standard metering practices by metering equipment capable of measuring (but not necessarily displaying) power flow in both directions. Each contract or tariff governing the relationship between a customer, electric distribution company, or energy service provider shall be identical, with respect to the rate

structure, all retail rate components, and monthly charges, to the contract or tariff under which the same customer would be served if such customer were not an agricultural net metering customer or a net metering customer with the exceptions that a residential net metering customer or an agricultural net metering customer whose generating facility has a capacity that exceeds 10 kilowatts shall pay any applicable tariffed monthly standby charges to the supplier, and that time-of-use metering under an electricity supply service tariff having no demand charges is not permitted. Said contract or tariff shall be applicable to both the electric energy supplied to, and consumed from, the grid by that customer.

In instances where a customer's metering equipment is of a type for which meter readings are made off site and where this equipment has, or will be, installed for the convenience of the electric distribution company, the electric distribution company shall provide the necessary additional metering equipment to enable net metering service at no charge to the customer. In instances where a customer has requested, and where the electric distribution company would not have otherwise installed, metering equipment that is intended to be read off site, the electric distribution company may charge the customer its actual cost of installing any additional equipment necessary to implement net metering service. A time-of-use customer shall bear the incremental metering costs associated with net metering. Any incremental metering costs associated with measuring the output of any generator ~~or generators~~ for the purposes of receiving renewable energy certificates shall be installed at the customer's expense unless otherwise negotiated between the customer and the REC purchaser. Agricultural net metering customers may be responsible for the cost of additional metering equipment necessary to accomplish account aggregation.

The customer shall receive no compensation for excess generation unless the customer has entered into a power purchase agreement with its supplier.

Upon the written request of the customer, the customer's supplier shall enter into a power purchase agreement for the excess generation for one or more net metering periods, as requested by the customer. The written request of the customer shall be submitted prior to the beginning of the first net metering period covered by the power purchase agreement. The power purchase agreement shall be consistent with this chapter. If the customer's supplier is an investor-owned electric distribution company, the supplier shall be obligated by the power purchase agreement to purchase the excess generation for the requested net metering periods at a price equal to the PJM Interconnection, L.L.C. (PJM) zonal day-ahead annual, simple average LMP (locational marginal price) for the PJM load zone in which the electric distribution company's Virginia retail service territory resides (simple average of hourly LMPs, by tiers, for time-of-use customers), as published by the PJM Market Monitoring Unit, for the most recent calendar year ending on or before the end of each

net metering period, unless the electric distribution company and the customer mutually agree to a higher price or unless, after notice and opportunity for hearing, the commission establishes a different price or pricing methodology. If the Virginia retail service territory of the investor-owned electric distribution company does not reside within a PJM load zone, the power purchase agreement shall obligate the electric distribution company to purchase excess generation for the requested net metering periods at a price equal to the systemwide PJM day-ahead annual, simple average LMP (simple average of hourly LMPs, by tiers, for time-of-use customers), as published by the PJM Market Monitoring Unit, for the most recent calendar year ending on or before the end of each net metering period, unless the electric distribution company and the customer mutually agree to a higher price or unless, after notice and opportunity for hearing, the commission establishes a different price or pricing methodology.

If the customer's supplier is a member-owned electric cooperative, the supplier shall be obligated by the power purchase agreement to purchase excess generation for the requested net metering periods at a price equal to the simple average (by tiers for time-of-use customers) of the electric cooperative's hourly avoidable cost of energy, including fuel, based on the energy and energy-related charges of its primary wholesale power supplier for the net metering period, unless the electric distribution company and the customer mutually agree to a higher price or unless, after notice and opportunity for hearing, the commission establishes a different price or pricing methodology.

If the customer's supplier is a competitive ~~supplier~~ supplier service provider, the supplier shall be obligated by the power purchase agreement to purchase the excess generation for the requested net metering periods at a price equal to the systemwide PJM day-ahead annual, simple average LMP (simple average of hourly LMPs, by tiers, for time-of-use customers), as published by the PJM Market Monitoring Unit, for the most recent calendar year ending on or before the end of each net metering period, unless the supplier and the customer mutually agree to a higher price or unless, after notice and opportunity for hearing, the commission establishes a different price or pricing methodology.

The customer's supplier shall make full payment annually to the customer within 30 days following the latter of the end of the net metering period or, if applicable, the date of the PJM Market Monitoring Unit's publication of the previous calendar-year's applicable zonal or systemwide PJM day-ahead annual, simple average LMP, or hourly LMP, as appropriate. The supplier may offer the customer the choice of an account credit in lieu of a direct payment. The option of a customer to request payment from its supplier for excess generation and the price or pricing formula shall be clearly delineated in the net metering tariff of the electric distribution company or timely provided by the customer's competitive

Regulations

supplier, as applicable. A copy of such tariff, or an Internet link to such tariff, at the option of the customer, shall be provided to each prospective customer requesting interconnection of a generating facility. A competitive supplier service provider shall provide in its contract with the customer the price or pricing formula for excess generation.

For a nontime-of-use customer, in any billing period in which there is a billing period credit, the customer shall be required to pay only the nonusage sensitive charges, including any applicable standby charges, for that billing period. For a time-of-use customer, in any billing period for which there are billing period credits in all tiers, the customer shall be required to pay only the demand ~~charge or~~ charges, nonusage sensitive charges, and any applicable standby charges, for that billing period. Any billing period credits shall be accumulated, carried forward, and applied at the first opportunity to any billing periods having positive net consumptions (by tiers, in the case of time-of-use customers). However, any accumulated billing period credits remaining unused at the end of a net metering period shall be carried forward into the next net metering period only to the extent that such accumulated billing period credits carried forward do not exceed the customer's billed consumption for the current net metering period, adjusted to exclude accumulated billing period credits carried forward and applied from the previous net metering period (recognizing tiers for time-of-use customers).

A customer owns any renewable energy certificates (RECs) associated with the total output of its generating facility. A supplier is only obligated to purchase a customer's RECs if the customer has exercised its one-time option at the time of signing a power purchase agreement with its supplier to include a provision requiring the purchase by the supplier of all generated RECs over the duration of the power purchase agreement.

Payment for all whole RECs purchased by the supplier during a net metering period in accordance with the power purchase agreement shall be made at the same time as the payment for any excess generation. The supplier will post a credit to the customer's account, or the customer may elect a direct payment. Any fractional REC remaining shall not receive immediate payment, but may be carried forward to subsequent net metering periods for the duration of the power purchase agreement.

The rate of the payment by the supplier for a customer's RECs shall be the daily unweighted average of the "CR" component of Virginia Electric and Power Company's Virginia jurisdiction Rider G tariff in effect over the period for which the rate of payment for the excess generation is determined, unless the customer's supplier is not Virginia Electric and Power Company, and that supplier has an applicable Virginia retail renewable energy tariff containing a comparable REC commodity price component, in which case

that price component shall be the basis of the rate of payment. The commission may, with notice and opportunity for hearing, set another rate of payment or methodology for setting the rate of payment for RECs.

To the extent that RECs are not sold to the customer's supplier, they may be sold to any willing buyer at any time at a mutually agreeable price.

20VAC5-315-77. Rules governing PPA providers and third-party partial requirements power purchase agreements in electric cooperative service territories.

A. The provisions of this section are promulgated pursuant to § 56-594.01 K and L of the Code of Virginia.

B. Pursuant to § 56-594.01 L of the Code of Virginia, the commission has no jurisdiction over civil contract disputes and claims for damages against PPA providers.

C. PPA providers shall only enter into third party partial requirements power purchase agreements with those retail customers and nonjurisdictional customers of the electric cooperative that are exempt from federal income taxation, unless otherwise permitted by § 56-585.4 of the Code of Virginia.

D. The commission's Division of Public Utility Regulation shall administer and maintain a registry of PPA providers eligible to offer third-party partial requirements power purchase agreements.

E. Prior to entering into a third-party partial requirements power purchase agreement with an eligible customer, a PPA provider shall submit a complete Form PPAR to the commission's Division of Public Utility Regulation and be listed on the registry of eligible PPA providers.

F. PPA provider registration shall be of two classes: residential and nonresidential. A PPA provider shall submit a Form PPAR for each class of customers it desires to serve.

G. The PPA provider shall submit a \$250 registration fee payable to the State Corporation Commission. If the PPA provider intends to be registered to serve both residential and nonresidential customers, then a \$500 registration fee shall be paid.

H. In addition to a completed Form PPAR, a PPA provider shall provide to the Division of Public Utility Regulation, contemporaneously with submitting Form PPAR, demonstration of its financial ability by providing one of the following:

1. Evidence of an investment-grade credit rating of BBB+ or higher;
2. Liquid assets of at least \$150,000, as shown by the per books balance sheet, income statement, and statement of changes in financial position of the applicant or the entity responsible for the financing of the applicant, for the two

most recent annual periods. Audited financial statements shall be provided, if available, including notes to the financial statements and auditor's letter. Published financial information that includes Securities and Exchange Commission forms 10K and 10Q shall be provided, if available; or

3. A continuous [or renewable] performance or surety bond, [an irrevocable letter of credit, or an irrevocable guaranty from a creditworthy corporate parent of the applicant] in a minimum amount of \$50,000 in a form to be prescribed by the commission staff. [~~The~~ A certified copy of] the bond, [letter of credit, or guaranty] shall be provided to the Division of Public Utility Regulation simultaneously with the application.

I. Upon receipt of Form PPAR, which includes the certifications required by § 56-594.01 L 3 of the Code of Virginia, and the appropriate demonstration of financial ability pursuant to subsection H of this section, the Division of Public Utility Regulation staff shall review the application to ensure it is complete. Such review shall not take longer than 30 days from receipt of complete registration material. Upon completion of the review, the PPA provider shall be added to the registry. The commission staff shall not investigate the corporate structure, financing, bookkeeping, accounting practices, contracting practices, prices, or terms and conditions in a third-party partial requirements power purchase agreement.

J. PPA providers shall adhere to the following standards of conduct:

1. PPA providers offering solar third-party PPAs shall adhere to the Solar Energy Industry Association's Solar Business Code.

2. PPA providers offering wind third-party PPAs shall adhere to the Distributed Wind Energy Association's Code of Ethics.

3. PPA providers offering other types of third-party PPAs (falling water, biomass, waste energy, landfill gas, municipal solid waste, wave motion, tides, or geothermal power) shall adhere to the North American Board of Certified Energy Practitioners Code of Ethics and Standards of Conduct.

4. PPA provider contracts shall include a conspicuous notice that the PPA provider adheres to the relevant standards of conduct and the PPA provider shall include a copy of or link to the standards of conduct on its website.

K. PPA providers shall have and include in customer contracts and on their Internet websites, a customer dispute resolution procedure.

L. Should the commission staff have reason to doubt the veracity of any certifications of the provider made as part of an application, or, in any other case, if extenuating or

extraordinary circumstances exist that warrant a proceeding, the staff may initiate a formal proceeding by motion.

M. The commission's jurisdiction over PPA providers shall be limited to the investigation, prosecution, and adjudication of complaints from any person as to the provider's adherence to a commission-approved standard of conduct, the behavior of a provider's employees, agents, representatives, or contractors, and the representations made to customers in reference to the provider's business as it relates to third-party partial power purchase agreements.

N. The commission's authority to impose remedies against PPA providers is limited to monetary penalties not to exceed \$30,000 per PPA provider registration; orders for PPA providers to cease or desist from a certain practice, act, or omission; removal from the registry; and the issuance of orders to show cause.

O. No PPA provider shall, by virtue of that status alone, be considered a public utility or competitive service provider for purposes of Title 56 of the Code of Virginia.

NOTICE: Forms used in administering the regulation have been filed by the agency. The forms are not being published; however, online users of this issue of the Virginia Register of Regulations may click on the name of a form with a hyperlink to access it. The forms are also available from the agency contact or may be viewed at the Office of the Registrar of Regulations, 900 East Main Street, 11th Floor, Richmond, Virginia 23219.

FORMS (20VAC5-315)

~~Agricultural Net Metering or Net Metering Interconnection Notification, Form NMIN (eff. 12/2015)~~

~~[Agricultural Net Metering or Net Metering Interconnection Notification, Form NMIN (eff. 1/2020)~~

~~Self Certification for Registration as a Third Party Requirements Power Purchase Agreement Registered Provider, Form PPAR (eff. 1/2020)~~

~~[Agricultural Net Metering or Net Metering Interconnection Notification, Form NMIN \(eff. 3/2020\)](#)~~

~~[Self-Certification for Registration as a Third-Party Requirements Power Purchase Agreement Registered Provider, Form PPAR \(eff. 3/2020\)](#)~~

VA.R. Doc. No. R20-6101; Filed February 12, 2020, 6:54 p.m.

GOVERNOR

EXECUTIVE ORDER NUMBER FIFTY (2020)

Declaration of a State of Emergency Due to Extreme Flooding

Importance of the Issue

On February 6, 2020, I declared that a state of emergency exists in the Commonwealth of Virginia to prepare and coordinate our response to extreme flooding across the Commonwealth. The anticipated effects of this situation constitute a disaster as described in § 44-146.16 of the Code of Virginia (Code). Therefore, by virtue of the authority vested in me by Article V, Section 7 of the Constitution of Virginia, by §§ 44-146.17 and 44-75.1 of the Code, as Governor and Director of Emergency Management and Commander-in-Chief of the Commonwealth's armed forces, I proclaim a state of emergency. Accordingly, I direct state and local governments to render appropriate assistance to prepare for this event, to alleviate any conditions resulting from the situation, and to implement recovery and mitigation operations and activities so as to return impacted areas to prevent conditions as much as possible. Emergency services shall be conducted in accordance with § 44-146.13 et seq. of the Code.

In order to marshal all public resources and appropriate preparedness, response, and recovery measures, I order the following actions:

A. Implementation by state agencies of the Commonwealth of Virginia Emergency Operations Plan, as amended, along with other appropriate state plans.

B. Activation of the Virginia Emergency Operations Center and the Virginia Emergency Support Team, as directed by the State Coordinator of Emergency Management, to coordinate the provision of assistance to state, local, and tribal governments and to facilitate emergency services assignments to other agencies.

C. Authorization for the heads of executive branch agencies, on behalf of their regulatory boards as appropriate, and with the concurrence of their Cabinet Secretary, to waive any state requirement or regulation, and enter into contracts without regard to normal procedures or formalities, and without regard to application or permit fees or royalties. All waivers issued by agencies shall be posted on their websites.

D. Activation of § 59.1-525 et seq. of the Code related to price gouging.

E. Activation of the Virginia National Guard to State Active Duty.

F. Authorization of a maximum of \$350,000 in state sum sufficient funds for state and local government mission assignments and state response and recovery operations authorized and coordinated through the Virginia Department

of Emergency Management allowable by The Stafford Act, 42 USC § 5121 et seq. Included in this authorization is \$100,000 for the Department of Military Affairs, if it is called to State Active Duty.

Effective Date of this Executive Order

This Executive Order shall be effective February 6, 2020, and shall remain in full force and in effect until March 7, 2020, unless sooner amended or rescinded by further executive order. Termination of this Executive Order is not intended to terminate any federal type benefits granted or to be granted due to injury or death as a result of service under this Executive Order.

Given under my hand and under the Seal of the Commonwealth of Virginia, this 7th day of February, 2020.

/s/ Ralph S. Northam
Governor

GUIDANCE DOCUMENTS

PUBLIC COMMENT OPPORTUNITY

Pursuant to § 2.2-4002.1 of the Code of Virginia, a certified guidance document is subject to a 30-day public comment period after publication in the Virginia Register of Regulations and prior to the guidance document's effective date. During the public comment period, comments may be made through the Virginia Regulatory Town Hall website (<http://www.townhall.virginia.gov>) or sent to the agency contact. Under subsection C of § 2.2-4002.1, the effective date of the guidance document may be delayed for an additional period. The guidance document may also be withdrawn.

The following guidance documents have been submitted for publication by the listed agencies for a public comment period. Online users of this issue of the Virginia Register of Regulations may click on the name of a guidance document to access it. Guidance documents are also available on the Virginia Regulatory Town Hall (<http://www.townhall.virginia.gov>) or from the agency contact or may be viewed at the Office of the Registrar of Regulations, 900 East Main Street, Richmond, Virginia 23219.

BOARD OF ACCOUNTANCY

Title of Document: [Virginia Board of Accountancy Policy #1 Trust Account.](#)

Public Comment Deadline: April 1, 2020.

Effective Date: April 2, 2020.

Agency Contact: Nancy Glynn, Executive Director, Board of Accountancy, 9960 Mayland Drive, Suite 402, Richmond, VA 23233, telephone (804) 367-8540, or email nancy.glynn@boa.virginia.gov.

BOARD OF OPTOMETRY

Title of Document: [Virginia Board of Optometry Bylaws.](#)

Public Comment Deadline: April 1, 2020.

Effective Date: April 2, 2020.

Agency Contact: Elaine J. Yeatts, Agency Regulatory Coordinator, Department of Health Professions, Perimeter Center, 9960 Mayland Drive, Suite 300, Richmond, VA 23233, telephone (804) 367-4688, or email elaine.yeatts@dhp.virginia.gov.

BOARD OF COUNSELING

Title of Document: [Guidance on Emotional Support Animals.](#)

Public Comment Deadline: April 1, 2020.

Effective Date: April 2, 2020.

Agency Contact: Elaine J. Yeatts, Agency Regulatory Coordinator, Department of Health Professions, Perimeter Center, 9960 Mayland Drive, Suite 300, Richmond, VA 23233, telephone (804) 367-4688, or email elaine.yeatts@dhp.virginia.gov.

DEPARTMENT OF TRANSPORTATION

Title of Document: [Locally Administered Projects Manual.](#)

Public Comment Deadline: April 1, 2020.

Effective Date: April 2, 2020.

Agency Contact: Jo Anne P. Maxwell, Regulatory Coordinator, Policy Division, Department of Transportation, 11th Floor, 1401 East Broad Street, Richmond, VA 23219, telephone (804) 786-1830, or email joanne.maxwell@vdot.virginia.gov.

BOARD OF HOUSING AND COMMUNITY DEVELOPMENT

Title of Document: [Virginia Homeless and Special Needs Housing Funding Guidelines, 2020–2022.](#)

Public Comment Deadline: April 1, 2020.

Effective Date: April 2, 2020.

Agency Contact: Kyle Flanders, Senior Policy Analyst, Department of Housing and Community Development, Main Street Centre, 600 East Main Street, Suite 300, Richmond, VA 23219, telephone (804) 786-6761, or email kyle.flanders@dhcd.virginia.gov.

ANNUAL LIST

Section 2.2-4103.1 of the Code of Virginia requires annual publication in the Virginia Register of Regulations of guidance document lists from state agencies. A guidance document is defined as "...any document developed by a state agency or staff that provides information or guidance of general applicability to the staff or public to interpret or implement statutes or the agency's rules or regulations..." Agencies are required to maintain a complete, current list of all guidance documents and make the full text of such documents available to the public.

Generally, the format for the guidance document list is: document number (if any), title of document, date issued or last revised, and citation of Virginia Administrative Code regulatory authority or Code of Virginia statutory authority. Questions concerning documents or requests for copies of documents should be directed to the contact person listed by the agency.

VIRGINIA RETIREMENT SYSTEM

Copies of the following documents may be viewed during regular work days from 8 a.m. until 4:30 p.m. in the office of the Virginia Retirement System, 1200 East Main Street, Richmond, VA 23219. Copies may be obtained free of charge by contacting Wendy Jenkins, at the same address, telephone (804) 775-3499, or email wjenkins@varetire.org. The documents may be downloaded from the Virginia Retirement System website at www.varetire.org and www.varetire.org/hybrid.

Questions regarding interpretation of benefit plan provisions or implementation of procedures outlined in these documents may be directed to Cynthia Wilkinson, Director of Policy, Planning and Compliance, Virginia Retirement System, 1200 East Main Street, Richmond, VA 23219, telephone (888) 827-3847, FAX (804) 786-1541, or email cwilkinson@varetire.org.

Guidance Documents:

[2019 Legislative Summary](#), published April 2019, Code of Virginia, Title 51.1, Chapters 1-7

[457 Deferred Compensation Plan Features and Highlights](#), revised October 2019, Code of Virginia, Title 51.1, Chapters 6.6.1

[457 Deferred Compensation and Cash Match Plan Features and Highlights](#), revised October 2019, Code of Virginia, Title 51.1, Chapters 6,6.1

[Approved Domestic Relations Orders Guide](#), revised January 2016, Addendum January 2018, Code of Virginia, Title 51.1, Chapter 1

[Benefits for VRS Members](#), revised June 2019, Code of Virginia, Title 51.1, Chapters 1-7

[Choose the Plan and Provider That's Right for You – Optional Retirement Plan for Higher Education](#), revised May 2019, Code of Virginia, Title 51.1, Chapter 1

[Choosing Your Retirement Plan – Plan 1 – Optional Retirement Plan for Higher Education, Membership Date: Before July 1, 2010](#), revised October 2019, Code of Virginia, Title 51.1, Chapter 1

[Choosing Your Retirement Plan – Plan 2 – Optional Retirement Plan for Higher Education, Membership Date: July 1, 2010 – December 31, 2013](#), revised October 2019, Code of Virginia, Title 51.1, Chapter 1

[Choosing Your Retirement Plan – Hybrid Retirement Plan, Membership Date: On or after January 1, 2014](#), revised October 2019, Code of Virginia, Title 51.1, Chapter 1

[Choosing Your Retirement Plan – Plan 1 – Optional Retirement Plan for Political Appointees, Membership Date: Before July 1, 2010](#), revised October 2019, Code of Virginia, Title 51.1-126.5

[Choosing Your Retirement Plan – Plan 2 – Optional Retirement Plan for Political Appointees, Membership Date: July 1, 2010 – December 31, 2013](#), revised October 2019, Code of Virginia, Title 51.1-126.5

[Choosing Your Retirement Plan – Optional Retirement Plan for Political Appointees – Hybrid Retirement Plan, Membership Date: On or after January 1, 2014](#), revised December 2017, Code of Virginia, Title 51.1-126.5

[Choosing Your Retirement Plan – Plan 1 – the Optional Retirement Plan for School Superintendents, Membership Date: Before July 1, 2010](#), revised October 2019, Code of Virginia, Title 51.1-126.6

[Choosing Your Retirement Plan – Plan 2 – Optional Retirement Plan for School Superintendents, Membership Date: July 1, 2010 – December 31, 2013](#), revised October 2019, Code of Virginia, Title 51.1-126.6

[Choosing Your Retirement Plan – Optional Retirement Plan for School Superintendents – Hybrid Retirement Plan, Membership Date: On or after January 1, 2014](#), revised October 2019, Code of Virginia, Title 51.1-126.6

[Comprehensive Annual Financial Report](#), published annually, last published December 2019, Code of Virginia, Title 51.1, Chapters 1-7

[Counseling Checklist for New Hybrid Retirement Plan Member](#), revised September 2019, Code of Virginia, Title 51.1, Chapters 1- 7

[Defined Contribution Plan Payroll Guide for Political Subdivisions, School Divisions and Decentralized State Employers](#), revised April 2018, Code of Virginia, Title 51.1, Chapters 6.6.1

[Disability Retirement Checklist for Employers](#), revised September 2019, Code of Virginia, Title 51.1, Chapters 1-7

[Employer Manual](#), revised July 2019, Code of Virginia, Title 51.1, Chapters 1-7

[Employer Update](#) – published monthly online, Code of Virginia, Title 51.1, Chapters 1-7

[Enhanced Benefits for Eligible Political Subdivision Hazardous Duty Employees Handbook for Members – Plan 1](#), revised July 2018, Code of Virginia, Title 51.1, Chapters 1, 2, 2.1

[Enhanced Benefits for Eligible Political Subdivision Hazardous Duty Employees Handbook for Members – Plan 2](#), revised December 2019, addendum July 1, 2018, Code of Virginia, Title 51.1, Chapters 1, 2, 2.1

[Fee Disclosure Notice for Defined Contribution Plan](#), published October 2018, Code of Virginia, Title 51.1, Chapters 6, 6.1

[Fee Disclosure Notice for Optional Retirement Plan for Higher Education](#), June 2019, Code of Virginia, Title 51.1, Chapters 1-7

[Focus Newsletter for Participants in Hybrid Retirement Plan and 457 Deferred Compensation Plan](#), posted quarterly, Code of Virginia, Title 51.1, Chapters 1, 6, 6.1

[Get Organized Guide](#), published September 2019, Code of Virginia, Title 51.1, Chapters 1-7

[Getting Ready to Retire Guide](#), revised September 2019, Code of Virginia, Title 51.1, Chapters 1-7

[Getting Ready to Retire Guide for Hybrid Members](#), revised, May 2019, Code of Virginia, Title 51.1, Chapter 1

[How to Designate Your Beneficiary – VRS Defined Contribution Plans](#), published June 2017, Code of Virginia, Title 51.1, Chapters 1, 6, 6.1

[Hybrid Contributions Illustration](#), published October 2017, Code of Virginia, Title 51.1, Chapter 1

[Hybrid Retirement Plan Features and Highlights Brochure](#), revised October 2019, Title 51.1-169

[Hybrid Retirement Plan – Handbook for Members](#), revised August 2019, Code of Virginia, Title 51.1, Chapters 1-7

[Hybrid Retirement Plan Roadmap](#), revised May 2019, Code of Virginia, Title 51.1, Chapters 1-7

[Investment Guide, Commonwealth of Virginia Defined Contribution Plans](#), revised September 2019, Code of Virginia, Title 51.1, Chapters 1,6,6.1

[Investment Option Performance Commonwealth of Virginia Defined Contribution Plans](#), revised October 2019, Code of Virginia, Title 51.1, Chapters 1, 6.1

[Investment Policy Statement for the Unbundled Defined Contribution Plans](#), revised February 9, 2017, Code of Virginia, Title 51.1, Chapters 1, 6, 6.1

[Judicial Retirement System – Handbook for Members in the JRS Plan 1, JRS Plan 2, and the JRS Hybrid Retirement Plan](#), revised March 2017, Addendum July 1, 2019, Code of Virginia, Title 51.1, Chapters 1,3

[Leaving Employment Guide, Commonwealth of Virginia 457 Deferred Compensation Plan Virginia Cash Match Plan](#), revised June 2018, Code of Virginia, Title 51.1, Chapters 1, 6, 6.1

[Leaving Employment Guide Defined Contribution Component Hybrid Retirement Plan](#), revised June 2018, Code of Virginia, Title 51.1, Chapters 1, 6, 6.1

[Leaving Employment Guide, Optional Retirement Plans](#), revised June 2018, Code of Virginia, Title 51.1, Chapter 2

[Losing a Loved One: Guide for Families](#), revised June 2019, Code of Virginia, Title 51.1, Chapters 1, 2, 2.1, 3, 5

[Member News](#), published online February, May, September, and November, Code of Virginia, Title 51.1, Chapters 1-7

[Model Language for Domestic Relations Orders – Defined Benefit Plan](#), revised August 2019, Code of Virginia, Title 51.1, Chapters 1-7

[Model Language for Domestic Relations Orders – Defined Contribution Plan Accounts](#), revised August 2019, Code of Virginia, Title 51.1, Chapters 1-7

[Model Language for Domestic Relations Orders – Optional Retirement Plan for Employees of Institutions of Higher Education Accounts](#), published July 2007, Code of Virginia, Title 51.1, Chapters 1-7

[Optional Retirement Plan for Higher Education Handbook](#), revised July 2018, Code of Virginia, Title 51.1, Chapters 1-7

[Optional Retirement Plan for Higher Education Plan Features and Highlights](#), revised October 2019, Code of Virginia, Title 51.1, Chapters 1-7

[Optional Retirement Plan for Political Appointees Plan Features and Highlights](#), revised October 2019, Code of Virginia, Title 51.1, Chapters 1-7

[Optional Retirement Plan for Political Appointees Plan: Choose the Plan That's Right for You](#), published October 2017, Code of Virginia, Title 51.1, Chapters 1-7

[Optional Retirement Plan for School Superintendents Plan Features and Highlights](#), revised October 2019, Code of Virginia, Title 51.1, Chapters 1-7

Guidance Documents

[Payroll Guide for Commonwealth Integrated Payroll Personnel System - Reporting State Agencies](#), revised July 2019, Code of Virginia, Title 51.1, Chapters 1-7

[Payroll Guide for Political Subdivisions, School Divisions and Decentralized State Employers](#), revised April 2018, Code of Virginia, Title 51.1, Chapters 1-7

[Popular Comprehensive Annual Financial Report](#), published annually, last published December 2018, Code of Virginia, Title 51.1, Chapters 1-7

[Quick and Easy Access to Your Account VRS Defined Contribution Plans](#), revised October 2019, Code of Virginia, Title 51.1, Chapters 1, 6, 6.1

[Quicken Instructions VRS Defined Contribution Plans](#), revised June 2017, Code of Virginia, Title 51.1, Chapters 1, 6, 6.1

[Retiree Handbook](#), revised May 2019, Code of Virginia, Title 51.1, Chapters 1-7

[Retiree News](#) – published semiannually, June, December, Code of Virginia, Title 51.1, Chapters 1-7

[Required Minimum Distributions \(RMD\) Checklist VRS Defined Contribution Plans](#), revised November 2018, Code of Virginia, Title 51.1, Chapters 1, 6, 6.1

[Return-to-Work Checklist for Employers](#), revised September 2019, Code of Virginia, Title 51.1, Chapters 1-7

[Service Retirement Checklist for Employers](#), revised September 2019, Code of Virginia, Title 51.1, Chapters 1-7

[Special Tax Notice - Hybrid 401\(a\)](#), revised July 2017, Code of Virginia, Title 51.1, Chapters 1, 6, 6.1

[Special Tax Notice - Hybrid 457](#), revised July 2017, Code of Virginia, Title 51.1, Chapters 1, 6, 6.1

[Special Tax Notice – VRS Defined Benefit Plans](#), revised December 2018, Code of Virginia, Title 51.1, Chapters 1, 6, 6.1

[Stable Value Fund Disclosure](#), revised May 2019, Code of Virginia, Title 51.1, Chapters 1, 6, 6.1

[State Police Officers' Retirement System Handbook – Plan 1](#), revised July 2018, Code of Virginia, Title 51.1, Chapters 1-7, 10, 11, 13, 14

[State Police Officers' Retirement System Handbook – Plan 2](#), Revised March 2017, addendum July 1, 2019, Code of Virginia, Title 51.1, Chapters 1-7, 10, 11, 13, 14

[Transitional Benefits Program Enhance Retirement Benefit Checklist for Employers](#), revised April 2019, Code of Virginia, Title 51.1, Chapters 1, 2, 2.1

[Understanding myVRS Navigator's Calculations and Business Rules](#), revised March 2013, Code of Virginia, Title 51.1, Chapters 1-7, 10, 11, 13, 14

[Understanding myVRS Navigator's Calculations and Business Rules for Employees Who Work less than 12 Months](#), revised March 2013, Code of Virginia, Title 51.1, Chapters 1-7, 10, 11, 13, 14

[Virginia Disability Retirement Employer Manual](#), revised July 2019, Code of Virginia, Title 51.1, Chapters 1-7

[Virginia Law Officers' Retirement System Handbook – Plan 1](#), revised July 2018, Code of Virginia, Title 51.1, Chapters 1-7, 10, 11, 13, 14

[Virginia Law Officers' Retirement System Handbook – Plan 2](#), revised December 2018, Addendum July 1, 2019, Code of Virginia, Title 51.1, Chapters 1-7, 10, 11, 13, 14

[Virginia Local Disability Program Long-Term Care Plan Brochure](#), revised February 2018, Code of Virginia, Title 51.1, Chapter 11.1

[Virginia Local Disability Program Handbook – Handbook for Employees in the VRS Hybrid Retirement Plan whose School Division or Political Subdivision Participates in Virginia Local Disability Program](#), revised November 2019, Code of Virginia, Title 51.1, Chapters 11.1

[Virginia Local Disability Program Employer Manual](#), revised September 2019, Code of Virginia, Title 51.1, Chapter 11.1

[Virginia Retirement System Disability Retirement Handbook for Members – Plans 1 and 2](#), revised January 2017, Addendum July 2019, Code of Virginia, Title 51.1, Chapters 1-7

[Virginia Sickness and Disability Program – Handbook for State Employees in the Virginia Retirement System, State Police Officers' Retirement System and Virginia Law Officers' Retirement System](#), revised September 2019, Code of Virginia, Title 51.1, Chapter 11

[Virginia Sickness and Disability Program Benefits Employer Manual](#), revised September 2019, Code of Virginia, Title 51.1, Chapter 11

[Virginia Retirement System Handbook for Members – Plan 1](#), revised July 2018, Code of Virginia, Title 51.1, Chapters 1-7, 10, 11, 13, 14

[Virginia Retirement System Handbook for Members – Plan 2](#), revised July 2018, Code of Virginia, Title 51.1, Chapters 1-7, 10, 11, 13, 14

[Virginia Supplemental 401\(a\) Retirement Plan for Middle School Specialists Plan Features and Highlights](#), revised October 2019, Code of Virginia, Title 51.1, Chapters 1, 6, 6.1

[VRS 101: An Introduction to the Virginia Retirement System](#), published January 2019, Code of Virginia, Title 51.1, Chapters 1-7, 10, 11, 13, 14

[VRS Investment Portfolio Disclosure](#), revised September 2019, Code of Virginia, Title 51.1, Chapters 1-7

[VRS Plan Comparison Guide](#), revised November 2017, Code of Virginia, Title 51.1, Chapters 1-7

[VSDP Long-Term Care Plan Brochure](#), revised July 2018, Code of Virginia, Title 51.1, Chapter 1

[Workforce Transition Act Retirement Checklist for Employers](#), revised April 2019, Code of Virginia, Title 51.1, Chapters 1-7, 10, 11, 13, 14

[Your Retirement Handbook for Hybrid Retirement Plan Retirees](#), published January 2019, Code of Virginia, Title 51.1, Chapters 1-7

GENERAL NOTICES/ERRATA

STATE WATER CONTROL BOARD

Proposed Enforcement Action for Alaron Farms LLC

An enforcement action has been proposed for Alaron Farms LLC for violations of State Water Control Law in Suffolk, Virginia. A description of the proposed action is available at the Department of Environmental Quality office listed or online at www.deq.virginia.gov. John Brandt will accept comments by email at john.brandt@deq.virginia.gov, FAX at (757) 518-2009, or postal mail at Department of Environmental Quality, Tidewater Regional Office, 5636 Southern Boulevard, Virginia Beach, VA 23462, from March 2, 2020, to April 1, 2020.

Proposed Enforcement Action for American Woodmark Corporation

An enforcement action has been proposed for American Woodmark Corporation for violations of the State Water Control Law at the American Woodmark Orange Dimension Mill facility located in Orange County, Virginia. A description of the proposed action is available at the Department of Environmental Quality office listed or online at www.deq.virginia.gov. Jim Datko will accept comments by email at james.datko@deq.virginia.gov or postal mail at Department of Environmental Quality, Northern Regional Office, 13901 Crown Court, Woodbridge, VA 22193, from March 3, 2020, through April 2, 2020.

Proposed Enforcement Action for Randall Eller

An enforcement action has been proposed for Randall Eller for violations of the State Water Control Law at 2435 Wesendonck Road, Bland County, Virginia. A description of the proposed action is available at the Department of Environmental Quality office listed or online at www.deq.virginia.gov. Ralph T. Hilt will accept comments by email at ralph.hilt@deq.virginia.gov, FAX at (276) 676-4899, or postal mail at Virginia Department of Environmental Quality, Southwest Regional Office, 355-A Deadmore Street, Abingdon, VA 24210, from March 3, 2020, through April 1, 2020.

Proposed Enforcement Action for the City of Franklin

An enforcement action has been proposed for the City of Franklin for violations of State Water Control Law at the City of Franklin wastewater treatment plant, Franklin, Virginia. A description of the proposed action is available at the Department of Environmental Quality office listed or online at www.deq.virginia.gov. John Brandt will accept comments by email at john.brandt@deq.virginia.gov, FAX at (757) 518-2009, or postal mail at Department of Environmental Quality, Tidewater Regional Office, 5636 Southern Boulevard, Virginia Beach, VA 23462, from March 2, 2020, to April 1, 2020.

Proposed Enforcement Action for Mojax LLC

An enforcement action has been proposed for Mojax LLC for violations of the State Water Control Law at the Middleburg Preserve I and II development sites located in Loudoun County, Virginia. A description of the proposed action is available at the Department of Environmental Quality office listed or online at www.deq.virginia.gov. Jim Datko will accept comments by email at james.datko@deq.virginia.gov or postal mail at Department of Environmental Quality, Northern Regional Office, 13901 Crown Court, Woodbridge, VA 22193, from March 3, 2020, through April 2, 2020.

Proposed Enforcement Action for Tri M. Nguyen

An enforcement action is proposed for Tri M. Nguyen for violations in Accomack County at the Anna Farm. Tri M. Nguyen withdrew groundwater without a permit in violation of the Groundwater Management Act of 1992. A description of the proposed action is available at <https://www.deq.virginia.gov/programs/enforcement/publicnotices.aspx>. Lee Crowell will accept comments by email at lee.crowell@deq.virginia.gov or postal mail at Department of Environmental Quality, P.O. Box 1105, Richmond, VA 23218, from March 2, 2020, to April 1, 2020.

Proposed Enforcement Action for NOVA Delivery Inc.

An enforcement action has been proposed for NOVA Delivery Inc. for violations of the State Water Control Law at the NOVA Delivery facility located in Fairfax County, Virginia. A description of the proposed action is available at the Department of Environmental Quality office listed or online at www.deq.virginia.gov. Jim Datko will accept comments by email at james.datko@deq.virginia.gov or postal mail at Department of Environmental Quality, Northern Regional Office, 13901 Crown Court, Woodbridge, VA 22193, from March 3, 2020, through April 2, 2020.

Proposed Consent Order for the University of Virginia Foundation

An enforcement action has been proposed for the University of Virginia Foundation for violations at the Birdwood Golf Course in Charlottesville, Virginia. The State Water Control Board proposes to issue a consent order with penalty and injunctive relief to the University of Virginia Foundation to address noncompliance with State Water Control Law. A description of the proposed action is available at the Department of Environmental Quality office listed or online at www.deq.virginia.gov. Eric Millard will accept comments by email at eric.millard@deq.virginia.gov, FAX at (540) 574-7878, or postal mail at Department of Environmental Quality, Valley Regional Office, 4411 Early Road, P.O. Box 3000, Harrisonburg, VA 22801, from March 2, 2020, to April 1, 2020.

Proposed Consent Special Order for the White Stone Volunteer Fire Department

An enforcement action is proposed for the White Stone Volunteer Fire Department for alleged violations that occurred at 579 Chesapeake Drive, White Stone, Virginia. The State Water Control Board proposes to issue a consent special order to White Stone Volunteer Fire Department to address noncompliance with State Water Control Law. A description of the proposed action is available at the Department of Environmental Quality office listed or online at www.deq.virginia.gov. Jeff Reynolds will accept comments by email at jefferson.reynolds@deq.virginia.gov or postal mail at Department of Environmental Quality, Piedmont Regional Office, 4949-A Cox Road, Glen Allen, VA 23060, from March 2, 2020, to April 2, 2020.

VIRGINIA CODE COMMISSION

Notice to State Agencies

Contact Information: *Mailing Address:* Virginia Code Commission, Pocahontas Building, 900 East Main Street, 8th Floor, Richmond, VA 23219; *Telephone:* (804) 698-1810; *Email:* varegs@dls.virginia.gov.

Meeting Notices: Section 2.2-3707 C of the Code of Virginia requires state agencies to post meeting notices on their websites and on the Commonwealth Calendar at <https://commonwealthcalendar.virginia.gov>.

Cumulative Table of Virginia Administrative Code Sections Adopted, Amended, or Repealed: A table listing regulation sections that have been amended, added, or repealed in the *Virginia Register of Regulations* since the regulations were originally published or last supplemented in the print version of the Virginia Administrative Code is available at <http://register.dls.virginia.gov/documents/cumultab.pdf>.

Filing Material for Publication in the *Virginia Register of Regulations*: Agencies use the Regulation Information System (RIS) to file regulations and related items for publication in the *Virginia Register of Regulations*. The Registrar's office works closely with the Department of Planning and Budget (DPB) to coordinate the system with the Virginia Regulatory Town Hall. RIS and Town Hall complement and enhance one another by sharing pertinent regulatory information.

ERRATA

STATE WATER CONTROL BOARD

Title of Regulation: **9VAC25-260. Water Quality Standards.**

Publication: 34:2 VA.R. 193-236 September 18, 2017.

Correction to Proposed Regulation:

Page 215, 9VAC25-260-140 B, Table of Parameters, "Toluene (µg/l)108883" row, last column, replace "6,000" with "~~6,000~~"

Publication: 35:22 VA.R. 2559-2582 June 24, 2019.

Correction to Final Regulation:

Page 2575, 9VAC25-260-140 B, Table of Parameters, "Toluene (µg/l)108883" row, last column, replace "6,000" with "~~6,000~~"

VA.R. Doc. No. R18-2148; Filed February 19, 2020

