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Fast-Track Regulation Agency Background Document

Agency name	Board of Agriculture and Consumer Services
Virginia Administrative Code (VAC) Chapter citation(s)	2 VAC 5-501
VAC Chapter title(s)	Regulations Governing the Cooling, Storing, Sampling, and Transporting of Milk
Action title	Amendments to adopt the U.S. Food and Drug Administration's 2023 Pasteurized Milk Ordinance by reference and update Virginia-specific provisions
Date this document prepared	December 12, 2025

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

Brief Summary

Provide a brief summary (preferably no more than 2 or 3 paragraphs) of this regulatory change (i.e., new regulation, amendments to an existing regulation, or repeal of an existing regulation). Alert the reader to all substantive matters. If applicable, generally describe the existing regulation.

The Regulations Governing the Cooling, Storing, Sampling, and Transporting of Milk (2 VAC 5-501) establishes storage and cooling standards for Grade "A" dairy farms and for milk transported from dairy farms. The standards address requirements relating to milk cooling and storage tanks, pay purpose laboratories, dairy farms and plants, permits, and construction of milk houses and associated facilities; cooling and storage standards for milk in transport; and the sampling and measuring of milk produced and sold from dairy farms and facilities. The proposed changes are consistent with current relevant federal standards and the U.S. Food and Drug Administration's (FDA) 2023 revision of the Pasteurized Milk Ordinance (PMO).

The PMO serves as a guideline of minimum standards for all state regulatory programs. In certain instances, 2 VAC 5-501 provides additional guidance or establishes requirements that are not included in the PMO. The proposed changes include the formal adoption by reference of the 2023 PMO; the repeal of sections that are duplicative of the PMO; the repeal of requirements for permit expiration and renewal on an annual basis; the repeal of state-specific requirements that certain samplers apply for, obtain, renew, and maintain permits that are not required by the PMO; and amendments to certain requirements to ensure consistency with the PMO and current science and technology.

Acronyms and Definitions

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

"Board" means the Board of Agriculture and Consumer Services.

"Bulk milk sampler" means any person who holds a permit issued by VDACS to collect, store, or transport official milk samples.

"Dairy farm" means any place or premises where one or more lactating animals (cows, goats, sheep, water buffalo, camels, or other hooved mammal) are kept for milking purposes, and from which a part or all of the raw milk or milk product(s) is provided, sold, or offered for sale to a milk plant, receiving station, or other transfer station.

"Farm bulk tank" means any tank installed on a dairy farm for the purpose of cooling or storing raw milk.

"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 producer" means any person who operates a dairy farm and provides, sells, or offers any milk for human consumption.

"PMO" means the Grade "A" Pasteurized Milk Ordinance, 2023 Revision.

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

Statement of Final Agency Action

Provide a statement of the final action taken by the agency including: 1) the date the action was taken; 2) that the agency has "adopted final amendments" to the regulation; 3) the name of the agency taking the action; and 4) the title of the regulation. A suggested statement is, "On [insert date] the Board/Department of [insert name] adopted final amendments to the [title of regulation(s)]."

On December 11, 2025, the Board of Agriculture and Consumer Services adopted amendments to Regulations Governing the Cooling, Storing, Sampling, and Transporting of Milk (2 VAC 5-501) and authorized staff to take any and all steps necessary to amend this regulation through a fast-track regulatory action.

Mandate and Impetus

Identify the mandate for this regulatory change and any other impetus that specifically prompted its initiation (e.g., new or modified mandate, petition for rulemaking, periodic review, or board decision). For purposes of executive branch review, "mandate" has the same meaning as defined in the ORM procedures, "a directive from the General Assembly, the federal government, or a court that requires that a regulation be promulgated, amended, or repealed in whole or part."

Consistent with Virginia Code § 2.2-4012.1, also explain why this rulemaking is expected to be noncontroversial and therefore appropriate for the fast-track rulemaking process.

Periodically, the FDA updates the PMO to ensure uniformity, the continued economic viability of the milk industry, and efficient and effective interstate milk transport. Virginia's milk-related regulations must reflect the requirements of one of the most recent editions of the PMO in order for Virginia dairies to ship milk interstate. The FDA audits state programs on a regular basis regarding the effectiveness of their enforcement and established policies and procedures. The FDA uses the PMO as a standard during its evaluation. If a state has not adopted the PMO or regulations similar to the PMO, it will not be able to achieve conformity with the audit. Failure to pass the audit could have serious consequences for both the regulatory program and the Virginia dairy industry.

The agency expects the proposed changes to be noncontroversial because they will bring the regulation in line with current federal standards, which were reviewed and commented on by industry when the FDA last updated the standards, and with regulations adopted by surrounding states. The proposed changes will also relieve the industry of having to annually renew certain permits.

Legal Basis

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

The Board serves as the promulgating entity for this regulation. Section 3.2-109 of the Code of Virginia establishes the Board as a policy board and authorizes the Board to adopt regulations in accordance with the provisions of Title 3.2 of the Code.

Section 3.2-5206 of the Code of Virginia authorizes the Board to establish definitions and standards of quality and identity and to adopt and enforce regulations dealing with the issuance of permits, production, importation, processing, grading, labeling, and sanitary standards for milk, milk products, market milk, market milk products, and those products manufactured or sold in semblance to or as substitutes for milk, milk products, market milk, or market milk products. This section also authorizes the Board to adopt (i) any regulation or part thereof under federal law that pertains to milk or milk products, amending the federal regulation as necessary for intrastate application and (ii) any model ordinance or regulation issued under federal law, including the PMO and the U.S. Department of Agriculture's Milk for Manufacturing Purposes.

Purpose

Explain the need for the regulatory change, including a description of: (1) the rationale or justification, (2) the specific reasons the regulatory change is essential to protect the health, safety or welfare of citizens, and (3) the goals of the regulatory change and the problems it is intended to solve.

The proposed amendments will align the regulation with current federal standards established by the 2023 revision of the PMO. In addition to providing for consistency with current federal standards and existing Virginia regulations, these amendments will also ensure that Virginia maintains its authority to oversee its state-level regulatory program. This will allow the regulatory program to continue to provide sufficient flexibility for the Virginia dairy industry while protecting the public's health, safety, and welfare by ensuring the safety and wholesomeness of all milk shipped from Virginia dairy farms.

Surrounding states have already updated their regulations to be consistent with the requirements governing the storage and transportation of milk established in the 2023 PMO. The proposed changes will facilitate interstate sales by Virginia milk producers by providing a level playing field with surrounding states with regard to the storage and transportation of milk.

Substance

Briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both. A more detailed discussion is provided in the "Detail of Changes" section below.

The substantive changes are as follows:

1. The adoption by reference of the 2023 PMO as regulations applicable in the enforcement of the milk sanitation program of the U.S. Public Health Service, administered by the VDACS Dairy Program.

The primary amendments to the PMO that the FDA has adopted since the 2017 PMO that will be incorporated into 2 VAC 5-501 through this regulatory action's adoption by reference of the 2023 PMO are as follows:

- Allowing for the use of new technology by establishing requirements and clarification to allow for on-tanker farm bulk tank aseptic milk sampling devices (revision made in 2019 PMO and retained in 2023 PMO).
- Removal of the requirement to list the name of the supervising regulatory agency at the point of origin for all milk tanker manifests and bills of lading (revision made in 2019 PMO and retained in 2023 PMO).

2. The repeal of provisions of the regulation that are duplicative of the requirements set forth in the 2023 PMO.

3. The repeal of provisions that require the annual expiration and subsequent renewal of certain permits required by the regulation or PMO.

4. The repeal of state specific provisions that require dairy plant samplers to apply for, maintain, and renew permits that they may be exempt from by the provisions in the PMO.

5. Amendments to 2 VAC 5-501-80 to align the regulations with the PMO and reflect current industry standards with regard to adequate agitation of milk and milk pick-up procedures.

- 6. Updates references to the “ANSI/NEMA 250, Enclosures for Electrical Equipment (1000 Volts Maximum), dated December 29, 2014” with “ANSI/NEMA 250, Enclosures for Electrical Equipment (1000 Volts Maximum), dated December 8, 2020.”
- 7. Updates references to the “Standard Methods for the Examination of Dairy Products, 17th Edition” with “Standard Methods for the Examination of Dairy Products, 18th Edition.”
- 8. The repeal of requirements for outdated strip chart style recording devices, which are no longer used by Virginia dairy farmers.

Issues

Identify the issues associated with the regulatory change, including: 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions; 2) the primary advantages and disadvantages to the agency or the Commonwealth; and 3) other pertinent matters of interest to the regulated community, government officials, and the public. If there are no disadvantages to the public or the Commonwealth, include a specific statement to that effect.

The primary advantage to the public is that the proposed amendments will allow for the safe storage and cooling of milk produced on dairy farms in Virginia and sold in intrastate and interstate commerce and will eliminate the confusion that could result from inconsistencies between state and federal standards. This ensures that the public is afforded the opportunity to consume a safe product and further ensures that the dairy industry is afforded additional flexibility regarding the storage of milk.

The primary advantage to the agency and Commonwealth is that the proposed amendments will ensure that the Commonwealth can adequately protect the public from milk cooled, stored, or transported in an unsafe manner. The amendments that will bring Virginia’s regulation in line with the PMO will support the continued intrastate and interstate sales of milk on a more competitive basis, which will ultimately benefit Virginia’s economy.

This proposed regulatory action poses no disadvantages to the public or the Commonwealth.

Requirements More Restrictive than Federal

Identify and describe any requirement of the regulatory change which is more restrictive than applicable federal requirements. Include a specific citation for each applicable federal requirement, and a rationale for the need for the more restrictive requirements. If there are no applicable federal requirements, or no requirements that exceed applicable federal requirements, include a specific statement to that effect.

The proposed amendments adopt the 2023 PMO, which serves as a set of minimum standards and guidelines for state regulatory programs. In addition to the minimum requirements established in the PMO, the proposed amendments include Virginia-specific provisions that clarify areas of the PMO that are open to broad interpretation; however, none of these proposed amendments are more restrictive than the PMO.

Agencies, Localities, and Other Entities Particularly Affected

Consistent with § 2.2-4007.04 of the Code of Virginia, identify any other state agencies, localities, or other entities particularly affected by the regulatory change. Other entities could include local partners such as tribal governments, school boards, community services boards, and similar regional organizations. "Particularly affected" are those that are likely to bear any identified disproportionate material impact which would not be experienced by other agencies, localities, or entities. "Locality" can refer to either local governments or the locations in the Commonwealth where the activities relevant to the regulation or regulatory change are most likely to occur. If no agency, locality, or entity is particularly affected, include a specific statement to that effect.

Other State Agencies Particularly Affected

The proposed regulation will not particularly affect any other state agency.

Localities Particularly Affected

The proposed regulation will not particularly affect any specific locality.

Other Entities Particularly Affected

The proposed regulation will not particularly affect any other entity.

Economic Impact

Consistent with § 2.2-4007.04 of the Code of Virginia, identify all specific economic impacts (costs and/or benefits), anticipated to result from the regulatory change. When describing a particular economic impact, specify which new requirement or change in requirement creates the anticipated economic impact. Keep in mind that this is the proposed change versus the status quo.

Impact on State Agencies

<p><i>For your agency:</i> projected costs, savings, fees or revenues resulting from the regulatory change, including: a) fund source / fund detail; b) delineation of one-time versus on-going expenditures; and c) whether any costs or revenue loss can be absorbed within existing resources</p>	<p>There is no projected additional cost to the agency to implement the proposed amendments.</p>
<p><i>For other state agencies:</i> projected costs, savings, fees or revenues resulting from the regulatory change, including a delineation of one-time versus on-going expenditures.</p>	<p>There is no projected additional cost to other state agencies to implement the proposed amendments.</p>
<p><i>For all agencies:</i> Benefits the regulatory change is designed to produce.</p>	<p>The primary advantage to the agency and Commonwealth is that the regulation ensures that the Commonwealth can adequately protect the public from milk cooled, stored, or transported in an unsafe manner. The requirements will also result in the continued intrastate and interstate sales of milk on a more competitive basis, which will ultimately benefit Virginia's economy.</p>

Impact on Localities

If this analysis has been reported on the ORM Economic Impact form, indicate the tables (1a or 2) on which it was reported. Information provided on that form need not be repeated here.

Projected costs, savings, fees or revenues resulting from the regulatory change.	There are no projected costs, savings, fees, or revenues to localities associated with the proposed amendments.
Benefits the regulatory change is designed to produce.	The primary advantage to localities of the regulation is that it allows for the safe storage and cooling of milk produced on dairy farms in Virginia and sold in intrastate and interstate commerce. This ensures that the public is afforded the opportunity to consume a safe product and further ensures that the dairy industry is afforded additional flexibility regarding the storage of milk.

Impact on Other Entities

If this analysis has been reported on the ORM Economic Impact form, indicate the tables (1a, 3, or 4) on which it was reported. Information provided on that form need not be repeated here.

Description of the individuals, businesses, or other entities likely to be affected by the regulatory change. If no other entities will be affected, include a specific statement to that effect.	Milk haulers, which employ bulk milk samplers, are subject to the provisions of this regulation and will be affected by the proposed amendments.
Agency's best estimate of the number of such entities that will be affected. Include an estimate of the number of small businesses affected. Small business means a business entity, including its affiliates, that: a) is independently owned and operated and; b) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.	There are 18 permitted contract milk haulers, 17 of which the agency estimates are small businesses. These haulers employ a total of approximately 260 bulk milk samplers.
All projected costs for affected individuals, businesses, or other entities resulting from the regulatory change. Be specific and include all costs including, but not limited to: a) projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses; b) specify any costs related to the development of real estate for commercial or residential purposes that are a consequence of the regulatory change; c) fees; d) purchases of equipment or services; and e) time required to comply with the requirements.	Affected businesses will incur no additional costs as a result of the proposed amendments.
Benefits the regulatory change is designed to produce.	Economic benefits include consistent regulation with surrounding states, thus facilitating more effective and efficient integration into interstate commerce by Virginia's dairy industry. Benefits also include the continued availability of safe and wholesome milk for intrastate and interstate sale. Another benefit is the time saved on annual permit renewals, which will no longer need to be

	submitted to the state regulatory agency by industry haulers and samplers. Another additional benefit is that approximately 125 dairy plant samplers will no longer need to apply for or renew a permit to perform their normal job duties.
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Alternatives to Regulation

Describe any viable alternatives to the regulatory change that were considered, and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the regulatory change. Also, include discussion of less intrusive or less costly alternatives for small businesses, as defined in § 2.2-4007.1 of the Code of Virginia, of achieving the purpose of the regulatory change.

There are no viable alternatives to the proposed regulatory action. This regulation must reflect the most recent version of the PMO in order to ensure that Virginia’s regulations are consistent with those adopted by surrounding states so that Virginia milk producers maintain the ability to compete with surrounding states with regard to interstate milk shipments. The agency considered the repeal and replacement of this regulation with a new regulation that simply adopts the 2023 PMO in its entirety. This alternative was rejected because the existing regulation includes some requirements that are unique to Virginia. The agency anticipates that the PMO will eventually include similar requirements, and the agency believes it would cause confusion to eliminate these provisions. The agency determined it was not appropriate to establish unique standards for small businesses, as doing so could negatively impact the safety of milk available for sale.

Regulatory Flexibility Analysis

Consistent with § 2.2-4007.1 B of the Code of Virginia, describe the agency’s analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small business. Alternative regulatory methods include, at a minimum: 1) establishing less stringent compliance or reporting requirements; 2) establishing less stringent schedules or deadlines for compliance or reporting requirements; 3) consolidation or simplification of compliance or reporting requirements; 4) establishing performance standards for small businesses to replace design or operational standards required in the proposed regulation; and 5) the exemption of small businesses from all or any part of the requirements contained in the regulatory change.

Alternative regulatory methods were analyzed, and the agency feels that establishing less stringent requirements than those being currently proposed will result in Virginia regulations being inconsistent with current federal requirements and those of surrounding states, thus hindering the ability of Virginia to ship milk interstate. The PMO serves as a set of minimum required guidelines; thus, Virginia is unable to adopt anything less stringent than the current PMO.

The agency is proposing changes in this action that will provide flexibility and simplicity for small businesses, such as by repealing duplicative requirements and eliminating certain permit requirements, as outlined in more detail elsewhere in this document.

Public Participation

Indicate how the public should contact the agency to submit comments on this regulation, and whether a public hearing will be held, by completing the text below.

Consistent with § 2.2-4011 of the Code of Virginia, if an objection to the use of the fast-track process is received within the 30-day public comment period from 10 or more persons, any member of the applicable standing committee of either house of the General Assembly or of the Joint Commission on Administrative Rules, the agency shall: 1) file notice of the objections with the Registrar of Regulations for publication in the Virginia Register and 2) proceed with the normal promulgation process with the initial publication of the fast-track regulation serving as the Notice of Intended Regulatory Action.

If you are objecting to the use of the fast-track process as the means of promulgating this regulation, please clearly indicate your objection in your comment. Please also indicate the nature of, and reason for, your objection to using this process.

The Board of Agriculture and Consumer Services is providing an opportunity for comments on this regulatory proposal, including but not limited to (i) the costs and benefits of the regulatory proposal and any alternative approaches, (ii) the potential impacts of the regulation, and (iii) the agency's regulatory flexibility analysis stated in this background document.

Anyone wishing to submit written comments for the public comment file may do so through the Public Comment Forums feature of the Virginia Regulatory Town Hall web site at: <https://townhall.virginia.gov>. Comments may also be submitted by mail, email or fax to:

Hunter Moyer
 PO Box 1163
 Richmond, VA 23218
 804-371-2380 (fax)
hunter.moyer@vdacs.virginia.gov

In order to be considered, comments must be received by 11:59 pm on the last day of the public comment period.

Detail of Changes

List all regulatory changes and the consequences of the changes. Explain the new requirements and what they mean rather than merely quoting the text of the regulation. For example, describe the intent of the language and the expected impact. Describe the difference between existing requirement(s) and/or agency practice(s) and what is being proposed in this regulatory change. Use all tables that apply, but delete inapplicable tables.

If an existing VAC Chapter(s) is being amended or repealed, use Table 1 to describe the changes between existing VAC Chapter(s) and the proposed regulation. If existing VAC Chapter(s) or sections are being repealed and replaced, ensure Table 1 clearly shows both the current number and the new number for each repealed section and the replacement section.

Table 1: Changes to Existing VAC Chapter(s)

Current chapter-section number	New chapter-section number, if applicable	Current requirements in VAC	Change, intent, rationale, and likely impact of new requirements
501-5	N/A	This section adopts the 2017 PMO	Change: Replace references to the 2017 PMO with the

			<p>2023 PMO. Wording is updated in order to be more clearly understood by the reader</p> <p>Intent: To adopt the 2023 revision of the PMO and make the section more easily understood.</p> <p>Rationale: To ensure the most recent revision of the PMO is incorporated into the regulation and to improve the understanding and application of the regulations.</p> <p>Likely Impact: Improved understanding and application of the regulations.</p>
501-10	N/A	Definitions	<p>Change: The proposed change amends or removes the definitions for the following terms:</p> <p>“3-A Sanitary Standards,” which is a term that is not used in the regulation “State regulatory agency”</p> <p>This proposed change also adds “if required” to part of the definition of “Dairy plant sampler”</p> <p>Intent: To update definitions in order to ensure they are consistent with other dairy related regulations and to specify that a Dairy Plant Sampler may or may not need a permit based on other requirements.</p> <p>Rationale: Update definitions to provide clarity for proposed amendments and existing definitions.</p> <p>Likely Impact: Improved understanding and application of the regulations.</p>
501-30	N/A	This section outlines the requirements to obtain and maintain permits to transport or sample milk.	<p>Change: To remove the annual permit renewal requirement for various permits and to provide an exemption to the state-specific requirement that all dairy plant samplers must have a permit.</p> <p>Intent: To remove permit expiration and renewal requirements and to provide exemptions to obtain and maintain certain permits.</p>

			<p>Rationale: To ease the burden of permit application, issuance, renewal, and processing for the industry and the agency.</p> <p>Likely Impact: Dairy Plant Samplers who are employed by a grade “A” milk plant and who receive each tanker at a milk plant and sample the milk for antibiotic residues will be able to operate under the permit of their employer instead of each employee who samples milk having to maintain an individual permit themselves. This will likely provide time savings for both the industry and the agency.</p>
501-40	N/A	This section outlines the requirements of milkhouse/milkroom construction	<p>Change: To remove the requirement that records be maintained in compliance with an appendix in the PMO.</p> <p>Intent: To remove duplicative text.</p> <p>Rationale: The PMO is already adopted by reference, which makes this section duplicative.</p> <p>Likely Impact: Improved understanding and application of the regulations.</p>
501-60	N/A	This section outlines the requirements for bulk milk holding/cooling tanks	<p>Change: To update referenced documents to their most current revision and remove references to outdated technology that is no longer in use on farms in Virginia.</p> <p>Intent: To update documents that have been revised to reflect current standards and technology and to remove references to outdated and no longer used equipment.</p> <p>Rationale: To remain current and relevant in regard to the science and technology currently used in the industry.</p> <p>Likely Impact: This will allow for the most recent technology and processes to be utilized by the industry.</p>
501-80	N/A	This section outlines the requirements for bulk milk tankers and the sampling of milk	<p>Change: To update referenced documents to their most current revision</p>

		before being pumped on bulk milk tankers	<p>and to update milk agitation and pick-up procedures to reflect current industry practices and science.</p> <p>Intent: To update documents and practices to reflect current procedures and science.</p> <p>Rationale: To remain current and relevant in regard to the science and practices currently used in the industry.</p> <p>Likely Impact: This will allow for the most recent science-based practices and industry procedures to be utilized.</p>
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