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Periodic Review and Small Business Impact Review Report of Findings

Agency name	Board of Agriculture and Consumer Services
Virginia Administrative Code (VAC) Chapter citation(s)	2 VAC 5 - 501
VAC Chapter title(s)	Regulations Governing the Cooling, Storing, Sampling and Transporting of Milk
Date this document prepared	March 25, 2026

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*.

Acronyms and Definitions

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

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

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

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

Legal Basis

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

The Board of Agriculture and Consumer Services (Board) serves as the promulgating entity for this regulation. Section 3.2-109 of the Code of Virginia (Code) 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 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.

Alternatives to Regulation

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

This regulation is based on the PMO, a document used by the U.S. Department of Health and Human Services and the U.S. Food and Drug Administration to ensure the safety and wholesomeness of milk and milk products for human consumption.

One alternative was to not change this regulation. However, this regulation must be continually updated to conform to U.S. Food and Drug Administration requirements.

Another alternative was to amend this regulation. This regulation is currently undergoing revision via Fast-Track and is currently being reviewed by the Attorney General. The proposed amendments will bring the regulation in line with current federal standards as 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 ensure Virginia maintains its own authority to oversee its state-level regulatory program, continuing to provide for sufficient flexibility for the Virginia dairy industry while continuing to protect the public's health, safety, and welfare by ensuring the safety and wholesomeness of all milk shipped from Virginia dairy farms.

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



Public Comment

Summarize all comments received during the public comment period following the publication of the Notice of Periodic Review, and provide the agency’s response. Be sure to include all comments submitted: including those received on Town Hall, in a public hearing, or submitted directly to the agency. Indicate if an informal advisory group was formed for purposes of assisting in the periodic review.

The agency did not receive any comments during the public comment period following the publication of the Notice of Periodic Review on October 20, 2025. An informal advisory group was not formed for the purpose of assisting in the periodic review.

Effectiveness

Pursuant to § 2.2-4017 of the Code of Virginia, indicate whether the regulation meets the criteria set out in the ORM procedures, including why the regulation is (a) necessary for the protection of public health, safety, and welfare, and (b) is clearly written and easily understandable.

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

Decision

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

If the result of the periodic review is to retain the regulation as is, complete the ORM Economic Impact form.

This regulation is included in a pending fast-track regulatory action to adopt the 2023 PMO. The current regulation as well as the proposed amendments included in the pending regulatory action are consistent with the stated objectives of the Milk, Milk Products, and Dairies Law (Va. Code § 3.2-5200 et seq.). The regulations are not overly burdensome to the industry, are clear and concise, and are necessary to ensure the safe storing and transportation of milk and milk products.

The agency has determined that no additional changes are needed to this regulation at this time.

Small Business Impact

As required by § 2.2-4007.1 E and F of the Code of Virginia, discuss the agency’s consideration of: (1) the continued need for the regulation; (2) the nature of complaints or comments received concerning the regulation; (3) the complexity of the regulation; (4) the extent to which the regulation overlaps, duplicates, or conflicts with federal or state law or regulation; and (5) the length of time since the regulation has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the regulation. Also, discuss why the agency’s decision, consistent with applicable law, will minimize the economic impact of regulations on small businesses.

(1) The regulation, both in its current form as well as the proposed amended regulation, provides important safeguards to ensure the safe manufacture and distribution of milk and milk products in the Commonwealth.

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

(3) The regulations are clearly written and allow for the safe manufacture of various forms of milk and milk products

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

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

There is no direct cost to small businesses to apply for the permits required by this regulation to sample and transport milk for human consumption. There may be indirect costs associated with complying with the sanitary requirements of the regulation in order to maintain the permit.

This regulation provides direct and indirect benefits to small businesses because it ensures consumer confidence in the quality and wholesomeness of dairy products and allows dairy farmers and dairy processors to transport and sell Grade A milk and milk products to intra- and interstate markets.

