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## Periodic Review and Small Business Impact Review Report of Findings

<b>Agency name</b>	Board of Agriculture and Consumer Services
<b>Virginia Administrative Code (VAC) Chapter citation(s)</b>	2 VAC 5-531
<b>VAC Chapter title(s)</b>	Regulations Governing Milk For Manufacturing Purposes
<b>Date this document prepared</b>	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.*

"Grade "A"" means any milk or milk product that complies with the standard of identity provided for in 21 Code of Federal Regulation (CFR) Part 131 to include fluid milk and milk products, yogurt, and cottage cheese.

"Manufactured Grade Milk products" means any milk or milk product that is not defined in 21 CFR Part 131 to include standardized hard and soft cheeses (with the exception of cottage cheese), butter, and dairy based puddings.

"Milk for Manufacturing Purposes and its Production and Processing" means the guidance document issued by the United States Department of Agriculture, providing regulatory requirements for the production and processing of manufactured milk products on dairy farms and milk plants. This document serves as a companion document to the FDA's Pasteurized Milk Ordinance.

"Pasteurized Milk Ordinance (PMO)" means the 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.

## 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, market milk products. In adopting any regulation pursuant to this section, the Board may adopt by reference:

1. Any regulation or part thereof under federal law that pertains to milk or milk products, amending the federal regulation as necessary for intrastate application.
2. Any model ordinance or regulation issued under federal law, including the Pasteurized Milk Ordinance (Public Health Service/Food and Drug Administration Publication Number 229) and the U.S. Department of Agriculture's Milk for Manufacturing Purposes and its Production and Processing Recommended Requirements.
3. Any reference, standard, or part thereof relating to milk, milk products, or milk production published by the American Society of Agricultural Engineers, the American Public Health Association, the American Society of Mechanical Engineers, or the International Association of Food Protection.
4. Any method of analysis relating to milk or milk products including any method of analysis published by the United States Public Health Service, the Association of Official Analytical Chemists, or the American Public Health Association.

## Alternatives to Regulation

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

The following alternatives were considered:

One alternative considered was not to regulate milk for manufacturing purposes at all. This alternative was rejected because it could undermine public confidence in the healthfulness and quality of manufactured dairy products. With no regulatory oversight, the opportunity for the industry to produce and public to consume unsafe dairy products would be significant. This in turn would result in an increase in dairy related

foodborne illness. Although an advantage is that the Commonwealth no longer has the expense of regulating this industry, the disadvantage is that there is an unacceptable level of risk to the consumer. Additionally, milk product producers would not be allowed to ship their products interstate. If this scenario were to occur, Virginia’s dairy industry and as an extension, the Commonwealth’s economy, would be significantly affected in a negative manner. This alternative, and the disadvantages that it would precipitate, would apply to both large and small businesses.

The second alternative considered was to provide less stringent requirements for small businesses than those that currently exist. However, the establishment of less stringent requirements would be inconsistent with existing federal requirements as well as the requirements of other states. Although there would be some level of regulatory oversight in place, less stringent requirements would still create an unacceptable level of risk to the consumer. Additionally, as noted above, milk product producers would not be allowed to ship their products interstate. And, as stated previously, Virginia’s dairy industry and as an extension, the Commonwealth’s economy, would be significantly affected in a negative manner.

**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.*

The agency has elected to retain the regulation as is. It is consistent with the stated objectives of the Milk, Milk Products, and Dairies Law. The regulations are not overly burdensome to the industry, are clear and concise, and are necessary to ensure the safe sale of milk for manufacturing purposes and the safe manufacture and distribution of milk products.

### 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.*

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(1) The current regulation provides sufficient safeguards to ensure the safe manufacture and distribution of manufactured grade milk products in the Commonwealth. Without the regulation, the safety of manufactured milk products would be compromised.

(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 manufactured grade milk products.

(4) There is minimal overlap with existing related state regulations and statutes. The minimal overlap occurs because existing regulations and statutes all address multiple types of dairy products (i.e. many manufactured milk products and Grade "A" milk, which is addressed in 2-VAC 5-490, are required to be pasteurized). However, the regulation is necessary to appropriately ensure the safety of manufactured milk products. There is no significant duplication or overlap relative to existing federal statutes and regulations.

(5) The regulation was amended during 2015. The regulation is continually evaluated at a programmatic level to ensure that it is adequate to address issues and concerns within the manufactured milk industry. Although certain portions of the industry have evolved, the regulations are still current, relevant and help to ensure the safe production of manufactured milk products. There is minimal impact on small businesses, as provisions are currently provided within the regulation to create exemptions from certain requirements for small-scale manufacturers. Additionally, since the agency is electing simply to retain its current regulation, there will be no impact on small businesses.

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