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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>	July 27, 2020

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Order 14 (as amended, July 16, 2018), the Regulations for Filing and Publishing Agency Regulations (1VAC7-10), 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 Code of Federal Regulation (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 U.S. Department of Agriculture that provides 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 PMO.

"PMO" means the Grade "A" Pasteurized Milk Ordinance, 2017 Revision. 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.

## 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.*

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Section 3.2-109 of the Code of Virginia (Code) establishes the Board of Agriculture and Consumer Services (Board) as a policy board with the authority 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, 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.

Section 3.2-5206 of the Code 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; (ii) any model ordinance or regulation issued under federal law, including the PMO and the Milk for Manufacturing Purposes and its Production and Processing; (iii) 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; and (iv) any method of analysis relating to milk or milk products, including any method of analysis published by the U.S. 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.*

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The agency has determined that no viable alternatives exist to achieve the purpose of this regulation. This regulation establishes (i) the requirements to produce and sell cow's milk for manufacturing purposes; (ii) the requirements to obtain a permit to process and sell cheese, butter, condensed milk, powdered milk, and similar products; (iii) and minimum standards that dairy farms and dairy plants must meet in producing and processing milk for manufacturing purposes, including pasteurization, cooling, storage, quality-control tests, packaging, and labeling requirements.

Without this regulation in place, there would be no regulatory oversight of this industry and the opportunity for the industry to produce, and public to consume, unsafe dairy products would be significant. This would create an unacceptable level of risk to the consumer and would result in an increase in dairy-related foodborne illness. Additionally, milk product producers would not be allowed to ship their products interstate, which would have a significant negative impact on the Commonwealth's economy.

### Public Comment

*Summarize all comments received during the public comment period following the publication of the Notice of Periodic Review, and provide the agency 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 April 27, 2020. 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 Executive Order 14 (as amended, July 16, 2018), including why the regulation is (a) necessary for the protection of public health, safety, and welfare, and (b) is clearly written and easily understandable.*

The regulation is necessary to ensure the regulation of the safe manufacture and distribution of milk products, which protects the public health, safety, and welfare. The regulation is 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).*

The agency recommends that this regulation stay in effect without change. The regulation is consistent with the stated objectives of the Code. The regulation is not overly burdensome to the industry, is clear and concise, and is 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.*

(1) There is a continued need for the current regulation as it provides sufficient safeguards to ensure the safe manufacture and distribution of manufactured grade milk products in the Commonwealth. Without the regulation in place, 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 not unnecessarily complex 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 last amended in 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.

Because the agency is recommending the retention of the existing regulation, 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.