



Virginia  
Regulatory  
Town Hall

## Periodic Review and Retention of Existing Regulations Agency Background Document

<b>Agency Name:</b>	Department of Agriculture and Consumer Services
<b>VAC Chapter Number:</b>	2 VAC 5-520
<b>Regulation Title:</b>	Rules and Regulations Governing Testing of Milk for Milkfat, Protein, and Lactose Content By Automated Instrument Methods
<b>Action Title:</b>	Retain
<b>Date:</b>	September 5, 2001

This information is required pursuant to the Administrative Process Act § 9-6.14:25, Executive Order Twenty-Five (98), and Executive Order Fifty-Eight (99) which outline procedures for periodic review of regulations of agencies within the executive branch. Each existing regulation is to be reviewed at least once every three years and measured against the specific public health, safety, and welfare goals assigned by agencies during the promulgation process.

This form should be used where the agency is planning to retain an existing regulation.

### Summary

*Please provide a brief summary of the regulation. There is no need to state each provision; instead give a general description of the regulation and alert the reader to its subject matter and intent.*

This regulation establishes: (1) the requirement for a person to have a permit from the Virginia Department of Agriculture and Consumer Services before he may test milk for its fat, protein, or lactose content, if the test results are used as the basis for payment; (2) the method for calibrating automated testing instruments used to determine the fat content of milk; and (3) that records on the accuracy of fat-testing equipment be maintained for twelve months from the date they are created.

### Basis

*Please identify the state and/or federal source of legal authority for the regulation. The discussion of this authority should include a description of its scope and the extent to which the authority is mandatory or discretionary. Where applicable, explain where the regulation exceeds the minimum requirements of the state and/or federal mandate.*

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Sections 3.1-535 and 3.1-535.1 of the Code of Virginia (1950), as amended, authorize the Board of Agriculture and Consumer Services to make and enforce rules governing: (i) application for certificates for persons to weigh, sample, or test milk and cream; and (ii) equipment, standards, and producers used in the receiving, weighing, measuring, sampling, and testing of milk or other fluid dairy products when the results are to be used for inspection or as a basis for payment in buying or selling. The authority to promulgate the regulation is discretionary.

### Public Comment

*Please summarize all public comment received as the result of the Notice of Periodic Review published in the Virginia Register and provide the agency response. Where applicable, describe critical issues or particular areas of concern in the regulation. Also please indicate if an informal advisory group was formed for purposes of assisting in the periodic review.*

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The agency received no public comment on this regulation as the result of the Notice of Periodic Review published in *The Virginia Register of Regulations* on June 18, 2001, to provide notice of opportunity to comment on this regulation pursuant to Executive Order Number Twenty-five (98). No informal advisory group was formed for the purposes of assisting in the periodic review.

### Effectiveness

*Please provide a description of the specific and measurable goals of the regulation. Detail the effectiveness of the regulation in achieving such goals and the specific reasons the agency has determined that the regulation is essential to protect the health, safety or welfare of citizens. Please assess the regulation's impact on the institution of the family and family stability. In addition, please indicate whether the regulation is clearly written and easily understandable by the individuals and entities affected.*

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The specific and measurable goal of this regulation is to protect the public's health, safety, and welfare with the least possible cost and intrusiveness to the citizens and businesses of the Commonwealth.

Section 3.1-531.1 of the Code of Virginia (1950), as amended, states that no test or contrivance other than Babcock or other centrifugal machines may be used unless approved by the Board of Agriculture and Consumer Services. The absence of other methods approved by the Board of Agriculture and Consumer Services would force the dairy industry to only use the Babcock test method for determining the composition of milk or cream as a basis for payment in buying or selling milk, cream, or dairy products.

The regulation is effective in providing alternative test methods for determining the composition of milk or cream. Automated light scattering methods, infrared milk analyzer methods, and numerous other methods detailed in the Official Methods of Analysis of the Association of Official Analytical Chemists are provided for by the regulation. The Babcock test method requires a trained operator to perform, is time consuming, costs more to perform per sample than automated methods, and is no longer used by industry laboratories.

The regulation is clearly written and easily understood by the individuals and entities affected.

### Alternatives

*Please describe the specific alternatives for achieving the purpose of the existing regulation that have been considered as a part of the periodic review process. This description should include an explanation of why such alternatives were rejected and this regulation reflects the least burdensome alternative available for achieving the purpose of the regulation.*

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The Agency considered eliminating this regulation. However, this alternative was rejected since additional methods of testing would not be available for the industry to use. The current regulation provides for alternative testing methods that are cost effective to the industry.

### Recommendation

*Please state that the agency is recommending that the regulation should stay in effect without change.*

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The agency recommends that the regulation be retained in its present form.

### Family Impact Statement

*Please provide an analysis of the regulation's impact on the institution of the family and family stability including the extent to which it: 1) strengthens or erodes the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourages or discourages economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children*

*and/or elderly parents; 3) strengthens or erodes the marital commitment; and 4) increases or decreases disposable family income.*

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Unless otherwise discussed in this report, this regulation has no impact upon families.