



## Periodic Review / Retain Regulation Agency Background Document

<b>Agency name</b>	Board of Agriculture and Consumer Services
<b>Virginia Administrative Code (VAC) citation</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>Document preparation date</b>	01-10-2013

This form is used when the agency has done a periodic review of a regulation and plans to retain the regulation without change. This information is required pursuant to Executive Orders 14 (2010) and 58 (1999).

### Legal basis

*Please identify the state and/or federal legal authority for the regulation, including (1) the most relevant law and/or regulation, and (2) promulgating entity, i.e., agency, board, or person.*

Sections 3.2-5223 and 3.2-5224 of the Code of Virginia (1950) as amended, authorizes 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.

### Alternatives

*Please describe all viable alternatives for achieving the purpose of the existing regulation that have been considered as part of the periodic review process. Include an explanation of why such alternatives were rejected and why this regulation is the least burdensome alternative available for achieving the purpose of the regulation.*

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 and would thus cause an additional

financial burden for the dairy industry. The current regulation provides for alternative testing methods that are cost effective to the industry.

**Public comment**

*Please summarize all comments received during the public comment period following the publication of the Notice of Periodic Review, and provide the agency response. Please indicate if an informal advisory group was formed for purposes of assisting in the periodic review.*

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<b>Commenter</b>	<b>Comment</b>	<b>Agency response</b>
Virginia Farm Bureau Federation	In favor of retaining regulation	Agreement
Virginia State Dairymen's Association	In favor of retaining regulation	Agreement

Both comments are in favor of retaining the regulation as a means to comply with federal regulations concerning intrastate and interstate commerce as well as maintaining testing standards. The regulation is vital to continued success of Virginia's dairy industry.

No informal advisory group was formed for purposes of assisting in the periodic review.

**Effectiveness**

*Please indicate whether the regulation meets the criteria set out in Executive Order 14 (2010), e.g., is necessary for the protection of public health, safety, and welfare, and is clearly written and easily understandable.*

Section 3.2 – 5224 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 important to ensure the economic welfare Virginia's citizens public by helping to ensure an affordable milk supply. The regulation is clearly written and easily understandable.

**Result**

*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.

### Small business impact

*In order to minimize the economic impact of regulations on small business, please include, pursuant to § 2.2-4007.1 E and F, a discussion of the agency's consideration of: (1) the continued need for the regulation; (2) the nature of complaints or comments received concerning the regulation from the public; (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, include a discussion of the agency's determination whether the regulation should be amended or repealed, consistent with the stated objectives of applicable law, to minimize the economic impact of regulations on small businesses.*

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The current regulation should be retained in its present form as it provides for alternative testing methods that are cost effective to the industry. The agency has not received any complaints or comments concerning the regulation from the public. The regulation's flexibility allows for use of other testing methods and is easily understood. This regulation is not mandated by any federal law or regulation. The regulation is mandated by state law. The regulation does not conflict with federal or state law. The regulation was last evaluated in 2001. New technologies for testing methods are supported by this regulation. The economic impact of the regulation on small businesses is favorable in that small laboratory equipment companies can offer for sale alternative testing equipment that meets regulatory guidelines. In addition, the regulation is effective in providing alternative, cost effective testing methods for determining the composition of milk or cream. The agency has determined that the regulation should be retained as it offers the dairy industry effective testing alternatives.

### Family impact

*Please provide an analysis of the regulation's impact on the institution of the family and family stability.*

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The absence of alternative methods of testing as provided for in this regulation will likely translate into an increase in the cost of milk for the purchasing consumer. This increased cost will result in less disposal income for families.