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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 5-520
<b>VAC Chapter title(s)</b>	Rules and Regulations Governing Testing of Milk for Milkfat, Protein, and Lactose Content By Automated Instrument Methods
<b>Date this document prepared</b>	June 14, 2022

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.*

### 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.*

Section 3.2-109 of the Code of Virginia (Code) establishes the Board of Agriculture and Consumer Services (Board) as a policy board and authorizes it to adopt regulations in accordance with the provisions of Title 3.2 of the Code. Sections 3.2-5223 and 3.2-5224 of the Code authorizes the 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 procedures 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 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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Section 3.2-5219 of the Code states that no test or contrivance other than the Babcock test method or other centrifugal machines may be used to test the composition of milk or other fluid dairy products as a basis for payment in buying or selling them, unless approved by the Board. 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 purpose of the current regulation is to provide for the approval of alternative testing methods that are cost-effective to the industry. Therefore, alternatives to this regulation were rejected, because the absence of this regulation would mean that additional, more cost-effective methods of testing milk and other fluid dairy products would not be available for the industry to use, thus causing an additional financial burden for the dairy industry by forcing its members to use only the Babcock test method.

### 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.*

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The agency received no public comment in response to the Notice of Periodic Review published on May 23, 2022, and did not form an informal advisory group for the purpose of assisting in this 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.*

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Section 3.2-5224 of the Code of Virginia states that no test or contrivance other than the Babcock test method or other centrifugal machines may be used unless approved by the Board. The absence of other methods approved by the Board would force the dairy industry to use only the Babcock test method for determining the composition of milk or cream as a basis for payment in buying or selling milk or other fluid dairy products. The regulation provides for alternative testing methods for determining the composition of milk or other fluid dairy products. 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. Therefore, the regulation is necessary for the protection of public health, safety, and welfare, as it allows for approval of the most cost-effective methods of analysis for milk and other fluid dairy products intended for consumption by Virginia's citizens,

and helps to ensure that an affordable milk supply is available to the public. 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).*

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The agency is recommending that the regulation should stay in effect without change because it provides for alternative testing methods for milk and other fluid dairy products that are cost-effective to the industry. Additionally, there have been no changes to agency or industry practices to necessitate any modifications.

### 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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There is a continuing need for this regulation as it provides for alternative testing methods for determining the composition of milk or other fluid dairy products that are cost-effective to the industry. The agency has not received any complaints or comments concerning the regulation from the public. The regulation is simple and easily understood. The regulation is not mandated by any federal law or regulation, but is mandated by and expands upon state law. It does not conflict with any federal or other state laws or regulations. The most current testing method technologies 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 other fluid dairy products. Therefore, the agency has determined that the regulation should be retained as-is.

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