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Periodic Review and Small Business Impact Findings Where Result is “Retain the Regulation As Is”

Agency name	Board of Agriculture and Consumer Services
Virginia Administrative Code (VAC) citation	2 VAC 5-520
Regulation title	Rules and Regulations Governing Testing of Milk for Milkfat, Protein, and Lactose Content by Automated Instrument Methods
Date	October 18, 2016

This information is required pursuant to Executive Order 17 (2014).

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.

Section 3.2-109 of the Code of Virginia establishes the Board of Agriculture and Consumer Services (Board) as a policy board. Sections 3.2-5223 and 3.2-5224 of the Code of Virginia authorize the Board to make and enforce rules governing: (i) application for certificates for persons to weigh or sample 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.

Section 3.2-5219 of the Code of Virginia states that no test or apparatus 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

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.

No comments were received during the public comment period that followed the publication of the Notice of Periodic Review on September 5, 2016, and an informal advisory group was not formed for the purposes of assisting in the periodic review.

Effectiveness

Please indicate whether the regulation meets the criteria set out in Executive Order 17 (2014), e.g., is necessary for the protection of public health, safety, and welfare, and is clearly written and easily understandable.

Section 3.2-5219 of the Code of Virginia states that no test or apparatus 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 AOAC 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.

Result

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

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. No changes to agency or industry practices have occurred that would necessitate any modifications.

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 basis for the agency's determination to retain the regulation as is, consistent with the stated objectives of applicable law, to minimize the economic impact of regulations on small businesses.

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 authorized by and expands upon state law. It does not conflict with any federal or state laws or regulations. No changes to agency or industry practices have occurred that would necessitate any modifications. 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.