

Code of Virginia
Title 3.2. Agriculture, Animal Care, and Food
Subtitle IV. Food and Drink; Weights and Measures
Chapter 52. Milk, Milk Products, and Dairies

Chapter 52. Milk, Milk Products, and Dairies.

Article 1. General Provisions.

§ 3.2-5200. Duty of Commissioner to foster dairy industry.

It shall be the duty of the Commissioner to foster and encourage the dairy industry of the Commonwealth, and for that purpose he shall investigate the general conditions of the creameries, cheese factories, condensed milk factories, skimming stations, milk stations, and farm dairies in the Commonwealth, with full power to enter upon any premises for such investigation, with the object in view of improving the quality and creating and maintaining uniformity of the dairy products of the Commonwealth. Should it become necessary in the judgment of the Commissioner, he may cause instruction to be given in any facility or in any locality of the Commonwealth, in order to promote the proper feeding and care of cows, or the practical operation of any plant producing dairy products, and in order to procure such a uniform and standard quality of dairy products in the Commonwealth.

Code 1950, § 3-341; 1966, c. 702, § 3.1-420; 2008, c. 860.

§ 3.2-5201. Conformity with regulations of U.S. Department of Health and Human Services and Department of Agriculture; compliance with Administrative Process Act.

In adopting regulations for the purpose of sanitation and to prevent deception, the Board shall be guided by those regulations recommended by the U.S. Department of Health and Human Services and the U.S. Department of Agriculture. The definitions and standards so adopted may conform, so far as practical, to the definitions and standards adopted or recommended by the Secretary of the U.S. Department of Health and Human Services or the U.S. Department of Agriculture. The regulations authorized by §§ 3.2-5212, 3.2-5213, and by this section shall be adopted in accordance with the Administrative Process Act (§ 2.2-4000 et seq.).

1970, c. 48, § 3.1-562.2; 2008, c. 860.

§ 3.2-5202. Sale of products not subject to local supervision.

Products produced, processed, or manufactured under the regulations adopted under this chapter may be sold in all localities in the Commonwealth and shall not be subject to regulation, by ordinance or otherwise, supervision or inspection of any political subdivision wherein the products are produced, processed, manufactured, or sold.

1970, c. 48, § 3.1-562.4; 1970, c. 49, § 3.1-530.5; 2008, c. 860.

§ 3.2-5203. Importing of products.

A. No regulation adopted under this chapter shall be construed to prohibit the sale within the Commonwealth of any product that is produced outside of the Commonwealth under laws or regulations of the exporting state or political subdivision that are substantially equivalent to regulations adopted under this article and that are enforced with equal effectiveness.

B. No Grade A raw milk shall be imported into the Commonwealth by any person who does not possess a permit issued under conditions prescribed by the Board. The Board shall adopt regulations for the importation of raw bulk milk from points beyond routine inspection of the Commonwealth to insure the quality of milk and milk products, to determine volume of product shipped into the Commonwealth, to be assured of the original source of production, and to provide for the best interest of the Commonwealth, and for the protection of the consuming public.

1970, c. 48, § 3.1-562.5; 1970, c. 49, § 3.1-530.6; 2008, c. 860.

§ 3.2-5204. Warning and punishment of persons using or furnishing impure milk.

Whenever it is determined by the Commissioner that any person is using, selling, or furnishing to any facility, milk dealer, the retail trade, or to any consumer of milk, any impure or unwholesome milk or cream, which impurity or unwholesomeness is caused by the unsanitary or filthy conditions of the premises where cows are kept or by the unsanitary or filthy care of handling of the cows, or from the use of unclean utensils or from unwholesome food, or from any other cause, such person shall first be notified and warned by the Commissioner not to use, sell, or furnish such milk or cream to any facility, milk dealers, the retail trade, or to

any consumer of milk. Any person who fails to obey such notice and warning and continues to use, sell, or furnish to any skimmin station, creamery, cheese factory, condensed milk factory, farm dairy, milk dealer, or to the retail trade impure or unwholesome milk or cream, is guilty of a Class 2 misdemeanor.

Code 1950, § 3-342; 1966, c. 702, § 3.1-421; 2008, c. 860.

§ 3.2-5205. Injunctions.

If any person violates any provision of this article or the regulations adopted hereunder, then either the Commissioner or the State Health Commissioner may petition any appropriate circuit court for relief by injunction, without being compelled to allege or prove that an adequate remedy at law does not exist.

1970, c. 49, § 3.1-530.8; 2008, c. 860.

Article 2. Standards of Quality, Grading, and Sanitary Standards.

§ 3.2-5206. Board authorized to establish standards and adopt regulations; guidance of State Health Commissioner.

A. The Board is authorized 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. Regulations concerning the processing and distributing of Grade A market milk and Grade A market milk products shall be adopted with the advice and guidance of the State Health Commissioner. The Board shall adopt regulations for the issuance of the permits referred to in § 3.2-5208. The Board may require permits in addition to those prescribed by the terms of this article, and shall adopt regulations concerning the conditions under which any additional permits shall be issued.

B. In adopting any regulation pursuant to this section, the Board may adopt by reference:

1. Any regulation or part thereof under federal law that pertains to milk or milk products, amending the federal regulation as necessary for intrastate application.
2. Any model ordinance or regulation issued under federal law, including the Pasteurized Milk Ordinance (Public Health Service/Food and Drug Administration Publication Number 229) and the U.S. Department of Agriculture's Milk for Manufacturing Purposes and its Production and Processing Recommended Requirements (hereafter the USDA Recommended Requirements), amending it as necessary for intrastate application and to: (i) require milk on each dairy farm to be cooled and stored at a temperature of 40 degrees Fahrenheit or less, but not frozen; (ii) require the use of recording thermometers and interval timers on every milk storage tank installed on a permitted Grade A milk dairy farm; (iii) specify the design, fabrication, installation, inspection, and record keeping necessary for the proper use of such thermometers and timers; (iv) establish a definition for small-scale processors of cheese under the dairy plant processing requirements contained in the USDA Recommended Requirements; and (v) create exemptions for small-scale processors of cheese from the USDA Recommended Requirements regarding processing requirements for dairy plants, provided such exemptions do not compromise food safety.
3. 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.
4. Any method of analysis relating to milk or milk products including any method of analysis published by the United States Public Health Service, the Association of Official Analytical Chemists, or the American Public Health Association.

C. Any regulation adopted pursuant to this section shall, unless a later effective date is specified in the regulation, be effective upon filing with the Registrar of Regulations, who shall publish the regulation as a final regulation in the Virginia Register of Regulations. Neither the provisions of the Administrative Process Act (§ 2.2-4000 et seq.) nor public participation guidelines adopted pursuant thereto shall apply to the adoption of any regulation pursuant to this section. Prior to adopting any regulation pursuant to this section, the Board shall publish a notice of opportunity to comment in the Virginia Register of Regulations. The notice of opportunity to comment shall contain: (i) a summary of the proposed regulation; (ii) instructions on how to obtain the complete text of the proposed regulation; and (iii) the name, address, and telephone number of the agency contact person responsible for receiving public comments. The notice of opportunity to comment shall be made at least 90 days in advance of the last date prescribed in the notice for submittals of public comment. The legislative review provisions of § 2.2-4014 shall apply to the promulgation or final adoption process of regulations under this section. The Board shall consider and keep on file all public comments received for any regulation adopted pursuant to this section.

D. Notwithstanding the provisions of subsections B and C, any permits that may be issued or regulations that may be adopted for the sale or manufacture of cheese from milk from any species not required to be permitted or regulated in intrastate commerce prior to July 1, 2001, under this article, shall be in accordance with the provisions of the Administrative Process Act (§ 2.2-4000 et seq.) if such regulations or permits apply to persons who manufacture less than 1,000 pounds of such cheese annually.

Code 1950, § 3-345; 1966, c. 702, § 3.1-424; 1970, c. 49, § 3.1-530.1; 2001, c. 523; 2008, c. 860.

§ 3.2-5207. Powers and duties of Commissioner; obstruction unlawful.

The Commissioner shall administer and enforce the regulations adopted pursuant to § 3.2-5206 except as provided in § 3.2-5208. He is empowered, in the performance of his duties, to enter upon and to have free access to any establishment or area subject to the provisions of this article, or the regulations adopted hereunder. It shall be unlawful for any person to hinder, obstruct, or interfere with the Commissioner in the performance of his duties under this article or under the regulations adopted pursuant to this article.

1970, c. 49, § 3.1-530.3; 2008, c. 860.

§ 3.2-5208. Powers and duties of State Health Commissioner; obstruction unlawful.

The State Health Commissioner, pursuant to the regulations adopted pursuant to § 3.2-5206, shall issue permits to all plants that process and distribute Grade A market milk and Grade A market milk products. The State Health Commissioner shall also enforce the regulations adopted under § 3.2-5206 in all plants from the point of delivery at the plant to the consumer. He is empowered, in the performance of his duties, to enter upon and to have free access to any establishment or area subject to the provisions of this article, or the regulations adopted hereunder, pertaining to the processing and distribution of Grade A market milk, Grade A market milk products, ungraded milk products, and those products manufactured in semblance to or as substitutes in Grade A market milk and Grade A market milk products plants from the point of delivery at the plant to the consumer. It shall be unlawful for any person to hinder, obstruct, or interfere with the State Health Commissioner in the performance of his duties under this article or under the regulations adopted hereunder.

1970, c. 49, § 3.1-530.4; 2008, c. 860.

§ 3.2-5209. Penalties.

Any violation of the provisions of this article, or the regulations adopted hereunder, or failure to comply with such provisions or regulations, is a Class 1 misdemeanor and punished as provided by law. Each day of such failure or violation shall be a separate offense and shall be punished as such.

1970, c. 49, § 3.1-530.9; 2008, c. 860.

§ 3.2-5210. Civil penalties.

A. In addition to the penalties prescribed in § 3.2-5209, any person violating any provision of this article or regulation adopted hereunder may be assessed a civil penalty by the Commissioner for each violation in an amount not to exceed \$1,000. Any civil penalty may be in lieu of suspension of a permit issued pursuant to § 3.2-5206. In determining the amount of any civil penalty, the Commissioner shall give due consideration to: (i) the previous violations committed by the person; (ii) the seriousness of the violation; and (iii) the demonstrated good faith of the person charged in attempting to achieve compliance with this article or regulation adopted hereunder after notification of the violation. Any civil penalty shall be in addition to any payment that may be required for the wholesale value of all milk and milk products that must be destroyed as a consequence of such violation.

B. A civil penalty may be assessed by the Commissioner only after the Commissioner has given the person charged with a violation an opportunity for a public hearing. Where such a public hearing has been held, the Commissioner shall make findings of fact and issue a written decision as to the occurrence of the violation and the amount of the penalty that is warranted, incorporating, when appropriate, an order requiring that the penalty be paid. When appropriate, the Commissioner shall consolidate such hearings with other proceedings pursuant to the provisions of this chapter. Any hearing under this section shall be a formal adjudicatory hearing in accordance with the Administrative Process Act (§ 2.2-4000 et seq.). When the person charged with such a violation fails to avail himself of the opportunity for a public hearing, a civil penalty shall be assessed by the Commissioner after the Commissioner determines that a violation has occurred and the amount of the penalty warranted, and issues an order requiring that the penalty be paid.

C. Civil penalties assessed under this section shall be paid into the general fund of the state treasury. The Board shall prescribe procedures for payment of civil penalties. The procedures shall include provisions for a person to consent to abatement of the alleged violation and pay a penalty or negotiated sum in lieu of such penalty without admission of civil liability arising from such alleged violation.

D. Final orders may be recorded, enforced and satisfied as orders or decrees of a circuit court upon certification of such orders by the Commissioner. Such orders may be appealed in accordance with the provisions of the Administrative Process Act (§ 2.2-4000 et seq.).

E. Nothing in this section shall require the Commissioner to institute proceedings for the imposition of civil penalties if the Commissioner considers the violations of this article to be minor. In such cases, the Commissioner may serve a suitable notice of warning in writing when he believes that the public interest will be served by so doing.

F. The penalty provisions of this section shall not apply to violations of this article or any regulation adopted hereunder with respect to excessive drug residue. The penalty for any such violation shall be as provided in § 3.2-5211.

2000, c. 993, § 3.1-530.10; 2001, c. 523; 2008, c. 860.

§ 3.2-5211. Excessive drug residue; penalty.

A. For the purposes of this section:

"Dairy farm" means any farm producing Grade A milk or milk for manufacturing purposes.

"Excessive drug residue" means drug residue that is: (i) greater than the value specified as a safe level by the U.S. Food and Drug Administration; (ii) equal to or greater than the value specified as the minimum actionable level by the U.S. Food and Drug Administration; or (iii) greater than the value specified as the maximum tolerance level established by federal law. In the event that no safe level, actionable level, or tolerance level for drug residue has been established under federal law, any drug residue shall be deemed to exceed the safe level, minimum actionable level, or tolerance level of drug residue.

"Official drug test" means a test: (i) performed by a laboratory that is certified by the Interstate Milk Shippers (IMS) and listed as certified in the IMS List Sanitation Compliance and Enforcement Ratings of Interstate Milk Shippers published by the U.S. Food and Drug Administration; (ii) performed in a laboratory operated by the Commonwealth; or (iii) performed using a method that has been reviewed and accepted by the United States Public Health Service, the Association of Official Analytical Chemists, or the American Public Health Association.

B. Where an official drug test detects the presence of excessive drug residue in milk produced at a dairy farm, the Commissioner may: (i) assess a civil penalty not to exceed \$100 against the operator of the dairy farm; or (ii) order the suspension of any permit issued to the operator pursuant to § 3.2-5206. No civil penalty shall be assessed under this section unless the operator of the dairy farm has been given the opportunity for an informal fact-finding conference pursuant to § 2.2-4019. If the matter is not resolved by the informal fact-finding conference or the operator of the dairy farm is dissatisfied with the Commissioner's decision from the informal fact-finding conference, the operator may request a second informal fact-finding conference. Any such request shall be submitted by the operator to the Commissioner within 30 days after the operator's receipt of the decision. The Commissioner in his discretion may grant or deny such request.

Nothing in this section shall be construed to require the Commissioner to hold a formal hearing pursuant to § 2.2-4020 prior to the assessment of a civil penalty or the suspension of a permit pursuant to this section.

C. If the Commissioner assesses a civil penalty pursuant to this section and the operator of the dairy farm fails to pay the civil penalty in a timely manner, the Commissioner shall suspend any permit issued pursuant to § 3.2-5206 to the operator.

D. Civil penalties assessed under this section shall be paid into the general fund of the state treasury. The Board shall prescribe procedures for payment of civil penalties. The procedures shall include provisions for a person to consent to abatement of the alleged violation and pay a penalty or negotiated sum in lieu of such penalty without admission of civil liability arising from such alleged violation.

2001, c. 523, § 3.1-530.11; 2008, c. 860.

Article 3. Ice Cream and Similar Products.

§ 3.2-5212. Authority of Board to establish standards, adopt regulations.

The Board is authorized to establish definitions, standards of quality and identity, and to adopt and enforce regulations dealing with the issuance of permits, labeling, and sanitary standards for ice cream, ice milk, frozen custards, sherbets, water ices, related foods, other similar products, and those products manufactured or sold in semblance to or as substitutes.

1970, c. 48, § 3.1-562.1; 2008, c. 860.

§ 3.2-5213. Commissioner to enforce article; right of entry.

The Commissioner shall administer and enforce the regulations adopted pursuant to this article. He is empowered, in the performance of his duties, to enter upon and to have free access to any establishment or area subject to the provisions of this article or the regulations adopted hereunder.

1970, c. 48, § 3.1-562.3; 2008, c. 860.

§ 3.2-5214. Permits; delegation of enforcement of article to State Health Commissioner for restaurants.

Any person engaged in the manufacture in the Commonwealth of any of the foods listed in § 3.2-5212 shall apply to the Commissioner on an application form prescribed by him for a permit to manufacture such foods or any of them.

A separate application shall be made for each establishment where such foods are manufactured or are to be manufactured. The Commissioner may by agreement delegate the enforcement of this article to the State Health Commissioner for restaurants as defined in § 35.1-1. Such agreement shall provide for the combining of the permit required by this article and the license required by § 35.1-18.

The Commissioner, upon receipt and approval of such application properly executed, shall issue a permit authorizing the applicant to engage in the manufacture of such foods as are described in the application. The Commissioner may, after a full hearing, refuse to issue a permit or renew a permit, or may suspend or revoke a permit in the case of any establishment that does not meet the requirements of this article or of any regulation adopted for its administration and enforcement. Permits shall be renewable on July 1 of each year.

1970, c. 48, § 3.1-562.6; 1978, c. 722; 1996, c. 722; 2008, c. 860.

§ 3.2-5215. Detention of adulterated, misbranded products.

Whenever any product subject to this article is found by the Commissioner upon any premises where it is held and there is reason to believe that the product is adulterated or misbranded in violation of the regulations adopted by the Board pursuant to this article, or that such product has been or is intended to be distributed in violation of regulations, the product may be detained for a period not to exceed 20 days, pending action under § 3.2-5216 of this article, and shall not be moved by any person from the place at which it is located when detained, until released by the Commissioner.

1970, c. 48, § 3.1-562.8; 2008, c. 860.

§ 3.2-5216. Condemnation of adulterated, misbranded products.

Any product referred to by § 3.2-5215 shall be liable to be proceeded against and condemned.

At any time prior to the expiration of the 20-day detention period provided by § 3.2-5215, the Commissioner shall notify the attorney for the Commonwealth for the city or county where such detention was made in writing. Upon receiving written notification, the attorney for the Commonwealth shall forthwith file in the name of the Commonwealth any information against the detained product in the clerk's office of the circuit court of the county or city where the detention was made. Upon the filing of such information, the clerk of court shall forthwith issue a warrant directing the sheriff to seize the detained product and see to its transportation to a suitable place of storage that, if necessary, may be outside of the county or city served by the sheriff. Should the attorney for the Commonwealth, for any reason, fail to file such information within five days after receipt of written notice of detention of the product, the same may, at any time within 30 days thereafter be filed by the Attorney General and the proceeding thereon shall be the same as if filed by the attorney for the Commonwealth.

Such information shall allege the seizure, and set forth in general terms the grounds of forfeiture of the seized product, and shall petition that the same be condemned and sold and the proceeds disposed of according to law, and that all persons concerned or interested be cited to appear and show cause why such product should not be condemned and sold to enforce the forfeiture. After the filing of the information, the attorney for the Commonwealth shall apply to the judge of the court wherein the information was filed for a hearing on the matters contained in the information. The judge of the court shall move the cause to the head of the docket and the hearing shall be had as soon as practical to do so.

The owner of and all persons in any manner then indebted or liable for the purchase price of the product and any person having a lien thereon, if they be known to the attorney who files the information, shall be made parties defendant thereto, and shall be served with the notice provided for, in the manner provided by law for serving a notice, at least 10 days before the day specified for the hearing on the information, if they are residents of the Commonwealth; and if they are unknown or nonresidents, or cannot with reasonable diligence be found in the Commonwealth, they shall be deemed sufficiently served by publication of the notice once a week for two successive weeks in some newspaper published in the county or city, or if there be none published therein, then in some newspaper having general circulation, and a notice shall be sent by registered mail of such seizure to the last known address of the owner of the detained product.

Any person claiming to be the owner of such product or to hold a lien thereon, may appear at any time before final judgment of the trial court, and be made a party defendant to the information so filed, which appearance shall be by answer, under oath, in which shall be clearly set forth the nature of such defendant's claim, whether as owner or as lienor, and if as owner, the right or title by which he claims to be such owner, and if lienor, the amount and character of his lien, and the evidence thereof; and in either case, such defendant shall set forth fully any reason or cause that he may have to show against the forfeiture of the product

If such product is condemned, it shall, after entry of the decree, be disposed of by destruction or sale as the court may direct and the proceeds, if sold, less the court costs and fees, and storage and other proper expenses, shall be paid into the state treasury, but the product shall not be sold contrary to the regulations of the Board; provided, that upon the execution and delivery of a good and sufficient bond conditioned that the product shall not be sold or otherwise disposed of contrary to the regulations of the Board, the court may direct that such product be delivered to a claimant thereof, who may have appeared in the proceedings, subject to such supervision by the Commissioner as is necessary to insure compliance with the applicable regulations. When a decree of condemnation is entered against a product and it is released under bond, or destroyed, court costs and fees, and storage and other proper expenses may, as the court deems just, be awarded against the person, if any, intervening as claimant of the product.

If a claimant denies for any reason that the product to be condemned is subject to condemnation as provided by this section, and shall demand a trial by jury of the issue thus made, then the court shall, under proper instructions, submit the same to a jury of five, to be selected and empanelled as prescribed by law. If the jury finds in favor of the claimant, or if the court, trying such issue without a jury, so finds, the judgment of the court shall be to entirely relieve the product from forfeiture, and no costs shall be taxed against such claimant.

1970, c. 48, § 3.1-562.9; 2008, c. 860.

§ 3.2-5217. Penalties.

Any violation of the provisions of this article or the regulations adopted hereunder, or failure to comply with such provisions or regulations, is a Class 1 misdemeanor and punished as provided by law. Each day of such failure or violation shall be a separate offense as such.

1970, c. 48, § 3.1-562.10; 2008, c. 860.

Article 4. Babcock and Other Machine Tests.

§ 3.2-5218. Definitions.

As used in this article, unless the context requires a different meaning:

"Holder" means a corporation, association, partnership or two or more persons having a joint or common interest.

Code 1950, § 3-415; 1966, c. 702, § 3.1-545; 2008, c. 860.

§ 3.2-5219. No test or apparatus other than Babcock or other centrifugal machines to be used unless approved by Board.

No test or apparatus shall be used for the purpose of determining the composition of milk or cream as a basis for payment in buying or selling milk or cream or dairy products other than the Babcock or other centrifugal machines unless such other test or apparatus has been approved for such use by regulation of the Board. In the event that the Board approves such other test or apparatus for such use, then the provisions of this article shall apply, mutatis mutandis, to such approved test or apparatus.

1970, c. 176, § 3.1-531.1; 2008, c. 860.

§ 3.2-5220. Inspection of centrifugal machines and scales; condemnation.

Every Babcock or other centrifugal machine, or cream test or butterfat test scale, used in the Commonwealth by any inspector of milk or cream or by any person in any milk inspection laboratory for determining the composition of milk or cream for purposes of inspection, or by any person in any milk depot, ice cream factory, confectionery, creamery, cheese factory, condensed milk factory laboratory, or other place for determining the composition or value of milk or cream as a basis for payment in buying or selling, shall be subject to inspection at least once in each year by the Commissioner. The Commissioner may condemn any Babcock or other centrifugal scale that is, in his opinion, not giving accurate results. No Babcock or other centrifugal machine or scale that has been condemned by the Commissioner shall be used in the Commonwealth by any person for determining the composition or value of milk or cream, unless the machine or scale has been changed and approved by the Commissioner.

Code 1950, § 3-402; 1966, c. 702, § 3.1-532; 2008, c. 860.

§ 3.2-5221. Manipulators of machines to procure certificates; renewal of certificate; revocation by Commissioner.

No inspector of milk or cream, and no person in any milk inspection laboratory, shall manipulate the Babcock or other centrifugal machine for the purpose of determining the composition of milk or cream for purposes of inspection without first obtaining a certificate from the Commissioner that he is competent to perform such work. No person in any milk depot, ice cream factory, confectionery, creamery, cheese factory, condensed milk factory, or other place in the Commonwealth shall manipulate the Babcock or other centrifugal machine for the purpose of determining the composition or value of milk or cream, or shall take samples or weigh milk or cream, as a basis for payment in buying or selling, without first obtaining a certificate from the Commissioner that he is competent to perform such work. All such certificates shall be renewed annually without further examination at the discretion of the Commissioner upon application. Unless a person holding a valid tester's, weigher's, and sampler's certificate renews his certificate within one year after its expiration date, he shall be required to pass the applicable examination before a new certificate shall be issued. If any holder of a certificate is notified by the Commissioner to correct his use of a Babcock or other centrifugal machine, or his method of sampling or weighing, and the person or holder of a certificate notified fails to comply with the notice and correct his use of a Babcock or other centrifugal machine, or his methods of sampling or weighing, he shall be deemed guilty of a violation of the provisions of this article, and the Commissioner may forfeit his certificate or assess a civil penalty as provided in § 3.2-5233. No holder of a certificate whose authority to manipulate a Babcock or other centrifugal machine or to sample or weigh milk or cream has been revoked by the Commissioner shall thereafter manipulate in the Commonwealth any centrifugal machine or sample or weigh milk or cream for the purposes herein specified until his certificate has been renewed.

Code 1950, § 3-403; 1966, c. 702, § 3.1-533; 1996, c. 723; 2000, c. 993; 2008, c. 860.

§ 3.2-5222. To whom certificates issued.

The Commissioner is authorized to issue certificates of competency to persons desiring to manipulate the Babcock or other centrifugal machine or to sample or weigh milk or cream who may present certificates of competency properly filled out and signed by the professor of dairy science or other authorized officer of the Virginia Polytechnic Institute and State University, and to other persons as, in the opinion of the Commissioner, are competent to manipulate the machines, and to sample or weigh milk or cream.

Code 1950, § 3-404; 1966, c. 702, § 3.1-534; 2008, c. 860.

§ 3.2-5223. Regulations governing applications for certificates; revocation by Board; standards and regulations.

The Board is authorized to adopt and enforce regulations governing applications for certificates and the granting of certificates. The Board may, in its discretion, revoke the authority of any holder of a certificate who, in its opinion, is not correctly manipulating any Babcock or other centrifugal machine, or correctly sampling or weighing milk or cream or is using dirty or otherwise unsatisfactory glassware or utensils. The Board is authorized to fix such standards and to adopt such regulations as may be deemed necessary to carry out the provisions of this article.

Code 1950, § 3-405; 1966, c. 702, § 3.1-535; 2008, c. 860.

§ 3.2-5224. Regulations governing equipment, standards and procedures.

The Board shall have authority to adopt and enforce regulations governing the 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 the purpose of inspection, check testing, or as a basis for payment in buying or selling.

1970, c. 176, § 3.1-535.1; 2008, c. 860.

§ 3.2-5225. Capacity of standard measurers.

In the use of the Babcock or any other centrifugal machine, the standard milk measurer or pipettes shall have a capacity of 17.6 cubic centimeters and the standard test tubes or bottles for milk shall have a capacity of two cubic centimeters for each 10 percent marked on the necks.

Code 1950, § 3-406; 1966, c. 702, § 3.1-536; 2008, c. 860.

§ 3.2-5226. Units for testing cream.

Cream shall be tested by weight and the standard units for testing shall be 18 grams, and nine grams. It is a violation of the provisions of this article to use any other standard of milk or cream measure where milk or cream is purchased by or furnished to creameries or cheese factories, and where the value of the milk or cream is determined by the percent of butterfat contained by the Babcock or other centrifugal test or cream test or butterfat test scales.

Code 1950, § 3-407; 1966, c. 702, § 3.1-537; 2008, c. 860.

§ 3.2-5227. Sampling to determine butterfat by composite tests.

In sampling milk or cream for composite tests to determine the percent of butterfat contained, no such sample or sampling shall be lawful unless a sample is taken from each weighing, and the quantity used shall be proportioned to the total weight of the milk or cream tested.

Code 1950, § 3-408; 1966, c. 702, § 3.1-538; 2008, c. 860.

§ 3.2-5228. Test of measurers; inspection of machines and scales; right of entry.

The Commissioner shall inspect or cause to be inspected at least once each year every Babcock or other centrifugal machine or cream test or butterfat test scales used in the Commonwealth by an inspector of milk or cream or by any person in any milk inspection laboratory for purposes of inspection, or by any person in any milk depot, ice cream factory, confectionery, creamery, cheese factory, condensed milk factory, or other place for determining the composition or value of milk or cream as a basis for payment in buying or selling. The Commissioner is further authorized to enter upon any premises in the Commonwealth where any centrifugal machine or cream test and butterfat test scales are used to inspect the devices and to ascertain if the provisions of law are complied with.

Code 1950, § 3-409; 1966, c. 702, § 3.1-539; 1996, c. 723; 2008, c. 860.

§ 3.2-5229. False manipulation and reading of tests.

Any person who shall, by himself or as the officer, servant, agent, or employee of any person falsely manipulate, underread, or overread the Babcock test or any other apparatus used for the purpose of determining the amount of milk fat in milk or cream, or who shall make any false determination of any test or apparatus used for the purpose of determining the amount of milk fat in any dairy products, is guilty of a Class 1 misdemeanor.

Code 1950, § 3-410; 1966, c. 702, § 3.1-540; 2008, c. 860.

§ 3.2-5230. Tender of payment as evidence of test.

The tender of payment for milk or cream at any given test, shall constitute prima facie evidence that such test was made.

Code 1950, § 3-411; 1966, c. 702, § 3.1-541; 2008, c. 860.

§ 3.2-5231. Commissioner to enforce article; persons exempt.

It shall be the duty of the Commissioner to see that the provisions of this article are complied with, and he may in his discretion prosecute any person violating any of its provisions. But the provisions of this article shall not be construed to affect a person using any centrifugal or other machine or test in determining the composition or value of milk or cream when such determination is made for the information of that person only and not for purposes of inspection, or as a basis for payment in buying or selling.

Code 1950, § 3-412; 1966, c. 702, § 3.1-542; 2008, c. 860.

§ 3.2-5232. Obstructing Commissioner; violations of article.

Any person who shall hinder or obstruct the Commissioner in the discharge of the authority or duty imposed upon him by this article, and any person violating any of its provisions is guilty of a Class 2 misdemeanor.

Code 1950, § 3-414; 1966, c. 702, § 3.1-544; 2008, c. 860.

§ 3.2-5233. Civil penalties.

A. In addition to the penalties prescribed in § 3.2-5229 or 3.2-5232, any person violating any provision of this article or regulation adopted hereunder may be assessed a civil penalty by the Commissioner for each violation in an amount not to exceed \$15,000. In determining the amount of any civil penalty, the Commissioner shall give due consideration to: (i) the previous violations committed by the person; (ii) the seriousness of the violation; and (iii) the demonstrated good faith of the person charged in attempting to achieve compliance with this article or the regulations adopted hereunder after notification of the violation. Any civil penalty shall be in addition to any payment that may be required for the wholesale value of all milk and milk products that must be destroyed as a consequence of such violation.

B. A civil penalty may be assessed by the Commissioner only after he has given the person charged with a violation an opportunity for a public hearing. Where such a public hearing has been held, the Commissioner shall make findings of fact and issue a written decision as to the occurrence of the violation and the amount of the penalty that is warranted, incorporating, when appropriate, an order therein requiring that the penalty be paid. When appropriate, the Commissioner shall consolidate such hearings with other proceedings pursuant to the provisions of this chapter. Any hearing under this section shall be a formal adjudicatory hearing in accordance with the Administrative Process Act (§ 2.2-4000 et seq.). When the person charged with such a violation fails to avail

himself of the opportunity for a public hearing, a civil penalty shall be assessed by the Commissioner after the Commissioner determines that a violation has occurred and the amount of the penalty warranted, and issues an order requiring that the penalty be paid.

C. Civil penalties assessed under this section shall be paid into the general fund of the state treasury. The Board shall prescribe procedures for payment of civil penalties. The procedures shall include provisions for a person to consent to abatement of the alleged violation and pay a penalty or negotiated sum in lieu of such penalty without admission of civil liability arising from such alleged violation.

D. Final orders may be recorded, enforced and satisfied as orders or decrees of a circuit court upon certification of such orders by the Commissioner. Such orders may be appealed in accordance with provisions of the Administrative Process Act (§ 2.2-4000 et seq.).

E. Nothing in this section shall require the Commissioner to institute proceedings for the imposition of civil penalties if the Commissioner considers the violations of this article to be minor. In such cases, the Commissioner may serve a suitable notice of warning in writing when he believes that the public interest will be served by so doing.

2000, c. 993, § 3.1-545.1; 2008, c. 860.

6/20/202