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Exempt Action Proposed Regulation Agency Background Document

Agency name	Board of Agriculture and Consumer Services
Virginia Administrative Code (VAC) citation(s)	2 VAC 5-490
Regulation title(s)	Regulations Governing Grade "A" Milk
Action title	Amendment to lower permissible somatic cell and bacteria counts
Date this document prepared	August 1, 2018

While a regulatory action may be exempt from executive branch review pursuant to § 2.2-4002 or § 2.2-4006 of the *Code of Virginia*, the agency is still encouraged to provide information to the public on the Regulatory Town Hall using this form. However, the agency may still be required to comply with the Virginia Register Act, Executive Order 14 (as amended, July 16, 2018), the Regulations for Filing and Publishing Agency Regulations (1 VAC7-10), and the *Virginia Register Form, Style, and Procedure Manual for Publication of Virginia Regulations*.

Brief Summary

Please provide a brief summary (preferably no more than 2 or 3 paragraphs) of this regulatory change (i.e., new regulation, amendments to an existing regulation, or repeal of an existing regulation). Alert the reader to all substantive matters. If applicable, generally describe the existing regulation.

2 VAC 5-490, Regulations Governing Grade "A" Milk, details the standards that must be met and the processing requirements necessary for milk to be considered grade A in Virginia. In May 2018, the Virginia State Dairymen's Association submitted to the Board of Agriculture and Consumer Services (Board) a Petition for Rulemaking requesting amendments to this regulation to lower the allowable counts of bacteria per milliliter and somatic cells per milliliter for milk to qualify as grade A. The Board considered and granted the petition at its meeting on July 24, 2018. At this meeting, the Board also adopted the proposed amendments and authorized staff to utilize the exempt regulatory process prescribed in Va. Code § 3.2-5206 to amend this regulation.

Subdivision A 3 of 2 VAC 5-490-50 currently provides that, to qualify for use in the commercial preparation of certain grade A milk or milk products, the bacteria count of the raw milk used shall not exceed 100,000 bacteria per milliliter of milk prior to commingling with any other milk...". The proposed amendments will reduce the maximum bacteria count to 50,000 bacteria per milliliter of milk. This

subdivision also currently provides that, "The somatic cell count of raw cow's milk, raw water buffalo's milk, or raw sheep's milk shall not exceed 750,000 somatic cells per milliliter." The proposed amendments will reduce the maximum somatic cell count to 500,000 per milliliter of milk.

Lowering the allowable somatic cell and bacteria counts in grade A milk will result in a safer and higher-quality product for consumers and may lead to the availability of new markets for milk and milk products produced in Virginia. Many producers are currently producing grade A milk that is in compliance with the proposed somatic cell and bacteria counts and would likely support the proposed regulatory amendments.

This agency background document is not being used to announce a periodic review or a small business impact review.