

BOARD OF AGRICULTURE AND CONSUMER SERVICES

**Virginia Produce Safety Law and Related Regulations
Civil Penalty Matrix
Guidelines for Enforcement**

Adopted: December 11, 2020

SECTION 1: AUTHORITY

Statutory Authority: § 3.2-5156 of the Code of Virginia (1950), as amended.

SECTION 2: DEFINITIONS

The following words and terms, when used in these guidelines, shall have the following meanings, unless the context clearly indicates otherwise. Definitions listed below are in supplement to Va. Code §§ 3.2-5146 and 3.2-5147.

“Board” means the Board of Agriculture and Consumer Services.

“Commissioner” means the Commissioner of Agriculture and Consumer Services.

“Farm” means “covered farm” as defined in § 3.2-5147 of the Code of Virginia.

“Hearing officer” means an attorney selected from a list maintained by the Executive Secretary of the Supreme Court in accordance with § 2.2-4024 of the Code of Virginia.

“Notice of Alleged Violation and Penalty Assessment” means a written notification from the case reviewer to the responsible party alleged to have committed a violation of the Virginia Produce Safety Law or regulations adopted pursuant to the Law that identifies the specific violation committed and indicates the amount of the civil penalty assessed in accordance with the included Civil Penalty Matrix.

“Previous violation” means any violation of the Virginia Produce Safety Law or regulations adopted pursuant to the Law cited within the five-year period preceding the current violation. “Previous violation” does not mean any final notice of the Program Supervisor or Program Manager that the Board overturns after considering the findings and recommendations of a hearing officer who held a formal hearing pursuant to § 2.2-4020 of the Code of Virginia.

“Program Manager” means (i) the manager of the Office of Dairy and Foods within the Virginia Department of Agriculture and Consumer Services, Division of Animal and Food Industry Services or (ii) a person designated as the Program Manager by the Commissioner and who works under the direction of the Commissioner.

“Program Supervisor” means (i) the supervisor of the Produce Safety Program within the Virginia Department of Agriculture and Consumer Services, Division of Animal and Food Industry Services, Office of Dairy and Foods or (ii) a person designated as Program Supervisor by the Commissioner and who works under the direction of the Commissioner.

“Responsible party” means the person or business alleged to have violated the Virginia Produce Safety Law or regulations adopted pursuant to the Law.

“Virginia Produce Safety Law” or “Law” means Chapter 51.1 of Title 3.2 of the Code of Virginia (Va. Code § 3.2-5146 *et seq.*).

SECTION 3: PROVISION FOR CIVIL PENALTIES GENERALLY

Any responsible party violating any section of the Virginia Produce Safety Law or regulations adopted pursuant to the Law may be assessed a civil penalty by the Board in an amount not to exceed \$1,000 per violation. In determining the amount of any civil penalty, the Board shall give due consideration to (i) the history of the responsible party’s previous violations, (ii) the seriousness of the violation, and (iii) the demonstrated good faith of the responsible party charged in attempting to achieve compliance with the Law or regulations adopted pursuant to the Law after being notified of the violation.

SECTION 4: PROCEDURE FOR CIVIL PENALTY ASSESSMENT

A. Farm Inspection

During a farm inspection, a Produce Safety Program staff member, upon completing an inspection designated Official Action Indicated due to an alleged violation of the Virginia Produce Safety Law or regulations adopted pursuant to the Law, shall submit documentation of proof of alleged violation, including all relevant facts, for review to the appropriate person according to the table below or to other staff designated by the Commissioner.

Staff Member Witnessing Alleged Violation	Case Reviewer
Produce Safety Specialist	Produce Safety Assistant Program Supervisor
Produce Safety Assistant Program Supervisor	Produce Safety Program Supervisor
Program Supervisor	Program Manager

B. Notice of Alleged Violation

Upon review of all documentation of proof of the alleged violation, if the case reviewer concurs that an alleged violation has occurred, he shall mail, by certified mail, the Notice of Alleged Violation and Penalty Assessment, including all documentation of relevant facts, notice of civil penalty amount, and consent resolution, to the responsible party. The notice shall advise the responsible party that he may (i) agree to the assessment; sign a consent resolution; waive his rights to an informal fact finding conference pursuant to § 2.2-4019 of the Code of Virginia (Code); and pay the civil penalty, which shall be due within 30 days after the date of receipt by the responsible party, or (ii) request an informal fact finding conference pursuant to § 2.2-4019 of the Code.

C. Informal Fact Finding Conference

Should the responsible party desire an informal fact finding conference, he shall request such within 30 days of receipt of the Notice of Alleged Violation and Penalty Assessment. The Program Supervisor will hold an informal fact finding conference pursuant to § 2.2-4019 of the Code prior to making a case decision, except in cases where the Program Supervisor served as the case reviewer. In any such case, the Program Manager will hold the informal fact finding conference. Following the informal fact finding conference and depending on who held such conference, the Program Supervisor or Program Manager will send to the responsible party the case decision via certified mail along with the fact basis for the decision and the civil penalty assessed.

D. Formal Hearing

The responsible party may appeal a case decision by the Program Supervisor or Program Manager to the Board pursuant to § 2.2-4020 of the Code. If the responsible party intends to appeal the case decision of the

Program Supervisor or Program Manager, he shall notify the Secretary of the Board in writing within 30 days following his receipt of the case decision. The Secretary of the Board will arrange for a hearing officer, arrange the location of the formal hearing, and arrange for a court reporter. The hearing officer will hear the relevant information about the case, consider the facts of all violations identified in the case, and evaluate the civil penalty assessed. The hearing officer shall transmit his findings and recommendations to the Board as required in § 2.2-4024(D) of the Code and inform the respondent of his right under § 2.2-4021(A) of the Code to address the Board. The Board shall consider the findings and recommendations of the hearing officer and render a case decision within the timeframe established in § 2.2-4021(C) of the Code. The Board may establish limits on how much time the representative of the responsible party will be afforded to address the Board with respect to the formal hearing officer’s findings and recommendations.

SECTION 5: ASSESSMENT OF SEPARATE VIOLATIONS

Each violation of the Virginia Produce Safety Law or regulations adopted pursuant to the Law shall be assessed separately for the purpose of determining the total civil penalty assessment.

SECTION 6: PENALTY POINT SYSTEM

The point system described in this section shall be used to determine the amount of any civil penalty for a violation of the Virginia Produce Safety Law or regulation adopted pursuant to the Law.

A. Violation Severity

The responsible party in violation of the Law or regulations adopted pursuant to the Law shall be assigned up to 10 points for the potential of the violation to result in a public health hazard, as described in one of the following categories:

Points	Description
0	Condition is unlikely to cause produce contamination
1-3	Condition may cause produce contamination
4-6	Condition will cause contamination if not corrected
7-10	Produce is already contaminated

A responsible party who violates § 3.2-5155 of the Code shall be assigned 10 points for violation severity.

B. History of Previous Violations

In determining the amount of a civil penalty, a responsible party in violation of the Law or regulations adopted pursuant to the Law shall be assigned one point for each previous violation of the same Virginia Code section or subsection or the same Code of Federal Regulations section or subsection as the current violation.

C. Good Faith Credit

The demonstrated good faith of the responsible party in attempting to achieve rapid compliance after notification of the alleged violation shall be taken into consideration in determining penalty points. Up to five points shall be deducted based on the following categories:

Points	Good Faith Credit Category
3-4	Immediate action taken to abate the alleged violation and correct any conditions resulting from the alleged violation.

1-2	Prompt and diligent efforts made to abate the alleged violation and correct any conditions resulting from the alleged violation within a reasonable period of time.
0	Minimal or no effort made to address the alleged violation and correct any condition resulting from the alleged violation.

D. Determination of Civil Penalty

- (I) Violations resulting in a cumulative sum of zero points after adding the total points assigned in accordance with subsections A, B, and C and subtracting the points assigned in accordance with subsection D shall not result in a civil penalty but shall be maintained on record as violations and shall be considered a previous violation for the purpose of subsection B if future penalties are issued.

- (II) Violations resulting in a cumulative sum of one or more points after adding the total points assigned in accordance with subsections A, B, and C and subtracting the points assigned in accordance with subsection D shall result in a civil penalty. The resulting total point amount shall be converted to a civil penalty dollar amount according to the following table:

Points	Dollars	Points	Dollars
1	\$50	11	\$550
2	\$100	12	\$600
3	\$150	13	\$650
4	\$200	14	\$700
5	\$250	15	\$750
6	\$300	16	\$800
7	\$350	17	\$850
8	\$400	18	\$900
9	\$450	19	\$950
10	\$500	≥20	\$1,000

SECTION 7: RECOVERY OF CIVIL PENALTIES, USE OF CIVIL PENALTY FUNDS

In accordance with the Virginia Debt Collection Act (§ 2.2-4800 *et seq.* of the Code), the Virginia Department of Agriculture and Consumer Services will take all appropriate and cost-effective actions to aggressively collect all accounts receivable, including the non-payment of civil penalties. Any civil penalty collected by the Commissioner for a violation of any section of the Virginia Produce Safety Law or regulations adopted pursuant to the Law will be paid into the state treasury and credited to the Virginia Natural Resources Commitment Fund, as prescribed in § 3.2-5156 of the Law.