

BOARD OF AGRICULTURE AND CONSUMER SERVICES
Tuesday, July 20, 2021

Hardywood Park Craft Brewery – West Creek
820 Sanctuary Trail Drive
Richmond, VA 23238

1. Call to order
2. Roll call
3. Approval of draft Board meeting minutes from May 20, 2021
4. Board member reports
5. Commissioner's Report to Board – Brad Copenhaver, Commissioner of Agriculture and Consumer Services
6. Proposed stage – 2 VAC 5-105 (Regulations for the Inspection of Pet Shops Selling Dogs or Cats) – Dr. Carolynn Bissett, Program Manager, Office of Veterinary Services
7. Proposed stage – 2 VAC 5-405 (Regulations for the Application of Fertilizer to Nonagricultural Lands) – David Gianino, Program Manager, Office of Plant Industry Services
8. Proposed fast-track action to amend 2 VAC 5-675 (Regulations Governing Pesticide Fees Charged by the Department of Agriculture and Consumer Services) and 2 VAC 5-685 (Regulations Governing Pesticide Applicator Certification under Authority of Virginia Pesticide Control Act) – Larry Nichols, Director, Division of Consumer Protection
9. Response to Sacks Petition for Rulemaking pertaining to home service contract providers pursuant to Va. Code § 59.1-434.4 – Michael Menefee, Program Manager, Office of Charitable and Regulatory Programs
10. Proposed appointment of Virginia Winery Distribution Company board member – Brad Copenhaver, Commissioner of Agriculture and Consumer Services
11. Overview of options for electronic meetings – Kevin Schmidt, Director, Office of Policy, Planning, and Research
12. New business
13. Future board meetings
14. Public comment period
15. Adjourn

DRAFT MINUTES

Thursday, May 20, 2021

The meeting of the Board of Agriculture and Consumer Services (Board) convened at approximately 9:00 a.m. on Thursday, May 20, 2021. The meeting was held by electronic communications means due to the state of emergency issued by Governor Northam as a result of the novel coronavirus (COVID-19). The meeting was held using Cisco WebEx Events. President Barlow called the meeting to order.

ROLL CALL

The Board Secretary called the roll:

PRESENT

O. Bryan Taliaferro, Jr.
Shelley Barlow
Cecil Shell
Margaret Ann Smith
L. Wayne Kirby
Kay Johnson Smith
John R. Marker
Richard Sellers
Neil Houff
Charles Church
Lonnie Johnson

Dr. M. Ray McKinnie

CONGRESSIONAL DISTRICT

1st
4th
5th
6th
7th
8th
10th
11th
Pesticides – Commercial Agricultural
Pesticides – Commercial Structural
Representing Dr. Timothy D. Sands, President,
Virginia Tech
Representing Dr. Makola Abdullah, President,
Virginia State University

ABSENT

Clifton A. Slade
Donald Horsley
James S. Huffard, III

3rd
2nd
9th

STAFF PRESENT

Charles Green, Deputy Commissioner, Virginia Department of Agriculture and Consumer Services
Kevin Schmidt, Secretary, Board of Agriculture and Consumer Services
Katherine Coates, Virginia Department of Agriculture and Consumer Services

APPROVAL OF MINUTES

Mr. Sellers moved that the draft minutes of the meeting on March 25, 2021, be approved as distributed. Mr. Shell seconded the motion. The motion was approved by a unanimous roll call vote.

APPROVE: Taliaferro, Barlow, Shell, K. Johnson Smith, Sellers, Houff, Church, McKinnie, L. Johnson

OPPOSE: None

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ELECTION OF OFFICERS

Deputy Commissioner Green opened the floor for nominations for Board President. Ms. Johnson Smith nominated Ms. Barlow for President, and Mr. Shell seconded the motion. There being no other nominations, Deputy Commissioner Green closed the nomination and called for a vote on the nominee. The Board elected Ms. Barlow as President by a unanimous roll call vote.

APPROVE: Taliaferro, Barlow, Shell, K. Johnson Smith, Marker, Sellers, Houff, Church, McKinnie, L. Johnson

OPPOSE: None

President Barlow opened the floor for nominations for Vice President. Ms. Johnson Smith nominated Mr. Houff for Vice President, and Mr. Sellers seconded the motion. There being no other nominations, Ms. Barlow closed the nomination and called for a vote on the nominee. The Board elected Mr. Houff as Vice President by a unanimous roll call vote.

APPROVE: Taliaferro, Barlow, Shell, K. Johnson Smith, Marker, Sellers, Houff, Church, McKinnie, L. Johnson

OPPOSE: None

President Barlow then called for nominations for Secretary. Mr. Sellers nominated Mr. Schmidt for Secretary, and Mr. Shell seconded the motion. There being no other nominations, President Barlow closed the nomination and called for a vote on the nominee. The Board elected Mr. Schmidt as Board Secretary by a unanimous roll call vote.

APPROVE: Taliaferro, Barlow, Shell, K. Johnson Smith, Marker, Sellers, Houff, Church, McKinnie, L. Johnson

OPPOSE: None

All three officer positions become effective July 1, 2021, and run through June 30, 2022.

REPORT FROM BOARD MEMBERS

A full recording of Board Member reports can be found at the following link:

<http://www.vdacs.virginia.gov/mp3/bacs5-20.mp4>

O. Bryan Taliaferro

Mr. Taliaferro began his report with an update on escalating grain prices. He reported that the weather conditions in his district are dry. He provided an update on the wheat, corn, and soybean crops. He stated that producers are having a good start but they will need rain later on in the spring.

Cecil Shell

Mr. Shell reported that the weather is dry in his district as well. The wheat crop is looking good so far, and grain prices are high. He noted that in his district, many of the farmers who planted hemp last year are not planting it this year and that many vegetable producers are planting

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cabbage. He provided an update on the hay, corn, and soybean crops in his district. He concluded by discussing the timber harvest and increasing lumber prices.

Kay Johnson Smith

Ms. Smith reported on the Animal Agriculture Alliance's 20th Annual Stakeholder Summit, which was held in May. The event attracted 594 registrants, including farmers, ranchers, social media influencers, restaurateurs, retailers, academics, and government officials - including Deputy Commissioner Green. The theme of the conference was "Obstacles to Opportunities." She provided an update on farmers' markets in her district. She noted that her area of Northern Virginia is inundated with cicadas but she was glad to learn through her research that they don't harm crops.

John Marker

Mr. Marker stated that cicadas are present in his district as well, and while they don't eat crops, they are causing some damage when they lay eggs on young tree branches. He reported on the status of corn and soybean planting in his district. The weather has been cold and dry. Vegetables are going in. Pastures and cattle are doing well. He reported that they are just finishing thinning apples chemically. He reminded the Board that this will be his last meeting as a Board member and concluded his report by thanking everyone for the opportunity to serve on the Board.

Richard Sellers

Mr. Sellers stated that he is not currently in Virginia, but he has heard the cicadas are out in his district. Urban gardens are in full force. He reported that he provided Kevin Schmidt with a copy of the proposed ordinance rule for agritourism in Fairfax County to distribute to the Board. The Fairfax County Farm Bureau has written a letter in support of the proposed ordinance. He urged Board members to read the proposed ordinance and consider a motion to support it.

Neil Houff

Mr. Houff reported on the corn and bean planting in his district. The weather has been cool and dry. Fertilizer prices have increased along with the favorable commodity prices, but they have seen some intermittent supply challenges with fertilizer and crop protection products. He stated that the wheat and barley crops in his district are excellent but need rain.

Charlie Church

Mr. Church reported that the Virginia Pest Management Association (VPMA) scheduled three virtual recertification webinars this spring. VPMA trained 190 technicians during the first two events and anticipate training another 100 during the last event, which is scheduled for June 16. He stated that in this calendar year, VPMA scheduled six in-person testing events in partnership with VDACS's Office of Pesticide Services to try and meet the testing needs of the industry while the DMV has limited capacity. VPMA is planning in-person trainings to start in September, which will culminate in an in-person state technical meeting in Virginia Beach.

He stated that the pest control industry has been able to maintain, and in some cases grow, its revenue during the pandemic. They have been very busy and are struggling to find people to do the work. VPMA and the National Pest Management Association have developed a workforce development program hoping to address the job candidate shortage.

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Lonnie Johnson

Mr. Johnson reported that Virginia Tech held a virtual commencement ceremony in May but it was also able to hold a series of in-person college level graduations on campus. Virginia Tech and Virginia Cooperative Extension (VCE) are using the summer to transition back into an in-person environment. They will be re-opening vacant positions for VCE specialists. VCE is in the process of filling 13 open agent positions and is looking to prioritize another eight positions using new funding. Virginia Tech will be conducting 4-H summer camps and are now reacting to the latest revised guidance from the Governor and Centers for Disease Control for COVID-19 precautions during the camps' operations.

Dr. M. Ray McKinnie

Dr. McKinnie stated that Virginia State University (VSU) is doing many of the same things that Mr. Johnson reported are happening at Virginia Tech. He reported that VSU will have its first in-person graduation since fall 2019 this week. The college is working on a return-to-campus plan. He stated that VSU will return most of its academic and VCE programs back to campus this summer and into the fall. He noted that three VCE specialist positions are currently being advertised, with more possibly coming. He encouraged Board members to reach out to anyone who would be interested in applying. He stated that the VSU College of Agriculture continues to work on growing its enrollment. It is offering numerous scholarships, and he encouraged Board members to reach out to young people seeking opportunities this fall to let them know to contact him.

Margaret Ann Smith

Ms. Smith reported that the weather has been dry in her district and a good rain shower is needed. She reported on the corn, bean, and hay crops. She stated that the cattle markets are starting to slow down. As commodity prices have climbed, cattle prices have taken a pushback, which will create challenges going forward. She noted that cost to gains are much higher than they were last year. This will cause a tremendous change in how cattle producers do business, and there is a lot of resistance and hesitation in the market. In the agriculture industry, often when one side is doing well, the other faces challenges.

Shelly Barlow

President Barlow reported that the weather extremes have been a challenge. She reported on the corn, bean, and cotton crops in her district and stated that strawberries are in full season. She congratulated Dr. Bronaugh on her confirmation as Deputy Secretary of the U.S. Department of Agriculture. She concluded her report by discussing the push for solar energy in the Commonwealth. She stated that Deputy Commissioner Green recently organized a meeting on solar energy and agriculture with key stakeholders in the industry. It was a productive conversation, and the Board needs to be tuned into this issue.

L. Wayne Kirby

Mr. Kirby echoed the reports of the other Board members. He shared his optimism about commodity prices and reported on the wheat and vegetable crops in his district.

COMMISSIONER'S REPORT

Deputy Commissioner Green delivered the Commissioner's Report to the Board. During the presentation of the report, he briefed the Board on personnel changes, recent events, and other

matters relating to VDACS and the COVID-19 state of emergency. A copy of the written report was included in the Board meeting agenda and materials.

NOTICE OF INTENDED REGULATORY ACTION – 2 VAC 5-317 (REGULATIONS FOR THE ENFORCEMENT OF THE NOXIOUS WEEDS LAW)

President Barlow called on David Gianino, Program Manager, Office of Plant Industry Services. Mr. Gianino gave the Board a brief overview on the Notice of Intended Regulatory Action for 2 VAC 5-317, Regulations for the Enforcement of the Noxious Weeds Law, and responded to Board member questions.

Following Mr. Gianino's presentation and discussion by the Board, Mr. Houff moved that the Board authorize staff to take any and all steps necessary to file a Notice of Intended Regulatory Action for 2 VAC 5-317, Regulations for the Enforcement of the Noxious Weeds Law, for public comment.

Mr. Sellers seconded the motion. The Board voted unanimously to approve the motion.

APPROVE: Taliaferro, Barlow, Shell, M. Smith, K. Johnson Smith, Marker, Sellers, Houff, Church, McKinnie, L. Johnson

OPPOSE: None

PROPOSED APPOINTMENTS OF VIRGINIA WINERY DISTRIBUTION COMPANY BOARD MEMBERS

President Barlow called on Deputy Commissioner Green. Deputy Commissioner Green brought to the Board's attention the expiration of the terms, effective June 30, 2021, of Virginia Winery Distribution Company (VWDC) board members Jay W. Colston, III of Virginia Imports, Doug Zerbst of Republic National Distribution Company, and Courtney Mailey of Blue Bee Cider. Deputy Commissioner Green then presented the Board with an endorsement from Dale Farino, President, Virginia Wine Wholesalers Association, Inc., that Mr. Colston and Mr. Zerbst be reappointed to the VWDC board of directors and from Laurie Aldrich, Executive Director, Virginia Wineries Association (VWA), recommending that Ms. Mailey be reappointed to the VWDC board of directors. Deputy Commissioner Green also notified the Board of the resignation of Randy Phillips, Cave Ridge Vineyard, and indicated that staff received a letter from Laurie Aldrich, Executive Director, VWA, recommending that Stan Joynes, Chief Executive Officer and owner of Valley Roads Vineyards, LLC, be appointed to the VWDC board of directors

These requests to the Board are made pursuant to subdivision (B)(2) of Va. Code § 3.2-102, which (i) requires the Commissioner to establish and operate a nonprofit, nonstock corporation to promote, develop, and sustain markets for licensed Virginia wineries and farm wineries and (ii) authorizes the Board to appoint the four members to this board of directors who serve with the Commissioner.

Deputy Commissioner Green asked the Board to consider the following appointments:

- Jay W. Colston, III of Virginia Imports for a term from July 1, 2021, through June 30, 2025, as an owner or manager of a wine wholesaler licensee

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- Doug Zerbst of Republic National Distribution Company for a term from July 1, 2021, through June 30, 2025, as an owner or manager of a wine wholesaler licensee
- Courtney Mailey of Blue Bee Cider for a term from July 1, 2021, through June 30, 2025, as an owner or manager of a winery or farm winery licensee that produces no more than 10,000 cases per year
- Stan Joynes, Chief Executive Officer and owner of Valley Roads Vineyards, LLC, for an unexpired term through June 30, 2021, as an owner or manager of a winery or farm winery licensee that is not served by a wholesaler when the owner or manager is appointed to the board

President Barlow informed the Board members that, unless a Board member wished to remove any of these nominations from the block for separate consideration, all four appointments would be handled in a block.

Following Deputy Commissioner Green's presentation, Mr. Sellers moved:

That the that the Board of Agriculture and Consumer Services reappoint Jay W. Colston, III of Virginia Imports to the board of directors of the Virginia Winery Distribution Company in the position of an owner or manager of a wine wholesaler licensee for a term from July 1, 2021, through June 30, 2025;

That the Board of Agriculture and Consumer Services reappoint Doug Zerbst of Republic National Distribution Company to the board of directors of the Virginia Winery Distribution Company in the position of an owner or manager of a wine wholesaler licensee for a term from July 1, 2021, through June 30, 2025;

That the Board of Agriculture and Consumer Services reappoint Courtney Mailey of Blue Bee Cider to the board of directors of the Virginia Winery Distribution Company in the position of a winery or farm winery licensee that produces no more than 10,000 cases per year for a term from July 1, 2021, through June 30, 2025; and

That the Board of Agriculture and Consumer Services appoint Stan Joynes, Chief Executive Officer and owner of Valley Roads Vineyards, LLC, to fill the vacancy on the board of directors of the Virginia Winery Distribution Company in the position of an owner or manager of a winery or farm winery licensee that is not served by a wholesaler when the owner or manager is appointed to the board for an unexpired term through June 30, 2021.

Ms. Johnson Smith seconded the motion. The Board voted unanimously to approve the motion.

APPROVE: Taliaferro, Barlow, Shell, M. Smith, K. Johnson Smith, Marker, Sellers, Houff, Church, McKinnie, L. Johnson

OPPOSE: None

OVERVIEW OF OFFICE OF CHARITABLE AND REGULATORY PROGRAMS

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President Barlow called on Michael Menefee Program Manager, Office of Charitable Gaming. Mr. Menefee presented the Board with an overview of the Office of Charitable and Regulatory programs.

NEW BUSINESS

No new business was introduced.

FUTURE BOARD MEETINGS

President Barlow announced that the remaining Board meeting dates for 2021 will be July 20 at Hardywood Park Craft Brewery-West Creek and December 10 in Richmond.

PUBLIC COMMENT PERIOD

There was no public comment.

ADJOURNMENT

There being no further business, the Board adjourned at approximately 11:23 a.m.

Respectfully submitted,

Shelley Barlow
Board President

Kevin Schmidt
Board Secretary

COMMISSIONER'S REPORT TO
BOARD OF AGRICULTURE AND CONSUMER SERVICES
July 20, 2021

PERSONNEL NEWS

Hosea Fortune was selected to serve as the new Grain Services Program Manager and began his new role effective July 10. Hosea had been serving in the role of Interim Grain Services Program Manager for the past several months and, prior to that, served in a management capacity in the role of Assistant Program Supervisor. Hosea has over 10 years of VDACS experience within Grain Services and is an experienced licensed Grain Inspector and Grader and program trainer.

Heather Wheeler was selected as the Manager of the Office of Domestic Marketing and Promotions (ODMP) and began her new role on June 25. Heather has worked at VDACS for five years, previously serving as a Program Manager for the Virginia Horse Industry Board, the Agritourism program, the Virginia Grown program, and farmers' markets. Prior to joining VDACS, she served as a Client Relations Manager for the Mary Washington University Center for Economic Development Business Incubator program and as a District Administrator for Target Corporation. Heather currently holds an Associate's degree in Business Administration and certificates in Accounting and Project Management and is currently working towards dual Bachelor's degrees in Human Resources and Business Administration-Project Management.

There are currently 124 vacancies (21.99 percent) at the agency. VDACS programs are experiencing significant challenges in recruiting applicants to work in customer-facing roles that have weekend, holiday, and evening and night shift requirements. This is creating significant impacts, especially in many Division of Commodity Services programs that provide grading and inspection services to clients. Divisions continue to collaborate with the Human Resources Office on recruitment efforts to fill vacant positions.

GOVERNOR'S PRIORITIES

Governor Northam issued a proclamation declaring June 13–19 as Virginia Agriculture Week to recognize and celebrate the many contributions of the Commonwealth's agricultural community. VDACS leadership and agency staff accompanied Governor Northam, First Lady Northam, Northam Administration officials, and agency leadership on visits to highlight the work of Virginia farmers, producers, research entities, agribusinesses, and VDACS offices throughout the week. Office of Communications staff developed features and content from each visit to share on social media and on other platforms throughout the week. Sites visited included Fresh Impact Farms (Arlington), Kentland Farms at Virginia Tech (Blacksburg), Rappahannock Oyster Company (Richmond), The Dairy Market and Moo Thru (Charlottesville), Botanical Bites and Provisions (Fredericksburg), HOPE Center (Fredericksburg), Perdue Agribusiness and VDACS's Grain Office (Chesapeake), and VDACS's Peanut Office (Suffolk).

Since May, Governor Northam has announced two new Agriculture and Forestry Industries Development (AFID) Fund facility grants totaling \$200,000. These projects represent \$14,885,000 in new capital investment, 87 new full-time positions, and commitments for the purchase of \$28,897,105 of Virginia-grown agriculture and forestry products. The grants were awarded to (i) Fairfax County for

Beanstalk and (ii) Patrick County for Prolam. The Prolam announcement was Patrick County’s first Governor’s economic development announcement in 15 years. To date, 105 Governor’s AFID Fund facility grants have been successfully awarded to 65 localities across Virginia.

Since May, Governor Northam has announced three new AFID Fund planning grants totaling \$75,000. The grants were awarded to (i) Brunswick and Lunenburg Counties to fund architectural and engineering plans for a proposed large-scale produce processing facility; (ii) Lee County to conduct a feasibility study for a produce auction, including the development of a business and marketing plan, identification of a suitable site, and a proposed building design; and (iii) Rockingham County to examine the feasibility of locating an anaerobic digester in the county for long-term, sustainable waste management. To date, 51 Governor’s AFID Fund planning grants have been awarded totaling \$1,043,232 to 62 localities across Virginia.

VDACS staff continues to work with Secretary of Agriculture and Forestry Ring to create a map of the highest priority agricultural lands in Virginia for conservation. A stakeholder group has been convened to analyze available data sources and two subcommittees will work on identifying what additional data is needed to accurately capture economic viability and vulnerability to development.

In May, the Office of Weights and Measures (OWM) represented VDACS on a series of Energy Contingency Conference (ECC) calls. The ECC was formed with other state agencies in response to the voluntary shutdown of the Colonial Pipeline due to a cyberattack. The purpose of the ECC was to share information, develop strategies, and implement resources to mitigate the impact of the pipeline closure to the greatest extent possible. OWM issued a waiver for certain regulatory requirements related to vapor pressure in gasoline after Governor Northam declared a state of emergency as a result of the shutdown of the pipeline. The VDACS Acting Emergency Coordinator provided support to OWM by acting as liaison with the Virginia Department of Emergency Management and updating the Federal Emergency Management Agency’s Crisis Management System. OWM also been assisted the Office of the Attorney General (OAG) by conducting investigations into allegations of gasoline price gouging. Price-gouging is defined as increases in gasoline prices of 25 percent over the pre-declaration of the state of emergency price. OWM inspectors gather information when an allegation is made and then refer the information to the OAG for further actions.

The Virginia Farm Bureau Federation (VFBF) and web developer Tamarack Media continue to work with VDACS staff on an update to the Virginia Farm Link website, which is a cooperative project between VDACS and VAFB. The site is under development and is expected to go live in August. The site’s new social media handles have been launched and are beginning to attract followers. Staff is working with VFBF to identify additional wrap-around resources for the site.

Total number of active industrial hemp registrations, as of June 30, 2021:	
Industrial Hemp Grower Registrations	862
Industrial Hemp Processor Registrations	281
Industrial Hemp Dealer Registrations	139

Planned Acreage	7,863
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The Food Safety Program has completed the inspections of 21 Registered Industrial Hemp Processors who are now manufacturing industrial hemp-derived extracts intended for human consumption. Four Registered Industrial Hemp Processors currently have pending applications to be inspected as manufacturers of industrial hemp-derived extracts intended for human consumption.

AGENCY OPERATIONS

Commissioner’s Office

In May, VDACS held its first meeting of the agency’s Diversity, Equity, and Inclusion (DEI) Strategic Planning Subcommittee. This subcommittee is comprised of agency volunteers who have an interest in drafting the agency’s initial DEI strategic plan as required by the One Virginia Strategic Plan and Chapter 168 of the 2021 Special Session 1 Acts of Assembly. In drafting the strategic plan, the subcommittee is using the One Virginia Online Toolkit provided by Dr. Underwood, the Commonwealth’s Chief DEI Officer. The subcommittee meets every other week and has completed four of its eight scheduled meetings. Each meeting is led by a different member of the subcommittee. In its work so far, the subcommittee has drafted a DEI mission statement for the agency and developed strategies, objectives, and metrics for two of the five goals outlined in the One Virginia toolkit. Commissioner Copenhagen led the second meeting of the subcommittee, which dealt with recruitment and retention as Goal One. The subcommittee will continue to meet throughout the summer to complete the development of the draft plan. The agency anticipates that it will submit the completed plan to the Governor’s DEI Office by September 30.

At the beginning of June, Commissioner Copenhagen visited a farm in Prince Edward County that was the site of a new robotic milking facility that VDACS Office of Dairy and Foods (ODF) Dairy Services was able to commission. The new installation was a retrofit at the existing farm location and is unique in that this is the first installation of this particular manufacturer’s robotic milking system in the Commonwealth. Virginia now has at least one robotic milking system offered from each of the main dairy equipment supply companies in the state.

In June, Commissioner Copenhagen and Deputy Commissioner Green participated in a meeting of the Southern Association of State Departments of Agriculture (SASDA), hosted by the Arkansas Department of Agriculture. SASDA is one of four state regional trade groups (SRTGs) that are all members of the National Association of State Departments of Agriculture. SASDA strives to improve American agriculture through the promotion of sound public policy and agriculture-related businesses and programs and to communicate the vital economic importance of agriculture. The annual SASDA meeting offered an opportunity for members and industry partners to meet face-to-face to discuss timely issues important to agriculture, including federal COVID assistance programs specific to food and agriculture, international trade, and various regulatory programs administered by the states. During the meeting, Commissioner Copenhagen and VDACS was selected to serve as Secretary for SASDA and also selected to serve as Treasurer/Secretary for the Southern U.S. Trade Association (SUSTA). SUSTA is a non-profit organization that receives federal funding to facilitate agricultural trade between small to medium-sized southern U.S. companies and overseas importers. The role of

Secretary for SASDA is a one-year term, while the SUSTA position is a multi-year commitment.

In June, Commissioner Copenhaver and Delegates Runion and Wilt toured the Harrisonburg Regional Animal Health Laboratory. This tour was the result of a conversation between the delegates and Deputy Commissioner Green and the VDACS Lab Director during an industry meeting hosted by the Virginia Agribusiness Council in May. During the conversation, Deputy Commissioner Green and the Lab Director shared information with the delegates about VDACS's laboratory system and how it supports agricultural producers in the Commonwealth. The Harrisonburg Daily News Record reported on the tour.

In June, Commissioner Copenhaver, Deputy Commissioner Green, and staff from the Agricultural Stewardship office met with Deputy Secretary of Natural Resources for the Chesapeake Bay Jennings regarding the agency's 2022-2023 programmatic milestones for the Chesapeake Bay Watershed Implementation Plan. Initiatives and milestones that were discussed involved developing a tiered marketing program for farms implementing best management practices, highlighting verification duties performed by Agricultural Stewardship program staff, and auditing the reports submitted to the agency from contractor-applicators applying nutrients to non-agricultural lands. Agencies have been asked to submit draft milestones to the Virginia Department of Environmental Quality by August 15.

In June, Commissioner Copenhaver attended the Virginia Agribusiness Council's Council Connections dinners at Glenburn Farms in Roanoke and Locust Hill Farm in Middleburg. These regional dinners offer the opportunity to hear from important decision makers in the agricultural industry and learn more about the priorities of elected officials and are open to both Council members and non-members. The event in Roanoke featured a discussion on agritourism. Delegates Hurst and Head were in attendance for this event. The event in Middleburg featured a discussion about the history of Locust Hill Farm, which is owned by Delegate Webert, and some of the production and conservation practices it employs. Senator Peterson and Delegate Gooditis were also in attendance for this event.

In recognition of Virginia Agriculture Week, the Communications Office developed a photo contest for the public and VDACS employees. The goal of the contest was to submit the best original image that best depicts Virginia agriculture. During the one-month contest entry period, 240 submissions were received from all over the state. Congratulations to Harriett Flynn of Harrisonburg, who submitted an image that was selected as the contest overall winner. After reviewing the judges' votes, two employees tied for best VDACS employee photo. Congratulations to Courtney Mickiewicz, Environmental Specialist II, Dairy and Foods, Animal and Food Industry Services (AFIS), and Kymberly Coffman, Agricultural Specialist IV, Veterinary Services, AFIS, for their winning photos.

Division of Marketing and Development (DMD)

In June, DMD and Budget Office staff submitted VDACS's submission for this year's U.S. Department of Agriculture (USDA) Specialty Crop Block Grant Program (SCBGP). The 2021 SCBGP consists of two portions. The first portion is the traditional federal Farm Bill allotment of approximately \$540,000. The second portion (referred to as HR 133 stimulus funding) is an additional allotment of \$730,000 designed to allow states the flexibility to fund COVID-19 relief specific projects or simply expand this year's amount of funding. The Farm Bill allotment has the traditional three-year timeframe,

while the HR 133 Stimulus funding has a four-year timeframe. The total amount of funding available in 2021 is approximately \$1.27 million. Virginia has selected 19 projects for this year's funding, including eight for the Farm Bill portion and 11 for the HR 133 portion. These projects are scheduled to begin October 1, 2021. Once USDA has approved Virginia's state plans and Memorandum of Understandings are in place with grantees, a press release will be issued (expected to be in September).

In May and June, Office of Domestic Marketing and Promotions (ODMP) staff conducted seven meetings for the following Virginia commodity boards: the Wine Board, Marine Products Board, Peanut Board, Egg Board, Aquaculture Advisory Board, and two meetings of the Horse Industry Board's Marketing Subcommittee. In accordance with the Governor's Executive Order, all board meetings were held with enhanced safeguards for social distancing, personal protective equipment, and offered hybrid and virtual options. At these meetings, the boards considered proposals for research, education, and promotional proposals for funding.

In May and June, ODMP staff recruited, trained, and approved 187 Virginia farmer vendors for participation in the 2021 Senior Farmers Market Nutrition and Women and Infant Children (SFMNP/WIC) *Farm Market Fresh* program. The SFMNP/WIC program is a USDA-funded program conducted in partnership with the Virginia Department of Aging and Rehabilitative Services that provides funds to qualifying senior citizens and women with infant children to purchase fresh fruit and vegetables from approved farmer vendors at participating farmers' markets across Virginia. In 2021 the program will be operating at 67 farmers' markets and 25 roadside stands located across the Commonwealth. The program runs from June 1 through November 30 and is expected to provide over \$400,000 worth of produce to the qualifying Virginia citizens.

The Office of International Marketing (OIM) has initiated two programs in Canada to support Virginia specialty food and non-alcoholic beverage companies in exports to the country. The first program is focused on Amazon Canada. The Canada trade representative, OIM staff, and an Amazon Canada consultant will select up to five companies to participate in this program. The selected companies will receive sponsorship from VDACS and assistance with listing and ranking services, pay per click advertising, and consulting for approximately three months once the product is listed on Amazon.ca. The second program is a retail promotion with a specialty grocery store in the Greater Toronto area. Up to five companies will be selected to be featured in this promotion.

OIM has begun planning for its first in-person international shows since March 2020. Brew London is scheduled to take place on July 29 - 31. Virginia breweries are unable to attend in-person due to the United Kingdom's (UK) quarantine requirements. However, the breweries will still ship product and be represented at the show by the VDACS's UK trade representative. Bar Convent Berlin will also take place in-person in October, and Virginia distilleries are expected to attend.

The Office of Food Distribution reports that seven Virginia foodbanks recently purchased \$6,347,242 in food through the federal Coronavirus Response and Relief Supplemental Appropriations Act. These foods are distributed to food insecure families and individuals through the Emergency Food Assistance Program. The foodbanks will also receive \$1,600,565 in federal administrative funds to pay for the costs of storage and distribution. This was the third coronavirus response act to provide food and funds for the foodbanks.

Market News reports that most major agricultural commodities have recovered from the initial price losses from the COVID-19 pandemic. Prices for many commodities are now significantly higher than before the pandemic began in February 2020. Although grain prices have increased since the pandemic began last year, prices have been decreasing as of mid-June. Since the end of April, wheat prices are down 12 percent, corn prices are down five percent, and soybean prices are down 13 percent. Soybean prices have been affected by weakness in soy oil as prices fell to their lowest levels since April 22 on concerns about potential changes to biofuel blending mandates in the U.S. Soybean stocks in China have also increased to their highest level in 2021 as large quantities of Brazilian soybeans have been imported and domestic crushing rates slowed down. Corn prices have been under pressure after beneficial rainfall and forecasts for additional storms in the Midwest eased concerns about crop conditions. Although there are still concerns about dry conditions in many areas, recent rainfall has improved the situation. Wheat has been under pressure due to strength in the U.S. dollar and weakness in the other grain markets.

Virginia feeder cattle sales were very active during the spring. Approximately 62,000 head of state-graded feeder cattle were sold from March through May. May monthly average feeder cattle prices were over two percent higher than last year but were approximately five percent lower than the five-year average for most weight classes. Poultry prices have gotten off to a good start in 2021. Broiler prices are up over 33 percent since the beginning of 2021 and are now 40 percent higher than before the pandemic began. Demand for poultry products has been good both at the retail and food service levels.

Below is a summary of prices as of June 18, 2021, compared to late February 2020 and the beginning of 2021:

Percentage of Price Change	Since February 2020	Since January 2021
Corn	↑ 48 percent	↑ 8 percent
Soybeans	↑ 53 percent	↓ 3 percent
Wheat	↑ 17 percent	↓ 3 percent
Hogs	↑ 142 percent	↑ 141 percent
Broilers	↑ 40 percent	↑ 33 percent
Cotton	↑ 43 percent	↑ 11 percent
Feeder Cattle	↓ 1 percent	↑ 8 percent
Slaughter Cattle	↑ 7 percent	↑ 10 percent

This year marks the 29th year of the Market News Retail Farmers' Markets publication. This publication serves as a valuable source of price information for Virginia producers and also helps promote the availability of locally grown produce and meat to potential buyers. In an effort to promote individual markets, each participating market has its own listing that includes information on locations, times, website links, and contact information as well as product availability and prices. The first issue of the year also has a section with historical price data that shows annual average prices over the past five years. Many market managers and vendors have stated that the historical prices are a valuable tool that helps them determine their current pricing.

In June, Market News issued the first vegetable shipping point price trend report of the season. This weekly report publicizes the availability of Virginia produce and is sent to buyers throughout the

country. The report appears in national summary reports issued by USDA and trade publications such as The Packer and North American Potato Market News. Staff also resumed reporting shipping point and wholesale terminal.

Division of Commodity Services (DCS)

Since May 21, 2021, Division of Commodity Services (DCS) staff:

- Inspected and certified grain commodities including soybeans, barley, wheat, soybean meal, and soybean hull pellets with a total value of more than \$63 million destined for 19 countries;
- Conducted 17 Grain Law compliance visits in 15 localities;
- Conducted General Market and Shipping Point Inspections on 556,305 pounds of fresh fruits and vegetables and Processed Food Inspections on 1,998,057 pounds of processed products;
- Performed six Good Agricultural Practice (GAP) Audits for Virginia fruit and vegetable growers;
- Inspected and certified approximately 45,557,909 pounds of Farmers' Stock peanuts and regrades, approximately 36,256,343 pounds of shelled and in-shell milled peanuts, and 1,057,608 pounds of imported peanuts from Argentina and Paraguay;
- Analyzed approximately 901 samples of peanuts for the presence and levels of aflatoxin to determine if the peanuts were safe for human consumption;
- Certified 834,943 pounds of various poultry parts for the USDA Feeding Program for School Lunch Products;
- Graded, via contracted full-time grading services, 31,803,403 pounds of chicken and 9,383,860 pounds of turkey for the Virginia poultry and egg industry.
- Provided non-contract fee grading and certification services for 207,475 pounds of poultry based on U.S. Consumer Grades to fulfill necessary specifications and contract requirements for the Virginia poultry and egg industry.
- Provided evaluation services to producers on approximately 16,177 cattle, 133 lambs/goats, and 114 beef carcasses.

DCS staff conducted a USDA Plant Survey at Shenandoah Valley Organics (SVO) in Harrisonburg. SVO has requested full-time grading service beginning this summer in order to provide A Grade product to Costco stores. With the approval of the Plant Survey, SVO began working with USDA on labeling approval and anticipates that production for Costco will begin mid-summer.

DCS conducted its annual Potato Inspection School for two rehires and three new employees. One full-time Fruit and Vegetable employee and an inspector from Delaware also participated. The Potato

Inspection School is designed to get inspectors prepared for the 2021 potato season. Inspection work was estimated to begin on or around July 1.

Livestock Services (LS) has worked in cooperation with industry partners, the Virginia Cattlemen's Association, and Virginia Cooperative Extension (VCE), to grade, evaluate, and assist in the marketing and promotion of Virginia feeder cattle throughout Virginia. Staff compiled load lot descriptions, provided marketing guidance to producers, and assisted during the commingling and loading of trailer load lots. Staff continue to evaluate and grade carcasses per USDA standards at Seven Hills Food Company in Lynchburg and evaluate slaughter cattle at Front Royal and Staunton Livestock yards. Staff evaluated and graded special state graded lamb and goat sales at locations throughout Virginia. Sales were coordinated around the ethnic holiday markets to capitalize on increased demand.

Working with youth livestock shows is another important segment of the LS program. Each year staff provide hours of market animal grading services to fairs and junior shows throughout Virginia. With fair season underway, LS staff have been evaluating market animal livestock at multiple locations.

Division of Animal and Food Industry Services (AFIS)

From April through May, the ODF Food Safety Program performed the inspections necessary to open 194 new food businesses. A total of 288 hours was spent working with vendors to open these firms. The Food Safety Program has an inventory of 13,147 firms under inspection. Twenty-five Food Safety Specialists, three Food Safety Technical Specialists, and three Field Supervisors are responsible for the regulatory oversight of these firms. From April through May, the ODF Food Safety Program conducted 1,317 inspections of food establishments (which includes retail food stores, food manufacturers, and food warehouses), investigated 53 consumer complaints, and collected 109 food samples.

During the months of April and May, the ODF Dairy Services Program conducted 237 inspections of Grade "A" and manufactured-grade dairy farms and 51 cheese and ice cream manufacturing plant inspections. To ensure compliance with Virginia's regulatory standards, program staff collected 629 milk samples from Virginia Grade "A" dairy farms. One hundred seventy-seven (177) cheese and frozen dessert samples were also collected to determine compliance with current dairy laws and regulations. Inspectors also made 829 farm visits to review construction of dairy facilities, review the installation of milking equipment and other related items, and offer advice and assistance to dairy farmers and manufactured milk processors.

In June, the Produce Safety Program (PSP) received a federal Notice of Award for a new five-year federal and state Cooperative Agreement Program with the U.S. Food and Drug Administration (FDA) to enforce the federal Produce Safety Rule on covered produce farms in Virginia. This new grant award will allocate approximately \$4,463,965 to the agency over a five-year period to continue the administration of the ODF Produce Safety Program. The official title of the project for the new grant is "Maintaining the Produce Safety Program at VDACS under Path C to Enhance Produce Safety and Achieve High Rates of Compliance with the FDA's Produce Safety Rule."

On May 1, the PSP began regulatory inspections for very small covered farms. All tiers of covered produce farms are now under inspection. As of June 28, the PSP has conducted a total of 114 routine

inspections of covered farms since implementation. There have been no egregious conditions found, no warning letters, or civil penalties issued to date. The PSP continues to offer outreach and education to industry stakeholders and associations. There are a total of 881 farms now on file, of which 245 are subject to inspection.

This year, the Office of Meat and Poultry Services (OMPS) was selected for an on-site audit of the Commonwealth's Meat and Poultry Inspection Program by the Federal State Audit Branch of the USDA Food Safety Inspection Services (FSIS). The purpose of this audit is to ensure that Virginia is maintaining a state inspection program equal to that of the USDA/FSIS inspection program. In March, USDA sent out auditors and conducted virtual audits of OMPS's financial records and accounting procedures, compliance with Title IV of the Civil Rights Act, and laboratories methods and procedures. Due to COVID restrictions, the on-site audit of inspected facilities was more challenging than usual. OMPS took extra precautions to accommodate the on-site auditor while maintaining social distance. The audit dates were March 22-27, 2021. The auditor selected three state-inspected plants, one custom exempt plant, one food distributor, and one state office for audit. Inspection personnel assigned to answer the auditor's questions were knowledgeable and professional. Preliminary reports show no issues found at the food distributor. No issues were found during the state office audit. Minor issues were found at the custom facility and one of the inspected plants. Findings have been corrected and verified by the inspection team. Preliminary reports completed by the auditor show no significant findings in the operations of OMPS State Inspection Program.

In May, OVS staff participated in the Fredericksburg Area Junior Livestock Show in Caroline County. This event draws exhibitors from seven counties near Fredericksburg. VCE requested that VDACS assist with checking that the livestock being exhibited met the exhibition's health requirements. Information was also distributed about biosecurity and drug residue avoidance.

In May, OVS staff conducted a Foaming Unit Training at the Rockingham County Fairgrounds. The purpose of this training was to exercise and maintain the KIFCO foaming units that are used during a poultry disease incident. Foaming is the industry and nationally recognized method of depopulation during an avian disease outbreak. Industry partners also participated and exercised their equipment. In the event of an avian disease outbreak, industry and VDACS would work together to humanely depopulate infected flocks as quickly as possible to minimize the transmission of disease.

In June, OVS staff assisted a Virginia-based turkey company with the depopulation of a farm premise in Rockingham County due to Turkey Coronavirus. Turkey Coronavirus is unrelated to human coronavirus but affects turkeys and is highly contagious. OVS staff was able to gain experience with the foaming equipment, which will prove to be valuable during an actual disease outbreak event.

In June, OVS staff attended the opening of a sheep and goat buying station in Russell County. Staff was present to monitor that incoming sheep and goats without official identification were properly identified upon arrival, records of identification applied were recorded, and to answer any questions from the buying station manager and consignors.

In Fiscal Year 2021, the OVS Animal Care Inspector performed inspections of 109 animal shelters.

DATE	ANIMAL SHELTER INSPECTIONS	CITATIONS	PENALTY REFERRAL
TOTAL FISCAL YTD	109	23	12

Division of Consumer Protection (DCP)

The Office of Pesticide Services (OPS) staff, in cooperation with the Virginia Pesticide Management Association, has continued to participate in in-person pesticide applicator testing events throughout Virginia. The events are intended to provide a pesticide applicator certification testing opportunity to prospective applicators who have had difficulty finding a venue to take the exams during the COVID-19 response and the resulting limited testing availability.

OPS field staff completed the inspection training offered by the Council on Licensure, Enforcement & Regulation (CLEAR). New OPS investigators participate in both the Basic and Specialized programs of CLEAR's National Certified Investigator Training. This year's program was conducted virtually and included live and self-paced components to train attendees in investigation and inspection techniques and procedures.

In June, as part of the project to offer online services to the pesticide industry, OPS staff conducted testing for an online pesticide applicator certification program. Once testing and implementation is complete, this program will allow for the online processing of applications for commercial applicators, registered technicians, and private applicators. In addition to pesticide applicator certification, online services will also include product registration and business licensing. This marks a significant move away from heavily paper-based processes. Online services are anticipated to be available to regulants beginning October 2021.

In June, OPS staff participated in the "Hispanic Field Day" coordinated by Virginia State University and the Small Farm Outreach Program. The event was hosted at Rosa's Garden in Hanover County. Staff from Rosa's Garden provided a tour of its farm operations, greenhouse, and packing shed to participants. OPS staff had the opportunity to share resources and general information on the federal Worker Protection Standard (WPS) with the participants. The WPS requires agricultural employers to ensure that all workers and handlers have completed WPS training within the last 12 months. The program was conducted in Spanish.

OPS was made aware of the availability of a \$28,426 grant from the U.S. Environmental Protection Agency (EPA), as part of the FY 21 Multipurpose Grant (MPG) program. VDACS intends to accept these funds to support activities associated with certain grant-funded environmental programs, specifically, Pesticide Cooperative Enforcement (Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) §23(a)(1)). Funding will be used to support OPS's e-Forms (electronic inspection and investigation forms) that are used exclusively by its Enforcement Program. e-Forms collects and stores inspection data electronically and provides access to existing data in the field. Full implementation of e-Forms has resulted in an overall reduction in inspection time, increased efficiency, and elimination of redundancy in data entry in addition to more consistency in data collection and accuracy. The increased efficiency of the inspection and the case development processes results in improved timeliness of

enforcement actions and enhanced reporting capabilities and information exchange between the state and EPA. For FY22, VDACS will utilize the MPG funding for maintenance and support services.

In June, Office of Plant Industry Services (OPIS) staff co-lead the first meeting of the Invasive Plant Species Working Group with staff from the Virginia Department of Conservation and Recreation (DCR). The work group was established by House Joint Resolution 527, which tasks VDACS and DCR with analyzing the sale and use of invasive plant species in the Commonwealth. Staff from DCR and VDACS provided background information on the Noxious Weeds Law, Regulations for Enforcement of the Noxious Weeds Law, and DCR's invasive plant species list. There were 73 people in attendance at this public meeting, 17 of whom were members of the work group.

In June, OPIS staff hosted a workgroup meeting of lawn care company stakeholders to discuss amendments to 2 VAC 5-405, *Regulations for the Application of Fertilizer to Nonagricultural Lands*. VDACS established the workgroup in order to obtain industry input into possible changes to penalties established in the regulation related to fertilizer applications to non-agricultural lands. Chapter 413 of the 2020 Acts of Assembly allowed the agency to seek such an increase in penalties that could be assessed on fertilizer contractor applicators or licensees not compliance with the regulation.

In June, OPIS staff participated in the dedication of a pollinator habitat at the Interstate 64 New Kent Safety Rest Area and Welcome Center. First Lady Northam and Secretary of Transportation Valentine officiated the ceremony as part of a celebration of Virginia Pollinator Week. The ceremony also included the planting of pollinator-friendly plants. The pollinator habitat at the rest area is the 23rd such site established as part of the Virginia Department of Transportation's Pollinator Habitat Program. This program creates natural areas of native plants along state-maintained roads and properties to provide habitats for pollinator species. The New Kent site included a variety of native plants beneficial to bees, butterflies, beetles, and birds. Approximately 50 invited guests attended the ceremony.

In May, OPIS was informed by USDA that more than 64,000 plants that originated from an out-of-state nursery that tested positive for *Phytophthora ramorum* had been shipped to Virginia. *Phytophthora ramorum* is a plant pathogen that causes the disease sudden oak death. OPIS staff received trace-forward information and visited all 64 retail locations that received the plants to survey for the disease. To date, no plants tested positive for *P. ramorum*. In a separate incident in June, OPIS staff was informed by USDA that 70 plants originating from an out-of-state nursery that tested positive for *P. ramorum* had been shipped to Virginia. OPIS staff received trace-forward information and visited the one retail location that had received the plants. No plants exhibited symptoms of the disease, and no plants tested positive for *P. ramorum*.

In May, OPIS staff attended a field training sponsored by the USDA Animal and Plant Health Inspection Services (APHIS) in Prince William County demonstrating how to inject Tree of Heaven (*Ailanthus altissima*) with a systemic insecticide for the control of spotted lanternfly (SLF). Tree of Heaven is the preferred host of the SLF. Tree injection eliminates any chance of the occurrence of drift, pesticide run off, or off-target treatments. The infested site in Prince William County is a wetland, which limits treatment options due to environmental concerns. The USDA SLF Science and Technology Working group recommended injecting Tree of Heaven with a systemic insecticide for control. Eight USDA staff and three VDACS staff were trained on this treatment technique.

In May, OPIS staff accompanied USDA-APHIS staff, who issued an Emergency Action Notice for brown garden snails being kept by a homeowner in Harrisonburg. USDA-APHIS notified OPIS staff that the brown garden snails were obtained through the internet. Four brown garden snails were confiscated and ultimately destroyed. Brown garden snails are considered plant pests and can cause damage on numerous host plants, including fruit trees, vegetables, ornamental plants, and agronomic crops like wheat and barley.

In June, OPIS staff were informed by USDA-APHIS that homeowners in Virginia recently purchased boxwood plants impacted by a newly-introduced invasive insect, the box tree moth (*Cydalima perspectalis*). The box tree moth is a damaging plant pest that feeds exclusively on boxwood plants, including wild and ornamental boxwoods. The insect can completely defoliate boxwood plants in the landscape and also attack and ultimately kill boxwood plants in the natural environment. Homeowners in Virginia received a total of 77 plants delivered to nine Virginia residences. USDA-APHIS staff will contact the homeowners and pursue eradication efforts. OPIS staff will work with USDA-APHIS staff to perform survey activities to visually inspect for the box tree moth on host and non-host plants.

In June, USDA-APHIS staff confirmed the identification of the elm zigzag sawfly (*Aproceros leucopoda*) that was found and collected in the City of Winchester by OPIS staff. The larvae of this insect feed on the leaves of elm trees in a unique, zigzagged pattern. This confirmation is the first official record of this insect in the U.S. USDA-APHIS will determine what action it will take against this insect. OPIS will also conduct its own review of this pest, which may include additional visual surveys. OPIS staff will also consult with the Virginia Department of Forestry to assess the threat to Virginia's forests.

In June, the Gypsy Moth Slow the Spread project completed its second aerial application of the mating disruption biocontrol for the gypsy moth on 11 treatment blocks in five counties (Russell, Washington, Smyth, Wythe, and Tazewell). Staff from OPIS monitored the applications as ground observers for the aircraft conducting the spray applications. Acreage treated in June was approximately 32,000 acres. Total acreage treated with the mating disruption biocontrol to date is approximately 74,000 acres. All Gypsy Moth Slow the Spread treatments in Virginia are now complete for the 2021 season.

In June, OPIS staff detected SLF nymphs on a trap in Lynchburg. This trap catch of SLF marks the first find for the locality. On June 9, OPIS staff performed a follow-up survey in the area around the trap and discovered that the local SLF population is limited to a small area, and no egg masses were found during the survey. OPIS staff plan to treat the SLF in the area and will increase trapping and outreach activities.

In July, OPIS staff monitored the treatment of giant hogweed (*Heracleum mantegazzianum*) at two sites, one in Clarke County and the other in Fauquier County, as part of a multi-year eradication project. These sites have each received three years of herbicide treatments, which have drastically reduced the populations of the plants at both locations. In 2018, approximately 130 giant hogweed plants were found at these locations, and in 2021, fewer than 20 plants were observed. Giant hogweed is a Tier One noxious weed in Virginia, and sap from this plant can cause burns and blisters if it comes into contact with exposed skin. OPIS will continue to treat these sites and other locations in Virginia where giant hogweed has been confirmed.

VIRGINIA ACTS OF ASSEMBLY -- 2020 RECONVENED SESSION

CHAPTER 1284

An Act to amend and reenact § 3.2-6500 of the Code of Virginia and to amend the Code of Virginia by adding sections numbered 3.2-5901.1 and 3.2-6501.1, relating to keeping of dogs, cats, and rabbits; State Animal Welfare Inspector; regulations.

[S 891]

Approved May 21, 2020

Be it enacted by the General Assembly of Virginia:

1. That § 3.2-6500 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding sections numbered 3.2-5901.1 and 3.2-6501.1 as follows:

§ 3.2-5901.1. State Animal Welfare Inspector.

The Commissioner shall employ and direct at least two licensed veterinary technicians, each of whom shall be known as the State Animal Welfare Inspector (the Inspector) and shall have the duty to carry out the tasks assigned to him pursuant to Chapter 65 (§ 3.2-6500 et seq.). The Inspector shall have the power to carry out the laws of the Commonwealth and the regulations of the Board and the Commissioner.

§ 3.2-6500. Definitions.

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

"Abandon" means to desert, forsake, or absolutely give up an animal without having secured another owner or custodian for the animal or by failing to provide the elements of basic care as set forth in § 3.2-6503 for a period of four consecutive days.

"Adequate care" or "care" means the responsible practice of good animal husbandry, handling, production, management, confinement, feeding, watering, protection, shelter, transportation, treatment, and, when necessary, euthanasia, appropriate for the age, species, condition, size and type of the animal and the provision of veterinary care when needed to prevent suffering or impairment of health.

"Adequate exercise" or "exercise" means the opportunity for the animal to move sufficiently to maintain normal muscle tone and mass for the age, species, size, and condition of the animal.

"Adequate feed" means access to and the provision of food that is of sufficient quantity and nutritive value to maintain each animal in good health; is accessible to each animal; is prepared so as to permit ease of consumption for the age, species, condition, size and type of each animal; is provided in a clean and sanitary manner; is placed so as to minimize contamination by excrement and pests; and is provided at suitable intervals for the species, age, and condition of the animal, but at least once daily, except as prescribed by a veterinarian or as dictated by naturally occurring states of hibernation or fasting normal for the species.

"Adequate shelter" means provision of and access to shelter that is suitable for the species, age, condition, size, and type of each animal; provides adequate space for each animal; is safe and protects each animal from injury, rain, sleet, snow, hail, direct sunlight, the adverse effects of heat or cold, physical suffering, and impairment of health; is properly lighted; is properly cleaned; enables each animal to be clean and dry, except when detrimental to the species; during hot weather, is properly shaded and does not readily conduct heat; during cold weather, has a windbreak at its entrance and provides a quantity of bedding material consisting of straw, cedar shavings, or the equivalent that is sufficient to protect the animal from cold and promote the retention of body heat; and, for dogs and cats, provides a solid surface, resting platform, pad, floormat, or similar device that is large enough for the animal to lie on in a normal manner and can be maintained in a sanitary manner. Under this chapter, shelters whose wire, grid, or slat floors (i) permit the animals' feet to pass through the openings, (ii) sag under the animals' weight, or (iii) otherwise do not protect the animals' feet or toes from injury are not adequate shelter.

"Adequate space" means sufficient space to allow each animal to (i) easily stand, sit, lie, turn about, and make all other normal body movements in a comfortable, normal position for the animal and (ii) interact safely with other animals in the enclosure. When an animal is tethered, "adequate space" means that the tether to which the animal is attached permits the above actions and is appropriate to the age and size of the animal; is attached to the animal by a properly applied collar, halter, or harness that is configured so as to protect the animal from injury and prevent the animal or tether from becoming entangled with other objects or animals, or from extending over an object or edge that could result in the strangulation or injury of the animal; is at least ten feet in length or three times the length of the animal, as measured from the tip of its nose to the base of its tail, whichever is greater, except when the animal is being walked on a leash or is attached by a tether to a lead line; does not, by its material, size, or weight or any other characteristic, cause injury or pain to the animal; does not weigh more than one-tenth of the animal's body weight; and does not have weights or other heavy objects attached to it.

The walking of an animal on a leash by its owner shall not constitute the tethering of the animal for the purpose of this definition. When freedom of movement would endanger the animal, temporarily and appropriately restricting movement of the animal according to professionally accepted standards for the species is considered provision of adequate space. The provisions of this definition that relate to tethering shall not apply to agricultural animals.

"Adequate water" means provision of and access to clean, fresh, potable water of a drinkable temperature that is provided in a suitable manner, in sufficient volume, and at suitable intervals appropriate for the weather and temperature, to maintain normal hydration for the age, species, condition, size and type of each animal, except as prescribed by a veterinarian or as dictated by naturally occurring states of hibernation or fasting normal for the species; and is provided in clean, durable receptacles that are accessible to each animal and are placed so as to minimize contamination of the water by excrement and pests or an alternative source of hydration consistent with generally accepted husbandry practices.

"Adoption" means the transfer of ownership of a dog or a cat, or any other companion animal, from a releasing agency to an individual.

"Agricultural animals" means all livestock and poultry.

"Ambient temperature" means the temperature surrounding the animal.

"Animal" means any nonhuman vertebrate species except fish. For the purposes of § 3.2-6522, animal means any species susceptible to rabies. For the purposes of § 3.2-6570, animal means any nonhuman vertebrate species including fish except those fish captured and killed or disposed of in a reasonable and customary manner.

"Animal control officer" means a person appointed as an animal control officer or deputy animal control officer as provided in § 3.2-6555.

"Boarding establishment" means a place or establishment other than a public or private animal shelter where companion animals not owned by the proprietor are sheltered, fed, and watered in exchange for a fee. "Boarding establishment" shall not include any private residential dwelling that shelters, feeds, and waters fewer than five companion animals not owned by the proprietor.

"Collar" means a well-fitted device, appropriate to the age and size of the animal, attached to the animal's neck in such a way as to prevent trauma or injury to the animal.

"Commercial dog breeder" means any person who, during any 12-month period, maintains 30 or more adult female dogs for the primary purpose of the sale of their offspring as ~~companion animals~~, *provided that a person who breeds an animal regulated under federal law as a research animal shall not be deemed to be a commercial dog breeder.*

"Companion animal" means any domestic or feral dog, domestic or feral cat, nonhuman primate, guinea pig, hamster, rabbit not raised for human food or fiber, exotic or native animal, reptile, exotic or native bird, or any feral animal or any animal under the care, custody, or ownership of a person or any animal that is bought, sold, traded, or bartered by any person. ~~Agricultural animals~~ *No agricultural animal, game species, or any animal regulated under federal law as a research animal shall not be considered a companion animal for the purposes of this chapter.*

"Consumer" means any natural person purchasing an animal from a dealer or pet shop or hiring the services of a boarding establishment. The term "consumer" shall not include a business or corporation engaged in sales or services.

"Dealer" means any person who in the regular course of business for compensation or profit buys, sells, transfers, exchanges, or barter companion animals. The following shall not be considered dealers: (i) any person who transports companion animals in the regular course of business as a common carrier or (ii) any person whose primary purpose is to find permanent adoptive homes for companion animals.

"Direct and immediate threat" means any clear and imminent danger to an animal's health, safety or life.

"Dump" means to knowingly desert, forsake, or absolutely give up without having secured another owner or custodian any dog, cat, or other companion animal in any public place including the right-of-way of any public highway, road or street or on the property of another.

"Emergency veterinary treatment" means veterinary treatment to stabilize a life-threatening condition, alleviate suffering, prevent further disease transmission, or prevent further disease progression.

"Enclosure" means a structure used to house or restrict animals from running at large.

"Euthanasia" means the humane destruction of an animal accomplished by a method that involves instantaneous unconsciousness and immediate death or by a method that involves anesthesia, produced by an agent that causes painless loss of consciousness, and death during such loss of consciousness.

"Exhibitor" means any person who has animals for or on public display, excluding an exhibitor licensed by the U.S. Department of Agriculture.

"Facility" means a building or portion thereof as designated by the State Veterinarian, other than a private residential dwelling and its surrounding grounds, that is used to contain a primary enclosure or enclosures in which animals are housed or kept.

"Farming activity" means, consistent with standard animal husbandry practices, the raising, management, and use of agricultural animals to provide food, fiber, or transportation and the breeding,

exhibition, lawful recreational use, marketing, transportation, and slaughter of agricultural animals pursuant to such purposes.

"Foster care provider" means a person who provides care or rehabilitation for companion animals through an affiliation with a public or private animal shelter, home-based rescue, releasing agency, or other animal welfare organization.

"Foster home" means a private residential dwelling and its surrounding grounds, or any facility other than a public or private animal shelter, at which site through an affiliation with a public or private animal shelter, home-based rescue, releasing agency, or other animal welfare organization care or rehabilitation is provided for companion animals.

"Groomer" means any person who, for a fee, cleans, trims, brushes, makes neat, manicures, or treats for external parasites any animal.

"Home-based rescue" means an animal welfare organization that takes custody of companion animals for the purpose of facilitating adoption and houses such companion animals in a foster home or a system of foster homes.

"Humane" means any action taken in consideration of and with the intent to provide for the animal's health and well-being.

"Humane investigator" means a person who has been appointed by a circuit court as a humane investigator as provided in § 3.2-6558.

"Humane society" means any incorporated, nonprofit organization that is organized for the purposes of preventing cruelty to animals and promoting humane care and treatment or adoptions of animals.

"Incorporated" means organized and maintained as a legal entity in the Commonwealth.

"Inspector" means a State Animal Welfare Inspector employed pursuant to § 3.2-5901.1 or his representative.

"Kennel" means any establishment in which five or more canines, felines, or hybrids of either are kept for the purpose of breeding, hunting, training, renting, buying, boarding, selling, or showing.

"Law-enforcement officer" means any person who is a full-time or part-time employee of a police department or sheriff's office that is part of or administered by the Commonwealth or any political subdivision thereof and who is responsible for the prevention and detection of crime and the enforcement of the penal, traffic or highway laws of the Commonwealth. Part-time employees are compensated officers who are not full-time employees as defined by the employing police department or sheriff's office.

"Livestock" includes all domestic or domesticated: bovine animals; equine animals; ovine animals; porcine animals; cervidae animals; caprae animals; animals of the genus *Lama* or *Vicugna*; ratites; fish or shellfish in aquaculture facilities, as defined in § 3.2-2600; enclosed domesticated rabbits or hares raised for human food or fiber; or any other individual animal specifically raised for food or fiber, except companion animals.

"New owner" means an individual who is legally competent to enter into a binding agreement pursuant to subdivision B 2 of § 3.2-6574, and who adopts or receives a dog or cat from a releasing agency.

"Ordinance" means any law, rule, regulation, or ordinance adopted by the governing body of any locality.

"Other officer" includes all other persons employed or elected by the people of Virginia, or by any locality, whose duty it is to preserve the peace, to make arrests, or to enforce the law.

"Owner" means any person who: (i) has a right of property in an animal; (ii) keeps or harbors an animal; (iii) has an animal in his care; or (iv) acts as a custodian of an animal.

"Pet shop" means a retail establishment where companion animals are bought, sold, exchanged, or offered for sale or exchange to the general public.

"Poultry" includes all domestic fowl and game birds raised in captivity.

"Primary enclosure" means any structure used to immediately restrict an animal or animals to a limited amount of space, such as a room, pen, cage, compartment, or hutch. For tethered animals, the term includes the shelter and the area within reach of the tether.

"Private animal shelter" means a facility operated for the purpose of finding permanent adoptive homes for animals that is used to house or contain animals and that is owned or operated by an incorporated, nonprofit, and nongovernmental entity, including a humane society, animal welfare organization, society for the prevention of cruelty to animals, or any other similar organization.

"Properly cleaned" means that carcasses, debris, food waste, and excrement are removed from the primary enclosure with sufficient frequency to minimize the animals' contact with the above-mentioned contaminants; the primary enclosure is sanitized with sufficient frequency to minimize odors and the hazards of disease; and the primary enclosure is cleaned so as to prevent the animals confined therein from being directly or indirectly sprayed with the stream of water, or directly or indirectly exposed to hazardous chemicals or disinfectants.

"Properly lighted" when referring to a facility means sufficient illumination to permit routine inspections, maintenance, cleaning, and housekeeping of the facility, and observation of the animals; to provide regular diurnal lighting cycles of either natural or artificial light, uniformly diffused throughout

the facility; and to promote the well-being of the animals.

"Properly lighted" when referring to a private residential dwelling and its surrounding grounds means sufficient illumination to permit routine maintenance and cleaning thereof, and observation of the companion animals; and to provide regular diurnal lighting cycles of either natural or artificial light to promote the well-being of the animals.

"Public animal shelter" means a facility operated by the Commonwealth, or any locality, for the purpose of impounding or sheltering seized, stray, homeless, abandoned, unwanted, or surrendered animals or a facility operated for the same purpose under a contract with any locality.

"Releasing agency" means (i) a public animal shelter or (ii) a private animal shelter, humane society, animal welfare organization, society for the prevention of cruelty to animals, or other similar entity or home-based rescue that releases companion animals for adoption.

"Research facility" means any place, laboratory, or institution licensed by the U.S. Department of Agriculture at which scientific tests, experiments, or investigations involving the use of living animals are carried out, conducted, or attempted.

"Sanitize" means to make physically clean and to remove and destroy, to a practical minimum, agents injurious to health.

"Sore" means, when referring to an equine, that an irritating or blistering agent has been applied, internally or externally, by a person to any limb or foot of an equine; any burn, cut, or laceration that has been inflicted by a person to any limb or foot of an equine; any tack, nail, screw, or chemical agent that has been injected by a person into or used by a person on any limb or foot of an equine; any other substance or device that has been used by a person on any limb or foot of an equine; or a person has engaged in a practice involving an equine, and as a result of such application, infliction, injection, use, or practice, such equine suffers, or can reasonably be expected to suffer, physical pain or distress, inflammation, or lameness when walking, trotting, or otherwise moving, except that such term does not include such an application, infliction, injection, use, or practice in connection with the therapeutic treatment of an equine by or under the supervision of a licensed veterinarian. Notwithstanding anything contained herein to the contrary, nothing shall preclude the shoeing, use of pads, and use of action devices as permitted by 9 C.F.R. Part 11.2.

"Sterilize" or "sterilization" means a surgical or chemical procedure performed by a licensed veterinarian that renders a dog or cat permanently incapable of reproducing.

"Treasurer" includes the treasurer and his assistants of each county or city or other officer designated by law to collect taxes in such county or city.

"Treatment" or "adequate treatment" means the responsible handling or transportation of animals in the person's ownership, custody or charge, appropriate for the age, species, condition, size and type of the animal.

"Veterinary treatment" means treatment by or on the order of a duly licensed veterinarian.

"Weaned" means that an animal is capable of and physiologically accustomed to ingestion of solid food or food customary for the adult of the species and has ingested such food, without nursing, for a period of at least five days.

§ 3.2-6501.1. Regulations for the keeping of certain animals.

A. *The Board shall, by July 1, 2022, and pursuant to the provisions of the Administrative Process Act (§ 2.2-4000 et seq.), adopt comprehensive regulations governing the keeping of dogs and cats by any pet shop. Such regulations shall not apply to agricultural animals.*

B. *The regulations adopted pursuant to subsection A shall require every regulated person or facility to register annually with the Department and shall prohibit operation without such registration. The fee for such annual registration shall be \$250 for any private, for-profit entity required to register. Such regulations shall provide that a pet shop shall not sell a dog or cat to any research facility.*

C. *The regulations adopted pursuant to subsection A shall establish standards consistent with the provisions of this chapter for the keeping of animals, including (i) standards of adequate care, exercise, feed, shelter, space, treatment, and water and (ii) standards of proper cleaning and lighting. Where necessary, the Board shall adopt specific regulations that apply only to a particular category of currently unregulated entity; however, the standards established for any two similar categories of regulated entity shall not differ significantly.*

D. *The Board shall issue guidance setting out the compliance requirements for each regulatory standard adopted pursuant to this section, providing information on what an entity in each category is expected to do to comply with a given regulatory standard.*

E. *Regulations adopted pursuant to this section shall require a State Animal Welfare Inspector employed pursuant to § 3.2-5901.1 to annually conduct at least one unannounced drop-in inspection of each pet shop.*

F. *Regulations adopted pursuant to this section shall establish remedies for each finding in a given inspection. Such remedies may include the cancellation of the registration granted pursuant to subsection B; the institution of a conditional probationary period, during which the regulated facility shall be allowed to continue to operate; the renewal of such registration for a limited period; or other actions.*

G. Nothing in this section or in any regulation adopted pursuant to this section shall be interpreted to limit the authority of any entity to punish or prosecute a person for a violation of any law or regulation or to prevent any person from alerting an animal control officer or law-enforcement officer regarding the condition or treatment of any animal.

Project 6715

Department Of Agriculture And Consumer Services

Promulgate regulation required by Chapter 1284 of the 2020 Acts of Assembly

Chapter 105

Regulations Pertaining to Pet Shops Selling Dogs or Cats [Under Development]

2VAC5-105-10. Definitions.

The following words and terms when used in this chapter shall have the following meanings unless the context clearly indicates otherwise:

"Animal care inspector" means the animal welfare inspector employed pursuant to § 3.2-5901.1 of the Code of Virginia, or as designated by the State Veterinarian.

"Department" means the Virginia Department of Agriculture and Consumer Services.

"Pet shop" means any retail, commercial, private, for-profit establishment that sells dogs or cats to the public and shall not include breeders, dealers, public or private animal shelters, home-based rescues, or residential establishments. Each location will constitute a separate pet shop.

2VAC5-105-20. Registration.

A. Each existing pet shop shall register and pay a \$250 registration fee with the department annually by July 1. A new pet shop that will sell dogs or cats shall register prior to offering dogs or cats for sale, and that registration shall be valid until July 1 of the following calendar year. A pet shop shall apply for a registration using a format developed by the State Veterinarian. A pet shop shall display its registration in a location visible to the public.

B. A pet shop that fails to register with or submit the registration fee to the department shall, upon written warning from the department, have a probationary period of 30 calendar days within which it must register with the department. If the pet shop fails to register with the department by

the conclusion of the probationary period, the pet shop shall not sell dogs or cats in the Commonwealth of Virginia.

2VAC5-105-30. Sale limitations.

A. No pet shop shall offer dogs or cats for sale to any research facility, as defined in § 3.2-6500 of the Code of Virginia.

2VAC5-105-40. Standards of care.

A. Each pet shop shall be kept in a clean, dry, and sanitary condition. Each pet shop shall provide enclosures that (i) can safely house dogs and cats and (ii) allow for adequate separation of animals of different sexes, ages, and temperaments. Each pet shop shall maintain dogs and cats in a manner that protects the animals against theft, injury, escape, and exposure to harmful substances.

B. Each pet shop shall ensure that all enclosures provide adequate shelter that is properly ventilated and that can be maintained at a comfortable temperature for the dogs and cats confined therein. An enclosure shall not be cleaned when occupied by a dog or cat unless the dog or cat can be further confined in a portion of the enclosure that precludes exposure to any cleaning agent, including water. The enclosure shall be thoroughly dry before it is returned to use. An enclosure shall be cleaned with a disinfectant or germicidal agent.

C. Each pet shop shall reasonably endeavor to ensure that drinking water is available to each dog or cat at all times unless otherwise ordered by a licensed veterinarian. Drinking water receptacles or bowls shall be secured to the enclosure in a fixed position or otherwise be of a design that cannot be tipped over by an animal and shall be maintained in sanitary condition.

D. Each pet shop shall ensure that dogs and cats are adequately and appropriately fed according to their age and that feed is stored in a manner that prevents spoilage, infestation, and contamination. All feed delivery utensils and receptacles shall be properly cleaned between uses.

E. Each pet shop shall ensure that each dog or cat is provided access to a resting platform or bedding as appropriate to its species, age, and condition.

F. Each pet shop shall provide adequate care to all dogs and cats offered for sale, including adequate exercise, adequate feed, adequate shelter, adequate space, treatment, adequate water, proper lighting, and proper cleaning, as these terms are defined in § 3.2-6500 of the Code of Virginia.

2VAC5-105-50. Inspection.

A. Each pet shop is subject to at least one unannounced annual inspection of dogs and cats during normal department business hours conducted by the animal care inspector.

B. The animal care inspector shall be granted access to the entire pet shop facility and any requested records.

C. Each pet shop shall be inspected for compliance with this chapter and Chapter 65 (§ 3.2-6500 et seq.) of Title 3.2 of the Code of Virginia.

2VAC5-105-60. Compliance.

A. A pet shop shall immediately correct any noncompliance that the animal care inspector identifies during an inspection. If the pet shop is not able to correct a noncompliance during the inspection, then a probationary period shall commence. If the animal care inspector identifies a noncompliance, he will provide the pet shop written notification within a reasonable time after the inspection. The notification will include a copy of the inspection report and an explanation of the cited noncompliance, including the relevant section of the Code of Virginia or Virginia Administrative Code. The pet shop shall correct the noncompliance to the satisfaction of the animal care inspector.

B. Upon gross, repeated violations or any noncompliance not corrected during a probationary period, the department may revoke a pet shop's registration following reasonable notice to the

registration holder and an opportunity for an informal fact finding proceeding pursuant to § 2.2-4019 of the Code of Virginia. If the department revokes a pet shop's registration, the pet shop shall not sell dogs or cats in the Commonwealth of Virginia and must post publicly visible signage provided by the department. The revocation of registration shall remain in effect until the pet shop corrects the noncompliance to the satisfaction of the animal care inspector.

C. The department may immediately temporarily suspend a pet shop's registration whenever the department has reason to believe that an animal health hazard exists or is imminent or when a pet shop willfully refuses to permit authorized inspection. If the department suspends a pet shop's registration, the pet shop shall not sell dogs or cats in the Commonwealth of Virginia and must post publicly visible signage provided by the department. The revocation of registration shall remain in effect until the pet shop corrects the noncompliance to the satisfaction of the animal care inspector.

Project 6716

Department Of Agriculture And Consumer Services

Amendment to penalties

Chapter 405

Regulations for the Application of Fertilizer to Nonagricultural Lands

2VAC5-405-110. Violations and penalties for noncompliance.

A. Any contractor-applicator or licensee that employs an individual who offers his services as a certified fertilizer applicator or who supervises the application of any fertilizer on nonagricultural land without obtaining prior registration certification from the commissioner shall be assessed a penalty of (i) \$250 for the first offense, (ii) \$500 for the second offense within any five year period, and (iii) \$1,000 for the third offense within any five year period.

B. Any contractor-applicator or licensee who does not maintain records as required by this chapter or submit the required annual report to the commissioner in accordance with 2 VAC 5-405-100 shall be (i) issued a warning for the first offense, (ii) assessed a penalty of \$250 for the second offense within any five year period, (iii) assessed a penalty of \$500 for the third offense within any five year period, and (iv) assessed a penalty of \$1,000 for the fourth offense within any five year period.

C. Any contractor-applicator or licensee who applies lawn fertilizer or lawn maintenance fertilizer at a rate, time, or method inconsistent with the standards and criteria for nutrient management promulgated pursuant to § 10.1-104.2 of the Code of Virginia shall be (i) issued a warning for the first offense, (ii) assessed a penalty of \$250 for the second offense within any five year period, (iii) assessed a penalty of \$500 for the third offense within any five year period, and (iv) assessed a penalty of \$1,000 for the fourth offense within any five year period.

D. Violations of the provisions of these regulations shall be handled in accordance with the provisions of the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia).

~~G.~~ E. Any penalties assessed for violations of this regulation shall be handled in accordance with a board-approved administrative process.

~~D.~~ F. In addition to any monetary penalties provided in this section, certified fertilizer applicators who violate any provision of this regulation may also be subject to the provisions of § 3.2-3621 of the Code of Virginia regarding the cancellation of certification.

VIRGINIA ACTS OF ASSEMBLY -- 2020 SESSION

CHAPTER 413

An Act to amend and reenact §§ 3.2-3602 and 3.2-3602.1 of the Code of Virginia, relating to lawn fertilizer contractor-applicators.

[S 849]

Approved March 23, 2020

Be it enacted by the General Assembly of Virginia:

1. That §§ 3.2-3602 and 3.2-3602.1 of the Code of Virginia are amended and reenacted as follows:

§ 3.2-3602. Local government regulation of fertilizer.

A. No locality shall regulate the registration, packaging, labeling, sale, use, application, storage or distribution of fertilizers except by ordinance as provided for in the requirements of the Chesapeake Bay Preservation Act (§ 62.1-44.15:67 et seq.), the Erosion and Sediment Control Law (§ 62.1-44.15:51 et seq.), the Stormwater Management Act (§ 62.1-44.15:24 et seq.) or other nonpoint source regulations adopted by the Department of Environmental Quality or the State Water Control Board. The provisions of this section shall not preempt the adoption, amendment, or enforcement of the Statewide Fire Prevention Code pursuant to § 27-97 and the Uniform Statewide Building Code pursuant to § 36-98.

B. *The Commissioner may enter into an agreement with a locality to provide oversight and data collection assistance related to the requirements of certified contractor-applicators pursuant to § 3.2-3602.1.*

§ 3.2-3602.1. Board authorized to adopt regulations for the application of regulated products to nonagricultural property; civil penalty.

A. The Board shall adopt regulations to certify the competence of (i) contractor-applicators, (ii) licensees, and (iii) employees, representatives, or agents of state agencies, localities, or other governmental entities who apply any regulated product to nonagricultural lands.

B. The regulations shall establish (i) training requirements; (ii) proper nutrient management practices in accordance with § 10.1-104.2, including soil analysis techniques, equipment calibration, and the timing of the application; and (iii) reporting requirements, including the submission of an annual report as specified by the Commissioner regarding the location of lawn fertilizer and lawn maintenance fertilizer applications. Contractor-applicators and licensees who apply lawn fertilizer and lawn maintenance fertilizer to more than a total of ~~400~~ 50 acres of nonagricultural lands annually and employees, representatives, or agents of state agencies, localities, or other governmental entities who apply lawn fertilizer and lawn maintenance fertilizer to nonagricultural lands shall submit an annual report on or before February 1 and on a form prescribed by the Commissioner. The annual report shall include the total acreage or square footage by zip code of the land receiving lawn fertilizer and lawn maintenance fertilizer in the preceding calendar year. The Department shall provide for optional reporting by electronic methods. The Department shall make publicly available every year the total acreage or square footage by zip code. Any personal information collected pursuant to this section shall be exempt from the Virginia Freedom of Information Act (§ 2.2-3700 et seq.), except that the Commissioner may release information that has been transformed into a statistical or aggregate form that does not allow identification of the persons who supplied, or are the subject of, particular information.

C. The Board may impose a civil penalty of up to ~~\$250~~ \$1,000 on any contractor-applicator or licensee who fails to comply with the regulations. The amount of the civil penalty shall be paid into the special fund established in § 3.2-3617.

D. The Board shall form a technical advisory committee of stakeholders. The Board shall consult with the technical advisory committee of stakeholders and the Department of Conservation and Recreation in the development of the regulations.

E. Any person who is subject to regulation and who applies any regulated product to nonagricultural lands shall comply with the regulations within 12 months of the effective date of the regulations.

F. Contractor-applicators and licensees in compliance with regulations adopted by the Board pursuant to this section shall not be subject to local ordinances governing the use or application of lawn fertilizer and lawn maintenance fertilizer.

Project 6869

Department Of Agriculture And Consumer Services

Fee amendments

2VAC5-675-30. Commercial applicator certificate fee.

Any person applying for a certificate as a commercial applicator shall pay to the department an initial nonrefundable certificate fee of \$100 ~~and a biennial nonrefundable renewal fee of \$100 thereafter~~. All certificates shall expire at midnight on June 30 in the second year after issuance unless suspended or revoked for cause. ~~All certificates~~ A certificate not suspended or revoked for cause will be renewed upon receipt of the biennial renewal fee. ~~If the applicator does not file an application for renewal of his certificate prior to COB submitted by June 30, the commissioner shall assess a late filing fee of 20% that shall be added to the renewal fee. The applicant shall pay the total fee prior to the commissioner's issuance of the renewal. However, if~~ If the certificate is not renewed within 60 days following the expiration of the certificate, then such certificate holder shall be required to take another examination. The fee for this reexamination or for any commercial applicator reexamination pursuant to subsection C of § 3.2-3930 of the Code of Virginia shall be \$100 and shall be nonrefundable. Any person applying to add a category or subcategory to his certificate shall pay to the department a nonrefundable fee of \$35. Federal, state, and local government employees certified to use, or supervise the use of, pesticides in government programs shall be exempt from any certification fees.

2VAC5-675-40. Registered technician certificate fee.

Any person applying for a certificate as a registered technician shall pay to the department an initial nonrefundable certificate fee of \$50 ~~and a biennial nonrefundable renewal fee of \$50 thereafter~~. All certificates shall expire at midnight on June 30 in the second year after issuance unless suspended or revoked for cause. A certificate not suspended or revoked for cause will be

renewed upon receipt of the biennial renewal fee. If the an application for renewal of any certificate is not filed prior to COB submitted by June 30, a late filing fee of 20% shall be assessed and added to the renewal fee and shall be paid by the applicant before the renewal shall be issued. If the certificate is not renewed within 60 days following the expiration of the certificate, then such certificate holder shall be required to take another examination. The fee for this reexamination pursuant to subsection C of § 3.2-3930 of the Code of Virginia shall be \$50 and shall be nonrefundable. Federal, state, and local government employees certified to use pesticides in government programs shall be exempt from any certification fees.

2VAC5-685-130. Renewal of certification.

A. Any certified private or commercial applicator or registered technician who desires to renew his certification shall do so biennially for the category or subcategory for which he is certified. A certified private or commercial applicator or registered technician must first attend board-approved recertification courses and submit proof of attendance at such courses, or be reexamined in basic pesticide safety and the categories desired for recertification. In addition to the requirement in this subsection, commercial applicators and registered technicians shall also ~~pay the biennial certificate fee and~~ submit an application for renewal before the commissioner will renew their certification.

B. A certified commercial applicator or registered technician must complete a board-approved recertification course that, at a minimum, addresses the following topics:

1. Legal aspects including:

- a. A reminder to follow label directions including those on use, storage, disposal, and transportation;
- b. A review of possible consequences of violating the law;

- c. A reminder that restricted use pesticides purchased under an applicator's certificate number must be for use by certified commercial applicators only;
 - d. A review of a certified commercial applicator's responsibilities in supervising the use of restricted use pesticides by noncertified applicators; and
 - e. A review of recordkeeping responsibilities of certified commercial applicators for restricted use pesticide applications; and
2. Category-related training including:
- a. A review of general safety for the applicator, coworkers, and the public;
 - b. A review of the environmental aspects of pesticide use, including impact on nontarget organisms, wildlife, domestic animals, groundwater, etc.;
 - c. A review of application techniques, including equipment, calibration, and maintenance;
 - d. A review of hazards, both personal safety and environmental, unique to that specific category;
 - e. A review of pertinent information regarding new chemistry or new formulations available that would be of use to applicators certified in the category;
 - f. A review of integrated pest management programs applicable to the category; and
 - g. A review of pests specific to category, including in-depth training on identification and control of selected specific pests. This section may be tailored to local needs.

C. A certified private applicator must complete a board-approved recertification course that, at a minimum, addresses the following topics:

1. General safety;
2. Legal update; and

3. Pest management and application technology including:

- a. A review of category-specific pest management and pesticide use patterns; and
- b. A review of category-specific pesticide application and handling technology.

D. A certified private or commercial applicator or registered technician may accumulate up to four years of credit by attending board-approved recertification courses.

E. Upon expiration of certification, the certificate of a private applicator, commercial applicator, or registered technician shall become invalid. Any private applicator, commercial applicator, or registered technician who desires to renew his certification, but fails to do so within 60 days after its expiration, shall be reexamined.

****The text below displays the proposed amendments as they would appear in the Virginia Administrative Code upon the effective date of the regulatory action to amend 2 VAC 5-675 and 2 VAC 5-685.***

2VAC5-675-30. Commercial applicator certificate fee.

Any person applying for a certificate as a commercial applicator shall pay to the department an initial nonrefundable certificate fee of \$100. All certificates shall expire on June 30 in the second year after issuance unless suspended or revoked for cause. A certificate not suspended or revoked for cause will be renewed upon receipt of an application for renewal submitted by June 30. If the certificate is not renewed within 60 days following the expiration of the certificate, then such certificate holder shall be required to take another examination. The fee for this reexamination or for any commercial applicator reexamination pursuant to subsection C of § 3.2-3930 of the Code of Virginia shall be \$100 and shall be nonrefundable. Any person applying to add a category or subcategory to his certificate shall pay to the department a nonrefundable fee of \$35. Federal, state, and local government employees certified to use, or supervise the use of, pesticides in government programs shall be exempt from any certification fees.

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2VAC5-685-130. Renewal of certification.

A. Any certified private or commercial applicator or registered technician who desires to renew his certification shall do so biennially for the category or subcategory for which he is certified. A certified private or commercial applicator or registered technician must first attend board-approved recertification courses and submit proof of attendance at such courses, or be reexamined in basic pesticide safety and the categories desired for recertification. In addition to the requirement in this subsection, commercial applicators and registered technicians shall also submit an application for renewal before the commissioner will renew their certification.

B. A certified commercial applicator or registered technician must complete a board-approved recertification course that, at a minimum, addresses the following topics:

1. Legal aspects including:

- a. A reminder to follow label directions including those on use, storage, disposal, and transportation;
- b. A review of possible consequences of violating the law;
- c. A reminder that restricted use pesticides purchased under an applicator's certificate number must be for use by certified commercial applicators only;
- d. A review of a certified commercial applicator's responsibilities in supervising the use of restricted use pesticides by noncertified applicators; and
- e. A review of recordkeeping responsibilities of certified commercial applicators for restricted use pesticide applications; and

2. Category-related training including:

- a. A review of general safety for the applicator, coworkers, and the public;
- b. A review of the environmental aspects of pesticide use, including impact on nontarget organisms, wildlife, domestic animals, groundwater, etc.;
- c. A review of application techniques, including equipment, calibration, and maintenance;
- d. A review of hazards, both personal safety and environmental, unique to that specific category;
- e. A review of pertinent information regarding new chemistry or new formulations available that would be of use to applicators certified in the category;
- f. A review of integrated pest management programs applicable to the category; and
- g. A review of pests specific to category, including in-depth training on identification and control of selected specific pests. This section may be tailored to local needs.

C. A certified private applicator must complete a board-approved recertification course that, at a minimum, addresses the following topics:

1. General safety;
2. Legal update; and
3. Pest management and application technology including:
 - a. A review of category-specific pest management and pesticide use patterns; and
 - b. A review of category-specific pesticide application and handling technology.

D. A certified private or commercial applicator or registered technician may accumulate up to four years of credit by attending board-approved recertification courses.


E. Upon expiration of certification, the certificate of a private applicator, commercial applicator, or registered technician shall become invalid. Any private applicator, commercial applicator, or registered technician who desires to renew his certification, but fails to do so within 60 days after its expiration, shall be reexamined.

Petition for new or amended regulation:

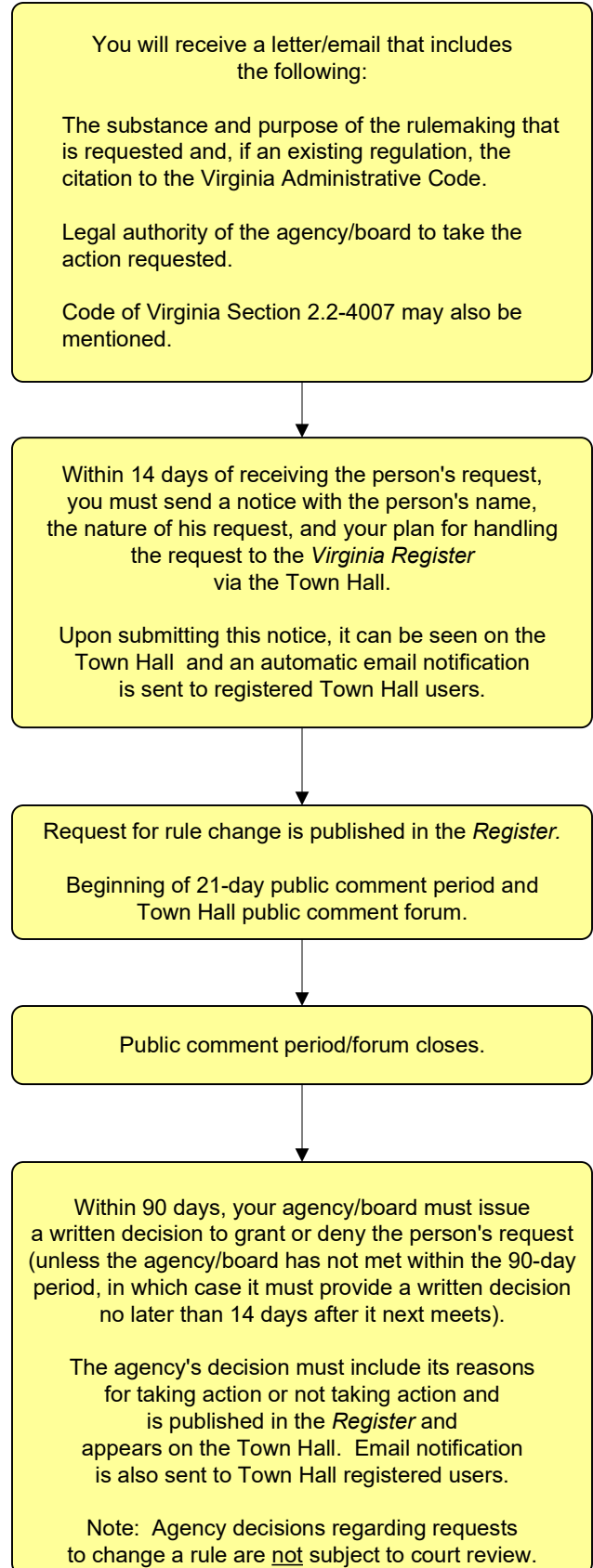
Information especially for
state agency staff

A petition for new or amended regulations is a request by a person(s) to an agency/board to develop a new regulation or amend an existing regulation.

Source: Section 2.2-4007 of the Code of Virginia


For more information, view the
Town Hall User Manual at
townhall.virginia.gov/UM/toc.cfm

The Process:



Petition for Rulemaking

david sacks <dmsacks@verizon.net>

Mon, Apr 5, 2021 at 5:39 AM

To: "Schmidt, Kevin" <kevin.schmidt@vdacs.virginia.gov>

Cc: david sacks <dmsacks@verizon.net>, jewel.bronaugh@vdacs.virginia.gov, chuckatuck@suffolkva.us

April 5, 2021

Kevin Schmidt

Director, Office of Policy, Planning, and Research

Virginia Department of Agriculture and Consumer Services

[102 Governor Street](#)

[Richmond, VA 23219](#)

Mr. Schmidt:

As a follow-up to my March 25, 2021 presentation to the Board of Agriculture and Consumer Services (the Board), I am submitting this Petition for New or Amended Regulations, pursuant to Code of Virginia Section 2.2-4007. I am requesting the Board promulgate regulations governing the issuance and provision of home service contracts to protect the tens of thousands of Virginia consumers who purchase these contracts each year.

In support of the petition requirements provided in Sec. 2.2-4007 A.(i), I submit the following, much of which was outlined in my March 25 testimony to the Board:

Home Service Contract Providers operating in Virginia are able to do so unlike any similar type company. They operate without any recourse for non compliance with the provisions of their contracts; there is no impact for failure to honor legitimate claims or other provisions of their policies, for failure to respond to inquiries in a timely manner, or for unwillingness to provide written or any responses of any type to policyholder inquiries. There is also no mechanism to require these companies to provide a process for appealing a decision for a denial of a claim. Furthermore, the Department, the Board, and the Commissioner, have no authority to intervene on Virginia consumers' behalf on these issues. These companies can receive and investigate a policyholder's claim, and there are no Virginia requirements with regard to responding to the claim filed. There are 38 such companies registered to do business in Virginia, but unlike insurance companies, there is nothing that controls how they operate in order to protect the Virginia consumer.

In support of the petition requirements provided in Sec. 2.2-4007 A.(ii), I submit the following:

The Code of Virginia Chapter 33.1, i.e., Section 59.1-434.4 subsection A provides the authority for the Board of Agriculture and Consumer Services to regulate Home Service providers as follows.

“The Board (that would this Board) is authorized to adopt reasonable regulations in order to implement provisions of this chapter relating to home service contracts. These regulations shall be adopted, amended, or repealed in accordance with the Administrative Process Act.”

Thank you for your consideration

David Sacks

11348 Long Meadow Drive

Glen Allen, VA 23059



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COMMONWEALTH of VIRGINIA

Jewel H. Bronaugh, Ph.D.
Commissioner

Department of Agriculture and Consumer Services

Division of Consumer Protection
Office of Charitable and Regulatory Programs

April 14, 2021

David Sacks
11348 Long Meadow Drive
Glen Allen, VA 23059

RE: Petition for Rulemaking

Dear Mr. Sacks:

Your recent correspondence requests that the Board of Agriculture and Consumer Services (Board) promulgate regulations governing the issuance and provision of home service contracts to protect the Virginia consumers who purchase these contracts. I directed staff to prepare and submit official notice of your petition for rulemaking for publication in the Virginia Register of Regulations within the 14 days required by the Virginia Administrative Process Act. Staff submitted notice of your petition to the Registrar on April 12, 2021. The notice will be published on May 10, 2021. The required public comment period will commence on May 10, 2021, and conclude on May 30, 2021. You may submit comments via the Virginia Regulatory TownHall at www.townhall.virginia.gov.

Following the 21-day period for public comment, I expect that your petition for rulemaking will be presented to the Board for consideration at its meeting in July 2021. Once the Board establishes the date and location for its July meeting, I will let you know.

Sincerely,

A handwritten signature in blue ink, appearing to read "Michael Menefee".

Michael Menefee
Program Manager

CC: Larry Nichols, Director, Division of Consumer Protection
Kevin Schmidt, Secretary, Board of Agriculture and Consumer Services



Secretariat Agriculture and Forestry

Agency Department of Agriculture and Consumer Services

Board Department of Agriculture and Consumer Services

Petition 342

Petition Information	
Petition Title	Home Service Contract Provider Regulation
Date Filed	4/12/2021 [Transmittal Sheet]
Petitioner	David Sacks
Petitioner's Request	Petitioner requests that the Board of Agriculture and Consumer Services promulgate regulations governing the issuance and provision of home service contracts to protect the Virginia consumers who purchase these contracts.
Agency's Plan	The Board of Agriculture and Consumer Services will consider this request at its next scheduled meeting following the public comment period. This meeting will occur on July 20, 2021.
Comment Period	Ended 5/30/2021 1 comments
Agency Decision	Pending

Contact Information	
Name / Title:	Michael Menefee / <i>Program Mgr, Charitable and Regulatory Programs</i>
Address:	P. O. Box 1163 Richmond, 23218
Email Address:	Michael.Menefee@vdacs.virginia.gov
Telephone:	(804)786-3983 FAX: (804)371-7479 TDD: (800)828-1120

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Agency

Department of Agriculture and Consumer Services

Board

Department of Agriculture and Consumer Services

Chapter

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Commenter: David Sacks

5/13/21 8:08 pm

Support the development of such regulations

This is a very important step for the protection of Virginia Consumers. Currently there are no regulations that govern the operation of these companies in Virginia, and consequently limited or no protection for Virginia homebuyers and homeowners. Homebuyers, almost have no say in the selection of the company that "covers" their house, so have no opportunity to perform due diligence to determine if these companies have decent business practices. These companies are able to deny claims based on however they choose to interpret their contracts, they are not required to have an appeal process for denials, they are under no obligation to even respond to customer inquiries in a reasonable time or fashion. And these are companies that are under contract to assist homeowners with major house system issues.

CommentID: **98534**

Chapter 33.1. Home Service Contract Providers

§ 59.1-434.1. Definitions

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

"Board" means the Board of Agriculture and Consumer Services.

"Commissioner" means the Commissioner of Agriculture and Consumer Services or his designee.

"Home service contract" means a contract or agreement for a separately stated consideration for any duration to perform the service, repair, replacement, or maintenance of property or to indemnify for the costs of service, repair, replacement, or maintenance, for the operational failure of any property due to a defect in materials, workmanship, inherent defect, or normal wear and tear, with or without additional provisions for incidental payment of indemnity under limited circumstances. Home service contracts may provide for the service, repair, replacement, or maintenance of property for damage resulting from power surges or interruption and for accidental damage from handling. Home service contracts may provide roof leak coverage.

"Property" means any component, part, appliance, or household system of a residential property that is covered by a contract, whether such component, part, appliance, or household system is personal property or is affixed as real property to the covered residential property.

"Provider" means a person that is contractually obligated to the purchaser under the terms of the home service contract.

"Purchaser" means a person who enters into a home service contract with a provider.

2017, c. 727.

§ 59.1-434.2. Registration; fees

A. It shall be unlawful for any provider to offer, advertise, or execute or cause to be executed by the purchaser any home service contract for property in the Commonwealth unless the provider at the time of the solicitation, offer, advertisement, sale, or execution of a contract has been properly registered with the Commissioner. The registration application and renewal shall be on a form provided by the Commissioner and shall (i) disclose the address, ownership, and nature of business of the provider; (ii) be renewed annually on July 1; (iii) be accompanied by a fee of \$300 per registration and annual renewal; and (iv) be accompanied by an audited financial statement per registration and annual renewal that is prepared in accordance with generally accepted accounting principles or statutory accounting principles, at the election of the provider. A registration application or registration renewal shall not be considered filed until all required information and fees are received by the Commissioner and taxes are paid pursuant to Article 10 (§ 58.1-400 et seq.) of Chapter 3 of Title 58.1. Notwithstanding § 58.1-3 or any other provision of law, the Department of Taxation and the Department of Agriculture and Consumer Services may exchange information regarding providers for purposes of enforcing the provisions of this chapter. A provider shall not be required by this chapter to file with the Commissioner or any other entity or agency copies of the provider's home service contract forms or information regarding the rates or charges under the provider's home service contracts. Any provider that fails to register prior to the sale of a home service contract shall pay a late filing fee of \$100 for

each 30-day period, or portion thereof, that the registration is late. A provider that fails to timely renew its registration shall pay a late fee of \$50 for each 30-day period, or portion thereof, that the annual renewal filing is late. The late fees authorized by this subsection shall be in addition to all other penalties authorized by law.

B. All fees shall be remitted to the State Treasurer and shall be placed to the credit and in the special fund of the Department of Agriculture and Consumer Services to be used in the administration of this chapter.

2017, c. 727.

§ 59.1-434.3. Bond or letter of credit required

A. Every provider shall maintain a funded reserve account for its obligations under its home service contracts issued and outstanding in the Commonwealth. The reserves shall not be less than 40 percent of gross consideration received, less claims paid, on the sale of the home service contract for all in-force home service contracts sold in the Commonwealth.

B. Each provider, before it is registered under § 59.1-434.2, shall file and maintain with the Commissioner, in form and substance satisfactory to him, a bond with corporate surety, from a company authorized to transact business in the Commonwealth or a letter of credit from a bank insured by the Federal Deposit Insurance Corporation, in the amount of \$10,000. Additional bond or letter of credit amounts shall be similarly filed with the Commissioner and shall be adjusted from time to time, in accordance with the following schedule:

a	Total Amount of Unexpired Home Service Contracts	Amount of Bond or Letter of Credit
b	\$50,001 to \$300,000	\$40,000
c	\$300,001 to \$750,000	\$65,000
d	\$750,001 or more	\$90,000

The total amount of unexpired home service contracts shall be the total consideration paid by all purchasers to the provider for all home service contracts currently in effect. The bond or letter of credit required by this subsection shall be in favor of the Commonwealth for the benefit of purchasers of home service contracts for property in the event that the provider does not fulfill its obligations under such home service contracts for any reason, including insolvency or bankruptcy.

C. The aggregate liability of the bond or letter of credit to all persons for all breaches of the conditions of the bond or letter of credit shall in no event exceed the amount of the bond or letter of credit. The bond or letter of credit shall not be cancelled or terminated except with the consent of the Commissioner.

D. In lieu of compliance with subsections A and B, a provider may demonstrate financial responsibility by filing with the Commissioner a copy of a liability insurance policy issued by an insurer authorized to transact business in the Commonwealth and that covers 100 percent of the provider's home service contract liabilities, including the administration of claims and the cost for such administration. Reimbursement insurance policies filed pursuant to this section may not be canceled by either the provider or the issuing insurer without providing 60 days' notice to the Commissioner.

§ 59.1-434.4. Regulations

A. The Board is authorized to adopt reasonable regulations in order to implement provisions in this chapter relating to home service contracts. These regulations shall be adopted, amended, or repealed in accordance with the Administrative Process Act (§ 2.2-4000 et seq.).

B. Without limiting the authority of the Board under subsection A, the Board is authorized to adopt reasonable regulations that designate services, in addition to those enumerated in the definition of home service contract in § 59.1-434.1, that may be provided under a home service contract, provided that the designation of the additional services is not inconsistent with the provisions of this chapter.

2017, c. 727.

§ 59.1-434.5. Investigations

A. The Commissioner may, with respect to home service contracts:

1. Make necessary public and private investigations within or without the Commonwealth to determine whether any person has violated the provisions of this chapter or any rule, regulation, or order issued pursuant to this chapter;
2. Require or permit any person to file a statement in writing, under oath or otherwise as the Commissioner determines, as to all facts and circumstances concerning the matter under investigation; and
3. Administer oaths or affirmations, and upon motion or upon request of any party, may subpoena witnesses, compel their attendance, take evidence, and require the production of any matter that is relevant to the investigation, including the existence, description, nature, custody, condition, and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of relevant facts, or any other matter reasonably calculated to lead to the discovery of material evidence.

B. Any proceeding or hearing of the Commissioner pursuant to this chapter, in which witnesses are subpoenaed and their attendance required for evidence to be taken, or any matter produced to ascertain material evidence, shall take place within the City of Richmond.

C. If any person fails to obey the subpoena or to answer questions propounded by the Commissioner and upon reasonable notice to all persons affected thereby, the Commissioner may apply to the Circuit Court of the City of Richmond for an order compelling compliance.

2017, c. 727.

§ 59.1-434.6. Production of records

Every provider, upon written request of the Commissioner, shall make available to the Commissioner its home service contract records for inspection and copying to enable the Commissioner to reasonably determine compliance with this chapter. Every provider shall maintain a true copy of each contract executed between the provider and a purchaser, and each contract shall be maintained for its term.

2017, c. 727.

§ 59.1-434.7. Home service contracts not insurance; exemptions

A. Home service contracts are (i) not contracts of insurance in the Commonwealth and (ii) not subject to regulation under Title 38.2.

B. Any provider that has a net worth, on a stand-alone basis or together with a parent company, calculated in accordance with generally accepted accounting principles or statutory accounting principles at the election of the provider, in excess of \$100 million shall be subject to neither (i) the provisions of this chapter nor (ii) the provisions of Title 38.2.

C. Any matter subject to the insurance regulatory authority of the State Corporation Commission pursuant to Title 38.2 shall not be subject to the provisions of this chapter.

D. Providers that comply with this chapter shall not be subject to the provisions of Title 38.2.

E. Employees of providers that comply with this chapter and licensed real estate agents or other contractors operating under a written agreement with such providers that market, sell, or offer to sell home service contracts on behalf of the registered provider shall be subject to neither (i) the provisions of this chapter nor (ii) the provisions of Title 38.2.

F. The provisions of this chapter shall not apply to:

1. Any extended service contract providers offering extended service contracts on consumer products, as those terms are defined in § 59.1-435, that are registered and regulated pursuant to Chapter 34 (§ 59.1-435 et seq.); or

2. Any maintenance and service agreement (i) pertaining to a heating, ventilation, air conditioning, or cooling system entered into between a seller of petroleum heating oil, propane, or natural gas and the seller's customer if the seller does not engage in selling home service contracts for property other than heating, ventilation, air conditioning, or cooling systems or (ii) entered into by a person who provides telecommunications services in the Commonwealth to which the service contract, guarantee or warranty relates.

2017, c. 727.

§ 59.1-434.8. Violations of chapter; penalty

A. Any provider that knowingly and willfully violates any provision of this chapter is guilty of a Class 3 misdemeanor.

B. Any violation of the provisions of this chapter shall constitute a prohibited practice pursuant to the provisions of § 59.1-200 and shall be subject to any and all of the enforcement provisions of the Virginia Consumer Protection Act (§ 59.1-196 et seq.).

2017, c. 727.

Code of Virginia

Title 3.2. Agriculture, Animal Care, and Food

Subtitle I. General Provisions; Protection and Promotion of Agriculture

Chapter 1. General Provisions

Article 1. Department and Commissioner of Agriculture and Consumer Services

§ 3.2-102. General powers and duties of the Commissioner

A. The Commissioner shall be vested with the powers and duties set out in § 2.2-601, the powers and duties herein provided, and such other powers and duties as may be prescribed by law, including those prescribed in Title 59.1. He shall be the executive officer of the Board, and shall see that its orders are carried out. He shall see to the proper execution of laws relating to the Department. Unless the Governor expressly reserves such power to himself, the Commissioner shall promote, protect, and develop the agricultural interests of the Commonwealth. The Commissioner shall develop, implement, and maintain programs within the Department including those that promote the development and marketing of the Commonwealth's agricultural products in domestic and international markets, including promotions, market development and research, marketing assistance, market information, and product grading and certification; promote the creation of new agribusiness including new crops, biotechnology and new uses of agricultural products, and the expansion of existing agribusiness within the Commonwealth; develop, promote, and maintain consumer protection programs that protect the safety and quality of the Commonwealth's food supply through food and dairy inspection activities, industry and consumer education, and information on food safety; preserve the Commonwealth's agricultural lands; ensure animal health and protect the Commonwealth's livestock industries through disease control and surveillance, maintaining animal health diagnostic laboratories, and encouraging the humane treatment and care of animals; protect public health and the environment through regulation and proper handling of pesticides, agricultural stewardship, and protection of endangered plant and insect species; protect crop and plant health and productivity; ensure consumer protection and fair trade practices in commerce; develop plans and emergency response protocols to protect the agriculture industry from bioterrorism, plant and animal diseases, and agricultural pests; assist as directed by the Governor in the Commonwealth's response to natural disasters; develop and implement programs and inspection activities to ensure that the Commonwealth's agricultural products move freely in trade domestically and internationally; and enter into agreements with federal, state, and local governments, land grant universities, and other organizations that include marketing, plant protection, pest control, pesticides, and meat and poultry inspection.

B. In addition, the Commissioner shall:

1. Establish and maintain a farm-to-school website. The purpose of the website shall be to facilitate and promote the purchase of Virginia farm products by schools, universities, and other educational institutions under the jurisdiction of the State Department of Education. The website shall present such current information as the availability of Virginia farm products, including the types and amount of products, and the names of and contact information for farmers, farm organizations, and businesses marketing such products; and
2. (Effective until July 1, 2021) Establish and operate a nonprofit, nonstock corporation under Chapter 10 (§ 13.1-801 et seq.) of Title 13.1 as a public instrumentality exercising public and essential governmental functions to promote, develop, and sustain markets for licensed Virginia

wineries and farm wineries, as defined in § 4.1-100. Such corporation shall provide wholesale wine distribution services for wineries and farm wineries licensed in accordance with § 4.1-207. The board of directors of such corporation shall be composed of the Commissioner and four members appointed by the Board, including one owner or manager of a winery or farm winery licensee that is not served by a wholesaler when the owner or manager is appointed to the board; one owner or manager of a winery or farm winery licensee that produces no more than 10,000 cases per year; and two owners or managers of wine wholesaler licensees. In making appointments to the board of directors, the Board shall consider nominations of winery and farm winery licensees submitted by the Virginia Wineries Association and wine wholesale licensees submitted by the Virginia Wine Wholesalers Association. The Commissioner shall require such corporation to report to him at least annually on its activities, including reporting the quantity of wine distributed for each winery and farm winery during the preceding year. The provisions of the Virginia Public Procurement Act shall not apply to the establishment of such corporation nor to the exercise of any of its powers granted under this section.

2. (Effective July 1, 2021) Establish and operate a nonprofit, nonstock corporation under Chapter 10 (§ 13.1-801 et seq.) of Title 13.1 as a public instrumentality exercising public and essential governmental functions to promote, develop, and sustain markets for licensed Virginia wineries and farm wineries, as defined in § 4.1-100. Such corporation shall provide wholesale wine distribution services for wineries and farm wineries licensed in accordance with § 4.1-206.1. The board of directors of such corporation shall be composed of the Commissioner and four members appointed by the Board, including one owner or manager of a winery or farm winery licensee that is not served by a wholesaler when the owner or manager is appointed to the board; one owner or manager of a winery or farm winery licensee that produces no more than 10,000 cases per year; and two owners or managers of wine wholesaler licensees. In making appointments to the board of directors, the Board shall consider nominations of winery and farm winery licensees submitted by the Virginia Wineries Association and wine wholesale licensees submitted by the Virginia Wine Wholesalers Association. The Commissioner shall require such corporation to report to him at least annually on its activities, including reporting the quantity of wine distributed for each winery and farm winery during the preceding year. The provisions of the Virginia Public Procurement Act shall not apply to the establishment of such corporation nor to the exercise of any of its powers granted under this section.

Code 1950, §§ 3-7, 3-9, 3-13; 1966, c. 702, §§ 3.1-8, 3.1-10, 3.1-14; 1971, Ex. Sess., c. 34; 1975, c. 260; 1977, c. 186; 1978, cc. 219, 540; 1982, c. 150; 1985, c. 397; 1993, c. 455; 1994, cc. 261, 370; 1995, c. 10; 1996, c. 996; 2005, c. 633; 2007, cc. 352, 870, 932, §§ 3.1-14.4, 3.1-14.01; 2008, c. 860; 2012, cc. 803, 835; 2020, cc. 1113, 1114.

The chapters of the acts of assembly referenced in the historical citation at the end of this section(s) may not constitute a comprehensive list of such chapters and may exclude chapters whose provisions have expired.



May 17, 2021

Dear Ms. Hill,

Virginia Wineries Association, a trade association representing Virginia's farm wineries and cideries, would like to nominate Stan Joynes, Chief Executive Officer and an owner of Valley Roads Vineyards, LC. for appointment to the Virginia Wine Distribution Center board. Mr. Joynes uses Virginia Wine Distribution Company, and no other distributors. Valley Road Vineyards produces less at 10,000 cases of wine annually.

Mr. Joynes was the cofounder and Shareholder of LeClairRyan (formerly LeClair & Joynes). Given his legal and winery experience, Virginia Wineries Association whole heartedly endorses and nominates Stan Joynes for the seat of the Virginia Wine Distribution Company vacated by Randy Philips, Cave Ridge Vineyard.

We appreciate the time and consideration of the board. Please feel free to contact us with any questions.

Respectfully,

A handwritten signature in black ink that reads 'Laurie P. Aldrich'.

Laurie P. Aldrich
Executive Director
Virginia Wineries Association

Code of Virginia
 Title 2.2. Administration of Government
 Chapter 37. Virginia Freedom of Information Act

§ 2.2-3708.2. Meetings held through electronic communication means.

A. The following provisions apply to all public bodies:

1. Subject to the requirements of subsection C, all public bodies may conduct any meeting wherein the public business is discussed or transacted through electronic communication means if, on or before the day of a meeting, a member of the public body holding the meeting notifies the chair of the public body that:

a. Such member is unable to attend the meeting due to (i) a temporary or permanent disability or other medical condition that prevents the member's physical attendance or (ii) a family member's medical condition that requires the member to provide care for such family member, thereby preventing the member's physical attendance; or

b. Such member is unable to attend the meeting due to a personal matter and identifies with specificity the nature of the personal matter. Participation by a member pursuant to this subdivision b is limited each calendar year to two meetings or 25 percent of the meetings held per calendar year rounded up to the next whole number, whichever is greater.

2. If participation by a member through electronic communication means is approved pursuant to subdivision 1, the public body holding the meeting shall record in its minutes the remote location from which the member participated; however, the remote location need not be open to the public. If participation is approved pursuant to subdivision 1 a, the public body shall also include in its minutes the fact that the member participated through electronic communication means due to (i) a temporary or permanent disability or other medical condition that prevented the member's physical attendance or (ii) a family member's medical condition that required the member to provide care for such family member, thereby preventing the member's physical attendance. If participation is approved pursuant to subdivision 1 b, the public body shall also include in its minutes the specific nature of the personal matter cited by the member.

If a member's participation from a remote location pursuant to subdivision 1 b is disapproved because such participation would violate the policy adopted pursuant to subsection C, such disapproval shall be recorded in the minutes with specificity.

3. Any public body, or any joint meetings thereof, may meet by electronic communication means without a quorum of the public body physically assembled at one location when the Governor has declared a state of emergency in accordance with § [44-146.17](#) or the locality in which the public body is located has declared a local state of emergency pursuant to § [44-146.21](#), provided that (i) the catastrophic nature of the declared emergency makes it impracticable or unsafe to assemble a quorum in a single location and (ii) the purpose of the meeting is to provide for the continuity of operations of the public body or the discharge of its lawful purposes, duties, and responsibilities. The public body convening a meeting in accordance with this subdivision shall:

a. Give public notice using the best available method given the nature of the emergency, which notice shall be given contemporaneously with the notice provided to members of the public body conducting the meeting;

b. Make arrangements for public access to such meeting through electronic communication means, including videoconferencing if already used by the public body;

c. Provide the public with the opportunity to comment at those meetings of the public body when public comment is customarily received; and

d. Otherwise comply with the provisions of this chapter.

The nature of the emergency, the fact that the meeting was held by electronic communication means, and the type of electronic communication means by which the meeting was held shall be stated in the minutes.

The provisions of this subdivision 3 shall be applicable only for the duration of the emergency declared pursuant to § [44-146.17](#) or [44-146.21](#).

B. The following provisions apply to regional public bodies:

1. Subject to the requirements in subsection C, regional public bodies may also conduct any meeting wherein the public business is discussed or transacted through electronic communication means if, on the day of a meeting, a member of a regional public body notifies the chair of the public body that such member's principal residence is more than 60 miles from the meeting location identified in the required notice for such meeting.

2. If participation by a member through electronic communication means is approved pursuant to this subsection, the public body holding the meeting shall record in its minutes the remote location from which the member participated; however, the remote location need not be open to the public.

If a member's participation from a remote location is disapproved because such participation would violate the policy adopted pursuant to subsection C, such disapproval shall be recorded in the minutes with specificity.

C. Participation by a member of a public body in a meeting through electronic communication means pursuant to subdivisions A 1 and 2 and subsection B shall be authorized only if the following conditions are met:

1. The public body has adopted a written policy allowing for and governing participation of its members by electronic communication means, including an approval process for such participation, subject to the express limitations imposed by this section. Once adopted, the policy shall be applied strictly and uniformly, without exception, to the entire membership and without regard to the identity of the member requesting remote participation or the matters that will be considered or voted on at the meeting;

2. A quorum of the public body is physically assembled at one primary or central meeting location; and

3. The public body makes arrangements for the voice of the remote participant to be heard by all persons at the primary or central meeting location.

D. The following provisions apply to state public bodies:

1. Except as provided in subsection D of § [2.2-3707.01](#), state public bodies may also conduct any meeting wherein the public business is discussed or transacted through electronic communication means, provided that (i) a quorum of the public body is physically assembled at one primary or central meeting location, (ii) notice of the meeting has been given in accordance with subdivision 2, and (iii) members of the public are provided a substantially equivalent electronic communication means through which to witness the meeting. For the purposes of this subsection, "witness" means observe or listen.

If a state public body holds a meeting through electronic communication means pursuant to this subsection, it shall also hold at least one meeting annually where members in attendance at the meeting are physically assembled at one location and where no members participate by electronic communication means.

2. Notice of any regular meeting held pursuant to this subsection shall be provided at least three working days in advance of the date scheduled for the meeting. Notice, reasonable under the circumstance, of special, emergency, or continued meetings held pursuant to this section shall be given contemporaneously with the notice provided to members of the public body conducting the meeting. For the purposes of this subsection, "continued meeting" means a meeting that is continued to address an emergency or to conclude the agenda of a meeting for which proper notice was given.

The notice shall include the date, time, place, and purpose for the meeting; shall identify the primary or central meeting location and any remote locations that are open to the public pursuant to subdivision 4; shall include notice as to the electronic communication means by which members of the public may witness the meeting; and shall include a telephone number that may be used to notify the primary or central meeting location of any interruption in the telephonic or video broadcast of the meeting. Any interruption in the telephonic or video broadcast of the meeting shall result in the suspension of action at the meeting until repairs are made and public access is restored.

3. A copy of the proposed agenda and agenda packets and, unless exempt, all materials that will be distributed to members of a public body for a meeting shall be made available for public inspection at the same time such documents are furnished to the members of the public body conducting the meeting.

4. Public access to the remote locations from which additional members of the public body participate through electronic communication means shall be encouraged but not required. However, if three or more members are gathered at the same remote location, then such remote location shall be open to the public.

5. If access to remote locations is afforded, (i) all persons attending the meeting at any of the remote locations shall be afforded the same opportunity to address the public body as persons attending at the primary or central location and (ii) a copy of the

proposed agenda and agenda packets and, unless exempt, all materials that will be distributed to members of the public body for the meeting shall be made available for inspection by members of the public attending the meeting at any of the remote locations at the time of the meeting.

6. The public body shall make available to the public at any meeting conducted in accordance with this subsection a public comment form prepared by the Virginia Freedom of Information Advisory Council in accordance with § [30-179](#).

7. Minutes of all meetings held by electronic communication means shall be recorded as required by § [2.2-3707](#). Votes taken during any meeting conducted through electronic communication means shall be recorded by name in roll-call fashion and included in the minutes. For emergency meetings held by electronic communication means, the nature of the emergency shall be stated in the minutes.

8. Any authorized state public body that meets by electronic communication means pursuant to this subsection shall make a written report of the following to the Virginia Freedom of Information Advisory Council by December 15 of each year:

- a. The total number of meetings held that year in which there was participation through electronic communication means;
- b. The dates and purposes of each such meeting;
- c. A copy of the agenda for each such meeting;
- d. The primary or central meeting location of each such meeting;
- e. The types of electronic communication means by which each meeting was held;
- f. If possible, the number of members of the public who witnessed each meeting through electronic communication means;
- g. The identity of the members of the public body recorded as present at each meeting, and whether each member was present at the primary or central meeting location or participated through electronic communication means;
- h. The identity of any members of the public body who were recorded as absent at each meeting and any members who were recorded as absent at a meeting but who monitored the meeting through electronic communication means;
- i. If members of the public were granted access to a remote location from which a member participated in a meeting through electronic communication means, the number of members of the public at each such remote location;
- j. A summary of any public comment received about the process of conducting a meeting through electronic communication means; and
- k. A written summary of the public body's experience conducting meetings through electronic communication means, including its logistical and technical experience.

E. Nothing in this section shall be construed to prohibit the use of interactive audio or video means to expand public participation.

2018, cc. [55](#), [56](#); 2019, c. [359](#); 2021, Sp. Sess. I, cc. [33](#), [490](#).