

BOARD OF AGRICULTURE AND CONSUMER SERVICES

**Patrick Henry Building
East Reading Room
1111 E. Broad Street
Richmond, Virginia**

Thursday, March 23, 2023

9 A.M.

1. Call to order
2. Roll call
3. Approval of draft Board meeting minutes from December 9, 2022
4. Board member reports
5. Commissioner's report to Board – Joseph Guthrie, Commissioner of Agriculture and Consumer Services
6. Proposed stage – 2 VAC 5-390 (Rules and Regulations for the Enforcement of the Virginia Seed Law) – David Gianino, Program Manager, Office of Plant Industry Services
7. Proposed fast-track action to repeal 2 VAC 5-318 (Rules and Regulations for Enforcement of the Virginia Pest Law – Thousand Cankers Disease) – David Gianino, Program Manager, Office of Plant Industry Services
8. Virginia Winery Distribution Company board appointee – Joseph Guthrie, Commissioner of Agriculture and Consumer Services
9. Electronic meeting policy adoption – Kevin Schmidt, Director, Office of Policy, Planning, and Research
10. New business
11. Future Board meetings
12. Public comment period
13. Adjourn

DRAFT MINUTES

Board of Agriculture and Consumer Services
Patrick Henry Building
East Reading Room
1111 E. Broad Street
Richmond, Virginia

Friday, December 9, 2022

The meeting of the Board of Agriculture and Consumer Services (Board) convened at approximately 9 a.m. on Friday, December 9, 2022, in the East Reading Room of the Patrick Henry Building in Richmond. President Barlow called the meeting to order.

ROLL CALL

The Board Secretary called the roll:

PRESENT

O. Bryan Taliaferro, Jr.
Donald Horsley
Clifton A. Slade
Shelley Barlow
Tyler Wegmeyer
Richard Sellers
Neil Houff
Charles Church
Dr. Wondi Mersi

Lonnie Johnson

CONGRESSIONAL DISTRICT

1st
2nd
3rd
4th
10th
11th
Pesticides – Commercial Agricultural
Pesticides – Commercial Structural
Representing Dr. Makola Abdullah, President,
Virginia State University
Representing Dr. Timothy D. Sands, President,
Virginia Tech

ABSENT

Cecil Shell
Margaret Ann Smith
Jacquelin Easter
Vacant
James S. Huffard, III

5th
6th
7th
8th
9th

STAFF PRESENT

Joseph Guthrie, Commissioner, Virginia Department of Agriculture and Consumer Services (VDACS)
Kevin Schmidt, Secretary, Board of Agriculture and Consumer Services
Erin Williams, Senior Policy Analyst, Virginia Department of Agriculture and Consumer Services

APPROVAL OF MINUTES

Mr. Sellers moved that the draft minutes of the meeting on July 19, 2022, be approved as distributed. Mr. Church seconded the motion. The Board voted unanimously to approve the motion.

WELCOME FROM SECRETARY OF AGRICULTURE AND FORESTRY LOHR

Board of Agriculture and Consumer Services

December 9, 2022

Page 2

Secretary of Agriculture and Forestry Lohr welcomed the Board and thanked members for their service. Secretary Lohr provided a brief update of the Secretariat's activities over the past year and priorities for the upcoming year. He also asked for future Board meeting dates so that he could try to attend.

REPORT FROM BOARD MEMBERS

Charles Church

Mr. Church reported on the Virginia Pest Management Association (VPMA) state technical meeting in Richmond and thanked Commissioner Guthrie for participating. He stated that the meeting trained over 200 pest management professionals and had 30 exhibitors over the three-day event. VPMA also had a fundraiser that raised approximately \$2,000, which allowed VPMA to award a \$1,500 scholarship to an entomology Ph.D. student at Virginia Tech.

Neil Houff

Mr. Houff mentioned the Virginia Crop Production Association's Crop Summit in January 2023 in Midlothian. Mr. Houff provided an update on fertilizer and pesticide supply chain challenges and pricing. Pricing is still fairly unpredictable for fertilizer, but pesticides have stabilized a bit. He concluded by stating that Shenandoah Valley crops had a good season.

Bryan Taliaferro

Mr. Taliaferro mentioned that he still sees a lot of soybeans in the fields, so when the beans are harvested, they will be in terrible shape. Yields in his district were up and down, with some dry spells that hit some soybeans badly and dropped the yields significantly. But, the soybean prices were astronomical. So, overall, grain farmers should make a profit this year. If farmers continue to see high input costs and the markets decline at all, profits will be in jeopardy for grain operations. Mr. Taliaferro also mentioned the completion of an eight-year process to transfer land within his family.

Donald Horsley

Mr. Horsley reported that he had good corn, wheat, and soybean yields this year, with the soybean yields the best he has ever had. Some spots did have dry weather, which hurt them. Mr. Horsley stated that they received 19 inches of rain over the first six months of the year in his area compared to 31 inches over the same time the previous year and that the rain in July is what saved the crops. They also had a good dry harvest season overall.

Clifton Slade

Mr. Slade reported that yields in his district all over the board. While yields were down in some place, prices were up. He also said that yields changed this year, with more yields near field bottoms. He completed one of the best years he ever had with vegetables and that irrigation for vegetables paid big dividends this year. Mr. Slade also thanked Virginia Agribility and the services that it has been able to provide and stated he was asked to go to national Agribility meeting in Spokane, Washington. Mr. Slade mentioned that, while he is still growing hemp and is one of the remaining growers, he is not sure if he will continue. Mr. Slade also relayed a message from Mr. Shell that the timber market is steady to strong with pine but that hardwoods are presenting some challenges. Mr. Shell also said that the yield on corn is down, the yield on soybeans was down but prices were up, and that tobacco yields and quality were good to very good. Mr. Shell did say that his irrigation ponds needed some moisture to make a crop next year.

Tyler Wegmeyer

Mr. Wegmeyer reported that the crop yield and conditions in his district were good. Above average rainfall was challenging for hay farmers at times. But, overall, it was a really good year. Prices were good, but inflation costs offset this. Supply chain issues continue to be an issue, specifically with larger equipment. He stated deer damage is at an all-time high and there is no question the deer population is huge and continues to be an issue. Mr. Wegmeyer mentioned that agritourism, specifically fall farm festivals, had a great year. Wineries and breweries did well in the fall, and the general population continues to want to get out and is choosing this form of entertainment for their families. There is a significant strawberry supply-chain issue for plant stock from Canada due to labor situations. This is important for strawberry growers since growers plant in September and October and timing is really important. Some strawberry growers were delayed in planting up to one month, and this will affect yields next year. Mr. Wegmeyer mentioned that labor is an issue, with higher wages needed to get quality employees and difficulty in getting the number of employees needed. Because of this, hours have been reduced. It is better than last year but still a major issue. Lastly, Mr. Wegmeyer mentioned that u-cut Christmas tree farms are mostly sold out, and retail establishments are having a hard time getting trees.

Richard Sellers

Mr. Sellers reported that his church garden had the lowest production it has ever had in its 10-year existence, even with irrigation. The garden did have a good crop of potatoes and an amazing crop of green beans. The overall yield was around 300 pounds compared with the usually 400-500 pounds. Mr. Sellers said that he has noticed it is getting warmer in his region, and that makes a difference on the crops. He also heard that the U.S. would be importing lamb from the U.K., which shocked him given previous concerns with disease. He also attended the opening of Beanstalk in Herndon, which was also attended by Governor Youngkin and Secretary of Agriculture and Forestry Lohr. He was impressed with the operation, especially when you look at the large population density in Northern Virginia and the demand for these types of products in that area. Mr. Sellers was glad the Governor was there and hopes that more projects like this are funded from the Governor's Agriculture and Forestry Industries Development Fund.

Dr. Wondi Mersi

Dr. Mersi reported that Virginia State University has its commencement on December 10, with 249 students expected to graduate. Dr. Mersi mentioned the Small Ruminant Mobile Processing Unit Certification Program graduated its first two cohorts on October 14, 2022, resulting in 42 producers qualified to harvest their own goats, sheep, and rabbits, and thanked Commissioner Guthrie for sending a letter to each of these graduates. The 2022 Annual Small Farms Conference was held November 3-4 in Portsmouth. Over 200 registrants attended the conference, which was filled with bus tours, panel discussions, networking, and an awards banquet. Award members included Cliff Slade, who received the volunteer of the year award. The Small Farm Outreach Program conducted a veteran farmer's field day titled "Boots to Roots 2 – Down on the Farm." The event was a huge success, with over 15 U.S. Department of Agriculture (USDA) staff and others participating and providing information. Finally, Dr. Mersi mentioned the 23rd annual Virginia Biological Farming Conference to be held January 6-8, 2023, in Roanoke.

Lonnie Johnson

Mr. Johnson reported that the Virginia Tech (VT) fall semester is about to end and, along with it, the 18-month sesquicentennial celebration commemorating the 150th anniversary of VT. Under the leadership of Dr. Tom Thompson, the College of Agriculture and Life Sciences received an \$80 million dollar grant from USDA for implementing climate smart technology practices on Virginia farms, which is the largest single grant in VT history. The Virginia Agriculture Experiment Station (VAES) is experiencing leadership changes with the unexpected and sudden passing of Sue Duncan, Associate Director of VAES, in October and with Dr. Saied Mostaghimi, Director of VAES, having announced his retirement in spring 2023. In the interim, Dr. Kang Xia has assumed the Interim Associate Director VAES position. Virginia Cooperative Extension (VCE) also welcomes Dr. Mike Gutter as the new Associate Dean CALS and VCE Director. Dr Gutter comes to VCE from the University of Florida Extension system and is excited to be in Virginia. Mr. Johnson hopes that Dr. Gutter is able to attend a Board meeting soon.

Shelly Butler Barlow

President Barlow reported that her area had three dry spells, which has been challenging. She mentioned that she went to harvest peanuts and cotton not optimistic about what the yields would be and was pleasantly surprised and not sure how that happened. Crop yields on all her crops were good to very good and prices have been pretty good. Cotton prices have been a roller coaster. The prices for cotton are still good, but they were really good previously. Everyone has been delayed by weather challenges and by having a bigger crop than normal, and some soybeans and cotton fields are still left to be harvested. This is a concern because the later the harvest, the poorer the quality. The area keeps having rain events that do not replenish the drought situation but that, instead, make conditions sloppy. Overall, considering the challenges during the season, she is pleased with the harvest and thankful to be finished. Supply-chain issues are evening out, but there are still some issues with large equipment. This will create some issue in the spring for some. President Barlow mentioned the community garden in her area and thinks the idea of a community garden and growing your own food is a really great lesson that everyone should experience. She also mentioned that the competition for land is getting critical and farmers are not on a level playing field. She hopes that agriculture can find ways to remain competitive and that localities can find ways to value the fact that agriculture is producing food and fiber on the land.

COMMISSIONER'S REPORT

Commissioner Joseph Guthrie delivered his report to the Board. During the presentation of this report, he briefed the Board on personnel changes, recent events, and other matters relating to VDACS. A copy of the written report on which his presentation was based was included in the Board meeting agenda and materials.

MEETING RECESS

At approximately 10:27 a.m., President Barlow recessed the meeting to hold a public hearing on the proposed regulations for 2 VAC 5-105, Regulations for the Inspection of Pet Shops Selling Dogs or Cats.

SUMMARY OF PUBLIC HEARING FOR PROPOSED REGULATIONS FOR 2 VAC 5-105 (REGULATIONS FOR THE INSPECTION OF PET SHOPS SELLING DOGS OR CATS)

At 10:27 a.m., President Barlow opened the public hearing on the proposed regulations for 2 VAC 5-105. A court reporter was present to make a record of the hearing, which will be included with the regulatory case file.

President Barlow called on Dr.Carolynn Bissett, Program Manager, Office of Veterinary Services, to brief the Board concerning the proposed regulations for 2 VAC 5-105.

Dr. Bissett advised the Board that the proposed regulation was filed with the Registrar of Regulations and published in The Virginia Register of Regulations. The Board was advised that the purpose of the hearing was to provide interested parties an opportunity to comment on the proposal.

Following the staff presentation, President Barlow asked Secretary Schmidt if anyone signed up to speak. Senator Marsden, the patron of the bill from the 2020 Session of the General Assembly that required the Board to enact these regulations, thanked the Board for its work on this regulation. The Board then received comments from the Virginia Pawsitivity Project, the Humane Society of the United States, the People for the Ethical Treatment of Animals, and the Virginia Pet Advocate Alliance.

President Barlow provided an opportunity for Board questions and advised the Board that, following the end of the public comment period for the proposal, staff will review oral and written comments received and, at a later meeting, present a recommendation on the proposal.

President Barlow then adjourned the public hearing at 10:48 a.m. and reconvened the Board meeting.

PROPOSED FAST-TRACK ACTION TO REPEAL 2 VAC 5-205 (RULES AND REGULATIONS PERTAINING TO SHOOTING ENCLOSURES)

President Barlow called on Dr. Carolynn Bissett, Program Manager, Office of Veterinary Services. Dr. Bissett briefed the Board on the proposed fast-track action to repeal 2 VAC 5-205. Following Dr. Bissett's presentation and questions from the Board, Mr. Sellers moved that the Board of Agriculture and Consumer Services repeal 2 VAC 5-205, Rules and Regulations Pertaining to Shooting Enclosures and that the Board authorize staff to take any and all steps necessary to repeal this regulation through a fast-track regulatory action.

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

EXPANSION OF THE REGULATED AREA OF 2 VAC 5-315 (VIRGINIA IMPORTED FIRE ANT QUARANTINE FOR ENFORCEMENT OF THE VIRGINIA PEST LAW)

President Barlow called on Larry Nichols, Director, Division of Consumer Protection. Mr. Nichols briefed the Board on the expansion of the regulated area for 2 VAC 5-315.

PESTICIDE CONTROL FUND REPORT AND ONLINE PESTICIDE REGISTRATION UPDATE

President Barlow called on Liza Fleeson Trossbach, Program Manager, Office of Pesticide Services, to provide an update on the Pesticide Control Fund report and VDACS's online pesticide registration system. Ms. Fleeson Trossbach also updated the Board on recent legislative inquiries from Southwest Virginia regarding the Board's regulatory authority with respect to pesticides.

STRENGTHENING VIRGINIA'S ANIMAL HEALTH LABORATORY SYSTEM

President Barlow called on Dr. Charles Broaddus, State Veterinarian and Director, Division of Animal and Food Industry Services to provide an update on efforts by the Virginia Department

of Agriculture and Consumer Services to examine potential opportunities to strengthen Virginia's animal health laboratory system.

UPDATE ON ELECTRONIC MEETING POLICY

President Barlow called on Kevin Schmidt, Director, Office of Policy, Planning, and Research, to provide an update on electronic meeting options for the Board due to recent changes to the Virginia Freedom of Information Act. Mr. Schmidt will provide a draft electronic meeting policy for discussion at either the March or May 2023 Board meeting.

NEW BUSINESS

President Barlow asked Board members if there is any new business to bring before the Board. Mr. Horsley asked if there was any update on the seed law regulation since a member of the public made this request at the July Board meeting. Larry Nichols provided an update on the status of this regulatory action.

FUTURE BOARD MEETINGS

President Barlow announced that the Board meeting dates for 2023 will be March 23, May 18, and December 7 in Richmond. A summer meeting and tour will be announced later. Mr. Horsley mentioned that his family was hosting the Virginia Ag Expo on August 3 at his farm, so one possibility might be to hold the summer meeting August 3-4 in Virginia Beach and tie this into the Virginia Ag Expo.

PUBLIC COMMENT PERIOD

Stefanie Tallion spoke on behalf of the Virginia Farm Bureau Federation (VAFB). Ms. Tallion thanked VDACS for attending the recent animal health laboratory listening sessions and for the agency's information and transparency at these sessions. VAFB did vote at its annual policy meeting in November to support keeping all four existing VDACS labs open at this time. Ms. Tallion stated that she believes this is the beginning of the discussion and looks forward to have more conversations about strengthening the animal health lab system going forward.

Brandon Reeves spoke on behalf of the Virginia Cattlemen's Association and aligned his comments with VAFB. The Virginia Cattlemen's Association wants to ensure that the lab system is accessible, is high quality, and produces efficient results for the association's producers. He thanked VDACS for hosting these listening sessions and asked that whatever is proposed in the future be at least as accessible to producers as the services are now.

ADJOURNMENT

There being no further business, the Board adjourned at approximately 12:18 p.m.

Respectfully submitted,

Shelley Barlow
Board President

Kevin Schmidt
Board Secretary

COMMISSIONER'S REPORT TO
BOARD OF AGRICULTURE AND CONSUMER SERVICES
March 23, 2023

PERSONNEL NEWS

The Division of Marketing has several program manager vacancies due to recent staff departures. The Program Manager of the Office of Agriculture and Forestry Development Services is vacant due to the departure of Stephen Versen. Stephen has taken a new position in Business Outreach at the Virginia Economic Development Partnership. The Program Manager of the Office of International Marketing will be vacant as of April 28 due to the retirement of Keith Long. Both positions are currently under active recruitment.

GOVERNOR'S PRIORITIES

Governor Youngkin proclaimed March as Virginia Controlled Environment Agriculture Month to highlight the importance and impact of next generation agriculture to the Commonwealth of Virginia. Controlled Environment Agriculture (CEA) utilizes innovations in technology in various growing methods such as hydroponics, aeroponics, aquaponics, and fogponics. These methods are used to grow produce in a variety of settings to include indoor farming, vertical farming, greenhouses, and protected cropping environments. Secretary of Agriculture and Forestry Lohr and members of his office joined VDACS staff in recognizing Virginia CEA month by visiting operations around the state.

Nearly 50 VDACS employees joined First Lady Suzanne Youngkin, Secretary of Agriculture and Forestry Lohr, Secretary of Education Guidera, and others in participating in Virginia Agriculture Literacy Week, March 13-17, by reading to preschoolers and elementary school students across the state. This year's National Agriculture in the Classroom's 2023 Book of the Year was *I Love Strawberries* by Shannon Anderson. The book follows the journey of a young gardener as she learns the work and responsibility of growing strawberries. Additionally, the book emphasizes entrepreneurship as she develops a plan to achieve her mission.

Since the last report, there have been two new Governor's Agriculture and Forestry Industry Development (AFID) Fund Facility Grants announced totaling \$65,000. In October, the City of Waynesboro was awarded \$25,000 for the location of Common Wealth Crush Co. The project represents \$1,500,000 in new capital investment, six new jobs, and commitments for the purchase of \$1,128,700 in Virginia-grown agriculture and forestry products. In December, Shenandoah County was awarded \$40,000 for the expansion of Wholesome Foods, Inc. The project represents \$1,195,000 in new capital investment, 12 new jobs, and commitments to purchase \$1,652,240 of Virginia-grown agriculture and forestry products. Since its inception, 124 Governor's AFID Facility Grants have been successfully awarded to 68 localities across Virginia totaling \$11,567,900. These projects have encouraged the creation of 3,968 new full-time jobs and full-time equivalent positions, \$1,449,550,234 in new capital investment, and \$1,413,433,725 in new Virginia-grown agriculture and forestry purchases.

In December, Governor Youngkin announced the third round of the Governor's AFID Fund Infrastructure Grant recipients. In total, 10 applicant localities received \$368,885 in grant funding of between \$15,000 and \$50,000: Albemarle County for turkey processing upgrades, Bedford County to support a new commercial kitchen, Carroll County for vegetable processing equipment upgrades, Charlottesville for the construction of a new shared-use commercial kitchen, Culpeper County for cold storage at the George Washington Carver Food Enterprise Center, Franklin County for an expansion at a custom meat processor, Galax for farmers market improvements, Nelson County for apple processing equipment upgrades, Prince Edward County for equipment improvements at its community cannery, and City of Roanoke to purchase cold storage at a local food hub. The next grant round will open on April 1, 2023, and close on May 15, 2023, with grant awards announced in June 2023. Since the expansion of the Governor's AFID Fund in 2021, 29 AFID Infrastructure Grants have been awarded totaling

\$742,772, providing critical support to 24 unique localities for local agriculture infrastructure capital projects, including farmers market improvements, the expansion of meat processing facilities, and community cannery upgrades. Additionally, 52 AFID Planning Grants have been awarded totaling \$1,063,232, positively impacting 63 unique localities for local agricultural and economic development enhancements ranging from local food sourcing to poultry industry support to viticulture education.

In December, Governor Youngkin announced the FY 2023 Farmland Preservation Fund grant awards. The General Assembly had appropriated \$875,000 for the grant round, which opened October 11, 2022, and closed November 18, 2022. Five localities applied for funding and were each awarded \$175,000 in matching funds for their Purchase of Development Rights programs: the City of Chesapeake, Clarke County, Fauquier County, Stafford County, and the City of Virginia Beach. Since the program’s inception in 2007, a total of \$13.2 million in state matching funds from the Fund have been used in part to permanently protect 14,802 acres (113 easements) in partnership with 16 local PDR programs.

Industrial Hemp Report	As of Feb. 10, 2023	On July 31, 2022	On July 31, 2021
Industrial Hemp Grower Registrations	305	253	876
Industrial Hemp Processor Registrations	168	203	290
Industrial Hemp Dealer Registrations	59	75	135

AGENCY OPERATIONS

Commissioner’s Office

Commissioner Guthrie and Deputy Commissioner Green participated in the National Association of State Departments of Agriculture (NASDA) Annual Winter Policy Conference in Arlington in February. They had meetings with several officials from the U.S. Department of Agriculture (USDA) and the U.S. Food and Drug Administration (FDA), including USDA Secretary Tom Vilsack, retiring USDA Deputy Secretary Jewel Bronaugh, FDA Commissioner Robert Califf, and others.

Commissioner Guthrie is Vice President of the Southern Association of State Departments of Agriculture (SASDA) and is in line to be president in June 2023- June 2024. That entails Virginia hosting the SASDA annual meeting in June 2024. Commissioner Guthrie has formed an internal committee to make plans for the event and contracted with NASDA for certain support services. Plans are to host in Williamsburg and to highlight the history, culture, and agriculture of Williamsburg and surrounding areas from Hampton Roads to Richmond.

Commissioner Guthrie is Secretary-Treasurer of the Southern US Trade Association (SUSTA), a role he inherited from the previous administration. The Commissioner noted at that time that SUSTA had an amount of over \$500,000 in a non-interest bearing account, which was a decision from a previous Secretary-Treasurer from another state. With interest rates higher now, he and Deputy Commissioner Green have successfully transferred those funds to a liquid savings account with a bank with branches throughout the SUSTA region that will earn around \$20,000 interest income annually.

Commissioner Guthrie and Dr. Stacy Anderson, the Dean of the Lincoln Memorial College of Veterinary Medicine (LMU-CVM) in Lee County, signed an MOU to expand livestock necropsy services in the westernmost area of the state, specifically the counties of Lee, Wise, Dickenson, Buchanan, Russell, Scott, and Washington. As a result of this memorandum, LMU-CVM veterinarians are now able to perform on-farm necropsies on deceased livestock and poultry in Southwest Virginia and submit tissue samples to the Virginia VDACS Regional Animal Health Laboratory (RAHL) in Wytheville for testing. LMU-CVM has agreed to do so

at a lower cost than the producer would be charged if they took the deceased animal to the Wytheville RAHL. The producer will receive results with the same timeliness and the same level of quality they would receive by taking the deceased animal to the Wytheville RAHL. This new service is in addition to the necropsy, regulation, and diagnostic testing that is already performed at the Wytheville RAHL, which is ongoing and will continue.

Division of Marketing

In December, VDACS staff joined Secretary Lohr and Commissioner Guthrie in Franklin County to celebrate the 10th Anniversary of the AFID Fund program at Homestead Creamery, which was the program's first AFID Facility Grant recipient. The event featured Former Secretary of Agriculture and Forestry Haymore and former Delegates Steve Landes and Ed Scott, each of whom was instrumental in the program's inception. Secretary Lohr made a presentation of Governor Youngkin's proclamation marking the 10th anniversary of the AFID program. The event was well attended by agriculture and forestry leaders from across the Commonwealth and received coverage from multiple media outlets.

In February, the Office of Agriculture and Forestry Development (OAFD), in partnership with the Virginia Farm Bureau Federation, participated in a workshop series focused on farm transition and succession planning. The series was organized by Virginia Cooperative Extension and held in four regions of the Commonwealth. Dick Wittman of Wittman Consulting hosted all workshops, which were attended by farm owners seeking to transition ownership and management of their farms to the next generation. Each event was attended by approximately 50 participants. The Virginia Farm Link program staffed a table at each workshop, and Commissioner Guthrie attended one of the workshops, providing agency perspective and showing VDACS's commitment to helping agricultural producers find the resources to navigate the intergenerational transfer of assets.

In November during the Virginia Farm Bureau Federation Convention, OAFD and the Office of Domestic Marketing and Promotions (ODMP) staff served as two members of the four-judge panel for the inaugural "Bull Pen" challenge, a "Shark Tank" style entrepreneur and business plan competition hosted by Virginia Foundation for Agriculture, Innovation and Rural Sustainability (VA FAIRS). The Bullpen is the outgrowth of VA FAIRS's strategic plan to promote entrepreneurship and innovation in Virginia agriculture. Multiple innovative rural agribusinesses applied for the \$30,000 in prize money. Seven Hill Meats was selected as the winner, earning \$12,500 to support its plans to process unwanted cattle hides at their facility to sell to high-end leather markets and to manufacture rawhide dog chews. VDACS Marketing was one of several sponsors of this successful event.

In January, the Office of Domestic Marketing and Promotions (ODMP) featured several Virginia's Finest exhibitors during the Virginia's Finest Reception of the Virginia Agribusiness Council's Annual Legislative Banquet in Richmond. The banquet attracted over 900 guests, including Governor Youngkin, Secretary Lohr, Commissioner Guthrie, members of the Governor's cabinet, agricultural decision-makers, lawmakers, and other stakeholders. The reception provided a wide variety of Virginia-made products. VDACS staff assisted in a number of ways to help make the event a success.

In January, ODMP staff met with Creative Engagement Solutions to begin planning the 2024 Food and Beverage Expo. The Expo will return to the Richmond Convention Center in March 2024.

In January, ODMP participated and exhibited in the Mid-Atlantic Nursery Tradeshow (MANTS) at the Baltimore Convention Center, one of the largest nursery and landscape industry trade shows. MANTS brings together buyers and more than 900 exhibitors over three days where businesses can connect with clients, network with potential customers; debut new products; and write orders for the upcoming season. ODMP staff manned a Virginia Grown booth to engage with attendees about Virginia products and the Virginia Grown program.

In January, ODMP staff and the Division Director's Office participated in a meeting coordinated by Produce Source Partners (PSP) between Food Lion local produce program management and Virginia growers who supply

Virginia produce to PSP for the Food Lions in Virginia. Overall, Food Lion's produce sales increased 11 percent in 2022 and local Virginia produce sales outpaced at 16 percent.

In January, ODMP participated in and exhibited at Eastern Shore Agriculture Conference in Belle Haven. VDACS staff exhibited at the conference, met with growers, and provided information on VDACS programs. Market News staff also presented a potato market outlook that included information on prices, shipments, and production in the U.S. and Canada. Information on chip-stock potato contracts for potato chips was also provided to assist producers in upcoming negotiations. There were approximately 100 people in attendance.

From November through February, ODMP staff participated in the following 15 agriculture promotional, marketing, and educational events: Southeast Strawberry Expo Farm Tour and Conference, Virginia's Finest All-Star Get Together, Virginia Farm Bureau Annual Convention, Virginia Agribusiness Council Reception, Eastern Shore Ag Conference, Northern Neck Food & Beverage Expo, Mid-Atlantic Nursery Tradeshow (MANTS), Virginia Cooperative Extension Tobacco Production meetings, Virginia Farmers Market Association's Annual Conference, Virginia Cooperative Extension Vegetable Production Meeting, Southern Cotton Growers Annual Meeting, Virginia Agricultural Growers Association Annual Meeting, Tobacco Growers Association of North Carolina's Grower Reception, Virginia Grain & Soybean Annual Conference, and the Annual Cotton Growers and Production Meeting.

From November through February, ODMP staff worked with the Virginia Department of the Aging and Rehabilitative Services (DARS) and Virginia farmers to support the 2022 Senior Farmers' Market Nutrition Program WIC (SFMNP/WIC) Nutrition Program. In 2022, SFMNP served 10,950 participants, with a total redemption rate of 87 percent. In 2022, 193 farmers, 64 farmers markets, and 24 roadside stands were authorized to accept the SFMNP vouchers. For 2023, Virginia has been approved to accept applications for participants at or below 185 percent of the federal poverty (FPL) level, a change from previous 150 percent of FPL. The booklet amount for Seniors will increase to \$50, the maximum allowed by USDA. ODMP assists DARS with the SFMNP under a memorandum of agreement, providing training, verification, and monitoring of eligible Virginia growers and farmers markets for participation in the SFMNP. ODMP staff also worked with DARS to implement a plan for expanding the program in 2023. DARS received a federal grant to expand the number of farmers and farmers markets participated in the program in FY 2023 and FY 2024. VDACS, the Virginia Farmers' Market Association, Virginia State, and Virginia Cooperative Extension (VCE) are partnering to support the expansion.

In March, ODMP staff exhibited at the Southeast Produce Council's (SEPC) Southern Exposure tradeshow in Orlando, Florida. This is SEPC's flagship tradeshow and conference. ODMP staffed a Virginia Grown booth, with representatives from Virginia produce companies: Crown Orchard, Greenswell Growers, Gotham Greens, Old Dominion Organics, AeroFarms, and C & E Family Farms.

In January, ODMP staff, coordinating with the Office of International Marketing (OIM), led the Virginia Corn Board and Virginia Grain Producers Association tour of Perdue's Export facility in Chesapeake and the Port of Virginia's International Gateway container facility in Norfolk. The group also saw the new \$61,000,000 crushing facility currently under construction. Port staff reported that 2022 Cargo Volume was up 5 percent, with more than 3.7 million TEUs (twenty-foot equivalent units) processed.

In December, Mexican Foreign Secretary Ebrard met with U.S. Secretary of State Blinken and National Security Advisor Sullivan in Washington, D.C. In the meetings, Foreign Secretary Ebrard and the U.S. officials prepared for President Biden's visit to Mexico and the North American Leaders' Summit on January 10, 2023, in Mexico. Secretary Blinken and Foreign Secretary Ebrard discussed the bilateral cooperation agenda, including economic and trade issues, along with many other regional security issues. The Latin America trade representative has learned that the corn issue was discussed in the meeting; however, none of the countries provided any

information on this topic. The ATO Mexico and the American Embassy consider this subject to be extremely important, and the U.S. and Canada continue to push Mexico on this issue.

In December, OIM learned of a \$35 million sale from Perdue Agribusiness' export facility in Chesapeake. This sale was a direct result of a tour of the Port of Virginia in August 2022 coordinated and hosted by DSMD and OIM staff targeting soybean buyers from Morocco, Tunisia, and Algeria.

In January, the Canada trade representatives staffed the VDACS Livestock Services and Virginia State Cattlemen's Association booth at the 25th Annual Beef Industry Convention in London, Ontario. This was a great opportunity for the Canada trade representatives to connect with cattle feeder companies in Canada to promote the Virginia cattle industry. The show was busy, and there was a steady flow of traffic to the Virginia booth each day. The representatives identified the high cost of Virginia calves compared to calves available in local Quebec market as one barrier. This market situation in Quebec may change if a Quebec deal with Pennsylvania goes through and Quebec starts shipping cattle to Pennsylvania. This would provide Quebec buyers the opportunity to purchase cattle from Virginia to fill trucks returning to Canada.

In January, the Middle East trade representative visited the city of Jeddah in Saudi Arabia to study its trade activities. During this visit, the trade representative met with leading importers and distributors of food products in the Middle East who are interested in evaluating the products offered by Virginia companies. She has arranged several meetings between Saudi and Virginia companies during Gulfood 2023. She is developing an action plan for Gulfood based on the information she gathered during her visit to Jeddah.

In January, the Canada trade representatives walked the Gluten-Free Expo Vancouver, a trade show organized by the Canadian gluten free industry. On January 19, the Canada trade representatives presented a brief report on the show to VDACS, highlighting gluten-free trends in Canada and making recommendations for Virginia companies. The show was well attended, with participation from local and national Canadian brands focused on gluten-free diet, health, and nutrition.

In January, the China trade representatives submitted an activity report to VDACS on Delicious U.S.A. Chef Event held at the American Club in Hong Kong in December. This event was organized by the USDA Agricultural Trade Office (ATO) in Hong Kong. The ATO/Hong Kong worked with local chefs and restaurants and created a large variety of cuisines. Delicious USA celebrates the high-quality, diversity, and sustainability of U.S. ingredients through the culinary imagination of chefs in Hong Kong. About 30 renowned chefs and guests attended the 2022 event. VDACS, along with 18 other U.S. organizations and companies, were the sponsors for this event. A special menu was developed by the chef at the American Club to feature high quality U.S. food ingredients and wines. Rappahannock River oysters were one of the featured items on the menu.

In February, the Division Director, OIM staff, and the Middle East trade representatives exhibited and participated in the Gulfood 2023 trade event in Dubai, UAE, and supported four Virginia companies at the event: Mind Blown Seafood, Pastry Base, Clark & Hopkins, and Commercial Lynks. Gulfood is the largest food and beverage event in the world, featuring over 5,000 companies from 125 countries and a line-up of industry leaders and the world's greatest chefs. Secretary Lohr also attended the event. The Middle East trade representatives and OIM coordinated the on-site logistics for the four Virginia companies. The companies had 21 meetings with buyers, participated in on-site cooking demonstrations to showcase their products, and met key USDA FAS personnel who can assist them with exporting. There were key meetings with Yasir Douri, CEO of Al Douri (nut and fruit company); Chef Uwe (President of Emirates Culinary Guild); the buying team at LuLu Hypermarkets (one of the largest grocery chains in the UAE); and Ebraheem Al Samadi, a foodie and Netflix celebrity in the UAE. The Virginia delegation toured three grocery chains to gain a better insight into the local marketplace regarding competition and opportunities.

The Food Distribution Office awarded \$5 million in sub grants to five agencies as part of the Virginia Farms to Families Food Box Program, which is funded through American Rescue Plan Act (ARPA). Funds will be used to procure foods from local sources for distribution to food insecure families and individuals. The five agencies receiving the funding are: ALIVE! Alexandria Farm Food Distribution, Appalachian Sustainable Development, Northern Virginia Food Rescue, Federation of Virginia Foodbanks, and God's Storehouse and Soup Kitchen.

The seven Federation of Virginia Food Banks have signed agreements with VDACS to receive \$11 million in funding to complete infrastructure projects at food bank warehouses. These ARPA funds and will go to projects that upgrade warehouse facilities to improve their ability to serve Virginia residents experiencing food insecurity.

In January, Market News provided data from state graded feeder cattle sales to Virginia Tech. Data from Central Virginia State Cattlemen's Association sales at Radiant was requested to analyze price premiums received for value added weaned and vaccinated cattle. Data from 2019 to 2022 was provided by Market News.

In February, Market News provided grain price data to Virginia Cooperative Extension. The Virginia Beach Virginia Cooperative Extension Office requested grain price data for use in an agriculture economic impact study. Monthly and annual average price data was provided for the Norfolk Terminal and Norfolk Producer areas.

Market News published the Cattle & Crops newsletter on a weekly basis. 2023 marks the 44th year the newsletter has been published. The publication provides prices and summary information from Virginia livestock auctions and state graded sales. Also included are Virginia grain prices as well as national production and supply reports of interest to Virginia producers. The publication is mailed and emailed to over 1,750 subscribers and is also available online.

Market News published the first Hay Clearing House newsletter of 2023. An online version was issued on January 3 marking the 32nd year the newsletter has been published. The publication serves as a tool to bring together buyers and sellers of hay and is particularly effective in helping livestock producers locate hay during times of shortages. Hay Clearing House includes listings of hay sellers and buyers and also has a section with historical hay prices from the Rushville hay auction. Market News continues to receive compliments from producers who state that the Hay Clearing House newsletter is the primary marketing tool they use to sell hay. The publication was posted online and sent to 565 email subscribers.

Division of Commodity Services (DCS)

Since December 10, DCS staff:

- Conducted Terminal Market and Shipping Point Inspections on 795,736 pounds of fresh fruits and vegetables, and Processed Food Inspections on 8,204,895 pounds of processed products and completed a Good Agricultural Practices (GAP) Audit;
- Inspected and certified grain commodities including soybeans, corn, wheat, soybean meal, and soybean hull pellets with a total value of more than \$895 million destined for 22 countries;
- Conducted a workshop on the correct use of sieves with one grain dealer, and visited seven grain dealer/handler sites, ensuring compliance with Virginia Grain Laws;
- Provided livestock evaluation services on approximately 28,885 cattle, 60 lambs/goats, and graded 389 beef carcasses;

- Inspected and certified approximately 86,145,069 pounds of Farmers' Stock peanuts and regrades, approximately 40,124,760 pounds of shelled and in-shell milled peanuts, and 3,440,534 pounds of imported peanuts from Argentina;
- Analyzed approximately 1,180 samples of peanuts for the presence and levels of aflatoxin to determine if the peanuts were safe for human consumption;
- Certified 6,036,516 pounds of various poultry parts for the USDA Feeding Program for School Lunch Products;
- Graded, via contracted full-time grading services, 70,162,597 pounds of chicken and 22,847,102 pounds of turkey for the Virginia poultry and egg industry;
- Provided non-contract fee grading and certification services for 832,806 pounds of poultry based on U.S. Consumer Grades to fulfill necessary specifications and contract requirements for the Virginia poultry and egg industry; and
- Performed two USDA Food Defense Audits

Tyson Foods signed a contract with DCS for three full-time graders beginning in June to provide service at its new state-of-the-art further processing facility in Danville. Teamwork Focus Commitment Poultry in Winchester requested grading service one day per week beginning in early April.

DCS participated in the following events this winter:

- January 11-14: Ontario Cattle Feeders Meeting and Convention, attracting approximately 500 attendees.
- February 1-3: National Cattlemen's Beef Association (NCBA) Convention and Trade Show in New Orleans, Louisiana, attracting approximately 7,000 attendees.
- January 24: Pennsylvania Feeders Day in Lancaster, Pennsylvania

Division of Consumer Protection (DCP)

In January, Office of Pesticide Services (OPS) staff kicked off the 2023 Pesticide Collection Program by hosting a virtual meeting with VCE agents representing the southside and central areas of Virginia, with around 10 agents participating. The meeting provided information about the program, outcomes from previous events, and challenges and requirements for the pesticide collection sites. It is anticipated that collection events will be held at Meherrin Ag in Charlotte Courthouse, Halifax County Agriculture Marketing Center in Scottsburg, Chatham Southern States in Chatham, Lynchburg Livestock Market in Lynchburg, Nutrien in South Hill, Henry County Refuse Center in Henry County, and John Randolph Firehouse in Farmville. VCE agents are in the process of confirming the availability and readiness to host the event in the fall. OPS target date for site selection is early March, with collections being held in late September. Localities in the 2023 service area are the counties of Amelia, Amherst, Appomattox, Bedford, Brunswick, Buckingham, Campbell, Charlotte, Cumberland, Franklin, Halifax, Henry, Lunenburg, Nottoway, Mecklenburg, Patrick, Pittsylvania, and Prince Edward and the cities of Bedford, Danville, Lynchburg, Martinsville, and South Boston.

In January, OPS made the newly developed Spanish Exam for Registered Technicians available to prospective applicators who elect to test in-person with a Pesticide Investigator or other approved proctor. OPS continues to work with the Department of Motor Vehicles and Everblue, the remote testing company, to make the Spanish Exam for Registered Technicians, along with all other certification exams, available through these testing

options. For FY 2022, over 14,000 certification exams were given across all categories, including initial and reinstated certificates and currently-certified applicators adding an additional certification category(s).

In February, OPS mailed renewal applications to approximately 2,700 licensed pesticide businesses. Beginning this year, pesticide businesses have the option to submit an application to become a licensed business or, for currently licensed pesticide businesses, to renew their pesticide business license, via the agency's online portal. Businesses may also submit change of information forms and update their Certificates of Insurance. Businesses electing to use the online system will have their pesticide business license and other similar correspondence sent electronically. Businesses electing to continue to use the paper-based process will have their pesticide business license and other correspondence sent via postal mail. All pesticide business licenses expire March 31.

In support of the new online services, VDACS has participated in two webinars at the request of industry. On February 23, OPS and Information Systems hosted a live demonstration of the online service for pesticide applicators for approximately 25 employees of TruGreen, a licensed pesticide business. The demonstration included a walk-through of the process for submitting an application for a prospective applicator online and included a question-and-answer session. On March 1, OPS collaborated with the Virginia Pest Management Association to provide a live demonstration of the process for submitting an online application for a new or renewing business license and included a question-and-answer session. Approximately 30 were in attendance.

In November, Office of Plant Industry Services (OPIS) staff hosted the Noxious Weeds Advisory Committee meeting in Charlottesville. The committee reviewed newly submitted noxious weed risk assessments and reconsidered previously submitted noxious weed risk assessments that had been tabled due to their commercial viability in Virginia. The newly submitted risk assessments that were reviewed included *Ludwigia peploides* (Creeping water primrose), *Ludwigia grandiflora* ssp. *Hexapetala* (Six petal water primrose), and *Alternanthera philoxeroides* (Alligatorweed). The committee approved these three species for recommending as Tier 2 noxious weeds. The committee reviewed previously submitted risk assessments for *Albizia julibrissin*, (Mimosa Tree), *Lespedeza cuneata*, (Chinese bushclover/*Sericea lespedeza*) and *Paulownia tomentosa* (Paulownia/Princess tree). The committee voted to recommend *Albizia julibrissin* as a Tier 3 noxious weed. The committee tabled *Paulownia tomentosa* and *Lespedeza cuneata*.

In November, OPIS staff met with staff from VCE to discuss recent confirmation of a plant disease commonly referred to as tar spot, a foliar disease of corn caused by *Phyllachora maydis* Maubl., an obligate fungus. Tar spot can reduce grain yield and quality of silage, stover, and husks in corn. The tar spot infection was detected in Rockingham County and is the first find in Virginia. It is unclear how the disease arrived at the Rockingham location, as no new seed source was purchased or no unusual practices or movement of plant material was found. Based on the biology of the pathogen, its ability to spread via airborne fungal spores and through infested plant material, the pathogen's widespread distribution in the midwestern area of the U.S., and a lack of regulatory control options, the implementation of best management practices to mitigate impacts is recommended.

In December, OPIS staff completed the 2022 cotton boll weevil survey. The 2022 survey resulted in the installation and monitoring of 927 traps on approximately 88,700 acres of cotton planted in Virginia. No cotton boll weevils were detected. Funding for the cotton boll weevil survey is paid by Virginia's cotton growers.

In February, DCP staff attended the Virginia Cotton Growers Association meeting in Franklin. Staff provided an update on the 2022 cotton boll weevil survey and the cotton boll weevil assessment for 2023. The 2023 assessment will be \$0.90/acre, which is an increase of \$0.15/acre from 2022.

From November 1, 2022 – March 1, 2023, OPIS staff surveyed for spotted lanternfly (SLF) life stages throughout Virginia, looking for egg masses in the quarantined areas and in areas where SLF is not known to occur. Staff destroyed more than 7,000 egg masses and did not identify any new populations outside of the known infested areas. Egg masses can harbor up to 45 spotted lanternfly eggs, which will hatch in early spring.

In December, OPIS staff participated on a call hosted by the California Department of Food and Agriculture (CDFA) that provided information related to recent changes to California's exterior SLF quarantine, which prohibits the entry of regulated articles from areas known to be infested with SLF. CDFA is considering every state that has a known population of SLF to be infested in its entirety. CDFA staff indicated that California may adjust the infested areas designated in its exterior quarantine and could also adjust the list of regulated articles if the originating state can provide survey data indicating that there is no SLF risk and that the article is not at risk of transporting SLF life stages. Other methods of compliance with the California quarantine include a master permit (an agreement between states that ensure compliance with a state's exterior quarantine), compliance agreement, or phytosanitary certificate. OPIS staff will work with CDFA to provide survey data indicating areas free from SLF to ensure commerce can continue. The call was attended by more than 35 participants representing state departments of agriculture.

In January, OPIS staff attended the 2023 USDA Interagency Research Forum on Invasive Species in Annapolis, Maryland. The meeting covered specific information related to agricultural pests of concern, some of which are present in Virginia (e.g., Spotted Lanternfly) as well as broad concepts and research related to invasive pests. While the meeting primarily focused on research, the information presented may impact plant pest survey and management programs used by OPIS. Topics of discussion included cerambycid beetles, using aerial imagery to detect invasive species, spotted lanternfly spread, management, and control, beech leaf disease dynamics, biocontrol success related to the emerald ash borer, and information on the Asian longhorned beetle program in South Carolina. Approximately 75 people were in attendance representing state departments of agriculture, USDA, and research institutions.

In January, OPIS staff received notification regarding funding for USDA's Plant Protection Act Section 7721. Over \$70 million was awarded to state agencies, research institutions, and tribal nations to protect crops and natural resources from invasive insect and disease pests for the 2023 season. Virginia will receive \$87,000 to conduct surveys for *Phytophthora ramorum*, forest pests, and pests that pose a threat to the grape industry.

In February, OPIS staff received notification that USDA Animal and Plant Health Inspection Service (APHIS) Plant Protection and Quarantine (PPQ) had confirmed a positive identification of *Ralstonia solanacearum* race 3, biovar 2 on geranium plants that had been imported from Mexico. This is a bacterium that causes wilt diseases, including brown rot of potato, bacterial wilt of tomato and eggplant, and southern wilt of geranium. Twelve states, including Virginia, received one variety of propagative geranium plant material associated with the plants that had tested positive. Only one location in Virginia received this plant material. OPIS staff followed up with the company that received the plant material, and 1,200 plants were voluntarily disposed of in accordance with prescribed destruction methods. No other plants tested positive for *R. solanacearum* race 3, biovar 2.

As of March 1, OPIS had shipped 319 beehive units to 120 individuals through the VDACS Beehive Distribution Program. Three more shipments of beehive units are expected to be completed by May 2023. VDACS received \$200,000 in FY 2023 for Beehive Distribution Program, which provides equipment to individuals for the construction of new beehives.

In January, staff from the Office of Weights and Measures (OWM) attended the National Conference on Weights and Measures (NCWM) Interim Meeting in Savannah, Georgia. The NCWM interim meeting provides an opportunity for state weights and measures officials and industry stakeholders to consider changes to the National Institute of Standards and Technology (NIST) Handbook 44, Handbook 130, and Handbook 133. Items were presented to standing committees for consideration as voting items at the annual meeting, scheduled for July 2023. If passed at the July meeting, items will be adopted into the handbooks and become effective in Virginia. Method of sale of cannabis was discussed and could be adopted in January 2023, including labeling requirements for products containing 0.3 percent or less of delta-9 tetrahydrocannabinol (THC) to be labeled as hemp and those containing more than 0.3 percent to be labeled as cannabis or marijuana.

In February, the Office of Weights and Measures (OWM) received the Large Capacity Scale Truck (LCST) ordered from Kanawha Scales and Systems in October 2022. The \$240,000 for this purchase was appropriated in the OWM budget for FY 2023. This new LCST will replace the current 1997 model truck. The large capacity scale truck is a 10-wheel truck that carries the weights and equipment needed to inspect large capacity commercial weighing devices. These devices include vehicle scales, livestock market scales, warehouse scales, forklift scales, and hopper scales.

Division of Animal and Food Industry Services (AFIS)

On June 30, 2022, the Office of Dairy and Foods (ODF) Food Safety Program (FSP) sent an electronic communication to over 13,000 food manufacturers and retail food establishments in Virginia to alert them that certain products intended for human consumption and that contain cannabinoids may be considered adulterated if such products contain an ingredient that is not approved as a food pursuant to the Virginia Food and Drink Law or are not manufactured in a facility that is under inspection in accordance with the Law. Since July 1, FSP staff have performed more than 6,859 inspections and visits and have educated food manufacturers and retail food establishments on the communication that was emailed and provided them with an educational handout to encourage voluntary compliance. During these visits, most businesses that were selling food products that appeared to contain cannabinoids in violation of the Law voluntarily removed the food products in question from sale. During these inspections and visits, 478 firms were found to be offering for sale non-complaint delta-8 THC ingestible products. Follow up inspections were conducted at these firms to ensure that these products were removed from sale. FSP is proceeding through the compliance and enforcement process with the firms that did not remove these products from sale when FSP conducted follow up inspections.

FSP also works to ensure that food and dietary supplements manufactured, processed, stored, and sold in Virginia are safe, wholesome, and properly labeled. From October through January, FSP conducted 2,849 inspections of food establishments (which includes retail food stores, food manufacturers, and food warehouses), investigated 135 consumer complaints, and collected 248 food samples.

FSP participates in economic development activities with persons interested in selling food products in Virginia by reviewing new food business proposals and assisting in the development of safe food processes. From October through January, FSP performed the inspections necessary to open 261 new food businesses. A total of 510.5 hours were spent working with vendors to open these firms. FSP has an inventory of 13,145 firms under inspection. Thirty-one Food Safety Specialists, four Food Safety Technical Specialists, and four Field Supervisors are responsible for the regulatory oversight of these firms.

From October through January, the ODF Dairy Services Program (DSP) conducted 442 inspections of Grade "A" and manufactured-grade dairy farms and 98 cheese and ice cream manufacturing plant inspections. To ensure compliance with Virginia's regulatory standards, program staff collected 1,247 milk samples and 128 water samples from Virginia dairy farms. An additional 359 cheese and frozen dessert samples were collected to determine compliance with current dairy laws and regulations. Dairy inspectors performed 2,091 on-farm visits and had extensive phone discussions with producers to review construction of dairy facilities and installation of milking equipment and to offer advice and assistance to farmers and manufactured milk processors.

In November, Gunnoe's Sausage withdrew its grant of inspection. This facility had been in operating since 1965. Logan Foods, a federal plant in Alexandria, will continue to produce and sell the brand.

During the winter months, the ODF Produce Safety Program (PSP) is continuing to prioritize three focus areas: industry education and outreach, farm inventory development, and the new U.S. Food and Drug Administration (FDA) agricultural water requirements. PSP has attended several large and several small-scale grower events and meetings across the state to engage producers about the FDA produce safety rule, online farm registration

portal, and new harvest and post-harvest agricultural water requirements. The number and frequency of these grower meetings is finally getting back to pre-pandemic levels.

In December, DSP secured \$20,618 in grant funding from the Association of Food and Drug Officials (AFDO), supported by FDA, to ensure ongoing dairy-specific regulatory training curriculums for staff, to ensure involvement with relevant organizations and conferences, and to remain educated in updated research with regards to developing food safety and hygienic equipment design trends within the field.

PSP is pursuing the location and addition of produce farms that are not yet part of its inspection inventory. There are currently 257 covered produce farms that are part of the program's inspection inventory (which includes large, small, and very small farms) with another 731 in PSP's database that are exempt (micro exempt, qualified exempt, rarely consumed raw exempt, and processing exempt) from the federal Produce Safety Rule. PSP inspectors have been working to verify farm data in their respective territories. 53 farms have registered online since the launch of the new voluntary farm registration portal, and 43 farms have applied for an exemption. Work continues to progress on the Dun & Bradstreet data set as 1,098 informational letters were mailed out to farms between December and January to help determine whether the farm is a valid entity or still active in farming produce commodities. Farm inventory work has been important during the winter months, as it will determine inspection work planning and prioritization in the spring when inspections resume.

In December, Office of Veterinary Services (OVS) staff participated in the Virginia Poultry Disease Task Force Meeting. This meeting is held on quarterly and is comprised of VDACS and USDA staff, commercial poultry companies, and others involved in commercial poultry industry. An overview of the current nationwide Highly Pathogenic Avian Influenza (HPAI) outbreak was covered in addition to response to Virginia's HPAI backyard cases. USDA covered the new biosecurity audits required to restock farms located in a HPAI control zone.

In December, five mares were placed under quarantine for Contagious Equine Metritis (CEM) Testing and six mares were released from CEM quarantine by OVS staff after testing and treatment was completed. After testing negative for four foreign animal diseases at the USDA Import Quarantine, mares and stallions over two years of age imported to the U.S. from CEM-infected countries must undergo a three-week (mare) to six-week (stallion) quarantine in their destination state. The testing and treatment protocol to prevent importation of the CEM agent is performed by accredited veterinarians and overseen by OVS staff at private farms in Virginia.

Last year, the General Assembly approved a capital construction project to expand the Regional Animal Health Laboratories in Warrenton, Harrisonburg, and Lynchburg. To accomplish this project, VDACS has partnered with James Madison University (JMU). JMU will be providing project management, project inspection, and capital project procurement services. This will be a multiyear project that should greatly enhance the VDACS laboratory facilities.

In January, a Bentley automatic somatic cell counter was delivered to VDACS's Wytheville laboratory. This equipment was funded partially through a \$17,615 grant that DSP was able to secure from AFDO. This equipment is estimated to save at least eight hours per week of manual counting of somatic cells (white blood cells) in raw milk. It is also projected to save approximately \$10,400 each year of shipping costs incurred by having to ship samples to another lab in order to maintain time and temperature requirements of raw milk samples set forth by the Pasteurized Milk Ordinance.

In January, the OVS Animal Care Inspector Senior provided a one-hour virtual presentation and discussion session for the Shelter Medicine Clerkship students from Virginia Tech. This session addresses the role of veterinarians in assisting shelters with protocol development and supervising euthanasia and the limited use of controlled substances as well as the requirements for animal shelters to obtain adequate legitimate veterinary care for animals in custody. Relevant laws and regulations were reviewed and discussed. The veterinarian in the role of "Clerkship Leader of Shelter Medicine and Surgery" at Virginia Tech requested this presentation, and it will

continue as a recurring component of the clerkships every three weeks.

In January, VDACS received a call regarding increased mortality in a house of 25,264 112-day old tom turkeys on a commercial premises in Rockingham County. Birds in one house had a sharp spike in mortality (1,100). Birds in the other two houses on the premises, also 112-day old tom turkeys, were not showing clinical signs. Duplicate tracheal swabs were taken from dead birds. These swabs were hand carried to the VDACS NAHLN Laboratory in Harrisonburg. The duplicate samples were shipped overnight to NVSL-Ames for confirmatory testing. The NAHLN laboratory reported non-negative results on PCR the same day. NVSL confirmed positive H5N1 on January 19. Indemnity was submitted and approved on January 18. Depopulation was completed January 18-19. The VDACS Office of Laboratory Services went to seven-days a week testing after the initial decision of HPAI in the commercial poultry industry. Staff was able to complete testing at up to four PCR runs per day to ensure continuity of operations for the companies needing negative pre-movement testing within 24 hours of move and to ensure surveillance testing had been completed. There are no definitive epidemiological links identified at this time, although there is a nearby pond and the presumption is that the AI virus from wild waterfowl feces was inadvertently introduced into the flock. An additional turkey farm of about 11,000 turkeys was also confirmed to be infected on January 24, and the flock was handled similarly to the first.

In February, the State Veterinarian announced the release of the control areas surrounding the two Rockingham County poultry farms that were affected by HPAI in January 2023. Following the detection of HPAI in Rockingham County, OVS staff worked with USDA Animal and Plant Health Inspection Service – Veterinary Services (APHIS-VS) to establish control areas with a 10-kilometer radius around the affected facilities. Movement of domestic birds into and out of that control area required testing and permitting. Since then, OLS staff performed repeated testing of all flocks in the control area to ensure that HPAI has not spread to other poultry flocks nearby. No additional samples tested positive for avian influenza, and testing is now complete. With the release of the control area, there is no further requirement for permitting or enhanced surveillance testing. Routine pre-movement testing will continue. However, it is important to continue to practice the highest practical levels of biosecurity, as the risk of HPAI in the environment remains high.

The FDA enforcement discretion period for harvest and post-harvest agricultural water requirements ended in January for large covered farms. During this upcoming year of inspections, FDA and the National Association of State Departments of Agriculture have both advised states to take an “educate while we regulate approach,” providing these farms a one-year grace period to help them come into compliance with the new water standards. Pre-harvest agricultural water requirements have still not been finalized. PSP continues to monitor and learn about water-related topics as released by FDA since it appears to be the leading concern in the produce industry.

The Office of Meat and Poultry Services (OMPS) continues to work with new facilities that have applied for and received grant funding. KC Farms Meats in Ferrum received its Conditional Grant of Inspection to begin operations in February. A final walk through of the facility was conducted at The Butchers Block in Dry Fork in February, and the company intends to begin operations soon. Both facilities will provide slaughter and processing opportunities to farmers who continue to struggle with scheduling their animals for processing. The Conditional Grant of Inspection will allow farmers to wholesale products to restaurants and grocery stores, sell meat at farmers’ markets, and sell directly to individual customers.

Meat processing establishments that have received grant funding continue to struggle with contractors, equipment suppliers, and local government regulations. Several existing establishments have expressed concerns regarding the removal of their inedible materials. Valley Protein, the only rendering company on the East Coast, sold its business to Darling Ingredients Company. Darling has limited the number of pickups from facilities and is restricting what materials it will accept. This makes it difficult for establishments to remove inedible materials from their premises. A few inspected operators have expressed that they will stop operations if they cannot find a solution to dispose of the inedible materials.

OMPS receives daily inquiries on the requirements to obtain a grant of inspection from individuals wanting to provide slaughter and processing services within Virginia. Several custom slaughter facilities have expressed interest in obtaining grants of inspection. Owners of slaughter and processing facilities continue to report challenges with hiring and retaining employees.

Project 7135

Department of Agriculture And Consumer Services

Amendments to Establish a Minimum Germination Rate for Cotton Seed

2VAC5-390-190. Minimum germination standard for cotton seed.

A. Cotton for agricultural seed, as defined in § 3.2-4000 of the Code of Virginia, shall have a 60% minimum germination.

B. A licensee may relabel and distribute, sell, or offer for sale cotton for agricultural seed that is labeled in violation of subdivision C 9 a of § 3.2-4008 of the Code of Virginia, if such seed is relabeled with the germination rate determined by the Department of Agriculture and Consumer Services.

Project 7458

Department of Agriculture And Consumer Services

Repeal of quarantine related to Thousand Cankers Disease

Chapter 318

Rules and Regulations for Enforcement of the Virginia Pest Law - Thousand Cankers Disease
(REPEALED)

2VAC5-318-10. Declaration of quarantine. (Repealed.)

~~A quarantine is hereby established to restrict the movement of certain articles capable of transporting Thousand Cankers Disease unless such articles comply with the conditions of this regulation.~~

2VAC5-318-20. Purpose of quarantine. (Repealed.)

~~The purpose of this quarantine is to help prevent the artificial spread of Thousand Cankers Disease to uninfested areas of the Commonwealth by regulating the movement of articles that are capable of transporting the disease. Thousand Cankers Disease is a disease complex that attacks walnut trees, *Juglans* spp. The fungus *Geosmithia morbida* is vectored by the walnut twig beetle, *Pityophthorus juglandis*, causing small cankers under the bark of the tree. The beetle introduces the fungus while it tunnels beneath the bark. As more beetles attack the tree, the number of cankers increases until they coalesce to girdle twigs and branches, restricting movement of nutrients and eventually killing the tree. Thousand Cankers Disease has become established in the Commonwealth and has the potential to spread to uninfested areas by natural means or through the movement of infested articles.~~

2VAC5-318-30. Definitions. (Repealed.)

~~The following words and terms shall have the following meanings unless the context clearly indicates otherwise:~~

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

~~"Certificate" means a document issued by an inspector or person operating in accordance with a compliance agreement to allow the movement of regulated articles to any destination.~~

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

~~"Commonwealth" means the Commonwealth of Virginia.~~

~~"Compliance agreement" means a written agreement between a person engaged in growing, handling, receiving, or moving regulated articles and the Virginia Department of Agriculture and Consumer Services, wherein the former agrees to comply with the requirements of the compliance agreement and comply with the provisions of this regulation.~~

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

~~"Infestation" means the presence of Thousand Cankers Disease or the existence of circumstances that make it reasonable to suspect that Thousand Cankers Disease is present.~~

~~"Inspector" means an employee of the Virginia Department of Agriculture and Consumer Services or other person authorized by the Commissioner of the Virginia Department of Agriculture and Consumer Services to enforce the provisions of this quarantine or regulation.~~

~~"Limited permit" or "permit" means a document issued by an inspector to allow the movement of regulated articles to a specific destination.~~

~~"Moved," "move," or "movement" means shipped; offered for shipment; received for transportation; transported; carried; or allowed to be moved, shipped, transported, or carried.~~

~~"Person" means the term as defined in § 1-230 of the Code of Virginia.~~

~~"Regulated area" means the localities, areas, or states listed in 2VAC5-318-50 of this regulation.~~

~~"Thousand Cankers Disease" means the disease complex caused by the fungus Geosmithia morbida that is vectored into walnut trees by the walnut twig beetle, Pityophthorus juglandis.~~

~~"Virginia Pest Law" means Chapter 7 (§ 3-2-700 et seq.) of Title 3.2 of the Code of Virginia.~~

2VAC5-318-40. Regulated articles. (Repealed.)

~~The following articles are regulated under the provisions of this regulation:~~

- ~~1. Any life stage of the walnut twig beetle, Pityophthorus juglandis.~~
- ~~2. The fungal pathogen, Geosmithia morbida.~~
- ~~3. All plants and plant parts of the genus Juglans including but not limited to nursery stock, budwood, scionwood, green lumber, firewood, and other material living, dead, cut, or fallen including stumps, roots, branches, mulch, and composted and uncomposted chips.~~
- ~~4. Specific exemptions include, but are not limited to, nuts, nut meats, hulls, processed lumber (100% bark free, kiln-dried, with squared edges), and finished wood products without bark, including walnut furniture, instruments, and other items derived from the genus Juglans.~~
- ~~5. Any other article or means of conveyance when it is determined by an inspector that it presents a risk of spread of Thousand Cankers Disease.~~

2VAC5-318-50. Regulated areas. (Repealed.)

~~The following areas in Virginia are quarantined for Thousand Cankers Disease:~~

- ~~1. The entire counties of:
Chesterfield
Fairfax
Goochland
Hanover
Henrico
King and Queen
King William
New Kent
Powhatan
Prince William~~
- ~~2. The entire cities of:
Colonial Heights
Fairfax
Falls Church
Manassas
Manassas Park
Richmond~~

2VAC5-318-60. Conditions governing the intrastate movement of regulated articles. (Repealed.)

~~A. Movement within a regulated area. Movement of a regulated article solely within a regulated area is allowed without restriction.~~

~~B. Movement from a regulated area to an unregulated area. Movement of a regulated article that originates from within a regulated area to an unregulated area is allowed only if the regulated article is accompanied by a certificate or limited permit issued in accordance with 2VAC5-318-70 and attached in accordance with 2VAC5-318-100.~~

~~C. Movement from an unregulated area through a regulated area. A regulated article that originates outside of a regulated area may move through a regulated area under the following conditions:~~

- ~~1. With a certificate or limited permit issued in accordance with 2VAC5-318-70 and attached in accordance with 2VAC5-318-100; or~~
- ~~2. Without a certificate or limited permit if:
 - ~~a. Accompanied by a waybill that indicates the point of origin of the regulated article;~~
 - ~~b. The regulated article is moved directly through the regulated area without stopping, except for refueling or due to traffic conditions; or has been stored, packed, or handled at locations approved by an inspector as not posing a risk of infestation; and~~
 - ~~c. The regulated article has not been combined or commingled with other articles so as to lose its individual identity.~~~~

~~D. Movement from a regulated area through an unregulated area. A regulated article that originates from within a regulated area may be moved through an unregulated area to a regulated area under the following conditions:~~

- ~~1. With a certificate or limited permit issued in accordance with 2VAC5-318-70 and attached in accordance with 2VAC5-318-100; or~~
- ~~2. Without a certificate or limited permit if:
 - ~~a. Accompanied by a waybill that indicates the point of origin of the regulated article;~~
 - ~~b. The regulated article is moved directly through the unregulated area without stopping, except for refueling or due to traffic conditions; or has been stored, packed, or handled at locations approved by an inspector as not posing a risk of infestation; and~~
 - ~~c. The regulated article has not been combined or commingled with other articles so as to lose its individual identity.~~~~

2VAC5-318-70. Issuance and cancellation of certificates and limited permits. (Repealed.)

~~A. Certificates and limited permits may be issued by an inspector for the movement of regulated articles originating from within a regulated area to any destination within Virginia when:~~

- ~~1. The regulated articles have been examined by the inspector and found to be apparently free of the Thousand Cankers Disease, or the regulated articles have been grown, produced, manufactured, stored, or handled in such a manner that, in the judgment of the inspector, would prevent an infestation or destroy all life stages of Thousand Cankers Disease;~~
- ~~2. The regulated articles are to be moved in compliance with any additional conditions deemed necessary under the Virginia Pest Law to prevent the spread of Thousand Cankers Disease; and~~

~~3. The regulated articles are eligible for unrestricted movement under all other domestic plant quarantines and regulations applicable to the regulated articles.~~

~~B. Certificates may be issued by any person operating under a compliance agreement for the movement of regulated articles to any destination within Virginia when:~~

~~1. The regulated articles have been examined by any person operating under a compliance agreement and found to be apparently free of Thousand Cankers Disease, or the regulated articles have been grown, produced, manufactured, stored, or handled in such a manner, and following all requirements of the compliance agreement, that would prevent an infestation;~~

~~2. The regulated articles are to be moved in compliance with any additional conditions deemed necessary under the Virginia Pest Law to prevent the spread of Thousand Cankers Disease; and~~

~~3. The regulated articles are eligible for unrestricted movement under all other domestic plant quarantines and regulations applicable to the regulated articles.~~

~~C. Any certificate or limited permit that has been issued or authorized may be withdrawn by the inspector orally or in writing if the inspector determines that the holder of the certificate or limited permit has not complied with all conditions for the use of the certificate or limited permit or with any applicable compliance agreement. If the withdrawal is oral, the withdrawal and the reasons for the withdrawal shall be confirmed in writing and communicated to the certificate or limited permit holder as promptly as circumstances allow.~~

~~2VAC5-318-80. Compliance agreements and cancellation. (Repealed.)~~

~~A. Any person engaged in growing, handling, or moving regulated articles may enter into a compliance agreement when an inspector determines that the person understands the requirements and obligations under this regulation. The agreement shall stipulate safeguards that must be maintained against the establishment and spread of Thousand Canker Disease and the conditions governing the movement of regulated articles.~~

~~B. Any compliance agreement may be canceled orally or in writing by an inspector whenever the inspector finds that the person who has entered into the compliance agreement has failed to comply with this regulation. If the cancellation is oral, the cancellation and the reasons for the cancellation shall be confirmed in writing and communicated to the person who entered into such compliance agreement as promptly as circumstances allow.~~

~~2VAC5-318-90. Assembly and inspection of regulated articles. (Repealed.)~~

~~A. Any person, other than a person authorized to issue certificates under 2VAC5-318-70, requesting a certificate or limited permit shall apply for inspection of the regulated article as far in advance as practical, but no less than five business days before the regulated articles are to be moved.~~

~~B. The regulated articles must be assembled at the place and in the manner the inspector designates as necessary to facilitate inspection and shall be safeguarded from infestation.~~

~~2VAC5-318-100. Attachment and disposition of certificates and limited permits. (Repealed.)~~

~~A. During the intrastate movement, a certificate or limited permit must be attached at all times to the outside of the container that contains the regulated article or to the regulated article itself. The requirements of this section may also be met by attaching the certificate or limited permit to the consignee's copy of the waybill, provided the regulated article is sufficiently described on the certificate or limited permit and on the waybill to facilitate the identification of the regulated article.~~

~~B. The certificate or the limited permit for the intrastate movement of a regulated article must be furnished by the carrier to the consignee at the destination of the regulated article. A copy of the certificate or the limited permit must be retained by the sender of the regulated article at the place of shipment.~~

~~**2VAC5-318-110. Inspection and disposal of regulated articles and posts. (Repealed.)**~~

~~Upon presentation of official credentials, an inspector is authorized to stop and inspect, and to seize, destroy, or otherwise dispose of or require disposal of regulated articles as provided in the Virginia Pest Law.~~

~~**2VAC5-318-120. Prohibited entry into Virginia. (Repealed.)**~~

~~A. The movement into Virginia of a regulated article originating in states that are known to have Thousand Cankers Disease or from any other area of the United States where federal or state plant regulatory officials have determined Thousand Cankers Disease to be present is prohibited unless prior written approval is issued by the commissioner. States with known areas of infestation of Thousand Cankers Disease include, but are not limited to:~~

- ~~Arizona~~
- ~~California~~
- ~~Colorado~~
- ~~Idaho~~
- ~~Nevada~~
- ~~New Mexico~~
- ~~Oregon~~
- ~~Pennsylvania~~
- ~~Tennessee~~
- ~~Utah~~
- ~~Washington~~

~~B. The movement of a regulated article for research purposes is permissible with the commissioner's prior written approval.~~

~~**2VAC5-318-130. Nonliability of the Department. (Repealed.)**~~

~~The department shall not be liable for any costs incurred by third parties whose costs result from, or are incidental to, inspections required under the provisions of this regulation.~~

~~**2VAC5-318-140. Revocation of this regulation. (Repealed.)**~~

~~This regulation may be revoked by the board when the board is satisfied that the need for this quarantine no longer exists. Such revocation shall take place upon the date specified by the board in the order that revokes this regulation.~~

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;
2. 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; and

3. Promulgate regulations in accordance with the Administrative Process Act (§ 2.2-4000 et seq.) not inconsistent with the laws of Virginia necessary to carry out the provisions of Article 1.1:1 (§ 18.2-340.15 et seq.) of Chapter 8 of Title 18.2. Such regulations may include penalties for violations.

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; 2022, cc. 554, 609.

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.



Virginia Wineries Association

250 West Main Street, Suite 100
Charlottesville, VA 22902
Office: (434) 326-9815
www.vawine.org

January 24, 2023

VDACS

102 Governor Street
Richmond, VA 23219

Dear Commissioner Guthrie,

The Virginia Wineries Association (VWA) is writing to endorse David Drillock of Fifty-Third Winery & Vineyard as a board member for the Virginia Winery Distribution Company (VWDC).

Fifty-Third Winery & Vineyard was the 53rd licensed Farm Winery in July of 1999. Dave & Susan Drillock purchased the winery in 2015 and have since made it their personal mission to craft quality Virginia wines that express the uniqueness of the Virginia terroir. Fifty-Third wines are mostly from their two estate owned vineyards, the 53rd Vineyard located in Louisa, Virginia and the Windy Meadow Vineyard located in Free Union, Virginia.

Dave currently serves on the VWA Board of Directors as well as numerous Association committees.

We feel that Dave would be an excellent candidate for board membership on the VWDC.

Thank you for your time and consideration.

Sincerely,

A handwritten signature in black ink, appearing to read 'G. Hodson', written over a circular stamp or seal.

George Hodson
President, Virginia Wineries Association

Policy and Procedure

Virginia Department of Agriculture and Consumer Services

Number: 2.3

SUBJECT: Conduct of Board Meetings and Board Votes; Freedom of Information; Conflict of Interest

Date: February 1990

Revision: August 31, 2022

This revision supersedes the October 29, 2021, revision of Policy 2.3.

Effective: September 1, 2022

APPROVAL:  _____

OBJECTIVE AND INTENT

To establish guidelines to ensure that the Board of Agriculture and Consumer Services; any other state board, council, or commission within the Department of Agriculture and Consumer Services; and any committee of any state board, council, or commission within the Department of Agriculture and Consumer Services complies with provisions of the Virginia Freedom of Information Act (Va. Code § 2.2-3700 et seq.) and the State and Local Government Conflict of Interests Act (Va. Code § 2.2-3100 et seq.).

DEFINITIONS

“Board” means the Board of Agriculture and Consumer Services; any other state board, council, or commission within the Department of Agriculture and Consumer Services; and any committee of any state board, council, or commission within the Department of Agriculture and Consumer Services.

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

“Secretary” means the secretary of a board.

PROCEDURES

I. FREEDOM OF INFORMATION

A. DEFINITIONS

"All-virtual public meeting" means a public meeting (i) conducted by a board, except those boards with the authority to deny, revoke, or suspend a professional or occupational license, using electronic communications means, (ii) during which all members of the board who participate do so remotely rather than being assembled in one physical location, and (iii) to which public access is provided through electronic communication means.

"Closed meeting" means a meeting from which the public is excluded.

"Electronic communication" means the use of technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities to transmit or receive information.

"Emergency" means an unforeseen circumstance rendering the notice required by the Virginia Freedom of Information Act (Va. Code § 2.2-3700 et seq.) impossible or impracticable and which circumstance requires immediate action.

"Open meeting" or "public meeting" means a meeting at which the public may be present.

"Remote participation" means participation by an individual member of a board by electronic communication means in a public meeting where a quorum of the board is otherwise physically assembled.

B. PUBLIC MEETINGS

Except as specifically provided by this policy, all meetings of a board shall be public meetings, including meetings of committees and work sessions, even if no votes are cast or no decisions are made.

MEETING

A meeting occurs when a board sits physically, regardless of location, as an entity or gathers through electronic communication. A meeting is also an informal assemblage of three or more members of a board or a quorum of the membership of the board, if said quorum is less than three, wherever held, with or without minutes being taken, whether or not votes are cast, and at which the members discuss public business of the board.

An email exchange between three or more board members or a quorum of the membership of the board, if said quorum is less than three, that occurs within a time period short enough to be considered a simultaneous assemblage of the board is considered a meeting of the board.

The gathering of employees of a board or the gathering or attendance of two or more members of a board at any place or function where no part of the purpose of such gathering or attendance is the discussion or transaction of any public business and such gathering or attendance was not called or prearranged with any purpose of discussing or transacting any business of the board shall not be deemed a public meeting.

NOTICE

The secretary shall provide notice including the time, date, and location of each meeting. Notice must be posted at least three working days prior to a board meeting. Notice must be posted in two physical locations: (i) a prominent public location at which notices are regularly posted and (ii) in the office of the clerk of the board or, if the board has no clerk, in the office of the Deputy Commissioner. Notice must also be posted on (i) the agency's website and (ii) a central electronic calendar maintained by the Commonwealth.

The secretary shall submit meeting notices to the Office of Policy, Planning, and Research for posting on a central electronic calendar maintained by the Commonwealth and to the Office of Communications for inclusion on the agency website.

Any person may annually file a written request for notification with a board. The request shall include the requester's name; address; zip code; daytime telephone number; electronic mail address, if available; and organization, if any. The secretary of a board receiving such a request shall provide notice of all meetings directly to each requestor.

Notice, reasonable under the circumstances, of special, emergency, or continued meetings shall be given contemporaneously with the notice provided members of the board.

CONDUCT OF MEETINGS AND MEETING MINUTES

At least one copy of the proposed agenda and all agenda packets and, unless exempt, all materials furnished to members of the board for a meeting shall be made available for public inspection at the same time the documents are furnished to the members of the board. The proposed agenda for a meeting of a board on which there is at least one member appointed by the Governor shall state whether public comment will be received at the meeting and, if so, the approximate point during the meeting when public comment will be received.

Any person may photograph, film, record, or otherwise reproduce any portion of a meeting required to be open. The board may adopt rules governing the placement and use of equipment necessary for broadcasting, photographing, filming, or recording a meeting to prevent interference with the proceedings.

No vote shall be taken by secret or written ballot in an open meeting.

Minutes shall be taken at all open meetings. Minutes shall be in writing and shall include (i) the date, time, and location of the meeting; (ii) the members of the board recorded as present and absent; and (iii) a summary of the discussion on matters proposed, deliberated, or decided and a record of any votes taken. In addition, for electronic communication meetings conducted in accordance with Va. Code § 2.2-3708.2 or § 2.2-3708.3, board minutes shall include (i) the identity of the members of the board who participated in the meeting through electronic communication means, (ii) the identity of the board members who were physically assembled at one physical location, and (iii) the identity of the members of the board who were not present at such physical location but who monitored such meeting through electronic communication means.

The secretary shall ensure that the draft minutes of each meeting are posted on the board's official public government website and on a central electronic calendar maintained by the Commonwealth no later than 10 working days after the conclusion of the meeting. The secretary shall ensure that final approved minutes are posted within three working days of final approval of the minutes. The secretary shall submit minutes to the Office of Policy, Planning, and Research for posting on a central electronic calendar maintained by the Commonwealth. The secretary should work with the Office of Communications to post minutes of a board's meeting on the agency's official public government website.

Each board is encouraged to (i) provide public access, both in person and through electronic communication means, to public meetings and (ii) provide avenues for public comment at public meetings when public comment is customarily received, which may include public comments made in person or by electronic communication means or other methods.

C. MEETINGS BY ELECTRONIC COMMUNICATION MEANS

There are three ways in which board members may participate in a meeting by electronic communication means: (i) pursuant to Va. Code § 2.2-3708.2 when the Governor has declared a state of emergency in accordance with Va. Code § 44-146.17, (ii) pursuant to Va. Code § 2.2-3708.3 regarding remote participation by individual members, and (iii) pursuant to Va. Code § 2.2-3708.3 allowing the meeting to be noticed as an all-virtual public meeting.

PARTICIPATION WHEN THE GOVERNOR HAS DECLARED A STATE OF EMERGENCY
(VA. CODE § 2.2-3708.2)

The board may meet by electronic communication means without a quorum of the board physically assembled at one location when the Governor has declared a state of emergency in accordance with Va. Code § 44-146.17, 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 board or the discharge of its lawful purpose, duties, and responsibilities. In such circumstances, the secretary shall (i) 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 board conducting the meeting; (ii) make arrangements for public access to such meeting through electronic communications means, including videoconferencing if already used by the board; (iii) provide the public with the opportunity to comment at those meetings of the board when public comment is customarily received; and (iv) otherwise comply with the provisions of the Virginia Freedom of Information Act.

The nature of the emergency, the fact that the meeting was held by electronic communication means, and the type of electronic communications means by which the meeting was held shall be stated in the minutes. The board's authority to hold a meeting pursuant to this section shall be applicable only for the duration of the Governor's declared emergency.

PARTICIPATION OTHER THAN WHEN THE GOVERNOR HAS DECLARED A STATE OF EMERGENCY (VA. CODE § 2.2-3708.3)

REMOTE PARTICIPATION BY INDIVIDUAL BOARD MEMBERS

An individual board member may use remote participation instead of attending a public meeting in person if, in advance of the public meeting, the board has adopted a policy, by recorded vote at a public meeting, that 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. The policy shall (i) describe the circumstances under which an all-virtual public meeting and remote participation will be allowed and the process the board will use for making requests to use remote participation, approving or denying such requests, and creating a record of such requests and (ii) fix the number of times remote participation for personal matters or all-virtual public meetings can be used per calendar year, not to exceed the limitations set forth in subdivisions (B)(4) and (C)(9) of Va. Code § 2.2-3708.3.

An individual board member wishing to use remote participation instead of attending a public meeting in person must also notify the board chair, in advance of the public meeting that: (i) the member has a temporary or permanent disability or other medical condition that prevents the member's physical attendance; (ii) a family member's medical condition requires the member to provide care for such family member, thereby preventing the member's physical attendance; (iii) the member's principal residence is more than 60 miles from the meeting location identified in the required notice for such meeting; or (iv) the member is unable to attend the meeting due to a personal matter and identifies with specificity the nature of the personal matter. A member may not use remote participation due to personal matters more than two meetings per calendar year or 25 percent of the meetings held per calendar year rounded up to the next whole number, whichever is greater.

If remote participation by an individual board member is approved, the board shall record in its minutes the remote location from which the member participated, which need not be open to the public and may be identified in the minutes by a general description. If such remote participation is approved pursuant to clause (i) or (ii) above, the board shall also record in its minutes the fact that the member participated through electronic communication means due to (a) a temporary or permanent disability or other medical condition that prevented the member's physical attendance or (b) 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 such remote participation is approved pursuant to clause (iii) above, the board shall also include in its minutes the fact that the member participated through electronic communication means due to the distance between the member's principal residence and the meeting location. If such remote participation is approved pursuant to clause (iv) above, the board 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 due to a personal matter is disapproved because such participation would violate the board's adopted policy, such disapproval shall be recorded in the minutes with specificity.

ALL-VIRTUAL PUBLIC MEETING PARTICIPATION BY BOARD MEMBERS

With the exception of those boards with the authority to deny, revoke, or suspend a professional or occupational license, any board may hold all-virtual public meetings, provided that the board complies with the other requirements in this policy for meetings, the board has adopted a policy as required pursuant to subsection D of Va. Code § 2.2-3708.3, and the board meets the following requirements:

1. An indication of whether the meeting will be an in-person or all-virtual public meeting is included in the required meeting notice along with a statement notifying the public that the method by which the board chooses to meet shall not be changed unless the board provides a new meeting notice in accordance with the provisions of § 2.2-3707;
2. Public access to the all-virtual public meeting is provided via electronic communication means;
3. The electronic communication means used allows the public to hear all members of the board in the all-virtual public meeting and, when audio-visual technology is available, to see the members of the board as well;
4. A phone number or other live contact information is provided to alert the board if the audio or video transmission of the meeting provided by the board fails, the board monitors such designated means of communication during the meeting, and the board takes a recess until public access is restored if the transmission fails for the public;
5. A copy of the proposed agenda and all agenda packets and, unless exempt, all materials furnished to members of a board for a meeting is made available to the public in electronic format at the same time that such materials are provided to members of the board;
6. The public is afforded the opportunity to comment through electronic means, including by way of written comments, at those public meetings when public comment is customarily received;
7. No more than two members of the board are together in any one remote location unless that remote location is open to the public to physically access it;
8. If a closed session is held during an all-virtual public meeting, transmission of the meeting to the public resumes before the board votes to certify the closed meeting as required by subsection D of § 2.2-3712;
9. The board does not convene an all-virtual public meeting (i) more than two times per calendar year or 25 percent of the meetings held per calendar year rounded up to the next whole number, whichever is greater, or (ii) consecutively with another all-virtual public meeting; and

10. Minutes of all-virtual public meetings held by electronic communication means are taken as required by § 2.2-3707 and include the fact that the meeting was held by electronic communication means and the type of electronic communication means by which the meeting was held. If a board member's participation from a remote location pursuant to the allowance for an all-virtual public meeting is disapproved because such participation would violate the policy adopted pursuant to subsection D of Va. Code § 2.2-3708.3, such disapproval shall be recorded in the minutes with specificity.

D. CLOSED MEETINGS

Section 2.2-3711 of the Code of Virginia establishes the specific circumstances under which a board may hold a closed meeting.

Except as specifically authorized by law, in no event will the board take action on matters discussed in any closed meeting, except at an open meeting for which notice was given.

To convene a closed meeting, the board shall, in open meeting, take an affirmative recorded vote approving a motion that (i) identifies the subject matter, (ii) states the purpose of the meeting, and (iii) makes specific reference to the applicable statutory exemption from open meeting requirements. The secretary shall ensure that matters contained in such motion be set forth in detail in the minutes of the open meeting. A general reference to authorized exemptions from open meeting requirements or the subject matter of the closed meeting shall not be sufficient to satisfy the requirements for a closed meeting. (See Appendix A for a sample motion to convene a closed meeting.)

The board shall restrict its discussion during the closed meeting only to those matters specifically exempted from open meeting requirements and identified in the motion made in the open meeting.

The board may permit nonmembers to attend a closed meeting if such persons are deemed necessary or if their presence will reasonably aid the board in its consideration of a topic that is a subject of the meeting.

Minutes may be taken during a closed meeting of the board but shall not be required. If minutes are taken, they shall not be subject to mandatory public disclosure.

When the board determines that it has concluded its deliberations in a closed meeting, it shall make a motion in the closed meeting to end the closed meeting. (See Appendix B for a sample motion to end a closed meeting.)

At the conclusion of any closed meeting, the board shall immediately reconvene in an open meeting and take a roll call or other recorded vote to be included in the minutes, certifying to the best of each member's knowledge (i) only public business matters lawfully exempted from open meeting requirements and (ii) only such public business matters as were identified in the motion by which the closed meeting was convened were heard, discussed, or considered in the meeting. Any member who believes that there was a departure from the requirements of clauses (i) and (ii) shall so state prior to the vote, indicating the substance of the departure that, in his judgment, has taken place. The statement shall be recorded in the board's minutes. (See Appendix C for a sample certification of a closed meeting.)

The board may then take action in the open meeting on any matters heard, discussed, or considered in the closed meeting. No resolution, ordinance, rule, contract, regulation, or motion adopted, passed, or agreed to in a closed meeting shall become effective unless the board, following the closed meeting, reconvenes in open meeting and takes a vote of the membership on such resolution, ordinance, rule, contract, regulation, or motion that shall have its substance reasonably identified in the open meeting.

II. CONFLICT OF INTEREST

A. DEFINITIONS

"Officer" means any person appointed or elected to any governmental or advisory agency, including local school boards, whether or not he receives compensation or other emolument of office.

"Personal interest" means a financial benefit or liability accruing to an officer or employee or to a member of his immediate family. Such interest shall exist by reason of (i) ownership in a business if the ownership interest exceeds three percent of the total equity of the business; (ii) annual income that exceeds, or may reasonably be anticipated to exceed, \$5,000 from ownership in real or personal property or a business; (iii) salary, other compensation, fringe benefits, or benefits from the use of property, or any combination thereof, paid or provided by a business or governmental agency that exceeds, or may reasonably be anticipated to exceed, \$5,000 annually; (iv) ownership of real or personal property if the interest exceeds \$5,000 in value and excluding ownership in a business, income, or salary, other compensation, fringe benefits or benefits from the use of property; (v) personal liability incurred or assumed on behalf of a business if the liability exceeds three percent of the asset value of the business; or (vi) an option for ownership of a business or real or personal property if the ownership interest will consist of clause (i) or (iv) above.

“Personal interest in a transaction” means a personal interest of an officer or employee in any matter considered by his agency. Such personal interest exists when an officer or employee or a member of his immediate family has a personal interest in property or a business or governmental agency, or represents or provides services to any individual or business and such property, business or represented or served individual or business (i) is the subject of the transaction or (ii) may realize a reasonably foreseeable direct or indirect benefit or detriment as a result of the action of the agency considering the transaction.

“Transaction” means any matter considered by any governmental or advisory agency, whether in a committee, subcommittee, or other entity of that agency or before the agency itself, on which official action is taken or contemplated.

B. VOTES

Any member of a board who has a personal interest in a transaction:

1. Shall disqualify himself from participating in that transaction if the transaction has application solely to property or a business in which he has a personal interest. He shall make known his personal interest, including the full name and address of the business and the address or parcel number for the real estate if the interest involves a business or real estate, and his disclosure shall be reflected in the written minutes or on a signed written declaration, either of which shall be kept on file for five years in the Commissioner’s office. If the board member is unable to participate pursuant to items 2 or 3 below, he shall disqualify himself, and his disclosure shall be reflected in the written minutes or on a signed written declaration, either of which shall be kept on file for five years in the Commissioner’s office. (See Appendix D for a declaration statement for such a circumstance.)
2. May participate in the transaction if he is a member of a business, profession, occupation, or group of three or more persons, the members of which are affected by the transaction, and he complies with the declaration requirements prescribed in Va. Code § 2.2-3114(F). The board member shall either make his declaration orally to be recorded in the written minutes of the board or file a signed written declaration with the Commissioner, who shall retain and make available for public inspection such declaration for a period of five years from the date of recording or receipt. If reasonable time is not available to comply with this requirement prior to participating in the transaction, the board member shall prepare and file the required declaration by the end of the next business day. (See Appendix E for a disclosure form for such a circumstance.)

3. May participate in the transaction when a party to the transaction is a client of his firm if he does not personally represent or provide services to such client and he complies with the declaration requirements prescribed in Va. Code § 2.2-3114(G). The board member shall either make his declaration orally to be recorded in the written minutes of the board or file a signed written declaration with the Commissioner, who shall retain and make available for public inspection such declaration for a period of five years from the date of recording or receipt. If reasonable time is not available to comply with this requirement prior to participating in the transaction, the board member shall prepare and file the required declaration by the end of the next business day. (See Appendix F for a disclosure form for such a circumstance.)
4. May participate in a vote on that transaction if it affects the public generally, even though his personal interest, as a member of the public, may also be affected by the transaction.

III. AUTHORITY

This policy is issued by the Commissioner of Agriculture and Consumer Services, pursuant to Section 2.2-3700 *et seq.* and Section 2.2-3100 *et seq.* of the Code of Virginia (1950), as amended.

VI. INTERPRETATION

The Commissioner with the advice of the Assistant Attorney General assigned to the board will be responsible for the interpretation of this policy.

Version History		
Version	Date	Change Summary
1	12/1/10	Original
2	12/28/16	Revised to reflect changes to state law, signed by Sandra Adams
3	10/29/21	Revised to reflect statutory amendments to electronic meeting requirements, signed by Bradley Copenhaver
4	8/31/2022	Revised to reflect statutory amendments to electronic meeting requirements from Chapter 597 of the 2022 Acts of Assembly, signed by Joseph Guthrie

MOTION: Identify the board member who makes the motion

SECOND: Identify the board member who seconds the motions

MEETING DATE:

MOTION TO CONVENE A CLOSED MEETING

Mr. President, pursuant to Section _____ of the Code of Virginia, I hereby move that the _____ (*identify the board*) convene a closed meeting for the purpose of discussing _____ (*state the specific purpose for which the meeting is convened, including a reference, when applicable, to the agenda item involved*).

VOTE

AYES:

NAYS:

ABSENT DURING VOTING:

ABSENT DURING MEETING:

Clerk/Secretary of (*identify the board*)

MOTION: Identify the board member who makes the motion

SECOND: Identify the board member who seconds the motions

MEETING DATE:

MOTION TO END CLOSED MEETING

Mr. President, the _____ (*identify the board*) has completed business in closed meeting. I hereby move that the _____ (*identify the board*) end its closed meeting.

VOTE

AYES:

NAYS:

ABSENT DURING VOTING:

ABSENT DURING MEETING:

Clerk/Secretary of (*identify the board*)

MOTION: Identify the board member who makes the motion

SECOND: Identify the board member who seconds the motions

MEETING DATE:

CERTIFICATION OF CLOSED MEETING

WHEREAS, the _____ (*identify the board*) convened a closed meeting on this date pursuant to an affirmative recorded vote and in accordance with the provisions of the Virginia Freedom of Information Act; and

WHEREAS, Section 2.2-3712(D) of the Code of Virginia requires a certification by the _____ (*identify the board*) that such closed meeting was conducted in conformity with Virginia law;

NOW, THEREFORE, BE IT RESOLVED that the _____ (*identify the board*) hereby certifies that, to the best of each member's knowledge, (i) only public business matters lawfully exempted from open meeting requirements by Virginia law and (ii) only such public business matters as were identified in the motion convening the closed meeting were heard, discussed, or considered by the _____ (*identify the board*).

VOTE

AYES:

NAYS:

(For each nay vote, the substance of the departure from the requirements of clauses (i) and (ii) above must be described prior to the vote.)

ABSENT DURING VOTE:

ABSENT DURING MEETING:

Clerk/Secretary of (*identify the board*)

DECLARATION OF PERSONAL INTEREST IN A BOARD VOTE
FROM WHICH THE MEMBER MUST DISQUALIFY HIMSELF FROM VOTING

I _____ (*name of board member*) hereby disqualify myself from voting on the transaction in question, because:

_____ The transaction has application solely to property or a business in which I have a personal interest or a business that has a parent-subsiary or affiliated business entity relationship with the business in which I have a personal interest;

The full name and address of the business (or the address or parcel number for the real estate) are as follows:

_____ (other; specify) _____

(signature)

(date)

(This disclosure shall be reflected in the public record of the agency and kept on file in the Commissioner's Office for a period of five years.)

DISCLOSURE STATEMENT OF PERSONAL INTEREST

WHEN A BOARD MEMBER IS A MEMBER OF A BUSINESS, PROFESSION, OCCUPATION, OR GROUP OF THREE OR MORE PERSONS AFFECTED BY THE TRANSACTION AND THE MEMBER CHOOSES TO VOTE

I _____ (*name of public body member*)
acknowledge that I may have a personal interest in _____
(*identify the transaction involved*). The nature of my personal interest is as follows:
_____. I am a member of
a business, profession, occupation, or group of three or more persons affected by the
transaction. I am nevertheless able to vote fairly, objectively, and in the public interest.

(signature of board member)

(date)

(This declaration is to be made orally and recorded in the written minutes of the board or is to be signed and filed with the secretary, who shall retain and make it available for a period of five years from the date of recording or receipt. If reasonable time is not available to comply with this requirement prior to participating in the transaction, the board member shall prepare and file the required declaration by the end of the next business day.)

DISCLOSURE STATEMENT OF PERSONAL INTEREST

WHEN A PARTY TO THE TRANSACTION IS A CLIENT OF THE BOARD MEMBER'S FIRM AND THE BOARD MEMBER DOES NOT PERSONALLY REPRESENT OR PROVIDE SERVICES TO SUCH CLIENT AND THE BOARD MEMBER CHOOSES TO VOTE

I _____ (*name of board member*)
acknowledge that I may have a personal interest in _____
(*identify the transaction involved*). _____ (*identify the party to the*
transaction) is a client of my firm. I do not personally represent or provide services to
_____ (*identify the party to the transaction*). I am able to vote fairly,
objectively, and in the public interest.

(signature of board member)

(date)

(This declaration is to be made orally and recorded in the written minutes of the board or is to be signed and filed with the Secretary, who shall retain and make it available for a period of five years from the date of recording or receipt. If reasonable time is not available to comply with this requirement prior to participating in the transaction, the board member shall prepare and file the required declaration by the end of the next business day.)



ELECTRONIC MEETINGS UNDER THE VIRGINIA FREEDOM OF INFORMATION ACT

Table of Contents

- I. Introduction, notes, and definitions (§ 2.2-3701)
- II. Remote participation and all-virtual public meetings (§ 2.2-3708.3)
 - A. Policy requirement
 - B. Remote participation by individual members of public bodies
 - C. All-virtual public meetings
- III. Electronic meetings conducted under a declared state of emergency (§ 2.2-3708.2 and State Budget Item 4-0.01 (g))
 - A. Electronic meetings conducted during a state of emergency declared by the Governor or a locality under § 2.2-3708.2
 - B. Electronic meetings conducted during a state of emergency declared by the Governor under State Budget Item 4-0.01 (g)

Appendix: Best Practices Recommendations for All-Virtual Public Meetings



ELECTRONIC MEETINGS UNDER THE VIRGINIA FREEDOM OF INFORMATION ACT

I. Introduction

Prior to September 1, 2022, the provisions of the Virginia Freedom of Information Act (FOIA) concerning electronic meetings¹ were found in § 2.2-3708.2 of the Code of Virginia. As of September 1, 2022, the FOIA provisions concerning electronic meetings are found in § 2.2-3708.2 and new § 2.2-3708.3. These two Code sections separate electronic meetings into two general categories:

1. Electronic meetings held other than during a declared state of emergency, which includes both remote participation by individual members and all-virtual public meetings (in new § 2.2-3708.3); and
2. Electronic meetings held during a declared state of emergency (in § 2.2-3708.2).

Note that electronic meetings held during a declared state of emergency are also addressed in the State Budget.² The procedures for holding electronic meetings under a declared state of emergency as of September 1, 2022, are substantively identical to the same procedures prior to September 1, 2022. However, the procedures for individual members using remote participation are similar but not identical to the equivalent provisions prior to September 1, 2022. Specifically, the provisions that allow remote participation by individual members of public bodies are largely the same regarding participation due to personal matters, a member's medical condition or disability, or the need to provide medical care for a family member. However, the provision allowing remote participation for a member whose principal residence is 60 miles or more from the meeting location, which was previously available only to regional public bodies, may be used by all public bodies as of September 1, 2022. The procedures for all-virtual public meetings are new. Unless otherwise specified, this guide is written to correspond to the law effective as of September 1, 2022.

Note: Annual report and public comment form no longer required

As of September 1, 2022, there is no equivalent to the provisions of former subsection D of § 2.2-3708.2, which allowed certain electronic meetings to be conducted by state-level public bodies. That subsection included the requirement for public bodies to report their experiences with electronic meetings to the FOIA Council and to make available to the public a public comment form so that members of the public could comment regarding their experiences with electronic meetings. The annual report and availability of the public comment form are no longer required as of September 1, 2022.

¹ The phrase "electronic meeting" is used herein to refer to all types of meetings conducted using electronic communications, but it is not a defined term under FOIA.

² State Budget Item 4-0.01 (g) (originally added to address the COVID-19 pandemic); 2020 Session Acts of Assembly, c. 1289; 2020 Special Session I Acts of Assembly, c. 56; 2021 Special Session I Acts of Assembly, c. 552; 2022 Special Session I Acts of Assembly, c. 2.



Note: Public participation and public comment

Former subsection E of § 2.2-3708.2 provided that "[n]othing in this section shall be construed to prohibit the use of interactive audio or video means to expand public participation." As amended effective September 1, 2022, subsection A of § 2.2-3708.3 explicitly encourages public bodies to

1. Provide public access, both in person and through electronic communication means, to public meetings; and
2. Provide avenues for public comment at public meetings when public comment is customarily received, which may include public comments made in person or by electronic communication means or other methods.

If members of a public body are physically assembled at one location but wish to allow members of the public to listen or provide comment electronically, there are no restrictions on doing so. In other words, the heightened procedural requirements that apply to members of the public body do not apply to the public or other persons such as employees and guest presenters. Public bodies may use electronic means to increase public access even if no members are participating electronically (such as by broadcasting via radio or television or online even when a meeting is held entirely in person). The specific requirements and limitations on electronic participation described in this guide apply only to the members of the public body holding a public meeting.

Note: Member participation and monitoring meetings electronically

So long as all of the appropriate procedural requirements are met, a member participating in a meeting using electronic communication may participate in discussions, make motions, vote, join in closed meetings, and otherwise participate fully as if such member was physically present. If the procedural requirements are not met, however, then the member may only monitor the meeting (i.e., listen or watch, depending on the technology used) and cannot otherwise participate.

If a member is monitoring a meeting but not participating, as a matter of best practices, it is suggested that the chair of the public body make a statement to inform the public and the other members, such as:

"Please observe that [*member name*] could not attend today's meeting, but is [*listening/watching*] the meeting [*by speakerphone, videoconference, or whatever electronic communication means is being utilized*]. However, [*member name*] is only monitoring the meeting. [*He/she*] is not counted as present and cannot make motions, vote, or otherwise participate."

Definitions (§ 2.2-3701)

The definitions included below are specifically relevant to meetings conducted using electronic communications, but keep in mind that the other definitions in § 2.2-3701 also apply to electronic meetings as appropriate.

The definition of "electronic communication" was amended in 2018³ and subsequently is applicable to all of the types of electronic participation allowed under §§ 2.2-3708.2 and 2.2-3708.3:

³ 2018 Acts of Assembly, c. 54



FOIA - Electronic Meetings Guide

"Electronic communication" means the use of technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities to transmit or receive information.

This definition is meant to be broad enough to include all of the different types of technology that might be used for electronic communication, whether audio-only (such as telephone or radio technology), visual-only (such as text messaging or email), or both (such as television and many online virtual meeting platforms).

The following two definitions are effective as of September 1, 2022.⁴ These definitions distinguish between meetings where a public body has assembled a quorum in one physical location but one or more members is participating by electronic communication and meetings where there is no quorum physically assembled in one location and all of the members are participating using electronic communication:

"All-virtual public meeting" means a public meeting (i) conducted by a public body, other than those excepted pursuant to subsection C of § 2.2-3708.3, using electronic communication means, (ii) during which all members of the public body who participate do so remotely rather than being assembled in one physical location, and (iii) to which public access is provided through electronic communication means.

"Remote participation" means participation by an individual member of a public body by electronic communication means in a public meeting where a quorum of the public body is otherwise physically assembled.

The procedural requirements and limitations applicable to the various types of electronic meetings are described in the rest of this guide.

Please do not hesitate to contact the FOIA Council with any questions you may have concerning the requirements for conducting meetings using electronic communications.

Toll-Free Telephone: 1-866-448-4100
Email: foiacouncil@dls.virginia.gov

⁴ 2022 Acts of Assembly, c. 597.



II. Remote participation and all-virtual public meetings (§ 2.2-3708.3)

A. Policy requirement

Subsection D of § 2.2-3708.3 requires that public bodies adopt a participation policy before using the provisions for remote participation or all-virtual public meetings. Note that no policy is required for meetings conducted under § 2.2-3708.2 during a declared state of emergency. This policy requirement is similar but not identical to the policy requirement in former subsection C of § 2.2-3708.2 prior to September 1, 2022—public bodies that adopted policies prior to that date may need to adopt new versions of their policies to stay in compliance! The public body must adopt the policy by recorded vote at a public meeting and the policy must "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." The policy must also do the following:

1. Describe the circumstances under which an all-virtual public meeting and remote participation will be allowed and the process the public body will use for making requests to use remote participation, approving or denying such requests, and creating a record of such requests; and
2. Fix the number of times remote participation for personal matters or all-virtual public meetings can be used per calendar year, not to exceed the limitations set forth in subdivisions B 4 and C 9.

The public body may set forth more restrictive limitations regarding the circumstances under which remote participation is allowed than the statutory limits set forth in FOIA, but it may not expand such participation beyond those statutory limits. The referenced subdivisions B 4 and C 9 of § 2.2-3708.3 set out the numerical limitation on remote participation due to personal matters and all-virtual public meetings, respectively, both of which are limited to two meetings per calendar year or 25 percent of the meetings held per calendar year rounded up to the next whole number, whichever is greater. Additionally, an all-virtual public meeting may not be held consecutively with another all-virtual public meeting.

Note: Count participation separately for different types of meetings and for meetings of different public bodies

First, note that the limits on remote participation due to personal matters are separate from the limits on all-virtual public meetings and should be counted separately. For example, if an individual member had already reached his limit on participation due to personal matters, but the public body scheduled an all-virtual public meeting, the member could still participate in the all-virtual public meeting because these numerical limits are counted separately for the different types of electronic meetings. Public bodies may set lower numerical limits on such meetings by policy, but they may not exceed the statutory limits of two meetings per calendar year or 25 percent of the meetings held per calendar year rounded up to the next whole number, whichever is greater. Note also that these statutory numerical limits apply only to remote participation due to personal matters and to all-virtual public meetings, not to other types of remote participation allowed under FOIA. In other words, members can use the other types of remote participation (due to medical condition or disability, providing medical care for a family member, or due to the distance of the member's principal residence from the meeting location) an unlimited number of times, unless the public body chooses to adopt a policy that places a numerical limit on those types of remote participation.



Second, public bodies may also adopt such a participation policy on behalf of any committee, subcommittee, or other entity that it creates. Keep in mind that such committees, subcommittees, and other entities are public bodies in their own right as defined in § 2.2-3701.⁵ Because they are separate public bodies, meetings of such committees, subcommittees, and other entities are counted separately from meetings of the public body that created them when determining whether a member has reached the numerical limit for remote participation due to personal matters and whether the limit regarding all-virtual public meetings has been reached (both regarding number and consecutive meetings). For example, if a member had reached the limit on participation due to personal matters in meetings of the main public body, he could still participate remotely due to personal matters in meetings of any committee, subcommittee, or other entity on which he serves (presuming he has not reached the limit for that committee, subcommittee, or other entity as well). Note again that public bodies may also set lower numerical limits on such meetings of their committees, subcommittees, or other entities, just as they can for the main public body, but they may not exceed the statutory limits.

Note: Public bodies may adopt a policy on electronic participation and members may use it at the same public meeting

If a member wishes to participate remotely but the public body has not yet adopted a policy on doing so prior to the meeting, it is still an option. So long as a quorum of the public body is assembled physically in one location first, that quorum may vote to adopt a participation policy as required by law during the public meeting. Then, after the policy has been adopted, the public body may allow the other member(s) to participate remotely for the rest of the meeting.

Sample policy language

In order to facilitate compliance with this requirement, the FOIA Council has prepared sample language that public bodies may use in crafting their own policies. This sample language is based on the language of the statute itself and includes both the basic policy statement and the limitations set forth in the law.

Sample language:

It is the policy of [the public body] that individual [public body] members may participate in meetings of [the public body] by electronic communication as permitted by § 2.2-3708.3 of the Code of Virginia. [If the public body wishes to add any additional limitations on the circumstances under which members may participate by electronic communications, include them here.] This policy shall apply 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.

Whenever an individual member wishes to participate from a remote location, the law requires a quorum of [the public body] to be physically assembled at the primary or central meeting location.

⁵ The definition of "public body" includes, among other entities, "any committee, subcommittee, or other entity however designated, of the public body created to perform delegated functions of the public body or to advise the public body."



When such individual participation is due to a personal matter, such participation is limited by law to two meetings per calendar year or 25 percent of the meetings held per calendar year rounded up to the next whole number, whichever is greater. [If the public body wishes to add any additional limitations on such remote participation, include them here.]

Further, it is the policy of [the public body] that [the public body] may hold all-virtual public meetings pursuant to subsection C of § 2.2-3708.3. Such all-virtual public meetings are also limited by law to two meetings per calendar year or 25 percent of the meetings held per calendar year rounded up to the next whole number, whichever is greater. Additionally, an all-virtual public meeting may not be held consecutively with another all-virtual public meeting. [If the public body wishes to add any additional limitations on such all-virtual public meetings, include them here.]

Policy must include processes on making requests, approving or denying requests, and recording requests

As part of the policy requirement, each public body must adopt three processes: one for making requests to use remote participation, one for approving or denying such requests, and one for creating a record of such requests. There are several possible mechanisms a public body might use; so long as the processes adopted do not violate the express provisions of § 2.2-3708.3, each public body may choose whichever processes it prefers. As an example, a public body might adopt a policy as follows:

- That the member notifies staff to make the request and staff then notifies the chair (since the chair must be notified of requests for remote participation, but as a practical matter, most public bodies rely on staff to make the technical arrangements for members to participate remotely);
- That approval is automatic unless a member's participation would violate FOIA, and, if such participation is challenged, then the matter would be put to a vote; and
- That the request is recorded in the minutes of the meeting.

Sample language:

Requests for remote participation or that [the public body] conduct an all-virtual public meeting shall be conveyed to ["staff" or "the clerk or chief administrator for the public body"] who shall then relay such requests to the chair of the public body.

Individual participation from a remote location shall be approved unless such participation would violate this policy or the provisions of the Virginia Freedom of Information Act (§ 2.2-3700 et seq. of the Code of Virginia). If a member's participation from a remote location is challenged, then [the public body] shall vote whether to allow such participation.

The request for remote participation or that [the public body] conduct an all-virtual public meeting shall be recorded in the minutes of the meeting. If [the public body] votes to disapprove of the member's participation because such participation would violate this policy, such disapproval shall be recorded in the minutes with



specificity. The minutes shall include other information as required by §§ 2.2-3707 and 2.2-3708.3 depending on the type of remote participation or all-virtual public meeting.

Additional limitations and other provisions are optional

Additional policy provisions may be included as each public body sees fit, so long as they do not violate the express provisions of FOIA. It is up to each public body to decide for itself whether to adopt any such additional policy provisions.

B. Remote participation by individual members of public bodies

When a meeting is scheduled to be held in person, there are four circumstances set out in subsection B of § 2.2-3708.3 where individual members of a public body may participate from a remote location instead of participating in person. In order to use these provisions, the public body must first adopt a policy on electronic participation as described above and the member must notify the chair of the public body of one of the following four reasons for remote participation:

1. The member has a temporary or permanent disability or other medical condition that prevents the member's physical attendance;
2. A medical condition of a member of the member's family requires the member to provide care that prevents the member's physical attendance;
3. The member's principal residence is more than 60 miles from the meeting location identified in the required notice for such meeting; or
4. The member is unable to attend the meeting due to a personal matter and identifies with specificity the nature of the personal matter. However, the member may not use remote participation due to personal matters more than two meetings per calendar year or 25 percent of the meetings held per calendar year rounded up to the next whole number, whichever is greater.

Reminder: As stated previously, the limitation to two meetings per calendar year or 25 percent of the meetings held per calendar year does not apply to the first three types of remote participation (member's disability or medical condition, need to provide medical care for a family member, or principal residence distance from the meeting location), it only applies when the member participates remotely due to a personal matter.

Minutes requirements

- If an individual member remotely participates in a meeting, a general description of the remote location must be included in the minutes (it does not need to be an exact address—for example, the minutes might read that "[Member] participated from his home in [locality]" or that "[Member] participated from her office in [locality]."). The remote location does not have to be open to the public.
- If a member remotely participates due to a (i) temporary or permanent disability or other medical condition that prevented the member's physical attendance or (ii) family member's medical condition that required the member to provide care for such family member, thereby preventing the member's physical attendance, that fact must be included in the



minutes. While the fact that a disability or medical condition prevents the member's physical attendance must be recorded in the minutes, it is not required to identify the specific disability or medical condition.

- If a member remotely participates because the member's principal residence is more than 60 miles from the meeting location, the minutes must include that fact.
- If a member remotely participates due to a personal matter, the minutes must include the specific nature of the personal matter cited by the member.
- As stated above, if remote participation by a member is disapproved because it would violate the participation policy adopted by the public body, such disapproval must be recorded in the minutes with specificity. Note that even if remote participation is disapproved, the member may continue to monitor the meeting from the remote location but may not participate and may not be counted as present at the meeting.

Examples of disability or medical condition that prevents physical attendance:

- Temporary hospitalization or confinement to home;
- Contagious illness; or
- Any temporary or permanent physical disability that physically prevents travel to the meeting location.

Examples of personal matters that may prevent physical attendance:

- Flat tire or other mechanical failure on the way to the meeting;
- Traffic congestion or stoppage;
- Personal, family, or business emergency;
- Blizzard, flood, or other severe weather conditions that prevent travel to the meeting location;
- Business trip;
- Family trip; or
- Scheduling conflict.

C. All-virtual public meetings

The provisions for all-virtual public meetings under subsection C of § 2.2-3708.3 may be used by all public bodies except "local governing bodies, local school boards, planning commissions, architectural review boards, zoning appeals boards, and boards with the authority to deny, revoke, or suspend a professional or occupational license." In order to do so, a public body must comply with the other meetings requirements of FOIA, must adopt a policy as previously described, and must comply with the following 10 additional statutory requirements:

1. An indication of whether the meeting will be an in-person or all-virtual public meeting is included in the required meeting notice along with a statement notifying the public that the method by which a public body chooses to meet shall not be changed unless the public body provides a new meeting notice in accordance with the provisions of § 2.2-3707;



FOIA - Electronic Meetings Guide

2. Public access to the all-virtual public meeting is provided via electronic communication means;
3. The electronic communication means used allows the public to hear all members of the public body participating in the all-virtual public meeting and, when audio-visual technology is available, to see the members of the public body as well;
4. A phone number or other live contact information is provided to alert the public body if the audio or video transmission of the meeting provided by the public body fails, the public body monitors such designated means of communication during the meeting, and the public body takes a recess until public access is restored if the transmission fails for the public;
5. A copy of the proposed agenda and all agenda packets and, unless exempt, all materials furnished to members of a public body for a meeting is made available to the public in electronic format at the same time that such materials are provided to members of the public body;
6. The public is afforded the opportunity to comment through electronic means, including by way of written comments, at those public meetings when public comment is customarily received;
7. No more than two members of the public body are together in any one remote location unless that remote location is open to the public to physically access it;
8. If a closed session is held during an all-virtual public meeting, transmission of the meeting to the public resumes before the public body votes to certify the closed meeting as required by subsection D of § 2.2-3712;
9. The public body does not convene an all-virtual public meeting (i) more than two times per calendar year or 25 percent of the meetings held per calendar year rounded up to the next whole number, whichever is greater, or (ii) consecutively with another all-virtual public meeting; and
10. Minutes of all-virtual public meetings held by electronic communication means are taken as required by § 2.2-3707 and include the fact that the meeting was held by electronic communication means and the type of electronic communication means by which the meeting was held. If a member's participation from a remote location pursuant to these requirements is disapproved because such participation would violate the policy adopted pursuant to subsection D of § 2.2-3708.3, such disapproval shall be recorded in the minutes with specificity.

See the Appendix for Best Practices Recommendations for All-Virtual Public Meetings on public comment and the use of video by members.



III. Electronic meetings conducted under a declared state of emergency (§ 2.2-3708.2 and State Budget Item 4-0.01 (g))

There are currently two different procedures for conducting electronic meetings during a declared state of emergency, one in FOIA as described in subsection III A below, the other in the State Budget as described in subsection III B below. Prior to the COVID-19 pandemic, the state of emergency provisions in FOIA had only been used to address short-duration emergencies such as acute weather conditions that required immediate responses (hurricanes, tornadoes, snowstorms, etc.). In 2020, those provisions allowed meetings only to address the declared state of emergency, and not for any other purposes. Because of the duration of the COVID-19 pandemic and the requirements for quarantine and social distancing in effect at that time, the existing provisions were deemed inadequate as they did not allow public bodies to use electronic meetings for any other purposes, i.e., conducting normal business. The State Budget provisions described below were enacted in 2020 to provide a mechanism for public bodies to conduct such other public business during the ongoing state of emergency.⁶ In 2021, the FOIA provisions addressing electronic meetings during a state of emergency were amended to reflect the experiences of public bodies, citizens, and the media when using electronic meetings during the COVID-19 pandemic and to account for such longer-duration states of emergency in the future.⁷ Note that in addition to differing procedural requirements, the FOIA provisions allow for electronic meetings during a state of emergency declared both by the Governor and by localities, whereas the Budget provisions only address a state of emergency declared by the Governor. However, the Budget provisions are applicable to common interest community governing boards as well as public bodies subject to FOIA, whereas the FOIA provisions are applicable only to public bodies. Both sets of provisions remain in the law as of September 1, 2022, so public bodies may use either one as appropriate to the circumstance.

A. Electronic meetings conducted during a state of emergency declared by the Governor or a locality under § 2.2-3708.2

Pursuant to § 2.2-3708.2, any public body 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 under the following conditions listed in subdivision A 3 of § 2.2-3708.2:

- The catastrophic nature of the declared emergency makes it impracticable or unsafe to assemble a quorum in a single location; and
- 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.

In addition, the public body must:

- 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;

⁶ See n. 2, *supra*.

⁷ 2021 Special Session I, c. 490.



FOIA - Electronic Meetings Guide

- Make arrangements for public access to such meeting through electronic communication means, including videoconferencing if already used by the public body;
- Provide the public with the opportunity to comment at those meetings of the public body when public comment is customarily received; and
- Otherwise comply with the provisions of FOIA.

Minutes requirements

The minutes must include 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.

Limitation on duration

The provisions of subdivision A 3 of § 2.2-3708.2 are applicable only for the duration of the emergency declared pursuant to § 44-146.17 or 44-146.21.

Note: No policy required

The requirements to adopt a policy as required for remote participation and all-virtual public meetings do not apply to meetings held under a declared state of emergency.

B. Electronic meetings conducted during a state of emergency declared by the Governor under State Budget Item 4-0.01 (g)

Pursuant to State Budget Item 4-0.01 (g), any public body 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, subject to the following procedures and conditions:

- The nature of the declared emergency makes it impracticable or unsafe for the public body to assemble in a single location;
- The purpose of meeting is to discuss or transact the business statutorily required or necessary to continue operations of the public body and the discharge of its lawful purposes, duties, and responsibilities; and
- The public body makes available a recording or transcript of the meeting on its website in accordance with the timeframes established in §§ 2.2-3707 and 2.2-3707.1.

In addition, the public body must:

- Give notice to the public 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;
- Make arrangements for public access to such meeting through electronic means, including, to the extent practicable, videoconferencing technology. If the means of communication allows, provide the public with an opportunity to comment;
- Otherwise comply with the provisions of § 2.2-3708.2; and



FOIA - Electronic Meetings Guide

- State in the minutes 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.

Note: This budget item also provides for electronic meetings to be held by governing boards of common interest communities such as condominium unit and property owners' associations. Such governing boards are not public bodies subject to FOIA but are subject to their own laws concerning access to records and meetings. Because the FOIA Council is limited to providing guidance regarding FOIA, provisions in State Budget Item 4-0.01 (g) that are specific to common interest communities have been omitted from this guide. Please direct any inquiries regarding records and meetings of common interest communities to the Office of the Common Interest Community Ombudsman within the Department of Professional and Occupational Regulation as follows:

PHONE (804) 367-2941
FAX (866) 490-2723
EMAIL CICOmbudsman@dpor.virginia.gov



Appendix: Best Practices Recommendations for All-Virtual Public Meetings

The second enactment clause of HB 444 (Bennett Parker, 2022) directed the FOIA Council to convene a work group to study best practices for all-virtual public meetings as follows:

That the Virginia Freedom of Information Advisory Council shall convene a work group, no later than May 1, 2022, to develop recommendations for best practices for public bodies holding all-virtual public meetings, including but not limited to how to take public comment virtually and the proper use of video by public body members. Such recommendations must be completed by August 1, 2022. The work group shall include representatives of the Virginia Association of Counties, the Virginia Municipal League, the Virginia Coalition for Open Government, and the Virginia Press Association and such other stakeholders the Council deem appropriate.

The work group met twice in May 2022 to consider these and other issues. The participants included representatives of the Virginia Association of Counties, the Virginia Municipal League, the Virginia Coalition for Open Government, the Virginia Press Association, the Virginia School Boards Association, the Department of Professional and Occupational Regulation, the Department of Health Professions, the Department of Education, the Department for Aging and Rehabilitative Services, and the Department of Criminal Justice Services. The following are the work group's recommendations as agreed by consensus.

I. Public Comment

A. Statutory Provisions

- For all meetings conducted under FOIA, subsection F of § 2.2-3707 provides as follows: "The proposed agendas for meetings of state public bodies where at least one member has been appointed by the Governor shall state whether or not public comment will be received at the meeting and, if so, the approximate point during the meeting when public comment will be received."
- For all electronic meetings conducted under § 2.2-3708.3, subsection A provides as follows: "Public bodies are encouraged to (i) provide public access, both in person and through electronic communication means, to public meetings and (ii) provide avenues for public comment at public meetings when public comment is customarily received, which may include public comments made in person or by electronic communication means or other methods."
- Among other requirements for conducting all-virtual meetings under subsection C of § 2.2-3708.3, subdivision C 6 provides the following requirement: "The public is afforded the opportunity to comment through electronic means, including by way of written comments, at those public meetings when public comment is customarily received;"
- Other laws may also have requirements for public comment that are specific to the type of public body and the type of meeting. For example, there are requirements to take public comment at certain meetings for local governing bodies in subsection D of § 15.2-1416, for school boards under § 22.1-79, and for governing boards of public institutions of higher education in § 23.1-307, etc.



B. Best Practices Recommendations

Before the meeting:

- Notice: State in the meeting notice whether public comment will be taken during the meeting and/or by other means such as submitting electronic written comments in advance.
- It is recommended that all public bodies accept written comments by email or other means. Public bodies should consider posting the comments to the public body's website, if it has one, and providing the comments to the members in advance of the meeting. You may want to set a deadline for receiving comments in advance in order to ensure there will be time for members to review them and to post them (but still allow comments to be submitted after the deadline; just note that they may not be posted before the meeting if they are received late).
- Public bodies may ask people to register in advance for logistical and planning purposes, but do not require registration in advance as a condition in order to speak because many commenters may not decide whether to comment until the meeting occurs.

During the meeting:

- Have the body's chair, clerk, or chief administrator announce when and how public comment will be taken, including any time limits, whether speakers will be heard in any particular order, asking participants to mute their microphones when not speaking, etc.
- Ask the person making comments to give their name (including spelling) and whether the person represents an organization so everyone knows who is speaking (but it is not required by law).
- Time limits: It is recommended that each speaker be allowed an equal amount of time to speak and that the amount of time provided is reasonable under the circumstances and sufficient to allow meaningful comment. However, because the circumstances and logistics of each meeting may vary as to the number of speakers, total time available for public comment, etc., there is no specific length of time that would be appropriate for all situations.
- Written comments: Depending on the number and length of written comments received, you may want to either read the comments (if they are few and/or brief) or summarize them (if they are many and/or lengthy) as appropriate to the circumstances. Written comments may be incorporated by reference, just make sure to keep copies if you do so.

Technical considerations:

- Waiting rooms: Based on prior experience, the work group recommends against using virtual waiting rooms where commenters must be pulled from one virtual "room" into another in order to speak because of the logistical difficulties and interruption to the flow of the meeting.
- Consider having a separate staff person who is not directly participating in the meeting handle technical duties such as recording the meeting, muting participants with open microphones who are not currently presenting or commenting, allowing and disabling screen sharing, etc.



- Screen sharing: Only staff and presenters should be allowed to share their screens in order to avoid the risk of someone else displaying inappropriate content.
- Chat functions: It is recommended not to use public written chat features for all-virtual meetings if the virtual meeting software will not capture it for recording and minutes purposes and also for the same reasons that screen sharing should be limited.

II. The Use of Video by Members

A. Statutory Provision:

- Subdivision C 3 of § 2.2-3708.3 requires that "[t]he electronic communication means used allows the public to hear all members of the public body participating in the all-virtual public meeting and, when audio-visual technology is available, to see the members of the public body as well."

B. Best Practices:

Note that in the course of discussing these recommendations for best practices, the work group concluded that most of them were applicable to all types of electronic participation in public meetings, although the details may vary depending on the type of meeting, the type of electronic participation, and the resources available to the public body. For example, a meeting held under the state of emergency provisions in § 2.2-3708.2 to address an acute weather emergency that requires immediate action may not allow time for many of the suggested actions, especially those that would take place before a meeting. The work group also recognized that staffing and technological resources vary significantly between different public bodies, which can affect each public body's ability to implement these recommendations. For these reasons, keep in mind that except for subdivision C 3 of § 2.2-3708.3 quoted above, these recommendations for best practices are not statutory requirements.

Before the meeting:

- Consider checking with new members to ensure they are familiar with the virtual meeting technology being used by the public body, and if not, help them become familiar with its basic functions (how to log in, turn the microphone and camera on and off, etc.).
- Consider providing members who are not already familiar with participation in virtual meetings any additional tips for being on camera generally (be on time, dress and act appropriately, lighting and glare issues, whether and how to use a virtual background, etc.).
- Consider having members who have not participated electronically in previous meetings log in before the meeting starts to ensure that they do not have any connection problems or other technical issues. Leave enough time so that staff can help if there are any such problems. If there are no such issues, have the members log back out or turn off their cameras and mute their microphones until it is time to start the meeting.
- Before or at the start of a virtual meeting, remind the members that the FOIA provisions that apply to participation in all meetings also still apply to electronic participation in all-virtual meetings. For example, whether a meeting is held in person or all-virtually, members should avoid the use of electronic communications in ways that would create a "meeting within a meeting" that is not visible to the public. This is especially true in all-



virtual meetings because the members are already communicating electronically and may have other means to do so that are not apparent to the public such as text chat functions that may be limited to certain participants and are not visible to those watching the meeting.

- Similarly to accepting public comments as described above, consider posting presentation materials to the public body's website, if any, and distributing them to the members in advance of the meeting (if the materials are available in advance).
- Consider the needs of persons with disabilities and compliance with the federal Americans with Disabilities Act (42 U.S. Code § 12101 et seq.). For more information, see www.ada.gov.

During the meeting:

- Generally, using an audio-visual connection is preferred over an audio-only connection for all types of electronic participation. This is especially true for all-virtual meetings because there is no central meeting location where the public can be in the same place as the members to observe the meeting.
- When using an audio-visual connection, members should stay on video during the meeting unless there is a specific reason to turn the video off, but remember to mute their microphones when they are not speaking. This is especially true for all-virtual meetings in order to try to provide transparency similar to an in-person meeting for those watching, while simultaneously avoiding audio problems such as feedback, echoes, and inadvertent noises from open microphones.
- Consider taking steps to ensure that the public and other members are aware of which members are speaking or acting at any given time, especially if a member is using an audio-only connection. For example, any members who are not on video should state their names before speaking so there is no confusion regarding who is talking. For members who are on video, if the technology allows it, display members' names along with the video. The same suggestions also apply to any other speakers or presenters who are not members.



BOARD OF AGRICULTURE AND CONSUMER SERVICES

POLICY ON ~~INDIVIDUAL~~ PARTICIPATION IN BOARD OF AGRICULTURE AND CONSUMER SERVICES MEETINGS BY ELECTRONIC ~~MEANS~~ COMMUNICATIONS PURSUANT TO VA. CODE § 2.2-3708.23

It is the policy of the Board of Agriculture and Consumer Services (Board) that individual members of the Board may participate in meetings of the Board by electronic ~~means~~ communications as permitted by ~~Virginia Code~~ § 2.2-3708.23 of the Code of Virginia. This policy shall apply 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.

Whenever an individual member wishes to participate from a remote location, the law requires a quorum of the Board to be physically assembled at the primary or central meeting location, ~~and arrangements will be made for the voice of the remote participant to be heard by all persons at the primary or central meeting location.~~

When such individual participation is due to a personal matter, such participation is limited by law to two meetings per calendar year or 25 percent of the meetings held per calendar year rounded up to the next whole number, whichever is greater.

Further, it is the policy of the Board that the Board may hold all-virtual public meetings pursuant to subsection C of § 2.2-3708.3. Such all-virtual public meetings are also limited by law to two meetings per calendar year or 25 percent of the meetings held per calendar year rounded up to the next whole number, whichever is greater. Additionally, an all-virtual public meeting may not be held consecutively with another all-virtual public meeting.

Requests for remote participation or that the Board conduct an all-virtual public meeting shall be conveyed to the Secretary of the Board, who shall then relay such requests to the President of the Board.

Individual participation from a remote location shall be approved unless such participation would violate this policy or the provisions of the Virginia Freedom of Information Act (§ 2.2-3700 et seq. of the Code of Virginia). If a member's participation from a remote location is challenged, then the Board shall vote whether to allow such participation.

The request for remote participation or that the Board conduct an all-virtual public meeting shall be recorded in the minutes of the meeting. If the Board votes to disapprove of the member's participation because such participation would violate this policy, such disapproval shall be recorded in the minutes with specificity. The minutes shall include other information as required by §§ 2.2-3707 and 2.2-3708.3 depending on the type of remote participation or all-virtual public meeting.

~~The reason that the member is unable to attend the meeting and the remote location from which the member participates will be recorded in the meeting minutes. When an individual's participation through electronic communication means is due to a personal matter, such participation 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. Individual participation from a remote location shall be approved unless such participation would violate this policy or the provisions of the Virginia Freedom of Information Act. If a member's participation from a remote location is challenged, then the Board shall vote whether to allow such participation. If the Board votes to disapprove of the member's participation because such~~

~~participation would violate this policy, such disapproval will be recorded in the minutes with specificity.~~ This policy applies to all committees and subcommittees of the Board.

Version History		
Version	Date	Change Summary
1	12/10/2021	Original
<u>2</u>	<u>3/23/2023</u>	<u>Revised to reflect electronic meeting changes to the Virginia Freedom of Information Act effective September 1, 2022</u>

**BOARD OF AGRICULTURE AND CONSUMER SERVICES
Future Meeting Dates**

MARK YOUR CALENDARS

Thursday, May 18, 2023

Patrick Henry Building
East Reading Room
1111 East Broad Street
Richmond

Friday, August 4, 2023

TBD
Virginia Beach

Thursday, December 7, 2023

TBD
Richmond