

BOARD OF AGRICULTURE AND CONSUMER SERVICES
Hotel Madison
710 S. Main Street
Harrisonburg, VA 22801

Wednesday, July 31, 2024

1 P.M.

1. Call to order
2. Roll call
3. Approval of draft Board meeting minutes from July 2, 2024
4. Board member reports
5. Commissioner's Report to Board – Joseph Guthrie, Commissioner of Agriculture and Consumer Services
6. Proposed fast-track action to repeal 2 VAC 5-550 (Rules and Regulations Pertaining to Tolerances and Prohibitions Applicable to Sausage) – David McGreevy, Deputy Director, Division of Animal and Food Industry Services
7. Proposed fast-track action to repeal 2 VAC 5-590 (Rules and Regulations Pertaining to Tolerances and Prohibitions Applicable to Ground Beef) – David McGreevy, Deputy Director, Division of Animal and Food Industry Services
8. Notice of Intended Regulatory Action – 2 VAC 5-360 (Regulations for the Enforcement of the Virginia Commercial Feed Act) – David Gianino, Program Manager, Office of Plant Industry Services
9. Proposed stage – 2 VAC 5-685 (Regulations Governing Pesticide Applicator Certification under Authority of Virginia Pesticide Control Act) and 2 VAC 5-680 (Regulations Governing Licensing of Pesticide Businesses Operating under Authority of the Virginia Pesticide Control Act) – Liza Fleeson Trossbach, Program Manager, Office of Pesticide Services
10. Annual electronic meeting policy adoption – Kevin Schmidt, Director, Office of Policy, Planning, and Research
11. New business
12. Future Board meetings
13. Public comment period
14. Adjourn

DRAFT MINUTES

Tuesday, July 2, 2024

The all-virtual meeting of the Board of Agriculture and Consumer Services (Board) convened at approximately 11:05 a.m. on Tuesday, July 2, 2024. The meeting was held using Cisco WebEx Events with electronic access made available to the public via the Virginia Regulatory Town Hall website. President Horsley called the meeting to order.

ROLL CALL

The Board Secretary called the roll:

PRESENT

Keith Harris
Donald Horsley
Raymond Keating
Brittany Jones
Margaret Ann Smith
Kailee M. Tkacz Buller
James S. Huffard, III
Richard Sellers
Neil Houff
Dr. Robert Corley

Dr. Alan Grant

CONGRESSIONAL DISTRICT

1st
2nd
3rd
4th
6th
8th
9th
11th
Pesticides – Commercial Agricultural
Representing Dr. Makola Abdullah, President,
Virginia State University
Representing Dr. Timothy D. Sands, President,
Virginia Tech

ABSENT

Cecil Shell
Jacquelin Easter
Tyler Wegmeyer
Charles Church

5th
7th
10th
Pesticides – Commercial Structure

STAFF PRESENT

Joseph Guthrie, Commissioner, Virginia Department of Agriculture and Consumer Services (VDACS)
Kevin Schmidt, Secretary, Board of Agriculture and Consumer Services
Nicolas Robichaud, Policy Assistant, VDACS

APPROVAL OF MINUTES

Mr. Harris moved that the draft minutes of the meeting on May 23, 2024, be approved as distributed. Mr. Sellers seconded the motion. The Board voted unanimously to approve the motion.

APPOINTMENT OF BOARD OF DIRECTORS OF VIRGINIA BEER DISTRIBUTION COMPANY

President Horsley called on Commissioner Guthrie to introduce the recommendations for appointments to the board of directors of the Virginia Beer Distribution Company.

Board of Agriculture and Consumer Service

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Commissioner Guthrie provided background on the Virginia Beer Distribution Company before introducing Jason Romano of Lake Anne Brew House, Matt Mullett of RichBrau, Aden Short of P.A. Short Distributing Company, and Greg White of Hoffman Beverage as recommended appointees.

Mr. Sellers moved that the Board of Agriculture and Consumer Services appoint Aden Short, P.A. Short Distributing Co, to fill a term from July 1, 2024, through June 30, 2026, on the board of directors of the Virginia Beer Distribution Company as an owner or manager of a Virginia beer wholesale licensee;

That the Board of Agriculture and Consumer Services appoint Greg White, Hoffman Beverage, to fill a term from July 1, 2024, through June 30, 2028, on the board of directors of the Virginia Beer Distribution Company as an owner or manager of a Virginia beer wholesale licensee;

That the Board of Agriculture and Consumer Services appoint Matt Mullett, RichBrau, to fill a term from July 1, 2024, through June 30, 2026, on the board of directors of the Virginia Beer Distribution Company as an owner or manager of a brewery or limited brewery licensee; and

That the Board of Agriculture and Consumer Services appoint Jason Romano, Lake Anne Brew House, to fill a term from July 1, 2024, through June 30, 2028, on the board of directors of the Virginia Beer Distribution Company as an owner or manager of a brewery or limited brewery licensee that is not served by a wholesaler at the time such owner or manager is appointed to the board of directors of the VBDC.

Mr. Houff seconded the motion. The Board voted unanimously in favor of the motion.

NEW BUSINESS

There was no new business brought before the Board.

FUTURE BOARD MEETINGS

President Horsley reminded the Board of the upcoming summer Board meeting on July 31, 2024, and subsequent tours on August 1, 2024. President Horsley also noted the December 12, 2024, Board meeting in Richmond.

PUBLIC COMMENT PERIOD

Kimberly Dyke-Harsley commented on food insecurity in the Commonwealth, including at correctional facilities.

ADJOURNMENT

There being no further business, the Board adjourned at approximately 11:40 a.m.

Respectfully submitted,

Donald Horsley
Board President

Kevin Schmidt
Board Secretary

COMMISSIONER'S REPORT TO
BOARD OF AGRICULTURE AND CONSUMER SERVICES
July 31, 2024

GOVERNOR'S PRIORITIES

On June 6, Office of Agriculture and Forestry Development (OAFD) staff joined Secretary Lohr and Prince William County officials as Governor Youngkin announced the expansion of Beanstalk Farms in Manassas, which plans to open its second indoor farm and distribution facility where it will grow a variety of leafy greens and fresh-cut herbs. The project will bring 18 new jobs and \$4.1 million of capital investment. Governor Youngkin also signed important new tax exemption legislation for controlled environment agriculture facilities.

On June 27 in Blacksburg, Governor Youngkin proclaimed both Virginia Agriculture Week for June 23 – 29 and June Dairy Month in a celebration that included representatives from dairy and other agricultural industries. The Governor then gave the keynote address at the Virginia FFA Convention, making him the first Governor to address the Convention in its 98-year history.

On June 28, Governor Youngkin announced the spring 2024 Agriculture and Forestry Industries Development (AFID) Infrastructure grant awards for eight projects totaling \$253,950. Also announced was a Planning Grant for The Roadmap to Urban Agriculture Project, a joint effort between Fairfax County, Fairfax City, and the Northern Virginia Soil and Water Conservation District. The project received \$30,000 to address issues in food system resilience.

On July 10, Governor Youngkin announced that Homestead Creamery will invest over \$2.5 million to renovate and expand its Franklin County production facility. The Governor approved a \$20,000 grant from the Governor's AFID Facility grant program, which the county will match.

On July 17, Governor Youngkin announced that Speyside Bourbon Cooperage, Inc. will invest \$16.8 million to build a new stave mill in Pittsylvania County, the company's fourth facility in Virginia. The new stave mill will create 40 new jobs and source 40 percent of its timber needs from Virginia forest landowners to supply the company's bourbon barrel cooperage in Smyth County. Governor Youngkin approved a \$250,000 grant from the Governor's AFID Fund, which Pittsylvania County will match with local funds.

AGENCY OPERATIONS

Commissioner's Office

As Commissioner Guthrie has served as the President of the Southern Association of State Departments of Agriculture (SASDA) for 2023-24, Virginia had the honor of hosting the annual SASDA Summer Meeting at Kingsmill Resort in Williamsburg. Commissioners/Secretaries of Agriculture from 14 states and the U.S. Virgin Islands attended along with staff and industry representatives for total of over 150 registrants, the highest level of attendance in memory. In addition to the meetings, attendees toured the Norfolk port and naval base by boat, visited the

Nauticus Museum, and traveled on an agribusiness tour to Amadas Industries in Suffolk and the Hampton AREC and Amory Seafood Processing in Hampton.

During Virginia Agriculture Week, June 23-29, Commissioner Guthrie traveled from Bristol to Suffolk meeting with farmers, FFA members, agricultural researchers, and other industry stakeholders.

The first meeting of the Board of Directors of the Virginia Beer Distribution Company was held at the VDACS Board Room on July 16. The Board adopted bylaws, elected a Chair and Vice Chair, adopted a remote meeting and virtual meeting policy, received training on FOIA and media relations, and deliberated the Operating Agreement and potential fee structures.

Division of Marketing and Development

On June 5, the Office of Farmland Preservation (OFP) presented at the Virginia Land Conservation Foundation (VLCF) Board of Trustees Meeting. VLCF celebrated its 25th year by showcasing successful land conservation projects across Virginia.

On June 20, OAFD staff, joined by Secretary Lohr's office, hosted the Summer Virginia Agricultural Development Officers tour of the Virginia Institute of Marine Sciences in Gloucester County. Attendees were also given a tour of Matheson Oyster Company's oyster fields and processing facility and learned about Matheson's non-traditional and regenerative oyster growing methods.

On June 26, OAFD staff participated in the Virginia Farm Bureau Federation Virginia Foundation for Agriculture and Rural Development (VA FAIRS) Board of Directors meeting in Weyers Cave. VA FAIRS staff provided updates including assistance to participants in applying for USDA Value-Added Producer Grants, the FAIRS Agriculture and Forestry Innovation "Bull Pen" Challenge, marketing initiatives, and task force updates.

On June 27, OAFD staff joined Secretary Lohr to meet with Plenty's executive leadership and tour its new indoor farm under construction in Chesterfield. This project, announced in September 2022, represents 300 new jobs, \$300 million in new capital investment, and the production of more than 9.4 million kilograms of Virginia-grown strawberries. A ribbon cutting celebration with Governor Youngkin is planned for September 24, 2024.

Since May, the Office of Domestic Marketing and Promotions (ODMP) participated in several agriculture marketing and educational events. These included Eastern Shore Soil & Water Conservation District's Cost Share Kickoff Meeting; Tobacco Associates, Inc. Board Meeting in Raleigh, NC; Chesapeake City Agritourism Workshop; Surry County Agritourism Workshop; Small Fruit Field Day in Hampton Roads; Berry Field Day in Hampton Roads; Virginia Tech Tree Fruit and Orchard Meeting in Cana; Virginia Small Grains Field Day in Warsaw; Cut Flower Discussion Event in Goochland; Virginia Cooperative Extension Orchard Meeting at Grave's Mountain Lodge in Madison County; and the OnTheSquare Farmers Market in Richmond.

On May 29 and 30, ODMP staff hosted a small grain tour in the Northern Neck and Middle Peninsula for staff from Virginia Farm Bureau, Virginia Cooperative Extension, grain elevators,

and other agricultural businesses. Producers shared that they have planted less wheat acreage than previous years due to the lower wheat prices. Grain elevators from Perdue, Scouler, Ardent Mills, and Redwood reported that they still had feed grade wheat left in their bins from last year. However, there is demand for milling quality wheat that could bring a better price to producers.

On June 23-25, Virginia's Finest companies displayed in the Summer Fancy Food Show in New York City. The show attracts thousands of diverse makers, buyers, and distributors from across the U.S. and the world for product discovery, networking, and business opportunities.

On May 28-30, the Office of International Marketing (OIM) attended Carrefour du Bois, Europe's largest lumber trade show focused on dimensional lumber. Virginia hardwood companies attended and showcased fine and high-quality hard wood forest products. Over 20 contracts were executed at the show, with over 25 additional currently in negotiation.

The Office of Food Distribution (OFD) awarded 12 sub grants totaling \$6,095,000 for the Local Food Purchase Assistance Plus (LFPA+) Program. The grantees will work with local farmers to purchase agricultural products and distribute those products to people who are food insecure.

OFD received 40 applications for \$6.4 million in funding for the Resilient Food Systems Infrastructure grant program. Successful applicants will receive funding for infrastructure improvement projects and equipment purchases to build resilience in the supply chain and to provide better markets for farms and food businesses.

With much of the state experiencing dry conditions, the Market News *Hay Clearing House* newsletter assists producers interested in purchasing hay. Market News receives feedback from producers that the newsletter is the primary marketing tool they use to buy and sell hay.

Division of Commodity Services

Since May, CS Staff:

- Conducted Terminal Market and Shipping Point Inspections on 4,991,616 pounds of fresh fruits and vegetables, processed Food Inspections on 1,369,627 pounds of processed products, conducted Export Inspections on approximately 3,201,184 pounds of potatoes to Canada, and completed 10 Good Agricultural Practices (GAP) Audits.
- Inspected and certified grain commodities including soybeans, corn, wheat, soybean meal, and soybean hull pellets with a total value of more than \$72 million destined for 24 countries.
- Conducted nine compliance visits with grain dealers.
- Provided livestock evaluation services on approximately 25,579 cattle and 912 lambs/goats and provided 38 Market News Reports on 16,299 head of livestock at livestock markets.

- Inspected and certified approximately 56,042,000 pounds of Farmers' Stock peanuts and regrades, approximately 46,458,750 pounds of shelled and in-shell milled peanuts, and 1,164,240 pounds of imported peanuts from Argentina and Paraguay.
- Analyzed approximately 1,183 samples of peanuts for the presence and levels of aflatoxin to determine if the peanuts were safe for human consumption.
- Certified 2,179,755 pounds of various poultry parts for the USDA Feeding Program for School Lunch Products.
- Graded, via contracted full-time grading services, 53,321,952 pounds of chicken and 21,577,238 pounds of turkey for the Virginia poultry and egg industry.
- Provided non-contract fee grading and certification services for 2,998,822 pounds of poultry based on U.S. Consumer Grades to fulfill necessary specifications and contract requirements for the Virginia poultry and egg industry.
- Performed two USDA Food Defense Audits.

Division of Consumer Protection

In late May, the Office of Pesticide Services (OPS) mailed nearly 8,000 pesticide applicator renewal letters for individuals whose certificates expired June 30. The fee for pesticide applicators to renew their certificates was eliminated in March 2022, but pesticide applicators are still required to take one recertification course every two years to renew their certification. Applicators whose certificates expired June 30 and completed the required recertification courses have their certificate automatically renewed and a new certificate sent to them beginning in June.

On June 4 - 5, OPS staff participated in the Southern Region American Association of Pesticide Safety Educator's Annual Conference. Staff provided an overview of OPS's role in regulating pesticides in Virginia and shared remote testing strategies, the online pesticide portal, and the Spanish Registered Technician exam. Staff also shared its progress toward development of a Spanish Core manual and implementation of Virginia's revised Certification and Training Plan.

On June 17, OPS received approval for supplemental funding from EPA that will be included in fiscal year (FY) 2025 grant funding. This funding will enhance OPS's reporting capabilities through Smartforms by upgrading its analytics tool, which will support and improve reporting performance by streamlining data gathering and presenting the data in the required format.

On July 2, OPS staff hosted a virtual meeting with the Pamunkey Tribe Natural Resources Department to discuss pesticide regulations. The Tribe, located in King William County, recently reinstated its Natural Resources Department. One of its first initiatives is to better understand pesticide management on the Pamunkey Indian Reservation. OPS staff provided an overview of Virginia's pesticide regulatory program and provided several related resources.

In early June, the Virginia Spongy Moth Slow the Spread program completed mating disruption aerial treatments on over 49,000 acres in Buchanan, Grayson, Halifax, Patrick, Russell, Smyth, and Tazewell counties. In addition, OPIS staff and contractors have placed and monitored 5,608 traps along the leading edge of the spongy moth population area to delimit the populations and determine treatment areas for 2025.

On June 17, staff from the Office of Plant Industry Services (OPIS) met with staff from the Virginia Department of Forestry, the Virginia Department of Conservation and Recreation, and the Virginia Department of Wildlife Resources to discuss coordinating invasive species management activities focused on new full-time positions and general fund appropriations to provide state-wide inter-agency response to invasive species. The agencies plan to meet quarterly to ensure priorities are being addressed and to prevent duplication of efforts.

From June 24-28, OPIS staff received notification that three of its federal cooperative agreements for federal FY 2024-2025 were approved including a grape commodity survey; *Phytophthora ramorum* survey; and a survey, treatment, and outreach for spotted lanternfly. The funds total \$395,790. The spotted lanternfly funding was reduced by over 50 percent compared to federal FY 2022-2023 grants.

For FY 2024, OPIS administered two invasive species management projects for the Imported Fire Ant and Two-horned Trapa. In FY 2024, more than 1,400 Imported Fire Ant mounds were treated with baited insecticides and approximately 50 privately owned or managed waterbodies are being managed for Two-horned Trapa.

Division of Animal and Food Industry Services

On June 6, the Office of Meat and Poultry Services (OMPS) facilitated a tour of AIA, Negroni's, in Harrisonburg. Negroni's plans to expand its operations to include the production of Italian salami, prosciutto and capicola to become the largest Italian meats distributor in the nation.

The Office of Dairy and Foods Food Safety Program (FSP) conducted over 3,699 inspections from March through June. FSP investigated 214 consumer complaints and collected 143 food samples. FSP also performed the inspection necessary to open 358 new food businesses.

In May, the Dairy Services Program (DSP) permitted a new Grade "A" dairy farm, 6-4 Euepsia, LLC, in Bland County. DSP staff assisted the firm in meeting regulatory requirements by conducting site visits and equipment and construction reviews since 2019. The DSP also revoked the permit of a farmer in Franklin County after multiple repeated antibiotic drug residue infractions. Ownership of the farm was then transferred to a different family member.

DSP is in the process of permitting over 125 milk tankers in Rockingham County for Red Stag, LLC, a milk hauling company headquartered in Texas. This will more than double the current inventory of tankers that DSP permits and inspects.

In 2024, ODF Produce Safety Specialists have conducted 40 inspections of covered produce farms and 80 visits to determine coverage under the federal Produce Safety Rule for farm inventory development. Staff attended 12 grower events to inform producers about the Produce Safety Rule, online farm registration portal, and new pre- and post-harvest agricultural water requirements.

The Office of Hemp Enforcement (OHE) has steadily filled 14 positions, with an additional position under recruitment. The program is currently focused on training and establishing proper procedures. As staff has been hired, inspection numbers are increasing, and staff is focusing on the significant compliance requirements to issue violations. Preliminary reports indicate that fewer THC-related poisonings have been reported to poison control centers and fewer shops are advertising delta-8 THC and other illegal hemp products for sale.

For FY 2024, 424 inspections were conducted at tobacco and vape retailers. These inspections reviewed 7,509 hemp products and identified 17,715 violations. In accordance with the civil penalty matrix, \$10,772,250 in civil penalties were assessed, with \$2,296,050 invoiced for payment. Penalty reductions are typically made during the conference/hearing process to improve compliance. There were 128 informal fact-finding conferences completed as part of the compliance process. VDACS has collected \$433,263 in civil penalties resulting from 163 cases.

On June 26, OHE staff provided training to several branches of local law enforcement as well as Norfolk Federal Bureau of Investigation and Bureau of Alcohol, Tobacco, Firearms and Explosive agents. The training continued outreach and education efforts of the program's duties and regulation of edible hemp products to protect Virginia consumers.

The Office of Veterinary Services (OVS) is monitoring the detection of highly pathogenic avian influenza (HPAI) in dairy cattle in other states. While the disease has not been found in Virginia, OVS is preparing for a detection should it occur. Testing for H5N1 in dairy cattle is being completed in the Harrisonburg Laboratory. Over 175 samples have been run, with an average turnaround time of less than 24 hours.

OVS staff has implemented a new program for inspecting pet shops that sell dogs or cats. The program is a result of legislation passed in 2020 and finalized regulations from May 2024. OVS has registered 18 pet shops and began inspections.

Since March, the Office of Laboratory Services has completed 88,883 tests. Testing increases included Coggins testing, fish testing in Wytheville, and spring fecal examinations.

In June, Harrisonburg Laboratory Staff assisted in the Virginia State University Agriculture Discovery program introducing high-school students to many aspects of agriculture. Dr. Quercia and Dr. Horstmann Blinn brought poultry samples to teach students about poultry necropsy and biosecurity and why it is an important aspect of animal agriculture.

Avian metapneumovirus testing continues to be high in the Harrisonburg Laboratory, averaging 400-500 samples per week. This testing is being used primarily for surveillance from the commercial poultry industry, both turkeys and chickens.

Project 7963 - Fast-Track

Department of Agriculture And Consumer Services

Repeal of 2 VAC 5-550

Chapter 550

Rules and Regulations Pertaining to Tolerances and Prohibitions Applicable to Sausage
(REPEALED)

2VAC5-550-10. Sausage. (Repealed.)

~~A. Cereal, vegetable starch, starchy vegetable flour, soya flour, soy protein concentrate, dried milk, nonfat dry milk, or calcium reduced dried skim milk may be added to sausage in quantities not to exceed, individually or collectively, 3-1/2% by weight of the finished product.~~

~~B. Water or ice in quantities not to exceed 3% may be added to sausage which is not cooked; sausage of the type which is cooked, such as frankfurter style, or normal style, and bologna style, may contain not more than 10% added water or moisture to make the product palatable.~~

~~C. When dried milk, nonfat dry milk, or calcium reduced dried skim milk is added to sausage in subsections A and B above, its use must not result in added water or moisture in excess of 3.0% for raw sausage, and 10% for cooked sausage.~~

~~D. When cereal, vegetable starch, starchy vegetable flour, soya flour, soy protein concentrate, dried milk, nonfat dry milk, or calcium reduced dried skim milk is added to sausage within the limits prescribed above, the product and the label shall be marked with the specific name of each added ingredient.~~

~~E. Raw pork sausage shall not be permitted to contain in excess of 50% total fat, as determined by the prescribed official AOAC method.~~

~~F. Sausage of the cooked type, such as frankfurter, vienna and bologna styles, shall not contain in excess of 30% total fat, as determined by the prescribed official AOAC method.~~

~~FORMS (2VAC5-550)(Repealed)~~

~~Inspection Report, Form VDACS-06017.~~

Project 7964 - Fast-Track

Department of Agriculture And Consumer Services

Repeal of 2 VAC 5-590

Chapter 590

Rules and Regulations Pertaining to Tolerances and Prohibitions Applicable to Ground Beef
(REPEALED)

2VAC5-590-10. Ground beef. (Repealed.)

~~A. Chopped beef, ground beef, hamburger shall consist of chopped fresh or frozen beef, with or without seasoning, and with or without the addition of beef fat as such. It shall contain no more than 30% fat, and shall not contain added water, binders, or extenders. When beef cheek meat (trimmed beef cheeks) is used in the preparation of chopped or ground beef, the amount of cheek meat shall be limited to 25%. If in excess of natural proportions, its presence shall be declared on the label.~~

~~B. Beef patties shall consist of chopped fresh or frozen beef, with or without the addition of beef fat as such or seasonings. Binders or extenders or partially defatted beef fatty tissue may be used, without added water or with added water, only in amounts such that the product's characteristics are essentially that of a meat patty. When seasoning, water, binders, or extenders or partially defatted beef fatty tissue are used, their presence shall be declared on the label by their common or usual name in descending order of predominance. Beef patties shall contain no more than 30% fat.~~

~~C. Fabricated beef steaks, veal steaks, beef and veal steaks, or veal and beef steaks, and similar products such as those labeled "beef steak, chopped, shaped, frozen," "minute steak, formed, wafer sliced, frozen," "veal steaks, beef added, chopped molded cubed frozen, hydrolized plant protein, and flavoring" shall be prepared by comminuting and forming the product from fresh or frozen meat, with or without added fat, of the species indicated on the label. These products shall contain no more than 30% fat, and shall not contain added water, binders, or extenders. Beef cheek meat (trimmed beef cheeks) may be used in the preparation of fabricated beef steaks only in accordance with the conditions prescribed in subsection A of 2VAC5-590-20.~~

2VAC5-590-20. Labeling and fat declaration requirements. (Repealed.)

~~A. Qualifying terms. No qualifying terms pertaining to product names, quality, or fat content of ground beef, other than those permitted by this chapter or applicable federal regulations, shall be used in the advertisement or labeling of ground beef products, unless a placard is displayed in reasonable proximity to the display which clearly states:~~

- ~~1. The name of the product;~~
- ~~2. Clarification of any qualifying term which is not self-evident; and~~
- ~~3. A statement of the maximum fat content of the product. Terms such as "lean," "extra lean," "super lean" and "premium" are examples of "qualifying terms".~~

~~B. Primal cuts. Ground beef sold or offered for sale by the name of a primal cut such as "ground chuck," "ground round," "chopped sirloin" or similar terms, shall be composed of meat exclusively from that part of the animal carcass.~~

~~C. Display placard. The display placard shall contain the name of the product and the statement "Does Not Exceed Per Cent Fat," the blank being filled in with the maximum per cent of fat by weight. The placard statement shall be in block letters no less than one-half inch in~~

~~size. However, placard labeling shall not be required when the package label includes the information specified in this chapter.~~

~~D. Use of terms optional. This chapter shall not be interpreted to require any processor or retailer to use any term other than "chopped beef," "ground beef," or "hamburger". If a processor or retailer elects to use qualifying terms, he shall determine and declare by label or placard the maximum percentage of fat in the product which can be maintained by customary operating procedure. The processing margin between the intended fat content and the declared maximum fat content of the product shall be determined by the processor or retailer.~~

~~E. Samples and analyses. Upon analysis by official AOAC methods of random samples collected by the Department of Agriculture and Consumer Services from display, a variation of not more than 3.0% in excess of the declared maximum shall be considered as meeting the declared maximum. Random samples shall consist of one package from display for each 10 packages or fractions thereof on display.~~

~~FORMS (2VAC5-590)(Repealed)~~

~~Inspection Report, Form VDACS-06017.~~

Project 7814

Department of Agriculture And Consumer Services

Conformance with EPA pesticide applicator standards

2VAC5-680-10. Definitions.

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

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

"Bulk pesticide" means any registered pesticide concentrate that is transported or held in an individual container in undivided quantities of greater than 55 U.S. gallons liquid measure or greater than 100 pounds net dry weight.

"Certification" or "certified" means the recognition granted by the Board of Agriculture and Consumer Services to an applicator upon satisfactory completion of board approved requirements.

"Commercial applicator" means any person who has completed the requirements for certification as determined by the board to use or supervise the use of any pesticide for any purpose or on any property other than as provided in the definition of private applicator.

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

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

"Distribute" or "distribution" means the act of distributing, selling, offering for sale, holding for sale, shipping, holding for shipment, delivering for shipment or receiving and, having so received, delivering or offering to deliver, or releasing for shipment to any person in any state. The term includes the sale of pesticides to wholesalers, retailers, and other merchants or to industrial, institutional, and commercial businesses for use by the employees of the business.

"EPA" means the U.S. Environmental Protection Agency.

"FIFRA" means the Federal Insecticide, Fungicide, and Rodenticide Act as amended, and incorporated by reference in this chapter.

"Licensed" or "licensee" means those businesses which, upon meeting the requirements established by the Board of Agriculture and Consumer Services, are issued a license to engage in the sale, storage, distribution, recommendation for use, or application of pesticides in Virginia in exchange for compensation.

"Limited household use" means the use of any general use pesticide product in or on a person's own dwelling and associated grounds such as lawn, garden, pool, or outbuildings. The term also means the use of a general use pesticide applied to animals owned as pets or raised for personal use and the use of personal use products such as mosquito repellents.

"Limited quantities" means purchases, at cost, for resale, of less than \$50,000 annually per outlet of products containing nonrestricted use pesticide active ingredients.

"Multiple violations" means more than one violation of the Act or regulations pursuant to the Act.

"Pest management consultant" means any person, who may or may not apply pesticides himself, who has obtained a business license in accordance with the requirements listed in this chapter, and who is authorized by this chapter to provide technical advice, supervision or aid, or recommendations for pesticide application commercially in Virginia.

"Pesticide" means (i) any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any insects, rodents, fungi, bacteria, weeds, or other forms of plant or animal life or viruses or bacteria, except viruses on or in living man or other animals, which the commissioner shall declare to be a pest, (ii) any substance or mixture of substances intended for use as a plant regulator, defoliant, or desiccant, and (iii) any substance which is

intended to become an active ingredient in any substance defined in clauses (i) and (ii) of this definition.

"Pesticide business" means any person engaged in the business of distributing, applying, or recommending the use of a product or storing, selling, or offering for sale pesticides for distribution directly to the user. The term "pesticide business" does not include (i) wood treaters not for hire; (ii) seed treaters not for hire; (iii) operations that produce agricultural products unless the owners or operators of such operations described in clauses (i), (ii), and (iii) of this definition are engaged in the business of selling or offering for sale pesticides, or distributing pesticides to persons outside of that agricultural producing operation in connection with commercial transactions; or (iv) businesses exempted by regulations adopted by the board.

"Pesticide business location" means any physical location of a pesticide business used to transact business financial transactions, arrangement of services, or assignment of work or where products, supplies, or business mail is delivered. The term excludes buildings or locations, including employees' residences, used solely for storage of service vehicles, equipment, or supplies or telephone answering services.

"Private applicator" means an applicator who uses or supervises the use of any pesticide which is classified for restricted use for purposes of producing any agricultural commodity on property owned or rented by him or his employer or, if applied without compensation other than trading of personal services between producers of agricultural commodities, on the property of another person.

"Registered technician" means the same as that term is defined in 2VAC5-685.

"Restricted use pesticide" or "pesticide classified for restricted use" means any pesticide classified as restricted by the Administrator of the U.S. Environmental Protection Agency.

"Sale" or "sell" means the transfer of goods to or to render services to another in exchange for compensation of any kind.

"Virginia Pesticide Control Act" or "Act" means Chapter 39 (§ 3.2-3900 et seq.) of Title 3.2 of the Code of Virginia.

2VAC5-680-60. Recordkeeping of restricted use pesticide sales by pesticide businesses.

A. Pesticide businesses that sell restricted use pesticides shall maintain a record of each restricted use pesticide sold. Each sales record shall contain the following:

- ~~1. Name, address, certified applicator number or business license number, and certificate or license expiration date of the person to whom the restricted use pesticide was sold or delivered~~ Name and address of the residence or principal place of business of each commercial applicator or private applicator to whom a restricted use pesticide was sold or, if applicable, the name and address of the residence or principal place of business of each noncertified person to whom a restricted use pesticide was sold for application by a commercial applicator or private applicator;
- ~~2. Certification number and expiration date of certification of the person to whom the restricted use pesticide was sold or delivered;~~
- ~~3. Date of sale~~ the transaction;
- ~~3. 4. Brand, trademark, or product name appearing on the product's label;~~
- ~~4. 5. EPA registration number, including any applicable Emergency Exemption number or State Special Local Need registration number;~~ and
- ~~5. 6. Quantity of pesticide sold or delivered.~~

B. The restricted use pesticide sales recordkeeping requirement may be satisfied by invoices, if (i) such invoices are kept separate from the licensee's other sales records, and (ii) the invoices contain the information required by subsection A of this section.

2VAC5-680-65. Recordkeeping of pesticide applications by licensed pesticide businesses.

Licensed pesticide businesses shall maintain a record of each pesticide applied. This shall apply to both general use and restricted use pesticides. Each record shall contain the:

1. Name, mailing address, and telephone number of customer and ~~address or~~ physical location, ~~if different,~~ of site of application;
2. Name and certification number (~~or certification number of the supervising certified applicator~~) of the person making the application or, if a registered technician makes the application, the name of the registered technician making the application and the name and certification number of the person supervising the application;
3. ~~Day~~ Time, day, month, and year of application;
4. Type of plants, crop, animals, commodity, stored product, or sites treated and principal pests to be controlled;
5. Acreage, area, or number of plants or animals treated;
6. Brand, trademark, or product name appearing on the product's label;
7. EPA registration number;
8. Amount of pesticide concentrate and amount of diluent used, by weight or volume, in mixture applied; ~~and~~
9. Total amount of pesticides applied per site per application; and
10. Type of application equipment used.

2VAC5-680-70. Recordkeeping of pesticide applications by pesticide businesses.

Pesticide businesses shall maintain a record of each pesticide applied. This shall apply to both general use and restricted use pesticides. Each record shall contain the:

1. Name, mailing address, and telephone number of customer and ~~address or~~ physical location, ~~if different,~~ of site of application;
2. Name and certification number ~~(or certification number of the supervising certified applicator)~~ of the person making the application or, if a registered technician makes the application, the name of the registered technician making the application and the name and certification number of the person supervising the application;
3. ~~Day~~ Time, day, month and year of application;
4. Type of plants, crop, animals, commodity, stored product, or sites treated and principal pests to be controlled;
5. Acreage, area, or number of plants or animals treated;
6. Brand, trademark, or product name appearing on the product's label;
7. EPA registration number;
8. Amount of pesticide concentrate and amount of diluent used, by weight or volume, in mixture applied; ~~and~~
9. Total amount of pesticides applied per site per application; and
10. Type of application equipment used.

2VAC5-685-10. Definitions.

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

"Accident" means an unexpected, undesirable event, involving the use or presence of a pesticide, that adversely affects man or the environment.

"Act" means the Virginia Pesticide Control Act (§ 3.2-3900 et seq. of the Code of Virginia).

"Agricultural commodity" means any plant or part thereof, or animal, or animal product, produced by a person, including farmers, ranchers, vineyardists, plant propagators, Christmas tree growers, aquaculturists, floriculturists, orchardists, foresters, nurserymen, wood treaters not for hire, or other comparable persons, primarily for sale, consumption, propagation, or other use by man or animals.

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

"Board-approved training" means a course which includes, at a minimum, study and review of all the material contained in an edition used in Virginia of (i) a basic pesticide applicator certification training core manual and (ii) a certification training manual for each specific category pertaining to the type of pesticide application to be done.

"Certificate" means the document issued to a certified applicator or registered technician who has completed all the requirements of Article 3 (§ 3.2-3929 et seq.) of Chapter 39 of Title 3.2 of the Code of Virginia.

"Certification" or "certified" means the recognition granted by the Board of Agriculture and Consumer Services to an applicator upon satisfactory completion of board-approved requirements.

"Chemigation" means the application of any pesticide through an irrigation system.

"Commercial applicator" means any applicator who has completed the requirements as determined by the board, including appropriate training and time in service, to apply for a certification, and who uses or supervises the use of any pesticide for any purpose or on any property, other than as provided in the definition of private applicator.

"Commercial applicator not for hire" means any commercial applicator who uses or supervises the use of pesticides as part of his job duties only on property owned or leased by him or his employer. It also applies to governmental employees who use or supervise the use of pesticides, whether on property owned or leased by them or their employers or not, in the performance of their official duties.

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

"Competent person" means a person having the demonstrated ability to perform the task to which he is assigned.

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

"Drift" means the physical movement of pesticide through the air at the time of pesticide application or soon thereafter from the target site to any nontarget or off-target site. Pesticide drift will not include movement of pesticides to nontarget or off-target sites caused by erosion, migration, volatility, or windblown soil particles that occurs after application unless specifically addressed on the pesticide product label with respect to drift control requirements.

"EPA" means the United States Environmental Protection Agency.

"Fumigant" means any substance that by itself or in combination with any other substance emits or liberates a gas or gases, fumes, or vapors that will destroy vermin, rodents, insects, and other pests and is usually lethal, poisonous, noxious, or dangerous to human life.

"Fungicide" means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any fungi or plant disease.

"Herbicide" means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any weed.

"Incident" means a definite and separate occurrence or event, involving the use or presence of a pesticide, that adversely affects man or the environment.

"Insecticide" means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any insects that may be present in any environment whatsoever.

"Knowledge" means the possession and comprehension of pertinent facts, together with the ability to use them in dealing with specific problems and situations within the pesticide context.

"Label" means the written, printed, or graphic matter on, or attached to, the pesticide or device, or the immediate container thereof, and the outside container or wrapper of the retail package, if any, of the pesticide or device.

"Labeling" means all labels and other written, printed, or graphic matter (i) upon the pesticide or device or any of its containers or wrappers, (ii) accompanying the pesticide or device at any time, or (iii) to which reference is made on the label or in literature accompanying the pesticide or device, except when accurate, nonmisleading reference is made to current official publications of the agricultural experiment station, the Virginia Polytechnic Institute and State University, the Department of Agriculture and Consumer Services, the State Board of Health, or similar federal institutions or other official agencies of the Commonwealth or other states when such states are authorized by law to conduct research in the field of pesticides.

"Licensed" or "licensee" means those businesses which, when meeting the requirements established by the Board of Agriculture and Consumer Services, are issued a license to engage in the sale, storage, distribution, recommend the use, or application of pesticides in Virginia in exchange for compensation.

"Marine antifoulant paint" means any compound, coating, paint or treatment applied or used for the purpose of controlling freshwater or marine fouling organisms on vessels.

"Noncertified applicator" means a person who is not certified in accordance with this chapter to use or supervise the use of a restricted use pesticide in the category appropriate to the type of application being conducted in the pertinent jurisdiction, but who is using a restricted use pesticide under the direct supervision of a person certified as a commercial or private applicator in accordance with this chapter.

"Pesticide" means (i) any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any insects, rodents, fungi, bacteria, weeds, or other forms of plant or animal life or viruses, except viruses on or in living man or other animals, which the commissioner shall declare to be a pest; (ii) any substance or mixture of substances intended for use as a plant regulator, defoliant, or desiccant; and (iii) any substance which is intended to become an active ingredient thereof.

"Pesticide business" means any person engaged in the business of distributing, applying or recommending the use of a product; or storing, selling, or offering for sale pesticides directly to the user. The term "pesticide business" does not include (i) wood treaters not for hire; (ii) seed treaters not for hire; (iii) operations that produce agricultural products unless the owners or operators of such operations described in clauses (i), (ii), and (iii) are engaged in the business of selling or offering for sale pesticides, or distributing pesticides to persons outside of that agricultural producing operation in connection with commercial transactions; or (iv) businesses exempted by regulations adopted by the board.

"Private applicator" means an applicator who uses or supervises the use of any pesticide that is classified for restricted use for purposes of producing any agricultural commodity on property owned or rented by him or his employer or, if applied without compensation other than trading of personal services between producers of agricultural commodities, on the property of another person.

"Registered technician" means an individual who renders services similar to those of a certified commercial applicator, but who has not completed all the training or time in service requirements to be eligible for examination for certification as a commercial applicator and is limited to application of general use pesticides. However, if he applies restricted use pesticides he shall do so only (i) under the direct supervision of a certified commercial or private applicator and (ii) if the label of the restricted use pesticide does not restrict the pesticide's permissible applicators to certified applicators. Every registered technician is certified in Category 60 regardless of the category or subcategory in which he is trained and applies pesticides.

"Registered technician not for hire" means any registered technician who uses or supervises the use of pesticides as part of his job duties only on property owned or leased by him or his employer. It also applies to governmental employees who use or supervise the use of pesticides, whether on property owned or leased by them or their employers or not, in the performance of their official duties.

"Repeat violation" means another violation following the first violation of the same provision of the Virginia Pesticide Control Act or the federal Insecticide, Fungicide, and Rodenticide Act (7 USC § 136 et seq.), or regulations adopted pursuant thereto, committed within a three-year period commencing with the date of official notification of the first violation of the provision.

"Restricted entry interval" means the time after the end of a pesticide application during which entry into the treated area is restricted.

"Restricted use pesticide" or "pesticide classified for restricted use" means any pesticide classified for restricted use by the administrator of the EPA under the provisions of 1947 (7 USC § 3(d)(1)(c)) of the federal Insecticide, Fungicide, and Rodenticide Act (as amended).

"Rodenticide" means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating rodents or any other vertebrate animal which the commissioner shall declare to be a pest.

"Tributyltin compounds" means any compound having three normal butyl groups attached to a tin atom and with or without an anion such as chloride, fluoride, or oxide.

"Under the direct supervision of" means the act or process whereby the application of a pesticide is made by a competent person acting under the instructions and control of a certified commercial applicator who is responsible for the actions of that person.

"Under the direct on-site supervision of" means the act or process whereby the application of a pesticide is made by a competent person acting under the instructions and control of a certified commercial applicator who is responsible for the actions of that person and is physically present on the property upon which the pesticide is being applied, and is in constant visual contact with the person applying the pesticide.

"Use" means the employment of a pesticide for the purposes of (i) preventing, destroying, repelling, or mitigating any pest or (ii) regulating plant growth, causing defoliation or desiccation of plants. The term "use" shall include application or mixing and shall include handling or transfer of a pesticide after the manufacturer's original seal is broken. The term "use" shall also include any act with respect to a particular pesticide which is consistent with the label directions for that particular pesticide.

"Vessel" means every description of watercraft, other than a seaplane, used or capable of being used as a means of transportation on the water, whether self-propelled or otherwise, and includes barges and tugs.

2VAC5-685-20. General requirements for certification.

A. The following persons must be certified as pesticide applicators:

1. Commercial applicators;
2. Registered technicians; and
3. Private applicators.

B. Commercial applicators not for hire must be certified only when using any pesticide in the following areas except as noted in subsection C of this section:

1. Areas open to the general public at daycare facilities, educational institutions, health care facilities, and convalescent facilities;
2. Areas where open food is stored, processed, or sold; and
3. Recreational lands over five acres in size.

C. Employees of local, state, and federal governmental agencies who use or supervise the use of any pesticide on any area in the performance of their official duties must be certified as either commercial applicators not for hire or registered technicians, but they are exempt from any certification fees.

D. All persons desiring certification as pesticide applicators must:

1. Complete board-approved training appropriate for the desired classification;
2. Submit a completed application to the commissioner; and
3. Pass required examination or examinations. Applicants who do not pass the examination and who request reexamination must resubmit a completed application to the commissioner or his duly authorized agent and pay the nonrefundable applicator certification fee as determined by 2VAC5-675, Regulations Governing Pesticide Fees Charged by the Department of Agriculture and Consumer Services; and
4. Be 18 years of age or older.

E. Persons with a history of repeat violations of federal or state pesticide laws or whose certification or pesticide business license has been revoked within the two-year period immediately prior to application are not eligible for certification. Such persons may appear before the board to show why they should be granted certification as outlined under provisions of § 3.2-3940 E of the Code of Virginia.

F. Applicants for certification cannot engage in the activity for which they are requesting certification, unless participating in supervised direct on-site training, until certification has been issued by the commissioner. Commercial applicators may not apply pesticides in any category or subcategory activity until they have passed the category-specific examination and obtained the appropriate certification.

G. A commercial or private applicator or registered technician may request a duplicate of the certification card if the applicator's or technician's card has been lost, stolen, mutilated or destroyed.

2VAC5-685-40. Specific certification requirements for private applicators.

A. Each applicant for a private applicator's certificate shall apply to the commissioner and then report to an authorized testing location within 90 days and take an examination for each certification category, specified in 2VAC5-685-80, applicable to his operation. The application shall contain the applicant's name, address, and classification desired for certification.

~~B. Persons who cannot read or understand labels shall not be certified as private applicators unless they demonstrate competence to apply restricted use pesticides on their own properties. Persons seeking a waiver of the literacy requirements shall petition the board. Persons certified under this waiver shall obtain certification in the categories of limited certificate or single product certification as described in 2VAC5-685-80.~~

2VAC5-685-60. Persons exempt from certification.

The following persons are exempt from certification:

1. Persons conducting laboratory research involving restricted use pesticides;
2. Doctors of medicine or doctors of veterinary medicine applying pesticides as drugs or medication during the course of their practice, or to control pests in corpses;
3. Persons who use or supervise the use of nonrestricted use pesticides as part of their duties only on properties owned or leased by their employers, except those persons identified in 2VAC5-685-20 B;
4. Persons who provide janitorial or cleaning services using nonrestricted use sanitizers, disinfectants, and germicides;
5. Painters who apply restricted use marine antifoulant paint under the direct supervision of a certified commercial applicator. One certified commercial applicator shall be present for every eight painters;
6. Forestry applicators standing on the ground who apply ~~general~~ nonrestricted use herbicides for forest vegetation control and tree thinning under the direct on-site supervision of a certified commercial applicator. One certified commercial applicator shall be present for every eight forestry applicators and be within voice contact of and no more than 200 feet from such applicators;
7. Individuals engaged in the training required for certification while under the direct on-site supervision of a certified commercial applicator;
8. Employees of local, state, or federal governmental agencies who from time to time make incidental use of ready-to-use pesticides that are properly registered in Virginia. For purposes of this section, "incidental use" means the use of a pesticide on an occasional,

isolated, site-specific basis in order to avoid immediate personal harm from stinging or biting insects. This exemption does not include regular, routine, or maintenance applications of pesticides or any use of restricted-use pesticides;

9. Individuals who apply nonrestricted use pesticides for the survey for gypsy moth under the authority of the department; ~~and~~

10. Individuals who apply nonrestricted use pesticides for the survey for cotton boll weevil under the authority of the department; and

11. An individual 18 years of age or older who applies a restricted use pesticide under the direct supervision of a private applicator. However, an individual 16 years of age or older who applies a restricted use pesticide under the direct supervision of a private applicator who is a member of the individual's immediate family and on property owned or leased by the private applicator is also exempt from certification if (i) the restricted use pesticide is not a fumigant, sodium cyanide, or sodium fluoroacetate and (ii) the individual is not applying the restricted use pesticide aerially.

2VAC5-685-70. Categories for commercial applicator certification.

A. Commercial applicators must be certified in one or more of the following commercial applicator categories or subcategories:

1. Agricultural pest control.

a. Agricultural plant pest control. This subcategory is for commercial applicators who will be using or supervising the use of pesticides in production of agricultural crops, ~~or~~ on grasslands, or on noncrop agricultural lands.

b. Agricultural animal pest control. This subcategory is for commercial applicators who will be using or supervising the use of pesticides on ~~agriculturally related~~ agricultural animals or in locations on or in which such animals are confined. Certification in this

- subcategory alone is not sufficient to authorize the purchase, use, or supervision of the use of sodium cyanide for predator control or sodium fluoroacetate for predator control.
- c. Fumigation of soil and agricultural products. This subcategory is for commercial applicators who will be using or supervising the use of pesticides for soil fumigation in production of an agricultural commodity and the application of pesticides for fumigation of stored agricultural plant products.
 - d. Chemigation. This subcategory is for commercial applicators who will be using or supervising the use of pesticides through an irrigation system.
2. Forest pest control. This category is for commercial applicators who will be using or supervising the use of pesticides in forests, forest nurseries, and seed orchards.
 3. Ornamental and turf pest control.
 - a. Ornamental pest control. This subcategory is for commercial applicators who will be using or supervising the use of pesticides in the maintenance and production of ornamental trees, shrubs, and flowers in and out-of-doors, excluding fumigation.
 - b. Turf pest control. This subcategory is for commercial applicators who will be using or supervising the use of pesticides in the production and maintenance of turf, including, but not limited to, turf in golf courses, residential lawns, parks, and cemeteries.
 4. Seed treatment (~~excluding fumigation~~). This category is for commercial applicators who will be using or supervising the use of pesticides on seeds in a seed treatment facility.
 5. Aquatic pest control.

- a. Aquatic pest control - general. This subcategory is for commercial applicators who will be using or supervising the use of pesticides in or on standing or running water, for the express purpose of controlling pests. This excludes applicators engaged in ~~public health related activities included in subdivision 8 of this subsection,~~ related to public health pest control.
- b. Marine antifoulant paints. This subcategory is for commercial applicators who will be using or supervising the use of marine antifoulant paints ~~containing tributyltin or other restricted use pesticides~~ applied to a boat hull, buoy, underwater equipment or pipe, or other underwater structure to prevent the growth of a plant or animal pest in or on a submerged surface.
6. Right-of-way pest control. This category is for commercial applicators who will be using or supervising the use of pesticides in the maintenance of public rights-of-way, such as a road, electric power line, telephone line, pipeline, or railway, and in the maintenance of fence lines, structural perimeters, or other similar areas.
7. Industrial, institutional, structural, and health-related pest control.
- a. General pest control ~~(excluding fumigation)~~. This subcategory is for commercial applicators who will be using or supervising the use of pesticides to control household ~~type~~ pests, including pests that inhabit or infest structures, stored products, and residential food preparation areas, and pests capable of infesting or contaminating foods and foodstuffs at any stage of processing facilities. This subcategory includes treatment of food processing areas and control of vertebrate structural invaders. This subcategory does not include control of wood-destroying pests or the use of fumigants.
- b. Wood-destroying pest control ~~(excluding fumigation)~~. This subcategory is for commercial applicators who will be using or supervising the use of pesticides other

- than fumigants to control organisms that destroy structures made of or containing wood.
- c. Fumigation. This subcategory is for commercial applicators who will be using or supervising the use of fumigant-type pesticides to control pests in a structure or an item other than soil or raw agricultural commodities.
- d. Vertebrate pest control ~~(excluding structural invaders)~~. This subcategory is for commercial applicators who will be using or supervising the use of pesticides, excluding sodium cyanide for predator control or sodium fluoroacetate for predator control, to control vertebrate pest animals outside of human dwellings or other structures.
- e. Sewer root pest control. This subcategory is for commercial applicators who use pesticides, including those containing metam sodium, to control roots in a sewer line root control.
- f. Public health for commercial applicators. This subcategory is for commercial applicators who will be using or supervising the use of pesticides to manage or control pests of medical significance that pose a risk to public health. This subcategory does not include a federal, state, or local government employee involved in public health pest control in the performance of his duties.
8. Public health pest control - government. This category is for commercial applicators who will be using or supervising the use of pesticides for the management and control of pests having of medical and public health significance that pose a risk to public health. This category is for a federal, state, or local government employee or contractor who uses or supervises the use of pesticides in a government-sponsored program.

9. Regulatory pest control. This category is for a federal, state, and or local governmental government employee applicators or contractor who will be using or supervising the use of pesticides, excluding sodium cyanide for predator control or sodium fluoroacetate for predator control, in the a government-sponsored program to control of regulated pests.

10. Demonstration and research pest control. This category is for ~~commercial applicators who will be demonstrating the proper use and techniques of application of pesticides (including classroom demonstration), or who will be supervising such demonstration. It also includes applicators who will be conducting pesticide research on greenhouse or field plots~~ a federal, state, or local government employee who (i) teaches proper pesticide use or application techniques or conducts or supervises classroom demonstrations of such, (ii) makes pesticide recommendations, or (iii) conducts research application of pesticides in a greenhouse or field plot.

11. Aerial pesticide application. This category is for commercial applicators who will be using or supervising the use of any pesticide applied by fixed- or rotary-wing aircraft, unmanned aerial vehicles (UAV), or unmanned aerial systems (UAS).

12. Wood preservation and wood product treatment. This category is for commercial applicators who will be using or supervising the use of pesticides at ~~treating wood treatment plants and or sawmills for preservative treatment~~ the preservation of wood and wood products by pressure, dipping, soaking, or diffusion processes to protect the wood or wood product from damage by insects, fungi, marine borers, or weather.

13. Miscellaneous. This category is to be used to designate categories or subcategories of commercial applicators ~~using specific pesticides or uses for which the U.S. EPA may mandate certification in order to allow for the pesticide or use~~ required by the Commonwealth of Virginia for use of general use pesticides.

14. Predator management. This category is for a federal, state, or local government employee or contractor who uses or supervises the use of pesticides in a government-sponsored program to control predators, including the use of sodium cyanide in a mechanical ejection device or sodium fluoroacetate in a protective collar.

B. A commercial applicator certified in one category and seeking initial certification in one or more additional categories shall meet the certification requirements of each of the new categories in which he desires certification.

2VAC5-685-80. Categories for private applicator certification.

Private applicators who apply or supervise the application of restricted use pesticides shall be certified in one or more of the following categories:

~~1. Category 86: Single product certification. Includes private applicator applicants who are seeking authorization to apply a single identified restricted use product or related restricted use products with the same active ingredient and with a similar formulation and use. This category is intended for limited use under special or emergency circumstances as identified by the board.~~

~~2. Category 87: Limited certificate - single product or single use. Includes private applicator applicants who are seeking authorization to apply a single restricted use pesticide for a single identified purpose. This category is intended for limited use under special or emergency circumstances as identified by the board on a case by case basis.~~

~~3. Category 90: Agricultural commodity production - food, fiber, and forestry products, and commodity production. Includes private applicators who use or supervise the use of restricted use pesticides, excluding fumigants, sodium cyanide for predator control, or sodium fluoroacetate for predator control. (i) in the production of agricultural crops, ~~including fumigation and chemigation;~~ (ii) on forestry products; (iii) on animals; (iv) in~~

places where animals are confined; (v) for the control of vertebrate pests of agricultural crops and livestock animals; or (vi) in the production of agricultural commodities; ~~and (vii) for the fumigation of agricultural products.~~

~~4. 2. Category 91: Ornamental production. Includes private applicators who use or supervise the use of restricted use pesticides, excluding fumigants, to control pests in (i) tree nurseries, (ii) shrub nurseries, (iii) ornamental plant nurseries, (iv) flower nurseries, (v) greenhouses used for breeding and growing ornamental plants, or (vi) irrigation systems, and (vii) ornamental production using fumigants.~~

3. Category 92: Fumigation. Includes private applicators who use or supervise the use of restricted use pesticides for fumigation.

4. Category 93: Predator control. Includes private applicators who use or supervise the use of restricted use pesticides for predator control including sodium cyanide and sodium fluoroacetate.

5. Category 94: Aerial application. Includes private applicators who use or supervise the use of restricted use pesticides by fixed-wing or rotary-wing aircraft, unmanned aerial vehicles (UAV), or unmanned aerial systems (UAS)

2VAC5-685-100. Specific knowledge required for the categories of commercial applicators.

~~**2VAC5-685-100. Specific knowledge required for the categories of commercial applicators.**~~

Applicants for commercial applicator certification shall possess the skills and knowledge associated with the chosen category(s) as they pertain to those items listed in 2VAC5-685-90-B 1 through 6, including recognizing category specific pests and their biology as described in 40 CFR § 171.103(d) and contained in the appropriate Virginia category specific training manual(s).

2VAC5-685-110. Specific knowledge required for the categories of private applicators.

~~**2VAC5-685-110. Specific knowledge required for the categories of private applicators.**~~

Applicants for private applicator certification shall possess the skills and knowledge associated with the chosen category(s) as they pertain to those items listed in ~~2VAC5-685-90-B 1 through 6, including recognizing category specific pests and their biology as~~ described in 40 CFR § 171.105 and contained in a Virginia category specific certification training manual(s).

2VAC5-685-120. Specific knowledge required for registered technicians.

~~**2VAC5-685-120. Specific knowledge required for registered technicians.**~~

In addition to the skills and knowledge ~~required in 2VAC5-685-90-B 1 through 6~~ described in 40 CFR § 171.201(d), ~~the~~ a registered technician applicant shall obtain the required amount of on-the-job training as discussed in 2VAC5-685-50.

2VAC5-685-130. Renewal of certification.

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

B. A certified commercial applicator or registered technician must complete a board-approved recertification course that, ~~at a minimum,~~ includes the core standards of competency for applicators established in 40 CFR §§ 171.101 and 171.103 and addresses the following topics:

1. Legal aspects including:

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

C. A certified private applicator must complete a board-approved recertification course that, ~~at a minimum,~~ includes the core standards of competency for applicators established in 40 CFR § 171.105 and addresses the following topics:

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

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

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

2VAC5-685-210. Specific recordkeeping requirements for commercial applicators not for hire and registered technicians not for hire.

~~**2VAC5-685-210. Specific recordkeeping requirements for commercial applicators not for hire and registered technicians not for hire.**~~

Commercial applicators not for hire and registered technicians not for hire shall maintain a record of each pesticide applied, containing the following:

1. Name of property owner; and mailing address, ~~or~~ physical location, and, as applicable, phone number of the site of application;

2. Name and certification number (~~or certification number of the supervising certified applicator~~) of the person making the application or, if a registered technician makes the application, the name of the registered technician and the name and certification number of the person supervising the application;
3. ~~Day~~ Time, day, month, and year of application;
4. Type of plants, crops, animals, commodity, stored product, or sites treated and principal pests to be controlled;
5. Acreage, area, or number of plants or animals treated;
6. Brand name or common product name of pesticide used;
7. EPA registration number;
8. Amounts of pesticide concentrate and amount of diluent used, by weight or volume, in mixture applied; ~~and~~
9. Total amount of pesticides applied per site per application; and
10. Type of application equipment used.

2VAC5-685-220. Specific recordkeeping requirements for private applicators.

A. A private applicator shall maintain records documenting that a noncertified applicator who applies a restricted use pesticide under the direct supervision of the private applicator has been trained in accordance with the requirements for a noncertified applicator training program as established in 40 CFR §171.201(d) or with the requirements established in 40 CFR § 170.501(c) for handlers, as that term is defined in 40 CFR § 170.3.

B. Training records maintained for noncertified applicators trained in accordance with the requirements established in 40 CFR §171.201(d) must contain all of the following information:

1. Noncertified applicator's printed name and signature;

2. Date of the training;

3. Name and certification number of the person who conducted the training; and

4. Title or a description of the training completed.

C. Training records maintained for handlers, as that term is defined in 40 CFR § 170.3, trained in accordance with the requirements established in 40 CFR § 170.501(c) must contain the information required in 40 CFR § 170.501(d).

D. A private applicator shall maintain the records required in this section for a period of two years following the date of training.

VIRGINIA ACTS OF ASSEMBLY -- 2024 SESSION

CHAPTER 129

An Act to amend and reenact § 2.2-3708.3 of the Code of Virginia, relating to the Virginia Freedom of Information Act; electronic meetings.

[S 734]

Approved March 20, 2024

Be it enacted by the General Assembly of Virginia:

1. That § 2.2-3708.3 of the Code of Virginia is amended and reenacted as follows:

§ 2.2-3708.3. Meetings held through electronic communication means; situations other than declared states of emergency.

A. 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.

B. Individual members of a public body may use remote participation instead of attending a public meeting in person if, in advance of the public meeting, the public body has adopted a policy as described in subsection D and the member notifies the public body chair that:

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.

If participation by a member through electronic communication means is approved pursuant to this subsection, the public body holding the meeting shall record in its minutes the remote location from which the member participated; however, the remote location need not be open to the public and may be identified in the minutes by a general description. If participation is approved pursuant to subdivision 1 or 2, the public body shall also include in its minutes the fact that the member participated through electronic communication means 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. If participation is approved pursuant to subdivision 3, the public body 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 participation is approved pursuant to subdivision 4, the public body shall also include in its minutes the specific nature of the personal matter cited by the member.

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

C. With the exception of 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, any public body may hold all-virtual public meetings, provided that the public body follows the other requirements in this chapter for meetings, the public body has adopted a policy as described in subsection D, and:

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;

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. *When audio-visual technology is available, a member of a public body shall, for purposes of a quorum, be considered absent from any portion of the meeting during which visual communication with the member is voluntarily disconnected or otherwise fails or during which audio communication involuntarily fails;*

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~~ 50 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 this subsection is disapproved because such participation would violate the policy adopted pursuant to subsection D, such disapproval shall be recorded in the minutes with specificity.

D. Before a public body uses all-virtual public meetings as described in subsection C or allows members to use remote participation as described in subsection B, the public body shall ~~first~~ *at least once annually* adopt 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:

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.

Any public body that creates a committee, subcommittee, or other entity however designated of the public body to perform delegated functions of the public body or to advise the public body may also adopt a policy on behalf of its committee, subcommittee, or other entity that shall apply to the committee, subcommittee, or other entity's use of individual remote participation and all-virtual public meetings.

BOARD OF AGRICULTURE AND CONSUMER SERVICES

POLICY ON PARTICIPATION IN BOARD OF AGRICULTURE AND CONSUMER SERVICES MEETINGS BY ELECTRONIC COMMUNICATIONS PURSUANT TO VA. CODE § 2.2-3708.3

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 communications as permitted by § 2.2-3708.3 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. This policy shall be adopted at least once annually.

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.

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 50 ~~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.

This policy applies to all committees and subcommittees of the Board.

Version History		
Version	Date	Change Summary
1	12/10/2021	Original
2	3/24/2023	Revised to reflect electronic meeting changes to the Virginia Freedom of Information Act effective September 1, 2022
<u>3</u>	<u>7/31/2024</u>	<u>Revised to reflect electronic meeting changes to the Virginia Freedom of Information Act effective July 1, 2024; annual approval of policy</u>

BOARD OF AGRICULTURE AND CONSUMER SERVICES
Future Meeting Dates

MARK YOUR CALENDARS

Thursday, December 12, 2024
Patrick Henry Building
East Reading Room
1111 East Broad Street
Richmond, VA 23219