

**BOARD OF AGRICULTURE AND CONSUMER SERVICES**  
**Electronic meeting held during state of emergency due to novel coronavirus**  
**(COVID-19)**  
**Friday, December 11, 2020**

**AGENDA**

**9 A.M.**

1. Call to order
2. Roll call
3. Approval of draft Board meeting minutes from July 21, 2020
4. Board member reports
5. Commissioner's Report to the Board – Dr. Jewel Bronaugh, Commissioner of Agriculture and Consumer Services
6. Pesticide Control Fund Report to the Board – Larry Nichols, Director, Division of Consumer Protection
7. Appointment of Regulatory Advisory Panel for 2 VAC 5-675 (Regulations Governing Pesticide Fees Charged By the Department of Agriculture and Consumer Services) – Larry Nichols, Director, Division of Consumer Protection
8. Fast-track regulatory action to repeal 2 VAC 5-325 (Regulations Governing Pine Shoot Beetle) – David Gianino, Program Manager, Office of Plant Industry Services
9. Notice of Intended Regulatory Action – 2 VAC 5-105 (Regulations Governing the Keeping of Dogs and Cats by Any Pet Shop) – Dr.Carolynn Bissett, Program Manager, Office of Veterinary Services
10. Proposed establishment of the Virginia Produce Safety Civil Penalty Matrix – Erik Bungo, Program Supervisor, Produce Safety Program
11. Request for release of records – Jason Grim, Interflex
12. New business
13. Future board meetings
14. Public comment period
15. Adjourn

## **PUBLIC PARTICIPATION**

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If you would like to comment during the public comment portion of the meeting, please sign up to do so using the WebEx Q&A feature. Via the Q&A feature, send the Meeting Host your first and last name as well as the name of the organization, if any, on whose behalf you will be commenting (e.g., Joe Smith with ABC Organization). If you join the meeting using the audio conference only or are unable to locate the WebEx Q&A feature to sign up for the public comment portion of the meeting, please dial \*3 on your phone to raise your hand. You may also email your first and last name as well as the name of the organization, if any, on whose behalf you will be commenting to [Erin.Williams@vdacs.virginia.gov](mailto:Erin.Williams@vdacs.virginia.gov). During the public comment portion of the meeting, the Meeting Host will unmute your microphone and announce that it is your turn to comment. Please minimize the background noise at your location.

Should any interruption of the broadcast of this meeting occur, please call 804-363-9201 or email [Erin.Williams@vdacs.virginia.gov](mailto:Erin.Williams@vdacs.virginia.gov) to notify the agency. Any interruption in the broadcast of the meeting shall result in the suspension of action at the meeting until repairs are made and public access is restored.

## **DRAFT MINUTES**

Thursday, July 21, 2020

The meeting of the Board of Agriculture and Consumer Services (Board) convened at approximately 9:10 a.m. on Tuesday, July 21, 2020. The meeting was held by electronic communications means due to the state of emergency issued by Governor Northam as a result of the novel coronavirus (COVID-19). The meeting was held using Cisco Webex Events. President Barlow called the meeting to order.

### **ROLL CALL**

The Board Secretary called the roll:

#### **PRESENT**

Clifton A. Slade  
Shelley Barlow  
Margaret Ann Smith  
L. Wayne Kirby  
Kay Johnson Smith  
Richard Sellers  
Neil Houff  
Kevin J. Kordek  
Mr. Lonnie Johnson

Dr. M. Ray McKinnie

#### **CONGRESSIONAL DISTRICT**

3<sup>rd</sup>  
4<sup>th</sup>  
6<sup>th</sup>  
7<sup>th</sup>  
8<sup>th</sup>  
11<sup>th</sup>  
Pesticides – Commercial Agricultural  
Pesticides – Commercial Structural  
Representing Dr. Timothy D. Sands, President,  
Virginia Tech  
Representing Dr. Makola Abdullah, President,  
Virginia State University

#### **ABSENT**

O. Bryan Taliaferro, Jr.  
Donald Horsley  
Cecil Shell  
James S. Huffard, III  
John R. Marker

1<sup>st</sup>  
2<sup>nd</sup>  
5<sup>th</sup>  
9<sup>th</sup>  
10<sup>th</sup>

#### **STAFF PRESENT**

Jewel Bronaugh, Commissioner, Virginia Department of Agriculture and Consumer Services  
Kevin Schmidt, Secretary, Board of Agriculture and Consumer Services  
Katherine Coates, Virginia Department of Agriculture and Consumer Services

#### **APPROVAL OF MINUTES**

Mr. Houff moved that the draft minutes of the meeting on May 21, 2020, be approved as distributed.  
Ms. Johnson Smith seconded the motion. The motion was approved by a unanimous roll call vote.

**APPROVE:** Slade, Barlow, M. Smith, K. Johnson Smith, Houff, Kordek, L. Johnson, McKinnie

**OPPOSE:** None

#### **REPORT FROM BOARD MEMBERS**

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

<http://www.vdacs.virginia.gov/mp3/julybacsrecording.mp4>

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at Randolph Farm with social distancing measures in place. He concluded his report by announcing that VSU is excited to welcome 17 recipients of 1890 scholarships this year.

### **Lonnie Johnson**

Mr. Johnson reported on Virginia Tech's plans for students to return to campus in the fall. They will operate with a hybrid model of in-person and virtual instruction. He outlined the adjustments being made in VCE centers to accommodate social distancing. He mentioned some of the challenges and missed opportunities due to the pandemic, including the cancellation of 4-H summer camps. He noted that the National Association of County Agriculture Extension Agents that was going to be hosted in Virginia Beach has gone virtual, which will result in lost revenue.

### **L. Wayne Kirby**

Mr. Kirby reported on the status of the spring wheat, vegetable, corn, and soybean crops in his district as well as the challenges caused by the drought.

### **Shelley Butler Barlow**

President Barlow began her report by stating that she was disappointed that she could not host the Board meeting at her farm. She reported on the drought in her area and how it has impacted the corn and cotton crop. She spoke about the stress and unknowns caused by the COVID-19 pandemic. She stated her appreciation for the efforts of VCE, VDACS, and the U.S. Department of Agriculture to support farmers during the pandemic.

She concluded by reporting that VALOR class interviews were held over Zoom, and the new class will be announced soon and will start in September.

### **Richard Sellers**

Mr. Sellers reported on the operations of farmers' markets, church gardens, and urban gardens in his region. He stated that he hopes that, in the future, the General Assembly approves the Urban Agriculture Council legislation they failed to approve during 2020 Session of the General Assembly.

## **COMMISSIONER'S REPORT**

Commissioner Bronaugh delivered her report to the Board. During the presentation of this report, she briefed the Board on personnel changes, recent events, and other matters relating to VDACS and the COVID-19 state of emergency. A copy of the written report on which her presentation was based was included in the Board meeting agenda.

## **2020 SESSION OF THE GENERAL ASSEMBLY – LEGISLATIVE**

President Barlow called on Kevin Schmidt, Director of the Office of Policy, Planning, and Research. Mr. Schmidt provided a brief overview of legislation tracked by VDACS during the 2020 Session of the General Assembly.

## **2020 SESSION OF THE GENERAL ASSEMBLY – BUDGET REPORT**

President Barlow called on Kendra Shifflett, Director of Administrative and Financial Services. Ms. Shifflett provided a brief overview of agency budget issues related to the 2020 Session of the General Assembly and responded to Board member questions.

## **EXEMPT ACTION TO ADOPT AMENDMENTS NECESSARY TO CONFORM TO CHANGES IN VIRGINIA STATUTORY LAW – 2 VAC 5-405 (REGULATIONS FOR THE APPLICATION**

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### **Clifton Slade**

Mr. Slade reported on the vegetable growing season in the Southeast, stating that it has been one of the most profitable seasons of his life, with farmers selling record numbers of crops. He reported on the local corn and soybean crops and the rainfall in his region. He concluded his report by sharing his experience growing hemp in 2020.

### **Margaret Ann Smith**

Ms. Smith reported on the rainfall and temperatures in her district. They have had a substantial number of cattle runs in July. She concluded her report with an update on the hay, corn, and soybean crops in her district, noting that there has been substantial variability in the crops.

### **Kay Johnson Smith**

Ms. Johnson Smith reported that Northern Virginia has entered Phase 3 of reopening. The supply chain issues have been resolved for stores and restaurants, but food banks are still over run. The farmers' markets in her region were able to stay open and are encouraged to take pre-orders and pre-box orders. She concluded by noting that golf courses in her region have also reopened.

### **Neil Houff**

Mr. Houff reported on the end of the application season and the impact of COVID-19 on supply chains. He reported on the weather patterns and corn crop in his district. He shared that the Virginia Crop Production Association (VCPA) decided to cancel its annual crop summit, which is usually held in January, because of the uncertainty caused by the pandemic. He concluded his report by noting that VDACS will be receiving a letter from the VCPA president asking VDACS to consider waiving continuing education credits for re-certification in light of the cancellation of the summit.

### **Kevin Kordek**

Mr. Kordek began his report with a story about the excellent peach crop he saw during a visit to Cullipher Farm. He reported on challenges faced by the National Pest Management Association due to the COVID-19 pandemic, including the cancellation of its in-person events. He noted the Virginia Pest Management Association was uniquely positioned because it was in the process of moving to a virtual platform prior to COVID-19. The VPMA State Technical Meeting has been delayed from late September to December 8-10, 2020, in Virginia Beach.

He thanked VDACS for its support of the industry during the pandemic. He reported that mergers and acquisitions and industry consolidation is back on track after being put on hiatus. Many companies have moved very quickly to add disinfection services, which have proved very popular. He concluded his report with an update on mosquito and tick season.

### **Dr. M. Ray McKinnie**

Dr. McKinnie reported that Virginia State University (VSU) is preparing to reopen in the fall and outlined its plans, social distancing efforts, and monitoring measures. Courses will be offered both online and face-to-face.

He reported that VSU's Virginia Cooperative Extension (VCE) program was one of the first to embrace virtual platforms and Facebook live virtual field walks. He gave an overview of the virtual activities conducted during the late spring and summer. Randolph Farm reopened, and research plantings for this year were completed. Last month, VSU reopened the research labs

**OF FERTILIZER TO NONAGRICULTURAL LANDS), AND THE NOTICE OF INTENDED REGULATORY ACTION – 2 VAC 5-405 (REGULATIONS FOR THE APPLICATION OF FERTILIZER TO NONAGRICULTURAL LANDS)**

President Barlow called on David Gianino, Program Manager, Office of Plant Industry Services. Mr. Gianino presented the Board with a brief overview of the proposed exempt action to amend 2 VAC 5-405 and the proposed Notice of Intended Regulatory Action to amend 2 VAC 5-405.

Following Mr. Gianino's presentation and discussion by the Board, Mr. Sellers moved that the Board of Agriculture and Consumer Services adopt 2 VAC 5-405, Regulations for the Application of Fertilizer to Nonagricultural Lands, as presented by staff, and that the Board authorize staff to take any and all steps necessary to amend this regulation through an exempt regulatory action as authorized by Section 2.2-4006 of the Virginia Administrative Process Act

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

**APPROVE:** Slade, Barlow, M. Smith, Kirby, K. Johnson Smith, Sellers, Houff, Kordek, L. Johnson, McKinnie

**OPPOSE:** None

Following the approval of the prior motion, Mr. Sellers moved that the Board of Agriculture and Consumer Services authorize staff to take any and all steps necessary to file a Notice of Intended Regulatory Action for 2 VAC 5-405, Regulations for the Application of Fertilizer to Nonagricultural Lands, for public comment

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

**APPROVE:** Slade, Barlow, M. Smith, Kirby, K. Johnson Smith, Sellers, Houff, Kordek, L. Johnson, McKinnie

**OPPOSE:** None

**PROPOSED EXEMPT ACTION TO PROMULGATE 2 VAC 5-595 (REGULATIONS GOVERNING THE MANUFACTURING AND SALE OF PRODUCTS THAT CONTAIN INDUSTRIAL HEMP EXTRACTS INTENDED FOR HUMAN CONSUMPTION)**

President Barlow called on Dr. Charles Broaddus, State Veterinarian and Director, Division of Animal Food and Industry Services. Dr. Broaddus provided an overview of 2 VAC 5-595. Dr. Broaddus then called on Ryan Davis, Program Manager, Office and Dairy and Foods. Mr. Davis briefed the Board on the proposed exempt action to promulgate on 2VAC 5-595 and answered board member questions.

Following Mr. Davis's presentation and discussion by the Board, Mr. Slade moved that the Board of Agriculture and Consumer Services adopt 2 VAC 5-595, Regulations Governing the Manufacturing and Sale of Products that Contain Industrial Hemp Extracts Intended for Human Consumption, as presented by staff, and that the Board authorize staff to take any and all steps necessary to promulgate this regulation through an exempt regulatory action as authorized by Section 3.2-5145.5 of the Virginia Food and Drink Law and to file this proposed regulation for public comment as required therein.

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Mr. Kordek seconded the motion. The Board voted to approve the motion.

**APPROVE:** Slade, Barlow, M. Smith, Kirby, K. Johnson Smith, Houff, Kordek, L. Johnson, McKinnie

**ABSTAIN:** Sellers

**OPPOSE:** None

**OFFICE OF PESTICIDE SERVICES – CASE DECISION – LAWN DOCTOR OF STAFFORD (CASE # 66174)**

President Barlow called on Justin Bell, Office of the Attorney General (OAG), who serves as Board counsel. Mr. Bell briefed the Board on its roles and responsibilities pertaining to the review of the case decision for Lawn Doctor of Stafford (Case # 66174) and the recommendation of the hearing officer for the formal hearing held in this case. Mr. Bell stated that while he is the Board's attorney, the Office of Pesticide Services (OPS) would be represented in this matter by its own OAG representative, Ms. Gray O'Dwyer.

Mr. Kordek noted that the OPS Civil Penalty Matrix was not included in the Board packet. Mr. Bell advised President Barlow and Secretary Schmidt that it was appropriate to take a brief recess in order to distribute the penalty matrix to Board members and to make the matrix available on Virginia's Regulatory Town Hall (Town Hall) so that it was accessible to members of the public.

**MEETING RECESS**

President Barlow called for a recess. The penalty matrix was distributed to Board members and posted on Town Hall. The meeting reconvened approximately five minutes later.

**OFFICE OF PESTICIDE SERVICES – CASE DECISION – LAWN DOCTOR OF STAFFORD (CASE # 66174) - CONTINUED**

President Barlow called on Mr. Christopher Bradford, owner of Lawn Doctor of Stafford. Mr. Bradford presented his position on the case.

President Barlow called on Liza Fleeson Trossbach, Program Manager, Office of Pesticide Services. Ms. Fleeson Trossbach provided the Board with a brief overview of the case decision concerning Lawn Doctor of Stafford.

At the advice of Mr. Bell, President Barlow called again on Mr. Bradford, who made additional comments.

Mr. Bradford, Ms. Fleeson Trossbach, Mr. Bell, and Ms. O'Dwyer responded to Board member questions.

After discussion and review of each position presented, Mr. Houff moved that the Board of Agriculture and Consumer Services reject the Hearing Officer's recommendation in Office of Pesticide Services Case Number 66174 concerning Lawn Doctor of Stafford and that the Board amend the civil penalty assessed by the previous decision of OPS to \$50.

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Mr. Kordek seconded the motion. During the roll call vote, Dr. McKinnie raised concerns about the clarity of the motion. The roll call vote was not completed. Secretary Schmidt requested a recess to work with Mr. Bell to draft a motion that addressed Dr. McKinnie's concerns.

**MEETING RECESS**

President Barlow called for a recess. The meeting reconvened approximately 10 minutes later.

**OFFICE OF PESTICIDE SERVICES – CASE DECISION – LAWN DOCTOR OF STAFFORD (CASE # 66174) - CONTINUED**

Secretary Schmidt asked Mr. Bell whether the roll call needed to be completed or whether Mr. Houff could withdraw his motion at this point. Mr. Bell confirmed that Secretary Schmidt could request that Mr. Houff withdraw his motion prior to the completion of the roll call on that motion. Mr. Houff agreed and withdrew his motion. Mr. Houff then moved that the Board of Agriculture and Consumer Services uphold the decision of the Office of Pesticide Services in Office of Pesticide Services Case Number 66174; agree that Lawn Doctor of Stafford was in violation of Section 3.2-3930(A) of the Virginia Pesticide Control Act as documented in Office of Pesticide Services Case Number 66174; and reduce the civil penalty assessed by the previous decision of the Office of Pesticide Services in Office of Pesticide Service Case Number 66174 to \$50.

The motion was seconded by Dr. McKinnie. The Board voted unanimously to approve the motion.

**APPROVE:** Slade, Barlow, M. Smith, Kirby, K. Johnson Smith, Sellers, Houff, Kordek, L. Johnson, McKinnie

**OPPOSE:** None

**NEW BUSINESS**

No new business was introduced.

**PUBLIC COMMENT PERIOD**

Rebecca Hobden, President, ECC Test Lab, commented with concerns about the requirements for testing industrial hemp derived extracts intended for human consumption.

Heather Ebling, Medicinal Genomics, left written comments about microbial allowable limits for hemp-derived tinctures and oils.

**FUTURE BOARD MEETINGS**

The December Board meeting will be held on Friday, December 11, 2020, in Richmond.

**ADJOURNMENT**

There being no further business, the Board adjourned at approximately 12:51 p.m.

Respectfully submitted,



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Shelley Barlow  
Board President

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Kevin Schmidt  
Board Secretary

COMMISSIONER'S REPORT TO  
BOARD OF AGRICULTURE AND CONSUMER SERVICES  
December 11, 2020

PERSONNEL NEWS

Tracy Fitzsimmons was selected as the new Livestock Services Program Manager. Tracy began her new role on October 13. Tracy has nearly 20 years of livestock grading experience and previously worked as a Livestock Marketing Specialist for the West Virginia Department of Agriculture. Most recently, Tracy served as the Executive Director of the Virginia Cattlemen's Association. Prior to working with the Virginia Cattlemen's Association, Tracy worked as a loan officer for Farm Credit of the Virginias. Tracy holds a B.S. in Animal and Veterinary Science from West Virginia University and holds professional memberships in many organizations, including American Agri-Women, American National Cattle Women's Association, and the National Cattlemen's Beef Association.

Landre Toulson was selected as VDACS's Mental Health and Stress Manager in late September. This was a new position created by VDACS in partnership with Agrisafe to help increase mental health awareness among Virginia farmers and to coordinate a network of available resources. Position funding is provided by a grant from the Farmer and Rancher Stress Assistance Network Program that was created under the 2018 federal Farm Bill. In this position, Landre will promote mental health and stress awareness among Virginia farmers and families, identify available mental health resources and partners, and create a regional mental health resource network in Virginia. A Virginia native, Landre understands the challenges of farming as he grew up on a grain farm in Northumberland County. He worked as a sales representative for Monsanto before returning home to work on his family farm and trucking companies, and he starting a new trucking company. Landre also worked at Virginia Cooperative Extension (VCE) as an Agricultural Natural Resources Agent, and most recently, he worked for Chesterfield and Henrico counties as a teacher assistant working with children with disabilities. Landre holds a B.S. in Agriculture and a Master of Education in Agriculture from Virginia State University.

Robert (Rob) Davenport joined VDACS as the Director of Marketing and Development on December 10. Rob has worked in the food and agribusiness industry for 30 years. During this time, he has obtained domestic and international sales, leadership, and business development experience in promoting a variety of agribusiness products. Prior to joining VDACS, Rob worked as international sales director for Sauer Brands, Inc., where he managed a \$60 million branded and private-label condiment export business for customers in 12 different countries. During this time, he worked with the office of U.S. Senator Tim Kaine and the United States Trade Representative to help develop the Trans-Pacific Partnership Agreement. He began his tenure at Sauer Brands as a national account manager and was promoted to sales manager of business development. In this role, he oversaw a \$40 million private label condiment and spice business that had multiple customers across the U.S. Before joining Sauer Brands, Rob worked as a national account manager for ConAgra Foods. In this position, he oversaw the Butterball turkey and Hebrew National product lines for all Costco U.S. operations. While employed at ConAgra, his area of responsibility grew to include sales responsibility of a variety of dry grocery, snack, refrigerated meat, and dairy items in the Costco East and Midwest regions.

## GOVERNOR'S PRIORITIES

Since August of this year, Governor Northam has announced five new Agriculture and Forestry Industries Development (AFID) Fund facility grants totaling \$755,000. These projects represent \$84,631,222 in new capital investment, 159 new jobs (155 full-time and four full-time equivalent positions (FTEs), and commitments for the purchase of \$72,824,427 of Virginia-grown agriculture and forestry products. The grants were awarded to (i) Goochland County for Greenswell Growers, (ii) Wythe County for Musser Lumber, (iii) Fairfax County for OmMade Peanut Butter, (iv) Madison County for Revalation Vineyards, and (v) the City of Harrisonburg for Shenandoah Valley Organic. To date, 98 AFID Fund facility grants have been successfully awarded to 60 localities across Virginia.

Since August, Governor Northam has announced two new AFID Fund planning grants totaling \$40,000. The grants were awarded to (i) Floyd County to create a new digital marketplace for producers, provide technical assistance using the marketplace, and add cold storage facilities and (ii) Loudoun County to launch a new e-commerce platform called "Loudoun Made, Loudoun Grown Marketplace." To date, 42 AFID Fund planning grants have been awarded totaling \$856,232 to 60 localities across Virginia.

Since July, the Virginia Farmland Preservation Fund provided state matching funds for the purchase of the two following easements: (i) Albemarle County utilized \$58,333 to purchase an easement on 49.69 acres, and (ii) Fauquier County utilized \$75,458 to purchase an easement on 152.15 acres. To date, the Virginia Farmland Preservation Fund has provided \$12,471,969 in matching funds for 108 easements in 16 localities, protecting a total of 14,473 acres. On November 10, the fiscal year (FY) 2021 Farmland Preservation Fund grant round opened with \$270,000 available in funding to eligible localities.

In September, Commissioner Bronaugh executed a Memorandum of Understanding with the Virginia Farm Bureau Foundation (VFBF) to update and overhaul the Virginia Farm Link website. Extensive surveys were conducted of current and former Farm Link users as well as a variety of stakeholder groups in order to develop a strategy for a revised website. In fall 2020, VFBF entered into the "discovery" phase with a website developer. The new Virginia Farm Link website is anticipated to launch by February 2021.

On July 1, Chapters 956 and 957 of the 2020 Acts of Assembly was enacted, establishing the Virginia Food Access Investment Fund (Fund) and the Virginia Food Access Investment Program (Program). The Program focuses on equity and justice in local food systems by investing in new or expanding existing food retailers to address food access issues in the Commonwealth. The Fund will provide grants for the construction, rehabilitation, equipment upgrades, or expansion of grocery stores, small food retailers, or innovative food retail projects in underserved communities. Since July, VDACS has convened an Equitable Food Oriented Development stakeholder work group to develop a draft set of Program guidelines and a grant evaluation rubric, which will be finalized by the end of the year. It is anticipated that the first round of grants will be awarded from the Fund in spring 2021. The Fund received \$1.25 million in nonreverting funds as of July 1, which includes \$125,000 annually over the biennium to fund a full-time Program Coordinator position. The hiring process began in November.

Chapters 956 and 957 also requires VDACS to work with a Community Development Financial Institution in administering the Program, and a Request for Proposal will be distributed before the end of the year.

In October, Governor Northam released the inaugural Virginia Roadmap to End Hunger. Produced by the Governor’s Children’s Cabinet, the Virginia Roadmap to End Hunger lays out opportunities to reduce food insecurity in the Commonwealth and critical next steps to develop policies, programs, and partnerships to benefit Virginia’s children and communities. In Virginia and across the country, food insecurity rates are increasing, with an estimated 445,000 additional Virginians experiencing food insecurity because of the ongoing COVID-19 pandemic. Prior to the onset of this public health crisis, approximately 850,000 Virginians were food insecure, including 250,000 children. The Virginia Roadmap to End Hunger looks beyond the current struggles and outlines a way forward to end hunger in the Commonwealth and ensure equitable access to healthy, affordable food for all Virginians.

<b>Total number of active industrial hemp registrations, as of November 14, 2020:</b>	
Industrial Hemp Grower Registrations	1,227
Industrial Hemp Processor Registrations	355
Industrial Hemp Dealer Registrations	228
<b>Planned Hemp Acreage For 2020</b>	<b>9,259</b>

The authority provided in the 2014 federal Farm Bill for hemp agricultural pilot programs, under which Virginia is currently regulating hemp production, was slated to expire on October 31, 2020. In September, VDACS notified the U.S. Department of Agriculture (USDA) and Virginia's hemp growers that, due to the costs to administer a hemp regulatory program that complied with USDA's Domestic Hemp Production Program regulation, which USDA adopted as required by the 2018 federal Farm Bill, Virginia would not pursue approval from USDA to be the primary regulator of hemp in Virginia. At that time, VDACS also advised hemp growers that they would need to obtain a Hemp Producer License from USDA in order to comply with federal law. In mid-October, the federal government delayed the repeal of the 2014 Farm Bill's agricultural pilot program authority. As such, VDACS is able to continue as the primary regulator of hemp production in Virginia until September 30, 2021, which is the date on which the authority is set to expire, and VDACS has advised USDA that VDACS will continue to operate a hemp agricultural pilot program that meets the requirements outlined in the 2014 federal Farm Bill through this date. VDACS subsequently advised hemp growers that they no longer needed a USDA Hemp Producer License.

As of October 30, Office of Plant Industry Services (OPIS) staff completed industrial hemp sampling for the 2020 growing season. This year, OPIS staff collected 289 hemp samples from 82 registered industrial hemp growers distributed throughout the Commonwealth. Staff selected the 82 growers who had samples collected at random from the approximately 1,200 growers in Virginia.

The VDACS Food Safety Program has completed the inspections of 17 Registered Industrial Hemp Processors that are manufacturing industrial hemp-derived extracts intended for human consumption throughout the state. Four additional Registered Industrial Hemp Processors currently have pending

applications to be inspected as manufacturers of industrial hemp-derived extracts intended for human consumption.

## AGENCY OPERATIONS

### *Commissioner's Office*

In September, Commissioner Bronaugh and Deputy Commissioner Green participated virtually in the 2020 National Association of State Departments of Agriculture (NASDA) Annual Meeting. During the first ever virtual meeting of NASDA, members voted to approve new action items on meat processing, rural broadband, federal economic development programs, and specialty crops. Commissioner Bronaugh chairs the Rural Development and Financial Security committee, through which the first policy amendment on diversity, inclusion, and racial equity passed. This new policy amendment becomes NASDA's 7th principle for a comprehensive, coordinated, and inclusive agricultural policy.

To increase farm safety awareness, VDACS recognized September 21 – 25 as National Farm Safety and Health Week in the Commonwealth. The third week of September is significant for farm safety, as fall harvest time is one of the busiest and most dangerous seasons of the year for the agriculture industry.

In September, Commissioner Bronaugh and Office of Agriculture and Forestry Development (OAFD) staff participated in an event hosted at Veritas Vineyards and Winery (Afton) to celebrate the Governor's opening of the historic Blue Ridge Tunnel as a new biking and walking trail after nearly 20 years of public and private efforts. Designed by renowned engineer Claudius Crozet, the tunnel was initially completed in 1858. Stretching for nearly a mile, the tunnel is considered an engineering marvel and remained as the longest tunnel of its kind for 20 years. Secretary of Agriculture and Forestry Ring, Secretary of Transportation Valentine, the President and CEO of the Virginia Tourism Corporation, and local elected officials also spoke during the event. While in the region, the CEO of Veritas led Secretary Ring, Commissioner Bronaugh, and others on a tour of the Virginia Sparkling Company's recently completed traditional-method sparkling wine production and bottling facility. The Virginia Sparkling Company received a \$40,000 facility grant from the Governor's AFID Fund in October 2019.

In October, in celebration of Virginia Farm to School Week, Commissioner Bronaugh and Secretary of Agriculture and Forestry Ring virtually read *The Apple Pie Tree* to several first-grade classes at Jackson Davis Elementary School and then led the students in the Crunch Heard 'Round the Commonwealth. The Crunch Heard 'Round the Commonwealth is a special event during which participants across the state simultaneously take a bite out of a locally-sourced apple to increase awareness of Virginia Farm to School programs. Farm to school week is a great opportunity to connect the Commonwealth's great agricultural resources with another great resource — Virginia students. Farm-to-school programs improve student nutrition and health, raise public awareness about food and farming, and strengthen community relationships.

In October, Commissioner Bronaugh and Deputy Commissioner Green represented Virginia at the 2020 Tri-National Agricultural Accord, a virtual meeting of senior state and provincial leaders from North America. The Tri-National Agricultural Accord represents a longstanding commitment among

the senior state and provincial agricultural officials of Canada, the U.S., and Mexico to work together collaboratively on agricultural trade and development issues, including phytosanitary issues and other trade barriers. This year's meeting marked the 29th year of the annual gathering and was hosted virtually by NASDA. Virginia's participation was important in furthering trade relationships with these commercial partners. During the meeting, participating members of NASDA and their state and provincial counterparts from Mexico and Canada updated work plans to address specific product barriers and other trade irritants that suppress free trade. At the conclusion of the meeting, the countries issued a joint statement on implementation of the U.S.-Mexico-Canada (USMCA) Trade Agreement. Commissioner Bronaugh led a break-out session on rural development issues with agricultural leaders from the three countries.

In October, Commissioner Bronaugh and Secretary Ring hosted a "fireside chat" with Beth Ford, CEO of Land O'Lakes, during the 2020 Virtual Governor's Summit on Rural Prosperity hosted by the Center for Rural Virginia. The annual event featured comments from Governor Northam, U.S. Congresswoman Spanberger, and U.S. Congressman Wittman. OAFD staff also participated in the event.

In October, Commissioner Bronaugh joined Governor and First Lady Northam at the Executive Mansion to receive a delivery of pumpkins and fall decor from Brann-King Farms and the Virginia Pumpkin Growers Association. Governor Northam presented a proclamation celebrating Virginia Pumpkin Month to acknowledge the work of the nearly 400 Virginia pumpkin growers who cultivate and harvest pumpkins and to recognize the value of pumpkins to Virginia's economy. During the event, the VDACS Director of Communications recorded a video of Governor Northam encouraging citizens to purchase Virginia Grown pumpkins, which was posted on the agency's social media platforms.

In November, the Virginia Christmas Tree Growers Association delivered Virginia-grown Christmas trees and wreaths to the Executive Mansion for display this holiday season. Governor Northam presented the association with a proclamation to acknowledge the more than 500 Christmas tree farms throughout the state and the significance of Christmas tree farming to Virginia agriculture, the state's largest private industry.

In November, Commissioner Bronaugh and VDACS staff visited Wilkinson Enterprises, a Universal Leaf receiving station located in South Hill, to record a promotional video for China Tobacco International (CTI) at the request of the North Carolina Department of Agriculture and Consumer Services (NCDA). The video addresses Virginia's support of the tobacco industry, CTI, and NCDA. Chinese tobacco inspectors are currently unable to visit the U.S. for pre-inspection of tobacco, so NCDA has volunteered its services in order to support relations with CTI. CTI resumed purchasing tobacco leaf from U.S. growers this year after being absent in 2018 and 2019 due to tariffs.

In November, Commissioner Bronaugh and VDACS staff participated in the inaugural meeting of the Virginia Spirits Board (Board). The meeting was conducted virtually and included a welcome from Commissioner Bronaugh and Secretary Ring. Board members listened to a presentation on the Virginia Freedom of Information Act, reviewed the Board handbook, discussed the establishment of revenue sources, and elected officers.

This season, the Southeast Farmers' Market was able to ship 408 tractor-trailer loads of watermelons

(the goal was 400) in spite of the severe tornado damage to the facility sustained on August 4, 2020. Due to the tornado, the building lost 80 percent of its roof and had most of its lighting damaged or destroyed. There were numerous garage doors that were missing or damaged beyond repair. The melon shed had partial roof damage and the block wall, which houses the electrical service, was pushed over at a 40-degree angle. The melon conveyer belt was also damaged. VDACS Facilities staff worked to have much of the damage repaired quickly to allow for melon processing season. Staff is working with numerous contractors to have the facility fully repaired and operational before the next growing season begins in May 2021.

### *Division of Marketing and Development (DMD)*

In October, the Office of Domestic Marketing (ODM) hosted a Virginia Grown booth at the Produce Marketing Association (PMA) Fresh Summit virtual trade show. The PMA Fresh Summit is touted as the “family reunion for the produce and floral industries where buyers and sellers come together to do business.” ODM staff coordinated VDACS’s participation, creating a virtual Virginia Grown exhibit booth to provide a forum for contacting buyers and assisting growers in making connections. The booth featured 11 Virginia growers: Bloomaker, Old Dominion Organic Farms, Parker Farms, Turkey Knob Growers, FresH2o Growers, Appalachian Harvest, Glaze Apples, C&E Farms, Dublin Farms, Crown Orchard Company, and Snake Creek Farms. These growers represent a wide range of Virginia products, including organic and conventional vegetables, apples, hydroponic lettuce, green beans, potatoes, cabbage, and pumpkins. ODM staff secured new buyer contacts during the event, contacting executives and buyers at major retailers and distributors, including Sprouts, Whole Foods, Kroger, Wegmans, Publix, The Fresh Market, HelloFresh, AmazonFresh, Costco, Safeway, Giant Eagle, and Performance Food Group. ODM also worked with the Office of International Marketing (OIM) to coordinate the participation of the Canada and Latin America trade representatives in order to steer buyers from those regions to the Virginia Grown booth. ODM staff will follow up with the participating Virginia companies to learn about their experiences and outcomes with the new virtual format.

In September, Division of Marketing and Development (DMD) staff received the signed agreement approving Virginia’s state plan for the 2020 USDA Specialty Crop Block Grant Program. Virginia has been awarded \$541,745 for 10 projects designed to improve the production and consumption of specialty crops. Three of the 10 projects are targeted directly at COVID-19 relief efforts. Projects were slated to begin October 1, 2020.

In September, DMD staff received approval paperwork for the USDA Organic Certification Cost Share Program. This program provides cost share assistance to producers and handlers of agricultural products who are obtaining or renewing their certification under the National Organic Program. VDACS has been allocated \$20,600 to reimburse up to 50 percent of the certification cost for such expenses paid between October 1, 2019, and September 30, 2020. Each reimbursement may not exceed \$500 per certification cost.

In November, OAFD staff organized and hosted a virtual meeting for several leaders of Virginia's agricultural industry with Howard Pisons, Executive Director of the Virginia Small Business Financing Authority. The meeting was held to discuss issues that agricultural producers were having accessing the

Rebuild VA Grand Fund for small businesses and nonprofits impacted by COVID-19. Participants included staff from the Virginia Poultry Federation, Virginia State Dairymen's Association, Virginia Agribusiness Council, and Farm Credit of the Virginias. The participants discussed and asked questions about a number of specific issues that agricultural producers are experiencing.

The Office of Food Distribution (OFD) continues to provide critical assistance to Virginia citizens who are dealing with food insecurity due to the COVID-19 pandemic. In October, OFD distributed \$2.4 million in USDA administrative funds to the seven Virginia foodbanks through funding provided by the federal Coronavirus Aid, Relief, and Economic Security Act.

In August, ODM staff received notification that the Virginia Strawberry Newsletter won the American Society of Horticulture Science Extension Division Education Award under the Newsletter Category for 2019. The creation of the newsletter is overseen by ODM staff, who works with contributors from Virginia Tech, North Carolina State University, the University of Maryland, the University of Delaware, and Clemson to publish information about strawberry research. The three newsletters each year provide a wealth of information for strawberry growers in the Commonwealth.

Throughout the summer, the Europe trade representative recruited spirits importers from across Europe to participate in a Virginia Virtual Spirits Tasting (VVST). For each of the three VVST events, the trade representative provided participating European importers and distributors with product samples from participating Virginia distilleries, followed by an opportunity to meet virtually with the companies whose products they sampled. OIM recruited seven Virginia distilleries to participate, including Catoctin Creek (Purcellville), Reservoir (Richmond), Virago Spirits (Richmond), Cirrus Vodka (Richmond), Ironclad Distillery (Newport News), Belmont Farm (Culpeper), and Virginia Distillery Company (Lovingston). One VVST tasting took place each week over the course of four weeks in August and September. Samples from each distillery were shipped to the importers before the virtual tastings, which were conducted using the WebEx meeting platform. During the virtual tastings, the distilleries presented their products and engaged with the importers to collect feedback and discuss export goals and pricing details. As a result of the mission, one importer has already committed to place an order with Belmont Farm Distillery for a pallet of its product. Catoctin Creek Distilling Company is also in the process of signing a contract with a European distributor as a result of the mission.

In September, OIM staff hosted a stakeholder discussion on the challenges Virginia companies face when exporting southern yellow pine timber. The discussion was well attended and included State Forester Farrell and Deputy State Forester Lasher; OIM, OAFD, and Virginia Port Authority staff; executives from the Virginia Forest Products Association, Virginia Forestry Association, and Virginia Loggers Association; and a number of Virginia pine loggers and forest products exporters. The group discussed the challenges that price Virginia pine out of foreign markets, including the availability and cost of pest treatment at a location near both the resource and the port; trucking costs; availability of phytosanitation inspections; and space and equipment for container stuffing, chip loading, and nematode sampling. OIM staff also participated in a call with USDA U.S. Forest Service, Virginia Department of Forestry, South Carolina Department of Forestry, and USDA forest products trade negotiators to discuss negotiating a pilot project for the export of pine logs to China.

In September, VDACS learned that TK Exports (Culpeper) recently negotiated a deal to export 2,100



beef breeding cattle to Uzbekistan as a result of OIM staff efforts to establish business relationships with government officials from Uzbekistan. In 2018, the Greater Richmond Partnership and the American Uzbekistan Chamber of Commerce hosted a visit from Uzbekistan's Ambassador to the U.S. The Ambassador wanted to discuss opportunities for the U.S. to either buy products from Uzbekistan or export products to the country. CS staff was invited to the meeting, where he shared that Virginia and the U.S. have some of the best livestock genetics in the world. Staff also shared information about TK Exports, a Virginia livestock export company capable of facilitating the export of live cattle.

In collaboration with the VDACS Canada trade representative, OIM hosted two webinars for Virginia companies interested in learning more about selling their products on Canadian e-commerce sites Amazon.ca and Shopify. The Canada trade representative identified experts on these two e-commerce sites to educate Virginia companies on the process, requirements, and fees associated with listing products on the respective platforms. More than 15 Virginia companies participated in each webinar.

In response to trade show and trade mission cancellations due to COVID-19, OIM established a two-part digital marketing program. The first segment is an application-based program for Virginia companies. Companies complete an application process and upon approval receive VDACS sponsorship and assistance for a digital marketing campaign in a region where VDACS has an established trade representative. The second segment of the program features digital marketing projects identified and initiated by OIM staff to promote specific Virginia agriculture and forest product groups such as seafood, hardwoods, and spirits. There are currently projects underway promoting Catocin Creek Distilling Company's whiskey products in Mexico and the United Kingdom and Virginia seafood products in China.

In October and November, the Office of Promotions (OP) conducted its first Virginia's Finest Virtual Trade Show Series to encourage pre-2020 holiday sales opportunities for Virginia food and beverage companies. The first series of the Virtual Trade Show took place on October 29 and November 5 and included four total sessions, each featuring a different category of Virginia food and beverage companies. Product samples were provided to registered buyers in advance of the show dates to facilitate the tastings. The four categories included baked goods, snacks and sweets, non-alcoholic beverages, and condiments. OP identified several additional areas to feature in future virtual tastings, including alcoholic beverages and cold and frozen products. The Virtual Trade Show was developed in partnership with CES, the same event company that the agency contracted with for the 2020 Virginia Food & Beverage Expo. OP will work with CES to develop the second series of virtual tastings in early 2021.

The Virginia's Finest Rack Program was initiated over 10 years ago as a way to encourage retailers to carry more Virginia's Finest products. It was initially developed as an opportunity for retailers to receive a custom-made Virginia's Finest-branded fixture at no cost when they commit to carrying six new Virginia's Finest products for at least six months. OP staff intends to place 15 of these fixtures in specialty shops around the Commonwealth by the end of December. OP will identify locations for placement and will coordinate the fixture delivery and the display of Virginia's Finest products.

Market News reports that although some commodities have made recent improvements following the initial losses from the COVID-19 pandemic, there are several that are still struggling to recover. Below is a summary as of November 6 compared to late February:

<b>Percentage of Price Decrease from February to November 6, 2020</b>	
Feeder Cattle	6 percent
Slaughter Cattle	7 percent
Broilers	9 percent

<b>Percentage of Price Increase from February to November 6, 2020</b>	
Corn	8 percent
Soybeans	27 percent
Wheat	15 percent
Hogs	19 percent
Cotton	14 percent

Market News reports that grain prices are making a strong recovery following decreases earlier this year. The recent price advances are due primarily to increasing export sales to China. Other factors supporting prices include reports of dry weather in South America and good domestic demand. As of November 5, wheat and corn prices have gained six percent and soybeans nine percent compared to October. October monthly average prices were the highest for October since 2013 with soybeans up to 20 percent higher, corn mostly 10 percent higher, and wheat up to 30 percent higher than the five-year average.

Market News reports that U.S. hog prices have continued to improve following the announcement of African Swine Fever (ASF) in Germany. Germany is the largest pork producer in Europe and a key supplier of pork to China. The first reported ASF case in Germany was found in a wild boar on September 10. As of November 1, there are 123 confirmed cases – all in wild animals with no domestic farm pigs affected. The news has improved export potential for U.S. hogs as China, Japan, South Korea, Brazil, Argentina, Mexico, and the Philippines have temporarily banned imports of pork from Germany. Hog prices have increased approximately 20 percent since the announcement and have exceeded pre-pandemic prices. Hog prices have increased approximately 30 percent since the announcement and are 19 percent higher than before the pandemic.

Market News reports that poultry prices have been the slowest of the meat products to recover from the declines of earlier this year. In early October, national broiler prices were down 18 percent compared to late February. Five straight weeks of slightly higher prices have helped. Poultry is more reliant on food service buying, which has diminished significantly as a result of COVID-19. It is estimated that food service represents between 20 and 50 percent of poultry sales in most markets.

Market News reports that slaughter capability at meat processing plants appears to be close to full capacity. Based on Livestock Inspected Under Federal Inspection for the week ending November 6, cattle and hog slaughter figures have returned to similar levels compared to the same period last year. Year-to-date slaughter for cattle is down approximately four percent, while hog slaughter is up one percent.

*Division of Commodity Services (DCS)*

Since July, DCS staff:

- Inspected and certified soybeans, corn, wheat, soybean meal, and soybean hull pellets with a total value of more than \$279 million destined for 24 countries;
- Conducted 15 Grain Law compliance visits and two site visits to review wheat damages;
- Conducted General Market Inspections on 213,696 pounds of fresh fruits and vegetables and Processed Food Inspections on over three million pounds of processed products;
- Conducted inspections on approximately 2.3 million pounds of potatoes exported to Canada;
- Performed 13 Good Agricultural Practice (GAP) Audits to Virginia fruit and vegetable growers;
- Inspected and certified approximately 67.6 million pounds of Farmers' Stock peanuts and regrades, approximately 73.2 million pounds of shelled and in-shell milled peanuts, and over 4.7 million pounds of imported peanuts from Argentina and Paraguay;
- Analyzed approximately 2,478 samples of peanuts for the presence and levels of aflatoxin to determine if the peanuts were safe for human consumption;
- Refreshed and rehired approximately 32 seasonal and wage employee samplers for the 2020 Farmers' Stock peanut season.
- Certified over 11.8 million pounds of various poultry parts for the USDA Feeding Program for School Lunch Products;
- Graded, via contracted full-time grading services, approximately 92.3 million pounds of chicken and 36.8 million pounds of turkey for the Virginia poultry and egg industry;
- Provided non-contract fee grading and certification services for approximately 1.8 million pounds of poultry based on U.S. Consumer Grades to fulfill necessary specifications and contract requirements for the Virginia poultry and egg industry;
- Provided evaluation services to producers who marketed over 3,579 Virginia Quality Assured (VQA) feeder cattle. The VQA program is established by the Virginia Cattlemen's Association and is considered one of the most recognized and valuable programs to producers and buyers;
- Provided evaluation services to producers on approximately 62,931 cattle, 1,869 lambs and goats, 707 beef carcasses, and 250 4-H or FFA animals;
- Conducted a one-day apple grading/inspection school in Winchester to prepare for the 2020 apple harvest season;

- Performed a USDA Food Defense desk audit for Americold in Sanford, North Carolina, at the request of USDA, and performed USDA Food Defense Audits at Perdue Foods in Bridgewater and Pilgrims in Timberville.

Since July, DCS staff evaluated and graded lambs and goats at special graded state sales at several locations throughout Virginia. Some sales were coordinated around the ethnic holiday markets to capitalize on increased demand. Staff also assisted with area lamb take-up opportunities, as they may be the only occasion some area producers have to market their sheep and goats.

Since July, DCS staff conducted a United Egg Producers (UEP) Animal Husbandry Audit requested by Green Valley Poultry Farm in Abingdon. Due to COVID-19, the audit was conducted utilizing desk audit procedures. UEP Animal Husbandry Audits ensure that egg producers are meeting industry standards for the humane treatment of laying hens. By successfully passing the audit process, Green Valley Poultry Farm can affix the “UEP Certified” logo on egg cartons produced at the facility. Many retail markets require that egg suppliers meet UEP Animal Husbandry Guidelines.

Since July, DCS staff has worked in cooperation with the Virginia Cattlemen’s Association and VCE to grade, evaluate, and assist in the marketing and promotion of Virginia feeder cattle throughout Virginia. Over 11,000 cattle have been evaluated utilizing field grading services. Staff have compiled load lot descriptions, provided marketing guidance to producers, and assisted during the loading of trailer load lots. Staff also provided livestock evaluation services and educational instruction for the Page Valley 4-H and FFA Livestock Show.

As of November 13, approximately 65 percent of Virginia’s peanuts has been harvested. In a normal year, Virginia’s peanut harvest is complete by mid- to late-October. This year’s harvest began late because of late planting, and growers have struggled throughout the season with weather, including heavy fog, rainfall, and ground wetness. Because of excessive wetness, peanut shells will be dark instead of bright and there will be some rot, which will result in lower prices. In addition, the European Union (EU) has imposed a new 25 percent tariff on U.S. peanuts that is impacting peanut sales to the EU. Birdsong Peanuts reports that it is receiving requests from some of its EU customers to cancel shipments of Virginia-style peanuts due to the tariffs. It is likely that this will affect the demand for the rest of the peanut shelling season for this year’s crop. The change in EU demand will also impact the service demand from DCS, which provides grading and inspection services to companies such as Birdsong.

#### *Division of Animal and Food Industry Services (AFIS)*

In September and October, Office of Veterinary Services (OVS) staff provided technical assistance at the State Fair of Virginia (Fair). While the Fair was closed to the general public, the livestock shows were held. OVS veterinarians briefly examined all show animals for signs of infectious disease, and staff ensured compliance with all regulatory requirements. In addition, OVS staff collected urine samples at the Virginia State Youth Livestock Show for the Grand Champion and Reserve Grand Champion from each species of livestock, including steers, goats, lambs, and hogs. The urine was submitted to an out-of-state lab to test for illegal substances.

Each year, OVS staff routinely visits county fairs in order to meet minimum surveillance testing numbers as part of the Avian Health Cooperative Agreement. In August, staff visited the Greene County Fair, the Grayson County Fair, and a poultry auction in Berryville to collect Avian Influenza surveillance samples. The auction was monitored to ensure that any out of state consignments met VDACS import requirements.

In September, the Virginia State Veterinarian and AFIS staff participated in the Virginia Poultry Disease Task Force Meeting via teleconference. The task force meets quarterly to review the Initial State Response and Containment Plan for Avian Influenza and to discuss recent disease issues. The agenda also included a presentation from the Virginia Department of Environmental Quality regarding the recent Avian Influenza event in North Carolina and South Carolina. The presentation included a discussion of the challenges of responding to an animal disease event during a pandemic, new types of equipment used, and materials used for composting.

In November, OVS assisted a Virginia-based turkey company with the depopulation of a breeder farm premise in Rockingham County. OVS has recently been asked to assist with depopulation at turkey breeder premises from several companies in response to an outbreak of turkey coronavirus. This is a different strain of coronavirus and not related to the current COVID-19 pandemic. Although it is not a disease that VDACS regulates, VDACS wants to support the turkey industry in any way possible. OVS has been working with the turkey company veterinarians in their efforts to depopulate some infected flocks and has helped with epidemiology and control measures to try to mitigate the spread of the disease. OVS also conducted such a depopulation for a Virginia-based turkey breeder premises located in Pendleton County, West Virginia. In addition to providing a service to Virginia poultry companies, participating in such depopulations provides OVS staff with a valuable opportunity to gain hands-on experience with the foaming equipment used for poultry depopulation.

In July, the VDACS Food Safety Program (FSP) began responding to alleged violations of the Governors Executive Orders (EOs) to the food establishments that it regulates through the Virginia Department of Health's RedCap system. Since July 30, VDACS has responded to approximately 4,832 complaints. FSP staff responded to these complaints with letters and emails to the firms and corporate contacts. Staff is spending a considerable amount of time fielding follow-up calls from these firms to discuss these complaints, related questions, the importance of compliance with the EOs, and repeated offenses. A large number of the complaints received were regarding employees and patrons of retail stores not wearing face coverings and violations of physical distancing requirements.

From June through October, FSP performed the inspections necessary to open 337 new food businesses. A total of 616.5 hours were spent working with vendors to open these firms. FSP has an inventory of 13,237 firms under inspection. Twenty-four Food Safety Specialists, two Food Safety Technical Specialists, and three Field Supervisors are responsible for the regulatory oversight of these firms. From June through October, the ODF Food Safety Program conducted 3,760 inspections of food establishments (which includes retail food stores, food manufacturers, and food warehouses), investigated 228 non COVID-19 consumer complaints, and collected 416 food samples.

During the months of June, July, August, and September, the ODF Dairy Services Program conducted 561 inspections of Grade "A" and manufactured-grade dairy farms, 46 cheese and ice cream manufacturing plant inspections, and 68 inspections of retail frozen dessert establishments. To ensure

compliance with Virginia's regulatory standards, program staff collected 1,759 milk samples from Virginia Grade "A" dairy farms. Four hundred and twelve (412) cheese and frozen dessert samples were also collected to determine compliance with current dairy laws and regulations. Inspectors also made 1,709 farm visits to review construction of dairy facilities, to review the installation of milking equipment and other related items, and to offer advice and assistance to dairy farmers and manufactured milk processors.

In July, Dairy Services commissioned a new Automatic (Robotic) Milking System at a farm in Amelia County and is currently in the process of commissioning another unit in Prince Edward County. These systems are designed to fully automate the process of milking cows, and farms can be designed to also fully automate the feeding of those animals. The number of dairy farms in Virginia has remained relatively stable throughout the year, and many farmers have been able to utilize COVID-19 relief funding to make improvements and expansions to their operations.

On July 1, 2020, the Produce Safety Program (PSP) entered into the final year of the five-year federal/state cooperative agreement program (CAP) to enforce the federal Produce Safety Rule on covered produce farms in Virginia. This program is supported entirely by a grant from the U.S. Food and Drug Administration (FDA). It is anticipated that a new federal funding announcement will be made later this year to continue the federal/state CAP, and VDACS will once again apply for federal funding. Unfortunately, federal funding was reduced on June 30, and the overall CAP reduction for years one through five amounts to \$329,767. On September 2, PSP applied for an administrative supplement in the amount of \$113,612 to help make up the fiscal deficiency. PSP received a new federal notice of award from FDA on September 3. As of October 5, the PSP has conducted 83 inspections of covered farms and 48 voluntary on-farm readiness reviews. After being prohibited from performing field activities for a period of time by FDA due to COVID-19 restrictions, field staff has resumed regulatory inspections of small and large covered farms. On Farm Readiness Reviews for very small farms will continue to be provided upon request until inspections begin in May 2021. These visits are conducted jointly by PSP staff and VCE agents and are designed to assist and educate farmers. PSP continues to offer outreach to industry stakeholders and associations.

#### *Division of Consumer Protection (DCP)*

In response to the COVID-19 pandemic, VDACS took the following steps to support pesticide businesses:

- For the duration of the COVID-19 state of emergency established by EO 51, licensed pesticide businesses may allow their employees to apply pesticides without obtaining a registered technician certification when those employees meet certain training and testing requirements. Registered technicians not for hire (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) may also apply pesticides without obtaining registered technician certification. This 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. Allowing employees to apply pesticides without obtaining a registered technician certification will cease 30 days after Governor Northam rescinds Virginia's COVID-19 state of emergency.

- All authorization letters for prospective applicators to take the exams to become certified pesticide applicators issued on or after December 20, 2019, have had their expiration dates extended to January 31, 2021, or the current date of expiration, whichever is greater. Prospective applicators that do not take the exams by January 31, 2021, or the current date of expiration, whichever is greater, will be required to submit a new application with appropriate fees to take the exams.

In recent months, the Office of Pesticide Services (OPS) coordinated with the Virginia Pest Management Association (VPMA) to offer four in-person testing opportunities in advance of the January 31, 2021, expiration date for authorization letters. All Letters of Authorization issued by OPS to prospective applicators to take exams issued on or after December 20, 2019, expire on January 31, 2021, unless the date on the letter is later. These in-person testing events are being offered in addition to the testing currently offered by appointment at the Virginia Department of Motor Vehicles and those hosted by OPS staff upon request. Testing requires registration and is free to VPMA members and \$25 for non-members. The fourth and final event is scheduled for January 13 in Springfield.

In FY 2020, the Pesticide Collection Program collected 26,807 pounds of unwanted pesticides at events throughout the Commonwealth. The VDACS Pesticide Collection Program assists agricultural producers, licensed pesticide dealers, pest control firms, golf courses, and homeowners with the proper disposal of unwanted pesticides. The program is available at no cost to eligible participants and is supported by pesticide fees collected by VDACS. Since its inception, the Pesticide Collection Program has collected approximately 1.5 million pounds of unwanted, expired, or discontinued pesticides.

In FY 2020, the Pesticide Plastic Container Recycling Program collected 129,561 pounds of pesticide containers at events throughout the Commonwealth. The program is available at no cost to eligible participants and is supported in part by pesticide fees collected by VDACS through a partnership with the Ag Container Recycling Council (ACRC). The ACRC, which is comprised of pesticide manufacturers and distributors, has voluntarily funded the collection and recycling of pesticide containers through a nationwide network of contractors that provide the granulation of containers. Since the program's inception in 1993, the Plastic Pesticide Container Recycling Program has collected over 2.2 million pounds of plastic pesticide containers in Virginia.

In July, the Office of Plant Industry Services (OPIS) began receiving reports from Virginia citizens who had been sent unsolicited packages of seed. The seeds were not labeled or identified; however, the packages appeared to have originated in China. On July 24, VDACS issued a press release instructing anyone who had received such a shipment to refrain from planting the seeds in the packages because they could be invasive species. The press release also directed Virginia residents to report these packages to OPIS. Some of the seed packages were collected by OPIS and then sent to USDA Animal and Plant Health Inspection Service (APHIS) Plant Protection and Quarantine (PPQ) for identification and eventual destruction. As of November 12, OPIS received approximately 2,030 reports from persons who have received unsolicited seed packages. Of these 2,030 reports, approximately 1,100 reports were from Virginia residents. On August 12, USDA APHIS PPQ established a federal online reporting tool for unsolicited seed packages, and as of August 14, OPIS has been directing Virginia residents to report the receipt of unsolicited seeds using the USDA APHIS PPQ reporting tool. USDA APHIS PPQ has identified over 300 species of seeds from the unsolicited seed packages and suspects that the seed

packages were part of a “brushing” scam. Brushing scams occur when companies send unsolicited packages in an effort to bolster their product ratings. USDA APHIS PPQ is working with trade partners in an effort to eliminate this pathway for unsolicited seed distribution in the U.S.

In August, USDA APHIS PPQ treatment contractors concluded Spotted Lanternfly (SLF) treatments of approximately 1,135 acres for 2020. The USDA APHIS PPQ treatment plan focused on treating Tree of Heaven (*Ailanthus altissima*) trees with insecticide and herbicide in the counties of Frederick and Clarke and the City of Winchester. Tree of Heaven is the preferred host of the SLF. SLF also feeds on more than 70 plant species, including grapes, apples, stone fruits, and hops, and poses a threat to Virginia’s peach, apple, grape, and wine industries. The treatment contractor treated 2,535 trees with a systemic insecticide and 4,002 trees with an herbicide to reduce the preferred host populations in the generally-infested areas. OPIS staff have been monitoring the treatment contractor since they began treatments in June. VDACS also conducted treatments for SLF, utilizing the contracted services from Davey Resource Group. The treatments began in August and concluded in October. The Davey Resource Group treatments were contracted by VDACS using federal grant funds. The goal of these treatments was to slow the spread of SLF on the leading edge of the generally-infested area and at isolated sites located outside of the generally-infested area. The VDACS treatments differed from the USDA APHIS PPQ treatments in that these treatments focused on treating SLF adult populations instead of treating Tree of Heaven. Davey Resource Group treated SLF populations on approximately 150 properties in Frederick and Clarke counties. OPIS staff monitored the treatments.

In September and October, OPIS staff found adult SLF in traps in Augusta County and Shenandoah County. In September, OPIS found two adult SLF in a trap that had been placed by OPIS at the southbound I-81 rest area in Augusta County, which is approximately 75 miles south of the SLF generally-infested area. OPIS staff conducted a follow-up survey of the rest area and confirmed an additional five adults. Following OPIS’s findings, USDA APHIS PPQ treated the Tree of Heaven on site. In October, OPIS staff investigated a report of SLF on a SLF trap in Shenandoah County. OPIS staff confirmed the presence of adult SLF and freshly-laid egg masses. OPIS staff removed as many egg masses as possible and treated the adult spotted lanternflies. OPIS is currently conducting a delineation survey in an attempt to determine if additional SLF are present.

In August, OPIS staff began trap placement for the 2020 cotton boll weevil survey. Cotton boll weevil surveys consists of monitoring cotton fields for the presence of the cotton boll weevil. Costs of the survey are paid by Virginia’s cotton growers. This year, OPIS staff placed 897 traps on approximately 87,000 cotton acres. OPIS staff will monitor these traps throughout the 2020 cotton season, completing the trapping season in early December. No cotton boll weevils have been found to date. While the Cotton Boll Weevil has been eradicated in Virginia, cotton growing states continue to place traps on cotton acres to monitor for re-infestation.

In October, OPIS staff hosted a meeting of the Noxious Weed Advisory Committee utilizing the virtual conferencing platform WebEx. Topics of discussion included a regulatory status update and an update on giant hogweed control treatments. The committee also reviewed four noxious weed assessments. There were 13 members from the Noxious Weed Advisory Committee in attendance.

As of October, the Gypsy Moth Slow the Spread (STS) program has completed the 2020 gypsy moth survey. Survey data will be used to determine the appropriate gypsy moth treatment strategies for 2021.



The STS program has been successful in reducing the rate of spread of the gypsy moth from infested areas to uninfested locations within Virginia and in neighboring states. In total, 4,799 traps were placed and monitored during the 2020 trapping season.

In October, OPIS staff participated in the first meeting of the Virginia Strategic Committee (VSC), which will focus on the management of and outreach for the invasive aquatic plant species *Trapa bispinosa*. *Trapa bispinosa* is an exotic aquatic plant found in Virginia that can displace native aquatic plant species and has the potential to negatively impact inland bodies of water such as streams, ponds, and lakes. The VSC is comprised of staff from the Virginia Department of Conservation and Recreation, Virginia Department of Wildlife Resources, U.S. Geological Survey, and Fairfax County. The mission of the committee is to develop a work plan and management strategies and to draft a proposal for a funding request to address *Trapa bispinosa* in the Commonwealth.

In October, Office of Weights and Measures staff participated in the virtual Southern Weights and Measures Association Conference (SWMA). The SWMA was originally scheduled to be held in Washington, D.C., but due to COVID-19, the conference was conducted in a virtual format. The SWMA provides an opportunity for member states, weights and measures officials, and industry stakeholders to convene, consider, and vote on proposed amendments to the regulations found in the National Conference on Weights and Measures (NCWM) Handbook 44, Handbook 130, and Handbook 133. Virginia is a member of the SWMA Laws and Regulations Committee. The annual NCWM meeting scheduled for July 2020 was postponed until January 2021.

On November 15, OWM issued a technical bulletin for the installation of Electric Vehicle Service Equipment (EVSE) in Virginia. EVSEs are those devices that are used for the sale of electricity for use in electric vehicles. The technical bulletin provides information regarding the certification requirements for EVSEs and the method by which electricity must be sold from an EVSE. In addition, the technical bulletin establishes a grace period for companies to come into compliance with Virginia's EVSE requirements. The technical bulletin was posted to the agency website and distributed to industry stakeholders.



# COMMONWEALTH of VIRGINIA

## Department of Agriculture and Consumer Services

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Jewel H. Bronaugh, Ph.D.  
Commissioner

October 15, 2020

Members of the Board of Agriculture and Consumer Services:

### I. PURPOSE

To report on the activities, educational programs, and grants administered through the Pesticide Control Fund (Fund), as required in item 95<sup>1</sup> of the 2019 Appropriation Act.

### II. THE PESTICIDE CONTROL FUND

The Virginia Pesticide Control Act (Act) (Va. Code § 3.2-3900 *et seq.*) grants certain powers to the Board of Agriculture and Consumer Services (Board), including the authority to regulate pesticides in Virginia. Section 3.2-3906 of the Act authorizes the Board to adopt regulations, in part, to establish a fee structure for the licensure, registration, and certification of pesticide businesses and applicators. Section 3.2-3912 of the Act (i) establishes the Fund, which is a special non-reverting account established on the books of the Comptroller into which all moneys levied and collected under the Act are deposited, (ii) provides that moneys in the Fund shall be used by the Department of Agriculture and Consumer Services solely for carrying out the purposes of the Act, and (iii) specifies that “expenditures and disbursements from the Fund shall be made by the State Treasurer on warrants issued by the Comptroller upon written request signed by the Commissioner.”

### III. PESTICIDE FEES

All pesticide fees that are collected pursuant to the Act are deposited into the Fund. The type, amount, frequency, and due date of the various fees are prescribed in 2 VAC 5-675, *Regulations Governing Pesticide Fees Charged by the Department of Agriculture and Consumer Services*. Effective July 11, 2019, 2 VAC 5-675 was amended to adjust the pesticide fee structure to reflect actual costs of program implementation. Prior to this adjustment, the certification

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<sup>1</sup> 2019 SESSION - BUDGET BILL - Acts of Assembly, Ch. 854, Item 95

*The Office of Pesticide Services shall publish a report on the activities, educational programs, research, and grants administered through the Pesticide Control Act Fund to the Board of Agriculture and Consumer Services by October 15 of each year.*

fees for pesticide applicators and licensing fees for pesticide businesses had been in place since 1990 and the pesticide product registration fee had been in place since 1999. Changes to the fee structure are subject to the Virginia Administrative Process Act and the standard executive branch review process.

The schedule of pesticide fees for fiscal year 2020 is below:

Pesticide Business License (Initial)	\$150	Payable at time of application
Pesticide Business License (Renewal)	\$150	Annual (Due March 31)
Late Fee for Business License Renewal	\$30	Payable upon late renewal
Commercial Applicator Certification (Initial)	\$100	Payable at time of application
Commercial Applicator Reciprocal Certification	\$100	Payable at time of application
Commercial Applicator Certification (Renewal)	\$100	Every two years (Due June 30)
Commercial Applicator - Additional certification category	\$35	Payable at time of application
Late Fee for Commercial Applicator Renewal	\$20	Payable upon late renewal
Registered Technician Applicator Certification (Initial)	\$50	Payable at time of application
Registered Technician Applicator Certification (Renewal)	\$50	Every two years (Due June 30)
Late Fee for Registered Technician Renewal	\$10	Payable upon late renewal
Product Registration (Initial)	\$225	Payable at time of application
Product Registration (Renewal)	\$225	Annual (Due December 31)
Late Fee for Product Registration Renewal	\$45	Payable upon late renewal

**IV. GRANT FUNDING**

The Pesticide Control Fund received \$366,394 in grant funding from the U.S. Environmental Protection Agency (EPA). The Virginia Department of Agriculture and Consumer Services (VDACS) used the EPA grant funds to offset salary and fringe expenses related to certification and enforcement. The agency also used the grant funds for pesticide-related projects such as training workshops and pollinator protection.

**V. ADMINISTRATION OF THE PESTICIDE CONTROL FUND DURING FISCAL YEAR 2020**

The Fund carried a balance of \$953,555 from fiscal year (FY) 2019. During FY 2020, the Office of Pesticide Services reported Fund sources of \$ 4,416,464.54 and Fund uses of \$3,453,880.22. The Fund balance at the end of FY 2020 was \$1,916,139. (Please see Appendix 1.) Expense detail for 2015-2020 can be found in Appendix 2.

**A. Operation of Office of Pesticide Services (OPS)**

OPS certifies pesticide applicators, registers pesticide products, issues pesticide business licenses, and educates pesticide users and the public about the benefits and risks of these products. Staff conducts routine inspections and investigates complaints to determine if pesticides have been misused. Staff also carries out public interest programs such as recycling of pesticide containers and disposal of pesticides. Through these activities, OPS protects consumers and the environment while permitting the safe and effective control of pests that adversely affect crops, structures, health, and domestic animals.

During FY 2020, OPS certified 5,930 private applicators, 6,982 commercial applicators, and 7,588 registered

technicians to apply pesticides in the Commonwealth. OPS also licensed 2,756 pesticide businesses and registered 16,150 pesticide products. Field staff conducted 1,486 routine inspections and related activities and initiated 68 investigations, including complaints, incidents, accidents, and related activities, at 1,164 individual sites throughout Virginia. Staff also conducted 198 marketplace registration inspections, checking the registration status of over 2,400 products. Please see Appendix 3 for an organizational chart and staffing as of July 1, 2020. Appendix 3 indicates the positions that were vacant at year-end closing, contributing to reduced personnel and operating expenses.

**B. Continuation of Education and Outreach Programs**

OPS continues to work with our Virginia Cooperative Extension (VCE) partners to provide pesticide applicators with up-to-date training materials and exams. Specific documents undergoing review and revision include four exams based upon the *Virginia Core* manual.

Costs related to applicator training, manuals, exams, and certification as well as continuing education and outreach programs were as follows:

<u>Virginia Cooperative Extension</u>	
Applicator Training, Manuals/Exams and Certification	\$ 359,470

Pesticide applicators can take the certification tests in writing at one of 12 VDACS-approved testing centers, at a VCE Office, or through the use of SecuriTest, which is offered at more than 70 Department of Motor Vehicles (DMV) customer service centers throughout the Commonwealth. During FY 2020, DMV administered 2,624 exams through SecuriTest. A total of 9,613 exams were given at all sites, resulting in the issuance of 5,945 new certifications across all pesticide applicator categories. Testing sites included DMV offices, VDACS offices, and other proctored testing venues.

The agency renewed its contract with Telamon Corporation to provide pesticide safety training services to growers, at a cost of \$20,971. During FY 2020, Telamon trained 328 agricultural employees, with emphasis on the EPA Worker Protection Standard (WPS) for Agricultural Pesticides.

Pesticide Safety Education (WPS)	\$ 20,971
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**C. Environmental Stewardship Programs**

Since its inception, the Pesticide Collection Program has collected approximately 1.5 million pounds of unwanted, expired, or discontinued pesticides. The program provides an environmentally conscientious option for agricultural producers, pesticide dealers, pest control firms, homeowners, and golf course operators to dispose of unwanted pesticides at no cost to them. For FY 2020, the Pesticide Collection Program collected 26,807 pounds of unwanted pesticides.

Since its inception in 1993, the Plastic Pesticide Container Recycling Program has collected more than 2.2 million pounds of containers. The program is available to any pesticide applicator or dealer in Virginia and is part of a nationwide effort by chemical manufacturers to reduce the waste generated by the disposal of plastic pesticide containers. For FY 2020, the Pesticide Plastic Container Recycling Program collected 129,561 pounds of pesticide containers statewide.

Costs related to environmental stewardship programs were as follows:

Pesticide Disposal	\$	31,939
Container Recycling	\$	14,802
<b>Total</b>	<b>\$</b>	<b>46,741</b>

**D. Projected Budget Balance**

Obligations paid from the Fund during FY 2020 include (i) OPS operating expenses, (ii) education and outreach programs, and (iii) the Pesticide Collection and the Plastic Pesticide Container Recycling programs.

The Fund’s year-end balance for the past five years:

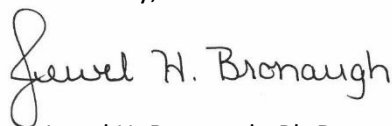
Fiscal Year	Ending Balance
2016	\$533,874
2017	\$789,277
2018	\$930,283
2019	\$953,555
2020	\$1,916,139

While the recently amended fee structure has resulted in increased revenue, it is anticipated that (i) restoring staffing to previous normal operating levels, (ii) increases in information technology costs, and (iii) equipment purchases will impact the ending balance for FY 2021. The year-end balance for FY 2021 is estimated to be \$2.4 million.

**VI. CONCLUSION**

The agency is committed to the fair and sensible regulation of pesticides in Virginia as well as activities that are consistent with the provisions of the Pesticide Control Act. I trust that our commitment is evident by the breadth and scope of the activities listed in this report. Please let me know if you have any questions or need additional information. As always, your input is most welcome and appreciated.

Sincerely,



Jewel H. Bronaugh, Ph.D.  
Commissioner

cc: The Honorable Bettina Ring, Secretary of Agriculture and Forestry  
Bradley Copenhaver, Deputy Secretary of Agriculture and Forestry  
Heidi Hertz, Assistant Secretary of Agriculture and Forestry

**Appendix 1**

<b>Pesticide Control Fund – FY 2020</b>	
<b>Fund Balance – June 30, 2019</b>	\$953,555.11
<b>SOURCES</b>	
Pesticide product registrations	\$3,330,830.00
Commercial applicator certification	\$340,812.25
Pesticide business licenses	\$446,979.00
Registered technician certification	\$209,576.00
Late fees, interest, misc.	\$75,084.02
Civil penalties	\$13,183.27
<b>Total Sources</b>	\$4,416,464.54
<b>USES</b>	
Personal services	\$1,458,004.33
Contractual services	\$915,791.79
Supplies and materials	\$32,724.48
Transfer payments (includes grant payments)	\$397,260.57
Continuous charges	\$122,522.03
Equipment	\$1,830.02
Agency administrative expenses	\$525,747.00
<b>Total Uses</b>	\$3,453,880.22
<b>Fund Balance – June 30, 2020</b>	\$1,916,139

**Appendix 2**

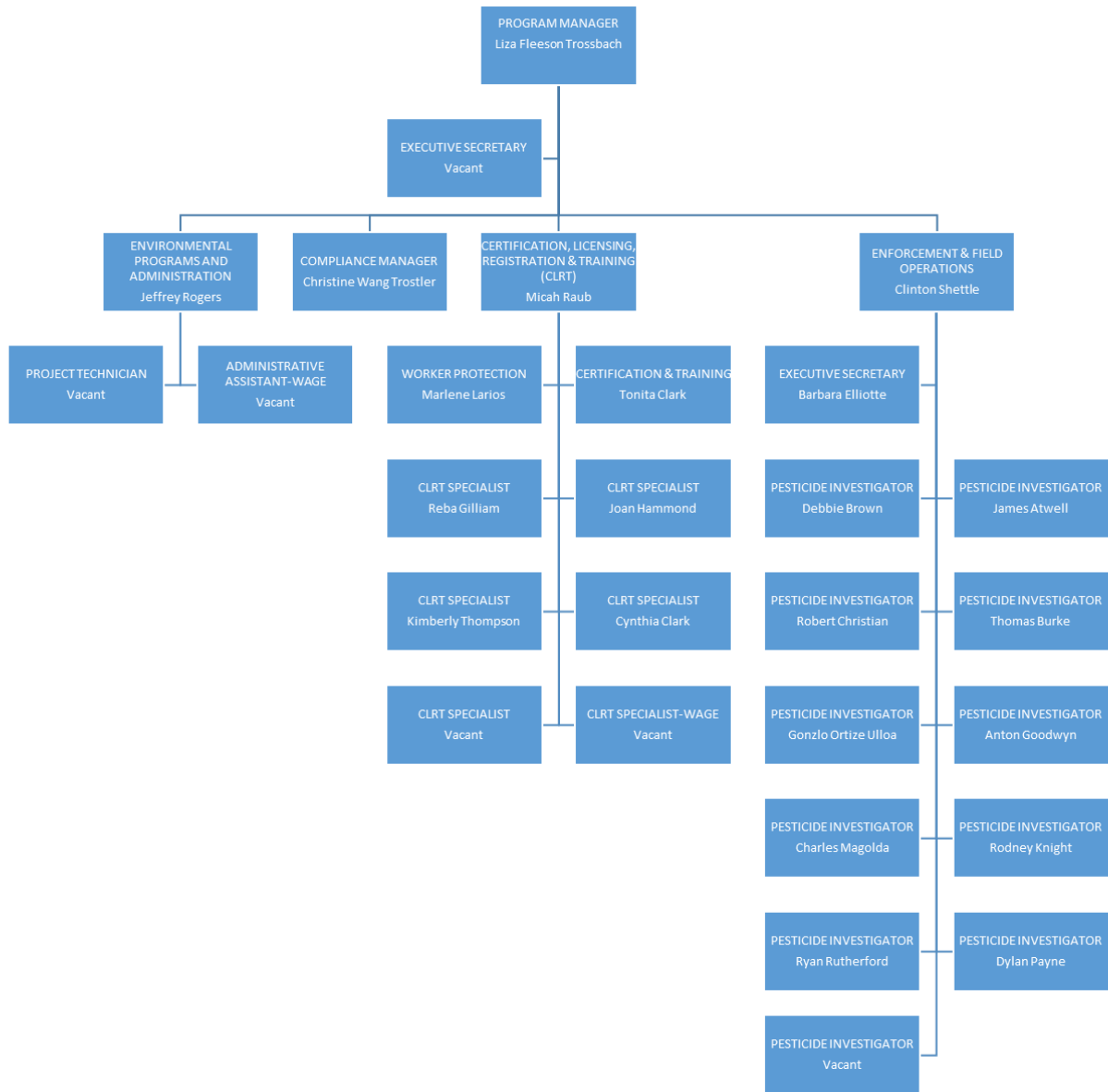
**Pesticide Control Fund  
FY –2015-2020**

<b>Expenditure Category</b>	<b>2015</b>	<b>2016</b>	<b>2017</b>	<b>2018</b>	<b>2019</b>	<b>2020</b>
Projects	\$976,438	\$1,025,345	\$818,038	\$435,836	\$488,481	\$427,182
Salaries	\$1,152,537	\$1,203,969	\$1,059,229	\$969,458	\$935,717	\$997,666
Fringe Benefits	\$497,728	\$515,265	\$477,677	\$447,899	\$444,642	\$460,338
Administrative Overhead	\$335,865	\$338,380	\$64,253	\$366,899	\$422,301	\$525,747
Information Technology	\$180,703	\$214,329	\$212,033	\$252,447	\$275,019	\$332,985
Laboratory Services	\$193,385	\$190,031	\$214,931	\$162,632	\$169,211	\$178,647
Rent	\$64,512	\$90,114	\$90,740	\$90,939	\$90,320	\$91,626
Equipment	\$207,870	\$59,380	\$3,451	\$1,694	\$10,789	\$1,830
Supplies	\$51,908	\$34,834	\$26,785	\$27,764	\$28,694	\$32,724
Travel	\$28,042	\$23,355	\$19,051	\$16,639	\$10,867	\$8,921
Testing Services (DMV)	\$19,001	\$24,155	\$12,415	\$23,050	\$17,215	\$17,870
Other**	\$309,986	\$241,090	\$149,944	\$130,845	\$160,287	\$378,343
<b>Revenue</b>	<b>\$2,883,605</b>	<b>\$2,910,286</b>	<b>\$3,403,950</b>	<b>\$3,067,108</b>	<b>\$3,076,815</b>	<b>\$4,416,465</b>
<b>June 30 Cash Balance</b>	<b>\$1,583,384</b>	<b>\$533,874</b>	<b>\$789,277</b>	<b>\$930,283</b>	<b>\$953,555</b>	<b>\$1,916,139</b>

\*\* "Other" includes expenditures for postage, printing, telecommunications, public information, legal and media services, pesticide disposal and container recycling, vehicle repair, workers compensation, unemployment compensation, liability and tort insurance, employee training, and various operating expenses.

Appendix 3

**VDACS - Division of Consumer Protection  
Office of Pesticide Services (FY 2020)**





**Project 6592 - Proposed****Department Of Agriculture And Consumer Services****Repeal of 2 VAC 5-325, Regulations Governing Pine Shoot Beetle**

## Chapter 325

Regulations Governing Pine Shoot Beetle (REPEALED)**2VAC5-325-10. Definitions. (Repealed.)**

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

"Certificate" means a document in which an inspector affirms that a specified regulated article is free of pine shoot beetle and may be moved to any destination outside the area under quarantine.

"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, the U.S. Department of Agriculture, or both, wherein the former agrees to comply with the requirements of the compliance agreement.

"Infestation" means the presence of the pine shoot beetle or the existence of circumstances that make it reasonable to believe that the pine shoot beetle is present.

"Inspector" means any employee of the Virginia Department of Agriculture and Consumer Services, or other person authorized by the commissioner to enforce the provisions of the quarantine or regulation.

"Limited permit" or "permit" means a document in which an inspector affirms that the regulated article identified on the document is eligible for movement in accordance with this regulation only to a specified destination and only in accordance with specified conditions.

"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 any association, company, corporation, firm, individual, joint stock company, partnership, society, or other entity.

"Pine nursery stock" means all *Pinus* spp. woody plants, shrubs, and rooted trees, including dug (balled and burlaped) Christmas trees, and ornamental pine, such as bonsai.

"Pine shoot beetle" means the insect known as pine shoot beetle, *Tomicus piniperda* (Linnaeus), in any stage of development.

"Virginia Pest Law" means the statute set forth in Article 1 (~~3~~ 3.2-700 et seq.) of Chapter 7 of Title 3.2 of the Code of Virginia.

**2VAC5-325-20. Regulated articles. (Repealed.)**

The following articles are regulated under the provisions of this quarantine, and shall not be moved out of any regulated area within Virginia, except in compliance with the conditions prescribed in this quarantine:

1. Pine products (*Pinus* spp.), as follows: bark nuggets (including bark chips); Christmas trees; logs with bark attached; lumber with bark attached; nursery stock; raw pine materials for wreaths and garlands; and stumps.
2. Any article, product, or means of conveyance which, in the determination of the Commissioner of the Department of Agriculture and Consumer Services (commissioner), presents the risk of spread of the pine shoot beetle.

**2VAC5-325-30. Regulated areas. (Repealed.)**

The following areas in Virginia:

The entire counties of:

Clarke

Loudoun

**2VAC5-325-40. Conditions governing the intrastate movement of regulated articles. (Repealed.)**

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

B. Any regulated article may be moved intrastate from a regulated area only if moved under the following conditions:

1. With a certificate or limited permit issued and attached in accordance with 2VAC5-325-50 and 2VAC5-325-80 of this quarantine.
2. Without a certificate or limited permit, if:
  - a. (1) The regulated article originates outside any regulated area and is moved through the regulated area without stopping (except for drop-off loads, refueling, or traffic conditions, such as traffic lights or stop signs) during October, November, or December, or when ambient air temperature is below 10 degrees Celsius (50 degrees Fahrenheit); or
  - (2) The regulated article originates outside any regulated area and, during the period of January through September, is moved through the regulated area at a temperature higher than 10 degrees Celsius (50 degrees Fahrenheit), if the article is shipped in an enclosed vehicle or completely covered (such as with plastic, canvas, or other closely woven cloth) so as to prevent access by the pine shoot beetle; and
  - b. The point of origin of the regulated article is indicated on the waybill.
3. With a limited permit issued by the Commonwealth if the regulated article is moved:
  - a. By a state or federal agency for experimental or scientific purposes;
  - b. Under conditions, specified on the permit, which the commissioner has found to be adequate to prevent the spread of the pine shoot beetle; and
  - c. With a tag or label, bearing the number of the permit issued for the regulated article, attached to the outside of the container of the regulated article or attached to the regulated article itself, if the regulated article is not in a container.

**2VAC5-325-50. Issuance and cancellation of certificates and limited permits. (Repealed.)**

A. An inspector may issue a certificate for the intrastate movement of a regulated article if the inspector determines that:

1. a. The regulated article has been treated under the direction of an inspector in accordance with 2VAC5-325-100 of this quarantine;
- b. Based on inspection of the premises of origin, if the regulated article is a greenhouse-grown pine (such as bonsai), that the greenhouse is free from the pine shoot beetle and is screened to prevent entry of the pine shoot beetle;
- c. Based on inspection of the regulated article, if the regulated article is a pine seedling or a pine transplant and is no greater than 36 inches high with a bole diameter at soil level of 1 inch or less, that it is free from the pine shoot beetle;
- d. Based on inspection by an inspector (branch tip by branch tip) of pine nursery stock, that it is free from the pine shoot beetle; or
- e. If the regulated article is a pine log with bark attached or pine lumber with bark attached or a pine stump, that its source tree has been felled during the period of July through October; and
2. a. The regulated article will be moved through the regulated area during October, November, or December, or when the ambient air temperature is below 10° Celsius (50° Fahrenheit);
- b. The regulated article will be moved through the regulated area during the period of January through September, if the ambient air temperature is 10° Celsius (50° Fahrenheit) or higher, in an enclosed vehicle or completely enclosed by a covering adequate to prevent access by the pine shoot beetle; or
- c. The pine log with bark attached, pine lumber with bark attached, or pine stump, from a tree felled during the period of July through October, will be shipped intrastate from the regulated area during the period of July through October; and
3. The regulated article is to be moved in compliance with any additional conditions deemed necessary under the Virginia Pest Law to prevent the spread of the pine shoot beetle; and
4. The regulated article is eligible for unrestricted movement under all other state or federal

domestic plant quarantines and regulations applicable to the regulated articles.

B. An inspector may issue a limited permit for the intrastate movement of a regulated article if the inspector determines that:

1. a. The regulated article is to be moved intrastate to a specified destination for specified handling, processing, or utilization (the destination and other conditions to be listed in the limited permit), and this intrastate movement will not result in the spread of the pine shoot beetle. If the regulated article is part of a shipment of pine Christmas trees, the inspector will make a pest risk determination on the basis of an inspection conducted in accordance with 2VAC5-325-50 C of this quarantine; or
  - b. The regulated article is to be moved intrastate from a regulated area to a regulated area and will transit any nonregulated area in an enclosed vehicle or completely enclosed by a covering adequate to prevent access by the pine shoot beetle; and
2. The regulated article is to be moved in compliance with any additional conditions deemed necessary under the Virginia Pest Law to prevent the spread of the pine shoot beetle; and
3. The regulated article is eligible for interstate movement under all other state or federal domestic plant quarantines and regulations applicable to the regulated article.

C. The number of pine Christmas trees randomly selected for inspection is determined by the size and type of shipment, in accordance with the following tables. If a shipment mixes painted and natural trees, the inspection procedure for painted trees will apply. If a pine shoot beetle is detected in any one of the trees being sampled, the entire shipment must be rejected. If no pine shoot beetle is detected in any of the trees sampled, the shipment will be allowed to move with a limited permit. The limited permit must state, "All trees that remain unsold as of December 25 must be destroyed by burning or chipping, or must be fumigated, prior to January 1."

Table 1. — Painted (Color Enhanced) Pine Christmas Trees

No. of trees in shipment	No. of trees to sample	No. of trees in shipment	No. of trees to sample	No. of trees in shipment	No. of trees to sample	No. of trees in shipment	No. of trees to sample
1-72	All	301-400	111	701-800	120	2,001-3,000	127
73-100	73	401-500	115	801-900	121	3,001-5,000	128
101-200	96	501-600	117	901-1,000	122	5,001-10,000	129
201-300	106	601-700	119	1,001-2,000	126	10,001 or more	130

Table 2. — Natural (Unpainted) Pine Christmas Trees

No. of trees in shipment	No. of trees to sample	No. of trees in shipment	No. of trees to sample	No. of trees in shipment	No. of trees to sample	No. of trees in shipment	No. of trees to sample
1-57	All	201-300	75	501-600	80	1,001-3,000	84
58-100	58	301-400	77	601-700	81	3,001-10,000	85
101-200	69	401-500	79	701-1,000	82	10,000 or more	86

D. Certificates and limited permits for use for intrastate movement of regulated articles may be issued by an inspector or person operating under a compliance agreement. A person operating under a compliance agreement may issue a certificate for the intrastate movement of a regulated article if an inspector has determined that the regulated article is otherwise eligible for a certificate in accordance with

subsection A of this section. A person operating under a compliance agreement may issue a limited permit for intrastate movement of a regulated article when an inspector has determined that the regulated article is eligible for a limited permit in accordance with subsection B of this section.

~~E. Any certificate or limited permit that has been issued or authorized may be withdrawn by the inspector orally or in writing if he 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 as promptly as circumstances allow.~~

#### **~~2VAC5-325-60. 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 this quarantine. The agreement shall stipulate that safeguards will be maintained against the establishment and spread of infestation, and will comply with the conditions governing the maintenance of identity, handling, and subsequent movement of such articles, and the cleaning and treatment of means of conveyance and containers.~~

~~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 quarantine. If the cancellation is oral, the cancellation and the reasons for the cancellation shall be confirmed in writing as promptly as circumstances allow.~~

#### **~~2VAC5-325-70. Assembly and inspection of regulated articles. (Repealed.)~~**

~~A. Any person (other than a person authorized to issue certificates or limited permits under 2VAC5-325-50 D), who desires to move a regulated article intrastate accompanied by a certificate or limited permit shall apply for inspection as far in advance as possible.~~

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

#### **~~2VAC5-325-80. Attachment and disposition of certificates and limited permits. (Repealed.)~~**

~~A. A certificate or limited permit required for the intrastate movement of a regulated article must be attached, at all times during the intrastate movement, to the outside of the container containing the regulated article, or to the regulated article itself, if not in a container. 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 identify the regulated article.~~

~~B. The certificate or 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.~~

#### **~~2VAC5-325-90. Inspection and disposal of regulated articles and pests. (Repealed.)~~**

~~Any properly identified inspector is authorized to stop and inspect, and to seize, destroy, or otherwise dispose of, or require disposal of regulated articles and pine shoot beetles as provided in the Virginia Pest Law under which this quarantine is issued.~~

#### **~~2VAC5-325-100. Treatments. (Repealed.)~~**

~~A. Fumigation is authorized for use on pine logs with bark attached, pine lumber with bark attached, pine bark nuggets (including bark chips), and pine stumps, as follows: logs, lumber, and stumps may be treated with methyl bromide at normal atmospheric pressure with  $48 \text{ g/m}^3$  ( $3 \text{ lb/1000 ft}^3$ ) for 16 hours at  $21^\circ$  Celsius ( $70^\circ$  Fahrenheit) or above, or  $80 \text{ g/m}^3$  ( $5 \text{ lb/1000 ft}^3$ ) for 16 hours at  $4.5^\circ$  through  $20.5^\circ$  Celsius ( $40^\circ$  through  $69^\circ$  Fahrenheit).~~

~~B. Cold treatment is authorized for cut pine Christmas trees, pine nursery stock, and raw pine materials for pine wreaths and garlands as follows: The regulated articles must be loaded into a refrigeration unit and held at  $20.6^\circ$  Celsius ( $-5^\circ$  Fahrenheit) for one hour; the period before the refrigeration unit reaches the specified temperature is not part of the treatment period.~~

~~C. Any one of these fumigation treatments is authorized for use on cut pine Christmas trees and raw pine materials for pine wreaths and garlands. Cut pine Christmas trees and raw pine materials for pine~~

wreaths and garlands may be treated with methyl bromide at normal atmospheric pressure as follows:

Temperature	Dosage: lbs/1000 ft <sup>3</sup>	Exposure: hours	Concentration readings: ounces per 1000 ft <sup>3</sup>			
			2.0 hrs.	3.0 hrs.	3.5 hrs.	4.0 hrs.
40-49°F	4.0	4.0	57	--	--	48
50-59°F	4.0	3.5	57	--	48	--
50-59°F	3.5	4.0	50	--	--	42
60°F+	4.0	3.0	57	48	--	--
60°F+	3.0	4.0	43	--	--	36

**2VAC5-325-110. Nonliability of the department. (Repealed.)**

~~The Virginia Department of Agriculture and Consumer Services shall not be liable for:~~

- ~~1. Any costs incident to inspections required under the provisions of the quarantine and regulations, other than for the services of the inspector.~~
- ~~2. Damage to cut pine Christmas trees due to possible phytotoxic effects of authorized treatments. Trees should be cut at least 14 days before treatment to reduce the possibility of phytotoxic effects.~~

**2VAC5-325-120. Revocation of this regulation. (Repealed.)**

~~This regulation may be revoked by either the Commissioner of the Department of Agriculture and Consumer Services or the Board of Agriculture and Consumer Services when such party is satisfied that the need for the regulation no longer exists. No revocation may take effect unless notice of the revocation is filed with the Registrar of Regulations. Once the notice has been filed, the effective date of the revocation shall be the filing date (unless the notice specifies an effective date that is later than the filing date, in which case that later date shall be the effective date).~~

# VIRGINIA ACTS OF ASSEMBLY -- 2020 RECONVENED SESSION

## CHAPTER 1284

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

[S 891]

Approved May 21, 2020

**Be it enacted by the General Assembly of Virginia:**

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

**§ 3.2-5901.1. State Animal Welfare Inspector.**

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

**§ 3.2-6500. Definitions.**

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

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

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

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

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

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

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

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

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

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

"Agricultural animals" means all livestock and poultry.

"Ambient temperature" means the temperature surrounding the animal.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**BOARD OF AGRICULTURE AND CONSUMER SERVICES**

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

Adopted: December XX, 2020

**SECTION 1: AUTHORITY**

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

**SECTION 2: DEFINITIONS**

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

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

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

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

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

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

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

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

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

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

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

**SECTION 3: PROVISION FOR CIVIL PENALTIES GENERALLY**

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

**SECTION 4: PROCEDURE FOR CIVIL PENALTY ASSESSMENT**

**A. Farm Inspection**

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

<b>Staff Member Witnessing Alleged Violation</b>	<b>Case Reviewer</b>
Produce Safety Specialist	Produce Safety Assistant Program Supervisor
Produce Safety Assistant Program Supervisor	Produce Safety Program Supervisor
Program Supervisor	Program Manager

**B. Notice of Alleged Violation**

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

**C. Informal Fact Finding Conference**

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

**D. Formal Hearing**

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

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

**SECTION 5: ASSESSMENT OF SEPARATE VIOLATIONS**

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

**SECTION 6: PENALTY POINT SYSTEM**

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

**A. Violation Severity**

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

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

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

**B. History of Previous Violations**

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

**C. Good Faith Credit**

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

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

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

**D. Determination of Civil Penalty**

- (I) Violations resulting in a cumulative sum of zero points after adding the total points assigned in accordance with subsections A, B, and C and subtracting the points assigned in accordance with subsection D shall not result in a civil penalty but shall be maintained on record as violations and shall be considered a previous violation for the purpose of subsection B if future penalties are issued.
  
- (II) Violations resulting in a cumulative sum of one or more points after adding the total points assigned in accordance with subsections A, B, and C and subtracting the points assigned in accordance with subsection D shall result in a civil penalty. The resulting total point amount shall be converted to a civil penalty dollar amount according to the following table:

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

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

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

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**RE: Request for records follow up**

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**Schmidt, Kevin** <kevin.schmidt@vdacs.virginia.gov>

Fri, Nov 6, 2020 at 5:23 PM

To: Emily Lessig &lt;elessig@interflex.net&gt;

Cc: Jason Grim &lt;jgrim@interflex.net&gt;, "White, Lamont" &lt;lamont.white@vdacs.virginia.gov&gt;, "Scruggs, Bill (VDACS)" &lt;bill.scruggs@vdacs.virginia.gov&gt;, Seth Benton &lt;seth.benton@vdacs.virginia.gov&gt;

Emily,

Thanks again to you and Jason for meeting with us today. Based on our conversation today, the Virginia Department of Agriculture and Consumer Services understands your previous request for records to be rescinded.

Have a great weekend.

Kevin

Kevin Schmidt  
Director, Office of Policy, Planning, and Research  
Virginia Department of Agriculture and Consumer Services  
102 Governor Street  
Richmond, VA 23219  
(804) 786-1346

On Thu, Nov 5, 2020 at 11:08 AM Emily Lessig <elessig@interflex.net> wrote:

Hi Kevin,

Anytime after 1:30pm works for us as well.

Thanks!

**Emily Lessig**

Phone: 800-293-2909 x1002 / [elessig@interflex.net](mailto:elessig@interflex.net)  
**interflex** | [www.interflex.net](http://www.interflex.net)

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**From:** Schmidt, Kevin <kevin.schmidt@vdacs.virginia.gov>**Sent:** Thursday, November 05, 2020 11:02 AM**To:** Emily Lessig <elessig@interflex.net>**Cc:** Jason Grim <jgrim@interflex.net>; White, Lamont <lamont.white@vdacs.virginia.gov>; Scruggs, Bill (VDACS) <bill.scruggs@vdacs.virginia.gov>; Seth Benton <seth.benton@vdacs.virginia.gov>**Subject:** Re: Request for records follow up

Emily,

I wanted to follow back up with you and Jason to see if you might be free to meet with us sometime tomorrow afternoon to further discuss your request for records. Anytime after 1:30 p.m. should work for us.

Thanks,

Kevin

Kevin Schmidt

Director, Office of Policy, Planning, and Research

Virginia Department of Agriculture and Consumer Services

102 Governor Street

Richmond, VA 23219

(804) 786-1346

On Thu, Oct 29, 2020 at 8:45 AM Emily Lessig <[elessig@interflex.net](mailto:elessig@interflex.net)> wrote:

Thank you, Kevin!

Emily Lessig

Phone: 800-293-2909 x1002 / [elessig@interflex.net](mailto:elessig@interflex.net)  
**interflex** | [www.interflex.net](http://www.interflex.net)

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**From:** Schmidt, Kevin <[kevin.schmidt@vdacs.virginia.gov](mailto:kevin.schmidt@vdacs.virginia.gov)>

**Sent:** Wednesday, October 28, 2020 5:48 PM

**To:** Emily Lessig <[elessig@interflex.net](mailto:elessig@interflex.net)>

**Cc:** Jason Grim <[jgrim@interflex.net](mailto:jgrim@interflex.net)>; White, Lamont <[lamont.white@vdacs.virginia.gov](mailto:lamont.white@vdacs.virginia.gov)>; Scruggs, Bill (VDACS) <[bill.scruggs@vdacs.virginia.gov](mailto:bill.scruggs@vdacs.virginia.gov)>; Seth Benton <[seth.benton@vdacs.virginia.gov](mailto:seth.benton@vdacs.virginia.gov)>

**Subject:** Request for records follow up

Emily,

Thank you again to you and Jason for taking the time to meet with us today regarding your recent request for records pursuant to the Virginia Freedom of Information Act. As we discussed today, the Virginia Department of Agriculture and Consumer Services understands your request to be for the following records:



"Monthly Performance Report (MPR) for each USDA processor approved for Virginia for the months of May and June 2020. The MPRs are completed versions of an Excel-based template provided by USDA that approved processors for each state are required to submit on a monthly basis. Please provide the reports in their original Excel format."

VDACS will review the data included in a Monthly Performance Report with our legal counsel to determine what information, if any, will need to be redacted pursuant to subdivision 2 of [Va. Code § 3.2-103](#). Once we have that determination, we will circle back with you and Jason to provide an update and to discuss next steps for completing your request. I hope to be able to provide additional information by the end of next week.

Please let me know if this is not your understanding of our discussion today.

Thanks,

Kevin

**Kevin Schmidt**

Director, Office of Policy, Planning, and Research

Virginia Department of Agriculture and Consumer Services

102 Governor Street

Richmond, VA 23219

(804) 786-1346

## **§ 2.2-3704. Public records to be open to inspection; procedure for requesting records and responding to request; charges; transfer of records for storage, etc**

A. Except as otherwise specifically provided by law, all public records shall be open to citizens of the Commonwealth, representatives of newspapers and magazines with circulation in the Commonwealth, and representatives of radio and television stations broadcasting in or into the Commonwealth during the regular office hours of the custodian of such records. Access to such records shall be provided by the custodian in accordance with this chapter by inspection or by providing copies of the requested records, at the option of the requester. The custodian may require the requester to provide his name and legal address. The custodian of such records shall take all necessary precautions for their preservation and safekeeping.

B. A request for public records shall identify the requested records with reasonable specificity. The request need not make reference to this chapter in order to invoke the provisions of this chapter or to impose the time limits for response by a public body. Any public body that is subject to this chapter and that is the custodian of the requested records shall promptly, but in all cases within five working days of receiving a request, provide the requested records to the requester or make one of the following responses in writing:

1. The requested records are being entirely withheld. Such response shall identify with reasonable particularity the volume and subject matter of withheld records, and cite, as to each category of withheld records, the specific Code section that authorizes the withholding of the records.
2. The requested records are being provided in part and are being withheld in part. Such response shall identify with reasonable particularity the subject matter of withheld portions, and cite, as to each category of withheld records, the specific Code section that authorizes the withholding of the records.
3. The requested records could not be found or do not exist. However, if the public body that received the request knows that another public body has the requested records, the response shall include contact information for the other public body.
4. It is not practically possible to provide the requested records or to determine whether they are available within the five-work-day period. Such response shall specify the conditions that make a response impossible. If the response is made within five working days, the public body shall have an additional seven work days in which to provide one of the four preceding responses.

C. Any public body may petition the appropriate court for additional time to respond to a request for records when the request is for an extraordinary volume of records or requires an extraordinarily lengthy search, and a response by the public body within the time required by this chapter will prevent the public body from meeting its operational responsibilities. Before proceeding with the petition, however, the public body shall make reasonable efforts to reach an agreement with the requester concerning the production of the records requested.

D. Subject to the provisions of subsection G, no public body shall be required to create a new record if the record does not already exist. However, a public body may abstract or summarize information under such terms and conditions as agreed between the requester and the public body.

E. Failure to respond to a request for records shall be deemed a denial of the request and shall constitute a violation of this chapter.

F. A public body may make reasonable charges not to exceed its actual cost incurred in accessing, duplicating, supplying, or searching for the requested records. No public body shall impose any extraneous, intermediary, or surplus fees or expenses to recoup the general costs associated with creating or maintaining records or transacting the general business of the public body. Any duplicating fee charged by a public body shall not exceed the actual cost of duplication. The public body may also make a reasonable charge for the cost incurred in supplying records produced from a geographic information system at the request of anyone other than the owner of the land that is the subject of the request. However, such charges shall not exceed the actual cost to the public body in supplying such records, except that the public body may charge, on a pro rata per acre basis, for the cost of creating topographical maps developed by the public body, for such maps or portions thereof, which encompass a contiguous area greater than 50 acres. All charges for the supplying of requested records shall be estimated in advance at the request of the citizen. The period within which the public body shall respond under this section shall be tolled for the amount of time that elapses between notice of the cost estimate and the response of the requester. If the public body receives no response from the requester within 30 days of sending the cost estimate, the request shall be deemed to be withdrawn.

G. Public records maintained by a public body in an electronic data processing system, computer database, or any other structured collection of data shall be made available to a requester at a reasonable cost, not to exceed the actual cost in accordance with subsection F. When electronic or other databases are combined or contain exempt and nonexempt records, the public body may provide access to the exempt records if not otherwise prohibited by law, but shall provide access to the nonexempt records as provided by this chapter.

Public bodies shall produce nonexempt records maintained in an electronic database in any tangible medium identified by the requester, including, where the public body has the capability, the option of posting the records on a website or delivering the records through an electronic mail address provided by the requester, if that medium is used by the public body in the regular course of business. No public body shall be required to produce records from an electronic database in a format not regularly used by the public body. However, the public body shall make reasonable efforts to provide records in any format under such terms and conditions as agreed between the requester and public body, including the payment of reasonable costs. The excision of exempt fields of information from a database or the conversion of data from one available format to another shall not be deemed the creation, preparation, or compilation of a new public record.

H. In any case where a public body determines in advance that charges for producing the requested records are likely to exceed \$200, the public body may, before continuing to process the request, require the requester to pay a deposit not to exceed the amount of the advance determination. The deposit shall be credited toward the final cost of supplying the requested records. The period within which the public body shall respond under this section shall be tolled for the amount of time that elapses between notice of the advance determination and the

response of the requester.

I. Before processing a request for records, a public body may require the requester to pay any amounts owed to the public body for previous requests for records that remain unpaid 30 days or more after billing.

J. In the event a public body has transferred possession of public records to any entity, including but not limited to any other public body, for storage, maintenance, or archiving, the public body initiating the transfer of such records shall remain the custodian of such records for purposes of responding to requests for public records made pursuant to this chapter and shall be responsible for retrieving and supplying such public records to the requester. In the event a public body has transferred public records for storage, maintenance, or archiving and such transferring public body is no longer in existence, any public body that is a successor to the transferring public body shall be deemed the custodian of such records. In the event no successor entity exists, the entity in possession of the public records shall be deemed the custodian of the records for purposes of compliance with this chapter, and shall retrieve and supply such records to the requester. Nothing in this subsection shall be construed to apply to records transferred to the Library of Virginia for permanent archiving pursuant to the duties imposed by the Virginia Public Records Act (§ 42.1-76 et seq.). In accordance with § 42.1-79, the Library of Virginia shall be the custodian of such permanently archived records and shall be responsible for responding to requests for such records made pursuant to this chapter.

1968, c. 479, § 2.1-342; 1973, c. 461; 1974, c. 332; 1975, cc. 307, 312; 1976, cc. 640, 709; 1977, c. 677; 1978, c. 810; 1979, cc. 682, 684, 686, 689; 1980, cc. 678, 754; 1981, cc. 456, 464, 466, 589; 1982, cc. 225, 449, 452, 560, 635; 1983, cc. 372, 462, 607; 1984, cc. 85, 395, 433, 513, 532; 1985, cc. 81, 155, 502, 618; 1986, cc. 273, 291, 383, 469, 592; 1987, cc. 401, 491, 581; 1988, cc. 39, 151, 395, 411, 891, 902; 1989, cc. 56, 358, 478; 1990, cc. 217, 538, 721, 819, 968; 1991, cc. 213, 561; 1992, cc. 40, 150, 167, 200, 203, 207, 593, 612; 1993, cc. 205, 270, 296, 537, 552, 638, 750, 883; 1994, cc. 485, 532, 606, 839, 853, 918; 1995, cc. 299, 362, 499, 562, 638, 722, 812, 837; 1996, cc. 168, 469, 589, 599, 783, 786, 794, 855, 862, 902, 905, 1001, 1046; 1997, cc. 198, 295, 439, 567, 636, 641, 777, 782, 785, 838, 861; 1998, cc. 427, 891; 1999, cc. 438, 703, 726; 2001, c. 844; 2002, cc. 715, 830; 2003, cc. 275, 981, 1021; 2007, c. 439; 2009, c. 626; 2010, c. 627; 2011, c. 604; 2016, cc. 620, 716; 2017, c. 778; 2020, c. 1142.

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

## § 3.2-103. Records to be held in confidence

The Commissioner shall hold the following records of the Department in confidence unless otherwise directed by the Governor or the Board:

1. Schedules of work for regulatory inspection;
2. Trade secrets and commercial or financial information supplied by individuals or business entities to the Department;
3. Reports of criminal violations made to the Department by persons outside the Department;
4. Records of active investigations until the investigations are closed;
5. Financial records of applicants for assistance from the Virginia Farm Loan Revolving Account except those records that are otherwise a matter of public record; and
6. Tax returns required by the agricultural commodity boards established pursuant to this title to the extent necessary to protect the privacy of individual taxpayers.

Code 1950, § 3-13; 1966, c. 702, § 3.1-14; 1975, c. 260; 1977, c. 186; 1978, cc. 219, 540; 1982, c. 150; 1993, c. 455; 1994, cc. [261](#), [370](#); 1995, c. [10](#); 1996, c. [996](#); 2005, c. [633](#); 2008, c. [860](#).

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

Processor ID	Processor Name	Report Month	Report Year	State	COOP	USDA Material	Carry Over	Monthly Beginning Inventory	Received this Month	Received YTD	Used/Reduced this Month	Used/Reduced YTD	Transfers +/- this Month	Transfers +/- YTD	Adjustments +/- this Month	Adjustments +/- YTD	Current Monthly Ending Inventory	Current Inventory Months on Hand (MOH)	Prior SY Used/Reduced YTD	Prior SY Avg Monthly Usage (AMU)
0910-0012	Bongards	09	2020	VA		110242	81,879.47	74,868.14	0.00	0.00	11,367.70	18,379.03	0.00	0.00	0.00	0.00	63,500.44	2.27	279,963.23	27,996.32

Processor ID	Processor Name	Report Month	Report Year	State	COOP	USDA Material	Sales Order Number	Received Date	Received LBS
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<b>Processor Identification</b>	<b>Processor Name</b>	<b>Report Month</b>	<b>Report Year</b>	<b>State</b>	<b>COOP</b>	<b>USDA Material</b>	<b>Type (Adjustment/ Transfer/ Cooperate Vender Negotiation)</b>	<b>LBS</b>	<b>Memo</b>	<b>USDA Transaction Identification*</b>
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Processor ID	Processor Name	Report Month	Report Year	State	COOP	Recipient Agency Number	Recipient Agency Name	Product Number	Product Name	USDA Material	End Product Data Schedule Donated Food	Case Quantity	Used LBS
0910-0012	Bongards	09	2020	VA						110242			156.42
0910-0012	Bongards	09	2020	VA						110242			200.00
0910-0012	Bongards	09	2020	VA						110242			320.00
0910-0012	Bongards	09	2020	VA						110242			320.00
0910-0012	Bongards	09	2020	VA						110242			283.50
0910-0012	Bongards	09	2020	VA						110242			1,323.00
0910-0012	Bongards	09	2020	VA						110242			90.00
0910-0012	Bongards	09	2020	VA						110242			980.00
0910-0012	Bongards	09	2020	VA						110242			20.00
0910-0012	Bongards	09	2020	VA						110242			905.31
0910-0012	Bongards	09	2020	VA						110242			5,239.50
0910-0012	Bongards	09	2020	VA						110242			20.00
0910-0012	Bongards	09	2020	VA						110242			21.55
0910-0012	Bongards	09	2020	VA						110242			40.00
0910-0012	Bongards	09	2020	VA						110242			493.50
0910-0012	Bongards	09	2020	VA						110242			42.00
0910-0012	Bongards	09	2020	VA						110242			57.92
0910-0012	Bongards	09	2020	VA						110242			120.00
0910-0012	Bongards	09	2020	VA						110242			735.00

	Regional Agency	Number	USDA Material	Beginning	Received	Adjustments	Usage	Balance
			110242					
			110242					
			110242					
			110242					
			110242					
			110242					
			110242					
			110242					
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			110242					
			110242					
			110242					

**December 11, 2020**

**Virginia Department of Agriculture and Consumer Services  
Board of Agriculture and Consumer Services**

**Meeting of the Board:**

Shelley S. Butler-Barlow, President  
Neil Houff, Vice-President  
Kevin Schmidt, Secretary

**Proposed Agenda Item:** Interflex FOIA Request

**Requestor:** Emily Lessig, 917 Fairborn Circle, Virginia Beach, VA 23464

**Summary:**

Interflex (<http://www.interflex.net>) works with school districts and cooperatives to facilitate a secure bid process and provide access to accurate and timely opportunities, results, and compiled market intelligence to manufacturers, distributors, and brokers working in the K-12 school food service segment.

We have been offering our services since 2002 and work with over 160 manufacturers and 40 school districts. The scope of our market intelligence includes the largest 700 school districts nationally and over 50% of the student population by enrollment.

Responsive to our FOIA request dated (October 26, 2020) Interflex has been denied records or been offered redacted versions of records pursuant to Code of VA: § 3.2-103.2<sup>1</sup> Interflex contends that there is nothing contained within the information being requested that qualifies either as a trade secret, commercial, or financial information, and that The Board is free to meet its obligation to authorize its release under Virginia Freedom of Information Act: §§ 2.2-3700 - 3714.

Our appeal is twofold. First, that § 3.2-103 does not exist to undermine or override FOIA, but as a reference to exceptions further developed withing the Act. § 3.2-103.2 provides less information and context, not more. Second, that having applied FOIA and its specific definitions and explanation of what trade secrets, financial, and commercial information are, that the information being requested does not warrant exclusion under either § 3.2-103.2 or §§ 2.2-3700 - 3714.

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<sup>1</sup> 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. **§ 3.2-103.2 Records to be held in confidence: Trade secrets and commercial or financial information, supplied by individuals or business entities to the Department.**

## General Overview

The bid process exists specifically to “foster full and open competition, free from real and perceived conflicts of interest”<sup>2</sup>. When procuring goods or services, school food authorities must conduct their procurement in a manner that provides full and open competition<sup>3</sup> and the absence of waste, fraud, and abuse. Without functional sunshine laws, neither the bid, nor proof of performance can be observed by the public who fund them, and the process cannot be independently validated and verified.

The Recipient Agency (RA) has a responsibility to develop and award bids for processing as well as to purchase commercial foods in like kind to replace the donated foods.<sup>4</sup> Processors have the responsibility to provide monthly performance reports, and State Distribution Agencies (SDA’s) have the responsibility to receive, review, and catalog the MPRs.

The procurement process at the RA level is always held in full, public view. Bids are publicly advertised, submissions are publicly unsealed, and copies made available on site and on-demand. Once awarded, the results (including awarded pricing) are also made available through FOIA.

Within the bid results exist the product name, product code, RA name, and their estimated quantities for each line item and product. This information is always recognized as public, (most bid documents state this explicitly), and no effort is made by any of the parties involved to keep it secret. Much of this is outlined in 7 CFR (Title 7 Code of Federal Regulations – Agriculture, Subpart E, §210.21 - Procurement) and the Uniform Trade Secrets Act.

The bid process is pertinent here because the MPRs are a direct consequence of the bid. They are THE proof that the process is not academic. All of the same information that is demonstrably public per the bid process, is now claimed to be exempt as it reappears on the MPRs.

## Consideration of the Request Under Virginia Freedom of Information Act: §§ 2.2-3700 - 3714

### Trade Secrets

The Uniform Trade Secrets Act ("UTSA") is a piece of legislation created by the Uniform Law Commission (ULC), a non-profit organization. The UTSA defines trade secrets and describes claims related to trade secrets. To date, 47 states and the District of Columbia have adopted the UTSA.<sup>5</sup>

**Uniform Trade Secrets Act of Virginia** (§ 59.1-336). According to The Act, "Trade secret" means information, including but not limited to, a formula, pattern, compilation, program, device, method, technique, or process, that:

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<sup>2</sup><https://www.commodityfoods.org/resources/Documents/Resources/School%20RA%20Processing%20Handbook.pdf>

<sup>3</sup> <https://www.federalregister.gov/documents/2007/10/31/E7-21420/procurement-requirements-for-the-national-school-lunch-school-breakfast-and-special-milk-programs>

<sup>4</sup> Virginia Department of Agriculture & Consumer Services Agency Agreement. <https://www.vdacs.virginia.gov/pdf/agreement.pdf>

<sup>5</sup> [https://www.law.cornell.edu/wex/trade\\_secret](https://www.law.cornell.edu/wex/trade_secret)

1. Derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use, and
2. Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

The VA UTSA sets two bars - one low, one high. It first attempts to qualify information as a “formula, pattern, compilation, program, device, method, technique, or process”, and if so, then asks whether the information in question meets the “independent economic value” AND the “reasonable efforts” standards. Please note that as written, the low bar must be met, then both A + B to qualify as exempt.

Question: Is there is anything in the information being requested that could be defined as a formula, pattern, compilation, program, device, method, technique, or process?

We argue NO and The Department has agreed that the information being sought does not meet the low bar, does not qualify to approach the high bar (“Independent economic value” and “reasonable efforts”), and is not considered to include trade secrets.

### **Financial Information**

**Definition:** “Financial information refers to the nonpublic information concerning an individual's assets, liabilities, credit, account numbers and balances, transactional information, and codes, passwords, social security numbers, tax identification numbers, driver's license or permit numbers, and state identification card numbers.”<sup>6</sup>

Question: Is there is anything in the information being requested that could be defined as financial information individual or corporate, public or nonpublic? We argue NO and The Department has agreed that the information being sought cannot be excluded as financial information under FOIA.

### **Commercial Information**

Based on statements made by the Department, the issue in providing the MPRs lies in the assertion that the data being requested is “commercial” per § 3.2-103.2

**Definition:** In all The Code of Virginia there is no legal definition for the term “commercial”, it is rarely ever used in the 29-page FOIA Act. Where it does appear, it does so within specific context, and the Department has already conceded that none are applicable to our request.

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<sup>6</sup> <https://definitions.uslegal.com/f/financial-information/>

The following are the 7 independent sections (§ 2.2-3705.1-7) of the Virginia Code pertaining to Exclusions from FOIA.

§ 2.2-3705.1. Exclusions to application of chapter; exclusions of general application to **public bodies**. (13 paragraphs)

§ 2.2-3705.2. Exclusions to application of chapter; records relating to **public safety**. (14 paragraphs)

§ 2.2-3705.3. Exclusions to application of chapter; records relating to **administrative investigations**. (12 paragraphs)

§ 2.2-3705.4. Exclusions to application of chapter; **educational records and certain records of educational institutions**. (8 paragraphs)

§ 2.2-3705.5. Exclusions to application of chapter; **health and social services records**. (16 paragraphs)

§ 2.2-3705.6. Exclusions to application of chapter; **proprietary records and trade secrets**. (30 paragraphs)

§ 2.2-3705.7. Exclusions to application of chapter; records of **specific public bodies and certain other limited exclusions**. (33 paragraphs)

The only section that could be potentially and specifically applicable are the 30 paragraphs listed under § 2.2-3705.6 dealing with: ***“proprietary records and trade secrets”***. But the Department has already confirmed that *none* of the 30 paragraphs of exclusions contained therein apply to the information being requested.

Concerning the question that we started with: Is § 3.2-103.2 meant to supplement, echo, reiterate, or displace the VA FOIA...

It is difficult to imagine reading the term “commercial” so broadly as to consider 103.2 supreme to the full text of the Act, which exists solely to address these issues and within which, various types of sensitive information are treated in far more detail. It does not seem like the legislature would have written 7 full and distinct sections containing 126 paragraphs of exemptions, only to be overridden by one word of one sentence within § 3.2-103.2 and applicable only to the department of Agriculture and Consumer Services.

To the contrary, the Act reads that:

“The provisions of this chapter shall be liberally construed to promote an increased awareness by all persons of governmental activities and afford every opportunity to citizens to witness the operations of government.

Any exemption from public access to records or meetings shall be narrowly construed and no record shall be withheld or meeting closed to the public unless ***specifically*** made exempt pursuant to this chapter or other ***specific*** provision of law.”<sup>7</sup> (Emphasis Added)

The last sentence mentions the word “specific” twice. It seems to rule out broad, general exclusions, and where specific language does not exist. The Department has exempted our request, which we submitted under FOIA, based on a single word contained within a single clause, which is neither narrow, nor specific, nor placed in context. It is not even defined.

We therefore ask that our request be fulfilled without redaction or delay and that any further requests for the same be treated in like manner.

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<sup>7</sup> § 2.2-3700.B Virginia Freedom of Information Act



VIRGINIA FREEDOM OF INFORMATION ADVISORY COUNCIL  
COMMONWEALTH OF VIRGINIA

**ELECTRONIC MEETINGS  
PUBLIC COMMENT FORM**

**WE NEED YOUR HELP--Please give us your feedback regarding how meetings using electronic communications technology compare to traditional meetings where everyone is present in the same room at the same time.**

**1. Name of the public body holding the meeting:** \_\_\_\_\_

**2. Date of the meeting:** \_\_\_\_\_

**3. What are your overall thoughts or comments about this meeting?** \_\_\_\_\_

\_\_\_\_\_

**4. Where did you attend this meeting -- main meeting location OR from a remote location? (circle one)**

**5. Technology used for the meeting (audio only or audio/visual, devices and/or software used--please be as specific as possible--for example, speakerphone, iPad, Skype, WebEx, Telepresence, etc.):**

\_\_\_\_\_

**6. Were you able to hear everyone who spoke at the meeting (members of the body and members of the public)?**

Poor				Excellent
1	2	3	4	5

COMMENT \_\_\_\_\_

**7. How easy was it for you to obtain agenda materials for this meeting?**

Easy				Difficult
1	2	3	4	5

COMMENT \_\_\_\_\_

**8. Could you hear/understand what the speakers said or did static, interruption, or any other technological problems interfere?**

Easy				Difficult
1	2	3	4	5

COMMENT \_\_\_\_\_

**9. If the meeting used audio/visual technology, were you able to see all of the people who spoke?**

Poorly				Clearly
1	2	3	4	5

COMMENT \_\_\_\_\_



**10. If there were any presentations (PowerPoint, etc.), were you able to hear and see them?**

Poorly  
1      2      3      4      5  
Clearly

COMMENT \_\_\_\_\_

**11. Were the members as attentive and did they participate as much as you would have expected?**

Less  
1      2      3      4      5  
More

COMMENT \_\_\_\_\_

**12. Were there differences you noticed in how the members interacted?**

**With the other members present:**

Very Different  
1      2      3      4      5  
No Difference

**With members participating from other locations:**

Very Different  
1      2      3      4      5  
No Difference

**With the public:**

Very Different  
1      2      3      4      5  
No Difference

COMMENT \_\_\_\_\_

**13. Did you feel the technology was a help or a hindrance?**

Hindered  
1      2      3      4      5  
Helped

COMMENT \_\_\_\_\_

**14. How would you rate the overall quality of this meeting?**

Poor  
1      2      3      4      5  
Excellent

COMMENT \_\_\_\_\_

**THANK YOU. Please send your completed form by mail, facsimile or electronic mail to the FOIA Council using the following contact information:**

Virginia Freedom of Information Advisory Council  
General Assembly Building, Second Floor  
201 North 9th Street, Richmond, Virginia 23219  
[foiacouncil@dls.virginia.gov](mailto:foiacouncil@dls.virginia.gov)/Fax: 804-371-8705/Tele: 866-448-4100