

BOARD OF AGRICULTURE AND CONSUMER SERVICES

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

Friday, December 9, 2022

9 A.M.

1. Call to order
2. Roll call
3. Approval of draft Board meeting minutes from July 19, 2022
4. Board member reports
5. Commissioner's report to Board – Joseph Guthrie, Commissioner of Agriculture and Consumer Services

10 A.M. Public Hearing – Proposed Regulations for 2 VAC 5-105 (Regulations for the Inspection of Pet Shops Selling Dogs or Cats) – Dr.Carolynn Bissett, Program Manager, Office of Veterinary Services

6. Proposed Fast-Track Action to Repeal 2 VAC 5-205 (Rules and Regulations Pertaining to Shooting Enclosures) – Dr. Carolynn Bissett, Program Manager, Office of Veterinary Services
7. Expansion of the Regulated Area of 2 VAC 5-315 (Virginia Imported Fire Ant Quarantine for Enforcement of the Virginia Pest Law) – David Gianino, Program Manager, Office of Plant Industry Services
8. Pesticide Control Fund report and online pesticide registration update – Liza Fleeson Trossbach, Program Manager, Office of Pesticide Services
9. Strengthening Virginia's animal health laboratory system – Dr. Charles Broaddus, State Veterinarian and Director, Division of Animal and Food Industry Services
10. Update on electronic meeting policy – Kevin Schmidt, Director, Office of Policy, Planning, and Research
11. New business
12. Future Board meetings
13. Public comment period
14. Adjourn

DRAFT MINUTES

Board of Agriculture and Consumer Services
Suffolk Center for Cultural Arts
110 W. Finney Avenue
Suffolk, Virginia 23434
Tuesday, July 19, 2022

The meeting of the Board of Agriculture and Consumer Services (Board) convened at approximately 1:00 p.m. on Tuesday, July 19, 2022, at the Suffolk Center for Cultural Arts in Suffolk. President Barlow called the meeting to order.

WELCOME FROM CITY OF SUFFOLK

President Barlow welcomed the members of the Board to the City of Suffolk. She discussed the city’s history and long standing connections to the agricultural industry. She also provided an overview of the tour schedule for the next day.

ROLL CALL

The Board Secretary called the roll:

PRESENT

Donald Horsley
Clifton A. Slade
Shelley Barlow
Cecil Shell
James S. Huffard, III
Tyler Wegmeyer
Richard Sellers
Neil Houff
Charles Church
Dr. Robert Corely

Dr. Alan Grant

CONGRESSIONAL DISTRICT

2nd
3rd
4th
5th
9th
10th
11th
Pesticides – Commercial Agricultural
Pesticides – Commercial Structural
Representing Dr. Makola Abdullah, President,
Virginia State University
Representing Dr. Timothy D. Sands, President,
Virginia Tech

ABSENT

O. Bryan Taliaferro, Jr. 1st
Margaret Ann Smith 6th
Jacquelin Easter 7th
Vacant 8th

STAFF PRESENT

Joseph Guthrie, Commissioner, Virginia Department of Agriculture and Consumer Services
Kevin Schmidt, Secretary, Board of Agriculture and Consumer Services
Katherine Coates, Administrative Assistant, Virginia Department of Agriculture and Consumer Services

APPROVAL OF MINUTES

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

REPORT FROM BOARD MEMBERS

Charles Church

Mr. Church reported on recent trainings conducted by the Virginia Pest Management Association (VPMA). In June, VPMA held the Jeff Johnson Memorial Prep Course in Richmond, during which they trained 12 participants. He stated that VPMA also continues to conduct several virtual training opportunities for technicians. He concluded by announcing that the VPMA is in the process of developing its agenda for the 2022 State Technical Meeting, which will be held on December 7-8 in Richmond.

Neil Houff

Mr. Houff reported that they have survived the recent supply chain challenges that continue to impact the pesticide and fertilizer industries. He stated that, in his 37 year career, he's never seen the kind of volatility in fertilizer prices that they have experienced in the past four months. There is still uncertainty regarding pesticide and fertilizer supply and prices for next year. He concluded by stating that the good news is that crops appear to be strong throughout the state, which will help farmers deal with the higher pesticide and fertilizer prices.

Donald Horsley

Mr. Horsley reported that the crops in his district have been variable. They were blessed with timely rains, but high temperatures have created some concerns. Rain levels have been inconsistent throughout his district, which has impacted some crops. Overall, they have been fortunate and have been able to weather supply chain challenges. He stated that he contacted his delegate to make sure that the Governor was aware of the supply chain issues that farmers are experiencing. He appreciated that the response he received was that the Governor was aware and is monitoring the issue.

Clifton Slade

Mr. Slade reported that vegetable growers had a wonderful start to their growing season in his district. Produce was ready for sale earlier than usual, which meant they had more to sell for the July 4 weekend, which is the biggest produce weekend of the year. He noted that green tomatoes have been selling as well as red tomatoes at farmers' markets this year. He stated that corn crops have been variable in his district, but the majority of the crops looks very good. He related his experiences with recent steep increases in supply costs. It's impacting all farmers. His cost of production is three times what it was last year, and they will have to adjust prices.

Cecil Shell

Mr. Shell reported that the weather and crops in his district have been variable. The tobacco crop is looking beautiful. The increased cost of production have been challenging. Fertilizer prices have almost doubled and fuel prices have basically tripled. Timber prices continue to be very high, but the land owners aren't necessarily seeing those profits. He stated that some soybean producers have struggled in his district due to the weather but that crops are good overall.

James Huffard

Mr. Huffard reported that weather has been variable in his district. They've added cows to their farm, so they need a lot of crops to keep them fed. He stated that dairy prices are the highest

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they have been in his lifetime but that costs of production are also the highest they have ever been. His processing operation continues to do well. They have contracted with several new schools to provide chocolate milk and they are making butter and cheese curds. He shared that he is on the National Dairy Shrine Board, which is actively trying to recruit younger or student board members. The organization gives out over \$40,000 in scholarships to college students each year. He asked board members to spread the word if they know of anyone who would be interested.

Tyler Wegmeyer

Mr. Wegmeyer began by thanking the Commissioner for visiting his farm during strawberry season. He reported that he had a record strawberry season with great yields and great turn out for his u-pick operation. Strawberry growers throughout the state also had a great year if they had a crop. One strawberry farmer in the Valley reported losing his entire crop to hail. This year was not quite as good as the two prior years when COVID restrictions made u-pick activities especially popular, but it was still strong. He shared information about his rewarding experience growing sunflowers and donating the profits to support relief efforts in Ukraine. He reported that there has been a lot of rain in his district, but it impacts different producers differently. He also shared his concerns about deer damage, which is the worst he has seen in his area. He asked if the state collects information on the financial impact of deer damage. He stated that he knew some states offer cost share for the expenses of putting in deer fencing and explained that many small farmers are really struggling with the impact of the deer damage.

Richard Sellers

Mr. Sellers reported that the church gardens and public gardens are doing very well in his district. It can be hard to locate seeds in local shops. He shared information on produce pricing in Northern Virginia farmers' markets. Yields in their church garden have been strong. He has been working with the local extension agents in Fairfax and Arlington counties about trying to get more people involved in agricultural activities to the area. He stated that Fairfax County is interested in using empty warehouses to develop urban gardening on a larger scale.

Dr. Robert Corely

Dr. Corely introduced himself to the Board. He stated that they have recently been meeting with U.S. Department of Agriculture leadership, including Deputy Secretary Bronaugh and Secretary Vilsack, about how to leverage new funding centered on smart agriculture. He reported that Virginia State University (VSU) is expecting its largest class of incoming freshman in the fall. They are proud of the COVID protocols they have in place on campus. He shared information on VSU's strong mental health plan for students, faculty, and staff to address the emotional impacts of the pandemic.

Dr. Alan Grant

Dr. Grant reported that Virginia Tech (VT) has hosted several agricultural events on campus this summer, including the Virginia 4-H Congress, Virginia 4-H All Stars Centennial Conference, Governor's School for Agriculture, and the Virginia Master Gardeners College. Summer orientation is underway. He stated that College of Agriculture and Life Sciences (CALS) enrollment will be steady. He provided information on various staff changes at Agricultural Research and Extension Centers (AREC) and Virginia Cooperative Extension. The search for a new Director of Virginia Cooperative Extension is ongoing, and they hope to announce something in the very near future. He concluded by providing an update on the opening of the new Hampton AREC.

Shelly Butler Barlow

President Barlow began by providing information on the meeting venue. She reported that the cotton crop is looking good even though it is blooming late and was planted late. She stated that her district is not getting as much rain as they would like, which, combined with the heat, can be hard on the crops. The corn has suffered, but cotton and soybeans are holding their own right now. She noted that while they are getting historically high prices for what they're selling, they are also paying historically high input costs. The numbers are bigger, but the margins are the same. She stated that she has experienced a few supply delays but has gotten what she needed at the last minute every time. She discussed her garden's tomato crop and provided information on the crops grown at her farm. She responded to Mr. Wegmeyer's comments about deer damage and echoed many of his concerns. Finally, she provided background information on the different kinds of peanuts that are grown in Virginia.

COMMISSIONER'S REPORT

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

BRIEFING ON THE FINAL 2022 APPROPRIATION ACT

President Barlow call on Kendra Shifflett, Director, Administrative and Financial Services. Ms. Shifflett briefed the Board on the fiscal implications of the final 2022 Appropriation Act. Following Ms. Shifflett's presentation, Kevin Schmidt, Director, Office of Policy, Planning, and Research, briefed the Board on the enforcement implications of additional language in the 2022 Appropriation Act related to industrial hemp extracts.

FINAL EXEMPT STAGE - 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 David McGreevy, Deputy Director, Division of Animal and Food Industry Services. Mr. McGreevy briefed the Board on the final exempt stage for 2 VAC 5-595. Following Mr. McGreevy's presentation and questions from the Board, Mr. Slade moved that the Board 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 have this regulation become a final regulation of the Board through an exempt regulatory action as authorized by Section 3.2-5145.5 of the Virginia Food and Drink Law.

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

EXPANSION OF THE REGULATED AREA FOR 2 VAC 5-336 (REGULATIONS FOR ENFORCEMENT OF THE VIRGINIA TREE AND CROP PESTS LAW - SPOTTED LANTERNFLY QUARANTINE)

President Barlow called on David Gianino, Program Manager, Office of Plant Industry Services. Mr. Gianino briefed the Board on the expansion of the regulated area for 2 VAC 5-336.

NEW BUSINESS

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Mr. Church asked for an update regarding the new online pesticide registration system and recent delays in the processing of pesticide applications. Larry Nichols, Director, Division of Consumer Protection, responded with an update that included information about technological issues and staffing. Mr. Nichols also stated that he would provide an additional update at the Board's next meeting.

FUTURE BOARD MEETINGS

President Barlow announced that the final meeting of the year will be held on December 9 in Richmond.

PUBLIC COMMENT PERIOD

Lewis Everett spoke on behalf of the Virginia Cotton Growers Association on issues related to potential amendments to 2 VAC 5-390, Rules and Regulations for the Enforcement of the Virginia Seed Law, which would address cotton seed germination rates. Following his comments, he answered Board member questions related to the information he provided.

Dylan Bishop spoke on behalf of the Cannabis Business Association of Virginia to express concerns with the agency's recent enforcement efforts related to hemp extracts intended for human consumption. Following his comments, he answered Board member questions related to the information he provided.

Matt Mansell spoke on behalf of the Virginia Healthy Alternatives Association to express concerns with the agency's recent enforcement efforts related to hemp extracts intended for human consumption.

Joseph Sutfin, an industrial hemp manufacturer and processor from Carroll County, expressed concerns with the agency's recent enforcement efforts related to hemp extracts intended for human consumption.

Stefanie Taillon, Senior Assistant Director of Governmental Relation, Virginia Farm Bureau Federation, addressed the Board to thank VDACS staff members for their assistance during the recent series of meat processing listening sessions that were held throughout the state.

Kyle Shreve spoke on behalf of the Virginia Agribusiness Council on issues related to potential amendments to 2 VAC 5-390, Rules and Regulations for the Enforcement of the Virginia Seed Law; High Pathogenic Avian Influenza; and the online pesticide registration system.

ADJOURNMENT

There being no further business, the Board adjourned at approximately 3:44 p.m.

Respectfully submitted,

Shelley Barlow
Board President

Kevin Schmidt
Board Secretary

COMMISSIONER'S REPORT TO
BOARD OF AGRICULTURE AND CONSUMER SERVICES
December 9, 2022

PERSONNEL NEWS

At the end of the year, Ryan Davis, Program Manager of the Office of Dairy and Foods (ODF), will be retiring after several decades of dedicated service to VDACS. Pam Miles has been selected as his successor. Pam has been working in the VDACS Food Safety Program in various roles at the agency with increasing responsibility for the past 34 years. She was employed initially as a Food Safety Specialist, then as a Regional Manager, and currently serves as the Program Supervisor. Prior to employment with VDACS, she worked in private industry for six years in quality control for Kraft Foods and a fluid milk plant. She graduated with a Bachelor of Science in Food Science from Purdue University.

GOVERNOR'S PRIORITIES

Highly Pathogenic Avian Influenza (HPAI) remains a disease of major concern, with outbreaks occurring with increasing frequency as the U.S. moves into fall and winter. Since July, Office of Veterinary Services (OVS) has investigated the detection of HPAI in four backyard flocks (Gloucester County, Caroline County, the City of Virginia Beach, and Southampton County) and one zoo (City of Hampton). HPAI continues to circulate in wild bird populations, and detections in domestic poultry are expected to increase as wild bird migration increases during fall and winter. Infected birds died or were depopulated, and all impacted premises were placed under a 120-day quarantine.

Since July 1, there have been six new Governor's Agriculture and Forestry Industry Development (AFID) Fund Facility Grants announced totaling \$933,000. On July 26, Pittsylvania County was awarded \$33,000 for the expansion of AeroFarms. This project represents 66 new jobs and commitments for the production and packaging of \$25,275,000 of Virginia-grown agriculture and forestry products. On July 29, Albemarle County was awarded \$50,000 for the expansion of Potter's Craft Cider. This project represents \$900,000 in new capital investment, eight new jobs, and commitments to purchase \$380,067 of Virginia-grown agriculture and forestry products. On August 8, Sussex County was awarded \$50,000 for the location of Restoration Bioproducts. This project represents \$3,053,980 in new capital investment, the creation of five new jobs, and the commitment to purchase \$1,728,000 in Virginia-grown agriculture and forestry products. On August 10, the City of Suffolk was awarded \$50,000 for the location of Old Castle Lawn & Garden. This project represents \$5,705,000 in new capital investment, the creation of 28 new jobs, and the commitment to purchase \$2,509,867 in Virginia-grown agriculture and forestry products. On August 11, Prince William County was awarded \$250,000 for the location and expansion of MurLarkey Distilled Spirits. This project represents \$8,088,890 in new capital investment, the creation of 42 new jobs, and the commitment to purchase \$429,860 in Virginia-grown agriculture and forestry products. On September 14, Chesterfield County was awarded \$500,000 for the location of Plenty, Inc. This project represents \$300,000,000 in new capital investment, 300 new jobs, and the commitment to produce and package 9.44 million kilograms, or \$94.4 million, in new Virginia-grown agriculture and forestry products. Since the program's inception, 123 Governor's AFID Facility Grants have been successfully awarded to 68 localities across Virginia totaling \$11,802,900. These projects have

encouraged the creation of 4,023 new full-time jobs and full-time equivalent positions, \$1,453,275,067 new capital investment, and \$1,432,951,431 in new Virginia-grown agriculture and forestry purchases.

Since July, one new Governor's AFID Fund Planning Grant was announced. Fauquier County received a grant to study the economic viability of locating a small-scale meat processing facility at the Fauquier Livestock Exchange in Marshall. The Fauquier County Agricultural Advisory Committee will oversee the project as part of its ongoing efforts to increase the economic viability of farming and provide advice and recommendations to the Board of Supervisors on matters affecting the agricultural economy and its development. With an additional \$20,000 in matching funds pledged by the county, Fauquier County Farm Bureau, and PATH Foundation, there will be a total of \$40,000 available to study the feasibility of the project. Since the program's inception, 52 AFID Planning Grants have been awarded totaling \$1,063,232, positively impacting 63 unique localities for local agricultural and economic development enhancements ranging from local food sourcing to poultry industry support to viticulture education.

In September, at the direction of Secretary of Agriculture and Forestry Lohr, the Office of Agriculture and Forestry Development (OAFD) coordinated Controlled Environment Agriculture (CEA) week in Virginia. Governor Youngkin has identified CEA as a key priority growth area for his administration. During CEA week, the Governor welcomed next-gen agricultural producers AeroFarms, Beanstalk, and Plenty to the Commonwealth. This required unprecedented levels of coordination between OAFD, the Secretary of Agriculture and Forestry's Office, and the Virginia Economic Development Partnership (VEDP). These efforts yielded a new webpage at VEDP dedicated to CEA, the creation of significant new marketing assets (many assembled by the VDACS Communications Office at the direction of OAFD), three announcement events over the course of three days, and an "In Case You Missed It" email from the Governor's Press Office summarizing the activities. The effort was successful in establishing CEA as a stated priority for VEDP, which was the goal of this effort.

In October, Secretary Lohr and OAFD staff participated in the inaugural CEA Summit East held at the Institute for Advanced Learning and Research (IALR) in Danville. The event brought together nearly 300 individuals, businesses, vendors, and organizations interested in CEA to take part in two days of networking, educational sessions, and tours of IALR. On the first day of the conference, OAFD staff spoke on and moderated a panel of Virginia CEA companies entitled "Growing Local and Finding Funding: Secrets to Successfully Partnering with State, Local Government Agencies to Grow Your Business." Secretary Lohr kicked off day two of the conference with a well-received welcome and keynote remarks.

In July, the Industrial Hemp Program Manager held six one-hour listening sessions for Industrial Hemp Growers, Processors, and Dealers who wanted to provide feedback to the agency on the regulation of the manufacturing or sale of industrial hemp extracts or substances containing tetrahydrocannabinol (THC) that are intended for human consumption, either orally or by inhalation. Forty-eight individuals attended these listening sessions. Generally, the attendees expressed support for testing, packaging, and labeling requirements for both orally consumed and inhaled products containing THC. Many attendees also expressed the importance of consumer education regarding these products as well as the importance of the retailer being knowledgeable about the products offered for sale. Attendees were divided over whether the synthetic cannabinoids should be used in orally consumed and inhaled products containing THC. Attendees expressed the desire to see out-of-state manufacturers of these

products regulated in the same way as Virginia manufacturers, with some attendees suggesting that only Virginia-produced products should be allowed for sale in Virginia. The Industrial Hemp Program Manager presented a summary of the industry's feedback at the August meeting of the Hemp Extract Task Force, which the Secretary of Agriculture and Forestry convened as required by the 2022 Appropriation Act.

AGENCY OPERATIONS

Commissioner's Office

In July, Commissioner Guthrie and Office of Domestic Marketing and Promotions (ODMP) staff participated in the Southern Piedmont Agricultural Research and Extension Center (SPAREC) Field Day. Commissioner Guthrie was the featured speaker, and the event included concurrent tours of tobacco and forage research. Tours included visits to research plots showcasing variety and disease trials. There were 110 participants, including producers, industry representatives, and other stakeholders. Prior to the tour, ODMP staff also participated in the SPAREC Leadership Council meeting, which included the introduction of and a discussion with the new director of SPAREC and the new station pathologist.

In August, OAFD staff facilitated an event at Seven Hills Abattoir in the City of Lynchburg to help key stakeholders learn more about the company's plans for growth and to explore the untapped potential to strengthen the resilience and performance of the Commonwealth's meat processing infrastructure. There were 22 people in attendance, including Secretary Lohr; Commissioner Guthrie; VDACS staff; and representatives of the Virginia Farm Bureau Federation (VFBF), Virginia Tobacco Commission, Virginia Cooperative Extension (VCE), Virginia Cattlemen's Association, and the City of Lynchburg. Following lunch, which was catered by a local restaurant that purchases Seven Hills beef, Seven Hills Owner Ryan Ford and Vice-President Dalton Mosser led a tour of the slaughter and processing facility, providing a detailed breakdown of the operational procedures they have implemented to maintain a remarkably efficient and effective level of productivity. After the tour, Ford and Mosser gave a presentation on the history and current state of the company, focusing on the challenges that prevent them from significantly increasing their purchases of Virginia cattle and thus providing more beef to consumers throughout Virginia and the region. This meeting sparked an interagency effort to identify avenues for supporting the future growth of Seven Hills and provided tremendous insight for VDACS staff as it works to draft the legislatively-mandated five-year strategic plan to improve meat processing capacity in the Commonwealth.

In August, Commissioner Guthrie was accompanied by the VDACS Communications Director, the Deputy Director of Marketing, and VDACS staff to a flue-cured tobacco farm in Brunswick County where the Commissioner recorded a video directed to China Tobacco International (CTI). The video was requested by the North Carolina Commissioner of Agriculture and Consumer Services on behalf of CTI to demonstrate support from flue-cured tobacco-producing states for China as a major export destination for U.S. tobacco leaf.

In August, Secretary Lohr and Chief Deputy Secretary of Agriculture and Forestry Slaybaugh joined Commissioner Guthrie, Deputy Commissioner Green and other VDACS staff to meet with

representatives of the Joint Legislative Audit and Review Committee (JLARC) to discuss their upcoming review of the AFID Facilities Grant Program. This is one of nine economic development incentive programs that JLARC will be reviewing this year, including the Commonwealth Opportunity Fund and four other programs administered by VEDP. OAFD staff prepared responses to questions submitted by JLARC about the program prior to the meeting, which JLARC indicated was helpful. Additional information requested by JLARC during the meeting, which OAFD staff is preparing, is a summary of all awards to date and examples of the detailed purchase commitments that grant recipients agree to as part of the AFID award process. From JLARC's description of their planned process and report, it appears the primary focus of the review will be on the program's history, design, awards, and overall effectiveness of program dollars from the viewpoint of taxpayers and policy makers.

In September, agency staff participated in the Virginia State University Field Day at Randolph Farm in Petersburg. This event is an opportunity to explore the Randolph Farm's 416 acres and learn from leading experts about the latest techniques and trends for small-scale, limited resource farmers and ranchers. It also provides attendees an opportunity to meet with and learn more about the state and federal agencies supporting agriculture. Agency staff was on hand at various exhibit tables to provide information on agency activities and services. There were over 500 people in attendance.

In September, Commissioner Guthrie participated in the Cannabis Public Health Advisory Council Meeting. The purpose of the Advisory Council is to assess and monitor public health issues, trends, and impacts related to cannabis and cannabis legalization and make recommendations regarding health warnings; retail cannabis product safety; and public health awareness, programming, and related resource needs. Commissioner Guthrie was able to offer guidance and expertise regarding the VDACS enforcement of hemp and THC related products in food establishments.

In September, Commissioner Guthrie offered remarks at the Kentland Farm Field Day hosted by the Virginia Tech College of Agriculture and Life Sciences and VCE. His remarks focused on the collaborative partnerships between VDACS and the hosting organizations as well as job opportunities at VDACS. The event highlighted research at Kentland Farm and offered a variety of workshops and demonstrations related to horticulture, integrated pest management, agroforestry, and small scale vegetable production, among others. There were approximately 200 attendees.

In September, Commissioner Guthrie joined Secretary Lohr to speak at the Virginia Forest Products Association (VFPA) Annual Convention in Virginia Beach. The VFPA is a non-profit, non-governmental, privately supported association of individual, firms, and corporations seeking to nourish the Commonwealth of Virginia's lumber and forest products industry. The convention featured updates from the VFPA, state agencies, and relevant associations as well as national economic forecasts and trends. There were approximately 150 attendees.

In September, Commissioner Guthrie accompanied staff from the Virginia Marine Products Board to Omega Protein in Reedville to learn more about its fish processing operation and tour the facility. Commissioner Guthrie met with company officials and participated in a company presentation. Omega Protein is Northumberland County's largest private employer. The company specializes in the production of omega-3 rich fish oil, protein-rich specialty fishmeal, and organic fish solubles for livestock and aquaculture feed manufacturers.

In September, Commissioner Guthrie and Division of Commodity Services staff participated in an "Open Barn Event" at a new cattle feeding barn in Halifax County. The facility is the first of its kind in the area, and the first cattle group was sold in early August through a Central Virginia Cattlemen's Association sale in Lancaster, Pennsylvania. The event provided educational and networking opportunities for livestock producers and industry leaders.

In September, Commissioner Guthrie and Deputy Commissioner Green participated in a meeting of the National Association of State Departments of Agriculture (NASDA) in Saratoga Springs, New York. The conference also included meetings of the Southern Association of State Departments of Agriculture (SASDA) and the Southern U.S. Trade Association (SUSTA), of which VDACS is a member. Commissioner Guthrie serves as Secretary/Treasurer of SUSTA, and Deputy Commissioner Green sits on SUSTA's Operations Committee. The conference included important meetings with federal leadership teams from USDA and the Food and Drug Administration (FDA) on items including avian influenza response, a national response strategy for Spotted Lanternfly, and state administration of the federal Produce Safety Rule. The NASDA membership updated several policy positions, and Commissioner Guthrie was interviewed by RFD TV regarding Virginia's strategy to attract investment in CEA projects.

In September and October, VDACS staff participated in a variety of activities in support of the State Fair of Virginia (Fair). Commissioner Guthrie and the VDACS Director of Communications visited the Fair to present a honey month proclamation to the Virginia State Beekeepers Association and to meet with commodity associations. VDACS staff accompanied Governor Youngkin, Secretary Lohr, and local elected officials during their visit to the Fair. VDACS Communications Office staff photographed the visit and shared the images on the agency's social media channels. Office of Veterinary Services (OVS) staff assisted with the verification of health requirements for breeding sheep, poultry, and youth livestock (cattle, sheep, goats, and hogs) being exhibited at the Fair. Office of Plant Industry Services (OPIS) staff set up an exhibit at the Fair that provides outreach and educational materials on invasive plant pests, including a display board with pictures of plant pests such as the spongy moth, spotted lanternfly, imported fire ants, and Asian longhorned beetle. In addition, educational identification guides will be provided as well as information on how VDACS manages invasive plant pests and the role of Virginia citizens in managing invasive plant pests.

In October, in celebration of Virginia Farm to School Week, Secretary Lohr, Chief Deputy Secretary Slaybaugh, Deputy Secretary of Agriculture and Forestry Green, Commissioner Guthrie, Deputy Commissioner Green, and VDACS staff participated 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. The Director of the Office of Communications recorded a video of Commissioner Guthrie and VDACS staff participating in this event and posted this video and a video recorded by the Secretary of Agriculture and Forestry's Office on VDACS social media platforms.

In October, Commissioner Guthrie and Deputy Commissioner Green travelled to Mexico to participate in the Tri-National Agricultural Accord meeting in Saltillo, Mexico. 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. One of the main areas of dispute between the countries is a Mexican presidential decree that could ban importation to and use of genetically modified crops in Mexico. Mexican authorities have already blocked the importation of certain seed technologies under this directive. The larger concern is that Mexico is the largest export market for U.S. corn, a commodity that consists of primarily genetically engineered varieties. The strict implementation of this decree could significantly harm the U.S. agriculture industry and destabilize Mexico's economy. While in Saltillo, Commissioner Guthrie also visited a technical university that has a metrology degree program that is graduating bilingual students. The VDACS Office of Weights and Measures includes a metrology laboratory, and finding persons technically trained in metrology is a challenge. The university leaders invited Commissioner Guthrie to tour the school to learn about the program and the international internship opportunities that the school has supported for its students. Prior to the meeting, the Latin America trade representative met Commissioner Guthrie and Deputy Commissioner Green in Monterrey, Mexico, for a tour of Mexican retailers. In Saltillo, the trade representative continued the retail tour with a visit to a wholesale market and a traditional market. During the visit, Commissioner Guthrie and Deputy Commissioner Green were able to speak to warehouse owners and growers to better understand the Mexican market. The trade representative attended open meetings during the Tri-National Agricultural Accord meeting, while closed meetings were attended by the Commissioner and the Deputy Commissioner.

In October, Commissioner Guthrie and OAFD staff participated in the 2022 Governor's Summit on Rural Prosperity in the Town of Smithfield, which was hosted by the Center for Rural Virginia. The event featured comments from Lieutenant Governor Sears, Secretary Lohr, and many other members of the Youngkin administration. Additional speakers included elected officials and leaders in rural development.

Division of Marketing

In October, OAFD, in partnership with the counties of Goochland and Powhatan, hosted the 2022 Maryland-Virginia Agriculture Development Conference, which brings together economic development professionals working in agriculture and forestry from both states to network and learn from each other about common issues, best practices, and problem solving. Participants included members of the OAFD-led Virginia Agricultural Development Officers group and counterparts from counties across Maryland as well as representatives from the Maryland Agricultural & Resource-Based Industry Development Corporation and the Southern Maryland Agricultural Development Commission. This year's event included visits to operations in Goochland and Powhatan of various sizes and business models, including Manakintowne Specialty Growers, Greenswell Growers, Chadwick & Son Orchids, Shalom Farms, and the Virginia Department of Corrections' State Farm. The group also engaged in three lengthy presentations and discussions on the development of meat processing facilities, H2A and H2B migrant worker programs, and the creation and management of farmers' markets. Commissioner Guthrie participated in the event, bringing crucial agency perspective and support to the conference activities. This conference has convened annually since 2011; this year, more than 50 individuals participated. The 2023 meeting of this group will take place next fall in Cecil County, Maryland.

In August, ODMP staff participated in and exhibited at the 2022 Virginia Ag Expo at Mill Creek Farm and Camden in Port Royal. The Virginia Agricultural Expo is the largest agricultural field day in the Commonwealth. Farmers and agribusiness look forward to this annual educational, marketing, and research event. ODMP staff served on the Ag Expo planning committee for the 2022 event. ODMP also assisted with the setup of five booth spaces for VDACS staff to exhibit within, including Virginia Grown, Virginia's Finest, Pesticide Services, the Governor's AFID Fund, and U.S. Department of Agriculture (USDA) Ag Statistics. Staff spoke with farmers from all over the Commonwealth about the agency and what VDACS has to offer to help farmers succeed and care for their crops. Staff shared growing season information with new farmers and handed out flyers about the Virginia Grown program and the benefits of registering your farm online through the agency. Staff also answered questions about agritourism, growing seasons, and what the agency can do to help the agricultural industry progress and succeed.

In July, August, September, and October, ODMP staff participated in the following 11 agriculture promotional, marketing, and educational events: South Carolina Tobacco Tour in Sumter, South Carolina; the North Carolina (NC) State Fiber Hemp Field Day in Salisbury, NC; the NC State Tobacco Field Day in Kingston, NC; the Virginia Nursery and Landscape Association Field Day in Broad Run; the Virginia State University Agriculture Field Day; Ag Market Network Monthly Cotton Conference; the Southern Piedmont AREC Field Day; Southside's Pittsylvania County Soil and Water District Ag Day; the United States Tobacco Grower Networking Event and Panel Discussion in Raleigh, NC; the Virginia Tech "Virginia Loves Ag Event"; and the International Fresh Produce Association's "Global Produce and Floral Show" in Orlando, Florida.

From July - October, ODMP staff worked with the Virginia Department of the Aging and Rehabilitative Services and Virginia farmers to support the 2022 Senior Farmers' Market Nutrition Program WIC (SFMNP/WIC) Nutrition Program. ODMP staff worked to approve 195 farmers for the program. Through October, participants have redeemed \$287,060 in coupons with the participating farmers. The SFMNP/WIC is designed to provide access to locally grown fruits, vegetables, honey, and herbs to low-income seniors and women with infant children.

On August 25, 2022, the Division of Marketing received an award acceptance letter from USDA regarding the 2022 round of Specialty Crop Block Grant Funding. This year's federal Farm Bill funding was approved at \$614,225 and includes eight projects that began October 1, 2022. The projects and grantees are as follows:

- Evaluate Plant Activators and Enzymes in Control of Fire Blight Inoculum Using Droplet Digital PCR (Virginia Tech)
- Evaluating Specialty Pumpkin Production and Postharvest Treatments for Shelf-Life Extension in Virginia (Virginia Tech and VCE)
- Developing Aromatic Snacking Pepper Cultivars Suitable for Vertical Agriculture (Virginia Tech)
- Field Pea Production for Virginia: An Emerging Market? (Virginia Tech)
- A New Way of Growing and Utilizing Blackberry: from Farms to Bottles (Virginia Tech)
- Investigating Adjacent Land-use Risks to Improve Good Agricultural Practices (Virginia Tech)

- A Flavor and Shelf-life Focused Study of Virginia Cherry Tomatoes from Field and Indoor Facilities (Virginia Tech)
- Increasing Market Access for Virginia Growers: Grower/Buyer Opportunities and Food Safety Recordkeeping App (Local Food Hub)

In August, ODMP and the Office of International Marketing (OIM) hosted a U.S. Soybean Export Council mission of 15 buyers from Morocco, Algeria, and Tunisia. Meetings were arranged with Perdue (Chesapeake), the Port of Virginia (Norfolk), and Land of Promise Farms (Virginia Beach). During discussions with the buyers, staff learned that there is an immediate need for wheat exports in North Africa and that several of the buyers may be looking to buy soybeans, wheat, and possibly soy hull pellets in the upcoming year.

In October, the Latin America trade representatives participated in the U.S. Apple Export Council Reverse Trade Mission for fresh produce importers. The trade mission began on October 3 in Grand Rapids, Michigan, and ended in Virginia. The group included importers from Colombia, Honduras, Costa Rica, and Dominican Republic. While in Virginia, the delegation visited Crown Orchards (Covesville) and Glaize Apples (Winchester) to see packed apples ready for shipment. Crown Orchards and Glaize Apples are two of Virginia's leading apple growing and packing companies.

In September, OIM, the Virginia Cattlemen's Association, and TK Exports (Culpeper) hosted the first-ever beef cattle delegation from Kazakhstan to Virginia. The trade mission included farm tours, graded cattle sales, and visits to processing facilities. Office of Veterinary Services (OVS) staff conducted a tour of the Harrisonburg Regional Animal Health Laboratory for the delegation on September 20. While at the Harrisonburg RAHL, the group spoke with OVS staff and a representative from the Virginia Beef Council regarding livestock traceability. The delegation was made up of Kazakhstani buyers that own cattle farms ranging from 500 to 1,600 head. OIM staff recorded videos throughout the trade mission, which was featured on VDACS social media channels.

In September, the China trade representatives exhibited in VDACS-sponsored booth space on behalf of Virginia companies at the Restaurant & Bar show (RBHK) in Hong Kong. RBHK is one of the most established food and hospitality exhibitions in the Hong Kong region, attracting importers, distributors, retailers, foodservice operators, and other food professionals from local food and beverage industries. The VDACS booth was decorated with samples from participating Virginia companies, and a promotional video about Virginia whiskey spotlighting Copper Fox Distillery (Williamsburg) was highlighted. During the show, the trade representatives offered samples to visitors for tasting and handed out brochures for Virginia products, including seafood, spirits, wine, and peanuts. The Agriculture Trade Office (ATO) Hong Kong also organized tasting sessions at its RBHK booth to promote U.S. products, including Virginia products. Representatives of Virginia companies were unable to travel to Hong Kong to participate due to pandemic-related travel restrictions. Copper Fox whiskey has generated over \$50,000 in related sales since the show.

In October, VDACS sponsored booth space at Vietnam Wood, the leading trade exhibition for the wood working industry in Asia. J.L. Gardner Hardwoods (Rocky Mount), BOSS Lumber (Galax), and Teal-Jones (Martinsville) exhibited in the VDACS booth space. The Turman Group (Christiansburg) also participated in the show and utilized funding from the Southern United States Trade Association's (SUSTA) 50 percent CostShare program. The Southeast Asia trade representatives worked with the OIM

team on the design and graphics of the VDACS booth for the show, provided interpretation services, and introduced the participating Virginia companies to new buyers. As a result of participation in the show, Boss Lumber reported that it had established new business with an importer that VDACS initially introduced the company to in 2019. During the show, the importer agreed to purchase two containers of lumber each month moving forward.

In October, Secretary Lohr, the Director of the Division of Marketing, and OIM staff were in Paris, France, for SIAL Paris, one of the most attended trade shows in the world. Occurring every two years, SIAL Paris attracts over 310,000 visitors from not only the European Union, but also from the rest of Europe, the Middle East, Africa, and Asia. VDACS sponsored a Virginia pavilion at the show that featured exhibits from four Virginia companies [PastryBase (Richmond), Sly Clyde Ciderworks (Hampton), Reservoir Distillery (Richmond), and Clark + Hopkins (Richmond)]. Secretary Lohr and the Marketing Director participated in events during the show with the U.S. Ambassador to France, Denise Bauer, and USDA in support of Virginia agriculture. Activities included a reception featuring Virginia products at the Ambassador's residence that was attended by 500 guests who were also attending the show. Additionally, a tree planting ceremony took place at the Ambassador's residence to celebrate and commemorate the connections between France, Thomas Jefferson, and food and agriculture in the Commonwealth of Virginia. Several dignitaries attended the ceremony, including a senator from France and other government officials from both the U.S. and France.

The Office of Food Distribution received \$6.2 million of funding from the USDA Local Food Purchase Assistance grant. These funds have been awarded to seven agencies who will procure foods from local sources, focusing on socially disadvantaged farmers and vendors. The foods will be distributed to food insecure individuals. The seven agencies receiving the funding are: 4P Foods (Warrenton), Lulu's Local Foods (Richmond), Appalachian Sustainable Development (Scott County), Vine & Fig (Harrisonburg), Northside Food Access Coalition (Richmond), Black Farmers Black Communities Action Plan, and Virginia Community Food Connections (Fredericksburg).

Since July, Market News compiled feeder cattle price data for the Eastern Virginia Cattlemen's Association (Association). The Association requested information on state graded feeder cattle prices from sales at the Culpeper Ag Enterprise sale barn during 2022. Information on feeder cattle sales from Lynchburg, Marshall, and Radiant was also requested to compare prices at each location. In addition, Market News provided price data for on-farm, weaned, and vaccinated cattle to help the Association evaluate price differences for value-added cattle.

Since July, Market News reported shipping point prices for Virginia pumpkins. Prices were reported weekly and helped promote Virginia pumpkins by appearing in *The Packer* magazine and the USDA's National Trend Report. In addition, pumpkin prices were updated weekly on the Market News Hotline as a source of information for growers. Initial reports from growers indicated that supplies were considerably lower than usual due to poor weather conditions. The pumpkin crop faced extremely high temperatures early in the season, which affected pollination, followed by excessive rainfall later in the season. In addition to having a smaller size crop, growers faced higher costs for fertilizer, bins, pallets, and labor.

Market News continues to publish the *Cattle & Crops* and the *Virginia Ag Brief* newsletters on a weekly basis. *Cattle & Crops* provides prices and summary information from Virginia livestock

auctions and state-graded sales. Also included are Virginia grain prices as well as national production and supply reports of interest to Virginia producers. *Virginia Ag Brief* contains a weekly summary of Virginia livestock and grain prices and is distributed to print and broadcast media throughout the state. The broadcast version is sent to 25 radio stations, and the print version is emailed to 40 newspapers throughout the Commonwealth. Market News also continues to publish the *Retail Farmers' Markets* publication and an online version of the *Hay Clearing House* newsletter. *Retail Farmers' Markets* serves as a valuable source of price information for Virginia producers and also helps promote the availability of locally grown produce and meat to potential buyers. In an effort to promote individual markets, each participating market has its own listing that includes information on locations, times, website links, and contact information as well as product availability and prices. *Hay Clearing House* serves as a tool to bring together buyers and sellers of hay and is particularly effective in helping livestock producers locate hay during times of shortages. *Hay Clearing House* includes listings of hay sellers and buyers and also has a section with historical hay prices from the Rushville hay auction. Market News continues to receive compliments from producers who report that the *Hay Clearing House* newsletter is the primary marketing tool they use to sell hay.

Division of Commodity Services (DCS)

Since July 20, Division of Commodity Services (DCS) Staff:

- Conducted Terminal Market and Shipping Point Inspections on 3,204,240 pounds of fresh fruits and vegetables and Processed Food Inspections on 4,303,003 pounds of processed products;
- Performed 40 Good Agricultural Practices (GAP) Audits and 57 Country of Origin Labeling (COOL) store inspections;
- Inspected and certified grain commodities, including soybeans, corn, wheat, soybean meal, and soybean hull pellets with a total value of more than \$312 million destined for 22 countries;
- Conducted two wheat inspection workshop and one corn/soybean workshop for two grain dealers. Visited 46 grain dealers to ensure they are in compliance with the Virginia Grain Law;
- Provided livestock evaluation services to producers on approximately 67,316 cattle, 1,209 lambs/goats, and 488 head of junior market livestock and graded 665 beef carcasses;
- Inspected and certified approximately 196,566,282 pounds of Farmers' Stock peanuts and regrades, approximately 84,338,849 pounds of shelled and in-shell milled peanuts, and 10,210,983 pounds of imported peanuts from Argentina;
- Analyzed approximately 2,420 samples of peanuts for the presence and levels of aflatoxin to determine if the peanuts were safe for human consumption;
- Certified 11,264,109 pounds of various poultry parts for the USDA Feeding Program for School Lunch Products;

- Graded, via contracted full-time grading services, 150,564,401 pounds of chicken and 59,070,069 pounds of turkey for the Virginia poultry and egg industry;
- Provided non-contract fee grading and certification services for 5,607,355 pounds of poultry based on U.S. Consumer Grades to fulfill necessary specifications and contract requirements for the Virginia poultry and egg industry;
- Performed four USDA Food Defense Audits and one Child Nutrition Review; and
- Conducted one United Egg Producers (UEP) Animal Husbandry Audit (Poultry & Egg Services).

DCS participated in local, regional, and statewide meetings and events, including:

- Virginia Cattle Industry Board Meeting
- Dublin Feeder Cattle Association Meeting
- Abingdon Feeder Cattle Association Annual Meeting
- Buckingham County Cattlemen's Meeting
- Virginia Cattlemen's Membership Update Meeting
- Rockbridge Cattlemen's Association Field Day
- Scott County Cattlemen's Field Day
- Monterey Stockyard Customer Appreciation
- ABS Heifer Development Meeting
- Campbell/Bedford Beef Producers Meeting
- Tri-State Beef Conference
- Culpeper 4-H Lamb Grading Demonstration; Virginia Ram Test and Field Day
- Russell County Fair – Youth Stockman's Contest
- PA Buyers Tour with Dublin Cattlemen's Association
- Cattle Health & Marketing Strategies Workshop – Tappahannock

Division of Animal and Food Industry Services (AFIS)

In July, Office of Veterinary Services (OVS) staff participated in a hands-on training offered by the Swine Medicine Education Center at Iowa State University through the National Animal Disease Preparedness and Response Program. The training included an overview of modern swine production facilities, biosecurity practices, industry movements, animal restraint, euthanasia, and sample collection from swine.

In September, OVS staff attended the USDA Foreign Animal Disease Diagnostician training at the Plum Island Animal Research Center in Plum Island, New York. This training will qualify OVS staff to investigate unknown disease events or outbreaks. Diseases currently foreign to U.S. livestock were studied and observed in detail during this training.

In October, OVS staff exhibited at and participated in the Virginia Animal Control Association (VACA) Annual Conference. This conference provided 15 hours of approved additional training for Virginia

animal control officers. The OVS Animal Care Veterinary Supervisor, Richmond Staff Veterinarian, and the OVS Animal Care Inspector Senior provided a two-hour instructional session during the conference.

In October, the State Veterinarian, the OVS Program Manager, and the Office of Laboratory Services Program Manager attended the U.S. Animal Health Association (USAHA) meeting in Minneapolis, Minnesota. This is a meeting of national state animal health officials. Issues discussed included highly pathogenic avian influenza, scrapie, theileria, and many other diseases affecting cattle, equine, poultry, sheep, and goats. The American Association of Veterinary Laboratory Diagnosticians also held its annual meeting as part of the USAHA conference. That meeting focused on laboratory activities, including quality, management, and testing.

The Office of Meat and Poultry Services (OMPS) continues to work with new facilities that have applied for and received grant funding in state and federal establishments. The Virginia State University (VSU) mobile slaughter and processing unit has begun operations. OMPS is working with Dr. O'Brian to ensure the implementation of procedures and regulations are carried out as smoothly as possible. The traveling unit has provided slaughter and processing services for a local farm in Mechanicsville. Use of the mobile unit will allow farmers to wholesale products to restaurants and grocery stores, sell meat at farmers' markets, and sell directly to individual customers.

Meat processing establishments that have received grant funding are still struggling with contractors, equipment suppliers, and local government regulations. Several new and existing establishments have expressed concerns regarding the removal of their inedible materials. Valley Protein (rendering company) recently sold its business to Darling Ingredients Company. Darling has limited the number of pickups from facilities and is restricting what materials it will accept. This is making it difficult for establishments to remove inedible materials from their premises. Some facilities are taking the inedible materials to local landfills. Others return the inedible materials to the animal owners for on farm disposal. Not all counties permit disposal of inedible materials at landfills. There is also a shortage of individuals with inedible hauler permits available to take materials to landfills. A few inspected operators have expressed that they will stop operations if they cannot find a way to dispose of the inedible materials.

Gunnoe's Sausage has notified OMPS that, effective November 4, 2022, it has sold its brand to Logan Foods, a federal plant in Alexandria. Logan Foods will continue to produce and sell the brand. Gunnoe's has been in operation since 1965 as a family owned and operated establishment.

OMPS receives daily inquiries on the requirements to obtain a grant of inspection to provide slaughter and processing services within Virginia. Several custom slaughter facilities have expressed interest in obtaining grants of inspection. Providing inspections at new establishments could be hindered by the difficulties OMPS has experienced in hiring new employees. The cattle industry also continues to report challenges with hiring and retaining employees at their facilities.

During the months of June, July, August, and September, the Office of Dairy and Foods (ODF) Dairy Services Program (DSP) conducted 525 inspections of Grade "A" and manufactured-grade dairy farms and 91 cheese and ice cream manufacturing plant inspections. To ensure compliance with Virginia's regulatory standards, program staff collected 1,475 milk samples from Virginia Grade "A" dairy farms. An additional 461 cheese and frozen dessert samples were collected to determine compliance with

current dairy laws and regulations. Dairy inspectors also performed 2,357 extensive phone discussions with producers and physical on-farm visits to review construction of dairy facilities and the installation of milking equipment and other related items and to offer advice and assistance to dairy farmers and manufactured milk processors.

In June, DSP secured \$17,614 in grant funding from the Association of Food and Drug Officials (AFDO), supported by FDA, to assist the Office of Laboratory Services in the purchase of upgraded laboratory equipment needed to perform regulatory sampling and testing functions of DSP.

The ODF Produce Safety Program (PSP) is continuing to conduct inspections of farms covered by the federal Produce Safety Rule. PSP has also continued to pursue the location and inspection of additional farms that are not yet part of its inspection inventory. There are currently 281 covered produce farms that are part of the program's inspection inventory (which includes large, small, and very small farms) with another 672 in PSP's database that are exempt (micro exempt, qualified exempt, rarely consumed raw exempt, and processing exempt) from the Produce Safety Rule. PSP inspectors have been working to verify farm data in their respective territories.

In July, PSP launched a new voluntary farm registration and exemption application portal. This web-based portal was designed using \$54,800 in federal grant funding from a no-cost extension received from FDA in May 2021. Farms currently in the database will be able to update their farm registration information and farm demographics and print a newly implemented certificate of registration. This certificate will also feature the newly designed VA Grown logo, and farm registration information will be shared with the VA Grown Program to mutually benefit both the regulatory and marketing/promotions functions of the agency. The certificates can be used by produce farmers to gain entry into new retail marketplaces, farmers' markets, and food service establishments. VDACS anticipates that this partnership will have a positive impact on sales of local produce as well as promote the regulatory partnership and future information sharing capabilities between farmers and government. VDACS issued a press release about the new portal at the end of August, and it was picked up and shared by the Virginia Farm Bureau Federation as well as Morning Ag Clips for the Delmarva region. A radio interview about the portal was conducted as a Spotlight on Ag feature with the Harrisonburg Radio Group in September.

The ODF Food Safety Program (FSP) participates in economic development activities with persons interested in selling food products in Virginia by reviewing new food business proposals and assisting in the development of safe food processes. From June through October, FSP performed the inspections necessary to open 305 new food businesses. A total of 622 hours were spent working with vendors to open these firms. FSP has an inventory of 13,092 firms under inspection. Thirty-one (31) Food Safety Specialists, four Food Safety Technical Specialists, and four Field Supervisors are responsible for the regulatory oversight of these firms.

FSP also works to ensure that food and dietary supplements manufactured, processed, stored, and sold in Virginia are safe, wholesome, and properly labeled. From June through October, FSP conducted 4,840 inspections of food establishments (which includes retail food stores, food manufacturers, and food warehouses), investigated 204 consumer complaints, and collected 344 food samples.

FSP received a Letter of Award from FDA for continued funding (\$455,000) for the fifth budget year (2022-2023) of FDA's Flexible Funding Grant, which includes aiding FSP to continue to be in full conformance with the Manufactured Food Regulatory Program Standards and maintaining the Virginia Rapid Response Team and Virginia Food Safety Task Force. FSP was also awarded an annual contract with FDA for \$343,363 to conduct 253 inspections on FDA's behalf in September 2022-August 2023 at food manufacturers and food warehouses in Virginia.

On June 30, FSP sent an electronic communication to over 13,000 food manufacturers and retail food establishments in Virginia to alert them that certain products intended for human consumption and that contain cannabinoids may be considered adulterated if such products contain an ingredient that is not approved as a food pursuant to the Virginia Food and Drink Law or are not manufactured in a facility that is under inspection in accordance with the Law. Since July 1, FSP staff have performed more than 3,726 inspections and visits and have educated food manufacturers and retail food establishments on the communication that was emailed and provided them with an educational handout to encourage voluntary compliance. During these visits, most businesses that were selling food products that appeared to contain cannabinoids in violation of the Law voluntarily removed the food products in question from sale. During these inspections and visits, 246 firms were found to be offering for sale non-complaint delta-8 tetrahydrocannabinol ingestible products. Follow up inspections were conducted at these firms to ensure that these products were removed from sale. FSP is proceeding through the compliance and enforcement process with the few firms that did not remove these products from sale when FSP conducted follow up inspections.

In July, the Office of Laboratory Services (OLS) Program Manager and OLS staff traveled to Philadelphia, Pennsylvania, for the 2022 Annual meeting of the American Association of Avian Pathologists Meeting. The meeting was comprised of a mix of industry personnel, state and government officials, allied representatives, veterinarians, and academic researchers. The OLS Program Manager delivered a presentation regarding vaccination for *Ornithobacterium rhinotracheale* as a collaborative effort with commercial turkey companies. The OLS Poultry Diagnostician presented a poster on the prevalence of disease in backyard poultry populations. The meeting constituted over 30 hours of continuing education specific to poultry health and management.

In August, OLS staff traveled to Ames, Iowa, to participate in National Animal Health Laboratory Network (NAHLN) Quality Management training. This course focuses on specific training and information related to the ISO 17025 quality standards, which apply to both American Association of Veterinary Laboratory Diagnosticians and A2LA accreditation. The laboratory system follows these standards, so specific training regarding application to a veterinary diagnostic lab is crucial for accreditation purposes. Participation in these courses also contributes to the annual NAHLN assessment for grant funding.

In August, FDA established the Harrisonburg Regional Animal Health Laboratory (RAHL) as Virginia's FDA "Central Laboratory." The Wytheville RAHL previously served as the central laboratory for dairy testing purposes. With this change, the Harrisonburg RAHL will assume all responsibility for overseeing proficiency testing of all Virginia Appendix N laboratories as part of the dairy certification program. Additionally, the FDA visit served as a final certification for the transfer of the Laboratory Evaluation Officer positions to two individuals out of the Harrisonburg Laboratory.

These two LEOs will serve as the auditors and subject matter experts for laboratories running dairy testing throughout the Commonwealth.

In September, the OLS Laboratory System had its biennial A2LA accreditation audits. Every two years, auditors come on site to evaluate the testing at each laboratory that is “on scope” for the A2LA accreditation standard. Each laboratory in the system has between 10 and 14 tests on this scope that must be audited. The audit includes evaluation of the testing procedure, confirmation, sample traceability, quality control, and analyst training records. This year, the OLS Regional labs are moving to a “system” A2LA accreditation under one single quality system to include system policies and scope.

Tests Performed at VDACS Regional Animal Health Laboratories Since July 2022	
Bacteriology	3,427
Dairy Microbiology	2,934
Food Safety	1,050
Hematology/Clinical Pathology	468
Mammalian Serology	7,207
Molecular Testing	3,258
Parasitology	1,076
Pathology	1,170
Poultry Serology	41,685
Virology	65
Water Testing	376
Total Lab Tests Conducted	62,716

In November, the RRT Coordinator and VDACS staff participated in the Virginia Food Emergency Response Plan (FERP) Exercise at the Virginia Emergency Operations Center. The exercise included participants from across the Richmond metro area, including the Virginia Rapid Response Team, Virginia Department of Health, Division of Consolidated Services, Virginia Department of Emergency Management, Fusion Center, and Hospital Coalition Network, and the U.S. Food and Drug Administration (FDA) Baltimore-District Emergency Response Coordinator. The exercise involved activation of the Virginia FERP, which would be used to assist with coordination and communication during a Food Emergency Response. Evaluators, including ODF staff, observed the discussion and presented the planning team with areas for improvement.

Division of Consumer Protection (DCP)

In October and November, the Office of Charitable and Regulatory Programs (OCRP) conducted seven regional charitable gaming training sessions across the Commonwealth to provide charitable gaming license holders an overview of recent legislative changes impacting the industry along with information on completing the revised financial reports. In total, there were 505 individuals who attended the seven training sessions.

In August, Office of Pesticide Services (OPS) staff attended a meeting hosted by Grayson County officials to hear the concerns of Preserve Grayson, a citizen group, as they relate to Christmas tree production in Grayson County. Concerns focused on the impacts of the Christmas tree industry in Grayson County, which includes large scale burning to clear acreage for planting; impacts of deforestation, including erosion and runoff; and potential adverse impacts to human health and the environment from the application of pesticides. The meeting focused primarily on pesticides and what Preserve Grayson believes to be the misapplication of pesticides by both the Christmas tree producers and pest control firms contracted by producers. Staff provided general information regarding the regulation of pesticides, certification, and licensing requirements and answered specific questions, including the process for submitting a complaint.

In August, OPS staff held the initial meeting with Everblue (JCN Partners) to begin the planning for the addition of remote testing as an option for prospective pesticide applicators. Currently, prospective applicators can take certification exams at Department of Motor Vehicles Customer Service Centers or during proctored testing events conducted by OPS staff. Remote testing will allow prospective applicators to take the exam at any time. Prospective applicators selecting this option for testing will pay a service fee to the provider. Biweekly meetings are scheduled moving forward. It is anticipated the remote testing option will be available beginning January 2023.

Beginning October 1, OPS made its online pesticide applicator certification portal broadly available. Prospective and currently certified applicators now have the option to submit applications, change of information forms, and other certification related forms, including the payment of fees, via the online portal. All communications and correspondence resulting from online submissions will be conducted via the online system. Use of the online system is optional, and paper submissions will continue to be accepted. All submissions will continue to be processed chronologically regardless of submission method. OPS notified approximately 2,800 licensed businesses and other stakeholders, including VCE and professional associations of availability of the online portal.

In October, OPS staff participated in the Virginia Tech Hokie BugFest in Blacksburg. This event is open to the public and celebrates the science of entomology through outreach and engagement. OPS provided pesticide safety information to attendees and conducted activities for children. Other activities at the BugFest included the live Hokie BugZoo; crafts and games; insect collection contests; cricket tasting; a bug library; and exhibits from local museums, VCE, and community organizations. It is estimated that the event attracted approximately 4,000 attendees.

In October, OPS Enforcement staff participated in the annual U.S. Environmental Protection Agency (EPA) Region III Pesticide Inspectors Workshop. This year's workshop was hosted by the West Virginia's Department of Agriculture and held in Canaan Valley, West Virginia. This workshop provides training for state pesticide inspectors and investigators who work under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) cooperative agreement. The course is designed to promote cooperation, communication, and the exchange of ideas between and within with states and EPA. During the workshop, participants received training specific to situations that inspectors may encounter in the field. The workshop satisfied annual training requirements to maintain federal credentials. Federal credentials allow inspections to be conducted by the states on behalf of EPA. As part of the workshop, EPA presented annual awards for the inspector of the year and the inspection of

the year. OPS Investigator Debbie Brown was awarded the Inspector of the Year. Inspectors and investigators attending the meeting were from Virginia, Maryland, Delaware, West Virginia, Pennsylvania, and the District of Columbia.

In October, OPS mailed pesticide product renewals to 1,594 registrants. Approximately 16,000 pesticide products are registered annually for use in Virginia. The Virginia Pesticide Control Act requires all pesticides that are used, offered for use, sold, or offered for sale, to be registered annually. Pesticide product registrations expire annually on December 31. Registrants have the option to utilize the new online system for pesticide product registration for both new and renewing products.

In October, EPA Region III conducted its required end-of-year evaluation for VDACS Pesticide Performance Partnership Grant. As part of the evaluation, EPA staff participated in a ride along inspection with OPS field staff to observe an inspection of a producer establishment and toured the Division of Consolidated Laboratory Services. EPA also reviewed OPS's accomplishments under the grant for fiscal year (FY) 2022 (July 1, 2021 – June 30, 2022). OPS met or exceeded its overall commitments, and no deficiencies were identified.

Staff from the Office of Weights and Measures (OWM) represented VDACS at the annual meeting of the National Conference on Weights and Measures (NCWM) held in Tacoma, Washington, July 10 - 14, 2022. The NCWM annual meeting provides an opportunity for member states, weights and measures officials, and industry stakeholders to consider and vote on proposed changes to national laws and regulations found in the National Institute of Standards and Technology (NIST) Handbook 44, Handbook 130, and Handbook 133. These handbooks have been adopted in the Code of Virginia for OWM to use as guidance in the performance of inspection activities. The items adopted for change to the handbooks will take effect upon publication, in January of 2023. During this meeting, the code in NIST Handbook 44 for Electric Vehicle Service Equipment (EVSE) (electric vehicle charging stations) was changed from a tentative status to a permanent status. The requirements for EVSEs will become effective when the new Handbook is published in January 2023.

In August, OWM staff was provided training from WinWam, which is the computer software used by OWM for business inspection activities. OWM recently upgraded its software to include a form designer feature, which will allow OWM to create forms in WinWam to replace the external forms used now for documentation for other information related to inspection activities. The target date for full implementation of the WinWam forms is January 1, 2023.

In September, the Metrology Laboratory received accreditation by the National Voluntary Laboratory Accreditation Program (NVLAP) for meeting the requirements of International Standard ISO/IEC 17025:2017. This accreditation is valid until September 30, 2023. The continued accreditation of the metrology laboratory is important to the customers it serves, demonstrating technical competence for a defined scope and the operation of a laboratory quality management system.

In October, OWM staff participated in the annual meeting of the Southern Weights and Measures Association (SWMA) in Raleigh, North Carolina. The SWMA annual meeting provides an opportunity for member states, weights and measures officials, and industry stakeholders to convene, consider, and vote on proposed changes to national laws and regulations found in the National Institute of Standards and Technology (NIST) Handbook 44 and Handbook 130. These handbooks have been adopted in the

Code of Virginia for OWM to use as guidance in the performance of inspection activities. One item discussed was the definition of, labeling of packages of, and method of sale of cannabis and cannabis-containing products for inclusion in Handbook 130, which will be published and presented to the National Conference of Weights and Measures Interim committees in January 2023 for discussion.

Since July 1, the Office of Plant Industry Services (OPIS) confirmed the presences of spotted lanternfly in several new localities. These localities include the independent cities of Radford and Roanoke, and the counties of Amherst, Arlington, Bedford, Caroline, Culpeper, Fairfax, Fauquier, Loudoun, Nelson, and Orange. Some locations do not represent existing populations but are instead regulatory incidents or one hitchhiking adult. OPIS staff have performed delimiting surveys and treatments at these locations in an effort to eradicate any populations found.

In July, OPIS staff presented information related to the recent spotted lanternfly (SLF) quarantine expansion and how it impacts businesses at a virtual industry stakeholder meeting hosted by the Virginia Vineyards Association and the Virginia Wineries Association. The presentation provided detailed information to winery and vineyard owners and managers in order to help them understand how the quarantine works and how they can comply with the quarantine. Topics presented included the biology of the insect, management options, the quarantine's impact on wineries and vineyards, preparing for SLF in vineyards, and utilizing local cooperative extension offices for SLF assistance. Virginia Tech and VCE staff also presented at this virtual meeting. There were approximately 60 participants representing wineries and vineyards from across Virginia.

Since August, OPIS staff participated on a spotted lanternfly strategic working group assembled by the National Association of State Departments of Agriculture (NASDA). The working group is led by USDA-Animal and Plant Health Inspection Service and is tasked with developing a strategic plan for the spotted lanternfly program. The strategic plan will address critical needs for states to handle and respond to the increasing spotted lanternfly problem. The anticipated completion of a strategic plan is tentatively scheduled for February 2023.

In July, OPIS staff received a report of a suspect invasive snail population in the Hampton area from VCE. OPIS staff responded and collected more than 30 snails from a homeowner that were suspected to be *Helix aspersa* or *Cornu aspersum*, commonly known as the European brown garden snail. The suspect snails were later confirmed by the USDA-APHIS National Identification Service as European brown garden snail. OPIS staff collected and destroyed all the snails. The European brown garden snail is considered a plant pest due to the snails' prolific reproduction and their feeding on a wide variety of plants, specifically agricultural crops.

In July, OPIS submitted funding requests in the amount of \$920,376 to USDA for grants through the Plant Protection Act Section (PPA) Section 7721 for the 2023-24 award year. The requested funding will support survey program activities for invasive plant pests, including the Spotted Lanternfly Survey, Treatment, and Outreach Program. Other work includes surveys for pests of grape commodities, the thousand cankers disease, forest pests such as the Asian longhorned beetle, and the fungal plant pathogen *Phytophthora ramorum*.

In August, OPIS staff received notification that the U.S. Fish and Wildlife Services (FWS) issued a Black Vulture Depredation Take Permit to VDACS. The permit will allow VDACS to issue sub-

permits to Virginia farmers, allowing them to kill black vultures that are causing damages to livestock. The black vulture depredation sub-permit program will be administered by VDACS in cooperation with USDA APHIS Wildlife Services (WS). The permit allows for a maximum of 1,000 vultures for the entire state of Virginia, and each farmer will be limited to taking five. As of November 7, 32 producers have been issued sub-permits.

In August, OPIS staff began work on the Virginia Cotton Boll Weevil survey program for the 2022 season. OPIS hires seasonal workers to set and monitor traps in or near cotton fields in Virginia to survey for the invasive and destructive cotton boll weevil. The cotton boll weevil has been eradicated from Virginia and the trapping program, which is funded by Virginia cotton producers, is critical to ensure that Virginia remains free of the cotton boll weevil. The estimated cotton acreage for the 2022 growing season is 88,000 acres.

In September, OPIS staff delivered a presentation to the Executive Board of the Virginia Nursery and Landscape Association regarding an invasive plants brochure that VDACS is developing pursuant to Chapter 289 of 2022 Acts of the Assembly. The brochure is to be developed by VDACS to explain the value of plant species native to the Commonwealth and the harm of noxious weeds and other invasive plants. The brochure will be made available to retail establishments that sell plants so that it can be copied and put on display at these establishments.

In October, OPIS received notification from USDA APHIS that samples of suspected imported fire ants taken in Nottoway and Prince George counties and two locations in the City of Richmond were confirmed positive. OPIS staff treated mounds at one of the Richmond locations and is developing a treatment plan for the second location, which is near open water. OPIS staff plans to survey and treat mounds in both Nottoway and Prince George within the next two weeks, provided that the weather holds at moderate temperatures. The detections in Nottoway and Prince George represent the first finds for each county, and OPIS will work to eradicate these populations.

The application period for the FY 2023 Beehive Distribution Program was October 26 – November 10, 2022. VDACS receives annual general fund appropriations in the amount of \$200,000 for the Beehive Distribution Program. The program provides equipment to individuals for the construction of new beehives. Recipients of the equipment will be randomly selected from eligible applications received during the application period. As of November 10, approximately 2,850 applications had been received.

In November, OPIS staff completed the 2022 National Karnal Bunt survey. The national survey for Karnal Bunt is administered by USDA-APHIS Plant Protection and Quarantine annually to identify areas in the U.S. that are free from Karnal Bunt. Karnal Bunt is a disease of wheat that impacts the quality of wheat where infections are present. The collective result from this survey allows wheat grown in the U.S. to be exported to other countries that consider Karnal Bunt a quarantined pest.

Project 6715 - Proposed

Department of Agriculture And Consumer Services

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

Chapter 105

Regulations Pertaining to Pet Shops Selling Dogs or Cats

2VAC5-105-10. Definitions.

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

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

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

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

2VAC5-105-20. Registration.

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

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

within which it must register with the department. If the pet shop fails to register with the department by the conclusion of the probationary period, the pet shop shall not sell dogs or cats in the Commonwealth of Virginia.

2VAC5-105-30. Sale limitations.

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

2VAC5-105-40. Standards of care.

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

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

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

D. Each pet shop shall ensure that dogs and cats are adequately and appropriately fed according to their age, and feed shall be stored in a manner that prevents spoilage, infestation,

and contamination. All feed delivery utensils and receptacles shall be properly cleaned between uses.

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

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

2VAC5-105-50. Inspection.

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

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

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

2VAC5-105-60. Compliance.

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

B. Upon gross, repeated violations or any noncompliance not corrected during a probationary period, the department may revoke a pet shop's registration following reasonable notice to the registration holder and an opportunity for an informal fact finding proceeding pursuant to § 2.2-4019 of the Code of Virginia. If the department revokes a pet shop's registration, the pet shop shall not sell dogs or cats in the Commonwealth of Virginia and must post publicly visible signage provided by the department. The revocation of registration shall remain in effect until the pet shop corrects the noncompliance to the satisfaction of the animal care inspector.

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

Project 7331

Department of Agriculture And Consumer Services

Chapter 205 Repeal Resulting from Periodic Review 2022

Chapter 205

Rules and Regulations Pertaining to Shooting Enclosures (REPEALED)

2VAC5-205-10. Definitions. (Repealed.)

~~"Accredited veterinarian" means a licensed veterinarian approved by the United States Department of Agriculture (USDA) and the State Veterinarian to perform functions required by cooperative state federal disease control and eradication programs.~~

~~"Approved laboratory" means a laboratory approved by USDA or the State Veterinarian to conduct official brucellosis, tuberculosis and pseudorabies tests.~~

~~"Brucellosis" means the contagious disease of livestock and other animals caused by the bacteria of the genus Brucella, also known as Bang's Disease.~~

~~"Brucellosis test" means any official test for the diagnosis of brucellosis approved by USDA and conducted in an approved laboratory.~~

~~"Certificate of veterinary inspection" means a written record of an animal's health status meeting the requirements of this chapter, executed on a form approved by the chief animal health official of an animal's state of origin.~~

~~"Pseudorabies" means the contagious, infectious, and communicable viral disease of livestock and other animals, also known as Aujeszky's disease, mad itch, or infectious bulbar paralysis.~~

~~"Pseudorabies test" means any official test for the diagnosis of pseudorabies approved by USDA conducted in an approved laboratory.~~

~~"Shooting enclosure" means a fenced area open commercially to the public where animals are held for the purpose of being shot.~~

~~"Tuberculin test" means any official test for the diagnosis of tuberculosis approved by USDA and performed by accredited veterinarians and approved laboratories.~~

~~"Tuberculosis" means the infectious disease caused by the pathogenic acid fast bacilli Mycobacterium bovis.~~

2VAC5-205-20. General provisions. (Repealed.)

~~A. Persons holding animals listed in subsection G of this section in Virginia for the purpose of recreational shooting must make application for and obtain an annual shooting enclosure license from the Virginia Department of Agriculture and Consumer Services (VDACS). A topographic map showing the boundaries of the fenced shooting enclosure and a contingency plan that they are capable of executing, specifying how they will eradicate and control any disease outbreak or recover escaped animals must accompany the application for a license.~~

~~B. Applicants must state on the application that the shooting enclosure complies with all county and city ordinances and statutes.~~

~~C. No license shall be issued without prior inspection and approval from a representative of VDACS. The applicant must contact the regional veterinary supervisor in the respective region to schedule an appointment for the inspection.~~

~~D. A one-time application fee plus an annual license fee as set forth in § 3.2-6038 of the Code of Virginia will be required of each licensee.~~

~~E. Operators of a shooting enclosure shall be liable for all costs incurred by any person, city, county, the Commonwealth of Virginia or federal government, resulting from escape of animals or disease eradication or control efforts resulting from animals confined to or escaped from the shooting enclosure.~~

~~F. Operators of shooting enclosures must notify VDACS Regional Veterinary Supervisor within 24 hours of first discovering a diseased, dead, or escaped animal; and the carcass must be submitted to the nearest VDACS regional laboratory for necropsy.~~

~~G. Animals allowed under a shooting enclosure permit are restricted to the following:~~

- ~~1. Goats: Ibex (*Capra ibex*), Iranian Ibex (*C. hircus*), Angora (*C. hircus*);~~
- ~~2. Sheep: Four-horned or Jacob's (*Ovis aries*), Black Hawaiian (*O. musimon*), Corsican (*O. corsican*), Merino (*O. aries*), Mouflon (*O. musimon*); and~~
- ~~3. Swine: Swine (*Sus scrofa*).~~

~~H. A shooting enclosure shall have a minimum of 100 adjoining acres. The applicant shall own or have the area under written lease. Shooting enclosures not contiguous with each other shall be operated under separate licenses.~~

2VAC5-205-30. Weapons. (Repealed.)

~~Weapons used to take animals on shooting enclosures shall comply with ordinances of the county in which the shooting enclosure is located.~~

2VAC5-205-40. Inspection requirements relating to shooting enclosures. (Repealed.)

~~A. Operators of shooting enclosures must allow inspection of their facilities, animals, and records by the State Veterinarian or his designated representative at any reasonable time.~~

~~B. Upon observing or having reason to believe that shooting enclosure animals are diseased or have been exposed to an infectious disease, the State Veterinarian or his designated representative may require inspection of the affected animals by an accredited veterinarian licensed in Virginia. Such inspections will be at the licensee's expense. A report by said veterinarian, regarding health and welfare of animals inspected under this provision, will be submitted to the State Veterinarian's office.~~

2VAC5-205-50. Fencing. (Repealed.)

~~The shooting enclosure shall be enclosed with a fence around the entire perimeter of the facility. The fence shall be maintained in good condition at all times and be so constructed to prevent the escape of animals being held inside the enclosure.~~

2VAC5-205-60. Shelter and humane care. (Repealed.)

~~A. The shooting enclosure operator shall provide adequate shelter for all animals within the facility so as to provide protection from sunlight and inclement weather. The shelter provided may be artificial or natural, and shall cover at least 15% of the surface acreage of the enclosure.~~

~~B. Each animal within the enclosure shall be provided at all times with adequate food and water, in sufficient quantity and quality, so as to maintain good health.~~

2VAC5-205-70. Health requirements. (Repealed.)

~~A. The animals shipped to a shooting enclosure must be accompanied by a certificate of veterinary inspection which shall:~~

- ~~1. Be issued by (i) an accredited veterinarian; (ii) a veterinarian in the employ of the Veterinary Services Division, Animal and Plant Health Inspection Service, USDA; or (iii) other veterinarian approved by the State Veterinarian;~~

~~2. Contain (i) the name and complete address of the consignor; (ii) the name and complete address of the consignee; (iii) the complete address of the animal's destination; (iv) the results of every veterinary medical test and every observation as to the animal's health required by this chapter of the animal to be shipped, the date the test was performed and results of the test; and~~

~~3. Be attached to the shipment's waybill or be in the possession of the person carrying the animal.~~

~~The licensee is responsible for keeping certificates of veterinary inspection, records of dates and types of disease testing, cause of death, and disposition for each animal. Records will be identified by animal ear or belly tag number. All records shall be retained for the period of ownership of the animal and for three years after disposition.~~

~~Unless otherwise provided in this chapter, no certificate of veterinary inspection shall have effect more than 30 days after it is issued. No person may use an expired certificate of veterinary inspection to ship an animal.~~

~~B. In addition to any penalties authorized by law or the violation of this chapter, any person shipping an animal in violation of this chapter shall be subject to having the animal quarantined by the State Veterinarian or his designated representative and, at the owner's expense:~~

~~1. Returned to the state of origin under permit;~~

~~2. Sent under permit directly to slaughter;~~

~~3. Destroyed;~~

~~4. Tested until the animal complies with requirements of this chapter for shipment; or~~

~~5. Disposed of by means necessary or appropriate, in the State Veterinarian's judgment, to protect the health of livestock the State Veterinarian is charged with protecting.~~

2VAC5-205-80. Shooting enclosure operations. (Repealed.)

~~A. All shooting enclosures must have adequate capture and holding facilities suitable for handling and restraining the species on site.~~

~~B. All shooting enclosures must dispose of carcasses and offal resulting from the normal operation of the preserve in accordance with state and local ordinances. Carcasses and offal cannot be used as feed or feed supplements for animals held by the enclosure.~~

~~C. In cases of disease outbreaks, testing, depopulation, cleaning and disinfecting costs associated with the disease eradication will be borne by the shooting enclosure operator.~~

2VAC5-205-90. Common carriers; trucks. (Repealed.)

~~Any person who is a common carrier or who owns any conveyance carrying any animal governed by this chapter shall keep the vehicle in a sanitary condition and shall, when required by the State Veterinarian or his designated representative, clean and disinfect his vehicle as required.~~

2VAC5-205-100. Health requirements of animals to be held. (Repealed.)

~~A. Sheep. No shooting enclosure may receive any sheep unless the sheep originates directly from a state officially designated scabies free by the United States Department of Agriculture and has been tested negative to malignant catarrhal fever test (wildebeest type) conducted in a state or federal laboratory within 30 days prior to entering the Commonwealth.~~

~~B. Goats. No shooting enclosure may receive any goat unless the goat:~~

~~1. Originates directly from a herd in which all goats were negative to a tuberculin test no more than 12 months before the goat enters the Commonwealth, or is individually tested and found negative to a tuberculin test no more than 30 days prior to entering the Commonwealth;~~

~~2. Originates directly from a herd in which all goats were negative to a brucellosis test within 12 months prior to the goat's entering the Commonwealth, or is individually tested and found negative to a brucellosis test within 30 days prior to entering the Commonwealth; and~~

~~3. The goat is free of clinical signs of caseous lymphadenitis. "Clinical signs," with reference to caseous lymphadenitis, means abscesses of the lymph nodes, whether draining or not.~~

~~G. Swine. No shooting enclosure may receive any swine unless the swine meet the following requirements:~~

~~1. Brucellosis:~~

~~a. No shooting enclosure may receive any swine over four months of age unless the swine:~~

~~(1) Originates from an officially validated brucellosis-free herd;~~

~~(2) Originates from a herd in which all swine over four months of age were negative to a brucellosis test conducted in a state or federal laboratory within 12 months prior to the date of entering Virginia; or~~

~~(3) Has been individually tested and found negative to a brucellosis test conducted in a state or federal laboratory within 30 days prior to entering the Commonwealth.~~

~~b. The certificate of veterinary inspection on the swine shall indicate the official herd status or the negative test.~~

~~2. Pseudorabies:~~

~~a. No shooting enclosure may receive any swine that have been vaccinated against pseudorabies.~~

~~b. No shooting enclosure may receive any swine unless the swine are identified by ear tag and:~~

~~(1) Originate directly from a pseudorabies-monitored herd;~~

~~(2) Originate directly from a qualified pseudorabies-negative herd; or~~

~~(3) Have been individually tested and found negative to a test for pseudorabies within 30 days prior to entering Virginia.~~

2VAC5-205-110. Suspension or revocation of license. (Repealed.)

The department may revoke or suspend a license for failure to comply with provisions of the license or this chapter.

Project 7431 - Exempt Final

Department of Agriculture And Consumer Services

Expand imported fire ant quarantine to include certain counties in southeastern Virginia

2VAC5-315-50. Regulated areas.

The following areas in Virginia are quarantined for imported fire ant:

The entire counties of:

Brunswick

Charlotte

Dinwiddie

Greensville

Halifax

Isle of Wight

James City

Lunenburg

Mecklenburg

Southampton

Sussex

York

The entire cities of:

Chesapeake

Emporia

Franklin

Hampton

Newport News

Norfolk

Poquoson

Portsmouth

Suffolk

Virginia Beach

Williamsburg



COMMONWEALTH of VIRGINIA

Department of Agriculture and Consumer Services

PO Box 1163, Richmond, Virginia 23218

www.vdacs.virginia.gov

Joseph W. Guthrie
Commissioner

October 15, 2022

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 104¹ of the 2021 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*.

The schedule of pesticide fees for fiscal year 2022 is below:

¹ 2021 SPECIAL SESSION I - BUDGET BILL - Acts of Assembly, Ch. 552, Item 104

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.

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)	\$0	
Commercial Applicator - Additional certification category	\$35	Payable at time of application
Registered Technician Applicator Certification (Initial)	\$50	Payable at time of application
Registered Technician Applicator Certification (Renewal)	\$0	
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 \$ 574,765.00 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 2022

The Fund carried a balance of \$2,868,695.69 from fiscal year (FY) 2021. During FY 2022, the Office of Pesticide Services reported Fund sources of \$4,588,565.73 and Fund uses of \$4,146,849.24. The Fund balance at the end of FY 2022 was \$3,310,412.18. (Please see Appendix 1.) Expense detail for 2017-2022 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 2022, OPS certified 4,809 private applicators, 7,010 commercial applicators, and 7,950 registered technicians to apply pesticides in the Commonwealth. OPS also licensed 2,508 pesticide businesses and registered 16,791 pesticide products. Field staff conducted 1,210 routine inspections and related activities and initiated 83 investigations, including complaints, incidents, accidents, and related activities, at 1,293 individual sites throughout Virginia. Staff also conducted 133 marketplace registration inspections, checking the registration status of

over 2,481 products. Please see Appendix 3 for an organizational chart and staffing as of July 1, 2022. Appendix 3 indicates the positions that were vacant at year-end closing.

B. Continuation of Education and Outreach Programs

OPS continues to work with its 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	\$ 271,676.23

Pesticide applicators can take the certification exams through the use of SecuriTest, which is offered at more than 70 Department of Motor Vehicles (DMV) customer service centers throughout the Commonwealth, at a VCE Office or, by appointment with OPS staff. During FY 2022, DMV administered 3,581 exams through SecuriTest. A total of 14,235 exams were given at all sites, resulting in the issuance of 4,040 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. During the reporting period, Telamon Corporation, which provides the required Worker Protection Standard (WPS) training to agricultural employees, was without a trainer. Coupled with the pandemic, this greatly reduced the opportunities to conduct training sessions and promote the availability of pesticide safety education at various agricultural related events. During FY 2022, Telamon did not conduct training and no expenses were submitted for reimbursement.

C. Environmental Stewardship Programs

Since its inception, the Pesticide Collection Program has collected approximately 1.7 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 2022, the Pesticide Collection Program collected 59,309 pounds of unwanted pesticides.

Since its inception in 1993, the Plastic Pesticide Container Recycling Program has collected more than 2.4 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 2022, the Pesticide Plastic Container Recycling Program collected 68,708 pounds of pesticide containers statewide.

Costs related to environmental stewardship programs were as follows:

Pesticide Disposal	\$	76,225.12
Container Recycling	\$	12,705.21
Total	\$	88,930.33

D. Projected Budget Balance

Obligations paid from the Fund during FY 2022 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:

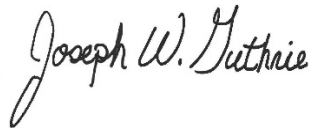
Fiscal Year	Ending Balance
2018	\$930,283
2019	\$953,555
2020	\$1,916,139
2021	\$2,868,696
2022	\$3,310,412

It is anticipated that (i) continued information technology costs for the online application system and (ii) equipment purchases will impact the ending balance for FY 2023. The year-end balance for FY 2023 is estimated to be \$3.48 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,



Joseph W. Guthrie
Commissioner

cc: The Honorable Matthew Lohr, Secretary of Agriculture and Forestry
Parker Slaybaugh, Chief Deputy Secretary of Agriculture and Forestry
Beth Green, Deputy Secretary of Agriculture and Forestry

Appendix 1

Pesticide Control Fund – FY 2022	
Fund Balance – June 30, 2020	\$ 2,868,695.69
SOURCES	
Pesticide product registrations	\$ 3,520,777.02
Commercial applicator certification	\$ 197,090.00
Pesticide business licenses	\$ 434,960.00
Registered technician certification	\$ 259,180.00
Late fees, interest, misc.	\$ 152,229.96
Civil penalties	\$ 24,328.75
Total Sources	\$4,588,565.73
USES	
Personal services	\$1,603,540.61
Contractual services	\$1,495,286.16
Supplies and materials	\$35,336.65
Transfer payments (includes grant payments)	\$285,159.44
Continuous charges	\$121,371.13
Equipment	\$24,603.25
Agency administrative expenses	\$ 581,552.00
Total Uses	\$4,146,849.24
Fund Balance – June 30, 2022	\$ 3,310,412.18

Appendix 2

**Pesticide Control Fund
FY 2017-2022**

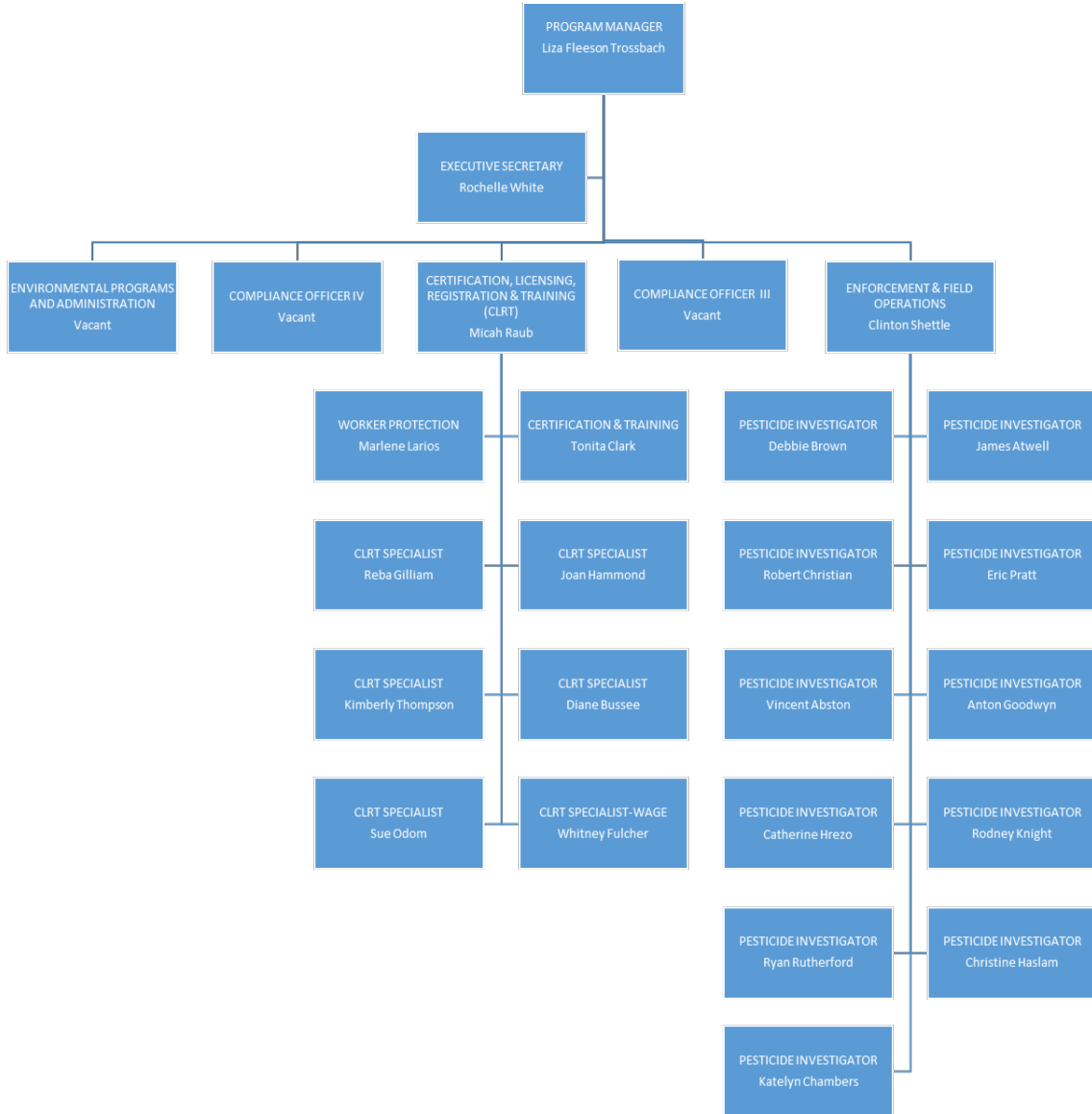
Expenditure Category	2017	2018	2019	2020	2021	2022
Projects*	\$818,038	\$435,836	\$488,481	\$427,182	\$401,628	\$360,606.56
Salaries	\$1,059,229	\$969,458	\$935,717	\$997,666	\$1,103,706	\$1,112,168.11
Fringe Benefits	\$477,677	\$447,899	\$444,642	\$460,338	\$505,811	\$491,372.50
Administrative Overhead	\$64,253	\$366,899	\$422,301	\$525,747	\$591,002	\$581,552.00
Information Technology	\$212,033	\$252,447	\$275,019	\$332,985	\$585,538	\$1,178,310.93
Laboratory Services	\$214,931	\$162,632	\$169,211	\$178,647	\$87,844	\$140,185.21
Rent	\$90,740	\$90,939	\$90,320	\$91,626	\$91,127	\$91,071.76
Equipment	\$3,451	\$1,694	\$10,789	\$1,830	\$110,186	\$24,603.25
Supplies	\$26,785	\$27,764	\$28,694	\$32,724	\$30,651	\$35,336.65
Travel	\$19,051	\$16,639	\$10,867	\$8,921	\$1,791	\$2,515.14
Testing Services (DMV)	\$12,415	\$23,050	\$17,215	\$17,870	\$6,020	\$19,662.00
Other**	\$149,944	\$130,845	\$160,287	\$378,343	\$ 141,949	\$109,465.00
Revenue	\$3,403,950	\$3,067,108	\$3,076,81500	\$4,416,465	\$4,609,809	\$4,588,565.73
June 30 Cash Balance	\$789,277	\$930,283	\$953,555	\$1,916,139	\$2,868,695	3,310,412.18

***Projects” includes expenditures for Applicator Training, Manuals/Exams and Certification (VCE); Pesticide Safety Education (Telamon) and pesticide disposal and container recycling. There were no expenses submitted by Telamon for reimbursement for services rendered in FY 2022.**

**** "Other" includes expenditures for postage, printing, telecommunications, public information, legal and media services, 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 2022)



Strengthening Virginia's Animal Health Laboratory System

DECEMBER 9, 2022



*VIRGINIA DEPARTMENT
OF AGRICULTURE AND
CONSUMER SERVICES*

Animal Health Lab System Overview

Four Laboratories + Central Office in Richmond

- Harrisonburg, Lynchburg, Warrenton, Wytheville
- At one time the system included 8 laboratories

All sites provide basic diagnostic services, regulatory services

- Some site-specific test functions
- Most sites provide necropsy service

Supports diverse animal industry sector in VA

- Poultry, Cattle, Dairy, Equine, Swine, Aquaculture

Funded through state appropriations, grants, testing fee revenue

Ranking of Test Counts/Revenue

- Harrisonburg >> Warrenton > Lynchburg/Wytheville



Strengthening Virginia's Animal Health Laboratory System

- A multi-year, producer-focused approach to improvement in order to achieve a top-tier, best in class status for Virginia's Animal Health Laboratory System
- Animal agriculture is the largest component of Virginia's agriculture sector, the single most economically important industry in Virginia
- Providing support to livestock and poultry health through the operation of the lab system is one of the Virginia Department of Agriculture and Consumer Services' top priorities
- A best-in-class lab system is essential to optimally support Virginia's thriving animal agriculture industry. What does this look like?
 - Excellent customer service throughout the state
 - Efficient use of taxpayer funding
 - Reliable, accurate, and timely lab results

Background of the Review

- In 2021, meetings were held with stakeholders, including Virginia Farm Bureau, Virginia Agribusiness Council, Virginia Poultry Federation, Virginia Cattleman's Association, Virginia Dairyman's Association, the Virginia Veterinary Medical Association, and Virginia Maryland College of Veterinary Medicine to consider the state of the lab system in Virginia, and determine if changes were needed.
- As part of that, stakeholders requested an independent review of the lab system, to include recommendations for improvement
- VDACS engaged the services of two nationally known animal health laboratory experts to conduct the review and make recommendations
- The report was finalized in May of 2022

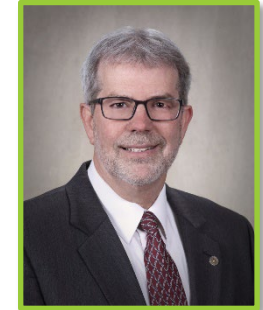
Reviewers

DR. DAVID ZEMAN, DVM, PHD,
DACVP



- Auditor (has audited 50+ animal health laboratories in the US and Canada)
 - Provides input into operations, assessments, and recommendations
- 20 year + Director of premier animal diagnostic laboratory in South Dakota
- Past President of AAVLD, numerous committees including Accreditation
- Boarded Pathologist

DR. BRUCE AKEY, DVM, MS



- Has supervised and participated in development and implementation of multi-year strategic plans for veterinary diagnostic labs in VA, NY, and TX
- Numerous laboratory operations reviews
- Past President of AAVLD, numerous committees

Report's Comparison of RAHLs to Other State Veterinary Diagnostic Laboratories

- Proper staffing is key
- The lack of career advancement opportunities puts the RAHLS at a disadvantage
 - Beneficial to formulate two career tracks → technical and supervisory
- AAVLD Accreditation is the most comprehensive option for overall diagnostics, quality, and operational management
- Revenue/Fee Schedule
 - Some tests were below average, some higher than average

Report's Comparison of RAHLs to Other State Veterinary Diagnostic Laboratories (cont.)

Organizational Structure

- Virginia is among the last of states to have multiple small to medium labs scattered throughout the state
- Current transportation logistics (eg overnight shipping) allows for ability to ship samples to location where testing can be performed in more cost-effective manner
- Nearly all states have transitioned to one or two strategically located laboratories
 - More efficient, successful, sustainable model with staffing and equipment.

NC opened a new \$90 million animal health lab in 2021, and MD opened a new \$20 million animal health lab in 2022

“The RAHLS would rank as Middle Tier in its strongest areas and Bottom Tier in others”*

- * This refers to the overall system, including support provided to all of animal agriculture throughout the state, and does not apply to specific labs or reliability of results, which are assured by accreditation of the lab system.

Strategic Recommendations from Report

STAFFING

Improve staff recruitment and retention

All laboratories need adequate administrative support staff to perform the duties that will allow analysts to remain at their primary analytical testing tasks

Develop a training program for new employees with proper steps performed and documented before any new analyst is released to perform tests for clients without supervision

Establish Subject Matter Experts

Implement reasonable levels of cross-discipline training, utilization, and rotation.

OPERATIONS

Establish an External Advisory Committee

Change workflows to improve testing turnaround times

Enhance the annual formal fee review process

Consolidate testing to take advantage of sample processing and testing

Upgrade existing Laboratory Information Management System

Increase support and resources for Quality Management System and streamline

Explore additional outreach and communication efforts

Improve Laboratory Safety Program

Strategic Recommendations from Report

LABORATORY SYSTEM STRUCTURE

Develop a multi-year transition plan to move from the current RAHLS structure to one comprised of two, state-of-the-art, facilities at Harrisonburg and Blacksburg in collaboration with the VMCVM

ACCREDITATION

Seek full AAVLD accreditation as quickly as possible



Proposed Framework for Advancement

Phase 1: Share the report and gather feedback from Virginia's agriculture industry

- External Advisory Committee being formed
- Also implement recommended changes that are possible within the existing lab system

Phase 2: Expand the Harrisonburg Laboratory

- Capital funding for this was allocated in the 2022 Budget
- Hopeful to break ground in 2024, with completion by 2027-2028

Phase 3: Explore opportunities for closer or more formalized collaborations with the Virginia Maryland College of Veterinary Medicine that benefits lab users, VDACS, and ViTALS

- The College is raising funds for a capital expansion project as part of their overall plan

Phase 4: Evaluate the structure of the VDACS lab system and where various tests and services can be most efficiently conducted, while maintaining accessibility and convenience for lab users

- “Where along the possible spectrum between separate-but-collaborate and fully-integrated with the VMCVM the system ends up should be thoughtfully explored with all parties, with the goal to maximize the benefits to all (RAHLS, VMCVM, and stakeholders).”
- “Part of the development will be determining the preferred level of collaboration or integration between the RAHLS and the VMCVM.”

Policy and Procedure

Virginia Department of Agriculture and Consumer Services

Number: 2.3

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

Date: February 1990

Revision: August 31, 2022

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

Effective: September 1, 2022

APPROVAL: 

OBJECTIVE AND INTENT

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

DEFINITIONS

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

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

“Secretary” means the secretary of a board.

PROCEDURES

I. FREEDOM OF INFORMATION

A. DEFINITIONS

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

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

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

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

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

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

B. PUBLIC MEETINGS

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

MEETING

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

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

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

NOTICE

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

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

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

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

CONDUCT OF MEETINGS AND MEETING MINUTES

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

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

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

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

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

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

C. MEETINGS BY ELECTRONIC COMMUNICATION MEANS

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

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

The board may meet by electronic communication means without a quorum of the board physically assembled at one location when the Governor has declared a state of emergency in accordance with Va. Code § 44-146.17, provided that (i) the catastrophic nature of the declared emergency makes it impracticable or unsafe to assemble a quorum in a single location and (ii) the purpose of the meeting is to provide for the continuity of operations of the board or the discharge of its lawful purpose, duties, and responsibilities. In such circumstances, the secretary shall (i) give public notice using the best available method given the nature of the emergency, which notice shall be given contemporaneously with the notice provided to members of the board conducting the meeting; (ii) make arrangements for public access to such meeting through electronic communications means, including videoconferencing if already used by the board; (iii) provide the public with the opportunity to comment at those meetings of the board when public comment is customarily received; and (iv) otherwise comply with the provisions of the Virginia Freedom of Information Act.

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

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

REMOTE PARTICIPATION BY INDIVIDUAL BOARD MEMBERS

An individual board member may use remote participation instead of attending a public meeting in person if, in advance of the public meeting, the board has adopted a policy, by recorded vote at a public meeting, that shall be applied strictly and uniformly, without exception, to the entire membership and without regard to the identity of the member requesting remote participation or the matters that will be considered or voted on at the meeting. The policy shall (i) describe the circumstances under which an all-virtual public meeting and remote participation will be allowed and the process the board will use for making requests to use remote participation, approving or denying such requests, and creating a record of such requests and (ii) fix the number of times remote participation for personal matters or all-virtual public meetings can be used per calendar year, not to exceed the limitations set forth in subdivisions (B)(4) and (C)(9) of Va. Code § 2.2-3708.3.

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

If remote participation by an individual board member is approved, the board shall record in its minutes the remote location from which the member participated, which need not be open to the public and may be identified in the minutes by a general description. If such remote participation is approved pursuant to clause (i) or (ii) above, the board shall also record in its minutes the fact that the member participated through electronic communication means due to (a) a temporary or permanent disability or other medical condition that prevented the member's physical attendance or (b) a family member's medical condition that required the member to provide care for such family member, thereby preventing the member's physical attendance. If such remote participation is approved pursuant to clause (iii) above, the board shall also include in its minutes the fact that the member participated through electronic communication means due to the distance between the member's principal residence and the meeting location. If such remote participation is approved pursuant to clause (iv) above, the board shall also include in its minutes the specific nature of the personal matter cited by the member.

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

ALL-VIRTUAL PUBLIC MEETING PARTICIPATION BY BOARD MEMBERS

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

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

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

D. CLOSED MEETINGS

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

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

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

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

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

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

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

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

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

II. CONFLICT OF INTEREST

A. DEFINITIONS

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

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

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

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

B. VOTES

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

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

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

III. AUTHORITY

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

VI. INTERPRETATION

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

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

MOTION: Identify the board member who makes the motion

SECOND: Identify the board member who seconds the motions

MEETING DATE:

MOTION TO CONVENE A CLOSED MEETING

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

VOTE

AYES:

NAYS:

ABSENT DURING VOTING:

ABSENT DURING MEETING:

Clerk/Secretary of (*identify the board*)

MOTION: Identify the board member who makes the motion

SECOND: Identify the board member who seconds the motions

MEETING DATE:

MOTION TO END CLOSED MEETING

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

VOTE

AYES:

NAYS:

ABSENT DURING VOTING:

ABSENT DURING MEETING:

Clerk/Secretary of (*identify the board*)

MOTION: Identify the board member who makes the motion

SECOND: Identify the board member who seconds the motions

MEETING DATE:

CERTIFICATION OF CLOSED MEETING

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

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

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

VOTE

AYES:

NAYS:

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

ABSENT DURING VOTE:

ABSENT DURING MEETING:

Clerk/Secretary of (*identify the board*)

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

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

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

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

_____ (other; specify) _____

(signature)

(date)

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

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

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

(signature of board member)

(date)

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

DISCLOSURE STATEMENT OF PERSONAL INTEREST

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

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

(signature of board member)

(date)

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



ELECTRONIC MEETINGS UNDER THE VIRGINIA FREEDOM OF INFORMATION ACT

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Appendix: Best Practices Recommendations for All-Virtual Public Meetings



ELECTRONIC MEETINGS UNDER THE VIRGINIA FREEDOM OF INFORMATION ACT

I. Introduction

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

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

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

Note: Annual report and public comment form no longer required

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

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

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



Note: Public participation and public comment

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

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

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

Note: Member participation and monitoring meetings electronically

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

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

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

Definitions (§ 2.2-3701)

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

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

³ 2018 Acts of Assembly, c. 54



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

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

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

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

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

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

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

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

⁴ 2022 Acts of Assembly, c. 597.



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

A. Policy requirement

Subsection D of § 2.2-3708.3 requires that public bodies adopt a participation policy before using the provisions for remote participation or all-virtual public meetings. Note that no policy is required for meetings conducted under § 2.2-3708.2 during a declared state of emergency. This policy requirement is similar but not identical to the policy requirement in former subsection C of § 2.2-3708.2 prior to September 1, 2022—public bodies that adopted policies prior to that date may need to adopt new versions of their policies to stay in compliance! The public body must adopt the policy by recorded vote at a public meeting and the policy must "be applied strictly and uniformly, without exception, to the entire membership and without regard to the identity of the member requesting remote participation or the matters that will be considered or voted on at the meeting." The policy must also do the following:

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

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

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

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



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

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

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

Sample policy language

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

Sample language:

It is the policy of [the public body] that individual [public body] members may participate in meetings of [the public body] by electronic communication as permitted by § 2.2-3708.3 of the Code of Virginia. [If the public body wishes to add any additional limitations on the circumstances under which members may participate by electronic communications, include them here.] This policy shall apply to the entire membership and without regard to the identity of the member requesting remote participation or the matters that will be considered or voted on at the meeting.

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

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



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

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

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

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

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

Sample language:

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

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

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



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

Additional limitations and other provisions are optional

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

B. Remote participation by individual members of public bodies

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

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

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

Minutes requirements

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



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

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

Examples of disability or medical condition that prevents physical attendance:

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

Examples of personal matters that may prevent physical attendance:

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

C. All-virtual public meetings

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

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



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

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



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

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

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

Pursuant to § 2.2-3708.2, any public body may meet by electronic communication means without a quorum of the public body physically assembled at one location when the Governor has declared a state of emergency in accordance with § 44-146.17 or the locality in which the public body is located has declared a local state of emergency pursuant to § 44-146.21 under the following conditions listed in subdivision A 3 of § 2.2-3708.2:

- The catastrophic nature of the declared emergency makes it impracticable or unsafe to assemble a quorum in a single location; and
- The purpose of the meeting is to provide for the continuity of operations of the public body or the discharge of its lawful purposes, duties, and responsibilities.

In addition, the public body must:

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

⁶ See n. 2, *supra*.

⁷ 2021 Special Session I, c. 490.



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

Minutes requirements

The minutes must include the nature of the emergency, the fact that the meeting was held by electronic communication means, and the type of electronic communication means by which the meeting was held.

Limitation on duration

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

Note: No policy required

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

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

Pursuant to State Budget Item 4-0.01 (g), any public body may meet by electronic communication means without a quorum of the public body physically assembled at one location when the Governor has declared a state of emergency in accordance with § 44-146.17, subject to the following procedures and conditions:

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

In addition, the public body must:

- Give notice to the public using the best available method given the nature of the emergency, which notice shall be given contemporaneously with the notice provided to members of the public body conducting the meeting;
- Make arrangements for public access to such meeting through electronic means, including, to the extent practicable, videoconferencing technology. If the means of communication allows, provide the public with an opportunity to comment;
- Otherwise comply with the provisions of § 2.2-3708.2; and



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- State in the minutes the nature of the emergency, the fact that the meeting was held by electronic communication means, and the type of electronic communication means by which the meeting was held.

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

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



Appendix: Best Practices Recommendations for All-Virtual Public Meetings

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

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

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

I. Public Comment

A. Statutory Provisions

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



B. Best Practices Recommendations

Before the meeting:

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

During the meeting:

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

Technical considerations:

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



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

II. The Use of Video by Members

A. Statutory Provision:

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

B. Best Practices:

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

Before the meeting:

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



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

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

During the meeting:

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



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

MARK YOUR CALENDARS

Thursday, March 23, 2023

Patrick Henry Building
East Reading Room
1111 East Broad Street
Richmond, VA

Thursday, May 18, 2023

Patrick Henry Building
East Reading Room
1111 East Broad Street
Richmond, VA

Thursday, December 7, 2023

TBD
Richmond, VA