

BOARD OF AGRICULTURE AND CONSUMER SERVICES
James Monroe Building
101 North 14th Street
Richmond, Virginia
Friday, December 10, 2021

9 A.M.

1. Call to order
2. Roll call
3. Approval of draft Board meeting minutes from July 20, 2021
4. Board member reports
5. Commissioner's Report to Board – Brad Copenhaver, Commissioner of Agriculture and Consumer Services
6. Notice of Intended Regulatory Action – 2 VAC 5-390, Rules and Regulations for the Enforcement of the Virginia Seed Law – Larry Nichols, Director, Division of Consumer Protection
7. Proposed stage – 2 VAC 5-317, Regulations for Enforcement of the Noxious Weeds Law – Larry Nichols, Director, Division of Consumer Protection
8. Pesticide Control Fund update – Larry Nichols, Director, Division of Consumer Protection
9. Proposed electronic meeting policy discussion and approval – Kevin Schmidt, Director, Office of Policy, Planning, and Research
10. Agricultural economic espionage – Cameron Fricks, Special Agent, Federal Bureau of Investigation – Richmond Division
11. New business
12. Future board meetings
13. Public comment period
14. Adjourn

DRAFT MINUTES

Tuesday, July 20, 2021

The meeting of the Board of Agriculture and Consumer Services (Board) convened at approximately 9:00 a.m. on Tuesday, July 20, 2021, at Hardywood Park Craft Brewery - West Creek in Richmond. President Barlow called the meeting to order.

ROLL CALL

The Board Secretary called the roll:

PRESENT

O. Bryan Taliaferro, Jr.
Donald Horsley
Clifton A. Slade
Shelley Barlow
Cecil Shell
Margaret Ann Smith
L. Wayne Kirby
James S. Huffard, III
Richard Sellers
Neil Houff
Charles Church
Lonnie Johnson

Dr. M. Ray McKinnie

CONGRESSIONAL DISTRICT

1st
2nd
3rd
4th
5th
6th
7th
9th
11th
Pesticides – Commercial Agricultural
Pesticides – Commercial Structural
Representing Dr. Timothy D. Sands, President,
Virginia Tech
Representing Dr. Makola Abdullah, President,
Virginia State University

ABSENT

John R. Marker 10th
Kay Johnson Smith 8th

STAFF PRESENT

Bradley Copenhaver, 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 20, 2021, be approved as distributed. Mr. Huffard seconded the motion. The motion was approved.

REPORT FROM BOARD MEMBERS

Neil Houff

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Mr. Houff reported that it has been hot and dry in the Shenandoah Valley. He gave the Board an update on fertilizer pricing and concluded his report by discussing some of the challenges in the pesticide and crop protection business.

Charles Church

Mr. Church reported that the Virginia Pest Management Association (VPMA) provided recertification training to 278 licensed applicators this spring during three virtual recertification webinars. In cooperation with the Virginia Department of Agriculture and Consumer Services (VDACS) Office of Pesticide Services (OPS), VPMA provided in person testing to 230 individuals. With the end of Governor Northam's state of emergency due to COVID-19 on June 30, the temporary regulations for registered technicians ends on July 30. He concluded his report by recognizing VDACS OPS investigator Robert Christian for his excellent service.

O. Bryan Taliaferro

Mr. Taliaferro reported on the status of the corn and soybean crop in his district. He reported that fertilizer, fuel, and pesticide prices are up. He stated that solar farms are cropping up in the first district and there are some community concerns about them.

Don Horsley

Mr. Horsley provided an update on the spring weather in his district and reported on the progress of the corn, soybean, and wheat crops. He stated that the crops are better than normal and producers are optimistic for a prosperous year.

Clifton Slade

Mr. Slade reported on crops in the southeast, stating that they all have excellent potential. He discussed his personal experiences in hemp production. He reported on the sales for the certified organic vegetable market. He reported that deer have still been a problem but he has received excellent service from the Virginia Department of Gaming and Inland Fishery this year.

Cecil Shell

Mr. Shell began his report by stating that there has also been some controversy about solar farms going up in southside. He reported on the activities of the hemp growers in his area, the hay crop, and the vegetable crop. The vegetable crop appears to have a good market. He concluded his report with the status of the tobacco and timber markets.

Margaret Ann Smith

Ms. Smith reported that, as Mr. Houff reported, the weather has been hot and dry in her district and rain has been spotty. She provided an update on the hay crop and livestock markets. She stated that the markets have been steady, with few exceptions. There is concern about grain prices. In the Shenandoah Valley, they are also seeing solar farms popping up as well as handwritten letters from landholding companies looking to buy land.

L. Wayne Kirby

Mr. Kirby congratulated Commissioner Copenhaver on his appointment to commissioner. Mr. Kirby reported that his term has expired and this will be his last meeting. He stated that 2021 looks to be a good year for Virginia agriculture and wished Board members the best.

James Huffard

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Mr. Huffard reported the weather has been similar to what others have reported. The crops in his district are doing well. He reported that Duchess Dairy is selling well, they have maxed out their labor force, and are hiring new people. He also reported that Duchess Dairy will start selling cheese curds in the next month. He reported that his area is also seeing more solar farms.

Richard Sellers

Mr. Sellers reported that farmer's market are in full swing in Northern Virginia. They are having one of their best tomato crops. He shared with the Board that Fairfax County's agritourism ordinance was adopted at a meeting last month. He offered to send it to the Board members if they want to send it to their own county supervisors.

M. Ray McKinnie

Dr. McKinnie reported that Virginia State University (VSU) is working on policy and procedures to prepare for a full return to campus in the fall. The College of Agriculture is doing a phased in approach to returning to campus. He reported that the scholarship program he reported on at the last meeting is giving out 25 full scholarships and more than 15 partial scholarships. He reported that the college is nearing the launch of their mobile processing facility. He provided dates for the college's upcoming events in the fall and concluded his report by stating that he is currently looking to fill the position of department chair for the College of Agriculture.

Lonnie Johnson

Mr. Johnson reported that Virginia Tech is also looking forward to a full return on campus as well. Virginia Tech will require that all students be vaccinated and provide proof of vaccination. The university is also updating its telework policy. Since the last meeting, 12 extension agent positions have been filled and 10 more are in progress. He reported that yesterday was the official launch of the Fightin' Hokie lager, which was a partnership between Virginia Tech and Hardywood Park Craft Brewery.

Shelley Butler Barlow

President Barlow officially welcomed Commissioner Copenhaver to the Board meeting. She reported that it was a tough May but crops in southeast are looking lush and green and they are optimistic for a good fall. She reported her farm will be growing peanuts for the first time. She attended the Fighting Hokie lager launch event the night before and stated it was a great event. She concluded her report by discussing the ramping up of solar farms. She let the Board know that there are several conversations happening around the state about solar farming.

COMMISSIONER'S REPORT

Commissioner Copenhaver 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.

PROPOSED STAGE – 2 VAC 5-105 REGULATIONS FOR THE INSPECTION OF PET SHOPS SELLING DOGS OR CATS

President Barlow called on Dr. Charles Broaddus, State Veterinarian and Director, Division of Animal and Food Industry Services. Dr. Broaddus introduced Dr.Carolynn Bissett, Program

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Manager, Office of Veterinary Services, who briefed the Board on the proposed action to promulgate 2 VAC 5-105.

Following Dr. Bissett's presentation, Mr. Sellers moved that the Board of Agriculture and Consumer Services adopt 2 VAC 5-105, Regulations for the Inspection of Pet Shops Selling Dogs or Cats, as presented by staff and that the Board authorize staff to take any and all steps necessary to file this proposed regulation for public comment.

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

PROPOSED STAGE – 2 VAC 5-405 REGULATIONS FOR THE APPLICATION OF FERTILIZER TO NONAGRICULTURAL LANDS

President Barlow called on David Gianino, Program Manager, Office of Plant Industry Services. Mr. Gianino briefed the Board on the proposed action to amend 2 VAC 5-405 and responded to Board member questions.

Following Mr. Gianino's briefing, Mr. Shell moved that the Board of Agriculture and Consumer Services adopt 2 VAC 5-405, Regulations for the Application of Fertilizer to Nonagricultural Lands, as presented by staff and that the Board authorize staff to take any and all steps necessary to file this proposed regulation for public comment

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

FAST-TRACK ACTION TO AMEND 2 VAC 5-675 REGULATIONS GOVERNING PESTICIDE FEES CHARGED BY THE DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES AND 2 VAC 5-685 REGULATIONS GOVERNING PESTICIDE APPLICATOR CERTIFICATION UNDER AUTHORITY OF VIRGINIA PESTICIDE CONTROL ACT

President Barlow called on Larry Nichols, Director, Division of Consumer Protection. Mr. Nichols briefed the Board on the proposed fast-track regulatory action for 2 VAC 5-675 and 2 VAC 5-685.

Following Mr. Nichols' presentation, Mr. Houff moved that the Board of Agriculture and Consumer Services adopt 2 VAC 5-675, Regulations Governing Pesticide Fees Charged by the Department of Agriculture and Consumer Services, and 2 VAC 5-685, Regulations Governing Pesticide Applicator Certification under Authority of Virginia Pesticide Control Act, as presented by staff and that the Board authorize staff to take any and all steps necessary to amend these regulations through a fast-track regulatory action.

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

Following that motion, Mr. Kirby moved that the Board of Agriculture and Consumer Services request that the Department of Agriculture and Consumer Services establish a stakeholder committee two years after the effective date of the proposed fee revisions to 2 VAC 5-675 to evaluate the Pesticide Control Fund budget and the impact of fee changes and to provide feedback to the Board regarding the need to increase or decrease pesticide fees assessed pursuant to this regulation.

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

RESPONSE TO SACKS PETITION FOR RULEMAKING PERTAINING TO HOME SERVICE CONTRACT PROVIDERS PURSUANT TO VA. CODE § 59.1-434.4

President Barlow called on Secretary Schmidt. Secretary Schmidt presented the Board with a brief overview of the requirements for an agency's response to a citizen's petition for rulemaking.

Following his presentation, President Barlow called on Michael Menefee, Program Manager, Office of Charitable and Regulatory Programs. Mr. Menefee gave an overview of home service contracts and presented the Board with the petition for rulemaking from David Sacks requesting that the Board initiate rulemaking to promulgate regulations pertaining to home service contract providers pursuant to Va. Code § 59.1-434.4

President Barlow then called on David Sacks, a resident of Henrico County, who spoke to the Board about his concerns regarding home service contract providers. After Mr. Sacks's comments, Mr. Menefee recommended that the Board deny the petition given the Board's lack of clear statutory authority to promulgate the regulations sought by Mr. Sacks.

Following Mr. Menefee's recommendation, Mr. Sellers moved that, after consideration of a petition for rulemaking presented by David Sacks to promulgate regulations pursuant to Va. Code § 59.1-434.4 governing the issuance and provisions of home service contracts to protect the Virginia consumers who purchase these contracts as well as public comments received concerning the petition and staff recommendations, the Board deny this petition and authorize staff to take any and all steps necessary to communicate the Board's decision regarding this petition.

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

PROPOSED APPOINTMENT OF VIRGINIA WINERY DISTRIBUTION COMPANY BOARD MEMBER

President Barlow called on Commissioner Copenhaver. Commissioner Copenhaver informed the Board that the term of Virginia Winery Distribution Company board member, Stan Joynes, Chief Executive Officer and owner of Valley Roads Vineyards, LLC, expired June 30, 2021. Commissioner Copenhaver also reminded the Board that Mr. Joynes was appointed to fill the unexpired term through June 30, 2021, at the Board's meeting on May 20, 2021.

Commissioner Copenhaver then presented the Board with the original endorsement in May from the Virginia Wineries Association recommending that Mr. Joynes be appointed to the VWDC board of directors.

Mr. Sellers moved that the Board of Agriculture and Consumer Services reappoint Stan Joynes, Chief Executive Officer and owner of Valley Roads Vineyards, LLC, to the board of directors of the Virginia Winery Distribution Company in the position of an owner or manager of a winery or

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farm winery licensee that is not served by a wholesaler when the owner or manager is appointed to the board for a term from July 1, 2021, through June 30, 2023

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

OVERVIEW OF OPTIONS FOR ELECTRONIC MEETINGS

President Barlow called on Secretary Schmidt to present the Board with a brief overview of the three available options for electronic meetings in the future. Secretary Schmidt will provide detailed information regarding these options and a draft electronic meeting policy to the Board for its consideration at the December 10 Board meeting.

NEW BUSINESS

There was no new business

FUTURE BOARD MEETINGS

President Barlow announced that the next meeting will be Friday, December 10, 2021, in Richmond. Secretary Schmidt also announced that VDACS will hold an orientation session for any new Board members that have not yet attended an orientation. (The most recent orientation session was held in December 2016.)

PUBLIC COMMENT PERIOD

There was no public comment.

ADJOURNMENT

There being no further business, the Board adjourned at approximately 12:06 p.m.

Respectfully submitted,

Shelley Barlow
Board President

Kevin Schmidt
Board Secretary

COMMISSIONER'S REPORT TO
BOARD OF AGRICULTURE AND CONSUMER SERVICES
December 10, 2021

GOVERNOR'S PRIORITIES

Since July, Governor Northam has announced six new Agriculture and Forestry Industries Development (AFID) Fund facility grants totaling \$1,390,000. These projects represent \$326,287,644 in new capital investment, 87 new full-time positions, and commitments for the purchase of \$119,529,170 of Virginia-grown agriculture and forestry products. The grants were awarded to (i) Sussex County for Virginia Diner, (ii) Smith and Grayson counties for Woodgrain, (iii) Pittsylvania County for Tyson Foods, (iv) Brunswick County for Southern Virginia Vegetable Packing, and (v) Patrick County for Ten Oaks. To date, 109 Governor's AFID Fund facility grants have been successfully awarded to 63 localities across Virginia.

In August, Governor Northam and Commissioner Copenhaver celebrated Virginia Farmers' Market Week with visits to farmers' markets across the state. Governor Northam proclaimed August 1 – 7 as Virginia Farmers' Market Week to recognize farmers' markets in the Commonwealth and encourage Virginians to purchase fresh farm products directly from local producers. Commissioner Copenhaver and VDACS staff visited with vendors and market managers at the Lynchburg Farmers' Market, the Danville Farmers' Market, and the Abingdon Market. Governor Northam and Secretary of Health and Human Resources Carey visited the Birdhouse Farmers' Market in Richmond. The VDACS Director of Communications photographed the presentation of the Governor's proclamation and the farmers' market visits, which were used to generate several social media posts.

In September, Governor Northam announced the establishment of the Governor's AFID Fund Infrastructure Grant. This expansion of the AFID grant program was introduced by Delegate Rasoul during the 2021 Session of the General Assembly. The infrastructure grant is designed to support sustainable local food systems for small-scale agricultural producers, farmers' markets, and food hubs through matching grants up to \$25,000 to local governments. The grant allows for special reduced match requirements for projects located in economically-distressed localities or underserved communities or for projects that benefit multiple small-scale producers. The grants will primarily be awarded to capital projects at new and existing food hubs, farmers' markets, commercial kitchens, and other value-added facilities such as those for the processing and packaging of meats, dairy products, produce, or other Virginia-grown products. The inaugural grant round opened October 1 and closed November 15, with awards to be announced by the end of the year.

In November, the VDACS Director of the Division of Marketing (DM) joined Governor Northam and Secretary of Agriculture and Forestry Ring on the Governor's Trade Mission to Belgium, Spain, and Germany. The trip included a number of trade and economic development meetings to promote Virginia agriculture and forestry products; Virginia specialty food products; and Virginia spirits, wine, and craft beers. The delegation also met with European Commission officials in Brussels, Belgium, to brief them on issues regarding industrial wood pellets, to encourage their continued purchases from Virginia, and to discuss regulations governing the importation of U.S. shellfish and craft spirits to Europe. Additionally, the group met with a number of German government officials to discuss biomass and opportunities for Virginia specialty food and beverage products.

In November, VDACS announced the second round of Virginia Food Access Investment Fund (VFAIF) grants. The grant round opened on December 1 and will close on February 22, 2022. Applicants will submit pre-proposals to determine eligibility and will have the option to receive technical assistance throughout the grant process. Funding decisions will be announced in April 2022. The inaugural VFAIF grant round opened on December 18, 2020, and closed on April 30, 2021. Fifteen projects were awarded grants totaling \$620,688. Awardees include small food retailers, innovative food retailers, and grocery stores in urban and rural areas throughout the Commonwealth.

In November, VDACS awarded grants from the new Virginia Agriculture Food Assistance Program (VAFAP) to five charitable food assistance organizations to reimburse local farmers and growers for any costs associated with harvesting, processing, packaging, or transporting donated agriculture products. The VAFAP grant program was enacted by the 2021 Session of the General Assembly and provides \$600,000 in funding that will be used for local farm products that will be distributed to food insecure families throughout Virginia. The selected grantees and the recommended grant amounts are as follows:

- Federation of Virginia Foodbanks - Virginia Farms to Foodbanks Program - \$200,000
- Appalachian Sustainable Development - Healthy Family-Family Farms - \$170,000
- Vine & Fig - Harrisonburg Farm to Community: Increasing Food Access in Urban Neighborhoods - \$105,000
- Local Environmental Agriculture Project/LEAP - Nourish Your Neighbor: Increasing Farmer Income and Food Security in the Roanoke Valley Region - \$75,000
- Surry 4H - \$50,000

Since July, VDACS staff continued work with Secretary Ring to create a map of the highest priority agricultural lands in Virginia for conservation. The stakeholder group, which included representatives of agricultural organizations and the land conservation community, agreed that the “Farms Under Threat” data generated by the American Farmland Trust was a more accurate representation of agricultural conservation priorities. Secretary Ring was successful in getting this data incorporated into ConserveVirginia version 3.0, a statewide map of conservation priorities created by the Secretary of Natural Resources. While this data layer is an improvement, it is still not perfect and conversations are ongoing regarding future improvements.

The Virginia Farm Bureau Federation (VFBF) and VDACS staff recently launched an update to the Virginia Farm Link website, which is a cooperative project between VDACS and VFBF. The site, which is located at www.virginiafarmlink.org, had a soft launch at the end of October. During the fall, VDACS and VFBF assisted users active in the previous version of the site transition to the new site. The Farm Link website was officially launched at the VFBF Annual Convention on December 1. This winter, VDACS and VFBF will be encouraging engagement with the site through press opportunities and outreach to agriculture, forestry, and land conservation networks. In addition to an updated interface, the website has additional resources to assist both farm owners and farm seekers. VFBF has hired an employee who will dedicate half of their time to maintaining the website, adding additional resources, and providing marketing and social media support.

In November, the U.S. Department of Agriculture (USDA) approved the agency’s Plan to Regulate Hemp Production in the Commonwealth of Virginia. Beginning January 1, 2022, the agency must

regulate hemp production in accordance with the 2018 Farm Bill and USDA’s Domestic Hemp Production Program regulations. Notable changes to the agency’s regulation of hemp production will include (i) requiring every applicant for an Industrial Hemp Grower Registration to submit to VDACS a criminal history report and (ii) requiring all Registered Industrial Hemp Growers to test the tetrahydrocannabinol (THC) concentration of their hemp crops 30 days before each hemp crop is harvested by utilizing private sampling agents and testing laboratories. Certain producers of fiber hemp and university researchers will not be subject to this testing requirement. Beginning January 1, 2022, the agency must submit both monthly and annual reports to USDA. The Office of Policy, Planning, and Research (OPPR) will distribute information regarding the new hemp production requirements to Registered Industrial Hemp Growers by mid-December 2021.

Total number of active industrial hemp registrations	As of October 31, 2021	On June 27, 2020
Industrial Hemp Grower Registrations	871	1,297
Industrial Hemp Processor Registrations	263	366
Industrial Hemp Dealer Registrations	123	234

The Food Safety Program has completed the inspections of 22 Registered Industrial Hemp Processors who are now manufacturing industrial hemp-derived extracts intended for human consumption. Four Registered Industrial Hemp Processors currently have pending applications to be inspected as manufacturers of industrial hemp-derived extracts intended for human consumption.

AGENCY OPERATIONS

Commissioner’s Office

In July, Commissioner Copenhaver and VDACS staff participated in the Virginia Tech Southern Piedmont Agricultural Research and Extension Center’s annual field day. The field day showcased tobacco, industrial hemp, and forages. Virginia Cooperative Extension (VCE) specialists and agents discussed ongoing research projects, including transplant fertilizer; official variety tests; Connecticut Broadleaf Cigar Wrapper tobacco; moisture uptake and run off; and trials of fungicides, herbicides, and insecticides. There were approximately 90 participants, including growers, University of Georgia Cooperative Extension staff, North Carolina State University Cooperative Extension staff, and tobacco/hemp seed and industry representatives.

In July, Commissioner Copenhaver and VDACS staff participated in the Virginia State University (VSU) Field Day at Randolph Farm. DM staff hosted a table and presented information to participants about the Virginia Grown program and job opportunities with VDACS. The State Veterinarian focused on the presentations on small ruminant production and the mobile meat processing unit. The Office of Meat and Poultry Services (OMPS) has been working with VSU on the development of its mobile meat-processing unit for several years. VSU plans to offer its first certification courses this fall, at which time these certified producers can use the unit for slaughter and processing of sheep and goats. The VDACS Director of Communications toured the farm, took pictures, and developed social media content for the agency and Commissioner social media accounts. Office of Pesticide Services (OPS) staff had a display that provided resources such as the Worker Protection Standard (WPS) "How to

Comply," worker training videos, and pesticide recordkeeping manuals. Office of Plant Industry Services (OPIS) staff manned a display that provided outreach materials on beekeeping, spotted lanternfly, imported fire ants, and best management practices for moving farm equipment out of plant pest quarantines. The event was attended by approximately 350 participants.

In August, Commissioner Copenhaver, Deputy Commissioner Green, Deputy Secretary of Agriculture and Forestry Hertz, and VDACS staff participated in the Virginia Agriculture Expo in Waterview. The Expo was attended by an estimated 1,500 farmers and agricultural service providers from across the Commonwealth. VDACS staff from multiple divisions exhibited at the event, including an employee recruitment exhibit. Office of Agriculture and Forestry Development (OAFD) staff discussed the Governor's AFID Fund program with key partners, including the Virginia Agribusiness Council (VAC), VFBF, and Virginia Farm Credit. Office of Domestic Marketing and Promotions (ODMP) staff provided information on the Virginia Grown program and Market News Services. OPS staff offered attendees federal agricultural WPS resources, including the WPS How to Comply Manual and the Agricultural Recordkeeping Manual. The OPIS exhibit provided information on invasive insects, including Spotted Lanternfly, Red Imported Fire Ants, and Asian Longhorned Beetle. Regulatory compliance information concerning these pests was provided to attendees. The VDACS Director of Communications was also present and took photos of the event, which were shared on social media.

In September, Commissioner Copenhaver joined Governor Northam, Secretary Ring, and other gubernatorial cabinet members in Clifton Forge to announce the reopening of Green Pastures Recreation Area in the George Washington and Jefferson National Forests. Governor Northam signed a historic Shared Stewardship agreement between the Commonwealth of Virginia and USDA to coordinate a response to the increasing ecological challenges and natural resource concerns throughout Virginia. Green Pastures was one of the few federal outdoor recreational areas throughout the country that was set aside exclusively for African Americans during the segregation era in the 20th century.

In September, Commissioner Copenhaver and staff participated in the National Association of State Departments of Agriculture's (NASDA) Annual Meeting, hosted this year by the Kentucky Department of Agriculture. During the meeting, the body representing the nation's Commissioners, Secretaries and Directors of Agriculture took action on a number of pressing policy items, including the adoption of a policy to promote agricultural workforce reform. Specifically, NASDA members adopted policy to support amending the H-2A and H-2B visa programs to include year-round workers for the agriculture and forestry industries. The group also amended the organization's policy on the Specialty Crop Block Grant Program. Members voted to advocate for USDA to allow hemp to be designed as both a specialty crop and an agronomic commodity depending on its intended use. During the event, VDACS served as Secretary for a meeting of the Southern Association of State Departments of Agriculture (SASDA) and as Secretary/Treasurer for a meeting of the Southern U.S. Trade Association (SUSTA). Both SASDA and SUSTA are affiliate organizations of NASDA.

In September, Commissioner Copenhaver, the State Veterinarian, and Division of Animal and Food Industry Services (AFIS) staff hosted the Dean of the Virginia-Maryland College of Veterinary Medicine, the Director of the ViTALS Laboratory, and industry stakeholders for tours of the Lynchburg Regional Animal Health Laboratory (RAHL) and Harrisonburg RAHL. Meeting attendees, including representatives from VFBF, VAC, Virginia Cattlemen's Association, Virginia Dairymen's Association, and the Virginia Poultry Federation discussed Virginia's lab system. The group

specifically discussed ways that the RAHL system could best support stakeholders. Participants expressed interest in an independent review of VDACS's lab system, and AFIS is currently selecting animal laboratory subject matter experts to review and evaluate the lab system and provide recommendations for improvement regarding how the lab system could best support Virginia's livestock and poultry producers.

In September, the Office of Administrative and Financial Services completed the annual Agency Risk Management and Internal Controls Standards (ARMICS) assessment. The assessment tests agency level internal controls across five components - the control environment, risk assessment, control activities, information and communication, and monitoring. The ARMICS assessment documents strengths, weakness, and risks of recording financial transactions in the general ledger; accountability to financial reporting requirements; compliance with laws and regulations; and stewardship over the Commonwealth's assets.

VDACS staff participated in a variety of activities in support of the State Fair of Virginia (Fair), which opened on September 24 and ended October 3. On September 28, Commissioner Copenhaver joined Governor Northam, Secretary Ring, and the VDACS Director of Communications on a tour of the Fair. ODMP staff installed and staffed the Virginia Tobacco Board educational exhibit at the 2021 State Fair of Virginia. Staff interacted with many adults and children who inquired about current production practices and acreage, tobacco's history in Virginia, and uses for the various types of tobacco. Attendees also asked numerous questions about industrial hemp and marijuana cultivation. VCE agents staffed the booth during the week, and ODMP staff returned for closing weekend. ODMP staffed the Virginia Peanut Growers Association State Fair educational exhibit, answering questions on where peanuts grow in Virginia, how they are harvested, and where to purchase Virginia peanuts. Schoolteachers and many home school parents signed up to receive grade-appropriate teachers' kits about peanuts. Fair attendees left with recipes using peanuts and peanut butter, and booth staff handed out thousands of sample bags of salted peanuts to Fair attendees. Office of Veterinary Services (OVS) staff assisted with the check-in of dairy cattle, dairy goats, breeding goats, breeding cattle, breeding sheep, and youth livestock. At the request of VCE and Virginia Tech, VDACS staff ensures livestock being exhibited has met the show entry health requirements.

In October, in celebration of Virginia Farm to School Week, Commissioner Copenhaver 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 Communications visited Morris Orchard to purchase apples for the event and then travelled to VDACS's Lynchburg office to record video for the event, which was then edited and posted on the agency's social media channels.

In October, Commissioner Copenhaver, the DM Director, and DM staff participated in the 43rd Annual Sunbelt Ag Expo in Moultrie, Georgia. Virginia was highlighted as the Spotlight State at this year's event. In addition to VDACS representatives, the Virginia delegation included representatives from Virginia Tech, VSU, VCE, and VFBF. The Virginia Spotlight State production showcased all of Virginia agriculture with 14 exhibits and 26 banners representing Virginia agriculture commodities and VFBF; VCE; and VDACS agriculture research, marketing, and education programs. The displays filled 3,200 square feet in the Spotlight State Exhibit Hall and another 2,000 square feet of outside space.

Staff worked in conjunction with VCE and VFBB to coordinate displays, educational and promotional materials, volunteers, and logistics for the event. All sectors of Virginia's agriculture industry participated to highlight Virginia's largest industry and its history. ODMF staffed an exhibit booth in the spotlight state building that highlighted VDACS and the Virginia Grown and Virginia's Finest programs. Commissioner Copenhaver participated as a guest speaker at the Spotlight State Ribbon-Cutting and attended the Farmer of The Year Banquet and Luncheon. There were an estimated 100,000 attendees at this weeklong event.

In October, in Pittsylvania County, Governor Northam, Secretary Ring, Secretary of Commerce and Trade Ball, Senator Ruff, Delegate Marshall, Commissioner Copenhaver, and local elected officials, joined executive leaders of Tyson Foods to break ground for the company's new 325,000 square-foot state-of-the-art prepared foods production facility. The new facility will produce ready-to-eat convenience protein foods under the Tyson brand, such as Any'tizer Snacks, Chicken Nuggets, and Grilled and Ready Chicken Breast Strips. The project, which Governor Northam announced August 26, represents \$300 million in new investment, the creation of 375 new jobs, and the commitment to purchase \$60 million of Virginia-grown chicken over the next three years. The groundbreaking event was well attended and received excellent media coverage.

In October, Commissioner Copenhaver and Deputy Commissioner Green participated in a meeting of the Tri-National Accord (Accord), organized by NASDA. The Tri-National Accord is the primary opportunity for senior state and provincial agricultural officials of Canada, the U.S., and Mexico to work together collaboratively on agricultural trade policy and development issues. The Accord meets annually to provide a forum for ongoing collaboration between states and provinces and respective federal governments through bi-lateral groups commonly referred to as Consultative Committees on Agriculture. One of the main issues discussed during this year's meeting was Mexico's federal government's recent decision to impose arbitrary prohibitions on agricultural biotechnology and certain pesticides. Delegates reaffirmed their commitment that the regulation, import, and use of these critical tools be based on science and established a work group to promote this goal.

In November, Commissioner Copenhaver and VDACS staff attended the 2021 Governors Summit on Rural Prosperity hosted by the Center for Rural Virginia. The event featured comments from Governor Northam, Secretary Ring, Deputy Secretary Hertz, and other members of the administration as well as from elected officials and leaders in rural development. There was a strong focus on broadband access and partnerships throughout the Summit.

In November, Commissioner Copenhaver, Deputy Commissioner Green, and OAFD staff participated in a virtual meeting with USDA Undersecretary of Agriculture for Farm Production and Conservation Robert Bonnie, National Resources Conservation Service Chief of Staff Alyssa Charney, Delaware Secretary of Agriculture Scuse and his staff, and Maryland Department of Agriculture Secretary Bartenfelder and his staff, to discuss challenges accessing Agricultural Conservation Easement Program (ACEP) funding. Secretary Scuse convened the meeting to open a conversation about how to make the ACEP funds easier to access, recognizing that over \$1 billion in funding is currently included in the federal reconciliation bill. For Maryland, the primary challenge is a legal one around indemnification language. For Virginia, the primary challenges are (i) insufficient funding allocated to Virginia, which disincentivizes applications particularly from understaffed land trusts, and (ii) both the length and the complicated nature of the process. The feedback was well-received, and both

Undersecretary Bonnie and Chief of Staff Charney are open to receiving feedback and suggestions on how to improve the process, both at the staff level and in the 2022 Farm Bill.

In November, Commissioner Copenhaver and VDACS staff participated in the Virginia Agribusiness Council's (VAC) Annual Conference and Policy Meeting in Doswell. On November 9, Deputy Secretary Hertz provided remarks on the work VDACS has done to advance agriculture through various grant programs and on the ConserveVirginia 3.0 map. DM staff was available to answer questions regarding the agriculture data layer of the ConserveVirginia 3.0 map and the stakeholder process involved in its development. OPS staff delivered a presentation to the group that provided information regarding the implementation of online services, future testing options, and the proposed change to the pesticide fee structure. Commissioner Copenhaver provided an overview of agency priorities, and VDACS staff answered policy questions from members. Attendees included approximately 40 VAC members and other interested parties.

The fiscal year (FY) 2021 annual reports for all commodity boards are available for review on VDACS's webpage: <https://www.vdacs.virginia.gov/boards-virginias-agricultural-commodity-boards.shtml>.

VDACS has been awarded \$500,000 from the USDA National Institute of Food and Agriculture (NIFA) to help address farmer mental health and stress in the Commonwealth. The funding is part of a nearly \$25 million investment to support Farm and Ranch Stress Assistance Network state department of agriculture projects. VDACS will coordinate resources to expand and sustain its efforts to address stress and mental health challenges for producers, their families, and rural communities in Virginia. VDACS will work with both existing and new partners to achieve the goals associated with this funding opportunity, including the Virginia Farm Bureau Federation, Virginia Tech, and others. These efforts include a digital media campaign; outreach, training, and professional development; credit counseling services; and access to a 24/7 national agriculture mental health crisis helpline.

Division of Marketing

In October, VDACS received a second award acceptance letter from USDA regarding the 2021 round of Specialty Crop Block Grant (SCBG) funding. This year, SCBG funds were distributed in two rounds. The first consisted of \$549,487 of funds allocated in the federal Farm Bill, which funded eight projects that began October 1, 2021. The second round of SCBG funds, which total \$731,139 for 11 projects that will begin on November 1, 2021, were provided through COVID-19 relief funding. A press release for both amounts will be crafted and routed.

The Office of International Marketing (OIM) reports that the Virginia trade data is now available for the first three quarters of 2021. As of September, Virginia has exported nearly \$2.8 billion in agricultural and forestry products. This is a 40 percent increase compared to the first three quarters of 2020. The top destinations for Virginia agricultural and forestry products include China, Canada, Switzerland, Mexico, and Taiwan. The top products exported were soybeans, pork, soybean meal, edible offal, and tobacco.

In July, BrewLDN took place in the United Kingdom. Five Virginia breweries and one cidery sent product to the show to be represented by the VDACS Europe trade representative. The participating

companies included Sly Clyde Cider, the Virginia Beer Company, O'Connor Brewing, Lickinghole Creek Craft Brewery, Port City Brewing Company, and Champion Brewing Company. Representatives of the Virginia companies were unable to travel to the show due to COVID-19 travel restrictions and quarantine requirements. The attendance at the show was lower than in previous years; however, the quality of visitors to the Virginia booth was high. The trade representative collected several promising leads, including two major retailers interested in the Virginia brews. The trade representative continues to pursue these leads on behalf of the Virginia breweries.

In October, Bar Convent Berlin was held in person in Germany. OIM sponsored booth space for four Virginia craft distilleries. Participating distilleries included Belmont Farm Distillery, Reservoir Distillery, Caiseal Spirits, and Catocin Creek Distilling Company. Staff from the distilleries were able to attend the show. The Europe trade representative is working with the distilleries to follow up on leads acquired during the show. Catocin Creek and Reservoir Distillery products were already available in the market prior to the show.

In October, KazAgro/KazFarm 2021 was held in Nur-Sultan, Kazakhstan. The event showcased agricultural equipment, livestock, animal husbandry, health, and feed products as well as food processing technologies to more than 9,000 industry professionals. The participation of companies from more than 21 countries, including national stands from Germany and Russia, underscore the show's international character. OIM sponsored booth space for two companies at the event, TK Exports and Global Nutritech. Staff from both companies travelled to Kazakhstan to participate in the show and reported that the market in Central Asia is large and growing, with many opportunities for Virginia agriculture, particularly livestock and feed additives.

In October, the Canada trade representative and OIM staff participated in the Grocery Innovations Canada (GIC) virtual trade show on behalf of Virginia Diner (Wakefield) and Ayoba (Springfield). GIC, which is a premier business-to-business grocery and specialty food show organized by the Canadian Federation of Independent Grocers, featured 80 exhibitors, including producers, distributors, associations, equipment, and services. The event attracted between 200 – 400 visitors at a time during show hours. The trade representative and staff also attended seminar sessions during GIC, including several that provided information on the Canadian retail environment.

In October, OIM staff organized a video shoot with Van Cleve Seafood to highlight its plant based seafood brand Mind Blown. Van Cleve has been in the traditional seafood industry for 20 years. Three years ago, the company began developing plant-based shrimp, scallops, oysters, crab, and other products. The video was used as a part of a USDA Foreign Agricultural Service (FAS) webinar in November to promote high-value U.S. food products to buyers in Thailand. OIM staff and the Southeast Asia trade representative worked to identify potential buyers in advance of the webinar. FAS-Thailand praised the video presentation, and virtual meetings with potential Thai buyers will be scheduled in January 2022.

In 2017, VDACS sponsored booth space for Virginia beer companies at the Stockholm Beer and Whisky Festival. During the event, the Europe trade representative introduced participating Virginia companies to several importers who have strong links to System Bolaget, the Swedish alcohol board and retail shops operator. In November, as a result of its participation in this show four years ago and the relationships it established with those importers at this show, Port City Brewing Company

(Alexandria) won a 12-month contract to supply its Optimal Wit beer in cans and in kegs for draught pouring in the on-premise sector. The initial order for 1,900 cases will ship in December 2021, to be followed by another 1,900 cases in January. Port City will also ship kegs of its other beers to build brand awareness in the on-premise trade. It is hoped that these efforts will lead to sustainable and continued sales of Port City beers in Sweden.

In July, August, September, and October, ODMP staff conducted 11 meetings for the following Virginia commodity boards: the Wine Board, Marine Products Board, Cotton Board, Spirits Board, Horse Board, Cattle Board, and Small Grains Board and one meeting of the Horse Industry Board's Marketing Subcommittee. In accordance with the Governor's Executive Order, all board meetings were held with enhanced safeguards for social distancing, personal protective equipment, and offered hybrid and virtual options. At these meetings, the boards considered proposals for research, education, and promotional proposals for funding.

In July, August, September, and October, ODMP staff continued to recruit, train, and approve additional Virginia farmer vendors for participation in the 2021 Senior Farmers Market Nutrition and Women and Infant Children (SFMNP/WIC) Farm Market Fresh program, bringing the total number of participating vendors to 190. The SFMNP/WIC program is a USDA-funded program conducted in partnership with the Virginia Department of Aging and Rehabilitative Services that provides funds to qualifying senior citizens and women with infant children to purchase fresh fruit and vegetables from approved farmer vendors at participating farmers' markets across Virginia. In 2021, the program operated at 67 farmers' markets and 25 roadside stands located across the Commonwealth. The program runs from June 1 through November 30 each year and provides over \$400,000 worth of produce to qualifying Virginia citizens.

In July, August, September, and October, ODMP staff participated in following 12 events: Virginia Tech Southern Piedmont Agriculture Research and Extension Center Field Day, Virginia Christmas Tree Grower Conference, Virginia Ag Expo, VSU Field Day, Southern Hemp Conference, Great Virginia Pumpkin Extravaganza, VSU Small Farmer Meetings, Virginia Specialty Food Association's Coffee Chat, Virginia Tech Ag Day, Virginia Agritourism Conference, Specialty Food Association's Fancy Food Virtual Tradeshow, and the State Fair of Virginia. Total participation in these events was approximately 6,600.

In October, ODMP staff coordinated and participated in Base Camp: Exploring the Trails, Agritourism, and Downtown Ecosystems Conference. This event was an expansion of the former Agritourism Conference and represents a collaboration between VDACS, VCE, Virginia Tourism, Virginia Department of Conservation and Recreation (DCR), National Park Services, and Virginia Department of Housing and Community Development. This was the first year the event was held as a combined conference that highlighted agritourism as well as Virginia trails and downtowns, and this combined model will continue to be used moving forward. The conference demonstrated how connections between the three can increase the tourism experience and increase revenues for all three industries.

In September, OAFD staff participated in the first meeting of the State Wood Utilization Team (SWUT), a group of forestry industry stakeholders charged with supporting the Virginia Department of Forestry (DOF) Marketing and Utilization Team in identifying industry issues and prioritizing marketing activities. Participants included Secretary Ring, Assistant State Forester Lasher, and

colleagues from DOF, Virginia Tech, the Virginia Forest Products Association, the Virginia Forestry Association, the Virginia Loggers Association, the Southern Virginia Higher Education Center, the USDA Forest Service, the Virginia Economic Development Partnership, and the Center for Natural Capital. During the meeting, participants discussed findings from industry roundtables that were held in 2019 and May 2021, the latter of which included participation from a similar group from North Carolina. The group expects to gather in person at least once a year and meet virtually as needed.

In November, OAFD staff participated in a meeting of the Workgroup to Review the Practice of Retiring Agricultural Land for the Generation of Nutrient Credits, organized by the Virginia Department of Environmental Quality (DEQ) and held in Richmond. The workgroup was mandated by Item 377 of the 2021 Appropriation Act. Item 377(O) requires DEQ to conduct a study on the conversion of farmland to nutrient credit banks. Other members of the workgroup included representatives from DOF, Virginia Department of Transportation, DEQ, VFBB, VAC, Chesapeake Bay Commission, Clarke County, Virginia Home Builders Association, and several credit bankers. The primary question asked of the group is whether the conversion of agricultural land into forested land for the generation of phosphorus credits was having a negative impact on prime farmland in the Commonwealth. The question arose in response to the conversion of land in rural northern Virginia, primarily in Clarke and Fauquier counties, to facilitate development in eastern Loudoun, Fairfax, and the other more urban counties. Since the beginning of the credit trading program, approximately 9,000 acres have been converted, and DEQ does not currently have any information on whether the converted land was working agricultural land, was situated on prime soils, or was generally all or a portion of the property. The credit bankers suggested that conversion of agricultural land may no longer be as likely in the future given that the changing rates of credits is now incentivizing streambank restoration. This workgroup will not conduct any further meetings. At this point, DEQ will prepare a draft report for submission to the General Assembly by December 31 that recommends that further information is needed to determine whether the areas converted qualify as "prime" farmland and to fully define "prime" farmland for the purposes of this discussion.

The Office of Food Distribution reports that the seven Virginia foodbanks recently purchased \$3 million of food through the federal Build Back Better Program, part of the U.S. American Rescue Plan legislation. These foods will be distributed to food insecure families and individuals through the Emergency Food Assistance Program.

Market News reports that grain prices continue to be volatile. Corn and soybean prices have been under pressure recently due to increased production and an active harvest pace. U.S. corn production is estimated to be up six percent and soybean production is estimated to be up five percent from last year due to increased acreage and improved yields. Despite recent losses, corn prices are up nine percent since the beginning of the year. Soybean prices are down 11 percent since January. State graded feeder cattle sales have been active during the fall season and during October, with over 5,000 head of state graded cattle sold per week. Virginia feeder cattle prices have declined during the fall season but are up nearly 10 percent since the beginning of the year.

Market News compiled and provided state-graded feeder cattle data to Virginia Tech at the request of the Virginia-Maryland College of Veterinary Medicine. Head count data by location for all state-graded sales for 2020 was compiled. The data was requested by Virginia Tech for the purpose of studying

cattle movements and will be used to model population health and the potential movement and interventions for new diseases.

Market News compiled feeder cattle price data for the Eastern Virginia Cattlemen's Association. The Association requested information on state graded feeder cattle prices from sales at the Culpeper Ag Enterprise sale barn during 2021. Information on feeder cattle prices from Marshall and Radiant was also requested in order to compare prices at each location.

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. Pumpkin prices were also updated weekly on the Market News Hotline as a source of information for growers

Division of Commodity Services (DCS)

Since July 21, Division of Commodity Services (DCS) Staff:

- Conducted General Market and Shipping Point Inspections on 24,541,500 pounds of fresh fruits and vegetables and Processed Food Inspections on 7,123,994 pounds of processed products;
- Performed 45 Good Agricultural Practices (GAP) audits for Virginia fruit and vegetable growers;
- Inspected and certified grain commodities including soybeans, corn, wheat, barley, soybean meal, and soybean hull pellets with a total value of more than \$195 million destined for 24 countries;
- Conducted nine Grain Law Compliance visits and two Grain Damage Workshops;
- Provided livestock evaluation services to producers for approximately 68,080 cattle, 744 lambs and goats, and 540 4-H and FFA animals, and graded 561 beef carcasses. Staff compiled load lot descriptions, provided marketing guidance to producers, and assisted during the commingling and loading of trailer load lots;
- Inspected and certified approximately 137,237,144 pounds of Farmers' Stock peanuts and regrades, approximately 69,030,940 pounds of shelled and in-shell milled peanuts, and 6,756,236 pounds of imported peanuts from Argentina and Paraguay;
- Analyzed approximately 1,958 samples of peanuts for the presence and levels of aflatoxin to determine if the peanuts were safe for human consumption;
- Certified 3,711,004 pounds of various poultry parts for the USDA Feeding Program for School Lunch Products;
- Graded, via contracted full-time grading services, 86,629,120 pounds of chicken and 30,740,178 pounds of turkey for the Virginia poultry and egg industry;
- Provided non-contract fee grading and certification services for 360,351 pounds of poultry based on U.S. Consumer Grades to fulfill necessary specifications and contract requirements for the Virginia poultry and egg industry; and
- Conducted USDA Food Defense audits at Cargill Distribution Center in Mount Crawford, Lineage Logistics in Sandston, Cargill Turkey in Dayton, Cargill Turkey and Cooked Meats in Timberville, and Pilgrims Pride in Timberville.

In August, DCS staff conducted a Processed Apple Inspection class in Winchester to prepare its inspectors and graders for the 2021 season. In November, staff also held a Shipping Point Apple training class to refresh staff on the requirements for when official certification is requested for a load of fresh apples.

In August, Commissioner Copenhagen and DCS staff participated in the National Cattlemen's Beef Association Convention and Trade Show in Nashville, Tennessee. DCS and the Virginia Cattlemen's Association collaborated on a joint exhibit to promote Virginia feeder cattle at this national event.

Since July, DCS staff evaluated and screened the rams on test at the Virginia Tech/Steele's Tavern performance ram test station. The rams are on consignment from producers from Virginia and West Virginia. Staff helped ensure the rams offered were sound, structurally correct, and able to produce lambs meeting industry standards before being offered at public auction.

In October, the Director of the Division of Commodity Services and the Poultry and Egg Services Program Manager participated as Section Leaders at the 27th Annual National Egg Quality School in Harrisburg, Pennsylvania. The school offers a curriculum to individuals with responsibilities or interest in assuring the distribution of quality shell eggs throughout the marketing chain. The school featured speakers from nine universities, USDA, the U.S. Food and Drug Administration (FDA), the American Egg Board, the Egg Nutrition Center, and the United Egg Producers. This year, 58 registered students attended the school from various segments of the shell egg industry in addition to state regulators from several states. VDACS has been an active supporter of the National Egg Quality School since its inception.

Division of Animal and Food Industry Services (AFIS)

In August, OVS staff participated in the inaugural U.S. Swine Health Improvement Plan (US SHIP) meeting in Des Moines, Iowa. The primary objective of this meeting was to develop and implement a U.S. Swine Health Improvement Plan for African Swine Fever and Classical Swine Fever monitored certification of U.S. pork production operations modeled after the basic tenets of the National Poultry Improvement Plan. It is hoped that US SHIP can be developed into a more formal platform for safeguarding, certifying, and bettering the health of U.S. swine and the longer-term competitiveness of the U.S. pork industry.

In September, the OVS Program Manager and Animal Care Veterinary Supervisor met with members of the Humane Society of the United States and the Virginia Federation of Humane Societies to discuss challenges that shelters are having accessing veterinary care due to COVID-19. Veterinary clinics are currently challenged with an increase in client numbers and staff shortage that have led to delays in appointments and treatment for citizens and shelters.

In October, the State Veterinarian and OVS Program Manager participated in several workgroup meetings on feral cat management. During the 2021 Session of the General Assembly, the Chairman of the House Agriculture, Chesapeake and Natural Resources Committee sent a letter to Secretary Ring and several other secretariats requesting that they study this issue. The workgroup has been asked to develop language for future legislative sessions on reducing free-roaming cats in the Commonwealth.

No consensus has been reached among the various participants, and a fifth meeting has been discussed to conclude the group’s work.

In October, OVS staff participated in the U.S. Animal Health Association and National Institute for Animal Agriculture Council virtual meetings. During the meetings, the subcommittees on cattle and bison presented information on Tuberculosis and its occurrence worldwide and the use of vaccines in some countries. Updates were presented on Theileria, the disease caused by the Asian Longhorn Tick, and related research being conducted at Virginia Tech. The groups discussed how current technologies and information systems can be adapted to improve the efficacy of animal agriculture. Staff also participated in a meeting to discuss swine health where new research was presented on animal welfare and depopulation methods that were streamlined during the pandemic. USDA veterinarians also presented updates on African Swine Fever support and surveillance in the Dominican Republic and Puerto Rico.

The total fiscal year 2022 statistics to date for animal shelter inspections are as follows:

DATE	ANIMAL SHELTER INSPECTIONS	CITATIONS	PENALTY REFERRAL
TOTAL FISCAL YTD 2022	34	15	8

From June through September, the Office of Dairy and Foods (ODF) Food Safety Program performed the inspections necessary to open 224 new food businesses. A total of 461.5 hours were spent working with vendors to open these firms. The Food Safety Program has an inventory of 13,087 firms under inspection. Twenty-eight Food Safety Specialists, three Food Safety Technical Specialists, and three Field Supervisors are responsible for the regulatory oversight of these firms. From June through September, the ODF Food Safety Program conducted 2,755 inspections of food establishments (which includes retail food stores, food manufacturers, and food warehouses), investigated 138 consumer complaints, and collected 187 food samples.

The Food Safety Program received a Letter of Award from FDA for continued funding (\$455,000) for the fourth budget year (2021-2022) of the FDA's Flexible Funding Grant, which includes aiding the Food Safety Program to continue to be in full conformance with the federal Manufactured Food Regulatory Program Standards and to maintain the Virginia Rapid Response Team and the Virginia Food Safety Task Force.

During the months of June, July, August, and September, the ODF Dairy Services Program conducted 551 inspections of Grade "A" and manufactured-grade dairy farms and 82 cheese and ice cream manufacturing plant inspections. To ensure compliance with Virginia's regulatory standards, program staff collected 1,662 milk samples from Virginia Grade "A" dairy farms. Four hundred twenty-four (424) cheese and frozen dessert samples were collected to determine compliance with current dairy laws and regulations. Inspectors also performed 2,137 extensive discussions with producers and farm visits to review construction of dairy facilities, review the installation of milking equipment and other related items, and offer advice and assistance to dairy farmers and manufactured milk processors.

In September, the Dairy Services Program received the results of two random federal check-ratings conducted by FDA. The agency received perfect scores in both the sanitation (producer/farm) and enforcement (regulatory) categories. These ratings were conducted in Clarke County and Montgomery County. In October, the Dairy Services Program received the results of a random state rating conducted in Franklin County by the Sanitation Rating Officer of the Virginia Department of Health that also resulted in a perfect score in the enforcement category.

The Produce Safety Program (PSP) has continued its programmatic development and creation of policies, procedures, database development, and inspection protocols. PSP has partnered with various entities, including industry, FDA, and academia, in order to create a fully functional, effective program that will provide industry assistance and education, regulatory oversight of produce farms, and an appropriate level of public health protection.

In August, the PSP merged farm data from the 2018 Dun & Bradstreet/U.S. Farm Survey into its existing produce farm database. The database subsequently increased in size from around 789 farms to more than 5,800 farms. Inspectors are currently working to clarify data and visit farms in their area. There are currently 262 covered farms that need an inspection (including large, small, and very small farms), and 697 that are exempt or qualified exempt. There are an additional 4,656 active farms in the database that may need an inspection, but PSP must gather more information to make such a determination. Administrative staff have sent over 330 informational letters to clients with P.O. Boxes listed in the survey. Another 1,000 letters will be sent to farms where more information is needed. In September, a new Memorandum of Understanding and contractual agreement was signed with Virginia Tech that will provide the university with \$10,000 to continue education and outreach regarding the federal Produce Safety Rule. PSP allocated this funding from its recent federal grant in order to continue its ongoing collaboration with Virginia Cooperative Extension and to engage the farming community.

The Office of Meat and Poultry Services (OMPS) performed the inspections necessary to open two new establishments this year. The first, Culpepper (Manassas), is producing Turkish Style Pizza. The second, Hatch Butchery (Richmond), is operating as an inspected central kitchen. Central kitchens provide inspected processing space for individuals looking to manufacture meat and poultry products. This facility allows individuals to build their business without the expense of leasing or purchasing a building and equipment. Two additional establishments moved or expanded their operations. Grayson Natural (Independence) has expanded its facility to provide additional space. Monterey Mountain Meats moved into the old Allegheny Meats facility and will be operating as a custom exempt facility. Several custom slaughter facilities have expressed interest in obtaining grants of inspection. OMPS is also expecting to gain two additional inspected establishments this year. Performing inspections at these new establishments could be hindered by OMPS's difficulties in hiring new inspectors. Inspected facilities are reporting difficulties obtaining meat and the other supplies necessary to meet their production needs. Plant managers are also citing difficulties in recruiting employees to work in meat packing plants. Livestock producers have reported issues getting animals slaughtered under inspection due to the lack of slaughter facilities in Virginia.

Division of Consumer Protection (DCP)

In July, Office of Weights and Measures (OWM) staff participated in the annual meeting of the National Conference on Weights and Measures, held in Rochester, New York, and in October, participated in the annual meeting of the Southern Weights and Measures Association, held in New Orleans, Louisiana. These meetings provide 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 Handbook 44, Handbook 130 and Handbook 133. These handbooks have been adopted by the Code of Virginia for OWM to use as guidance in the performance of inspection activities.

In August, the Virginia Metrology Laboratory underwent an audit to maintain National Voluntary Laboratory Accreditation Program accreditation. The accreditation demonstrates technical competence for a defined scope and the operation of a laboratory quality management system. The audit included a review of the management system and records to ensure the Metrology Lab is in compliance with the recognized International Standard ISO/IEC 17025:2017. The auditor witnessed calibration procedures to ensure technical competence. VDACS was issued reaccreditation through September 2022.

In August, OPS staff virtually participated in the annual meeting of the Association of Structural Pest Control Regulatory Officials. Meeting topics included regulatory preemption, structural fumigation clearance devices and mitigation measures, and impacts of future pandemics for regulators and industry. New this year were training sessions for inspectors that covered topics such as interviewing techniques, agricultural and non-agricultural terrorism, and testifying at a hearing or in court. OPS is actively involved in the structural pest control arena. This meeting provides an opportunity to provide issue-specific input and pertinent information related to the regulation of the industry. The approximately 200 attendees represented state and federal government officials, researchers, educators, and members of the regulated industry.

In September, OPS hosted the final pesticide collection event for the 2021 Pesticide Collection Program. A total of 16,010 pounds of unwanted pesticides were collected from the events hosted in the City of Fairfax and Prince William County, bringing the total pesticides collected for 2021 to 59,309 pounds. The Pesticide Disposal Program assists agricultural producers, licensed pesticide dealers, pest control firms, golf courses, and homeowners with the proper disposal of unwanted pesticides. The program is available at no cost to eligible participants and is supported by pesticide fees collected by VDACS. Since its inception, the Pesticide Collection Program has collected over 1.6 million pounds of unwanted pesticide material. The 2022 Pesticide Collection Program will take place in the counties of Albemarle, Augusta, Bath, Clarke, Culpeper, Fauquier, Fluvanna, Frederick, Greene, Highland, Louisa, Madison, Nelson, Orange, Page, Rappahannock, Rockbridge, Rockingham, Shenandoah, and Warren and the cities of Buena Vista, Charlottesville, Harrisonburg, Lexington, Staunton, Waynesboro, and Winchester.

In September, OPS staff participated in the virtual biannual State Federal Insecticide, Fungicide, and Rodenticide Act Issues Research and Evaluation Group (SFIREG) Joint Working Committee Meeting. Staff was an invited presenter providing the state lead agency perspective on EPA Office of Enforcement and Compliance Assurance flexibilities and recommended processes to assist in meeting inspection commitments during the COVID-19 public health emergency. EPA had provided a letter to state lead agencies that allowed inspection flexibilities through March 2021, and as a result of the continuing impacts of COVID-19, provisions of the letter were extended through September 2021. EPA

is currently re-evaluating if a further extension is necessary. Other topics of interest included Dicamba, State Certification Plans, residential backyard mosquito applications, and updates from the EPA's Offices of Pesticide Programs and Enforcement and Compliance Assurance. OPS staff serves as the Region III representative to SFIREG.

In October, the OPS Online Pesticide Product Registration System became available to registrants for both new and renewing pesticide products. Pesticide product registration renewal notices were sent to approximately 1,728 registrants representing approximately 16,791 pesticide products. Registrants are being encouraged to use the new online services to renew their products for the 2022 registration year. Benefits of the use of the new system to registrants include reducing the overall processing time for completed applications, reduced postage costs, and online payment. There is no fee for registrants to use the online system. Registrants are able to access the system via the agency's website. Detailed instructions are provided throughout the online application process to support users. Pesticide Product Registration is the first of three online solutions to be made available to OPS customers. In addition to pesticide product registration, the pesticide applicator certification and business licensing programs will also offer online services in the near future.

Since July, OPS staff has proctored several in-person pesticide applicator testing events in cooperation with the Virginia Pest Management Association and VCE. These proctored events are part of OPS's ongoing effort to provide additional testing opportunities and assist prospective applicators with certification. Although the Virginia Department of Motor Vehicles continues to serve as the primary testing option for prospective applicators, its capacity is currently reduced, which has led OPS to explore additional testing opportunities.

In September, OPS and the OPIS staff hosted a meeting with FieldWatch, Inc. in Richmond. The meeting focused on the building of strategic partnerships to expand the use of FieldWatch solutions as well as discussion regarding how to encourage beekeepers and pesticide applicators to utilize the online systems. As part of Virginia's *Voluntary Plan to Mitigate the Risk of Pesticides to Managed Pollinators*, VDACS procured FieldWatch's online mapping tool as a means to enhance communication between beekeepers and pesticide applicators. Beekeepers can use BeeCheck® to map the location of their hives, and agricultural producers and pesticide applicators can register with FieldCheck® to view the locations of hives in the application area and notify beekeepers of planned applications. FieldWatch, Inc. is a non-profit organization that seeks to facilitate increased collaboration and communication between specialty crop producers, beekeepers, and pesticide applicators.

In September, OPS and OPIS hosted a stakeholder workgroup meeting in Henrico to discuss Virginia's Voluntary Plan to Mitigate the Risk of Pesticides to Managed Pollinators (Plan). The meeting was held in response to the enactment of Chapter 458 of the 2021 Acts of Assembly, Special Session 1. Chapter 458 directed VDACS to conduct a study on the Beekeeper Pollinator Protection Plan (*Voluntary Plan to Mitigate the Risk of Pesticides to Managed Pollinators*) and the associated voluntary best management practices for the purpose of improving communication between beekeepers and pesticide applicators in an effort to further reduce the risk to pollinators from neonicotinoid insecticides. The information gathered during the meeting was included in the agency's report, which was due to the General Assembly on December 1. Of the 24 invitees representing pesticide applicators and beekeepers and their respective associations, a total of eight representatives attended. Members in

attendance included hobbyist beekeepers, commercial beekeepers, and representatives from the agricultural organizations.

In July, OPIS staff released approximately 750 mile-a-minute weevils at a site in Accomack County known to be infested with Mile-a-minute weed (*Persicaria perfoliata*). The Mile-a-minute weevil feeds exclusively on the Mile-a-minute weed, resulting in defoliation and reducing the survivability of the plant. The weevils act as a biocontrol agent to suppress the growth and spread of the weed. Mile-a-minute weed is listed as a Tier 3 noxious weed in Virginia's *Regulations for the Enforcement of the Noxious Weeds Law* (2 VAC 5-317). Mile-a-minute weed is a highly invasive plant that grows rapidly, producing vines that can overtake native vegetation.

OPIS began accepting applications for the Beehive Distribution Program (BDP) on July 20, and the application period closed August 4. Over 6,500 applications were received by OPIS for the BDP, which provides beekeeping equipment to recipients. VDACS received general fund appropriations of \$125,000 in FY 2021 and \$200,000 in FY 2022 for the BDP. OPIS is working with a vendor for the distribution of the beehive equipment.

From July through October, the spotted lanternfly (SLF) was found in the counties of Albemarle, Page, Rockbridge, and Carroll. The Carroll County site represents the farthest west in Virginia where SLF has been found. Treatments were conducted by OPIS at all four sites. Staff will conduct delimiting surveys of the nearby areas for all of these sites to determine if they are isolated incidents or if the populations are more distributed.

During the summer and fall of 2021, OPIS staff conducted pesticide injections using the systemic insecticide Dinotefuran at high priority SLF sites as a method of rapid control for SLF. While more costly, tree injections have a higher mortality rate for the SLF than insecticides applied through bark sprays, with insect mortality occurring within 30 minutes of injection. To date, approximately 60 properties have been treated in 2021 with Dinotefuran injections by OPIS staff.

In July, OPIS staff submitted funding requests in the amount of \$1,609,174, to USDA for grants through the federal Plant Protection Act (PPA) Section 7721 for the 2022-23 award year. The requested funding will support survey program activities for various invasive plant pests, including the SLF Survey, Treatment, and Outreach Program.

From June through November, staff from OPIS and DCR hosted six meetings of the workgroup for House Joint Resolution 527 (HJ 527). HJ 527 was passed by the 2021 General Assembly and requires the two agencies to conduct a study on the sale and use of invasive plants in the Commonwealth. As part of this study, VDACS and DCR hosted meetings to obtain stakeholder input. HJ 527 required all meetings to be completed by November 30, 2021, and a report submitted to the Governor and the General Assembly by the first day of the 2022 Session of the General Assembly.

From August - November, staff from OPIS installed and monitored approximately 810 cotton boll weevil traps on 73,000 acres of cotton. Cotton boll weevil surveys consist of installing and monitoring traps placed on cotton fields to detect the presence of the cotton boll weevil. Costs of the survey are paid by Virginia's cotton growers. The 73,000 estimated cotton acres in Virginia represents a five

percent decrease compared to last year's cotton acreage. To date, no cotton boll weevil has been detected in Virginia.

In November, OPIS received confirmation from USDA that Red Imported Fire Ant (RIFA) *Solenopsis invicta* (Buren) (Hymenoptera:Formicidae) was confirmed for a sample collected from Lee County. Two fire ant mounds were found at the Lee County site, which is approximately 200 miles west of the closest confirmed RIFA site in Virginia. However, Tennessee and Kentucky have fire ant populations near this site. Later in November, OPIS was notified by the Virginia Tech Department of Entomology that the RIFA colony was confirmed to be a colony of fire ant hybrids. One of the populations in Tennessee is a hybrid RIFA population that seems to tolerate colder temperatures. Black Fire Ants and Red Fire Ant hybrids are generally found in areas north of Red Fire Ant populations. OPIS is in discussions with the property owner to schedule treatments of the mounds.

In November, OPIS and DOF staff surveyed for Thousand Canker Disease (TCD) in Fauquier County. In October, staff confirmed TCD on a sample collected from a mature walnut tree located in Fauquier County. The positive confirmation was the first in Fauquier County. TCD is a disease complex native to the western U.S. that primarily affects black walnut (*Juglans nigra*). The complex is the result of the combined activity of a fungus (*Geosmithia morbida*) and the walnut twig beetle. TCD affects the vascular system of the tree, creating many cankers, which prevent the flow of water and nutrients and can lead to overall tree decline and mortality. TCD is a regulated disease and insect complex in Virginia. Staff collected two additional samples to help better understand the scope of this recent TCD detection.

Virginia Administrative Code

Chapter 390. Rules and Regulations for the Enforcement of the Virginia Seed Law

2VAC5-390-10. Methods of inspecting, sampling, and testing, and the application tolerances.

Method of inspecting, sampling, and testing, and the application of tolerance shall be according to the "Rules for Testing Seeds" adopted by the Association of Official Seed Analysts* except:

1. For those kinds of tree and shrub seed not included in the "Rules for Testing Seeds," Association of Official Seed Analysts, the testing procedure used shall be those recommended by the National Tree Seed Laboratory.
2. That tolerances are not allowed on prohibited noxious weed seeds.
3. Tolerance shall apply to flower and vegetable germination standards only as specified in [2VAC5-390-90](#) and [2VAC5-390-110](#).
4. For seed peanuts the testing tolerance will be five on the minimum germination standard.
5. Certain kinds listed as crop seeds in Association of Official Seed Analysts Handbook 25 "Uniform Classification of Weed and Crop Seed" shall be considered restricted noxious weed seeds as listed in [2VAC5-390-20](#) B 2.

*Currently effective, copies of which may be obtained from the commissioner upon request, at cost.

Statutory Authority

§ [3.2-4001](#) of the Code of Virginia.

Historical Notes

Derived from VR115-04-09 § 1, eff. November 13, 1985; amended, Virginia Register Volume 2, Issue 4, eff. December 24, 1985; Volume 2, Issue 17, eff. June 25, 1986; Volume 3, Issue 1, eff. November 12, 1986; Volume 7, Issue 7, eff. January 31, 1991.

2VAC5-390-20. Noxious weed seeds.

Noxious weed seeds as defined in the Virginia Seed Law, Article 1 (§ [3.2-4000](#) et seq.) of Chapter 40 of Title 3.2 of the Code of Virginia are divided into two classes:

A. Prohibited noxious weed seeds are:

Balloonvine - *Cardiospermum halicacabum*

Canada thistle - *Cirsium arvens*

Field Bindweed - *Convolvulus arvensis*

Johnsongrass, Sorgrass and, *Sorghum alnum*, and hybrids derived therefrom - *Sorghum* spp. - Perennial

Plumeless thistles, which includes Musk thistle, and Curled thistle - *Carduus* spp.

Quackgrass - *Agropyron repens*

Serrated tussock - *Nassella trichotoma*

Sicklepod - Cassia tora

B. Restricted noxious weed seeds are:

1. Restricted noxious weed seeds for agricultural and vegetable seed, except for lawn and turf seed and mixtures thereof, shall be prohibited from sale for seeding purposes if the number per ounce or per pound of such noxious weed seed found exceeds the limitations allowed for each. Such weed seeds and limitations shall be:

KIND	LIMITATION
Wild onion bulblets and wild garlic bulblets - Allium spp.	5 per ounce or 80 per pound for orchardgrass; 2 per ounce or 32 per pound for other kinds
Dodder - Cuscuta spp.	4 per ounce or 64 per pound
Wild mustard - Brassica spp. - includes species when incidentally occurring in agricultural seed, provided that species listed in 2VAC5-390-50 and 2VAC5-390-90 may be sold as such when labeled as required.	5 per ounce all or 80 per pound
Giant foxtail - Setaria faberi	4 per ounce or 64 per pound
Radish - Raphanus spp.	1 per ounce or 16 per pound

2. Restricted noxious weed seeds for lawn and turf seed and mixtures thereof. Those kinds listed below shall be restricted noxious weed seeds and shall be declared on the label under the heading "Noxious weed seeds" or "Undesirable grass seed" according to § [3.2-4008](#) J 5 when present in bentgrasses, Kentucky bluegrass, chewing fescue, red fescue, hard fescue, varieties of perennial ryegrass, varieties of named turf type tall fescue, and/or mixtures containing these grasses. Such weed seeds are:

Annual bluegrass	Poa annua
**Bentgrasses (creeping, colonial, velvet)	Agrostis spp.
**Bermudagrass, Giant bermudagrass	Cynodon spp.
**Meadow fescue	Festuca pratensis
Orchardgrass	Dactylis glomerata
**Redtop	Agrostis gigantea
**Rough bluegrass	Poa trivialis
**Tall fescue	Festuca arundinacea
Timothy	Phleum pratense
Velvetgrass	Holcus lanatus
**May be included as a labeled component of a mixture when in excess of 5.0% of the whole.	

NOTE - EXEMPTIONS - This chapter does not apply to restricted noxious weed seeds in grasses or mixtures clearly labeled for pasture, forage, hay, or spoilbank reclamation usage.

Statutory Authority

§ [3.2-4001](#) of the Code of Virginia.

Historical Notes

Derived from VR115-04-09 § 2, eff. November 13, 1985; amended, Virginia Register Volume 2, Issue 4, eff. December 24, 1985; Volume 2, Issue 17, eff. June 25, 1986; Volume 3, Issue 1, eff. November 12, 1986; Volume 7, Issue 7, eff. January 31, 1991; [Volume 25, Issue 11](#), eff. March 4, 2009; Errata, 25:13 VA.R. 2566 March 2, 2009.

2VAC5-390-30. Net weight requirements.

A. Net weight is required on all containers except on packets containing less than ½ ounce avoirdupois.

B. All net weight labeling shall be consistent with the requirements of the Virginia Weights and Measures Law, Chapter 56 (§ [3.2-5600](#) et seq.) of Title 3.2 of the Code of Virginia and the Virginia Weights and Measures regulations except that when a seed tag is used the net weight information may appear on the seed tag rather than on the seed bag.

Statutory Authority

§ [3.2-4001](#) of the Code of Virginia.

Historical Notes

Derived from VR115-04-09 § 3, eff. November 13, 1985; amended, Virginia Register Volume 2, Issue 4, eff. December 24, 1985; Volume 2, Issue 17, eff. June 25, 1986; Volume 3, Issue 1, eff. November 12, 1986; Volume 7, Issue 7, eff. January 31, 1991; [Volume 25, Issue 11](#), eff. March 4, 2009.

2VAC5-390-40. Labeling treated seed.

A. Contents of label. All seed "treated" as defined by § [3.2-4000](#) of the Code of Virginia, shall be labeled in type no smaller than eight points to indicate that such seed has been treated and to show the name of any substance or a description of any process (other than application of a substance) used to treat such seed, for example:

Treated with -(Name of substance or process)

or -(Name of substance or process) treated.

If the substance used in such treatment in the amount remaining with the seed is harmful to humans or other vertebrate animals, the seed shall also bear a label containing statements as specified by subsections C and D below. The label shall contain the required information in any form that is clearly legible and complies with this chapter. The information may be on the analysis tag, on a separate tag, or printed on the container in a conspicuous manner.

B. Name of substance. The name of any substance as required by subsection A of this section shall be commonly accepted coined, chemical (generic), or abbreviated chemical name. Commonly accepted coined names are not private trademarks and are free for use by the public and are commonly recognized as names of particular substances such as thiram, captan, lindane, and dichlone. Examples of commonly accepted chemical (generic) names are: bluestone, calcium carbonate, cuprous oxide, zinc hydroxide, hexachlorobenzene and ethyl mercury acetate. The terms "mercury" or "mercurial" may be used to represent all types of mercurial compounds. Examples of commonly accepted abbreviated chemical names are: BHC (1,2,3,4,5,6, Hexachlorocyclohexane) and DDT (dichloro diphenyl trichloroethane)

C. Mercurials and similarly toxic substance.

1. Seeds treated with a mercurial or similarly toxic substance, if any amount whatsoever remains with the seed, shall be labeled to show a representation of a skull and crossbones at least twice the size of the type used for information required to be on the label under subsection A and shall also include in red letters on a background of distinctly contrasting color a statement substantially as follows: "Treated with Poison," "Poison treated," or "Poison." Such treatment shall appear in type no smaller than eight points.

2. Substances similarly toxic to mercurials include the following: Aldrin (technical); demeton; dieldrin; endrin; heptachlor; O, O-diethyl S-(ethylthiomethyl) phosphorodithiolate; and O, O-diethyl S-2 (ethylthio) ethyl phosphorodithiolate. Any amount of such substances remaining with the seed shall be considered harmful to humans and other vertebrate animals.

D. Other harmful substances. If any substance, other than one which would be classified as a mercurial or similarly toxic substance under subsection C., is used in the treatment of seed; the amount remaining with the seed is considered harmful to humans or other vertebrate animals unless the seed is in containers of four ounces or less. Seed treated with such substances shall be labeled with an appropriate caution statement in type no smaller than eight points worded substantially as follows: "Do not use for food," "Do not use for feed," "Do not use for oil purposes," or "Do not use for food, feed, or oil purposes." This subsection applies to all chemical substances not within subsection C. except that the following substances shall not be deemed harmful when present at a rate less than the number of parts per million indicated:

Allethrin - 2 p.p.m.

Malathion - 8 p.p.m.

Methoxychlor - 8 p.p.m.

Piperonyl butoxide - 20 p.p.m. except 8 p.p.m. on Oat and Sorghum.

Pyrethrins -- 3 p.p.m. except 1 p.p.m. on Oat and Sorghum.

E. Weight of treatment substance. When the weight of treatment substances added exceed 1.0% of the net weight of seed, the rate of treatment must be given on the analysis tag.

Statutory Authority

§ [3.2-4001](#) of the Code of Virginia.

Historical Notes

Derived from VR115-04-09 § 4, eff. November 13, 1985; amended, Virginia Register Volume 2, Issue 4, eff. December 24, 1985; Volume 2, Issue 17, eff. June 25, 1986; Volume 3, Issue 1, eff. November 12, 1986; Volume 7, Issue 7, eff. January 31, 1991; [Volume 25, Issue 11](#), eff. March 4, 2009.

2VAC5-390-50. Agricultural seeds.

A. Agricultural seeds are the seed of the following:

Alfalfa -- *Medicago sativa*

Barley -- *Hordeum vulgare*

Beet, Sugar -- *Beta vulgaris*

Bentgrass:

Bentgrass, colonial -- *Agrostis tenuis*

Bentgrass, creeping -- *Agrostis stolonifera* var. *palustris*

Bentgrass, velvet -- *Agrostis canina*

Bermudagrass -- Except as specified in [2VAC5-390-20](#) of this chapter.

Common -- *Cynodon dactylon* var. *dactylon*

Giant -- *Cynodon dactylon* var. *aridus*

Bluegrass:

Canada -- *Poa compressa*

Kentucky -- *Poa pratensis*

Rough -- *Poa trivialis*

Wood -- *Poa nemoralis*

Brome, smooth -- *Bromus inermis*

Broomcorn -- *Sorghum bicolor*

Buckwheat -- *Fagopyrum esculentum*

Canarygrass, reed -- *Phalaris arundinacea*

Carpetgrass -- *Axonopus affinis*

Clover:

Alsike -- *Trifolium hybridum*

Crimson -- *Trifolium incarnatum*

Red -- *Trifolium pratense*

Sweet -- (See Sweet Clover)

White -- *Trifolium repens* including the var. Ladino

Corn:

Field -- *Zea mays*

Pop -- *Zea mays* var. *everta*

Cotton -- *Gossypium* spp.

Cowpea -- *Vigna unguiculata* subsp. *unguiculata*

Crambe -- *Crambe abyssinica*

Crownvetch -- *Coronilla varia*

Dallisgrass -- *Paspalum dilatatum*

Fescue:

Chewings -- *Festuca rubra* var. *commutata*

Hard -- *Festuca trachyphylla*

Meadow -- *Festuca pratensis*

Red -- *Festuca rubra* subsp. *rubra*

Sheep -- *Festuca ovina*

Tall -- *Festuca arundinacea*

Lespedeza:

Bicolor -- *Lespedeza bicolor*

Korean -- *Lespedeza stipulacea*

Sericea -- *Lespedeza cuneata*

Striate -- *Lespedeza striata*

Millet, browntop -- *Brachiaria ramosa*

Millet, Italian -- *Setaria italica*

Millet, Japanese -- *Echinochloa crusgalli* var. *frumentacea*

Millet, pearl -- *Pennisetum americanum*

Millet, proso -- *Panicum miliaceum*

Oat -- *Avena* spp.

Oatgrass, tall -- *Arrhenatherum elatius*

Orchardgrass -- *Dactylis glomerata*

Pea, field -- *Pisum sativum*

Peanut -- *Arachis hypogaea*

Rape, winter -- *Brassica napus* var. *biennis*

Redtop -- *Agrostis gigantea*

Rye -- *Secale cereale*

Ryegrass, annual or Italian -- *Lolium multiflorum*

Ryegrass, intermediate -- *Lolium* X *hybridum*

Ryegrass, perennial -- *Lolium perenne*

Sorghum, grain and sweet -- *Sorghum bicolor*

Sorghum, Sudangrass hybrid -- *Sorghum bicolor* X *Sorghum sudanense*

Soybeans -- *Glycine max*

Sudangrass -- *Sorghum sudanense*

Sunflower -- *Helianthus annuus*

Sweet Clover:

White -- *Melilotus alba*

Yellow -- *Melilotus officinalis*

Timothy -- *Phleum pratense*

Tobacco -- *Nicotiana tabacum*

Trefoil, Birdsfoot -- *Lotus corniculatus*

Triticale -- *Triticosecale*

Vetch, hairy -- *Vicia villosa* subsp. *villosa*

Wheat -- *Triticum aestivum*

B. Kinds not listed under subsection A. Any kind of seed not listed under subsection A of this section or in [2VAC5-390-90](#) when present incidentally in seed samples of the kinds so listed shall be considered to be a weed seed unless such kind is classified solely as a crop seed by the Association of Official Seed Analysts in its handbook "Uniform Classification of Weed and Crop Seeds."

Statutory Authority

§ [3.2-4001](#) of the Code of Virginia.

Historical Notes

Derived from VR115-04-09 § 5, eff. November 13, 1985; amended, Virginia Register Volume 2, Issue 4, eff. December 24, 1985; Volume 2, Issue 17, eff. June 25, 1986; Volume 3, Issue 1, eff. November 12, 1986; Volume 7, Issue 7, eff. January 31, 1991.

2VAC5-390-60. Weed seeds.

As provided by subdivision 1 f of § [3.2-4015](#) of the Code of Virginia, agricultural seed of the following kinds may contain weed seeds not to exceed the following limitations:

1. Korean Lespedeza -- Lespedeza stipulacea 1.50%
2. Orchardgrass -- Dactylis glomerata (Hulled) 1.50%
3. Oatgrass, tall -- Arrhenatherum elatius 1.50%
4. Redtop -- Agrostis gigantea 1.50%

Statutory Authority

§ [3.2-4001](#) of the Code of Virginia.

Historical Notes

Derived from VR115-04-09 § 6, eff. November 13, 1985; amended, Virginia Register Volume 2, Issue 4, eff. December 24, 1985; Volume 2, Issue 17, eff. June 25, 1986; Volume 3, Issue 1, eff. November 12, 1986; Volume 7, Issue 7, eff. January 31, 1991; [Volume 25, Issue 11](#), eff. March 4, 2009.

2VAC5-390-70. Code designation.

As provided by § [3.2-4008](#) C 12 and J 10 of the Code of Virginia, any Virginia seed dealer may request from the commissioner a code designation to be used in lieu of his name and address for use on seed labeled for intrastate shipment provided; however, such shipments must be labeled to show the name and address of the consignee. Such designation will bear the prefix VDACS followed by an appropriate assigned number; however, a bona fide AMS (C&MS) number may be used in lieu of the VDACS code designation provided it is recorded with the commissioner by the seed dealer.

Statutory Authority

§ [3.2-4001](#) of the Code of Virginia.

Historical Notes

Derived from VR115-04-09 § 7, eff. November 13, 1985; amended, Virginia Register Volume 2, Issue 4, eff. December 24, 1985; Volume 2, Issue 17, eff. June 25, 1986; Volume 3, Issue 1, eff. November 12, 1986; Volume 7, Issue 7, eff. January 31, 1991; [Volume 25, Issue 11](#), eff. March 4, 2009.

2VAC5-390-80. Controlled conditions.

Controlled conditions are those minimum field standards for certification last established by the State Certified Seed Board as authorized under Article 2 (§ [3.2-4021](#) et seq.) of Chapter 40 of Title 3.2 of the Code of Virginia.

Statutory Authority

§ [3.2-4001](#) of the Code of Virginia.

Historical Notes

Derived from VR115-04-09 § 8, eff. November 13, 1985; amended Virginia Register Volume 2, Issue 4, eff. December 24, 1985; Volume 2, Issue 17, eff. June 25, 1986; Volume 3, Issue 1, eff. November 12, 1986; Volume 7, Issue 7, eff. January 31, 1991; [Volume 25, Issue 11](#), eff. March 4, 2009; Errata, 25:13 VA.R. 2566 March 2, 2009.

2VAC5-390-90. Vegetable seeds and minimum germination standards.

A. Vegetable seeds are the seeds of the following, and the germination standards are as indicated:

Kind	Germination Standard
Asparagus -- <i>Asparagus officinalis</i>	70
Beans, garden -- <i>Phaseolus vulgaris</i>	70
Beans, lima -- <i>Phaseolus lunatus</i>	70
Beet -- <i>Beta vulgaris</i>	65
Broccoli -- <i>Brassica oleracea</i> var. <i>botrytis</i>	75
Brussels sprouts -- <i>Brassica oleracea</i> var. <i>gemnifera</i>	70
Cabbage -- <i>Brassica oleracea</i> , var. <i>capitata</i>	75
Carrot -- <i>Daucus carota</i>	55
Cauliflower -- <i>Brassica oleracea</i> var. <i>botrytis</i>	75
Celeriac -- <i>Apium graveolens</i> var. <i>rapaceum</i>	55
Celery -- <i>Apium graveolens</i> var. <i>dulce</i>	55
Chicory -- <i>Cichorium intybus</i>	65
Citron -- <i>Citrullus lanatus</i> var. <i>citroides</i>	65
Collards -- <i>Brassica oleracea</i> var. <i>acephala</i>	80
Corn, garden -- <i>Zea mays</i>	75
Cornsalad -- <i>Valerianella locusta</i>	70
Cowpea -- <i>Vigna unguiculata</i> subsp. <i>unguiculata</i>	75
Cress, garden -- <i>Lepidium sativum</i>	75
Cress, upland -- <i>Barbarea verna</i>	60
Cress, water -- <i>Nasturtium officinale</i>	40
Cucumber -- <i>Cucumis sativus</i>	80
Eggplant -- <i>Solanum melongena</i>	60
Endive -- <i>Cichorium endivia</i>	70
Kale -- <i>Brassica</i> spp	75
Kohlrabi -- <i>Brassica oleracea</i> var. <i>gongylodes</i>	75
Leek -- <i>Allium porrum</i>	60
Lettuce -- <i>Lactuca sativa</i>	80
Muskmelon (Cantaloupe) -- <i>Cucumis melo</i>	75
Mustard -- <i>Brassica juncea</i>	75
Mustard, spinach -- <i>Brassica perviridis</i>	75
Okra -- <i>Abelmoschus esculentus</i>	50
Onion -- <i>Allium cepa</i>	70
Parsley -- <i>Petroselinum crispum</i>	60
Parsnip -- <i>Pastinaca sativa</i>	60

Peas, garden -- <i>Pisum sativum</i>	80
Pepper -- <i>Capsicum spp</i>	55
Pe-tsai or Chinese cabbage -- <i>Brassica pekinensis</i>	75
Pumpkin -- <i>Cucurbita pepo</i>	75
Radish -- <i>Raphanus sativus</i>	75
Rhubarb -- <i>Rheum rhabarbarum</i>	60
Rhutabaga -- <i>Brassica napus var. napobrassica</i>	75
Salsify -- <i>Tragapogon porrifolius</i>	75
Spinach (except New Zealand) -- <i>Spinacia oleracea</i>	60
Spinach, New Zealand -- <i>Tetragonia expansa</i>	40
Squash -- <i>Cucurbita pepo</i>	75
Swiss chard -- <i>Beta vulgaris var. cicla</i>	65
Tomato -- <i>Lycopersicon lycopersicum</i>	75
Turnip -- <i>Brassica rapa</i>	80
Watermelon -- <i>Citrullus lanatus</i>	70

B. Testing tolerances shall not be applied unless the percentage of germination is shown on the seed package or label attached to the seed container. If no germination percentage is shown on the label, the seed must meet minimum standards without benefit of tolerance.

Statutory Authority

§ [3.2-4001](#) of the Code of Virginia.

Historical Notes

Derived from VR115-04-09 § 9, eff. November 13, 1985; amended, Virginia Register Volume 2, Issue 4, eff. December 24, 1985; Volume 2, Issue 17, eff. June 25, 1986; Volume 3, Issue 1, eff. November 12, 1986; Volume 7, Issue 7, eff. January 31, 1991.

2VAC5-390-100. Origin.

Origin as required by § [3.2-4008](#) C 4 of the Code of Virginia shall not apply to seed in lawn or turf grass mixtures in prepacked containers of fifty pounds or less; however, the formulator of such mixtures shall maintain origin records as required by § [3.2-4006](#) of the Code of Virginia.

Statutory Authority

§ [3.2-4001](#) of the Code of Virginia.

Historical Notes

Derived from VR115-04-09 § 10, eff. November 13, 1985; amended, Virginia Register Volume 2, Issue 4, eff. December 24, 1985; Volume 2, Issue 17, eff. June 25, 1986; Volume 3, Issue 1, eff. November 12, 1986; Volume 7, Issue 7, eff. January 31, 1991; [Volume 25, Issue 11](#), eff. March 4, 2009.

2VAC5-390-110. Flower seed and minimum germination standards.

A. The kinds of flower seeds listed below are those for which standard testing procedures have been prescribed and which are, therefore, required to be labeled in accordance with the germination labeling provisions of §§ [3.2-4000](#) and [3.2-4008](#) of the Code of Virginia. The percentage listed opposite each kind is the germination standard for that kind. For the kinds marked with an asterisk, this percentage is the total of percentage germination and percentage hard seed. For other kinds, it is the percentage germination.

Kind	Minimum Germination Standard
African daisy-- <i>Dimorphotheca sinuata</i>	55
Ageratum-- <i>Ageratum houstonianum</i>	60
Alyssum-- <i>Alyssum compactum</i> , <i>A. Lobularia maritima</i> , <i>A. saxatile</i>	60
Anemone-- <i>Anemone pulsatilla</i>	55
Angel's trumpet-- <i>Brugmansia arborea</i>	60
Arabis-- <i>Arabis alpina</i>	60
Aster, China-- <i>Callistephus chinensis</i> except Pompon, Powderpuff, and Princess types	55
Aster, China-- <i>Callistephus chinensis</i> , Pompon, Powderpuff and Princess types	50
Aubrieta-- <i>Aubrieta deltoidea</i>	45
Balsam-- <i>Impatiens balsamina</i>	70
Calendula-- <i>Calendula officinalis</i>	65
California poppy-- <i>Eschscholzia californica</i>	60
Calliopsis-- <i>Coreopsis tinctoria</i> C. basalis	65
Campanula:	
Canterbury bells-- <i>Campanula medium</i>	60
Cup and Saucer bellflower-- <i>Campanula medium calycanthemata</i>	60
Carpathian bellflower-- <i>Campanula carpatica</i>	50
Peach bellflower-- <i>Campanula persicifolia</i>	50
Candytuft, annual-- <i>Iberis amara</i> , <i>I. umbellata</i>	65
Candytuft, perennial-- <i>Iberis gibraltarica</i> , <i>I. sempervirens</i>	55
*Castor bean-- <i>Ricinus communis</i>	60
Cathedral bells-- <i>Cobaea scandens</i>	65
Celosia-- <i>Celosia argentea</i>	65
Centaurea: basket flower-- <i>centaurea americana</i> , Cornflower-- <i>C. cyanus</i> , dusty miller-- <i>C. cineraria royal</i> centaurea-- <i>C. imperialis</i> , sweet sultan, Amberboa <i>moschata</i> , Velvet centaurea-- <i>C. gymnocarpa</i>	60
Chinese forget-me-not-- <i>Cynoglossum amabile</i>	55
Chrysanthemum, annual-- <i>Chrysanthemum carinatum</i> , C., coronarium, C. segetum	40
Clarkia-- <i>Clarkia unguiculata</i>	65
Cleome-- <i>Cleome hassleriana</i>	65
Columbine-- <i>Aquilegia</i> spp.	50
Coral bells-- <i>Heuchera sanguinea</i>	55
Coreopsis, perennial-- <i>Coreopsis lanceolata</i>	40
Cosmos: Sensation, Mammoth and Crested type-- <i>Cosmos bipinnatus</i> ; Klondyke type-- <i>C. sulphureus</i>	65
Dahlia-- <i>Dahlia</i> spp	55
Delphinium: cardinal larkspur--perennial delphinium-- <i>Delphinium cardinale</i> ; Pacific giant, gold metal and other hybrids, belladonna, bellamosum types, Chinensis types <i>D. elatum</i>	55
Dianthus:	
Carnation-- <i>Dianthus caryophyllus</i>	60
China pinks-- <i>Dianthus Chinensis</i> , <i>Heddewigii</i> , <i>Heddensis</i>	70
Grass pinks-- <i>Dianthus plumarius</i>	60
Maiden pinks-- <i>Dianthus deltoide</i>	60
Sweet William-- <i>Dianthus barbatus</i>	70
Sweet Wivelsfield-- <i>Dianthus X allwoodii</i>	60
Dracena-- <i>Cordyline australis</i>	55

English daisy-- <i>Bellis perennis</i>	55
Foxglove-- <i>Digitalis</i> spp.	60
Gaillardia, annual-- <i>Gaillardia pulchella</i> , var. <i>picta</i> ; perennial-- G. <i>aristata</i>	45
Geum-- <i>Geum</i> spp.	55
Gilia-- <i>Gilia</i> spp.	65
Godetia-- <i>Clarkia amoena</i> var. <i>concinne</i>	65
Gourds-- <i>Cucurbita</i> spp.; <i>Lagenaria</i> spp.	70
Gypsophila: annual baby's breath-- <i>Gypsophila elegans</i> ; perennial baby's breath-- <i>G. paniculata</i> , <i>G. pacifica</i> , <i>G. repens</i>	70
Helichrysum-- <i>Helichrysum bracteatum</i>	60
*Hollyhock-- <i>Alcea rosea</i>	65
*Ipomopa: Cypress vine-- <i>Ipomea quamoclit</i> ; Moonflower-- <i>I. alba</i> ; morning glories, cardinal climber, hearts and honey vine-- <i>I. spp.</i>	75
Job's tears-- <i>Coix lacryma-jobi</i>	70
Kochia-- <i>Kochia scoparia trichophylla</i>	55
Larkspur, annual-- <i>Consolida ambigua</i>	60
Lantana-- <i>Lantana camara</i>	35
Linaria-- <i>Linaria</i> spp.	65
Lobelia, annual-- <i>Lobelia erinus</i>	65
Lunaria, annual-- <i>Lunaria annua</i>	65
*Lupine-- <i>Lupinus</i> spp.	65
Marigold-- <i>Tagetes</i> spp.	65
Marvel of Peru-- <i>Mirabilis jalapa</i>	60
Mignonette-- <i>Reseda odorata</i>	55
Myosotis-- <i>Myosotis alpestris</i> , <i>M. oblongata</i> , <i>M. pulastris</i> , <i>M.</i> <i>scorpioides</i>	50
Nasturtium-- <i>Tropaeolum</i> spp.	60
Nemesia-- <i>Nemesia</i> spp.	65
Nemophila-- <i>Nemophila menziesii</i> subsp. <i>insignis</i>	70
Nicotiana-- <i>Nicotiana glauca</i> , <i>N. X sanderae</i>	65
Nierembergia-- <i>Nierembergia</i> spp.	55
Nigella-- <i>Nigella damascena</i>	55
Pansy-- <i>Viola tricolor</i>	60
Penstemon-- <i>Penstemon barbatus</i> , <i>P. grandiflorus</i> , <i>P. laevigatus</i> , <i>P. hirsutus</i>	60
Petunia-- <i>Petunia</i> spp.	45
Phacelia-- <i>Phacelia campanularia</i> , <i>P. minor</i> , <i>P. tanacetifolia</i>	65
Phlox, annual-- <i>Phlox drummondii</i> all types and varieties	55
Physalis-- <i>Physalis</i> spp.	60
Poppy: shirley poppy-- <i>Papaver rhoeas</i> ; Iceland poppy-- <i>P.</i> <i>nudicaule</i> ; oriental poppy-- <i>P. orientale</i> ; tulip poppy-- <i>P. glaucum</i>	60
Portulaca-- <i>Portulaca grandiflora</i>	55
Salpiglossis-- <i>Salpiglossis sinuata gloxiniflora</i> , <i>S. salpiglossis</i>	60
Salvia--Scarlet Sage-- <i>Salvia splendens</i> ; mealycup sage (blue bedder)-- <i>S. farinacea</i>	50
Saponaria-- <i>Saponaria ocymoides</i> , <i>S. vaccaria pyramidata</i>	60
Scabiosa, annual-- <i>Scabiosa atropurpurea</i>	50
Scabiosa, perennial-- <i>Scabiosa caucasica</i>	40
Schizanthus-- <i>Schizanthus</i> spp.	60
Shasta Daisy-- <i>Chrysanthemum maximum</i> , <i>C. leucanthemum</i>	65
Snapdragon-- <i>Antirrhinum</i> spp.	55
Solanum-- <i>Solanum</i> spp.	60

Stocks:Common--Matthiola incana; Evening Scented--Matthiola longipetala subsp. bicornis	65
Sunflower--Helianthus spp.	65
*Sweet pea, annual and perennial other than dwarf bush--Lathyrus odoratus, L. latifolius	75
*Sweet pea, dwarf bush--Lathyrus odoratus	65
Thunbergia--Thunbergia alata	60
Torch flower--Tithonia rotundifolia	70
Tritoma--Kniphofia spp.	65
Verbena, annual--Verbena X hybrida	35
Vinca--Catharanthus roseus	60
Viola--Viola cornuta	55
Wallflower--Cheiranthus cheiri	65
Zinnia--Zinnia angustifolia, Z. elegans, Z. grandiflora, Z. acerosa, Z. peruviana	50

B. Testing tolerances shall not be applied unless the percentage of germination is shown on the seed package or label attached to the seed container. If no germination percentage is shown on the label, the seed must meet the minimum standards without benefit of tolerance.

Statutory Authority

§ [3.2-4001](#) of the Code of Virginia.

Historical Notes

Derived from VR115-04-09 § 11, eff. November 13, 1985; amended, Virginia Register Volume 2, Issue 4, eff. December 24, 1985; Volume 2, Issue 17, eff. June 25, 1986; Volume 3, Issue 1, eff. November 12, 1986; Volume 7, Issue 7, eff. January 31, 1991; [Volume 25, Issue 11](#), eff. March 4, 2009.

2VAC5-390-120. Labeling of flower seed.

Flower seeds shall be labeled with the name of the kind and variety or a statement of type and performance characteristics as prescribed by § [3.2-4008](#) G and H of the Code of Virginia.

A. For seeds of plants grown primarily for their blooms:

1. Seeds of a single name variety shall be labeled to show the kind and variety name. For example -- "Marigold, Butterball."
2. Seeds of a single type and color for which there is no special variety name shall be labeled to show either the type of plant or the type and color of bloom. For example -- "Scabiosa, Tall, Large Flowered, Double, Pink."
3. Seeds consisting of an assortment or mixture of colors or varieties of a single kind, the kind name, the type of plant, and the type or types of bloom shall be indicated. In addition, it shall be clearly indicated that the seed is mixed or assorted. An example of labeling such a mixture or assortment is -- "Marigold, Dwarf double French, Mixed colors."
4. Seeds consisting of an assortment or mixture of kinds, shall clearly indicate that the seed is assorted or mixed and the specific use of the assortment or mixture shall be indicated. For example -- "Cut flower mixture," or "Rock garden mixture." Such statements as "Wild flower mixture," "General purpose mixture," "Wonder mixture," or any other statement which fails to indicate the specific use of the seed shall not meet the requirements of this provision unless the specific use of the mixture is also stated.

B. Seeds of plants grown for ornamental purposes other than their blooms shall be labeled to show the kind and variety, or the kind together with a descriptive statement concerning the ornamental part of the plant. For example -- "Ornamental gourds, Small fruited, Mixed."

Statutory Authority

§ [3.2-4001](#) of the Code of Virginia.

Historical Notes

Derived from VR115-04-09 § 12, eff. November 13, 1985; amended, Virginia Register Volume 2, Issue 4, eff. December 24, 1985; Volume 2, Issue 17, eff. June 25, 1986; Volume 3, Issue 1, eff. November 12, 1986; Volume 7, Issue 7, eff. January 31, 1991; [Volume 25, Issue 11](#), eff. March 4, 2009.

2VAC5-390-130. Application of germination standards to mixture of kinds of flower seed.

A mixture of kinds of flower seeds will be considered to be below standard if the germination of any kind or combination of kinds constituting 25% or more of the mixture by number is below standard for the kind or kinds involved.

Statutory Authority

§ [3.2-4001](#) of the Code of Virginia.

Historical Notes

Derived from VR115-04-09 § 13, eff. November 13, 1985; amended, Virginia Register Volume 2, Issue 4, eff. December 24, 1985; Volume 2, Issue 17, eff. June 25, 1986; Volume 3, Issue 1, eff. November 12, 1986; Volume 7, Issue 7, eff. January 31, 1991.

2VAC5-390-140. Tree and shrub seeds.

Tree and shrub seeds are seeds of the following:

Abies balsamea (L.) Mill. -- Balsam Fir

Abies fraseri (Pursh.) Poir -- Fraser Fir

Acer rubrum L. -- Red Maple

Acer saccharum Marsh. -- Sugar Maple

Aesculus glabra -- Ohio Buckeye

Aesculus octandra -- Sweet Buckeye

Ailanthus altissima (Mill.) Swingle -- Tree of Heaven, Ailanthus

Amelanchier canadensis -- Service Berry

Betula lenta L. -- Sweet Birch

Betula alleghaniensis Britton -- Yellow Birch

Betula nigra L. -- River Birch

Carya tomentosa -- Mockernut Hickory

5*Carya glabra*-- Pignut Hickory

Carya ovata -- Shagbark Hickory

Carya laciniata -- Shellbark Hickory

Castanea dentata -- American Chestnut
Catalpa bignonioides Walt. -- Southern Catalpa
Cedrus deodara (Roxb.) Loud. -- Deodar Cedar
Cedrus libani Loud. -- Cedar of Lebanon
Celtis occidentalis -- Hackberry
Chamaecyparis thyoides -- Southern White Cedar or Atlantic White Cedar
Cornus florida -- Flowering Dogwood
Diospyros virginiana -- Persimmon
Fagus grandifolia -- American Beech
Fraxinus americana -- White Ash
Fraxinus pennsylvanica Marsh. -- Green Ash
Fraxinus pennsylvanica var. *lanceolata* (Borkh.) Sarg. -- Green Ash
Gleditsia triacanthos L. -- Honey Locust
Ilex opaca -- American Holly
Juglans cinerea -- Butternut
Juglans nigra -- Black Walnut
Juniperus virginiana -- Eastern Red Cedar
Larix decidua Mill. -- European Larch
Larix kaempferi -- Japanese Larch
Liquidambar styraciflua L. -- Sweetgum
Liriodendron tulipifera -- Yellow Poplar
Magnolia acuminata -- Cucumber
Malus spp. -- Apple
Malus spp. -- Crabapple
Maclura pomifera -- Osage Orange
Morus rubra -- Red Mulberry
Nyssa aquatica -- Tupelo Gum
Nyssa sylvatica var. *sylvatica* -- Black Gum
Nyssa sylvatica var. *biflora* -- Swamp Black Gum
Picea abies (L.) Karst. -- Norway Spruce

Picea glauca (Moench.) Voss -- White Spruce

Picea pungens Engelm. -- Blue Spruce, Colorado Spruce

Picea pungens var. *glauca* Reg. -- Colorado Blue Spruce

Picea rubens Sarg. -- Red Spruce

Pinus banksiana Lamb. -- Jack Pine

Pinus densiflora Sieb. & Zucc. -- Japanese Red Pine

Pinus echinata Mill. -- Shortleaf Pine

Pinus elliottii Engelm. -- Slash Pine

Pinus mugo Turra. -- Mountain Pine

Pinus nigra Arnold -- Austrian Pine

Pinus nigra var. *poiretiana* (Ant.) Aschers & Graebn. -- Corsican Pine

Pinus palustris Mill. -- Longleaf Pine

Pinus resinosa Ait. -- Red Pine, Norway Pine

Pinus rigida Mill. -- Pitch Pine

Pinus serotina -- Pond Pine

Pinus strobus L. -- Eastern White Pine

Pinus sylvestris L. -- Scotch Pine

Pinus taeda L. -- Loblolly Pine

Pinus thunbergii Parl. -- Japanese Black Pine

Pinus virginiana Mill. -- Virginia Pine, Scrub Pine

Platanus occidentalis -- Sycamore

Populus balsamifera -- Eastern Cotton Wood

Populus tremuloides -- Quaking Aspen

Prunus avium (L.) -- Cherry

Prunus serotina -- Black Cherry

Pseudotsuga menziesii var. *glauca* (Beissn.) Franco -- Blue Douglas Fir

Pseudotsuga menziesii var. *caesia* (Beissn.) Franco -- Gray Douglas Fir

Pseudotsuga menziesii var. *menziesii* -- Green Douglas Fir

Pyrus communis L. -- Pear

Quercus alba -- White Oak

Quercus borealis -- Northern Red Oak

Quercus coccinea -- Scarlet Oak

Quercus falcata -- Southern Red Oak

Quercus falcata var. *pagodaefolia* -- Cherrybark Oak

Quercus lyrata -- Swamp White Oak

Quercus macrocarpa -- Bur Oak

Quercus montana -- Chestnut Oak

Quercus nigra -- Water Oak

Quercus palustris -- Pin Oak

Quercus phellos -- Willow Oak

Quercus rubra -- Red Oak

Quercus veketina -- Black Oak

Quercus virginiana -- Live Oak

Robinia pseudoacacia L. -- Black Locust

Salix nigra -- Black Willow

Sassafras verifolium -- Sassafras

Syringa vulgaris L. -- Common Lilac

Taxodium distichum -- Bald Cypress

Thuja occidentalis L. -- Northern White Cedar, Eastern Arborvitae

Tilia americana -- Basswood

Tsuga canadensis (L.) Carr. -- Eastern Hemlock, Canada Hemlock

Ulmus americana L. -- American Elm

Ulmus parvifolia Jacq. -- Chinese Elm

Statutory Authority

§ [3.2-4001](#) of the Code of Virginia.

Historical Notes

Derived from VR115-04-09 § 14, eff. November 13, 1985; amended, Virginia Register Volume 2, Issue 4, eff. December 24, 1985; Volume 2, Issue 17, eff. June 25, 1986; Volume 3, Issue 1, eff. November 12, 1986; Volume 7, Issue 7, eff. January 31, 1991.

2VAC5-390-150. Zone for labeling origin from which tree and shrub seeds were collected in Virginia.

The Virginia zone designations for labeling of tree and shrub seeds shall be as follows:

A. Mountain -- The Blue Ridge Mountains and Westward.

B. Piedmont -- East of the Blue Ridge Mountains and west of U.S. No. 1 from North Carolina line to Richmond and U.S. No. 301 from Richmond to Potomac River Bridge.

C. Coastal Plains -- East of U.S. No. 1 from North Carolina line to Richmond and U.S. No. 301 from Richmond to Potomac River Bridge.

D. Eastern Shore -- Northampton and Accomack Counties.

Statutory Authority

§ [3.2-4001](#) of the Code of Virginia.

Historical Notes

Derived from VR115-04-09 § 15, eff. November 13, 1985; amended, Virginia Register Volume 2, Issue 4, eff. December 24, 1985; Volume 2, Issue 17, eff. June 25, 1986; Volume 3, Issue 1, eff. November 12, 1986; Volume 7, Issue 7, eff. January 31, 1991.

2VAC5-390-160. Maximum percentage of inert matter.

Seed or seed mixtures as defined by § [3.2-4000](#) of the Code of Virginia shall not contain more than 15% by weight of inert matter, excluding coating material which has been added to enhance the planting value.

Statutory Authority

§ [3.2-4001](#) of the Code of Virginia.

Historical Notes

Derived from VR115-04-09 § 16, eff. November 13, 1985; amended, Virginia Register Volume 2, Issue 4, eff. December 24, 1985; Volume 2, Issue 17, eff. June 25, 1986; Volume 3, Issue 1, eff. November 12, 1986; Volume 7, Issue 7, eff. January 31, 1991; [Volume 25, Issue 11](#), eff. March 4, 2009.

2VAC5-390-170. Minimum size of peanut seed.

Shelled peanuts for agricultural seed as defined in § [3.2-4000](#) of the Code of Virginia shall be a size of which 97% by weight of whole seed shall pass over a 16/64 inch screen and none shall pass through a 14/64 inch screen.

Statutory Authority

§ [3.2-4001](#) of the Code of Virginia.

Historical Notes

Derived from VR115-04-09 § 17, eff. November 13, 1985; amended, Virginia Register Volume 2, Issue 4, eff. December 24, 1985; Volume 2, Issue 17, eff. June 25, 1986; Volume 3, Issue 1, eff. November 12, 1986; Volume 7, Issue 7, eff. January 31, 1991; [Volume 25, Issue 11](#), eff. March 4, 2009.

2VAC5-390-180. Minimum germination standard for peanut seed.

Peanuts for agricultural seed as defined in § [3.2-4000](#) of the Code of Virginia shall have a 75% minimum total germination. However, effective March 1, 2008, and continuing until July 1, 2008, the minimum total germination shall be 70%.

Statutory Authority

§ [3.2-4001](#) of the Code of Virginia.

Historical Notes

Derived from VR115-04-09 § 18, eff. November 13, 1985; amended, Virginia Register Volume 2, Issue 4, eff. December 24, 1985; Volume 2, Issue 17, eff. June 25, 1986; Volume 3, Issue 1, eff. November 12, 1986; Volume 7, Issue 7, eff. January 31, 1991; [Volume 14, Issue 14](#), eff. March 1, 1998; [Volume 22, Issue 14](#), eff. February 27, 2006; [Volume 24, Issue 15](#), eff. March 11, 2008; [Volume 25, Issue 11](#), eff. March 4, 2009.

Forms (2VAC5-390-9999)

Rules For Testing Seeds, Association of Official Seed Analysts.

Website addresses provided in the Virginia Administrative Code to documents incorporated by reference are for the reader's convenience only, may not necessarily be active or current, and should not be relied upon. To ensure the information incorporated by reference is accurate, the reader is encouraged to use the source document described in the regulation.

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Proposed Stage – 2 VAC 5-317
Regulations for the Enforcement of the Noxious Weeds Law

Plant Species Recommended for Listing as Noxious Weeds

Background

Virginia's Noxious Weeds Law, Va Code § 3.2-800 *et seq.*, provides authority to the Board of Agriculture and Consumer Services to establish, by regulation, those plants deemed to be noxious weeds. Noxious Weeds are listed in Section 20 of the [*Regulations for the Enforcement of the Noxious Weeds Law*](#). Prior to designating a plant as a noxious weed, the Board shall review the recommendations of an advisory committee (Noxious Weeds Advisory Committee) established by the Commissioner. Membership of the Noxious Weeds Advisory Committee is listed in Section 100 of the *Regulations for the Enforcement of the Noxious Weeds Law*.

The plant species recommended for listing as a noxious weed share similar qualities of all invasive plant species. Invasive plant species (i) are highly adaptable, (ii) are copious seed producers, (iii) have an ability to overwhelm native species through rapid growth and spread which results in the displacement of more desirable native species, and (iv) are costly to control once they become established. Adding invasive plant species (and the plant products, including seeds from these species) to the noxious weed list will limit their movement and sale in Virginia.

While the plants being proposed for listing as a noxious weed can be found in Virginia and may continue to spread naturally, the inclusion on Virginia's noxious weeds list may prevent further artificial distribution and spread in the Commonwealth.

Definition of “Noxious Weed” from the Noxious Weeds Law (Va. Code § 3.2-800 *et seq.*)

"Noxious weed" means any living plant, or part thereof, declared by the Board through regulations under this chapter to be detrimental to crops, surface waters, including lakes, or other desirable plants, livestock, land, or other property, or to be injurious to public health, the environment, or the economy, except when in-state production of such living plant, or part thereof, is commercially viable or such living plant is commercially propagated in Virginia.

Classification of noxious weeds, as prescribed in the *Regulations for the Enforcement of the Noxious Weeds Law* (2 VAC 5-317-10.):

- "Tier 1 noxious weed" means any noxious weed that is not known to be present in the Commonwealth.
- "Tier 2 noxious weed" means any noxious weed that is present in the Commonwealth and for which successful eradication or suppression is feasible.
- “Tier 3 noxious weed” means any noxious weed (i) that is present in the Commonwealth, (ii) whose spread may be slowed by restrictions on its movement, and (iii) for which successful eradication or suppression is not feasible.

Proposed Plant Species for Virginia's Noxious Weeds List

The Noxious Weeds Advisory Committee (NWAC) recommends listing the following 12 plant species as noxious weeds on Virginia's *Regulations for the Enforcement of the Noxious Weeds Law*, 2 VAC 5-317-20:

- *Alliaria petiolata* Common name: Garlic mustard
- *Dioscorea polystachya* Common name: Chinese yam
- *Elaeagnus umbellata* Common name: Autumn olive
- *Ficaria verna* Common name: Lesser celandine
- *Lespedeza bicolor* Common name: Bicolor lespedeza, shrubby bushclover
- *Lonicera maackii* Common name: Amur honeysuckle
- *Lonicera japonica* Common name: Japanese honeysuckle
- *Phragmites australis* Common name: Phragmites
- *Pueraria montana* Common name: Kudzu
- *Reynoutria japonica* Common name: Japanese knotweed
- *Trapa bispinosa* Common name: Two-horned trapa
- *Ulmus pumila* Common name: Siberian elm

Alliaria petiolata

Common name: Garlic Mustard

Description: Garlic mustard is an invasive herb that has spread throughout much of the United States over the past 150 years, becoming one of the worst invaders of forests in the American northeast and midwest. While it is usually found in the undergrowth of disturbed woodlots and forest edges, recent findings have shown that garlic mustard has the ability to establish and spread even in pristine areas. This spread has allowed it to become the dominant plant in the undergrowth of some forests, greatly reducing the diversity of all species. Garlic mustard is one of very few non-native plants to be able to successfully invade forest understories.

Distribution: Garlic mustard is a non-native species originating from Europe and parts of Asia. It is believed that garlic mustard was introduced into North America for medicinal purposes and food. The earliest known report of it growing in the United States dates back to 1868 on Long Island, NY. It has since spread throughout the eastern United States and Canada and can be found as far west as Washington, Utah, and British Columbia. Garlic mustard has been reported in all but one county of Pennsylvania, throughout northern New Jersey and northern Delaware, every county in West Virginia, most counties in Virginia except for patches in the southeast and southwest, throughout the Appalachian region in Kentucky, Tennessee, and North Carolina, in much of northern Kentucky, and patches of central Tennessee.

Threat: If allowed to form dense forest floor carpet, Garlic mustard can crowd out native wildflowers and insect life that depends on those flowers, including various butterfly species. The toxic chemicals it releases into the soil can have a negative impact on the health of fungi and tree communities, potentially further damaging recreation and aesthetic enjoyment, including birding, wildlife watching, and nature appreciation.

Recommendation: VDACS supports the NWAC recommendation to list Garlic Mustard as a Tier 3 noxious weed.

Dioscorea polystachya

Common name: Chinese yam

Description: Chinese yam is also known as cinnamon vine or air potato. It was brought from China to North America in the 1800s for food, ornamental, and medicinal uses. It escaped cultivation by the mid-1980s and is now found throughout the eastern and central United States. It is an invasive herbaceous, twining vine that grows to about 16 feet and aggressively invades open-to-shady areas in the eastern United States.

Distribution: Nearly all counties in Virginia report observations of Chinese yam. It has been identified in most of the eastern United States, from Texas to Florida and Vermont to Kansas.

Threat: Chinese yam can lower native species richness and abundance by outcompeting and eliminating native plant species. It does this by quickly outgrowing the native herbs and seedlings, thickly blanketing all adjacent vegetation, and competitively excluding sunlight. Entire stands of native shrubs may become covered by Chinese yam, shading and eventually killing the stand. It is also able to completely cover the ground so that all native herbaceous ground cover is excluded. Chinese yam has the same ability to invade and negatively impact natural areas and gardens.

Recommendation: VDACS supports the NWAC recommendation to list Chinese yam as a Tier 3 noxious weed.

Elaeagnus umbellata

Common name: Autumn olive

Description: Autumn olive is a deciduous shrub native to Asia that has spread as an invasive species throughout the United States. Introduced in 1830 as an ornamental plant that could provide habitat and food for wildlife, Autumn olive was widely planted by the Soil Conservation Service (Natural Resources Conservation Service) as erosion control near roads and on ridges. Once thought as the best way to control erosion and provide wildlife habitat, it is now a major invasive plant. The plant's positive attributes are quickly outweighed by its rapid and uncontrollable spread across forest edges, roadsides, meadows and grassland, where it displaces native plants.

Distribution: Native to Asia, Autumn olive was first introduced to the United States in 1830. Autumn olive is found in most counties in Virginia and in most of the states in the mid-Atlantic region.

Threat: Autumn olive outcompetes and displaces native plants, creates monocultures, and rapidly invades, colonizes, and takes over natural areas. It does this by shading out smaller, less aggressive plants and by changing the chemistry of the soil around itself, a process called allelopathy. Loss of native vegetation can have cascading effects throughout an ecosystem, and invasive species are one of the major drivers for a loss of biodiversity. Removing the shrub by cutting and/or burning creates even more autumn olive, since it is a strong root-sprouter.

Recommendation: VDACS supports the NWAC recommendation to list Autumn as a Tier 3 noxious weed.

Ficaria verna

Common name: Lesser celandine

Description: Lesser celandine is native to Europe, northern Africa, western Asia, and Siberia. It was brought to the United States as an ornamental plant and when it arrived, this species found that it had a huge competitive advantage over native plants. This species has been present in the United States for at least 150 years, but increasing reports of naturalization over the last 20 years indicate it is now rapidly spreading across the country.

Distribution: While it's not widely distributed in Virginia, populations in those locations are very large. Lesser celandine has been reported in the Richmond area, along the James River, Roanoke, Northern Virginia, the Norfolk area, and in the Shenandoah Valley.

Threat: Lesser celandine can grow in all kinds of light, soil, and moisture conditions, giving it the ability to thrive where other native species are not as successful. It also spreads rapidly through dividing and spreading, creating thick, monocultured mats of Lesser celandine, prohibiting other plants from growing. Lesser celandine is so aggressive that many native plants that are very important for wildlife can't compete. The plant species can overwhelm forest ecology and negatively impact ecosystems and native plant communities.

Recommendation: VDACS supports the NWAC recommendation to list Lesser celandine as a Tier 3 noxious weed.

Lespedeza bicolor

Common name: Bicolor lespedeza or shrubby bushclover

Description: Bicolor lespedeza is a loose, open, deciduous shrub or sub-shrub which typically grows 5-10 feet tall and wide. The plant has been utilized in the past for a wildlife habitat management species, since Bicolor lespedeza provides food for deer, rabbits, gophers, northern bobwhites, doves, and livestock and provides habitat or cover for northern bobwhites, doves, and woodcocks.

Distribution: Bicolor lespedeza occurs from Virginia south to northern Florida and west to Louisiana and Kentucky. Although, Bicolor lespedeza also occurs as far north as New York, Ontario, Michigan, and Iowa and as far west as Nebraska and Texas, abundance of Bicolor lespedeza in natural areas is greatest in the southeastern United States. Bicolor lespedeza is widely distributed in Virginia.

Threat: Bicolor lespedeza is an extremely aggressive invader of open areas. Dense monocultural thickets are formed due to their ability to sprout from root crowns. They out-compete native vegetation and once established, are very difficult to remove due to the seed bank, which can remain viable for decades. Bicolor lespedeza can produce as

many as 300 million seeds/acre and can easily create dense stands which negatively impact native flora and overall ecological balance of Virginia's woodlands.

Recommendation: VDACS supports the NWAC recommendation to list Bicolor lespedeza as a Tier 3 noxious weed.

Lonicera maackii

Common name: Amur honeysuckle

Description: Amur honeysuckle was imported as an ornamental plant into New York in 1898 through the New York Botanical Garden. It has been widely planted for wildlife cover and soil erosion control but long ago escaped from plantings and began reproducing on its own and spreading into natural areas.

Distribution: Amur honeysuckle is one of the most common and invasive bush honeysuckles found in the mid-Atlantic region. It occurs in most states in the eastern U.S., except for Maine and Florida. It is reported in 32 states in the US. In Virginia, Amur honeysuckle is widely distributed (31 counties) and known to be established in many areas in the Commonwealth.

Threat: Amur honeysuckle can form dense thickets and replace relatively open understories. Rapid uptake of surface water, coupled with high leaf nutrient concentration and loss during decomposition, may support a positive nutrient feedback loop for the Amur honeysuckle shrubs, resulting in an impact on forest production and water and nutrient transformation and availability in terrestrial habitats. Where this species becomes established in the understory of forests, it has a negative impact on tree seedlings and herbs. Amur honeysuckle impedes reforestation of cut or disturbed areas and prevents reestablishment of native plants. It leafs out earlier than most natives and forms dense thickets too shady for most native species. Additionally, researchers in the midwest found increased nest predation of robins using Amur honeysuckle as a result of plant structure which facilitates access to nests by predators such as snakes. While the carbohydrate-rich fruits of exotic honeysuckles provide some nutrition for birds and rodents in winter, they do not compare to the lipid-rich fruits of native species that provide greater energy to sustain migrating birds.

Recommendation: VDACS supports the NWAC recommendation to list Amur honeysuckle as a Tier 3 noxious weed.

Lonicera japonica

Common name: Japanese honeysuckle

Description: Japanese honeysuckle is one of the most recognizable and well established ornamental vines in the U.S. Native to eastern Asia, Japanese honeysuckle was introduced to Long Island, New York, in 1806 for ornamental, erosion control and wildlife uses. It is a fast-growing vine that twines around stems of shrubs, herbaceous plants and other vertical supports. In full sun it forms large tangles that smother and kill vegetation. It can kill shrubs and saplings by girdling

Distribution: It is documented to occur and reported to be invasive throughout the eastern U.S. from Maine to Florida and west to Wisconsin and Texas, with scattered occurrences in the Southwest. It is adapted to a wide variety of habitats from full sun to shade. In Virginia, Japanese honeysuckle is so plentiful and distributed, it is nearly ubiquitous in wet to dry forests, old fields, disturbed floodplains, and various open habitats.

Threat: Japanese honeysuckle is able to displace native species by outcompeting native plants for light, space, water, and nutrients. It grows very rapidly, and will send out runners that will root and grow anywhere. In nature, Japanese honeysuckle vines will twine around anything growing in close proximity, eventually covering small trees and shrubs. This can lead to the collapse of the trees and shrubs due to the mere weight of vegetation. Dense thickets of vegetation prevent the germination and growth of many native species, eventually preventing the replacement of understory shrubs and trees.

Recommendation: VDACS supports the NWAC recommendation to list Japanese honeysuckle as a Tier 3 noxious weed.

Phragmites australis

Common name: Common reed or phragmites

Description: Common reed was probably introduced to North America by accident in ballast material in the late 1700s or early 1800s. Common reed is a perennial reed that grows from elongated rhizomes or stolons. It grows 3 - 20 feet tall, forms dense stands which include both live and standing dead stems from previous year's growth. Although it has been historically used for a variety of uses (arrow shafts, thatching, fodder for animals), it poses a great ecological threat in environments where it is not native and takes control.

Distribution: Common reed occurs in disturbed to pristine wet areas including tidal and non-tidal wetlands, brackish and fresh-water marshes, river edges, shores of lakes and ponds, roadsides and ditches. It prefers full sun and can tolerate fresh to mesohaline salinities. In Virginia, the Common reed is found throughout all of Virginia Coastal Plain and Piedmont areas, extending into the northern mountain region counties, specifically the Chesapeake Bay Lowlands, Mid-Atlantic Coastal Plain, and Central Appalachian ecoregions. It is currently reported in two-thirds of Virginia's localities.

Threat: Common reed is a vigorous growing plant that forms dense monotypic stands that consume available growing space and push out other plants including the native subspecies. It also alters wetland hydrology, increases the potential for fire and reduces and degrades wetland wildlife habitat due in part to its very dense growth habit. Common reed can impact agriculture and forestry by dominating drainage ditches and it can invade low-lying forest stands after harvest. Common reed reduces accessibility of native marsh and reduces birding and hunting opportunities. It displaces native species including sedges, rushes, and cattails; and reduces wildlife habitat diversity, resulting in loss of food and shelter for native wildlife.

Recommendation: VDACS supports the NWAC recommendation to list Common Reed/Phragmites as a Tier 3 noxious weed.

Pueraria montana

Common name: Kudzu

Description: Kudzu is a semi-woody, perennial vine that was introduced into the United States in the 1870's as an ornamental and was subsequently utilized as erosion control in the 1930s-1950s. It is native to Japan and southeast China. Kudzu grows out of control quickly, spreading through runners (stems that root at the tip when in contact with moist soil), rhizomes and by vines that root at the nodes to form new plants. Once established, kudzu grows at a rate of one foot per day with mature vines as long as 100 feet.

Distribution: Kudzu is reported in more than 60 localities in Virginia. Kudzu invades riparian floodplains, mixed and deciduous forests, agricultural fields and grasslands, and climbs evergreen pine stands.

Threat: Kudzu outcompetes everything from native grasses to fully mature trees by shading them from the sunlight they need for photosynthesis. Loss of native plants harms other plants, insects and animals that adapted alongside them, leading to cascading effects throughout an ecosystem. A kudzu infestation overtopping other vegetation will smother and kill all plants below it. A solid mat on a riparian floodplain or exposed slope will leave nothing living below it. Kudzu can have severe impacts on native plant communities and economic impacts related to management of the invasive species,

Recommendation: VDACS supports the NWAC recommendation to list kudzu as a Tier 3 noxious weed.

Reynoutria japonica

Common name: Japanese knotweed

Description: Japanese knotweed is a member of the buckwheat family and was introduced into the U.S. from Eastern Asia (Japan, China, Korea) as an ornamental on estates in the late-1800s. It also has a history of being used as an erosion control plant. Japanese knotweed thrives in disturbed areas and once established can spread rapidly, creating monoculture stands that threaten native plant communities. Japanese knotweed can tolerate deep shade, high temperatures, high soil salinity and drought.

Distribution: Japanese knotweed can be found in 42 states in the U.S. In Virginia, it has been reported in more than 50 localities. It is commonly found along streams and rivers, in low-lying areas, disturbed areas such as rights-of-way, and around old home sites and farmsteads.

Threat: Japanese knotweed can disrupt ecosystem processes and system-wide parameters by causing long term damage to riverbanks and creating increased flood related damage. It can spread very quickly and forms dense clonal colonies that out-compete native vegetation by blocking sunlight, releasing alleopathic chemicals, creating dense stem and leaf litter, and robbing nutrients and water from the soil. Because of its ability to expand rapidly through riparian areas over short and long distances, cause streambank damage and change flooding regimes, and exclude other species of plants, the effects on outdoor recreation can be devastating. Entire alluvial communities can be

disrupted, and the effects can emerge quickly. Users of such riparian areas experience high negative impacts to recreation, whether birding, hiking, camping, nature photography, wildlife watching, kayaking, canoeing, or fishing.

Recommendation: VDACS supports the NWAC recommendation to list Japanese knotweed as a Tier 3 noxious weed.

Trapa bispinosa

Common name: Two-horned trapa

Description: Two-horned trapa, also referred to as water chestnut, is an annual, floating-leaved aquatic plant found in freshwater wetlands, lakes, ponds, and sluggish reaches of rivers. It is native to India and has been used as a medicinal herb and a nutritional supplement. The two-horned trapa can easily outcompete other aquatic plants and completely alter the waters it inhabits by shading out underwater plant species by creating thick mats of leaves floating on the surface. In addition, the seeds created by the two-horned trapa can remain dormant in the river beds for three or more years.

Distribution: The distribution of Two-horned trapa is extremely limited. There are sites in Virginia waterways, but it is not reported in other states. It has been reported and positively identified in about 32 sites in 2018, which include aquatic habitats, ponds, the Occoquan River, a few tidal inlets of the Potomac River watershed, but has not yet reached the main body of the Potomac River. It is believed that the seeds can attach themselves to water fowl and can be distributed to unconnected bodies of water.

Threat: The two-horned trapa can be devastating to local pond, lake, and river ecosystems by creating dense foliage mats on the top of the water, outcompeting local native aquatic flora, negatively impacting boating and fishing, and its dense growth leads to detrimental effects, such as low dissolved oxygen and obstruction of water flow and impedes recreational use of water.

Recommendation: VDACS supports the NWAC recommendation to list Two-horned trapa as a Tier 2 noxious weed.

Ulmus pumila

Common name: Siberian elm

Description: Siberian elm is a perennial deciduous tree that grows well in disturbed areas, has a high seed germination rate, and seedlings establish quickly in sparsely vegetated areas. A native of Eastern Asia, Siberian elm was introduced to the U.S. in the 1860s for its hardiness, fast growth, and ability to grow in various moisture conditions. It is these characteristics that make this species more invasive than other elms. In addition, the tree can develop brittle branches that can break easily and is susceptible to a host of other pest problems.

Distribution: Siberian elm has been reported in 43 states, from Massachusetts to California. In Virginia, it has been reported in 20 localities in Virginia, however it is likely more prevalent throughout the Commonwealth than just those localities reported.

Siberian elm can be found on dry sites, as well as along moist stream banks, in pastures, on grasslands, and on disturbed lands. Most reports are from northern and southwestern Virginia.

Threat: Siberian elm is especially proficient at invading disturbed prairies, being able to dominate new, especially recently planted prairie restorations, in just a few years. Fast growing seedlings of Siberian elm quickly overtake native vegetation, especially shade-intolerant species. Trees can form dense thickets that close open areas, blocking out light and displacing native vegetation. Open areas are most vulnerable to invasion by this species, so pastures or untended farmland are at risk.

Recommendation: VDACS recommends listing Siberian elm as a Tier 3 noxious weed, not a Tier 2 as the NWAC recommended. Due to its wide distribution in the Commonwealth and throughout the eastern region of the U.S., eradication or suppression is not feasible but restricting its movement will slow its spread.

Project 6889

Department Of Agriculture And Consumer Services

Amend noxious weed list

Chapter 317

Regulations for Enforcement of the Noxious Weeds Law

2VAC5-317-20. Tier 1, Tier 2, and Tier 3 noxious weeds.

A. The following plants are hereby declared Tier 1 noxious weeds:

1. *Salvinia molesta*, Giant salvinia.
2. *Solanum viarum*, Tropical soda apple.
3. *Heracleum mantegazzianum*, Giant hogweed.

B. The following plants are hereby declared Tier 2 noxious weeds:

1. *Imperata cylindrica*, Cogon grass.
2. *Lythrum salicaria*, Purple loosestrife.
3. *Ipomoea aquatica*, Water spinach.
4. *Vitex rotundifolia*, Beach vitex.
5. *Oplismenus hirtellus* spp. *undulatifolius*, Wavyleaf basketgrass.
6. *Corydalis incisa*, Incised fumewort.
7. *Trapa bispinosa*, Two horned trapa.

C. The following plants are hereby declared Tier 3 noxious weeds:

1. *Ailanthus altissima*, Tree of heaven.
2. *Ampelopsis brevipedunculata*, Porcelain berry.
3. *Celastrus orbiculatus*, Oriental bittersweet.
4. *Hydrilla verticillata*, Hydrilla.
5. *Persicaria perfoliata*, Mile-a-minute weed.
6. *Alliaria petiolata*, Garlic mustard.
7. *Dioscorea polystachya*, Chinese yam.
8. *Elaeagnus umbellata*, Autumn olive.
9. *Ficaria verna*, Lesser celandine.
10. *Lespedeza bicolor*, Bicolor lespedeza.
11. *Lonicera maackii*, Amur honeysuckle.
12. *Lonicera japonica*, Japanese honeysuckle.
13. *Phragmites australis*, Common reed.
14. *Pueraria montana*, Kudzu.
15. *Reynoutria japonica*, Japanese knotweed.
16. *Ulmus pumila*, Siberian elm.



COMMONWEALTH of VIRGINIA

Department of Agriculture and Consumer Services

PO Box 1163, Richmond, Virginia 23218

www.vdacs.virginia.gov

October 15, 2021

Bradley Copenhaver
Commissioner

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 2021 is below:

Pesticide Business License (Initial)	\$150	Payable at time of application
Pesticide Business License (Renewal)	\$150	Annual (Due March 31)

¹ 2021 Special Session I Acts of Assembly, Ch. 552, Item 104

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

IV. GRANT FUNDING

The Virginia Department of Agriculture and Consumer Services (VDACS) received \$527,195 in grant funding from the U.S. Environmental Protection Agency (EPA) for pesticide regulation and applicator certification. VDACS used the EPA grant funds to offset salary and fringe expenses related to certification and enforcement. The agency also used the grant funds for pesticide-related projects such as training workshops and pollinator protection.

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

The Fund carried a balance of \$1,916,139 from FY 2020. During FY 2021, Office of Pesticide Services (OPS) reported Fund sources of \$4,609,809 and Fund uses of \$3,657,253. The Fund balance at the end of FY 2021 was \$2,868,696. (Please see Appendix 1.) Expense detail for 2016-2021 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 the 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 2021, OPS certified 5,401 private applicators, 6,580 commercial applicators, and 7,083 registered technicians to apply pesticides in the Commonwealth. OPS also licensed 2,748 pesticide businesses and registered 16,576 pesticide products. Field staff conducted 1,180 routine inspections and related activities and initiated 77 investigations, including complaints, incidents, accidents, and related activities, at 1,409 individual sites throughout Virginia. Staff also conducted 210 marketplace registration inspections, checking the registration status of over 2,100 products. Please see Appendix 3 for an organizational chart and staffing as of July 1, 2021. Appendix 3 indicates the positions that were vacant at year-end closing.

B. Continuation of Education and Outreach Programs

OPS continues to work with Virginia Cooperative Extension (VCE) 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	\$	304,017

Pesticide applicators can complete the tests necessary to achieve certification 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. As a result of COVID-19, all DMV offices were closed for several months in the spring of 2020, followed by a staggered reopening. Once reopened, pesticide applicator testing at DMVs, along with many other services, were by appointment only. This has greatly reduced the DMV's overall testing capacity. During FY 2021, DMV administered 1,458 exams through SecuriTest. A total of 8,922 exams were given at all sites, resulting in the issuance of 4,268 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 2021, Telamon trained 14 agricultural employees, with emphasis on the EPA Worker Protection Standard (WPS) for Agricultural Pesticides. There were no expenses submitted by Telamon for reimbursement during FY 2021.

C. Environmental Stewardship Programs

Since its inception, the Pesticide Collection Program has collected approximately 1.6 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 2021, the Pesticide Collection Program collected 61,703 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 2021, the Pesticide Plastic Container Recycling Program collected 167,298 pounds of pesticide containers statewide.

Costs related to environmental stewardship programs were as follows:

Pesticide Disposal	\$	67,812.75
Container Recycling	\$	13,394.33
		<hr/>

Total \$ 81,207.08

D. Projected Budget Balance

Obligations paid from the Fund during FY 2021 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
2017	\$789,277
2018	\$930,283
2019	\$953,555
2020	\$1,916,139
2021	\$2,868,696

The fee increases implemented in July 2019 have resulted in an increased year-end Fund balance for the past two years. As a result, the Board has initiated a fast-track regulatory action to eliminate renewal fees for commercial applicators and registered technicians in an effort to moderate the year-end cash balance. It is anticipated that (i) increases in information technology costs for the online application system and (ii) equipment purchases will impact the year-end balance for FY 2022, which is estimated to be \$3.0 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,



Bradley Copenhaver
Commissioner

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

Appendix 1

Pesticide Control Fund – FY 2021	
Fund Balance – June 30, 2020	\$ 1,916,139.43
SOURCES	
Pesticide product registrations	\$ 3,428,570.70
Commercial applicator certification	\$ 401,978.80
Pesticide business licenses	\$ 457,870.00
Registered technician certification	\$ 260,729.00
Late fees, interest, misc.	\$ 43,389.71
Civil penalties	\$ 17,271.13
Total Sources	4,609,809.34
USES	
Personal services	\$ 1,609,516.20
Contractual services	\$ 837,830.84
Supplies and materials	\$ 30,651.92
Transfer payments (includes grant payments)	\$ 354,635.22
Continuous charges	\$ 123,430.70
Equipment	\$ 110,186.20
Agency administrative expenses	\$ 591,002.00
Total Uses	3,657,253.08
Fund Balance – June 30, 2021	\$ 2,868,695.69

Appendix 2

**Pesticide Control Fund
FY 2016-2021**

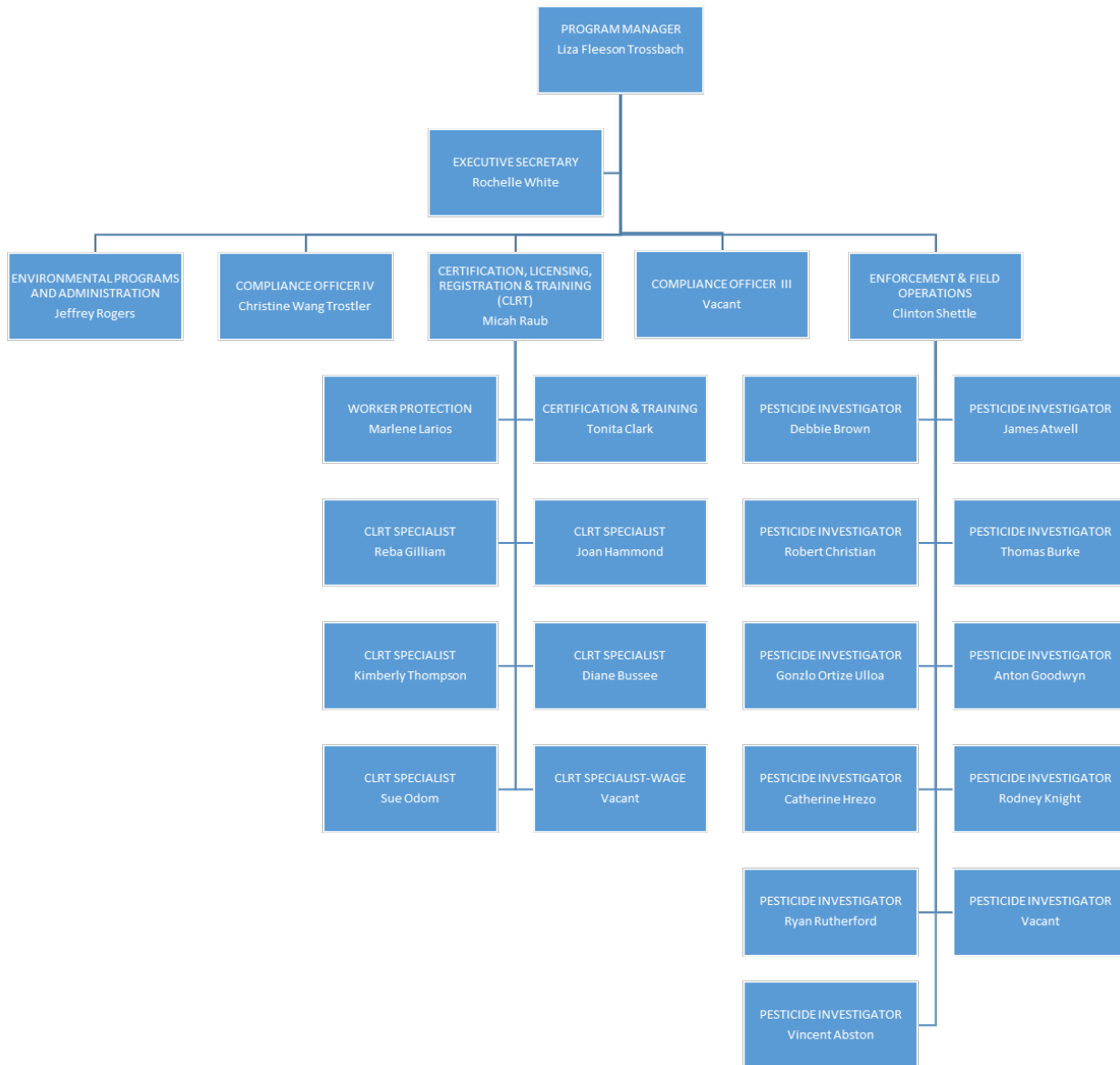
Expenditure Category	2016	2017	2018	2019	2020	2021
Projects*	\$1,025,345	\$818,038	\$435,836	\$488,481	\$427,182	\$401,628
Salaries	\$1,203,969	\$1,059,229	\$969,458	\$935,717	\$997,666	\$1,103,706
Fringe Benefits	\$515,265	\$477,677	\$447,899	\$444,642	\$460,338	\$505,811
Administrative Overhead	\$338,380	\$64,253	\$366,899	\$422,301	\$525,747	\$591,002
Information Technology	\$214,329	\$212,033	\$252,447	\$275,019	\$332,985	\$585,538
Laboratory Services	\$190,031	\$214,931	\$162,632	\$169,211	\$178,647	\$87,844
Rent	\$90,114	\$90,740	\$90,939	\$90,320	\$91,626	\$91,127
Equipment	\$59,380	\$3,451	\$1,694	\$10,789	\$1,830	\$110,186
Supplies	\$34,834	\$26,785	\$27,764	\$28,694	\$32,724	\$30,651
Travel	\$23,355	\$19,051	\$16,639	\$10,867	\$8,921	\$1,791
Testing Services (DMV)	\$24,155	\$12,415	\$23,050	\$17,215	\$17,870	\$6,020
Other**	\$241,090	\$149,944	\$130,845	\$160,287	\$378,343	\$ 141,949
Revenue	\$2,910,286	\$3,403,950	\$3,067,108	\$3,076,815	\$4,416,465	\$4,609,809
June 30 Cash Balance	\$533,874	\$789,277	\$930,283	\$953,555	\$1,916,139	\$2,868,695

* "Projects" includes \$304,017 in expenditures for Applicator Training, Manuals/Exams, and Certification (VCE); \$16,403 in expenditures for Pesticide Safety Education (Telamon); and \$81,207 in expenditures for pesticide disposal and container recycling. The \$16,403 for services rendered by Telamon was incurred during FY 2020 but paid during FY 2021. There were no expenses submitted by Telamon for reimbursement for services rendered in FY 2021

** "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 2021)**



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: October 29, 2021

This revision supersedes the December 28, 2016, revision of Policy 2.3.

Effective: October 29, 2021

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

“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.

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 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.

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 recorded 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 public body 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.

The secretary shall ensure that the draft minutes of a meeting are posted 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.

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(A)(1) and (2) regarding participation by individual members, (ii) pursuant to Va. Code § 2.2-3708.2(D) allowing the meeting to be noticed as an electronic meeting, and (iii) pursuant to Va. Code § 2.2-3708.2(A)(3) when the Governor has declared a state of emergency in accordance with Va. Code § 44-146.17.

The secretary will ensure that minutes of all meetings conducted through electronic communication means are recorded as required in Va. Code § 2.2-3707. Votes taken during any meeting conducted through electronic communication means shall be recorded by name in roll-call fashion and included in the minutes.

Additionally, the seventeenth enactment of Chapter 1 of the 2021 Acts of Assembly, Special Session II, amends the 2021 Appropriation Act to allow, through June 30, 2022, advisory boards to meet electronically without a quorum of the board physically assembled at one location if the meeting is being held solely to receive presentations, updates, or public comment or to conduct other forms of information gathering. The advisory board must not take any vote or make any formal recommendations at such meeting.

PARTICIPATION BY INDIVIDUAL BOARD MEMBERS PURSUANT TO VA. CODE § 2.2-3708.2(A)(1) AND (2)

An individual board member may participate in a public meeting from a remote location only if (i) the board has adopted a written policy allowing for and governing participation of its members by electronic communication means, including an approval process for such participation, subject to the

express limitations imposed by Va. Code § 2.2-3708.2. Once adopted, the policy shall be applied strictly and uniformly, without exception, to the entire membership and without regard to the identity of the member requesting remote participation or the matters that will be considered or voted on at the meeting; (ii) a quorum of the board is physically assembled at one primary or central meeting location; and (iii) the board makes arrangements for the voice of the remote participant to be heard by all persons at the primary or central meeting location. Such individual member must notify the chair of the board on or before the day of the meeting indicating that the member is unable to attend the meeting due to a (i) temporary or permanent disability or other medical condition that prevents the member's physical attendance; (ii) a family member's medical condition that requires the member to provide care for such family member, thereby preventing the member's physical attendance; or (iii) a personal matter, when the member identifies with specificity the nature of the personal matter. A member is limited to the greater of two electronic meetings each calendar year or 25 percent of the meetings held per calendar year rounded up to the next whole number due to personal matters.

If participation by a member through electronic communications means 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. The board will also record in its minutes the fact that the member participated through electronic communication means due to (i) a temporary or permanent disability or other medical condition that prevented the member's physical attendance; (ii) a family member's medical condition that required the member to provide care for such family member, thereby preventing the member's physical attendance; or (iii) a personal matter, with the specific nature of the personal matter cited by the member and included in the minutes.

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.

PARTICIPATION PURSUANT TO VA. CODE § 2.2-3708.2(D)

Board meetings wherein the public business is discussed or transacted through electronic communication means may be conducted when (i) a quorum of the members is physically assembled at one primary or central meeting location, (ii) notice has been given in accordance with the notice requirements stated below, and (iii) members of the public are provided a substantially equivalent electronic communication means through which to observe or listen to the meeting.

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

The secretary shall ensure that the notice of any board meeting conducted through electronic communication means pursuant to this subsection occurs at least three working days in advance of the date scheduled for the meeting. The notice shall (i) include the date, time, place, and purpose for the meeting; (ii) identify the primary or central meeting location and any remote location open to the public; (iii) include notice as to the electronic communication means by which members of the public may observe or listen to the meeting; and (iv) include a telephone number that may be used to notify the primary or central meeting location of any interruption in the telephonic or video broadcast of the meeting. Any interruption in the telephonic or video broadcast of the meeting shall result in suspension of action at the meeting until repairs are made and public access restored.

The secretary will prepare an agenda and materials that will be distributed to members of the board and will ensure that a copy of the proposed agenda and agenda packets and, unless exempt, all materials that will be distributed to board members for a meeting be made available for public inspection at the same time such documents are furnished to the members of the board conducting the meeting.

Public access to any remote location from which any additional member of the board participates through electronic communication means shall be encouraged but not required. However, if three or more members are gathered at the same remote location, then such remote location shall be open to the public. If access to a remote location is afforded, (i) all persons attending the meeting at any of the meeting locations shall be afforded the same opportunity to address the public body as persons attending at the primary or central location and (ii) a copy of the proposed agenda and agenda packets and, unless exempt, all materials that will be distributed to members of the board for the meeting shall be made available for inspection by members of the public attending the meeting at any of the remote locations at the time of the meeting.

The secretary shall make available to the public at any meeting conducted through such electronic communication means pursuant to this subsection a public comment form prepared by the Virginia Freedom of Information Advisory Council.

If the board meets by electronic communication means pursuant to this subsection, its secretary shall file with the Virginia Freedom of Information Advisory Council by December 15 of each year a report of the following: (i)

the total number of meetings held that year in which there was participation through electronic communication means; (ii) the dates and purposes of each such meeting; (iii) a copy of the agenda for each such meeting; (iv) the primary or central meeting location for each such meeting; (v) the types of electronic communication means by which the meetings were held; (vi) if possible, the number of members of the public who observed or listened to the meeting through electronic communication means; (vii) the identity of any member of the board recorded as present at each meeting and whether each member was present at the primary or central meeting location or participated through electronic communication means; (viii) the identity of any members of the board who were recorded as absent at each meeting and any members who were recorded as absent at a meeting but who monitored the meeting through electronic communication means; (ix) if members of the public were granted access to a remote locations from which a member participated in a meeting through electronic communication means, the number of members of the public at each such remote location; (x) a summary of any public comment received about the process of conducting a meeting through electronic communication means; and (xi) a written summary of the board's experience conducting a meeting through electronic communication means, including its logistical and technical experience.

PARTICIPATION WHEN THE GOVERNOR HAS DECLARED A STATE OF EMERGENCY

The board 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 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 Va. Code § 2.2-3708.2.

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 subdivision shall be applicable only for the duration of the Governor's declared emergency.

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 a public 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 shall then take a vote of the membership on any resolution, ordinance, rule, contract, regulation, or motion on which it agreed 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

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.)

BOARD OF AGRICULTURE AND CONSUMER SERVICES

Policy on Individual Participation in Board of Agriculture and Consumer Services Meetings by Electronic Means pursuant to Va. Code § 2.2-3708.2

It is the policy of the Board of Agriculture and Consumer Services (Board) that individual members of the Board may participate in meetings of the Board by electronic means as permitted by Virginia Code § 2.2-3708.2. This policy shall apply to the entire membership and without regard to the identity of the member requesting remote participation or the matters that will be considered or voted on at the meeting. Whenever an individual member wishes to participate from a remote location, the law requires a quorum of the Board to be physically assembled at the primary or central meeting location, and arrangements will be made for the voice of the remote participant to be heard by all persons at the primary or central meeting location. The reason that the member is unable to attend the meeting and the remote location from which the member participates will be recorded in the meeting minutes. When an individual's participation through electronic communication means is due to a personal matter, such participation is limited each calendar year to two meetings or 25 percent of the meetings held per calendar year rounded up to the next whole number, whichever is greater. Individual participation from a remote location shall be approved unless such participation would violate this policy or the provisions of the Virginia Freedom of Information Act. If a member's participation from a remote location is challenged, then the Board shall vote whether to allow such participation. If the Board votes to disapprove of the member's participation because such participation would violate this policy, such disapproval will be recorded in the minutes with specificity. This policy applies to all committees and subcommittees of the Board.

This policy was originally adopted by the Board at its meeting on December 10, 2021.