



P.O. Box 2277, Harrisonburg, VA 22801; 540-433-2451; hobey@vapoultry.com

VIA ELECTRONIC MAIL

Ms. Princy Doss
Director of Policy, Planning and Public Information
Virginia Department of Labor and Industry
600 E. Main Street, Suite 207
Richmond, VA 23219
princy.doss@doli.virginia.gov

Mr. Jay Withrow, Director
Division of Legal Support, VPP, ORA, OPPPI, and OWP
Virginia Department of Labor and Industry
600 E. Main Street, Suite 207
Richmond, VA 23219
jay.withrow@doli.virginia.gov

Re: Comments of the Virginia Poultry Federation Regarding Adoption of
Proposed Permanent Standard for COVID for Infectious Disease Prevention: SARS-CoV-2
Virus That Causes COVID-19, 16VAC25-220

Dear Ms. Doss and Mr. Withrow:

I am writing on behalf of Virginia Poultry Federation (VPF) concerning the referenced matter. VPF is a statewide trade association representing all sectors of the poultry industry. Our comments reflect the views of VPF and do not constitute a statement of admission on behalf of individual members of VPF.

Virginia's largest agricultural sector, the poultry industry contributes about \$13 billion annually to the Virginia economy; supports the livelihood of some 1,100 family farms; and employs more than 15,000 people.

As you know, VPF previously urged the Virginia Department of Labor and Industry (DOLI) not to promulgate the recently adopted Emergency Temporary Standard (ETS). We set forth our reasons for opposing the ETS in detailed comments to DOLI. We noted the changing scientific understanding of the Novel Coronavirus Disease 2019 (COVID-19) and contended that guidance issued by the Occupational Safety and Health Administration (OSHA) and the Centers for Disease Control and Prevention (CDC), which are updated with regularity, is the most appropriate mechanism to guide prevention measures.

We further contended in our previous comments that Virginia employers have a general duty under the Occupational Safety and Health Act of 1970 to keep their workplaces free from recognized hazards that cause or are likely to cause death or serious physical harm (the general duty clause). 29 U.S.C. § 654(a)(2) (see Va. Code § 40.1-51.1A- “It shall be the duty of every employer to furnish to each of his employees safe employment and a place of employment which is free from recognized hazards that are causing or are likely to cause death or serious physical harm to his employees, and to comply with all applicable occupational safety and health rules and regulations promulgated under this title.”). Each of these regulations and statutes is clear and enforceable. If a Virginia employer failed to take action to protect its workers from COVID-19, as recommended by OSHA or the CDC, DOLI’s Occupational Safety and Health Division (VOSH) could cite the company for violation of the general duty clause or another existing regulation.

These and other viewpoints and facts set forth in our previous comments remain the same, and we reiterate them herein.

Poultry plants in Virginia were successful in implementing COVID-19 prevention measures prior to adoption of the ETS, and will continue to make worker safety a top priority. According to data posted by the Virginia Department of Health (VDH), about 94 percent of 1,228 cases among poultry workers occurred in April and May, with a dramatic decline after that. There were 25 cases in June, 13 in July, and just 4 in August. The data show that the industry’s implementation of OSHA, CDC, and VDH guidance was successful. In addition to our successful implementation of protective measures when the pandemic struck last spring, our industry is now working diligently to comply with the ETS.

Now that DOLI has adopted the ETS, the question is how long should these requirements be kept in place? In our view, they should not be permanent. Disease pandemics are temporary; regulations addressing them should be as well. VPF opposes adoption of a permanent standard and believes no further action by the Safety and Health Codes Board is needed. At most, DOLI should adopt a mechanism that allows any ongoing COVID-19 regulatory standards to expire when the emergency circumstances are over, if an emergency extends beyond January 2021.

The process by which DOLI adopted the ETS was flawed and inappropriate because it did not allow for adequate stakeholder input. The result was an ETS with ambiguous and confusing provisions that led to many questions among the regulated community. VPF sought to help our members navigate the new rules by hosting a webinar with subject matter experts and submitting questions to DOLI, some of which remain to be answered.

Adoption of a regulatory program of this magnitude should have involved a regulatory advisory committee and extensive discussions with representatives of impacted businesses. Such is normally the case pursuant to the Administrative Process Act. We understand the ETS was adopted through certain emergency regulatory procedures. However, the ETS was hastily adopted without adequate time for consideration of detailed written comments, much less an

opportunity for public testimony. Anything beyond what is currently in place should allow for substantially more stakeholder input.

Please let me know if you have any questions or would like any additional information. Thank you for your consideration of our views.

Sincerely,

A handwritten signature in cursive script that reads "Hobey Bauhan".

Hobey Bauhan
President