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VIA ELECTRONIC MAIL

June 4, 2021

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 a Heat Illness Prevention Standard

Dear Mr. Withrow:

I am writing on behalf of Virginia Poultry Federation (VPF) concerning the Department of Labor and Industry's Notice of Intended Regulatory Action (NOIRA) regarding adoption of a heat illness prevention standard.

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. VPF is the statewide trade association representing all sectors of the industry.

Protecting the health and safety of our workforce is a top priority of the poultry industry. The incidence of occupational injuries and illnesses within the poultry sector's slaughter and processing workforce has fallen by 86 percent over the last 25 years and continues to decline according to the 2019 Injury and Illness Report released last year by the Bureau of Labor Statistics. Among the preventative measures implemented by the industry are those which protect workers from heat illness. Poultry operations typically have specific, detailed heat stress management programs.

VPF discourages the Department from adopting a detailed standard ahead of any federal OSHA standard that might be developed. We have concerns about any Virginia-specific regulations that might conflict with any guidance from OSHA, creating a patchwork of state standards.

Virginia employers already have a general duty under the Occupational Safety and Health Act of 1970 to keep their workplaces free from recognized hazards, including heat stress, which 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 heat illness, as recommended in various guidelines to protect workers from such hazards, DOLI’s Occupational Safety and Health Division (VOSH) could cite the company for violation of the general duty clause or another existing regulation.

To the extent DOLI determines to move forward with a standard, VPF will be very interested in its content and will participate in the process by weighing in with comments and testimony. We do ask that you include a representative of the broader agricultural industry on any technical or regulatory advisory committees created for this action.

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