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VIA ELECTRONIC MAIL

January 8, 2021

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](mailto: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](mailto: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.

Poultry plants in Virginia were successful in implementing COVID-19 prevention measures well PRIOR to adoption of the Emergency Temporary Standard (ETS), and will continue to make worker safety a top priority. According to data posted by the Virginia Department of Health (VDH), about 90 percent of cases among poultry workers occurred in April and May, with a dramatic decline after that, even as total Virginia cases increased. 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 has worked diligently to comply with the ETS.

As you know, VPF previously urged the Virginia Department of Labor and Industry (DOLI) not to promulgate the ETS last summer. We set forth our reasons for opposing the ETS in detailed comments to DOLI. We noted the changing scientific understanding of the novel COVID-19 and contended that guidance issued by the OSHA and 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.

Additionally, the proposed permanent standard published for a 30 day public comment period did not contain the language that had been included in the ETS at §16VAC25-220-10. G.1 concerning compliance with CDC guidelines. I was going to ask, what is the purpose of removing this reference? But then suddenly, the day before the public hearing, a new draft emerged containing a version of 10 G.1. Virginia should rely MORE heavily upon and correlate more closely to CDC guidance.

Also, where is the economic impact analysis to determine cost to small businesses? How are impacted stakeholders able to review and comment on this analysis, which has not been released, before the comment period ends this week or before the Board votes next week?

In our view, DOLI should not adopt a permanent standard. Disease pandemics are temporary; regulations addressing them should be as well. If anything, you should consider another temporary standard, especially with the present rollout of vaccines which will likely end the public health emergency this year.

However, whatever you do requires additional time for appropriate deliberation, transparency, and stakeholder input, and it should contain an explicit mechanism to allow it to expire immediately upon the end of the state of emergency.

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 deliberation with stakeholders. We are concerned the same is true of the present rulemaking process.

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