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**Petition for Rulemaking Pursuant to Virginia Code § 2.2-4007(A):**  
**Minimum Welfare Standards for the Transport of Live Poultry to Slaughter**

**I. Background**

Petitioner formally requests that the Virginia Board of Agriculture and Consumer Services (the “Board”) adopt regulations setting minimum welfare standards for the transport of live poultry to slaughter. Petitioner is a legal advocacy organization whose mission is to end the suffering of animals in slaughterhouses, farms, and laboratories by discovering, exposing, and challenging unlawful conduct in all its forms.<sup>1</sup> Petitioner is incorporated and headquartered in Virginia<sup>2</sup> and regularly engages in legal actions aimed at mitigating cruelty inflicted upon animals in the Commonwealth.<sup>3</sup>

Each year, nearly 300 million chickens and turkeys are transported, processed, and sold in Virginia.<sup>4</sup> In the United States, poultry sales exceed those of either beef, pork, or mutton by weight,<sup>5</sup> while the number of individual birds processed dwarfs that of all other slaughtered livestock combined.<sup>6</sup> Despite this, poultry are often excluded from state and federal laws governing welfare standards for animals in agriculture.<sup>7</sup> Furthermore, state and federal animal

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<sup>1</sup> Home, Animal Partisan, <https://www.animalpartisan.org/> (last visited Aug. 1, 2023).

<sup>2</sup> Animal Partisan, Inc., Virginia State Corporation Commission, <https://cis.scc.virginia.gov/EntitySearch/BusinessInformation?businessId=11433943&source=FromEntityResult&isSeries%20=%20false> (last visited Aug. 1, 2023).

<sup>3</sup> Cruelty complaint filed against Virginia slaughterhouse for shooting pig four times in the head, Animal Partisan, <https://www.animalpartisan.org/news/cruelty-complaint-filed-against-virginia-slaughterhouse-for-shooting-pig-four-times-in-head> (last visited Aug. 1, 2023); Lawsuit filed to compel VCU to turn over public records related to school’s animal research, Animal Partisan, <https://www.animalpartisan.org/news/lawsuit-filed-to-compel-vcu-to-turn-over-public-records-related-to-schools-animal-research> (last visited Aug. 1, 2023).

<sup>4</sup> See NAT’L AGRIC. STAT. SERV., U.S. DEP’T OF AGRIC., AC-17-A-46, 2017 CENSUS OF AGRICULTURE (2019).

<sup>5</sup> The United States Meat Industry at a Glance, N. AM. MEAT INST., <https://www.meat institute.org/index.php?ht=d/sp/i/47465/pid/47465> (last visited June 7, 2023).

<sup>6</sup> See ANIMAL WELFARE INST., HUMANE SLAUGHTER UPDATE: FEDERAL AND STATE OVERSIGHT OF THE WELFARE OF FARM ANIMALS AT SLAUGHTER 2 (2020) [hereinafter HUMANE SLAUGHTER UPDATE].

<sup>7</sup> See, e.g., 9 C.F.R. § 313.1-313.50 (regulating humane methods of slaughter for “livestock” but not for poultry); 2 VA. ADMIN. CODE 5-210-30 (2022) (incorporating by reference 9 C.F.R. § 313).

cruelty laws often exempt certain agricultural activities,<sup>8</sup> making domestic fowl raised for food simultaneously one of the most abundant animal groups in the United States and one of the least protected.

Researchers have long recognized the potential for transport to subject livestock and poultry to unnecessary stress and suffering.<sup>9</sup> However, regulations setting minimum welfare standards for transport remain underdeveloped compared to those regulating activities within slaughterhouses.<sup>10</sup> Currently, the only Virginia law setting standards for the transport of live poultry is Virginia Code § 3.2-6508, which sets a maximum twenty-four-hour transport time without providing animals an opportunity to be "exercised, properly rested, fed and watered as necessary."<sup>11</sup> The law also requires that "[a]dequate space in the primary enclosure within any type of conveyance . . . be provided each animal depending upon the particular type and species of animal."<sup>12</sup> It does not, however, offer specific guidance for the size or features of enclosures, the nature and duration of feeding, rest, and exercise stops, or techniques for safely and humanely handling birds.<sup>13</sup> It also does not contain any requirements pertaining to proper ventilation or protection against the extreme heat or cold often experienced by poultry in transport.<sup>14</sup>

As industry consolidation has decreased the number of federal- and state-inspected slaughterhouses in recent decades, the average distance of each trip from farm to slaughter has increased.<sup>15</sup> Furthermore, the number of birds processed per year continues to grow both in Virginia<sup>16</sup> and the United States.<sup>17</sup> Finally, record heat waves in the U.S. increase the likelihood that poultry will be exposed to extreme temperatures during transport. Accordingly, as more and more birds are subject to more extreme temperatures and more hours in transport, the need to set minimum protections grows more urgent. The Board is uniquely poised to address this need by adopting regulations setting minimum standards for compliance with § 6508 and otherwise governing vehicles, equipment, and practices used to transport live poultry, pursuant to its powers under Virginia Code § 3.2-6501.<sup>18</sup>

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<sup>8</sup> See, e.g., VA. CODE ANN. § 3.2-6570 (2023) ("This section shall not prohibit . . . farming activities as provided by this title or regulations adopted hereunder."); VA. CODE ANN. § 3.2-6501.1 (2023) ("Such regulations shall not apply to agricultural animals."); GA. CODE ANN. § 16-12-4(g) (2023); N.C. GEN. STAT. § 14-360(c)(2a) (2023); W. VA. CODE § 61-8-19(f) (2023); Animal Welfare Act, 7 U.S.C. § 2131.

<sup>9</sup> See ANIMAL WELFARE INST., LEGAL PROTECTIONS FOR FARM ANIMALS DURING TRANSPORT 1 (2021) [hereinafter LEGAL PROTECTIONS].

<sup>10</sup> See *id.* ("[N]o federal law in the United States governs conditions during domestic transport, other than the maximum duration of travel before rest . . .").

<sup>11</sup> VA. CODE ANN. § 3.2-6508 (2023).

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> See HUMANE SLAUGHTER UPDATE, *supra* note 3, at 3.

<sup>16</sup> See NAT'L AGRIC. STAT. SERV., U.S. DEP'T OF AGRIC., AC-17-A-46, 2017 CENSUS OF AGRICULTURE: UNITED STATES (2019).

<sup>17</sup> See NAT'L AGRIC. STAT. SERV., U.S. DEP'T OF AGRIC., AC-17-A-46, 2017 CENSUS OF AGRICULTURE: VIRGINIA (2019).

<sup>18</sup> "The Board may adopt regulations and guidelines consistent with the objectives and intent of this chapter concerning the care and transportation of animals." VA. CODE ANN. § 3.2-6501 (2023).

## II. Summary of Requested Action

This petition for rulemaking requests the Board to adopt regulations setting minimum welfare standards for the transport of live poultry to slaughter, pursuant to its powers under Virginia Code §§ 3.2-109; 3.2-5404(1) and (5); 3.2-6001; 3.2-6501; and 3.2-6508. The petition is submitted pursuant to Virginia Code § 2.2-4007<sup>19</sup> and 2 Virginia Administrative Code 5-11-60.<sup>20</sup>

Specifically, Petitioner requests that the Board promulgates regulations detailing required enclosure specifications and features; minimum ventilation standards and temperature-monitoring hardware and temperature tolerances for conveyances; and guidance for the safe and humane handling of birds by employees and contractors. The exact requested specifications are detailed in section IV, “Text of the Proposed Rule,” below.



*A typical poultry transport truck.<sup>21</sup>*

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<sup>19</sup> “Any person may petition an agency to request the agency to develop a new regulation or amend an existing regulation.” VA. CODE ANN. § 2.2-4007 (2023).

<sup>20</sup> “[A]ny person may petition the agency to consider a regulatory action.” 2 VA. ADMIN. CODE 5-11-60.

<sup>21</sup> © 2008 by b3nscott. b3nscott, FLICKR (May 22, 2008), <https://www.flickr.com/photos/16693144@N00/2512789670>.

### **III. The Board Should Adopt Regulations Setting Minimum Welfare Standards for the Transport of Live Poultry to Slaughter**

#### **A. The Board Has Statutory Authority to Adopt Regulations Setting Minimum Welfare Standards for the Transport of Live Poultry to Slaughter**

Va. Code Ann. § 3.2-109 authorizes the Board to “adopt regulations in accordance with the provisions” of Title 3.2 of the Virginia Code, titled “Agriculture, Animal Care, and Food.” Within Title 3.2, Chapter 65, titled “Comprehensive Animal Care,” provides prohibitions and requirements regarding animal care<sup>22</sup> and authorizes the Board to “adopt regulations and guidelines consistent with the objectives and intent of [Chapter 65] concerning the care and transportation of animals.”<sup>23</sup>

The text of Chapter 65 makes clear that its provisions were intended to apply to poultry. The chapter defines “animal” as “any nonhuman vertebrate species except fish,”<sup>24</sup> while Subtitle V, which contains Chapter 65, defines “animal” as “any organism of the kingdom Animalia, other than a human being.”<sup>25</sup> While certain provisions of Chapter 65 explicitly exclude agricultural animals from applicability,<sup>26</sup> neither Chapter 65 nor Subtitle V contains any general provision suggesting the legislature intended to exclude poultry or agricultural animals from regulation.<sup>27</sup> In fact, the inclusion in Chapter 65 of a definition of “agricultural animals”<sup>28</sup> and a provision specifically addressing care of agricultural animals by owners<sup>29</sup> confirms the legislature intended Chapter 65 to apply to agricultural animals. Accordingly, poultry raised for slaughter are proper subjects for regulation by the Board.

Furthermore, transportation is also clearly within the scope of the Board’s authority under Chapter 65. The chapter defines “care” as “the responsible practice of good animal husbandry, handling, production, management, confinement, feeding, watering, protection, shelter, transportation, [and] treatment . . . appropriate for the age, species, condition, size and type of the animal and the provision of veterinary care when needed to prevent suffering or impairment of health.”<sup>30</sup> Regulations setting minimum welfare standards for the transport of live poultry would concern the practice of good animal husbandry, handling, confinement, feeding, watering, protection, shelter, transportation, and treatment of poultry, which are cognizable subjects for regulation by the Board.

Finally, the above definition of “care,” in addition to Chapter 65’s inclusion of generally applicable anti-cruelty provisions<sup>31</sup> and contemplation of such concepts as the “protection,”

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<sup>22</sup> VA. CODE ANN. §§ 3.2-6500 to -6596 (2023).

<sup>23</sup> *Id.* § 6501 (emphasis added).

<sup>24</sup> *Id.* § 6500.

<sup>25</sup> VA. CODE ANN. § 3.2-5900 (2023).

<sup>26</sup> *See, e.g.*, VA. CODE ANN. § 3.2-6570(D) (2023) (“This section shall not prohibit . . . farming activities as provided under this title or regulations adopted hereunder.”).

<sup>27</sup> *See* VA. CODE ANN. §§ 3.2-6500 to -6596 (2023).

<sup>28</sup> *See id.* § 6500 (Defining “agricultural animals” as “all livestock and poultry”).

<sup>29</sup> *Id.* § 6503.1. Further addressed below, section D.

<sup>30</sup> *Id.* § 6500 (emphasis added).

<sup>31</sup> VA. CODE ANN. §§ 3.2-6570 to -6573 (2023).

“treatment,” and “comfort[]” of animals, demonstrates that ensuring the humane treatment of animals is one of the Board’s principal duties and one of Chapter 65’s principal goals.

In sum, regulations setting minimum welfare standards for the transport of live poultry to slaughter are “consistent with the objectives and intent” of Chapter 65 of the Virginia Code and “concern[] the care and transportation of animals,” and the Board is therefore authorized by Virginia Code § 3.2-6501 to adopt them. Furthermore, while the Virginia Code authorizes localities to prohibit “cruelty to and abuse of animals and fowl,”<sup>32</sup> local ordinances are unlikely to be an effective means of improving the welfare of poultry during transport as poultry production is an industry involving large amounts of inter-locality movement,<sup>33</sup> making the Virginia state government the proper entity to adopt uniform requirements. Accordingly, the Board is the appropriate body to effectively take the requested action.

### **B. Adopting Minimum Welfare Standards for the Transport of Live Poultry to Slaughter Would Improve Poultry Health and Wellbeing**

According to the Food and Agriculture Organization of the United Nations, “[t]ransport of livestock [including poultry]<sup>34</sup> is undoubtedly the most stressful and injurious stage in the chain of operations between farm and slaughterhouse and contributes significantly to poor animal welfare and loss of production.”<sup>35</sup> Potential effects of transport stress include emotional distress, bruising, suffocation, heat stroke, dehydration, exhaustion, and broken limbs.<sup>36</sup> These effects are caused by a variety of potential stressors including “acceleration, vibration, motion, impacts, fasting, withdrawal of water, social disruption and noise.”<sup>37</sup> However, extreme temperatures, and in particular heat stress, are the stressors generally considered most threatening to birds’ welfare.<sup>38</sup> Extreme temperatures and other causes of stress and injury can occur during the loading/handling, transit, and lairage phases of transport, with each phase presenting its own risks.<sup>39</sup>

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<sup>32</sup> VA. CODE ANN. § 3.2-6544(B) (2023).

<sup>33</sup> For instance, while data specific to Virginia operations was unavailable, a 2008 study found the average distance for livestock to slaughter in Massachusetts was fifty-two miles. *See* COMMUNITY INVOLVED IN SUSTAINING AGRICULTURE, DEMAND STUDY: ASSESSING VOLUME AND ATTRIBUTES OF FARMER DEMAND FOR SLAUGHTER AND MEAT PROCESSING SERVICES IN MASSACHUSETTS 11 (2008).

<sup>34</sup> While the term “livestock” is often defined as excluding poultry, the cited FAO guidelines refer to “cattle, goats, sheep, pigs, poultry, and ostriches.” FOOD AND AGRICULTURE ORGANIZATION OF THE UNITED NATIONS, GUIDELINES FOR HUMANE HANDLING, TRANSPORT AND SLAUGHTER OF LIVESTOCK v [hereinafter FAO GUIDELINES].

<sup>35</sup> *Id.* at 33; *see also* *The Critical Relationship Between Farm Animal Health and Welfare*, Animal Welfare Institute, <https://awionline.org/sites/default/files/uploads/documents/FA-AWI-Animal-Health-Welfare-Report-04022018.pdf> (last visited Aug. 1, 2023)

<sup>36</sup> *See id.* at 33-34.

<sup>37</sup> M.A. MITCHELL & P.J. KETTLEWELL, WELFARE OF POULTRY DURING TRANSPORT: A REVIEW 91 (2009).

<sup>38</sup> *See id.*

<sup>39</sup> *See id.* at 92.

## 1. Handling

Catching, handling, and loading birds for transport to slaughter can potentially cause a number of injuries, including bone fractures, dislocations, ruptured organs, bruising, and head trauma.<sup>40</sup> Injuries during this phase of transport contribute significantly to the overall number of birds that are dead-on-arrival to the processing facility (“DOA” birds), and can occur during pre-catch movement or driving of birds, catching, carrying, transfer between handlers, loading into crates, loading of crates onto the vehicle, transit, unloading of crates, removal of birds from crates, and pre-slaughter handling.<sup>41</sup> In fact, a 2022 Animal Outlook investigation of a Virginia poultry farm owned by Tyson Foods documented catch crews brutalizing chickens, including one who “ripped off the head of a chicken” as well as others who threw and kicked chickens.<sup>42</sup>

Virginia Cooperative Extension, an agricultural partnership between Virginia Tech and Virginia State University with 107 offices throughout the commonwealth,<sup>43</sup> recommends the following best practices for the humane catching and handling of poultry:

Noisy, aggressive catching can cause panic and injury. Approach the birds quietly and calmly, possibly under dim lighting. For larger bird-types, always have two points of contact when catching a bird, for instance by holding the legs and the body. Never catch birds by their neck, head, or tail. Avoid catching by their legs or wings alone. Do not hold birds upside down, [as] they get stressed, fearful and may even die because of inverted restraint.<sup>44</sup>

Additionally, the National Chicken Council, a national trade group which advocates for the broiler chicken industry,<sup>45</sup> states in its “widely adopted”<sup>46</sup> *Animal Welfare Guidelines and Audit Checklist* that birds must never be thrown, that transport modules or crates should be regularly assessed for damage that can cause injury to birds, and that “potential for temperature and climatic stress should be considered when scheduling catching, transport, and holding.”<sup>47</sup>

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<sup>40</sup> See Michael S. Cockram & Ketan Jung Dulal, *Injury and Mortality in Broilers During Handling and Transport to Slaughter*, 98 CAN. J. ANIMAL SCI. 416, 419 (2018) [hereinafter *Injury and Mortality*].

<sup>41</sup> See *id.*

<sup>42</sup> Investigation of Tyson Grower Reveals Mass, Systemic Cruelty, Animal Outlook, <https://animaloutlook.org/investigations/investigation-of-tyson-grower-reveals-mass-systemic-cruelty/> (last visited Aug. 1, 2023).

<sup>43</sup> See VA. COOP. EXTENSION, *About Virginia Cooperative Extension*, <https://ext.vt.edu/about.html> (last visited July 11, 2023).

<sup>44</sup> PHILIP J. CLAUER, VA. COOP. EXTENSION, TRANSPORTING POULTRY IN A HUMANE MANNER 1 (2018).

<sup>45</sup> See *About NCC*, NAT’L CHICKEN COUNCIL, <https://www.nationalchickencouncil.org/about/> (last visited July 11, 2023).

<sup>46</sup> See *Animal Welfare for Broiler Chickens*, NAT’L CHICKEN COUNCIL, <https://www.nationalchickencouncil.org/policy/animal-welfare/> (last visited July 11, 2023) (“[P]roper treatment [of chickens] is . . . an ethical obligation . . .”).

<sup>47</sup> NAT’L CHICKEN COUNCIL, NATIONAL CHICKEN COUNCIL ANIMAL WELFARE GUIDELINES AND AUDIT CHECKLIST FOR BROILERS 13 (2017).



Moreover, the World Organization for Animal Health’s Terrestrial Animal Code states that “[a]nimals should be grasped or lifted in a manner which avoids pain or suffering and physical damage” and that “[c]onscious animals should not be thrown, dragged or dropped.”<sup>48</sup>

Finally, stresses and trauma during the catching and loading process have been shown to make birds more susceptible to the negative effects of stress and trauma during the transit phase.<sup>49</sup>



An example of improper handling captured during a 2016 Animal Outlook investigation at a Virginia farm that would be prohibited under this proposal.<sup>50</sup>

## 2. Transit

As stated above, the primary cause of stress and injury during transit is extreme temperature. Temperatures inside conveyances are a result of a number of factors, including ambient outdoor temperatures, quality of ventilation, and stocking density.<sup>51</sup> Ventilation patterns and internal trailer temperatures can be influenced by vehicle design, crate configuration, and ventilation

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<sup>48</sup> Terrestrial Animal Code, World Organization of Animal Health, [https://www.woah.org/en/what-we-do/standards/codes-and-manuals/terrestrial-code-online-access/?id=169&L=1&htmlfile=chapitre\\_aw\\_land\\_transpt.htm](https://www.woah.org/en/what-we-do/standards/codes-and-manuals/terrestrial-code-online-access/?id=169&L=1&htmlfile=chapitre_aw_land_transpt.htm) (last visited Aug. 1, 2023).

<sup>49</sup> See K.S. Schwartzkopf-Genswein et al., *Road Transport of Cattle, Swine and Poultry in North America and Its Impact on Animal Welfare, Carcass and Meat Quality: A Review*, 92 MEAT SCI. 227, 238 (2012).

<sup>50</sup> *Victory: COK Video of Cruelty to Chickens Prompts Groundbreaking Charges & Convictions*, ANIMAL OUTLOOK (Aug. 29, 2017), <https://animaloutlook.org/cok-victory-tyson-convictions/>.

<sup>51</sup> See *Injury and Mortality*, *supra* note 37, at 423.

configuration (i.e., the number and arrangement of open ventilation channels vs. closed ventilation channels).<sup>52</sup>

Additionally, temperatures can vary drastically between different areas of the same conveyance.<sup>53</sup> For instance, during seasons with cold outdoor temperatures, a “paradoxical heat stress” has been observed in conditions where ventilation channels have been closed to protect birds from extreme cold, causing moisture created by the birds’ panting and other physiological stress responses to accumulate and create a “thermal core” in the heart of the conveyance.<sup>54</sup> These thermal cores often occur in the top and front regions of the trailer.<sup>55</sup> Birds located within the thermal core can be subject to extreme heat, while at the same time, birds in the outer-most regions of the same conveyance can experience extreme cold.<sup>56</sup>

In poultry, heat stress can result in physiological responses such as oxidative stress, acid-base imbalance, weight loss, dysregulated metabolism, and suppressed immune system.<sup>57</sup> These severe physiological disruptions can lead to discomfort, pain, and mortality, as well as reduced meat and egg production.<sup>58</sup> Forty percent of DOA birds are the result of thermal stress.<sup>59</sup>

The recommended maximum temperature for the safe transport of mature broilers is about 84°F.<sup>60</sup> Above this limit and without proper precautions, birds will likely produce additional heat and moisture by attempting to regulate their internal temperature through panting, which can lead to moisture accumulation and further temperature increases in poorly ventilated conveyances.<sup>61</sup> A significant increase in stress-indicating hormones has also been shown where the ambient air temperature during transport is below about 41°F.<sup>62</sup>

Overcrowding of crates can also contribute to stress and mortality through piling, reduced circulation, and body heat accumulation.<sup>63</sup> Virginia Cooperative Extension recommends between one-half and one square foot of space per bird for chickens, and two to three square feet of space for ducks, geese, and turkeys, and notes that “leaving the birds packed in the carrying crates is inhumane.”<sup>64</sup>

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<sup>52</sup> See *id.*

<sup>53</sup> See *id.*

<sup>54</sup> See M.A. Mitchell & P.J. Kettlewell, *Physiological Stress and Welfare of Broiler Chickens in Transit: Solutions Not Problems!*, 77 *POULTRY SCIENCE* 1803, 1810-11 (1998) (“Any impairment of airflow through the structure will result in the accumulation of heat and moisture that in combination will impose heat stress upon the birds.”).

<sup>55</sup> See *Injury and Mortality*, *supra* note 37, at 423.

<sup>56</sup> See *id.*

<sup>57</sup> See Abdul Rahman Sesay, *Impact of Heat Stress on Chicken Performance, Welfare, and Probable Mitigation Strategies*, 12 *INT’L J. ENV’T AND CLIMATE CHANGE* 3120, 3127 (2022); Mark W. Bohler et al., *Heat Stress Responses in Birds: A Review of the Neural Components*, 2021, 10 *BIOLOGY* 1095 (2021).

<sup>58</sup> Heat stress is estimated to account for \$165 million in poultry product losses per year in the United States. See *id.* at 1096.

<sup>59</sup> See Schwartzkopf-Genswein et al., *supra* note 44, at 236.

<sup>60</sup> See *id.*

<sup>61</sup> See *id.* (“[A]n important factor in the design of future broiler transport trailers is the inclusion of active ventilation to reduce large temperature gradients and high humidity levels inside the trailer.”).

<sup>62</sup> See Bulent Teke, *Survey on Dead on Arrival of Broiler Chickens Under Commercial Transport Conditions*, 25 *LARGE ANIMAL REV.* 237, 241 (2019).

<sup>63</sup> See CLAUER, *supra* note 40, at 3.

<sup>64</sup> See *id.*





*An example of dangerous overcrowding captured during a 2016 Animal Outlook investigation at a Virginia farm.<sup>65</sup>*

### 3. Lairage

Lairage is defined as the period between the arrival of poultry to the slaughterhouse and slaughter.<sup>66</sup> Heat and cold stress are also common during lairage;<sup>67</sup> however, lairage under appropriate conditions and for appropriate lengths of time has been shown to reduce stress before slaughter and increase broiler welfare.<sup>68</sup> The majority of studies suggest the ideal amount of time spent in lairage is between one and four hours.<sup>69</sup> However, the USDA's Food Safety and Inspection Service has documented numerous instances of poultry being left in lairage for many hours, often during extreme weather, leading to unnecessary suffering and death.<sup>70</sup> The Poultry Service Association, a Canada-based trade group representing poultry transporters,<sup>71</sup> recommends that poultry in lairage always be protected from extreme weather and temperature, given adequate ventilation, and monitored for signs of stress.<sup>72</sup>

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<sup>65</sup> *Tyson Exposed: A Tradition of Torture*, Animal Outlook, <https://animaloutlook.org/tyson-exposed-a-tradition-of-torture/#group> (last visited Aug. 1, 2023).

<sup>66</sup> See Teke, *supra* note 57.

<sup>67</sup> See MITCHELL & KETTLEWELL, *supra* note 34; *Cold Temperatures Can Have Severe Consequences for Poultry Health and Welfare*, POULTRY EXTENSION COLLABORATIVE NEWSL (Poultry Extension Collaborative), Feb. 2023, at 1.

<sup>68</sup> See Teke, *supra* note 57.

<sup>69</sup> See Schwartzkopf-Genswein et al., *supra* note 44.

<sup>70</sup> See *Report: USDA Fails to Protect Birds Who Are Neglected, Abandoned During Transport and At Slaughterhouse*, ANIMAL WELFARE INST. (Aug. 9, 2018), <https://awionline.org/press-releases/report-usda-fails-protect-birds-who-are-neglected-abandoned-during-transport-and>.

<sup>71</sup> See *About*, POULTRY SERV. ASSOC., <http://www.poultryserviceassociation.com/about.html> (last visited Aug. 1, 2023).

<sup>72</sup> POULTRY SERV. ASSOC., *POULTRY HANDLING AND TRANSPORTATION MANUAL 87* (Al Dam & Susan Fitzgerald, eds., 2017).

### C. No Federal Law Currently Sets Minimum Welfare Standards for the Transport of Live Poultry to Slaughter in Virginia

The primary federal statute governing animal welfare during transport is 49 U.S.C. § 80502 (“The Twenty-Eight Hour Law”), which sets a maximum of twenty-eight hours of confinement for animals in transport without proper feeding, watering, and rest.<sup>73</sup> However, the USDA has interpreted the Twenty-Eight Hour Law as applying to cattle, pigs, and other mammals but not to poultry,<sup>74</sup> and currently no other federal statute governs the welfare of poultry during transport.<sup>75</sup> Furthermore, the USDA focuses its enforcement of the Twenty-Eight Hour Law on animals being moved across state lines or being imported into the US from abroad,<sup>76</sup> meaning that even if the USDA expanded the Twenty-Eight Hour Law to reach poultry — and there is no indication it will — it would likely not focus enforcement efforts on the intrastate movement of poultry in Virginia.

The Animal Health Protection Act (“AHPA”),<sup>77</sup> another federal statute, empowers the Secretary of Agriculture to “prohibit or restrict the use of any means of conveyance . . . [which] has not been maintained in a clean and sanitary condition or does not have accommodations for the safe and proper movement and humane treatment of livestock.”<sup>78</sup> However, while the AHPA explicitly pertains to animals moved in interstate or international commerce,<sup>79</sup> the USDA “has not used this authority to regulate the interstate transport of animals within the United States” but has instead applied it only to imports and exports.<sup>80</sup> Accordingly, the AHPA does not regulate poultry moved purely intrastate in Virginia and is unlikely to be applied to poultry moved interstate through Virginia.

Finally, the Animal Welfare Act (“AWA”) is a broad federal statute providing many welfare protections for animals, including those moved in commerce.<sup>81</sup> However, the AWA explicitly excludes agricultural animals used for food or fiber from applicability.<sup>82</sup>

In sum, the current federal statutory framework provides no minimum welfare standards for the transport (either interstate or intrastate) of live poultry to slaughter in Virginia.

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<sup>73</sup> 49 U.S.C. § 80502; *see* LEGAL PROTECTIONS, *supra* note 6.

<sup>74</sup> *See* U.S. DEP’T OF AGRIC., *Twenty-Eight Hour Law*, NAT’L AGRIC. LIBR. <https://www.nal.usda.gov/animal-health-and-welfare/twenty-eight-hour-law#:~:text=If%20livestock%20are%20being%20transported,of%20Agriculture%20enforces%20the%20Law> (last visited June 8, 2023).

<sup>75</sup> *See* ANIMAL WELFARE INST., *THE WELFARE OF BIRDS AT SLAUGHTER IN THE UNITED STATES: THE NEED FOR GOVERNMENT REGULATION* 3 (2020).

<sup>76</sup> ANIMAL WELFARE INST., *A REVIEW: THE TWENTY-EIGHT HOUR LAW AND ITS ENFORCEMENT* 7 (2020) (“The current Twenty-Eight Hour Law enforcement strategy only applies to animals being transported interstate to slaughter and animals transported across the national border.”).

<sup>77</sup> 7 U.S.C. §§ 8301-8322.

<sup>78</sup> *Id.* § 8304.

<sup>79</sup> *See id.* § 8301.

<sup>80</sup> LEGAL PROTECTIONS, *supra* note 6, at 3.

<sup>81</sup> 7 U.S.C. §§ 2131-2160.

<sup>82</sup> *See id.* § 2132(g) (excluding “farm animals, such as, but not limited to livestock or poultry”).

## D. Virginia Law Governing Welfare Standards for the Transport of Live Poultry to Slaughter Lacks Specificity and Reach

### 1. The Virginia Code

As noted above, the primary Virginia statute governing the treatment of poultry during transport to slaughter is Virginia Code § 3.2-6508 (“The Twenty-Four Hour Law”).<sup>83</sup> The Twenty-Four Hour Law is a loose analog to the federal Twenty-Eight Hour Law, prohibiting the confinement for transport of “any animal” for longer than twenty-four hours without exercise, rest, feed, and water “as necessary for that particular type and species of animal.”<sup>84</sup> The law also requires “adequate space” for each animal according to its species. Chapter 65 of the Virginia Code defines “adequate space” as

sufficient space to allow each animal to (i) easily stand, sit, lie, turn about, and make all other normal body movements in a comfortable, normal position for the animal and (ii) interact safely with other animals in the enclosure. . . . When freedom of movement would endanger the animal, temporarily and appropriately restricting movement of the animal according to professionally accepted standards for the species is considered provision of adequate space.<sup>85</sup>

Neither the Twenty-Four Hour Law nor Chapter 65’s definitions section provides exact specifications for compliance with regard to any species.<sup>86</sup> The law also does not address temperature, ventilation, handling, or lairage.<sup>87</sup> While adequate restraint and loading density are an important component of humane transport,<sup>88</sup> providing adequate space by itself does not ensure safe temperatures will be maintained in a conveyance. Similarly, while adequate exercise, rest, feed, and water are necessary components of good animal husbandry practices, the twenty-four hour maximum imposed by the law has little tangible impact on poultry welfare when

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<sup>83</sup> VA. CODE ANN. § 3.2-6508 (2023).

<sup>84</sup> *Id.* This language differs from that of provisions such as § 3.2-6503 which govern treatment of companion animals to the exclusion of agricultural animals. That provision requires “adequate” feed, water, shelter, etc., where each of those terms is defined explicitly in the chapter’s definitions section. For instance, “adequate feed” is defined as

access to and the provision of food that is of sufficient quantity and nutritive value to maintain each animal in good health; is accessible to each animal; is prepared so as to permit ease of consumption for the age, species, condition, size and type of each animal; is provided in a clean and sanitary manner; is placed so as to minimize contamination by excrement and pests; and is provided at suitable intervals for the species, age, and condition of the animal, but at least once daily, except as prescribed by a veterinarian or as dictated by naturally occurring states of hibernation or fasting normal for the species.

VA. CODE ANN. § 3.2-6500 (2023). The Twenty-Four Hour Law does, however, require “adequate space” for each regulated animal, a term which is also included in Chapter 65’s definitions section and is elaborated above.

<sup>85</sup> *Id.*

<sup>86</sup> *See* VA. CODE ANN. § 3.2-6508 (2023).

<sup>87</sup> *See id.*

<sup>88</sup> *See* K.S. Schwartzkopf-Genswein et al., *supra* note 44, at 228.

increases in DOA percentage have been observed after only fifteen minutes of transit time<sup>89</sup> and when a complete transit of the Commonwealth (from the Cumberland Gap to Washington, D.C.) takes only seven to ten hours.

Additionally, other sections of Chapter 65 provide general, non-transportation-oriented requirements for the care of companion animals and agricultural animals.<sup>90</sup> The provision pertaining to agricultural animals requires, as relevant here, "[f]eed to prevent malnourishment," "[w]ater to prevent dehydration," and "[v]eterinary treatment as needed to address impairment of health or bodily function when such impairment cannot be otherwise addressed through animal husbandry."<sup>91</sup> This provision represents only the most basic requirements of proper animal care which, while their codification is a necessary and important starting point for ensuring the humane treatment of agricultural animals within the Commonwealth, are not calculated to address the particular issues facing poultry during transport.

Finally, while the Virginia animal cruelty statute nominally applies to "any animal," it also states that it shall not apply to "farming activities."<sup>92</sup> As Chapter 65's broad definition of "farming activities" requires only that an activity be "consistent with standard animal husbandry practices," the statute is unlikely to apply to the treatment of poultry during transport as long as the behavior in question is consistent with standard animal husbandry practices.

## 2. The Virginia Administrative Code

While the Virginia Administrative Code contains extensive regulations governing the control and eradication of diseases among livestock and poultry,<sup>93</sup> it does not contain any regulations significantly affecting poultry welfare during transport. The only regulations potentially affecting the conditions of poultry during transport are those setting sanitation requirements for conveyances.<sup>94</sup> However, no regulations elaborate on the requirements of the Twenty-Four Hour Law or otherwise offer standards for the welfare of poultry during transport.

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<sup>89</sup> See E. Nijdam et al., *Factors Influencing Bruises and Mortality of Broilers During Catching, Transport, and Lairage*, 2004 POULTRY SCI. 83:1610, 1612 (2004).

<sup>90</sup> See VA. CODE ANN. § 3.2-6503 (2023) (governing "[c]are of companion animals by owner"); VA. CODE ANN. § 3.2-6503.1 (governing "care of agricultural animals by owner").

<sup>91</sup> *Id.* As noted in note 78, *supra*, this language creates less stringent requirements than those pertaining to companion animals in § 3.2-6503.

<sup>92</sup> See VA. CODE ANN. § 3.2-6500 (2023).

<sup>93</sup> See, e.g., 2 VA. ADMIN. CODE 5-30-20 (2023) (requiring veterinarians and laboratory operators to report the diagnosis of poultry diseases to the State Veterinarian); 2 VA. ADMIN. CODE 5-90-30 (2023) (requiring all Virginia to comply with pullorum-typhoid provisions of the National Poultry Improvement Plan for Breeding Poultry, setting minimum sanitation standards); 2 VA. ADMIN. CODE 5-141-60 (2023) (requiring all poultry to undergo certain health and infectious disease tests before entry into Virginia); 2 VA. ADMIN. CODE 5-210-10 (2023) (adopting by reference meat inspection provisions of the Code of Federal Regulations).

<sup>94</sup> See 2 VA. ADMIN. CODE 5-141-50 (2023) (requiring all conveyances to be "kept in a sanitary condition"); 2 VA. ADMIN. CODE 5-195-90 (2023) (requiring vehicles, bird-holding devices, "and any premises where birds may be held" in live-bird markets to be kept "clean and sanitary"; requiring the use of state-approved "crate and conveyance washing equipment" within the live-bird marketing system);

## E. Other Jurisdictions Have Adopted Minimum Welfare Standards for the Transport of Live Poultry to Slaughter

Jurisdictions other than Virginia, including Kentucky, Louisiana, New Jersey, Wisconsin, Pennsylvania, Rhode Island, and Connecticut, have effectively implemented minimum welfare standards for poultry during transport both via statute and via administrative rulemaking. A brief summation of the laws governing poultry welfare during transport follows:

- **Connecticut:** Connecticut’s animal cruelty statute includes a provision requiring “reasonable care” to be taken to “prevent unnecessary suffering” of poultry during transport:

Any crate or other container used for the purpose of transporting, shipping or holding for sale any live poultry shall be in a sanitary condition and shall be constructed so as to provide sufficient ventilation and warmth, and such poultry, while in such container, shall receive such reasonable care as may be required to prevent unnecessary suffering.<sup>95</sup>

- **Rhode Island:** Rhode Island’s animal cruelty statute provides similar protections, requiring sufficient sanitation, ventilation, and warmth, and requiring “reasonable care” to “prevent unnecessary suffering.”<sup>96</sup>
- **Pennsylvania:** Pennsylvania’s animal cruelty statute requires at least one cubic foot of crate space to be allocated per fifteen pounds of poultry being transported.<sup>97</sup>
- **Louisiana:** Louisiana’s administrative code requires that all conveyances used for the transportation of live poultry by land have “stocking density that allows all poultry to lie down simultaneously without being forced to lie on top of other poultry,” “transportation vehicle design, maintenance, arrangement of poultry, and time of transport to minimize injury, distress, or death to the poultry,” and “vehicles transporting poultry designed to provide adequate ventilation to minimize injury, distress, heat or cold stress, or death to the poultry.”<sup>98</sup>
- **Kentucky:** Kentucky’s administrative code requires that poultry be handled, loaded, and unloaded “in a manner that minimizes the risk of injury” and given “feed and water so as to maintain a body condition appropriate for . . . weather condition[s].”<sup>99</sup>

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<sup>95</sup> CONN. GEN. STAT. § 53-249 (2022).

<sup>96</sup> 4 R.I. GEN. LAWS § 4-1-7 (2023).

<sup>97</sup> 18 PA. CONS. STAT. § 5538(b) (2023).

<sup>98</sup> LA. ADMIN. CODE tit. 7, pt. XXI, § 2109(G) (2023).

<sup>99</sup> 302 KY. ADMIN. REGS. 21:020 (2023).

- **Wisconsin:** A Wisconsin statute sets specific minimum crate heights of thirteen inches for poultry transport and deems any “crowding or congesting of chickens . . . so as to impair or endanger the well-being of such chickens” as animal cruelty.<sup>100</sup>
- **New Jersey:** The New Jersey administrative code requires catching and transport protocols which minimize “the number of times a bird is handled between capture and rehousing or slaughter” as well as the “time between capture and slaughter.”<sup>101</sup>

The variety of approaches taken in these jurisdictions demonstrates that poultry welfare during transport is a matter of concern for U.S. citizens and is a proper subject of legislation and regulation by the States. These approaches also demonstrate that positive poultry welfare outcomes can be achieved through the imposition of standards of conduct such as the reasonable care standard, or through the promulgation of more specific guidelines pertaining to the equipment and practices employed by commercial agriculture. Finally, they can serve as useful models for state laws which are sensitive to temperature, ventilation, handling, and other aspects of poultry transport that are likely to lead to stress and injury.

#### **F. Virginia Has Regulated the Welfare of Other Animals During Transport**

The Board has previously adopted regulations governing standards for transport of numerous types of animals other than poultry. For instance, Chapter 150 of the Virginia Administrative Code contains extensive regulations governing the transportation of companion animals, including birds.<sup>102</sup> However, Chapter 150 explicitly excludes agricultural animals from its definition of “companion animal,”<sup>103</sup> and thus does not govern poultry transport. The chapter’s sections governing the transport of birds provide specifications for the construction of primary enclosures,<sup>104</sup> guidance for ventilation, temperature tolerances, and required visual observation by the driver during transport,<sup>105</sup> guidance for minimizing injury during handling and lairage at terminal facilities,<sup>106</sup> and required access to adequate food and water.<sup>107</sup>

As noted above, the Virginia Code also contains statutes such as the Twenty-Four Hour Law which set some minimum standards for the transportation of agricultural animals, including poultry.

That the Virginia General Assembly and the Board have both effectuated laws governing the welfare during transport of non-agricultural birds and other animals demonstrates that animal

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<sup>100</sup> WIS. STAT. § 134.52 (2023).

<sup>101</sup> N.J. ADMIN. CODE § 2:8-4.7 (2023).

<sup>102</sup> See 2 VA. ADMIN. CODE 5-150-70 (2023).

<sup>103</sup> See 2 VA. ADMIN. CODE 5-150-10 (2023).

<sup>104</sup> See 2 VA. ADMIN. CODE 5-150-180 (2023).

<sup>105</sup> See 2 VA. ADMIN. CODE 5-150-190 (2023) (“Temperatures in primary conveyances shall not exceed 75 °F for more than 45 minutes without supplemental ventilation through natural or automatic ventilation or air conditioning nor fall below 45 °F without auxiliary heat . . . .”); 2 VA. ADMIN. CODE 5-150-220 (2023) (requiring driver to visually observe birds for signs distress “not less than once every four hours,” make temperature observations and adjust ventilation accordingly, and ensure birds can breath properly, among other things).

<sup>106</sup> See 2 VA. ADMIN. CODE 5-150-230 (2023) (requiring birds be moved “as expeditiously as possible” and not exposed to temperatures greater than 85 °F for longer than 45 minutes while in lairage, among other things).

<sup>107</sup> See 2 VA. ADMIN. CODE 5-150-210 (2023).



welfare, including the welfare of birds during transport, is a subject of concern for the Virginia citizenry and one which has been deemed worthy of attention by the state’s highest authorities. Accordingly, the proposed rulemaking represents only an extension of an already established priority within the Virginia government rather than a fundamentally new sphere of regulation.

### **G. Adopting Minimum Standards for the Welfare of Live Poultry During Transport to Slaughter Improves Food Safety and Protects Consumers**

The effects of transport stress on poultry are not limited to physical discomfort, distress, and mortality for birds, but also implicate food safety concerns for consumers.

Physiological responses to stress have been shown to result in undesirable and dangerous changes in meat products. Stress and lack of rest prior to slaughter can lead to lowered levels of lactic acid,<sup>108</sup> a chemical which plays an important role in maintaining ideal muscle pH and delaying spoilage in meat by impairing the growth of harmful bacteria.<sup>109</sup> Thus, meat from animals “which have suffered from stress or injuries during handling, transport and slaughter” is “likely to have a shorter shelf life due to spoilage,” leading to “off-smells, color changes, rancidity and slime.”<sup>110</sup> As with all food spoilage, these problems lead to products that are not only undesirable but also potentially dangerous. Indeed, transport stress may even increase the prevalence of pathogenic bacteria known to cause illness in humans, such as *Campylobacters*, in the fecal matter of poultry prior to slaughter.<sup>111</sup> This increase in microbial contamination further increases the risk of illness for the consumer.<sup>112</sup>

A primary mechanism through which many of these undesirable and dangerous changes occur is through the escape of blood from blood vessels into muscle tissue, known as “bruising.”<sup>113</sup> Bruising is typically caused by physical impacts<sup>114</sup> such as those that can occur during improper handling and loading, bumpy transit, or the use of inadequate enclosures during transit. Bruised muscle is an “ideal medium for the growth of contaminating bacteria” and is therefore “not suitable for use as food.”<sup>115</sup> However, bruising “can be significantly reduced by following the recommended techniques of handling, transport, and slaughter.”<sup>116</sup>

Similarly, heat stress has also been shown to affect food safety and quality in poultry products. Oxidative stress caused by excessive heat is thought to increase intestinal permeability, which allows for the movement of bacteria from the digestive tract into the muscle tissue that will later

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<sup>108</sup> See FAO GUIDELINES, *supra* note 31, at 5.

<sup>109</sup> “If the contaminating bacteria are those of the food poisoning type, the consumers of the meat become sick, resulting in costly treatment . . .” *Id.*

<sup>110</sup> *Id.*

<sup>111</sup> See P. Whyte et al., *The Effect of Transportation Stress on Excretion Rates of Campylobacters in Market-age Broilers*, 80 POULTRY SCI. 817, 817 (2001).

<sup>112</sup> See Aijuan Zheng et al., *Stress Associated with Simulated Transport, Changes Serum Biochemistry, Postmortem Muscle Metabolism, and Meat Quality of Broilers*, 2020 ANIMALS 10, 1442 (2020).

<sup>113</sup> See FAO GUIDELINES, *supra* note 31, at 6-7.

<sup>114</sup> See *id.* at 7.

<sup>115</sup> See *id.* at 6.

<sup>116</sup> See *id.* at 7.

be sold as meat.<sup>117</sup> In addition to increased risk of product contamination,<sup>118</sup> heat stress can accelerate the process of rigor mortis and glycolysis after slaughter, which can lead to meat characteristics that are undesirable to consumers such as pH decline, reduced ability to hold water, and tough meat.<sup>119</sup> Finally, heat stress also renders poultry more susceptible to bruising,<sup>120</sup> further compounding these risks and making humane transport an especially crucial component of protecting consumers.

As noted above, heat stress and physical impacts are common consequences of current poultry transport practices. These conditions not only negatively affect the welfare of poultry, but also that of poultry consumers. However, the Board is poised to meaningfully address these concerns by adopting regulations governing proper techniques and equipment to minimize heat stress and bruising in poultry. As the USDA estimates that the average American will eat almost seventy pounds of chicken during a given year,<sup>121</sup> these consumer protection issues present serious risks to a huge portion of Virginia’s population and necessitate a multi-faceted response of which transport welfare regulations are a key part.

#### **IV. Text of the Proposed Rule**

Petitioner proposes that the Board promulgate a new chapter of Title 2 of the Virginia Administrative Code, to be contained within “Agency 5: Department of Agriculture and Consumer Services,” and entitled, “CHAPTER 151. RULES AND REGULATIONS GOVERNING THE TRANSPORT OF LIVE POULTRY.” The text of the proposed rule is as follows:

##### **PART I GENERAL PROVISIONS**

##### **2 VAC 5-151-10. Definitions.**

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

"Conveyance" means any car, truck, trailer, train car, or other vehicle being used for the commercial transport of poultry.

“Lairage” means the temporary holding of poultry after arrival to slaughter but before slaughter.

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<sup>117</sup> See Lucas J. Lara & Marcos H. Rostagno, *Impact of Heat Stress on Poultry Production*, 2013 3 ANIMALS 356, 362 (2013).

<sup>118</sup> See *id.* at 361.

<sup>119</sup> See Schwartzkopf-Genswein et al., *supra* note 44, at 236.

<sup>120</sup> See Lucas J. Lara & Marcos H. Rostagno, *Impact of Heat Stress on Poultry Production*, 2013 3 ANIMALS 356, 360 (2013) (“In a study to determine the factors influencing bruises and mortality of broilers at harvest, percentage of bruises was associated with season, moment of transport, and ambient temperature . . .”).

<sup>121</sup> See U.S. DEP’T OF AGRIC., *Food Availability and Consumption*, ECON. RSCH. SERV., <https://www.ers.usda.gov/data-products/ag-and-food-statistics-charting-the-essentials/food-availability-and-consumption/> (last visited June 30, 2023).

"Lairage area" means any enclosure or facility for the temporary holding of birds after unloading from transport.

"Mechanical ventilation system" means a system of fans and/or air conditioners adequate to provide proper ventilation to every primary enclosure in a given conveyance.

"Poultry" means any breed of chicken, turkey, goose, duck, emu, or other fowl raised for the purpose of providing meat or eggs.

"Primary conveyance" means the main method of transportation used to convey an animal from origin to destination, such as a motor vehicle, plane, ship, or train.

"Primary enclosure" means any structure used to immediately restrict an animal or animals to a limited amount of space, such as a room, pen, cage, compartment or hutch. For tethered animals, the term includes the shelter and the area within reach of the tether.

"Proper ventilation" means the movement of air sufficient to prevent the accumulation of moisture in primary conveyances and ensure the body temperatures of poultry stay within healthy limits.

"Relative humidity" means a measure of the amount of water vapor in the air expressed as a percentage.

"Thermometer" means any device capable of measuring air temperature and relative humidity and relaying that information to the driver of the conveyance at least once every four hours.

## PART II STANDARDS FOR THE TRANSPORTATION OF LIVE POULTRY

### 2 VAC 5-151-20. Handling and loading.

During catching, loading, and unloading of poultry, handlers shall not:

1. Hold or carry poultry in an upside-down position;
2. Catch or hold birds by the head, neck, wing(s), tail, or a single leg, without an additional point of contact to distribute weight;
3. Throw birds;
4. Hold more than two birds in one hand at a given time;
5. Load any bird that is not dry.

2 VAC 5-151-30. Primary conveyances.

A. Poultry shall be transported in a primary conveyance equipped with either:

1. A mechanical ventilation system that ensures proper ventilation throughout all poultry enclosures; or
2. A system of thermometers for monitoring temperature and relative humidity throughout the conveyance, reasonably spaced as to provide accurate readings of each portion of the conveyance which contains primary enclosures.

B. The driver of any conveyance shall observe enclosure temperatures at least once every four hours and take all reasonable measures to ensure, through the use of proper ventilation, that temperatures and relative humidities inside primary enclosures are safe and comfortable for all poultry contained therein.

2 VAC 5-151-40. Primary enclosures.

Poultry shall be transported in a primary enclosure that shall be constructed in such a manner that:

1. The structural strength of the enclosure is sufficient to contain the birds and to withstand the normal rigors of transporting;
2. The interior of the enclosure is free from any protrusions that could be injurious to the birds contained therein;
3. The openings of such enclosures are easily accessible at all times for emergency removal of the birds;
4. Openings are sufficient to provide for proper ventilation and normal breathing;
5. The primary enclosures contain rims or other devices on those faces of the outside walls that contain ventilation openings to prevent obstruction of those openings and to provide a minimum air circulation space of 0.75 inches between the primary enclosure and any adjacent cargo or conveyance wall;
6. Are large enough to ensure that each bird contained therein has sufficient space to turn about freely in a standing position using normal body movements; however, certain species may be restricted in their movements according to professionally acceptable standards when such

freedom of movement would constitute a danger to the animals, their handlers, or other persons; and

7. They allow excreta to be absorbed, covered or separated from the birds by use of a wire mesh flooring above the solid floor or of a clean litter that is safe and nontoxic to the birds, except where these methods pose a threat to the safety of the birds.

2 VAC 5-151-50. Lairage.

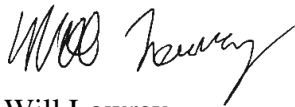
Poultry shall be provided with at least one hour and no more than eight hours of lairage time in a lairage area with proper ventilation and a maintained temperature between 65°F and 85°F.

## V. Conclusion

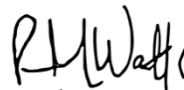
As detailed above, transport represents a crucial but oft-overlooked component of the poultry production process, and its regulation serves as an opportunity to meaningfully improve the welfare of the nearly 300 million birds processed per year in Virginia. Not only would such regulations reduce suffering on a vast scale, but they would also do much to protect Virginia's consumers from food-borne illness. The current state of Virginia and federal law presents a void which the Board is uniquely poised to fill by using its statutory authority, entrusted to it by the people of the Commonwealth, to follow other states such as Kentucky, New Jersey, and Louisiana in regulating on this matter.

The Supreme Court of the United States has recently reiterated in *National Pork Producers Council v. Ross* that animal welfare is a matter of public morals that it is within the power of the States to regulate.<sup>122</sup> Meanwhile, Americans have demonstrated a growing concern with the conditions in which agricultural animals are raised, transported, and slaughtered.<sup>123</sup> By adopting minimum standards for poultry welfare during transport to slaughter, the Board can simultaneously improve the lives of millions of vulnerable animals and demonstrate the moral progress of the people of the Commonwealth.

If you have any questions on this request, please contact me at [wlowrey@animalpartisan.org](mailto:wlowrey@animalpartisan.org) or (804) 307-4102. Thank you in advance for your assistance with this matter.



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<sup>122</sup> See *Nat'l Pork Producers Council v. Ross*, 143 S. Ct. 1142, 1160 (2023).

<sup>123</sup> See AM. SOC'Y FOR THE PREVENTION OF CRUELTY TO ANIMALS, *2023 Industrial Animal Agriculture Opinion Survey 1* (2023) (indicating seventy-nine per cent of respondents are "somewhat or very concerned about the negative impacts of industrial animal agriculture on animal welfare").