



**COMMONWEALTH of VIRGINIA**  
**DEPARTMENT OF LABOR AND INDUSTRY**

**C. Ray Davenport**  
COMMISSIONER

Main Street Centre  
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**DRAFT AGENDA**

**SAFETY AND HEALTH CODES BOARD MEETING**

**Thursday, November 12, 2020 Electronic meeting**

**10:00 a.m.**

**\*\*\*\*Refer to the Third and Fourth Page of the Agenda for Instructions on Registering to Make Public Comment and Meeting Access Information\*\*\*\***

1. **Call to Order**
2. **Approval of Agenda**
3. **Approval of Minutes for the following meetings:**
  - March 5, 2020 Regular Board Meeting
  - June 24, 2020 Emergency Electronic Meeting
  - June 29, 2020 Continued Emergency Electronic Meeting
  - July 7, 2020 Continued Emergency Electronic Meeting
  - July 15, 2020 Continued Emergency Electronic Meeting
  - September 30, 2020 Electronic Public Hearing

4. **Election of Officers**
5. **Opportunity for the Public to Address the Board**

**NOTE: The Board will not be taking any substantive action during today's meeting on the Proposed Permanent Standard for Infectious Disease Prevention of the SARS-CoV-2 Virus That Causes COVID.**

*An opportunity for the public to present oral comments on the proposed permanent standard will be provided for in a separate public hearing to be scheduled after publication of the revised proposed permanent standard .*

6. **Old Business**  
None

7. **New Business**

a) Occupational Exposure to Beryllium for General Industry, **§1910.1024**

Presenter – *Ronald Graham*

b) Occupational Exposure to Beryllium for Construction and Shipyards, **§§1915.1024 and 1926.1024**

Presenter – *Ronald Graham*

c) Cranes and Derricks in Construction: **§§1926.1400 and 1926.1442**

Presenter – *Marta Fernandes*

d) Results of Periodic Review for 2020

1. **16 VAC 25-11**                      Public Participation Guidelines
2. **16 VAC 25-180**                  Virginia Field Sanitation Standard, Agriculture

Presenter – *Princy Doss*

e) DOLI Presentation Regarding Comments Received from the Public and the Department's response on the Proposed Permanent Standard for Infectious Disease Prevention of the SARS-CoV-2 Virus That Causes COVID

Presenter – *Jay Withrow*

f) *(If requested by the Board)* Closed Meeting for the Purpose of Consultation with Legal Counsel Regarding Specific Legal Matters Pursuant to § 2.2-3711.A.8 of the Code of Virginia.

8. **Items of Interest from the Department of Labor and Industry**

9. **Items of Interest from Members of the Board**

10. **Meeting Adjournment**

## **PUBLIC PARTICIPATION**

Members of the public may listen to the meeting via the Cisco WebEx platform by using the weblink, access code, and password below, or audio conference only by using the telephone numbers and access code below.

Participation capacity is limited and is on a first come, first served basis due to the capacity of CISCO WebEx technology.

### **Event address for attendee:**

<https://covaconf.webex.com/covaconf/onstage/g.php?MTID=e62178826f802b82a7926dde419947ca0>

**Event number (access code):** 171 037 3233

**Event password:** DOLI2020

### **To join the audio conference only:**

**Call this number:** 1-517-466-2023 **or US Toll Free** 1-866-692-4530

**Enter this Access Code:** 171 037 3233

**NOTE:** The Board will not be taking any substantive action during today's meeting on the Proposed Permanent Standard for Infectious Disease Prevention of the SARS-CoV-2 Virus That Causes COVID.

*An opportunity for the public to present oral comments on the proposed permanent standard will be provided for in a separate public hearing to be scheduled after publication of the revised proposed permanent standard.*

**If you wish to make an Oral Public Comment during the public hearing, you must follow the instructions below:**

- Oral public comment will be received during the public hearing from those persons who have submitted an email to **Princy.Doss@doli.virginia.gov** no later than **5:00 PM** on **November 9, 2020** indicating that they wish to offer oral comment. Comments may be offered by these individuals when their name is announced by Ms. Doss. Oral comments will be restricted to 5 minutes each.
- When logging onto WebEx each person **must provide their full name** during the registration process upon entering the meeting. Do not use the default username as it is imperative that the meeting organizer be able to determine who is in attendance based on their registration name. Failure to follow these specific registration instructions will restrict your ability to participate with oral remarks.
- If you wish to make an oral comment and will be utilizing the "audio conference only" option to witness the hearing, you must provide the phone number you will be calling in

from in your email to Ms. Doss so that the administrator will know whom to unmute at the appropriate time.

- Other important information:
  - All parties will be muted until Ms. Doss announces the name of the person who is next to provide an oral comment.
  - All public participation connections will be muted following the public comment periods.
  - Please login from a location without background noise.
  - Individuals participating in the Virtual meeting on November 12, 2020 are encouraged to submit a written version of any comments by email to **Princy.Doss@doli.virginia.gov** no later than **5:00 PM** on **November 13, 2020**.

Should any interruption of the broadcast of this meeting occur, please call 804-371-2318 or email **Brian.Jaffe@doli.virginia.gov** to notify the agency. Any interruption in the broadcast of the meeting shall result in the suspension of action at the meeting until repairs are made and public access is restored.

FOIA Council Electronic Meetings Public Comment form for submitting feedback on this electronic meeting may be accessed at:

<http://foiacouncil.dls.virginia.gov/sample%20letters/welcome.htm>

**DRAFT**

**SAFETY AND HEALTH CODES BOARD  
PUBLIC HEARING AND MEETING MINUTES  
March 5, 2020**

**BOARD MEMBERS PRESENT:** Mr. Charles Stiff, Vice Chair  
Mr. Travis Parsons, Interim Chair  
Mr. John Fulton  
Ms. Anna Jolly  
Mr. Kenneth Richardson, II  
Ms. Milagro Rodriguez  
Mr. Louis J. Cernak, Jr.  
Mr. Courtney Malveaux  
Mr. Dwight Flammia

**BOARD MEMBERS ABSENT:** Ms. Tina Hoover  
Mr. Phil Glaize

**STAFF PRESENT:** Mr. C. Ray Davenport, Commissioner of Dept. of Labor & Industry  
Mr. William P. Burge, Assistant Commissioner  
Mr. Jay Withrow, Director, Legal Support, BLS, VPP, ORA, and OWB  
Ms. Princy R. Doss, Director, Policy, Planning, & Public Information  
Mr. Ron Graham, Director, VOSH Health Compliance  
Ms. Marta Fernandes, Director, VOSH Safety Compliance  
Ms. Diane Duell, Director, Legal Support  
Ms. Holly Trice, Senior Staff Attorney  
Ms. Tracy Fitzpatrick, VOSH  
Ms. Christin Bernhardt, VOSH DLS  
Ms. Krystal Tang, DOLI  
Mr. Alex West, DOLI  
Mr. Adolfo Lopez, DOLI  
Ms. Deonna Hargrove, Regional Director  
Ms. Austin Sprill, DOLI

**OTHERS PRESENT:** Mr. Joshua Laws, Attorney General's Office  
Ms. Jan Thomas, C.T. Purcell, Inc.  
Jerry Rivera, NECA  
Mr. Sam Revsinson<sup>1</sup>, Eagle  
Ms. Danielle Simms, Virginia League of Conservation Voters  
Ms. Lisa Wright, Court Reporter, Chandler & Halasz, Stenographic Court Reporters

**ORDERING OF AGENDA**

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<sup>1</sup> Attendees were asked to sign in at the beginning of the meeting. This attendee's handwriting was difficult to read.

Chair Charles Stiff called the Public meeting to order at 10:10 a.m. A quorum was present.

### **APPROVAL OF AGENDA**

Chair Stiff requested a motion to accept the amended Agenda was made, properly seconded, and carried by unanimous voice vote.

### **APPROVAL OF MINUTES**

Chair Stiff asked the Board for a motion to approve the minutes from the September 17, 2019 Board meeting. A motion was made and properly seconded. The minutes were approved by unanimous voice vote.

### **PUBLIC**

Dr. Jan Thomas addressed the board with two issues. First, was the need for heat illness policy and how it is being formulated into policy at the organizational and company levels. She has seen some policies that she does not think they could manage, and hopes that the board could give guidance in the field on how to protect workers when it is extremely hot or cold. California OSHA is a leader in occupational safety and health, but may not work for Virginia. Her second concern is the need to respirators. Lately, she has been unable to find them, and has never had this problem before. Safety glasses are also hard to find. Even though the Attorney General has asked people to stop buy the respirators and hoarding them VOSH need to do something soon. She stated that she has enough now, but is not sure if she will in three months. She contacted Jennifer Rose asking for guidance on what to do, because we need to discuss this today.

Board member asked about her concern regarding company guidance in terms of standards or guidance or both. Dr. Thomas stated that Federal OSHA has some good guidance on their websites. Her worry is that companies make statements such as at 80 degrees heat illness policies are implemented, but humidity and individual acclimation, etc. can affect that. She believes we need better information from OSHA, and can't do policy is such a broad way. Virginia has been a leader in many areas and Virginia can be a leader in terms of extreme heat and extreme cold.

Jerry Rivera with Washington, D.C. NECA, looking at the proposed language and agrees that it adds value as a guidance document. Speaks in favor of the rule, but wants this to be guidance and not regulatory. Thinks that there are good intentions, but that it is challenging at times. For larger folks they have a concept, but the smaller folks are struggling and there is where opportunities lie.

Daniel Simpson League of Conservation Voters. There were some bills in General Assembly, and they were waiting to see what the board would be able to accomplish.

## **OLD BUSINESS**

There was no old business to discuss.

## **NEW BUSINESS**

### **Respiratory Protection Standard §1910.134**

Mr. Ronald Graham, Director of Health for the VOSH program for the Department introduced himself to the board, before proceeding with Virginia Occupational Safety and Health's request for the Board to consider for adoption federal OSHA's final rule for the respiratory protection standard revision for Appendix A, which are the additional ambient CNC quantitative fit testing protocols: Respiratory Protection Standard as published in Volume 84 of the Federal Register page 50739 on September 26, 2019. The proposed effective date is March 31, 2020.

Mr. Graham summarized the final rule as approving two additional fit testing protocols for inclusion in appendix A to the Respiratory Protection Standard. They are, one, the modified aerosol condensation nuclei quantitative fit testing protocol for full-face and half-mask elastomeric respirators, And, also, the modified ambient aerosol CNC quantitative fit testing protocol for filtering facepieces. These standards would apply to general industry, construction, and shipyards.

Mr. Graham explained that prior to the publishing of this final rule, appendix A contained four quantitative fit testing protocols. These were the generated aerosol; the ambient aerosol condensation nuclei; the controlled negative pressure and the controlled negative pressure REDON. This particular rule allows for two more options for testing protocols. Mr. Graham further explained that TSI has been one of the leading industries for quantitative fit testing. TSI submitted two additional protocols to OSHA for adoption, but OSHA chose not to adopt them after further review from the company.

### **Final Regulation to Amend 16-VAC25-60-260**

Ms. Princy Doss, Director of Policy, Planning, and Public Information for the Department's VOSH program introduced herself to the board before proceeding with VOSH's request that the Safety and Health Codes Board consider for adoption, as a final regulation of the Board, the following VOSH proposal to amend the Administrative Regulation for the VOSH Program, 16VAC25-60-260.A.3., pursuant to §§2.2-4006.A.3.

Ms. Doss explained that this amendment was necessary because action by the General Assembly during the 2016 Session amended §40.1-51.1.D of the Code of Virginia, to match the federal OSHA regulatory changes to 29CFR1904.39(a)(2) which required employers:

“Within twenty-four (24) hours after the in-patient hospitalization of one or more employees or an employee's amputation or an employee's loss of an eye, as a result of a work-related incident, you must report the in-patient hospitalization, amputation, or loss of an eye to OSHA.”

Governor McAuliffe signed the legislation with an effective date of July 1, 2016. The legislation mirrors

the language contained in 29CFR1904.39:

“§ 40.1-51.1. Duties of employers.

....

D. Every employer shall report to the Virginia Department of Labor and Industry within eight hours any work-related incident resulting in a fatality or within 24 hours any work-related incident resulting in (i) the inpatient hospitalization of one or more persons, (ii) an amputation, or (iii) the loss of an eye, as prescribed in the rules and regulations of the Safety and Health Codes Board.”

VOSH’s Administrative Regulation contained one reference to §40.1-51.1.D which has never been updated to reflect the 2016 legislative change:

“16VAC25-60-260. Issuance of citation and proposed penalty.

....

A.

....

3. Notwithstanding subdivision 1 of this subsection, if an employer fails to notify the commissioner of any work-related incident resulting in a fatality or in the inpatient hospitalization of three or more persons within eight hours of such occurrence as required by § 40.1-51.1 D of the Code of Virginia, the six-month timeframe shall not be deemed to commence until the commissioner receives actual notice of the incident.” (Emphasis added).

Ms. Doss summarized that the final regulation, 16VAC25-60-260.A.3, will be amended to reflect the 2016 legislative change to §40.1-51.1.D as follows:

3. Notwithstanding subdivision 1 of this subsection, if an employer fails to notify the commissioner within eight hours of any work-related incident resulting in a fatality or within 24 hours of any work-related incident resulting in (i) the inpatient hospitalization of three one or more persons, (ii) an amputation, or (iii) the loss of any eye, within eight hours of such occurrence as required by § 40.1-51.1 D of the Code of Virginia, the six-month timeframe shall not be deemed to commence until the commissioner receives actual notice of the incident.

Ms. Doss stated that The Safety and Health Codes Board is authorized by Title 40.1-22(5) to:

“... adopt, alter, amend, or repeal rules and regulations to further, protect and promote the safety and health of employees in places of employment over which it has jurisdiction and to effect compliance with the federal OSH Act of 1970...as may be necessary to carry out its functions established under this title.”

“In making such rules and regulations to protect the occupational safety and health of employees, the Board shall adopt the standard which most adequately assures, to the extent feasible, on the basis of the best available evidence that no employee will suffer material impairment of health or functional capacity.”



“However, such standards shall be at least as stringent as the standards promulgated by the federal OSH Act of 1970 (P.L.91-596). In addition to the attainment of the highest degree of health and safety protection for the employee, other considerations shall be the latest available scientific data in the field, the feasibility of the standards, and experiences gained under this and other health and safety laws.”

Ms. Doss noted that the purpose of amending the Administrative Regulation is to update regulatory language to reflect a legislative change that took effect on July 1, 2016. There was no anticipated impact on employers, and the impact on the Department of Labor and Industry, for training DOLI employees on the changes to the regulation was minimal. There were no anticipated additional fiscal or other programmatic impacts for the Department if the final regulation is adopted.

Ms. Doss stated that staff of the Department of Labor and Industry recommended that the Safety and Health Codes Board consider for adoption, as a final regulation of the Board, the final amendments to 16VAC25-60-260.A.3, Administrative Regulation for the Virginia Occupational Safety and Health (VOSH) Program, Duties of employers, in accordance with the authority of the Board under §40.1-22(5) and the requirements of the Administrative Process Act §2.2-4000, et seq.

### **Request to Initiate Notice of Intended Regulatory Action (NOIRA) to Adopt a Regulation on Health Illness Prevention**

Mr. Withrow, Director of Legal Services for VOSH, requested the Board to authorize the Department of Labor and Industry to initiate the regulatory process to adopt a regulation applicable to Heat Illness Prevention by filing a Notice of Intended Regulatory Action (“NOIRA”) pursuant to the Virginia Administrative Process Act, Virginia §2.2-4000. Mr. Withrow discussed the regulatory process involved in adopting a regulation and was asking for approval to start that process. Explaining that once the NOIRA was published and opportunity for public comments, the Department would proceed with researching the issue and developing a recommendation to come back to the Board with a proposed regulation for review.

The VOSH Program intends to conduct a review of existing federal and state regulations as well as national consensus standards and guidelines designed to protect employees from heat illness hazards. The proposal would address indoor and outdoor heat illness hazards experienced by similarly situated employees in all industries covered by VOSH jurisdiction. Mr. Withrow gave an overview of current heat illness protections under a general duty clause and some background to illustrate the need for regulatory action for more specific protections to address the heat illness issues in Virginia. Mr. Withrow provided an overview of the impact on employees, employers, and enforcement of the potential regulations.

VOSH has been sharing information with the delegates and senators that have introduced bills in the 2020 Virginia General Assembly on the topic and will be providing those senators/delegates updates about actions the Board takes on this. It will be up to those members of the legislature to decide whether they want to go and reintroduce the bills this fall for the 2021 session or potentially carry over those existing ones. Mr. Withrow addressed questions from the Board as to the benefits of having a regulation as opposed to going through the legislative process.

The Recommended Action/Motion: That Staff of the Department of Labor and Industry recommends that the Board direct the Department to initiate a Notice of Intended Regulatory Action to adopt regulations applicable to Heat Illness Prevention. The Department also recommends that the Board state in any motion it may make regarding this NOIRA, that it will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision of this or any other regulation.

This motion was approved with no opposition and all present Board members indicated aye.

### **Notice of Periodic Review for 2020**

Ms. Doss stated that the Department of Labor and Industry requests authorization by the Board to proceed with the periodic review process of the regulations listed below. These two Safety and Health Codes Board regulations are subject to the periodic review process in calendar year 2020.

16VAC25-11, Public Participation Guidelines.

16VAC25-180, Virginia Field Sanitation Standard in Agriculture.

This motion was approved with no opposition and all present Board members indicated aye.

### **Items of Interest from the Department of Labor and Industry**

C. Ray Davenport, Commissioner of the Department of Labor and Industry, reported on the budget and indicated that there will be some additional monies and state funding within the current budget from Federal OSHA and DOLI's goal to claim all of the federal monies beginning next October 1 for the next federal fiscal year cycle. DOLI will also be pursuing the funding of the Agency's 12 unfunded positions and compliance officers that the Governor did include in his budget.

The Commissioner also reported that year to date, this calendar year to date we've experienced two fatalities that VOSH had inspected in their jurisdiction. In 2019 we ended the year unfortunately with 40 fatalities that VOSH had inspected.

### **Items of Interest from Members of the Board**

Board member Kenneth Richardson had a question regarding an email he received regarding the Coronavirus in the workplace and guidance he received from his attorney to log onto the OSHA 300 if determined it was contracted at the workplace. Mr. Withrow provided some background information on coronavirus and indicated that VOSH would probably say from an enforcement agency standpoint it's best to be safe than sorry. If you have reasonable circumstantial evidence that it occurred at the office, you might consider going ahead and logging it onto OSHA 300. I think you need to use some commonsense when you're evaluating it. Do your due diligence. Investigate what you can and make a decision based on the best available evidence that you've got.

### **Meeting Adjournment**

Mr. Stiff asked the Board if there is a motion to adjourn. Mr. Cernak motioned to adjourn. Mr. Parsons seconded that motion. Mr. Stiff asked the board if all were in favor of adjourning the meeting and all indicated aye. Mr. Stiff adjourned the meeting of the Safety and Health Codes Board at 11:41 a.m., on March 5, 2020.

**DRAFT**

**SAFETY AND HEALTH CODES BOARD  
PUBLIC HEARING AND MEETING MINUTES  
June 24, 2020**

On March 12, 2020, Governor Ralph Northam issued Executive Order Number 51, declaring a State of Emergency under § 44-146.17 due to the spread within the Commonwealth and surrounding states of the Novel Coronavirus (COVID-19), a communicable disease of public health threat. On May 26, 2020, Governor Northam issued Executive Order Number 63, directing the Commissioner of Labor and Industry to promulgate emergency standards to “control, prevent, and mitigate the spread of COVID-19 in the workplace.

“Under §2.2-3708.2.A.3, a public body may meet by electronic 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 § 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 address the emergency.

Given the nature of the emergency, that COVID-19 spreads easily from person to person, and the purpose of the meeting, which was to promulgate an emergency temporary standard specifically addressing the emergency, the Safety and Health Codes Board (“Board”) held an entirely electronic emergency meeting utilizing WebEx.

The Board members and Department staff listed below as “participating” were all participating via WebEx. There was no quorum of Board members physically assembled at one location. There was a quorum of Board members participating on WebEx for purposes of the emergency electronic meeting.

Notice of the meeting was provided to the public contemporaneously with the notice given to the Board. The notice invited the public to witness the meeting remotely via WebEx. Notice was provided on the Department of Labor and Industry’s (DOLI) website at <https://www.doli.virginia.gov/safety-and-health-codes-board-electronic-emergency-meeting/> as well as on the Virginia Regulatory Townhall’s website at <https://townhall.virginia.gov/L/ViewMeeting.cfm?MeetingID=31004>.

A copy of the proposed agenda and all agenda packets, unless exempt, and all materials furnished to members of the Board for this meeting were made available for public inspection on the Doli’s website at <https://www.doli.virginia.gov/safety-and-health-codes-board-electronic-emergency-meeting/> and the Virginia Regulatory Townhall’s website at <https://townhall.virginia.gov/L/ViewMeeting.cfm?MeetingID=31004> contemporaneously with the documents being furnished to the members of the Board.

**BOARD MEMBERS**

**PARTICIPATING:**

Mr. Charles L. (“Chuck”) Stiff (Interim Chair)  
Mr. Jeffery Steers  
Dr. Dwight Flammia  
Mr. John D. Fulton  
Mr. Phil Glaize

Ms. Tina Hoover  
Ms. Anna E. Jolly  
Mr. Michael. A. Luce  
Mr. Courtney M. Malveaux  
Mr. Travis M. Parsons  
Mr. Kenneth W. Richardson, II  
Ms. Milagro (“Milly”) Rodriguez  
Mr. Thomas A. Thurston.

**BOARD MEMBERS ABSENT:** Mr. Louis J. (“Lou”) Cernak Jr.  
Mr. Phil Glaize

**STAFF PARTICIPATING:** Mr. C. Ray Davenport, Commissioner of Dept. of Labor & Industry  
Mr. William P. Burge, Assistant Commissioner  
Mr. Jay Withrow, Director, Legal Support, BLS, VPP, ORA, and OWB  
Ms. Princy R. Doss, Director, Policy, Planning, & Public Information  
Mr. Ron Graham, Director, VOSH Health Compliance  
Ms. Marta Fernandes, VOSH Safety Compliance  
Ms. Jennifer Rose, Director  
Ms. Christine Childress  
Mr. Richard White  
Ms. Diane Duell, Director, Legal Support  
Ms. Holly Trice, Senior Staff Attorney  
Mr. Edward G. Hilton, Director of Boiler Safety  
Ms. Cristin Bernhardt, Staff Attorney  
Mr. Alex West, Staff Attorney  
Ms. Elizabeth DePatie, DOLI Legal Intern

**OTHERS PARTICIPATING:** Mr. Joshua Laws, Attorney General’s Office  
Ms. Lisa Wright, Court Reporter, Chandler & Halasz, Stenographic Court Reporters

**CALL TO ORDER**

Chair Chuck Stiff called the Public meeting to order at 9:19 a.m. A quorum was present. Chair Stiff made opening remarks informing the public that this meeting was an emergency electronic meeting, held under Va. Code Section 2.2-3708.2, and using WebEx to allow panelists (Board members and DOLI staff) and participants to listen to the meeting by internet or telephone.

This emergency Board meeting was held to discuss the DRAFT Emergency Temporary Standard/Emergency Regulation to address the SARS-CoV-2 Virus and COVID-19 Disease hazards for all employees and employers under the jurisdiction of the Virginia Occupational Safety and Health (VOSH) program, 16 VAC 25-220.

Section 2.2-3708.2(d)(7), Code of Virginia, requires that “votes taken during any meeting conducted through electronic communication means shall be recorded by name in roll-call fashion and included in

the minutes.” It also requires that “For emergency meetings held by electronic communication means, the nature of the emergency shall be stated in the minutes.”

**APPROVAL OF AGENDA**

Chair Stiff asked the Board if there is any discussion on the agenda. The motion was made, properly seconded and the roll call vote was conducted. The motion carried.

<b>Approval of Agenda</b>	<b>Yea</b>	<b>Nay</b>	<b>Abstain</b>	<b>Absent</b>	<b>Other</b>
Mr. Jeffery Steers	1				
Mr. Louis J. (“Lou”) Cernak Jr.				1	
Dr. Dwight Flammia	1				
Mr. John D. Fulton	1				
Mr. Phil Glaize				1	
Ms. Tina Hoover	1				
Ms. Anna E. Jolly	1				
Mr. Michael. A. Luce	1				
Mr. Courtney M. Malveaux	1				
Mr. Travis M. Parsons	1				
Mr. Kenneth W. Richardson, II	1				
Ms. Milagro (“Milly”) Rodriguez	1				
Mr. Charles L. (“Chuck”) Stiff					did not vote
Mr. Thomas A. Thurston	1				
<b>TOTALS</b>	<b>11</b>			<b>2</b>	<b>1</b>

**NEW BUSINESS**

Jay Withrow, Director of Legal Support, ORA, OPPO, and OWP presented the briefing package for the Emergency Temporary Standard/Emergency Regulation to address the SARS-CoV-2 Virus and COVID-19 Disease hazards for all employees and employers under the jurisdiction of the Virginia Occupational Safety and Health (VOSH) program, 16 VAC 25-220. This presentation is available on the DOLI website.

Mr. Withrow presented 41 pages of the briefing package before Board member Courtney Malvaeux requested permission to make a motion to the Board.

Mr. Malvaeux made a motion that “Roll call votes relating to necessity or substance of a new standard shall occur after a live public comment period (in person or virtually) to afford members of the board an opportunity to discuss these matters with effected stakeholders.”

Board members discussed the motion Mr. Malvaeux proposed. Some stated that there was not enough time given for public comment and to hear from all the stakeholders. Others stated

that the situation is an emergency requiring an emergency standard. Mr. Stiff asked the Board if there is any discussion on the agenda. The motion was made, properly seconded, a roll call vote was conducted, and the motion did not carry.

<b>Malveaux's motion on roll call vote after public hearing</b>	<b>Yea</b>	<b>Nay</b>	<b>Abstain</b>	<b>Absent</b>	<b>Other</b>
Mr. Louis J. ("Lou") Cernak Jr.		1			
Dr. Dwight Flammia		1			
Mr. John D. Fulton	1				
Mr. Phil Glaize					No vote - technical issues
Ms. Tina Hoover	1				
Ms. Anna E. Jolly		1			
Mr. Michael. A. Luce	1				
Mr. Courtney M. Malveaux	1				
Mr. Travis M. Parsons		1			
Mr. Kenneth W. Richardson, II	1				
Ms. Milagro ("Milly") Rodriguez		1			
Mr. Jeffery Steers					No vote - technical issues
Mr. Charles L. ("Chuck") Stiff					Did not vote
Mr. Thomas A. Thurston		1			
Totals	5	6	1	1	

After the vote was taken, the Board took a break, and Mr. Glaize was able to be heard during the break. Mr. Glaize was able to hear the meeting, but was not able to be heard during the roll call vote or during the discussion. Mr. Glaize asked to speak to the motion and to have his vote heard. Mr. Stiff granted Mr. Glaize permission to speak.

Mr. Stiff asked Mr. Withrow if Mr. Glaize could vote, and Mr. Withrow advised that the agency should research Robert's Rules of Order to determine if this is admissible and if this would be a motion to reconsider. Mr. Malvaeux requested that Mr. Glaize's vote be taken due to technical difficulties, not procedural issues and that this was not considered a reconsideration. While the agency researched this procedural issue, Mr. Withrow continued presenting the briefing package up to p.120. A break was taken.

When the Board reconvened after the break, Attorney Josh Laws presented the options for the Board to address the issue of board members who were unable to vote for Mr. Malvaeux's motion. Mr. Stiff decided to allow for the vote to be taken again due to technical difficulties.

Mr. Malvaeux repeated his motion that "Roll call votes relating to necessity or substance of a new standard shall occur after a live public comment period (in person or virtually) to afford

members of the board an opportunity to discuss these matters with effected stakeholders.”

<b>Malveaux's motion on roll call vote after public hearing (second vote)</b>	<b>Yea</b>	<b>Nay</b>	<b>Abstain</b>	<b>Absent</b>
Jeffrey Steers		1		
Mr. Louis J. (“Lou”) Cernak Jr.		1		
Dr. Dwight Flammia		1		
Mr. John D. Fulton	1			
Mr. Phil Glaize	1			
Ms. Tina Hoover	1			
Ms. Anna E. Jolly		1		
Mr. Michael. A. Luce	1			
Mr. Courtney M. Malveaux	1			
Mr. Travis M. Parsons		1		
Mr. Kenneth W. Richardson, II	1			
Ms. Milagro (“Milly”) Rodriguez		1		
Mr. Charles L. (“Chuck”) Stiff			1	
Mr. Thomas A. Thurston		1		
<b>TOTALS</b>	<b>6</b>	<b>7</b>	<b>1</b>	

The motion was made, properly seconded, a roll call vote was conducted, and the motion did not carry.

Mr. Withrow continued with presenting the briefing package up to p. 136, for a vote on the Department staff’s recommendation. Mr. Withrow stated that the “staff of the Department of Labor and Industry recommends that the Board find that SARS-CoV-2 and COVID-19 related hazards and job task employee exposures constitute a grave danger to employees in Virginia that necessitate the adoption of an emergency temporary standard to protect Virginia employees from the spread of the SARS-CoV-2 virus which causes COVID-19 under Va. Code §40.1-22(6a).

The Board had a discussion related to the recommendation and whether there is a grave danger and if there is a need for an emergency temporary standard. The motion was made, properly seconded, and carried.



<b>Finding of Grave Danger</b>	<b>Yea</b>	<b>Nay</b>	<b>Abstain</b>	<b>Absent</b>
Jeffrey Steers	1			
Mr. Louis J. ("Lou") Cernak Jr.	1			
Dr. Dwight Flammia	1			
Mr. John D. Fulton	1			
Mr. Phil Glaize		1		
Ms. Tina Hoover		1		
Ms. Anna E. Jolly	1			
Mr. Michael. A. Luce			1	
Mr. Courtney M. Malveaux		1		
Mr. Travis M. Parsons	1			
Mr. Kenneth W. Richardson, II	1			
Ms. Milagro ("Milly") Rodriguez	1			
Mr. Charles L. ("Chuck") Stiff			1	
Mr. Thomas A. Thurston	1			
<b>TOTALS</b>	<b>9</b>	<b>3</b>	<b>2</b>	

The Board took a break and when they returned Mr. Withrow continued with his presentation at p. 137 of the briefing package. Mr. Withrow addressed the Department's finding on whether workplace exposures to SARS-CoV-2 and COVID-19 constituted an emergency situation to employees and employers in Virginia necessitating the adoption of an emergency regulation and stopped his presentation at p. 140 of the briefing package to provide the Department staff's recommendation.

Mr. Withrow stated that the "staff of the Department of Labor and Industry recommends that the Board find that SARS-CoV-2 and COVID-19 related hazards and job task employee exposures constitute an emergency situation that necessitate the adoption of an emergency regulation to protect Virginia employees and employers under Va. Code §2.2-4011."

The Board had a discussion related to the recommendation and whether there was an emergency situation and if there is a need for adoption of an emergency regulation. The motion was made, properly seconded, and carried.

<b>Roll Call on Emergency</b>	<b>Yea</b>	<b>Nay</b>	<b>Abstain</b>	<b>Absent</b>
Jeffery Steers			1	
Mr. Louis J. ("Lou") Cernak Jr.	1			
Dr. Dwight Flammia	1			
Mr. John D. Fulton	1			
Mr. Phil Glaize	1			
Ms. Tina Hoover		1		
Ms. Anna E. Jolly	1			
Mr. Michael. A. Luce			1	
Mr. Courtney M. Malveaux	1			
Mr. Travis M. Parsons		1		
Mr. Kenneth W. Richardson, II	1			
Ms. Milagro ("Milly") Rodriguez		1		
Mr. Charles L. ("Chuck") Stiff			1	
Mr. Thomas A. Thurston		1		
<b>TOTALS</b>	<b>7</b>	<b>4</b>	<b>3</b>	

After the vote, Mr. Stiff asked the Board if they had legal questions requiring a closed meeting with Mr. Laws. No Board members requested a closed meeting.

Mr. Withrow stated that while the Board has made a finding of a grave danger and made a finding of an emergency regulation, they have not officially decided the path that they are going to adopt a regulation.

Mr. Withrow stated that the "staff of the Department of Labor and Industry recommends that the Safety and Health Codes Board adopt either an emergency temporary standard under Va. Code §40.1-22(6a) or an emergency regulation under Va. Code §2.2-4011 addressing infectious disease prevention SARS-CoV-2 that causes COVID-19 the content of which will be determined at a later time."

The Board had a discussion related to the recommendation. The motion was made, properly seconded, and carried.

<b>Adoption of Emergency Temporary Standard/Regulation</b>	<b>Yea</b>	<b>Nay</b>	<b>Abstain</b>	<b>Absent</b>
Jeffery Steers	1			
Mr. Louis J. ("Lou") Cernak Jr.	1			
Dr. Dwight Flammia	1			
Mr. John D. Fulton			1	
Mr. Phil Glaize		1		
Ms. Tina Hoover	1			
Ms. Anna E. Jolly	1			
Mr. Michael. A. Luce			1	
Mr. Courtney M. Malveaux		1		
Mr. Travis M. Parsons		1		
Mr. Kenneth W. Richardson, II	1			
Ms. Milagro ("Milly") Rodriguez	1			
Mr. Charles L. ("Chuck") Stiff			1	
Mr. Thomas A. Thurston	1			
<b>TOTALS</b>	<b>8</b>	<b>3</b>	<b>3</b>	

Mr. Withrow continued with presenting the briefing package at p. 175, where information between the two statutes is provided. Mr. Withrow concluded this part of the briefing package at p. 182. Mr. Stiff asked the Board if they required legal counsel to discuss the two options. No Board members requested this.

Mr. Withrow continued his presentation of the briefing package at p. 182 and delivered the Department's recommendation that the Board should proceed under Va. Code §40.1-22(6a). While the Board can select the route it thinks is most effective and as long as it acts in accordance with the procedural and substantive requirements of either statute, using §40.1-22(6a) means the Board will be acting under a specific power in its own statute. In addition, based on the informal guidance from the Attorney General's Office, the Board would have the ability to put in place a permanent standard during the six month period that the Emergency Temporary Standard is in effect, and based on the language in 40.1-22(6a), the Board can also act to repeal it during that time. However, because of the possibility of court review, it is the further recommendation of the Department that the Board accept to substantially comply with the core requirements of the Administrative Process Act by undertaking to do the following during the six month period that the Emergency Temporary Standard is in effect.

Mr. Withrow stated that the "staff of the Department of Labor and Industry recommend that the Safety and Health Codes Board adopt and emergency temporary standard under Va. Code §40.1-22(6a), Infection Disease Prevention SARS-CoV-2 virus that causes COVID-19, the content of which will be considered at a later time. The Board also directs the Department to send the

emergency temporary standard to the Department of Planning and Budget for an economic impact analysis with a request that they complete the same within 14 days, as provided for under Executive Order 14 for emergency regulations adopted under Va. Code §2.2-4011. Publish a 60 day written comment period for the emergency temporary standard as provided for in the Board’s Public Participation Guidelines for “normal” proposed regulations, 16VAC25-11-50. The Board will schedule a public hearing as is the standard course of action for the Board with “normal” proposed regulations, 16VAC25-11-100, and the Board will schedule a meeting to adopt a permanent regulation.

The Board had a discussion related to the recommendation. The motion was made, properly seconded, and carried.

<b>Adopt ETS/Reg under Va. Code §40.1-22(6A)</b>	<b>Yea</b>	<b>Nay</b>	<b>Abstain</b>	<b>Absent</b>
Mr. Jeffery Steers	1			
Mr. Louis J. (“Lou”) Cernak Jr.	1			
Dr. Dwight Flammia	1			
Mr. John D. Fulton	1			
Mr. Phil Glaize		1		
Ms. Tina Hoover		1		
Ms. Anna E. Jolly	1			
Mr. Michael. A. Luce			1	
Mr. Courtney M. Malveaux		1		
Mr. Travis M. Parsons	1			
Mr. Kenneth W. Richardson, II	1			
Ms. Milagro (“Milly”) Rodriguez	1			
Mr. Charles L. (“Chuck”) Stiff			1	
Mr. Thomas A. Thurston	1			
<b>TOTALS</b>	<b>9</b>	<b>3</b>	<b>2</b>	

Mr. Withrow stated that the next step would be to review the Draft emergency temporary standard with amendments. Mr. Stiff suggested that the Board continue this to another day and asked the Board members for their availability.

**ITEMS OF INTEREST FROM THE DEPARTMENT OF LABOR AND INDUSTRY**

Commission Ray Davenport stated that there were no items of interest from the Department.

**MEETING ADJOURNMENT**

Chair Stiff asked the Board if there is a motion to adjourn. The motioned to adjourn was made and properly seconded. Chair Stiff adjourned the meeting of the Safety and Health Codes Board at 4:35PM, on June 24, 2020.

**DRAFT**

**SAFETY AND HEALTH CODES BOARD  
PUBLIC HEARING AND MEETING MINUTES  
Monday June 29, 2020**

On March 12, 2020, Governor Ralph Northam issued Executive Order Number 51, declaring a State of Emergency under § 44-146.17 due to the spread within the Commonwealth and surrounding states of the Novel Coronavirus (COVID-19), a communicable disease of public health threat. On May 26, 2020, Governor Northam issued Executive Order Number 63, directing the Commissioner of Labor and Industry to promulgate emergency standards to “control, prevent, and mitigate the spread of COVID-19 in the workplace.

“Under §2.2-3708.2.A.3, a public body may meet by electronic 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 § 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 address the emergency.

Given the nature of the emergency, that COVID-19 spreads easily from person to person, and the purpose of the meeting, which was to promulgate an emergency temporary standard specifically addressing the emergency, the Safety and Health Codes Board (“Board”) held an entirely electronic emergency meeting utilizing WebEx.

The Board members and Department staff listed below as “participating” were all participating via WebEx. There was no quorum of Board members physically assembled at one location. There was a quorum of Board members participating on WebEx for purposes of the emergency electronic meeting.

This meeting was a continued emergency meeting under Va. Code 2.2-3708.2(D)(2), following the initial meeting on June 24, 2020. Notice of the continued meeting was provided to the public contemporaneously with the notice given to the Board. The notice invited the public to witness the meeting remotely via WebEx. Notice was provided on the Department of Labor and Industry’s (DOLI) website at <https://www.doli.virginia.gov/safety-and-health-codes-board-electronic-emergency-meeting/> as well as on the Virginia Regulatory Townhall’s website at <https://townhall.virginia.gov/L/ViewMeeting.cfm?MeetingID=31037>.

A copy of this proposed agenda and all agenda packets, unless exempt, and all materials furnished to members of the Board for this meeting were made available for public inspection on the Doli’s website at <https://www.doli.virginia.gov/safety-and-health-codes-board-electronic-emergency-meeting/> and the Virginia Regulatory Townhall’s website at <https://townhall.virginia.gov/L/ViewMeeting.cfm?MeetingID=31037> contemporaneously with the documents being furnished to the members of the Board.

**BOARD MEMBERS**

**PARTICIPATING:**

Mr. Charles L. (“Chuck) Stiff, current chairman  
Mr. Louis J. (“Lou”) Cernak, Jr  
Dr. Norman Oliver, Commissioner of the Virginia Department of Health, given full voting rights by the board (only present for opening comments and the first vote the agenda, from that point on represented by Dr. Dwight Flammia)  
Dr. Dwight Flammia – acting in Dr. Norman Oliver’s stead, given full rights of a board member on a temporary basis as a representative of the Department of Health.  
Mr. John Fulton  
Mr. Phil Glaize  
Ms. Tina Hoover  
Ms. Anna Jolly

Mr. Courtney Malveaux  
Mr. Travis Parsons  
Mr. Kenneth Richardson, II  
Ms. Milagro Rodriguez  
Mr. Jeffrey Steers  
Mr. Thomas A Thurston

**BOARD MEMBERS ABSENT:** Mr. Michael A. Luce

**STAFF PARTICIPATING:** Mr. C. Ray Davenport, Commissioner of Dept. of Labor & Industry  
Mr. William P. Burge, Assistant Commissioner  
Mr. Jay Withrow, Director, Legal Support, BLS, VPP, ORA, and OWB  
Ms. Princy R. Doss, Director, Policy, Planning, & Public Information  
Mr. Ron Graham, Director, VOSH Health Compliance  
Ms. Marta Fernandes, VOSH Safety Compliance  
Ms. Jennifer Rose, Director  
Ms. Christine Childress  
Mr. Richard White  
Ms. Diane Duell, Director, Legal Support  
Ms. Holly Trice, Senior Staff Attorney  
Mr. Edward G. Hilton, Director of Boiler Safety  
Ms. Cristin Bernhardt, Staff Attorney  
Mr. Alex West, Staff Attorney  
Ms. Elizabeth DePatie, DOLI Legal Intern

**OTHERS PARTICIPATING:** Mr. Joshua Laws, Attorney General's Office  
Ms. Lisa Wright, Court Reporter, Chandler & Halasz, Stenographic Court Reporters

**Call to Order.**

Meeting begin at 9:19 AM. Meeting was held entirely virtually/electronically in compliance with the state of emergency declared by Governor Northam. No members of the board physically assembled for this meeting to form a quorum but instead entirely met through the Cisco Webex platform.

The purpose of the continued emergency meeting was to adopt an Emergency Temporary Standard under Va. Code 40.1-22(6a), Infectious Disease Prevention, SARS-CoV-2 Virus That Causes COVID-19, VAC 25-220, applicable to all employers and employees covered by Virginia Occupational Safety and Health (VOSH) program.

Section 2.2-3708.2(d)(7), Code of Virginia, requires that "votes taken during any meeting conducted through electronic communication means shall be recorded by name in roll-call fashion and included in the minutes." It also requires that "For emergency meetings held by electronic communication means, the nature of the emergency shall be stated in the minutes."

**Approval of Agenda.**

Before agenda approval: 21:05 minutes into meeting: full voting rights of Dept. of Health and Dept of Environment. Mr. Courtney Malveaux made a motion to continue the meeting in order to receive more comments from the public and employers, motion did not succeed. Department had actually already gone well beyond the requirements for public input for an Emergency Temporary Standard under Title 40.1, including reviewing over 3,000 public comments collected prior to discussions of the standard began. Chairman of the board moves to have the agenda approved and to move through the standard which is approved.

Agenda approved an hour and fifteen minutes after proposed start time at around 10:30

<b>Approval of Agenda</b>	<b>Yea</b>	<b>Nay</b>	<b>Abstain</b>	<b>Absent</b>	<b>Other</b>
Mr. Jeffery Steers	1				
Mr. Louis J. ("Lou") Cernak Jr.	1				
Dr. Norm Oliver (Dr. Dwight Flammia acted on behalf of Dr. Norm Oliver after the agenda vote)	1				
Mr. John D. Fulton	1				
Mr. Phil Glaize	1				
Ms. Tina Hoover		1			
Ms. Anna E. Jolly	1				
Mr. Michael. A. Luce				1	
Mr. Courtney M. Malveaux	1				
Mr. Travis M. Parsons	1				
Mr. Kenneth W. Richardson, II	1				
Ms. Milagro ("Milly") Rodriguez	1				
Mr. Charles L. ("Chuck") Stiff	1				
Mr. Thomas A. Thurston	1				
<b>TOTALS</b>	<b>12</b>	<b>1</b>		<b>1</b>	

**New Business.**

Meeting began with comments from Dr. Norman Oliver on the importance of this standard before leaving, Dr. Dwight Flammia is his representative from this point onwards (1 hour and 21 minutes into the meeting). This was followed by Jay Withrow, Director of Legal Support, ORA, OPPO, and OWP, presenting the briefing package for the Emergency Temporary Standard/Emergency Regulation to address the SARS-CoV-2 Virus and COVID-19 Disease hazards for all employees and employers under the jurisdiction of the Virginia Occupational Safety and Health (VOSH) program, 16 VAC 25-220. This presentation is available on the DOLI website. On this day only the agenda and §10, 20, and 30 were discussed. The below reflects the discussions around amendments made by the Department as well as board members only as they pertain to those sections. The below includes: section and subsection(s), person making the motion, timestamps, and critical discussions around these areas. Meeting was continued and the board met again on July 7<sup>th</sup>.

Adoption of the term "Temporary Standard" in lieu of "Emergency Regulation" –running change proposed by the department. This, along with some clean up language in the start of section 10, was approved 2 hours and 15 minutes into the meeting.

<b>Non substantive changes for draft (pages 4, 5, and 6)</b>	<b>Yea</b>	<b>Nay</b>	<b>Abstain</b>	<b>Absent</b>	<b>Other</b>
Mr. Jeffery Steers	1				
Mr. Louis J. ("Lou") Cernak Jr.	1				
Dr. Dwight Flammia (Dr. Flammia acted as Dr. Oliver's representative from this vote forward, with approval)	1				
Mr. John D. Fulton	1				
Mr. Phil Glaize	1				
Ms. Tina Hoover	1				
Ms. Anna E. Jolly	1				

Mr. Michael. A. Luce	1				
Mr. Courtney M. Malveaux				1	
Mr. Travis M. Parsons	1				
Mr. Kenneth W. Richardson, II	1				
Ms. Milagro ("Milly") Rodriguez	1				
Mr. Charles L. ("Chuck") Stiff	1				
Mr. Thomas A. Thurston	1				
TOTALS	13			1	

**Section 10 Purpose, scope and applicability**

Minor updates to the language, proposed by the Department, which were non-substantive in nature were made throughout votes on this section. These were accepted at various points. None of these changes affected the substance of the standard but were largely for clarity and/or grammar. These minor changes can be viewed in the document as strikethroughs/highlights for the record. The motions for these changes were properly seconded, and a roll call vote conducted. The tables below reflect the votes for the changes in the order in which they occurred.

<b>Department motion to clean up language in §10 through original page 8</b>	<b>Yea</b>	<b>Nay</b>	<b>Abstain</b>	<b>Absent</b>	<b>Other</b>
Mr. Jeffery Steers	1				
Mr. Louis J. ("Lou") Cernak Jr.	1				
Dr. Dwight Flammia	1				
Mr. John D. Fulton	1				
Mr. Phil Glaize	1				
Ms. Tina Hoover	1				
Ms. Anna E. Jolly	1				
Mr. Michael. A. Luce				1	
Mr. Courtney M. Malveaux	1				
Mr. Travis M. Parsons	1				
Mr. Kenneth W. Richardson, II	1				
Ms. Milagro ("Milly") Rodriguez	1				
Mr. Charles L. ("Chuck") Stiff	1				
Mr. Thomas A. Thurston	1				
TOTALS	13			1	

<b>Department motion on Page 6</b>	<b>Yea</b>	<b>Nay</b>	<b>Abstain</b>	<b>Absent</b>	<b>Other</b>
Mr. Jeffery Steers	1				
Mr. Louis J. ("Lou") Cernak Jr.	1				
Dr. Dwight Flammia	1				
Mr. John D. Fulton	1				
Mr. Phil Glaize	1				
Ms. Tina Hoover	1				
Ms. Anna E. Jolly	1				
Mr. Michael. A. Luce				1	
Mr. Courtney M. Malveaux	1				



Mr. Travis M. Parsons	1				
Mr. Kenneth W. Richardson, II	1				
Ms. Milagro ("Milly") Rodriguez	1				
Mr. Charles L. ("Chuck") Stiff	1				
Mr. Thomas A. Thurston	1				
<b>TOTALS</b>	<b>13</b>			<b>1</b>	

Amendment to §10 by Mr. Courtney Malveaux

Mr. Malveaux asked to have the standard amended to include language that the standard shall not be extended without public participation in accordance with the Virginia Administrative Process Act. The motion was properly seconded, and a roll call vote conducted. The motion carried 2 hrs. and 24 minutes into meeting.

<b>§10 motion to add language to 10.B. submitted by Mr. Mr. Malveaux</b>	<b>Yea</b>	<b>Nay</b>	<b>Abstain</b>	<b>Absent</b>	<b>Other</b>
Mr. Jeffery Steers			1		
Mr. Louis J. ("Lou") Cernak Jr.		1			
Dr. Dwight Flammia			1		
Mr. John D. Fulton	1				
Mr. Phil Glaize	1				
Ms. Tina Hoover	1				
Ms. Anna E. Jolly	1				
Mr. Michael. A. Luce				1	
Mr. Courtney M. Malveaux	1				
Mr. Travis M. Parsons		1			
Mr. Kenneth W. Richardson, II	1				
Ms. Milagro ("Milly") Rodriguez		1			
Mr. Charles L. ("Chuck") Stiff	1				
Mr. Thomas A. Thurston		1			
<b>TOTALS</b>	<b>7</b>	<b>4</b>	<b>2</b>	<b>1</b>	

10.D.2.a BOARD AMENDMENT proposed by Mr. Thompson Thuston.

Mr. Thurston raised concerns for the factors that help to determine if an employee should be in the "high" category including the environment (indoor/outdoor) and the contact/closeness of the employee to other person in the work area. This language is meant to ensure and assist employers have a baseline for how to perform a risk assessment. The motion was properly seconded, and a roll call vote conducted. This was approved in 2 hrs. and 51 minutes into the meeting.

<b>§10.D.2 amendment submitted by Thomas Thurston</b>	<b>Yea</b>	<b>Nay</b>	<b>Abstain</b>	<b>Absent</b>	<b>Other</b>
Mr. Jeffery Steers	1				
Mr. Louis J. ("Lou") Cernak Jr.	1				
Dr. Dwight Flammia	1				
Mr. John D. Fulton	1				
Mr. Phil Glaize	1				
Ms. Tina Hoover	1				

Ms. Anna E. Jolly	1				
Mr. Michael. A. Luce				1	
Mr. Courtney M. Malveaux	1				
Mr. Travis M. Parsons	1				
Mr. Kenneth W. Richardson, II	1				
Ms. Milagro ("Milly") Rodriguez	1				
Mr. Charles L. ("Chuck") Stiff	1				
Mr. Thomas A. Thurston	1				
TOTALS	13			1	

10.D.2.a AMENDMENT proposed by Dr. Dwight Flammia.

Dr. Dwight Flammia proposed a running change throughout the document to change "known or suspected COVID-19 person" to use person-first language. Motion was made by the chairman to use the phrase "person known or suspected to be infected with SARS-CoV-2 virus." The motion was properly seconded, and a roll call vote conducted. This was accepted 2hrs and 55 minutes into the meeting.

<b>§10.D.2.a Language change by Dr. Dwight Flammia (move to person first language for whole document)</b>	<b>Yea</b>	<b>Nay</b>	<b>Abstain</b>	<b>Absent</b>	<b>Other</b>
Mr. Jeffery Steers	1				
Mr. Louis J. ("Lou") Cernak Jr.	1				
Dr. Dwight Flammia	1				
Mr. John D. Fulton	1				
Mr. Phil Glaize	1				
Ms. Tina Hoover	1				
Ms. Anna E. Jolly	1				
Mr. Michael. A. Luce				1	
Mr. Courtney M. Malveaux	1				
Mr. Travis M. Parsons	1				
Mr. Kenneth W. Richardson, II	1				
Ms. Milagro ("Milly") Rodriguez	1				
Mr. Charles L. ("Chuck") Stiff	1				
Mr. Thomas A. Thurston	1				
TOTALS	13			1	

10.D.2.b BOARD AMENDMENT proposed by Mr. Thomas Thurston

After discussion this amendment was updated with the language: shared work vehicles; industries or places of employment where **employer sponsored shared transportation is a common practice** such as . . . " The motion was properly seconded, and a roll call vote conducted. Motion carries 3hr 12min in.

<b>§10.D.2.b, amendment submitted by Mr. Thomas Thurston</b>	<b>Yea</b>	<b>Nay</b>	<b>Abstain</b>	<b>Absent</b>	<b>Other</b>
Mr. Jeffery Steers	1				
Mr. Louis J. ("Lou") Cernak Jr.	1				
Dr. Dwight Flammia	1				
Mr. John D. Fulton	1				

Mr. Phil Glaize	1				
Ms. Tina Hoover	1				
Ms. Anna E. Jolly	1				
Mr. Michael. A. Luce				1	
Mr. Courtney M. Malveaux	1				
Mr. Travis M. Parsons	1				
Mr. Kenneth W. Richardson, II	1				
Ms. Milagro ("Milly") Rodriguez	1				
Mr. Charles L. ("Chuck") Stiff	1				
Mr. Thomas A. Thurston	1				
TOTALS	13			1	

10.G

10.G offers employers and schools an option to comply with the CDC standards instead of VOSHA standards. A motion to strike 10.G, due to concerns about the CDC guidelines not being sufficient or consistent in order to protect Virginia employees, by Mr. Parsons was withdrawn. There was a lot of concern around this amendment as it was originally written, particularly in ensuring employers actually comply with CDC regulations (if they so choose) and that these protections meet the same standards and level of care as those proposed by VOSH. Additional concerns that employers will not be able to understand or know what standards to comply with or be abreast of the CDC standards. Mr. Withrow explains how the Department typically handles such wording typically during inspections. Various modifications and substitutes were made, detailed below. This does not represent the final wording, lettering, or numbering seen in the final standard. (See minutes from July 7<sup>th</sup> and 15<sup>th</sup> for more discussion/final version of the amendment).

10.G.1, substitute amendment proposed by the department. The motion was properly seconded, and a roll call vote conducted. Accepted 4 hrs. and 53 minutes.

<b>§10.G language clean up, submitted by Department</b>	<b>Yea</b>	<b>Nay</b>	<b>Abstain</b>	<b>Absent</b>	<b>Other</b>
Mr. Jeffery Steers	1				
Mr. Louis J. ("Lou") Cernak Jr.	1				
Dr. Dwight Flammia	1				
Mr. John D. Fulton	1				
Mr. Phil Glaize	1				
Ms. Tina Hoover	1				
Ms. Anna E. Jolly	1				
Mr. Michael. A. Luce				1	
Mr. Courtney M. Malveaux	1				
Mr. Travis M. Parsons	1				
Mr. Kenneth W. Richardson, II	1				
Ms. Milagro ("Milly") Rodriguez	1				
Mr. Charles L. ("Chuck") Stiff	1				
Mr. Thomas A. Thurston	1				
TOTALS	13			1	

10.G.1.A was struck and replaced by language of 10.G.1. Two separate votes were had to make the final language of 10.G.1. The first vote concerned documenting which CDC publication an employer was complying with. The

second added the language “In order to take advantage of . . .” Both of these motions were properly seconded and a role call vote was had. Both motions carried.

<b>10.G.1., “The employer must document which CDC publication and section the employer is complying with that provides an equivalent or greater level of protection than a specific requirement of this standard.”</b>	<b>Yea</b>	<b>Nay</b>	<b>Abstain</b>	<b>Absent</b>	<b>Other</b>
Mr. Jeffery Steers	1				
Mr. Louis J. (“Lou”) Cernak Jr.	1				
Dr. Dwight Flammia	1				
Mr. John D. Fulton		1			
Mr. Phil Glaize		1			
Ms. Tina Hoover		1			
Ms. Anna E. Jolly	1				
Mr. Michael. A. Luce				1	
Mr. Courtney M. Malveaux		1			
Mr. Travis M. Parsons	1				
Mr. Kenneth W. Richardson, II	1				
Ms. Milagro (“Milly”) Rodriguez	1				
Mr. Charles L. (“Chuck”) Stiff		1			
Mr. Thomas A. Thurston	1				
<b>TOTALS</b>	<b>8</b>	<b>5</b>		<b>1</b>	

<b>§10.G.1 adding language “In order to take advantage . . . ”</b>	<b>Yea</b>	<b>Nay</b>	<b>Abstain</b>	<b>Absent</b>	<b>Other</b>
Mr. Jeffery Steers	1				
Mr. Louis J. (“Lou”) Cernak Jr.	1				
Dr. Dwight Flammia	1				
Mr. John D. Fulton		1			
Mr. Phil Glaize	1				
Ms. Tina Hoover		1			
Ms. Anna E. Jolly	1				
Mr. Michael. A. Luce				1	
Mr. Courtney M. Malveaux		1			
Mr. Travis M. Parsons	1				
Mr. Kenneth W. Richardson, II	1				
Ms. Milagro (“Milly”) Rodriguez	1				
Mr. Charles L. (“Chuck”) Stiff		1			
Mr. Thomas A. Thurston	1				
<b>TOTALS</b>	<b>9</b>	<b>4</b>		<b>1</b>	

10.G.1.B was adopted that required employers to document the CDC publication and section that employers are in compliance with if they wish to invoke 10.G.1

10.G.2 – specific to standards related to schools re-opening. This section allows schools to follow the guidance of the State Council of Higher education and to be found in compliance with this standard provided they are following their certified re-opening plans. There are concerns about employers who work for the school. There are concerns about confusion over which standards to comply with. There are concerns about this not providing enough protection for employees and staff at schools. Board wants to insure that there will be an equivalency of protections between what the school boards do and what the VOSH standard requires. The guidance document drafted on June 11<sup>th</sup> for schools is reviewed and language for this amendment is drafted. The motion was properly seconded, and a roll call vote conducted and approved.

<b>2A Public Institution Section Administration</b>	<b>Yea</b>	<b>Nay</b>	<b>Abstain</b>	<b>Absent</b>	<b>Other</b>
Mr. Jeffery Steers	1				
Mr. Louis J. ("Lou") Cernak Jr.	1				
Dr. Dwight Flammia	1				
Mr. John D. Fulton	1				
Mr. Phil Glaize		1			
Ms. Tina Hoover		1			
Ms. Anna E. Jolly	1				
Mr. Michael. A. Luce				1	
Mr. Courtney M. Malveaux	1				
Mr. Travis M. Parsons	1				
Mr. Kenneth W. Richardson, II	1				
Ms. Milagro ("Milly") Rodriguez	1				
Mr. Charles L. ("Chuck") Stiff	1				
Mr. Thomas A. Thurston	1				
<b>TOTALS</b>	<b>11</b>	<b>2</b>		<b>1</b>	

10.H was added to the document. This motion was properly seconded and a roll call vote held. This motion was approved.

<b>§10.H</b>	<b>Yea</b>	<b>Nay</b>	<b>Abstain</b>	<b>Absent</b>	<b>Other</b>
Mr. Jeffery Steers	1				
Mr. Louis J. ("Lou") Cernak Jr.	1				
Dr. Dwight Flammia	1				
Mr. John D. Fulton	1				
Mr. Phil Glaize	1				
Ms. Tina Hoover	1				
Ms. Anna E. Jolly	1				
Mr. Michael. A. Luce				1	
Mr. Courtney M. Malveaux	1				
Mr. Travis M. Parsons	1				

Mr. Kenneth W. Richardson, II	1				
Ms. Milagro ("Milly") Rodriguez	1				
Mr. Charles L. ("Chuck") Stiff	1				
Mr. Thomas A. Thurston	1				
TOTALS	13			1	

§20 Dates

Mr. Courtney Malveaux made a motion adding language that the temporary standard will expire on a specified date or be superseded by a permanent standard. This motion was properly seconded, and a roll call vote conducted. The motion passed.

<b>§20, Addition of expiration language by Mr. Courtney Malveaux</b>	<b>Yea</b>	<b>Nay</b>	<b>Abstain</b>	<b>Absent</b>	<b>Other</b>
Mr. Jeffery Steers	1				
Mr. Louis J. ("Lou") Cernak Jr.		1			
Dr. Dwight Flammia	1				
Mr. John D. Fulton	1				
Mr. Phil Glaize	1				
Ms. Tina Hoover	1				
Ms. Anna E. Jolly		1			
Mr. Michael. A. Luce				1	
Mr. Courtney M. Malveaux	1				
Mr. Travis M. Parsons		1			
Mr. Kenneth W. Richardson, II		1			
Ms. Milagro ("Milly") Rodriguez		1			
Mr. Charles L. ("Chuck") Stiff	1				
Mr. Thomas A. Thurston		1			
TOTALS	7	6		1	

Minor updates to the language, proposed by the Department, were accepted. The motions for these changes were properly seconded, and a roll call vote conducted. This occurs 5 hrs. and 50 minutes into the meeting.

<b>§20 Clean up language from department on original pages 13 + 14 (non-substantive)</b>	<b>Yea</b>	<b>Nay</b>	<b>Abstain</b>	<b>Absent</b>	<b>Other</b>
Mr. Jeffery Steers	1				
Mr. Louis J. ("Lou") Cernak Jr.	1				
Dr. Dwight Flammia	1				
Mr. John D. Fulton	1				
Mr. Phil Glaize	1				
Ms. Tina Hoover	1				
Ms. Anna E. Jolly	1				
Mr. Michael. A. Luce				1	
Mr. Courtney M. Malveaux	1				
Mr. Travis M. Parsons	1				
Mr. Kenneth W. Richardson, II	1				
Ms. Milagro ("Milly") Rodriguez	1				

Mr. Charles L. ("Chuck") Stiff	1				
Mr. Thomas A. Thurston	1				
TOTALS	13			1	

The section as a whole mostly remained unchanged from this meeting pending a larger discussion about adoption dates and training dates for COVID-19 as well as work safety protocols. (See July 15<sup>th</sup> meeting notes for updates).

**§30 Definitions**

Language proposed by the Department to make this section clearer and/or grammatically correct was voted upon throughout the discussion of section 30. None of these changes affected the substance of the standard. These motion were properly seconded, and a roll call vote conducted. All of these changes were approved at various vote points. The tables below reflect the vote tallies for these changes. These were non-substantiate in nature.

The first vote on Department clean up language includes an amendment by Dr. Dwight Flammia. Amendment proposed by Dr. Dwight Flammia - §30. DEFINITION OF "ASYMTOMATIC. After discussion, during the meeting, the language proposed by Dr. Dwight Flammia was slightly modified to be "Asymptomatic means a person who is not symptomatic." This modified language was accepted. A motion was made to approve this modified language and properly seconded, and a roll call vote conducted. This change was incorporated throughout the document.

<b>§30, Department Clean up language for original pages 14+15 (non-substantive) Includes Dr. Dwight Flammia's definition of "asymptomatic"</b>	<b>Yea</b>	<b>Nay</b>	<b>Abstain</b>	<b>Absent</b>	<b>Other</b>
Mr. Jeffery Steers	1				
Mr. Louis J. ("Lou") Cernak Jr.	1				
Dr. Dwight Flammia	1				
Mr. John D. Fulton	1				
Mr. Phil Glaize	1				
Ms. Tina Hoover	1				
Ms. Anna E. Jolly	1				
Mr. Michael. A. Luce				1	
Mr. Courtney M. Malveaux	1				
Mr. Travis M. Parsons	1				
Mr. Kenneth W. Richardson, II	1				
Ms. Milagro ("Milly") Rodriguez	1				
Mr. Charles L. ("Chuck") Stiff	1				
Mr. Thomas A. Thurston	1				
TOTALS	13			1	

<b>§30 Department language clean on pages 19-20 (non-substantive changes)</b>	<b>Yea</b>	<b>Nay</b>	<b>Abstain</b>	<b>Absent</b>	<b>Other</b>
Mr. Jeffery Steers	1				
Mr. Louis J. ("Lou") Cernak Jr.	1				

Dr. Dwight Flammia	1				
Mr. John D. Fulton	1				
Mr. Phil Glaize	1				
Ms. Tina Hoover	1				
Ms. Anna E. Jolly	1				
Mr. Michael. A. Luce				1	
Mr. Courtney M. Malveaux	1				
Mr. Travis M. Parsons	1				
Mr. Kenneth W. Richardson, II	1				
Ms. Milagro ("Milly") Rodriguez	1				
Mr. Charles L. ("Chuck") Stiff	1				
Mr. Thomas A. Thurston	1				
TOTALS	13			1	

In addition to clean up language proposed by the Department. The below also reflects votes taken for an amendment proposed by Mr. Thomas Thurston. This amendment expanded on exposure risks for employees in the "high" risk category. The amended language added a sentence "patient/client/customer with unknown COVID-19 status." This language was accepted along with the addition of "blood donation services" to the High Risk category.

<b>§30 Department motion, clean up language on pg. 21 (non-substantive). This included an amendment to the definition "High" by Mr. Thomas Thurston.</b>	<b>Yea</b>	<b>Nay</b>	<b>Abstain</b>	<b>Absent</b>	<b>Other</b>
Mr. Jeffery Steers	1				
Mr. Louis J. ("Lou") Cernak Jr.	1				
Dr. Dwight Flammia	1				
Mr. John D. Fulton	1				
Mr. Phil Glaize	1				
Ms. Tina Hoover	1				
Ms. Anna E. Jolly	1				
Mr. Michael. A. Luce				1	
Mr. Courtney M. Malveaux	1				
Mr. Travis M. Parsons	1				
Mr. Kenneth W. Richardson, II	1				
Ms. Milagro ("Milly") Rodriguez	1				
Mr. Charles L. ("Chuck") Stiff	1				
Mr. Thomas A. Thurston	1				
TOTALS	13			1	



<b>§30, Department language cleanup for definition “exposure risk level” medium, subsection 1 + 2. Original pages 23-24. (non-substantive)</b>	<b>Yea</b>	<b>Nay</b>	<b>Abstain</b>	<b>Absent</b>	<b>Other</b>
Mr. Jeffery Steers	1				
Mr. Louis J. (“Lou”) Cernak Jr.	1				
Dr. Dwight Flammia	1				
Mr. John D. Fulton	1				
Mr. Phil Glaize	1				
Ms. Tina Hoover	1				
Ms. Anna E. Jolly	1				
Mr. Michael. A. Luce				1	
Mr. Courtney M. Malveaux	1				
Mr. Travis M. Parsons	1				
Mr. Kenneth W. Richardson, II	1				
Ms. Milagro (“Milly”) Rodriguez	1				
Mr. Charles L. (“Chuck”) Stiff	1				
Mr. Thomas A. Thurston	1				
<b>TOTALS</b>	<b>13</b>			<b>1</b>	

<b>§30, Department clean up language on original pages 25, 26, 27 (non-substantive changes)</b>	<b>Yea</b>	<b>Nay</b>	<b>Abstain</b>	<b>Absent</b>	<b>Other</b>
Mr. Jeffery Steers	1				
Mr. Louis J. (“Lou”) Cernak Jr.	1				
Dr. Dwight Flammia	1				
Mr. John D. Fulton	1				
Mr. Phil Glaize	1				
Ms. Tina Hoover	1				
Ms. Anna E. Jolly	1				
Mr. Michael. A. Luce				1	
Mr. Courtney M. Malveaux	1				
Mr. Travis M. Parsons	1				
Mr. Kenneth W. Richardson, II	1				
Ms. Milagro (“Milly”) Rodriguez	1				
Mr. Charles L. (“Chuck”) Stiff	1				
Mr. Thomas A. Thurston	1				
<b>TOTALS</b>	<b>13</b>			<b>1</b>	

**§30, DEFINITION OF “EXPOSURE RISK LEVEL” BOARD AMENDMENT – Thomas Thurston**

Language was added to this amendment to help guide what an employer should look to when making an exposure risk level assessment. This included explicitly looking at all methods of exposure as well as assessing risk factors present during the course of employment regardless of location. The motion was properly seconded, and a roll call vote conducted. This was accepted.

<b>§30 Employee Definition and Exposure risk, Mr. Thomas Thurston</b>	<b>Yea</b>	<b>Nay</b>	<b>Abstain</b>	<b>Absent</b>	<b>Other</b>
Mr. Jeffery Steers	1				
Mr. Louis J. ("Lou") Cernak Jr.	1				
Dr. Dwight Flammia	1				
Mr. John D. Fulton		1			
Mr. Phil Glaize	1				
Ms. Tina Hoover	1				
Ms. Anna E. Jolly	1				
Mr. Michael. A. Luce				1	
Mr. Courtney M. Malveaux	1				
Mr. Travis M. Parsons	1				
Mr. Kenneth W. Richardson, II	1				
Ms. Milagro ("Milly") Rodriguez	1				
Mr. Charles L. ("Chuck") Stiff	1				
Mr. Thomas A. Thurston	1				
<b>TOTALS</b>	<b>12</b>	<b>1</b>		<b>1</b>	

§30, DEFINITION OF "EXPOSURE RISK LEVEL" specifically the definition of "HIGH" BOARD AMENDMENT – Thomas Thurston

This amendment would have removed the language "inside six feet." This amendment was withdrawn during the meeting, no changes were made.

§30, DEFINITION OF "EXPOSURE RISK LEVEL" – "HIGH" & "Medium"

Mr. Courtney Malveaux made motions to strike language from "Exposure Risk Level" "High" and "Medium". These motions were properly seconded and a roll call vote was held. Neither of these motions carried.

<b>§30, Mr. Malveaux motion to strike language in "exposure risk" "medium"</b>	<b>Yea</b>	<b>Nay</b>	<b>Abstain</b>	<b>Absent</b>	<b>Other</b>
Mr. Jeffery Steers			1		
Mr. Louis J. ("Lou") Cernak Jr.		1			
Dr. Dwight Flammia		1			
Mr. John D. Fulton	1				
Mr. Phil Glaize		1			
Ms. Tina Hoover	1				
Ms. Anna E. Jolly		1			
Mr. Michael. A. Luce				1	
Mr. Courtney M. Malveaux	1				
Mr. Travis M. Parsons		1			
Mr. Kenneth W. Richardson, II		1			
Ms. Milagro ("Milly") Rodriguez		1			
Mr. Charles L. ("Chuck") Stiff			1		
Mr. Thomas A. Thurston		1			
<b>TOTALS</b>	<b>3</b>	<b>8</b>	<b>2</b>	<b>1</b>	

<b>§30, Mr. Malveaux motion to strike language in “exposure risk” “high”</b>	<b>Yea</b>	<b>Nay</b>	<b>Abstain</b>	<b>Absent</b>	<b>Other</b>
Mr. Jeffery Steers	1				
Mr. Louis J. (“Lou”) Cernak Jr.		1			
Dr. Dwight Flammia			1		
Mr. John D. Fulton	1				
Mr. Phil Glaize	1				
Ms. Tina Hoover	1				
Ms. Anna E. Jolly		1			
Mr. Michael. A. Luce				1	
Mr. Courtney M. Malveaux	1				
Mr. Travis M. Parsons		1			
Mr. Kenneth W. Richardson, II	1				
Ms. Milagro (“Milly”) Rodriguez		1			
Mr. Charles L. (“Chuck”) Stiff	1				
Mr. Thomas A. Thurston		1			
<b>TOTALS</b>	<b>7</b>	<b>5</b>	<b>1</b>	<b>1</b>	

§30, DEFINITION OF “EXPOSURE RISK LEVEL” - MEDIUM” BOARD AMENDMENT by Thomas Thurston.

Mr. Thomas Thurston proposed an amendment that would remove the language “inside six feet” from exposure risk levels. This amendment was withdrawn and no changes were made. At this point, it was made clear that any amendment by Mr. Thurston to remove “inside six feet” was withdrawn going forward.

§30, DEFINITION OF “EXPOSURE RISK LEVEL” – “MEDIUM” BOARD AMENDMENT – Mr. Thomas Thurston

Mr. Thurston proposed an amendment relating specifically to those classified in the “medium risk category” which would add work performed in customer premises to the medium risk category. This discussion was tabled for a later date.

**Items of Interest from the Department of Labor and Industry.**

There were no specific items of interest from the Department.

**Meeting Adjournment.**

Meeting was adjourned at 5:15 PM. The Emergency Temporary Standard review was not complete by the end of the meeting. The discussion was continued on July 7, 2020.

**DRAFT**

**SAFETY AND HEALTH CODES BOARD  
PUBLIC HEARING AND MEETING MINUTES  
July 7, 2020**

On March 12, 2020, Governor Ralph Northam issued Executive Order Number 51, declaring a State of Emergency under § 44-146.17 due to the spread within the Commonwealth and surrounding states of the Novel Coronavirus (COVID-19), a communicable disease of public health threat. On May 26, 2020, Governor Northam issued Executive Order Number 63, directing the Commissioner of Labor and Industry to promulgate emergency standards to “control, prevent, and mitigate the spread of COVID-19 in the workplace.

“Under §2.2-3708.2.A.3, a public body may meet by electronic 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 § 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 address the emergency.

Given the nature of the emergency, that COVID-19 spreads easily from person to person, and the purpose of the meeting, which was to promulgate an emergency temporary standard specifically addressing the emergency, the Safety and Health Codes Board (“Board”) held an entirely electronic emergency meeting utilizing WebEx.

The Board members and Department staff listed below as “participating” were all participating via WebEx. There was no quorum of Board members physically assembled at one location. There was a quorum of Board members participating on WebEx for purposes of the emergency electronic meeting.

This meeting was a continued emergency meeting under Va. Code 2.2-3708.2(D)(2), following the initial meeting on June 24, 2020, and the continued meeting on June 29, 2020. Notice of the continued meeting was provided to the public contemporaneously with the notice given to the Board. The notice invited the public to witness the meeting remotely via WebEx. Notice was provided on the Department of Labor and Industry’s (DOLI) website at <https://www.doli.virginia.gov/safety-and-health-codes-board-electronic-emergency-meeting/> as well as on the Virginia Regulatory Townhall’s website at <https://townhall.virginia.gov/L/ViewMeeting.cfm?MeetingID=31057> .

A copy of the proposed agenda and all agenda packets, unless exempt, and all materials furnished to members of the Board for this meeting were made available for public inspection on the DOLI’s website at <https://www.doli.virginia.gov/safety-and-health-codes-board-electronic-emergency-meeting/> and the Virginia Regulatory Townhall’s website at <https://townhall.virginia.gov/L/ViewMeeting.cfm?MeetingID=31057> contemporaneously with the documents being furnished to the members of the Board.

**BOARD MEMBERS**

**PARTICIPATING:**

Mr. Charles L. (“Chuck”) Stiff (Chair)  
Mr. Jeffery Steers  
Dr. Dwight Flammia  
Mr. John D. Fulton  
Mr. Phil Glaize  
Ms. Tina Hoover  
Ms. Anna E. Jolly  
Mr. Michael. A. Luce  
Mr. Courtney M. Malveaux (partially present)  
Mr. Travis M. Parsons  
Ms. Milagro (“Milly”) Rodriguez  
Mr. Thomas A. Thurston  
Mr. Louis J. (“Lou”) Cernak Jr.

**BOARD MEMBERS ABSENT:**

Mr. Kenneth W. Richardson, II

**STAFF PARTICIPATING:**

Mr. C. Ray Davenport, Commissioner of Dept. of Labor & Industry  
Mr. William P. Burge, Assistant Commissioner  
Mr. Jay Withrow, Director, Legal Support, BLS, VPP, ORA, and OWB  
Ms. Princy R. Doss, Director, Policy, Planning, & Public Information  
Mr. Ron Graham, Director, VOSH Health Compliance  
Ms. Marta Fernandes, VOSH Safety Compliance  
Ms. Jennifer Rose, Director  
Ms. Christine Childress  
Mr. Richard White  
Ms. Diane Duell, Director, Legal Support  
Ms. Holly Trice, Senior Staff Attorney  
Mr. Edward G. Hilton, Director of Boiler Safety  
Ms. Cristin Bernhardt, Staff Attorney  
Mr. Alex West, Staff Attorney  
Ms. Elizabeth DePatie, DOLI Legal Intern

**OTHERS PARTICIPATING:**

Mr. Joshua Laws, Attorney General’s Office  
Ms. Lisa Wright, Court Reporter, Chandler & Halasz, Stenographic Court Reporters

**CALL TO ORDER**

Interim Chair Chuck Stiff called the Public meeting to order at 9:15 a.m. A quorum was present. Mr. Stiff made opening remarks informing the public that this meeting was an emergency electronic meeting, held under Va. Code Section 2.2-3708.2, and using WebEx to allow panelists (Board members and DOLI staff) and participants to listen to the meeting by internet or telephone.

The purpose of the continued emergency meeting was to adopt an Emergency Temporary Standard under Va. Code 40.1-22(6a), Infectious Disease Prevention, SARS-CoV-2 Virus That Causes COVID-19,

VAC 25-220, applicable to all employers and employees covered by Virginia Occupational Safety and Health (VOSH) program.

Section 2.2-3708.2(d)(7), Code of Virginia, requires that "votes taken during any meeting conducted through electronic communication means shall be recorded by name in roll-call fashion and included in the minutes." It also requires that "For emergency meetings held by electronic communication means, the nature of the emergency shall be stated in the minutes."

**APPROVAL OF AGENDA**

Mr. Stiff asked the Board if there is any discussion on the agenda. The motion was made, properly seconded, and carried by unanimous voice vote.

<i>Approval of Agenda</i>	<i>Yea</i>	<i>Nay</i>	<i>Abstain</i>	<i>Absent</i>	<i>Other</i>
<i>Mr. Jeffery Steers</i>				<b>1</b>	
<i>Mr. Louis J. ("Lou") Cernak Jr.</i>	<b>1</b>				
<i>Dr. Dwight Flammia</i>	<b>1</b>				
<i>Mr. John D. Fulton</i>	<b>1</b>				
<i>Mr. Phil Glaize</i>	<b>1</b>				
<i>Ms. Tina Hoover</i>	<b>1</b>				
<i>Ms. Anna E. Jolly</i>	<b>1</b>				
<i>Mr. Michael. A. Luce</i>	<b>1</b>				
<i>Mr. Courtney M. Malveaux</i>				<b>1</b>	
<i>Mr. Travis M. Parsons</i>	<b>1</b>				
<i>Mr. Kenneth W. Richardson, II</i>				<b>1</b>	
<i>Ms. Milagro ("Milly") Rodriguez</i>	<b>1</b>				
<i>Mr. Charles L. ("Chuck") Stiff</i>	<b>1</b>				
<i>Mr. Thomas A. Thurston</i>	<b>1</b>				
<b>TOTALS</b>	<b>12</b>			<b>2</b>	

**NEW BUSINESS**

Jay Withrow, Director of Legal Support, ORA, OPPO, and OWP began his presentation of the DRAFT Emergency Temporary Standard with amendments to be considered on page 6. This version of the DRAFT ETS is available on the DOLI website. Mr. Withrow presented an amendment offered by the Administration for §10.G.1 and §10.G.2.

Mr. Stiff asked the Board if there is any discussion on the agenda.

There was discussion. The motion was made, properly seconded, a roll call vote was conducted, and the motion carried.

<b>Administration's Amendment to 10.G</b>	<b>Yea</b>	<b>Nay</b>	<b>Abstain</b>	<b>Absent</b>	<b>Other</b>
<b>Mr. Jeffery Steers</b>	<b>1</b>				
<b>Mr. Louis J. ("Lou") Cernak Jr.</b>		<b>1</b>			
<b>Dr. Dwight Flammia</b>	<b>1</b>				
<b>Mr. John D. Fulton</b>	<b>1</b>				
<b>Mr. Phil Glaize</b>	<b>1</b>				
<b>Ms. Tina Hoover</b>	<b>1</b>				
<b>Ms. Anna E. Jolly</b>		<b>1</b>			
<b>Mr. Michael. A. Luce</b>			<b>1</b>		
<b>Mr. Courtney M. Malveaux</b>				<b>1</b>	
<b>Mr. Travis M. Parsons</b>		<b>1</b>			
<b>Mr. Kenneth W. Richardson, II</b>				<b>1</b>	
<b>Ms. Milagro ("Milly") Rodriguez</b>		<b>1</b>			
<b>Mr. Charles L. ("Chuck") Stiff</b>	<b>1</b>				
<b>Mr. Thomas A. Thurston</b>		<b>1</b>			
<b>Totals</b>	<b>6</b>	<b>5</b>	<b>1</b>	<b>2</b>	

Mr. Withrow continued to §30 and amendments made to definitions under "Medium Exposure." Mr. Stiff asked the Board if there is any discussion on the agenda. The motion was made, properly seconded, a roll call vote was conducted, and the motion carried.

<b>Section 30 Definitions and Administration Amendment</b>	<b>Yea</b>	<b>Nay</b>	<b>Abstain</b>	<b>Absent</b>	<b>Other</b>
<b>Jeffery Steers</b>	<b>1</b>				
<b>Mr. Louis J. ("Lou") Cernak Jr.</b>	<b>1</b>				
<b>Dr. Dwight Flammia</b>	<b>1</b>				
<b>Mr. John D. Fulton</b>	<b>1</b>				
<b>Mr. Phil Glaize</b>	<b>1</b>				
<b>Ms. Tina Hoover</b>	<b>1</b>				
<b>Ms. Anna E. Jolly</b>	<b>1</b>				
<b>Mr. Michael. A. Luce</b>	<b>1</b>				
<b>Mr. Courtney M. Malveaux</b>				<b>1</b>	
<b>Mr. Travis M. Parsons</b>		<b>1</b>			
<b>Mr. Kenneth W. Richardson, II</b>				<b>1</b>	
<b>Ms. Milagro ("Milly") Rodriguez</b>		<b>1</b>			
<b>Mr. Charles L. ("Chuck") Stiff</b>	<b>1</b>				
<b>Mr. Thomas A. Thurston</b>		<b>1</b>			
<b>TOTALS</b>	<b>9</b>	<b>3</b>		<b>2</b>	

Mr. Withrow suggested a change in Ms. Jolly’s amendment to §30 Lower Exposure Risk Level from “close contact” to “contact with others inside six feet” and Ms. Jolly agreed. Mr. Stiff asked the Board if there is any discussion on the agenda. The motion was made, properly seconded, a roll call vote was conducted, and the motion carried.

<b><i>Jolly Amendment §30 Lower Exposure Risk Level</i></b>	<b><i>Yea</i></b>	<b><i>Nay</i></b>	<b><i>Abstain</i></b>	<b><i>Absent</i></b>	<b><i>Other</i></b>
<b><i>Jeffery Steers</i></b>	<b><i>1</i></b>				
<b><i>Mr. Louis J. (“Lou”) Cernak Jr.</i></b>			<b><i>1</i></b>		
<b><i>Dr. Dwight Flammia</i></b>	<b><i>1</i></b>				
<b><i>Mr. John D. Fulton</i></b>	<b><i>1</i></b>				
<b><i>Mr. Phil Glaize</i></b>	<b><i>1</i></b>				
<b><i>Ms. Tina Hoover</i></b>	<b><i>1</i></b>				
<b><i>Ms. Anna E. Jolly</i></b>	<b><i>1</i></b>				
<b><i>Mr. Michael. A. Luce</i></b>	<b><i>1</i></b>				
<b><i>Mr. Courtney M. Malveaux</i></b>				<b><i>1</i></b>	
<b><i>Mr. Travis M. Parsons</i></b>	<b><i>1</i></b>				
<b><i>Mr. Kenneth W. Richardson, II</i></b>				<b><i>1</i></b>	
<b><i>Ms. Milagro (“Milly”) Rodriguez</i></b>			<b><i>1</i></b>		
<b><i>Mr. Charles L. (“Chuck”) Stiff</i></b>	<b><i>1</i></b>				
<b><i>Mr. Thomas A. Thurston</i></b>			<b><i>1</i></b>		
<b><i>TOTALS</i></b>	<b><i>9</i></b>		<b><i>3</i></b>	<b><i>2</i></b>	

Mr. Withrow presented Ms. Jolly’s two amendments in §30 to “Feasible” and “Filtering Facepiece” respirator. Mr. Stiff asked the Board if there is any discussion on the agenda. The motion was made, properly seconded, a roll call vote was conducted, and the motion carried.

<b><i>Jolly Amendment §30 Feasible and Filtering Facepiece respirator</i></b>	<b><i>Yea</i></b>	<b><i>Nay</i></b>	<b><i>Abstain</i></b>	<b><i>Absent</i></b>	<b><i>Other</i></b>
<b><i>Mr. Jeffery Steers</i></b>	<b><i>1</i></b>				
<b><i>Mr. Louis J. (“Lou”) Cernak Jr.</i></b>	<b><i>1</i></b>				
<b><i>Dr. Dwight Flammia</i></b>	<b><i>1</i></b>				
<b><i>Mr. John D. Fulton</i></b>	<b><i>1</i></b>				
<b><i>Mr. Phil Glaize</i></b>	<b><i>1</i></b>				
<b><i>Ms. Tina Hoover</i></b>	<b><i>1</i></b>				
<b><i>Ms. Anna E. Jolly</i></b>	<b><i>1</i></b>				
<b><i>Mr. Michael. A. Luce</i></b>	<b><i>1</i></b>				
<b><i>Mr. Courtney M. Malveaux</i></b>				<b><i>1</i></b>	
<b><i>Mr. Travis M. Parsons</i></b>	<b><i>1</i></b>				



<i>Mr. Kenneth W. Richardson, II</i>				<b>1</b>	
<i>Ms. Milagro (“Milly”) Rodriguez</i>	<b>1</b>				
<i>Mr. Charles L. (“Chuck”) Stiff</i>	<b>1</b>				
<i>Mr. Thomas A. Thurston</i>	<b>1</b>				
<b>TOTALS</b>	<b>12</b>			<b>2</b>	

Mr. Withrow presented a Department change to “May be infected with SARS-CoV-2” to Include “and not currently vaccinated against the SARS-Cov-2 virus.” Mr. Stiff asked the Board if there is any discussion on the agenda. The motion was made, properly seconded, a roll call vote was conducted, and the motion carried. However, Mr. Glaize was muted and could not speak. Then Phil was able to speak and asked questions so there was some discussion.

<i>Dept. change to “May be infected with SARS-CoV-2”</i>	<i>Yea</i>	<i>Nay</i>	<i>Abstain</i>	<i>Absent</i>	<i>Other</i>
<i>Mr. Jeffery Steers</i>	<b>1</b>				
<i>Mr. Louis J. (“Lou”) Cernak Jr.</i>		<b>1</b>			
<i>Dr. Dwight Flammia</i>	<b>1</b>				
<i>Mr. John D. Fulton</i>			<b>1</b>		
<i>Mr. Phil Glaize</i>			<b>1</b>		
<i>Ms. Tina Hoover</i>	<b>1</b>				
<i>Ms. Anna E. Jolly</i>	<b>1</b>				
<i>Mr. Michael. A. Luce</i>			<b>1</b>		
<i>Mr. Courtney M. Malveaux</i>				<b>1</b>	
<i>Mr. Travis M. Parsons</i>		<b>1</b>			
<i>Mr. Kenneth W. Richardson, II</i>				<b>1</b>	
<i>Ms. Milagro (“Milly”) Rodriguez</i>		<b>1</b>			
<i>Mr. Charles L. (“Chuck”) Stiff</i>	<b>1</b>				
<i>Mr. Thomas A. Thurston</i>		<b>1</b>			
<b>TOTALS</b>	<b>5</b>	<b>4</b>	<b>3</b>	<b>2</b>	

Mr. Withrow presented Ms. Jolly’s two amendments and changes by Department to the end of the definitions section. Mr. Stiff asked the Board if there is any discussion on the agenda. The motion was made, properly seconded, a roll call vote was conducted, and the motion carried.

<i>Jolly 2 Amendments and Department changes to end of definitions</i>	<i>Yea</i>	<i>Nay</i>	<i>Abstain</i>	<i>Absent</i>	<i>Other</i>
<i>Mr. Jeffery Steers</i>	<b>1</b>				
<i>Mr. Louis J. (“Lou”) Cernak Jr.</i>	<b>1</b>				
<i>Dr. Dwight Flammia</i>	<b>1</b>				
<i>Mr. John D. Fulton</i>	<b>1</b>				
<i>Mr. Phil Glaize</i>			<b>1</b>		
<i>Ms. Tina Hoover</i>	<b>1</b>				

<i>Ms. Anna E. Jolly</i>	<b>1</b>				
<i>Mr. Michael. A. Luce</i>			<b>1</b>		
<i>Mr. Courtney M. Malveaux</i>				<b>1</b>	
<i>Mr. Travis M. Parsons</i>	<b>1</b>				
<i>Mr. Kenneth W. Richardson, II</i>	<b>1</b>				
<i>Ms. Milagro ("Milly") Rodriguez</i>	<b>1</b>				
<i>Mr. Charles L. ("Chuck") Stiff</i>	<b>1</b>				
<i>Mr. Thomas A. Thurston</i>	<b>1</b>				
<b>TOTALS</b>	<b>10</b>		<b>2</b>	<b>2</b>	

Mr. Withrow presented Ms. Jolly's amendment to Section 40.A.1 and Department cleanup. Mr. Stiff asked the Board if there is any discussion on the agenda. The motion was made, properly seconded, a roll call vote was conducted, and the motion carried.

<i>Ms. Jolly Amendment to §40.A.1 and Department cleanup</i>	<i>Yea</i>	<i>Nay</i>	<i>Abstain</i>	<i>Absent</i>	<i>Other</i>
<i>Mr. Jeffery Steers</i>	<b>1</b>				
<i>Mr. Louis J. ("Lou") Cernak Jr.</i>	<b>1</b>				
<i>Dr. Dwight Flammia</i>	<b>1</b>				
<i>Mr. John D. Fulton</i>	<b>1</b>				
<i>Mr. Phil Glaize</i>	<b>1</b>				
<i>Ms. Tina Hoover</i>	<b>1</b>				
<i>Ms. Anna E. Jolly</i>	<b>1</b>				
<i>Mr. Michael. A. Luce</i>	<b>1</b>				
<i>Mr. Courtney M. Malveaux</i>				<b>1</b>	
<i>Mr. Travis M. Parsons</i>	<b>1</b>				
<i>Mr. Kenneth W. Richardson, II</i>				<b>1</b>	
<i>Ms. Milagro ("Milly") Rodriguez</i>	<b>1</b>				
<i>Mr. Charles L. ("Chuck") Stiff</i>	<b>1</b>				
<i>Mr. Thomas A. Thurston</i>	<b>1</b>				
<b>TOTALS</b>	<b>12</b>			<b>2</b>	

Mr. Withrow presented the Administration's amendment to delete §40.A.3. Ms. Jolly started discussion stating that she thinks 40.A.3.a and b should stay, but c and d will be deleted. Ms. Rodrigues asked why §40.A.3.c would not be retained, but she agreed with Jay's reasoning. Mr. Thurston withdrew his amendment on serological testing. Mr. Stiff asked the Board if there is any discussion on the agenda. The motion was made, properly seconded, a roll call vote was conducted, and the motion carried.

<i>Administration Amendment to §40.A.3</i>	<i>Yea</i>	<i>Nay</i>	<i>Abstain</i>	<i>Absent</i>	<i>Other</i>
<i>Mr. Jeffery Steers</i>	<b>1</b>				
<i>Mr. Louis J. ("Lou") Cernak Jr.</i>	<b>1</b>				
<i>Dr. Dwight Flammia</i>	<b>1</b>				

<i>Mr. John D. Fulton</i>	<b>1</b>				
<i>Mr. Phil Glaize</i>	<b>1</b>				
<i>Ms. Tina Hoover</i>	<b>1</b>				
<i>Ms. Anna E. Jolly</i>	<b>1</b>				
<i>Mr. Michael. A. Luce</i>	<b>1</b>				
<i>Mr. Courtney M. Malveaux</i>				<b>1</b>	
<i>Mr. Travis M. Parsons</i>	<b>1</b>				
<i>Mr. Kenneth W. Richardson, II</i>				<b>1</b>	
<i>Ms. Milagro ("Milly") Rodriguez</i>	<b>1</b>				
<i>Mr. Charles L. ("Chuck") Stiff</i>	<b>1</b>				
<i>Mr. Thomas A. Thurston</i>	<b>1</b>				
<b>TOTALS</b>	<b>12</b>			<b>2</b>	

Mr. Withrow presented Department changes from §40.A.4, 40.A.5, 40.A.7, and Ms. Jolly's amendments to §40.A.5 and 40.A.7. Mr. Stiff asked the Board if there is any discussion on the agenda. The motion was made, properly seconded, a roll call vote was conducted, and the motion carried.

<i>Department changes from §40.A.4, 40.A.5, 40.A.7, and Ms. Jolly's amendments to §40.A.5 and 40.A.7</i>	<i>Yea</i>	<i>Nay</i>	<i>Abstain</i>	<i>Absent</i>	<i>Other</i>
<i>Mr. Jeffery Steers</i>	<b>1</b>				
<i>Mr. Louis J. ("Lou") Cernak Jr.</i>	<b>1</b>				
<i>Dr. Dwight Flammia</i>	<b>1</b>				
<i>Mr. John D. Fulton</i>	<b>1</b>				
<i>Mr. Phil Glaize</i>	<b>1</b>				
<i>Ms. Tina Hoover</i>	<b>1</b>				
<i>Ms. Anna E. Jolly</i>	<b>1</b>				
<i>Mr. Michael. A. Luce</i>	<b>1</b>				
<i>Mr. Courtney M. Malveaux</i>			<b>1</b>		
<i>Mr. Travis M. Parsons</i>	<b>1</b>				
<i>Mr. Kenneth W. Richardson, II</i>				<b>1</b>	
<i>Ms. Milagro ("Milly") Rodriguez</i>	<b>1</b>				
<i>Mr. Charles L. ("Chuck") Stiff</i>	<b>1</b>				
<i>Mr. Thomas A. Thurston</i>	<b>1</b>				
<b>TOTALS</b>	<b>12</b>		<b>1</b>	<b>1</b>	

Mr. Withrow presented Mr. Malveaux's amendment to §40.A.7 and Ms. Jolly's amendment to §40.A.8. Mr. Stiff asked the Board if there is any discussion on the agenda. The motion was made, properly seconded, a roll call vote was conducted, and the motion carried.

<i>Mr. Malvaeux's amendment to §40.A.7 and Ms. Jolly's amendment to §40.A.8</i>	<i>Yea</i>	<i>Nay</i>	<i>Abstain</i>	<i>Absent</i>	<i>Other</i>
<i>Mr. Jeffery Steers</i>	<b>1</b>				
<i>Mr. Louis J. ("Lou") Cernak Jr.</i>	<b>1</b>				
<i>Dr. Dwight Flammia</i>	<b>1</b>				
<i>Mr. John D. Fulton</i>	<b>1</b>				
<i>Mr. Phil Glaize</i>	<b>1</b>				
<i>Ms. Tina Hoover</i>	<b>1</b>				
<i>Ms. Anna E. Jolly</i>	<b>1</b>				
<i>Mr. Michael. A. Luce</i>	<b>1</b>				
<i>Mr. Courtney M. Malveaux</i>	<b>1</b>				
<i>Mr. Travis M. Parsons</i>	<b>1</b>				
<i>Mr. Kenneth W. Richardson, II</i>				<b>1</b>	
<i>Ms. Milagro ("Milly") Rodriguez</i>	<b>1</b>				
<i>Mr. Charles L. ("Chuck") Stiff</i>	<b>1</b>				
<i>Mr. Thomas A. Thurston</i>	<b>1</b>				
<b>TOTALS</b>	<b>13</b>			<b>1</b>	

Mr. Withrow presented VDH's amendment to §40.A.7, Department change to §40.A.8, and Ms. Jolly's amendment to §40.A.8. Mr. Withrow suggests combining Mr. Malveaux's amendment to §40.A.8.a, but Ms. Jolly did not agree because her change was different. Mr. Stiff suggested breaking it up and taking a vote on Ms. Jolly's amendment to §40.A.8. There was a discussion about HIPAA or other legal obstacles around privacy. Mr. Withrow suggested adding language "to the extent permitted by law, including HIPAA." The Board discussed system to report. Ms. Jolly wanted to change "report" to "receive reports of" in her amendment. Ms. Jolly was ok with this change and Mr. Withrow's language changing the language to "To the extent permitted by law, including HIPAA, employer shall establish a system to receive report of..." Mr. Stiff asked the Board if there is any discussion on the agenda. The motion was made, properly seconded, a roll call vote was conducted, and the motion carried.

<i>VDH's amendment to §40.A.7, Department change to §40.A.8, and Ms. Jolly's amendment to §40.A.8.</i>	<i>Yea</i>	<i>Nay</i>	<i>Abstain</i>	<i>Absent</i>	<i>Other</i>
<i>Mr. Jeffery Steers</i>	<b>1</b>				
<i>Mr. Louis J. ("Lou") Cernak Jr.</i>		<b>1</b>			
<i>Dr. Dwight Flammia</i>	<b>1</b>				
<i>Mr. John D. Fulton</i>	<b>1</b>				
<i>Mr. Phil Glaize</i>	<b>1</b>				
<i>Ms. Tina Hoover</i>	<b>1</b>				
<i>Ms. Anna E. Jolly</i>	<b>1</b>				
<i>Mr. Michael. A. Luce</i>			<b>1</b>		

<i>Mr. Courtney M. Malveaux</i>	<b>1</b>				
<i>Mr. Travis M. Parsons</i>	<b>1</b>				
<i>Mr. Kenneth W. Richardson, II</i>				<b>1</b>	
<i>Ms. Milagro ("Milly") Rodriguez</i>	<b>1</b>				
<i>Mr. Charles L. ("Chuck") Stiff</i>	<b>1</b>				
<i>Mr. Thomas A. Thurston</i>	<b>1</b>				
<b>TOTALS</b>	<b>11</b>	<b>1</b>	<b>1</b>	<b>1</b>	

Mr. Withrow presented Mr. Malveaux's Amendment to § 40A.8.a. Mr. Parsons asked to remove "upon reasonable belief of the employer" and he was fine with the rest of the language and Mr. Malveaux agreed. Mr. Stiff asked the Board if there is any discussion on the agenda. The motion was made, properly seconded, a roll call vote was conducted, and the motion carried.

<i>Mr. Malveaux's Amendment to §40.A.8.a and Mr. Parson's change</i>	<i>Yea</i>	<i>Nay</i>	<i>Abstain</i>	<i>Absent</i>	<i>Other</i>
<i>Mr. Jeffery Steers</i>			<b>1</b>		
<i>Mr. Louis J. ("Lou") Cernak Jr.</i>	<b>1</b>				
<i>Dr. Dwight Flammia</i>	<b>1</b>				
<i>Mr. John D. Fulton</i>	<b>1</b>				
<i>Mr. Phil Glaize</i>	<b>1</b>				
<i>Ms. Tina Hoover</i>	<b>1</b>				
<i>Ms. Anna E. Jolly</i>	<b>1</b>				
<i>Mr. Michael. A. Luce</i>			<b>1</b>		
<i>Mr. Courtney M. Malveaux</i>	<b>1</b>				
<i>Mr. Travis M. Parsons</i>	<b>1</b>				
<i>Mr. Kenneth W. Richardson, II</i>				<b>1</b>	
<i>Ms. Milagro ("Milly") Rodriguez</i>	<b>1</b>				
<i>Mr. Charles L. ("Chuck") Stiff</i>	<b>1</b>				
<i>Mr. Thomas A. Thurston</i>	<b>1</b>				
<b>TOTALS</b>	<b>11</b>		<b>2</b>	<b>1</b>	

Mr. Withrow presented Mr. Malveaux's amendment and Ms. Jolly's amendment to §40.A.8.c. Mr. Malveaux withdrew his amendment. Mr. Stiff asked the Board if there is any discussion on the agenda. The motion was made, properly seconded, a roll call vote was conducted, and the motion carried.

<i>Ms. Jolly's Amendment to §40.A.8.c</i>	<i>Yea</i>	<i>Nay</i>	<i>Abstain</i>	<i>Absent</i>	<i>Other</i>
<i>Mr. Jeffery Steers</i>	<b>1</b>				
<i>Mr. Louis J. ("Lou") Cernak Jr.</i>	<b>1</b>				
<i>Dr. Dwight Flammia</i>				<b>1</b>	
<i>Mr. John D. Fulton</i>		<b>1</b>			
<i>Mr. Phil Glaize</i>	<b>1</b>				
<i>Ms. Tina Hoover</i>		<b>1</b>			

<i>Ms. Anna E. Jolly</i>	<b>1</b>				
<i>Mr. Michael. A. Luce</i>			<b>1</b>		
<i>Mr. Courtney M. Malveaux</i>		<b>1</b>			
<i>Mr. Travis M. Parsons</i>	<b>1</b>				
<i>Mr. Kenneth W. Richardson, II</i>				<b>1</b>	
<i>Ms. Milagro ("Milly") Rodriguez</i>	<b>1</b>				
<i>Mr. Charles L. ("Chuck") Stiff</i>	<b>1</b>				
<i>Mr. Thomas A. Thurston</i>	<b>1</b>				
<b>TOTALS</b>	<b>8</b>	<b>3</b>	<b>1</b>	<b>1</b>	

Mr. Withrow presented Ms. Rodriguez's amendment to §40.8.d. Mr. Stiff asked the Board if there is any discussion on the agenda. The motion was made, properly seconded, a roll call vote was conducted, and the motion carried.

<i>Ms. Rodriguez's Amendment to §40.8.d</i>	<i>Yea</i>	<i>Nay</i>	<i>Abstain</i>	<i>Absent</i>	<i>Other</i>
<i>Mr. Jeffery Steers</i>	<b>1</b>				
<i>Mr. Louis J. ("Lou") Cernak Jr.</i>	<b>1</b>				
<i>Dr. Dwight Flammia</i>	<b>1</b>				
<i>Mr. John D. Fulton</i>		<b>1</b>			
<i>Mr. Phil Glaize</i>	<b>1</b>				
<i>Ms. Tina Hoover</i>		<b>1</b>			
<i>Ms. Anna E. Jolly</i>	<b>1</b>				
<i>Mr. Michael. A. Luce</i>			<b>1</b>		
<i>Mr. Courtney M. Malveaux</i>	<b>1</b>				
<i>Mr. Travis M. Parsons</i>	<b>1</b>				
<i>Mr. Kenneth W. Richardson, II</i>				<b>1</b>	
<i>Ms. Milagro ("Milly") Rodriguez</i>	<b>1</b>				
<i>Mr. Charles L. ("Chuck") Stiff</i>	<b>1</b>				
<i>Mr. Thomas A. Thurston</i>	<b>1</b>				
<b>TOTALS</b>	<b>10</b>	<b>2</b>	<b>1</b>	<b>1</b>	

Mr. Withrow presented Ms. Rodriguez's amendment to §40.8.e. Mr. Stiff asked the Board if there is any discussion on the agenda. The motion was made, properly seconded, a roll call vote was conducted, and the motion carried.

<i>Ms. Rodriguez's Amendment to §40.8.e</i>	<i>Yea</i>	<i>Nay</i>	<i>Abstain</i>	<i>Absent</i>	<i>Other</i>
<i>Mr. Jeffery Steers</i>			<b>1</b>		
<i>Mr. Louis J. ("Lou") Cernak Jr.</i>	<b>1</b>				
<i>Dr. Dwight Flammia</i>			<b>1</b>		
<i>Mr. John D. Fulton</i>		<b>1</b>			
<i>Mr. Phil Glaize</i>	<b>1</b>				
<i>Ms. Tina Hoover</i>		<b>1</b>			
<i>Ms. Anna E. Jolly</i>	<b>1</b>				

<i>Mr. Michael. A. Luce</i>			<b>1</b>		
<i>Mr. Courtney M. Malveaux</i>	<b>1</b>				
<i>Mr. Travis M. Parsons</i>	<b>1</b>				
<i>Mr. Kenneth W. Richardson, II</i>				<b>1</b>	
<i>Ms. Milagro (“Milly”) Rodriguez</i>	<b>1</b>				
<i>Mr. Charles L. (“Chuck”) Stiff</i>		<b>1</b>			
<i>Mr. Thomas A. Thurston</i>	<b>1</b>				
<b>TOTALS</b>	<b>7</b>	<b>3</b>	<b>3</b>	<b>1</b>	

Mr. Withrow presented Department Changes to §40.A.9 – 40.C. Mr. Stiff asked the Board if there is any discussion on the agenda. The motion was made, properly seconded, a roll call vote was conducted, and the motion carried.

<i>Department changes to §40.A.9-40.C</i>	<i>Yea</i>	<i>Nay</i>	<i>Abstain</i>	<i>Absent</i>	<i>Other</i>
<i>Mr. Jeffery Steers</i>	<b>1</b>				
<i>Mr. Louis J. (“Lou”) Cernak Jr.</i>	<b>1</b>				
<i>Dr. Dwight Flammia</i>	<b>1</b>				
<i>Mr. John D. Fulton</i>	<b>1</b>				
<i>Mr. Phil Glaize</i>	<b>1</b>				
<i>Ms. Tina Hoover</i>	<b>1</b>				
<i>Ms. Anna E. Jolly</i>	<b>1</b>				
<i>Mr. Michael. A. Luce</i>	<b>1</b>				
<i>Mr. Courtney M. Malveaux</i>	<b>1</b>				
<i>Mr. Travis M. Parsons</i>	<b>1</b>				
<i>Mr. Kenneth W. Richardson, II</i>				<b>1</b>	
<i>Ms. Milagro (“Milly”) Rodriguez</i>	<b>1</b>				
<i>Mr. Charles L. (“Chuck”) Stiff</i>	<b>1</b>				
<i>Mr. Thomas A. Thurston</i>	<b>1</b>				
<b>TOTALS</b>	<b>13</b>			<b>1</b>	

Mr. Withrow presented Mr. Thurston’s amendment to §40.C.1 to change “and” to “or.” Mr. Stiff asked the Board if there is any discussion on the agenda. The motion was made, properly seconded, a roll call vote was conducted, and the motion carried.

<i>Mr. Thurston’s amendment to §40.C</i>	<i>Yea</i>	<i>Nay</i>	<i>Abstain</i>	<i>Absent</i>	<i>Other</i>
<i>Mr. Jeffery Steers</i>	<b>1</b>				
<i>Mr. Louis J. (“Lou”) Cernak Jr.</i>	<b>1</b>				
<i>Dr. Dwight Flammia</i>	<b>1</b>				
<i>Mr. John D. Fulton</i>		<b>1</b>			
<i>Mr. Phil Glaize</i>	<b>1</b>				
<i>Ms. Tina Hoover</i>	<b>1</b>				
<i>Ms. Anna E. Jolly</i>	<b>1</b>				
<i>Mr. Michael. A. Luce</i>	<b>1</b>				

<i>Mr. Courtney M. Malveaux</i>	<b>1</b>				
<i>Mr. Travis M. Parsons</i>	<b>1</b>				
<i>Mr. Kenneth W. Richardson, II</i>				<b>1</b>	
<i>Ms. Milagro (“Milly”) Rodriguez</i>	<b>1</b>				
<i>Mr. Charles L. (“Chuck”) Stiff</i>	<b>1</b>				
<i>Mr. Thomas A. Thurston</i>	<b>1</b>				
<b>TOTALS</b>	<b>12</b>	<b>1</b>		<b>1</b>	

Mr. Withrow presented Mr. Thurston’s amendment to §40.D.1. Mr. Stiff asked the Board if there is any discussion on the agenda. The motion was made, properly seconded, a roll call vote was conducted, and the motion carried.

<i>Mr. Thurston’s amendment to §40.D.1</i>	<i>Yea</i>	<i>Nay</i>	<i>Abstain</i>	<i>Absent</i>	<i>Other</i>
<i>Mr. Jeffery Steers</i>	<b>1</b>				
<i>Mr. Louis J. (“Lou”) Cernak Jr.</i>	<b>1</b>				
<i>Dr. Dwight Flammia</i>	<b>1</b>				
<i>Mr. John D. Fulton</i>	<b>1</b>				
<i>Mr. Phil Glaize</i>	<b>1</b>				
<i>Ms. Tina Hoover</i>	<b>1</b>				
<i>Ms. Anna E. Jolly</i>	<b>1</b>				
<i>Mr. Michael. A. Luce</i>	<b>1</b>				
<i>Mr. Courtney M. Malveaux</i>	<b>1</b>				
<i>Mr. Travis M. Parsons</i>	<b>1</b>				
<i>Mr. Kenneth W. Richardson, II</i>				<b>1</b>	
<i>Ms. Milagro (“Milly”) Rodriguez</i>	<b>1</b>				
<i>Mr. Charles L. (“Chuck”) Stiff</i>	<b>1</b>				
<i>Mr. Thomas A. Thurston</i>	<b>1</b>				
<b>TOTALS</b>	<b>13</b>			<b>1</b>	

Mr. Withrow presented Department changes from Section 40.D.1.a to 40.D.1.c. Mr. Stiff asked the Board if there is any discussion on the agenda. The motion was made, properly seconded, a roll call vote was conducted, and the motion carried.

<i>Department changes from Section 40.D.1.a to 40.D.1.c</i>	<i>Yea</i>	<i>Nay</i>	<i>Abstain</i>	<i>Absent</i>	<i>Other</i>
<i>Mr. Jeffery Steers</i>	<b>1</b>				
<i>Mr. Louis J. (“Lou”) Cernak Jr.</i>	<b>1</b>				
<i>Dr. Dwight Flammia</i>	<b>1</b>				
<i>Mr. John D. Fulton</i>	<b>1</b>				
<i>Mr. Phil Glaize</i>	<b>1</b>				
<i>Ms. Tina Hoover</i>	<b>1</b>				
<i>Ms. Anna E. Jolly</i>	<b>1</b>				
<i>Mr. Michael. A. Luce</i>	<b>1</b>				
<i>Mr. Courtney M. Malveaux</i>	<b>1</b>				



<b>Mr. Travis M. Parsons</b>	<b>1</b>				
<b>Mr. Kenneth W. Richardson, II</b>				<b>1</b>	
<b>Ms. Milagro (“Milly”) Rodriguez</b>	<b>1</b>				
<b>Mr. Charles L. (“Chuck”) Stiff</b>	<b>1</b>				
<b>Mr. Thomas A. Thurston</b>	<b>1</b>				
<b>TOTALS</b>	<b>13</b>			<b>1</b>	

Mr. Withrow presented Ms. Jolly’s Amendment to §40.D.1.d, added language “where feasible” and “Hand sanitizers required for use to protect against SARS-CoV-2 are flammable and use and storage in hot environments can result in a hazard.” Mr. Stiff asked the Board if there is any discussion on the agenda. The motion was made, properly seconded, a roll call vote was conducted, and the motion carried.

<b>Ms. Jolly’s Amendment to §40.D.1.d, added language “where feasible” and “Hand sanitizers</b>	<b>Yea</b>	<b>Nay</b>	<b>Abstain</b>	<b>Absent</b>	<b>Other</b>
<b>Mr. Jeffery Steers</b>	<b>1</b>				
<b>Mr. Louis J. (“Lou”) Cernak Jr.</b>	<b>1</b>				
<b>Dr. Dwight Flammia</b>	<b>1</b>				
<b>Mr. John D. Fulton</b>	<b>1</b>				
<b>Mr. Phil Glaize</b>			<b>1</b>		
<b>Ms. Tina Hoover</b>				<b>1</b>	
<b>Ms. Anna E. Jolly</b>	<b>1</b>				
<b>Mr. Michael. A. Luce</b>			<b>1</b>		
<b>Mr. Courtney M. Malveaux</b>	<b>1</b>				
<b>Mr. Travis M. Parsons</b>	<b>1</b>				
<b>Mr. Kenneth W. Richardson, II</b>				<b>1</b>	
<b>Ms. Milagro (“Milly”) Rodriguez</b>	<b>1</b>				
<b>Mr. Charles L. (“Chuck”) Stiff</b>	<b>1</b>				
<b>Mr. Thomas A. Thurston</b>	<b>1</b>				
<b>TOTALS</b>	<b>10</b>		<b>2</b>	<b>2</b>	

Mr. Malvauex asked to amend to strike “and hand sanitizer” and there was a lot of discussion. Mr. Malvauex suggested making an alternative motion “Handwashing facilities or if hand washing facilities are unavailable, hand sanitizer, are available...” Mr. Stiff asked the Board if there is any discussion on the agenda. The motion was made, properly seconded, a roll call vote was conducted, and the motion failed.

<b>Mr. Malvauex Amendment to hand sanitizer</b>	<b>Yea</b>	<b>Nay</b>	<b>Abstain</b>	<b>Absent</b>	<b>Other</b>
<b>Mr. Jeffery Steers</b>		<b>1</b>			
<b>Mr. Louis J. (“Lou”) Cernak Jr.</b>		<b>1</b>			
<b>Dr. Dwight Flammia</b>		<b>1</b>			
<b>Mr. John D. Fulton</b>		<b>1</b>			

<i>Mr. Phil Glaize</i>		<b>1</b>			
<i>Ms. Tina Hoover</i>	<b>1</b>				
<i>Ms. Anna E. Jolly</i>		<b>1</b>			
<i>Mr. Michael. A. Luce</i>			<b>1</b>		
<i>Mr. Courtney M. Malveaux</i>	<b>1</b>				
<i>Mr. Travis M. Parsons</i>		<b>1</b>			
<i>Mr. Kenneth W. Richardson, II</i>				<b>1</b>	
<i>Ms. Milagro (“Milly”) Rodriguez</i>		<b>1</b>			
<i>Mr. Charles L. (“Chuck”) Stiff</i>		<b>1</b>			
<i>Mr. Thomas A. Thurston</i>		<b>1</b>			
<b>TOTALS</b>	<b>2</b>	<b>10</b>	<b>1</b>	<b>1</b>	

Mr. Malvaeux withdrew his amendment regarding §40.E

Ms. Jolly withdrew her amendment regarding §40.E

Mr. Withrow presented VDH’s Amendment to §40.E, to split §40.E into an E and an F. Mr. Stiff asked the Board if there is any discussion on the agenda. The motion was made, properly seconded, a roll call vote was conducted, and the motion carried.

<b><i>VDH’s Amendment to §40.E, to split §40.E into E and an F</i></b>	<b><i>Yea</i></b>	<b><i>Nay</i></b>	<b><i>Abstain</i></b>	<b><i>Absent</i></b>	<b><i>Other</i></b>
<i>Mr. Jeffery Steers</i>	<b>1</b>				
<i>Mr. Louis J. (“Lou”) Cernak Jr.</i>	<b>1</b>				
<i>Dr. Dwight Flammia</i>	<b>1</b>				
<i>Mr. John D. Fulton</i>	<b>1</b>				
<i>Mr. Phil Glaize</i>	<b>1</b>				
<i>Ms. Tina Hoover</i>	<b>1</b>				
<i>Ms. Anna E. Jolly</i>	<b>1</b>				
<i>Mr. Michael. A. Luce</i>			<b>1</b>		
<i>Mr. Courtney M. Malveaux</i>	<b>1</b>				
<i>Mr. Travis M. Parsons</i>	<b>1</b>				
<i>Mr. Kenneth W. Richardson, II</i>				<b>1</b>	
<i>Ms. Milagro (“Milly”) Rodriguez</i>	<b>1</b>				
<i>Mr. Charles L. (“Chuck”) Stiff</i>	<b>1</b>				
<i>Mr. Thomas A. Thurston</i>	<b>1</b>				
<b>TOTALS</b>	<b>12</b>		<b>1</b>	<b>1</b>	

Mr. Withrow presented Department changes to §40.G, Mr. Malvaeaux’s Amendment to §40.H and Department changes to §40.I.1. Mr. Stiff asked the Board if there is any discussion on the agenda. The motion was made, properly seconded, a roll call vote was conducted, and the motion carried.

<b><i>Department changes to §40.G, Mr. Malvaeaux’s Amendment to §40.H and Department changes to §40.I.1</i></b>	<b><i>Yea</i></b>	<b><i>Nay</i></b>	<b><i>Abstain</i></b>	<b><i>Absent</i></b>	<b><i>Other</i></b>
<b><i>Mr. Jeffery Steers</i></b>	<b><i>1</i></b>				
<b><i>Mr. Louis J. (“Lou”) Cernak Jr.</i></b>	<b><i>1</i></b>				
<b><i>Dr. Dwight Flammia</i></b>	<b><i>1</i></b>				
<b><i>Mr. John D. Fulton</i></b>				<b><i>1</i></b>	
<b><i>Mr. Phil Glaize</i></b>	<b><i>1</i></b>				
<b><i>Ms. Tina Hoover</i></b>	<b><i>1</i></b>				
<b><i>Ms. Anna E. Jolly</i></b>	<b><i>1</i></b>				
<b><i>Mr. Michael. A. Luce</i></b>	<b><i>1</i></b>				
<b><i>Mr. Courtney M. Malveaux</i></b>	<b><i>1</i></b>				
<b><i>Mr. Travis M. Parsons</i></b>	<b><i>1</i></b>				
<b><i>Mr. Kenneth W. Richardson, II</i></b>				<b><i>1</i></b>	
<b><i>Ms. Milagro (“Milly”) Rodriguez</i></b>	<b><i>1</i></b>				
<b><i>Mr. Charles L. (“Chuck”) Stiff</i></b>	<b><i>1</i></b>				
<b><i>Mr. Thomas A. Thurston</i></b>	<b><i>1</i></b>				
<b><i>TOTALS</i></b>	<b><i>12</i></b>			<b><i>2</i></b>	

Mr. Withrow presented Mr. Malveaux’s amendment to §40.I.2 and Ms. Jolly’s amendment to §40.I.3. Mr. Stiff asked the Board if there is any discussion on the agenda. The motion was made, properly seconded, a roll call vote was conducted, and the motion carried.

<b><i>Mr. Malveaux’s amendment to §40.I.2 and Ms. Jolly’s amendment to §40.I.3</i></b>	<b><i>Yea</i></b>	<b><i>Nay</i></b>	<b><i>Abstain</i></b>	<b><i>Absent</i></b>	<b><i>Other</i></b>
<b><i>Mr. Jeffery Steers</i></b>	<b><i>1</i></b>				
<b><i>Mr. Louis J. (“Lou”) Cernak Jr.</i></b>	<b><i>1</i></b>				
<b><i>Dr. Dwight Flammia</i></b>	<b><i>1</i></b>				
<b><i>Mr. John D. Fulton</i></b>			<b><i>1</i></b>		
<b><i>Mr. Phil Glaize</i></b>	<b><i>1</i></b>				
<b><i>Ms. Tina Hoover</i></b>	<b><i>1</i></b>				
<b><i>Ms. Anna E. Jolly</i></b>	<b><i>1</i></b>				
<b><i>Mr. Michael. A. Luce</i></b>	<b><i>1</i></b>				
<b><i>Mr. Courtney M. Malveaux</i></b>	<b><i>1</i></b>				
<b><i>Mr. Travis M. Parsons</i></b>	<b><i>1</i></b>				
<b><i>Mr. Kenneth W. Richardson, II</i></b>				<b><i>1</i></b>	
<b><i>Ms. Milagro (“Milly”) Rodriguez</i></b>	<b><i>1</i></b>				
<b><i>Mr. Charles L. (“Chuck”) Stiff</i></b>	<b><i>1</i></b>				
<b><i>Mr. Thomas A. Thurston</i></b>	<b><i>1</i></b>				
<b><i>TOTALS</i></b>	<b><i>12</i></b>		<b><i>1</i></b>	<b><i>1</i></b>	

Mr. Withrow presented VDH’s amendment to §40.I.4. Mr. Stiff asked the Board if there is any discussion on the agenda. The motion was made, properly seconded, a roll call vote was conducted, and the motion carried.

<i>VDH’s amendment to §40.I.4</i>	<i>Yea</i>	<i>Nay</i>	<i>Abstain</i>	<i>Absent</i>	<i>Other</i>
<i>Mr. Jeffery Steers</i>	<b>1</b>				
<i>Mr. Louis J. (“Lou”) Cernak Jr.</i>	<b>1</b>				
<i>Dr. Dwight Flammia</i>	<b>1</b>				
<i>Mr. John D. Fulton</i>	<b>1</b>				
<i>Mr. Phil Glaize</i>	<b>1</b>				
<i>Ms. Tina Hoover</i>		<b>1</b>			
<i>Ms. Anna E. Jolly</i>	<b>1</b>				
<i>Mr. Michael. A. Luce</i>			<b>1</b>		
<i>Mr. Courtney M. Malveaux</i>	<b>1</b>				
<i>Mr. Travis M. Parsons</i>	<b>1</b>				
<i>Mr. Kenneth W. Richardson, II</i>				<b>1</b>	
<i>Ms. Milagro (“Milly”) Rodriguez</i>	<b>1</b>				
<i>Mr. Charles L. (“Chuck”) Stiff</i>	<b>1</b>				
<i>Mr. Thomas A. Thurston</i>	<b>1</b>				
<b>TOTALS</b>	<b>11</b>	<b>1</b>	<b>1</b>	<b>1</b>	

Mr. Withrow presented Mr. Thurston’s amendment to §40.I.5, Ms. Jolly’s amendment to §40.I.6, and Mr. Malveaux’s amendment to §40.I.6 Mr. Stiff asked the Board if there is any discussion on the agenda. The motion was made, properly seconded, a roll call vote was conducted, and the motion carried.

<i>Mr. Thurston’s amendment to §40.I.5, Ms. Jolly’s amendment to §40.I.6, and Mr. Malveaux’s amendment to §40.I.6</i>	<i>Yea</i>	<i>Nay</i>	<i>Abstain</i>	<i>Absent</i>	<i>Other</i>
<i>Mr. Jeffery Steers</i>	<b>1</b>				
<i>Mr. Louis J. (“Lou”) Cernak Jr.</i>	<b>1</b>				
<i>Dr. Dwight Flammia</i>	<b>1</b>				
<i>Mr. John D. Fulton</i>	<b>1</b>				
<i>Mr. Phil Glaize</i>	<b>1</b>				
<i>Ms. Tina Hoover</i>	<b>1</b>				
<i>Ms. Anna E. Jolly</i>	<b>1</b>				
<i>Mr. Michael. A. Luce</i>	<b>1</b>				
<i>Mr. Courtney M. Malveaux</i>	<b>1</b>				
<i>Mr. Travis M. Parsons</i>	<b>1</b>				
<i>Mr. Kenneth W. Richardson, II</i>				<b>1</b>	
<i>Ms. Milagro (“Milly”) Rodriguez</i>	<b>1</b>				
<i>Mr. Charles L. (“Chuck”) Stiff</i>	<b>1</b>				
<i>Mr. Thomas A. Thurston</i>	<b>1</b>				
<b>TOTALS</b>	<b>13</b>			<b>1</b>	

Mr. Withrow presented Department changes §40.I.8 based on Mr. Malveaux’s earlier amendments regarding hand sanitizer, adding the language “where feasible,” adding Ms. Jolly’s earlier amendment regarding flammability of hand sanitizers, and Department change to 40.I.9. Mr. Stiff asked the Board if there is any discussion on the agenda. The motion was made, properly seconded, a roll call vote was conducted, and the motion carried.

<b><i>§40.I.8 based on Mr. Malveaux’s earlier amendments regarding hand sanitizer, adding the language “where feasible,” adding Ms. Jolly’s earlier amendment regarding flammability of hand sanitizers, and Department change to 40.I.9</i></b>	<b><i>Yea</i></b>	<b><i>Nay</i></b>	<b><i>Abstain</i></b>	<b><i>Absent</i></b>	<b><i>Other</i></b>
<b><i>Mr. Jeffery Steers</i></b>	<b><i>1</i></b>				
<b><i>Mr. Louis J. (“Lou”) Cernak Jr.</i></b>	<b><i>1</i></b>				
<b><i>Dr. Dwight Flammia</i></b>	<b><i>1</i></b>				
<b><i>Mr. John D. Fulton</i></b>	<b><i>1</i></b>				
<b><i>Mr. Phil Glaize</i></b>	<b><i>1</i></b>				
<b><i>Ms. Tina Hoover</i></b>	<b><i>1</i></b>				
<b><i>Ms. Anna E. Jolly</i></b>	<b><i>1</i></b>				
<b><i>Mr. Michael. A. Luce</i></b>	<b><i>1</i></b>				
<b><i>Mr. Courtney M. Malveaux</i></b>	<b><i>1</i></b>				
<b><i>Mr. Travis M. Parsons</i></b>	<b><i>1</i></b>				
<b><i>Mr. Kenneth W. Richardson, II</i></b>				<b><i>1</i></b>	
<b><i>Ms. Milagro (“Milly”) Rodriguez</i></b>	<b><i>1</i></b>				
<b><i>Mr. Charles L. (“Chuck”) Stiff</i></b>	<b><i>1</i></b>				
<b><i>Mr. Thomas A. Thurston</i></b>	<b><i>1</i></b>				
<b><i>TOTALS</i></b>	<b><i>13</i></b>			<b><i>1</i></b>	

Mr. Withrow presented Mr. Malveaux’s to §40.J, delete section J, Mr. Thurston’s amendment to §40.L to move it to §90, and Department changes from §40.K to 50.A.4. Mr. Stiff asked the Board if there is any discussion on the agenda. The motion was made, properly seconded, a roll call vote was conducted, and the motion carried.

<b><i>presented Mr. Malveaux’s to §40.J, delete section J, Mr. Thurston’s amendment to §40.L to move it to §90, and Department changes from §40.K to 50.A.4</i></b>	<b><i>Yea</i></b>	<b><i>Nay</i></b>	<b><i>Abstain</i></b>	<b><i>Absent</i></b>	<b><i>Other</i></b>
<b><i>Mr. Jeffery Steers</i></b>	<b><i>1</i></b>				
<b><i>Mr. Louis J. (“Lou”) Cernak Jr.</i></b>	<b><i>1</i></b>				
<b><i>Dr. Dwight Flammia</i></b>	<b><i>1</i></b>				
<b><i>Mr. John D. Fulton</i></b>	<b><i>1</i></b>				
<b><i>Mr. Phil Glaize</i></b>	<b><i>1</i></b>				
<b><i>Ms. Tina Hoover</i></b>	<b><i>1</i></b>				
<b><i>Ms. Anna E. Jolly</i></b>	<b><i>1</i></b>				
<b><i>Mr. Michael. A. Luce</i></b>	<b><i>1</i></b>				
<b><i>Mr. Courtney M. Malveaux</i></b>	<b><i>1</i></b>				

<i>Mr. Travis M. Parsons</i>	<b>1</b>				
<i>Mr. Kenneth W. Richardson, II</i>				<b>1</b>	
<i>Ms. Milagro (“Milly”) Rodriguez</i>	<b>1</b>				
<i>Mr. Charles L. (“Chuck”) Stiff</i>	<b>1</b>				
<i>Mr. Thomas A. Thurston</i>	<b>1</b>				
<b>TOTALS</b>	<b>13</b>			<b>1</b>	

Mr. Withrow presented Department changes to §50.A.5, VDH Amendment to §50.A.5, Mr. Thurston’s Amendment to §50.B.1, VDH Amendment to §50.B.3, and Department changes to §50.B.8. (stopped before CM Amendment to 50.B.8) Mr. Stiff asked the Board if there is any discussion on the agenda. The motion was made, properly seconded, a roll call vote was conducted, and the motion carried.

<i>Department changes to §50.A.5, VDH Amendment to §50.A.5, Mr. Thurston’s Amendment to §50.B.1, VDH Amendment to §50.B.3, and Department changes to §50.B.8</i>	<i>Yea</i>	<i>Nay</i>	<i>Abstain</i>	<i>Absent</i>	<i>Other</i>
<i>Mr. Jeffery Steers</i>	<b>1</b>				
<i>Mr. Louis J. (“Lou”) Cernak Jr.</i>	<b>1</b>				
<i>Dr. Dwight Flammia</i>	<b>1</b>				
<i>Mr. John D. Fulton</i>	<b>1</b>				
<i>Mr. Phil Glaize</i>	<b>1</b>				
<i>Ms. Tina Hoover</i>	<b>1</b>				
<i>Ms. Anna E. Jolly</i>	<b>1</b>				
<i>Mr. Michael. A. Luce</i>			<b>1</b>		
<i>Mr. Courtney M. Malveaux</i>	<b>1</b>				
<i>Mr. Travis M. Parsons</i>	<b>1</b>				
<i>Mr. Kenneth W. Richardson, II</i>				<b>1</b>	
<i>Ms. Milagro (“Milly”) Rodriguez</i>	<b>1</b>				
<i>Mr. Charles L. (“Chuck”) Stiff</i>	<b>1</b>				
<i>Mr. Thomas A. Thurston</i>	<b>1</b>				
<b>TOTALS</b>	<b>12</b>		<b>1</b>	<b>1</b>	

**ITEMS OF INTEREST FROM THE DEPARTMENT OF LABOR AND INDUSTRY**

The Department had no items of interest.

**MEETING ADJOURNMENT**

Mr. Stiff asked the Board if there is a motion to recess, and the meeting of the Safety and Health Codes Board ended around 5:00 PM on July 7, 2020.

**DRAFT**

**SAFETY AND HEALTH CODES BOARD  
PUBLIC HEARING AND MEETING MINUTES  
Wednesday July 15, 2020**

On March 12, 2020, Governor Ralph Northam issued Executive Order Number 51, declaring a State of Emergency under § 44-146.17 due to the spread within the Commonwealth and surrounding states of the Novel Coronavirus (COVID-19), a communicable disease of public health threat. On May 26, 2020, Governor Northam issued Executive Order Number 63, directing the Commissioner of Labor and Industry to promulgate emergency standards to “control, prevent, and mitigate the spread of COVID-19 in the workplace.”

“Under §2.2-3708.2.A.3, a public body may meet by electronic 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 § 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 address the emergency.”

Given the nature of the emergency, that COVID-19 spreads easily from person to person, and the purpose of the meeting, which was to promulgate an emergency temporary standard specifically addressing the emergency, the Safety and Health Codes Board (“Board”) held an entirely electronic emergency meeting utilizing WebEx.

The Board members and Department staff listed below as “participating” were all participating via WebEx. There was no quorum of Board members *physically* assembled at one location. There was a quorum of Board members participating on WebEx for purposes of the emergency electronic meeting.

This meeting was a continued emergency meeting under Va. Code 2.2-3708.2(D)(2), following the initial meeting on June 24, 2020, the continued meeting on June 29, 2020, and the continued meeting on July 7, 2020. Notice of the continued meeting was provided to the public contemporaneously with the notice given to the Board. The notice invited the public to witness the meeting remotely via WebEx. Notice was provided on the Department of Labor and Industry’s (DOLI) website at <https://www.doli.virginia.gov/safety-and-health-codes-board-electronic-emergency-meeting/> as well as on the Virginia Regulatory Townhall’s website at <https://townhall.virginia.gov/L/ViewMeeting.cfm?MeetingID=31089>.

A copy of the proposed agenda and all agenda packets, unless exempt, and all materials furnished to members of the Board for this meeting were made available for public inspection on the Doli’s website at <https://www.doli.virginia.gov/safety-and-health-codes-board-electronic-emergency-meeting/> and the Virginia Regulatory Townhall’s website at <https://townhall.virginia.gov/L/ViewMeeting.cfm?MeetingID=31089> contemporaneously with the documents being furnished to the members of the Board.

**BOARD MEMBERS**

**PARTICIPATING:**

Mr. Charles Stiff, Interim Chair  
Mr. Jeff Steers  
Mr. Louis J. Cernak, Jr.

Dr. Dwight Flammia  
Mr. John Fulton  
Ms. Tina Hoover  
Ms. Anna Jolly  
Mr. Michael Luce  
Mr. Courtney Malveaux, participated for parts of the meeting, absences noted  
Mr. Travis Parsons  
Mr. Kenneth Richardson, II  
Ms. Milagro Rodriguez  
Mr. Thomas Thurston

**BOARD MEMBERS ABSENT:** Mr. Phil Glaize

**STAFF PARTICIPATING:** Mr. C. Ray Davenport, Commissioner of Dept. of Labor & Industry  
Mr. William P. Burge, Assistant Commissioner  
Mr. Jay Withrow, Director, Legal Support, BLS, VPP, ORA, and OWB  
Ms. Princy R. Doss, Director, Policy, Planning, & Public Information  
Mr. Ron Graham, Director, VOSH Health Compliance  
Ms. Marta Fernandes, VOSH Safety Compliance  
Ms. Jennifer Rose, Director  
Ms. Christine Childress  
Mr. Richard White  
Ms. Diane Duell, Director, Legal Support  
Ms. Holly Trice, Senior Staff Attorney  
Mr. Edward G. Hilton, Director of Boiler Safety  
Ms. Cristin Bernhardt, Staff Attorney  
Mr. Alex West, Staff Attorney  
Ms. Elizabeth DePatie, DOLI Legal Intern

**OTHERS PARTICIPATING:** Mr. Joshua Laws, Assistant Attorney General  
Ms. Lisa Wright, Court Reporter, Chandler & Halasz, Stenographic Court Reporters

#### **CALL TO ORDER**

Chair Chuck Stiff called the Public meeting to order at 9:15am. A quorum was present. Chair Stiff made opening remarks informing the public that this meeting was a continued emergency electronic meeting, held under Va. Code Section 2.2-3708.2, and using WebEx to allow panelists (Board members and DOLI staff) and participants to listen to the meeting by internet or telephone.

The purpose of the continued emergency meeting was to adopt an Emergency Temporary Standard under Va. Code 40.1-22(6a), Infectious Disease Prevention, SARS-CoV-2 Virus That Causes COVID-19, VAC 25-220, applicable to all employers and employees covered by Virginia Occupational Safety and Health (VOSH) program.



Section 2.2-3708.2(d)(7), Code of Virginia, requires that "votes taken during any meeting conducted through electronic communication means shall be recorded by name in roll-call fashion and included in the minutes." It also requires that "For emergency meetings held by electronic communication means, the nature of the emergency shall be stated in the minutes."

**APPROVAL OF AGENDA**

Chair Stiff asked the Board if there was any discussion on the agenda. There was none. Chair Stiff asked if there was a motion to approve the agenda. The motion was made, properly seconded and the roll call vote was conducted. The motion carried.

<b>Approval of Agenda</b>	<b>Yea</b>	<b>Nay</b>	<b>Abstain</b>	<b>Absent</b>	<b>Other</b>
Mr. Jeffery Steers	1				
Mr. Louis J. ("Lou") Cernak Jr.	1				
Dr. Dwight Flammia	1				
Mr. John D. Fulton	1				
Mr. Phil Glaize				1	
Ms. Tina Hoover	1				
Ms. Anna E. Jolly	1				
Mr. Michael. A. Luce	1				
Mr. Courtney M. Malveaux	1				
Mr. Travis M. Parsons	1				
Mr. Kenneth W. Richardson, II	1				
Ms. Milagro ("Milly") Rodriguez	1				
Mr. Charles L. ("Chuck") Stiff	1				
Mr. Thomas A. Thurston	1				
<b>TOTALS</b>	<b>13</b>	<b>0</b>	<b>0</b>	<b>1</b>	

**NEW BUSINESS**

After approval of the agenda, Chair stiff moved onto new business, which consisted of reviewing and amending the proposed emergency temporary standard for Infectious Disease Prevention, SARS-CoV-2 Virus that causes COVID-19. Chair Stiff recognized the department. Before discussing the standard, Director Withrow gave an update on statistics of the Coronavirus both in Virginia and across the United States. The department then returned to discussing the proposed standard.

The department prepared a document entitled "16 VAC 25-220, Emergency Temporary Standard Infectious Disease Prevention: SARS-CoV-2 Virus That Causes COVID-19 VOSH PROPOSED AMENDMENTS: July 15, 2020, Reflecting Changes to June 12, 2020 Draft COMBINED BOARD MEMBER AMENDMENTS: [THROUGH July 7, 2020]" ("combined board document") This document combined all the amendments the board members had introduced into one document as well as revisions the Department and the Administration wished to make. References to certain page numbers in motions that were made during this meeting, reference the page numbers of the above listed document.

Board member Malveaux was unavailable for the entire meeting; the department began with his amendments so that he was present to discuss his amendments. Board Member Malveaux' first motion

was to delete section 50.B.8 of 16VAC25-220. Chair Stiff recognized Board member Malveaux who explained his reasoning for his amendment. The Board further discussed the matter.

Chair Stiff asked if someone would make a motion. Board Member Malveaux made a motion to delete section 50.B.8. The motion was made, properly seconded, and a roll call vote was conducted. The motion failed.

<b>Malveaux's motion to delete 16VAC25-220-50.B.8</b>	<b>Yea</b>	<b>Nay</b>	<b>Abstain</b>	<b>Absent</b>	<b>Other</b>
Mr. Jeffery Steers		1			
Mr. Louis J. ("Lou") Cernak Jr.		1			
Dr. Dwight Flammia		1			
Mr. John D. Fulton	1				
Mr. Phil Glaize				1	
Ms. Tina Hoover	1				
Ms. Anna E. Jolly		1			
Mr. Michael. A. Luce			1		
Mr. Courtney M. Malveaux	1				
Mr. Travis M. Parsons		1			
Mr. Kenneth W. Richardson, II		1			
Ms. Milagro ("Milly") Rodriguez		1			
Mr. Charles L. ("Chuck") Stiff			1		
Mr. Thomas A. Thurston		1			
<b>TOTALS</b>	<b>3</b>	<b>8</b>	<b>2</b>	<b>1</b>	

Chair Stiff called for the next item. The department turned to page 64 to Board member Malveaux's amendment of section 90C, which appears on page 65 of the combined board document. Section 90 of the proposed standard concerns anti-discrimination/whistleblower and Director Withrow gave the Board background information on §40.1-51.2:1 and 16VAC25-60-110 (whistleblower statute and regulation), before turning to Board Member Malveaux to discuss his amendment. Board Member Malveaux explained his reasoning for the amendment. The Board discussed the matter.

Chair Stiff asked if someone would make a motion to amend section 90C. The motion was made, properly seconded, and a roll call vote was conducted. The motion failed.

<b>Malveaux's motion to amend section 90C of 16VAC25-220</b>	<b>Yea</b>	<b>Nay</b>	<b>Abstain</b>	<b>Absent</b>	<b>Other</b>
Mr. Jeffery Steers			1		
Mr. Louis J. ("Lou") Cernak Jr.		1			
Dr. Dwight Flammia			1		
Mr. John D. Fulton	1				
Mr. Phil Glaize				1	
Ms. Tina Hoover	1				
Ms. Anna E. Jolly		1			
Mr. Michael. A. Luce			1		
Mr. Courtney M. Malveaux	1				
Mr. Travis M. Parsons		1			

Mr. Kenneth W. Richardson, II	1				
Ms. Milagro ("Milly") Rodriguez		1			
Mr. Charles L. ("Chuck") Stiff	1				
Mr. Thomas A. Thurston		1			
<b>TOTALS</b>	<b>5</b>	<b>5</b>	<b>3</b>	<b>1</b>	

After Board member Malveaux' second motion, Board Member Malveaux left the meeting.

Chair Stiff called for the next item. The department moved on to pages 8 and 9 of the combined board document which addressed the revisions to 10G put forth by the Administration.

Chair Stiff asked if there was any discussion on the matter. There was none.

Chair Stiff asked if someone would make a motion to accept the Administration's revisions to 10G. The motion was made, properly seconded, and a roll call vote was conducted. The motion carried.

<b>Motion on Administration's amendments to 10G</b>	<b>Yea</b>	<b>Nay</b>	<b>Abstain</b>	<b>Absent</b>	<b>Other</b>
Mr. Jeffery Steers	1				
Mr. Louis J. ("Lou") Cernak Jr.	1				
Dr. Dwight Flammia	1				
Mr. John D. Fulton	1				
Mr. Phil Glaize				1	
Ms. Tina Hoover	1				
Ms. Anna E. Jolly	1				
Mr. Michael. A. Luce	1				
Mr. Courtney M. Malveaux				1	
Mr. Travis M. Parsons	1				
Mr. Kenneth W. Richardson, II	1				
Ms. Milagro ("Milly") Rodriguez	1				
Mr. Charles L. ("Chuck") Stiff	1				
Mr. Thomas A. Thurston	1				
<b>TOTALS</b>	<b>12</b>	<b>0</b>	<b>0</b>	<b>2</b>	

The Board recessed from 10:25am to 10:35am.

At the resumption of the meeting at 10:35am, Chair Stiff called for the next item. Board member Malveaux returned to the meeting. The department moved on to pages 34 of the combined board document. Board member Parsons introduced an amendment to section 50.B.8 regarding psychological and behavioral support. The department asked if the department could add in an amendment to Board Member Parson's amendment adding in the phrase "to the extent feasible." Board Member Parson agreed to the department's addition.

Chair Stiff asked if there was any discussion on the matter. There was none.

Chair Stiff asked if someone would make a motion to accept Board member Parson’s amendment to section 50.B.8. The motion was made, properly seconded, and a roll call vote was conducted. The motion carried.

<b>Parson’s motion on page 34 to amend 50.B.8</b>	<b>Yea</b>	<b>Nay</b>	<b>Abstain</b>	<b>Absent</b>	<b>Other</b>
Mr. Jeffery Steers			1		
Mr. Louis J. (“Lou”) Cernak Jr.	1				
Dr. Dwight Flammia	1				
Mr. John D. Fulton	1				
Mr. Phil Glaize				1	
Ms. Tina Hoover	1				
Ms. Anna E. Jolly	1				
Mr. Michael. A. Luce			1		
Mr. Courtney M. Malveaux	1				
Mr. Travis M. Parsons	1				
Mr. Kenneth W. Richardson, II	1				
Ms. Milagro (“Milly”) Rodriguez	1				
Mr. Charles L. (“Chuck”) Stiff			1		
Mr. Thomas A. Thurston	1				
<b>TOTALS</b>	<b>10</b>		<b>3</b>	<b>1</b>	

Board member Malveaux left the meeting.

Chair Stiff called for the next item. The department moved to page 34 of the document, where the Department of Health had recommended the words “health care setting” be defined. Director Withrow explained the term was only used once and that the department felt there was sufficient guidance in the definition of “exposure risk level.” Board member Flammia accepted the department’s reasoning and no motion was made.

Chair Stiff called for the next item. The department moved on to pages 33-36 of the combined document. The department asked that the board consider the revisions on these pages, adding and deleting a few words on these pages to “clean up” the document.

Chair Stiff asked if there was any discussion on the matter. There was none.

Chair Stiff asked if someone would make a motion to accept the department’s recommendation to make clean up revisions to page 33-36 of the combined document. The motion was made, properly seconded, and a roll call vote was conducted. The motion carried.

<b>Motion on Department’s clean up of pages 33-36</b>	<b>Yea</b>	<b>Nay</b>	<b>Abstain</b>	<b>Absent</b>	<b>Other</b>
Mr. Jeffery Steers	1				
Mr. Louis J. (“Lou”) Cernak Jr.	1				
Dr. Dwight Flammia	1				
Mr. John D. Fulton	1				
Mr. Phil Glaize				1	

Ms. Tina Hoover	1				
Ms. Anna E. Jolly	1				
Mr. Michael. A. Luce	1				
Mr. Courtney M. Malveaux				1	
Mr. Travis M. Parsons	1				
Mr. Kenneth W. Richardson, II	1				
Ms. Milagro ("Milly") Rodriguez	1				
Mr. Charles L. ("Chuck") Stiff	1				
Mr. Thomas A. Thurston	1				
TOTALS	12	0	0	2	

Board member Malveaux returned to the meeting.

Chair Stiff called for the next item. The department moved to page 36 and Board Member Thurston's amendment regarding employee representation in the assessment process. The department made some suggestions to Board Member Thurston's amendment that Board Member Thurston accepted.

Chair Stiff asked if there was any discussion on the matter. There was none.

Chair Stiff asked if someone would make a motion to make to changes suggested by Board member Thurston and the department on page 36. The motion was made, properly seconded, and a roll call vote was conducted. The motion carried.

<b>Motion on Thurston and Dept. amendments on page 36</b>	<b>Yea</b>	<b>Nay</b>	<b>Abstain</b>	<b>Absent</b>	<b>Other</b>
Mr. Jeffery Steers	1				
Mr. Louis J. ("Lou") Cernak Jr.	1				
Dr. Dwight Flammia	1				
Mr. John D. Fulton			1		
Mr. Phil Glaize				1	
Ms. Tina Hoover	1				
Ms. Anna E. Jolly	1				
Mr. Michael. A. Luce			1		
Mr. Courtney M. Malveaux	1				
Mr. Travis M. Parsons	1				
Mr. Kenneth W. Richardson, II	1				
Ms. Milagro ("Milly") Rodriguez	1				
Mr. Charles L. ("Chuck") Stiff	1				
Mr. Thomas A. Thurston	1				
TOTALS	11	0	2	1	

Chair Stiff called for the next item. The department moved to page 37 and an amendment proposed by Board member Jolly. The department felt the amendment was repetitive. Board member Jolly withdrew the amendment.

Chair Stiff called for the next item. The department moved to pages 36 and 37. These were clean up items.

Chair Stiff asked if there was any discussion on the matter. There was none.

Chair Stiff asked if someone would make a motion to accept the department’s recommendation for clean up revisions on pages 36-37 through item 4. The motion was made, properly seconded, and a roll call vote was conducted. The motion carried.

<b>Dept’s motion on clean up items on pages 36-37 through item 4</b>	<b>Yea</b>	<b>Nay</b>	<b>Abstain</b>	<b>Absent</b>	<b>Other</b>
Mr. Jeffery Steers	1				
Mr. Louis J. (“Lou”) Cernak Jr.	1				
Dr. Dwight Flammia	1				
Mr. John D. Fulton	1				
Mr. Phil Glaize				1	
Ms. Tina Hoover	1				
Ms. Anna E. Jolly	1				
Mr. Michael. A. Luce	1				
Mr. Courtney M. Malveaux	1				
Mr. Travis M. Parsons	1				
Mr. Kenneth W. Richardson, II	1				
Ms. Milagro (“Milly”) Rodriguez	1				
Mr. Charles L. (“Chuck”) Stiff	1				
Mr. Thomas A. Thurston	1				
<b>TOTALS</b>	<b>13</b>	<b>0</b>	<b>0</b>	<b>1</b>	

Chair Stiff called for the next item. The department moved on to page 37 and an amendment by Board member Rodriguez to amend 50.c.5. Board member Rodriguez discussed her reasoning for the amendment.

Chair Stiff asked if there was any discussion on the matter. There was none.

Chair Stiff asked if someone would make a motion to accept Board member Rodriguez’ amendments to 50.c.5. The motion was made, properly seconded, and a roll call vote was conducted. The motion carried.

<b>Motion on Rodriguez’ amendments to 50.c.5</b>	<b>Yea</b>	<b>Nay</b>	<b>Abstain</b>	<b>Absent</b>	<b>Other</b>
Mr. Jeffery Steers	1				
Mr. Louis J. (“Lou”) Cernak Jr.	1				
Dr. Dwight Flammia	1				
Mr. John D. Fulton			1		
Mr. Phil Glaize				1	
Ms. Tina Hoover	1				
Ms. Anna E. Jolly	1				
Mr. Michael. A. Luce			1		

Mr. Courtney M. Malveaux	1				
Mr. Travis M. Parsons	1				
Mr. Kenneth W. Richardson, II	1				
Ms. Milagro ("Milly") Rodriguez	1				
Mr. Charles L. ("Chuck") Stiff	1				
Mr. Thomas A. Thurston	1				
TOTALS	11	0	2	1	

Chair Stiff called for the next item. The department moved to pages 39-42 of the combined board document. Director Withrow discussed the department's recommendation for clean up and reorganizing of the paragraphs. Board member Jolly also had an amendment on these pages that would fit in with the department's recommendations. Board member Jolly accepted.

Chair Stiff asked if there was any discussion on the matter. Board member Steers had a question on page 39 regarding engineering controls and what to do in situations where the employer did not own the building in which they worked. Director Withrow explained the department would be putting out guidance on this issue.

Chair Stiff asked if someone would make a motion to accept the department's recommendation to adopt changes on pages 39-42. The motion was made, properly seconded, and a roll call vote was conducted. The motion carried.

<b>Dept motion for revisions to pages 39-42 of combined board document</b>	<b>Yea</b>	<b>Nay</b>	<b>Abstain</b>	<b>Absent</b>	<b>Other</b>
Mr. Jeffery Steers	1				
Mr. Louis J. ("Lou") Cernak Jr.	1				
Dr. Dwight Flammia	1				
Mr. John D. Fulton	1				
Mr. Phil Glaize				1	
Ms. Tina Hoover	1				
Ms. Anna E. Jolly	1				
Mr. Michael. A. Luce	1				
Mr. Courtney M. Malveaux	1				
Mr. Travis M. Parsons	1				
Mr. Kenneth W. Richardson, II	1				
Ms. Milagro ("Milly") Rodriguez	1				
Mr. Charles L. ("Chuck") Stiff	1				
Mr. Thomas A. Thurston	1				
TOTALS	13	0	0	1	

Board member Malveaux left the meeting.

Chair Stiff called for the next item. The department moved to pages 43-45. Board member Jolly withdrew her amendment on these pages. Director Withrow addressed a comment made by the Health Department on these pages. The department recommended the board accept the clean up revisions on pages 43-45, section 60.C.

Chair Stiff asked if there was any discussion on the matter. There was none.

Chair Stiff asked if someone would make a motion to accept the department’s recommendation to make the clean up revisions to section 60.C. on pages 43-45 of the combined board document. The motion was made, properly seconded, and a roll call vote was conducted. The motion carried.

<b>Dept. motion for revisions to 60.C., pages 43-45 of combined board document</b>	<b>Yea</b>	<b>Nay</b>	<b>Abstain</b>	<b>Absent</b>	<b>Other</b>
Mr. Jeffery Steers	1				
Mr. Louis J. (“Lou”) Cernak Jr.	1				
Dr. Dwight Flammia	1				
Mr. John D. Fulton	1				
Mr. Phil Glaize				1	
Ms. Tina Hoover	1				
Ms. Anna E. Jolly	1				
Mr. Michael. A. Luce	1				
Mr. Courtney M. Malveaux				1	
Mr. Travis M. Parsons	1				
Mr. Kenneth W. Richardson, II	1				
Ms. Milagro (“Milly”) Rodriguez	1				
Mr. Charles L. (“Chuck”) Stiff	1				
Mr. Thomas A. Thurston	1				
<b>TOTALS</b>	<b>12</b>	<b>0</b>	<b>0</b>	<b>2</b>	

Chair Stiff called for the next item. The department moved on to an amendment sent to the department by Board member Jolly to add a “n” and “o” to section 60.B.1 on page 41. Board member Jolly explained her reasoning the she felt the public did not understand when face coverings were required to be work.

Chair Stiff asked if there was any discussion on the matter. Chair Stiff expressed his concern that the standard was blurring the line between PPE and face coverings. Director Withrow commented that the standard did clearly define face coverings, surgical/medical procedure mask and PPE. Director Withrow also committed to addressing the issue in the FAQ guidance put out by the department. Board member Rodriguez asked that the amendment add the requirement that the employer provide the face covering if the face covering were to be required given the work situation. Board member Jolly stated she would agree to that addition.

Chair Stiff asked if someone would make a motion to accept Board member Jolly and Rodriguez’ amendment of section 60.B.1 to add an n and an o. The motion was made, properly seconded, and a roll call vote was conducted. The motion carried.

<b>Jolly and Rodriguez motion to amend section 60 to add a “n” and “o”</b>	<b>Yea</b>	<b>Nay</b>	<b>Abstain</b>	<b>Absent</b>	<b>Other</b>
Mr. Jeffery Steers	1				
Mr. Louis J. (“Lou”) Cernak Jr.	1				
Dr. Dwight Flammia	1				



Mr. John D. Fulton	1				
Mr. Phil Glaize				1	
Ms. Tina Hoover	1				
Ms. Anna E. Jolly	1				
Mr. Michael. A. Luce	1				
Mr. Courtney M. Malveaux				1	
Mr. Travis M. Parsons	1				
Mr. Kenneth W. Richardson, II	1				
Ms. Milagro ("Milly") Rodriguez	1				
Mr. Charles L. ("Chuck") Stiff	1				
Mr. Thomas A. Thurston	1				
TOTALS	12	0	0	2	

Chair Stiff called for the next item. The department moved to page 46 of the combined board document and discussed several pages of "clean up" revisions. The department recommended that the board adopt the small revisions found on pages 46-49.

Chair Stiff asked if there was any discussion on the matter. There was none.

Chair Stiff asked if someone would make a motion to accept the department's recommendation to adopt the small revisions found on pages 46-49. The motion was made, properly seconded, and a roll call vote was conducted. The motion carried.

<b>Dept. motion on "clean up" revisions on pages 46-49 of combined board document</b>	<b>Yea</b>	<b>Nay</b>	<b>Abstain</b>	<b>Absent</b>	<b>Other</b>
Mr. Jeffery Steers	1				
Mr. Louis J. ("Lou") Cernak Jr.	1				
Dr. Dwight Flammia	1				
Mr. John D. Fulton	1				
Mr. Phil Glaize				1	
Ms. Tina Hoover	1				
Ms. Anna E. Jolly	1				
Mr. Michael. A. Luce	1				
Mr. Courtney M. Malveaux				1	
Mr. Travis M. Parsons	1				
Mr. Kenneth W. Richardson, II	1				
Ms. Milagro ("Milly") Rodriguez	1				
Mr. Charles L. ("Chuck") Stiff	1				
Mr. Thomas A. Thurston	1				
TOTALS	12	0	0	2	

Chair Stiff called for the next item. The department moved to page 50. Director Withrow discussed comments submitted by the Health Department. In response to the comments, the department added new sections section 70.C.5.c and 70.C.9. Director Withrow then asked if Board member Flammia had any concerns or comments on the additional sections the department proposed in response to the Health department's comments. Board member Flammia stated he had no comments or concerns.

Director Withrow then moved to page 51 of the combined board document, where the department proposed to delete section 8 on that page because it was repetitive.

Chair Stiff asked if there was any discussion on the matter. Board member Steers asked a question on temperature checks.

Chair Stiff asked if someone would make a motion to accept the changes on pages 50-51. The motion was made, properly seconded, and a roll call vote was conducted. The motion carried.

<b>Dept. Motion to accept changes to pages 50 and 51 to add to section 70 and delete section 70.C.8</b>	<b>Yea</b>	<b>Nay</b>	<b>Abstain</b>	<b>Absent</b>	<b>Other</b>
Mr. Jeffery Steers	1				
Mr. Louis J. ("Lou") Cernak Jr.	1				
Dr. Dwight Flammia	1				
Mr. John D. Fulton	1				
Mr. Phil Glaize				1	
Ms. Tina Hoover	1				
Ms. Anna E. Jolly	1				
Mr. Michael. A. Luce	1				
Mr. Courtney M. Malveaux				1	
Mr. Travis M. Parsons	1				
Mr. Kenneth W. Richardson, II	1				
Ms. Milagro ("Milly") Rodriguez	1				
Mr. Charles L. ("Chuck") Stiff	1				
Mr. Thomas A. Thurston	1				
<b>TOTALS</b>	<b>12</b>	<b>0</b>	<b>0</b>	<b>2</b>	

Chair Stiff called for the next item. The department moved to page 51 where board member Rodriguez proposed adding in a new section 70.C.8, proposing there be written documentation of which mandatory and non mandatory CDC guidance an employer is following in lieu of the standard. Board member Rodriguez explained her rationale for this section. Chair Stiff asked a question whether CDC guidance had already been addressed in the standard. Director Withrow stated the standard did not already have requirement for written documentation of what CDC guidance an employer was following.

Chair Stiff asked if there was any other discussion on the matter. There was none.

Chair Stiff asked if someone would make a motion to motion to accept Board member Rodriguez' motion. The motion was made, properly seconded, and a roll call vote was conducted. The motion carried.

<b>Rodriguez' motion to add in new section 70.C.8</b>	<b>Yea</b>	<b>Nay</b>	<b>Abstain</b>	<b>Absent</b>	<b>Other</b>
Mr. Jeffery Steers	1				
Mr. Louis J. ("Lou") Cernak Jr.	1				
Dr. Dwight Flammia	1				
Mr. John D. Fulton		1			

Mr. Phil Glaize				1	
Ms. Tina Hoover	1				
Ms. Anna E. Jolly	1				
Mr. Michael. A. Luce			1		
Mr. Courtney M. Malveaux				1	
Mr. Travis M. Parsons	1				
Mr. Kenneth W. Richardson, II	1				
Ms. Milagro ("Milly") Rodriguez	1				
Mr. Charles L. ("Chuck") Stiff			1		
Mr. Thomas A. Thurston	1				
TOTALS	9	1	2	2	

Chair Stiff called for the next item. The department skipped to page 64 to address changes to section 90 to quickly finish this section before a lunch break. The department recommended adoption of the small changes on page 64 as well as Board member Parson's amendment found on that page. The department also recommended adoption of the department and board member Thurston's amendment to section 90.D.

Chair Stiff asked if there was any discussion on the matter. There was none.

Chair Stiff asked if someone would make a motion to accept the department's recommendation to adopt the clean up changes to pages 64 and 65 as well as Board member Parson's amendment and the joint Board member Thurston and department amendment. The motion was made, properly seconded, and a roll call vote was conducted. The motion carried.

<b>Motion to accept Parson amendment and Thurston/Dept. amendment and clean up changes on pages 64-65</b>	<b>Yea</b>	<b>Nay</b>	<b>Abstain</b>	<b>Absent</b>	<b>Other</b>
Mr. Jeffery Steers	1				
Mr. Louis J. ("Lou") Cernak Jr.	1				
Dr. Dwight Flammia	1				
Mr. John D. Fulton	1				
Mr. Phil Glaize				1	
Ms. Tina Hoover	1				
Ms. Anna E. Jolly	1				
Mr. Michael. A. Luce	1				
Mr. Courtney M. Malveaux				1	
Mr. Travis M. Parsons	1				
Mr. Kenneth W. Richardson, II	1				
Ms. Milagro ("Milly") Rodriguez	1				
Mr. Charles L. ("Chuck") Stiff	1				
Mr. Thomas A. Thurston				1	
TOTALS	11	0	0	3	

Chair Stiff then recessed for lunch.

The meeting reconvened at 12:30pm.

Chair Stiff called for the next item. The department moved to page 52 and the Administration’s small amendment to section 80. The department supported the Administration’s amendment.

Chair Stiff asked if there was any discussion on the matter. There was none.

Chair Stiff asked if someone would make a motion to accept the amendment of the Administration to section 80. The motion was made, properly seconded, and a roll call vote was conducted. The motion carried.

<b>Administration’s motion on section 80</b>	<b>Yea</b>	<b>Nay</b>	<b>Abstain</b>	<b>Absent</b>	<b>Other</b>
Mr. Jeffery Steers	1				
Mr. Louis J. (“Lou”) Cernak Jr.	1				
Dr. Dwight Flammia	1				
Mr. John D. Fulton	1				
Mr. Phil Glaize				1	
Ms. Tina Hoover	1				
Ms. Anna E. Jolly	1				
Mr. Michael. A. Luce	1				
Mr. Courtney M. Malveaux				1	
Mr. Travis M. Parsons	1				
Mr. Kenneth W. Richardson, II	1				
Ms. Milagro (“Milly”) Rodriguez	1				
Mr. Charles L. (“Chuck”) Stiff	1				
Mr. Thomas A. Thurston	1				
<b>TOTALS</b>	<b>12</b>	<b>0</b>	<b>0</b>	<b>2</b>	

Chair Stiff called for the next item. Board member Malveaux rejoined the meeting. The department moved to page 55 which was a streamlined amendment of section 80 by Board members Parson and Thurston and the department.

Chair Stiff asked if there was any discussion on the matter. Board member Hoover asked if there would be training documents in other languages. Director Withrow discussed the department’s plans for translating the training documents into multiple languages.

Board member Steers also asked a question about implementation of the training and Director Withrow stated section 20 would address effective dates, but that the board had not addressed that section, yet.

Chair Stiff suggested the word “adequate” before ventilation be removed.

Chair Stiff asked if someone would make a motion to accept the streamlined board member Parson amendment. The motion was made, properly seconded, and a roll call vote was conducted. The motion carried.

<b>Parsons' amendment to section 80 on page 50, and taking out the word "adequate"</b>	<b>Yea</b>	<b>Nay</b>	<b>Abstain</b>	<b>Absent</b>	<b>Other</b>
Mr. Jeffery Steers	1				
Mr. Louis J. ("Lou") Cernak Jr.	1				
Dr. Dwight Flammia	1				
Mr. John D. Fulton	1				
Mr. Phil Glaize				1	
Ms. Tina Hoover	1				
Ms. Anna E. Jolly	1				
Mr. Michael. A. Luce	1				
Mr. Courtney M. Malveaux	1				
Mr. Travis M. Parsons	1				
Mr. Kenneth W. Richardson, II	1				
Ms. Milagro ("Milly") Rodriguez	1				
Mr. Charles L. ("Chuck") Stiff	1				
Mr. Thomas A. Thurston	1				
<b>TOTALS</b>	<b>13</b>	<b>0</b>	<b>0</b>	<b>1</b>	

Chair Stiff called for the next item. The department moved to pages 56-59 of the combined board document. The department recommended the board adopt all the clean up changes on pages 57-top of 59, to sections 80 C, D, and E.

Chair Stiff asked if there was any discussion on the matter. There was none.

Chair Stiff asked if someone would make a motion to accept the department's recommendation to adopt all the clean up revisions to page 57-the top of page 59. The motion was made, properly seconded, and a roll call vote was conducted. The motion carried.

<b>Dept. motion to adopt clean up revisions on page 57-59, section 80C, D, E</b>	<b>Yea</b>	<b>Nay</b>	<b>Abstain</b>	<b>Absent</b>	<b>Other</b>
Mr. Jeffery Steers	1				
Mr. Louis J. ("Lou") Cernak Jr.	1				
Dr. Dwight Flammia	1				
Mr. John D. Fulton	1				
Mr. Phil Glaize				1	
Ms. Tina Hoover	1				
Ms. Anna E. Jolly	1				
Mr. Michael. A. Luce	1				
Mr. Courtney M. Malveaux	1				
Mr. Travis M. Parsons	1				
Mr. Kenneth W. Richardson, II	1				
Ms. Milagro ("Milly") Rodriguez	1				
Mr. Charles L. ("Chuck") Stiff	1				
Mr. Thomas A. Thurston	1				
<b>TOTALS</b>	<b>13</b>	<b>0</b>	<b>0</b>	<b>1</b>	

Chair Stiff called for the next item. The department moved to page 60 to Board member Parson’s substitution amendment for sections 80F and G. Board member Parson explained his rationale.

Chair Stiff asked if there was any discussion on the matter. Board member Malveaux asked if the intent was to put up a poster in the regular area of places at employment where similar posters are displayed. Director Withrow said yes. Chair Stiff, Board member Jolly and Board member discussed adding the option of providing awareness orally and well as written. Board member Jolly suggested the first line of proposed section 80F be revised to say “Employers with hazards or job tasks classified at lower risk shall provide written or oral information...” Board member Jolly then suggested the word “written” before “information” in section G.

Chair Stiff asked if someone would make a motion to accept Board member Parson’s substitution amendment with the other suggested changes by Chair Stiff and Board member Jolly. The motion was made, properly seconded, and a roll call vote was conducted. The motion carried.

<b>Parson’s substitution amendment for section 80F and G with the addition of “and oral” to first line and take out word “written” before “information” in G</b>	<b>Yea</b>	<b>Nay</b>	<b>Abstain</b>	<b>Absent</b>	<b>Other</b>
Mr. Jeffery Steers	1				
Mr. Louis J. (“Lou”) Cernak Jr.	1				
Dr. Dwight Flammia	1				
Mr. John D. Fulton	1				
Mr. Phil Glaize				1	
Ms. Tina Hoover	1				
Ms. Anna E. Jolly	1				
Mr. Michael. A. Luce	1				
Mr. Courtney M. Malveaux	1				
Mr. Travis M. Parsons	1				
Mr. Kenneth W. Richardson, II	1				
Ms. Milagro (“Milly”) Rodriguez	1				
Mr. Charles L. (“Chuck”) Stiff	1				
Mr. Thomas A. Thurston	1				
<b>TOTALS</b>	<b>13</b>	<b>0</b>	<b>0</b>	<b>1</b>	

Chair Stiff called for the next item. The department moved on to page 64 to discuss a minor amendment sent to Director Withrow by Board member Parson, proposing an amendment to section 90B. The amendment proposed moving the words “face covering” after “face shield and gloves.” The department did not have an issue with the change. Board member Steers pointed out the word “or” should be taken out before the word gloves.

Chair Stiff asked if there was any other discussion on the matter. There was none.

Chair Stiff asked if someone would make a motion to accept Board member Parson’s amendment to section 90B. The motion was made, properly seconded, and a roll call vote was conducted. The motion carried.

<b>Parson amendment to move the words “face covering” after “face shield and gloves” in section 90B and to take out the word “or” before gloves.</b>	<b>Yea</b>	<b>Nay</b>	<b>Abstain</b>	<b>Absent</b>	<b>Other</b>
Mr. Jeffery Steers	1				
Mr. Louis J. (“Lou”) Cernak Jr.	1				
Dr. Dwight Flammia	1				
Mr. John D. Fulton	1				
Mr. Phil Glaize				1	
Ms. Tina Hoover	1				
Ms. Anna E. Jolly	1				
Mr. Michael. A. Luce	1				
Mr. Courtney M. Malveaux	1				
Mr. Travis M. Parsons	1				
Mr. Kenneth W. Richardson, II	1				
Ms. Milagro (“Milly”) Rodriguez	1				
Mr. Charles L. (“Chuck”) Stiff	1				
Mr. Thomas A. Thurston	1				
<b>TOTALS</b>	<b>13</b>	<b>0</b>	<b>0</b>	<b>1</b>	

Board member Malveaux left the meeting. Chair Stiff called for the next item. The department moved to page 10 to discuss the section on section 20, Dates. Director Withrow discussed the need to publish the entire ETS in a newspaper of general circulation in Richmond, Virginia because Va. Code 40.1-22(6a) required this. Given that requirement and the need for the department to be able to create all the training documents needed for employers, the Department recommended an effective date sometime the week of July 27, 2020. The department also recommended the training requirement for 60 days under section 70 and 30 days for the training required in section 80. Chair Stiff asked if the department felt comfortable with these dates. Director Withrow responded that he was.

Chair Stiff asked if there was any discussion on the matter. Board member Rodriguez expressed concern for 60 days to implement training; she felt the emergency warranted a faster implementation. Board member Parson expressed the same concerns. Both board members questioned whether the ETS could be published electronically. Director Withrow explained the research the department performed indicated the statute required publication of the standard in paper form.

Board member Hoover felt 30 and 60 days were too soon for employers to complete the training. She suggested making all of it 60 days. There were more discussion back and forth on possible options.

Chair Stiff asked if someone would make a motion to accept the department’s recommendations for both the language of section 20 and the specific dates listed in section 20 regarding effective date and dates by which employers had to have their training complete. The motion was made, properly seconded, and a roll call vote was conducted. The motion carried.

<b>Dept motion on Section 20, Dates</b>	<b>Yea</b>	<b>Nay</b>	<b>Abstain</b>	<b>Absent</b>	<b>Other</b>
Mr. Jeffery Steers	1				
Mr. Louis J. ("Lou") Cernak Jr.	1				
Dr. Dwight Flammia	1				
Mr. John D. Fulton	1				
Mr. Phil Glaize				1	
Ms. Tina Hoover		1			
Ms. Anna E. Jolly	1				
Mr. Michael. A. Luce			1		
Mr. Courtney M. Malveaux				1	
Mr. Travis M. Parsons	1				
Mr. Kenneth W. Richardson, II	1				
Ms. Milagro ("Milly") Rodriguez	1				
Mr. Charles L. ("Chuck") Stiff	1				
Mr. Thomas A. Thurston	1				
<b>TOTALS</b>	<b>10</b>	<b>1</b>	<b>1</b>	<b>2</b>	

Chair Stiff called for the next item. The department moved back to page 64. Board member Parsons made a motion to put the word "or" back into section 90B that was taken out in a previous motion. Director Withrow explained Board member Parsons wanted to make clear that "face coverings" were separate from the previous 3 items. The department agreed with Board member Parsons.

Chair Stiff asked if there was any discussion on the matter. There was none.

Chair Stiff asked if someone would make a motion to accept Board member Parsons' amendment to put the word "or" back into section 90.B. The motion was made, properly seconded, and a roll call vote was conducted. The motion carried.

<b>Parson's motion to put word "or" back into Section 90.B</b>	<b>Yea</b>	<b>Nay</b>	<b>Abstain</b>	<b>Absent</b>	<b>Other</b>
Mr. Jeffery Steers	1				
Mr. Louis J. ("Lou") Cernak Jr.	1				
Dr. Dwight Flammia	1				
Mr. John D. Fulton	1				
Mr. Phil Glaize				1	
Ms. Tina Hoover	1				
Ms. Anna E. Jolly	1				
Mr. Michael. A. Luce	1				
Mr. Courtney M. Malveaux				1	
Mr. Travis M. Parsons	1				
Mr. Kenneth W. Richardson, II	1				
Ms. Milagro ("Milly") Rodriguez	1				
Mr. Charles L. ("Chuck") Stiff	1				
Mr. Thomas A. Thurston	1				
<b>TOTALS</b>	<b>12</b>	<b>0</b>	<b>0</b>	<b>2</b>	



Chair Stiff called for the next item. The department moved back to page 2 of the combined board document. Director Withrow read the entirety of page 2 to the Board. Page 2 was a recommendation to adopt a final Emergency Temporary Standard with the effective date and training dates listed. Page 2 also included a paragraph recommending that the Board state in any motion it may make regarding this Emergency Temporary Standard that it will receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision of this or any other standard or regulation.

Chair Stiff asked if there was any discussion on the matter. There was none.

Chair Stiff asked if someone would make a motion to accept the recommendation to adopt a final Emergency Temporary Standard. The motion was made, properly seconded, and a roll call vote was conducted. The motion carried.

<b>Dept. Motion to adopt a final Emergency Temporary Standard</b>	<b>Yea</b>	<b>Nay</b>	<b>Abstain</b>	<b>Absent</b>	<b>Other</b>
Mr. Jeffery Steers	1				
Mr. Louis J. ("Lou") Cernak Jr.	1				
Dr. Dwight Flammia	1				
Mr. John D. Fulton		1			
Mr. Phil Glaize				1	
Ms. Tina Hoover		1			
Ms. Anna E. Jolly	1				
Mr. Michael. A. Luce			1		
Mr. Courtney M. Malveaux				1	
Mr. Travis M. Parsons	1				
Mr. Kenneth W. Richardson, II	1				
Ms. Milagro ("Milly") Rodriguez	1				
Mr. Charles L. ("Chuck") Stiff	1				
Mr. Thomas A. Thurston	1				
<b>TOTALS</b>	<b>9</b>	<b>2</b>	<b>1</b>	<b>2</b>	

Chair Stiff thanked everyone for their diligence and asked Director Withrow if there was anything left on the combined board document. Director Withrow said no and then thanked all of the Board members for their hard work.

#### **Items of Interest from the Department of Labor and Industry**

Chair Stiff asked if there were any items of interest from the Department of Labor and Industry. Chair Stiff recognized the Commissioner. Commissioner Davenport thanked all the Board members on behalf of the workers of the Commonwealth, of the Administration, and the department, for their heroic work over the past 4 board meetings to deal with this difficult issue. Chair Stiff then thanked everyone on behalf of the board.

**Items of Interest from Members of the Board**

Board member Parsons thanks Chair Stiff for all his hard work and dedication.

**Meeting Adjournment**

There being no further business, a motion was properly made and seconded to adjourn the meeting. The meeting adjourned at 1:55 p.m.

**DRAFT**  
**SAFETY AND HEALTH CODES BOARD**  
**PUBLIC HEARING MEETING MINUTES**  
**Wednesday September 30, 2020**

This public hearing was held for the purpose of consideration of 16VAC25-220, Proposed Permanent Standard: Infectious Disease Prevention: SARS-CoV2 Virus That Causes COVID-19 by the Virginia Safety and Health Codes Board pursuant to Va. Code §40.1-22(6a).

The Safety and Health Codes Board (“Board”) held an electronic meeting pursuant to the budget language as amended by Chapter 1289 of the 2020 Acts of Assembly that states:

Notwithstanding any other provision of law, any public body, including any state, local, regional, or regulatory body, or a governing board as defined in § 54.1-2345 of the Code of Virginia may meet by electronic communication means without a quorum of the public body or any member of the governing board physically assembled at one location when the Governor has declared a state of emergency in accordance with § 44-146.17, provided that (i) the nature of the declared emergency makes it impracticable or unsafe for the public body or governing board to assemble in a single location; (ii) the purpose of meeting is to discuss or transact the business statutorily required or necessary to continue operations of the public body or common interest community association as defined in § 54.1-2345 of the Code of Virginia and the discharge of its lawful purposes, duties, and responsibilities; (iii) a public body shall make available a recording or transcript of the meeting on its website in accordance with the timeframes established in §§ 2.2-3707 and 2.2-3707.1 of the Code of Virginia; and (iv) the governing board shall distribute minutes of a meeting held pursuant to this subdivision to common interest community association members by the same method used to provide notice of the meeting.

Given the nature of the emergency, that COVID-19 spreads easily from person to person, the Board held an electronic emergency meeting utilizing **WebEx**.

Notice of the public hearing was provided to the public as required by VA Code §2.2-3708.2 and Executive Order 14 (2018). The notice invited the public to witness the meeting remotely via WebEx. Notice of this public hearing was published in the Richmond Times Dispatch on September 25, 2020. Notice of this hearing was also published on the Virginia Regulatory Townhall’s website here: <https://townhall.virginia.gov/L/ViewMeeting.cfm?MeetingID=31418>.

The Board members and Department staff listed below as “participating” were all participating via WebEx. There was no quorum of Board members *physically* assembled at one location. There was a quorum of Board members participating on WebEx for purposes of the public hearing.

A recording of the public hearing in its entirety is available here: <https://www.doli.virginia.gov/wp-content/uploads/2020/10/SHCB-Public-Hearing-on-Permanent-Standard-9.30.2020.mp4>

**BOARD MEMBERS**

**PARTICIPATING:**

Mr. Charles Stiff, Interim Chair  
Mr. Louis J. Cernak, Jr.  
Mr. Patrick Bolling  
Mr. John Fulton  
Ms. Tina Hoover  
Ms. Anna Jolly  
Mr. Michael Luce  
Mr. Courtney Malveaux  
Mr. Travis Parsons  
Mr. Kenneth Richardson, II  
Ms. Milagro Rodriguez  
Mr. Thomas Thurston  
Mr. Phil Glaize

**BOARD MEMBERS ABSENT:**

Mr. Jerome Brooks

**STAFF PARTICIPATING:**

Mr. C. Ray Davenport, Commissioner of Dept. of Labor & Industry  
Mr. William P. Burge, Assistant Commissioner  
Mr. Jay Withrow, Director, Legal Support, BLS, VPP, ORA, and OWB  
Ms. Princy R. Doss, Director, Policy, Planning, & Public Information  
Mr. Ron Graham, Director, VOSH Health Compliance  
Ms. Marta Fernandes, VOSH Safety Compliance  
Ms. Jennifer Rose, Director  
Ms. Christine Childress  
Mr. Richard White  
Ms. Diane Duell, Director, Legal Support  
Ms. Holly Trice, Senior Staff Attorney  
Ms. Cristin Bernhardt, Staff Attorney  
Mr. Alex West, Staff Attorney

**OTHERS PARTICIPATING:**

Mr. Joshua Laws, Assistant Attorney General  
Ms. Lisa Wright, Court Reporter, Chandler & Halasz, Stenographic Court Reporters

**CALL TO ORDER**

Chair Chuck Stiff called the Public meeting to order at 9:15am. A quorum was present. Chair Stiff made opening remarks informing the public that this virtual public hearing was being held for the purpose of consideration of 16VAC25-220, Proposed Permanent Standard: Infectious Disease Prevention: SARS-CoV2 Virus That Causes COVID-19 by the Virginia Safety and Health Codes Board pursuant to Va. Code §40.1-22(6a).

## **OPPORTUNITY FOR PUBLIC COMMENT ON THE PROPOSED PERMANENT STANDARD.**

After Mr. Stiff made his opening remarks, the opportunity of public comment on the proposed permanent standard began. This public hearing only included discussion on the proposed public standard. No votes were taken; there were no deliberations, and no decisions were made.

Members of the public had been given the opportunity to sign up to offer their comments on the proposed permanent standard ahead of the public hearing.

The following members of the public made appearances to present public comment on the proposed permanent standard:

1. Brett Vassey, Virginia Manufacturers Association
2. Hobey Bauhan, Virginia Poultry Federation
3. Marcia Tetterton, Virginia Association for Home Care and Hospice
4. Kim Bobo, Virginia Interfaith Center for Public Policy
5. Nicole Riley, National Federation of Independent Business
6. Kyle Shreve, Virginia Agribusiness Council
7. Jeff Perkins, Boxley Materials Company and Virginia Transportation
8. David Broder, SEIU Virginia 512
9. Jodi Roth, Virginia Retail Federation
10. Brandon Robinson, Associated General Contractors of Virginia (AGCVA)
11. Nandan Kenkeremath, Leading Edge Policy & Strategy, LLC
12. Terrance Durkin, Roanoke Regional Chamber of Commerce
13. Donald Baylor, National Coalition of Public Safety Officers
14. Vance Young, ATU Local 1764
15. P. Dale Bennett, Virginia Trucking Association
16. Joe Lerch, Virginia Association of Counties
17. Charlotte Brody, BlueGreen Alliance
18. Clayton Medford, Northern Virginia Chamber of Commerce
19. Doris Crouse-Mays, Virginia AFL-CIO
20. Karen McElfish, M.D. Virginia Conference United Methodist Women
21. Laura Karr, Amalgamated Transit Union
22. Jennifer M. Walle, Troutman-Sanders
23. Felicia Miller, United Food and Commercial Local 400
24. Emily Reynolds, Hampton Roads Chamber of Commerce
25. Jason Yarashes, Legal Aid Justice Center/VA Justice Project for Farm and Immigrant Workers
26. Mike Wilson, United Food and commercial Workers Local 400
27. Rebecca Reindel, AFL-CIO
28. M.K. Fletcher, AFL-CIO

## **ADJOURNMENT**

After all the commenters had offered their comments, Mr. Stiff reiterated that the Board would be scheduling a Board meeting to consider the proposed permanent standard further. At that time, the public would have another opportunity to offer their input.

Mr. Stiff thanked the Board members, all participants and the Agency for helping. The hearing adjourned at 11:55am.



**COMMONWEALTH of VIRGINIA**  
**DEPARTMENT OF LABOR AND INDUSTRY**

**C. Ray Davenport**  
COMMISSIONER

Main Street Centre  
600 East Main Street, Suite 207  
Richmond, Virginia 23219  
PHONE (804) 371-2327  
FAX (804) 371-6524

**Virginia Safety and Health Codes Board**

**BRIEFING PACKAGE**

**For November 12, 2020**

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**Occupational Exposure to Beryllium for General Industry, §1910.1024**

**I. Action Requested**

The Virginia Occupational Safety and Health (VOSH) Program requests the Safety and Health Codes Board (SHCB) consider for adoption federal OSHA's amendments of 29 CFR 1910 to revise portions of its existing general industry standard for Occupational Exposure to Beryllium, as published in 85 FR 42582 on July 14, 2020. <https://www.govinfo.gov/content/pkg/FR-2020-07-14/pdf/2020-10678.pdf>.

The proposed effective date is January 7, 2021.

**II. Summary and Purpose of the Final Rule**

**A. Summary**

On January 9, 2017, OSHA published a final rule on Occupational Exposure to Beryllium and Beryllium Compounds (82 FR 2470).<sup>1</sup> This rule created health standards for beryllium exposure in the general industry (29 CFR 1910.1024), construction (29 CFR 1926.1124), and shipyards (29 CFR 1915.1024) sectors. On December 11, 2018, Federal OSHA published a Notice of Proposed Rulemaking (NPRM) in which the agency proposed various amendments to the beryllium standard for general industry (83 FR 63746). With the proposed revisions, Federal OSHA sought to clarify certain provisions and simplify or improve compliance with the beryllium standard for general industry. In this final rule, Federal OSHA finalized the majority of the changes proposed in the NPRM, with some revisions intended to address

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<sup>1</sup> The SHCB adopted this final rule on February 16, 2017. It became effective May 15, 2017.

concerns raised by stakeholders during the comment period. Federal OSHA believes that these changes to the standard will maintain safety and health protections for workers and will further enhance worker protections by ensuring that the standard is well understood.

## **B. Purpose**

The purpose of the amendments of the existing general industry standard for occupational exposure to beryllium and beryllium compounds is to clarify certain provisions and simplify or improve compliance. The revisions are designed to maintain or enhance worker protections overall by ensuring that the rule is well understood and compliance is more straightforward.

## **III. Overview of Revisions to the Standard**

Broadly, Federal OSHA proposed to add one definition and modify five existing terms in paragraph (b), Definitions; to amend paragraph (f), Methods of compliance; paragraph (h), Personal protective clothing and equipment; paragraph (i), Hygiene areas and practices; paragraph (j), Housekeeping; paragraph (k), Medical surveillance; paragraph (m), Communication of hazards; and paragraph (n), Recordkeeping; and to replace the 2017 final standard's Appendix A with a new appendix designed to supplement the proposed definition of beryllium work area.

Each change is discussed briefly below.

### **A. Definitions; Paragraph (b)**

The final rule changes or adds six terms in the definitions paragraph of the standard. The terms that are changing or are being added are beryllium sensitization, beryllium work area, CBD diagnostic center, chronic beryllium disease, confirmed positive and dermal contact with beryllium.

1. ***Beryllium sensitization***—“a response in the immune system of a specific individual who has been exposed to beryllium. There are no associated physical or clinical symptoms and no illness or disability with beryllium sensitization alone, but the response that occurs through beryllium sensitization can enable the immune system to recognize and react to beryllium. While not every beryllium sensitized person will develop chronic beryllium disease (CBD), beryllium sensitization is essential for development of CBD.”
2. ***Beryllium work area***—Paragraph (b) of the final rule defines beryllium work area as “any work area where materials that contain at least 0.1 percent beryllium by weight are processed either: (1) During any of the operations listed in Appendix A of the standard; or (2) where employees are, or can reasonably be expected to be, exposed to airborne beryllium at or above the action level.”

The establishment of beryllium work areas serves to ensure that employees and other persons are aware of the potential presence of airborne beryllium; to control access to these areas; and in conjunction with other provisions such as the written control plan,



hygiene, and housekeeping requirements, to minimize the transfer of beryllium to other areas of the facility and reduce the potential for exposure to other employees.

3. ***CBD diagnostic center***—The final rule clarifies this term. Federal OSHA is defining *CBD diagnostic center* to mean a medical diagnostic center that has a pulmonologist or pulmonary specialist on staff and on-site facilities to perform a clinical evaluation for the presence of CBD.

The revised definition also states that a CBD diagnostic center must have the capacity to perform pulmonary function testing (as outlined by the American Thoracic Society criteria), bronchoalveolar lavage (BAL), and transbronchial biopsy. In the revised definition, the CBD diagnostic center must also have the capacity to transfer BAL samples to a laboratory for appropriate diagnostic testing within 24 hours and the pulmonologist or pulmonary specialist must be able to interpret the biopsy pathology and the BAL diagnostic test results.

4. ***Chronic beryllium disease (CBD)***— For the purposes of this standard, the term chronic beryllium disease means a “chronic granulomatous lung disease caused by inhalation of airborne beryllium by an individual who is beryllium sensitized.” The revisions serve to differentiate CBD from other respiratory diseases associated with beryllium exposure (e.g., lung cancer) and to make clear that beryllium sensitization and the presence of beryllium in the lung are essential in the development of CBD (see 82 FR at 2492).
5. ***Confirmed positive***—Federal OSHA is amending the definition of confirmed positive to mean (1) the person tested has had two abnormal BeLPT test results, an abnormal and a borderline test result, or three borderline test results, obtained from tests conducted within a three-year period; or (2) the result of a more reliable and accurate test indicating a person has been identified as having beryllium sensitization.

The phrase “beryllium sensitization” is removed from the first sentence of the definition, which previously stated that a person is confirmed positive if that person has beryllium sensitization, as indicated by two abnormal BeLPT test results, an abnormal and a borderline test result, or three borderline test results. Federal OSHA intends that confirmed positive act only as a trigger for requirements such as continued medical monitoring and surveillance for the purposes of this standard, and not as a general-purpose definition of beryllium sensitization.

For purposes of the beryllium standard, any worker with the BeLPT test results specified in the definition of confirmed positive should be offered an evaluation for CBD with continued medical surveillance as well as the option of medical removal protection, even though some small percentage of workers who are confirmed positive by this definition may not in fact be sensitized to beryllium, as is the case for any diagnostic test

6. ***Dermal contact with beryllium***--Paragraph (b) of this final rule defines dermal contact with beryllium as skin exposure to (1) soluble beryllium compounds containing beryllium in concentrations greater than or equal to 0.1 percent by weight; (2) solutions containing beryllium in concentrations greater than or equal to 0.1 percent by weight; or (3) visible dust, fumes, or mists containing beryllium in concentrations greater than or

equal to 0.1 percent by weight. The definition also states that handling of beryllium materials in non-particulate solid form that are free from visible dust containing beryllium in concentrations greater than or equal to 0.1 percent by weight is not considered dermal contact under the standard. Several of the standard's provisions are triggered where an employee has, or can be reasonably expected to have, dermal contact with beryllium. These include provisions in paragraph (f), Written exposure control plan; paragraph (h), Personal protective clothing and equipment (PPE); paragraph (i), Hygiene areas and practices; paragraph (k), Medical surveillance; and paragraph (m), Communication of hazards.

## **B. Methods of Compliance; Paragraph (f)**

Paragraph (f) of the beryllium standard for general industry contains provisions covering methods for reducing employee exposure to beryllium through the use of a written exposure control plan and engineering and work practice controls. Paragraph (f)(1) sets forth the requirements for written exposure control plans. Paragraph (f)(1)(i) requires employers to establish, implement, and maintain such a plan, and paragraphs (f)(1)(i)(A)–(H) specifies the information and procedures that must be included in the plan. Paragraph (f)(1)(ii) directs employers to review and evaluate each plan at least annually and update it under specified circumstances.

The final rule makes two changes to paragraph (f).

1. Under paragraph (f)(1)(i)(D), employers were previously required to include procedures in their plans for minimizing cross-contamination, “including preventing the transfer of beryllium” between surfaces, equipment, clothing, materials, and articles within beryllium work areas. This final rule removes the word “preventing” from the regulatory text to clarify that these procedures may not totally eliminate the transfer of beryllium, but should minimize cross contamination of beryllium, including between surfaces, equipment, clothing, materials, and articles.
2. The second change involves one of the circumstance when employers must update their written exposure control plans. Paragraph (f)(1)(ii)(B) of the standard directed employers to update the written exposure control plan, as necessary, when they are notified that an employee is eligible for medical removal in accordance with paragraph (l)(1), referred for evaluation at a CBD diagnostic center, or shows signs or symptoms associated with “airborne exposure to or dermal contact with beryllium.” The final rule replaces the phrase “airborne exposure to and dermal contact with beryllium” with “exposure to beryllium.” Federal OSHA explained that the change would simplify the language of the provision while still capturing all potential exposure scenarios currently covered.

## **C. Personal Protective Clothing and Equipment; Paragraph (h)**

Paragraph (h) of the beryllium standard for general industry requires employers to provide employees with personal protective clothing and equipment (PPE) where employee exposure exceeds, or can reasonably be expected to exceed, the TWA PEL or STEL, or where there is a reasonable expectation of dermal contact with beryllium. Paragraph (h) also

contains provisions for the safe removal, storage, cleaning, and replacement of the PPE required by this standard.

The final rule makes two revisions to paragraph (h).

1. The first revision relates to paragraph (h)(2)(i), which addresses removal and storage of PPE. Paragraph (h)(2)(i) previously required employers to ensure that each employee removes all beryllium contaminated PPE at the end of the work shift, “at the completion of tasks involving beryllium,” or when PPE becomes visibly contaminated with beryllium, whichever comes first. This final rule modifies the phrase “at the completion of tasks involving beryllium” by changing “tasks” to “all tasks,” so that it reads “at the completion of all tasks involving beryllium” (83 FR at 63754).
2. The second revision relates to paragraph (h)(3)(iii), which addresses cleaning and replacement of PPE. This paragraph required employers to inform in writing the persons or the business entities who launder, clean, or repair the PPE required by this standard of the potentially harmful effects of “airborne exposure to and dermal contact with beryllium.” The final rule replaces the phrase “airborne exposure to and dermal contact with beryllium” with “exposure to beryllium” (83 FR at 63755). Federal OSHA explained that this change simplifies the language of the provision while still capturing all potential exposure scenarios currently covered; and, as such, the agency concluded that the revised language will maintain safety and health protections for workers.

#### **D. Hygiene Areas and Practices; Paragraph (i)**

Paragraph (i) of the beryllium general industry standard requires that the employer provide employees with readily accessible washing facilities, change rooms, and showers when certain conditions are met; requires the employer to take certain steps to minimize exposure in eating and drinking areas; and prohibits certain practices that may contribute to beryllium exposure. As explained in the 2017 final rule, Federal OSHA believes that strict compliance with these provisions will reduce the amount and duration of employees’ airborne exposure and dermal contact with beryllium (82 FR at 2683–88).

The final rule makes three revisions to paragraph (i).

1. First, the final rule makes a change in the wording of paragraph (i)(1), which required that “[f]or each employee working in a beryllium work area,” the employer must provide readily accessible washing facilities to remove beryllium from the hands, face, and neck; and ensure that employees who have dermal contact with beryllium wash any exposed skin at specific designated times. The final rule amends the language to apply to “each employee . . . who can reasonably be expected to have dermal contact with beryllium,” in addition to each employee working in a beryllium work area (83 FR at 63768).
2. Second, the final rule makes a change in the wording of paragraph (i)(2), which required employers to provide “employees who work in a beryllium work area,” with a designated change room where employees are required to remove their personal clothing. Federal OSHA is revising paragraph (i)(2) to require employers to provide a

designated change room to employees who are required to use personal protective clothing or equipment under paragraph (h)(1)(ii) of the beryllium standard, instead of to employees who work in a beryllium work area (83 FR at 63768).

Paragraph (h)(1)(ii) of the beryllium standard requires the provision and use of appropriate PPE where there is a reasonable expectation of dermal contact with beryllium. The requirement to provide change rooms would continue to apply only where employees are required to remove their personal clothing. The changes to paragraphs (i)(1) and (i)(2) were merely intended to ensure that the hygiene provisions related to washing facilities and change rooms would continue to protect employees who are reasonably expected to have dermal contact with beryllium.

3. Finally, the final rule makes a third change, which applies to paragraph (i)(4), in order to clarify the requirements for cleaning beryllium-contaminated PPE prior to entering an eating or drinking area. Paragraph (i)(4)(ii) required the employer to ensure that no employees enter any eating or drinking area with beryllium-contaminated personal protective clothing or equipment unless, prior to entry, surface beryllium has been removed from the clothing or equipment by methods that do not disperse beryllium into the air or onto an employee's body.

The final rule modifies this paragraph to require the employer to ensure that, before employees enter an eating or drinking area, beryllium contaminated PPE is cleaned, as necessary, to be as free as practicable of beryllium by methods that do not disperse beryllium into the air or onto an employee's body (83 FR at 63768).

The agency explained that this change would clarify that Federal OSHA does not expect the methods used to clean PPE prior to entering an eating or drinking area to completely eliminate residual beryllium from the surface of the PPE if complete elimination is not practicable (83 FR at 63755–56). This clarification also aligns the language of paragraph (i)(4)(ii) with the language of paragraph (i)(4)(i), which requires employers to ensure that beryllium-contaminated surfaces in eating and drinking areas are as free as practicable of beryllium.

#### **E. Disposal, Recycling and Reuse; Paragraph (j)**

Paragraph (j) of the beryllium general industry standard requires employers to adhere to certain housekeeping practices. Paragraphs (j)(1) and (j)(2) require employers to maintain all surfaces in beryllium work areas as free as practicable of beryllium, promptly clean spills and emergency releases of beryllium, and use appropriate cleaning methods, while paragraph (j)(3) requires employers to take certain actions when transferring materials that contain at least 0.1 percent beryllium by weight or that are contaminated with beryllium outside a plant for the purpose of disposal, recycling, or reuse.

The final rule makes seven changes to the previous requirements of paragraph (j)(3).

1. First, the final rule revises (j)(3) such that the provisions address reuse (in addition to disposal and recycling). Paragraph (j)(3) of the 2017 final rule contained requirements for the labeling and enclosure of certain materials designated for disposal and the

labeling and either enclosure or cleaning of materials designated for recycling. The preamble to the 2017 final rule made clear that paragraph (j)(3)'s requirements related to recycling also applied to reuse (see 82 FR at 2695–96), but the standard did not explicitly advise employers of this requirement.

To make the agency's original intent clear, Federal OSHA is including provisions addressing reuse. This change was intended to ensure that workers who may be exposed to materials containing or contaminated with beryllium that are directly reused without first being processed into a different form are appropriately protected.

2. Second, the final rule reorganizes paragraph (j)(3)'s original two paragraphs (one on disposal, one on recycling—with the labeling requirements specified in each) into three new paragraphs with each paragraph focusing on a different topic.
3. Third, the final rule simplifies (j)(3) by replacing the phrase materials “that contain beryllium in concentrations of 0.1 percent by weight or more” with a shorter phrase: Materials “that contain at least 0.1 percent beryllium by weight.”
4. Fourth, Federal OSHA added an explicit exemption for materials transferred within a plant from the cleaning and enclosure requirements in new paragraphs (j)(3)(ii) and (iii).
5. Fifth, the final rule revises (j)(3) to make Federal OSHA's intent clear regarding “sealed, impermeable bags.” The revisions make it explicitly clear that employers are required to utilize enclosures that prevent the release of beryllium-containing particulate or solutions under normal conditions of use, storage, or transport.
6. Sixth, the final rule adds a “cleaning option” to take into account large items that would not fit in a container. The “cleaning option” would offer protection for workers who handle large items like machines or structures that contain at least .1 percent beryllium by weight. Federal Osha determined that workers handling items designated for disposal, like workers handling items designated for recycling or reuse, would be just as protected from exposure to beryllium if the items were cleaned to be as free as practicable of beryllium as if the items were placed in containers.
7. Seventh, the final rule revises language surrounding the cleaning of materials designated for disposal, recycling or reuse by removing the phrase “surface beryllium contamination.” This phrase was used in (j)(3) but was not defined. To avoid confusion stemming from an undefined new term, Federal OSHA determined it would delete the term entirely.

#### **F. Medical Surveillance; Paragraph (k)**

Paragraph (k) of the beryllium standard for general industry addresses medical surveillance requirements. The paragraph specifies which employees must be offered medical surveillance, as well as the frequency and content of medical examinations. It also sets forth the information that must be provided to the employee and employer. The purposes of medical surveillance for beryllium are (1) to identify beryllium related adverse health effects so that appropriate intervention measures can be taken; (2) to determine if an employee

has any condition that might make him or her more sensitive to beryllium exposure; and (3) to determine the employee's fitness to use personal protective equipment such as respirators.

The final rule makes two sets of changes to paragraph (k), the first set to (k)(2) and the second set to (k)(7).

1. Federal OSHA removed the strict requirement of a medical examination within 30 days of exposure in an emergency in all instances, under paragraph (k)(2)(i)(B), and added new paragraphs (k)(2)(iv)(A) and (B).

The final rule makes this change after Federal OSHA received stakeholder comment that for individuals exposed one-time during an emergency, 30 days may be insufficient to detect beryllium sensitization, so a longer timeframe for medical examinations is more appropriate. However, the final rule still needed to account for those employees who are not regularly exposed to beryllium as part of their normal work duties, those who are regularly subject to medical surveillance.

Now, paragraph (k)(2)(iv)(A) accounts for the small population of employees who are not regularly exposed and new paragraph (k)(2)(iv)(B) accounts for those who regularly encounter beryllium in their normal work duties.

The final rule also revises existing paragraph (k)(2)(iii) to take into account employees whose employment is terminated prior to receiving a medical exam.

- a. Paragraph (k)(2)(iv)(A) requires that if an employee is exposed to beryllium during an emergency and has not received a medical examination under paragraph (k)(1)(i) within the previous two years, then the employer must provide that employee with a medical examination within 30 days of the date of the emergency.
- b. Under paragraph (k)(2)(iv)(B), if an employee has received a medical examination under paragraph (k)(1)(i) within the previous two years, then the employer would be required to offer that employee a medical examination that meets the requirements of the standard at least one year but no more than two years after the employee was exposed to beryllium in an emergency.
- c. The final rule also revises (k)(2)(iii) to require that employers offer a medical examination to any employee who has not received an examination since the emergency exposure at the time the employee's employment is terminated.

2. Federal OSHA amends paragraph (k)(7) in three ways:

- a. First, OSHA is revising paragraph (k)(7)(i) to require that the evaluation must be scheduled within 30 days, and must occur within a reasonable time, of the employer receiving one of the types of documentation listed in paragraph (k)(7)(i)(A) or (B).

- b. Second, the final rule adds a provision, in paragraph (k)(7)(ii), which clarifies that, as part of the evaluation at the CBD diagnostic center, the employer must ensure that the employee is offered any tests deemed appropriate by the examining physician at the CBD diagnostic center, such as pulmonary function testing (as outlined by the American Thoracic Society criteria), bronchoalveolar lavage (BAL), and transbronchial biopsy.
- c. Third, the final rule makes a handful of minor, nonsubstantive numbering and reference edits to other provisions in paragraph (k)(7) to account for the addition of new paragraph (k)(7)(ii).

#### **G. Communication of Hazards; Paragraph (m)**

Paragraph (m) of the beryllium standard sets forth the employer's obligation to comply with the Hazard Communication standard (HCS) (16 VAC25-90-1910.1200) relative to beryllium and to take additional steps to warn and train employees about the hazards of beryllium.

The final rule makes three revisions to paragraph (m).

1. The first change is related to paragraph (m)(3), which previously required employers to label "each bag and container" of clothing, equipment, and materials contaminated with beryllium. The final rule replaces the phrase "each bag and container" with the phrase "each immediate container," to clarify that the employer need only label the immediate bag or container of beryllium-contaminated items and not larger containers holding the labeled bag or container.
2. Paragraph (m)(4) addresses employee information and training. One of the topics is airborne exposure to and contact with beryllium, including the signs and symptoms of CBD. The final rule adds the word "dermal" immediately prior to "contact with beryllium."
3. The word "dermal" is also added prior to "contact with beryllium" in paragraph (m)(4)(ii)(E).

#### **H. Recordkeeping; Paragraph (n)**

Paragraph (n) of the beryllium standard for general industry requires employers to make and maintain air monitoring data, objective data, and medical surveillance records, and prepare and maintain training records. The final rule modifies the recordkeeping requirement by allowing employers to retain the option of using social security numbers to identify employees and adds the option of using some other alternative employee identifier system, as explained in the Standards Improvement Project IV (SIP-IV) final rule (adopted by the SHCB September 17, 2019.)

#### **IV. Impact**

##### **A. Impact on Employers**

The final rule will only have a de minimus cost for the time employers will need to spend familiarizing themselves with the revised portions of the final rule. Federal OSHA projects the net total effect would result in cost savings, mainly from improving employer understanding and facilitating application of the rule.

##### **B. Impact on Employees**

This final rule should achieve greater protection of employees in that employers will avoid misapplication of the beryllium standard's requirements and hence achieve greater compliance with the standard's intended meaning, thereby increasing protection for workers.

##### **C. Impact on the Department of Labor and Industry**

It is anticipated that any impact on DOLI resulting from adoption of the revisions to this standard will be negligible. Any such costs would be related to training VOSH compliance staff on the standard.

Federal regulations 29 CFR 1953.23(a) and (b) require that Virginia, within six months of the occurrence of a federal program change, to adopt identical changes or promulgate equivalent changes which are at least as effective as the federal change. The Code of Virginia reiterates this requirement in § 40.1-22(5). Adopting these revisions will allow Virginia to conform to the federal program change.

#### **V. Benefit, Cost, and Feasibility**

This rule amends the existing general industry standard for occupational exposure to beryllium and beryllium compounds to clarify certain provisions and simplify or improve compliance. Federal OSHA's final economic analysis shows that these changes will result in unquantifiable cost savings, largely due to the prevention of misinterpretation and misapplication of the standard. In promulgating the 2017 final rule, Federal OSHA determined that the beryllium rule was both technologically and economically feasible. See 82 FR at 2582–86, 2590–96, Summary of the Final Economic Analysis. The changes made in this final rule are intended to align more clearly with the intent of the 2017 final rule.

Because Federal OSHA has determined that this final rule will decrease the costs of compliance by preventing misinterpretation and misapplication of the standard, and would require no new controls or other technology, Federal OSHA has also determined that the rule is both technologically and economically feasible. Because this final rule only clarifies the existing beryllium standard or makes minor revisions that will generally aid in compliance, the revised beryllium standard will maintain safety and health protections for workers. And, to the extent this final rule helps employers avoid misapplication of the beryllium standard's requirements and hence achieves greater compliance with the standard's intended meaning, there will be increased protection for workers.



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## **RECOMMENDED ACTION**

Staff of the Department of Labor and Industry recommends that the Safety and Health Codes Board adopt federal OSHA's Final Rule revising the Occupational Exposure to Beryllium in General Industry Standard, §1910.1024 and Appendix A as authorized by Virginia Code §§ 40.1-22(5) and 2.2-4006.A.4(c), with an effective date of January 7, 2021.

The Department also recommends that the Board state in any motion it may make to amend this regulation that it will receive, consider and respond to petitions by any interested person with respect to reconsideration or revision of this or any other regulation which has been adopted in accordance with the above-cited subsection A.4(c) of the Administrative Process Act.

**Occupational Exposure to Beryllium in General Industry, §1910.1024  
Final Rule**

As Adopted by the  
Safety and Health Codes Board

Date: \_\_\_\_\_



VIRGINIA OCCUPATIONAL SAFETY AND HEALTH PROGRAM

VIRGINIA DEPARTMENT OF LABOR AND INDUSTRY

Effective Date: \_\_\_\_\_

16VAC25-90-1910.1024, Beryllium, §1910.1024; and Appendix A

When the regulations as set forth in federal OSHA's Final Rule for the Occupational Exposure to Beryllium, Part 1910 is applied to the Commissioner of the Department of Labor and Industry and/or to Virginia employers, the following federal terms shall be considered to read as below:

Federal Terms

VOSH Equivalent

29 CFR

VOSH Standard

Assistant Secretary

Commissioner of Labor and Industry

Agency

Department

July 14, 2020

January 7, 2020

assessment of occupational exposure to beryllium (Document ID 0026, Attachment 2, pp. 9–16). Another took issue with OSHA’s risk determination pertaining to dermal contact with beryllium and argued that the current standard did not distinguish between the chemical forms of beryllium and its varying risk of injury from dermal contact (Document ID 0038, pp. 13–15). OSHA addressed these concerns about risk in the 2017 final rule and determined that the beryllium standard addresses a significant risk (see 82 FR at 2545–52). The changes and clarifications proposed by the 2018 NPRM do not affect that determination.

Another commenter took issue with the revised PEL for beryllium set in the 2017 final rule, suggesting that a lower PEL was needed to protect workers from CBD and lung cancer (Document ID 0028, p. 1). Although OSHA determined in the 2017 final rule that there remains a significant risk of material impairment of health at the 0.2 µg/m³ PEL and the 2.0 µg/m³ STEL, the agency further determined that it could not demonstrate that a lower PEL would be technologically feasible (82 FR at 2552). Again, OSHA did not propose to revisit this finding in this rulemaking.

**List of Subjects for 29 CFR Part 1910**

Beryllium, General industry, Health, Occupational safety and health.

**Authority**

Loren Sweatt, Principal Deputy Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, directed the preparation of this document. The agency issues the sections under the following authorities: 29 U.S.C. 653, 655, 657; Secretary of Labor’s Order 1–2012 (77 FR 3912); 29 CFR part 1911; and 5 U.S.C. 553, as applicable.

Signed at Washington, DC, on May 13, 2020.

**Loren Sweatt,**

*Principal Deputy Assistant Secretary of Labor for Occupational Safety and Health.*

**Amendments to Standards**

For the reasons set forth in the preamble, chapter XVII of title 29, part 1910 is amended to read as follows:

**PART 1910—OCCUPATIONAL SAFETY AND HEALTH STANDARDS**

■ 1. The authority section for part 1910, subpart Z, continues to read as follows:

**Authority:** 29 U.S.C. 653, 655, 657; Secretary of Labor’s Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736), 1–90 (55 FR 9033), 6–96 (62 FR 111), 3–2000 (65 FR 50017), 5–2002 (67 FR 65008),

5–2007 (72 FR 31160), 4–2010 (75 FR 55355), or 1–2012 (77 FR 3912); and 29 CFR part 1911.

All of subpart Z issued under 29 U.S.C. 655(b), except those substances that have exposure limits listed in Tables Z–1, Z–2, and Z–3 of § 1910.1000. The latter were issued under 29 U.S.C. 655(a).

Section 1910.1000, Tables Z–1, Z–2 and Z–3 also issued under 5 U.S.C. 553, but not under 29 CFR part 1911 except for the arsenic (organic compounds), benzene, cotton dust, and chromium (VI) listings.

Section 1910.1001 also issued under 40 U.S.C. 3704 and 5 U.S.C. 553.

Section 1910.1002 also issued under 5 U.S.C. 553, but not under 29 U.S.C. 655 or 29 CFR part 1911.

Sections 1910.1018, 1910.1029, and 1910.1200 also issued under 29 U.S.C. 653.

Section 1910.1030 also issued under Public Law 106–430, 114 Stat. 1901.

Section 1910.1201 also issued under 49 U.S.C. 1801–1819 and 5 U.S.C. 553.

■ 2. Amend § 1910.1024 by:

■ A. Revising the definitions for “Beryllium sensitization,” “Beryllium work area,” “CBD diagnostic center,” “Chronic beryllium disease (CBD),” and “Dermal contact with beryllium”.

■ B. Revise paragraphs (f)(1)(i)(D), (f)(ii)(B), (h)(2)(i), (h)(3)(iii), (i)(1) introductory text, (i)(2), (i)(4)(ii), (j)(3), (k)(2)(i)(B), (k)(2)(iii) and (iv), (k)(7)(i) introductory text, (k)(7)(ii) through (vi), (l)(1)(i)(B), (l)(1)(ii), (m)(3), (m)(4)(ii)(A), (m)(4)(ii)(E), (n)(1)(ii)(F), (n)(3)(ii)(A), (n)(4)(i), and Appendix A.

The revisions read as follows:

**§ 1910.1024 Beryllium.**

\* \* \* \* \*

(b) \* \* \*

*Beryllium sensitization* means a response in the immune system of a specific individual who has been exposed to beryllium. There are no associated physical or clinical symptoms and no illness or disability with beryllium sensitization alone, but the response that occurs through beryllium sensitization can enable the immune system to recognize and react to beryllium. While not every beryllium-sensitized person will develop chronic beryllium disease (CBD), beryllium sensitization is essential for development of CBD.

*Beryllium work area* means any work area where materials that contain at least 0.1 percent beryllium by weight are processed either:

- (1) During any of the operations listed in Appendix A of this standard; or
- (2) Where employees are, or can reasonably be expected to be, exposed to airborne beryllium at or above the action level.

*CBD diagnostic center* means a medical diagnostic center that has a

pulmonologist or pulmonary specialist on staff and on-site facilities to perform a clinical evaluation for the presence of chronic beryllium disease (CBD). The CBD diagnostic center must have the capacity to perform pulmonary function testing (as outlined by the American Thoracic Society criteria), bronchoalveolar lavage (BAL), and transbronchial biopsy. The CBD diagnostic center must also have the capacity to transfer BAL samples to a laboratory for appropriate diagnostic testing within 24 hours. The pulmonologist or pulmonary specialist must be able to interpret the biopsy pathology and the BAL diagnostic test results.

*Chronic beryllium disease (CBD)* means a chronic granulomatous lung disease caused by inhalation of airborne beryllium by an individual who is beryllium sensitized.

*Confirmed positive* means the person tested has had two abnormal BeLPT test results, an abnormal and a borderline test result, or three borderline test results, obtained from tests conducted within a three-year period. It also means the result of a more reliable and accurate test indicating a person has been identified as having beryllium sensitization.

\* \* \* \* \*

*Dermal contact with beryllium* means skin exposure to:

- (1) Soluble beryllium compounds containing beryllium in concentrations greater than or equal to 0.1 percent by weight;
- (2) Solutions containing beryllium in concentrations greater than or equal to 0.1 percent by weight; or
- (3) Visible dust, fumes, or mists containing beryllium in concentrations greater than or equal to 0.1 percent by weight. The handling of beryllium materials in non-particulate solid form that are free from visible dust containing beryllium in concentrations greater than or equal to 0.1 percent by weight is not considered dermal contact under the standard.

\* \* \* \* \*

(f) \* \* \*

(1) \* \* \*

(i) \* \* \*

(D) Procedures for minimizing cross-contamination, including the transfer of beryllium between surfaces, equipment, clothing, materials, and articles within beryllium work areas;

\* \* \* \* \*

(ii) \* \* \*

(B) The employer is notified that an employee is eligible for medical removal in accordance with paragraph (l)(1) of this standard, referred for evaluation at

a CBD diagnostic center, or shows signs or symptoms associated with exposure to beryllium; or

\* \* \* \* \*  
(h) \* \* \*  
(2) \* \* \*

(i) The employer must ensure that each employee removes all beryllium-contaminated personal protective clothing and equipment at the end of the work shift, at the completion of all tasks involving beryllium, or when personal protective clothing or equipment becomes visibly contaminated with beryllium, whichever comes first.

\* \* \* \* \*

(3) \* \* \*  
(iii) The employer must inform in writing the persons or the business entities who launder, clean, or repair the personal protective clothing or equipment required by this standard of the potentially harmful effects of exposure to beryllium and that the personal protective clothing and equipment must be handled in accordance with this standard.

\* \* \* \* \*

(i) \* \* \*  
(1) *General.* For each employee working in a beryllium work area or who can reasonably be expected to have dermal contact with beryllium, the employer must:

\* \* \* \* \*

(2) *Change rooms.* In addition to the requirements of paragraph (i)(1)(i) of this standard, the employer must provide employees who are required to use personal protective clothing or equipment under paragraph (h)(1)(ii) of this standard with a designated change room in accordance with this standard and the Sanitation standard (§ 1910.141) where employees are required to remove their personal clothing.

\* \* \* \* \*

(4) \* \* \*  
(ii) No employees enter any eating or drinking area with beryllium-contaminated personal protective clothing or equipment unless, prior to entry, it is cleaned, as necessary, to be as free as practicable of beryllium by methods that do not disperse beryllium into the air or onto an employee's body; and

\* \* \* \* \*

(j) \* \* \*  
(3) *Disposal, recycling, and reuse.* (i) Except for intra-plant transfers, when the employer transfers materials that contain at least 0.1 percent beryllium by weight or are contaminated with beryllium for disposal, recycling, or reuse, the employer must label the

materials in accordance with paragraph (m)(3) of this standard;

(ii) Except for intra-plant transfers, materials designated for disposal that contain at least 0.1 percent beryllium by weight or are contaminated with beryllium must be cleaned to be as free as practicable of beryllium or placed in enclosures that prevent the release of beryllium-containing particulate or solutions under normal conditions of use, storage, or transport, such as bags or containers; and

(iii) Except for intra-plant transfers, materials designated for recycling or reuse that contain at least 0.1 percent beryllium by weight or are contaminated with beryllium must be cleaned to be as free as practicable of beryllium or placed in enclosures that prevent the release of beryllium-containing particulate or solutions under normal conditions of use, storage, or transport, such as bags or containers.

\* \* \* \* \*

(k) \* \* \*  
(2) \* \* \*  
(i) \* \* \*

(B) An employee meets the criteria of paragraph (k)(1)(i)(B) of this standard.

\* \* \* \* \*

(iii) At the termination of employment for each employee who meets any of the criteria of paragraph (k)(1)(i) of this standard at the time the employee's employment terminates, unless an examination has been provided in accordance with this standard during the six months prior to the date of termination. Each employee who meets the criteria of paragraph (k)(1)(i)(C) of this standard and who has not received an examination since exposure to beryllium during the emergency must be provided an examination at the time the employee's employment terminates.

(iv) For an employee who meets the criteria of paragraph (k)(1)(i)(C) of this standard:

(A) If that employee has not received a medical examination within the previous two years pursuant to paragraph (k)(1)(i) of this standard, then within 30 days after the employee meets the criteria of paragraph (k)(1)(i)(C) of this standard; or

(B) If that employee has received a medical examination within the previous two years pursuant to paragraph (k)(1)(i) of this standard, then at least one year but no more than two years after the employee meets the criteria of paragraph (k)(1)(i)(C) of this standard.

\* \* \* \* \*

(7) \* \* \*

(i) The employer must provide an evaluation at no cost to the employee at

a CBD diagnostic center that is mutually agreed upon by the employer and the employee. The evaluation at the CBD diagnostic center must be scheduled within 30 days, and must occur within a reasonable time, of:

\* \* \* \* \*

(ii) The employer must ensure that, as part of the evaluation, the employee is offered any tests deemed appropriate by the examining physician at the CBD diagnostic center, such as pulmonary function testing (as outlined by the American Thoracic Society criteria), bronchoalveolar lavage (BAL), and transbronchial biopsy. If any of the tests deemed appropriate by the examining physician are not available at the CBD diagnostic center, they may be performed at another location that is mutually agreed upon by the employer and the employee.

(iii) The employer must ensure that the employee receives a written medical report from the CBD diagnostic center that contains all the information required in paragraph (k)(5)(i), (ii), (iv), and (v) of this standard and that the PLHCP explains the results of the examination to the employee within 30 days of the examination.

(iv) The employer must obtain a written medical opinion from the CBD diagnostic center within 30 days of the medical examination. The written medical opinion must contain only the information in paragraph (k)(6)(i), as applicable, unless the employee provides written authorization to release additional information. If the employee provides written authorization, the written opinion must also contain the information from paragraphs (k)(6)(ii), (iv), and (v), if applicable.

(v) The employer must ensure that each employee receives a copy of the written medical opinion from the CBD diagnostic center described in paragraph (k)(7) of this standard within 30 days of any medical examination performed for that employee.

(vi) After an employee has received the initial clinical evaluation at a CBD diagnostic center described in paragraphs (k)(7)(i) and (ii) of this standard, the employee may choose to have any subsequent medical examinations for which the employee is eligible under paragraph (k) of this standard performed at a CBD diagnostic center mutually agreed upon by the employer and the employee, and the employer must provide such examinations at no cost to the employee.

\* \* \* \* \*

(l) \* \* \*  
(1) \* \* \*

- (i) \* \* \*
- (B) A written medical report recommending removal from airborne exposure to beryllium in accordance with paragraph (k)(5)(v) or (k)(7)(iii) of this standard; or
- (ii) The employer receives a written medical opinion recommending removal from airborne exposure to beryllium in accordance with paragraph (k)(6)(v) or (k)(7)(iv) of this standard.
- \* \* \* \* \*
- (m) \* \* \*
- (3) *Warning labels.* Consistent with the HCS (§ 1910.1200), the employer must label each immediate container of clothing, equipment, and materials contaminated with beryllium, and must, at a minimum, include the following on the label:  
 DANGER  
 CONTAINS BERYLLIUM  
 MAY CAUSE CANCER  
 CAUSES DAMAGE TO LUNGS  
 AVOID CREATING DUST  
 DO NOT GET ON SKIN
- (4) \* \* \*
- (ii) \* \* \*

- (A) The health hazards associated with airborne exposure to and dermal contact with beryllium, including the signs and symptoms of CBD;
- \* \* \* \* \*
- (E) Measures employees can take to protect themselves from airborne exposure to and dermal contact with beryllium, including personal hygiene practices;
- \* \* \* \* \*
- (n) \* \* \*
- (1) \* \* \*
- (ii) \* \* \*
- (F) The name and job classification of each employee represented by the monitoring, indicating which employees were actually monitored.
- \* \* \* \* \*
- (3) \* \* \*
- (ii) \* \* \*
- (A) Name and job classification;
- \* \* \* \* \*
- (4) \* \* \*
- (i) At the completion of any training required by this standard, the employer must prepare a record that indicates the name and job classification of each

employee trained, the date the training was completed, and the topic of the training.

\* \* \* \* \*

(p) *Appendix.* Table A.1 in this appendix sets forth the operations that, where performed under the circumstances described in the column heading above the particular operations, trigger the requirement for a beryllium work area.

**Appendix A to § 1910.1024—Operations for Establishing Beryllium Work Areas**

Paragraph (b) of this standard defines a *beryllium work area* as any work area where materials that contain at least 0.1 percent beryllium by weight are processed (1) during any of the operations listed in Appendix A of this standard, or (2) where employees are, or can reasonably be expected to be, exposed to airborne beryllium at or above the action level. Table A.1 in this appendix sets forth the operations that, where performed under the circumstances described in the column heading above the particular operations, trigger the requirement for a beryllium work area.

TABLE A.1—OPERATIONS FOR ESTABLISHING BERYLLIUM WORK AREAS WHERE PROCESSING MATERIALS CONTAINING AT LEAST 0.1 PERCENT BERYLLIUM BY WEIGHT

Beryllium metal alloy operations (generally <10% beryllium by weight)	Beryllium composite operations (generally >10% beryllium by weight) and beryllium metal operations	Beryllium oxide operations
Abrasive Blasting.	Abrasive Blasting.	Abrasive Blasting.
Abrasive Processing.	Abrasive Processing.	Abrasive Processing.
Abrasive Sawing.	Abrasive Sawing.	Abrasive Sawing.
Annealing.	Annealing.	Boring.
Bright Cleaning.	Atomizing.	Brazing (>1,100 °C).
Brushing.	Attritioning.	Broaching with green ceramic.
Buffing.	Blanking.	Brushing.
Burnishing.	Bonding.	Buffing.
Casting.	Boring.	Centerless grinding.
Centerless Grinding.	Breaking.	Chemical Cleaning.
Chemical Cleaning.	Bright Cleaning.	Chemical Etching.
Chemical Etching.	Broaching.	CNC Machining.
Chemical Milling.	Brushing.	Cold Isostatic Pressing (CIP).
Dross Handling.	Buffing.	Crushing.
Deburring (grinding).	Burnishing.	Cutting.
Electrical Chemical Machining (ECM).	Casting.	Deburring (grinding).
Electrical Discharge Machining (EDM).	Centerless Grinding.	Deburring (non-grinding).
Extrusion.	Chemical Cleaning.	Destructive Testing.
Forging.	Chemical Etching.	Dicing.
Grinding.	Chemical Milling.	Drilling.
Heat Treating (in air).	CNC Machining.	Dry/wet Tumbling.
High Speed Machining (>10,000 rpm).	Cold Isostatic Pressing.	Extrusion.
Hot Rolling.	Cold Pilger.	Filing by Hand.
Lapping.	Crushing.	Firing of Green Ceramic.
Laser Cutting.	Cutting.	Firing of Refractory Metallization (>1,100 °C).
Laser Machining.	Deburring.	Grinding.
Laser Scribing.	Dicing.	Honing.
Laser Marking.	Drawing.	Hot Isostatic Pressing (HIP).
Melting.	Drilling.	Lapping.
Photo-Etching.	Dross Handling.	Laser Cutting.
Pickling.	Electrical Chemical Machining (ECM).	Laser Machining.
Point and Chamfer.	Electrical Discharge Machining (EDM).	Laser Scribing.
Polishing.	Extrusion.	Laser Marking.
Torch Cutting ( <i>i.e.</i> , oxy-acetylene).	Filing by Hand.	Machining.
Tumbling.	Forging.	Milling.
Water-jet Cutting.	Grinding.	Piercing.
Welding.	Heading.	Mixing.

TABLE A.1—OPERATIONS FOR ESTABLISHING BERYLLIUM WORK AREAS WHERE PROCESSING MATERIALS CONTAINING AT LEAST 0.1 PERCENT BERYLLIUM BY WEIGHT—Continued

Beryllium metal alloy operations (generally <10% beryllium by weight)	Beryllium composite operations (generally >10% beryllium by weight) and beryllium metal operations	Beryllium oxide operations
Sanding. Slab Milling.	Heat Treating. Honing. Hot Isostatic Pressing (HIP). Lapping. Laser Cutting. Laser Machining. Laser Scribing. Laser Marking. Machining. Melting. Milling. Mixing. Photo-Etching. Pickling. Piercing. Pilger. Plasma Spray. Point and Chamfer. Polishing. Powder Handling. Powder Pressing. Pressing. Reaming. Roll Bonding. Rolling. Sanding. Sawing (tooth blade). Shearing. Sizing. Skiving. Slitting. Snapping. Sputtering. Stamping. Spray Drying. Tapping. Tensile Testing. Torch Cutting ( <i>i.e.</i> , oxy acetylene). Trepanning. Tumbling. Turning. Vapor Deposition. Water-Jet Cutting. Welding.	Plasma Spray. Polishing. Powder Handling. Powder Pressing. Reaming. Sanding. Sectioning. Shearing. Sintering of Green Ceramic. Sintering of Refractory Metallization (>1,100 °C). Snapping. Spray Drying. Tape Casting. Turning. Water Jet Cutting.





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**Virginia Safety and Health Codes Board**

**BRIEFING PACKAGE**

**For November 12, 2020**

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**Occupational Exposure to Beryllium for Construction and Shipyards, §§1915.1024 and 1926.1024**

**I. Action Requested**

The Virginia Occupational Safety and Health (VOSH) Program requests the Safety and Health Codes Board (SHCB) consider for adoption federal OSHA's amendments of 29 CFR 1915 and 29 CFR 1926 to revise portions of its existing construction and shipyard<sup>1</sup> standards for Occupational Exposure to Beryllium, as published in *85 FR 53910* on August 31, 2020.

<https://www.govinfo.gov/content/pkg/FR-2020-08-31/pdf/2020-18017.pdf>

The proposed effective date is January 7, 2021.

**II. Summary and Purpose of the Final Rule**

**A. Summary**

On January 9, 2017, OSHA published a final rule on Occupational Exposure to Beryllium and Beryllium Compounds (82 FR 2470).<sup>2</sup> This rule created health standards for beryllium exposure in the general industry (29 CFR 1910.1024), construction (29 CFR 1926.1124), and shipyards (29 CFR 1915.1024) sectors.

In the final rule, Federal OSHA concluded that employees exposed to beryllium and beryllium compounds at the preceding permissible exposure limits (PELs) were at significant risk of material impairment of health, specifically chronic beryllium disease (CBD) and lung

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<sup>1</sup> VOSH's jurisdiction over maritime activity is limited to the public sector.

<sup>2</sup> The SHCB adopted this final rule on February 16, 2017. It became effective May 15, 2017.

cancer. The agency further determined that limiting employee exposure to an 8-hour time weighted average (TWA) PEL of 0.2 mg/ m<sup>3</sup> would reduce this significant risk to the maximum extent feasible. Therefore, the 2017 final rule adopted a TWA PEL of 0.2 mg/m<sup>3</sup>.

In addition to the revised PEL, the 2017 final rule established a new short-term exposure limit (STEL) of 2.0 mg/m<sup>3</sup> over a 15-minute sampling period and an action level of 0.1 mg/m<sup>3</sup> as an 8-hour TWA, along with a number of ancillary provisions intended to provide additional protections to employees. The ancillary provisions included requirements for exposure assessment, methods for controlling exposure, respiratory protection, personal protective clothing and equipment, housekeeping, medical surveillance, hazard communication, and recordkeeping that are similar to those found in other OSHA health standards.

The 2017 final rule went into effect on May 20, 2017, and OSHA began enforcing the PEL and STEL in the construction and shipyard sectors on May 11, 2018.

On June 27, 2017, based on stakeholder feedback and a review of applicable existing standards, Federal OSHA published a notice of proposed rulemaking (NPRM) proposing to revoke the ancillary provisions for both the construction and shipyards standards while retaining the new lower PEL of 0.2 mg/m<sup>3</sup> and STEL of 2.0 mg/m<sup>3</sup> for those sectors (82 FR 29182).

On September 30, 2019, Federal OSHA issued a final rule in which the agency declined to revoke the ancillary provisions of the construction and shipyards standards as proposed in the June 27, 2017 NPRM (84 FR 51377). Based on comments received and the record as a whole, the agency determined that there is not complete overlap in protections between the beryllium standards' ancillary provisions and existing standards applicable to these sectors. Thus, revoking all of the ancillary provisions and leaving only the PEL and STEL would be inconsistent with Federal OSHA's statutory mandate to protect workers from the demonstrated significant risks of material impairment of health resulting from exposure to beryllium and beryllium compounds.

However, after careful review, Federal OSHA determined that some revisions to the construction and shipyards standards were appropriate. To give the agency time to finalize a new proposal with these more limited changes to the construction and shipyards standards, the final rule delayed the compliance dates for all ancillary provisions of these standards until September 30, 2020. The final rule did not impact the PEL or STEL, which OSHA has been enforcing since May 11, 2018.

On October 8, 2019, OSHA published the proposal being finalized here (84 FR 53902). In the NPRM, the agency proposed several revisions to the ancillary provisions of the construction and shipyard standards to more appropriately tailor the standards to these industries, to align certain provisions with recent changes to the general industry standard, and to clarify OSHA's intent with respect to materials containing trace amounts of beryllium.

## **B. Purpose**

The purpose of the changes to the beryllium standards for construction and shipyards is to accomplish three goals: (1) To more appropriately tailor the requirements of the construction and shipyards standards to the particular exposures in these industries in light of partial overlap between the beryllium standards' requirements and other Federal OSHA standards; (2) to more closely align the shipyards and construction standards to the general industry beryllium standard with respect to the medical definitions and medical surveillance requirements, where appropriate; and (3) to clarify certain requirements with respect to materials containing only trace amounts of beryllium.

## **III. Overview of Revisions to the Standard**

Federal OSHA has determined that, taken together, the limited exposures in the construction and shipyards industries and the partial overlap between the beryllium standards and other Federal OSHA standards make revisions to both the construction and shipyards beryllium standards appropriate.

The rationales for these revisions fall into three categories. First, OSHA is removing or modifying some provisions which— although appropriate in the general industry context—may be unnecessary or require revision to appropriately protect employees in the construction and shipyards industries. Operations with beryllium exposure in the construction and shipyards industries are significantly less varied and employees are exposed to materials with significantly lower content beryllium than in the general industry sector.

Second, Federal OSHA is revising some provisions of the construction and shipyard standards to avoid inconsistencies with the clarifying changes the agency has made in the (July 14, 2020) general industry final rule.

Third, Federal OSHA is revising certain paragraphs of the construction and shipyard standards to address the application of provisions related to dermal contact to materials containing beryllium in trace quantities.

This final rule makes revisions to the following paragraphs of the beryllium standards for construction and shipyards: Paragraph (b), definitions; paragraph (f), methods of compliance; paragraph (g), respiratory protection; paragraph (h), personal protective clothing and equipment; paragraph (i), hygiene areas and practices; paragraph (j), housekeeping; paragraph (k), medical surveillance; paragraph (m), communication of hazards; and paragraph (n), recordkeeping.

### **A. Definitions; Paragraph (b)**

The final rule mirrors many of the additions and clarifications to terms revised in the final rule for occupational exposure to beryllium in general industry. The terms that are changing or are being added are “beryllium sensitization,” “CBD diagnostic center,” “chronic beryllium disease,” and “confirmed positive.”

This final rule also eliminates the definitions “emergency” and “High efficiency particulate air (HEPA) filter” which is discussed below.

1. ***Beryllium sensitization*** — “a response in the immune system of a specific individual who has been exposed to beryllium. There are no associated physical or clinical symptoms and no illness or disability with beryllium sensitization alone, but the response that occurs through beryllium sensitization can enable the immune system to recognize and react to beryllium. While not every beryllium sensitized person will develop chronic beryllium disease (CBD), beryllium sensitization is essential for development of CBD.”

This definition is the same as the one found in the July 2020 final rule for general industry.

2. ***CBD diagnostic center*** — The final rule clarifies this term. Federal OSHA is defining *CBD diagnostic center* to mean a medical diagnostic center that has a pulmonologist or pulmonary specialist on staff and on-site facilities to perform a clinical evaluation for the presence of CBD.

The revised definition also states that a CBD diagnostic center must have the capacity to perform pulmonary function testing (as outlined by the American Thoracic Society criteria), bronchoalveolar lavage (BAL), and transbronchial biopsy. In the revised definition, the CBD diagnostic center must also have the capacity to transfer BAL samples to a laboratory for appropriate diagnostic testing within 24 hours and the pulmonologist or pulmonary specialist must be able to interpret the biopsy pathology and the BAL diagnostic test results.

The revision to this definition is the same as the one found in the July 2020 final rule for general industry.

3. ***Chronic beryllium disease (CBD)*** — For the purposes of this standard, the term chronic beryllium disease means a “chronic granulomatous lung disease caused by inhalation of airborne beryllium by an individual who is beryllium sensitized.” The revisions serve to differentiate CBD from other respiratory diseases associated with beryllium exposure (e.g., lung cancer) and to make clear that beryllium sensitization and the presence of beryllium in the lung are essential in the development of CBD (see 82 FR at 2492).

The revision to this definition is the same as the one found in the July 2020 final rule for general industry.

4. ***Confirmed positive*** — Federal OSHA is amending the definition of confirmed positive to mean (1) the person tested has had two abnormal BeLPT test results, an abnormal and a borderline test result, or three borderline test results, obtained from tests conducted within a three-year period; or (2) the result of a more reliable and accurate test indicating a person has been identified as having beryllium sensitization.

The revision to this definition is the same as the one found in the July 2020 final rule for general industry.

5. **Emergency** — The final rule removes references to the term emergency throughout the construction and shipyards standards, including the definition in paragraph (b). Federal OSHA explained that, unlike in general industry, the construction and shipyards industries—where exposure to beryllium is almost exclusively limited to trace quantities from abrasive blasting and welding operations—do not have emergencies in which exposures to beryllium will differ from the normal conditions of work.

Specifically, Federal OSHA reasoned that an uncontrolled release of airborne beryllium in these industries (such as a release resulting from a failure of the blasting control equipment, a spill of the abrasive blasting media, or failure of the ventilation system for welding operations) would occur only during the performance of routine tasks already associated with the airborne release of beryllium; that is, during abrasive blasting or welding processes.

The agency explained that it anticipates employees working in the immediate vicinity of an uncontrolled release of airborne beryllium in these contexts would already be protected from exposure by the standards' existing requirements for respiratory protection (paragraph (g)), medical surveillance (paragraph (k)), and hazard communication (paragraph (m)) due to their existing exposure to airborne beryllium (84 FR at 53909; see also id. at 53912, 53918–20).

6. **High efficiency particulate air (HEPA) filter** — Federal OSHA is removing the reference to HEPA-filtered vacuuming in the housekeeping requirements of revised paragraphs (j)(1) and (2). In the NPRM, OSHA neglected to remove the definition for high-efficiency particulate air (HEPA) filter in paragraph (b), despite the fact that there are no longer any provisions in either standard that reference HEPA-filters. This final rule removes the definition. This change has no substantive effect on any requirements in the standards and Federal OSHA considers this a technical correction.

## **B. Methods of Compliance; Paragraph (f)**

Paragraph (f) of the beryllium standards for construction and shipyards requires employers to implement methods for reducing employee exposure to beryllium through a detailed written exposure control plan, engineering and work practice controls, and a prohibition on rotating employees to achieve compliance with the PEL. In the 2017 final rule, Federal OSHA determined that written plans would “be instrumental in ensuring that employers comprehensively and consistently protect their employees” (82 FR at 2668). Federal OSHA also concluded that requiring reliance on engineering and work practice controls, rather than on respirator use, is consistent with good industrial hygiene practice and with OSHA’s traditional approach to health standards (82 FR at 2672).

While extending these provisions to the construction and shipyards industry in the 2017 final rule, Federal OSHA acknowledged that exposures to beryllium in these industries are limited primarily to a few operations, abrasive blasting in construction and shipyards and some welding operations in shipyards (82 FR at 2637–38).

In the 2019 NPRM, Federal OSHA proposed to revise the requirements in paragraph (f) in light of the very narrow set of affected operations and the limited extent of beryllium exposure in the construction and shipyards industries. Federal OSHA explained that some provisions in paragraph (f)—although appropriate in the general industry context—may be unnecessary to protect employees in the construction and shipyards industries (84 FR at 53909–10).

Likewise, OSHA preliminarily determined that provisions relating solely to dermal contact with beryllium should not apply in the construction and shipyards industries, where exposures primarily involve materials containing only trace amounts of beryllium (84 FR at 53909) or, in the case of welding, where OSHA believes the process and materials do not present a dermal contact risk (see 84 FR at 53906).

Accordingly, the final rule makes several revisions to both paragraph (f)(1) (Written exposure control plan) and (2) (Engineering and work practice controls) in the construction and shipyards standards.

The final rule makes the following changes to paragraph (f)(1):

1. The final rule revises paragraph (f)(1)(i)(A) by removing the words “airborne” and “dermal contact with” as qualifiers for exposure to beryllium, so as to require simply a list of operations and job titles reasonably expected to involve exposure to beryllium.
2. Second, the final rule revoke paragraphs (f)(1)(i)(B) and (C) which required additional lists of operations and job titles involving exposure at or above the action level and above the TWA PEL or STEL, respectively. Federal OSHA reasoned that, given the small number of operations with beryllium exposure in construction and shipyards, the list of operations and job titles in these categories would be the same as those required by paragraph (f)(1)(i)(A). As such, any additional lists would be unnecessary and redundant (84 FR at 53910–11).
3. The final rule revokes the requirements that the employer include in the written exposure control plan procedures for minimizing cross contamination (paragraph (f)(1)(i)(D)) and procedures for minimizing the migration of beryllium within or to locations outside the workplace (paragraph (f)(1)(i)(E)) (84 FR at 53910).

With respect to the construction standard, Federal OSHA reasoned that the requirement to include procedures in the written exposure control plan to restrict access to work areas where exposures to beryllium could reasonably be expected to exceed the TWA PEL or STEL (formerly paragraph (f)(i)(E), renumbered as (f)(i)(D)), along with the requirement that these procedures be implemented by a competent person (paragraph (e)(2)), would be sufficient to control cross-contamination and migration of beryllium from abrasive blasting operations.

For the shipyard standard, OSHA retained requirements for regulated areas (paragraph (e)), which require that employers designate areas where exposures to beryllium could exceed the PELs and limit access to authorized employees.

4. To further limit cross-contamination and migration, the final rule adds a new paragraph in both the construction ((f)(1)(i)(E)) and shipyards ((f)(1)(i)(D)) standards to require that the written exposure control plan include procedures to ensure the integrity of each containment used to minimize exposures to employees outside the containment (such as tarps or structures used to keep sandblasting debris within an enclosed area during abrasive blasting operations).
5. The final rule removes the requirement that the employer include in the written exposure control plan procedures for removing, laundering, storing, cleaning, repairing, and disposing of beryllium-contaminated personal protective clothing and equipment, including respirators (paragraph (f)(1)(i)(H)).
6. Finally, as with paragraph (f)(1)(i)(A), the final rule revises paragraph (f)(1)(ii)(B) to refer simply to “exposure to” rather than “airborne exposure to or dermal contact with” beryllium (84 FR at 53911).

The revision to this paragraph, which previously required the employer to review, evaluate, and update the written exposure control plan, as necessary, when notified that an employee shows signs or symptoms associated with airborne exposure to or dermal contact with beryllium, is consistent with other paragraphs where the agency is simplifying the language in a similar manner (e.g., paragraphs (k)(3)(ii)(A) and (k)(4)(i), Medical surveillance) and is not intended to alter the meaning of the provision.

As for paragraph (f)(2), Federal OSHA reconsidered this approach to engineering and work practice controls in the construction and shipyards contexts. Because exposure to beryllium in construction and shipyards is almost exclusively limited to abrasive blasting and welding, Federal OSHA preliminarily determined in the 2019 NPRM that requiring engineering controls where exposures are between the action level and the PEL is not reasonably appropriate for these industries. As such, the final rule revises paragraph (f)(2) to remove the requirement that employers implement engineering and work practice controls wherever exposures are between the action level and PEL.

### **C. Paragraph (g) Respiratory Protection**

Paragraph (g) of this final rule requires the provision and use of respiratory protection under several conditions to protect against exposure to beryllium. Paragraph (g)(1) requires employers provide respiratory protection at no cost to employees and to ensure that employees utilize such protection in certain circumstances.

Under subsection (g)(1)(iv), employers were previously required to use respiratory protection during emergencies, from both the construction and shipyards standards. Federal OSHA has determined that it is unnecessary to trigger respiratory protection requirements on the occurrence of an emergency. Any uncontrolled release of beryllium in these operations will not create exposures that differ from the normal conditions of work and workers should already be protected by the other provisions of paragraph (g).

This final rule eliminates the emergency provision from paragraph (g) and Federal OSHA removes paragraph (g)(1)(iv) from the beryllium standards for construction and shipyards.

#### **D. Personal Protective Clothing and Equipment; Paragraph (h)**

Paragraph (h) of the beryllium standards for the construction and shipyards industries (29 CFR 1926.1124(h) and 1915.1024(h), respectively) provides requirements relating to personal protective clothing and equipment (PPE).

Paragraph (h) is revised in both standards to reflect the fact that Federal OSHA did not intend for the standards' provisions aimed at protecting workers from the effects of dermal contact with beryllium to apply to operations that involve materials containing only trace amounts of beryllium absent significant airborne exposures.

The final rule revises paragraphs (h) in the following ways:

1. Revises paragraph (h)(1) to state "where airborne exposure exceeds, or can reasonably be expected to exceed, the TWA PEL or STEL, the employer must provide at no cost, and ensure that each employee uses, appropriate personal protective clothing and equipment in accordance with the written exposure control plan required under paragraph (f)(1) of this standard and OSHA's Personal Protective Equipment standards for shipyards (subpart I of this part). "
2. Revises paragraph (h)(2) to state:
  - (i) The employer must ensure that each employee removes all personal protective clothing and equipment required by this standard at the end of the work shift or at the completion of all tasks involving beryllium, whichever comes first.
  - (ii) The employer must ensure that personal protective clothing and equipment required by this standard is not removed in a manner that disperses beryllium into the air, and is removed as specified in the written exposure control plan required by paragraph (f)(1) of this standard.
  - (iii) The employer must ensure that no employee with reasonably expected exposure above the TWA PEL or STEL removes personal protective clothing and equipment required by this standard from the workplace unless it has been cleaned in accordance with paragraph (h)(3)(ii) of this standard.
3. Revises paragraph (h)(3)(ii) to state "the employer must ensure that beryllium is not removed from personal protective clothing and equipment required by this standard by blowing, shaking, or any other means that disperses beryllium into the air."
4. Removes paragraph (h)(3)(iii).

#### **E. Hygiene Areas and Practices; Former Paragraph (i)**

Paragraph (i) requires that the employer provide employees with readily accessible washing facilities, change rooms, and showers when certain conditions are met; requires the



employer to take certain steps to minimize exposure in eating and drinking areas; and prohibits certain practices that may contribute to beryllium exposure.

The final rule removes paragraph (i), hygiene areas and practices, from the beryllium standards as Federal OSHA determined that the sanitation standards for construction (29 CFR 1926.51) and shipyards (29 CFR 1915.88) provide protections comparable to those in paragraph (i) of the beryllium standards for construction and shipyards and that additional requirements will not materially increase protections in these sectors. Accordingly, Federal OSHA is removing paragraph (i) from the beryllium standards for construction and shipyards.

#### **F. Housekeeping; Paragraph (j)**

The final rule revises paragraph (j) to further tailor certain provisions of the beryllium standards for construction and shipyards—including those housekeeping requirements—to those operations for which Federal OSHA has data; that is, abrasive blasting operations with material containing trace amounts of beryllium and limited welding operations where dermal contact is not an exposure source of concern.

In addition, Federal OSHA found other Federal OSHA standards that were duplicative of those found in paragraph (j) of the beryllium standards.

To that end, the final rule makes the following changes to paragraph (j)

1. Remove existing paragraph (j)(1) which required employers to follow the written exposure control plan in paragraph (f) when cleaning beryllium-contaminated areas and to ensure that spills and emergency releases of beryllium are cleaned up promptly and in accordance with the written exposure control plan (84 FR at 53917). Federal OSHA explained that routine general housekeeping and housekeeping related to spills are adequately covered by the existing ventilation standard for construction (29 CFR 1926.57(f)(7)) and OSHA's general ventilation standard (29 CFR 1910.94(a)) applicable to shipyards (84 FR at 53917).
2. Paragraph (j)(2) is renumbered as (j)(1) and revised as follows:
  - a. paragraph (j)(2)(i) is renumbered as (j)(1)
  - b. paragraph (j)(2)(ii) is renumbered as (j)(2)
  - c. both revised and renumbered paragraphs replace the phrase "cleaning in beryllium-contaminated area" with "cleaning up dust resulting from operations that cause, or can reasonably be expected to cause, airborne exposure above the TWA PEL or STEL"
  - d. both revised and renumbered paragraphs remove references to "HEPA-filtered vacuuming" in renumbered paragraphs (j)(1) and (2) and instead to refer to methods that minimize the likelihood and level of airborne exposure. Federal OSHA explained that in abrasive blasting operations, where large amounts of

dust are generated, the use of such vacuums may be problematic due to filter overload and clogging which may cause additional exposures (84 FR at 53917).

3. Paragraph (j)(2)(iii) is renumbered as (j)(3) and removed the phrase “beryllium contaminated areas” and adds a provision that limits the use of compressed air to circumstances in which there is a limited quantity of dust, which, if reentrained, would not result in exposures above the TWA PEL or STEL.
4. Paragraph (j)(2)(iv) is renumbered as (j)(4) and removes the reference to “beryllium-contaminated areas” and instead requires the use of respiratory protection and PPE “in accordance with paragraphs (g) and (h)” when dry sweeping, brushing, or compressed air is used (84 FR at 53918).
  - a. Newly renumbered (j)(4) also removes the disposal provision, which had required that, when transferring beryllium-containing materials to another party for use or disposal, employers must provide the recipient a copy of the warning label required by paragraph (m).

#### **G. Medical Surveillance; Paragraph (k)**

Paragraph (k) of the beryllium standard for construction and shipyards addresses medical surveillance requirements. The paragraph specifies which employees must be offered medical surveillance, as well as the frequency and content of medical examinations. It also sets forth the information that must be provided to the employee and employer. The purposes of medical surveillance for beryllium are (1) to identify beryllium related adverse health effects so that appropriate intervention measures can be taken; (2) to determine if an employee has any condition that might make him or her more sensitive to beryllium exposure; and (3) to determine the employee’s fitness to use personal protective equipment such as respirators.

The final rule makes several revisions to paragraph (k) which are listed below.

1. Under subsection (k)(1)(i)(C), employers were previously required to perform medical surveillance after exposure to beryllium during an emergency from both the construction and shipyards standards. Federal OSHA has determined that it is unnecessary to trigger medical surveillance requirements on the occurrence of an emergency. Any uncontrolled release of beryllium in these operations will not create exposures that differ from the normal conditions of work; thus, the other provisions of paragraph (k) should already protect workers.

This final rule eliminates the emergency provision from paragraph (k) and removes paragraph (k)(1)(i)(C) from the beryllium standards for construction and shipyards.

2. Paragraph (k)(3)(ii)(A) previously required the employer to ensure that the employee is offered a medical examination that includes a medical and work history, with an emphasis on, among other things, past and present airborne exposure to or dermal contact with beryllium. Paragraph (k)(4)(i) previously required the employer to ensure that the examining PLHCP (and the agreed upon CBD diagnostic center, if an evaluation

is required under paragraph (k)(7) of this standard) had certain information, including a description of the employee's former and current duties that relate to the employee's airborne exposure to and dermal contact with beryllium.

In this final rule, Federal OSHA revised paragraphs (k)(3)(ii)(A) and (k)(4)(i) to replace the phrase "airborne exposure to and dermal contact with beryllium" with the similar phrase "exposure to beryllium" to alleviate unnecessary confusion created by the use of the term "dermal contact".

3. Paragraph (k)(7) contains the requirements for an evaluation at a CBD diagnostic center. Federal OSHA made two substantive revisions to (k)(7)(i) to make it consistent with recent changes to the beryllium general industry standard. (84 FR at 53919)
  - a. Paragraph (k)(7)(i) previously required employers to provide the examination within 30 days of the employer receiving one of the types of documentation listed in paragraph (k)(7)(i)(A) or (B). It was determined that it is not always possible to schedule and complete the examination and required tests within 30 days. Therefore, Federal OSHA is revising paragraph (k)(7)(i) to require that the evaluation be scheduled within 30 days, and occur within a reasonable time of the employer receiving one of the types of documentation listed in paragraph (k)(7)(i)(A) or (B).
  - b. Paragraph (k)(7)(ii) is being added by Federal OSHA to clarify that as part of the evaluation at the CBD diagnostic center, the employer must ensure that the employee is offered any tests deemed appropriate by the examining physician at the CBD diagnostic center. This final rule (k)(7)(ii) requires that the evaluation include any tests deemed appropriate by the examining physician at the CBD diagnostic center, such as pulmonary function testing (as outlined by the ATS criteria), BAL, and transbronchial biopsy. Paragraph (k)(7)(ii) further requires that if any of the tests deemed appropriate by the examining physician are not available at the CBD diagnostic center, they may be performed at another location that is agreed upon by the employer and employee and at no cost to the employee.
4. Federal OSHA made a number of minor, nonsubstantive revisions to the numbering and cross-references in paragraph (k)(7) to account for the addition of new paragraph (k)(7)(ii).

#### **H. Communication of Hazards; Paragraph (m)**

Paragraph (m) of the beryllium standards for construction and shipyards sets forth the employer's obligations to comply with Federal OSHA's Hazard Communication Standard (HCS) (29 CFR 1910.1200) relative to beryllium, and to take additional steps to warn and train employees about the hazards of beryllium.

The final rule makes three revisions to paragraph (m).

1. The first change was to remove paragraph (m), which previously required employers to use specific language for warning labels applied to bags and containers of clothing,

equipment, and materials contaminated with beryllium (paragraph (m)(2) in construction and paragraph (m)(3) in shipyards).

- a. These changes to reflect Federal OSHA's intent that provisions aimed at protecting workers from the effects of dermal contact need not apply to materials containing only trace amounts of beryllium—like all beryllium containing material used in abrasive blasting in the construction and shipyards industries—in the absence of significant airborne exposure. Federal OSHA applied the same rationale to the limited welding operations in shipyards, where the agency had evidence that at most only trace amounts of particulate beryllium will form (84 FR at 53906).
  - b. Accordingly, OSHA has determined that the previous labeling provisions in paragraph (m) (paragraph (m)(2) in construction and (m)(3) in shipyards) are not necessary in the construction and shipyards contexts and has removed these provisions.
2. The second change revises paragraph (m) for employee information and training to remove requirements related to emergency procedures ((m)(3)(ii)(D) in construction and (m)(4)(ii)(D) in shipyards) and personal hygiene practices ((m)(3)(ii)(E) in construction and (m)(4)(ii)(E) in shipyards).
  - a. These references to emergencies in the shipyards and construction standards are being removed because Federal OSHA expects that any emergency in these industries (such as a release resulting from a failure of the blasting control equipment, a spill of the abrasive blasting media, or the failure of the ventilation system for welding operations in shipyards) would occur only during the performance of routine tasks already associated with the airborne release of beryllium; i.e., during the abrasive blasting or welding process (84 FR at 53917; see also the Summary and Explanation for paragraph (g)). As such, any uncontrolled release of beryllium in these operations would not create exposures that differ from the normal conditions of work and workers will already be protected by the other provisions of paragraph (g).
  - b. The final rule also removes the hygiene provisions of the construction and shipyard standards due to overlap with existing OSHA standards, the limited operations where beryllium exposure may occur in construction and shipyards, and the trace quantities of beryllium present in these operations (84 FR at 53920; see also the Summary and Explanation for paragraph (i)). As with the previously discussed labeling requirement, Federal OSHA reasoned that the removal of these provisions would render the correlating training requirements unnecessary.
3. The third change, revises paragraphs (m)(3)(i) in construction and (m)(4)(i) in shipyards—renumbered in the final standards as (m)(2)(i) and (m)(3)(i), respectively—to remove dermal contact as a trigger for training. Federal OSHA determined for construction and shipyards, that training in accordance with the HCS should be provided to each employee who has, or can reasonably be expected to have, airborne

exposure to beryllium, without regard to dermal contact. HCS training requirements in proposed paragraph (m)(2) for construction and proposed paragraph (m)(3) for shipyards would continue to apply to all workers that are covered under these standards, regardless of the potential for dermal contact (84 FR at 53920–21).

- a. The final rule revises renumbered paragraphs (m)(2)(ii)(A) in the construction standard and (m)(3)(ii)(A) in the shipyards standard to remove references to “airborne exposure” and “dermal contact” and instead to require training on the health hazards associated with “exposure to beryllium.”
- b. The final rule revises renumbered paragraphs (m)(2)(ii)(D) in the construction standard and (m)(3)(ii)(D) in the shipyards standard to require training on measures employees can take to protect themselves from “exposure to beryllium.”

These revisions, OSHA explained, would maintain OSHA’s intent that training must cover both airborne and skin exposure while both resolving an inconsistency between the shipyards and construction standards with respect to references to dermal contact and simplifying the provisions (84 FR at 53921).

#### **I. Recordkeeping; Paragraph (n)**

Paragraph (n) of the beryllium standards for construction and shipyards requires employers to make and maintain records of air monitoring data, objective data, medical surveillance, and training. The final rule revises paragraphs (n)(1)(ii)(F), (n)(3)(ii)(A), and (n)(4)(i) of both the construction and shipyards standards to remove the requirements to include employee SSNs in monitoring data, medical surveillance, and training records.

### **IV. Impact**

#### **A. Impact on Employers**

Federal OSHA projects the net total effect of the changes to the beryllium standards for construction and shipyards will result in cost savings for employers. These savings stem mainly from tailoring the requirements of the construction and shipyards standards to the particular exposures in these industries in light of partial overlap between the beryllium standards’ requirements and other OSHA standards and the clarification of certain requirements with respect to materials containing only trace amounts of beryllium.

See Section V.A. of this briefing package for estimates of cost savings to employers in Virginia.

#### **B. Impact on Employees**

This final rule tailors certain aspects of the final construction and shipyards beryllium standards to the operations for which Federal OSHA has sufficient data to demonstrate worker exposure to beryllium at levels of concern, to properly characterize and evaluate the exposures, and to develop appropriate measures to address them (i.e., abrasive blasting operations and limited welding operations in shipyards).

Tailoring the construction and shipyards beryllium standards to these operations ensures that the standards are no more complex or onerous than is needed to protect workers, which Federal OSHA believes will improve compliance and thereby better protect workers.

**C. Impact on the Department of Labor and Industry**

It is anticipated that any impact on DOLI resulting from adoption of the revisions to this standard will be negligible. Any such costs would be related to training VOSH compliance staff on the revisions to the standards.

Federal regulations 29 CFR 1953.23(a) and (b) require that Virginia, within six months of the occurrence of a federal program change, to adopt identical changes or promulgate equivalent changes which are at least as effective as the federal change. The Code of Virginia reiterates this requirement in § 40.1-22(5). Adopting these revisions will allow Virginia to conform to the federal program change.

**D. Benefit, Cost, and Feasibility**

**1. Cost**

Federal OSHA estimates that these changes will lead to total annualized cost savings of \$2.5 million at a 3 percent discount rate over 10 years; at a discount rate of 7 percent over 10 years, the annualized cost savings would be \$2.6 million. Federal OSHA has determined that these changes will maintain safety and health protections for workers, while facilitating compliance with the standards and yielding some cost savings.

For Virginia employers, the changes in the final rule would lead to an estimated \$67,125 total annualized cost savings at a 3 percent discount rate over 10 years; at a discount rate of 7 percent over 10 years, the annualized cost savings would be \$69,810.<sup>3</sup>

**2. Economic Feasibility and Technological Feasibility**

A safety standard must be both economically and technologically feasible. A standard is technologically feasible if the protective measures it requires already exist, available technology can bring these measures into existence, or there is a reasonable expectation for developing the technology that can produce these measures. (See, e.g., *American Iron and Steel Inst. v. OSHA* (Lead II), 939 F.2d 975, 980 (D.C. Cir. 1991) (per curium).) A standard is economically feasible when industry can absorb or pass on the costs of compliance without threatening an industry's long-term profitability or competitive structure. (See *American Textile Mfrs. Inst. v. Donovan*, 452 U.S. 490, 530 n. 55 (1981); Lead II, 939 F.2d at 980.) A standard is cost effective if the protective measures it requires are the least costly of the available alternatives that achieve the same level of protection. (See, e.g., *Lockout/Tagout II*, 37 F.3d at 668.)

**a. Economic Feasibility**

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<sup>3</sup> To determine Virginia's comparable costs, VOSH uses the formula (federal costs provided) x .02685= Virginia's costs.

In the 2017 FEA, OSHA concluded that the beryllium standards for construction and shipyards were both economically feasible (see 82 FR at 2471). This final rule modifies some of the ancillary provisions in both standards and Federal OSHA has concluded that the revisions would overall, reduce costs for employers in both sectors. Because the effect of this rule is a net reduction in costs, OSHA has determined that this rule is economically feasible in both the construction and shipyard sectors.

**b. Technological Feasibility**

This section summarizes Federal OSHA's technological feasibility findings made in the 2017 FEA (see Document ID 2042, FEA Chapter IV—Technological Feasibility). Because this final rule contains no new requirements that might raise feasibility concerns, Federal OSHA's technological feasibility analysis remains unchanged from the 2017 final rule.

The information in this section is drawn entirely from the 2017 FEA and contains no new information or assessment.

Overall, based on the information discussed in Chapter IV of the 2017 FEA, OSHA determined that the majority of the exposures in construction and shipyards are either already at or below the new final PEL, or can be adequately controlled to levels below the final PEL through the implementation of additional engineering and work practice controls for most operations most of the time.

The one exception is that Federal OSHA determined that workers who perform open-air abrasive blasting using mineral grit (i.e., coal slag) will routinely be exposed to levels above the final PEL even after the installation of feasible engineering and work practice controls, and therefore, these workers will also be required to wear respiratory protection. Therefore, OSHA concluded in the January 9, 2017 final rule that the final PEL of 0.2 mg/m<sup>3</sup> is technologically feasible in abrasive blasting in construction and shipyards and in welding in shipyards.

Contact Person:

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## **RECOMMENDED ACTION**

Staff of the Department of Labor and Industry recommends that the Safety and Health Codes Board adopt Federal OSHA's Final Rule revising the Occupational Exposure to Beryllium in Construction and Shipyards Standard, §§1915.1024 and 1926.1024 as authorized by Virginia Code §§ 40.1-22(5) and 2.2-4006.A.4(c), with an effective date of January 7, 2021.

The Department also recommends that the Board state in any motion it may make to amend this regulation that it will receive, consider and respond to petitions by any interested person with respect to reconsideration or revision of this or any other regulation which has been adopted in accordance with the above-cited subsection A.4(c) of the Administrative Process Act.



**Occupational Exposure to Beryllium in Construction and Shipyards, §§1915.1024 and 1926.1024  
Final Rule**

As Adopted by the  
Safety and Health Codes Board

Date: \_\_\_\_\_



VIRGINIA OCCUPATIONAL SAFETY AND HEALTH PROGRAM

VIRGINIA DEPARTMENT OF LABOR AND INDUSTRY

Effective Date: \_\_\_\_\_

16VAC25-100-1915.1024; 16 VAC25-175-1926.1024

When the regulations as set forth in federal OSHA's Final Rule for the Occupational Exposure to Beryllium, Parts 1915 and 1926 are applied to the Commissioner of the Department of Labor and Industry and/or to Virginia employers, the following federal terms shall be considered to read as below:

Federal Terms

VOSH Equivalent

29 CFR

VOSH Standard

Assistant Secretary

Commissioner of Labor and Industry

Agency

Department

August 31, 2020

January 7, 2020

The agency issues the sections under the following authorities: 29 U.S.C. 653, 655, 657; 40 U.S.C. 3704; 33 U.S.C. 941; Secretary of Labor's Order 1-2012 (77 FR 3912 (January 25, 2012)); and 29 CFR part 1911.

Signed at Washington, DC, on August 13, 2020.

**Loren Sweatt,**

*Principal Deputy Assistant Secretary of Labor for Occupational Safety and Health.*

#### Amendments to Standards

For the reasons set forth in the preamble, chapter XVII of title 29, parts 1915 and 1926, of the Code of Federal Regulations is amended as follows:

#### PART 1915—OCCUPATIONAL SAFETY AND HEALTH STANDARDS FOR SHIPYARD EMPLOYMENT

■ 1. The authority citation for part 1915 continues to read as follows:

**Authority:** 33 U.S.C. 941; 29 U.S.C. 653, 655, 657; Secretary of Labor's Order No. 12-71 (36 FR 8754); 8-76 (41 FR 25059), 9-83 (48 FR 35736), 1-90 (55 FR 9033), 6-96 (62 FR 111), 3-2000 (65 FR 50017), 5-2002 (67 FR 65008), 5-2007 (72 FR 31160), 4-2010 (75 FR 55355), or 1-2012 (77 FR 3912); 29 CFR part 1911; and 5 U.S.C. 553, as applicable.

■ 2. Amend § 1915.1024 by:

- a. In paragraph (b), add a definition for "Beryllium sensitization" in alphabetical order, revise the definitions for "CBD diagnostic center," "Chronic beryllium disease (CBD)," and "Confirmed positive," and remove the definitions of "Emergency" and "High-efficiency particulate air (HEPA) filter."
- b. Revise paragraph (f)(1)(i)(A).
- c. Remove paragraphs (f)(1)(i)(B), (C), (D), (E), and (H).
- d. Redesignate paragraphs (f)(1)(i)(F) and (G) as paragraphs (f)(1)(i)(B) and (C).
- e. In newly redesignated paragraph (f)(1)(i)(C), remove the word "and" at the end of the paragraph.
- f. Add new paragraphs (f)(1)(i)(D) and (E).
- g. Revise paragraphs (f)(1)(ii)(B), (f)(2), and (g)(1)(iii).
- h. Remove paragraph (g)(1)(iv).
- i. Redesignate paragraph (g)(1)(v) as paragraph (g)(1)(iv).
- j. Revise paragraphs (h)(1) and (2) and (h)(3)(ii).
- k. Remove paragraph (h)(3)(iii).
- l. Remove and reserve paragraph (i).
- m. Revise paragraphs (j) and (k)(1)(i)(B).
- n. Remove paragraph (k)(1)(i)(C).
- o. Redesignate paragraph (k)(1)(i)(D) as paragraph (k)(1)(i)(C).
- p. Revise paragraphs (k)(2)(i)(B), (k)(2)(ii), (k)(3)(ii)(A), (k)(4)(i), and (k)(7)(i) introductory text.

- q. Redesignate paragraphs (k)(7)(ii) through (v) as paragraphs (k)(7)(iii) through (vi).
- r. Add a new paragraph (k)(7)(ii).
- s. Revise paragraph (m)(1)(ii).
- t. Remove paragraph (m)(3).
- u. Redesignate paragraph (m)(4) as paragraph (m)(3).
- v. Revise newly redesignated paragraphs (m)(3)(i) introductory text and (m)(3)(ii)(A).
- w. Remove newly redesignated paragraph (m)(3)(ii)(D).
- x. Further redesignate newly redesignated paragraphs (m)(3)(ii)(E) through (I) as paragraphs (m)(3)(ii)(D) through (H).
- z. Revise newly redesignated paragraphs (m)(3)(ii)(D) and (m)(3)(iv) and paragraphs (n)(1)(ii)(F), (n)(3)(ii)(A), and (n)(4)(i).

The revisions and additions read as follows:

#### § 1915.1024 Beryllium.

\* \* \* \* \*

(b) \* \* \*

*Beryllium sensitization* means a response in the immune system of a specific individual who has been exposed to beryllium. There are no associated physical or clinical symptoms and no illness or disability with beryllium sensitization alone, but the response that occurs through beryllium sensitization can enable the immune system to recognize and react to beryllium. While not every beryllium-sensitized person will develop chronic beryllium disease (CBD), beryllium sensitization is essential for development of CBD.

*CBD diagnostic center* means a medical diagnostic center that has a pulmonologist or pulmonary specialist on staff and on-site facilities to perform a clinical evaluation for the presence of chronic beryllium disease (CBD). The CBD diagnostic center must have the capacity to perform pulmonary function testing (as outlined by the American Thoracic Society criteria), bronchoalveolar lavage (BAL), and transbronchial biopsy. The CBD diagnostic center must also have the capacity to transfer BAL samples to a laboratory for appropriate diagnostic testing within 24 hours. The pulmonologist or pulmonary specialist must be able to interpret the biopsy pathology and the BAL diagnostic test results.

*Chronic beryllium disease (CBD)* means a chronic granulomatous lung disease caused by inhalation of airborne beryllium by an individual who is beryllium-sensitized.

*Confirmed positive* means the person tested has had two abnormal BeLPT test

results, an abnormal and a borderline test result, or three borderline test results from tests conducted within a 3-year period. It also means the result of a more reliable and accurate test indicating a person has been identified as having beryllium sensitization.

\* \* \* \* \*

(f) \* \* \*

(1) \* \* \*

(i) \* \* \*

(A) A list of operations and job titles reasonably expected to involve exposure to beryllium;

\* \* \* \* \*

(D) Procedures used to ensure the integrity of each containment used to minimize exposures to employees outside of the containment; and

(E) Procedures for removing, cleaning, and maintaining personal protective clothing and equipment in accordance with paragraph (h) of this standard.

(ii) \* \* \*

(B) The employer is notified that an employee is eligible for medical removal in accordance with paragraph (I)(1) of this standard, referred for evaluation at a CBD diagnostic center, or shows signs or symptoms associated with exposure to beryllium; or

\* \* \* \* \*

(2) *Engineering and work practice controls.* The employer must use engineering and work practice controls to reduce and maintain employee airborne exposure to beryllium to or below the TWA PEL and STEL, unless the employer can demonstrate that such controls are not feasible. Wherever the employer demonstrates that it is not feasible to reduce airborne exposure to or below the PELs with engineering and work practice controls, the employer must implement and maintain engineering and work practice controls to reduce airborne exposure to the lowest levels feasible and supplement these controls by using respiratory protection in accordance with paragraph (g) of this standard.

\* \* \* \* \*

(g) \* \* \*

(1) \* \* \*

(iii) During operations for which an employer has implemented all feasible engineering and work practice controls when such controls are not sufficient to reduce airborne exposure to or below the TWA PEL or STEL; and

\* \* \* \* \*

(h) \* \* \*

(1) *Provision and use.* Where airborne exposure exceeds, or can reasonably be expected to exceed, the TWA PEL or STEL, the employer must provide at no cost, and ensure that each employee uses, appropriate personal protective

clothing and equipment in accordance with the written exposure control plan required under paragraph (f)(1) of this standard and OSHA's Personal Protective Equipment standards for shipyards (subpart I of this part).

(2) *Removal of personal protective clothing and equipment.* (i) The employer must ensure that each employee removes all personal protective clothing and equipment required by this standard at the end of the work shift or at the completion of all tasks involving beryllium, whichever comes first.

(ii) The employer must ensure that personal protective clothing and equipment required by this standard is not removed in a manner that disperses beryllium into the air, and is removed as specified in the written exposure control plan required by paragraph (f)(1) of this standard.

(iii) The employer must ensure that no employee with reasonably expected exposure above the TWA PEL or STEL removes personal protective clothing and equipment required by this standard from the workplace unless it has been cleaned in accordance with paragraph (h)(3)(ii) of this standard.

(3) \* \* \*  
(ii) The employer must ensure that beryllium is not removed from personal protective clothing and equipment required by this standard by blowing, shaking, or any other means that disperses beryllium into the air.

(j) *Housekeeping.* (1) When cleaning dust resulting from operations that cause, or can reasonably be expected to cause, airborne exposure above the TWA PEL or STEL, the employer must ensure the use of methods that minimize the likelihood and level of airborne exposure.

(2) The employer must not allow dry sweeping or brushing for cleaning up dust resulting from operations that cause, or can reasonably be expected to cause, airborne exposure above the TWA PEL or STEL unless methods that minimize the likelihood and level of airborne exposure are not safe or effective.

(3) The employer must not allow the use of compressed air for cleaning where the use of compressed air causes, or can reasonably be expected to cause, airborne exposure above the TWA PEL or STEL.

(4) Where employees use dry sweeping, brushing, or compressed air to clean, the employer must provide, and ensure that each employee uses, respiratory protection and personal protective clothing and equipment in

accordance with paragraphs (g) and (h) of this standard.

(5) The employer must ensure that cleaning equipment is handled and maintained in a manner that minimizes the likelihood and level of airborne exposure and the re-entrainment of airborne beryllium in the workplace.

(k) \* \* \*  
(1) \* \* \*  
(i) \* \* \*

(B) Who shows signs or symptoms of CBD or other beryllium-related health effects; or

\* \* \* \* \*  
(2) \* \* \*  
(i) \* \* \*

(B) An employee meets the criteria of paragraph (k)(1)(i)(B) of this standard.

(ii) At least every two years thereafter for each employee who continues to meet the criteria of paragraph (k)(1)(i)(A), (B), or (C) of this standard.

\* \* \* \* \*  
(3) \* \* \*  
(ii) \* \* \*

(A) A medical and work history, with emphasis on past and present exposure to beryllium, smoking history, and any history of respiratory system dysfunction;

\* \* \* \* \*  
(4) \* \* \*

(i) A description of the employee's former and current duties that relate to the employee's exposure to beryllium;

\* \* \* \* \*  
(7) \* \* \*

(i) The employer must provide an evaluation at no cost to the employee at a CBD diagnostic center that is mutually agreed upon by the employer and the employee. The evaluation at the CBD diagnostic center must be scheduled within 30 days, and must occur within a reasonable time, of:

\* \* \* \* \*  
(ii) The evaluation must include any tests deemed appropriate by the examining physician at the CBD diagnostic center, such as pulmonary function testing (as outlined by the American Thoracic Society criteria), bronchoalveolar lavage (BAL), and transbronchial biopsy. If any of the tests deemed appropriate by the examining physician are not available at the CBD diagnostic center, they may be performed at another location that is mutually agreed upon by the employer and the employee.

\* \* \* \* \*  
(m) \* \* \*  
(1) \* \* \*

(ii) Employers must include beryllium in the hazard communication program established to comply with the HCS.

Employers must ensure that each employee has access to labels on containers of beryllium and to safety data sheets, and is trained in accordance with the requirements of the HCS (29 CFR 1910.1200) and paragraph (m)(3) of this standard.

\* \* \* \* \*  
(3) \* \* \*

(i) For each employee who has, or can reasonably be expected to have, airborne exposure to beryllium;

\* \* \* \* \*  
(ii) \* \* \*

(A) The health hazards associated with exposure to beryllium, including the signs and symptoms of CBD;

\* \* \* \* \*  
(D) Measures employees can take to protect themselves from exposure to beryllium;

\* \* \* \* \*  
(iv) The employer must make a copy of this standard and its appendices readily available at no cost to each employee and designated employee representative(s).

(n) \* \* \*  
(1) \* \* \*  
(ii) \* \* \*

(F) The name and job classification of each employee represented by the monitoring, indicating which employees were actually monitored.

\* \* \* \* \*  
(3) \* \* \*  
(ii) \* \* \*

(A) Name and job classification;

\* \* \* \* \*  
(4) \* \* \*

(i) At the completion of any training required by this standard, the employer must prepare a record that indicates the name and job classification of each employee trained, the date the training was completed, and the topic of the training.

\* \* \* \* \*

**PART 1926—SAFETY AND HEALTH REGULATIONS FOR CONSTRUCTION**  
**Subpart Z—Toxic and Hazardous Substances**

■ 3. The authority citation for part 1926, subpart Z, continues to read as follows:

**Authority:** 40 U.S.C. 3704; 29 U.S.C. 653, 655, 657; and Secretary of Labor's Order No. 12-71 (36 FR 8754), 8-76 (41 FR 25059), 9-83 (48 FR 35736), 1-90 (55 FR 9033), 6-96 (62 FR 111), 3-2000 (65 FR 50017), 5-2002 (67 FR 65008), 5-2007 (72 FR 31160), 4-2010 (75 FR 55355), or 1-2012 (77 FR 3912) as applicable; and 29 CFR part 1911.

Section 1926.1102 not issued under 29 U.S.C. 655 or 29 CFR part 1911; also issued under 5 U.S.C. 553.

■ 4. Amend § 1926.1124 by:

- a. In paragraph (b), add a definition for "Beryllium sensitization" in alphabetical order, revise the definitions for "CBD diagnostic center," "Chronic beryllium disease (CBD)," and "Confirmed positive," and remove the definitions of "Emergency" and "High-efficiency particulate air (HEPA) filter."
- b. Revise paragraph (f)(1)(i)(A).
- c. Remove paragraphs (f)(1)(i)(B), (C), (D), (E), and (H).
- d. Redesignate paragraphs (f)(1)(i)(F), (G), and (I) as paragraphs (f)(1)(i)(B), (C), and (D).
- e. Remove the period at the end of newly redesignated paragraph (f)(1)(i)(D) and add a semicolon in its place.
- f. Add new paragraphs (f)(1)(i)(E) and (F).
- g. Revise paragraphs (f)(1)(ii)(B), (f)(2), and (g)(1)(iii).
- h. Remove paragraph (g)(1)(iv).
- i. Redesignate paragraph (g)(1)(v) as paragraph (g)(1)(iv).
- j. Revise paragraphs (h)(1) and (2) and (h)(3)(ii).
- k. Remove paragraph (h)(3)(iii).
- l. Remove and reserve paragraph (i).
- m. Revise paragraphs (j) and (k)(1)(i)(B).
- n. Remove paragraph (k)(1)(i)(C).
- o. Redesignate paragraph (k)(1)(i)(D) as paragraph (k)(1)(i)(C).
- p. Revise paragraphs (k)(2)(i)(B), (k)(2)(ii), (k)(3)(ii)(A), (k)(4)(i), and (k)(7)(i) introductory text.
- q. Redesignate paragraphs (k)(7)(ii) through (v) as paragraphs (k)(7)(iii) through (vi).
- r. Add a new paragraph (k)(7)(ii).
- s. Remove paragraph (m)(2).
- t. Redesignate paragraph (m)(3) as paragraph (m)(2).
- u. Revise newly redesignated paragraphs (m)(2)(i) introductory text and (m)(2)(ii)(A).
- v. Remove newly redesignated paragraph (m)(2)(ii)(D).
- w. Further redesignate newly redesignated paragraphs (m)(2)(ii)(E) through (I) as paragraphs (m)(2)(ii)(D) through (H).
- x. Revise newly redesignated paragraphs (m)(2)(ii)(D) and (m)(2)(iv) and paragraphs (n)(1)(ii)(F), (n)(3)(ii)(A), and (n)(4)(i).

The revisions and additions read as follows:

§ 1926.1124 Beryllium.

\* \* \* \* \*

(b) \* \* \*

*Beryllium sensitization* means a response in the immune system of a specific individual who has been exposed to beryllium. There are no associated physical or clinical symptoms and no illness or disability

with beryllium sensitization alone, but the response that occurs through beryllium sensitization can enable the immune system to recognize and react to beryllium. While not every beryllium-sensitized person will develop chronic beryllium disease (CBD), beryllium sensitization is essential for development of CBD.

*CBD diagnostic center* means a medical diagnostic center that has a pulmonologist or pulmonary specialist on staff and on-site facilities to perform a clinical evaluation for the presence of chronic beryllium disease (CBD). The CBD diagnostic center must have the capacity to perform pulmonary function testing (as outlined by the American Thoracic Society criteria), bronchoalveolar lavage (BAL), and transbronchial biopsy. The CBD diagnostic center must also have the capacity to transfer BAL samples to a laboratory for appropriate diagnostic testing within 24 hours. The pulmonologist or pulmonary specialist must be able to interpret the biopsy pathology and the BAL diagnostic test results.

*Chronic beryllium disease (CBD)* means a chronic granulomatous lung disease caused by inhalation of airborne beryllium by an individual who is beryllium-sensitized.

*Confirmed positive* means the person tested has had two abnormal BeLPT test results, an abnormal and a borderline test result, or three borderline test results from tests conducted within a 3-year period. It also means the result of a more reliable and accurate test indicating a person has been identified as having beryllium sensitization.

\* \* \* \* \*

- (f) \* \* \*
- (1) \* \* \*
- (i) \* \* \*

(A) A list of operations and job titles reasonably expected to involve exposure to beryllium;

\* \* \* \* \*

(E) Procedures used to ensure the integrity of each containment used to minimize exposures to employees outside the containment; and

(F) Procedures for removing, cleaning, and maintaining personal protective clothing and equipment in accordance with paragraph (h) of this standard.

(ii) \* \* \*

(B) The employer is notified that an employee is eligible for medical removal in accordance with paragraph (l)(1) of this standard, referred for evaluation at a CBD diagnostic center, or shows signs

or symptoms associated with exposure to beryllium; or

\* \* \* \* \*

(2) *Engineering and work practice controls.* The employer must use engineering and work practice controls to reduce and maintain employee airborne exposure to beryllium to or below the TWA PEL and STEL, unless the employer can demonstrate that such controls are not feasible. Wherever the employer demonstrates that it is not feasible to reduce airborne exposure to or below the PELs with engineering and work practice controls, the employer must implement and maintain engineering and work practice controls to reduce airborne exposure to the lowest levels feasible and supplement these controls by using respiratory protection in accordance with paragraph (g) of this standard.

\* \* \* \* \*

(g) \* \* \*

(1) \* \* \*

(iii) During operations for which an employer has implemented all feasible engineering and work practice controls when such controls are not sufficient to reduce airborne exposure to or below the TWA PEL or STEL; and

\* \* \* \* \*

(h) \* \* \*

(1) *Provision and use.* Where airborne exposure exceeds, or can reasonably be expected to exceed, the TWA PEL or STEL, the employer must provide at no cost, and ensure that each employee uses, appropriate personal protective clothing and equipment in accordance with the written exposure control plan required under paragraph (f)(1) of this standard and OSHA's Personal Protective and Life Saving Equipment standards for construction (subpart E of this part).

(2) *Removal of personal protective clothing and equipment.* (i) The employer must ensure that each employee removes all personal protective clothing and equipment required by this standard at the end of the work shift or at the completion of all tasks involving beryllium, whichever comes first.

(ii) The employer must ensure that personal protective clothing and equipment required by this standard is not removed in a manner that disperses beryllium into the air, and is removed as specified in the written exposure control plan required by paragraph (f)(1) of this standard.

(iii) The employer must ensure that no employee with reasonably expected exposure above the TWA PEL or STEL removes personal protective clothing and equipment required by this

standard from the workplace unless it has been cleaned in accordance with paragraph (h)(3)(ii) of this standard.

(3) \* \* \*

(ii) The employer must ensure that beryllium is not removed from personal protective clothing and equipment required by this standard by blowing, shaking, or any other means that disperses beryllium into the air.

\* \* \* \* \*

(j) *Housekeeping.* (1) When cleaning up dust resulting from operations that cause, or can reasonably be expected to cause, airborne exposure above the TWA PEL or STEL, the employer must ensure the use of methods that minimize the likelihood and level of airborne exposure.

(2) The employer must not allow dry sweeping or brushing for cleaning up dust resulting from operations that cause, or can reasonably be expected to cause, airborne exposure above the TWA PEL or STEL unless methods that minimize the likelihood and level of airborne exposure are not safe or effective.

(3) The employer must not allow the use of compressed air for cleaning where the use of compressed air causes, or can reasonably be expected to cause, airborne exposure above the TWA PEL or STEL.

(4) Where employees use dry sweeping, brushing, or compressed air to clean, the employer must provide, and ensure that each employee uses, respiratory protection and personal protective clothing and equipment in accordance with paragraphs (g) and (h) of this standard.

(5) The employer must ensure that cleaning equipment is handled and maintained in a manner that minimizes the likelihood and level of airborne exposure and the re-entrainment of airborne beryllium in the workplace.

(k) \* \* \*

(1) \* \* \*

(i) \* \* \*

(B) Who shows signs or symptoms of CBD or other beryllium-related health effects; or

\* \* \* \* \*

(2) \* \* \*

(i) \* \* \*

(B) An employee meets the criteria of paragraph (k)(1)(i)(B) of this standard.

(ii) At least every two years thereafter for each employee who continues to meet the criteria of paragraph (k)(1)(i)(A), (B), or (C) of this standard.

\* \* \* \* \*

(3) \* \* \*

(ii) \* \* \*

(A) A medical and work history, with emphasis on past and present exposure to beryllium, smoking history, and any history of respiratory system dysfunction;

\* \* \* \* \*

(4) \* \* \*

(i) A description of the employee's former and current duties that relate to the employee's exposure to beryllium;

\* \* \* \* \*

(7) \* \* \*

(i) The employer must provide an evaluation at no cost to the employee at a CBD diagnostic center that is mutually agreed upon by the employer and the employee. The evaluation at the CBD diagnostic center must be scheduled within 30 days, and must occur within a reasonable time, of:

\* \* \* \* \*

(ii) The evaluation must include any tests deemed appropriate by the examining physician at the CBD diagnostic center, such as pulmonary function testing (as outlined by the American Thoracic Society criteria), bronchoalveolar lavage (BAL), and transbronchial biopsy. If any of the tests deemed appropriate by the examining physician are not available at the CBD diagnostic center, they may be

performed at another location that is mutually agreed upon by the employer and the employee.

\* \* \* \* \*

(m) \* \* \*

(2) \* \* \*

(i) For each employee who has, or can reasonably be expected to have, airborne exposure to beryllium:

\* \* \* \* \*

(ii) \* \* \*

(A) The health hazards associated with exposure to beryllium, including the signs and symptoms of CBD;

\* \* \* \* \*

(D) Measures employees can take to protect themselves from exposure to beryllium;

\* \* \* \* \*

(iv) The employer must make a copy of this standard and its appendices readily available at no cost to each employee and designated employee representative(s).

(n) \* \* \*

(1) \* \* \*

(ii) \* \* \*

(F) The name and job classification of each employee represented by the monitoring, indicating which employees were actually monitored.

\* \* \* \* \*

(3) \* \* \*

(ii) \* \* \*

(A) Name and job classification;

\* \* \* \* \*

(4) \* \* \*

(i) At the completion of any training required by this standard, the employer must prepare a record that indicates the name and job classification of each employee trained, the date the training was completed, and the topic of the training.

\* \* \* \* \*

[FR Doc. 2020-18017 Filed 8-28-20; 8:45 am]

BILLING CODE 4510-26-P



# COMMONWEALTH of VIRGINIA

## DEPARTMENT OF LABOR AND INDUSTRY

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### VIRGINIA SAFETY AND HEALTH CODES BOARD BRIEFING PACKAGE FOR NOVEMBER 12, 2020

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#### Cranes and Derricks in Construction: Subpart CC of 29 CFR Part 1926

#### I. Action Requested

The Virginia Occupational Safety and Health (VOSH) Program requests the Safety and Health Codes Board to consider for adoption federal OSHA's revision to the standard for cranes and derricks in construction to provide specific exemptions and clarifications with regard to the application of the standard to cranes and derricks used for railroad roadway work, subpart CC of §1926 for the Final Rule on Cranes and Derricks in Construction, as published in *85 FR 179 57109* on September 15, 2020. <https://www.govinfo.gov/content/pkg/FR-2020-09-15/pdf/2020-17179.pdf>

The proposed effective date is January 7, 2021.

#### II. Summary, Background and Purpose of the Revised Standard

##### A. Summary and Overview

OSHA is revising the standard for cranes and derricks in construction to provide specific exemptions and clarifications with regard to the application of the standard to cranes and derricks used for railroad roadway work. These exemptions and clarifications recognize the unique equipment and circumstances in railroad roadway work and reflect the preemption of some OSHA requirements by regulations promulgated by the Federal Railroad Administration (FRA).

##### B. Background

Federal OSHA published the Cranes and Derricks in Construction standard on August 9, 2010 (29 CFR part 1926, subpart CC, 75 FR 47906). The crane standard added many new provisions, addressing topics such as requirements to ensure safe ground conditions underneath equipment, mandatory safety devices, distance from power lines, inspection procedures, workplace area controls to prevent workers from entering hazardous areas, and new operator certification requirements.

On October 7, 2010, the Association of American Railroads and a number of individual railroads (hereafter collectively referred to as AAR) filed a petition challenging the rule. That petition remains before the United States Court of Appeals for the District of Columbia Circuit (Case No. 10–1386), but after AAR provided more background and additional information about existing practices in the railroad industry, the parties reached a settlement in which Federal OSHA agreed to issue an interpretation of the standard as it relates to railroads and to propose revisions to the regulatory text of the crane standard.

The settlement was narrowly tailored to address the aspects of the railroad industry that differ significantly from the more typical construction work covered by the crane standard. In 2018, Federal OSHA published a notice of proposed rulemaking (NPRM) seeking public comment on the proposed regulatory changes for the railroad industry that had been included in the settlement agreement (83 FR 34076 (July 19, 2018))

Subsequent to the settlement agreement executed between AAR and OSHA in September 2014, FRA issued a final regulation involving, among other issues, safety-related training requirements for the use of railroad cranes and railroad roadway maintenance machines (hereafter, RMMs will mean [railroad] roadway maintenance machines) equipped with a hoisting device. This regulation also included other revisions to FRA regulations addressing the use of RMMs (79 FR 66460, November 7, 2014). As dictated by Section 4(b)(1) of the Occupational Safety and Health (OSH) Act (29 U.S.C. 653), to the extent FRA regulations exercise statutory authority to prescribe or enforce standards or regulations affecting occupational safety and health, Federal OSHA is preempted from applying regulatory requirements of its own to the corresponding working conditions addressed.

On March 19, 2019, following the publication of Federal OSHA’s NPRM, FRA provided Federal OSHA further information clarifying that FRA intends to preempt the potential applicability of most of the OSHA requirements addressed in OSHA’s NPRM (see Docket ID: OSHA–2015– 0012–0015) through FRA regulations. Thus, Federal OSHA concluded that those affected parts of the Federal OSHA crane standard do not apply with regard to the operation of RMMs.

Although any exemption from Federal OSHA requirements resulting from the preemption of Federal OSHA statutory authority by FRA would apply whether or not the Federal OSHA regulations include any specific exemptions, Federal OSHA believed it was still appropriate to amend the Code of Federal Regulations (CFR) to include the explicit exemptions for RMMs in the Federal OSHA crane standard.

Having the exemptions specified in the Federal OSHA crane standard will provide additional clarity for employers in the railroad industry, including contractors, who may be unfamiliar with the legal implications of FRA’s action. A clearer understanding of which regulatory requirements are applicable will ultimately result in a more effective regulatory program and improved safety.

**C. Purpose**

The purpose of the revised standard and exemptions is to provide additional clarity for employers in the railroad industry, including contractors, who may be unfamiliar with the legal implications of Federal Railroad Administration’s (FRA) action. A clearer understanding of which regulatory requirements are applicable will ultimately result in a more effective regulatory program and improved safety.



### III. Overview of Revisions to the Standard

Broadly, Federal OSHA proposed to add one exemption to §1926.1400 (c), redesignate §1926.1442 as §1926.1443, and add a new §1926.1442, Railroad roadway maintenance machines.

Each change is discussed briefly below.

#### **A. §1926.1400 Subpart CC Exclusions; Paragraph (c), Exemption for Flash-Butt Welding Trucks and Equipment With Similar Attachments**

This final rule adds paragraph (c)(18) to § 1926.1400 of the crane standard in order to exclude flash-butt welding trucks and equipment with similar attachments from the requirements of part 1926, Subpart CC.

Flash-butt welding trucks are RMMs with low-hanging workhead attachments. These machines are equipped with an attachment designed to suspend and move a welding workhead low and close to the rails in order to precisely weld two sections of rail together. Other machines that fall within this exemption are similarly designed to suspend and move specific operation workheads low to the rails. This class of machines does not have any other hoisting device. AAR provided examples of these machines to OSHA prior to publication of the proposed rule (see Docket ID: OSHA– 2015–0012–0008).

Because these machines are not capable of raising and suspending the workhead more than a few feet above the ground or roadbed, and the weight and structure of the workhead does not appear to present any danger of equipment tipover at any point during the workhead's full range of motion, Federal OSHA believes that equipment in this class does not present the types of safety hazards Federal OSHA intended to address in the crane standards and equipment with similar attachments from the requirements of part 1926, subpart CC.

#### **B. New §1926.1442 To Address Railroad Equipment**

This section addresses severability and is currently the last section of the crane standard. The final rule redesigns the severability provision currently in §1926.1442 as § 1926.1443 to enable the addition of a new § 1926.1442 dedicated to the RMMs addressed in this rulemaking.

Rather than insert the various new RMM exceptions throughout subpart CC, this final rule consolidates them into a single section for the convenience of the affected parties and to maintain the organizational integrity of subpart CC. Aside from the § 1926.1400(c)(18) exclusion for flash-butt welding trucks and similar equipment, § 1926.1442 will contain all of the new provisions addressed through the settlement.

#### **C. Scope of New §1926.1442**

New § 1926.1442(a) sets out the scope of the new exemptions. The limited exemptions for railroads in the new § 1926.1442 apply to work on the construction of railroad tracks and supporting structures, including the railroad ties supporting the tracks, the ballast and the road bed that support the track and ties, and the poles and other structures on which railroad signal devices and signage are mounted. The exemptions do not apply to other types of construction activities that may be related to railroads, such as the construction of buildings, retaining walls, fences, or platforms controlled by railroads.

When the exemptions do not apply, the crane standard continues to apply to construction activities conducted by employers in the railroad industry as it does to employers in other industries. The final rule applies these exemptions to equipment covered by subpart CC that meets the definition of “Roadway Maintenance Machine” as defined in 49 CFR 214.7, regardless of whether the equipment is used for railroad bridge construction work or for other construction work involving railroad tracks and supporting structures.

The final rule specifies that the exemptions apply only to the extent that the RMM activities remain subject to the authority of FRA. For example, Federal OSHA’s exemptions would apply to railroad bridge construction subject to subpart B of 49 CFR part 214 (Bridge Worker Safety Standards), but the use of cranes to construct a highway bridge over railroad track would not be exempt to the extent that FRA lacks authority to regulate that activity to ensure the safe operation of that equipment. Federal OSHA’s crane standard, including its requirements for operator training, certification, and evaluation, would apply in full to the latter class of construction activity.

**D. §1926.1442(b)(1) Operator Certification, Training, and Evaluation**

This final rule paragraph provides exemptions in accordance with section 4(b)(1) of the OSH Act, which exempts from the Act the working conditions of certain employees with respect to which other Federal agencies exercise statutory authority to prescribe and enforce occupational safety and health standards.

Following Federal OSHA’s promulgation of the crane standard in subpart CC, FRA promulgated training requirements for operators of RMMs equipped with hoisting devices. FRA’s rule included a clear statement in the preamble that after the effective date of the new rule, “FRA regulations would apply to operators of roadway maintenance machines equipped with a crane, rather than Federal OSHA’s regulation related to crane operator qualification and certification found at 29 CFR 1926.1427” (79 FR 66460, 66475 (November 7, 2014)).

This final rule therefore exempts all of the operator “qualification and certification” requirements in § 1926.1427, as well as the operator training requirements in § 1926.1430.

**E. §1926.1442(b)(2) Rail Clamps, Rail Stops, and Work-Area Controls**

This final rule paragraph provides exemptions in accordance with section 4(b)(1) of the OSH Act. Final rule §1926.1442(b)(2) exempts employers from three requirements. §1926.1442(b)(2)(i) and (ii) provides exemptions from subpart CC requirements for using rail stops and rail clamps on equipment covered by subpart CC. §1926.1442(b)(2)(iii) provides an exemption from work area controls specified by §1926.1424(a)(2) when employers are subject to the on-track safety program requirements of 49 CFR 214.307(b).

FRA’s interpretation of its regulations in its communication to Federal OSHA stated clearly that it intended the regulations at 49 CFR part 214 (specifically, §§214.307, 214.341(b), and 214.357(b)) to preempt all three categories of Federal OSHA’s requirements when operating RMMs: “FRA regulations ensure employers put in place sufficient protections to prevent the types of hazards that OSHA intended to prevent through its work-area control, rail clamp and rail stop requirements.”

**F. §1926.1442(b)(3) Out-of-Level Work**

This paragraph provides exemptions in accordance with section 4(b)(1) of the OSH Act. §1926.1442(b)(3) exempts RMMs from restrictions on out-of-level work. These OSHA restrictions, including the requirements to comply with out-of-level manufacturer procedures in §1926.1402(b), the inspection requirements in §1926.1412(d)(l)(xi), and the requirement that machines have out-of-level indicators in §1926.1415(a)(l), address the risk of equipment tipover and loss of control of the load.

The record in this rulemaking indicates that out-of-level operation is a longstanding and necessary practice in the railroad industry. Industry practices already account for load-chart adjustments and other standard practices to address out-of-level work. In 2010, OSHA responded to the unique nature of railroad work conditions with an exception to the out-of-level work prohibition for railroad equipment but limited the exception to include only equipment traveling on the tracks (see § 1926.1402(f)).

Following the rulemaking, AAR explained that many RMMs, like a swing loader crane, often travel next to the track (as opposed to on it) but frequently must work out-of-level because the ballast and road bed are sloped.

**G. §1926.1442(b)(4) Dragging a Load Sideways**

This exemption in §1926.1442(b)(4) in this final rule provides relief from the prohibition in §1926.1417(q) against using cranes or derricks to drag a load sideways. It has been an existing practice during many track construction projects for RMMs to drag rail or ties sideways. The practice of dragging long pieces of rail sideways off the ties or to position them on top of the ties is routine and critical to the process of track construction. This practice does not have a ready alternative, does not involve lifts more than a few feet off the ground, and the movement of the load is predictable because the procedure is repeated over and over with the same materials.

**H. §1926.1442(b)(5) Boom-Hoist Limiting Device**

§1926.1442(b)(5) of this final rule clarifies existing § 1926.1416(d)(1), which requires equipment manufactured after December 16, 1969, to have a boom-hoist limiting device. Traditionally, boom hoists wind wire rope around a revolving drum. The boom hoists continue to wind until stopped by the operator, a limiting device, or by damaging the machine.

On hydraulic cylinder/piston equipped booms, the § 1926.1416(d)(1) requirement for a limiting device is redundant because the stroke or piston travel is an inherent limit in each cylinder/piston. Thus, this final rule exempts RMMs using a hydraulic piston for raising and lowering the boom from the requirement for a boom hoist limiting device in § 1926.1416(d)(1) (83 FR at 34081).

**I. §1926.1442(b)(6) Manufacturer Guidance for Modifications Covered by § 1926.1434**

§1926.1442(b)(6) in this final rule provides an exemption for certain railroad machines from the requirements of §1926.1434, which requires employers to obtain and follow the equipment manufacturer's guidance for equipment modifications.

As discussed earlier with respect to out-of-level work, however, in 49 CFR 214.341 and 214.357 FRA has chosen to address the issue of manufacturer's guidance and how it will allow departure from that guidance. FRA communicated to Federal OSHA that FRA views its regulations as preempting Federal OSHA's jurisdiction to require compliance with manufacturer instructions and guidance. (See Docket ID: OSHA-2015-0012-0015.) Therefore, to reflect the extent of FRA's preemption, the final rule includes this exemption.

**J. §1926.1442(b)(7) Other Manufacturer Guidance**

§1926.1442(b)(7) in this final rule provides an exemption for certain RMMs from the requirements of several other sections of subpart CC that require employers to follow the manufacturer's guidance, instructions, procedures, prohibitions, limitations, or specifications. The requirements are found in §§1926.1404(j), (m), and (q); 1926.1417(a), (r), (u), and (aa); 1926.1433(d)(1)(i); and 1926.1441.

Under the final rule, these requirements do not apply if the employer is subject to the requirements of 49 CFR part 214.

**IV. Impact**

**A. Impact on Employers**

The final rule will only have a *de minimus* cost for the time employers will need to spend familiarizing themselves with the exemptions enumerated in the final rule.

**B. Impact on Employees**

The revised standard provides a clearer understanding of which regulatory requirements are applicable, resulting in a more effective regulatory program and ultimately will improve worker safety.

**C. Impact on the Department of Labor and Industry**

It is anticipated that any impact on DOLI resulting from adoption of the revisions to this standard will be negligible. Any such costs would be related to training VOSH compliance staff on the standard.

Federal regulations 29 CFR 1953.23(a) and (b) require that Virginia, within six months of the occurrence of a federal program change, to adopt identical changes or promulgate equivalent changes which are at least as effective as the federal change. The Code of Virginia reiterates this requirement in § 40.1-22(5). Adopting these revisions will allow Virginia to conform to the federal program change.

**V. Cost, Economic Feasibility and Technological Feasibility**

**A. Cost**

The estimated cost savings for employers for this final rule are the difference between the full cost of the 2010 rule and the residual costs left after the exemptions of this final rule are in place.

FRA's preemption interpretation and Federal OSHA's corresponding exemptions in this final rule relieve the railroad industry of many cost burdens related to the crane standard. Federal OSHA estimates that the 2010 rule would have cost the railroad industry \$24.7 million annually in 2018

dollars. The residual total of the 2010 crane rule after the exemptions of this final rule is \$7.6 million in costs for the railroad industry. Thus, railroad employers will save \$17.1 million per year at a discount rate of 3 percent. At a discount rate of 7 percent, the 2010 rule would have cost the railroad industry \$26.2 million annually, has a residual total of costs of \$7.6 million, and hence has cost savings of \$18.6 million.

For costs to Virginia employers, it is estimated that the 2010 rule would have cost the railroad industry in Virginia \$663,195 annually.<sup>1</sup> The residual total of the 2010 crane rule after the exemptions of this final rule is \$204,060 in costs to the Virginia railroad industry. Thus, railroad employers will save 459,135 at a discount rate of 3 percent.

At a discount rate of 7 percent, the 2010 rule would have cost the Virginia railroad industry \$703,470, would have had a residual cost of \$204,060, and hence would have had cost savings of \$499,410.

## **B. Economic Feasibility and Technological Feasibility**

A safety standard must be both economically and technologically feasible. A standard is technologically feasible if the protective measures it requires already exist, available technology can bring these measures into existence, or there is a reasonable expectation for developing the technology that can produce these measures. (See, e.g., *American Iron and Steel Inst. v. OSHA* (Lead II), 939 F.2d 975, 980 (D.C. Cir. 1991) (per curium).) A standard is economically feasible when industry can absorb or pass on the costs of compliance without threatening an industry's long-term profitability or competitive structure. (See *American Textile Mfrs. Inst. v. Donovan*, 452 U.S. 490, 530 n. 55 (1981); Lead II, 939 F.2d at 980.) A standard is cost effective if the protective measures it requires are the least costly of the available alternatives that achieve the same level of protection. (See, e.g., *Lockout/Tagout II*, 37 F.3d at 668.)

### **1. Economic Feasibility**

This section investigates the economic impacts of both the 2010 rule and this final rule, whether they are economically feasible for the railroad industry as a whole, and whether the agency can certify that both rules will not have a significant economic impact on a substantial number of small entities.

Since the railroad industry will incur only a fraction of the full costs attributable to the 2010 crane standard, a finding that the 2010 crane rule would have no significant economic impact implies the same for this final rule. In its Preliminary Economic Analysis (PEA), Federal OSHA determined that the crane rule is economically feasible for the railroad industry and the agency certified that the proposed rule would not have a significant impact on a substantial number of small entities (83 FR at 34086–87).

The final rule does not include any provisions that added any costs not identified in the PEA, so the Federal OSHA reached the same conclusions with respect to the final rule.

### **2. Technological Feasibility**

All requirements of the final rule applicable to the railroad industry have now been in place since the promulgation of the crane standard in 2010, and the only feasibility issues for the railroad

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<sup>1</sup> To determine Virginia's comparable costs, VOSH uses the formula (federal costs provided) x .02685= Virginia's costs.

industry raised with Federal OSHA were addressed through the settlement with AAR and reflected in the exemptions in this final rule.

The crane standard is technologically feasible for the railroad industry.

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### **RECOMMENDED ACTION**

Staff of the Department of Labor and Industry recommends that the Safety and Health Codes Board adopt OSHA's Final Rule revising the Cranes and Derricks in Construction Industry Standard, §1926.1400, §1926.1442, and adding §1926.1443, as authorized by Virginia Code §§40.1-22(5) and 2.2-4006.A.4(c), with an effective date of January 7, 2021.

The Department also recommends that the Board state in any motion it may make to amend this regulation that it will receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision of this or any other regulation which has been adopted in accordance with the above-cited subsection A.4(c) of the Administrative Process Act.

**Cranes and Derricks in Construction Industry: §§1926.1400 and 1926.1442  
Final Rule**

As Adopted by the

Safety and Health Codes Board

Date: \_\_\_\_\_



VIRGINIA OCCUPATIONAL SAFETY AND HEALTH PROGRAM

VIRGINIA DEPARTMENT OF LABOR AND INDUSTRY

Effective Date: \_\_\_\_\_



When the regulations, as set forth in 29 CFR Part 1926.1400 and 1926.1442 of the Final Rule for Cranes and Derricks in Construction are applied to the Commissioner of the Department of Labor and Industry and/or to Virginia employers, the following federal terms shall be considered to read as below:

Federal Terms

VOSH Equivalent

29 CFR

VOSH Standard

Assistant Secretary

Commissioner of Labor and Industry

Agency

Department

September 15, 2020

January 7, 2021

Jersey, New York, North Carolina, Oregon, Puerto Rico, South Carolina, Tennessee, Utah, Vermont, Virginia, Virgin Islands, Washington, and Wyoming. Connecticut, Illinois, New Jersey, New York, Maine, and the Virgin Islands have OSHA-approved State Plans that apply to state and local government employees only.

#### VIII. Unfunded Mandates Reform Act of 1995

OSHA reviewed this final rule in accordance with the Unfunded Mandates Reform Act of 1995 (UMRA; 2 U.S.C. 1501 *et seq.*) and Executive Order 13132 (64 FR 43255). OSHA determined that this rule does not add new costs because the regulatory changes are exemptions.

OSHA's standards do not impose any duties on state and local governments except in states that elect voluntarily to adopt a State Plan approved by the agency. OSHA is not aware of any tribal governments that operate railroads using equipment that would be subject to this rulemaking, and the regulatory changes create exceptions to the rule, not new duties. Consequently, this rule does not meet the definition of a "Federal intergovernmental mandate" (see Section 421(5) of the UMRA (2 U.S.C. 658(5))).

Therefore, for the purposes of the UMRA, the agency certifies that this final rule does not mandate that state, local, or tribal governments adopt new, unfunded regulatory obligations, or increase expenditures by the private sector of more than \$100 million in any year.

#### IX. Consultation and Coordination With Indian Tribal Governments

OSHA reviewed this final rule in accordance with Executive Order 13175 (65 FR 67249 (November 9, 2000)) and determined that it does not have "tribal implications" as defined in that order. The final rule does not have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

#### List of Subjects in 29 CFR Part 1926

Construction industry, Cranes, Derricks, Occupational safety and health, Railroad roadway work.

#### Authority and Signature

This document was prepared under the direction of Loren Sweatt, Principal Deputy Assistant Secretary of Labor for Occupational Safety and Health, U.S.

Department of Labor, Washington, DC 20210.

The agency issues the sections under the following authorities: 29 U.S.C. 653, 655, 657; 40 U.S.C. 3704; 33 U.S.C. 941; Secretary of Labor's Order 1-2012 (77 FR 3912 (1/25/2012)); and 29 CFR part 1911.

Signed at Washington, DC, on August 3, 2020.

**Loren Sweatt,**

*Principal Deputy Assistant Secretary of Labor for Occupational Safety and Health.*

For the reasons stated in the preamble of this final rule, OSHA is amending 29 CFR part 1926 as follows:

### PART 1926—SAFETY AND HEALTH REGULATIONS FOR CONSTRUCTION

#### Subpart CC—Cranes and Derricks in Construction

■ 1. The authority citation for subpart CC of 29 CFR part 1926 continues to read as follows:

**Authority:** 40 U.S.C. 3701 *et seq.*; 29 U.S.C. 653, 655, 657; Secretary of Labor's Order No. 5-2007 (72 FR 31159) or 1-2012 (77 FR 3912), as applicable; and 29 CFR part 1911.

■ 2. Amend § 1926.1400 by adding paragraph (c)(18) to read as follows:

#### § 1926.1400 Scope.

\* \* \* \* \*

(c) \* \* \*

(18) *Flash-butt welding trucks.* Flash-butt welding trucks or other roadway maintenance machines not equipped with any hoisting device other than that used to suspend and move a welding device or workhead assembly. For purposes of this paragraph (c)(18), the terms *flash-butt welding truck* and *roadway maintenance machine* refer to railroad equipment that meets the definition of "roadway maintenance machine" in 49 CFR 214.7 and is used only for railroad track work.

\* \* \* \* \*

#### § 1926.1442 [Redesignated as § 1926.1443]

■ 3. Redesignate § 1926.1442 as § 1926.1443.

■ 4. Add a new § 1926.1442 to read as follows:

#### § 1926.1442 Railroad roadway maintenance machines.

(a) *General rule.* Employers using equipment covered by this subpart that meets the definition of "roadway maintenance machine," as defined in 49 CFR 214.7, must comply with the requirements in this subpart, except as provided in paragraphs (b)(1) through (7) of this section when subject to the

authority of the Federal Railroad Administration.

(b) *Exceptions—(1) Operator certification, training, and evaluation.* The requirements in §§ 1926.1427 (Operator qualification and certification) and 1926.1430 (Training) do not apply. The qualification and training requirements contained in §§ 1926.1436(q) (Qualification and training for derricks), 1926.1440(a) (Sideboom cranes), and 1926.1441(a) (Equipment with a rated hoisting/lifting capacity of 2,000 pounds or less) do not apply.

(2) *Rail clamps, rail stops, and work-area controls.* (i) The requirement for rail clamps in § 1926.1415(a)(6) does not apply;

(ii) The requirement for rail stops in § 1926.1415(a)(6) does not apply; and

(iii) The work-area controls specified by § 1926.1424(a)(2) do not apply.

(3) *Out-of-level work.* The restrictions on out-of-level work, and the requirements for crane-level indicators and inspections of those indicators (including the requirements in §§ 1926.1402(b), 1926.1412(d)(1)(xi), and 1926.1415(a)(1)), do not apply.

(4) *Dragging a load sideways.* The prohibition in § 1926.1417(q) on dragging a load sideways does not apply.

(5) *Boom-hoist limiting device.* The requirement in § 1926.1416(d)(1) for a boom-hoist limiting device does not apply to roadway maintenance machines when the cranes use hydraulic cylinders to raise the booms.

(6) *Manufacturer guidance for modifications covered by § 1926.1434.* The requirements to follow the manufacturer's guidance set forth in § 1926.1434 do not apply if the employer is subject to the requirements of 49 CFR part 214.

(7) *Other manufacturer guidance.* The requirements to follow the manufacturer's guidance, instructions, procedures, prohibitions, limitations, or specifications, set forth in § 1926.1404(j), (m), or (q); § 1926.1415(a)(6); § 1926.1417(a), (r), (u), or (aa); § 1926.1433(d)(1)(i); or § 1926.1441 do not apply if the employer is subject to the requirements of 49 CFR part 214.

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**COMMONWEALTH of VIRGINIA**  
**DEPARTMENT OF LABOR AND INDUSTRY**

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**VIRGINIA SAFETY AND HEALTH CODES BOARD**

**BRIEFING PACKAGE**

**For November 12, 2020**

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**Report of Periodic Review of Certain Existing Regulations  
Departmental Review and Findings**

**I. Background and Basis**

The Administrative Process Act (§2.2-4017 of the Code of Virginia) and Governor Northam's Executive Order 14 (2018)(AMENDED), "Development and Review of State Agency Regulations," governs the periodic review of existing regulations. This Executive Order requires that state agencies conduct a periodic review of regulations every four years. The following Safety and Health Codes Board regulations have been identified for review in 2020:

- 16 VAC 25-11 Public Participation Guidelines
- 16 VAC 25-180 Virginia Field Sanitation Standard, Agriculture

**II. Current Status and Process**

Upon the approval of the Board to proceed, at the March 5, 2020 meeting, the process of periodic review by the Department of Labor and Industry (Department) began for the above-noted regulations with publication of a Notice of Periodic Review in the Virginia Register. At the March meeting, the Board approved the periodic review of these regulations, with a public comment period of the required 21 days. The public comment period began on April 13, 2020, when the Notice of Periodic Review was published, and closed on May 4, 2020. No comments were received for any of the regulations during the public comment period. Following the public comment period, Department staff reviewed the regulations and prepared recommendations for the Board's consideration at this meeting. If approved by the Board, the Department will post a report

on the Town Hall website indicating for each regulation either that (1) the Board will retain the regulation as is, or (2) the Board will begin a regulatory action to amend the regulation.

### III. **Review and Analysis**

Pursuant to § 2.2-4007.1 E and F of the *Code of Virginia*, the Department is obligated to evaluate the economic impact of these regulations on small business. The following factors must be considered:

- the continued need for the regulation;
- the nature of complaints or comments received concerning the regulation from the public;
- the complexity of the regulation;
- the extent to which the regulation overlaps, duplicates, or conflicts with federal or state law or regulation; and
- the length of time since the regulation has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the regulation.

As required, the discussion below includes the Department's determination as to whether the regulation should be amended, repealed, or retained consistent with the stated objectives of applicable law, to minimize the economic impact of regulations on small businesses.

#### A. **16 VAC 25-11, Public Participation Guidelines**

Section 2.2-4007.02 of the *Code of Virginia* states public participation guidelines (PPGs) "for soliciting the input of interested parties in the formation and development of its regulations shall be developed, adopted, and used by each agency pursuant to the provisions of this chapter."

An agency's PPGs "...shall afford interested persons an opportunity to (i) submit data, views, and arguments, either orally or in writing, to the agency, to include an online public comment forum on the Virginia Regulatory Town Hall, or other specially designated subordinate and (ii) be accompanied by and represented by counsel or other representative."

**Determination:** It is the determination of the Department that the regulation is not overly complex and is clearly written. There is no negative impact on the regulated community and the regulation does not overlap, duplicate, or conflict with federal or state law or regulation. As a result of this periodic review, the Department has determined that the regulation has no negative economic impact on small business.

During the Public Comment Period, the Department received no comments on the Periodic Review of this Regulation.

**Recommendation:** The Department recommends that this regulation be retained with no changes.

**B. 16 VAC 25-180, Virginia Field Sanitation Standard, Agriculture**

Section 40.1-22(5) of the *Code of Virginia* states that “...the Board shall adopt the standard which most adequately assures, to the extent feasible, on the basis of the best available evidence, that no employee will suffer material impairment of health or functional capacity. However, such standards shall be at least as stringent as the standards promulgated by the Federal Occupational Safety and Health Act of 1970 (P.L. 01-596).”

The regulation requires agricultural employers to provide potable drinking water, regardless of the number of employees, hand washing and toilet facilities to field workers performing hand agricultural labor. It is identical to the current federal OSHA standard, except for the requirement that employers provide potable drinking water regardless of the number of employees.

The Field Sanitation regulation has three goals:

- Reduce the incidence of material impairment of the health of Virginia workers due to workplace exposure to known hazards.
- Require sanitary facilities for agricultural workers equal to those required for construction workers.
- Protect the public’s health, safety, and welfare with the least possible cost and intrusiveness to the citizens and businesses of the Commonwealth.

Provision of sanitary facilities and potable drinking water serve to reduce or eliminate the following four major categories of occupational diseases: heat-related illnesses, communicable diseases, urinary tract infections, and pesticide-related illnesses.

**Determination:** The Field Sanitation regulation is essential to reduce or eliminate the health problems faced by agricultural laborers in the field by providing them with potable drinking water and sanitary facilities. This regulation is not overly complex and is clearly written. There is no negative impact on the regulated community and the regulation does not overlap, duplicate, or conflict with federal or state law or regulation. As a result of this periodic review, the agency determines that the regulation has no negative economic impact on small business.

During the Public Comment Period, the Department received no comments on the Periodic Review of this Regulation.

**Recommendation:** The Department recommends that this regulation be retained with no changes.

**IV. Recommended Action**

At this time, the Department of Labor and Industry recommends to the Safety and Health Codes Board to retain the following with no changes:

- 16 VAC 25-11, Public Participation Guidelines
- 16 VAC 25-180, Virginia Field Sanitation Standard, Agriculture

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**COMMONWEALTH of VIRGINIA**  
**DEPARTMENT OF LABOR AND INDUSTRY**

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November 4, 2020

**VIRGINIA DEPARTMENT OF LABOR AND INDUSTRY**  
**VIRGINIA OCCUPATIONAL SAFETY AND HEALTH (VOSH) PROGRAM**  
**16 VAC 25-220, Proposed Permanent Standard for**  
**Infectious Disease Prevention of SARS-CoV-2 Which Causes COVID-19**

**DEPARTMENT RESPONSE TO WRITTEN AND ORAL COMMENTS**

**Background**

The Department received 993 written comments through the Virginia Regulatory Townhall for the 60 day written comment period from August 27, 2020 to September 25, 2020.

There were 33 written comments sent directly to the Department during the 60 day written comment period, although a number of those were also posted by the Commenter on the Virginia Regulatory Townhall.

There were 29 oral comments received during the public hearing on September 30, 2020.

Broadly speaking, the comments can be divided into those who supported the standard, opposed the standard, raised the single issue of “no masks,” and those with no position. A standard Department response was developed for the following categories:

“Supports”	Comment 84196 (see page 4)
“Opposed with no substantive comments”	Comment 84237 (see page 6)
“Opposed with substantive comments”	Comment 84956 (see page 20) (contains VOSH outreach, training and education information)
“No mask”	Comment 85535 (see page 101)
“Opposed, one size fits all”	Comment 85680 (see page 139)

For each of the above, the Department’s response is provided once in detail and then thereafter a reference back to the initial Department response was provided (e.g. SEE DEPARTMENT RESPONSE TO COMMENT 84196)

The above five standard responses (comments 84196, 84237, 84956, 85680, and 85535) are highlighted in yellow for easy reference.

Finally, a significant number of commenters, particularly those with an affiliation, submitted essentially identical comments, for which a standard Department response was developed. In those cases, the Department's response was provided once in detail and then the next identical comment received a reference back to the initial Department response (e.g. SEE DEPARTMENT RESPONSE TO COMMENT 85680).

### COMMENTS POSTED ON THE VIRGINIA REGULATORY TOWNHALL

84192 Terry Pruitt Gaston Brothers Utilities, LLC 7/28/2020  
<https://townhall.virginia.gov/L/viewcomments.cfm?commentid=84192>

It is premature to make the Temporary Standard a Permanent Standard. The Department should "let the dust settle", before contemplating a Standard that will be very difficult to enforce and will call into question the qualifications of Compliance Officers who will make compliance determinations. The Temporary Standard is already burdensome and only addresses the prevention of spreading COVID-19 among co-workers. I do not think it is VOSH's job "police" infections likely caused outside the workplace. Businesses do not need a VOSH enforcement tool to address the problem; it is better left to state and local Health Departments.

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The use of the word "permanent" in reference to the Standard reflects the fact that, if adopted, the Standard does not currently have a date on which it would expire. However, the Board has the authority to amend or repeal the Standard as the workplace hazards associated with the SARS-CoV-2 virus and COVID-19 disease evolve and eventually lessen.

While many people become infected with SARS-CoV-2 in community settings that are not work-related, every person that becomes infected who is also an employee becomes a potential workplace source and transmitter of the virus if they report to work while still capable of transmitting the disease. There are numerous documented examples of the workplace spread SARS-CoV-2, which is also considered to be highly contagious. The introduction of an infectious disease into a workplace setting, regardless of the source, constitutes a workplace health hazard subject to regulation and enforcement by VOSH.

The VOSH program has clear statutory and regulatory jurisdiction over workplace safety and health issues in the Commonwealth, including the potential for spread of infectious diseases among employees and employers, and when those employees and employers are potentially exposed to other persons who may be carriers of the infectious diseases (patients, customers, independent contractors, etc.).

While the Virginia Department of Health (VDH) has some statutory and regulatory responsibilities in certain industries (restaurant permitting, temporary labor camp permitting, nursing home licensing, etc.), its primary focus is public safety, customer safety and patient safety. VDH has very limited and in some cases no enforcement options when it comes to requiring many of Virginia's industries to limit the spread of SARS-CoV-2 among employees and employers in the workplace.

In such cases where VDH does intervene in a workplace setting that does not fall under its jurisdiction, it will attempt to obtain the employer's agreement with Governor's Executive Orders, but it does not attempt to obtain the employer's agreement to comply with VOSH laws, standards, and regulations, such as VOSH's



COVID-19 ETS or other applicable VOSH standards and regulations (e.g., personal protective equipment, respiratory protective equipment, etc.).

In cases where either an employer refuses to comply with Governor's Executive Orders or VDH suspects potential violations of VOSH laws, standards and regulations, it will make a referral to VOSH for either an informal investigation or an onsite inspection. Accordingly, it is neither legal nor appropriate from a policy standpoint for VOSH to cede jurisdiction to VDH to handle all COVID-19 issues.

84195 Lisa Gray

7/30/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=84195>

Mandating that employees social distance and wear face masks when distancing is not possible on a permanent basis just to control SARS type viruses is both premature and unsustainable. Small businesses do not have the resources to pay employees to stay home for several days because cold symptoms mirror SARS symptoms. Not to mention, employees can't afford to stay home unpaid for conditions that mimic SARS, such as allergies, common colds, ear infections, etc.

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The use of the word "permanent" in reference to the Standard reflects the fact that, if adopted, the Standard does not currently have a date on which it would expire. However, the Board has the authority to amend or repeal the Standard as the workplace hazards associated with the SARS-CoV-2 virus and COVID-19 disease evolve and eventually lessen.

16VAC25-220-40.B.4 of the COVID-19 Emergency Temporary Standard (ETS), provides that "Employers shall develop and implement policies and procedures for employees to report when employees are experiencing symptoms consistent with COVID-19, and no alternative diagnosis has been made (e.g., tested positive for influenza)...." Such employees are then classified as "Suspected to be infected with SARS-CoV-2 virus" and may not report to the workplace until they have been cleared for return to work in accordance with ETS requirements. In situations where there is the possibility for an alternative diagnosis (such as allergies, the common cold, the flu, an ear infection, etc.) the employer has a number of options, including but not limited to, a positive test for influenza or the employee obtaining an alternative diagnosis from a medical authority.

In addition, the Virginia Department of Health provides the following guidance:

If the employee DID NOT have close contact with a COVID-19 case or an area with substantial COVID-19 transmission, but does have signs or symptoms and tested negative for SARS-CoV-2, the negative test can be considered as supporting an "alternative diagnosis", and the person would not be considered suspected to be infected with SARS-CoV-2 virus. The employee must remain out of work until signs and symptoms have resolved and the employee has been fever-free for at least 24 hours without the use of fever-reducing medicine (unless symptoms are due to a known non-infectious cause, such as allergies).

NOTE: It is important to remember that a negative test for SARS-CoV-2 only means that the person wasn't infected at the time the test was taken. If the person is ill one week, tests negative for SARS-CoV-2, and recovers from their illness, only to become ill again soon after, there is always the potential that the repeat illness may be related to COVID. Each illness should be handled as a distinct situation, meaning, the employee should not always be considered to be COVID-19 negative because they tested negative previously.

The Department acknowledges that all of its VOSH laws, standards and regulations can serve to place compliance burdens on employers and employees, particularly in the small business sector. The Department also believes that employers that embrace providing sound and comprehensive workplace safety and health protections can make their business more efficient and profitable through such benefits as reduced injuries, illnesses and fatalities, reduced workers' compensation costs, reduced insurance costs, improvements in morale and innovation, and increased productivity.

The Department strongly encourages Virginia's small business owners to take advantage of free and confidential occupational safety and health onsite and virtual consultation and training services to address COVID-19 compliance issues. More information about the VOSH Consultation Services can be found at: <https://www.doli.virginia.gov/vosh-programs/consultation/>

In addition, free Outreach, Training, and Educational materials to assure compliance with COVID-19 requirements can be found at: <https://www.doli.virginia.gov/covid-19-outreach-education-and-training/>

**84196** Christina White 7/31/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=84196>

This is a good start to having a usable plan for this and other infectious diseases. There will need to be some adjusting of the some of the sections including the antibody testing section as we learn more and get better test methods. We need to have guidelines to protect workers and hold businesses accountable. Having healthy and safe employees will lead to having healthier and safer customers. This will help businesses in the long run as safer businesses are more profitable.

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[STANDARD RESPONSE FOR COMMENTERS THAT SUPPORT THE PROPOSED STANDARD]

The Department agrees with the Commenter's position that a permanent standard is needed.

The use of the word "permanent" in reference to the Standard reflects the fact that, if adopted, the Standard does not currently have a date on which it would expire. However, the Board has the authority to amend or repeal the Standard as the workplace hazards associated with the SARS-CoV-2 virus and COVID-19 disease evolve and eventually lessen.

There is substantial scientific evidence and infection, hospitalization and death statistics that support the conclusion that SARS-CoV-2 presents a danger to employees in the workplace.

It is the Department's position that the danger posed to employees and employers by the SARS-CoV-2 virus and COVID-19 disease are necessary and appropriate to regulate after the expiration of the current COVID-19 Emergency Temporary Standard (ETS) on January 26, 2021. The number of COVID-19 daily infections in Virginia and the United States continue to support the conclusion of ongoing widespread community transmission and the continuing possibility of the introduction of SARS-CoV-2 into Virginia's workplaces for many months to come. It is well recognized that one or more vaccines will not be widely available to the public and employees until well after January 26, 2021.

The Department also believes that the Standard will ultimately help businesses to grow and bring customers back when those customers see that employers are providing employees with appropriate protections required by the Standard from SARS-CoV-2. If customers don't feel safe because employees don't feel safe, it will be hard for a business to prosper in a situation where there is ongoing community spread.

The Department acknowledges that all of its VOSH laws, standards and regulations can serve to place compliance burdens on employers and employees, particularly in the small business sector. The Department also believes that employers that embrace providing sound and comprehensive workplace safety and health protections can make their business more efficient and profitable through such benefits as reduced injuries, illnesses and fatalities, reduced workers' compensation costs, reduced insurance costs, improvements in morale and innovation, and increased productivity.

Review of all COVID-19 related inspections under the Emergency Temporary Standard is conducted centrally by the Department with both a programmatic and legal review prior to a decision to issue or not issue violations/penalties to assure consistent enforcement across the Commonwealth. The Department does not anticipate any significant increase in litigation with regard to the Emergency Temporary Standard or any permanent standard.

The Department strongly encourages Virginia's small business owners to take advantage of free and confidential occupational safety and health onsite and virtual consultation and training services to address COVID-19 compliance issues. More information about the VOSH Consultation Services can be found at: <https://www.doli.virginia.gov/vosh-programs/consultation/>

In addition, free Outreach, Training, and Educational materials to assure compliance with COVID-19 requirements can be found at: <https://www.doli.virginia.gov/covid-19-outreach-education-and-training/>

The proposed permanent standard has been subject to the following notice and comment procedures. The Virginia Safety and Health Codes Board held a 60 day written comment period for the Proposed Permanent Standard, with the comment period running from August 27, 2020 to September 25, 2020. The Board held a Public Hearing on September 30, 2020. A revised draft of the Proposed Permanent Standard will be published with an additional 30 day comment period prior to any Board action. A public hearing will also be held. An economic impact analysis/cost analysis will be prepared for the revised proposed permanent standard.

84202 Anonymous 8/5/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=84202>

It is problematic that the return to work criteria in both the temporary standard and proposed permanent standard are not consistent with CDC and VDH guidance. Physicians have been following CDC guidance and providing return to work notes to their patients based on CDC/VDH guidance. Employers should not be placed in a position of second guessing and over-riding a physician's note. What is the liability to the employer if they do not allow an employee to return to work who has been released by their physician to do so? Secondly, since CDC/VDH guidance is constantly evolving and they produce clear and helpful communications and posters, the standards should simply refer to the CDC/VDH guidance on when to end isolation.

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The issue of the differences between the Standard's return to work requirement and those of the CDC will be addressed in the revised proposed permanent standard. A Frequently Asked Question (FAQ) provided by DOLI addresses the issue as it pertains to the current Emergency Temporary Standard (ETS).

On July 22, 2020, the CDC changed its guidance with regard to symptoms-based strategies from exclusion for 10 days after symptom onset and resolution of fever for at least 3 days to exclusion for 10 days after symptom onset and resolution of fever for at least 24 hours (i.e., the change was from 72 hours to 24 hours).

For persons who never develop symptoms (i.e., asymptomatic), isolation and other precautions can be discontinued 10 days after the date of their first positive RT-PCR test for SARS-CoV-2 RNA.

The Department notes that the Standard provides flexibility to business through 16VAC25-220-10.G.1 which provides that “To the extent that an employer actually complies with a recommendation contained in CDC guidelines, whether mandatory or non-mandatory, to mitigate SARS-CoV-2 virus and COVID-19 disease related hazards or job tasks addressed by this standard, and provided that the CDC recommendation provides equivalent or greater protection than provided by a provision of this standard, the employer’s actions shall be considered in compliance with this standard.”

Employers who comply with the above-referenced change in CDC guidance issued July 22, 2020, will be considered to be providing protection equivalent to protection provided by complying with the requirements in the ETS.

However, nothing in the FAQ shall be construed to prohibit an employer from complying with the symptom-based or time-based strategies for return to work determinations in the ETS. (See §40 FAQ 18, <https://www.doli.virginia.gov/cononavirus-covid-19-faqs/>). In addition, 16VAC25-220-40.B.4 of the COVID-19 Emergency Temporary Standard (ETS), provides that “Employers shall develop and implement policies and procedures for employees to report when employees are experiencing symptoms consistent with COVID-19, and no alternative diagnosis has been made (e.g., tested positive for influenza)...” There is nothing in the ETS or draft permanent standard that prohibits an employer from relying on the medical opinions of a doctor.

84237 Anonymous 8/26/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=84237>

We already have four dragons breathing down our necks telling us what to do and what not to do (Loudoun County Health Dept., VDH, CDC, the Governor's Executive Orders). My god, we can't even run our business' for all the none-stop minutia raining down on us. The last thing we need is yet another (5th) dragon breathing down our necks ... telling us what to do. WE ALREADY KNOW WHAT TO DO !!! Stop this insanity now!!!

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[STANDARD RESPONSE FOR COMMENTERS THAT OPPOSE THE PROPOSED STANDARD]

The use of the word “permanent” in reference to the Standard reflects the fact that, if adopted, the Standard does not currently have a date on which it would expire. However, the Board has the authority to amend or repeal the Standard as the workplace hazards associated with the SARS-CoV-2 virus and COVID-19 disease evolve and eventually lessen.

The VOSH program has clear statutory and regulatory jurisdiction over workplace safety and health issues in the Commonwealth, including the potential for spread of infectious diseases among employees and employers, and when those employees and employers are potentially exposed to other persons who may be carriers of the infectious diseases (patients, customers, independent contractors, etc.).

It is the Department's position that the danger posed to employees and employers by the SARS-CoV-2 virus and COVID-19 disease are necessary and appropriate to regulate after the expiration of the current COVID-19 Emergency Temporary Standard (ETS) on January 26, 2021. The number of COVID-19 daily infections in Virginia and the United States continue to support the conclusion of ongoing widespread community transmission and the continuing possibility of the introduction of SARS-CoV-2 into Virginia's workplaces for many months to come. It is well recognized that one or more vaccines will not be widely available to the public and employees until well after January 26, 2021.

The Department also believes that the Standard will ultimately help businesses to grow and bring customers back when those customers see that employers are providing employees with appropriate protections required by the Standard from SARS-CoV-2. If customers don't feel safe because employees don't feel safe, it will be hard for a business to prosper in a situation where there is ongoing community spread.

The Department notes that the Standard provides flexibility to business through 16VAC25-220-10.G.1 which provides that "To the extent that an employer actually complies with a recommendation contained in CDC guidelines, whether mandatory or non-mandatory, to mitigate SARS-CoV-2 virus and COVID-19 disease related hazards or job tasks addressed by this standard, and provided that the CDC recommendation provides equivalent or greater protection than provided by a provision of this standard, the employer's actions shall be considered in compliance with this standard."

The Department acknowledges that all of its VOSH laws, standards and regulations can serve to place compliance burdens on employers and employees, particularly in the small business sector. The Department also believes that employers that embrace providing sound and comprehensive workplace safety and health protections can make their business more efficient and profitable through such benefits as reduced injuries, illnesses and fatalities, reduced workers' compensation costs, reduced insurance costs, improvements in morale and innovation, and increased productivity.

Review of all COVID-19 related inspections under the Emergency Temporary Standard is conducted centrally by the Department with both a programmatic and legal review prior to a decision to issue or not issue violations/penalties to assure consistent enforcement across the Commonwealth. The Department does not anticipate any significant increase in litigation with regard to the Emergency Temporary Standard or any permanent standard.

The proposed permanent standard has been subject to the following notice and comment procedures. The Virginia Safety and Health Codes Board held a 60 day written comment period for the Proposed Permanent Standard, with the comment period running from August 27, 2020 to September 25, 2020. The Board held a Public Hearing on September 30, 2020. A revised draft of the Proposed Permanent Standard will be published with an additional 30 day comment period prior to any Board action. A public hearing will also be held. An economic impact analysis/cost analysis will be prepared for the revised proposed permanent standard.

84246 Anonymous

8/30/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=84246>

Making this permanent is an unnecessary overreach in response to what is, ultimately, a temporary problem. The order is very specific to COVID-19, which, presumably, will eventually have a vaccine. Furthermore, the addition of new, onerous burdens placed on employers who are already struggling to keep their businesses going during a time when the government is preventing business as usual is outrageous. Most of us are

working with significantly reduced revenue and higher cost of operations due to the restrictions the government has already created. We are all researching CDC and VDH guidelines for ways to make our businesses as safe as possible for our employees and customers. Adding additional government oversight and burdensome regulations – which often do not align with the guidelines from agencies with more insight into effective strategies for infectious disease control – is not in the best interest of anyone. It is also important to note that recommendations from CDC and VDH continue to change on a regular basis. It would be highly irresponsible to enact long term mandates based on a snapshot of an evolving situation. "COVID-19 vaccines will be an important part of the Commonwealth's and the country's ability to significantly reduce the ongoing spread of the SARS-CoV-2 virus in the workplace and in the community. However, with the projected population-level efficacy of COVID-19 vaccine to be 50-70%, no one can definitively state that someone vaccinated will not subsequently be free from infection. There is also anecdotal information and scientific surveys that appear to indicate that a certain sector of the American population will refuse to be vaccinated. Accordingly, it is anticipated that SARS-CoV-2 will continue to infect a certain sector of the populace and be present in the workplace for months and years to come.

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The VOSH program has clear statutory and regulatory jurisdiction over workplace safety and health issues in the Commonwealth, including the potential for spread of infectious diseases among employees and employers, and when those employees and employers are potentially exposed to other persons who may be carriers of the infectious diseases (patients, customers, independent contractors, etc.).

It is the Department's position that the danger posed to employees and employers by the SARS-CoV-2 virus and COVID-19 disease are necessary and appropriate to regulate after the expiration of the current COVID-19 Emergency Temporary Standard (ETS) on January 26, 2021. The number of COVID-19 daily infections in Virginia and the United States continue to support the conclusion of ongoing widespread community transmission and the continuing possibility of the introduction of SARS-CoV-2 into Virginia's workplaces for many months to come. It is well recognized that one or more vaccines will not be widely available to the public and employees until well after January 26, 2021.

The Department also believes that the Standard will ultimately help businesses to grow and bring customers back when those customers see that employers are providing employees with appropriate protections required by the Standard from SARS-CoV-2. If customers don't feel safe because employees don't feel safe, it will be hard for a business to prosper in a situation where there is ongoing community spread.

The Department notes that the Standard provides flexibility to business through 16VAC25-220-10.G.1 which provides that "To the extent that an employer actually complies with a recommendation contained in CDC guidelines, whether mandatory or non-mandatory, to mitigate SARS-CoV-2 virus and COVID-19 disease related hazards or job tasks addressed by this standard, and provided that the CDC recommendation provides equivalent or greater protection than provided by a provision of this standard, the employer's actions shall be considered in compliance with this standard."

Inconsistency and Burden. We are a private preschool and have been deemed essential by governor's order. We are very proud to have stayed open during the whole Covid-19 crisis and offer our current parents and new - essential - parents a safe space for their children. We have been following all guidelines (CDC, VDH, VDSS, Governor's Mandates) diligently, even when they were often conflicting and inconsistent. We do not need another government body(DOLI) have us comply with yet another standard, potentially creating more confusion. There is no consistency, e.g. DOLI requires the return to work policy to be 72 hours fever free, and 7 days with no symptoms, while the CDC requires 24 hours and 10 days! Face coverings instructions are unclear - is it when social distancing cannot be maintained, or at all times, as feasible? The challenges with social distancing and young children are not mentioned at all in any of the specific regulations. Just as it is hard for medical personnel or law enforcement to social distance, it is hard for our teachers in dealing with young children. We do not need the threat to be thrown in jail or with a hefty fine. "It is the Department's position that the danger posed to employees and employers by the SARS-CoV-2 virus and COVID-19 disease are necessary and appropriate to regulate after the expiration of the current COVID-19 Emergency Temporary Standard (ETS) on January 26, 2021. The number of COVID-19 daily infections in Virginia and the United States continue to support the conclusion of ongoing widespread community transmission and the continuing possibility of the introduction of SARS-CoV-2 into Virginia's workplaces for many months to come. It is well recognized that one or more vaccines will not be widely available to the public and employees until well after January 26, 2021.

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The issue of the differences between the Standard's return to work requirement and those of the CDC will be addressed in the revised proposed permanent standard. A Frequently Asked Question (FAQ) provided by DOLI addresses the issue as it pertains to the current Emergency Temporary Standard (ETS).

On July 22, 2020, the CDC changed its guidance with regard to symptoms-based strategies from exclusion for 10 days after symptom onset and resolution of fever for at least 3 days to exclusion for 10 days after symptom onset and resolution of fever for at least 24 hours (i.e., the change was from 72 hours to 24 hours). For persons who never develop symptoms (i.e., asymptomatic), isolation and other precautions can be discontinued 10 days after the date of their first positive RT-PCR test for SARS-CoV-2 RNA.

The Department notes that the Standard provides flexibility to business through 16VAC25-220-10.G.1 which provides that "To the extent that an employer actually complies with a recommendation contained in CDC guidelines, whether mandatory or non-mandatory, to mitigate SARS-CoV-2 virus and COVID-19 disease related hazards or job tasks addressed by this standard, and provided that the CDC recommendation provides equivalent or greater protection than provided by a provision of this standard, the employer's actions shall be considered in compliance with this standard."

Employers who comply with the above-referenced change in CDC guidance issued July 22, 2020, will be considered to be providing protection equivalent to protection provided by complying with the requirements in the ETS.

However, nothing in the FAQ shall be construed to prohibit an employer from complying with the symptom-based or time-based strategies for return to work determinations in the ETS. (See §40 FAQ 18, <https://www.doli.virginia.gov/cononavirus-covid-19-faqs/>).

84251 Anonymous

8/31/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=84251>

The requirements of this standard are overly burdensome to continue indefinitely. There is no data to support the need for this standard to become permanent. To expect workers in Virginia to have to social distance and wear face coverings for the rest of their working lives is utterly ridiculous. Perhaps if board members were to say that out loud to themselves they might actually realize how ridiculous that sounds. I listened to all of the sessions on the adoption of the ETS and personally felt that it was a joke. I am amazed how board members quickly changed their minds when the governor didn't like what they had to say. (learning institution requirements) Some board members seemed to be in it in order to be able to get more clients for their consultation business or just to try to make a name for themselves. I would be interested to see how they are all following the requirements that they themselves instituted. A nice surprise VOSH visit to their establishments would be very interesting indeed. Then again, it would be interesting to see if VOSH is even following these requirements.

Workers need to be able to get back to normal. Employers need to be able to get back to normal. You can't continue to force employers to put unrealistic protections in place just so their employees can blow those protections out of the water when they go to the bar, the grocery store or even to their evening sports leagues. If workers aren't willing to take responsibility for themselves out in public then employers should not be forced to take the responsibility for them. This standard ultimately makes employers responsible for what the workers are doing off the job and that just makes no sense whatsoever.

We don't need more regulation. We need more people with good sense. Obviously that is lacking in the Governor's office, on the board, at VOSH and in the Commonwealth overall.

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The use of the word “permanent” in reference to the Standard reflects the fact that, if adopted, the Standard does not currently have a date on which it would expire. However, the Board has the authority to amend or repeal the Standard as the workplace hazards associated with the SARS-CoV-2 virus and COVID-19 disease evolve and eventually lessen.

In the meantime, the VOSH program has clear statutory and regulatory jurisdiction over workplace safety and health issues in the Commonwealth, including the potential for spread of infectious diseases among employees and employers, and when those employees and employers are potentially exposed to other persons who may be carriers of the infectious diseases (patients, customers, independent contractors, etc.).

It is the Department’s position that the danger posed to employees and employers by the SARS-CoV-2 virus and COVID-19 disease are necessary and appropriate to regulate after the expiration of the current COVID-19 Emergency Temporary Standard (ETS) on January 26, 2021. The number of COVID-19 daily infections in Virginia and the United States continue to support the conclusion of ongoing widespread community transmission and the continuing possibility of the introduction of SARS-CoV-2 into Virginia’s workplaces for many months to come. It is well recognized that one or more vaccines will not be widely available to the public and employees until well after January 26, 2021.



The Commenter asks why employers should provide strong workplace protections to prevent the spread of SARS-CoV-2, when employees can get infected anyway by not maintaining the same kind of protections in their private life, and then apparently bring that infection back into the workplace. It is exactly because there currently is a real possibility that infections obtained outside of work – whether by an employee, or a customer, or a patient, or a subcontractor – that employers need to maintain workplace COVID-19 protections for those employees who do act responsibly away from work.

The Department also believes that the Standard will ultimately help businesses to grow and bring customers back when those customers see that employers are providing employees with appropriate protections required by the Standard from SARS-CoV-2. If customers don't feel safe because employees don't feel safe, it will be hard for a business to prosper in a situation where there is ongoing community spread.

84406 Jason Monk, Hampton Division of Fire and Rescue

9/2/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=84406>

The current temporary standard for symptom-based return-to-work guidelines (Page 22, 1.a.i.) are inconsistent with current CDC and VDH guidelines. The DOLI temporary guidance requires 72 hours without a fever as one of the three requirements. However, the CDC recommends 24 hours without a fever. Otherwise, the guidance of the DOLI document and the CDC recommendations for RTW are identical. Because DOLI is a lawful requirement, we must follow the current DOLI recommendations even if they are not consistent with CDC guidance. By making the DOLI document consistent with CDC, it will clear up confusion and allow us to follow the most current recommendations. Another consideration would be to add language that won't require a document change if the CDC guidance changes, such as, ""...or the most current CDC recommendations.""

I respectfully request that the DOLI document, specifically 1.a.i. on page 22, reflect the current CDC recommendations.

#### Current DOLI Guidance

a. For known or suspected to be infected with the SARS-CoV-2 virus employees the symptom-based strategy excludes an employee from returning to work until (i) at least three days (72 hours) have passed since recovery, defined as resolution of fever without the use of fever-reducing medications and improvement in respiratory symptoms (e.g., cough, shortness of breath) and (ii) at least 10 days have passed since symptoms first appeared

#### Current CDC Recommendations (HCP)

- At least 10 days have passed since symptoms first appeared and
- At least 24 hours have passed since last fever without the use of fever-reducing medications and
- Symptoms (e.g., cough, shortness of breath) have improved

#### Current CDC Recommendations (all others)

- For most persons with COVID-19 illness, isolation and precautions can generally be discontinued 10 days after symptom onset<sup>1</sup> and resolution of fever for at least 24 hours, without the use of fever-reducing medications, and with improvement of other symptoms. °A limited number of persons with severe illness

may produce replication-competent virus beyond 10 days that may warrant extending duration of isolation and precautions for up to 20 days after symptom onset; consider consultation with infection control experts.

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The Department notes that the Standard provides flexibility to business through 16VAC25-220-10.G.1 which provides that "To the extent that an employer actually complies with a recommendation contained in CDC guidelines, whether mandatory or non-mandatory, to mitigate SARS-CoV-2 virus and COVID-19 disease related hazards or job tasks addressed by this standard, and provided that the CDC recommendation provides equivalent or greater protection than provided by a provision of this standard, the employer's actions shall be considered in compliance with this standard."

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The use of the word "permanent" in reference to the Standard reflects the fact that, if adopted, the Standard does not currently have a date on which it would expire. However, the Board has the authority to amend or repeal the Standard as the workplace hazards associated with the SARS-CoV-2 virus and COVID-19 disease evolve and eventually lessen.

There is substantial scientific evidence and infection, hospitalization and death statistics that support the conclusion that SARS-CoV-2 presents a danger to employees in the workplace.

It is the Department's position that the danger posed to employees and employers by the SARS-CoV-2 virus and COVID-19 disease are necessary and appropriate to regulate after the expiration of the current COVID-19 Emergency Temporary Standard (ETS) on January 26, 2021. The number of COVID-19 daily infections in Virginia and the United States continue to support the conclusion of ongoing widespread community transmission and the continuing possibility of the introduction of SARS-CoV-2 into Virginia's workplaces for many months to come. It is well recognized that one or more vaccines will not be widely available to the public and employees until well after January 26, 2021.

The Department also believes that the Standard will ultimately help businesses to grow and bring customers back when those customers see that employers are providing employees with appropriate protections required by the Standard from SARS-CoV-2. If customers don't feel safe because employees don't feel safe, it will be hard for a business to prosper in a situation where there is ongoing community spread.

84432 Anonymous 9/4/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=84432>"Intent to Permanently Mask the Citizens of Virginia

There has been no actually, peer-studied, published, definitive evidence that masks work. There is a lot of extrapolation from half-way done trials, no doubt, but hard evidence? And any info should come from an agency that people can trust, which will be a challenge. The CDC has been shown to lie, as did the WHO, as did the VA Governor.

If masks work, then why social distance? If social distancing works, why close everything? I suspect VA will try to mandate a vaccine for something with a 0.03% fatality rate, but I digress.

This a clear example of governmental and agency over-reach. The state needs to completely re-open.

If this does actually take effect it will be interesting to see what (and who) exemptions are contained in the final verbiage. We all know Governor Northam is a fan, and practitioner, of ""its good for thee but not for me"". Whether that is not wearing a mask or wearing blackface.

In closing I refer you back to our state's motto...but in today's vernacular, ""karma's a witch"".

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

SEE DEPARTMENT RESPONSE TO COMMENT 85535

84459 Anonymous 9/5/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=84459>

Building Owner Notification Section

This section of the proposed regulations is overly burdensome to property/building owners. Leases with tenants are structured in many different (and complex) ways. A commercial property can be occupied by a tenant (or multiple tenants) and the tenant is 100% responsible for maintaining their space and common areas. It is not practical for tenants to notify their Landlord every time there is a COVID occurrence. It is also not practical to notify other tenants in the building of such occurrence. Policy makers need to consult experienced real estate attorneys to understand the legal impacts this proposal may have on the Landlord/Tenant relationship.

If the Landlord is responsible for sanitizing the common area they will pass these costs on to the tenants. This can be extremely expensive and costly to business owners who are trying to remain solvent during an economic recession.

“In the same manner as subdivision 8 a of this subsection, the building or facility owner. The building or facility owner will require all employer tenants to notify the owner of the occurrence of a SARS-CoV-2-positive test for any employees or residents in the building. This notification will allow the owner to take the necessary steps to sanitize the common areas of the building. In addition, the building or facility owner will notify all employer tenants in the building that one or more cases have been discovered and the floor or work area where the case was located.”

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The Department respectfully disagrees with the Commenter's request to change the notification section for building owners.

As noted by the Commenter, the Standard provides ""This notification will allow the owner to take the necessary steps to sanitize the common areas of the building."" There is nothing in the above language that prohibits building owners/landlords and tenants from relying on existing contractual arrangements or agreeing to new contractual arrangements for such things as sanitation of common areas of the building. In an instance where current lease agreements provide for the tenant to take care of sanitation of common areas of the building, the ""next steps"" required by the Standard can be as simple as notifying the tenant that it is the tenants responsibility to sanitize its common areas pursuant to current lease requirements.

84766 "Michael Cassidy,

The Commonwealth Institute for Fiscal Analysis 9/11/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=84766>

Adopt a permanent standard consistent with the ETS

We commend the DOLI staff and Safety and Health Codes Board for developing and approving emergency temporary standards in a timely manner in the wake of COVID-19. In particular, we thank DOLI and the Board for prioritizing physical distancing, which is one of the best ways to prevent person to person spread. We also strongly support requiring employers to provide greater transparency and communication when someone in the workplace has been infected with COVID-19, while still complying with the Americans with Disabilities Act and other applicable Virginia laws and regulations. Finally, we appreciate the strong sanitation requirements applying to workplaces and the standards that ensure access to basic sanitation needs for workers.

The proposed Permanent Standard for Infectious Disease Prevention for COVID-19 would maintain important protections for working people and communities in Virginia and provide continuity with the emergency temporary standards, thereby reducing the challenges employers and employees would face from changing regulations.

Thank you for considering these comments from The Commonwealth Institute. We urge you to do what is right to protect Virginia's workers and adopt the proposed Permanent Standard.

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SEE DEPARTMENT RESPONSE TO COMMENT 84196

84837 Nancy Neal 9/13/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=84837>"ETS as Permanent Standard

I applaud the Governor and the Board for issuing the ETS, and fully support making the standard permanent. I am sorry that it places a burden on employers. DOLI / VOSH has offered assistance and as this virus is deadly and highly contagious there is no other responsible choice.

This virus spreads exponentially and as the majority of citizens are employed, it makes sense that they could be exposed and unintentionally infect the workplace- also, without the mandatory requirement of employer notification to employees once a suspected or positive case is reported and subsequent isolation required, could destroy the entire workforce and their families, and ruin the business entirely, with the added detriment of facilitating widespread community transmission.

Make it permanent unless and until a vaccine is available that destroys or prevents Covid-19.

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SEE DEPARTMENT RESPONSE TO COMMENT 84196

84898 Olin Kinney, Operatons Support Group, Metropolitan Washington Airports Auth 9/15/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=84898>

HVAC System Operating As Designed per VA USBC

The engineering controls proposed in the Emergency Temporary Standard (ETS) from Virginia's Department of Labor and Industry, effective July 27, 2020, stipulate compliance with the 2019 version of ASHRAE Standard 62.1 and 62.2, Ventilation for Acceptable Indoor Air Quality. These engineering controls represent an overreach of the regulatory process since it is impractical for Owners of existing buildings, absent of any pending major renovations, to comply with standards that precede the time when the facilities were designed and constructed. Building HVAC systems in use have been designed, constructed, and commissioned in accordance with strict building code requirements in effect at the time of issuing the Certificate of Occupancy. The engineering controls in the ETS should only require systems to be maintained and operated in accordance with their system design and related manufacturer requirements as of the date of the Certificate of Occupancy or subsequent upgrade to the system.

Although the Department of Labor and Industry utilized the language of the ETS as a basis for the proposed regulation, it is imperative to tailor any permanent regulation for a magnitude and duration commensurate to the risk presented. The COVID-19 pandemic methods of transmission are not fully understood, yet regulations are being proposed to significantly change large components of buildings to address those methods of transmission. Requiring retroactive compliance with a 2019 ASHRAE HVAC standard without fully understanding the real risk from the HVAC system on the building occupants for virus dispersion is premature at best. It should be left to the industry trade groups to determine the most effective design and performance requirements for existing and new HVAC systems and any permanent regulations should follow existing processes contained in the Virginia Uniform Statewide Building Code (USBC) which utilize appropriate industry investigation and recommendations.

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The Department acknowledges the comment and notes that the ASHRAE air handling requirements issue raised by the Commenter is undergoing a legal review.

84924 Anonymous 9/16/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=84924>

Unnecessary and Dangerous

This is an extreme response to a temporary health issue. Making an already ridiculous requirement of employers, employees and the public a permanent burden for a mildly harmful virus, will undeniably cause harm. Face coverings are useless in a non sterile environment. Their only purpose is to make the public feel safe. All of these proposed requirements are actually harmful and not at all helpful. The more we wear masks, sanitize everything obsessively, etc. we are lowering our immune systems and our body's abilities to fight viruses, putting us at an increased risk for serious health complications. If this were to pass and become a permanent requirement, people will become sick, businesses will fail, unemployment will continue, mental health will continue to decline. Enough with the insanity. We need to return to normalcy and this is the direct opposite of that.

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The use of the word "permanent" in reference to the Standard reflects the fact that, if adopted, the Standard does not currently have a date on which it would expire. However, the Board has the authority to amend or repeal the Standard as the workplace hazards associated with the SARS-CoV-2 virus and COVID-19 disease evolve and eventually lessen.

The Department respectfully disagrees with the Commenters suggestion that SARS-CoV-2 is a "mildly harmful virus".

There is substantial scientific evidence and infection, hospitalization and death statistics that support the conclusion that SARS-CoV-2 presents a danger to employees in the workplace.

It is the Department's position that the danger posed to employees and employers by the SARS-CoV-2 virus and COVID-19 disease are necessary and appropriate to regulate after the expiration of the current COVID-19 Emergency Temporary Standard (ETS) on January 26, 2021. The number of COVID-19 daily infections in Virginia and the United States continue to support the conclusion of ongoing widespread community transmission and the continuing possibility of the introduction of SARS-CoV-2 into Virginia's workplaces for many months to come. It is well recognized that one or more vaccines will not be widely available to the public and employees until well after January 26, 2021.

The Department also believes that the Standard will ultimately help businesses to grow and bring customers back when those customers see that employers are providing employees with appropriate protections required by the Standard from SARS-CoV-2. If customers don't feel safe because employees don't feel safe, it will be hard for a business to prosper in a situation where there is ongoing community spread.

It is the Department's position that Face Coverings Help in Protecting against Infection Spread in the Community

"During a pandemic, cloth masks may be the only option available; however, they should be used as a last resort when medical masks and respirators are not available.

....

The general public can use cloth masks to protect against infection spread in the community. In community settings, masks may be used in 2 ways. First, they may be used by sick persons to prevent spread of infection (source control), and most health organizations (including WHO and CDC) recommend such use. In fact, a recent CDC policy change with regard to community use of cloth masks is also based on high risk for transmission from asymptomatic or presymptomatic persons. According to some studies, ~25%–50% of persons with COVID-19 have mild cases or are asymptomatic and potentially can transmit infection to others. So in areas of high transmission, mask use as source control may prevent spread of infection from persons

with asymptomatic, presymptomatic, or mild infections. If medical masks are prioritized for healthcare workers, the general public can use cloth masks as an alternative. Second, masks may be used by healthy persons to protect them from acquiring respiratory infections; some randomized controlled trials have shown masks to be efficacious in closed community settings, with and without the practice of hand hygiene. Moreover, in a widespread pandemic, differentiating asymptomatic from healthy persons in the community is very difficult, so at least in high-transmission areas, universal face mask use may be beneficial. The general public should be educated about mask use because cloth masks may give users a false sense of protection because of their limited protection against acquiring infection. Correctly putting on and taking off cloth masks improves protection. Taking a mask off is a high-risk process because pathogens may be present on the outer surface of the mask and may result in self-contamination during removal.

84943 Anonymous

9/16/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=84943>

There has to be a reasonable balance

This temporary standard has not been in force long enough to measure its effectiveness, and therefore making it permanent is premature at best, and an abuse of power at worst.

Many organizations enacted the majority of the measures within these standards long before they were standards because they cared about their employees and consumers and they had to maintain operations for the good of those people and their surrounding community. But they did so not assuming if they didn't they'd be investigated, fined, jailed or shut-down if they didn't. And they certainly didn't do it with the expectation that a one-size-fits-all would apply to every business.

The intent of these standards, slowing the spread of this particular contagion, should be commended. Face coverings work to absorb many (not all) respiratory droplets in a piece of fabric instead of allowing free dispersion through the air. Sanitation and disinfection works to kill active germs on people and surfaces. Physical distancing works to limit exposure potential between infected and non-infected people by choosing to assume all people could be infected.

Unfortunately, these are all systems that cannot be 100% effective as they require the participation of all parties, at all times. And businesses cannot be held responsible for the behavior of employees and consumers when they are not on the premises of the business.

Ultimately, employees do not spend their entire lives at work, so making the assumption that multiple people who work for the same business and are infected with a highly contagious virus (that is in community spread) were infected as the result of the conditions of that workplace is absurd.

Businesses cannot police the behavior of their employees or consumers during the times when they are not on premises of the business.

However, businesses are now under heightened scrutiny and risk of liability should either a consumer or employee become ill. Businesses must report to the VDH, even though a positive test has already been shared with VDH. And if multiple employees test positive, the business must also report to DOLI as the business is now considered the site of an "outbreak," despite there being no absolute method to determine where that individual transmitted the disease. Correlation does not equate causality yet in this case, an ill person's employer is under investigation.

If two employees who follow the employer's Infectious Disease Preparedness and Response Plan during work hours, but then go on vacations and later test positive for COVID-19, it is absolutely ridiculous to assume the employer was the source of those infections and the home of an ""outbreak.""

The symptoms of COVID-19 mirror those of seasonal allergies, the common cold (another coronavirus), the flu and many other conditions. And the list of symptoms continues to change in length, severity and commonality.

The poorly defined screening process that is required by these standards ensures that any employee could justify not coming to work nearly every single day if they so chose. It could also ensure that any employer would be forced to send any number of their workforce home nearly every single day, based on the responses reported by the employee.

How many people who just read that have experienced a low grade fever, or a cough within the past 8 months?

Did they all stay home from work each time? Did all of them get tested for COVID-19? If they got tested, did they get their results back in a timely fashion? Did they share those results?

Never mind the fact that not everyone has paid sick time. Never mind the fact that businesses need employees to operate, employees need paychecks to provide for their families, and that employees are afraid to share their positive COVID-19 test.

Beyond the employee screening, there are still customers who refuse to wear a mask in businesses and workers who are afraid of being assaulted simply because they had the audacity to remind the customer of the law.

Even the local police department won't consistently wear face coverings in indoor settings despite the law because some of them (like many delusional Americans these days) believe the virus is a ""hoax.""

How can we really expect an employee or a manager of an organization to feel confident that those same police will support them in removing somebody in the midst of a full-on ""don't tread on me"" tantrum because they want to buy their cigarettes without wearing a mask?

It is safer for the business to hang a sign and not confront one of these people... their job doesn't pay them nearly enough to risk their life for it. Managers don't make enough money to confront a headstrong hoaxer either, and the only recourse is to call the police... and then wait for them to show up to essentially say the exact same thing only while wearing a badge and a gun.

That's not exactly great for business and there isn't any enforceable action for a business beyond no-trespass orders to keep one of those people out of their business and back in their delusions and denial.

But just let a couple of employees of one of those establishments get COVID-19 and suddenly the business is the site of an ""outbreak,"" and an investigation by DOLI, despite their best efforts to enforce the law and their internal policy.

Finally, to assume that this crisis is permanent places unnecessary burden on businesses and further escalates the fear of employees that they are unsafe at work.

While all the presentations from all the consultancy firms (who are making a mint off these standards) have repeatedly said that the vast majority of businesses fall into the ""Medium Risk"" category, more and more employees are feeling unsafe without N95 respirators, face shields and gloves despite global shortages and



the fact that those items should be reserved for people working directly with patients infected with COVID-19.

It isn't enough to have someone complete an exposure level risk assessment and conclude that face coverings, sanitation/disinfection and social distancing is sufficient if the standard itself says face coverings aren't PPE and that every employee on Earth can point out situations where those three things might not work and file an anonymous complaint against their employer.

I appreciate the intent of temporary standards and while many of them are incredibly burdensome and nearly impossible for DOLI to enforce (since their plan is to start any investigation by requesting a copy of the IDPR plan so they don't have to actually come on site), there is a solid benefit and community responsibility to protect the health of our workers and customers the best we can.

But these cannot be permanent standards. This is not a permanent crisis nor can a business be expected to bear the full brunt of this level of scrutiny when the people these standards are implemented to protect are not under the constant supervision of businesses.

My recommendation would be to continue with the existing temporary standard as is until the 5th month, and then extend it based on the relevant science of that time, the availability of information and the progress of vaccine availability.

Virginia showed that it can lead the nation by developing these standards in the first place. Let it now lead by maintaining a continuous review process to ensure they are effective and not needlessly burdensome to Virginians doing their best to stay alive and stay afloat.

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The use of the word "permanent" in reference to the Standard reflects the fact that, if adopted, the Standard does not currently have a date on which it would expire. However, the Board has the authority to amend or repeal the Standard as the workplace hazards associated with the SARS-CoV-2 virus and COVID-19 disease evolve and eventually lessen.

Va. Code §40.1-22(6a) under which the Emergency Temporary Standard (ETS) was adopted does not permit the ETS to be extended beyond 6 months.

While many people become infected with SARS-CoV-2 in community settings that are not work-related, every person that becomes infected who is also an employee becomes a potential workplace source and transmitter of the virus if they report to work while still capable of transmitting the disease. There are numerous documented examples of the workplace spread SARS-CoV-2, which is also considered to be highly contagious. The introduction of an infectious disease into a workplace setting, regardless of the source, constitutes a workplace health hazard subject to regulation and enforcement by VOSH.

16VAC25-220-50.C.1 provides that ""Prior to the commencement of each work shift, prescreening or surveying shall be required to verify each covered employee does not have signs or symptoms of COVID-19."" Employers are provided the flexibility to determine what form of prescreening they will use to determine that ""each covered employee does not have signs or symptoms of COVID-19.""

16VAC25-220-40.B.8.e requires employers to notify the Department within 24 hours of the discovery of three or more employees present at the place of employment within a 14-day period testing positive for SARS-CoV-2 virus during that 14-day time period.

DOLI and the Virginia Department of Health (VDH) have collaborated on a Notification Portal for employers to report COVID-19 cases in accordance with Emergency Temporary Standard (ETS) Sections 16VAC25-220-40.B.8.d and -40.B.8.e that satisfies COVID-19 reporting requirements for both agencies. The portal went live on September 28, 2020. Here is a link:

<https://www.doli.virginia.gov/report-a-workplace-fatality-or-severe-injury-or-covid-19-case/>

If an employer is contacted by VOSH either through an informal investigation (phone/fax/email/letter) or as a result of an onsite inspection, it will be provided the opportunity to present information on whether it believes the employee's infection occurred as a result of a workplace exposure or was contracted away from work.

SEE DEPARTMENT RESPONSE TO COMMENT 84956

**84956** Ron Jenkins, Virginia Loggers Association 9/17/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=84956>

Provide Guidance Let Small Businesses Decide

Our medical, science and government leaders should strive to provide the best possible information about diseases and pandemics affecting the workplace environment. However, the business owners should be allowed to make their own decisions on which best practices are appropriate for their business. Regulations should not dictate over reaching mandates on employers. Instead, provide updated information and let business owners do the rest. Business owners do not need more regulations mandating what they must do and adding punitive liabilities for not choosing steps promoted by politics or bureaucracy. Employers should be accountable for their decisions but give them the right to use their best judgment. Updated education is needed - not more regulations!

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[STANDARD RESPONSE TO COMMENTERS WHO OPPOSE THE STANDARD WITH ADDITIONAL INFORMATION ON CONSULTATION, OUTREACH, EDUCATION AND TRAINING]

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The VOSH program has clear statutory and regulatory jurisdiction over workplace safety and health issues in the Commonwealth, including the potential for spread of infectious diseases among employees and employers, and when those employees and employers are potentially exposed to other persons who may be carriers of the infectious diseases (patients, customers, independent contractors, etc.).

It is the Department's position that the danger posed to employees and employers by the SARS-CoV-2 virus and COVID-19 disease are necessary and appropriate to regulate after the expiration of the current COVID-19 Emergency Temporary Standard (ETS) on January 26, 2021. The number of COVID-19 daily infections in Virginia and the United States continue to support the conclusion of ongoing widespread community transmission and the continuing possibility of the introduction of SARS-CoV-2 into Virginia's workplaces for many months to come. It is well recognized that one or more vaccines will not be widely available to the public and employees until well after January 26, 2021.

The Department also believes that the Standard will ultimately help businesses to grow and bring customers back when those customers see that employers are providing employees with appropriate protections required by the Standard from SARS-CoV-2. If customers don't feel safe because employees don't feel safe, it will be hard for a business to prosper in a situation where there is ongoing community spread.

The Department notes that the Standard provides flexibility to business through 16VAC25-220-10.G.1 which provides that "To the extent that an employer actually complies with a recommendation contained in CDC guidelines, whether mandatory or non-mandatory, to mitigate SARS-CoV-2 virus and COVID-19 disease related hazards or job tasks addressed by this standard, and provided that the CDC recommendation provides equivalent or greater protection than provided by a provision of this standard, the employer's actions shall be considered in compliance with this standard."

The Department acknowledges that all of its VOSH laws, standards and regulations can serve to place compliance burdens on employers and employees, particularly in the small business sector. The Department also believes that employers that embrace providing sound and comprehensive workplace safety and health protections can make their business more efficient and profitable through such benefits as reduced injuries, illnesses and fatalities, reduced workers' compensation costs, reduced insurance costs, improvements in morale and innovation, and increased productivity.

Review of all COVID-19 related inspections under the Emergency Temporary Standard is conducted centrally by the Department with both a programmatic and legal review prior to a decision to issue or not issue violations/penalties to assure consistent enforcement across the Commonwealth. The Department does not anticipate any significant increase in litigation with regard to the Emergency Temporary Standard or any permanent standard.

The Department strongly encourages Virginia's small business owners to take advantage of free and confidential occupational safety and health onsite and virtual consultation and training services to address COVID-19 compliance issues. More information about the VOSH Consultation Services can be found at: <https://www.doli.virginia.gov/vosh-programs/consultation/>

In addition, free Outreach, Training, and Educational materials to assure compliance with COVID-19 requirements can be found at: <https://www.doli.virginia.gov/covid-19-outreach-education-and-training/>

The proposed permanent standard has been subject to the following notice and comment procedures. The Virginia Safety and Health Codes Board held a 60 day written comment period for the Proposed Permanent Standard, with the comment period running from August 27, 2020 to September 25, 2020. The Board held a Public Hearing on September 30, 2020. A revised draft of the Proposed Permanent Standard will be published with an additional 30 day comment period prior to any Board action. A public hearing will also be held. An economic impact analysis/cost analysis will be prepared for the revised proposed permanent standard.

84961 and 84963 (duplicate) Charles Davis: City of Norfolk Water Meter Mechanic Supervisor  
9/17/2020 <https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=84961>

My name is Charles Davis and I'm a Water Meter Mechanic Supervisor in the Department of Combined Utilities for the City of Norfolk.

Since the outbreak of COVID19, there have been numerous concerns regarding adequate personal protection equipment and proper social distancing. I've watched the City relocate office personnel to adhere to social

distancing practices, but out in the field it's not possible. The nature of work requires multiple employees to complete complex assignments.

I support the proposed permanent standard for infectious disease prevention for COVID-19.

The essential functions listed in our job description highlight the fact that we are subjected to Communicable Diseases several times a week, Physical Danger, and Various Fumes and odors daily. And as stated in the interview process "This is an Essential Position which means you may be required to work nights, weekends, and rotating shifts, and holidays in response to severe weather events and emergencies."

As a Supervisor, my personal Health and Safety as well as that of my colleagues, who provide daily Essential Public Services, are my priority.

I'm forced to ask questions:

How expendable am I? How is expendable is my crew? Or the families we all support? We are exposed daily to COVID-19 induced work environments.

How does the City of Norfolk explain to the families of crew members when there is a loss of life due to exposure to COVID-19?

It just happened recently! We lost one of our crew members... and guess what? The City did not tell us.

The lack of empathy and the failure of preparation from department/division heads, who in some cases were also exposed and not properly vetted and/or quarantined themselves, is a major concern right now amongst my colleagues.

Currently, there is no process to follow-up with workers exposed to COVID-19.

The standard should also include a COVID-19 exposure log and requirements for managing cases.

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SEE DEPARTMENT RESPONSE TO COMMENT 84196

84969 Anonymous

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=84969>

A Permanent standard should only apply when the CDC or VDH declare a Pandemic

16VAC25-220 should only become permanent with the provision that it only requires employer to comply when the CDC and/or VDH have declared a infectious disease has become a pandemic.

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

85187 Nick Vranak, VP

Safety Corman-Kokosing

9/21/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85187>

Support for Permanent VOSH Standards

My name is Charles Davis and I'm a Water Meter Mechanic Supervisor in the Department of Combined Utilities for the City of Norfolk.

Since the outbreak of COVID19, there have been numerous concerns regarding adequate personal protection equipment and proper social distancing. I've watched the City relocate office personnel to adhere to social distancing practices, but out in the field it's not possible. The nature of work requires multiple employees to complete complex assignments.

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The essential functions listed in our job description highlight the fact that we are subjected to Communicable Diseases several times a week, Physical Danger, and Various Fumes and odors daily. And as stated in the interview process "This is an Essential Position which means you may be required to work nights, weekends, and rotating shifts, and holidays in response to severe weather events and emergencies."

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Currently, there is no process to follow-up with workers exposed to COVID-19.

The standard should also include a COVID-19 exposure log and requirements for managing cases.

Please Help us. Support the Front Line Workers here in the City of Norfolk.

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SEE DEPARTMENT RESPONSE TO COMMENT 84196

Employees and employers may contact DOLI offices around the state when they have questions or concerns about COVID-19: <https://www.doli.virginia.gov/about/doli-offices-statewide/>

The Standard contains a framework for managing cases:

1. Identify cases.

16VAC25-220-40.B.4 provides that "Employers shall develop and implement policies and procedures for employees to report when employees are experiencing symptoms consistent with COVID-19, and no alternative diagnosis has been made (e.g., tested positive for influenza). Such employees shall be designated by the employer as "suspected to be infected with SARS-CoV-2 virus."

2. Remove from work known cases and those "suspected to be infected with SARS-CoV-2 virus"

16VAC25-220-40.B.5 provides that “Employers shall not permit employees or other persons known or suspected to be infected with SARS-CoV-2 virus to report to or remain at the work site or engage in work at a customer or client location until cleared for return to work.”

3. Notify employees and others of known cases.

16VAC25-220-40.B.8 provides “To the extent permitted by law, including HIPAA, employers shall establish a system to receive reports of positive SARS-CoV-2 tests by employees, subcontractors, contract employees, and temporary employees (excluding patients hospitalized on the basis of being known or suspected to be infected with SARS-CoV-2 virus) present at the place of employment within the previous 14 days from the date of positive test....”

4. Provide for return to work.

16VAC25-220-40.C.1 provides that “The employer shall develop and implement policies and procedures for employees known or suspected to be infected with the SARS-CoV-2 virus to return to work....”

Federal OSHA’s Recordkeeping regulation contains requirements for employer maintenance of injury and illness logs in part 1904. <https://www.osha.gov/laws-regs/regulations/standardnumber/1904/>. Section 1904 contains recording criteria, <https://www.osha.gov/laws-regs/regulations/standardnumber/1904/1904.4>. OSHA provides further guidance at: <https://www.osha.gov/memos/2020-05-19/revised-enforcement-guidance-recording-cases-coronavirus-disease-2019-covid-19>

The VOSH program is prohibited from requiring or allowing recordkeeping requirements contrary to those set by federal OSHA so that a consistent, statistically reliable national data collection system can be maintained. See 16VAC25-60-190.A.2, <http://leg1.state.va.us/cgi-bin/legp504.exe?000+reg+16VAC25-60-190>, “2. No variances on record keeping requirements required by the U.S. Department of Labor shall be granted by the commissioner....”

85192 Anonymous 9/21/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85192>

Premature Implementation

It is premature to permanently implement these standards.

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

85205 Anonymous 9/21/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85205>

ASHRAE Disconnect and Other Remarks

The proposed section 16VAC25-220-50 references ANSI/ASHRAE Standards 62.1 and 62.2 (2019a, 2019b). However, the Virginia USBC utilizes the 2015 International Mechanical Code, which references ASHRAE 62.1-2013, which is two versions behind (i.e., 2016 and 2019). So buildings currently under design would likely not fully comply with the referenced 2019 standard. Older buildings designs may not be close to current building designs and equipment may not be capable of achieving the proposed standard.

Note that "'Economic feasibility' means the employer is financially able to undertake the measures necessary to comply with one or more requirements in this standard. The cost of corrective measures to be taken will not usually be considered as a factor in determining whether a violation of this standard has occurred. If an employer's level of compliance lags significantly behind of its industry, an employer's claim of economic infeasibility will not be accepted.'" The term "'industry'" is undefined and is thus subject to varying interpretations and enforcements. E.g., consider two private schools, one with 600 students and a \$10M endowment and one with 125 students and no endowment. Are they to be treated same because they are both in the private education "'industry'"?

Note that "'Building or facility owner'" is defined as "'the legal entity, including a lessee, that exercises control over management and record keeping functions relating to a building or facility in which activities covered by this standard take place.'" While the actual building owner might generally maintain and exercise such control, in a pre-existing lease, a lessee may have accepted such responsibility in exchange for a lower rent. Clearly, at the time of entering into the lease pre-Covid, the lessee had no reason to believe that it would face the types of obligations that would be imposed by this proposed standard, which could result in financial ruin for a small business.

Outdoor air dilution is one aspect that is addressed in the proposed standard. However, did not see where filtration improvements (MERV 13 seems to be minimum industry recommendation) or UV lights in air-handling systems are addressed.

There are vague references to "'maintaining equipment.'" If one is to demonstrate compliance with ASHRAE 62.1, that would require an engineering analysis and an air balance.

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The Department acknowledges the comment and notes that the air handling requirements issue raised by the Commenter is undergoing a legal review.

The Department acknowledges that all of its VOSH laws, standards and regulations can serve to place compliance burdens on employers and employees, particularly in the small business sector. The Department also believes that employers that embrace providing sound and comprehensive workplace safety and health protections can make their business more efficient and profitable through such benefits as reduced injuries, illnesses and fatalities, reduced workers' compensation costs, reduced insurance costs, improvements in morale and innovation, and increased productivity.

The Department strongly encourages Virginia's small business owners to take advantage of free and confidential occupational safety and health onsite and virtual consultation and training services to address COVID-19 compliance issues. More information about the VOSH Consultation Services can be found at: <https://www.doli.virginia.gov/vosh-programs/consultation/>

In addition, free Outreach, Training, and Educational materials to assure compliance with COVID-19 requirements can be found at: <https://www.doli.virginia.gov/covid-19-outreach-education-and-training/>

85210 James Whitehead 9/21/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85210>

Reject the COVID Regulation

I urge those in power to reject the Permanent COVID regulation. This regulation has not met rigorous standards for implementation and it is not known with supporting data if the regulation will have any positive effects. One thing is certain most citizens are totally unaware of this regulation. Business owners would be blindsided. Enforcement? I don't think the Commonwealth has the regulatory resources to enforce this draconian measure. Resistance to the new regulation? You bet! Virginians are fed up with being told what to do when common sense is all that is needed.

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

85211 Cathleen Cogdill 9/21/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85211>

Strangling businesses will not bring them back-COVID is not permanent-stop trying to regulate it!

With another regulation comes another tipping point of no return. Businesses are open markets of opportunity for employees and customers alike. Virginia should not become a state of in loco parentis. We already have colleges and universities that struggle with controlling the students who did return to campus and do not live in our state for more than nine months at a time.

However, businesses are now even at MORE risk with overwhelming scrutiny should either a consumer or employee become ill. The pandemic is being perpetuated as permanent and businesses are caught in the Catch 22. If multiple employees test positive, the business must also report to DOLI and VDH and then wear the SCARLET 'O' - outbreak! And with no way of really assessing the scope of that outbreak as employees are not housed by their employers. Moving around the Commonwealth is becoming an expensive game of pinball, not knowing who bumped into whom and got what from where. Correlation does not mean causation and if every ill person's employer is under investigation-no one will ever return to work.

Can we dial it down? This is going to wreak havoc on our ability to function as the hub of businesses we all enjoy across all five regions of this great Commonwealth we all call home.

—

SEE DEPARTMENT RESPONSE TO COMMENT 84956

While many people become infected with SARS-CoV-2 in community settings that are not work-related, every person that becomes infected who is also an employee becomes a potential workplace source and transmitter of the virus if they report to work while still capable of transmitting the disease. There are numerous documented examples of the workplace spread SARS-CoV-2, which is also considered to be highly contagious. The introduction of an infectious disease into a workplace setting, regardless of the source, constitutes a workplace health hazard subject to regulation and enforcement by VOSH.

85214 Pamela Mashburn 9/21/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85214>

Amazing power grab Covid is not going to be with us Permanently, so why are proposing Permanent regulations. Are we in a Democratic Republic or a Dictatorship?

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The Department has no response to the Commenter's political commentary.

SEE DEPARTMENT RESPONSE TO COMMENT 84237

85223 Anonymous 9/21/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85223>

Excessive regulation, implementation not thought out.

The proposed regulation is a permanent excessive expansion of regulations for a temporary situation.

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

85227 Fred Schoenfeld 9/21/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85227>

small businesses do not need any more regulations!

Please do not impose another requirement on businesses... many have closed! We know what is best for our employees and guests, we are drowning in rules and regs now... trust that businesses know the right thing to do... we do not need Richmond to make our lives any harder!!!

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SEE DEPARTMENT RESPONSE TO COMMENT 84956

85230 Anonymous 9/22/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85230>"exposed individuals

Please define an exposed individual as outlined on page 20 ""a. The employer's own employees who may have been exposed, within 24 hours of discovery of the employees possible exposure"" Are you using VDH definition of exposure or something else? This is causing a great deal of consternation amongst employees as to who should be notified.

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Determinations of employee exposure in reference to the Commenter's question are normally fact specific. The following example is provided.

16VAC25-220-40.B.8.a provides in part:

8. To the extent permitted by law, including HIPAA, employers shall establish a system to receive reports of positive SARS-CoV-2 tests by employees, subcontractors, contract employees, and temporary employees (excluding patients hospitalized on the basis of being known or suspected to be infected with SARS-CoV-2 virus) present at the place of employment within the previous 14 days from the date of positive test, and the employer shall notify:

a. The employer's own employees who may have been exposed, within 24 hours of discovery of the employees possible exposure,...

The following Frequently Asked Question was developed by the Department on this issue (§40, FAQ 24, <https://www.doli.virginia.gov/cononavirus-covid-19-faqs/>)

24. The owners of a salon have a question about alerting the employees at their workplace when an employee tests positive for COVID-19. They are under the impression that only employees in “close contact” (as defined by the CDC) with the positive employee must be alerted. The salon has a strict physical distancing requirement of six feet or more for employees, so they alerted no one at the workplace of the positive case. Is this correct?

No. Employees were required to be notified. The term “close contact” is not used in the ETS. The term “close contact” is used by the CDC for determining when contact tracing should be conducted and is defined as “any individual within 6 feet of an infected person for at least 15 minutes.” 16VAC25-220-10.H specifically provides that:

H. Nothing in the standard shall be construed to require employers to conduct contact tracing of the SARS-CoV-2 virus or COVID-19 disease.

16VAC25-220.40.B.8.a requires employers to notify their “own employees who may have been exposed, within 24 hours of discovery of the employees’ possible exposure....”

Just because an employer has a strict policy of physical distancing as the company alleges does not mean that all employees, customers or persons complied at all times. The intent of the notification requirement is to provide employees information of a “possible” exposure so that employees can make decisions for themselves on the appropriate course of action to take.

In a situation such as a typical beauty salon where the “footprint” of the floor space would not be considered large, and all employees work in the same work space on the same floor, the employer must notify all employees that were “present at the place of employment within the previous 14 days from the date of positive test.

85232 Craig DiSesa 9/22/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85232>

Government Malfeasance

I am perplexed by the extent of the regulations without any data to back-up them up. The only thing that is blatantly obvious to me is that Virginia is trying to make the poor poorer and the rich richer. These regulations are a recipe for income inequality like we have never seen before.

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

85235 Ross Snare, Prince William Chamber of Commerce 9/22/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85235>

## Prince William Chamber is STRONGLY Opposed to DOLI Regulations becoming Permanent

The Prince William Chamber is STRONGLY opposed to the Department of Labor and Industry's COVID-19 Regulations becoming permanent. In a time where some reports estimate that 20-25% of businesses will close forever, these regulations threaten to drive those numbers even higher.

Businesses, especially small businesses, are already struggling to survive these hard economic times and these regulations only increase the burden on them. The business community had no real input when they were originally drafted and developed and when they were put in place. The regulations were developed too quickly and are incredibly broad in scope.

On top of these regulations, the business community also needs to follow guidelines from the CDC, OSHA and there is guidance in the CARES ACT as well. Those regulations alone change almost week to week, increasing the amount of regulations that businesses will have to adhere to will only make a hard situation more difficult.

We also see the DOLI Regulations dramatically increasing the amount of litigation that will go to the courts. They have created a litany of reasons for filing a lawsuit, and a majority of those reasons are based on an individual's perspective, rather than on facts and the situation.

Making the DOLI Regulations permanent will only hurt businesses as they try to move into "the new normal" that we find ourselves adjusting to.

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## SEE DEPARTMENT RESPONSE TO COMMENT 84956

The proposed permanent standard has been subject to the following notice and comment procedures. The Virginia Safety and Health Codes Board held a 60 day written comment period for the Proposed Permanent Standard, with the comment period running from August 27, 2020 to September 25, 2020. The Board held a Public Hearing on September 30, 2020. A revised draft of the Proposed Permanent Standard will be published with an additional 30 day comment period prior to any Board action.

85237 Jon Harman 9/22/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85237>

## Do Not Support Making the ETS Permanent

As a highway construction contractor in Virginia, I do not support the proposal to make the ETS standards permanent. While we all understand the importance of ETS during this pandemic, it is causing a significant administrative burden for us as employers, particularly in the construction industry. We are currently having to divert resources from other other positions/tasks just to manage the process, and should it become permanent, it may force companies like ours to hire additional personnel, affecting not only our competitiveness, but also the costs to the Commonwealth. Below are several reasons why we do not support this proposal:

1. The symptoms of COVID-19 overlap with and are very similar to other common illnesses, such as the common cold and flu. However, the definition in the ETS regarding guidance of any cold/flu like symptoms is to first assume a "Presumptive positive" for COVID. This means that an employee experiencing symptoms must immediately quarantine for 10 days or until a doctor provides a written note stating that it is not a

COVID concern, which doctors currently are hesitant to do. This affects use of the employees sick/vacation leave, impacts productivity, and also fosters an environment where employees could be hesitant to report symptoms or use leave they otherwise would.

2.The ETS makes a broad, general classification of Risk for construction companies based on numbers of employees, not specifically on the type of construction or type of project sites for the employees involved. As an example, a road construction site that is miles long with 50 employees spaced out in normal construction practices is very Low risk, but the company would be defined under a Medium risk classification.

3.ETS establishes company "Health officers" to become de facto certified, accredited, licensed doctors to diagnose symptoms and the health of employees. In doing so, they take on a form of liability regarding medical conditions without the required HIPAA or medical training. They also would necessarily become privy to private and personal employee health-related issues.

4.ETS limits the number of employees and manner of in-person training & certifications, to the point that they become unrealistic to perform virtually in the construction industry. OSHA, MSHA and CPR/first-aid training all require, and in some cases mandate, in person instruction and physical contact that contradicts the ETS standard.

5.There are additional risks and safety concerns created by the broad use of face coverings with employees where the risk is low and social distancing is easily achieved. As examples, face coverings/shields easily fog up safety glasses and create a larger safety hazard to the employee. Further, in hot weather conditions, face coverings contribute to the potential for heat-related illnesses, and worker discomfort. Face coverings also muffle the employees voice, and eliminate the visual interpretation of the person speaking. Each of these situations can affect overall worker safety.

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The Standard does not address the issue of "quarantine". "Quarantine" is separation of people who were in "close contact" with a person with COVID-19 from others. The Standard does address the issue of "isolation".

"Isolation" is the separation of people with COVID-19 from others. People in isolation need to stay home and separate themselves from others in the home as much as possible. Requirements for returning to work from isolation is covered by the ETS in 16VAC25-220-40.C. However, please note that in lieu of complying with 16VAC25-220-40.C, employers may comply with recently updated CDC guidelines (see §40 FAQ 18, <https://www.doli.virginia.gov/cononavirus-covid-19-faqs/>).

With regard to the issue of "alternative diagnosis", 16VAC25-220-40.B.4 of the COVID-19 Emergency Temporary Standard (ETS), provides that "Employers shall develop and implement policies and procedures for employees to report when employees are experiencing symptoms consistent with COVID-19, and no alternative diagnosis has been made (e.g., tested positive for influenza)..." Such employees are then classified as "Suspected to be infected with SARS-CoV-2 virus" and may not report to the workplace until they have been cleared for return to work in accordance with ETS requirements. In situations where there is the possibility for an alternative diagnosis (such as allergies, the common cold, the flu, an ear infection, etc.) the employer has a number of options, including but not limited to, a positive test for influenza or the employee obtaining an alternative diagnosis from a medical authority.

In addition, the Virginia Department of Health provides the following guidance:

If the employee DID NOT have close contact with a COVID-19 case or an area with substantial COVID-19 transmission, but does have signs or symptoms and tested negative for SARS-CoV-2, the negative test can be considered as supporting an “alternative diagnosis”, and the person would not be considered suspected to be infected with SARS-CoV-2 virus. The employee must remain out of work until signs and symptoms have resolved and the employee has been fever-free for at least 24 hours without the use of fever-reducing medicine (unless symptoms are due to a known non-infectious cause, such as allergies).

NOTE: It is important to remember that a negative test for SARS-CoV-2 only means that the person wasn’t infected at the time the test was taken. If the person is ill one week, tests negative for SARS-CoV-2, and recovers from their illness, only to become ill again soon after, there is always the potential that the repeat illness may be related to COVID. Each illness should be handled as a distinct situation, meaning, the employee should not always be considered to be COVID-19 negative because they tested negative previously.

While the Standard lists a number of industries under the definition of “medium” exposure risk level, the language specifically states that “Medium exposure risk hazards or job tasks “may include,” but are not limited to, operations and services in....(Emphasis added). The definition of “medium” exposure risk level does not classify the listed industries as medium risk, but instead when read in conjunction with other portions of the Standard, indicates that the listed industries “may” fall into that category, depending on how the employer assesses and classifies the types of hazards employees are exposed to and the type of job tasks they undertake, in accordance with the requirements in 16VAC25-220-40.B, which provides that:

B. Exposure assessment and determination, notification requirements, and employee access to exposure and medical records.

1. Employers shall assess their workplace for hazards and job tasks that can potentially expose employees to the SARS-CoV-2 virus or COVID-19 disease. Employers shall classify each job task according to the hazards employees are potentially exposed to and ensure compliance with the applicable sections of this standard for very high, high, medium, or lower risk levels of exposure. Tasks that are similar in nature and expose employees to the same hazard may be grouped for classification purposes.

The Standard also provides in 16VAC25-220-10.E.1 provides in part:

E. Application of this standard to a place of employment will be based on the exposure risk level presented by SARS-CoV-2 virus-related and COVID-19 disease-related hazards present or job tasks undertaken by employees at the place of employment as defined in this standard (i.e., very high, high, medium, and lower risk levels).

1. It is recognized that various hazards or job tasks at the same place of employment can be designated as very high, high, medium, or lower exposure risk for purposes of application of the requirements of this standard.

The Department respectfully disagrees with the Commenter’s suggestion that the Standard “establishes company “Health officers” to become de facto certified, accredited, licensed doctors to diagnose symptoms and the health of employees.” No such language is included in the Standard.

For instance, although it is a generally accepted practice, the Standard does not specifically require that employers check the temperatures of employees. 16VAC25-220-50.C.1 provides that “Prior to the commencement of each work shift, prescreening or surveying shall be required to verify each covered employee does not have signs or symptoms of COVID-19.” Employers are provided the flexibility to

determine what form of prescreening they will use to determine that ""each covered employee does not have signs or symptoms of COVID-19.""

OSHA provides guidance on screening employees in the construction industry that can be used by non-medical personnel at: <https://www.osha.gov/SLTC/covid-19/construction.html>.

The Department disagrees that the Standard impedes the ability to train employees virtually. Written certification records are only required for those employees classified as very high or high exposure risk level. 16VAC25-220-80.C. The overwhelming majority of construction workers are classified as medium or lower exposure risk.

If the employer is concerned that employee use of a face covering may present a greater safety or health hazard to employees than compliance with the Standard (e.g., heat illness concerns, the inability to communicate coherently with another employee during a potentially hazardous job task) the issue needs to be assessed during the personal protective equipment (PPE) hazard assessment process required either under the Standard (see 16VAC25-220-50.D for very high and high risk situations, and 16VAC25-220.60.D for medium risk situations) or 1910.132(d) for general industry employers. The PPE hazard assessment process will allow the employer to identify any potential situations where there may be a greater hazard presented and develop alternative protections for employees.

In addition, 16VAC25-220-80.B.f provides that training on the standard provided to employees shall include with regard to PPE: "Heat-related illness prevention including the signs and symptoms of heat-related illness...."

85241 Lori O 9/22/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85241>

Oppose permanent standards for COVID for infectious disease prevention

Standards for COVID for infectious disease prevention should not be permanent.

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

85243 Dana 9/22/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85243>

Oppose Permanent standards for COVID

Do not legislate permanent standards. This will not be a permanent situation and we need to stop all of the back and forth and confusion.

Let's move forward.

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This Standard is not being proposed as legislation to the General Assembly. The Standard is being considered for adoption by the Virginia Safety and Health Codes Board pursuant to Va. Code §40.1-22(6a) and would be enforced by the Department of Labor and Industry's (DOLI) Virginia Occupational Safety and Health (VOSH) Program.

SEE DEPARTMENT RESPONSE TO COMMENT 84237

85244 Emily Hasty, Hampton Roads Chamber 9/22/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85244>

#### Hampton Roads Chamber Strongly Opposes Emergency Regulations Becoming Permanent

The Hampton Roads Chamber is a premier pro-business organization representing more than 400,000 members of Virginia's workforce. The Chamber supports public policies that strengthen free enterprise and regional collaboration efforts that promote economic development and conditions for businesses to succeed.

The Hampton Roads Chamber is strongly opposed to the Department of Labor and Industry's COVID-19 emergency regulations becoming permanent. Businesses, especially small businesses, are already struggling to survive these hard economic times and regulations only increase the burden on them. In a time where some reports estimate that 20-25% of businesses will shut down permanently, these regulations threaten to drive those numbers even higher.

The business community had no real input when they were originally drafted, developed, and when they were put in place. The regulations were developed too quickly and are incredibly broad in scope.

On top of these regulations, the business community also follows guidelines from the CDC, OSHA, and guidance specified in the CARES Act. Those regulations alone change almost week to week. Increasing the number of regulations that businesses will have to adhere to, will only make a hard situation more difficult.

The DOLI Regulations will dramatically increasing the amount of litigation that will go to the courts. They create a litany of reasons for filing a lawsuit, and a majority of those reasons are based on an individual's perspective, rather than on the facts. Making the DOLI Regulations permanent will only hurt businesses as they try to move into ""the new normal"" that we find ourselves adjusting to.

While facing devastating economic conditions Virginia's businesses continue to keep the safety and health of their employees as their top priority. We respectfully request that you reject the proposed permanent emergency regulations.

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SEE DEPARTMENT RESPONSE TO COMMENT 84956

85245 Mark Gilvey Prince William Chamber 9/22/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85245>

#### Prince William Chamber is STRONGLY Opposed to DOLI Regulations becoming Permanent

The Prince William Chamber is STRONGLY opposed to the Department of Labor and Industry's COVID-19 Regulations becoming permanent. In a time where some reports estimate that 20-25% of businesses will close forever, these regulations threaten to drive those numbers even higher.

Businesses, especially small businesses, are already struggling to survive these hard economic times and these regulations only increase the burden on them. The business community had no real input when they were originally drafted and developed and when they were put in place. The regulations were developed too quickly and are incredibly broad in scope.

On top of these regulations, the business community also needs to follow guidelines from the CDC, OSHA and there is guidance in the CARES ACT as well. Those regulations alone change almost week to week, increasing the amount of regulations that businesses will have to adhere to will only make a hard situation more difficult.

We also see the DOLI Regulations dramatically increasing the amount of litigation that will go to the courts. They have created a litany of reasons for filing a lawsuit, and a majority of those reasons are based on an individual's perspective, rather than on facts and the situation.

Making the DOLI Regulations permanent will only hurt businesses as they try to move into "the new normal" that we find ourselves adjusting too.

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SEE DEPARTMENT RESPONSE TO COMMENT 84956

The proposed permanent standard has been subject to the following notice and comment procedures. The Virginia Safety and Health Codes Board held a 60 day written comment period for the Proposed Permanent Standard, with the comment period running from August 27, 2020 to September 25, 2020. The Board held a Public Hearing on September 30, 2020. A revised draft of the Proposed Permanent Standard will be published with an additional 30 day comment period prior to any Board action.

85246 Brenda Straits Moffett Paving & Excavating Corp 9/22/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85246>

Oppose making ETS permanent

I oppose making the current ETS, in its current form, permanent. It puts too much of a burden on small businesses that are already hurting from the shutdown due to Covid-19. It goes too far in making some things mandatory that should be up to the business what they do and not do. Another power grab by an already too powerful government.

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SEE DEPARTMENT RESPONSE TO COMMENT 84956

85247 Anonymous Prince William Chamber? 9/22/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85247>

Prince William Chamber is STRONGLY Opposed to DOLI Regulations becoming Permanent

The Prince William Chamber is STRONGLY opposed to the Department of Labor and Industry's COVID-19 Regulations becoming permanent. In a time where some reports estimate that 20-25% of businesses will close forever, these regulations threaten to drive those numbers even higher.



Businesses, especially small businesses, are already struggling to survive these hard economic times and these regulations only increase the burden on them. The business community had no real input when they were originally drafted and developed and when they were put in place. The regulations were developed too quickly and are incredibly broad in scope.

On top of these regulations, the business community also needs to follow guidelines from the CDC, OSHA and there is guidance in the CARES ACT as well. Those regulations alone change almost week to week, increasing the amount of regulations that businesses will have to adhere to will only make a hard situation more difficult.

We also see the DOLI Regulations dramatically increasing the amount of litigation that will go to the courts. They have created a litany of reasons for filing a lawsuit, and a majority of those reasons are based on an individual's perspective, rather than on facts and the situation.

Making the DOLI Regulations permanent will only hurt businesses as they try to move into "the new normal" that we find ourselves adjusting too.

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SEE DEPARTMENT RESPONSE TO COMMENT 84956

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85248 "Janine, Prince William Chamber of Commerce 9/22/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85248>

Prince William Chamber is STRONGLY Opposed to DOLI Regulations becoming Permanent

The Prince William Chamber is STRONGLY opposed to the Department of Labor and Industry's COVID-19 Regulations becoming permanent. In a time where some reports estimate that 20-25% of businesses will close forever, these regulations threaten to drive those numbers even higher.

Businesses, especially small businesses, are already struggling to survive these hard economic times and these regulations only increase the burden on them. The business community had no real input when they were originally drafted and developed and when they were put in place. The regulations were developed too quickly and are incredibly broad in scope.

On top of these regulations, the business community also needs to follow guidelines from the CDC, OSHA and there is guidance in the CARES ACT as well. Those regulations alone change almost week to week, increasing the amount of regulations that businesses will have to adhere to will only make a hard situation more difficult.

We also see the DOLI Regulations dramatically increasing the amount of litigation that will go to the courts. They have created a litany of reasons for filing a lawsuit, and a majority of those reasons are based on an individual's perspective, rather than on facts and the situation.

Making the DOLI Regulations permanent will only hurt businesses as they try to move into "the new normal" that we find ourselves adjusting too.

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SEE DEPARTMENT RESPONSE TO COMMENT 85235

85249 Andrea Van Wambeke 9/22/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85249>

Opposed to Permanent Infectious Disease Standards

As a business in the hospitality community, we are strongly opposed to making requirements for infectious diseases permanent. None of our businesses were built to withstand constant restrictions like the ones we've seen over the last few months. We are all barely hanging on, and trying to make it through to a day when we can return to a more normal state of operations. We understand that COVID is a serious disease that requires alterations and increased safety requirements. However, we cannot withstand these requirements being made permanent and continuing past the immediate COVID threat.

Thank you,

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SEE DEPARTMENT RESPONSE TO COMMENT 84956

85250 Gayle Whitlock, Chair-Elect Prince William Chamber of Commerce 9/22/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85250>

Prince William Chamber is STRONGLY Opposed to DOLI Regulations becoming Permanent

The Prince William Chamber is STRONGLY opposed to the Department of Labor and Industry's COVID-19 Regulations becoming permanent. In a time where some reports estimate that 20-25% of businesses will close forever, these regulations threaten to drive those numbers even higher.

Businesses, especially small businesses, are already struggling to survive these hard economic times and these regulations only increase the burden on them. The business community had no real input when they were originally drafted and developed and when they were put in place. The regulations were developed too quickly and are incredibly broad in scope.

On top of these regulations, the business community also needs to follow guidelines from the CDC, OSHA and there is guidance in the CARES ACT as well. Those regulations alone change almost week to week, increasing the amount of regulations that businesses will have to adhere to will only make a hard situation more difficult.

We also see the DOLI Regulations dramatically increasing the amount of litigation that will go to the courts. They have created a litany of reasons for filing a lawsuit, and a majority of those reasons are based on an individual's perspective, rather than on facts and the situation.

Making the DOLI Regulations permanent will only hurt businesses as they try to move into "the new normal" that we find ourselves adjusting to.

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SEE DEPARTMENT RESPONSE TO COMMENT 85235

85251 Coldwell Banker NOW Coldwell Banker NOW 9/22/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85251>

Strongly oppose

The proposal ignores the realities of small business needs and operations.

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SEE DEPARTMENT RESPONSE TO COMMENT 84956

85252 NOEL SWEENEY; Andrea Van Wambeke 9/22/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85252>

VERY VERY OPPOSED TO PERMANENT INFECTIOUS DISEASE STANDARDS

As a business in the hospitality community, we are strongly opposed to making requirements for infectious diseases permanent. None of our businesses were built to withstand constant restrictions like the ones we've seen over the last few months. We are all barely hanging on, and trying to make it through to a day when we can return to a more normal state of operations. We understand that COVID is a serious disease that requires alterations and increased safety requirements. However, we cannot withstand these requirements being made permanent and continuing past the immediate COVID threat.

Thank you,

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

85253 Steve Daves, R.W. Murray Co. 9/22/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85253>

Strongly Opposed

I am STRONGLY opposed to the Department of Labor and Industry's Temporary COVID-19 Regulations becoming permanent.

Businesses, especially small businesses, are already struggling to survive during the current pandemic and the current challenging economic climate. These regulations only increase the burden on businesses without providing studied, documented and proven safety protections. The business community had no real input when they were originally drafted and developed and when they were put in place. The regulations were developed too quickly and have not been in place long enough to study/determine the effectiveness of the requirements. Now is not the time to make them permanent.

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SEE DEPARTMENT RESPONSE TO COMMENT 84956

85254 Heidi Wulf, Realtor RE/MAX 9/22/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85254>

Department of Labor and Industry's COVID-19 Regulations becoming permanent

Worst thing you can do! I strong appose!

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

85256 Ning Cappella, LLC Ning Cappella, LLC 9/22/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85256>

Strongly Opposed - setting up small business for bankruptcy

This could bankrupt a small employer who has fewer than 25 employees. To pay all this sick pay plus hire a temporary person to do the work is an overwhelming burden.

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It is the Department's position that the danger posed to employees and employers by the SARS-CoV-2 virus and COVID-19 disease are necessary and appropriate to regulate after the expiration of the current COVID-19 Emergency Temporary Standard (ETS) on January 26, 2021. The number of COVID-19 daily infections in Virginia and the United States continue to support the conclusion of ongoing widespread community transmission and the continuing possibility of the introduction of SARS-CoV-2 into Virginia's workplaces for many months to come. It is well recognized that one or more vaccines will not be widely available to the public and employees until well after January 26, 2021.

The Department also believes that the Standard will ultimately help businesses to grow and bring customers back when those customers see that employers are providing employees with appropriate protections required by the Standard from SARS-CoV-2. If customers don't feel safe because employees don't feel safe, it will be hard for a business to prosper in a situation where there is ongoing community spread.

The Department acknowledges that all of its VOSH laws, standards and regulations can serve to place compliance burdens on employers and employees, particularly in the small business sector. The Department also believes that employers that embrace providing sound and comprehensive workplace safety and health protections can make their business more efficient and profitable through such benefits as reduced injuries, illnesses and fatalities, reduced workers' compensation costs, reduced insurance costs, improvements in morale and innovation, and increased productivity.

The Department strongly encourages Virginia's small business owners to take advantage of free and confidential occupational safety and health onsite and virtual consultation and training services to address COVID-19 compliance issues. More information about the VOSH Consultation Services can be found at: <https://www.doli.virginia.gov/vosh-programs/consultation/>

In addition, free Outreach, Training, and Educational materials to assure compliance with COVID-19 requirements can be found at: <https://www.doli.virginia.gov/covid-19-outreach-education-and-training/>

The Standard does not require employers to provide sick leave to employees. It does reference the Families First Coronavirus Response Act (FFCRA) at 16VAC25-220-40.B.6:

6. To the extent feasible and permitted by law, including but not limited to the Families First Coronavirus Response Act, employers shall ensure that sick leave policies are flexible and consistent with public health guidance and that employees are aware of these policies.

Further information about the FFCRA and sick leave policies can be found at:  
<https://www.dol.gov/agencies/whd/pandemic/ffcra-employee-paid-leave>

85257 Susan Jacobs 9/22/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85257>

I STRONGLY OPPOSED

I STRONGLY OPPOSED to the Department of Labor and Industry's COVID-19 Regulations becoming Permanent.  
STOP HURTING OUR BUSINESS COMMUNITY

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

85258 Jonathan Barbour R.W. Murray Co. 9/22/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85258>

Strongly Opposed

Strongly opposed to these measures remaining in place.

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

85259 Barry DuVal, Virginia Chamber of Commerce 9/22/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85259>

Dear Commissioner Davenport and Members of the Safety and Health Codes Board,

The health and safety of our workforce and customers continue to be the top priority for businesses in the commonwealth during the ongoing pandemic. The business community supports clear and consistent workplace health protection protocols; however, we remain concerned about the impact many of the provisions of the emergency temporary standards have on businesses and encourage you to not make them permanent.

However, if the Board does decide to move forward with a permanent standard, then several components of the standard will need to be tweaked to provide businesses with additional flexibility. We remain concerned that the emergency temporary standards, as currently written, contain several inconsistencies with state and federal regulations and some constitutional concerns.

Below are some of the areas of the ETS that need attention if a permanent standard is pursued:

Amend § 10G to the agency's original language providing "safe harbor" for employers who follow CDC and OSHA guidance.

Strike the vague language mandating "flexible" sick leave policies. It is unconstitutionally vague and it exceeds the agency's statutory authority.

Strike requirements of owners of buildings and facilities to report COVID cases to employer tenants. It exceeds the intent of the Occupational Safety and Health (OSH) Act to require employers to provide employment and a place of employment that is free of recognized hazards.

Remove hand sanitizer as a requirement. Everywhere else, it is a substitute or a best practice.

Change language to apply hazard levels to job tasks instead of employers or industries.

Change the time-based return-to-work rule requiring three days of being symptom-free (following the ten-day period since the onset of symptoms) to one, consistent with the new CDC standard.

Eliminate the requirement to report positive cases to the Department of Health. Health care providers are already doing this.

Eliminate the redundant language regarding employee refusal to work because they feel unsafe. The criteria for protected work refusals are already in the Administrative Regulatory Manual.

Define "minimal contact."

Eliminate requirements to include business considerations (e.g., how to handle supply chain issues, cross-training to prepare for staff shortages) that have nothing to do with employee safety.

Ensure this regulation sunsets with the Governor's State of Emergency the way the ETS does.

The Board should also consider the burden that making this standard permanent and adding additional provisions will have on businesses that continue to struggle with the economic consequences of this pandemic.

Lastly, we continue to believe that enforcement of these provisions should be handled with understanding and leniency. Virginia businesses, many of which have been devastated by the economic impact of this pandemic, are working hard to remain safely operational for their workforce and customers; however, the shifting regulatory landscape continues to be a significant challenge, especially for Virginia's small businesses. As the Board considers making these standards permanent, it is our hope that they will refrain from overenforcement and not penalize businesses that have given a good faith effort in following these complicated rules that continue to change.

Thank you for your consideration.

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The Department does not plan to recommend that 16VAC25-220-10.G be returned to its original language. It is the Department's position that similarly situated employees and employers exposed to the same or even more serious hazards or job task should all be provided the same basic level of safety and health protections. The Standard's language in 16VAC25-220-10.G assures such protections.

The Department disagrees that the sick leave language referenced is unconstitutionally vague. The Standard does not require employers to provide sick leave to employees. It does reference the Families First Coronavirus Response Act (FFCRA) at 16VAC25-220-40.B.6:

6. To the extent feasible and permitted by law, including but not limited to the Families First Coronavirus Response Act, employers shall ensure that sick leave policies are flexible and consistent with public health guidance and that employees are aware of these policies.

Further information about the FFCRA and sick leave policies can be found at:  
<https://www.dol.gov/agencies/whd/pandemic/ffcra-employee-paid-leave>

The Department does not plan to recommend that the notification requirements to tenants be removed from the Standard. The Department notes that the Standard does not apply to non-business tenants in an apartment building. The intent of the notification requirement is to provide employees information of a “possible” exposure so that employees can make decisions for themselves on the appropriate course of action to take.

The Standard already requires that employers assess and classify the types of hazards employees are exposed to and the type of job tasks they undertake, in accordance with the requirements in 16VAC25-220-40.B.

The Department does not plan to recommend the elimination of reporting requirements to the Department of Health, although it does intend to recommend a change to the trigger number of positive cases. DOLI and the Virginia Department of Health (VDH) have collaborated on a Notification Portal for employers to report COVID-19 cases in accordance with Emergency Temporary Standard (ETS) Sections 16VAC25-220-40.B.8.d and -40.B.8.e that satisfies COVID-19 reporting requirements for both agencies. The portal went live on September 28, 2020. Here is a link:

<https://www.doli.virginia.gov/report-a-workplace-fatality-or-severe-injury-or-covid-19-case/>

The Department does not plan to recommend eliminating the Whistleblower provision regarding refusal to work referenced by the Commenter. Subsection D was added by the Safety and Health Codes Board, not by DOLI. It is a restatement of current regulatory requirements in 16VAC25-60-110 and specifically refers to that section, and is considered by the Board to be a restatement of employee rights consistent with current law.

The Department intends to recommend a definition of “minimal occupational contact” be added to the revised proposed standard.

The Department intends to recommend language changes to the “business consideration” language in 16VAC25-220-70.C.5 referenced by the Commenter to make clear that the language is related to occupational safety and health concerns.

SEE DEPARTMENT RESPONSE TO COMMENT 84956

85261 John Massingill 9/22/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85261>"No, a thousand times no.

I echo these comments

"We already have four dragons breathing down our necks telling us what to do and what not to do (...[the] County Health Dept., VDH, CDC, the Governor’s Executive Orders). My god, we can’t even run our business

for all the none-stop minutia raining down on us. The last thing we need is yet another (5th) dragon breathing down our necks .... telling us what to do. WE ALREADY KNOW WHAT TO DO!!! Stop this insanity now!!!"

Get the boot of the Commonwealth off of small business' neck.

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SEE DEPARTMENT RESPONSE TO COMMENT 84956

85264 Holly Harrinton 9/22/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85264>

Strongly oppose COVID19 regulations becoming permanent

As a health care professional who has remained employed throughout the pandemic while adhering to CDC guidelines, I am strongly opposed to converting the current regulations from temporary in status to permanent. While the Nation is on the verge of releasing an FDA approved vaccine and our population has exhibited changed behaviors conducive to limiting/stopping the spread, the conversion will have an adverse impact on both businesses and families and quite frankly, is unwarranted

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COVID-19 vaccines will be an important part of the Commonwealth's and the country's ability to significantly reduce the ongoing spread of the SARS-CoV-2 virus in the workplace and in the community. However, with the projected population-level efficacy of COVID-19 vaccine to be 50-70%, no one can definitively state that someone vaccinated will not subsequently be free from infection. There is also anecdotal information and scientific surveys that appear to indicate that a certain sector of the American population will refuse to be vaccinated. Accordingly, it is anticipated that SARS-CoV-2 will continue to infect a certain sector of the populace and be present in the workplace for months and years to come.

SEE DEPARTMENT RESPONSE TO COMMENT 84237

85265 Anonymous 9/22/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85265>

Permanent COVD legislation

Another poorly thought out bureaucratic nightmare from people who never had to run a business!

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

85270 Brian Mason 9/22/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85270>

Please stop Covid-19 proposal!



Please stop Covid-19 proposal!

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

85272 Jonathan Shinkle 9/22/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85272>

STRONGLY OPPOSED TO MAKING THESE REGULATIONS PERMANENT!

To whom it may concern:

As a business member in the Commonwealth, I am strongly opposed to the idea of making these covid regulations permanent. This has already crushed small businesses in the state and prolonging these regulations is unnecessary and dramatically broad in scope.

Businesses, especially small businesses, are already struggling to survive these hard economic times and these regulations only increase the burden on them. The business community had no real input when they were originally drafted and developed and when they were put in place. The regulations were developed too quickly and are incredibly broad in scope.

On top of these regulations, the business community also needs to follow guidelines from the CDC, OSHA and there is guidance in the CARES ACT as well. Those regulations alone change almost week to week, increasing the amount of regulations that businesses will have to adhere to will only make a hard situation more difficult.

We also see the DOLI Regulations dramatically increasing the amount of litigation that will go to the courts. They have created a litany of reasons for filing a lawsuit, and a majority of those reasons are based on an individual's perspective, rather than on facts and the situation.

Making the DOLI Regulations permanent will only hurt businesses as they try to move into "the new normal" that we find ourselves adjusting too.

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SEE DEPARTMENT RESPONSE TO COMMENT 84956

The proposed permanent standard has been subject to the following notice and comment procedures. The Virginia Safety and Health Codes Board held a 60 day written comment period for the Proposed Permanent Standard, with the comment period running from August 27, 2020 to September 25, 2020. The Board held a Public Hearing on September 30, 2020. A revised draft of the Proposed Permanent Standard will be published with an additional 30 day comment period prior to any Board action.

85277 Cynthia Murray Prince William Chamber of Commerce member 9/22/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85277>

I run a small business in Prince William County. We work hard to follow careful, thoughtful protocol to protect our employees and clients. This is a burden, but we understand it is necessary at this time. To make these precautions permanent would be overly burdensome.

We are members of Prince William Chamber of Commerce. The Prince William Chamber is STRONGLY opposed to the Department of Labor and Industry's COVID-19 Regulations becoming Permanent. In a time where some reports estimate that 20-25% of businesses will close forever, these regulations threaten to drive those numbers even higher.

Businesses, especially small businesses, are already struggling to survive these hard economic times and these regulations only increase the burden on them. The business community had no real input when they were originally drafted and developed and when they were put in place. The regulations were developed too quickly and are incredibly broad in scope.

On top of these regulations, the business community also needs to follow guidelines from the CDC, OSHA and there is guidance in the CARES ACT as well. Those regulations alone change almost week to week, increasing the amount of regulations that businesses will have to adhere to will only make a hard situation more difficult.

We also see the DOLI Regulations dramatically increasing the amount of litigation that will go to the courts. They have created a litany of reasons for filing a lawsuit, and a majority of those reasons are based on an individual's perspective, rather than on facts and the situation.

Making the DOLI Regulations permanent will only hurt businesses as they try to move into "the new normal" that we find ourselves adjusting to.

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SEE DEPARTMENT RESPONSE TO COMMENT 84956

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85278 UPS UPS? 9/22/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85278>

Oppose

I strongly oppose

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

85282 Virginia Brockwell, Anderson Brockwell Agency Inc 9/22/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85282>

STRONGLY OPPOSE MAKING ETS for Covid Permanent

What you are proposing is overly burdensome, expensive and leaves employers open to needless litigation. There is also very little flexibility offered for employers that are not as exposed to the public as others.

During a time when revenue is down, your proposal does not increase employee safety and endangers yet another workplace to going out of business.

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

85283 Tim Smith 9/22/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85283>"

Strongly reject the idea!

Strongly reject the idea of making these guidelines permanent

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

85285 Christina Bradley 9/22/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85285>

Strongly oppose permanent ETS

Dear Members of the Safety and Health Codes Board:

I write to you to register my strong opposition to making the COVID-19 Emergency Temporary Standard (ETS) permanent.

Our business is committed to the safety and welfare of our customers, employees, and community. While the risk of COVID-19 transmission has not yet been eliminated, I harbor serious concerns that the currently enacted emergency measures are overly burdensome and will negatively affect our regional businesses' ability to continue operating if made permanent. Confusing and ambiguous language in the ETS, as well as ever-changing directives from various state and federal health authorities has made running a business in the most challenging of times even harder.

We will continue to make good faith efforts to keep our employees safe and follow public health best practices. Please support your local businesses and reject any extension of the Emergency Temporary Standard.

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

85287 AC 9/22/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85287>

Strongly Oppose

The vast majority of employers are keenly aware of the hazards related to COVID and are taking necessary precautions. All this does is require employers to spend more money on legal advice to be compliant instead of using that money for better resources--like staying in business.

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

Review of all COVID-19 related inspections under the Emergency Temporary Standard is conducted centrally by the Department with both a programmatic and legal review prior to a decision to issue or not issue violations/penalties to assure consistent enforcement across the Commonwealth. The Department does not anticipate any significant increase in litigation with regard to the Emergency Temporary Standard or any permanent standard."

85288 Anonymous 9/22/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85288>

Opposed to ETS Permancy

Dear Members of the Safety and Health Codes Board:

I am writing relative to my strong opposition to making the COVID-19 Emergency Temporary Standard (ETS) permanent.

Our business is committed to the safety and welfare of our customers, employees, and community. While the risk of COVID-19 transmission has not yet been eliminated, I harbor serious concerns that the currently enacted emergency measures are overly burdensome and will negatively affect our regional businesses' ability to continue operating if made permanent. Confusing and ambiguous language in the ETS, as well as ever-changing directives from various state and federal health authorities has made running a business in the most challenging of times even harder.

Our goal is to always ensure our employees are safe and follow public health best practices. Please support your local businesses and reject any extension of the Emergency Temporary Standard.

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

85290 Sam Lowman 9/22/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85290>

Strongly oppose COVID 19 ETS being made permanent

Dear Members of the Safety and Health Codes Board:

I am writing relative to my strong opposition to making the COVID-19 Emergency Temporary Standard (ETS) permanent.

Our business is committed to the safety and welfare of our customers, employees, and community. While the risk of COVID-19 transmission has not yet been eliminated, I harbor serious concerns that the currently

enacted emergency measures are overly burdensome and will negatively affect our regional businesses' ability to continue operating if made permanent. Confusing and ambiguous language in the ETS, as well as ever-changing directives from various state and federal health authorities has made running a business in the most challenging of times even harder.

Our goal is to always ensure our employees are safe and follow public health best practices. Please support your local businesses and reject any extension of the Emergency Temporary Standard.

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

85291 Patrick T. Mooney 9/22/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85291>

Strongly oppose permanent ETS

Dear Members of the Safety and Health Codes Board:

I write to you to register my strong opposition to making the COVID-19 Emergency Temporary Standard (ETS) permanent.

Businesses are committed to the safety and welfare of customers, employees, and the community of patrons and always have been! While the risk of COVID-19 transmission has not yet been eliminated, I firmly believe that the currently enacted emergency measures are overly burdensome and have negatively affected our regional businesses' ability to continue operating. If made permanent many business that have been able to hang on up to now will go under.

Confusing and ambiguous language in the ETS, as well as ever-changing directives from various state and federal health authorities has made running a business in the most challenging of times even harder.

We will continue to make good faith efforts to keep our employees safe and follow public health best practices. Please support your local businesses and reject any extension of the Emergency Temporary Standard.

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

85292 Alice Webber BLANCO, INC blancolabels.com 9/22/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85292>

Oppose making ETS permanent

Dear Members of the Safety and Health Codes Board:

I write to you to register my strong opposition to making the COVID-19 Emergency Temporary Standard (ETS) permanent.

Our business is committed to the safety and welfare of our customers, employees, and community. While the risk of COVID-19 transmission has not yet been eliminated, I harbor serious concerns that the currently enacted emergency measures are overly burdensome and will negatively affect our regional businesses'

ability to continue operating if made permanent. Confusing and ambiguous language in the ETS, as well as ever-changing directives from various state and federal health authorities has made running a business in the most challenging of times even harder.

We will continue to make good faith efforts to keep our employees safe and follow public health best practices. Please support your local businesses and reject any extension of the Emergency Temporary Standard.

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

85293 Greg O'Brien 9/22/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85293>

Strongly Opposed to DOLI regulations becoming permanent

As a small, yet essential business, our costs have skyrocketed, while our revenues have tanked. Making these increased regulations permanent, for a problem that is temporary, is grossly negligent. What's worse is, if it is done, costs of goods and services will have to increase by the actual cost, plus the necessary margin, in order to implement. There's no way that is good for Virginia.

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

85293 Anonymous/Mark Maderic 9/22/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85295>

Strongly Oppose making ES permanent!

Dear Members of the Safety and Health Codes Board:

I write to you to register my strong opposition to making the COVID-19 Emergency Temporary Standard (ETS) permanent.

Our business is committed to the safety and welfare of our customers, employees, and community. While the risk of COVID-19 transmission has not yet been eliminated, I harbor serious concerns that the currently enacted emergency measures are overly burdensome and will negatively affect our regional businesses' ability to continue operating if made permanent. Confusing and ambiguous language in the ETS, as well as ever-changing directives from various state and federal health authorities, has made running a business in the most challenging of times even harder.

We will continue to make good faith efforts to keep our employees safe and follow public health best practices. Please support your local businesses and reject any extension of the Emergency Temporary Standard.

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

85295 Robert Ferber 9/22/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85296>

Strongly Oppose making ES permanent!

Dear Members of the Safety and Health Codes Board:

I write to you to register my strong opposition to making the COVID-19 Emergency Temporary Standard (ETS) permanent.

Our business is committed to the safety and welfare of our customers, employees, and community. While the risk of COVID-19 transmission has not yet been eliminated, I harbor serious concerns that the currently enacted emergency measures are overly burdensome and will negatively affect our regional businesses' ability to continue operating if made permanent. Confusing and ambiguous language in the ETS, as well as ever-changing directives from various state and federal health authorities, has made running a business in the most challenging of times even harder.

We will continue to make good faith efforts to keep our employees safe and follow public health best practices. Please support your local businesses and reject any extension of the Emergency Temporary Standard.

Best Regards,

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

85296 Robert Ferber 9/22/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85296>

Strongly Oppose

Strongly oppose. Please do not add additional burdens to small businesses that are already struggling. This will cause unnecessary litigation. We all work hard to keep our employees, customers, and community safe.

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

85297 Stephen Leisge, GAMBIT Management 9/22/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85297>

Strongly oppose

Strongly oppose this imposition on businesses, which are following all CDC guidelines to the best of their abilities while trying to maintain an active business environment.

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

85298 Scott Williams 9/22/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85298>

I strongly oppose making the Emergency Regulations permanent.

I strongly oppose making the burdensome Emergency Regulations permanent. It is hard enough for employers to navigate through the world of COVID as is. Making the Emergency Regulations permanent will be a huge mistake, and will add another excessive burden for businesses. While the regulations may be well-intentioned, they will cause hardships for employers and make many decide to close up shop and say it is not worth it. Most small businesses in this state have been beaten down by the shutdowns and restrictions. Adding more and/or making them permanent will be a huge mistake and will do unrepairable harm to many, many businesses. Please do the right thing and don't make them permanent. Thank you,

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

85299 Brian W Bowen Integrity Financial Planning Inc 9/22/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85299>

Dear Members of the Safety and Health Codes Board:

I write to you to register my strong opposition to making the COVID-19 Emergency Temporary Standard (ETS) permanent.

Our business is committed to the safety and welfare of our customers, employees, and community. While the risk of COVID-19 transmission has not yet been eliminated, I harbor serious concerns that the currently enacted emergency measures are overly burdensome and will negatively affect our regional businesses' ability to continue operating if made permanent. Confusing and ambiguous language in the ETS, as well as ever-changing directives from various state and federal health authorities has made running a business in the most challenging of times even harder.

We will continue to make good faith efforts to keep our employees safe and follow public health best practices. Please support your local businesses and reject any extension of the Emergency Temporary Standard.

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

85301 David M Todd, President EZ Rampz/Mobility Solutions 9/22/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85301>

Dear Members of the Safety and Health Codes Board:

As a small business owner for over 20 years I have never faced a more challenging time. I write to you to ask you not to make it even more challenging by making the COVID-19 Emergency Temporary Standard (ETS) permanent.



My small business is committed to the safety and welfare of our customers, team members, and community. While the risk of COVID-19 transmission has not yet been eliminated, I harbor serious concerns that the currently enacted emergency measures are overly burdensome and will negatively affect our regional businesses' ability to continue operating if made permanent. The travel regulations are not feasible to businesses operating in other states. The confusing and ambiguous language in the ETS, as well as ever-changing directives from various state and federal health authorities has made a hard job even harder.

My company works with the highest at risk population and we are diligently taking all prescribed precautions and we will continue to make good faith efforts to keep our employees safe and follow public health best practices. Please support your local businesses and reject any extension of the Emergency Temporary Standard.

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

5302 David O 9/22/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85302>

Strongly oppose

Strongly oppose.

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

85303 Kathy Seymore-Lanter, Varney, Inc. 9/22/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85303>

Strongly Oppose the Emergency Temporary Standard proposal to make it permanent

Dear Members of the Safety and Health Codes Board,

I write to you to register my strong opposition to making the COVID-19 Emergency Temporary Standard (ETS) permanent.

Our business is committed to the safety and welfare of our customers, employees and community. While the risk of COVID-19 transmission has not yet been eliminated, I have serious concerns that the currently enacted emergency measures are overly burdensome and will negatively affect our regional businesses' ability to continue operating if made permanent. Confusing and ambiguous language in the ETS, as well as ever-changing directives from various state and federal health authorities has made running a business in the most challenging of times even harder.

We will continue to make good faith efforts to keep our employees safe and follow public health best practices. Please support your local businesses and reject any extension of the Emergency Temporary Standard.

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

85304 Titan Auto and Tire Titan Auto and Tire 9/22/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85304>

Oppose permanent ETS

I oppose making ETS permanent. These temporary standards have caused great difficulty, including physical and emotional stress, also created an awkward work environment for our staff. In the automotive repair industry our employees are easily distanced 6 feet apart throughout the day. Social distancing of 6 feet between customers and staff is possible and simple to comply with. The mask also creates communication and safety issues between staff members due to muffling and being unable to see lips. Communication with customers has been hindered due to muffling and older customers not being able to understand our staff.

Demanding businesses continue with masks permanently is outrageous.

SEE DEPARTMENT RESPONSE TO COMMENT 84956

If your employees are able to maintain physical distancing of 6 feet from other persons (employees, customers, etc.) at all times, than it is appropriate for their job tasks to be classified as “lower risk.” Please note that the definition for “lower risk” also provides that “when it is necessary for an employee to have brief contact with others inside the six feet distance a face covering is required”, and still allows the job tasks to remain classified as lower risk. Employers that are able to modify job tasks and mitigate potential exposure to SARS-CoV-2 to the extent that they can classify their employees as lower risk greatly reduce their compliance burden under the Standard. Such employers will not have to comply with the additional requirements contained in 16VAC25-220-60 for medium risk hazards and job tasks; nor will they have to develop an infectious disease preparedness and response plan under 16VAC25-220-70. Finally, such employers will be able avoid the large majority of the training requirements under 16VAC25-220-80, with the exception that employees have to be provided with written or oral information on the hazards and characteristics of SARS-COV-2 and the symptoms of COVID-19 and measures to minimize exposure. The Department has developed an information sheet which satisfies this requirement which can be found at:  
<https://www.doli.virginia.gov/wp-content/uploads/2020/07/Lower-Risk-Training-1.pdf>.

The Standard requires employers to provide and employees in customer facing positions to wear a face covering. If the employer is concerned that employee use of a face covering may present a greater safety or health hazard to employees than compliance with the Standard (e.g., the inability to communicate coherently with another employee during a potentially hazardous job task) the issue needs to be assessed during the personal protective equipment (PPE) hazard assessment process required either under the Standard (see 16VAC25-220-50.D for very high and high risk situations, and 16VAC25-220.60.D for medium risk situations) or 1910.132(d) for general industry employers. The PPE hazard assessment process will allow the employer to identify any potential situations where there may be a greater hazard presented and develop alternative protections for employees.

85305 Mitchell Kaneff Business owner in Roanoake 9/22/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85305>

## Reject the Extension of Emergency Temporary Standard

As the owner of a facility in Roanoke employing 200 residents, I am writing to register my strong opposition to allowing the COVID-19 Emergency Temporary Standard (ETS) to become permanent.

I am already deeply committed to keeping my employees, customers, and community safe, but I worry that in time this currently enacted emergency measure will develop into an overly burdensome obstacle if it were to become permanent. Much of the language is ambiguous and directives are fluid and often difficult to fully comprehend. My company is dedicated to continuing in good faith to keep our people safe and to carefully - and assiduously - follow and comply with public health best practices. But to make the ETS permanent is an unnecessary move that will hurt local businesses and I am adamantly opposed to this extension.

Thank you.

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

85306 Mulford Mediation Mulford Mediation 9/22/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85306>

Enough is Enough

Enough is Enough. Your burden is a heavy one. Get off the backs of Virginia businesses.

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

85310 Steve Simpson 9/22/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85310>

general notice 1137 DOLI ETS regulation

I think we need to wait for a vaccine or a cure. We have all taken precautions on our own for every other problem that has come along. We can spend ourselves out of business or be sued out of business by the fine print of a mandate and this in no way should be made permanent. Small business can not be held responsible for this kind of regulation. Personal responsibility falls on everyone, not totally on the backs of employers. How many employees bring a problem to work from their outside interactions and then it becomes the sole problem of the employer?

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

85311 Chris Carey 9/22/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85311>

Please do not do this

Please do not make this standard permanent. It is too early to make this decision. Please wait until there is enough data to support this decision.

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

85312 Alice Harris Coleman 9/22/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85312>

oppose ETS

I strongly oppose this legislation. Our country has endured many new diseases and strains. This is definitely over reach.

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"This Standard is not being proposed as legislation to the General Assembly. The Standard is being considered for adoption by the Virginia Safety and Health Codes Board pursuant to Va. Code §40.1-22(6a) and would be enforced by the Department of Labor and Industry's (DOLI) Virginia Occupational Safety and Health (VOSH) Program.

SEE DEPARTMENT RESPONSE TO COMMENT 84237

85313 Anonymous 9/22/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85313>

COVID-19 ETS Unreasonable

I write to strongly oppose making the COVID-19 ETS permanent. The undue burden added to business is confusing and unrealistic. Additionally, healthcare organizations should be exempt from these types of orders due to the standard precautions already in place.

Businesses are committed to the safety and welfare of their patrons and business owners need to be trusted to do the right thing to provide a safe environment.

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

85314 Tyler Reece 9/22/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85314>"oppose ETS

Strongly oppose. Infringement on my rights.

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16VAC25-220-10.C provides that the Standard applies "to every employer, employee, and place of employment in the Commonwealth of Virginia within the jurisdiction of the VOSH program...." The Standard does not address the rights or protections of the general public.

SEE DEPARTMENT RESPONSE TO COMMENT 84237

85315 Taylor Justis 9/22/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85315>

oppose

NO way!!

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

85316 JC Tuck 9/22/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85316>

Strongly oppose. Free Virginia from the election Infection.

Strongly Oppose. If the legislators and other politicians had to endure the hardships they place on the people in the state that actually work and produce it would be a different story. While business after business are closing their doors you government employees use information not proven to be factual to make life harder on a daily basis. End the damaging Covid 19 restrictions now and put Virginia back to work. If the jobs and paychecks of the politicians were being lost this sham would have been over months ago.

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This Standard is not being proposed as legislation to the General Assembly. The Standard is being considered for adoption by the Virginia Safety and Health Codes Board pursuant to Va. Code §40.1-22(6a) and would be enforced by the Department of Labor and Industry's (DOLI) Virginia Occupational Safety and Health (VOSH) Program.

SEE DEPARTMENT RESPONSE TO COMMENT 84237

85317 Stephen Hall Courthouse Shell 9/22/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85317>

STRANGLING SMALL BUSINESS

I STRONGLY OPPOSE THIS. SMALL BUSINESSES HAVE DONE A GREAT JOB OF HANDLING THIS FROM MY OBSERVATIONS. YOU WILL RUIN MORE SMALL BUSINESS WITH YOUR OVER REGULATIONS.

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

85318 S. Brown 9/22/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85318>

STRONGLY OPPOSE. STOP STRANGLING SMALL BUSINESS

This is insanity. Do your job and listen to the citizens and listen to the business owners. NO NO NO.  
STRONGLY OPPOSE.

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

85319 anonymous 9/22/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85319>

Oppose ETS becoming permanent

I oppose the ETS forced upon small businesses in Virginia. It puts a financial and mental burden on our staff, and in this time and age we need to make things easier for the small businesses of Virginia, not more difficult.

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

85320 Dan First Choice Auto 9/22/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85320>

ETS

The ETS should NOT be made permanent. It is mostly common sense temporary things we do anyway. We do not need any more government overreaching.

It causes us to spend way too much money on HR and legal compliance, takes away from running the business and makes us worry about the WRONG things. I think it can be counter productive.

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

85321 Barrie Car Buck Barrie Car Buck 9/22/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85321>

Don't make a bad situation worse

Please don't add additional burdens on us small business owners. The past few months have been an ordeal for all of us, especially small business. To continue to mandate onerous ordinances on us will leave us open to DOLI audits and penalties or perhaps even legal action.

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SEE DEPARTMENT RESPONSE TO COMMENT 84956

85324 Diane Bennett, Bennett Insurance 9/22/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85324>

Do not make Covid-19 Regs Permanent

Covid-19 regulations were supposed to be temporary. Making them permanent will strangle businesses trying to survive. Our economy depends on business productivity, stop trying to strangle the nation's economic engines.

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SEE DEPARTMENT RESPONSE TO COMMENT 84956

85325 Deborah E West 9/22/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85325>

Strongly Oppose ETS becoming permanent

This would be an undue burden to small business. It would open the door to unwarranted litigation Small business is already struggling to survive. We STRONGLY OPPOSE.

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SEE DEPARTMENT RESPONSE TO COMMENT 84956

85326 Neal Keese multiple restaurant owner 9/22/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85326>

Strongly Oppose

In my opinion, this legislation was reactive and not well thought out. Small business already face tremendous regulatory oversight on many fronts. In almost every small business employees are protected and treated fairly and almost like family. Furthermore, compliance with this law as written is not feasible or practicable.

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"This Standard is not being proposed as legislation to the General Assembly. The Standard is being considered for adoption by the Virginia Safety and Health Codes Board pursuant to Va. Code §40.1-22(6a) and would be enforced by the Department of Labor and Industry's (DOLI) Virginia Occupational Safety and Health (VOSH) Program.

SEE DEPARTMENT RESPONSE TO COMMENT 84956"

85327 Stephen Piscitelli 9/22/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85327>

Overreach by temporary authority to make restrictions permanent

It is a travesty for anyone to overreach their authority in violation of our right to the pursuit of happiness life and liberty according to our consitutional rights because of arbitrary decisions  
of unelected officials concerning our welfare against our own will.

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"SEE DEPARTMENT RESPONSE TO COMMENT 84237

The Department has no response to the Commenter's political commentary."

85328 Mary Coles 9/22/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85328>

OPPOSE making ETS permanent!

Please OPPOSE making ETS permanent. DOLI is going to KILL Virginia Small Business and totally destroy Virginia's ranking as a good place to do business!

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SEE DEPARTMENT RESPONSE TO COMMENT 84956

85329 David Edwards 9/22/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85329>

ETS permanent

The ETS is overreach as it is! To make these regulations permanent will KILL small businesses! This CANNOT happen.

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SEE DEPARTMENT RESPONSE TO COMMENT 84956

85331 Chuck Shifflett 9/22/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85331>

Strongly oppose ETS Reg as Permanent

Making the ETS Regulation permanent would put an undue / unfair burden on the businesses of our State. The amount of money, time and energy spent complying short term is even too much. No one expects this Pandemic to last forever and therefore we should not be forced to comply with further regulation forever.

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SEE DEPARTMENT RESPONSE TO COMMENT 84956



85332 "Fritz's Car Care Inc. Fritz's Car Care Inc. 9/22/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85332>

ETS oppose ETS regs, hurts small biz with over regs

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SEE DEPARTMENT RESPONSE TO COMMENT 84956

85333 Suzan D. Herskowitz, Suzan D. Herskowitz, P.L.L.C. 9/22/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85333>

In favor of making some of the ETS standards permanent

I am an employer and while I understand that businesses want to be open, we have to keep ourselves and our employees safe. We also have to keep our customers and clients safe.

I am in favor of making the following provisions of the ETS permanent:

Keep requirement for hand sanitizer.

Keep flexible sick leave language.

Require landlords to inform employer tenants of covid positive cases in the building.

Require employers to report to VDH. If someone lives out of state or is tested out of state, that will not otherwise be reported in Virginia.

Do not change the return to work rule regarding being symptom free, otherwise change it to comply with the CDC guidelines.

Thank you.

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The Department agrees with the Commenter's recommendations about certain provisions being made permanent. The Department also notes the following:

SEE DEPARTMENT RESPONSE TO COMMENT 84956

85334 Tim Clark Blair Construction 9/22/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85334>

Oppose

Our family business opposes these additional burdens on employers during this challenging economic time. The health and safety of our workforce and customers continue to be the top priority for businesses in the commonwealth during the ongoing pandemic. And while we support clear and consistent workplace health protection protocols; we remain concerned about the impact many of the provisions of the ETS are having on businesses and encourage the Board to not make them permanent.

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SEE DEPARTMENT RESPONSE TO COMMENT 84956

85337 A Barbour 9/22/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85337>

Strongly Oppose!

As a small business owner already dealing with too much government regulation, I absolutely oppose this bill.

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This Standard is not being proposed as legislation to the General Assembly. The Standard is being considered for adoption by the Virginia Safety and Health Codes Board pursuant to Va. Code §40.1-22(6a) and would be enforced by the Department of Labor and Industry's (DOLI) Virginia Occupational Safety and Health (VOSH) Program.

Review of all COVID-19 related inspections under the Emergency Temporary Standard is conducted centrally by the Department with both a programmatic and legal review prior to a decision to issue or not issue violations/penalties to assure consistent enforcement across the Commonwealth. The Department does not anticipate any significant increase in litigation with regard to the Emergency Temporary Standard or any permanent standard.

SEE DEPARTMENT RESPONSE TO COMMENT 84237

85338 Ray Bowes 9/22/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85338>

WEARING MASK

WE ARE OPPOSED TO THIS. LET US GET THRU THE PRESENT BUT WE ADD TO THE FUTURE

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

85339 DownHome Pharmacy DownHome Pharmacy 9/22/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85339>

OPPOSE

As a small independent pharmacy and family owned business we oppose these additional burdens on employers during this challenging economic time. The health and safety of our employees and customers continue to be our top priority. We do support clear and consistent workplace health protection protocols; we are concerned about the impact many of the provisions of the ETS are having on businesses and encourage the Board to not make them permanent.

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SEE DEPARTMENT RESPONSE TO COMMENT 84956

85340 Elizabeth Block 9/22/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85340>

Strongly Opposed

Our economy is driven by small business, and these businesses will close forever and will be considered too risky to open should the Department of Labor and Industry's COVID-19 Regulations becoming Permanent. Commercial real estate will be rendered useless and empty with debt that would not be paid. Do not take Covid as a precedence to what should be. The over powering regulations of health departments infringe upon the freedom to live normal lives. Our children's mental and physical health will suffer, in addition to the health and welfare of others.

We are also not meant to live so removed from others, or to live in fear. Please do not make Covid-19 Regulations permanent for infectious disease, which by the way, could be any illness depending on how loosely the Department of Health wishes to define it. I strongly oppose.

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SEE DEPARTMENT RESPONSE TO COMMENT 84956

ROLE OF THE VIRGINIA DEPARTMENT OF HEALTH (VDH)

The Commenter's following concerns are best addressed to VDH: "Our children's mental and physical health will suffer, in addition to the health and welfare of others. We are also not meant to live so removed from others, or to live in fear."

While the Virginia Department of Health (VDH) has some statutory and regulatory responsibilities in certain industries (restaurant permitting, temporary labor camp permitting, nursing home licensing, etc.), its primary focus is public safety, customer safety and patient safety. VDH has very limited and in some cases no enforcement options when it comes to requiring many of Virginia's industries to limit the spread of SARS-CoV-2 among employees and employers in the workplace.

85341 J Bucaro 9/22/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85341>

Oppose

Strongly oppose. Just more government regulations that have unintended consequences

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

85323 Adam Dean 9/22/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85343>

Strongly Oppose

Our economy is driven by small business, and these businesses will close forever and will be considered too risky to open should the Department of Labor and Industry's COVID-19 Regulations becoming Permanent. Commercial real estate will be rendered useless and empty with debt that would not be paid. Do not take Covid as a precedence to what should be. The over powering regulations of health departments infringe upon the freedom to live normal lives. Our children's mental and physical health will suffer, in addition to the health and welfare of others.

We are also not meant to live so removed from others, or to live in fear. Please do not make Covid-19 Regulations permanent for infectious disease, which by the way, could be any illness depending on how loosely the Department of Health wishes to define it. I strongly oppose.

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SEE DEPARTMENT RESPONSE TO COMMENT 84956

85344 Anonymous 9/22/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85344>

Against government oversight

Against these regulations. Let businesses freedom to choose what methods to follow. employees and patrons can work/shop elsewhere if they don't agree. Virginia is an at will state for employment and no one is required to stay at a job they disagree with.

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SEE DEPARTMENT RESPONSE TO COMMENT 84956

The Department has no response concerning the Commenter's reference to ""at will employment"" in Virginia other than to note that employers within the jurisdiction of the VOSH program are required to provide safe and health workplaces for their employees.

85345 Gary Walker Cabo Fish Taco 9/22/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85345>

Strongly oppose

We strongly oppose. Some trust should be afforded the VA business community without constantly passing more and more regulations that are rash and poorly constructed. If this moves forward please take the VA Chamber's letter of opposition and suggested actions as my opinion and recommendation.

Thanks,

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SEE DEPARTMENT RESPONSE TO COMMENT 84956

85350 Kathleen Washburn, Massage Envy, Roanoke 9/22/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85350>

Strongly appose

Dear Members of the Safety and Health Codes Board:

I write to you to register my strong opposition to making the COVID-19 Emergency Temporary Standard (ETS) permanent.

Our business is committed to the safety and welfare of our customers, employees, and community. While the risk of COVID-19 transmission has not yet been eliminated, I harbor serious concerns that the currently enacted emergency measures are overly burdensome and will negatively affect our regional businesses' ability to continue operating if made permanent. Confusing and ambiguous language in the ETS, as well as ever-changing directives from various state and federal health authorities has made running a business in the most challenging of times even harder.

We will continue to make good faith efforts to keep our employees safe and follow public health best practices. Please support your local businesses and reject any extension of the Emergency Temporary Standard.

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SEE DEPARTMENT RESPONSE TO COMMENT 84956

85352 Tim Reith/Copper Kettle Copper Kettle 9/22/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85352>

I strongly oppose DOLI position on the adoption of permanent standard for Infectious Disease Prev

I support the VA Chamber of Commerce position that we should not make permanent the the Temporary Standard for Infectious Disease Prevention. I own two restaurants that struggle every day to keep the doors open with the currecnt restriction. I m in negative cash flow and take monet out of my saving every month to keep the doors open. Adding an addition layerof regulation to a permanamt basis, makes no sense to me and may cause me to go out of business. Extend the temporary order for as long as necessary and let us work thru this.

Respectfully submitted

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SEE DEPARTMENT RESPONSE TO COMMENT 84956

Va. Code §40.1-22(6a) under which the Emergency Temporary Standard (ETS) was adopted does not permit the ETS to be extend beyond 6 months. "

85358 Richards Pharmacy Richards Pharmacy 9/22/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85358>

I oppose making DOLI Regulations permanent.

I oppose making DOLI Regulations permanent.

---

SEE DEPARTMENT RESPONSE TO COMMENT 84237

85360 Anonymous 9/22/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85360>

The last thing we need is more government rules telling us what to do.

We need less government, not more, in our lives telling us how to run our businesses. We have made the investments and have the costs, not the bureaucrats.

---

SEE DEPARTMENT RESPONSE TO COMMENT 84956

85361 Anonymous 9/22/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85361>

Dear Members of the Safety and Health Codes Board:

I write to you to register my strong opposition to making the COVID-19 Emergency Temporary Standard (ETS) permanent.

Our business is committed to the safety and welfare of our customers, employees, and community. While the risk of COVID-19 transmission has not yet been eliminated, I harbor serious concerns that the currently enacted emergency measures are overly burdensome and will negatively affect our regional businesses' ability to continue operating if made permanent. Confusing and ambiguous language in the ETS, as well as ever-changing directives from various state and federal health authorities has made running a business in the most challenging of times even harder.

We will continue to make good faith efforts to keep our employees safe and follow public health best practices. Please support your local businesses and reject any extension of the Emergency Temporary Standard.

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SEE DEPARTMENT RESPONSE TO COMMENT 84956

85363 Julie Holmes Virginia Tire & Auto 9/22/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85363>

Strongly oppose making the current ETS regulations permanent

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

85367 STEVEN CRAWFORD, HEPNER TIRE AND AUTO, WOODSTOCK 9/23/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85367>

ANOTHER GOVERNMENT ONUS..."SOCIALISM IS FOR THE PEOPLE, NOT THE SOCIALISTS!

---

SEE DEPARTMENT RESPONSE TO COMMENT 84237

The Department has no response to the Commenter's political commentary.

85368 Blue Ocean Buying Group Blue Ocean Buying Group 9/23/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85368>

ANOTHER GOVERNMENT ONUS...

SOCIALISM IS FOR THE PEOPLE, NOT THE SOCIALISTS!

---

SEE DEPARTMENT RESPONSE TO COMMENT 84237

The Department has no response to the Commenter's political commentary.

85370 Scott's Ivy Exxon Scott's Ivy Exxon 9/23/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85370>

I OPPOSE DOLI PROPOSAL

I oppose making the regulations permanent.

---

SEE DEPARTMENT RESPONSE TO COMMENT 84237

85371 Jimmie K. Crowder Crowder-Hite-Crews 9/23/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85371>

DOLI Regulation

Please do not make this permanent.

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

85375 J. Smith 9/23/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85375>

I strongly oppose

These are government overreach in terms of privately owned and operated corporations and small businesses. Keep government intervention out of small business - all these ridiculous regulations will do is force closures and unemployment of thousands - in no world is this sort of financial obligation sustainable. Do not use this pandemic to takeover private enterprise - you will effectively kill entrepreneurship! Do not make these permanent

---

SEE DEPARTMENT RESPONSE TO COMMENT 84956

85376 Jim McAden 9/23/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85376>

Honorable members of the Safety and Health Codes Board:

Since the outset of this pandemic we have been following guidance provided by the CDC, the WHO, and VDH. These organizations are best prepared to advise citizens, employees and employers about the measures that should be instituted to protect the health of employees. The ETS have been confusing and, in some cases, contradictory to other guidance. As employers, our number one concern is the health and safety of our employees. The fact that Virginia is the only state to have passed similar legislation should be a clue that the regulation is unnecessary and overly burdensome to Virginia businesses.

We are committed to doing whatever we can to keep our employees safe and follow best practices as advised by public health agencies. Please support Virginia businesses by rejecting any extension of the ETS.

---

SEE DEPARTMENT RESPONSE TO COMMENT 84956

85377 Dave Jenkins 9/23/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85377>

Oppose

This is simply not needed on a permanent basis. It's burden on anyone in business particularly those in Customer service. I can't understand a word anyone is saying thru these things and have to ask multiple times what they are saying to the point of asking people to spell out.

Just another burden on business functions imposed by the ruling party in Richmond. Dumb and dumber.

---

SEE DEPARTMENT RESPONSE TO COMMENT 84956

The Department has no response to the Commenter's political commentary.



85379 Robert Saunders 9/23/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85379>

smaller government

Strongly oppose.

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

85381 Mary Finnigan 9/23/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85381>

Strongly oppose

Strongly oppose making these regulations, which has created an unnecessary burden on businesses, permanent.

It is unnecessary to have additional regulations/laws.

We already have OSHA, CDC recommendations, and the CARES Act.

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SEE DEPARTMENT RESPONSE TO COMMENT 84956

85382 JOSEPH H KALKSTEIN 9/23/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85382>

Permanent ETS regulations

I strongly oppose making the ETS regulations permanent

---

SEE DEPARTMENT RESPONSE TO COMMENT 84237

85383 Tracey 9/23/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85383>

opposed

I am opposed to making the ETS permanent. It is burdensome for employers and customers. We need life to return to normal.

---

SEE DEPARTMENT RESPONSE TO COMMENT 84956

85386 anonymous 9/23/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85386>

NO TO PERMENENT REGULATION!

Temporary Regulation is ok, But Permanent is too far!

---

SEE DEPARTMENT RESPONSE TO COMMENT 84237

85387 Adam Fried 9/23/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85387>"DOLI

Opposed

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

85388 Taunya Gardner 9/23/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85388>

DOLI - Opposed

Opposed to DOLI regulation

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This Standard is not being proposed as legislation to the General Assembly. The Standard is being considered for adoption by the Virginia Safety and Health Codes Board pursuant to Va. Code §40.1-22(6a) and would be enforced by the Department of Labor and Industry's (DOLI) Virginia Occupational Safety and Health (VOSH) Program.

SEE DEPARTMENT RESPONSE TO COMMENT 84237

85389 "Craig Botetourt Electric Cooiperative  
" 9/23/2020 <https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85389>

Dear Members of the Safety and Health Codes Board:

I write to you to register my strong opposition to making the COVID-19 Emergency Temporary Standard (ETS) permanent.

Our business is committed to the safety and welfare of our customers, employees, and community. While the risk of COVID-19 transmission has not yet been eliminated, I harbor serious concerns that the currently enacted emergency measures are overly burdensome and will negatively affect our regional businesses' ability to continue operating if made permanent. Confusing and ambiguous language in the ETS, as well as

ever-changing directives from various state and federal health authorities has made running a business in the most challenging of times even harder.

We will continue to make good faith efforts to keep our employees safe and follow public health best practices. Please support your local businesses and reject any extension of the Emergency Temporary Standard.

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SEE DEPARTMENT RESPONSE TO COMMENT 84956

85393 Dan Craddock 9/23/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85393>

Opposed

Must adjust verbiage to better support small business growth. Opposed to current guidelines becoming permanent.

---

SEE DEPARTMENT RESPONSE TO COMMENT 84956

85396 Richard Furnival 9/23/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85396>

strongly oppose

I oppose making these draconian measures permanent. Business are struggling, and this is not necessary.

---

SEE DEPARTMENT RESPONSE TO COMMENT 84237

85397 Allen Harrison 9/23/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85397>

STRONGLY oppose!

Please do not make these regulations permanent. This is unnecessary and another burden on all businesses, especially small businesses.

---

SEE DEPARTMENT RESPONSE TO COMMENT 84956

85398 Anonymous 9/23/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85398>

Absolutely Opposed

Stop this useless regulation. As a business owner I know that it is in my best interest to establish the appropriate safety practices to protect my valuable business assets - my staff and my customers, and we did so at the beginning of this crisis. I don't need DOLI to regulate this just to justify their existence.

---

SEE DEPARTMENT RESPONSE TO COMMENT 84956

85399 BATTLEFIELD HOMES INC BATTLEFIELD HOMES INC 9/23/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85399>

Covid 19 restrictions

strongly oppose continuing restrictions

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

85400 Service Tire & Battery, Inc. Service Tire & Battery, Inc. 9/23/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85400>

I oppose making DOLI Regulations permanent.

It's hard enough being a small business these days. Hard to tell our customers that you have to wear a mask while inside our building, when they don't want to. Some get upset and leave. It's hard to understand some customers tell us what they need done to their vehicles while wearing mask. We oppose making this regulation permanent!

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SEE DEPARTMENT RESPONSE TO COMMENT 84956

85401 Anonymous 9/23/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85401>

Opposed to ETS Permancy

Dear Members of the Safety and Health Codes Board:

I am writing relative to my strong opposition to making the COVID-19 Emergency Temporary Standard (ETS) permanent.

Our business is committed to the safety and welfare of our customers, employees, and community. While the risk of COVID-19 transmission has not yet been eliminated, I harbor serious concerns that the currently enacted emergency measures are overly burdensome and will negatively affect our regional businesses' ability to continue operating if made permanent. Confusing and ambiguous language in the ETS, as well as ever-changing directives from various state and federal health authorities has made running a business in the most challenging of times even harder.

Our goal is to always ensure our employees are safe and follow public health best practices. Please support your local businesses and reject any extension of the Emergency Temporary Standard.

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SEE DEPARTMENT RESPONSE TO COMMENT 84956

85402 Chris Brown, Benny Marconi's 9/23/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85402>

Definitely oppose

Trust your businesses and support them. We know the public and what's best for them because we have to do what's best for them to survive.

---

SEE DEPARTMENT RESPONSE TO COMMENT 84237

85403 Anonymous 9/23/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85403>

Opposed to Permanent Restrictions

I am opposed to DOLI making the Emergency Temporary Standard permanent.

It restricts doing business normally.

---

SEE DEPARTMENT RESPONSE TO COMMENT 84237

85404 Mark Anderton 9/23/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85404>

Opposed

DOLI should be required to provide evidence that this and other regulations are cost effective. Can you show that this has helped ""stop the spread?"" I suspect that the fines and penalties imposed by your cadre of inspectors are the justification for continuing this regulation.

---

An economic impact analysis/cost analysis will be prepared for the revised proposed permanent standard.

Review of all COVID-19 related inspections under the Emergency Temporary Standard is conducted centrally by the Department with both a programmatic and legal review prior to a decision to issue or not issue violations/penalties to assure consistent enforcement across the Commonwealth. The Department does not anticipate any significant increase in litigation with regard to the Emergency Temporary Standard or any permanent standard.

Any penalties collected by the Commonwealth in response to VOSH COVID-19 related inspections is deposited in the General Fund of the Commonwealth and not the Department of Labor and Industry's budget.

SEE DEPARTMENT RESPONSE TO COMMENT 84237

85406 Anonymous 9/23/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85406>

Oppose covid restrictions

I absolutely oppose the current restriction as well any even the thought of making them permanent. This is absolutely ridiculous and its time for this BS to go away, and that is what it is, BS. There will always be sick people and wearing a mask is never going to change that, if you think it will you are fooling yourself. Get over it already!!

---

SEE DEPARTMENT RESPONSE TO COMMENT 84237

SEE DEPARTMENT RESPONSE TO COMMENT 85535

85407 Anonymous 9/23/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85407>

Dear Members of the Safety and Health Codes Board:

I write to you to register my strong opposition to making the COVID-19 Emergency Temporary Standard (ETS) permanent.

Our business is committed to the safety and welfare of our customers, employees, and community. While the risk of COVID-19 transmission has not yet been eliminated, I harbor serious concerns that the currently enacted emergency measures are overly burdensome and will negatively affect our regional businesses' ability to continue operating if made permanent. Confusing and ambiguous language in the ETS, as well as ever-changing directives from various state and federal health authorities has made running a business in the most challenging of times even harder.

We will continue to make good faith efforts to keep our employees safe and follow public health best practices. Please support your local businesses and reject any extension of the Emergency Temporary Standard.

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SEE DEPARTMENT RESPONSE TO COMMENT 84956

85409 Anonymous 9/23/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85409>

opposed to Permanent Restrictions

Dear Members of the Safety and Health Codes Board:

I am writing to you to share my strong opposition to making the COVID-19 Emergency Temporary Standard (ETS) permanent.

Our business is committed to the safety and welfare of our customers, employees, and community. While the risk of COVID-19 transmission has not yet been eliminated, I harbor serious concerns that the currently enacted emergency measures are overly burdensome and will negatively affect our regional businesses' ability to continue operating if made permanent. Confusing and ambiguous language in the ETS, as well as ever-changing directives from various state and federal health authorities has made running a business in the most challenging of times even harder.

We will continue to make good faith efforts to keep our employees safe and follow public health best practices. Please support your local businesses and reject any extension of the Emergency Temporary Standard.

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SEE DEPARTMENT RESPONSE TO COMMENT 84956

85411 Laura Clark (2nd comment) 9/23/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85411>

No to making permanent, use National Emergency declaration instead

I read through the regulations and although safety of all citizens is absolutely necessary during this crises, making them permanent regulations does not make sense. It not only overburdens the employer, but it does not take into account the evolution of a vaccine and any other mitigating severity of the disease. It think replacing the temporary regulations with the same timeline as the US DOL where the guideline used for COBRA law based on the National Emergency ""Outbreak Period"", is adequate and a better solution. So, when the outbreak period is declared to be ended, the regulations end or within 60 days thereafter.

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SEE DEPARTMENT RESPONSE TO COMMENT 84956

85412 Eddie Gupton 9/23/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85412>

Dear Members of the Safety and Health Codes Board:

I write to you to register my strong opposition to making the COVID-19 Emergency Temporary Standard (ETS) permanent.

Our business is committed to the safety and welfare of our customers, employees, and community. While the risk of COVID-19 transmission has not yet been eliminated, I harbor serious concerns that the currently enacted emergency measures are overly burdensome and will negatively affect our regional businesses' ability to continue operating if made permanent. Confusing and ambiguous language in the ETS, as well as ever-changing directives from various state and federal health authorities has made running a business in the most challenging of times even harder.

We will continue to make good faith efforts to keep our employees safe and follow public health best practices. Please support your local businesses and reject any extension of the Emergency Temporary Standard.

Regards,

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SEE DEPARTMENT RESPONSE TO COMMENT 84956

85413 David 9/23/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85413>

"Against Long Term Extension

1. Amend § 10G to the agency's original language providing "safe harbor" for employers who follow CDC and OSHA guidance.
  2. Strike the vague language mandating "flexible" sick leave policies. It is unconstitutionally vague and it exceeds the agency's statutory authority.
  3. Strike requirements of owners of buildings and facilities to report COVID cases to employer tenants. It exceeds the intent of the Occupational Safety and Health (OSH) Act to require employers to provide employment and a place of employment that is free of recognized hazards.
  4. Remove hand sanitizer as a requirement. Everywhere else, it is a substitute or a best practice.
  5. Change language to apply hazard levels to job tasks instead of employers or industries.
  6. Change the time-based return-to-work rule requiring three days of being symptom-free (following the ten-day period since the onset of symptoms) to one, consistent with the new CDC standard.
  7. Eliminate the requirement to report positive cases to the Department of Health. Health care providers are already doing this.
  8. Eliminate the redundant language regarding employee refusal to work because they feel unsafe. The criteria for protected work refusals are already in the Administrative Regulatory Manual.
  9. Define "minimal contact."
  10. Eliminate requirements to include business considerations (e.g., how to handle supply chain issues, cross-training to prepare for staff shortages) that have nothing to do with employee safety.
- 

SEE DEPARTMENT RESPONSE TO COMMENT 85259

85414 Stasia Jolley 9/23/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85414>

OPPOSE

Oppose permanent enforcement

---



SEE DEPARTMENT RESPONSE TO COMMENT 84237

85416 Ron 9/23/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85416>

Oppose the Extension

do not extend Long Term the Permanent Covid measures

---

SEE DEPARTMENT RESPONSE TO COMMENT 84237

85420 Brian Cook, VP Palmer Gosnell Hospitality Palmer Gosnell Hospitality 9/23/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85420>

Opposed

Please do not extend the ETS, this could be a burden that puts the end to many business trying to hold on until this is over.

---

SEE DEPARTMENT RESPONSE TO COMMENT 84956

85421 Tony Abedy 9/23/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85421>

I oppose the new bill "This Standard is not being proposed as legislation to the General Assembly. The Standard is being considered for adoption by the Virginia Safety and Health Codes Board pursuant to Va. Code §40.1-22(6a) and would be enforced by the Department of Labor and Industry's (DOLI) Virginia Occupational Safety and Health (VOSH) Program.

---

SEE DEPARTMENT RESPONSE TO COMMENT 84237

85424 Scott Hine, Fredericksburg Area Builders Association 9/23/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85424>

Strongly Oppose this idea.

This is an overly restrictive government intrusion into how private businesses operate.

---

SEE DEPARTMENT RESPONSE TO COMMENT 84956

85429 Anonymous 9/23/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85429>

Strongly Oppose

I strongly oppose the extension for the ETS. The burden is becoming too great to continue doing business. Both the federal and state governments have put too much burden on business with the response to COVID. Please show me where in the constitution at the federal or state levels that business is responsible for supporting the public during a pandemic or any other emergency. If the government feels that something is necessary to support the public then the government needs to bear the burden and whatever law or executive order put in place needs to be sunsetted to prevent the permanent additional growth of government as the result of a temporary issue.

---

SEE DEPARTMENT RESPONSE TO COMMENT 84956

85430 Tinh Phan Virginia Asian Chamber of Commerce 9/23/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85430>

strongly oppose

Strongly oppose to making this a permanent regulation. While businesses are struggling to survive, they do not need to have another regulation around their necks. They and their employees have worked hard in pandemic time to survive, following guidelines to wear face masks, social distance, washing hands to protect themselves while working, we shall leave them alone especially from any permanent regulations that they already followed on a voluntary basis. They are those who should claim credit for protecting themselves, not the government.

---

SEE DEPARTMENT RESPONSE TO COMMENT 84237

85432 AW Harrison 9/23/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85432>

Opposed

Using today's available stats, .016% of Virginians have gotten COVID-19. .02% of those (or .0003% of VA's population) have died with it. Burdening businesses further will lead to a plethora of problems and types of problems. Trust our businesses to take appropriate measures, and trust our people to use their heads. Issue guidelines, not dictates. We are not children.

---

SEE DEPARTMENT RESPONSE TO COMMENT 84956

85435 Chris 9/23/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85435>

"oppose

Strongly oppose!!!!!!

---

SEE DEPARTMENT RESPONSE TO COMMENT 84237

85437 Anonymous 9/23/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85437>

Temporary Emergency Standard

Totally opposed to the standard becoming permanent

---

SEE DEPARTMENT RESPONSE TO COMMENT 84237

85411 Jason A Hartman, Brown Edwards 9/23/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85441>

Strongly oppose

I am opposed to making the COVID-19 Emergency Temporary Standard permanent.

We will continue our good faith efforts to keep our employees and clients safe and follow public health best practices.

---

SEE DEPARTMENT RESPONSE TO COMMENT 84956

85445 anonymous 9/23/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85445>

STRONGLY OPPOSE!

Using your very own stats .016% of VA residence have acquired the chinese virus. Of those only .02% of .016% have died! We are not stupid, we don't need the VA govt to tell us how avoid this. You all do this an businesses will vote you all out!

---

This Standard is not being proposed as legislation to the General Assembly. The Standard is being considered for adoption by the Virginia Safety and Health Codes Board pursuant to Va. Code §40.1-22(6a) and would be enforced by the Department of Labor and Industry's (DOLI) Virginia Occupational Safety and Health (VOSH) Program.

The Department has no response to the Commenter's political commentary.

SEE DEPARTMENT RESPONSE TO COMMENT 84237

85446 Eric Watkins

9/23/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85446>

Opposed to extension

I am opposed to making the COVID-19 Emergency Temporary Standard permanent.

We will continue our good faith efforts to keep our employees and clients safe and follow public health best practices.

---

SEE DEPARTMENT RESPONSE TO COMMENT 84956

85449 Melina Davis, The Medical Society of Virginia 9/23/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85449>

THIS COMMENT WAS ALSO SUBMITTED DIRECTLY TO THE DEPARTMENT AT:

<https://www.doli.virginia.gov/wp-content/uploads/2020/09/Medical-Society-of-Virginia-Public-Comments-to-the-Proposed-Permanent-Standard-9.23.2020.pdf>

RE: Comments on 16 VAC 25-220, Permanent Standard for Infectious Disease Prevention: SARS-CoV-2

On behalf of the Medical Society of Virginia (MSV), I am providing the following comments on 16 VAC 25-220, the permanent standard for COVID-19 prevention and mitigation in the workplace. Physicians and physician assistants have been on the front lines fighting the spread of COVID-19 in Virginia for more than six months. Medical practices have implemented extensive measures and follow detailed requirements and guidelines set forth by the Department of Health and Human Services (HHS), Centers for Disease Control and Prevention (CDC), Virginia Department of Health (VDH), and the Virginia Department of Labor and Industry (DOLI) to prevent, mitigate, and control the spread of COVID-19 in communities across the Commonwealth. We are grateful for the work put in by the Safety and Health Codes Board on the Emergency Temporary Standard, but we have several concerns with the draft permanent standard as written and the potential burden in could put on MSV members beyond the emergency period. Accordingly, as it considers the implementation of a permanent standard, we respectfully request that the Safety and Health Codes Board: 1) eliminate the requirement for employers to report positive SARS-CoV-2 test results to VDH; 2) clarify the return to work requirements regarding the test-based strategy; and 3) clarify the applicability of the permanent standard so that it is only in effect during a declared public health emergency related to COVID-19.

First, under the CARES Act, all clinical laboratories and testing providers in Virginia, many of which are physician practices, are required to report the results of any test to detect SARS-CoV-2 to VDH. As such, all positive tests are already being reported to VDH by the testing provider. Requiring an employer to report the test result to VDH in addition to that is duplicative and unnecessarily burdensome. We respectfully request this requirement be removed from the permanent standard.

Second, the draft permanent standard's test-based strategy for "Return to Work" is in conflict with recommendations from VDH and CDC. The draft permanent standard requires employers to select either a test-based strategy or a non-test-based strategy for determining whether employees known to be infected

with SARS-CoV-2 can return to work. The test-based strategy would require the employee to have obtained two negative test results more than 24 hours apart. The problem is that a person may test positive for the virus for up to 120 days after being infected, even though the person is no longer infectious and the virus contagious after 10-20 days, depending on the severity.[1]

Therefore, VDH and CDC recommend that a person who tests positive for SARS-CoV-2 not be tested again within three months. However, if an employer chooses to use the test-based strategy to determine whether employees can return to work, those employees could be absent from work unnecessarily for up to three months. In such a case, the employee would be forced to take unpaid leave if they do not have enough paid time off to cover the period beyond that which is required under the Families First Coronavirus Response Act and the Family and Medical Leave Act. Although the draft permanent standard would allow employers to select the non-test-based strategy for compliance, the option for a test-based strategy creates confusion for health care providers and employers already under a significant amount of pressure complying with other laws, regulations, and guidelines. Accordingly, we respectfully request the test-based strategy for known SARS-CoV-2 cases be eliminated or clarified in the permanent standard.

Lastly, the permanent standard, as currently written, will apply to Virginia businesses indefinitely, including at such a foreseeable time at which COVID-19 is no longer a critical public health emergency. Consequently, health care providers will still be required to comply with the strict requirements in this standard three years from now when most people have been immunized and effective treatments have been developed.

Most public health experts agree that the SARS-CoV-2 virus will never fully disappear. Over time, however, more effective treatments and vaccines will be developed to eliminate effectively the emergent public health threat. Accordingly, it is foreseeable that current prevention measures like those contained in this draft permanent standard will no longer be necessary in that instance.

We understand that such a time might not occur for another year or more and therefore appreciate the need for a permanent standard to be in place. However, we request that language be included to the effect that specifically limits application of these measures to a period of declared public health emergency due to COVID-19. That way businesses can operate without the burden of complying with regulations that are no longer necessary to protect public health once the public health emergency is over. And if there is a future outbreak of COVID-19 in Virginia that necessitates a declaration of public health emergency, this regulation could then become effective again.

We respectfully request the above changes to the draft permanent standard to provide clarity and certainty for health care providers and employers in the Commonwealth.

Sincerely,

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The Department does not plan to recommend the elimination of reporting requirements to the Department of Health, although it does intend to recommend a change to the trigger number of positive cases.

The Department intends to recommend that the return to work provisions of the standard be updated to reflect current CDC and VDH guidance.

The issue of the differences between the Standard's return to work requirement and those of the CDC will be addressed in the revised proposed permanent standard. A Frequently Asked Question (FAQ) provided by DOLI addresses the issue as it pertains to the current Emergency Temporary Standard (ETS).

On July 22, 2020, the CDC changed its guidance with regard to symptoms-based strategies from exclusion for 10 days after symptom onset and resolution of fever for at least 3 days to exclusion for 10 days after symptom onset and resolution of fever for at least 24 hours (i.e., the change was from 72 hours to 24 hours). For persons who never develop symptoms (i.e., asymptomatic), isolation and other precautions can be discontinued 10 days after the date of their first positive RT-PCR test for SARS-CoV-2 RNA.

16VAC25-220-10.G.1 provides in part that:

To the extent that an employer actually complies with a recommendation contained in CDC guidelines, whether mandatory or non-mandatory, to mitigate SARS-CoV-2 virus and COVID-19 disease related hazards or job tasks addressed by this standard, and provided that the CDC recommendation provides equivalent or greater protection than provided by a provision of this standard, the employer's actions shall be considered in compliance with this standard.... (Emphasis added).

Employers who comply with the above-referenced change in CDC guidance issued July 22, 2020, will be considered to be providing protection equivalent to protection provided by complying with the requirements in the ETS.

However, nothing in the FAQ shall be construed to prohibit an employer from complying with the symptom-based or time-based strategies for return to work determinations in the ETS. (See §40 FAQ 18, <https://www.doli.virginia.gov/cononavirus-covid-19-faqs/>)

SEE DEPARTMENT RESPONSE TO COMMENT 84956

85450 Marci Kinter, PRINTING United Alliance 9/23/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85450>

"Oppose Adoption of Permanent Standard

Thank you for the opportunity to provide comments on the Commonwealth's Proposed Final Standard, Infectious Disease Prevention: SARS-CoV-2 Virus That Causes COVID-19. The PRINTING United Alliance (PrUA) represents the interests of facilities engaged in the production of products through screen, digital, flexographic, and lithographic printing processes. This includes facilities engaged in garment decoration, production of membrane switches, decals, all types of signage, as well as paper products, such as books, pamphlets, and other marketing materials. Our industry is comprised primarily of small businesses, with about 80 percent of establishments employing 20 or fewer people.

We understand and share the concern of the Commonwealth regarding the safety of the workforce during this time of pandemic. However, we believe, it must be tempered with common sense and recognition of costs associated with the compliance of a regulation. We believe that current regulations, as adopted and enforced by VOSH, offer sufficient protection for the workforce for infectious diseases, including the current SARS-CoV-2 Virus.

We do not recommend adoption of a permanent standard addressing this one particular issue. PrUA agrees with the position stated by the U.S. Department of Labor's Occupational Safety and Health Administration that existing statutory and regulatory tools are protecting America's workers and that neither an emergency temporary standard nor a permanent regulation is necessary at this time.

We believe that VOSH has adopted all the relevant federal standards and already has the authority and regulatory oversight to address safety and health issues associated with this pandemic situation. An

additional regulation is unnecessary and would impose significant costs on businesses at a time when many cannot afford it as they are on the verge of bankruptcy or in a situation where their income is significantly lower than the pre-pandemic period. Many of our members are reporting that sales and income are between 40-60% of pre-pandemic levels.

One of our overarching concerns with the adoption of this standard is that there is no end date or a provision addressing its suspension when the pandemic ceases. It appears that the requirements of this standard would become continuously applicable, and this is not an acceptable situation. The lack of clarity raises critical questions such as - would this standard be enforced only during a pandemic that involved this specific virus? Who would declare that this standard applies, and most importantly, who would determine when the provisions no longer apply as a pandemic may be over? For these reasons, PrUA firmly believes that VAOSH's current regulatory programs adequately address workplace exposures, including exposures to this virus strain.

Another concern is the static nature of the requirements. While the standard does reference the use of guidelines issued by the Center of Disease Control (CDC), and since the temporary rule was adopted, several recommendations by the CDC have changed and conflict with the requirements in the temporary rule. There are no provisions in the regulation that address what a covered entity would be required to do when another recommendation is revised by the CDC that would conflict with the regulation. As the pandemic continues, it is reasonable to expect that the CDC will issue updated guidance as new information regarding this virus, as well as others, is discovered. How will the average small business determine if they are to follow the requirements specified in the regulation versus the most recent and effect guidance issued by the CDC? And most importantly, how will these conflicts be addressed during an inspection and possible enforcement action?

In order to make this standard permanent, VOSH needs to provide justification that the transmission of the virus in the workplace is such that imposing such an onerous regulation as this one is necessary to protect the health and wellbeing of workers. VOSH is compelled to show that in the absence of a regulation of this nature would cause widespread infections as compared to its existing set of regulations.

In examining the latest statistics for COVID-19 infections, the number of new cases, percentage positivity (the number of cases confirmed as a ratio of the amount of testing), and hospitalizations is clearly on a downward trajectory. Based on the actions taken to address the spike in infections that recently occurred, it appears that the increase was due to people congregating in social settings and not due to being exposed by a coworker. Other recent outbreaks occurred in correctional facility, healthcare, and educational settings. The infection data also shows a higher concentration of infections occurring in Northern Virginia. Of course, some of these locations are "workplaces" which points to the fact that workers need to take precautions to prevent becoming infected.

Because these outbreaks occurred since the imposition of the temporary standard, the requirements in it had little outcome on the results. The publicly available data is not detailed enough to discern the number of "workers" infected verse the general public or other populations. VOSH has access to more specific information and must present compelling evidence that a standard of this nature is warranted. VOSH should be able to show infection rates of workers that occurred before the temporary standard was imposed versus infections after the standard went into effect to support making the standard permanent.

Likewise, VOSH also needs to show that the requirements in the temporary standard, as compared to following CDC and federal OSHA's recommendations, would be more effective at preventing transmission of

the virus in the workplace. Until such time that compelling data indicating virus transmission was dramatically reduced as a result of the temporary standard can be produced, a permanent standard is not warranted.

In addition, the proposed regulation contains many provisions that are quite onerous for small businesses. We offer the following comments on the proposal itself.

#### Section 40 – Mandatory requirements for all employees

PrUA continues to stress that the requirement to ask employers to designate and document employees as either “very high,” “high,” “medium,” or “lower” exposure risk assumes that the small business would have a person on staff capable of making these type of subjective judgement calls. The addition of a staff person, knowledgeable in the area of infectious disease, imposes a significant economic burden. Alternately, hiring a consultant to perform this analysis also requires taking on significant economic burden and is cost prohibitive.

Section 40.B.3-8c should be deleted. The inclusion of these sections in the permanent standard is not appropriate as these requirements are personnel related and do not have a role in a safety regulation. While we agree that VOSH can develop regulations stating when employers need to notify VOSH regarding injuries and illnesses, we believe that the proposed requirements set forth in the proposed rule overstep the boundaries between development of a safety and health regulation and employment law.

Section 40.C, Return to Work, should also be deleted as these requirements also overstep the boundary between safety in the workplace and employment law.

Section 40.K.8 contains a statement “Hand sanitizers required for use to protect against SARS-CoV-2 are flammable and use and storage in hot environments can result in a hazard.” All chemicals entering the workplace must be accompanied by a Safety Data Sheet that clearly outlines storage requirements. Inclusion of this statement is not relevant as employers are required to clearly identify and store flammable materials. Sanitizers, including hand sanitizers, that are being used in the workplace will be classified as “workplace” chemicals and would fall under the provisions of the Hazard Communication Standard.

#### Section 60 – Requirements for hazards or job tasks classified at “medium” exposure risk

Section 60.A discusses engineering controls that facilities must undertake when employees are classified as “medium” exposure risk. The ventilation requirements listed are identical to those found in Sections 50.A.1 and 50.A.2 for health care facilities where airborne particulates of infectious diseases are expected to be encountered. Many printing operations could have employees in the medium exposure risk category, and it is important to understand that printing facilities have adopted ventilation systems appropriate for their facilities based on chemical use. The upgrading to this type of ventilation system is both unwarranted and expensive

Section 60.D discusses requirements for Personal Protective Equipment. It is unclear from the regulatory text whether Section 60.C.2 applies to employers that have already undertaken hazard assessments for PPE required in the workplace, which is required of general industry. It appears that this section was written for businesses that are not already covered by the mandatory assessment. And, if Section 60.C.2 does apply to general industry and a new hazard assessment is required, why is there an additional requirement that it be certified when that is already required? We recommend that this section be reworded to acknowledge industry sectors that are already required to conduct the written hazard assessment and conform this requirement to current regulation.



Section D.4 should be deleted as it is not a regulatory requirement but a statement of fact that should be included in a guidance document rather than a regulation.

#### Section 70 - Infectious disease preparedness and response plan

Implementing Section 70 requirements will create a serious economic burden for small businesses to implement. The proposal states that a person “shall be knowledgeable in infection control principles and practices as they apply to the facility, service or operation.” This proposed standard seems to require businesses to train an existing staff person and dedicate their time to this effort or hire an outside consultant to develop a plan. Again, state guidelines have been issued that provide templates that can be adopted by the business sector that does not require the use of an expert in infectious diseases. In addition, the Centers for Disease Control and Prevention have issued numerous guidelines to assist businesses with creating plans so as not to require the need to hire outside consultants. Hiring such consultants places a significant financial burden on businesses that are trying to recover from the current economic crisis.

The requirements in Section 70.C.3 are unreasonable, if not impossible, to perform by a person who is not an epidemiologist, virologist, or other public health expert. The information about transmission of the virus is changing constantly and even the CDC – upon which the entire country relies – is unable to definitely state how the COVID-19 virus is transmitted, as evidenced by posting guidance on September 18 and then removing that guidance three days later. In addition, the incidence of COVID-19 cases changes constantly. Accordingly, it is unreasonable to expect that a designated person to be personally responsible for knowing the transmission, travel, and other exposure risk information required in Section 70.C.3.a.

Further, the requirement of Section 70.C.3.b-c is extremely complicated and filled with potential violations of federal law under the Americans With Disabilities Act, , Age Discrimination and Employment Act, the Genetic Information Nondiscrimination Act , HIPPA laws, and Equal Employment Opportunity Commission regulations. Requiring such information gathering and analysis puts the company and the designated person at very high risk of liability for violating these laws.

The requirements of Section 70.C.4-9 are not necessary to include in a permanent rule. The heightened requirements related to COVID-19 are covered in the temporary rule. Once the pandemic has resolved, workplaces will be organized and structured in a manner that fulfills federal OSHA requirements and will address the general duty to provide a safe workplace. It is unnecessary to promulgate a permanent rule about best practices, which will continue to evolve in response to surrounding conditions and the proposed requirements of the permanent rule will no longer be the most current nor best practice as written.

#### Section 80 - Training

We believe that training requirements as outlined are already in place for printing establishments as required by the general industry standards. The addition of any new PPE requires training. And this training is already well documented. The requirements placed in this section are duplicative and do not reflect what is required by current regulation. Therefore, for general industry, such as printing, Section 80.B.8 is redundant and unnecessary duplication of regulation. VOSH should provide a cross reference to the general industry standards so that employers understand that this requirement is already in place in the current regulations governing the use, care, and selection of personal protective equipment.

#### Concluding Remarks

The PRINTING United Alliance remains committed to providing the graphic communications and printing industry with resources to address safety and health issues associated with the COVID-19 pandemic.

However, we do not believe that a formal safety and health regulation is either appropriate or warranted as current general industry standards are comprehensive and sufficient. This position has been validated by both OSHA and U.S. Court of Appeals for the District of Columbia Circuit actions.

Thank you for the opportunity to provide our thoughts and comments on this important regulatory initiative.

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SEE DEPARTMENT RESPONSE TO COMMENT 84956

A number of the issues raised by the Commenter are addressed by Frequently Asked Questions provided by the Department at: <https://www.doli.virginia.gov/cononavirus-covid-19-faqs/>

For instance §10, FAQ 10: 10. Regarding §16VAC25-220-10.G.1, which CDC guidelines are considered by VOSH to provide “equivalent or greater protection than provided by a provision of this standard”?

In order for an employer to take advantage of the language in 16VAC25-220-10.G to be “considered in compliance with” the ETS in the context of a VOSH inspection, the employer will have to inform VOSH what CDC guidelines they are complying with that they contend provide “equivalent or greater protection than provided by a provision of this standard.” VOSH will then evaluate the employer’s submission and if it agrees that the guidelines do provide equivalent or greater protection, it will then have to verify employer compliance with the guidelines through the inspection process (e.g., conduct interviews, etc.). VOSH will not be going through a separate process of identifying CDC guidelines it considers to provide equivalent or greater employee protection to individual provisions of the ETS.

The Standard requires that employers assess and classify the types of hazards employees are exposed to and the type of job tasks they undertake, in accordance with the requirements in 16VAC25-220-40.B. It does not require employers to classify employees.

The Department does not intend to recommend that the notification procedures in 16VAC25-220-40.B.3 through -40.B.8 be deleted. Those sections address such things as assuring that infected workers do not enter the workplace until cleared for return to work. The intent of the notification requirement is to provide employees information of a “possible” exposure so that employees can make decisions for themselves on the appropriate course of action to take, to prevent the spread of the virus in the workplace.

The Department does not intend to recommend removing the return to work requirements in 16VAC25-220-40.C. The issue of the differences between the Standard's return to work requirement and those of the CDC will be addressed in the revised proposed permanent standard. A Frequently Asked Question (FAQ) provided by DOLI addresses the issue as it pertains to the current Emergency Temporary Standard (ETS).

On July 22, 2020, the CDC changed its guidance with regard to symptoms-based strategies from exclusion for 10 days after symptom onset and resolution of fever for at least 3 days to exclusion for 10 days after symptom onset and resolution of fever for at least 24 hours (i.e., the change was from 72 hours to 24 hours). For persons who never develop symptoms (i.e., asymptomatic), isolation and other precautions can be discontinued 10 days after the date of their first positive RT-PCR test for SARS-CoV-2 RNA.

16VAC25-220-10.G.1 provides in part that:

To the extent that an employer actually complies with a recommendation contained in CDC guidelines, whether mandatory or non-mandatory, to mitigate SARS-CoV-2 virus and COVID-19 disease related hazards or job tasks addressed by this standard, and provided that the CDC recommendation provides equivalent or

greater protection than provided by a provision of this standard, the employer's actions shall be considered in compliance with this standard.... (Emphasis added).

Employers who comply with the above-referenced change in CDC guidance issued July 22, 2020, will be considered to be providing protection equivalent to protection provided by complying with the requirements in the ETS.

However, nothing in the FAQ shall be construed to prohibit an employer from complying with the symptom-based or time-based strategies for return to work determinations in the ETS. (See §40 FAQ 18, <https://www.doli.virginia.gov/cononavirus-covid-19-faqs/>)

The language referenced in 16VAC25-220-40.K.8 was added by the Board as a service to employers to make them aware of a potential hazard and the Department will not recommend its removal.

The Department acknowledges the comment and notes that the ASHRAE air handling requirements issue raised by the Commenter is undergoing a legal review.

16VAC25.60.D.1 provides that ""Employers covered by this section and not otherwise covered by the VOSH Standards for General Industry (16VAC25-90-1910)..."", which means it applies to those employers not in general industry. If, as the Commenter notes, they have already completed a hazard assessment under 1910.132 that addressed SARS-CoV-2 and COVID-19 related hazards and job tasks, then they do not have to complete another one. It is the Department's position that general industry employers are required to update their pre-COVID-19 PPE hazard assessments to reflect SARS-CoV-2 and COVID-19 related hazards.

The Department respectfully disagrees with the Commenter's suggestion that 16VAC25-220-60.D.4 is a ""state of fact"" and should be deleted. That section provides: 4. The employer shall implement a respiratory protection program in accordance with 16VAC25-90-1910.134 (b) through (d) (except (d)(1)(iii)), and (f) through (m), that covers each employee required to use a respirator.

With regard to section 70, the Department does agree that the ""proposed standard seems to require businesses to train an existing staff person and dedicate their time to this effort or hire an outside consultant to develop a plan."" The Department has provide a template that can be used at: <https://www.doli.virginia.gov/covid-19-outreach-education-and-training/>

The Department respectfully disagrees with the Commenter's assertion that 16VAC25-220-70.C.3 contains requirements that could only be addressed by an ""epidemiologist, virologist, or other public health expert"". For instance, such a medical person is not needed to determine whether an employee works within 6 feet of another employee or other person (see 16VAC25-220-70.C.3.a.i.), or to determine whether employees work more than one job or not (16VAC25-220-70.C.3.a.iii) where they might work inside 6 feet of another employee or person.

With regard to training provisions related to PPE in 16VAC25-220-80, if, as the Commenter notes, they have already completed a training under existing general industry standards (1910) that addressed SARS-CoV-2 and COVID-19 related hazards and job tasks, then they do not have to train again. It is the Department's position that general industry employers are required to update any pre-COVID-19 training required by a general industry standard to reflect SARS-CoV-2 and COVID-19 related hazards.

Strongly Opposed

I am opposed to making the COVID-19 Emergency Temporary Standard permanent.

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

85453 Devon Anders 9/23/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85453>

Oppose Permanent Regulations in accordance with VA Chamber letter dated 9/22/20

VA Chamber Letter dated 9/2220

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SEE DEPARTMENT RESPONSE TO COMMENT 85237

85454 Elizabeth Keegan 9/23/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85454>

Opposed to all points

Policies and procedures prior to this pandemic were more than sufficient. Many people, including myself, are highly ALLERGIC to hand sanitizers and the excess amount of chemicals used and prevents us from going out in public and risking exposure to these hazardous chemicals. These proposed changes are ludicrous and in no way help the safety of workers or customers, it only increases the bureaucracy.

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

85458 Dan 9/23/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85458>

Strongly Opposed

I strongly oppose any extension or permanent implementation of these standards. Government overreach throughout the country is based primarily on fear induced by flawed testing, dishonest and inaccurate recording, manipulation of data, and gross misrepresentation of facts. Please stop contributing to this insanity, and let us all get on with our lives.

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

85459 Kenny Gaudreau 9/23/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85459>

Strongly Oppose

Truly jaw-dropped that this even needs a vote. Restricting business behavior and masking individuals out of fear is not the American way. Americans are the ones who fight against tyranny, not support it. Liberty for all.

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

The Department has no response to the Commenter's political commentary."

85468 Lee Brooks 9/23/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85468>

ets regulations

strongly oppose

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

85472 Anonymous 9/23/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85472>

Strongly opposed

Strongly opposed.

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

85475 Access Now, Inc. Access Now, Inc. 9/23/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85475>

Strongly Opposed

You cannot expect the commonwealth to carry on business and continue the vigilance of protecting staff against a pandemic. This unrealistic and expensive. Re think the plan and perhaps have phases, we go down to phase two and only go back to phase three if need arises.

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SEE DEPARTMENT RESPONSE TO COMMENT 84956

85478 Anonymous 9/23/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85478>

Strongly oppose

I strongly oppose the VDH's suggestions for permanent disease preventions for businesses in the Commonwealth.

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SEE DEPARTMENT RESPONSE TO COMMENT 84956

85479 Mighty of Virginia Mighty of Virginia 9/23/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85479>

Strongly Oppose Permanent ETS

We strongly oppose the consideration of making current ETS regulations regarding COVID-19 permanent!

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

85481 Thomas H 9/23/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85481>

Strongly Oppose Making DOLI Regulation Permanent

No more new regulations need to be put in place and all current regulations need to be changed to recommendations. Let the people decide what is best for their health, it is not the governments place to tell me or any business what is in our best interest.

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

85484 Tammy Rausch 9/23/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85484>

STRONGLY OPPOSED TO ANY COVID OR EMERGENCY RESTRICTIONS NOW OR IN THE FUTURE

Dear Fellow Citizens, From our tiny community to our world has forever been changed from the unleashing of this virus and will not recover in my nor my children's lifetime. If you could do anything to make us safer it would come to us as nutritional supplements, Air purification for homes and businesses, and mass transportation. You could make a positive impact by eliminating the new business restrictions and quickly pass amendments that remove the "dozens of other hidden business restrictions, qualifications (ie-taxes for a sign or piece of education) and you could get out of the way with zoning. It's not the government that takes the business risk, decides if the public will support it.

As we all are aware of the health risk, everything we say and do comes with risks. Anyone who wants to stay home can do so at their own financial and personal risk as well. What we all need is less government. Not one soul can be saved from one thing because of government. I do have more to say on that.

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"SEE DEPARTMENT RESPONSE TO COMMENT 84237

The Department has no response to the Commenter's political commentary."

85486 V Bullock 9/23/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85486>

VA should move forward with the permanent standard rule-making with haste in order to ensure all wor  
I strongly agree.

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SEE DEPARTMENT RESPONSE TO COMMENT 84196

85488 Lloyd Harrison 9/23/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85488>

"Oppose

The ETS is burdensome, inconsistent and contradictory, and potentially damaging to businesses. Businesses are already struggling to deal with the effects of the pandemic. At a time of reduced staffing, diminished revenues, and in many cases non-existent profits, layering on more regulatory compliance is counterproductive. The whistleblower mechanism, which allows for unsubstantiated claims on social media, is wrong. We are all well-aware of the dangers of social media. Viral media accusations, without merit or substantiation, can destroy a business's reputation overnight.

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The Standard is being considered for adoption by the Virginia Safety and Health Codes Board pursuant to Va. Code §40.1-22(6a) and would be enforced by the Department of Labor and Industry's (DOLI) Virginia Occupational Safety and Health (VOSH) Program, not the Virginia Department of Health.

SEE DEPARTMENT RESPONSE TO COMMENT 84956

Pursuant to Va. Code §40.1-51.2:1, employees are protected from discrimination when they engage in activities protected by Title 40.1 of the Code of Virginia ("because the employee has filed a safety or health complaint or has testified or otherwise acted to exercise rights under the safety and health provisions of this title for themselves or others.").

Whether an employee engaged in a "protected activity" under Title 40.1 is very fact specific, but can include occupational safety and health information shared by an employee about their employer on a social media or other public platform in certain situations.

16VAC25-220-90.C provides that:

No person shall discharge or in any way discriminate against an employee who raises a reasonable concern about infection control related to the SARS-CoV-2 virus and COVID-19 disease to the employer, the employer's agent, other employees, a government agency, or to the public such as through print, online, social, or any other media.

If an employee raises an unsubstantiated COVID-19 related claim or makes a false COVID-19 related claim against their employer through print, online, social, or any other media, such an act by an employee would not be considered "reasonable" under the ETS and disciplinary action taken against the employee in accordance with the employer's human resource policies would not be considered "discrimination" under the ETS/ER or Va. Code §40.1-51.2:1.

85492 Richard Starr, Rockydale Quarries Corp 9/23/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85492>

Dear members of the safety and health codes board,

The purpose of this comment is to emphatically oppose making the COVID-19 Emergency Temporary Standard permanent. As a member of our company's management team, I can affirm without the slightest doubt that the ETS is overly burdensome and at times frustratingly ambiguous. Below I have detailed several reasons this position.

Perhaps the most obvious and leading reason to not adopt the ETS permanently is that the COVID-19 situation is changing by the day. As our medical professionals learn more about it, the guidance changes significantly in a matter of months and even weeks. For example, if Virginia had tried to set a permanent standard during the first month of the pandemic, it would have been based on guidance that was saying healthy individuals should not wear a mask. Point being- why set a permanent standard when the guidance will still continue to change frequently and the details/implications of a vaccine haven't been determined either?

The content of the ETS is poor (it reads like it was thrown together in a hurry).

The definitions for very high, high, medium, and lower exposure risk hazards are written poorly and have ambiguous language. Medium is particularly difficult to figure out because it uses the wording 'more than minimal occupational contact inside 6 feet' with others. The obvious question that many employers have faced is what constitutes 'more than minimal'? The ETS fails to define it and for months now no one has been able to give me a straight answer. The ETS should never have been this ambiguous to start with, much less should it be made permanent.

There is a significant burden on employers to purchase and consume extreme amounts of sanitation supplies, another reason to keep the standard temporary and as short as possible.

The ETS requirement for face coverings within 6 feet of others causes employers to dedicate money, time, & resources to comply- another reason the standard should remain temporary and as short as possible. I believe Virginia's businesses are able to work with employees and the latest information on the benefits of mask wearing and side effects of mask wearing (like individuals coming closer to hear and understand you) to determine when it is the appropriate action.

The requirements for who needs to create an infectious disease and response plan are not well-defined. 'Medium with 11 or more employees' does not clearly communicate enough detail. Taking a literal meaning,



it implies that any company with at least 11 employees (regardless of how many locations or employees per location), with at least one job task classified as medium would be required to create the plan, even if just 1 employee was required to do the medium risk job task. But is that the intended meaning? Or does it mean if there are at least 11 employees that are required to do a medium risk task that then the plan is required? Can that be based on separated, individual site locations? Bottom line- a well written rule wouldn't be so ambiguous and it would save companies from having to go on a several week long wild goose chase to find an 'educated guess' answer for this.

Employers are burdened further by training and retraining requirements in the ETS. The standard was written so poorly that any changes to the infectious disease plan would warrant retraining of all relevant employees, including all the documentation.

I could go on but the main point is that both the ambiguous and burdensome language in this standard has already put a strain on employers during these uncertain times. We have spent far too many hours simply trying to find answers that the ETS should have had clarified to begin with. The requirements that we do understand cost us a lot in time and money to comply with, which once again reinforces that this standard should not be made permanent. There is no good reason to make this ETS permanent, as it would only continue to burden employers who were already subject to abiding by the Governor's executive orders relating to COVID-19. The ETS was and still is bad for business, and I have yet to see any positive or gain come from it.

We will continue to make good faith efforts to keep our employees safe and follow public health best practices. Please support your local businesses and reject any extension of the Emergency Temporary Standard.

Thanks for your time,

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SEE DEPARTMENT RESPONSE TO COMMENT 84956

The Department intends to recommend a definition of ""minimal occupational contact"" be added to the revised proposed standard.

With regard to the requirement for an Infectious Disease Preparedness and Response Plan, the example given by the Commenter is correct, if only one employee is classified as medium, then the employer would have to have a plan. The Department provided a Frequently Asked Question (FAQ) addressing that issue, §70, FAQ 1: Employers with hazards or job tasks classified as “medium” risk that employ eleven (11) or more employees (regardless of other classifications), must have a written Infectious Disease Preparedness and Response Plan” solely applicable to those employees that fall in the medium risk category.

<https://www.doli.virginia.gov/cononavirus-covid-19-faqs/>

Substantive changes to the Infectious Disease Preparedness and Response Plan would require retraining for those employees covered by the plan under the current wording of the Standard.

85496 Ginni Mastin

9/23/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85496>

Strongly Oppose

Virginia used to be employer friendly but businesses will start to leave Virginia. You write these Executive orders/Laws but you can't even explain them or clarify what it means.

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This Standard is not being proposed as legislation to the General Assembly. The Standard is being considered for adoption by the Virginia Safety and Health Codes Board pursuant to Va. Code §40.1-22(6a) and would be enforced by the Department of Labor and Industry's (DOLI) Virginia Occupational Safety and Health (VOSH) Program.

SEE DEPARTMENT RESPONSE TO COMMENT 84956

85497 Louie Berbert 9/23/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85497>

Oppose a permanent Standard

These regulations are often unrealistic and burdensome to essential personnel. Everyone is doing their part by social distancing, washing our hands, and wearing masks. Anything over these regulations create costly production delays along with upset customers and employees. There are also major inconsistencies with the execution of the standard. Just visit any department store and you will note numerous violations, meanwhile small businesses are shut down. Please reconsider this standard.

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The Standard is being considered for adoption by the Virginia Safety and Health Codes Board pursuant to Va. Code §40.1-22(6a) and would be enforced by the Department of Labor and Industry's (DOLI) Virginia Occupational Safety and Health (VOSH) Program, not the Virginia Department of Health.

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SEE DEPARTMENT RESPONSE TO COMMENT 84956

85499 Bo Farr, Boxley Materials 9/23/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85499>

Strongly Oppose making Covid ETS permanent

Dear Members of the Safety and Health Codes Board:

I write to you to register my strong opposition to making the COVID-19 Emergency Temporary Standard permanent for the following reasons:

Practicality. The over-arching concern here is that adopting permanent regulations on COVID makes little sense when the science is evolving and CDC guidance continues to change. Making these standards permanent at this stage is simply not practical as there is a very real likelihood that much of what employers are going to be required to follow "indefinitely" will be obsolete or shown to have no impact whatsoever on the virus.

Engineering controls. Even employers with medium risk employees are to ensure their air-handling systems comply with American National Standards Institute/American Society of Heating, Refrigerating and Air-Conditioning Engineers Standards, which include requirements for outdoor air ventilation in most residential and nonresidential spaces. These ETS standards are likely going to be in a constant state of change considering CDC's evolving guidance. Some of these changes are not supported by the science and that is what should guide these standards.

CDC deference. The ETS does not give enough leeway to the fact that science and health information about the virus is changing. If the ETS simply deferred to CDC by stating that if employers are in compliance with CDC guidance, then they are in compliance with the standard, that should suffice. But instead, the ETS only references the CDC when the CDC guidance is equal to or more stringent to ETS regs.

"Place of Employment." The ETS requires employers notify VDOLI if they have three positive test cases in a "place of employment" within 14 days. The ETS also requires employers to notify all employees at the "place of employment" within 24 hours of a positive test case. This idea of a "place of employment" is undefined. The concept of a "place of employment" is a vague concept, especially where employees may be working at different job sites day to day or may go weeks without interacting with other employees at another part of a facility. There is also a concern with employers with contractors (not technically their employees), at certain job sites as well.

Unintended consequences with VOSH. The ETS states that it "is designed to supplement and enhance existing VOSH laws, rules." However, there are some industry-specific concerns considering construction employees who are already complying with specifics as to PPE for their line of work. ETS imposes rules like, "[w]hen multiple employees are occupying a vehicle for work purposes, the employer shall ensure compliance with respiratory protection and personal protective equipment standards applicable to the employer's industry." This could be read to require a new N95 mask each day construction employees share common vehicles. That simply cannot be an intent of the ETS, but it could be the technical interpretation.

Third-party contractors. Obtaining information out of the other companies working on the same project can be a challenge when it comes to conducting contact tracing. If Companies A, B, C, and D all have employees working on a construction project, and an employee of Company D tests positive or experiences symptoms, it can be difficult for this information to make its way to Companies A, B, and C, who all have liability and responsibility with regard to engaging in immediate contact tracing. Thus, there needs to be some protections for those employers whose employees are essential and are intermingling with employees of other employers to get their job done but are stymied by limited immediate communication.

Presumptive Positives. The symptoms of COVID-19 overlap with and are very similar to other common illnesses, such as the common cold and flu. However, the definition in the ETS regarding guidance of any cold/flu like symptoms is to first assume a "Presumptive positive" for COVID. This means that an employee experiencing symptoms must immediately quarantine for 10 days or until a doctor provides a written note stating that it is not a COVID concern, which doctors currently are hesitant to do. This affects use of the employees' sick/vacation leave, impacts productivity, and fosters an environment where employees could be hesitant to report symptoms or use leave.

Employee Count. The ETS makes a broad general classification of Risk for Construction companies based on numbers of employees, not specifically on the type of construction or type of project sites for the employees involved. As an example, a road construction site that is miles long with 50 employees spaced out in normal construction practices is very Low risk, but the company would be defined under a Medium risk classification.

Negative impacts of face coverings. There are additional risks and safety concerns created by the broad use of face coverings with employees where the risk is low and social distancing is easily achieved. Face coverings easily fog up safety glasses and create a larger safety hazard to the employee. In hot weather, face coverings contribute to the potential for heat-related illnesses and worker discomfort. Face coverings also muffle the employee's voice and eliminate the visual interpretation of the person speaking. Each of these situations can affect overall worker safety.

Thank you

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#### SEE DEPARTMENT RESPONSE TO COMMENT 84956

The Department acknowledges the comment and notes that the ASHRAE air handling requirements issue raised by the Commenter is undergoing a legal review.

The Department does not plan to recommend that 16VAC25-220-10.G be returned to its original language. It is the Department's position that similarly situated employees and employers exposed to the same or even more serious hazards or job task should all be provided the same basic level of safety and health protections. The Standard's language in 16VAC25-220-10.G assures such protections.

The Department has provided Frequently Asked Questions (FAQ) on the topic of ""place of employment"" at <https://www.doli.virginia.gov/cononavirus-covid-19-faqs/>. Specifically, §40, FAQs 6, 7 and 8:

6. Does the ETS require employers in Virginia to notify employees about a positive case of COVID-19 in the workplace?

Yes. 16VAC25-220-40.B.8 provides:

8. To the extent permitted by law, including HIPAA, employers shall establish a system to receive reports of positive SARS-CoV-2 tests by employees, subcontractors, contract employees, and temporary employees (excluding patients hospitalized on the basis of being known or suspected to be infected with SARS-CoV-2 virus) present at the place of employment within the previous 14 days from the date of positive test, and the employer shall notify:

- a. The employer's own employees who may have been exposed, within 24 hours of discovery of the employees possible exposure, while keeping confidential the identity of the known to be infected with SARS-CoV-2 virus person in accordance with the requirements of the Americans with Disabilities Act (ADA) and other applicable federal and Virginia laws and regulations; and
- b. In the same manner as subdivision 8 a of this subsection, other employers whose employees were present at the work site during the same time period; and
- c. In the same manner as subdivision 8 a of this subsection, the building or facility owner...." (Emphasis added).

7. If an employee tests positive, but was not at a facility or jobsite where other employees could have been exposed, does that positive test have to be reported under 16VAC25-220-40.A.8.d or §16VAC25-220-40A.8.e?

No. The reporting provisions in 16VAC25-220-40.A.8 only apply to situations where an employee was "present at the place of employment within the previous 14 days from the date of positive test."

8. Regarding the notification requirements of 16VAC25-220-40.A.8.e, does “place of employment” mean that the 3 or more employees who test positive in a 14-day period work at the same facility or jobsite rather than the same employer regardless of location?

In the context of 16VAC25-220-40.A.8.e, “place of employment” means that the 3 or more infected employees worked at the same work site within the previous 14 days from the date of positive test.

The Department intends to recommend revisions to 16VAC25-220-40.F, which currently provides: “F. When multiple employees are occupying a vehicle for work purposes, the employer shall ensure compliance with respiratory protection and personal protective equipment standards applicable to the employer's industry.

16VAC25-220-10.H specifically provides that: H. Nothing in the standard shall be construed to require employers to conduct contact tracing of the SARS-CoV-2 virus or COVID-19 disease.

The Standard does not address the issue of “quarantine”. “Quarantine” is separation of people who were in “close contact” with a person with COVID-19 from others. The Standard does address the issue of “isolation”.

“Isolation” is the separation of people with COVID-19 from others. People in isolation need to stay home and separate themselves from others in the home as much as possible. Requirements for returning to work from isolation is covered by the ETS in 16VAC25-220-40.C. However, please note that in lieu of complying with 16VAC25-220-40.C, employers may comply with recently updated CDC guidelines (see §40 FAQ 18, <https://www.doli.virginia.gov/cononavirus-covid-19-faqs/>).

While the Standard lists a number of industries under the definition of “medium” exposure risk level, the language specifically states that “Medium exposure risk hazards or job tasks may include, but are not limited to, operations and services in...(Emphasis added). The definition of “medium” exposure risk level does not classify the listed industries as medium risk, but instead when read in conjunction with other portions of the Standard, indicates that the listed industries “may” fall into that category, depending on how the employer assesses and classifies the types of hazards employees are exposed to and the type of job tasks they undertake, in accordance with the requirements in 16VAC25-220-40.B, which provides that:

B. Exposure assessment and determination, notification requirements, and employee access to exposure and medical records.

1. Employers shall assess their workplace for hazards and job tasks that can potentially expose employees to the SARS-CoV-2 virus or COVID-19 disease. Employers shall classify each job task according to the hazards employees are potentially exposed to and ensure compliance with the applicable sections of this standard for very high, high, medium, or lower risk levels of exposure. Tasks that are similar in nature and expose employees to the same hazard may be grouped for classification purposes.

The Standard also provides in 16VAC25-220-10.E.1 provides in part:

E. Application of this standard to a place of employment will be based on the exposure risk level presented by SARS-CoV-2 virus-related and COVID-19 disease-related hazards present or job tasks undertaken by employees at the place of employment as defined in this standard (i.e., very high, high, medium, and lower risk levels).

1. It is recognized that various hazards or job tasks at the same place of employment can be designated as very high, high, medium, or lower exposure risk for purposes of application of the requirements of this standard.

If the employer is concerned that employee use of a face covering may present a greater safety or health hazard to employees than compliance with the Standard (e.g., heat illness concerns, the inability to communicate coherently with another employee during a potentially hazardous job task) the issue needs to be assessed during the personal protective equipment (PPE) hazard assessment process required either under the Standard (see 16VAC25-220-50.D for very high and high risk situations, and 16VAC25-220.60.D for medium risk situations) or 1910.132(d) for general industry employers. The PPE hazard assessment process will allow the employer to identify any potential situations where there may be a greater hazard presented and develop alternative protections for employees.

In addition, 16VAC25-220-80.B.f provides that training on the standard provided to employees shall include with regard to PPE: "Heat-related illness prevention including the signs and symptoms of heat-related illness...."

85502 Joseph William Altizer 9/23/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85502>

Strongly oppose COVID-19 ETS

I am registering my strong opposition to making ETS permanent. Confusing and ambiguous language in the ETS along with ever-changing directives from various state and federal authorities are inefficient and an unreasonable cost burden for all businesses.

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The Standard is being considered for adoption by the Virginia Safety and Health Codes Board pursuant to Va. Code §40.1-22(6a) and would be enforced by the Department of Labor and Industry's (DOLI) Virginia Occupational Safety and Health (VOSH) Program, not the Virginia Department of Health.

SEE DEPARTMENT RESPONSE TO COMMENT 84956

85503 Tom Cleer 9/23/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85503>

Permanent COVID standard

I would like the to see the COVID standards in Virginia made permanent. COVID is not going away anytime soon and a science-based standard from one agency gives the necessary guidance to employers and workers during this pandemic.

All Virginia workers need protection so please move forward quickly to adopt a strong permanent standard.

Thanks

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SEE DEPARTMENT RESPONSE TO COMMENT 84196

85505 Ronald Milligan 9/23/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85505>

Strongly Opposed

Strongly Opposed!!!!

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

85506 Virginia Diamond, Northern Virginia Labor Federation 9/23/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85506>

Strongly support making standard permanent

The emergency temporary standard has been extremely helpful and important in providing guidance to workers and employers on how to maintain a safe workplace. The standard is clear and science-based.

Unfortunately COVID is still going to be with us after January and it is critical to maintain this standard permanently so that all workers can perform their jobs safely.

Thank you.

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SEE DEPARTMENT RESPONSE TO COMMENT 84196

85508 Tim Simmonds 9/23/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85508>"All Virginia workers need protection so please move forward quickly to adopt a strong, permanent sta

Begin All Virginia workers need protection so please move forward quickly to adopt a strong, permanent standard

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SEE DEPARTMENT RESPONSE TO COMMENT 84196

85509 Patrick Dixon 9/23/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85509>

Strongly Support

It was gratifying to see Virginia leading the way in instituting the ETS in the face of this unprecedented crisis of public health and I very much hope that this rule will be made permanent. I have great confidence that all responsible business owners in Virginia will have the ingenuity and the wherewithal to take the necessary measures to abide by this standard and protect their workers from potentially life threatening consequences.

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SEE DEPARTMENT RESPONSE TO COMMENT 84196

85514 Becky Daiss 9/23/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85514>

Permanent COVID Standard in Virginia

All Virginia workers need protection so please move forward quickly to adopt a strong, permanent standard. This is a matter of life and death.

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SEE DEPARTMENT RESPONSE TO COMMENT 84196

85516 Anonymous 9/23/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85516>

Strongly opposed

Strongly opposed

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

85520 Sherry 9/23/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85520>

Absolutely oppose!

For Pete's sake! We don't need more of Big Brother! Government just keeps wanting more and more of my time, energy, and money!

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

The Department has no response to the Commenter's political commentary.

85524 Charles Tjersland, VP AFGE Local 1924 9/23/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85524>

COVID-19 Working Standard

Please make the standard permanent -- COVID is not going away any time soon.

- A clear, science-based standard from one agency gives necessary guidance to employers and workers during a pandemic
  - All Virginia workers need protection so please move forward quickly to adopt a strong, permanent standard.
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SEE DEPARTMENT RESPONSE TO COMMENT 84196

85525 Susan Fertig-Dykes 9/23/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85525>

Absolutely opposed to making COVID rules permanent.

Not enough is known or understood about COVID, so making anything permanent would be foolish.

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

The Department has no response to the Commenter's political commentary.

85526 Richard Dellinger 9/23/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85526>

Strongly Oppose

Dear Members of the Safety and Health Codes Board:

I write to you to register my strong opposition to making the COVID-19 Emergency Temporary Standard (ETS) permanent.

Our business is committed to the safety and welfare of our customers, employees, and community. While the risk of COVID-19 transmission has not yet been eliminated, I harbor serious concerns that the currently enacted emergency measures are overly burdensome and will negatively affect our regional businesses' ability to continue operating if made permanent. Confusing and ambiguous language in the ETS, as well as ever-changing directives from various state and federal health authorities has made running a business in the most challenging of times even harder.

We will continue to make good faith efforts to keep our employees safe and follow public health best practices. Please support your local businesses and reject any extension of the Emergency Temporary Standard.

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

85527 Hillary Horn 9/23/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85527>

Protecting workers=protecting public from COVID

Make the standard permanent because COVID 19 will be with us into 2021. We must stop the spread of this virus as this is the only way that we can return to normal and that our economy can recover. Due to the stealthy contagiousness of COVID 19, strict workplace guidelines are needed to protect employees on the job. When workers contract the virus on the job they bring it home to their families and they can spread it

unknowingly to others. A friend of mine recently contracted the virus from a caregiver to an elderly parent in their home. The patient died and four family members became ill. Had this standard been in place and enforced, this family could have been spared from this nightmare. I see construction workers all the time working in close proximity to each other without masks. COVID will not end on Dec 31st and neither should protections for workers; the health of all those they come in contact with is at stake!

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SEE DEPARTMENT RESPONSE TO COMMENT 84196

85528 Paula Thiede 9/23/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85528>

Make Covid Standard Permanent

Please make the Covid standard permanent. Virginia workers need protection, and a clear, science-based standard from one agency gives employers and workers the necessary standard to follow. Covid is not going away soon, and may be with us permanently. Thank you.

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SEE DEPARTMENT RESPONSE TO COMMENT 84196

85532 Roger Eitelman 9/23/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85532>

Temporary health and safety standard

Please make the temporary Health and Safety Standard permanent.

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SEE DEPARTMENT RESPONSE TO COMMENT 84196

85533 Anonymous 9/23/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85533>

Strongly Support Permanent Workplace Health and Safety Standard on COVID-19

Virginia's Emergency Temporary Standard (ETS) for workplace safety and health already is protecting Virginia workers. But a "temporary" standard is only for six months and the novel coronavirus and COVID-19 will likely be a threat for a longer period of time. Virginia needs a permanent standard against COVID-19.

I live in Falls Church, in the center of an early COVID-19 hot spot in Northern Virginia, and retired and aged 70 with chronic prescription-treated asthma, have been ""Staying Safer at Home"" since mid-March. But frontline workers do not have that luxury; they need to get up and out and to work every day. Accordingly, I strongly support the passage of a permanent workplace health and safety standard on COVID-19 to support workers in the Commonwealth.

Virginia set a nation-wide precedent with its Emergency Temporary Standard, and still needs a strong permanent standard. The proposed standard provides strong protections for workers and clear guidance for employers. This standard will save lives, prevent COVID-19 spread and help get Virginia's economy moving again.

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SEE DEPARTMENT RESPONSE TO COMMENT 84196

85534 Anonymous 9/23/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85534>

Permanent Covid standard

Strongly opposed

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

85535 anonymous 9/23/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85535>

Strongly oppose

no permanent use of masks!!!

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[STANDARD RESPONSE TO "NO MASK" ONLY COMMENTS]

Over 200 comments were received in response to the Proposed Permanent Standard for Infectious Disease Prevention of the SARS-CoV-2 Virus That Causes COVID-19, 16VAC25-220 ("Standard"), solely opposed to any form of face covering (or "face mask") requirement. The following responses are provided by VOSH in response to face covering issues raised by the comments:

**The Standard Does Not Contain a Public Face Covering Mandate:**

16VAC25-220-10.C provides that the Standard applies "to every employer, employee, and place of employment in the Commonwealth of Virginia within the jurisdiction of the VOSH program...." The Standard does not contain a face covering mandate for the general public. That issue is the purview of the Virginia Department of Health and Governor's Executive Orders (e.g., Executive Order 63).

The Standard does require employees to wear either personal protective equipment, respiratory protection equipment, or face coverings in situations where physical distancing of six feet from other persons cannot be maintained.

**Face Covering Requirements are not unconstitutional:**

For those commenters who argued that that certain gubernatorial mandates (e.g., "face mask" mandate) are unconstitutional, according to the Office of the Attorney General on at least twelve occasions the Governor's

COVID-19 restrictions have been upheld by circuit courts throughout the Commonwealth. Two of these specifically challenged the face covering requirements. Schilling et al. v. Northam, CL20-799 (Albemarle Co. Cir. Ct. July 20, 2020); Strother, et al. v. Northam, CL20-260 (Fauquier Co. Cir. Ct. June 29, 2020).

#### Regulation versus legislation:

Some commenters were under the impression that the Standard was being proposed as legislation to the General Assembly. That is incorrect. The Standard is being considered for adoption by the Virginia Safety and Health Codes Board pursuant to Va. Code §40.1-22(6a) and would be enforced by the Department of Labor and Industry's (DOLI) Virginia Occupational Safety and Health (VOSH) Program.

#### Permanence of the Standard:

Some commenters raised concerns about a face covering mandate being "permanent". The use of the word "permanent" in reference to the Standard reflects the fact that, if adopted, the Standard does not currently have a date on which it would expire. However, the Board has the authority to amend or repeal the Standard as the workplace hazards associated with the SARS-CoV-2 virus and COVID-19 disease evolve and eventually lessen.

#### A Medical exemption is provided for face coverings:

Some commenters expressed concern about any face covering requirement that could present medical problems for a person with a pre-existing medical condition, such as asthma, etc. 16VAC25-220-40.I provides that:

"1. Nothing in this standard shall require the use of a respirator, surgical/medical procedure mask, or face covering by any employee for whom doing so would be contrary to the employee's health or safety because of a medical condition...."

Situations involving employers with an employee with a medical condition that does not allow them to wear a face covering when required while performing job tasks where physical distancing of six feet cannot be maintained are subject to requirements of the Americans with Disabilities Act (ADA). The ADA is enforced by the federal Equal Employment Opportunity Commission (EEOC).

The following link to the EEOC webpage with guidance on the ADA and COVID-19 issues can be used to research the core issue of whether the "high risk" category that the employee falls into is a "medical condition" that meets the definition of a "disability" under the ADA or not. Section D contains FAQs on "reasonable accommodations" that are provided to employees with a disability. The term "undue hardship" is referenced, and should be researched to see if it applies to the employer's situation.

<https://www.eeoc.gov/wysk/what-you-should-know-about-covid-19-and-ada-rehabilitation-act-and-other-eeo-laws>

#### Commenters Suggesting that Sick People Stay Home Instead of Requiring the Wearing of Face Coverings:

Some commenters suggested that sick people stay home instead of requiring the wearing of face coverings. 16VAC25-220.B.5 specifically requires employers to assure that employees either known or suspected of being infected with SARS-CoV-2 not report to or remain at the work site or engage in work at a customer or client location until cleared for return to work.

However, it is well-documented in scientific literature that an estimated 20% or more of persons infected with SARS-CoV-2 have no symptoms (are "asymptomatic"), while others may be infected and not show

symptoms for several days (presymptomatic). Accordingly, simply telling sick people to stay home does not address the problem of potential asymptomatic and presymptomatic spread of SARS-CoV-2.

“Epidemiologic studies have documented SARS-CoV-2 transmission during the pre-symptomatic incubation period, and asymptomatic transmission has been suggested in other reports. Virologic studies have also detected SARS-CoV-2 with RT-PCR low cycle thresholds, indicating larger quantities of viral RNA, and cultured viable virus among persons with asymptomatic and pre-symptomatic SARS-CoV-2 infection.

The exact degree of SARS-CoV-2 viral RNA shedding that confers risk of transmission is not yet clear. Risk of transmission is thought to be greatest when patients are symptomatic since viral shedding is greatest at the time of symptom onset and declines over the course of several days to weeks. However, the proportion of SARS-CoV-2 transmission in the population due to asymptomatic or pre-symptomatic infection compared to symptomatic infection is unclear.”

Face Coverings Help in Protecting against Infection Spread in the Community and at work:

“During a pandemic, cloth masks may be the only option available; however, they should be used as a last resort when medical masks and respirators are not available.

....

The general public can use cloth masks to protect against infection spread in the community. In community settings, masks may be used in 2 ways. First, they may be used by sick persons to prevent spread of infection (source control), and most health organizations (including WHO and CDC) recommend such use. In fact, a recent CDC policy change with regard to community use of cloth masks is also based on high risk for transmission from asymptomatic or presymptomatic persons. According to some studies, ~25%–50% of persons with COVID-19 have mild cases or are asymptomatic and potentially can transmit infection to others. So in areas of high transmission, mask use as source control may prevent spread of infection from persons with asymptomatic, presymptomatic, or mild infections. If medical masks are prioritized for healthcare workers, the general public can use cloth masks as an alternative. Second, masks may be used by healthy persons to protect them from acquiring respiratory infections; some randomized controlled trials have shown masks to be efficacious in closed community settings, with and without the practice of hand hygiene. Moreover, in a widespread pandemic, differentiating asymptomatic from healthy persons in the community is very difficult, so at least in high-transmission areas, universal face mask use may be beneficial. The general public should be educated about mask use because cloth masks may give users a false sense of protection because of their limited protection against acquiring infection. Correctly putting on and taking off cloth masks improves protection. Taking a mask off is a high-risk process because pathogens may be present on the outer surface of the mask and may result in self-contamination during removal.

Commenter’s statements expressing a refusal to wear face coverings:

To the extent that the commenters who opposed a mandatory face covering requirement can be considered to represent any significant percentage of people living, working or traveling through Virginia, their views expressing a refusal to wear masks in public or business settings, unintentionally strengthens the case for a face covering (or other personal protective equipment and respiratory protection equipment) requirement in the Standard.

The stated commenters bolster the credibility of research presented to the Board by the VOSH during the adoption process for the Emergency Temporary Standard (ETS), that employees will face a higher risk of virus

exposure in the coming months because a certain segment of the population will refuse to wear face coverings or observe physical distancing of at least 6 feet when interacting with employees.

The proposed permanent standard has been subject to the following notice and comment procedures. The Virginia Safety and Health Codes Board held a 60 day written comment period for the Proposed Permanent Standard, with the comment period running from August 27, 2020 to September 25, 2020. The Board held a Public Hearing on September 30, 2020. A revised draft of the Proposed Permanent Standard will be published with an additional 30 day comment period prior to any Board action. A public hearing will also be held. An economic impact analysis/cost analysis will be prepared for the revised proposed permanent standard.

85536 Jessica Rosner. Epidemiology Program Manager VDH \*\*See extensive comments in TH website 9/23/2020 <https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85536>

comments to the permanent standard

The Virginia Department of Health (VDH) would prefer for the standard to require adherence to current VDH/Centers for Disease Control and Prevention (CDC) standards instead of stating particular VDH/CDC guidance that should be followed in writing. This would allow the standard to remain up-to-date with current recommendations without having to employ workarounds such as going through the revision process or developing FAQs to address updates.

In the purpose, scope, and applicability section, subsection E2b should state ""The type of hazards encountered, including exposure to respiratory droplets and potential exposure to the airborne transmission of SARS-CoV-2 virus..."" as SARS-CoV-2 is primarily transmitted through respiratory droplets (Reference: [https://www.cdc.gov/coronavirus/2019-ncov/hcp/non-us-settings/overview/index.html#:~:text=COVID%2D19%20is%20primarily%20transmitted,sneezes%2C%20coughs%2C%20or%20talks\).](https://www.cdc.gov/coronavirus/2019-ncov/hcp/non-us-settings/overview/index.html#:~:text=COVID%2D19%20is%20primarily%20transmitted,sneezes%2C%20coughs%2C%20or%20talks).)

In the definitions section, for the ""community transmission"" definition, #2 should read ""Minimal to moderate"" where there is sustained community transmission..."" (Reference: <https://www.cdc.gov/coronavirus/2019-ncov/community/community-mitigation.html>).

The definition for ""duration and frequency of employee exposure"" should read (in part): ""An example of an acute SARS-CoV-2 virus or COVID-19 disease situation may be an unmasked customer, patient, or other person coughing or sneezing directly into the face of an employee.""

The definition for ""high exposure risk hazards or job tasks"" lists as an example contact tracer services. Contact tracing is not per se healthcare delivery. For VDH local health departments, this is confusing for staff and does not match the actual risk. Contact tracing would best be listed in medium (if performed on-site at the local health department) or low (if performed remotely). Also of note, contact tracing is listed in both the high risk and medium risk definitions. Recommend removing it from the high risk category and leaving it in the medium or low risk category definition.

The ""lower exposure risk hazards or job tasks"" definition should read (in part): ""Employees in this category have minimal occupational contact with other employees, other persons, or the general public, such as in an office building setting; or are able to achieve minimal occupational contact to SARS-CoV-2 through the implementation of engineering, administrative and work practice controls."" Further, the definition includes reference to employee use of face coverings for contact inside of six feet of coworkers, customers, or other

persons. As the face coverings language is found in the definitions section, it may not be clear to employers that this is a mandatory requirement of the ETS. VDH recommends moving this face covering requirement from the definitions section of the ETS to the “Mandatory requirements for all employers” section or, alternatively, a new ETS section entitled “Requirements for hazards or job tasks classified as lower risk exposure.”

The face covering definition should read (in part): ““A face covering is not intended to protect the wearer, but it may reduce the spread of virus from the wearer to others. A face covering is not a surgical/medical procedure mask or respirator.””

The face shield definition should read: ““Face shield means a form of personal protective equipment made of transparent, impermeable materials primarily used for eye protection from droplets or splashes for the person wearing it. A face shield is not a substitute for a face covering, surgical/medical procedure mask or respirator.”” (Reference: <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/cloth-face-cover-guidance.html>).

The definition of ““may be infected with SARS-CoV-2 virus”” should remove the language ““and not currently vaccinated against the SARS-CoV-2 virus,”” as with the projected population-level efficacy of COVID-19 vaccine to be 40-70%, we cannot definitively state that someone vaccinated will not subsequently be free from infection.

The personal protective equipment definition should read (in part): ““Personal protective equipment may include, but is not limited to, items such as gloves, safety glasses, goggles, shoes, earplugs or muffs, hard hats, respirators, surgical/medical procedure masks, impermeable gowns or coveralls, face shields, vests, and full body suits.””

The physical distancing definition should read (in part): ““Physical distancing,' also called 'social distancing,' means keeping space between yourself and other persons while conducting work-related activities inside and outside of the physical establishment by staying, for purposes of this Standard, at least six feet from other persons.””

The definition of SARS-CoV-2 should read: ““SARS-CoV-2 means the novel virus that causes coronavirus disease 2019, or COVID-19. Coronaviruses are named for the crown-like spikes on their surfaces.””

The signs of COVID-19 definition should read: ““Signs of COVID-19 are abnormalities that can be objectively observed, and may include fever, trouble breathing or shortness of breath, cough, new confusion, vomiting, bluish lips or face, etc.””

The surgical/medical procedure mask should read (in part): ““A surgical/medical procedure mask has a looser fitting face seal than a tight-fitting respirator.””

A definition for symptoms of COVID-19 should be added that reads: ““Symptoms of COVID-19” are abnormalities that are subjective to the person and not observable to others, and may include chills, fatigue, muscle or body aches, headache, new loss of taste or smell, sore throat, nausea, congestion or runny nose, diarrhea, etc.””

The definition of symptomatic should read: ““Symptomatic means a person who is experiencing signs and/or symptoms similar to those attributed to COVID-19. A person may become symptomatic 2 to 14 days after exposure to the SARS-CoV-2 virus.””

The mandatory requirements for all employers, subsection A, should read: ""Employers shall ensure compliance with the requirements in this section to protect employees in all exposure risk levels from workplace exposure to the SARS-CoV-2 virus that causes the COVID-19 disease."" In this same section, subsection B2 should read ""Employers shall inform employees of the methods of and encourage employees to self-monitor for signs and symptoms of COVID-19 if employees suspect possible exposure or are experiencing signs and/or symptoms of illness."" Subsection B4 should read (in part): ""Employers shall develop and implement policies and procedures for employees to report when employees are experiencing signs and/or symptoms consistent with COVID-19 and no alternative diagnosis has been made (e.g., tested positive for influenza)."" In subsection B5, consider adding ""and others"" to the last sentence (""...that would not result in potentially exposing other employees and others to the SARS-CoV-2 virus"" ) to encompass customers, vendors, volunteers, etc. Section B7 should read: ""Employers shall discuss with subcontractors and companies that provide contract or temporary employees about the importance and requirement of employees or other persons who are known or suspected to be infected with the SARS-CoV-2 virus of staying home. Subcontractor, contract, or temporary employees known or suspected to be infected with the SARS-CoV-2 virus shall not report to or be allowed to remain at the work site until cleared for return to work. Subcontractors shall not allow their employees known or suspected to be infected with the SARS-CoV-2 virus to report to or be allowed to remain at work or on a job site until cleared for return to work.""

Subsection B8 of mandatory requirements for all employers should read: ""To the extent permitted by law, including HIPAA, employers shall establish a system to receive reports of positive SARS-CoV-2 tests by employees, subcontractors, contract employees, and temporary employees (excluding patients hospitalized on the basis of being known or suspected to be infected with SARS-CoV-2 virus) present at the place of employment within 2 days prior to symptom onset (or positive test if the employee is asymptomatic) until 10 days after onset (or positive test), and the employer shall notify..." This is important because VDH defines the infectious period of a COVID-19 case-patient as 2 days prior to symptom onset (or test positivity if the patient is asymptomatic) until 10 days after onset. This is the period established during which close contacts of case-patients should receive follow up. VDH suggests modifying the language of the standard to be consistent with the infectious period.

In regard to subsection B8d, receiving duplicative individual reports of COVID-19 from both employers and laboratories/physicians reduces VDH's ability to identify outbreaks, as VDH staff will instead be dealing with increased paperwork and having to match employer reports with reports received from physicians and laboratories. In taking on that responsibility, less time will be focused on the items that would allow VDH to most effectively intervene (e.g., case-patient interviews, employer outbreak reports). It's important to reduce the duplicative reports VDH would receive from employers under the current ETS, while still having the opportunity to identify potential outbreaks. For that reason, the Virginia Department of Health would like to modify B8d to read: "During a declaration of an emergency by the Governor pursuant to § 44-146.17 every employer as defined by § 40.1-2 of the Code of Virginia shall report to the Virginia Department of Health when the worksite has had two or more confirmed cases of COVID-19. The employer shall make such a report in a manner specified by VDH, including name, date of birth, and contact information of each case, within 24 hours of becoming aware of such cases. Employers shall continue to report all cases until the local health department has closed the outbreak. After the outbreak is closed, subsequent identification of two or more confirmed cases of COVID-19 during a declared emergency shall be reported, as above."

In regard to subsection B8e, it's important to note that some employers (such as residential programs, daycares, schools, long-term care facilities, etc.) are required to report outbreaks to VDH per the Code of Virginia 12VAC5-90-90 . VDH feels that duplicative reporting to both VDH and DOLI may be burdensome to these employers.



In regard to section C of the mandatory requirements for all employers, VDH would prefer for this section to state that employees must be excluded from work until they have met VDH/CDC requirements for discontinuing home isolation or quarantine. VDH already governs and has the ability to require (if deemed necessary) certain isolation and quarantine periods per the Code of Virginia statutes on isolation and quarantine. Sections C1a and C2b are not consistent with current public health guidance for discontinuing isolation. Particularly, in most cases C1b is not recommended for discontinuing isolation – this is generally for transfers of patients between healthcare facilities (e.g. hospital à long-term care facility). If it is not possible to state that employees must be excluded from work until they have met VDH/CDC requirements for discontinuing home isolation or quarantine and specific return to work guidance must be stated explicitly, VDH would prefer for the language in section C1a and C1b to be changed to (for isolated persons): “Persons with COVID-19 who have symptoms may discontinue isolation and return to work when:

At least 10 days\* have passed since symptom onset and

At least 24 hours have passed since resolution of fever without the use of fever-reducing medications and

Other symptoms have improved.

\*A limited number of persons with severe illness may produce replication-competent virus beyond 10 days, that may warrant extending duration of isolation for up to 20 days after symptom onset. Persons who are severely immunocompromised may require testing to determine when they can return to work. Consider consultation with infection control experts.

Persons infected with SARS-CoV-2 who never develop COVID-19 symptoms may discontinue isolation and other precautions 10 days after the date of their first positive RT-PCR test for SARS-CoV-2 RNA.”

Furthermore, If return to work guidance for quarantined workers must be stated explicitly in the permanent standard, VDH recommends including this language in a separate section of the standard, such as: “XXXX. Quarantine of exposed employees.

“Quarantine” is separation of people who have been in “close contact” with a person with COVID-19 from others. People in quarantine should stay home as much as possible, limit their contact with other people, and monitor their health closely in case they become ill.

Close contact is described as being within 6 feet of someone who has COVID-19 for a total of 15 minutes or more; providing care at home to someone who is sick with COVID-19; having direct physical contact (e.g., hugging, kissing) with a person with COVID-19; sharing eating or drinking utensils with a person with COVID-19; or being exposed to the respiratory droplets of someone with COVID-19 (e.g., being sneezed on, being coughed on).

Close contacts of a known COVID-19 case who are not experiencing symptoms should be quarantined at home until 14 days have passed since last contact with the COVID-19 case or, if contact is ongoing (such as living together in a household), 14 days after the COVID-19 patient has been released from isolation, which may result in exclusion for up to 24 days.

NOTE: If the employee is a household contact of a person with COVID-19 and the employee is able to have complete separation from the ill person (meaning no contact, no time together in the same room, no sharing of any spaces, such as the same bathroom or bedroom), the employee may follow the timeline for non-household contact.

If the employee develops symptoms of COVID-19 or tests positive for SARS-CoV-2, exclusion guidance for employees suspected or confirmed to have COVID-19 should be followed. If the employee tests negative during the quarantine period, they must continue to quarantine for the full 14 days.

However, anyone who has been exposed through close contact with someone with COVID-19 does NOT need to stay home when the exposed person:

developed COVID-19 illness within the previous 3 months,

has recovered, and

remains without COVID-19 symptoms (for example, cough, shortness of breath).

It may be necessary for personnel filling essential critical infrastructure roles who are asymptomatic contacts to remain in the workplace in order to provide essential services, if the business cannot operate without them (except for education sector workers, who should quarantine for the full 14 days). These situations should be reviewed with the local health department on a case-by-case basis, with home quarantine being the preferred method of addressing close contacts. If a business is unable to operate without the critical infrastructure employee, the employee (except for education sector workers) may return to work (not undergo quarantine) as long as:

Employers pre-screen the employee (temperature checks)

Employers conduct regular monitoring of employee

Employee wears a face mask at all times for 14 days after last close contact

Employee maintains 6 feet of physical distance from all persons outside their household

Employer ensures work space is routinely cleaned and disinfected.”

Subsection C1 of the mandatory requirements for all employers states “While an employer may rely on other reasonable options, a policy that involves consultation with appropriate healthcare professionals concerning when an employee has satisfied the symptoms based strategy requirements in subdivision 1 a of this subsection will constitute compliance with the requirements of this subsection.” VDH is unclear about the intent of this statement. If the intent is to require clearance from a healthcare provider prior to returning to work, VDH has two concerns: 1. Neither CDC nor VDH require healthcare provider clearance for returning to work. Requiring clearance from a healthcare provider to return to work may burden healthcare provider offices that are inundated with cases. 2. Requiring clearance to return to work may create an equity issue, as some employees may not be able to afford to get physician clearance. If this is the intent of the statement, VDH recommends striking the statement. However, if the intent is for employees and employers to remain up-to-date on public health recommendations, VDH would recommend changing the language to “consultation with appropriate healthcare and/or public health professionals” to allow for public health input without requiring physician clearance.

Subsection C1bi states “Nothing in this standard shall be construed to prohibit an employer from requiring a known or suspected to be infected with the SARS-CoV-2 virus employee to be tested in accordance with subdivision 1 b of this subsection.” Neither CDC nor VDH currently recommend the test-based strategy be employed to clear a person to return to work. As a result, this language promotes a practice that is no longer consistent with current public health recommendations. VDH would prefer to remove specific language on return to work standards in lieu of requiring employees to remain out of work until they have met VDH/CDC criteria to discontinue isolation/quarantine. However, if specific language on when an employee may return

to work must be a part of the standard, VDH would recommend modifying this language to say: "Employees known or suspected to be infected with SARS-CoV-2 who have experienced symptoms should follow a symptom-based strategy for returning to work. Employees known or suspected to be infected with SARS-CoV-2 who never developed symptoms should follow a time-based strategy for returning to work."

Subsection C2a of the mandatory requirements for all employers should read ""The time-based strategy excludes an employee from returning to work until at least 10 days have passed since the date of the employee's first positive COVID-19 diagnostic test assuming the employee and, for symptomatic employees, have had improvement of symptoms. If an asymptomatic employee who tested positive develops symptoms, then the symptom-based shall be used.""

Regarding the section ""Requirements for hazards or job tasks classified as very high or high exposure risk,"" since the VERY HIGH and the HIGH exposure risk jobs have the same engineering, administrative, work practice and PPE requirements, it adds burden to the employer to have to distinguish between them. Also – many of the engineering, administrative, work practice and PPE requirements between this section and the next (MEDIUM exposure risk jobs) are exactly the same. VDH recommends rewriting this so that employers can readily see what is required for all and what additional requirements are necessary for the VERY HIGH and HIGH categories. The above would make this much more customer-friendly.

In the very high or high exposure risk requirements section, subsection B6, VDH recommends modifying this language to be consistent with current guidance on laboratory testing of SARS-CoV-2 samples.

The remainder of VDH comments will be provided in a second townhall comment.

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The Department has addressed VDH's comments in it revised draft of the proposed standard.

85541 Olivia 9/23/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85541>

Support permanent standard

A clear, science-based standard from one agency gives necessary guidance to employers and workers during a pandemic. All Virginia workers need protection so please move forward quickly to adopt a strong, permanent standard for as long as this virus rages.

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SEE DEPARTMENT RESPONSE TO COMMENT 84196

85544 Chuck Swain, Modern Automotive 9/23/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85544>

Oppose making ETS Permanent

Sir / Ma'am,

Please reject making this understandable Emergency TEMPORARY Order Permanent.

The additional unnecessary burden that imposes on already challenged businesses during these trying times has little to no impact on public health yet it creates hardships for businesses that have struggled to adapt to the current situation.

Thank you for your consideration.

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SEE DEPARTMENT RESPONSE TO COMMENT 84956

85545 Jessica Rosner. Epidemiology Program Manager VDH \*\*See extensive comments in TH website 9/23/2020 <https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85545>

comments to the permanent standard (2)

Additional comments:

In the requirements for very high or high exposure risk section, subsection C4 should read: ""An employer shall post signs requesting patients and family members to immediately report signs or symptoms of respiratory illness on arrival at the healthcare facility and use disposable face coverings.""

In the same section, subsection C9 should read: ""Provide face coverings to non-employees suspected to be infected with SARS-CoV-2 virus to contain respiratory secretions until the non-employees are able to leave the site (i.e., for medical evaluation and care or to return home).""

In the same section, subsection D5 should read: ""Unless contraindicated by a hazard assessment and equipment selection requirements in subdivision 1 of this subsection, employees classified as very high or high exposure risk shall be provided with and wear gloves, a gown, a face shield or goggles, and a respirator when in contact with or inside six feet of patients or other persons known to be or suspected of being infected with SARS-CoV-2. Where indicated by the hazard assessment and equipment selection requirements in subsection D of this section, such employees shall also be provided with and wear a surgical/medical procedure mask. Gowns shall be the correct size to assure protection."" Further, the italicized part is confusing for several reason: 1. It makes reference to subsection D, but it is subsection D. 2. The prior sentence already stipulates the provision of a respirator – requiring providing/wearing of a surgical/medical procedure mask is confusing. Perhaps what is meant is that the PATIENT should be wearing such a mask for source control – but that should not be required when not medically tolerated.

As mentioned in a previous comment, the requirements for hazards or job tasks classified as medium exposure risk section should be rewritten for simplification for employers due to the similarity of requirements in this section to the requirements for very high/high risk settings.

Subsection C1b of the requirements for medium exposure risk settings should read: ""Provide face coverings to non-employees suspected to be infected with SARS-CoV-2 to contain respiratory secretions until the non-employees are able to leave the site (i.e., for medical evaluation and care or to return home).""

In the infectious disease preparedness and response plan section, subsection C3a<sup>ii</sup> reads ""Known or suspected to be infected with the SARS-CoV-2 virus persons or those at particularly high risk of COVID-19 infection (e.g., local, state, national, and international travelers who have visited locations with ongoing COVID-19 community transmission..."" VDH and CDC are now emphasizing the activities that one participates in as much as the locations one travels to. This should be addressed in this section. (Reference:

<https://www.vdh.virginia.gov/coronavirus/coronavirus/travel-to-areas-with-widespread-ongoing-community-spread/> and <https://www.cdc.gov/coronavirus/2019-ncov/travelers/index.html>).

In the same section, subsection C3b should read (in part): ""To the extent permitted by law, including HIPAA, employees' individual risk factors for severe disease. For example, people of any age with one or more of the following conditions are at increased risk of severe illness from COVID-19:...obesity (body mass index or BMI of 30 or higher)..."" The BMI value has been changed from 40 to 30, and this should be reflected in the standard. (Reference: <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-with-medical-conditions.html>). Additionally, this subsection should end with the sentence ""The risk for severe illness from COVID-19 also increases with age."" (Reference: <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/older-adults.html>). It's essential that the ETS includes this, particularly with the advancing age of many workers.

In the same section, subsection 5 should read (in part): ""Identify infection prevention measures to be implemented."" Subsection 6 should read: ""Provide for the prompt identification and isolation of known or suspected to be infected with the SARS-CoV-2 virus employees away from work, including procedures for employees to report when they are experiencing signs and/or symptoms of COVID-19.""

In the training section, subsection B5 should read: ""Risk factors of severe COVID-19 illness with underlying health conditions and advancing age;"". Subsection 7 should read ""Safe and healthy work practices, including but not limited to, physical distancing, wearing of face coverings, disinfection procedures, disinfecting frequency, ventilation, noncontact methods of greeting, etc.;"". The following language should be added to subsection 8: ""Strategies to extend PPE supplies during limited capacity.""

Subsection C makes reference to ""the trained employee's physical or electronic signature."" VDH recognizes that obtaining a physical or electronic signature on a document can be difficult in a telework environment. VDH suggests revising this language to indicate a physical or electronic signature is not necessary if other documentation of training completion (e.g., electronic certification through a training system) can be provided.

Subsection E4 of the training section should be added and should read: ""Changes in public health's (CDC and VDH) understanding of SARS-CoV-2's transmission and impact on public health.""

Subsection G3 of the training section should read: ""The signs and symptoms of the COVID-19 disease"". Subsection G5 should read: ""Safe and healthy work practices and control measures, including but not limited to, physical distancing, wearing of face masks, sanitation and disinfection practices."" Subsection G6 should be added and should read: ""Requirements of any applicable Virginia executive order or order of public health emergency related to the SARS-CoV-2 virus or COVID-19 disease; and the current subsection G6 should be moved to G7.

In the discrimination against an employee for exercising rights section, subsection B should read: ""No person shall discharge or in any way discriminate against an employee who voluntarily provides and wears the employee's own personal protective equipment, including but not limited to a respirator, face shield, gowns or gloves provided that the PPE does not create a greater hazard to the employee or create a serious hazard for other employees. No person shall discharge or in any way discriminate against an employee who voluntarily provides and wears the employee's own face covering."" As previously written, it included face covering as PPE (face coverings are not PPE) and it indicated "if provided by the employer" for PPE, when the employer MUST provide PPE.

In regard to subsection D of this section, language should be rewritten to be clearer. Employees may read and interpret that they can refuse to work, even if appropriate safeguards can be put into place, but this was clarified to mean that employees cannot refuse to work – this becomes a performance issue – if appropriate safeguards are implemented. It is important to assure that there is a whistleblower clause but, as written, this will create considerable consternation for employers-employees." The Department has addressed VDH's comments in it revised draft of the proposed standard.

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85546 Dr. and Mrs, Stephen Ruth 9/23/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85546>

Please push for Strong permanent safety standard to support workers--make ETS permanent in Virginia  
Virginia needs a strong permanent standard.

- The proposed standard provides strong protections for workers and clear guidance for employers.
  - This standard will save lives, prevent COVID-19 spread and help get Virginia's economy moving again.
- 

SEE DEPARTMENT RESPONSE TO COMMENT 84196

85549 Johnny Cassett 9/23/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85549>

MUST END ETS RESTRICTIONS

The current ETS standards for workplaces, including the requirement to wear PPE, needs to be revoked. Ongoing research is finding that COVID-19 is not spread in the airborne fashion one reported (see Washington Post article <https://www.washingtonpost.com/nation/2020/09/21/cdc-covid-aerosols-airborne-guidelines/>)

The permanent use of PPE will discourage customers from face-to-face business (it is hard to understand communication), create another expense (providing PPE), and will not make a measurable difference in combating the spread of the virus. Monitoring hand washing and sanitary surfaces is a more manageable, and as effective, method of controlling the spread.

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"SEE DEPARTMENT RESPONSE TO COMMENT 84956

SEE DEPARTMENT RESPONSE TO COMMENT 85535

85552 Diane Sears 9/23/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85552>

Masks. Strongly Oppose.

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SEE DEPARTMENT RESPONSE TO COMMENT 85535

85553 Corey Clayborne, AIA Virginia 9/23/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85553>

#### Items that Require Vetting and Analysis

The sections noting air handling requirements for both high and medium risk occupations reference ASHRAE standards that have not yet been adopted as part of VUSBC (ASHRAE 2017 and 2019) as they were released just last November. It is doubtful therefore that even the newest facilities recently brought online would comply with these design standards.

The revised 2019 edition of the standard includes significant changes, including:

- New informative tables of ventilation rates per unit area for checking new and existing buildings ventilation calculations
- Simplified version of the Ventilation Rate Procedure improving calculations for system ventilation efficiency and zone air distribution effectiveness
- Modified Natural Ventilation Procedure calculation methodology
- Revised scope to specifically identify occupancies previously not covered
- Natural ventilation now requires considering the quality of the outdoor air and interaction of the outdoor air with mechanically cooled spaces.
- Humidity control requirements are now expressed as dew point and not as relative humidity.

In addition, the maintenance code requires property owners to maintain the standards in place as of the date of issuance of their respective building permits. Even if equipment is replaced it is “like for like” so that one does not have to redesign and replace the entire HVAC system just because a 15-year old condensing unit reached the end of its useful life. These regulations, as proposed, present fundamental changes to the maintenance code, which is part of the VUSBC family.

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The Department acknowledges the comment and notes that the ASHRAE air handling requirements issue raised by the Commenter is undergoing a legal review.

85555 Sonia Lozano, LIUNA Local 572 9/23/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85555>

#### Permanent Standards COVID-19

- A clear, science-based standard from one agency gives necessary guidance to employers and workers during a pandemic
  - All Virginia workers need protection so please move forward quickly to adopt a strong, permanent standard.
-

SEE DEPARTMENT RESPONSE TO COMMENT 84196

85556 William Dent 9/23/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85556>

Make Virginia's Emergency Temporary Standard Permanent

Virginia did the right thing in providing an Emergency Temporary Standard available to protect workers for workplace safety and health, and it has been working but it was to expire in six months. Protecting workers safety and health makes sense at all times, during the continuation of the threat from the Covid-19 virus which will be with us for some time, but also from any recognized danger at any time. Virginia workers have reason to be proud of a Commonwealth that values them enough to protect them now and should be able to have the same confidence on into the future.

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SEE DEPARTMENT RESPONSE TO COMMENT 84196

85558 MARK E SNELL-COOK (Norfolk APWU Local 262) 9/23/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85558>

Essential and Consistent applicatio and policy

A permanent standard for COVID 19 is needed. The temporary standard needs to be made permanent and is key to ensuring workers and workplaces are equitable and consistent in their responses and applications of a scientifically based standard.

The workers of the Commonwealth of Virginia deserve to have this standard, no matter where they work from one end of the Commonwealth to the other.

Thank you for your attention to this important matter.

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SEE DEPARTMENT RESPONSE TO COMMENT 84196

85559 Lucretia McCulley 9/23/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85559>

Permanent Workplace Safety Standard - Strongly support

Virginia needs a strong permanent standard for workplace health and safety during COVID-19. The proposed standard provides strong protections for workers and clear guidance for employers. This standard will save lives, prevent COVID-19 spread and help get Virginia's economy moving again.

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SEE DEPARTMENT RESPONSE TO COMMENT 84196

85560 John Dixon 9/23/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85560>"Class Action guarenteed



You cannot legally quarantine healthy people and we all know there is no threat of mass death from CCP virus -99.9% survival.

""The CDC has released US Covid death statistics and there is no "pandemic" level.

-0.00052% death in children under 1 -0.000088% death in children... More 1-4 years -0.000073% death in children 5-14 years -0.000775% death in people 15-24 years -0.0031% death in people 25-34 years -0.0089% death in people 35-44 years -0.023% death in people 45-54 years -0.05% death in people 55-64 years -1.3% death in people 65-74 years -3.1% death in people 75-84 years -8.6% death in people over 85 years Of those deaths in people over 85, 40% died of pneumonia and most had 2+ comorbidities.

Your intent to destroy Virginia's economy and our lives will not go unanswered at court and the ballot box.

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The Standard does not address the issue of ""quarantine"". "Quarantine" is separation of people who were in "close contact" with a person with COVID-19 from others.

The Standard does address the issue of ""isolation"". "Isolation" is the separation of people with COVID-19 from others. People in isolation need to stay home and separate themselves from others in the home as much as possible. Requirements for returning to work from isolation is covered by the ETS in 16VAC25-220-40.C. However, please note that in lieu of complying with 16VAC25-220-40.C, employers may comply with recently updated CDC guidelines (see §40 FAQ 18, <https://www.doli.virginia.gov/conronavirus-covid-19-faqs/>).

SEE DEPARTMENT RESPONSE TO COMMENT 84237

The Department has no response to the Commenter's political commentary.

85561 Don Labe 9/23/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85561>

Strongly oppose! Absolutely No!

this permanent order is too far overreaching. We are Americans and Virginians. We do not need these permanent instructions in our lives that will continue to destroy business.

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

85564 Martha Drehmannb 9/23/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85564>

Covid restrictions

Strongly opposed to making the current Covid restrictions in the work place permanent. Businesses need to get back to a normal work environment as soon as possible. Interactions are difficult, the required equipment is expensive, and the risk has decreased.

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

85565 anonymous 9/23/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85565>

Agree

I support this measure

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SEE DEPARTMENT RESPONSE TO COMMENT 84196

85569 Melissa White, VA United Methodist Women 9/23/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85569>

Strongly Support

A permanent workplace health and safety standard for COVID 19 to support workers will help prevent the spread of COVID-19! Let's do all things possible to value the health of those in the workplace and to get our economy moving again!

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SEE DEPARTMENT RESPONSE TO COMMENT 84196

85571 Carolyn McNeal 9/23/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85571>

Workers Need Protections

Please make the OSHA standard for COVID a permanent standard. COVID isn't going to just magically go away. We will have to deal with it for months or years to come. A clear, science-based standard is necessary to protect workers.

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SEE DEPARTMENT RESPONSE TO COMMENT 84196

85572 Jean H Lowe 9/23/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85572>

Workplace health and safety

It is time to make temporary protections permanent.

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SEE DEPARTMENT RESPONSE TO COMMENT 84196

85574 Anonymous 9/23/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85574>

Strong support for permanent standards

To Whom It May Concern:

As we all have been coping and facing the consequences of the Covid-19, I believe that it is very important to have work places that are safe, that protect those persons who must be working and prevent the spread of this very serious virus. It is only fair and right that persons can work in an environment that meets the strong protections needed. For this to occur, employers must be given clear guidance and have correct information to implement and maintain a workplace that has strong safety standards for all. This needs to be a permanent standard as I believe we will be facing Covid-19 for the foreseeable future. I further believe that such action is vital to the return, restoration and viability of our economy.

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SEE DEPARTMENT RESPONSE TO COMMENT 84196

85576 Cary Nelson, H.N. Funkhouser & Co 9/23/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85576>

Strongly Oppose

Please note that these regulations pose a huge burden on small businesses.

We value our team and our customers but feel these ETS are too cumbersome.

Most Sincerely,

---

SEE DEPARTMENT RESPONSE TO COMMENT 84956

85577 Mary Anne Cummins 9/23/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85577>

Strongly Support

This standard will save lives, prevent COVID-19 spread and help get Virginia's economy moving again. The proposed standard provides strong protections for workers and clear guidance for employers. It is often those on the lower end of the pay scale who are affected by a lack of safety and health protections. The standard needs to be made permanent. Thank you.

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SEE DEPARTMENT RESPONSE TO COMMENT 84196

85581 Maryann T Craig 9/23/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85581>

Pass permanent law to have businesses have protection for all employees against COVID 19.

Pass permanent law to have businesses have protection for all employees against COVID 19.

---

SEE DEPARTMENT RESPONSE TO COMMENT 84196

85582 Tiffany Brooks 9/23/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85582>

STRONGLY OPPOSE

This is getting way out of hand! These masks or anything that people use to cover their face is a joke!! We live in the United States of America we the people have the right to choose. The government is over stepping.

The shut down was totally ridiculous! People have lost their businesses their livelihoods. The way they put food on the table, but big businesses and corporations were able to stay open...come on that makes no sense at all. And then trying to make people wear a mask while walking in to a restaurant, but they take it off to eat in the same restaurant, how does that prevent anything? How does wearing a piece of cloth that is not N95 mask helping at all? And then making our children wear a mask at school and not allowed to play with their friends. Inmates are allowed to do more then our own children. If someone wants to wear a mask that is their choice just as if someone choices not to wear one it's their right not to as well. If they have a mask on what is the problem they are protected right??!!! ?? We the people have the right to chose what we do with our body. The government needs to stand down.

---

SEE DEPARTMENT RESPONSE TO COMMENT 84956

85584 anonymous 9/23/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85584>

Strongly oppose

Stop it with the govt overreach. Too many families have already lost their livelihood, everything they worked for. Enough is enough.

---

SEE DEPARTMENT RESPONSE TO COMMENT 84237

SEE DEPARTMENT RESPONSE TO COMMENT 85535"

85585 Sharon Church 9/23/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85585>

permanent health and safety standard

I strongly support enacting a permanent health and safety standard for COVID 19. Virginia needs a strong permanent standard that provides clear guidance for employers. If we can limit the virus we can get our economy working again. Thanks

---

SEE DEPARTMENT RESPONSE TO COMMENT 84196

85586 anonymous 9/23/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85586>

strongly oppose

strongly oppose this being made permanent!!! This will continue to hurt our economy.

---

SEE DEPARTMENT RESPONSE TO COMMENT 84237

85587 Pamela Pouchot 9/23/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85587>

Strongly support

The regulations enacted due to the Covid-19 virus work to ensure a healthy work environment. Why would anyone want to go back to an unclean and potentially infectious work environment. I strongly urge Virginia to keep these health measures to keep all Virginians as healthy as possible.

---

SEE DEPARTMENT RESPONSE TO COMMENT 84196

85588 Pamela Tetro, NP, Geriatric Services UVA 9/23/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85588>"I strongly support

Virginia needs strong health and safety policies for all of its workers. Not just for the next six months but permanently. COVID-19 is our current threat for who knows how long and we have to be prepared for the next pandemic. We need clear guidelines for workers and employers to keep everyone safe. we need clear guidelines for workers and employers to keep everyone safe.

---

SEE DEPARTMENT RESPONSE TO COMMENT 84196

85590 Richard Lindsay 9/23/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85590>

Strongly oppose permanent order

This temporary order is so new we do not know its affect on businesses and more importantly we don't know how effective it is from a safety perspective. The least we could do is see how this works out and what lessons can be learned from a "temporary" rule.. It seems outrageous to me, almost a fraud, to institute a temporary rule and within 60 days make it be permanent, with no results to show. The least we could do is analyze the results before piling on excessive regulations and open up many businesses to excessive liability.

---

SEE DEPARTMENT RESPONSE TO COMMENT 84237

85591 CB Smith

9/23/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85591>

Strongly oppose

With stringent regulations in place businesses will be afraid to open for fear of lawsuits. That will limit job opportunities, and people want jobs. The current temporary order is our best medical guess as effective protective measures. I am worried that when we reopen we may or may not see a spike in cases, which then means that perhaps these protective orders weren't our best solution. I strongly encourage you to keep this protective order in a temporary status until after, at minimum this winter's is cold and flu season is over.

---

SEE DEPARTMENT RESPONSE TO COMMENT 84237

Review of all COVID-19 related inspections under the Emergency Temporary Standard is conducted centrally by the Department with both a programmatic and legal review prior to a decision to issue or not issue violations/penalties to assure consistent enforcement across the Commonwealth. The Department does not anticipate any significant increase in litigation with regard to the Emergency Temporary Standard or any permanent standard.

85592 Terri Cooper

9/23/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85592>

Strongly oppose!

This is a violation of constitutional rights and cannot be enforced . There will be mass dissent.

---

"The Department disagrees with the Commenter's statement that the Standard ""is a violation of constitutional rights and cannot be enforced.""

To the extent that the Commenter is referring to gubernatorial mandates (e.g., "face mask" mandate in Executive Orders) being unconstitutional, according to the Office of the Attorney General on at least twelve occasions the Governor's COVID-19 restrictions have been upheld by circuit courts throughout the Commonwealth. Two of these specifically challenged the face covering requirements. Schilling et al. v. Northam, CL20-799 (Albemarle Co. Cir. Ct. July 20, 2020) ; Strother, et al. v. Northam, CL20-260 (Fauquier Co. Cir. Ct. June 29, 2020).

SEE DEPARTMENT RESPONSE TO COMMENT 84237

85594 Trish Vaughan 9/23/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85594>

Keep the Standard on Occupational Exposure to COVID 19 permanent for Employers

Our citizens need to feel safe going to work, have access to PPE and know that their jobs are not at risk in the event they contract Covid-19. Please keep the Virginia's Emergency Temporary Standard on Occupational Exposure to COVID-19 in place permanently and show how Virginia is leading the way again by keeping these standards in place rather than having them expire in January.

Show the rest of the states, that Virginia's protects our employees in our commonwealth. Safety first, will lead us into economic recovery faster. Thank you.

---

SEE DEPARTMENT RESPONSE TO COMMENT 84196

85595 Kathleen Temple 9/23/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85595>

strongly support!

Our society desperately needs permanent workplace health and safety standard on COVID-19 to support essential workers and ALL workers. The current pandemic is surely not going to be our last. We must set up the safety standards now

- Virginia needs a strong and \*permanent\* standard.

- The proposed standard provides strong protections for workers and clear guidance for employers.

- This standard will save lives, prevent COVID-19 spread and help get Virginia's economy moving again.

Thank you for your consideration,

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SEE DEPARTMENT RESPONSE TO COMMENT 84196

85596 David Knighton 9/23/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85596>

Strongly oppose permanent mandate

Strongly oppose

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

85597 Kathleen Kurtz 9/23/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85597>

Workplace safety

I strongly support the passage of a permanent workplace health and safety standard on COVID-19 to support the many workers who do important work for all of us. It is only right to ensure their safety.

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SEE DEPARTMENT RESPONSE TO COMMENT 84196

85598 Irene Caperton 9/23/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85598>

Permanent workplace health and safety standard on COVID-19

I ask your support of a permanent workplace health and safety standard on COVID-19. This will serve to protect employees and provide guidance to employers. The result will be improved health outcomes and a more efficient recovery of the economy. Thank you for consideration of this action.

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SEE DEPARTMENT RESPONSE TO COMMENT 84196

85601 Jeff Busch 9/23/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85601>

Strongly oppose

I strongly oppose making this permanent. The studies are ever evolving for the virus.

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

85602 Kristen Reid 9/23/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85602>

Strongly oppose making this permanent

While I could support an extension, I can't support making this permanent. We have no idea what the future holds so any move of permanency would be a mistake and an infringement on rights.

---

SEE DEPARTMENT RESPONSE TO COMMENT 84237

85603 Lois Sandy 9/23/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85603>



Please support upgraded standards to guide employers and protect all workers re: COVID-19 advice.

Please support the best scientific advice for guiding employers and protecting all workers from exposure to COVID-19. I believe it is the only way we can safely open up and improve our schools and economy.

Thank you for serving the well-being of all citizens,

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SEE DEPARTMENT RESPONSE TO COMMENT 84196

85605 Rodney Weaver 9/23/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85605>

Strongly Oppose

Strongly oppose this mandate!

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

85607 James White 9/23/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85607>

Permanent masks

I strongly oppose permanent masking as a form of preventing COVID as a infectious control measure by the department of labor of the state of Virginia. "

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

85609 M. Volz 9/23/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85609>

Agree!!

As a small business owner caring for cancer patients and senior citizens, it is crucial that businesses and individuals take public health & safety seriously. This mandate is necessary!

Too many, including our president, have ignored the experts resulting in our country being overrun with covid 19. Public health is not and should not be a political issue. We need this mandate to ensure that everyone is doing their part for the good of the community

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SEE DEPARTMENT RESPONSE TO COMMENT 84196

85610 Roger Barnett 9/23/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85610>

Strongly Oppose masks

Strongly oppose masks and more onerous regulations! Stop injecting a political ruse into a permanent cure for a temporary problem.

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"SEE DEPARTMENT RESPONSE TO COMMENT 84237

SEE DEPARTMENT RESPONSE TO COMMENT 85535

85611 Jacqueline H. Dwyer 9/23/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85611>

I STRONGLY SUPPORT Virginia's Emergency Temporary Standard (ETS)

Virginia needs a strong permanent standard and the ETS is a good start, although I hope it will become permanent or at least be in effect for more than the six months that COVID-19 is expected to still be around. The proposed standard provides strong protections for workers and clear guidance for employers. It will save lives, prevent COVID-19 spread and help get Virginia's economy moving again. Thank you!

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SEE DEPARTMENT RESPONSE TO COMMENT 84196

85612 Deborah Talley 9/23/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85612>

Permanent Standards For The Workplace

I think that permanent standards are needed to protect all workers, because it seems like COVID isn't going away. And all worker's need to be protected from any pandemics that may come about in the future.

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SEE DEPARTMENT RESPONSE TO COMMENT 84196

85613 anonymous 9/23/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85613>

Let people decide for themselves! Stop the control.

We are 6 months into this 14 days to flatten the curve. We are 6 months into realizing that the scientific predictions were wrong. We are 6 months into Government overreach.

What ever happened to people making their own choices for themselves and their families? If people feel the need to wear a mask, let them. If people do not feel the need to wear a mask, they should be allowed that

right as well. Employers should not be made to require their workers to wear a mask, if they want to enforce mask wearing, they can. If an employer does not want to force mask wearing on their employees or customers then they shouldn't. Then customers and employees alike all have the choice to continue work or giving their business to those who share their choices. It really is a simple idea, one that protects individuals own rights.

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"SEE DEPARTMENT RESPONSE TO COMMENT 84237

SEE DEPARTMENT RESPONSE TO COMMENT 85535

85614 Charlotte Harman 9/23/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85614>

Permanent protection plan

Virginia should always protect workers. We need a permanent health protection plan in force not just for COVID but for all flus present and not yet here.

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SEE DEPARTMENT RESPONSE TO COMMENT 84196

85615 Floyd Colemam 9/23/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85615>

opposition

no no. This is infringement

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

85616 Susan Buchheit 9/23/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85616>

This is diabolical

STRONGLY opposed to the Department of Labor and Industry's COVID-19 Regulations becoming Permanent. In a time where some reports estimate that 20-25% of businesses will close forever, these regulations threaten to drive those numbers even higher.

Businesses, especially small businesses, are already struggling to survive these hard economic times and these regulations only increase the burden on them. The business community had no real input when they were originally drafted and developed and when they were put in place. The regulations were developed too quickly and are incredibly broad in scope.

On top of these regulations, the business community also needs to follow guidelines from the CDC, OSHA and there is guidance in the CARES ACT as well. Those regulations alone change almost week to week, increasing

the amount of regulations that businesses will have to adhere to will only make a hard situation more difficult.

We also see the DOLI Regulations dramatically increasing the amount of litigation that will go to the courts. They have created a litany of reasons for filing a lawsuit, and a majority of those reasons are based on an individual's perspective, rather than on facts and the situation.

Making the DOLI Regulations permanent will hurt businesses and our individual freedoms.

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"SEE DEPARTMENT RESPONSE TO COMMENT 84956

Review of all COVID-19 related inspections under the Emergency Temporary Standard is conducted centrally by the Department with both a programmatic and legal review prior to a decision to issue or not issue violations/penalties to assure consistent enforcement across the Commonwealth. The Department does not anticipate any significant increase in litigation with regard to the Emergency Temporary Standard or any permanent standard.

85618 Susan Parsley 9/23/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85618>

Strongly opposed to permanent restrictions

I believe making the measure put in place for Covid permanent is extremely premature. This also should be an individual choice, not one forced upon anyone

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

85619 Jennie L Waering 9/23/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85619>

Please protect Virginia's workers

Dear Virginia Legislators,

Do you remember how it felt like when your colleague from Lunenburg failed to tell you and his other fellow legislators that he had tested positive for COVID 19? What if your employer made you come back to work without taking the precautions required in the Temporary Act after co-workers tested positive? What do you trade off to risk infection? What if you are the breadwinner for your family and you cannot afford to be fired? What if your elderly and immunocompromised mother lives in your home and you were concerned about taking the virus home to her? What if you have a child with asthma and her doctor told you, the parent, that you must take extreme precautions against her acquiring the virus? This is NOT a burden on the employer issue. This is NOT a money issue. This is a life and death issue for some employees and their families- it could be for you, for your spouse, for your son or your daughter. These are extraordinary times. We don't know when those times will go away. More than 200,000 United States Citizens have died from this virus. Please think with your heart when you vote on this issue. Please think of your mandate as a legislator to work FOR THE PEOPLE. Please don't let your people down. Let your vote be on the side of morality. Remember you are commanded to care for "the least of these."

Thank you for your consideration.

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This Standard is not being proposed as legislation to the General Assembly. The Standard is being considered for adoption by the Virginia Safety and Health Codes Board pursuant to Va. Code §40.1-22(6a) and would be enforced by the Department of Labor and Industry's (DOLI) Virginia Occupational Safety and Health (VOSH) Program.

SEE DEPARTMENT RESPONSE TO COMMENT 84196

85620 anonymous 9/23/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85620>

Strongly Support Covid Workplace Safety Requirements.

Virginia needs a strong permanent standard for work protection and workplace safety. The proposed standard provides strong protections for workers and clear guidance for employers. This standard will save lives, prevent COVID spread, and as a result help get the Commonwealths workplaces and economy back to work and moving forward.

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SEE DEPARTMENT RESPONSE TO COMMENT 84196

85622 Isabel Ressler Virginia Organizing 9/23/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85622>

Support permanent regulations, protect workers!

This standard will save lives, prevent COVID-19 spread and help get Virginia's economy moving again. Please make these standards permanent!

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SEE DEPARTMENT RESPONSE TO COMMENT 84196

85623 Susan Joyce 9/23/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85623>

COVID Safety Standards

Virginia needs clear and enforcible health and safety standards to prevent COVID 19 in the work place.

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SEE DEPARTMENT RESPONSE TO COMMENT 84196

85626 Carolyn Caywood 9/23/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85626>

Strongly Support a Permanent Standard against COVID-19

Workers in Virginia need a strong permanent standard to protect their health and safety. I think the proposed standard provides strong protections for workers and clear guidance for employers. It's the sort of guidance I relied on when I was a manager. Now I rely on younger people taking precautions to avoid spreading COVID-19 to those of us who are more vulnerable.

This standard will save lives and prevent COVID-19 spread, and that will help get Virginia's economy moving again. We have to stop this lurching back and forth between relaxing rules and infection surges that force tightening of rules. Standards make a difference.

---

SEE DEPARTMENT RESPONSE TO COMMENT 84196

85627 Dale Dean 9/23/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85627>

I Strongly Support Permanent Standards for Workplace Health and Safety in this Era of Covid-19

I strongly support making permanent the Emergency Temporary Standards (ETS) for Covid-19. VA needs strong permanent standards for workplace health and safety to ensure social distancing, regular cleaning, or other safety protocols. These standards will protect workers and provide clear guidance for employers. They can limit the spread of Covid-19, save lives and help Virginia's economy recover.

Thank you for considering my comment.

---

SEE DEPARTMENT RESPONSE TO COMMENT 84196

85630 Angela Brown 9/23/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85630>

Strongly support standards for protecting workers

Please support strong standards to protect workers and others, especially from covid.

Thank you for caring about the citizens who are keeping things going these days.

—grateful senior citizen

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SEE DEPARTMENT RESPONSE TO COMMENT 84196

85631 Dana Brown 9/23/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85631>

Strongly Opposed

Strongly opposed to making the Covid-19 restrictions permanent.

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

85632 Rachel Clark 9/23/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85632>

Strongly oppose permanent face cover requirements

I strongly oppose a permanent face covering requirement as there is no scientific or clinical evidence to support this measure. The current pandemic is an isolated situation and should be treated as such." "SEE DEPARTMENT RESPONSE TO COMMENT 84237

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SEE DEPARTMENT RESPONSE TO COMMENT 85535

85635 anonymous 9/23/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85635>

Strongly oppose permanent face cover requirements

I strongly oppose a permanent face covering requirement as there is no scientific or clinical evidence to support this measure. The current pandemic is an isolated situation and should be treated as such.

---

SEE DEPARTMENT RESPONSE TO COMMENT 84237

85636 Patricia A Seiler 9/23/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85636>

Strongly support

I strongly support passage of a permanent workplace health and safety standard on COVID-19 to keep workers safe. All of us have been told to wear masks, wash our hands, and practice social distancing. All workplaces should be required to do their part to make sure that workers are as safe as possible.

Virginia needs a strong permanent standard. A temporary standard is not enough.

The proposed standard provides strong protections for workers and clear guidance for employers. It will save lives, prevent COVID-19 spread and help get Virginia's economy moving again.

We are counting on you to continue to protect everyone who works in Virginia.

Sincerely,

---

SEE DEPARTMENT RESPONSE TO COMMENT 84196

85637 Teresa McConnel

9/23/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85637>

Strongly Support Health and Safety Standard

I am writing to strongly support a permanent Workplace Health and Safety Standard for workers in Virginia, especially in this time of Covid 19. It is unclear how long the danger and threat of this contagious disease will continue to be among us. Workers need to know that if they risk their health and their lives to return or continue to work at their workplaces, that the Commonwealth of Virginia will be there to uphold basic standards for their safety.

---

SEE DEPARTMENT RESPONSE TO COMMENT 84196

85639 K Stewart

9/24/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85639>

Strongly opposed to Restrictions

Businesses are already suffering and more will close if restrictions are not lifted. People cannot conduct their business in the current hostile to business environment. These restrictions hurt the customers as well because they will not be able to fully patronize a business under the current restrictions. All need to be lifted including the idiotic mask requirement. Stop causing further division and destruction of the community.

Virginia must be fully open and restrictions free!

---

SEE DEPARTMENT RESPONSE TO COMMENT 84956

85640 David H

9/24/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85640>

Strongly opposed

I strongly oppose keeping permanent mask wearing in place. \_\_\_\_\_

"SEE DEPARTMENT RESPONSE TO COMMENT 84237

SEE DEPARTMENT RESPONSE TO COMMENT 85535

85642 Rebecca

9/24/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85642>

Workplace safety standard



I support the transition of the temporary workplace safety standard to a permanent workplace safety standard. It is important that people be safe at their jobs, especially because viruses like this are not a one-off occurrence. Stronger rules will help everyone.

---

SEE DEPARTMENT RESPONSE TO COMMENT 84196

85643 anonymous 9/24/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85643>

Moving Forward

Need for all Workers No Exceptions

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SEE DEPARTMENT RESPONSE TO COMMENT 84196

85647 Tom Schoedel 9/24/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85647>

Opposition to DOLI regulation

Opposition to DOLI regulation

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

85650 Jeff Stonehill 9/24/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85650>

No Way Strongly oppose

Its time to get back to ""business"". Stop trying to control small business. Its the flu, take universal precautions and on with it !

---

SEE DEPARTMENT RESPONSE TO COMMENT 84956

85651 Debby Dirvan 9/24/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85651>

Opposed

As a small business owner, I am opposed to the excessive regulations mandated on small business. The increased costs and potential liability create an oppressive environment for business development in the Commonwealth.

---

SEE DEPARTMENT RESPONSE TO COMMENT 84956

85654 Rebecca

9/24/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85654>

covid regulations

we have an extremely contagious virus, we MUST wear masks.

---

16VAC25-220-10.C provides that the Standard applies “to every employer, employee, and place of employment in the Commonwealth of Virginia within the jurisdiction of the VOSH program....” The Standard does not contain a face covering mandate for the general public. That issue is the purview of the Virginia Department of Health and Governor’s Executive Orders (e.g., Executive Order 63).

The Standard does require employees to wear either personal protective equipment, respiratory protection equipment, or face coverings in situations where physical distancing of six feet from other persons cannot be maintained.

---

SEE DEPARTMENT RESPONSE TO COMMENT 84237

85655 anonymous

9/24/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85655>"opposed

You can't legislate Common Sense. Big Brother bureaucracy again trying to think for us. Once the workshift is over, the lemmings are going to go do what they please where they please to do it.

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This Standard is not being proposed as legislation to the General Assembly. The Standard is being considered for adoption by the Virginia Safety and Health Codes Board pursuant to Va. Code §40.1-22(6a) and would be enforced by the Department of Labor and Industry’s (DOLI) Virginia Occupational Safety and Health (VOSH) Program

The Commenter seems to suggest that employers should not provide strong workplace protections to prevent the spread of SARS-CoV-2, when employees can get infected anyway by not maintaining the same kind of protections in their private life, and then apparently bring that infection back into the workplace. It is exactly because there currently is a real possibility that infections obtained outside of work – whether by an employee, or a customer, or a patient, or a subcontractor – that employers need to maintain workplace COVID-19 protections for those employees who do act responsibly away from work.

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

85657 anonymous

9/24/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85657>

"DOLI

Opossed

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

85658 anonymous 9/24/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85658>

"opposed

Unfair in this hard times

---

SEE DEPARTMENT RESPONSE TO COMMENT 84956

85659 Emily T 9/24/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85659>

Strongly Oppose

I strongly oppose keeping permanent mask wearing in place.

---

SEE DEPARTMENT RESPONSE TO COMMENT 84237

85660 Dorothy Chaplin 9/24/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85660>

COVID

Please stop putting added pressure to employers. We are all doing our part to ensure folks are safe, but the regulations cost us time and money that could go to help us fight COVID.

Please stop these COVID regulations on employers.

---

SEE DEPARTMENT RESPONSE TO COMMENT 84956

85661 anonymous 9/24/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85661> No Masks! Stop trying to take away our freedoms!

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

SEE DEPARTMENT RESPONSE TO COMMENT 85535

85662 Elizabeth Giles 9/24/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85662>

Proposed permanent face covering

I strongly oppose this proposed regulation.. The pandemic is an isolated incident and there is absolutely no scientific research or clinical evidence to support the proposal. Moving in this direction would present the community with continued manifestation of mental, emotional and social illnesses. This dictate is an infringement on human rights.

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

SEE DEPARTMENT RESPONSE TO COMMENT 85535

85663 David Giles 9/24/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85663> No health crisis / no masks.  
In times of no pandemic, no masks!

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

SEE DEPARTMENT RESPONSE TO COMMENT 85535

85664 Pat Lewis, Chesapeake Bank 9/24/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85664>

Strongly OPPOSE making DOLI regulation permanent

As a small employer that does it's absolute best to provide a safe, engaging, great work environment for all of our employees, we strongly oppose making this DOLI regulation permanent. It is burdensome, and takes precious time, efforts and resources away from truly helping our employees. It has caused us to do nothing more that we were already doing, but has added a level of administration and regulation that is causing a distraction. Virginia employers are smart enough to do the right things to protect it's employees, OR employees will seek employment elsewhere, which takes care of any issue that DOL would trying to address with this burdensome regulation. Please do the right thing and let this regulation expire. Thank you

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SEE DEPARTMENT RESPONSE TO COMMENT 84956

85665 Stacy Watson 9/24/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85665>

Time to return to business as normal

these mandates & protocols are a burden to businesses and our communities. I strongly oppose making these protocols permanent as it is apparent that this virus is as dangerous as the flu, if not less than.

It is time for our businesses, communities & people to live & work as before - free & with choices. It is time for us to build our economy & community back as we have always done as Americans. Let's put our funds to growth & not towards limitations & ridiculous protocols. Stop living in fear & stop forcing insane regulations on our businesses!

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SEE DEPARTMENT RESPONSE TO COMMENT 84956

85667 Timothy J 9/24/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85667>

Oppose - freedom, trust in citizens, this won't stop with COVID

Virginians should be free to choose how they want to handle this and the next health crisis to come. This is about government overreach and the taking away of our freedoms. The market place and we who make it work should be free to determine the extent to how we treat these situations. If a business doesn't provide the protection we believe is necessary, don't engage it. If an employer refuses to provide the protection we believe is necessary, then find one who does. The Virginia government is not our mother and the more responsibility and freedoms we cede to it will empower this leviathan to continue dictating how we must live and raise our families.

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SEE DEPARTMENT RESPONSE TO COMMENT 84956

85668 Ray Funkhouser 9/24/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85668>

Forced mask use! Overreach!

This is such an example of government overreach. We have seen many examples during this pandemic of government overreach. This is especially true when someone wants to feel powerful without using common sense. This one size fits all mentality is very harmful to not only individuals but businesses as well. Small businesses have been put out of business for no reason. This legislation is not a good one and too overreaching. Does a private home become a public place if someone visits. Please let this one go. We have seen that we have contained this virus to what the original objectives were. Flatten the curve so our health system can handle the cases that arise. We have done that. Keep promoting awareness of what can be done to minimize the virus.

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This Standard is not being proposed as legislation to the General Assembly. The Standard is being considered for adoption by the Virginia Safety and Health Codes Board pursuant to Va. Code §40.1-22(6a) and would be enforced by the Department of Labor and Industry's (DOLI) Virginia Occupational Safety and Health (VOSH) Program.

SEE DEPARTMENT RESPONSE TO COMMENT 84237

SEE DEPARTMENT RESPONSE TO COMMENT 85535

85669 Annie Cupka 9/24/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85669>

Strongly oppose making this permanent.

Our businesses are already struggling to stay alive. Making these permanent will further stifle their ability to recover.

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SEE DEPARTMENT RESPONSE TO COMMENT 84956

85670 Oscar Giles 9/24/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85670>

Permanent Face Covering

Permanent Face Covering. Absolutely opposed to the above proposed regulation.

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

SEE DEPARTMENT RESPONSE TO COMMENT 85535

85671 Brandon Knowlton 9/24/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85671>

OPPOSE

To much regulation and overstepping.

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

85672 Jennifer Ruckner 9/24/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85672>

Strongly opposed

Strongly opposed to this action.

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

85674 anonymous 9/24/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85674>

"STOP Th MADDNESS

Keep DOLI out! As a business owner we don't need another governing body that will create another layer of guidelines.

Many businesses and most especially small business are working with reduced revenue and higher cost of operations due to the restrictions the government has already created.

I have always followed infection control processes, I've implemented changes to follow CDC and VDH guidelines to make my businesses as safe as possible for our employees and customers.

As a small businesses owner I'm personally still recovering from the closure and most certainly do not have the resources to pay employees to stay home for several days because of common allergy, cold and flu symptoms mirror SARS symptoms.

Adding this new layer will only burden on the mental wellness of an employee and the business with the slightest sniffle, cough or pressure that come with these common conditions. Please let's STOP THE MADNESS!!!

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SEE DEPARTMENT RESPONSE TO COMMENT 84956

85675 Buddy Henley 9/24/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85675>

COVID-19 Workplace Safety Emergency Regulations

I am a business owner who primarily conducts business in Virginia, and I oppose making the COVID-19 Workplace Safety Emergency Standard permanent.

Six months into the pandemic, I have learned to adapt to this unprecedented time by implementing industry-specific guidance from the Governor, the Virginia Health Department, the CDC, and OSHA to ensure physical distancing and extensive sanitization. I want to keep my employees safe because I care about their welfare.

Now is not the time to make the emergency temporary standard permanent when it's likely this pandemic will be temporary. Imposing "one size fits all" COVID-19 regulations on all employers and employees is unreasonable especially when guidance is continually changing as we learn more about the virus and how best to protect against it's spread. Knowing the temporary standard expires in February 2021, there is plenty of time for the Board to wait until we know more about how long the pandemic could last before taking any further action.

My company takes its responsibility for protecting our employees seriously. Making the COVID-19 emergency regulations permanent will only make a difficult situation worse for employers and employees. I remain concerned about the impact many of the provisions of the emergency regulations are having on my business and encourage the Board to not make them permanent.

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This Standard is not being proposed as legislation to the General Assembly. The Standard is being considered for adoption by the Virginia Safety and Health Codes Board pursuant to Va. Code §40.1-22(6a) and would be enforced by the Department of Labor and Industry's (DOLI) Virginia Occupational Safety and Health (VOSH) Program.

SEE DEPARTMENT RESPONSE TO COMMENT 84956

85676 Patricia Vinkenes 9/24/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85676>

The Gospel requires us to protect our most vulnerable workers--permanently extend.

Jesus tells us that whatever we do for the least of our brothers, we do for him.

When over 200,000 Americans have died, and as we approach the flu season, it is critical that you permanently extend these protections.

COVID is not going away any time soon. A clear, science-based standard from one agency gives necessary guidance to employers and workers during a pandemic. The Institute for Health Metrics & Evaluation at the University of Washington predicts that death will reach 410,000 by January 1st. These protections are vital for all Virginians but particularly our most vulnerable essential workers.

Thank you

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SEE DEPARTMENT RESPONSE TO COMMENT 84196

85677 Kaley Crosen 9/24/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85677>

Strongly oppose!

Strongly oppose!!

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

85678 Judy Rhodes 9/24/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85678>

Absolutely no need to make these permanent.

Small businesses are struggling and do not need to face more regulation, especially by making these items permanent. We work very hard already at complying with mandates that have been handed down. Our goal as business owners is to keep our customers safe and happy but we don't need the state looking over our shoulder at every turn to tell us how to do that. We are adults that are able to make these determinations on our own.

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SEE DEPARTMENT RESPONSE TO COMMENT 84237



85679 Neil Adams 9/24/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85679>"Strongly Oppose Making this Measure Permanent

Steps should be take to prevent the spread of Covid-19 to keep the public safe, but if these measures are made permanent then it will be difficult to change when the crisis has passed. Don't make a bad situation worse.

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

85680 Dan Walker Waco, Inc 9/24/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85680>

COVID-19 Workplace Safety Emergency Regulations

I am a business owner in Virginia, and I oppose making the COVID-19 Workplace Safety Emergency Standard permanent.

Six months into the pandemic, I have learned to adapt to this unprecedented time by implementing industry-specific guidance from the Governor, the Virginia Health Department, the CDC, and OSHA to ensure physical distancing and extensive sanitization. I want to keep my employees safe because I care about their welfare.

Now is not the time to make the emergency temporary standard permanent when it's likely this pandemic will be temporary. Imposing "one size fits all" COVID-19 regulations on all employers and employees is unreasonable especially when guidance is continually changing as we learn more about the virus and how best to protect against it's spread. Knowing the temporary standard expires in February 2021, there is plenty of time for the Board to wait until we know more about how long the pandemic could last before taking any further action.

My company takes its responsibility for protecting our employees seriously. Making the COVID-19 emergency regulations permanent will only make a difficult situation worse for employers and employees. I remain concerned about the impact many of the provisions of the emergency regulations are having on my business and encourage the Board to not make them permanent.

Respectfully,

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[STANDARD RESPONSE TO "ONE SIZE FITS ALL" COMMENTS FROM THOSE THAT OPPOSE THE PROPOSED STANDARD]

The Department respectfully disagrees that the Standard is a "one size fits all" regulatory approach.

At its core the Standard is a risk management system to prevent or limit the spread in the workplace of the SARS-CoV-2 virus which causes COVID-19.

It is designed to provide basic protections for all employees and employers within the jurisdiction of the Virginia Occupational Safety and Health program.

It provides certain mandatory requirements for all employers and specific additional requirements for Very High, High, and Medium risk job tasks centered around mitigation of hazards.

The Standard is also designed to incentivize employers to make changes in the workplace that will enable employees in certain situations to be classified to a reduced level of risk (e.g., from high to medium or from medium to lower), thereby also reducing the employer's compliance and cost burdens.

The use of the word "permanent" in reference to the Standard reflects the fact that, if adopted, the Standard does not currently have a date on which it would expire. However, the Board has the authority to amend or repeal the Standard as the workplace hazards associated with the SARS-CoV-2 virus and COVID-19 disease evolve and eventually lessen.

There is substantial scientific evidence and infection, hospitalization and death statistics that support the conclusion that SARS-CoV-2 presents a danger to employees in the workplace.

It is the Department's position that the danger posed to employees and employers by the SARS-CoV-2 virus and COVID-19 disease are necessary and appropriate to regulate after the expiration of the current COVID-19 Emergency Temporary Standard (ETS) on January 26, 2021. The number of COVID-19 daily infections in Virginia and the United States continue to support the conclusion of ongoing widespread community transmission and the continuing possibility of the introduction of SARS-CoV-2 into Virginia's workplaces for many months to come. It is well recognized that one or more vaccines will not be widely available to the public and employees until well after January 26, 2021.

The Department also believes that the Standard will ultimately help businesses to grow and bring customers back when those customers see that employers are providing employees with appropriate protections required by the Standard from SARS-CoV-2. If customers don't feel safe because employees don't feel safe, it will be hard for a business to prosper in a situation where there is ongoing community spread.

Review of all COVID-19 related inspections under the Emergency Temporary Standard is conducted centrally by the Department with both a programmatic and legal review prior to a decision to issue or not issue violations/penalties to assure consistent enforcement across the Commonwealth. The Department does not anticipate any significant increase in litigation with regard to the Emergency Temporary Standard or any permanent standard.

The Department notes that the Standard provides flexibility to business through 16VAC25-220-10.G.1 which provides that "To the extent that an employer actually complies with a recommendation contained in CDC guidelines, whether mandatory or non-mandatory, to mitigate SARS-CoV-2 virus and COVID-19 disease related hazards or job tasks addressed by this standard, and provided that the CDC recommendation provides equivalent or greater protection than provided by a provision of this standard, the employer's actions shall be considered in compliance with this standard."

The Department acknowledges that all of its VOSH laws, standards and regulations can serve to place compliance burdens on employers and employees, particularly in the small business sector. The Department also believes that employers that embrace providing sound and comprehensive workplace safety and health protections can make their business more efficient and profitable through such benefits as reduced injuries, illnesses and fatalities, reduced workers' compensation costs, reduced insurance costs, improvements in morale and innovation, and increased productivity.

The Department strongly encourages Virginia's small business owners to take advantage of free and confidential occupational safety and health onsite and virtual consultation and training services to address

COVID-19 compliance issues. More information about the VOSH Consultation Services can be found at: <https://www.doli.virginia.gov/vosh-programs/consultation/>

In addition, free Outreach, Training, and Educational materials to assure compliance with COVID-19 requirements can be found at: <https://www.doli.virginia.gov/covid-19-outreach-education-and-training/>

The proposed permanent standard has been subject to the following notice and comment procedures. The Virginia Safety and Health Codes Board held a 60 day written comment period for the Proposed Permanent Standard, with the comment period running from August 27, 2020 to September 25, 2020. The Board held a Public Hearing on September 30, 2020. A revised draft of the Proposed Permanent Standard will be published with an additional 30 day comment period prior to any Board action. A public hearing will also be held. An economic impact analysis/cost analysis will be prepared for the revised proposed permanent standard.

85682 VL Roth 9/24/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85682>

Strongly Opposed

Why do VA employers need rules more restrictive than those set by the CDC?

This may be a pandemic, but not a ""permanent-dimic"

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

85683 James Bennett 9/24/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85683>

Strongly Oppose

This is a burden to small businesses. As conditions change such as vaccines, availability of PPE, economy, changing conditions. Unreasonable and unattainable requirements will put many small businesses out of business! If somehow business can stay open, they would have to significantly increase cost to end user customers to try to keep their doors open, which will hurt all.

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SEE DEPARTMENT RESPONSE TO COMMENT 84956

85684 Daniel Rude 9/24/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85684>

I am a business owner in Virginia, and I oppose making the COVID-19 Workplace Safety Emergency Standard permanent.

Six months into the pandemic, I have learned to adapt to this unprecedented time by implementing industry-specific guidance from the Governor, the Virginia Health Department, the CDC, and OSHA to ensure physical distancing and extensive sanitization. I want to keep my employees safe because I care about their welfare.

Now is not the time to make the emergency temporary standard permanent when it's likely this pandemic will be temporary. Imposing "one size fits all" COVID-19 regulations on all employers and employees is unreasonable especially when guidance is continually changing as we learn more about the virus and how best to protect against its spread. Knowing the temporary standard expires in February 2021, there is plenty of time for the Board to wait until we know more about how long the pandemic could last before taking any further action.

My company takes its responsibility for protecting our employees seriously. Making the COVID-19 emergency regulations permanent will only make a difficult situation worse for employers and employees. I remain concerned about the impact many of the provisions of the emergency regulations are having on my business and encourage the Board to not make them permanent.

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SEE DEPARTMENT RESPONSE TO COMMENT 85680

85685 Frank Lucia Delta Dental of Virginia 9/24/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85685>

Clarity, Consistency and Fairness needed

Delta Dental of Virginia is the Commonwealth's largest dental benefits carrier. We employ more than 300 Virginians, provide dental coverage to more than two million people and more than 5,000 employer groups. From our headquarters in Roanoke, we answer more than 670,000 calls and process more than four million claims annually. Our subscribers and the dentists who serve them rely on our quick and accurate claims processing.

Our sophisticated system has allowed us to continue meeting the needs of our customers even as we have deployed more than 90 percent of our workforce to a work-from-home arrangement. This has allowed us to implement specific health and safety measures at our office facilities based on CDC and other recommendations. Protecting the health and safety of our employees is and will continue to be our top priority. While we have been able to maintain an excellent level of service throughout this pandemic, we have a need to begin returning key employees to the office. To do so, it is imperative that the health and safety rules are clear, consistent and reasonable.

While we support workplace health and safety protocols, Delta Dental of Virginia echoes the position communicated by the Virginia Chamber of Commerce and we encourage you to refrain from making the temporary standards permanent. If a permanent rule is pursued, we support the additional clarifications recommended by the Chamber. Lastly, we request that enforcement of any COVID-19-related health and safety provisions be treated with leniency, particularly given the extent to which Virginia businesses are attempting to meet demanding, and sometimes complicated and changing, rules.

Thank you for your consideration.

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SEE DEPARTMENT RESPONSE TO COMMENT 84956

85686 Jim Burke 9/24/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85686>

Strongly support passage of a permanent workplace health and safety standard on COVID-19

We have recently seen that Virginia's temporary workplace health and safety standards have improved working conditions. Virginia needs, however, a strong permanent standard. The proposed standard provides strong and essential protections for workers and clear guidance for employers that will enhance business operations.

I strongly support passage of this standard which will save lives, prevent COVID-19 spread and help get Virginia's economy moving again.

Thank you

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SEE DEPARTMENT RESPONSE TO COMMENT 84196

85687 DAVID 9/24/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85687>

Very strongly Oppose

As a Safety professional in the construction industry for the last 20 years, my dedication and duty to my workers is to provide a safe work environment to all of them. We have followed all CDC, DOLI and Government guidelines as well as the VA temporary standard, to insure we practice social distancing, wearing of masks on all projects, hand washing stations, hand sanitizer, cleaning of equipment and education on practices to apply in their homes. All of the things I have stated are things we reinforce everyday.

To now come up with a permanent standard does not in my opinion do anything but give the state a way to make more money by inspecting business's and fining them for what ever reasons they can find. This does not help make things safer, it does not make employees feel safer and it surely does nothing to help combat and prevent this awful disease.

I strongly object to this standard being made permanent and hope we all can get thru this safely.

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SEE DEPARTMENT RESPONSE TO COMMENT 84956

85688 Anonymous 9/24/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85688>

STRONGLY opposed to COVID-19 Regulations becoming Permanent

These regulations are just an increased burden that makes running a business that much more difficult.

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SEE DEPARTMENT RESPONSE TO COMMENT 84956

85689 Bruce Burton 9/24/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85689>

Proposed Permanent Standard for COVID for Infectious Prevention:SARS-CoV-2 Virus.

I write in strong support of the proposed permanent standard to help protect Virginia workers from the COVID-19 virus. It is clear the virus is not going away anytime soon. A permanent standard would not only protect Virginia's hard-working employees during the current Corona Virus Pandemic, but would also help should a new and different pandemic occur in the future.

A clear, science-based standard from a single agency would give the necessary guidance to employers and workers alike during this and future pandemics. It is clear that all Virginia workers require these needed protections and I respectfully urge the Safety and Health Codes Board to move quickly to adopt a strong, permanent standard.

Sincerely,

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SEE DEPARTMENT RESPONSE TO COMMENT 84196

85690 Anonymous 9/24/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85690>

Covid-19 Workplace Safety Emergency Regulations

Gentlemen,

Although we agree with the emergency regulation for the COVID-19 issue, once a vaccine is in place and the epidemic is under control, there is no need to make this regulation permanent.

This would place undue hardship and cost on developers and contractors, while not controlling any hazard. If a hazard does not exist, how can you justify a regulation.

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

85691 Carl Lecher 9/24/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85691>

COVID-19 Workplace Safety Emergency Standard

Good morning,

I'm reaching out to express my opinion that the COVID-19 Workplace Safety Emergency Standard should not be made permanent. Although I feel that Virginia handled the COVID situation better than many other states, the overall approach was and is a fundamental governmental over-reach and is unconstitutional.

The limitations on the ability to work and to earn a living for both business owners and ""workers"" has been devastating to our state and our country. This should never happen again.

I strongly recommend that we do not make this a permanent standard that will undoubtedly only lead to further infringement on and erosion of our rights as citizens.

Thank you,

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" SEE DEPARTMENT RESPONSE TO COMMENT 84237

85692 Richard Franey 9/24/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85692>

Am steadfastly opposed

The fact that there has been no public hearing is of major concern as to 1) why 2) who is pushing this and 3) why are trying to enact a permanent fix for a temporary issue. As a business owner I have some significant concerns with several components of this regulation.

Hold a public forum where all comments and concerns can be heard and if it is necessary to move forward then do so. There are also some concerns that all committee members may not be transparent in their motives which creates credibility issues.

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The proposed permanent standard has been subject to the following notice and comment procedures. The Virginia Safety and Health Codes Board held a 60 day written comment period for the Proposed Permanent Standard, with the comment period running from August 27, 2020 to September 25, 2020. The Board held a Public Hearing on September 30, 2020. A revised draft of the Proposed Permanent Standard will be published with an additional 30 day comment period prior to any Board action.

SEE DEPARTMENT RESPONSE TO COMMENT 84237

85693 J Markell, Sunrise Landscape and Design 9/24/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85693>

Strongly opposed to more regulations and burdens to small business

Strongly opposed-Businesses need help, not more burdensome regulations that are very unfair. We do not have endless financial resources. Guidance would be helpful but something as random as disease cannot all fall on the employer the employee also as to be accountable to themselves and their actions.

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SEE DEPARTMENT RESPONSE TO COMMENT 84956

85696 Sonia Quinonez 9/24/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85696>

strongly support permanent labor standards to protect workers from virus spread

We need strong, rational, long-term focused leadership in this moment. Temporary safety measures are not what this moment calls for. Virginia took the lead in setting up emergency labor standards in the wake of the current pandemic; now we need you to show even stronger leadership by putting in place permanent standards that will enable our businesses to open up in rationale ways that protect workers and customers alike, that enable our communities to minimize viral spread, and that make us more resilient in the face of future pandemic threats. Please act now!

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SEE DEPARTMENT RESPONSE TO COMMENT 84196

85697 Tom Miller 9/24/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85697>

Covid-19 emergency standard

Strongly oppose a permanent emergency standard

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

85699 Anonymous 9/24/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85699>

ETS COVID

Strongly Oppose.

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

85700 Jacki 9/24/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85700>

Strongly oppose

I strongly oppose this attempt to control businesses and the population at large by restricting our rights, our ability to work, provide for our families, and our right to assemble. You are creating an enviroment that forces the individual to depend on government, and bow to government, by putting unreasonable regulations on business. Businesses have great concern for their employees and customers. One trip to Chick



Filet or Target, will show you that business have listened to the experts and changed the entire way they do business to protect their employees and their customers. Though most of the population is not in danger from this virus, the entire country has changed their daily life and the way we do business to save those who are at risk. That is what Americans do. We rise to the occasion, we beat the enemy. We dont do it by surrendering our liberties to anyone. This Board is operating beyond the scope of their existance and its desire to make these controls permant, beyond the current crisis, is evidence of their ultimate goal. The public and businesses alike have been patient and cooperative for an extremely long time, not knowing that that cooperation would be used to attempt to rule them in the future.

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SEE DEPARTMENT RESPONSE TO COMMENT 84956

85702 Kristine Heine 9/24/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85702>

Virginia's Emergency Temporary Standards

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The Department acknowledges the Comment and has no additional response as the Commenter did not raise any substantive issues.

85704 Anonymous 9/24/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85704>"Absolutely opposed to this

This would violate basic human rights.

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

85708 Anonymous 9/24/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85708>

Strongly support making temporary pandemic standards permanent

Thank you for adopting emergency temporary standards for workers during the pandemic. Since Covid-19 continues to be a major problem and likely to worsen again this Fall, I urge the Department of Labor to adopt strong, permanent standards to protect workers and provide clear guidance for employers. It is important that all employees in Virginia, but especially those on the front lines of food production and services, are protected from the novel coronavirus and other viruses that afflict our society, not only for their own health, that of their families, and people they may come into contact with, but also for the health of the commonwealth's economy. Please make the temporary standards permanent.

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SEE DEPARTMENT RESPONSE TO COMMENT 84196

85709 Melody Emswiler

9/24/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85709>

Strongly Oppose!

OSHA's General Duty Clause mandates all businesses to provide for a safe workplace for all employees; therefore, it is my opinion that it is not necessary to impose further mandates that in this case are vague and cumbersome. Prior to the passage of the temporary guidelines at the onset of the Pandemic, VA businesses were working hard at this and not because it is a mandate, but because we care about our employees, customers, and communities.

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SEE DEPARTMENT RESPONSE TO COMMENT 84956

85710 Anonymous

9/24/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85710>

Opposed

I oppose codifying a permanent DOLI infectious COVID standard. All aspects of this public health emergency should have been handled exclusively by the Virginia Department of Health. Instead, we have two state agencies performing the same activities. VOSH/DOLI are already overburdened with the occupational safety inspections and investigations in their purview. The ETS has buried them even further and compromised their ability to focus on their original mission. There is a reason that no other state jumped on this bandwagon. It is an administrative nightmare and doesn't improve any of the actual protection and mitigation strategies that employers were already implementing. Do not make this administrative nightmare permanent.

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The states of Virginia, Washington, Michigan and Oregon have adopted COVID-19 related workplace safety and health regulations.

The VOSH program has clear statutory and regulatory jurisdiction over workplace safety and health issues in the Commonwealth, including the potential for spread of infectious diseases among employees and employers, and when those employees and employers are potentially exposed to other persons who may be carriers of the infectious diseases (patients, customers, independent contractors, etc.).

While the Virginia Department of Health (VDH) has some statutory and regulatory responsibilities in certain industries (restaurant permitting, temporary labor camp permitting, nursing home licensing, etc.), its primary focus is public safety, customer safety and patient safety. VDH has very limited and in some cases no enforcement options when it comes to requiring many of Virginia's industries to limit the spread of SARS-CoV-2 among employees and employers in the workplace.

In such cases where VDH does intervene in a workplace setting that does not fall under its jurisdiction, it will attempt to obtain the employer's agreement with Governor's Executive Orders, but it does not attempt to obtain the employer's agreement to comply with VOSH laws, standards, and regulations, such as VOSH's COVID-19 ETS or other applicable VOSH standards and regulations (e.g., personal protective equipment, respiratory protective equipment, etc.).

In cases where either an employer refuses to comply with Governor's Executive Orders or VDH suspects potential violations of VOSH laws, standards and regulations, it will make a referral to VOSH for either an informal investigation or an onsite inspection. Accordingly, it is neither legal nor appropriate from a policy standpoint for VOSH to cede jurisdiction to VDH to handle all COVID-19 issues.

SEE DEPARTMENT RESPONSE TO COMMENT 84956

85711 L Massey 9/24/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85711>

Strongly opposed

I strongly oppose the Dept. of Labor and Industry's COVID-19 Regulations becoming permanent. Temporary orders will suffice as we begin to approach the end of this pandemic. Any permanent orders will financially burden small business owners, who will then need to pass those costs to consumers.

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SEE DEPARTMENT RESPONSE TO COMMENT 84956

85712 S. Pit 9/24/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85712>

Reasonable Opposition

Opposition to making standards permanent is "reasonable" as the guidance surrounding this pandemic continually changes making these standards permanent would be confusing and ineffectual. Additionally, within these standards, there are many conflicts and inconsistencies. Furthermore, the training requirements create a problem as the guidance shifts and employees question "who trained you about COVID?"

A few specific areas that place significant burdens on businesses are (1) 16VAC25-220-80 E Training- keeping current with ever-changing guidelines and retraining employees almost daily on the changes. (2) 16VAC25-220-90 C "Reasonable" concern is litigious and costly business as the concerns raised to media/social media has to be defended in both a court of law and the court-of-public-opinion. Reporting should be limited to the employer, employer's agent, and government agency all of which have significant power to address and mitigate concerns. (3) 16VAC25-220-90 D is conflicting with 16VAC25-60-110 because if the employer is following the standards, then an employee cannot refuse to work without the consequence of termination as following the standards enables the workplace to be considered safe. (4) Reporting to the Department of Health is the job of the medical professionals who are doing the testing. The Dept of Health does not accept reports from businesses. Additionally, after a business is notified by an employee, there is no follow-up or training by the health district to address employee concerns, it falls back on the non-medically trained employer to address this situation. (5) Finally, there is little notice to small businesses about changes or updates or even the publication of these standards. Businesses who do not participate with Chamber of Commerce or advocacy/lobby groups would not be aware of any of these standards or requests as the "publication of the notice in a Richmond newspaper" is a grossly inadequate method of notification in this digital time. At minimum a notice to all registered businesses with the VA SCC should be required.

Why are we standardizing a system for a particular disease? Shouldn't we be standardizing a system for any possible pandemic or community outbreak? Standards that are specific to a COVID-19 will not be pertinent to a COVID -20 and we will be doing this all over again...

These standards do not protect employees in the way that one would want to be protected and they create a burden on businesses for a condition that is out of the control of businesses. A business is not ""creating"" an environment that causes infectious disease, yet they are being treated as if they are doing so. The current news shows the lack of concern of the public with house-parties and other super-spreader events... not of businesses!

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SEE DEPARTMENT RESPONSE TO COMMENT 84956

16VAC25-220-80.E, the Standard does not require employers to retrain employees when guidelines from CDC or VDH change, unless they intend to take advantage of 16VAC25-220-10.G.1 which provides: that “To the extent that an employer actually complies with a recommendation contained in CDC guidelines, whether mandatory or non-mandatory, to mitigate SARS-CoV-2 virus and COVID-19 disease related hazards or job tasks addressed by this standard, and provided that the CDC recommendation provides equivalent or greater protection than provided by a provision of this standard, the employer's actions shall be considered in compliance with this standard.”

Retraining is required under 16VAC25-220-80.E where: 1. Changes in the workplace, SARS-CoV-2 virus or COVID-19 disease hazards exposed to, or job tasks performed render previous training obsolete;

2. Changes are made to the employer’s Infectious Disease Preparedness and Response Plan; or

3. Inadequacies in an affected employee's knowledge or use of workplace control measures indicate that the employee has not retained the requisite understanding or skill.

Pursuant to Va. Code §40.1-51.2:1, employees are protected from discrimination when they engage in activities protected by Title 40.1 of the Code of Virginia (“because the employee has filed a safety or health complaint or has testified or otherwise acted to exercise rights under the safety and health provisions of this title for themselves or others.”).

Whether an employee engaged in a “protected activity” under Title 40.1 is very fact specific, but can include occupational safety and health information shared by an employee about their employer on a social media or other public platform in certain situations.

16VAC25-220-90.C provides that:

No person shall discharge or in any way discriminate against an employee who raises a reasonable concern about infection control related to the SARS-CoV-2 virus and COVID-19 disease to the employer, the employer’s agent, other employees, a government agency, or to the public such as through print, online, social, or any other media.

If an employee raises an unsubstantiated COVID-19 related claim or makes a false COVID-19 related claim against their employer through print, online, social, or any other media, such an act by an employee would not be considered “reasonable” under the ETS and disciplinary action taken against the employee in accordance with the employer’s human resource policies would not be considered “discrimination” under the ETS/ER or Va. Code §40.1-51.2:1.

The Department respectfully disagrees with the the Commenter's statement that ""16VAC25-220-90 D is conflicting with 16VAC25-60-110"". The Department does not plan to recommend eliminating the Whistleblower provision regarding refusal to work referenced by the Commenter. Subsection D was added by the Safety and Health Codes Board, not by DOLI. It is a restatement of current regulatory requirements in 16VAC25-60-110 and specifically refers to that section, and is considered by the Board to be a restatement of employee rights consistent with current law.

The Department does not plan to recommend the elimination of reporting requirements to the Department of Health, although it does intend to recommend a change to the trigger number of positive cases.

DOLI and the Virginia Department of Health (VDH) have collaborated on a Notification Portal for employers to report COVID-19 cases in accordance with Emergency Temporary Standard (ETS) Sections 16VAC25-220-40.B.8.d and -40.B.8.e that satisfies COVID-19 reporting requirements for both agencies. The portal went live on September 28, 2020. Here is a link:

<https://www.doli.virginia.gov/report-a-workplace-fatality-or-severe-injury-or-covid-19-case/>

The Safety and Health Codes Board has the option to begin consideration of a comprehensive infectious disease standard at any time; however the Department recommends that the focus for now remain on addressing SARS-CoV-2 and COVID-19 workplace hazards.

While the Department constantly strives to improve information dissemination about its programs, and will continue to look for new ways to do so, it feels that there was widespread notice to the business community and the general public about the adoption of the Emergency Temporary Standard through print, television, and social media.

The Department respectfully disagrees with the Commenters statement that ""The current news shows the lack of concern of the public with house-parties and other super-spreader events... not of businesses!"" Unfortunately, there are numerous recent examples of large event gatherings where employees were present and exposed inside 6 feet to persons not wearing face coverings or other PPE.

85713 Anonymous 9/24/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85713>

NO MORE!

No! I will not live like a slave. Get off our backs and out of our lives. We've had enough and will not sit quietly by while government dictates every aspect of our lives in the name of ""safety"".

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

85714 anonymous 9/24/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85714>

COVID-19 Emergency Safety Regulations -- Keep Temporary

I am an employee of a small but essential business in Virginia, and I oppose making the COVID-19 Workplace Safety Emergency Standard permanent.

Six months into the pandemic, I have learned to adapt to this unprecedented time by implementing industry-specific guidance from the Governor, the Virginia Health Department, the CDC, and OSHA to ensure physical distancing and extensive sanitization. I want to keep my employees safe because I care about their welfare.

Now is not the time to make the emergency temporary standard permanent when it's likely this pandemic will be temporary. Imposing "one size fits all" COVID-19 regulations on all employers and employees is unreasonable especially when guidance is continually changing as we learn more about the virus and how best to protect against it's spread. Knowing the temporary standard expires in February 2021, there is plenty of time for the Board to wait until we know more about how long the pandemic could last before taking any further action.

My company takes its responsibility for protecting our employees seriously. Making the COVID-19 emergency regulations permanent will only make a difficult situation worse for employers and employees. I remain concerned about the impact many of the provisions of the emergency regulations are having on my company and encourage the Board to not make them permanent.

Thank you,

Concern Employee of Virginia

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SEE DEPARTMENT RESPONSE TO COMMENT 85680

85716 Tammy Vincent 9/24/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85716> OPPOSE mandatory wearing of facemasks and shutdowns. I do not agree with the mandatory wearing of face coverings for any age group or population or for any business legally requiring their patrons to do so. NO TO FACE MASK WEARING REQUIREMENT!.

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

SEE DEPARTMENT RESPONSE TO COMMENT 85535

85718 Jennifer Cooper 9/24/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85718>

Strongly support

Virginia needs a strong permanent workplace health and safety standard on COVID-19 to support workers. The proposed standard provides strong protections for workers and clear guidance for employers. This standard will save lives, prevent COVID-19 spread, and help get Virginia's economy moving again.

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SEE DEPARTMENT RESPONSE TO COMMENT 84196

85719 John Alvis

9/24/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85719>

Strongly Oppose

The regulations are overly burdensome, contradictory with the CDC, VDH, and DOLI's own standard template.

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

The issue of the differences between the Standard's return to work requirement and those of the CDC will be addressed in the revised proposed permanent standard. A Frequently Asked Question (FAQ) provided by DOLI addresses the issue as it pertains to the current Emergency Temporary Standard (ETS).

On July 22, 2020, the CDC changed its guidance with regard to symptoms-based strategies from exclusion for 10 days after symptom onset and resolution of fever for at least 3 days to exclusion for 10 days after symptom onset and resolution of fever for at least 24 hours (i.e., the change was from 72 hours to 24 hours). For persons who never develop symptoms (i.e., asymptomatic), isolation and other precautions can be discontinued 10 days after the date of their first positive RT-PCR test for SARS-CoV-2 RNA.

16VAC25-220-10.G.1 provides in part that:

To the extent that an employer actually complies with a recommendation contained in CDC guidelines, whether mandatory or non-mandatory, to mitigate SARS-CoV-2 virus and COVID-19 disease related hazards or job tasks addressed by this standard, and provided that the CDC recommendation provides equivalent or greater protection than provided by a provision of this standard, the employer's actions shall be considered in compliance with this standard.... (Emphasis added).

Employers who comply with the above-referenced change in CDC guidance issued July 22, 2020, will be considered to be providing protection equivalent to protection provided by complying with the requirements in the ETS.

However, nothing in the FAQ shall be construed to prohibit an employer from complying with the symptom-based or time-based strategies for return to work determinations in the ETS. (See §40 FAQ 18, <https://www.doli.virginia.gov/cononavirus-covid-19-faqs/>)

The Department acknowledges that all of its VOSH laws, standards and regulations can serve to place compliance burdens on employers and employees, particularly in the small business sector. The Department also believes that employers that embrace providing sound and comprehensive workplace safety and health protections can make their business more efficient and profitable through such benefits as reduced injuries, illnesses and fatalities, reduced workers' compensation costs, reduced insurance costs, improvements in morale and innovation, and increased productivity.

The Department strongly encourages Virginia's small business owners to take advantage of free and confidential occupational safety and health onsite and virtual consultation and training services to address COVID-19 compliance issues. More information about the VOSH Consultation Services can be found at: <https://www.doli.virginia.gov/vosh-programs/consultation/>

In addition, free Outreach, Training, and Educational materials to assure compliance with COVID-19 requirements can be found at: <https://www.doli.virginia.gov/covid-19-outreach-education-and-training/>

85722 Cathy J 9/24/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85722>

Masks permanent. Very strongly opposed.

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

SEE DEPARTMENT RESPONSE TO COMMENT 85535

85723 anonymous 9/24/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85723>

Strongly Oppose

This government overreach has gone on way to long and must stop immediately. This country is about freedom, just leave us alone. 15 days to flatten the curve, moved to destroy the economy to try and make Trump lose, it has backfired in your faces. This rise of the mini tyrants has gone on way to long. Just leave us alone, your lies and constantly changing narrative and goal posts has destroy any credibility you ever thought you may have in trying to protect us. We all see now that it all has been a lie. Just leave us alone.

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

85725 Evelyn Ruffin 9/24/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85725>

Permanent Health and Safety Standard

The pandemic brought on by the Covid-19 virus has revealed how important employer-provided health and safety measures are to their employees. Because Covid-19 promises to be with us for the indefinite future and because a widely available vaccine remains months away and its efficacy over the long-term is unproven, I think that enforceable permanent standards of health and safety in the workplace should be passed by the state legislature.

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This Standard is not being proposed as legislation to the General Assembly. The Standard is being considered for adoption by the Virginia Safety and Health Codes Board pursuant to Va. Code §40.1-22(6a) and would be enforced by the Department of Labor and Industry's (DOLI) Virginia Occupational Safety and Health (VOSH) Program.

SEE DEPARTMENT RESPONSE TO COMMENT 84196"



85726 Cathy Johnson 9/24/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85726>

Stongly oppose. No masks.

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

SEE DEPARTMENT RESPONSE TO COMMENT 85535

85727 Nicholas Vincent 9/24/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85727>"Super Duper Strongly Oppose

Choice not mandate.

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

85728 Andrea Fields 9/24/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85728>

Strongly Oppose

I strongly oppose! The regulations are overly broad, unduly burdensome, and contradictory to the opinions set forth by the CDC and VDH which state that face coverings do not stop the spread of COVID-19 or any other virus. It is preposterous to force face coverings on us and our businesses.

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

The issue of the differences between the Standard's return to work requirement and those of the CDC will be addressed in the revised proposed permanent standard. A Frequently Asked Question (FAQ) provided by DOLI addresses the issue as it pertains to the current Emergency Temporary Standard (ETS).

On July 22, 2020, the CDC changed its guidance with regard to symptoms-based strategies from exclusion for 10 days after symptom onset and resolution of fever for at least 3 days to exclusion for 10 days after symptom onset and resolution of fever for at least 24 hours (i.e., the change was from 72 hours to 24 hours). For persons who never develop symptoms (i.e., asymptomatic), isolation and other precautions can be discontinued 10 days after the date of their first positive RT-PCR test for SARS-CoV-2 RNA.

16VAC25-220-10.G.1 provides in part that:

To the extent that an employer actually complies with a recommendation contained in CDC guidelines, whether mandatory or non-mandatory, to mitigate SARS-CoV-2 virus and COVID-19 disease related hazards or job tasks addressed by this standard, and provided that the CDC recommendation provides equivalent or

greater protection than provided by a provision of this standard, the employer's actions shall be considered in compliance with this standard.... (Emphasis added).

Employers who comply with the above-referenced change in CDC guidance issued July 22, 2020, will be considered to be providing protection equivalent to protection provided by complying with the requirements in the ETS.

However, nothing in the FAQ shall be construed to prohibit an employer from complying with the symptom-based or time-based strategies for return to work determinations in the ETS. (See §40 FAQ 18, <https://www.doli.virginia.gov/cononavirus-covid-19-faqs/>)

The Department acknowledges that all of its VOSH laws, standards and regulations can serve to place compliance burdens on employers and employees, particularly in the small business sector. The Department also believes that employers that embrace providing sound and comprehensive workplace safety and health protections can make their business more efficient and profitable through such benefits as reduced injuries, illnesses and fatalities, reduced workers' compensation costs, reduced insurance costs, improvements in morale and innovation, and increased productivity.

The Department strongly encourages Virginia's small business owners to take advantage of free and confidential occupational safety and health onsite and virtual consultation and training services to address COVID-19 compliance issues. More information about the VOSH Consultation Services can be found at: <https://www.doli.virginia.gov/vosh-programs/consultation/>

In addition, free Outreach, Training, and Educational materials to assure compliance with COVID-19 requirements can be found at: <https://www.doli.virginia.gov/covid-19-outreach-education-and-training/>

85729 Karen Gay 9/24/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85729>

Absolutely Not! Read the Science.

These regulations are burdensome and not based on science. Smallpox killed 30% of people infected. The Virginia mortality rate for COVID is .03%. Anybody can calculate this ... ~3000 deaths divided by 8.5 million people. Here's a study from 1981 saying that masks are not helpful - even in a hospital.  
[https://pashev.me/files/orr-1981.pdf?fbclid=IwAR3RcIJ7bVYFWWUCcoQa0tOc1hUHCZm05NTC0j\\_7Dm7XU5AJ65zBKYAEEA](https://pashev.me/files/orr-1981.pdf?fbclid=IwAR3RcIJ7bVYFWWUCcoQa0tOc1hUHCZm05NTC0j_7Dm7XU5AJ65zBKYAEEA). So perhaps the health authorities in VA should actually do their homework and study the science rather than mindlessly accepting what they hear on the news.

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

SEE DEPARTMENT RESPONSE TO COMMENT 85535

85730 Barbara Allen 9/24/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85730>

Strongly Support

I'm writing in support of implementing a permanent standard of Virginia's Emergency Temporary Standard (ETS). We need a strong health and safety standard that supports and protects all workers and gives clear guidance for employers. This standard will save lives, prevent the spread of COVID-19 and get Virginia's economy moving again. More importantly, a permanent health and safety standard supports a stronger Virginia economy.

Virginia and the entire country are facing unprecedented challenges due to COVID-19, which means in my humble opinion, that our elected officials must come together and pass critical bills that protect workers and the majority of the American people, who have been affected by this virus, through no fault of their own. I don't understand how this can be so misunderstood for those who have been elected to solve problems. They must do the necessary work, regardless of party affiliation, to represent us with honesty, respect, and integrity to solve our collective problems now! We urge these officials to step up and do the job we expected them to do! It's time that we turn the corner, not kick all of these issues down the road for another time or election. The time is upon us now to do the right and honorable thing for your constituents.

Thank you for providing me with the opportunity to share my opinion.

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SEE DEPARTMENT RESPONSE TO COMMENT 84196

85732 Matt Taylor 9/24/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85732>

Strongly opposed

strongly opposed to mandatory masks. The science does not support this kind of mandate.

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

SEE DEPARTMENT RESPONSE TO COMMENT 85535

"

85733 Chris Cage 9/24/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85733>

Absolutely Oppose

I absolutely oppose the permanent wearing of masks.

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

SEE DEPARTMENT RESPONSE TO COMMENT 85535

85734 Lisa Fuqua 9/24/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85734>

VERY STRONGLY OPPOSE

VERY STRONGLY OPPOSE

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

85735 anonymous 9/24/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85735>"Covid-19

I am a business owner in Virginia, and I oppose making the COVID-19 Workplace Safety Emergency Standard permanent.

Six months into the pandemic, I have learned to adapt to this unprecedented time by implementing industry-specific guidance from the Governor, the Virginia Health Department, the CDC, and OSHA to ensure physical distancing and extensive sanitization. I want to keep my employees safe because I care about their welfare.

Now is not the time to make the emergency temporary standard permanent when it's likely this pandemic will be temporary. Imposing "one size fits all" COVID-19 regulations on all employers and employees is unreasonable especially when guidance is continually changing as we learn more about the virus and how best to protect against it's spread. Knowing the temporary standard expires in February 2021, there is plenty of time for the Board to wait until we know more about how long the pandemic could last before taking any further action.

My company takes its responsibility for protecting our employees seriously. Making the COVID-19 emergency regulations permanent will only make a difficult situation worse for employers and employees. I remain concerned about the impact many of the provisions of the emergency regulations are having on my business and encourage the Board to not make them permanent.

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SEE DEPARTMENT RESPONSE TO COMMENT 85680

85736 Our Lady Queen of Peace Catholic Church Our Lady Queen of Peace Catholic Church  
9/24/2020 <https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85736>

permanent workplace health and safety standard

Virginia needs a strong permanent standard.

- The proposed standard provides strong protections for workers and clear guidance for employers.
- This standard will save lives, prevent COVID-19 spread and help get Virginia's economy moving again.

This standard should be around for much more than 6 months. People and companies need support in understanding what they need to do to keep a healthy work environment. Having the standard will keep employers in the know. Workers will return to work and feel comfortable to do so.

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SEE DEPARTMENT RESPONSE TO COMMENT 84196

85737 Bob Hambleton 9/24/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85737>

VERY STRONGLY OPPOSE

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

85740 Kristy 9/24/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85740>

Opposed to permanent mask mandate. If workers feel safer, if community members feel safer wearing masks, then go for it, but to make this a permanent mandate is a no. People are able to be hateful behind their computers, now they are able to be hateful behind a mask. No. No. No. I would rather not live to see the day that this day becomes a "new normal".

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

SEE DEPARTMENT RESPONSE TO COMMENT 85535

85741 Rhonda Ligon 9/24/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85741>

Workplace Health Standards for Covid19

I strongly support high standards for workplace health protection. Everyone is inter-connected during this pandemic. We must protect all people.

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SEE DEPARTMENT RESPONSE TO COMMENT 84196

85742 Bob Hambleton (second comment) 9/24/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85742>

VERY STRONGLY OPPOSE

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

85745 Jeff Stapel

9/24/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85745>

Strongly Oppose Permanent Standard

The ETS once published is flawed because it is trying to deal with regulating a medical condition that is not well understood, studied or static. With a virus that the CDC is constantly changing it's protocols on, responding to new research and findings, new testing means and processes, and reinterpreting the means and methods of data collection which the very definition of a pandemic are based on, how can a regulation not be obsolete as soon as it is published. There is a need for flexibility and adaptability for businesses to be able to deal with this changing landscape which ETS does not provide currently. If it is not able to adjust not to the changing information and needs, how will it if it is made permanent. The reliance on sanitizing surfaces when there is not reliable science to show the transmission from surfaces exists. The reliance on masks where there is not reliable science to show that it is effective. The reliance on social distancing and the definition of close contact which there is not sufficient research to support the effectiveness of these strategies in the current time and for all future situations. The presumptions which this standard is built on have not been substantiated by sufficient science tested over time to make it reliable to base a regulatory standard upon. Let the ETS end then allow sufficient review and research to be done to determine what really was the best response to COVID-19. Then consider if a regulatory response is ever going to be able to predict the best future response to a viral pandemic that will have numerous unknown variables. That is not what regulations do best, ever!

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SEE DEPARTMENT RESPONSE TO COMMENT 84956

85746 Donald L Baylor

9/24/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85746>

Wearing Mask, Required PPE and Access to Emergency Leave

Workers must be provided the medical grade PPE when working in high risk environments such as our prisons and jails. We know that these workers are more susceptible to this virus while working indoors, especially when working in areas where individuals are positive with corona virus. Not only should these workers have the medical grade mask and face coverings, but covering to protect their clothing as well. Should one of these workers be exposed to the virus and the need to quarantine arise, these workers should have access to the leave under the Family First Corona Virus Medical Leave Act. As it stands right now many of these workers are having to use what ever leave they may have accumulated when they have to quarantine. In Virginia's prisons Correctional Officers are being exempted from the emergency leave should they be exposed to the virus and forced to use their personal leave balances when having to quarantine to prevent the risk of spread. That is not right! This Pandemic is not going anywhere any time soon and there is already concern that another virus is on the horizon. These essential employees should not be exempt from the emergency leave

that is afforded to others when they too are risking their lives to provide the Commonwealth and its communities with good public safety. We need tough standards and we need to make them permanent.

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It is the Department's position that general industry employers, such as prisons and jails, are required to update their pre-COVID-19 PPE hazard assessments and take into account SARS-CoV-2 and COVID-19 related hazards and job tasks, particularly where known COVID-19 persons are housed. In such situations, it is the Department's position that enhanced personal protective equipment beyond face coverings, up to and including respirators, would be a minimum requirement under 1910.132 and 1910.134 in certain situations.

The Standard does not address the issue of ""quarantine"". "Quarantine" is separation of people who were in "close contact" with a person with COVID-19 from others. The Standard does address the issue of ""isolation"".

"Isolation" is the separation of people with COVID-19 from others. People in isolation need to stay home and separate themselves from others in the home as much as possible. Requirements for returning to work from isolation is covered by the ETS in 16VAC25-220-40.C. However, please note that in lieu of complying with 16VAC25-220-40.C, employers may comply with recently updated CDC guidelines (see §40 FAQ 18, <https://www.doli.virginia.gov/cononavirus-covid-19-faqs/>).

85747 John Blankenship Concrete Pipe & Precast, LLC 9/24/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85747>

Emergency Temporary Standard Infectious Disease Prevention: SARS-CoV-2 Virus That Causes COVID-19

I strongly oppose making the Emergency Temporary Standard Infectious Disease Prevention: SARS-CoV-2 Virus that causes COVID-19, 16VAC25 as a permanent standard.

We have gone to great expense and effort to comply to the emergency temporary standard and do not think that there is just reason to make it a permanent standard. We were in compliance with this emergency standard as soon as the CDC recommendations came out in March which was way before the emergency standard became a requirement in Virginia. We care about the safety and well being of our employees and visitors to our plants and will always safeguard them from harm regardless. We do not need of a VOSHA standard to make us do the right thing. We will do the right thing on our own because it is the right thing to do for our employees and our business.

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

SEE DEPARTMENT RESPONSE TO COMMENT 85535

85748 Lisa Clay 9/24/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85748>

STRONGLY OPPOSE: No right to make healthcare decisions for us!

These mandates have been ridiculous from the start. No government agency has the right to make healthcare decisions on behalf of us. Masks are not proven to be 100% effective and lockdowns inhibit the immune system, making people even more prone to disease and viruses. Hydroxychloroquine has been withheld/discouraged, despite being effective at the early stages of this virus. It would make much more sense to let this run its course without lockdowns and mask mandates, instead providing the HydroxyQ and azithromycin regimen at early onset for those who wish take the treatment. The people have had enough!

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

SEE DEPARTMENT RESPONSE TO COMMENT 85535

85749 Fred Hedgecoth 9/24/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85749>

INTENSELY OPPOSED TO THIS IDIOTIC NONSENSE

Tucker Carlson says it better than I can:

I'm sorry but anyone that thinks that social distancing is a good idea for the next few years, actually wants to be micro-chipped or thinks that a 'benevolent' dictatorship is for the good of humanity, I don't want to give that point of view any of my energy.

I am a free Human Being and if you want to stay home, stay home. That's your sovereign right to choose.

If you want to wear a mask, wear a mask. That's your sovereign right to choose.

If you want to avoid large crowds, avoid large crowds. That's your sovereign right to choose

I am not required to descend into poverty for YOU.

I am not required to abstain from human contact for YOU.

I refuse to participate in ""quarantine life"" until there's an unsafe, untested vaccine released in eighteen months.

I refuse to receive a vaccine to make others feel more safe. That's my sovereign right to choose!

If you're convinced the vaccine is safe and effective, you can get it yourself.

Some of you are allowing fear and policies devoid of scientifically accurate data to destroy the country you live in and ruin your life.

We have a constitutional right to take risks. Life is full of bacteria and viruses, many of which spread before symptoms manifest and after they subside.

We have a sovereign right to receive OR refuse vaccines.

The data was inaccurate at best; purposely overblown to justify government overreaction at worst.

Stop allowing the government to destroy: ?The food supply; ?Small businesses; ?Medical autonomy; ?Access to healthcare; ?Mass gatherings; ?Privacy rights; ?Our mental health & freedom



When the ""new normal"" is filled with starvation, depression, suicide, child abuse, domestic violence, imprisonment, governmental spying, and pure DESPERATION, the ""virus"" is going to look preferable to the world you helped facilitate.

I'm going to turn this around on people from now on. Those that say I'm (or anyone that supports this) putting money over lives by wanting the country back open for business...

Hear this:

- YOU don't care about the people that will kill themselves out of hopelessness
  - YOU don't care about small businesses that'll close their doors (THEIR LIVELIHOOD) permanently
  - YOU don't care about the children/women/men that'll be victims of domestic abuse
  - YOU don't care about people defaulting on their mortgages
  - YOU don't care about bills going unpaid by families with ZERO income right now
  - YOU don't care about people wondering where their next meal will come from
  - YOU don't care about the people that'll lose their sobriety and slip back into alcoholism
  - YOU don't care about the people that will starve
  - YOU support the inevitable looting that'll take place
  - YOU don't care about anyone that's murdered the longer this shut down goes on
  - YOU don't care about people's mental health
  - YOU don't care about the children that DO need teachers and educators to guild & educate them
  - YOU don't care about the economy crashing down around us
  - YOU DON'T CARE.
  - YOU love your shackles
  - YOU are pathetic, begging your leaders for MORE shut down and MORE regulations and MORE handouts
- I will NOT tolerate another person telling me that I don't care about lives.
- I care about the situation in its entirety.
- But YOU don't care about any of that so...?YOU stay home.?YOU wear a mask.?YOU live in fear.
- I on the other hand will not. As is my sovereign right to choose NOT TO!
- 

"SEE DEPARTMENT RESPONSE TO COMMENT 84237

The Department has no response to the Commenter's political commentary.

85751 anonymous 9/24/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85751>

Strongly oppose as written

As a small business, family owned and operated for the past 14 years, we have maintained our Bed and Breakfast and have complied with established codes. As written, the new regulations would place unwarranted burdens on our business, forcing us to close.

Certainly, the purpose of new regulations to address COVID is to stop its spread, not close businesses by requiring each to adhere to regulations that do not account for the size, staff and potential impact on those businesses.

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

85752 Chris Willis 9/24/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85752>

"Strongly Opposed

Dear Members of the Safety and Health Codes Board:

I write to you to register my strong opposition to making the COVID-19 Emergency Temporary Standard (ETS) permanent.

Our business is committed to the safety and welfare of our customers, employees, and community. While the risk of COVID-19 transmission has not yet been eliminated, I harbor serious concerns that the currently enacted emergency measures are overly burdensome and will negatively affect our regional businesses' ability to continue operating if made permanent. Confusing and ambiguous language in the ETS, as well as ever-changing directives from various state and federal health authorities has made running a business in the most challenging of times even harder.

We will continue to make good faith efforts to keep our employees safe and follow public health best practices. Please support your local businesses and reject any extension of the Emergency Temporary Standard.

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

85753 Francisco Rojas 9/24/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85753>

STRONGLY OPPOSE SEE DEPARTMENT RESPONSE TO COMMENT 84237

85755 Julie Coons, Northern Virginia Chamber of Commerce 9/24/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85755>"Thank you for the opportunity to comment on the proposed Permanent Standard for COVID for Infectious Disease Prevention:

SARS-CoV-2 Virus That Causes COVID-19, 16VAC25-220. Our membership remains concerned, as we were in July with the temporary standard, that the regulation is overly burdensome and that regulators have not followed an appropriately public process for its development. The Northern Virginia Chamber is also a member of the Virginia Business Coalition and would like to associate our organization with the comments the Coalition has submitted separately.

The novel nature of COVID-19 means the scientific consensus of how to reduce the spread has changed over time and will continue to change. In the short 7 months this country has dealt with COVID, only handwashing and social distancing have remained at the fore of recommended prevention methods – not even the ubiquitous mask-wearing we see in Northern Virginia was recommended in the first several weeks. However, this regulation becoming permanent ignores the potential for changing science, which does not make people safer but places a massive burden on businesses. Making it permanent also ignored the many problems with the temporary standard as laid out in detail in the Coalition’s comments.

We would ask that should you proceed with the adoption of a permanent standard, you make the following changes:

Please remove 16VAC25-220-50 B.1.b. - Requiring all existing buildings in the Commonwealth to upgrade their HVAC systems to the latest standard, instead of when replacing or in new buildings which is the standard process for building code updates.

Please remove any reference to sick leave. While the regulation attempts to provide clarity and specificity in regards to health and safety of employees, the references to sick leave policies are vague and not in concert with the rest of the regulation. Employers are already bound by the federal law referenced in the regulation – the Families First Coronavirus Response Act – and this is not an appropriate method to enforce a federal law

Please return to the language originally drafted providing safe harbor to employers following federal guidance. Businesses have operated under CDC and OSHA guidance since March and should be recognized for keeping people safe during that time.

Additionally, please address the process, substantive, business impact, and other concerns raised by the Virginia Business Coalition

This regulation should sunset at the expiration of Gov. Northam’s Executive Order as stipulated in the Emergency Temporary Standard (ETS). We would argue that the expiration will allow regulators to assess the current science at that time and allow the Administration to truly engage with all stakeholders to see what changes are necessary to keep people safe and keep businesses open. It would also allow for the many concerns the business community has raised to be addressed

As I said in my comments in June, the Northern Virginia Chamber has a long history of working with Virginia leaders to create good public policy. The process for this regulation continues to preclude the ability for collaboration between all stakeholders. We implore you to reconsider adoption of a permanent standard and instead allow the ETS to remain as previously adopted and direct regulators to work with stakeholders to address concerns in the ETS. We stand ready to work with the Northam Administration and the General Assembly on ways to protect employees and customers as Virginia continues to reopen its economy safely. Thank you.

Sincerely,"

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"SEE DEPARTMENT RESPONSE TO COMMENT 84956

The Department acknowledges the comment and notes that the ASHRAE air handling requirements issue raised by the Commenter is undergoing a legal review.

The Department does not plan to recommend changes to sick leave provisions in the Standard. The Standard does not require employers to provide sick leave to employees. It does reference the Families First Coronavirus Response Act (FFCRA) at 16VAC25-220-40.B.6:

6. To the extent feasible and permitted by law, including but not limited to the Families First Coronavirus Response Act, employers shall ensure that sick leave policies are flexible and consistent with public health guidance and that employees are aware of these policies.

Further information about the FFCRA and sick leave policies can be found at:

<https://www.dol.gov/agencies/whd/pandemic/ffcra-employee-paid-leave>

The Department does not plan to recommend that 16VAC25-220-10.G be returned to its original language. It is the Department's position that similarly situated employees and employers exposed to the same or even more serious hazards or job task should all be provided the same basic level of safety and health protections. The Standard's language in 16VAC25-220-10.G assures such protections.

85756 Jerry Dominguez 9/24/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85756>

STRONGLY OPPOSE

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

85757 Bryan Bumgardner, Fortiline Waterworks 9/24/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85757>

Strongly oppose

Members of the Safety and Health Code Board,

As the Virginia Market General Manager of Fortiline Waterworks, an employer of many in the heavy construction industry, I oppose adopting a Permanent Standard for Infectious Disease Prevention: SARS-CoV-2 Virus That Causes COVID-19, 16VAC25-220.

I am opposed to any amendment to include other flus, viruses, colds, or other communicable diseases in any permanent standard. There is no one-size fits all plan to combat a wide variety of infectious illnesses.

The Emergency Standards are burdensome, obsolete, difficult to enforce, costly in time and money, and lack flexibility to adapt to current science and innovation. I am STRONGLY OPPOSED to the adoption of these as a Permanent Standard for what is a temporary health situation.

I remain committed to the health and safety of my employees and thank you for the opportunity to publically comment.

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The Standard does not cover other infectious diseases like influenza, tuberculosis, etc.

SEE DEPARTMENT RESPONSE TO COMMENT 84237

85758 Steve Jones

9/24/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85758>STRONGLY OPPOSE

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

85759 Charles Jones

9/24/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85759>

STRONGLY OPPOSE

Members of the Safety and Health Code Board,

As an employee/crew leader in the heavy construction industry, I strongly oppose adopting a Permanent Standard for Infectious Disease Prevention: SARS CoV-2 Virus that causes COVID 19, 16VAC25-220.

Construction is an essential business performing critical work for the Commonwealth of Virginia, especially since the onset of the pandemic. Health and safety is important for my crew and my company has made it a priority. My employer has implemented all of the CDC and OSHA COVID-19 guidelines as soon as information was available and are in compliance with the CARES Act mandates. I cannot imagine how much this has costs my employer but I know it has pulled resources from my projects for training which has resulted in my projects falling behind. In addition to my normal daily startup procedures I am not required to ask medically related questions each day to make sure each person on the jobsite does not have any sickness, symptom or signs of any illness and perform screenings/temp checks. Our industry, from what I understand, can only hire people 18 or older - this is the definition of an adult at this age and my crew members should be accountable for their own health and not report to work if they are sick. I should not be asked to check people's temperatures and personally invade their medical life when they should be capable of doing this for themselves. Let's ask individuals to rise up to accountability and responsibility as opposed to treating them like children and invading them personally.

I am also shocked that the amendment would broaden to include other flus, viruses, colds etc. to the permanent standard. I do not have a medical degree or training, nor should I have to in order to perform my job in the construction industry (my co-workers should not have to have this responsibility or training either). Making this standard permanent and/or broadening it is such a burden to small businesses and the people who work in the small businesses. I am committed to my employer and my crews and their health and safety, but this over reaching and will ultimately costs the state and consumers more money.

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"The Standard does not cover other infectious diseases like influenza, tuberculosis, etc.

Although it is a generally accepted practice, the Standard does not specifically require that employers check the temperatures of employees. 16VAC25-220-50.C.1 provides that ""Prior to the commencement of each work shift, prescreening or surveying shall be required to verify each covered employee does not have signs or symptoms of COVID-19."" Employers are provided the flexibility to determine what form of prescreening they will use to determine that ""each covered employee does not have signs or symptoms of COVID-19.""

SEE DEPARTMENT RESPONSE TO COMMENT 84956

85760 Faye Lickey 9/24/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85760>

Strongly Oppose Adopting a Permanent Standard

The Emergency Standards are burdensome, obsolete, difficult to enforce, costly in time and money, and lack flexibility to adapt to current science and innovation. I am STRONGLY OPPOSED to the adoption of these as a Permanent Standard for what is a temporary health situation.

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SEE DEPARTMENT RESPONSE TO COMMENT 84956

85762 Brian Jones 9/24/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85762>

STRONGLY OPPOSE

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

85763 James Lockin 9/24/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85763>

STRONGLY OPPOSE

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

85764 Barbara Jones 9/24/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85764>

STRONGLY OPPOSE ADOPTING A PERMANENT STANDARD

I strongly oppose adopting a Permanent Standard for Infectious Disease Prevention: SARS-CoV2 Virus that causes COVID-19, 16VAC25-220 and amendments to include other flus, viruses, colds or other communicable diseases in any permanent standard.

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The Standard does not cover other infectious diseases like influenza, tuberculosis, etc.

SEE DEPARTMENT RESPONSE TO COMMENT 84237

85765 Charles Ford 9/24/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85765>

STRONGLY OPPOSE ADOPTING A PERMANENT STANDARD

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

85766 Ray Bare 9/24/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85766>

STRONGLY OPPOSE ADOPTING A PERMANENT STANDARD

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

85767 Jan Osborne 9/24/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85767>

Proposal to make mask mandate permanent. I VERY STRONGLY OPPOSE making then mask mandate permanent. If a vaccine is expected to be available, why should the mask wearing be made permanent?? Strongly feel this is a crisis that is not permanent, so why make mask wearing permanent? ABSOLUTELY NOT!

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

SEE DEPARTMENT RESPONSE TO COMMENT 85535

85768 Anonymous 9/24/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85768>

no more mask. strongly oppose this, our rights have been violated too long already!!!!!! "

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

SEE DEPARTMENT RESPONSE TO COMMENT 85535

85770 Karen Berrier 9/24/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85770>

STRONGLY OPPOSE ADOPTING A PERMANENT STANDARD

Members of the Safety and Health Code Board,

As the Controller, Corporate Secretary/Treasurer in the heavy construction industry, I oppose adopting a Permanent Standard for Infectious Disease Prevention: SARS-CoV-2 Virus that causes COVID-19 16VAC25-220.

I am opposed to any amendment to include other flus, viruses, colds, or other communicable diseases in any permanent standard. There is no one-size fits all plan to combat a wide variety of infectious illnesses.

The Emergency Standards are burdensome, obsolete, difficult to enforce, costly and lack flexibility to adapt to current science and innovation. I am STRONGLY OPPOSED to the adoption of these as a Permanent Standard for what is a temporary health situation.

I remain committed to the health and safety of my coworkers/employees and thank you for the opportunity to comment.

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"The Standard does not cover other infectious diseases like influenza, tuberculosis, etc.

SEE DEPARTMENT RESPONSE TO COMMENT 84956

85772 Cheryl Holmes 9/24/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85772>

Proposal to make masks permanent. Strongly oppose

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

SEE DEPARTMENT RESPONSE TO COMMENT 85535

85773 Robert BP Thompson 9/24/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85773>

Oppose of permanent standard for Infectious Disease Control

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

85774 Katherine Fiedler 9/24/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85774>"Permanent Workplace Safety Standard - Strongly Support



Employees in Virginia deserve a permanent standard for workplace health and safety as the Covid-19 pandemic continues to affect schedules and expectations in the workplace. The proposed standard provides strong protections for workers and clear guidelines for employers. This standard will save lives, prevent the spread of Covid-19, and will help get the economy across Virginia moving again. I strongly support the permanent workplace safety standard, and I support the health and safety of all employees in Virginia.

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SEE DEPARTMENT RESPONSE TO COMMENT 84196

85775 Tanya Hudson 9/24/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85775>

STRONGLY OPPOSE

Stop harassing the people!

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

85777 Penny Perry 9/24/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85777>

Strongly support permanent workplace health and safety standard on COVID-19.

I strongly support a permanent workplace health and safety standard on COVID-19 to support workers.

Virginia needs a strong permanent standard. The proposed standard provides strong protections for workers and clear guidance for employers. This standard will save lives, prevent COVID-19 spread and help get Virginia's economy moving again.

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SEE DEPARTMENT RESPONSE TO COMMENT 84196

85778 William Wright 9/24/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85778>

Consideration for people with disabilities

Would recommend guidance for workers who have prosthetics (i.e.: wheelchairs, crutches, leg/arm prosthetics)

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SEE DEPARTMENT RESPONSE TO COMMENT 84196

**Strongly Oppose**

This is a simple abuse of power and overreach by Governor Northam and this regulatory agency. Neither the Virginia Constitution, nor the Code, nor the U.S. Constitution support the Executive branch imposing a non-legislative, mandatory masking requirement on healthy citizens.

Prior to his death, Justice Antonin Scalia said that the greatest threat to freedom lies within the expansive and unaccountable regulative agencies, and this is a perfect example of this danger that the late Justice warned us about.

That this is a pure and unjustified power grab can be further seen by the current ""with-COVID"" death toll in Virginia. Just 122 Virginians under the age of 50 have died with a positive COVID testing--comparable to virtually any cause-of-death statistic that can be dreamed up over a six-month span.

Nearly half of the 3,113 reported COVID-related deaths have been among those 80 years and older, with another quarter of all related deaths coming among those 70 and older. My grandmother is over 80 and my family and I take great care to avoid physical contact with her. The facts indicate that this is a real disease that poses a danger to some people, but they also indicate that there is no conceivable justification for forcing all Virginia citizens to live under quarantine conditions for the foreseeable future.

It is also telling that while your department is threatening to unilaterally impose an illegal order on Virginians in the name of public health and safety, unborn children continue to be ripped limb from limb at an astonishing rate in our state. Some 7,000 Virginian babies have been killed in the womb since COVID--twice the reported number of COVID deaths. Until this scourge is addressed and done away with under the law, the Governor's appeal to health and safety will fall on deaf ears across our Commonwealth.

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For those commenters who argued that that certain gubernatorial mandates (e.g., "face mask" mandate) are unconstitutional, according to the Office of the Attorney General on at least twelve occasions the Governor's COVID-19 restrictions have been upheld by circuit courts throughout the Commonwealth. Two of these specifically challenged the face covering requirements. *Schilling et al. v. Northam*, CL20-799 (Albemarle Co. Cir. Ct. July 20, 2020); *Strother, et al. v. Northam*, CL20-260 (Fauquier Co. Cir. Ct. June 29, 2020).

The Standard does not address the issue of ""quarantine"". "Quarantine" is separation of people who were in "close contact" with a person with COVID-19 from others. The Standard does address the issue of "isolation".

"Isolation" is the separation of people with COVID-19 from others. People in isolation need to stay home and separate themselves from others in the home as much as possible. Requirements for returning to work from isolation is covered by the ETS in 16VAC25-220-40.C. However, please note that in lieu of complying with 16VAC25-220-40.C, employers may comply with recently updated CDC guidelines (see §40 FAQ 18, <https://www.doli.virginia.gov/cononavirus-covid-19-faqs/>).

SEE DEPARTMENT RESPONSE TO COMMENT 84237

85781 anonymous 9/24/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85781>

Oppose DOLI Regulation Changes

I do not support the DOLI making the emergency temporary standard regarding COVID-19 permanent. Safety comes first, but it should not be regulated in this way. This would make it even more difficult to conduct business in the state of Virginia and I strongly oppose making these standards permanent.

---

SEE DEPARTMENT RESPONSE TO COMMENT 84237

85786 P Lee 9/24/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85786>

Oppose

We oppose this action.

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

85787 Kate Bates Arlington Chamber of Commerce 9/24/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85787>

Dear Commissioner Davenport and Members of the Safety and Health Codes Board,

The Arlington Chamber of Commerce and our more than 700 members place the highest priority on our workforce and customers' health and safety during the ongoing pandemic. In support of this goal, the Chamber has worked, and will continue to work, to share critical information and best practices with community, including our partnership with Arlington Economic Development in creating the Return to the Workplace Toolkit.

Clear and consistent workplace health protection protocols will help Virginia's businesses operate safely, but we believe that the Emergency Temporary Standard for COVID-19 Prevention falls short of this goal. As such, we encourage the Board not to make the Emergency Temporary Standard permanent. Making this standard permanent and potentially adding provisions could place a significant burden on businesses that continue to struggle with the economic consequences of this pandemic.

Moreover, we believe that businesses should have flexibility to apply practices that work best for achieving health and safety in their circumstances. The shifting regulatory landscape continues to be a challenge for their recovery, especially for small businesses. We encourage the Board not to penalize businesses that have given a good faith effort in following these complex and evolving rules.

We thank you for your consideration of these comments.

Sincerely,

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SEE DEPARTMENT RESPONSE TO COMMENT 84956

85788 James G. Beckner 9/24/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85788>

Opposed to PERMANENT regulations for a TEMPORARY crisis!

As a small business employer, there is no denying that workplace health and safety are of paramount importance. The Commonwealth already has comprehensive temporary standards in place. However, establishing onerous permanent regulations for a temporary health emergency is absurd.

As written, the proposed permanent standard will apply to all Virginia businesses indefinitely, including the time when COVID-19 is no longer a declared public health emergency. At such a time when vaccines and treatments are available, the standards will no longer be necessary.

Language must be included that specifically limits application of these measures only to a period of declared public health emergency due to COVID-19.

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SEE DEPARTMENT RESPONSE TO COMMENT 84956

85791 Kelly Thompson 9/24/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85791>

Oppose

Strongly Oppose adoption of a permanent standard

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

85792 anonymous 9/24/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85792>

Oppose DOLI Regulation Changes

100% Oppose! Stop the nonsense!

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

85793 J. Hall Holmes, Inc J. Hall Holmes, Inc 9/24/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85793>

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

SEE DEPARTMENT RESPONSE TO COMMENT 85535

"

85794 Joshua Rodriguez 9/24/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85794>

Oppose

These mandates have been ridiculous from the start. No government agency has the right to make healthcare decisions on behalf of us. Masks are not proven to be 100% effective and lockdowns inhibit the immune system, making people even more prone to disease and viruses. Hydroxychloroquine has been withheld/discouraged, despite being effective at the early stages of this virus. It would make much more sense to let this run its course without lockdowns and mask mandates, instead providing the HydroxyQ and azithromycin regimen at early onset for those who wish take the treatment. The people have had enough!

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SEE DEPARTMENT RESPONSE TO COMMENT 84956

SEE DEPARTMENT RESPONSE TO COMMENT 85535"

85796 Restaurant 9/24/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85796>

Infinitely OPPOSE!!!

Virginia should not become a state of dictatorship!

Businesses are now even MORE at risk of permanent closure. This is going to wreak havoc on the ability of businesses to sustain on-going scrutiny whenever the Governor decides we, as a community, are at risk. This is a stranglehold that will shut down businesses or require them to reduce labor force in order to survive, especially come next May, when his new minimum wage takes effect, THAT WAS PASSED IN MARCH 2020 DURING A PANDEMIC!!!

Businesses know what is best for employees and guests, and there should be some trust that businesses know the right thing to do. As a small business owner and restaurant owner, I do not need Richmond to make my life or the lives of my employees more perilous!!! My employees need their jobs, and some have been there 15 years and have children. I am on the verge of having to close unless I get further PPP, as it is. Making the public more afraid to leave their homes causes further harm to our economy and to our mental health. Give the citizens some credit for knowing if they are at-risk and need to take further precautions.

As a small businesses owner, I am still recovering from the closure. In a time where some reports estimate that 20-25% of businesses will shut down permanently, these regulations threaten to drive those numbers even higher. Mine will be one of them, as my restaurant only holds 32 people and 8 seats have been out of use since they are counter stools. My business is down 50% and cannot sustain much longer. Increasing the

number of regulations that my business will have to adhere to, will only make a hard situation more dire. This could bankrupt me as an employer who has fewer than 11 employees.

These regulations create a litany of lawsuits, based on someone's perspective, rather than on facts. While facing devastating economic conditions Virginia's businesses continue to keep the safety and health of their employees as their top priority. Please REJECT the proposed permanent emergency regulations.

This is an extreme response to a temporary health issue. We are already lowering our immune systems and our body's abilities to fight viruses, putting us at an increased risk for serious health complications. If this were to pass and become a permanent requirement, people will become sick, businesses will fail, unemployment will continue, mental health will continue to decline. Adding this will only burden on the mental wellness of an employee and the business with the slightest sniffle, cough or pressure that come with these common conditions.

The government didn't put up the money for my business, and the more responsibility and freedoms we cede to, it will empower this Commonwealth to dictate how we must live and raise our families. That's called Dictatorship. Please let's STOP THE MADNESS!!! Enough with the insanity.

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SEE DEPARTMENT RESPONSE TO COMMENT 84956

The Department has no response to the Commenter's political commentary.

85797 David Moore, CFO      Slurry Pavers, Inc      9/24/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85797>

Unnesesary permanent standard

I am opposed to adopting a Permanent Standard for Infectious Disease Prevention: SARS-Covid-2 Virus That Causes COVID-19, 16VAC25-220. It is important to delay implementation of any draconian rules until the subject has been thoroughly studied and analyzed. The cost to the public will be immense, and such drastic measures need to be fully vetted over time.

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

85798 Carol Duffy Clay      9/24/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85798>

Strongly Support Virginia's Emergency Temporary Standard (ETS)

I'm a Virginia resident and I am writing to urge you to make Virginia's Emergency Temporary Standard (ETS) a permanent workplace health and safety standard on COVID-19. Virginia led the nation in establishing this legislation and it has protected so many workers, especially the most vulnerable essential workers, during these very difficult times. We need to continue and establish a strong permanent standard that protects workers and give clear guidance to their employers.

This is so critical to protect those who are working so hard, prevent the further spread of this virus, to save lives, and also to help businesses operate safely and revive our economy again.

Thank you for the work you are all doing and for your attention to this very important legislation.

Best,

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SEE DEPARTMENT RESPONSE TO COMMENT 84196

85799 E Dennison 9/24/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85799>

ONE GOAL - SAVE LIVES

Having a penalty enforced regulation will help keep workers (and yourself) safe (AND ALIVE) as we ALL navigate toward eradicating COVID-19. Mandatory masks = pandemic free.

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SEE DEPARTMENT RESPONSE TO COMMENT 84196

85803 Andrew Akers 9/24/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85803>

Strongly oppose! These masking rules are completely unneeded. These rules de-humanize the workplace and only create a toxic environment for all citizens. I strongly oppose making these rules permanent! They should have been ended yesterday!

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

SEE DEPARTMENT RESPONSE TO COMMENT 85535

85804 anonymous 9/24/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85804>

Strongly Oppose these forced requirements, esp. as being permanent

The overreach of this administration has gone beyond logical. The financial burden being placed on employers is substantial as a temporary measure, let alone if they are enacted as permanent, for a situation that is temporary and will eventually be unnecessary.

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

85805 Carol Chowdhry 9/24/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85805>

Emergency Temporary Standard (ETS)

Virginia's Emergency Temporary Standard led the country in establishing protections for individuals working in exceptionally crowded conditions, such as meat packing facilities and call centers. Covid made these protections urgent. The disease is still with us, so the protections need to be made permanent. The workers who staff these facilities have been regarded as ""essential."" Therefore, are also essential. They also represent a standard of decent treatment that should be a minimum essential of decency.

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SEE DEPARTMENT RESPONSE TO COMMENT 84196

85806 Sharon Baroncelli, Shenandoah County Chamber of Commerce 9/24/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85806>"Opposed to DOLI

Regulations going permanent

On behalf of the Chamber's 450 members, we are opposed to these regulations going permanent due to the burdensome costs involved to implement on our small businesses. Our businesses are very concerned for the safety of their workforce and customers and they are taking all efforts towards that end. To place additional costly burdens on these businesses may end up to be their demise.

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

85807 Charlotte Brody, BlueGreen Alliance 9/24/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85807>

BGA Support for a Permanent Standard: No Safe Harbor in a Guidance Fog

The BlueGreen Alliance, a coalition of the nation's largest labor unions and environmental organizations, collectively representing millions of members and supporters, supports the adoption of 16VAC25-220, Proposed Permanent Standard Infectious Disease Prevention.

To date, more than 3,000 Virginians have died because of COVID-19. Some not yet defined portion of the more than 140,000 men, women and children in the Commonwealth who have been infected by the virus will have long term cardiac and lung damage. The harm that COVID has already caused and the potential for an overpowering new wave of infection as the weather turns cold are the life-saving reasons to praise the emergency temporary standard and urge the promulgation of a permanent standard for infectious disease prevention based on the language of the ETS.

We ask DOLI and the codes board to resist the effort of the Chamber of Commerce and some industries to add additional safe harbor language. The use of the terms "consider, may chose, encourage, should, and recommend" in the guidance documents issued by CDC and US OSHA leaves employers and workers without any clear framework for COVID safety. How can a worker or an employer determine what is needed for "a safe and healthful workplace" when US OSHA states in their March 2020 Guidance on Preparing Workplaces



for COVID-19 that, “The recommendations are advisory in nature, informational in content, and are intended to assist employers in providing a safe and healthful workplace.” This language may result in two long term care facility owners, two meatpacking corporations or two shipyard operators using CDC and OSHA guidance documents to consider and choose very different COVID safety procedures. In Virginia, the ETS sets out a well-defined set of steps that all workplaces must take to protect all employees from COVID-19. This clarity levels the playing field and provides protection for all workers, not just those lucky enough to have an employer who has voluntarily determined to strictly follow the CDC and OSHA advice.

The impossibility of clearly defining what following CDC and OSHA guidance actually means makes a “safe harbor” for employers who follow CDC and OSHA guidance unenforceable and dangerous. A Virginia meat or poultry plant could argue that they deserve safe harbor status because they followed the Interim Guidance from CDC and OSHA to consider engineering controls and social distancing even if their consideration led the facility’s decision makers to do nothing about either of these important safety measures.. The “provided that the CDC recommendation provides equivalent or greater protection than provided by a provision of this standard” language in the proposed permanent standard is essential to the efficacy of the rule.

Virginia is charting the path that all states and the federal government should be taking. The BlueGreen Alliance thanks you for your leadership.

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SEE DEPARTMENT RESPONSE TO COMMENT 84196

With regard to the ""safe harbor"" issue, the Department notes that the Standard provides flexibility to business through 16VAC25-220-10.G.1 which provides that “To the extent that an employer actually complies with a recommendation contained in CDC guidelines, whether mandatory or non-mandatory, to mitigate SARS-CoV-2 virus and COVID-19 disease related hazards or job tasks addressed by this standard, and provided that the CDC recommendation provides equivalent or greater protection than provided by a provision of this standard, the employer's actions shall be considered in compliance with this standard.” The Standard is clear that employer's wishing to take advantage of 16VAC25-220-10.G.1 must comply with both mandatory and non-mandatory provisions in the specific CDC guidelines, and those provisions must provide equivalent or greater protection than provided by a provision of the Standard.

85808 David Redford LB Water 9/24/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85808>

Strongly Oppose Adopting a Permanent Standard

Members of the Safety and Health Code,

As an employee of LB Water (David Redford Sales Manager) in the Heavy Construction Industry, I strongly Oppose adopting a Permanent Standard for Infectious disease Prevention: SARS-CoV-2 Virus That Causes COVID-19, 16VAC25-220. I am opposed to any amendment to include other flus, viruses, colds, or other communicable diseases in any permanent standard. There is no one-size fits all plan to combat a wide variety of infectious illnesses. The Emergency Standards are burdensome, obsolete, difficult to enforce, costly in time and money, and lack flexibility to adapt to current science and innovation. I am STRONGLY OPPOSED to the adoption of these as a Permanent Standard for what is a temporary health situation. I remain committed to the health and safety of my coworkers and thank you for the opportunity to publically comment.

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The Standard does not cover other infectious diseases like influenza, tuberculosis, etc.

SEE DEPARTMENT RESPONSE TO COMMENT 84237

85810 Nathan Akers 9/24/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85810>

I strongly oppose this measure

I strongly oppose this measure. It is unreasonable and unnecessary to require people to cover their faces indefinitely. We are humans and need the human connection of each other's smiles and interaction.

This is also a dangerous measure for children in establishing the precedent of not being able to indenting and recognize people and pictures and cameras. Child trafficking and predators are on the rise because of this mandate already.

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

SEE DEPARTMENT RESPONSE TO COMMENT 85535

85811 J McCormick 9/24/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85811>

Strong Oppose All Mask Mandates. Changes to policy should not be made at a time when this "health emergency" is so politicized. Any permanent changes to standards need to be put on hold until the event is over and the data can be reviewed objectively. Many actions are being made under the guise of safety without engagement of the people of the commonwealth, effectively circumventing the rights of the people you claim to be protecting. Any policy enacted should be put to a vote via formal referendum and/or legislative action.

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

SEE DEPARTMENT RESPONSE TO COMMENT 85535

85812 Whitney Akers 9/24/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85812>

Strongly disapprove!! We do NOT want/need this overreaching measure. People should maintain the freedom to govern our own face covering choices. Strongly disapprove of this attempt to hyper-control!

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

SEE DEPARTMENT RESPONSE TO COMMENT 85535

85813 Cady Perkinson 9/24/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85813>

STRONGLY OPPOSE ADOPTING A PERMANENT STANDARD

As a Human Resources Manager in the heavy construction industry, I oppose adopting a Permanent Standard for Infectious Disease Prevention: SARS-CoV-2 Virus That Causes COVID-19, 16VAC25-220. Construction worked for four and a half months under CDC and OSHA guidelines before the Emergency Temporary Standard became effective, July 27, 2020. During those months we implemented critical safety measures to ensure the health of our employees. The federal guidelines for construction were working and additional regulations were duplicative and unnecessary. I am opposed to any amendment to include other flus, viruses, colds, or other communicable diseases in any permanent standard. There is no one-size fits all plan to combat a wide variety of infectious illnesses. The Emergency Standards are burdensome, obsolete, difficult to enforce, costly in time and money, and lack flexibility to adapt to current science and innovation. I am STRONGLY OPPOSED to the adoption of these as a Permanent Standard for what is a temporary health situation.

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The Standard does not cover other infectious diseases like influenza, tuberculosis, etc.

SEE DEPARTMENT RESPONSE TO COMMENT 84237

85814 Wes Heath LB Water 9/24/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85814>

Strongly Oppose Adopting a Permanent Standard

Members of the Safety and Health Code,

As an employee of LB Water (Wesley Heath) in the Heavy Construction Industry, I strongly Oppose adopting a Permanent Standard for Infectious disease Prevention: SARS-CoV-2 Virus That Causes COVID-19, 16VAC25-220. I am opposed to any amendment to include other flus, viruses, colds, or other communicable diseases in any permanent standard. There is no one-size fits all plan to combat a wide variety of infectious illnesses. The Emergency Standards are burdensome, obsolete, difficult to enforce, costly in time and money, and lack flexibility to adapt to current science and innovation. I am STRONGLY OPPOSED to the adoption of these as a Permanent Standard for what is a temporary health situation. I remain committed to the health and safety of my coworkers and thank you for the opportunity to publically comment.

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"The Standard does not cover other infectious diseases like influenza, tuberculosis, etc.

SEE DEPARTMENT RESPONSE TO COMMENT 84237

85815 Scott Baldrige LB Water 9/24/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85815>

Strongly Oppose Adopting a Permanent Standard

Members of the Safety and Health Code,

As an employee of LB Water (Scott Baldrige) in the Heavy Construction Industry, I strongly Oppose adopting a Permanent Standard for Infectious disease Prevention: SARS-CoV-2 Virus That Causes COVID-19, 16VAC25-220. I am opposed to any amendment to include other flus, viruses, colds, or other communicable diseases in any permanent standard. There is no one-size fits all plan to combat a wide variety of infectious illnesses. The Emergency Standards are burdensome, obsolete, difficult to enforce, costly in time and money, and lack flexibility to adapt to current science and innovation. I am STRONGLY OPPOSED to the adoption of these as a Permanent Standard for what is a temporary health situation. I remain committed to the health and safety of my coworkers and thank you for the opportunity to publically comment.

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The Standard does not cover other infectious diseases like influenza, tuberculosis, etc.

SEE DEPARTMENT RESPONSE TO COMMENT 84237

85816 Christian Johnson LB Water 9/24/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85816>

Strongly Oppose Adopting a Permanent Standard

Members of the Safety and Health Code,

As an employee of LB Water (Christian Johnston) in the Heavy Construction Industry, I strongly Oppose adopting a Permanent Standard for Infectious disease Prevention: SARS-CoV-2 Virus That Causes COVID-19, 16VAC25-220. I am opposed to any amendment to include other flus, viruses, colds, or other communicable diseases in any permanent standard. There is no one-size fits all plan to combat a wide variety of infectious illnesses. The Emergency Standards are burdensome, obsolete, difficult to enforce, costly in time and money, and lack flexibility to adapt to current science and innovation. I am STRONGLY OPPOSED to the adoption of these as a Permanent Standard for what is a temporary health situation. I remain committed to the health and safety of my coworkers and thank you for the opportunity to publically comment.

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The Standard does not cover other infectious diseases like influenza, tuberculosis, etc.

SEE DEPARTMENT RESPONSE TO COMMENT 84237

85817 Becky McDonough 9/24/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85817>

Burdensome Regulation/Strongly Oppose

Overreaching government regulations will surely kill economic recovery.

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

85818 Paul Shook LB Water 9/24/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85818>

Strongly Oppose Adopting a Permanent Standard

Members of the Safety and Health Code,

As an employee of LB Water in the Heavy Construction Industry, I strongly Oppose adopting a Permanent Standard for Infectious disease Prevention: SARS-CoV-2 Virus That Causes COVID-19, 16VAC25-220. I am opposed to any amendment to include other flus, viruses, colds, or other communicable diseases in any permanent standard. There is no one-size fits all plan to combat a wide variety of infectious illnesses. The Emergency Standards are burdensome, obsolete, difficult to enforce, costly in time and money, and lack flexibility to adapt to current science and innovation. I am STRONGLY OPPOSED to the adoption of these as a Permanent Standard for what is a temporary health situation. I remain committed to the health and safety of my coworkers and thank you for the opportunity to publically comment.

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The Standard does not cover other infectious diseases like influenza, tuberculosis, etc.

SEE DEPARTMENT RESPONSE TO COMMENT 84237

85819 Amy 9/24/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85819>"Strongly Oppose

Strongly Oppose to adapting a permanent standard.

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

85820 John Rainero, PE Permatile Concrete Products Company 9/24/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85820>

VP Construction and Engineering

Members of the Safety and Health Code Board,

I am an employee in the precast concrete industry. We produce essential products to support the infrastructure needs of the Commonwealth, I oppose adopting a Permanent Standard for Infectious Disease Prevention: SARS-CoV-2 Virus That Causes COVID-19, 16VAC25-220.

I am also a Civil Engineer with an dedication to pragmatic and common sense solutions to problems in business and life:

- As a critical part of the Construction Industry we are an essential business that has been performing critical work in the Commonwealth since the onset of the pandemic. The health and safety of all employees is the top priority of our company. A culture of safety is our primary operating principle. We implemented the CDC and OSHA COVID-19 guidelines for construction as soon as they were published and are in compliance with the CARES Act mandates.

- We worked for four and a half months under CDC and OSHA guidelines before the Emergency Temporary Standard became effective, July 27,2020. During those months we implemented critical safety measures to ensure the health of our employees. The federal guidelines for construction were working and additional regulations were duplicative and unnecessary.

- The science of COVID-19 is continuously being updated. The CDC and OSHA guidelines are frequently updated to reflect the science. The Emergency Temporary Standard, proposed in April 2020, is outdated and inflexible. If the standard were to become permanent, it would continue to require businesses to comply with outdated regulations. What was thought to be true about the transmission of SARS-CoV-2 in April, is no longer accurate. As an example, the disinfection standard requirements are based on practices that now may not provide meaningful reduction in transmission. An hour or more a day is spent disinfecting tools and equipment. It is time consuming and burdensome to continue with practices no longer scientifically relevant.

- The costs of the required training (16VAC25-220-70 and 16VAC25-220-80) average a total of 2 hours per employee. Developing the Infectious Disease Preparedness and Response Plan (16VAC25-220-70), not including implementation, requires approximately 40 hours by a supervisory level employee. These hours are in addition to and impede other job functions.

- Non-medically trained individuals now are required to perform health screenings. Screening each employee on average, takes thirty minutes at the start of a shift. Individuals must take accountability for their own health and not report to work if they are exhibiting the symptoms of COVID-19. After six months, Virginians should be very well aware of those symptoms. Our company, as mandated by the CARES Act, provides the Paid Sick Leave necessary for employees to stay home if they are ill.

- Under the umbrella of Construction, our job tasks fall into the “Low” and “Medium” categories as defined in 16VAC25-220-30. The standards use “Grave” danger to regulate ALL businesses in Virginia, yet the great majority of deaths in Virginia (79% or 2269 as of September 23rd Virginia Department of Health Dashboard) were patients over the age of 70. As it is unlikely many over the age of 70 were actively still in the workplace, that leaves 613 deaths over 6 months or a death rate in Virginia of.007% based on a population of 8,536,000 (2019 US Census Bureau). Further, 54% (1556) of deaths were patients in long-term care and correctional facilities. As not all of those deaths fall into the over 70 category, that means less than 613 deaths were potentially working Virginians. Where they were exposed to the virus is not provided in the data. The definition of “Grave” danger for “low” and “medium” risk category needs to be revisited. These categories should be removed from the Temporary Standard and never be part of any Permanent Standard.

I am opposed to any amendment to include other flus, viruses, colds, or other communicable diseases in any permanent standard. There is no one-size fits all plan to combat a wide variety of infectious illnesses.

The Emergency Standards are burdensome, obsolete, difficult to enforce, costly in time and money, and lack flexibility to adapt to current science and innovation. I am STRONGLY OPPOSED to the adoption of these as a Permanent Standard for what is a temporary health situation.

I remain committed to the health and safety of my coworkers and thank you for the opportunity to publically comment.

Thank you

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"SEE DEPARTMENT RESPONSE TO COMMENT 84956

An economic impact analysis/cost analysis will be prepared for the revised proposed permanent standard.

The Department would request more information from the Commenter on how it takes 30 minutes to screen individual employees. Although it is a generally accepted practice, the Standard does not specifically require that employers check the temperatures of employees. 16VAC25-220-50.C.1 provides that ""Prior to the commencement of each work shift, prescreening or surveying shall be required to verify each covered employee does not have signs or symptoms of COVID-19."" Employers are provided the flexibility to determine what form of prescreening they will use to determine that ""each covered employee does not have signs or symptoms of COVID-19.""

The phrase ""grave danger"" is not used in the Standard. The Commenter is correct that the significant majority of construction job tasks and hazards are properly classified as medium or lower risk.

The Department notes that in recent years, VOSH has investigated an average of approximately 35 to 40 occupationally related fatalities per year. As of October 30, 2020, VOSH has investigated over 30 employee deaths attributable to COVID-19 alone. The large majority of those cases remain under investigation to determine if they were occupationally related or not, and if occupationally related, whether violations of the Emergency Temporary Standard or mandatory requirements in Governor's Executive Orders should be cited or not. Review of all COVID-19 related inspections under the Emergency Temporary Standard is conducted centrally by the Department with both a programmatic and legal review prior to a decision to issue or not issue violations/penalties to assure consistent enforcement across the Commonwealth.

The Department respectfully disagrees with the Commenter's suggestion that the Standard should be revised to remove risk classification categories.

At its core the Standard is a risk management system to prevent or limit the spread in the workplace of the SARS-CoV-2 virus which causes COVID-19.

It is designed to provide basic protections for all employees and employers within the jurisdiction of the Virginia Occupational Safety and Health program.

It provides certain mandatory requirements for all employers and specific additional requirements for Very High, High, and Medium risk job tasks centered around mitigation of hazards.

The Standard is also designed to incentivize employers to make changes in the workplace that will enable employees in certain situations to be classified to a reduced level of risk (e.g., from high to medium or from medium to lower), thereby also reducing the employer's compliance and cost burdens.

The Standard does not cover other infectious diseases like influenza, tuberculosis, etc."

85822 Piotr Sliwka

9/24/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85822>

Strongly Apposed

I am strongly apposed to this regulation, both as a temporary measure and a permanent one. There is a 100% mortality rate among humans. We all die. It is NOT the government's job to keep us safe from illness. Making face coverings mandatory is an extreme government over reach.

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

SEE DEPARTMENT RESPONSE TO COMMENT 85535

85824 Jaime Baldwin 9/24/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85824>

Strongly Oppose I strongly oppose a permanent mandate to wear masks when in public.

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

SEE DEPARTMENT RESPONSE TO COMMENT 85535

85825 Allen Tire Allen Tire 9/24/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85825>

ETS regulations

Strongly oppose

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

85826 Kate 9/24/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85826>

Strongly oppose

It doesn't make sense to make it permanent, we had several different strains of the flu over the years and have never done anything like this. We have survived and thrived after all of these so why would we do something so radical at this time??

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

85827 M Warner 9/24/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85827>

Strongly Oppose



The temporary standard from April 2020 is outdated. People need to take accountability for their own health. After 6 months we should know the symptoms. The transmission of Covid-19 is no longer accurate or relevant. This is a temporary situation. Why make this a permanent standard? I strongly oppose to the making the temporary standard permanent.

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The Emergency Temporary Standard was adopted by the Board on July 15, 2020 and became effective on July 27, 2020.

SEE DEPARTMENT RESPONSE TO COMMENT 84237

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85828 Daniel Rickmond BHCI 9/24/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85828>

Strongly Opposed to Adopting a Permanent Standard

I work in the construction industry and supervise workers in the field. I strongly oppose instituting any permanent standards in regard to COVID-19. We already impose strict safety compliance standards and are adhering to all guidelines. Instituting a permanent standard on something that was just instituted as a temporary standard 60 days ago is negligent. Furthermore living in a state where masks and temperature checks are the permanent way of doing business is not a place anyone with common sense would want to live.

I am opposed to any amendment to include other flus, viruses, colds, or other communicable diseases in any permanent standard. There is no one-size fits all plan to combat a wide variety of infectious illnesses.

The Emergency Standards are burdensome, obsolete, difficult to enforce, costly in time and money, and lack flexibility to adapt to current science and innovation. I am STRONGLY OPPOSED to the adoption of these as a Permanent Standard for what is a temporary health situation.

I remain committed to the health and safety of my coworkers and thank you for the opportunity to publicly comment.

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The Standard does not cover other infectious diseases like influenza, tuberculosis, etc.

SEE DEPARTMENT RESPONSE TO COMMENT 84237

85830 anonymous 9/24/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85830STRONGLY OPPOSE>

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

85832 Lauren Akers (multiple comments)

9/24/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85832>

Strongly Oppose

I am strongly opposed to this regulation, both as a temporary measure and a permanent one. There is a 100% mortality rate among humans. We all die. It is NOT the government's job to keep us safe from illness. Making face coverings mandatory is an extreme government over reach.

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

SEE DEPARTMENT RESPONSE TO COMMENT 85535

"

85834 Amy

9/24/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85834>

"Very strongly opposed

Very strongly opposed

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

85835 Melinda Lewis

9/24/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85835>

Strongly Support

Virginians need a strong permanent standard. The proposal provides strong protections for workers and clear guidance for employers. It will save lives, prevent COVID spread and get our economy moving again. This works for all of us, not just some or a few, but all of us.

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SEE DEPARTMENT RESPONSE TO COMMENT 84196

85838 anonymous

9/24/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85838>

Department of Labor and Industry Announces Intent to Adopt a Permanent Standard for Infectious Disease

I am a business owner in Virginia, and I oppose making the COVID-19 Workplace Safety Emergency Standard permanent.

Six months into the pandemic, I have learned to adapt to this unprecedented time by implementing industry-specific guidance from the Governor, the Virginia Health Department, the CDC, and OSHA to ensure physical distancing and extensive sanitization. I want to keep my employees safe because I care about their welfare.

Now is not the time to make the emergency temporary standard permanent when it's likely this pandemic will be temporary. Imposing "one size fits all" COVID-19 regulations on all employers and employees is unreasonable especially when guidance is continually changing as we learn more about the virus and how best to protect against it's spread. Knowing the temporary standard expires in February 2021, there is plenty of time for the Board to wait until we know more about how long the pandemic could last before taking any further action.

My company takes its responsibility for protecting our employees seriously. Making the COVID-19 emergency regulations permanent will only make a difficult situation worse for employers and employees. I remain concerned about the impact many of the provisions of the emergency regulations are having on my business and encourage the Board to not

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SEE DEPARTMENT RESPONSE TO COMMENT 85680

85839 Canon Virginia 9/24/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85839>

DOLI COVID-19 Temporary Regulations change to Permanent

Provide safe harbor for employers who follow CDC and OSHA guidance

Eliminate reporting requirements to Health Dept and Virginia OSHA for Employers given testing facilities report this anyway

Eliminate requirement for business considerations i.e. supply chain or cross training

Strike vague language regarding the need to provide flexible sick leave

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SEE DEPARTMENT RESPONSE TO COMMENT 84956

The Department does not plan to recommend that 16VAC25-220-10.G be returned to its original language. It is the Department's position that similarly situated employees and employers exposed to the same or even more serious hazards or job task should all be provided the same basic level of safety and health protections. The Standard's language in 16VAC25-220-10.G assures such protections.

The Department does not plan to recommend the elimination of reporting requirements to the Department of Health, although it does intend to recommend a change to the trigger number of positive cases. DOLI and the Virginia Department of Health (VDH) have collaborated on a Notification Portal for employers to report COVID-19 cases in accordance with Emergency Temporary Standard (ETS) Sections 16VAC25-220-40.B.8.d and -40.B.8.e that satisfies COVID-19 reporting requirements for both agencies. The portal went live on September 28, 2020. Here is a link:

<https://www.doli.virginia.gov/report-a-workplace-fatality-or-severe-injury-or-covid-19-case/>

The Department intends to recommend language changes to the ""business consideration"" language in 16VAC25-220-70.C.5 referenced by the Commenter to make clear that the language is related to occupational safety and health concerns.

The Department disagrees that the sick leave language referenced is unconstitutionally vague. The Standard does not require employers to provide sick leave to employees. It does reference the Families First Coronavirus Response Act (FFCRA) at 16VAC25-220-40.B.6:

6. To the extent feasible and permitted by law, including but not limited to the Families First Coronavirus Response Act, employers shall ensure that sick leave policies are flexible and consistent with public health guidance and that employees are aware of these policies.

Further information about the FFCRA and sick leave policies can be found at:  
<https://www.dol.gov/agencies/whd/pandemic/ffcra-employee-paid-leave>

85846 Jeffrey N. Lighthiser, President/CEO, Draper Aden Associates 9/24/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85846>

Strongly Oppose

As an employer in the design industry that serves heavy construction, I oppose adopting a Permanent Standard for Infectious Disease Prevention: SARS-CoV-2 Virus That Causes COVID-19, 16VAC25-220.

- Construction is an essential business performing critical work in the Commonwealth since the onset of the pandemic. The health and safety of all employees is the top priority of our company. A culture of safety is our primary operating principle. We implemented the CDC and OSHA COVID-19 guidelines for construction as soon as they were published and are in compliance with the CARES Act mandates.
- The science of COVID-19 is continuously being updated. The CDC and OSHA guidelines are frequently updated to reflect the science. The Emergency Temporary Standard, proposed in April 2020, is outdated and inflexible. If the standard were to become permanent, it would continue to require businesses to comply with outdated regulations. What was thought to be true about the transmission of SARS-CoV-2 in April, is no longer accurate. As an example, the disinfection standard requirements are based on practices that now may not provide meaningful reduction in transmission. An hour or more a day is spent disinfecting tools and equipment. It is time consuming and burdensome to continue with practices no longer scientifically relevant.
- The costs of the required training (16VAC25-220-70 and 16VAC25-220-80) average a total of 2 hours per employee. Developing the Infectious Disease Preparedness and Response Plan (16VAC25-220-70), not including implementation, requires approximately 40 hours by a supervisory level employee. These hours are in addition to and impede other job functions.
- Construction tasks fall into the “Low” and “Medium” categories as defined in 16VAC25-220-30. The standards use “Grave” danger to regulate ALL businesses in Virginia, yet the great majority of deaths in Virginia (79% or 2269 as of September 23rd Virginia Department of Health Dashboard) were patients over the age of 70. As it is unlikely many over the age of 70 were actively still in the workplace, that leaves 613 deaths over 6 months or a death rate in Virginia of .007% based on a population of 8,536,000 (2019 US Census Bureau). Further, 54% (1556) of deaths were patients in long-term care and correctional facilities. As not all of those deaths fall into the over 70 category, that means less than 613 deaths were potentially working Virginians. Where they were exposed to the virus is not provided in the data. The definition of “Grave” danger for “low” and “medium” risk category needs to be revisited. These categories should be removed from the Temporary Standard and never be part of any Permanent Standard.

I am opposed to any amendment to include other flus, viruses, colds, or other communicable diseases in any permanent standard. There is no one-size fits all plan to combat a wide variety of infectious illnesses.

The Emergency Standards are burdensome, will become obsolete, difficult to enforce, costly in time and money, and lack flexibility to adapt to current science and innovation. I am STRONGLY OPPOSED to the adoption of these as a Permanent Standard for what is a temporary health situation.

I remain committed to the health and safety of my employees and the employees of our partners in the construction industry. Thank you for the opportunity to publicly comment.

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"The Emergency Temporary Standard was adopted by the Board on July 15, 2020 and became effective on July 27, 2020.

SEE DEPARTMENT RESPONSE TO COMMENT 84956

85847 anonymous 9/24/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85847>

STRONGLY opposed to making the regulation permanent

Not needed as we move forward. Stop the micromanaging.

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

85848 BA Ciccolella 9/24/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85848>

Strongly Support these Worker Protections

Please make sure that our workers are fully protected from exposure to this virus while they are at work. There is no reason an employer should be using workers without protecting them and their families from this potentially deadly disease.

This pandemic is NOT over, no matter what political persons would like to think, and it will not be over until everyone takes responsible steps to protect their neighbors, and that includes our laborers, and anyone who works in our state.

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SEE DEPARTMENT RESPONSE TO COMMENT 84196

85849 anonymous 9/24/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85849>

Oppose Permanent Standard

As a member of the Construction Industry I oppose this directive becoming a Permanent Standard.

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

85852 Michael Miller 9/24/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85852>

"Stongly Oppose

I am a business owner and strongly oppose making this standard permanent. I want to keep my employees safe because I care about their well-being, but imposing a on size fits all regulation while the what we learn about the virus is continually evolving is premature.

The fact that 49 other states have not taken this action should be considered as well.

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The states of Virginia, Washington, Michigan and Oregon have adopted COVID-19 related workplace safety and health regulations.

SEE DEPARTMENT RESPONSE TO COMMENT 84237

85854 Mike Van Sickel, Branscome Inc. 9/24/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85854>

STRONGLY OPPOSED Permanent Standard for Infectious Disease Prevention

Members of the Safety and Health Code Board,

As an employer in the heavy construction industry, I oppose adopting a Permanent Standard for Infectious Disease Prevention: SARS-CoV-2 Virus That Causes COVID-19, 16VAC25-220.

I am opposed to any amendment to include other flus, viruses, colds, or other communicable diseases in any permanent standard. There is no one-size fits all plan to combat a wide variety of infectious illnesses.

The Emergency Standards are burdensome, obsolete, difficult to enforce, costly in time and money, and lack flexibility to adapt to current science and innovation. I am STRONGLY OPPOSED to the adoption of these as a Permanent Standard for what is a temporary health situation.

Thank you for the opportunity to publicly comment.

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The Standard does not cover other infectious diseases like influenza, tuberculosis, etc.

SEE DEPARTMENT RESPONSE TO COMMENT 84237

85856 Jason Yarashes, Legal Aid Justice Center 9/24/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85856>

Adopt the Proposed Permanent Standard for Infectious Disease Prevention for COVID-19

We commend the Department of Labor and Industries (DOLI) staff and the Safety and Health Codes Board (Board) for developing and approving emergency temporary standards in the wake of COVID-19. In particular, we thank DOLI and the Board for prioritizing physical distancing, which is one of the best ways to prevent person to person spread. We also strongly support requiring employers to provide greater transparency and communication when someone in the workplace has been infected with COVID-19, while still complying with the Americans with Disabilities Act and other applicable Virginia laws and regulations. Finally, we appreciate both the strong sanitation requirements applying to workplaces and the standards that ensure access to basic sanitation needs for workers, as well as the anti-retaliation provisions.

The proposed Permanent Standard for Infectious Disease Prevention for COVID-19 would maintain important protections for working people and communities in Virginia and provide continuity with the emergency temporary standards, thereby reducing the challenges employers and employees would face from changing standards.

Thank you for considering these comments from the Legal Aid Justice Center. We urge you to do what is right to protect Virginia's workers and adopt the proposed Permanent Standard.

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SEE DEPARTMENT RESPONSE TO COMMENT 84196

85858 Greg Garland 9/24/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85858>

Strongly Support

I urge the COVID-19 ETS workplace legislation become permanent for the safety of all whose health in threatened by a compromised work environment. Thank you for your just and compassionate vote.

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SEE DEPARTMENT RESPONSE TO COMMENT 84196

85859 anonymous 9/24/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85859>

Strongly oppose becoming permanent.

We had already developed the Safety protocols in March 2020 to meet the individual health and safety of employees for COVID 19. We could not wait until July for the Administration to force us and then we were force to revise and comply with their program thus creating additional hardship and not adding anything that hadn't been addressed. To mandate permanently is just burdensome and unproductive.

**WE STRONGLY DISAGREE WITH THIS BECOMING PERMANENT!**

You want to help small business provide guidance, support, less regulation, when we needed it in March not 5 months later.

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

85860 anonymous

9/24/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85860>

Strongly support

The Commonwealth of Virginia needs a permanent standard for workplace safety and health - regardless of hopes that Covid 19 will be eradicated soon. Why limit the importance of workers' health and safety to a six-month period; or connect it to a specific health concern?

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SEE DEPARTMENT RESPONSE TO COMMENT 84196

85863 John King, President

Virginia Poultry Growers Cooperative (VPGC)

9/24/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85863>

Permanent Standard Regulation SARS-CoV-2 Virus That Causes COVID-19

VPGC represents nearly 200 family growers and processes approximately 300M pounds of turkey per year with nearly 600 employees. I am writing to object to the plan to make the recently Emergency Temporary Standard (ETS) regulation permanent. VPGC is a good example of an organization that implemented measures to protect employees long before state government regulations were enacted. Our plan to combat Covid-19 has evolved as recommendations have changed from both the Virginia Department of Health (VDH) and Centers for Disease Control (CDC). We have shown transparency with VDH, legislators and our employees long before the ETS was adopted in an effort to provide assurances that we were working to offer protections. VPGC has also worked with other companies to help them adopt some of the same procedures that have proven to mitigate Covid-19 in our workforce. While we had minimal cases in the processing plant at the beginning of the pandemic, we have had no additional cases in the processing plant in the last 3 months.

The ETS rule was enacted outside the normal bounds of regulatory implementation with very little input from the stakeholders. Questions about the ETS regulation have gone unanswered and industry has been left to interpret broad and ambiguous provisions. There is ample guidance from VDH, CDC and OSHA to mitigate the spread of Covid-19 and this has been proven by the rapid reduction of cases in meat processing plants across the Commonwealth. In fact, you could make the argument that cases have largely disappeared completely.

I urge the Department of Labor and Industry not to follow the same flawed ETS process with a permanent implementation of rules that have proven not necessary. I was alarmed at how the ETS was enacted with minimal input from stakeholders and I am equally concerned that regulation of this magnitude is being considered on a permanent basis using the same unsound process.



Sincerely,

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The proposed permanent standard has been subject to the following notice and comment procedures. The Virginia Safety and Health Codes Board held a 60 day written comment period for the Proposed Permanent Standard, with the comment period running from August 27, 2020 to September 25, 2020. The Board held a Public Hearing on September 30, 2020. A revised draft of the Proposed Permanent Standard will be published with an additional 30 day comment period prior to any Board action.

Frequently Asked Questions (FAQs) are available at: <https://www.doli.virginia.gov/cononavirus-covid-19-faqs/>.

SEE DEPARTMENT RESPONSE TO COMMENT 84956

An economic impact analysis/cost analysis will be prepared for the revised proposed permanent standard.

85867 Sam Anderson 9/24/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85867>"Strongly Opposed

This is something the people should decide. Leave it up to us, either on the day to day life or allow every permanent Virginian resident to vote this into law for a set time line. This is not something the state legislature should decide.

This will harm businesses, people will be unable to understand each other and the disruption that I have witnessed at stores will continue until this over.

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This Standard is not being proposed as legislation to the General Assembly. The Standard is being considered for adoption by the Virginia Safety and Health Codes Board pursuant to Va. Code §40.1-22(6a) and would be enforced by the Department of Labor and Industry's (DOLI) Virginia Occupational Safety and Health (VOSH) Program.

SEE DEPARTMENT RESPONSE TO COMMENT 84237

85868 anonymous 9/24/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85868>

MANDATING PERMANENT RESTRICTIONS

I am against the permanent use of restrictions for COVID 19. No other country has done this and the virus is being eradicated. Our numbers are the lowest they have ever been and research is continuing to show that our bodies fight this virus the same way they fight all other viruses. If we were not aware of the novelty of this one, our bodies would be reacting the same way.

There are countless other viruses that do not require for us to be restricted, out of work, forced to wear masks, etc. Those same viruses are deadly to the elderly and those with co-morbidities.

Also, the CDC published data stating that the masks were of no use to our countrymen in the West fighting wild fires. The smoke particles are larger than that of SARS2. So, if the mask doesn't work for those large particles, it is not effective for the miniscule ones of COVID 19, either.

Thank you for your hard work. Let's do what is best for our state and country.

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"SEE DEPARTMENT RESPONSE TO COMMENT 84237

SEE DEPARTMENT RESPONSE TO COMMENT 85535

85871 Robert C 9/24/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85871>

STRONGLY OPPOSE

OPPOSE DOLI,

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

85873 Freeman 9/24/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85873>

Save Lives

Yes, save lives, and where the mask, what is the problem? Yes, I agree with the policy.

Thank you!

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SEE DEPARTMENT RESPONSE TO COMMENT 84196

85874 Carmen Silvius 9/24/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85874>

Oppose Making DOLI Regulation Permanent

I strongly oppose these additional burdens on employers during this challenging economic time. And while the business community supports clear and consistent workplace health protection protocols; we remain concerned about the impact many of the provisions of the ETS are having on businesses and encourage the Board to not make them permanent.

Below are some of the areas of the ETS that need attention if a permanent standard is pursued:

1. Amend § 10G to the agency's original language providing "safe harbor" for employers who follow CDC and OSHA guidance.

- 2.Strike the vague language mandating “flexible” sick leave policies. It is unconstitutionally vague and it exceeds the agency’s statutory authority.
  - 3.Strike requirements of owners of buildings and facilities to report COVID cases to employer tenants. It exceeds the intent of the Occupational Safety and Health (OSH) Act to require employers to provide employment and a place of employment that is free of recognized hazards.
  - 4.Remove hand sanitizer as a requirement. Everywhere else, it is a substitute or a best practice.
  - 5.Change language to apply hazard levels to job tasks instead of employers or industries.
  - 6.Change the time-based return-to-work rule requiring three days of being symptom-free (following the ten-day period since the onset of symptoms) to one, consistent with the new CDC standard.
  - 7.Eliminate the requirement to report positive cases to the Department of Health. Health care providers are already doing this.
  - 8.Eliminate the redundant language regarding employee refusal to work because they feel unsafe. The criteria for protected work refusals are already in the Administrative Regulatory Manual.
  - 9.Define “minimal contact.”
  - 10.Eliminate requirements to include business considerations (e.g., how to handle supply chain issues, cross-training to prepare for staff shortages) that have nothing to do with employee safety. 11. Ensure this regulation sunsets with the Governor’s State of Emergency the way the ETS does. The Board should also consider the burden that making this standard permanent and adding additional provisions will have on businesses that continue to struggle with the economic consequences of this pandemic.
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SEE DEPARTMENT RESPONSE TO COMMENT 85259

85875 James Kline 9/24/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85875>

STRONGLY OPPOSE THIS ATTACK ON SMALL PRACTICES

This is an unfair requirement, especially if made permanent. Small Businesses have largely been ignored by the State and Federal Government supply system. This law would add excessive reporting and paperwork. We do not have large administrative departments and frequently the development, reporting and, documentation is left up to the owner/Doctor to try and develop and maintain in addition to seeing patients. While large Hospitals have been supported, given, and allowed to hoard the majority of PPE the smaller private practices continue to suffer and be ignored by State and Federal Government. Large corporate practices have dozens of admin to comply with the excessive reporting and documentation requirements of this law while small practices do not. The State of Virginia does not require dental insurance companies to pay fair reimbursement between large practices and small, does not supply adequate PPE to small practices, does not require suppliers to fairly distribute PPE, and because we cannot charge patients for PPE we are forced to absorb the costs of PPE we are forced to pay outside of normal channels. Do not add more onerous regulations and requirements for small practices to suffer with and be prosecuted out of existence for. We have always been safe, are trying to be as safe as possible and will continue to do so - but the supply system,

Government and Private, is slanted to large entities and this law would require small practices to go bankrupt or close or stop seeing patients to allow enough time to ""Develop"" policies.

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SEE DEPARTMENT RESPONSE TO COMMENT 84956

The Department does not have legal authority to regulate supply chains for items such as personal protective equipment (PPE) and other products, but is well aware of the shortages of such items at various times as N-95 respirators, cleaning and disinfecting chemicals, hand sanitizer and other medical products to provide safety and health protections to employees.

The Standard was designed to provide employers with flexibility and takes into account the “feasibility” of an employer to comply with certain requirements, particularly in areas involving PPE that is not readily commercially available at this time.

See Federal OSHA’s” Enforcement Guidance for Respiratory Protection and the N95 Shortage Due to the Coronavirus Disease 2019 (COVID-19) Pandemic” (which employers in Virginia can rely on) for further information and guidance on respiratory protection. <https://www.osha.gov/memos/2020-04-03/enforcement-guidance-respiratory-protection-and-n95-shortage-due-coronavirus>

Please note that price gouging complaints during a state of emergency in Virginia can be filed with the Office of the Attorney General (OAG): [https://www.oag.state.va.us/consumer-protection/index.php?option=com\\_content&view=article&id=181#:~:text=File%20a%20Price%20Gouging%20complaint,Office%20of%20Weights%20and%20Measures.](https://www.oag.state.va.us/consumer-protection/index.php?option=com_content&view=article&id=181#:~:text=File%20a%20Price%20Gouging%20complaint,Office%20of%20Weights%20and%20Measures.)

The Department does not have legal authority to regulate the rate at which insurance companies reimburse medical practices.

85879 Wendy Singer 9/24/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85879>

Emergency Temporary Standard/Emergency Regulation, Infectious Diseases Prevention, SARS-COV-2 Virus

The purpose of this comment is to request that the Emergency Temporary Standard (see subject) be made a permanent regulation. Reasons follow. COVID-19 will not have disappeared at the end of the six month emergency period. The regulations contain protections all employees should be able to expect where they work. The guidelines are clearly written. Following the regulations actually helps employers by providing a healthy workplace so employees don't miss work or work to work sick and make others sick, which reduces productivity. Thank you for your consideration.

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SEE DEPARTMENT RESPONSE TO COMMENT 84196

85880 Melanie M Koerperich 9/24/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85880>

STRONGLY opposed to the Department of Labor and Industry’s COVID-19 Regulations becoming Permanent

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

85881 Mimi Coles 9/24/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85881>

ELIMINATE the ETS!!

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

85884 Wendy Singer (multiple comments) 9/24/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85884>

Emergency Temporary Standard/Emergency Regulation, Infectious Diseases Prevention, SARS-COV-2 Virus

The purpose of this comment is to request that the Emergency Temporary Standard (see comment subject above) be made a permanent regulation. Reasons follow. The COVID-19 pandemic will not have disappeared at the end of six months. The regulations provide for safety measures that all employees should be able to expect wherever they work. The regulations provide clear guidance to employers. Following the regulations actually helps employers by providing a healthy workplace, one where employees don't miss work because they've gotten sick on the job or come to work and infect others, thus reducing overall productivity.

Thank you for your consideration.

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SEE DEPARTMENT RESPONSE TO COMMENT 84196

85886 Brandon O'Connell, CFONansemond Pre-Cast Concrete Co., Inc. 9/24/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85886>

Strongly Oppose

Members of the Safety and Health Code Board,

I am an employer in the precast concrete industry. We produce essential products to support the infrastructure needs of the Commonwealth, I oppose adopting a Permanent Standard for Infectious Disease Prevention: SARS-CoV-2 Virus That Causes COVID-19, 16VAC25-220.

- As a critical part of the Construction Industry we are an essential business that has been performing critical work in the Commonwealth since the onset of the pandemic. The health and safety of all employees is the top priority of our company. A culture of safety is our primary operating principle. We implemented the CDC and OSHA COVID-19 guidelines for construction as soon as they were published and are in compliance with the CARES Act mandates.

- We worked for four and a half months under CDC and OSHA guidelines before the Emergency Temporary Standard became effective, July 27,2020. During those months we implemented critical safety measures to ensure the health of our employees. The federal guidelines for construction were working and additional regulations were duplicative and unnecessary.

- The science of COVID-19 is continuously being updated. The CDC and OSHA guidelines are frequently updated to reflect the science. The Emergency Temporary Standard, proposed in April 2020, is outdated and inflexible. If the standard were to become permanent, it would continue to require businesses to comply with outdated regulations. What was thought to be true about the transmission of SARS-CoV-2 in April, is no longer accurate. As an example, the disinfection standard requirements are based on practices that now may not provide meaningful reduction in transmission. An hour or more a day is spent disinfecting tools and equipment. It is time consuming and burdensome to continue with practices no longer scientifically relevant.

- The costs of the required training (16VAC25-220-70 and 16VAC25-220-80) average a total of 2 hours per employee. Developing the Infectious Disease Preparedness and Response Plan (16VAC25-220-70), not including implementation, requires approximately 40 hours by a supervisory level employee. These hours are in addition to and impede other job functions.

- Non-medically trained individuals now are required to perform health screenings. Screening each employee on average, takes thirty minutes at the start of a shift. Individuals must take accountability for their own health and not report to work if they are exhibiting the symptoms of COVID-19. After six months, Virginians should be very well aware of those symptoms. Our company, as mandated by the CARES Act, provides the Paid Sick Leave necessary for employees to stay home if they are ill.

- Under the umbrella of Construction, our job tasks fall into the “Low” and “Medium” categories as defined in 16VAC25-220-30. The standards use “Grave” danger to regulate ALL businesses in Virginia, yet the great majority of deaths in Virginia (79% or 2269 as of September 23rd Virginia Department of Health Dashboard) were patients over the age of 70. As it is unlikely many over the age of 70 were actively still in the workplace, that leaves 613 deaths over 6 months or a death rate in Virginia of.007% based on a population of 8,536,000 (2019 US Census Bureau). Further, 54% (1556) of deaths were patients in long-term care and correctional facilities. As not all of those deaths fall into the over 70 category, that means less than 613 deaths were potentially working Virginians. Where they were exposed to the virus is not provided in the data. The definition of “Grave” danger for “low” and “medium” risk category needs to be revisited. These categories should be removed from the Temporary Standard and never be part of any Permanent Standard.

I am opposed to any amendment to include other flus, viruses, colds, or other communicable diseases in any permanent standard. There is no one-size fits all plan to combat a wide variety of infectious illnesses.

The Emergency Standards are burdensome, obsolete, difficult to enforce, costly in time and money, and lack flexibility to adapt to current science and innovation. I am **STRONGLY OPPOSED** to the adoption of these as a Permanent Standard for what is a temporary health situation.

I remain committed to the health and safety of my employees and thank you for the opportunity to publicly comment.

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SEE DEPARTMENT RESPONSE TO COMMENT 84956

SEE DEPARTMENT RESPONSE TO COMMENT 86359

85888 Richard Staubs 9/24/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85888>"Oppose making temporary COVID regulations permanent

I am a Virginia small business owner who is opposed to making the temporary COVID regulations permanent. We are all aware of the risks and work diligently to mitigate them for our employees and our customers. The state does not need to tell me to care, or to be careful. Our employees and customers are the reason for our existence and we are in the best position to determine the actions necessary to achieve safety in our workplace.

" SEE DEPARTMENT RESPONSE TO COMMENT 84237

85889 Kim George, Cook's Exxon 9/24/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85889>

Strongly Oppose

I strongly oppose adopting permanent rules for a temporary problem. We remain committed to protect our employees and customers. Making these rules permanent causes a huge burden on employers.

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

85890 Donna Worrell 9/24/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85890>

Oppose permanence of COVID-19 Workplace Safety Emergency Standard

I am a small business owner in Virginia who opposes making the COVID-19 Workplace Safety Emergency Standard permanent. Six months into the pandemic, I have learned to adapt to this unprecedented time by implementing safety protocols from a number of federal and state entities to ensure physical distancing and extensive sanitization. I want to keep my employees and customers safe because I care about their welfare.

Imposing "one size fits all" COVID-19 regulations on all employers is unreasonable especially when guidance is continually changing as we learn more about the virus. The Board needs to take the time to see what challenges employers are facing implementing the emergency regulations before taking any further action.

My company takes its responsibility for protecting its employees seriously. Making the COVID-19 emergency regulations permanent will only make a difficult situation worse for employers and employees. I remain concerned about the impact many of the provisions of the emergency regulations are having on my business and encourage the Board to not make them permanent

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SEE DEPARTMENT RESPONSE TO COMMENT 85680

85891 Michael 9/24/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85891> "Regulating us out of business !!

I already take the safety of my clients and my employees seriously enough. We have learned a lot over the past six months in how to protect all involved. With that said, the COVID-19 Workplace Emergency Regulations cannot be permanent, at least do not make that sort of decision. Give this pandemic some time to perhaps resolve itself..... you are killing us financially with all the Federal, and State regulations..... and another thing. When a hurricane comes to town, NOBODY is allowed to price gouge.... but that has been standard practice it seems for PPE products. Is anybody going to help with the MASSIVE price gouging?

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Price gouging complaints during a state of emergency in Virginia can be filed with the Office of the Attorney General (OAG): [https://www.oag.state.va.us/consumer-protection/index.php?option=com\\_content&view=article&id=181#:~:text=File%20a%20Price%20Gouging%20complaint,Office%20of%20Weights%20and%20Measures.](https://www.oag.state.va.us/consumer-protection/index.php?option=com_content&view=article&id=181#:~:text=File%20a%20Price%20Gouging%20complaint,Office%20of%20Weights%20and%20Measures.)

SEE DEPARTMENT RESPONSE TO COMMENT 84956

85893 Oil Equipment Sales and Service Co., Inc Oil Equipment Sales and Service Co., Inc 9/24/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85893>

Permanent Covid-19 Standards

If the covid 19 mandates are made permanent, without a one on one review of each small business and its situation, you will put hundreds of small businesses out of business.

The people that run the state of Virginia and most of the politicians that run this country are so far out of touch with what is important to the small business man that they think because they see ONE business that something will work in they think it will work for all small businesses. THIS IS NOT AND WILL NEVER BE TRUE. Come visit my small business and see.

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SEE DEPARTMENT RESPONSE TO COMMENT 84956

85895 Tina Miller 9/24/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85895>

Do not hurt businesses/employers further - PLEASE

Businesses struggle as it is to stay in business! Please do not hurt them further with more regulations. We care deeply for our employees, but continuing to make regulations that we need to administer makes it harder to survive, and if we go out of business that hurts our employees by losing their jobs, hurts our communities by lack of tax revenue, hurts our streets by having vacancies. Please do not vote to hurt businesses further by making Covid regulations permanent. These were intended to be temporary and please keep them as such - it seems like a bait and switch to make them permanent!

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

85897 Seal Specialists LP Seal Specialists LP 9/24/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85897>

Do not hurt small business

I am a small business owner in Virginia who opposes making the COVID-19 Workplace Safety Emergency Standard permanent. Six months into the pandemic, I have learned to adapt to this unprecedented time by implementing safety protocols from a number of federal and state entities to ensure physical distancing and extensive sanitization. I want to keep my employees and customers safe because I care about their welfare.

Now is not the time to make the emergency temporary standard permanent when it's likely this pandemic will be temporary. Imposing "one size fits all" COVID-19 regulations on all employers is unreasonable especially when guidance is continually changing as we learn more about the virus. The Board needs to take the time to see what challenges employers are facing implementing the emergency regulations before taking any further action.

My company takes its responsibility for protecting its employees seriously. Making the COVID-19 emergency regulations permanent will only make a difficult situation worse for employers and employees. I remain concerned about the impact many of the provisions of the emergency regulations are having on my business and encourage the Board to not make them permanent.

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SEE DEPARTMENT RESPONSE TO COMMENT 85680

85898 Michael S 9/24/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85898>

Enough already

Enough already. There is enough ""red tape"" for small businesses. Please let us get back to working and living. Small businesses provide quality and customer service that large companies can't or won't. We are doing right by our employees and customers. Trust us to continue to do the right thing.

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SEE DEPARTMENT RESPONSE TO COMMENT 84956

85899 Oil Equipment Sales and Service Co., Inc (multiple comments) Oil Equipment Sales and Service Co., Inc 9/24/2020 <https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85899>

Permanent Covid-19 Standards STRONGLY OPPOSE

STRONGLY OPPOSE

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

85900 David Lawall

9/24/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85900>

Strong Disagree with Imposing Additional COVID Regulations

I am a small business owner in Virginia who opposes making the COVID-19 Workplace Safety Emergency Standard permanent. Six months into the pandemic, I have learned to adapt to this unprecedented time by implementing safety protocols from a number of federal and state entities to ensure physical distancing and extensive sanitization. I want to keep my employees and customers safe because I care about their welfare.

Now is not the time to make the emergency temporary standard permanent when it's likely this pandemic will be temporary. Imposing "one size fits all" COVID-19 regulations on all employers is unreasonable especially when guidance is continually changing as we learn more about the virus. The Board needs to take the time to see what challenges employers are facing implementing the emergency regulations before taking any further action.

My company takes its responsibility for protecting its employees seriously. Making the COVID-19 emergency regulations permanent will only make a difficult situation worse for employers and employees. I remain concerned about the impact many of the provisions of the emergency regulations are having on my business and encourage the Board to not make them permanent.

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SEE DEPARTMENT RESPONSE TO COMMENT 85680

85901 anonymous

9/24/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85901>

Do not make COVID 19 regulations permanent

I am a small business owner in Virginia who opposes making the COVID-19 Workplace Safety Emergency Standard permanent. Six months into the pandemic, I have learned to adapt to this unprecedented time by implementing safety protocols from a number of federal and state entities to ensure physical distancing and extensive sanitization. I want to keep my employees and customers safe because I care about their welfare.

Now is not the time to make the emergency temporary standard permanent when it's likely this pandemic will be temporary. Imposing "one size fits all" COVID-19 regulations on all employers is unreasonable especially when guidance is continually changing as we learn more about the virus. The Board needs to take the time to see what challenges employers are facing implementing the emergency regulations before taking any further action.

My company takes its responsibility for protecting its employees seriously. Making the COVID-19 emergency regulations permanent will only make a difficult situation worse for employers and employees. I remain concerned about the impact many of the provisions of the emergency regulations are having on my business and encourage the Board to not make them permanent.

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SEE DEPARTMENT RESPONSE TO COMMENT 85680

85902 Greenwood Stores Greenwood Stores 9/24/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85902>

Building Owners

Can everyone say Discrimination? Tenant business will be greatly impacted negatively if a tenant has to disclose to a landlord a positive case & then that has to be passed on to other tenants? Common areas? Those are mostly outside and comprised of concrete, asphalt, & shrubbery. What is to be sanitized? This is totally ludicrous, unfounded, and a waste of time, energy & money. Have the people who wrote this proposal ever visited a landlord owned location? Should this hold true for apartment buildings? Talk about having tenants targeted for threats, bad blood, & other negative actions!! This proposal puts our citizens, businesses, & way of life (including our civil liberties & freedom) at risk. STOP the over-reaching. Church and state was separated for a reason. State and privately-owned need to stay separate. It's hard enough to stay in business with the over-taxation that has to be passed on to consumers. Now you want increased expenses to be passed on in a time of business turn-down? Leave our freedom alone!!! Trust that we are a Commonwealth full of decent, intelligent, and responsible citizens and know how to do the right thing without it being mandated! OPPOSED!!!!

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The Standard does not apply to non-business tenants in an apartment building.

The Standard does not requiring sanitizing of ""concrete, asphalt & shrubbery.""

SEE DEPARTMENT RESPONSE TO COMMENT 84237

85905 Robert H 9/24/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85905>

Opposed to these "regulations"

I am a business owner, and I am highly opposed to these so called regulations, that have been put in place over 6 months ago.

These rules have done very little to prevent any spread of the virus. Especially creating a high load and demand on small business, which have little to no effect on the spread of the virus. When there would have been more effective rules put in place on larger businesses that have high traffic and interaction with the public!

Small businesses are close groups that do not interact in large quantities with a vast number of the general public. Where as the large businesses that have thousands of public interactions, sometimes per hour, are allowed to have less strict rules. This does nothing to hinder the spread of this virus.

further, it is because of these types of regulations that just about every industry now is suffering from an inability to keep up with production!

The restrictions caused several businesses to lay off people because they could not meet the demands, and to close their factories. They did this as a temporary measure and many as a permanent closure because they would not recover from it!

With these shut downs the supply chain has been backlogged and strained, and it will continue to get worse. Many businesses are just deciding to ignore them, so they can just remain operational or even meet critical demand.

If you want to stop the spread of this virus, it is not the businesses you need to turn to for restrictions, but the general public on education! They don't understand how it spreads, how to properly sanitize, how to even care for themselves. Instead they require more rules to be put in place to try and stop a spread that they need to be educated on.

Its sad when I hear people talking in public that they think the virus spreads because of rain, or because they received a box in the mail, or drinking certain brands of liquid or even food will give it to them.

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The Standard does not place requirements based on the size of the business.

SEE DEPARTMENT RESPONSE TO COMMENT 84956

85906 Michael Miles, Construction 9/24/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85906>

Construction Equipment Foreman

I am strongly against the protocols that are present today from becoming permanent. Not only are they obtrusive in daily work and personal interactions with others, but the use of a mask as a preventer of disease transmittal is still in question. The CDC printed opinions in 2017 the masks do not help. The WHO has vacillated between both options. My second and personal reason is that those who are hard of hearing need to see peoples mouth's to work out what people are saying. The wearing of masks defeats this ability and has now isolated a portion of our society from being able to communicate while out and about with others they come in contact with in our daily activities. I am a part of the hearing impaired society and find communication in food and retail stores very difficult and have on occasions had to have my children interpret for me. I am not a scientist or scholar, but I do know that we are social animals, we need people and this type of egregious draconian restriction takes away out independence and our humanity. Whether it is or not, it sure seems to be a measure being driven by todays political climate. Lets have rational thought and discourse from all parties to come to a workable way to live in our social world and not make a lost generation be the next catch phrase to identify an age group of our community.

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"SEE DEPARTMENT RESPONSE TO COMMENT 84237

SEE DEPARTMENT RESPONSE TO COMMENT 85535

85907 Marlene Dakita 9/24/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85907>

Strongly support

Virginia's Emergency Temporary Standard (ETS) for workplace safety is helping people now during COVID-19, but COVID is going to stick around for quite some time yet. I support a strong PERMANENT standard so that workers who are working can continue to work safely. This in turn will get Virginia's economy moving again.

Thank you.

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SEE DEPARTMENT RESPONSE TO COMMENT 84196

85908 S. Phillips 9/24/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85908>

STRONGLY OPPOSE MAKING COVID-19 REGULATIONS PERMANENT

Individuals are free to implement their own personal regulations, should they choose. They can choose to frequent a business or not. They can choose to wear PPE or not. Forcing additional regulations on business owners, which leave exceptionally broad room for litigious action against the business is far more harmful. Last time I checked, this was the U.S. In the U.S., you are free to make your own decisions and you are responsible for your actions. Studies and research are showing the impacts from COVID-19 are being blown-out of proportion. It seems the studies are supported by the fact there is no marked increase of covid amidst all the ""peaceful"" protesters in the COVID ""hot spot"" areas like NYC, Seattle, Portland, and DC. The measure to make COVID-19 regulations permanent is STRONGLY OPPOSED! If instituted, it seems the U.S. Government supports it's citizens rights to gather in large groups and peacefully protest.

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

85909 Mills Restoration Mills Restoration 9/24/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85909>

No permanent covid regs

We do not need permanent solutions written into law at this point. Everyday the information on what is effective and what is not is changing. Any written laws at this point would be beyond premature.

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SEE DEPARTMENT RESPONSE TO COMMENT 84956

85910 anonymous 9/24/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85910>

Consider these amendments for the permanent standard

Repeal 16 VAC 25-220-40.A.8.e. It is unnecessarily burdensome on employers and DOLI. If you cannot repeal then amend it with the addition of the following sentence. "This reporting requirement only applies where the definition of work-relatedness under 1904.5 has been met." Furthermore, this reporting should not be required of employers where all employees/tasks are in the lower risk category.

Rename 16 VAC 25-220 and amend 16 VAC 25-220-10 so it covers more than one highly infectious airborne pathogen. The permanent standard needs to cover such pathogens as M. tb, Legionella and H1N1. These are all airborne infectious pathogens for which OSHA has engaged in enforcement actions in the past. Either that or the permanent standard should cover ". . . pandemics declared by the WHO or its successor organization." In 2003, a novel coronavirus that caused Severe Acute Respiratory Syndrome (SARS) was identified. Today we refer to that once 'novel' coronavirus as SARS-CoV-1 and its existence/prevalence became overshadowed by norovirus outbreaks, MERS outbreaks, the 2009 flu pandemic and now the COVID-19 pandemic. By this time next year, there may be a SARS-CoV-3 that causes an illness worse than COVID-19. This pathogen-specific standard will not apply to future pandemics or outbreaks caused by other pathogens. Keep in mind that outbreaks of the flu caused by the same H1N1 virus that triggered the 2009 pandemic still occur today.

The permanent standard needs to anticipate the availability of a vaccine. There may need to be a requirement that employers offer the vaccine to high and very high risk employees, similar to the HBV vaccine provision under the Bloodborne Pathogen standard. If 70% of the employees in a particular location have immunity (either through vaccination or after recovering from the illness) can that workplace dispense with the wearing of masks or other requirements within the standard? 70% is a conservative estimate of the herd immunity threshold (HIT) for COVID-19. If the standard is amended to cover other pathogens then instead of a number, the requirement should refer to the specific HIT for a disease. The standard would also need to include a definition for HIT.

16 VAC 25-220-60.B.1.g. needs to be renumbered as 16 VAC 25-220-60.A.2. Physical barriers are an engineering control not an administrative/work practice control. Face coverings are also a type of physical barrier and not an administrative/work practice control. Depending on the material, face coverings have varying percentages of permeability. Regardless, even a partial barrier is still an engineering control that helps to contain the amount of contaminant that is released into the workplace from a presumptive source. In addition, there are some grammatical errors in 16 VAC 25-220-60.B.1.

In lieu of the above, allow 16 VAC 25-220 to expire. COVID-19 is not an occupational disease like Asbestosis, Byssinosis, Pneumosiderosis and CWP, just to name a few. SARS-CoV-2 is not an occupational health hazard. It is a public health hazard that has reached pandemic level. Everyone has potential exposure regardless of his or her occupation. The OSHA/VOSH standards need to be reserved for hazards that exist or are created by the work activity/location/process. The public, not the workplace is the source of this hazard. Most employees are just as likely if not more likely to be exposed to this pathogen when not at work. Even those that are teleworking, because it is infeasible to enforce any provision of this standard inside someone's place of residence. It is infeasible to control others that reside with teleworkers. Even health care workers who may have to take care of an ailing loved one at home, where they will not be required to wear PPE as they would at work, are more at risk outside of work.

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The Department does not plan to recommend the elimination of reporting requirements to the Department of Health, although it does intend to recommend a change to the trigger number of positive cases. 16VAC25-220-40.B.8.e requires employers to notify the Department within 24 hours of the discovery of three or more employees present at the place of employment within a 14-day period testing positive for SARS-CoV-2 virus

during that 14-day time period. The intent of the notification requirement is to provide employees information of a “possible” exposure so that employees can make decisions for themselves on the appropriate course of action to take.

DOLI and the Virginia Department of Health (VDH) have collaborated on a Notification Portal for employers to report COVID-19 cases in accordance with Emergency Temporary Standard (ETS) Sections 16VAC25-220-40.B.8.d and -40.B.8.e that satisfies COVID-19 reporting requirements for both agencies. The portal went live on September 28, 2020. Here is a link:

<https://www.doli.virginia.gov/report-a-workplace-fatality-or-severe-injury-or-covid-19-case/>

If an employer is contacted by VOSH either through an informal investigation (phone/fax/email/letter) or as a result of an onsite inspection, it will be provided the opportunity to present information on whether it believes the employee’s infection occurred as a result of a workplace exposure or was contracted away from work.

The Safety and Health Codes Board has the option to begin consideration of a comprehensive infectious disease standard at any time; however the Department recommends that the focus for now remain on addressing SARS-CoV-2 and COVID-19 workplace hazards.

COVID-19 vaccines will be an important part of the Commonwealth’s and the country’s ability to significantly reduce the ongoing spread of the SARS-CoV-2 virus in the workplace and in the community. However, with the projected population-level efficacy of COVID-19 vaccine to be 50-70%, no one can definitively state that someone vaccinated will not subsequently be free from infection. There is also anecdotal information and scientific surveys that appear to indicate that a certain sector of the American population will refuse to be vaccinated. Accordingly, it is anticipated that SARS-CoV-2 will continue to infect a certain sector of the populace and be present in the workplace for months and years to come.

The Department does not intend to include a requirement in the Standard for employees to be vaccinated; however, the Standard is designed to incentivize employers to implement mitigation strategies against the spread of SARS-COV-2, and vaccinations are one such strategy.

The Department intends to recommend revisions to 16VAC25-220-60.B.1.g.

While many people become infected with SARS-CoV-2 in community settings that are not work-related, every person that becomes infected who is also an employee becomes a potential workplace source and transmitter of the virus if they report to work while still capable of transmitting the disease. There are numerous documented examples of the workplace spread SARS-CoV-2, which is also considered to be highly contagious. The introduction of an infectious disease into a workplace setting, regardless of the source, constitutes a workplace health hazard subject to regulation and enforcement by VOSH.

85912 anonymous

9/24/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85912>

**STRONGLY OPPOSE MAKING COVID-19 REGULATIONS PERMANENT**

Individuals are free to implement their own personal regulations, should they choose. They can choose to frequent a business or not. They can choose to wear PPE or not. Forcing additional regulations on business owners, which leave exceptionally broad room for litigious action against the business is far more harmful. Last time I checked, this was the U.S. In the U.S., you are free to make your own decisions and you are

responsible for your actions. Studies and research are showing the impacts from COVID-19 are being blown-out of proportion. It seems the studies are supported by the fact there is no marked increase of covid amidst all the ""peaceful"" protesters in the COVID ""hot spot"" areas like NYC, Seattle, Portland, and DC. The measure to make COVID-19 regulations permanent is STRONGLY OPPOSED! If instituted, it seems the U.S. Government supports it's citizens rights to gather in large groups and peacefully protest.

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

85914 Tamara BlueGreen Alliance 9/24/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85914>

BlueGreen Alliance

For anyone that is reading these comments, I don't believe any non-Virginia resident or business should be commenting on matters that are being considered by our Commonwealth that impacts our citizens! Throw out comments by Washington lobbyists, organizations, and disruptors. They should have no consideration given to their thoughts and opinions when it comes to Virginia law, mandates, and bills. Shame on them for inserting themselves in this process that should be limited to those of us who have to live with the decisions made by our STATE GOVERNMENT!

I OPPOSE this ETS being made permanent!!!

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The Department does not have any control over who can file comments to standards and regulations. That is within the purview of the General Assembly.

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

85916 Dian T 9/24/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85916>

Strongly oppose

Until we figure out whether we can develop a vaccine, no permanent mandate should be made for wearing masks.

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

SEE DEPARTMENT RESPONSE TO COMMENT 85535

85917 R W 9/24/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85917>



For those that support this crazy idea, please read

The government is running and ruining our lives. They always want more. More rules and regulations, and more money. Anything and everything that can be taxed; they will tax it. Having us provide PPE indefinitely is just another way of taxing us. We have to pass the cost on to your customers or eventually close.

Small business owners are more responsible than larger businesses because they know the names of their employees. We are already doing everything required. Trust us to continue to do what is right. Doing it right, is what small businesses do.

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

85919 anonymous 9/24/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85919>

Strongly opposed

The burden that these mandates have put on businesses and families is worse than the virus. With tests that create false positives and counting all deaths ""with Covid we are being asked to follow guidelines based on false data. These mandates create situations where businesses are closed permanently and families lose their means to pay their bills and keep a roof over their head. There's a reason that emergency orders are supposed to be temporary. We were told that we would close down for two weeks to slow the spread and here we are months later. Please vote NO to save Virginia.

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

85920 Barry Elswick 9/24/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85920>

Strongly opposed!

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SEE

DEPARTMENT RESPONSE TO COMMENT 84237

85921 anonymous 9/24/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85921>

No to permanent restrictions

The virus has been extremely hard on micro business. For all the mandatory steps would just push us over the edge and make us go out of business. That would mean hardship on employees and also mean the state would not receive any tax income from us. The micro businesses did not receive help that much as it was just based on employees, which we have less room to absorb the loss like a larger company would.

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SEE DEPARTMENT RESPONSE TO COMMENT 84956

85922 Garnette Owens 9/24/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85922>

Strongly oppose!

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

85924 Myra Hopcroft 9/24/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85924>"Strongly Oppose

This is not a one size fits all pandemic and should not be treated as such.

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SEE DEPARTMENT RESPONSE TO COMMENT 85680

85925 Kevin Kramer IUE-CWA Local 82167 9/24/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85925>

Pandemic standard

I believe this pandemic standard is a good idea. It gives guidance on how to start dealing with a situation, even before the medical community knows how to deal with it. We WILL have another pandemic, the only question is when. The world of viruses, diseases and the like is ever changing, and we need tools to be able to try to keep up. That is exactly what this is, a tool. It doesn't solve the issue for every possible situation, but it very well could save lives. Without a permanent standard, we have no guidance, and every response, in every work place, will differ based on management's best guess. We need more than someone's best guess. We need this standard to be permanent. Covid-19 has shown exactly how vulnerable we are as a society. Without guidance on how to deal with issues, you have no knowledge of, it costs lives.

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SEE DEPARTMENT RESPONSE TO COMMENT 84196

85927 Kyle Shreve, Virginia Agribusiness Council 9/24/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85927>

Re: Opposition to Proposed Permanent Standard for COVID-19 Mitigation [16VAC25-220]

Mr. Withrow:

I am writing you today on behalf of the Virginia Agribusiness Council to provide comments regarding the proposed Permanent Standard for COVID-19 mitigation. The Council is a member-based trade association representing the agriculture and forestry industries, contributing \$91 billion of economic impact in the Commonwealth.

We continue to oppose the standard as an unnecessary, static, and one-size fits all policy that does not allow the different industry sectors to adapt to the latest science and guidelines for mitigation. However, should the Board decide to make the standard permanent, the Council urges the Board to retain the provision revoking the standard if the Governor removes the State of Emergency. If a vaccine is approved and distributed in the next 12 months, large sections of the standard will be unnecessary and outdated. A permanent standard responding to a temporary threat is nonsensical, and therefore, should sunset when the Governor's State of Emergency expires.

The Council appreciates the inclusion of language allowing compliance with the standard by following the latest CDC publication. The industry has already invested millions of dollars and implemented unprecedented safety measures to protect their workforce and maintain the food supply. The different sectors of our industry have followed guidelines from the CDC, U.S. Department of Labor, and the Virginia Department of Agriculture and Consumer Services (VDACS).

Furthermore, public-facing businesses such as farmers markets, farm wineries, and farm breweries and others, have followed the Governor's Phase III Guidelines. Each individual farm, agribusiness, sawmill, papermill, etc. provides multiple services, could process products differently, and be a diversified operation with different types of agricultural production. The Permanent Regulation is yet another layer from another agency that leads to confusion and endangers the very workers the standard seeks to protect. The clause allowing compliance by following a CDC guidance document should be continued and clarified to reduce confusion.

We renew our initial finding that the definition of "technical feasibility" holds the industry to a standard requiring "technical know-how" and a level of compliance that "lags significantly behind that of their industry". Many of the requirements contained in the Regulation are qualified by the terms "to the extent feasible". This standard will likely lead to subjective and inconsistent enforcement depending on the employee making the complaint and the VOSH investigator. Additionally, each individual industry is diverse, especially that of agriculture and forestry.

We appreciate the Department's willingness to provide educational materials surrounding the ETS. However, we are concerned that there are requirements contained in the ETS that businesses have not been given a proper mechanism with which to comply. For example, the notification requirements allow a business to notify the Virginia Department of Health upon confirmation of a positive case. There is currently no standard reporting form or mechanism to report such a case to the Virginia Department of Health that we are aware. In addition, the provisions surrounding HVAC systems are unobtainable for some of our members. Asking those businesses to constantly update those systems is unrealistic and provides very little benefit in combating the virus. This requirement should be removed. Before enforcement actions are taken on any updated proposal, we ask that the Permanent Standard be amended to provide realistic expectations and businesses be given the tools they need to satisfy the requirements.

Finally, the Emergency Temporary Standard was adopted hastily and without adequate time for public input. There are measures currently contained in the ETS that are out of date or impossible to achieve for any business. We urge the Board not to make the same mistake with a regulation designed to last into the future. The Council believes that further amendments may be proposed by members of the Health and

Safety Codes Board or the Administration. The Council would ask that should any amendments be proposed or adopted by the Board; the Board should allow for a second comment period before the final Permanent Standard is adopted.

We appreciate the opportunity to comment on the proposed Permanent Standard and would be happy to answer any questions the Board may have.

Sincerely,

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SEE DEPARTMENT RESPONSE TO COMMENT 85680

COVID-19 vaccines will be an important part of the Commonwealth's and the country's ability to significantly reduce the ongoing spread of the SARS-CoV-2 virus in the workplace and in the community. However, with the projected population-level efficacy of COVID-19 vaccine to be 50-70%, no one can definitively state that someone vaccinated will not subsequently be free from infection. There is also anecdotal information and scientific surveys that appear to indicate that a certain sector of the American population will refuse to be vaccinated. Accordingly, it is anticipated that SARS-CoV-2 will continue to infect a certain sector of the populace and be present in the workplace for months and years to come.

The Standard's definition of "technical feasibility" is based on a longstanding definition contained in the VOSH Field Operations Manual (FOM) and federal OSHA's FOM. The Department does not intend to recommend any change to the definition.

Feasibility is defined and referenced numerous times in the Standard to provide a level of flexibility to employers to achieve compliance with the requirements of the Standard and to mitigate the spread of SARS-CoV-2 to employees while at work.

Here is a summary of the defense:

Infeasibility Defense (previously known as the "impossibility" defense)

A citation may be vacated if the employer proves that:

1. The means of compliance prescribed by the applicable standard would have been infeasible under the circumstances in that either:

- a. Its implementation would have been technologically or economically infeasible or
- b. Necessary work operations would have been technologically or economically infeasible after its implementation; and

2. Either:

- a. An alternative method of protection was used or
- b. There was no feasible alternative means of protection.

NOTE: Evidence as to the unreasonable economic impact of compliance with a standard may be relevant to the infeasibility defense.

Source: Occupational Safety and Health Law, Randy S. Rabinowitz, 2nd Edition (2002)

16VAC25-220-40.B.8.e requires employers to notify the Department within 24 hours of the discovery of three or more employees present at the place of employment within a 14-day period testing positive for SARS-CoV-2 virus during that 14-day time period.

DOLI and the Virginia Department of Health (VDH) have collaborated on a Notification Portal for employers to report COVID-19 cases in accordance with Emergency Temporary Standard (ETS) Sections 16VAC25-220-40.B.8.d and -40.B.8.e that satisfies COVID-19 reporting requirements for both agencies. The portal went live on September 28, 2020. Here is a link:

<https://www.doli.virginia.gov/report-a-workplace-fatality-or-severe-injury-or-covid-19-case/>

The Department acknowledges the comment and notes that the ASHRAE air handling requirements issue raised by the Commenter is undergoing a legal review.

Review of all COVID-19 related inspections under the Emergency Temporary Standard is conducted centrally by the Department with both a programmatic and legal review prior to a decision to issue or not issue violations/penalties to assure consistent enforcement across the Commonwealth. The Department does not anticipate any significant increase in litigation with regard to the Emergency Temporary Standard or any permanent standard.

The proposed permanent standard has been subject to the following notice and comment procedures. The Virginia Safety and Health Codes Board held a 60 day written comment period for the Proposed Permanent Standard, with the comment period running from August 27, 2020 to September 25, 2020. The Board held a Public Hearing on September 30, 2020. A revised draft of the Proposed Permanent Standard will be published with an additional 30 day comment period prior to any Board action.

85928 anonymous 9/24/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85928>

MUST APPROVE

We need to be safe. Businesses will not protect nor support us when we get sick. Covid is not going away because people are not following the rules. Until there is a vaccine this needs to be permanent.

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SEE DEPARTMENT RESPONSE TO COMMENT 84196

85931 anonymous 9/24/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85931>

Approve

Peoples lives are more important than money. The only people that oppose this are people that don't care about the heath and safety of people above money. Wear a mask, stay as far back as possible, wash your hands, and try to get your government to do the right thing. Lives above money.

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SEE DEPARTMENT RESPONSE TO COMMENT 84196

85932 Judy Freeman 9/24/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85932>

Worker Protection Legislation

I am asking you to make permanent the temporary Worker Protection legislation passed in the Virginia General Assembly this spring. We desperately need to continue this measure.

Sincerely,

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This Standard is not being proposed as legislation to the General Assembly. The Standard is being considered for adoption by the Virginia Safety and Health Codes Board pursuant to Va. Code §40.1-22(6a) and would be enforced by the Department of Labor and Industry's (DOLI) Virginia Occupational Safety and Health (VOSH) Program.

SEE DEPARTMENT RESPONSE TO COMMENT 84196

85933 anonymous 9/24/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85933>

YES!!!!

Please do not allow the ignorant to change this. Masks and gloves do not hurt people. There are NO exceptions. NONE. Wear a mask or don't go into the store. IF your a business, supply the equipment needed to keep your employees and customers safe. ITS A MASK KAREN!

" SEE DEPARTMENT RESPONSE TO COMMENT 84196

85934 anonymous 9/24/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85934>"protection of workers

Please make temporary protection of workers, permanent

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SEE DEPARTMENT RESPONSE TO COMMENT 84196

85935 Tian 9/24/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85935>

Protection for employees

Protection of Employees. Enough said. PPE MANDATORY for all!

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SEE DEPARTMENT RESPONSE TO COMMENT 84196

85936 DR. JILL D. WOOD, PHARMHEALTH EXPRESS PHARMACY & WELLNESS 9/24/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85936>

STRONGLY OPPOSE MAKING COVID-19 WORKPLACE SAFETY EMERGENCY STANDARD PERMANENT

I AM A SMALL BUSINESS OWNER IN VIRGINIA WHO OPPOSES MAKING THE COVID-19 WORKPLACE SAFETY EMERGENCY STANDARD PERMANENT. SIX MONTHS INTO THE PANDEMIC, I HAVE LEARNED TO ADAPT TO THIS UNPRECEDENTED TIME BY IMPLEMENTING SAFETY PROTOCOLS FROM A NUMBER OF FEDERAL AND STATE ENTITIES TO ENSURE PHYSICAL DISTANCING AND EXTENSIVE SANITIZATION. I WANT TO KEEP MY EMPLOYEES AND CUSTOMERS SAFE BECAUSE I CARE ABOUT THEIR WELFARE.

NOW IS NOT THE TIME TO MAKE THE EMERGENCY TEMPORARY STANDARD PERMANENT WHEN IT'S LIKELY THIS PANDEMIC WILL BE TEMPORARY. IMPOSING ""ONE SIZE FITS ALL"" COVID-19 REGULATIONS ON ALL EMPLOYERS IS UNREASONABLE ESPECIALLY WHEN GUIDANCE IS CONTINUALLY CHANGING AS WE LEARN MORE ABOUT THE VIRUS. THE BOARD NEEDS TO TAKE THE TIME TO SEE WHAT CHALLENGES EMPLOYERS ARE FACING IMPLEMENTING THE EMERGENCY REGULATIONS BEFORE TAKING ANY FURTHER ACTION.

MY COMPANY TAKE ITS RESPONSIBILITY FOR PROTECTING ITS EMPLOYEES SERIOUSLY. MAKING THE COVID-19 EMERGENCY REGULATIONS PERMANENT WILL ONLY MAKE A DIFFICULT SITUATION WORSE FOR EMPLOYERS AND EMPLOYEES. I REMAIN CONCERNED ABOUT THE IMPACT MANY OF THE PROVISIONS OF THE EMERGENCY REGULATIONS ARE HAVING ON MY BUSINESS AND ENCOURAGE THE BOARD TO NOT MAKE THEM PERMANENT.

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SEE DEPARTMENT RESPONSE TO COMMENT 85680

85937 David Ring Strongwell 9/24/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85937>

Strongly oppose

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

85938 Pamela Johnson 9/24/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85938>

Strongly Oppose making DOLI Regs Permanent

I strongly oppose making DOLI regulations permanent. The CARES Act has leave that small businesses can't continue to afford to pay for as well as many other CDC and OSHA guidelines. We are lucky to still be in business at all after shutting the country down for 2 months. The country is still shut down.

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SEE DEPARTMENT RESPONSE TO COMMENT 84956

85939 Faivre Insurance and Financial Services, Inc. Faivre Insurance and Financial Services, Inc.  
9/24/2020 <https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85939>

I oppose making Covid 19 workplace standards permanent

I am a small business owner in Virginia who opposes making the COVID-19 Workplace Safety Emergency Standard permanent. As an essential business and an owner who has been dealing face to face with this pandemic for over 6 months, I have learned to adapt by implementing safety protocols to ensure physical distancing and extensive sanitization. I have worked hard to keep my employees and customers safe because I care about their welfare as well as my own.

Now is not the time to make the emergency temporary standard permanent. Imposing "one size fits all" COVID-19 regulations on all employers is unreasonable especially when guidance is continually changing as we learn more about the virus. The Board needs to take the time to see what challenges employers are facing implementing the emergency regulations before taking any further action.

My company takes its responsibility for protecting its employees seriously. Making the COVID-19 emergency regulations permanent will only make a difficult situation worse for employers and employees. I remain concerned about the impact many of the provisions of the emergency regulations are having on my business and encourage the Board to not make them permanent.

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SEE DEPARTMENT RESPONSE TO COMMENT 85680

85940 James Doughton 9/24/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85940>

Strongly Opposed

Please do not burden our business and employees with ongoing expenses and regulations when we have not had enough time to determine what is actually best for these unique situations. Please be patient.

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SEE DEPARTMENT RESPONSE TO COMMENT 84956

85943 Stuart Gunter 9/24/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85943>

Strongly Oppose Adopting a Permanent Standard

Members of the Safety and Health Code Board,

I am the Region Manager of multiple production facilities in the precast concrete industry. We produce essential products to support the infrastructure needs of the Commonwealth, I oppose adopting a Permanent Standard for Infectious Disease Prevention: SARS-CoV-2 Virus That Causes COVID-19, 16VAC25-220.



- As a critical part of the Construction Industry we are an essential business that has been performing critical work in the Commonwealth since the onset of the pandemic. The health and safety of all employees is the top priority of our company. A culture of safety is our primary operating principle. We implemented the CDC and OSHA COVID-19 guidelines for construction as soon as they were published and are in compliance with the CARES Act mandates.

- We worked for four and a half months under CDC and OSHA guidelines before the Emergency Temporary Standard became effective, July 27,2020. During those months we implemented critical safety measures to ensure the health of our employees. The federal guidelines for construction were working and additional regulations were duplicative and unnecessary.

- The science of COVID-19 is continuously being updated. The CDC and OSHA guidelines are frequently updated to reflect the science. The Emergency Temporary Standard, proposed in April 2020, is outdated and inflexible. If the standard were to become permanent, it would continue to require businesses to comply with outdated regulations. What was thought to be true about the transmission of SARS-CoV-2 in April, is no longer accurate. As an example, the disinfection standard requirements are based on practices that now may not provide meaningful reduction in transmission. An hour or more a day is spent disinfecting tools and equipment. It is time consuming and burdensome to continue with practices no longer scientifically relevant.

- The costs of the required training (16VAC25-220-70 and 16VAC25-220-80) average a total of 2 hours per employee. Developing the Infectious Disease Preparedness and Response Plan (16VAC25-220-70), not including implementation, requires approximately 40 hours by a supervisory level employee. These hours are in addition to and impede other job functions.

- Non-medically trained individuals now are required to perform health screenings. Screening each employee on average, takes thirty minutes at the start of a shift. Individuals must take accountability for their own health and not report to work if they are exhibiting the symptoms of COVID-19. After six months, Virginians should be very well aware of those symptoms. Our company, as mandated by the CARES Act, provides the Paid Sick Leave necessary for employees to stay home if they are ill.

- Under the umbrella of Construction, our job tasks fall into the “Low” and “Medium” categories as defined in 16VAC25-220-30. The standards use “Grave” danger to regulate ALL businesses in Virginia, yet the great majority of deaths in Virginia (79% or 2269 as of September 23rd Virginia Department of Health Dashboard) were patients over the age of 70. As it is unlikely many over the age of 70 were actively still in the workplace, that leaves 613 deaths over 6 months or a death rate in Virginia of.007% based on a population of 8,536,000 (2019 US Census Bureau). Further, 54% (1556) of deaths were patients in long-term care and correctional facilities. As not all of those deaths fall into the over 70 category, that means less than 613 deaths were potentially working Virginians. Where they were exposed to the virus is not provided in the data. The definition of “Grave” danger for “low” and “medium” risk category needs to be revisited. These categories should be removed from the Temporary Standard and never be part of any Permanent Standard.

I am opposed to any amendment to include other flus, viruses, colds, or other communicable diseases in any permanent standard. There is no one-size fits all plan to combat a wide variety of infectious illnesses.

The Emergency Standards are burdensome, obsolete, difficult to enforce, costly in time and money, and lack flexibility to adapt to current science and innovation. I am STRONGLY OPPOSED to the adoption of these as a Permanent Standard for what is a temporary health situation.

I remain committed to the health and safety of my employees, co-workers, customers, and facilities and thank you for the opportunity to publicly comment.

SEE DEPARTMENT RESPONSE TO COMMENT 84956

SEE DEPARTMENT RESPONSE TO COMMENT 86359

85944 anonymous

9/24/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85944>

Strongly oppose

These regulations are already out of date. They are onerous and will not be permanently needed.

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

85945 Gene McGee

9/24/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85945>

Strongly Oppose Adopting a Permanent Standard

Members of the Safety and Health Code Board,

I am the Region Manager of multiple production facilities in the precast concrete industry servicing states from the East Coast to the Midwest, including VA, MD, DE, and Washington DC. We produce essential products to support the infrastructure needs of the Commonwealth, I oppose adopting a Permanent Standard for Infectious Disease Prevention: SARS-CoV-2 Virus That Causes COVID-19, 16VAC25-220.

- As a critical part of the Construction Industry we are an essential business that has been performing critical work in the Commonwealth since the onset of the pandemic. The health and safety of all employees is the top priority of our company. A culture of safety is our primary operating principle. We implemented the CDC and OSHA COVID-19 guidelines for construction as soon as they were published and are in compliance with the CARES Act mandates.
- We worked for four and a half months under CDC and OSHA guidelines before the Emergency Temporary Standard became effective, July 27,2020. During those months we implemented critical safety measures to ensure the health of our employees. The federal guidelines for construction were working and additional regulations were duplicative and unnecessary.
- The science of COVID-19 is continuously being updated. The CDC and OSHA guidelines are frequently updated to reflect the science. The Emergency Temporary Standard, proposed in April 2020, is outdated and inflexible. If the standard were to become permanent, it would continue to require businesses to comply with outdated regulations. What was thought to be true about the transmission of SARS-CoV-2 in April, is no longer accurate. As an example, the disinfection standard requirements are based on practices that now may not provide meaningful reduction in transmission. An hour or more a day is spent disinfecting tools and equipment. It is time consuming and burdensome to continue with practices no longer scientifically relevant.
- The costs of the required training (16VAC25-220-70 and 16VAC25-220-80) average a total of 2 hours per employee. Developing the Infectious Disease Preparedness and Response Plan (16VAC25-220-70), not

including implementation, requires approximately 40 hours by a supervisory level employee. These hours are in addition to and impede other job functions.

- Non-medically trained individuals now are required to perform health screenings. Screening each employee on average, takes thirty minutes at the start of a shift. Individuals must take accountability for their own health and not report to work if they are exhibiting the symptoms of COVID-19. After six months, Virginians should be very well aware of those symptoms. Our company, as mandated by the CARES Act, provides the Paid Sick Leave necessary for employees to stay home if they are ill.

- Under the umbrella of Construction, our job tasks fall into the “Low” and “Medium” categories as defined in 16VAC25-220-30. The standards use “Grave” danger to regulate ALL businesses in Virginia, yet the great majority of deaths in Virginia (79% or 2269 as of September 23rd Virginia Department of Health Dashboard) were patients over the age of 70. As it is unlikely many over the age of 70 were actively still in the workplace, that leaves 613 deaths over 6 months or a death rate in Virginia of.007% based on a population of 8,536,000 (2019 US Census Bureau). Further, 54% (1556) of deaths were patients in long-term care and correctional facilities. As not all of those deaths fall into the over 70 category, that means less than 613 deaths were potentially working Virginians. Where they were exposed to the virus is not provided in the data. The definition of “Grave” danger for “low” and “medium” risk category needs to be revisited. These categories should be removed from the Temporary Standard and never be part of any Permanent Standard.

I am opposed to any amendment to include other flus, viruses, colds, or other communicable diseases in any permanent standard. There is no one-size fits all plan to combat a wide variety of infectious illnesses.

The Emergency Standards are burdensome, obsolete, difficult to enforce, costly in time and money, and lack flexibility to adapt to current science and innovation. I am STRONGLY OPPOSED to the adoption of these as a Permanent Standard for what is a temporary health situation.

I remain committed to the health and safety of my employees, co-workers, customers, and facilities and thank you for the opportunity to publicly comment.

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SEE DEPARTMENT RESPONSE TO COMMENT 86359

85947 Michael Morgan 9/24/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85947>

Strongly oppose permanent COVID regulations

I strongly oppose any permanent sanctions put in place for COVID mitigation

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

85948 Carol Lindsay 9/24/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85948>

Oppose Covid 19 mandate

I strongly oppose a mandate for covid 19. This is no worse than the flu. Businesses are hurting and people are hurting. The prices of foods have gone up and those on fixed incomes are especially having problems. The mask is rediculus. It says on the box it does not protect you from covid 19 so why would you force someone to wear it breathing in carbon monioxide? There are a lot of people out here with health issues. Is this really about a virus or being compliant?

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

SEE DEPARTMENT RESPONSE TO COMMENT 85535

85949 Pinkie Wood Wood Safety Consultants 9/24/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85949>

Strongly opposed

While I believe that temporary measures were needed to protect employees and the public from a virus that we could not seem to control, permanent standards with no end date seems to be an excessive measure that does not make sense. We as a people are very good at working to, if not eliminate them to adequately control diseases that we are faced with. If we can come up with an answer for AIDS, we can surely come up with a vaccination to control Covid19. This will render the need for the temporary measures to be unnecessary. A permanent regulation is not only not needed but is ludicrous

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COVID-19 vaccines will be an important part of the Commonwealth's and the country's ability to significantly reduce the ongoing spread of the SARS-CoV-2 virus in the workplace and in the community. However, with the projected population-level efficacy of COVID-19 vaccine to be 50-70%, no one can definitively state that someone vaccinated will not subsequently be free from infection. There is also anecdotal information and scientific surveys that appear to indicate that a certain sector of the American population will refuse to be vaccinated. Accordingly, it is anticipated that SARS-CoV-2 will continue to infect a certain sector of the populace and be present in the workplace for months and years to come.

SEE DEPARTMENT RESPONSE TO COMMENT 84237"

85951 Maura Harrison 9/24/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85951>

Oppose making CoVID regs mandatory

STRONGLY OPPOSED

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

85954 Wright's Iron, Inc Wright's Iron, Inc 9/24/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85954>

COVID-19

I am a small business owner in Virginia who opposes making the COVID-19 Workplace Safety Emergency Standard permanent. I have learned over the last six months to adapt to these uncertain times and have implemented common sense protocols in place. Now is no the time to impose ""one size fits all"" COVID-19 regulations on small businesses. This is unreasonable, especially when guidance is continually changing as we learn more about the virus.

No more regulations. Allow businesses to make the decisions that are best for there specific work places and employees.

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SEE DEPARTMENT RESPONSE TO COMMENT 85680

85955 Ed Wilson 9/24/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85955>

Why small businesses OPPOSE making these standards permanent

The standards approved in July 2020 had flaws. These standards were pushed though with little input from all business types & sizes and they go way beyond federal standards. Just a few examples of how these regulations are expensive, confusing, and difficult for small business:

- Requiring physical separation of employees at low-risk businesses by a permanent, solid floor to ceiling wall when physical distancing can't be achieved. Yet higher risk businesses have more flexibility to use smaller temporary barriers like Plexiglas sneeze guards. This makes no since! Why would we make this permanent?
- All businesses must clean and disinfect at the same intervals whether its a 9 to 5 office setting or a factory with round-the-clock shifts. Again, imposing burdens without any rationale. No one size fits all solution is practical.
- Requiring employers to determine the risk of each employee instead of basing that on their job tasks. Again, just makes no since.
- Attempting to regulate sick leave policies, flexible work sites, flexible schedules, meetings and travel, and delivery of services or products without regard to varying industry standards. Do not take this flexibility away from any business! They need this exact flexibility to keep operating & providing services to all Virginians.
- Not allowing enough time to train employees.
- Expecting employers with "reasonable diligence" to know when an employee is infected with the virus but doesn't define what that means. So many problems with this...

Regulation that is unclear & not flexible is the very last thing VA needs to make permanent. We need to allow businesses the flexibility to keep employees safe as well as their own families. Look around! Small business owners have risen to the challenge to make VA safe. People acting like making these temporary

regulations permanent is going to improve VA are just uneducated about the actual regulations they supposedly support.

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The language referenced by the Commenter (physical separation of employees at low-risk businesses by a permanent, solid floor to ceiling wall) is one method described in the Standard for mitigating the spread of SARS-CoV2; however, employers are not required to do so.

The language referenced by the Commenter (All businesses must clean and disinfect at the same intervals whether its a 9 to 5 office setting or a factory with round-the-clock shifts. Again, imposing burdens without any rationale.) is assumed by the Department to refer to 16VAC25-220-40.K.5 which provides “All common spaces, including bathrooms, frequently touched surfaces, and doors, shall at a minimum be cleaned and disinfected at the end of each shift.” The Department disagrees that there is no rationale for the requirement. The provision states that the cleaning will take place “at the end of each shift”, the rationale being to prevent the spread of the SARS-CoV-2 virus from one group of employees to another (employers with multiple shifts); or from the same group of employees from one day to another when they have been away from work during the time in between shifts and potentially exposed to SARS-CoV-2 in the interim, or for locations where customers enter, for the same reason.

The language referenced by the Commenter (Requiring employers to determine the risk of each employee instead of basing that on their job tasks) is not accurate. The Standard specifically provides in 16VAC25-220-40.B.1 that “Employers shall assess their workplace for hazards and job tasks that can potentially expose employees to the SARS-CoV-2 virus or COVID-19 disease. Employers shall classify each job task according to the hazards employees are potentially exposed....”

Employers were provided 30 days to train employees and were provided free Outreach, Training and Educational materials by the Department to do so.

The Department disagrees that the Standard is a “one size fits all” regulatory approach.

At its core the Standard is a risk management system to prevent or limit the spread in the workplace of the SARS-CoV-2 virus which causes COVID-19.

It is designed to provide basic protections for all employees and employers within the jurisdiction of the Virginia Occupational Safety and Health program.

It provides certain mandatory requirements for all employers and specific additional requirements for Very High, High, and Medium risk job tasks centered around mitigation of hazards.

The Standard is also designed to incentivize employers to make changes in the workplace that will enable employees in certain situations to be classified to a reduced level of risk (e.g., from high to medium or from medium to lower), thereby also reducing the employer’s compliance and cost burdens.

SEE DEPARTMENT RESPONSE TO COMMENT 84956

85956 ROBERTS INS & FIN SVS INC ROBERTS INS & FIN SVS INC 9/24/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85956>

MANDATORY WORKPLACE SAFETY STANDARD

ABSOLUTELY NOT!!! I am a small business owner in Virginia who opposes making the COVID-19 Workplace Safety Emergency Standard permanent. Six months into the pandemic, I have learned to adapt to this unprecedented time by implementing safety protocols from a number of federal and state entities to ensure physical distancing and extensive sanitization. I want to keep my employees and customers safe because I care about their welfare.

Now is not the time to make the emergency temporary standard permanent when it's likely this pandemic will be temporary. Imposing "one size fits all" COVID-19 regulations on all employers is unreasonable especially when guidance is continually changing as we learn more about the virus. The Board needs to take the time to see what challenges employers are facing implementing the emergency regulations before taking any further action.

My company takes its responsibility for protecting its employees seriously. Making the COVID-19 emergency regulations permanent will only make a difficult situation worse for employers and employees. I remain concerned about the impact many of the provisions of the emergency regulations are having on my business and encourage the Board to not make them permanent.

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SEE DEPARTMENT RESPONSE TO COMMENT 85680

85957 Cheryl Lynn Alexander 9/24/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85957>

oppose permanent mandate

I strongly oppose making COVID-19 mandates permanent. It has cost small businesses greatly. In addition small business should not have to live in fear of being shut down for not following regulations that have no proven advantage toward the safety and well being of our communities.

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

85958 Nancy Brooks 9/24/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85958>

Please make workplace safety permanent

I am grateful that VA has good leadership and standards during the pandemic. Please make the workplace protections permanent.

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SEE DEPARTMENT RESPONSE TO COMMENT 84196

85960 Jerald Akers 9/24/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85960>

Oppose this bureaucratic nonsense

This is a joke! 47 pages of government overreach! It took you 47 pages to tell businesses they need to wear masks to protect them from a virus that has killed less than 1% of those infected!!! And the majority of those 1% are elderly people who aren't even in the work place!!

Get out of your government office and go walk the aisles of a business place and see the real world for once.

Then you'll realize this proposed 47 pages of nonsense is a totally unnecessary!

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

85961 anonymous 9/24/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85961>

strongly support

strongly support.

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SEE DEPARTMENT RESPONSE TO COMMENT 84196

85962 anonymous 9/24/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85962>

strongly support

strongly support.

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SEE DEPARTMENT RESPONSE TO COMMENT 84196

85963 anonymous 9/24/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85963>

strongly support

yes please make permanent restrictions

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SEE DEPARTMENT RESPONSE TO COMMENT 84196

85965 Barbara Wiggins 9/24/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85965>



Humanity Has Heart

What the world need now is to take a long hard look around our communities and what do you see? People are getting older with no one who wants to take the time to help them unless there is a big pay check involved. One thing for sure is the fact that money don't last and none of it will be distributed when we are dead and gone. So, I say, please have a heart Dominion Energy, have a heart, take the time to get to know the people who are in need

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MAY BE COMMENTER TO WRONG FORUM

SEE DEPARTMENT RESPONSE TO COMMENT 84237

85967 Sean McAskill 9/24/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85967>

Opposed to covid regulations

We have treatments that work and we are still pushing regulations in attempt to “do something”. If you wish to be helpful encourage people to be healthy and boost their immune systems. The burden of regulations is having dire unforeseen effects on healthy people and unhealthy people. If you are a champion of poor people see how this is hurting lower middle class and lower income families.

Also it would seem a logical thing to promote testing for those with immunity. If one thinks a vaccine will help but already having had covid doesn't this is illogical.

The the first state to push for immunity testing. And protect those who do not wish to take mandatory vaccines. And if anyone tells you you must take a flu shot of covid shot tell them “my body my choice”.

we believe in freedom and this is the state that gave us so many founding fathers. Be a supporter of this liberty to choose for ourselves. Those who are in danger may find they have already had this disease.

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SEE DEPARTMENT RESPONSE TO COMMENT 84956

85968 David Crum 9/24/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85968>

Strongly oppose these regulations

We do not need more governmental control on our lives. If businesses want to invoke these measures then so be it. This citizen has had it with the direction this state is headed.

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

85970 K Davis 9/24/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85970>

Strongly oppose permanent regulations

Strongly opposed making regulations permanent

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

85972 anonymous 9/24/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85972>

Emergency regulations

I am a small business owner in Virginia who opposes making the COVID-19 Workplace Safety Emergency Standard permanent. Six months into the pandemic, I have learned to adapt to this unprecedented time by implementing safety protocols from a number of federal and state entities to ensure physical distancing and extensive sanitization. I want to keep my employees and customers safe because I care about their welfare.

Now is not the time to make the emergency temporary standard permanent when it's likely this pandemic will be temporary. Imposing "one size fits all" COVID-19 regulations on all employers is unreasonable especially when guidance is continually changing as we learn more about the virus. The Board needs to take the time to see what challenges employers are facing implementing the emergency regulations before taking any further action.

My company takes its responsibility for protecting its employees seriously. Making the COVID-19 emergency regulations permanent will only make a difficult situation worse for employers and employees. I remain concerned about the impact many of the provisions of the emergency regulations are having on my business and encourage the Board to not make them permanent

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SEE DEPARTMENT RESPONSE TO COMMENT 85680

85973 Robert Hoffman 9/24/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85973>

Executive Overreach

The Commonwealth does not need a permanent solution to a temporary problem. More importantly, there doesn't appear to be a way to disentangle the Commonwealth from these regulations once the COVID-19 outbreak is over. Virginia does not need a ""safety"" regulation that outlives the problem it's meant to solve.

Something this broad and this invasive should come through the General Assembly, if it happens at all, and should come with sunset provisions.

I also really don't need to see the Attorney General's office forced to waste money defending this excessive mandate from an inevitable series of lawsuits that could well outlive the Northam Administration.

This is a bad idea, implemented in a bad way, destined to end up in several courts on the Commonwealth and Federal level, and likely to eventually fall. You can avoid all of this by tabling this regulation now.

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

85974 Lisa Harris

9/24/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85974>

In support

- The permanent standard is necessary to protect working people in Virginia
- COVID isn't going away and there continue to be outbreaks
- Another wave is likely very soon
- Without permanent protections, workers will be at risk
- Airborne transmission requires the strong standard.
- Needed for all workers - no exceptions
- A strong permanent standard will be useful for future pandemics
- Clear standards coming from one agency of authority simplifies things for employers and workers
- Standard requirements do not change with no notice as federal recommendations have been doing
- Based off science instead of influence from big business interference or political whims
- CDC/education exceptions makes it confusing and is impractical for employers - it should be removed
- The ETS is a strong standard and should be made permanent
- The standard is effective when employers implement the protections
- Standard is based off scientific information, long-standing occupational H&S practices, and health & safety recommendations
- Protections are important for controlling airborne hazards, which SARS-CoV-2 clearly is
- The standard is a programmatic standard, so instead of being overly prescriptive, each employer is required to implement a program tailored to their workplace using scientific-based and longstanding workplace control practices
- Highlight importance of key components for all at-risk workers: risk assessment, plan, training, etc.
- Key components are based off current OSHA standards and familiar to employers and workers
- Return to work requirements align with current science.
- Ventilation requirements are in line with industry standards (ASHRAE)
- Respiratory protection is clearly defined and required for workers who are deemed at risk

- Face coverings are clearly defined and required according to previous VA mandates and helps control the spread of droplet transmission
  - Recommendations for improvement:
    - Removing CDC exception
    - 6 foot rule is not an effective control for airborne exposure - the virus travels farther. Ventilation, reduced persons and time in spaces, and other controls must be combined with distancing
    - Medical removal for known infections, exposures, or when recommended by a medical or public health professional, with removal protections
  - ☑The employer must maintain the employee's base earnings, seniority, and other rights and benefits that existed at the time of removal until cleared for return to work
  - Strengthen the involvement of worker/rep involvement in the plan - the language is good, but it happens less often in practice. VOSH should ensure their educational material and enforcement efforts are clear that this must be done.
  - OSHA has a longstanding history of helping employers with compliance and enforcement discretion with employers who are making good faith efforts.
  - A permanent standard is needed to protect all workers, as COVID isn't going away and will help protect workers from future pandemics
  - The ETS is a strong, comprehensive standard that sets clear requirements based off longstanding practices and current science and should be made permanent
  - VA should move forward with the permanent standard rule-making with haste in order to ensure all workers are protected from COVID permanently
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#### SEE DEPARTMENT RESPONSE TO COMMENT 84196

The Department notes that the Standard provides flexibility to business through 16VAC25-220-10.G.1 which provides that "To the extent that an employer actually complies with a recommendation contained in CDC guidelines, whether mandatory or non-mandatory, to mitigate SARS-CoV-2 virus and COVID-19 disease related hazards or job tasks addressed by this standard, and provided that the CDC recommendation provides equivalent or greater protection than provided by a provision of this standard, the employer's actions shall be considered in compliance with this standard. An employer's actual compliance with a recommendation contained in CDC guidelines, whether mandatory or non-mandatory, to mitigate SARS-COV-2 and COVID19 related hazards or job tasks addressed by this standard shall be considered evidence of good faith in any enforcement proceeding related to this standard."

The Department does not intend to recommend any change to 16VAC25-220-10.G.1. A specific reference to ""hospitals, health systems, and other facilities under their control"" is unnecessary as the above provision applies to all employers wishing to take advantage of its provisions.

The Department does not intend to revise the definition of physical distancing or to eliminate physical distancing as a recognized mitigation strategy. The six foot physical distancing requirement remains a best practice recognized by the CDC and VDH.

82. 6 Foot rule.

The Department does not intend to revise the definition of physical distancing or to eliminate physical distancing as a recognized mitigation strategy. The six foot physical distancing requirement remains a best practice recognized by the CDC and VDH.

83. The Department does not intend to recommend the addition of medical removal protections to the Standard.

Some employees will be able to use sick leave during the time they are away from work. While the Standard does not require employers to provide sick leave to employees, it does reference the Families First Coronavirus Response Act (FFCRA) at 16VAC25-220-40.B.6:

6. To the extent feasible and permitted by law, including but not limited to the Families First Coronavirus Response Act, employers shall ensure that sick leave policies are flexible and consistent with public health guidance and that employees are aware of these policies.

Further information about the FFCRA and sick leave policies can be found at:

<https://www.dol.gov/agencies/whd/pandemic/ffcra-employee-paid-leave>

Some employees will be able to receive workers' compensation while they are away from work.

[http://www.vwc.state.va.us/sites/default/files/documents/COVID-19-Statistics-FAQs\\_0.pdf](http://www.vwc.state.va.us/sites/default/files/documents/COVID-19-Statistics-FAQs_0.pdf)

The Department does not intend to recommend any additional employee involvement language to the Standard. Such involvement is currently required in 16VAC25-220-50.D.1.a, 16VAC25-220-60.D.1.a, and 16VAC25-220-70.C.2.

85976 Transaction expert 9/24/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85976>

OPPOSED -

Too early to make permanent with little scientific fact, not political

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

85977 Scott Crumpler 9/24/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85977>

STRONGLY OPPOSE ADOPTING PERMANENT STANDARD

I am an employee in the precast concrete industry. WE produce essential elements that support the infrastructure in VA.

I oppose making the temporary standards permanent- or the expansion of them.

Adding flus, viruses, colds is not smart. There is not a one size fits all that covers these things- today anymore than there was a year ago--- when nobody even talked about this.

The emergency Standards are themselves burdensome, unenforceable, costly in inflexible. It kicks dirt in the face of businesses who place their employees safety as their top priority.

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The Standard does not cover other infectious diseases like influenza, tuberculosis, etc.

SEE DEPARTMENT RESPONSE TO COMMENT 84956

85980 "Wink Fasteners Inc

9/24/2020 <https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85980>

Oppose making it permanent

I am a small business owner in Virginia who opposes making the COVID-19 Workplace Safety Emergency Standard permanent. Six months into the pandemic, I have learned that we are all still learning and need to be able to adapt to new information and protocols. I want to keep my employees healthy and safe because I care about their welfare .

Now is not the time to make the emergency temporary standard permanent when it's likely this pandemic will be temporary. Imposing "one size fits all" COVID-19 regulations on all employers is unreasonable and unnecessary. The Board needs to take the time to see what challenges employers are facing implementing the emergency regulations before taking any further action.

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SEE DEPARTMENT RESPONSE TO COMMENT 85680

85982 anonymous 9/24/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85982>"Strongly Opposed

I am strongly opposed to this policy. It is overly burdensome and unnecessary long-term.

---

SEE DEPARTMENT RESPONSE TO COMMENT 84237

85986 Scott Bunn 9/24/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85984>"In the strongest way possible I Oppose making Covid-19 Emergency Regs Permanent

This government is far overreaching. It needs to end and anyone on the ballot in support of this needs to know your seat is going to be on this line if you vote yes to this

---

This Standard is not being proposed as legislation to the General Assembly. The Standard is being considered for adoption by the Virginia Safety and Health Codes Board pursuant to Va. Code §40.1-22(6a) and would be

enforced by the Department of Labor and Industry's (DOLI) Virginia Occupational Safety and Health (VOSH) Program.

SEE DEPARTMENT RESPONSE TO COMMENT 84237

85986 anonymous 9/24/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85986>"COVID-19

A permanent standard is needed to protect all workers, as COVID isn't going away and will help protect workers from future pandemics

---

SEE DEPARTMENT RESPONSE TO COMMENT 84196

85987 Cristeena Naser 9/24/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85987>

Permanent Standard for CoVid-19 Protocols

Virginia needs a strong permanent standard to protect workers from COVID-19 with clear guidance for employers as to what they need to do to meet the standard. The temporary standard has helped protect workers lives. The proposed standard would provide the necessary strong protections for workers with clear guidance for employers.

This standard will save lives, prevent COVID-19 spread and help get Virginia's economy moving again. We need a strong permanent COVID-19 standard!

---

SEE DEPARTMENT RESPONSE TO COMMENT 84196

85989 Eve Swartz 9/24/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85989>

STRONGLY SUPPORT PERMANENT Workplace Health & Safety Standard

Virginia needs a strong, PERMANENT workplace health and safety standard. The Covid-19 pandemic will outlast the current temporary standard. To address the economic problems created by Covid, protecting everyone in the Commonwealth against it to the greatest possible extent is essential. In the long run, protecting people's health will save money and increase productivity.

The proposed standard provides strong protections for workers as well as clear guidance for employers. It will help get Virginia's economy moving again because it will help prevent the Covid-19's spread. Without addressing the health crisis, the economy will continue to stagnate. Protecting workers health and safety saves money in the long run because when people can't work, they require social assistance.

---

SEE DEPARTMENT RESPONSE TO COMMENT 84196

85990 Michelle Stanley 9/24/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85990>

Strongly Oppose. To make permanent a mask mandate is an unnecessary burden on employees and employers. There is nothing nfrom stopping people from wearing a make IF THEY CHOOSE. The Va Dept of labor is overstepping your authority. If Virginia is going to mandate mask that should be done through the General Assembly where the delegates and senators can talk directly with constituents. NO! To mask.

---

SEE DEPARTMENT RESPONSE TO COMMENT 84237

SEE DEPARTMENT RESPONSE TO COMMENT 85535

85993 Allen Gatz, Jr 9/24/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85993>

STRONGLY OPPOSE a permanent face covering/mask requirement

Hello:

My name is Allen Getz, Jr. I live in Mecklenburg County VA; the town of Boydton specifically

As a partially deaf person who possesses a myriad of health issues, a permanent facial covering mandate prohibits me from exercising my rights as a Virginian. For example, on one occasion I could not participate in a Public Hearing in Mecklenburg County (date 15 September) because of the mask requirement -- the requirement prevents me (on this occasion) from entering the foyer to enter the Hearing occurring in an adjacent area. Also, I could not enter the Registrar's office and vote for the upcoming elections. Only by the placement of the equipment outside could I participate.

I am certain I am not alone in these frustrations -- and seeing the lady tazed in Ohio gives me great cause for concern.

For most of this, I feel as if I am relegated to the back of the bus. Disabled folks should not be treated in such fashion.

Therefore, a 'NO' vote on mandatory facial coverings becomes obvious

Sincerely,

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

SEE DEPARTMENT RESPONSE TO COMMENT 85535



85995 John Peterson 9/24/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85995>

Strongly support a permanent standard

We need to extend the COVID-19 Emergency Temporary Standard (ETS) until COVID-19 is no longer a threat to health. It would be useful to have the standard be permanent for all pandemic conditions, so we don't have an 8 month delay the NEXT pandemic.

The ETS benefits both employees and employers (by giving clear guidance), and by getting the economy going again while reducing transmission and saving lives.

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SEE DEPARTMENT RESPONSE TO COMMENT 84196

85996 Tricia McClintock 9/24/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85996>

STRONGLY OPPOSE! PEOPLE WITH ASTHMA/ALLERGIES CAN'T BREATHE IN A MASK

THIS IS THE WORST POSSIBLE IDEA! IT'S NOT NECESSARY AND PEOPLE WITH ASTHMA AND ALLERGIES CANNOT BREATHE IN A MASK! THIS WILL PREVENT PEOPLE FROM BEING ABLE TO WORK. WE DON'T NEED A NANNY STATE TELLING US WHAT TO DO- ESPECIALLY WHEN IT'S THE WRONG THING!

---

Some commenters expressed concern about any face covering requirement that could present medical problems for a person with a pre-existing medical condition, such as asthma, etc. 16VAC25-220-40.I provides that:

"1. Nothing in this standard shall require the use of a respirator, surgical/medical procedure mask, or face covering by any employee for whom doing so would be contrary to the employee's health or safety because of a medical condition...."

Situations involving employers with an employee with a medical condition that does not allow them to wear a face covering when required while performing job tasks where physical distancing of six feet cannot be maintained are subject to requirements of the Americans With Disabilities Act (ADA). The ADA is enforced by the federal Equal Employment Opportunity Commission (EEOC).

The following link to the EEOC webpage with guidance on the ADA and COVID-19 issues can be used to research the core issue of whether the "high risk" category that the employee falls into is a "medical condition" that meets the definition of a "disability" under the ADA or not. Section D contains FAQs on "reasonable accommodations" that are provided to employees with a disability. The term "undue hardship" is referenced, and should be researched to see if it applies to the employer's situation.

<https://www.eeoc.gov/wysk/what-you-should-know-about-covid-19-and-ada-rehabilitation-act-and-other-eo-laws>

SEE DEPARTMENT RESPONSE TO COMMENT 84237

85997 Keith and Megan Johnson

9/24/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=85997>

Government Overreach - OPPOSED

Any undue hardship such as: the requirement to wear a bacterial zoo (mask), socially distance or even mandatory vaccines are governmental overreach not authorized by state or federal law . . . in lieu of what Democrats claim. States do not have legal authority to seize this type of lawless power that is not set forth or enshrined within our founding documents.

In addition, the Exceptions Clause in Order 63 is ignored by the Governor & the Health Department. We have underlying health conditions yet the Governor and health officials bully and intimidate innocent citizens by threatening jail time if we buy groceries, pick up our medicine or sing a simple song in Church.

We refuse to be intimidated by immoral and unethical ""leaders.""

We do not want to hear from you because it's time you listen to the citizenry for a change.

We OPPOSE this attempt at violating our liberties.

---

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<https://www.eeoc.gov/wysk/what-you-should-know-about-covid-19-and-ada-rehabilitation-act-and-other-eeo-laws>

SEE DEPARTMENT RESPONSE TO COMMENT 84956

The Department has no response to the Commenter's political commentary.

86000 Kim Marble

9/24/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86000>"Cannot wear a mask

I cannot wear a mask for more than a moment or two due to a condition. This proposal is discriminatory and unconstitutional. I am fully against mask masks.

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

SEE DEPARTMENT RESPONSE TO COMMENT 85535

86002 "Shontell Giles

9/25/2020 <https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86002>

Strongly oppose permanently wearing a mask. Wearing masks makes it difficult for people who suffer with asthma, bronchitis and allergies to breathe. Also, it's a hazard to our health and is very harmful for people to breathe in their own carbon monoxide. I very strongly suggest that this is not an mandatory permanent mandate.

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

SEE DEPARTMENT RESPONSE TO COMMENT 85535

86003 Laura B Douglass 9/25/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86003>

Strongly support Permanent Safety Standard

Those who profit from Virginia's excellent work force need to protect the workers who make the profits possible. Virginia needs a strong permanent standard to protect workers and provide guidance for their employers. The proposed standard provides strong protections for workers and clear guidance for employers. This standard will save lives, prevent COVID-19 spread and help get Virginia's economy moving again.

A permanent safety standard must provide the necessary protection and support for those on the front lines. Please do the right thing, the moral thing, the thing you would want in place if your loved ones were ""those workers"" and vote for the Permanent Safety Standard.

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SEE DEPARTMENT RESPONSE TO COMMENT 84196

86004 anonymous 9/25/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86004>

Strongly Oppose Permanent COVID Restrictions & Masks

We oppose permanent covid restrictions, including mask and vaccination provisions, for the workforce and private business. The government does not belong in private businesses and these one-size-fits-all approaches based on industry do not work well for small businesses. We the people decide what is best for our own businesses and it is overstepping the bounds of government to tell businesses how they must operate. We oppose permanent covid restrictions/procedures.

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SEE DEPARTMENT RESPONSE TO COMMENT 85680

86005 anonymous 9/25/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86005>

Strongly Oppose this Legislation of Mandatory Mask Wearing. We are now being forced to wear mask in a Nation that has a valid Constitutional Right to not wear a mask. God has given us more protection than any mask. We rebuke Satan in the name of Jesus. This is a straight violation of our civil liberties and now the powers that be want to control our very lives. The virus is a lie and now that Left has lost the ejection this last ditch effort to control the people will not work.

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

SEE DEPARTMENT RESPONSE TO COMMENT 85535

86006 anonymous 9/25/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86006>"Legislators please do your due diligence from both sides.

To all legislators - You owe it to Virginians to KNOW both sides of the science of such practices. You are imposing unknown dangers if you impose this law.

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This Standard is not being proposed as legislation to the General Assembly. The Standard is being considered for adoption by the Virginia Safety and Health Codes Board pursuant to Va. Code §40.1-22(6a) and would be enforced by the Department of Labor and Industry's (DOLI) Virginia Occupational Safety and Health (VOSH) Program.

SEE DEPARTMENT RESPONSE TO COMMENT 84237

86007 GC Smith 9/25/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86007>

OPPOSE

OPPOSE

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

86009 Lisa Beard

9/25/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86009>

Strongly oppose

I strongly oppose this legislation. Not only is it government overreach on something that should be left for the business owners and employees to decide if it is effective and necessary in their particular workplace I have personally experienced health issues associated WITH mask wearing. I have had sinus and lung conditions directly related to extended mask wearing. If you try to legislate this, I and others will be bringing a class action lawsuit against the state. The benefit DOES NOT outweigh the risk. Scientifically covid is no longer a pandemic nor an epidemic. Scientifically the masks worn do not filter out all the virus spored. Scientifically you are breaking back in your own bacteria that is present in your mouth. Scientifically this bacteria causes sinus and lung infections. If you try and mandate this you will not be using scientific reasoning. You will be leaving the state open to costly legal action.

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Some commenters expressed concern about any face covering requirement that could present medical problems for a person with a pre-existing medical condition, such as asthma, etc. 16VAC25-220-40.I provides that:

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<https://www.eeoc.gov/wysk/what-you-should-know-about-covid-19-and-ada-rehabilitation-act-and-other-eeo-laws>

SEE DEPARTMENT RESPONSE TO COMMENT 84237

86016 Martin Juergensen

9/25/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86016>

Opposed! Where are the Clinical Trials to Prove Masks work? Cite the clinical study for efficacy regarding any and all accepted face cover work? Since when do we restrict and quarantine the healthy in America? Our rights do not end where risk tolerance for others begin. This is overreach in restricting freedoms in America. Continuation of practice in wearing masks is even proven to be unhealthy in case studies...

<https://threadreaderapp.com/thread/1281191529537822720.html> CDC numbers were

skewed...<https://canadafreepress.com/article/the-cdc-confesses-to-lying-about-covid-19-death-numbers>.

<https://principia-scientific.com/finally-cdc-admits-just-9210-americans-died-from-covid19/>. Evidence masks

do not work...[https://articles.mercola.com/sites/articles/archive/2020/09/11/can-a-face-mask-prevent-coronavirus.aspx?cid\\_source=dnl&cid\\_medium=email&cid\\_content=art1ReadMore&cid=20200911Z1&mid=DM647803&rid=961961448&fbclid=IwAR2qXVtaCC5TL84ytbTzuQcVUDV2wNkyJiaXU9YcpSCYfJBlh2cb4S5zPg](https://articles.mercola.com/sites/articles/archive/2020/09/11/can-a-face-mask-prevent-coronavirus.aspx?cid_source=dnl&cid_medium=email&cid_content=art1ReadMore&cid=20200911Z1&mid=DM647803&rid=961961448&fbclid=IwAR2qXVtaCC5TL84ytbTzuQcVUDV2wNkyJiaXU9YcpSCYfJBlh2cb4S5zPg)

o. [https://lockdownsceptics.org/scientific-information-on-masks-against-covid-19/?fbclid=IwAR2cP2NZ14YUUGPDYPaolzAR\\_8-mnYgSFgj2Cpk1DfZDsO8gdaD3pawQpWA](https://lockdownsceptics.org/scientific-information-on-masks-against-covid-19/?fbclid=IwAR2cP2NZ14YUUGPDYPaolzAR_8-mnYgSFgj2Cpk1DfZDsO8gdaD3pawQpWA)

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

SEE DEPARTMENT RESPONSE TO COMMENT 85535

86022 Barbara Smith

9/25/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86022>"Very strongly oppose

This is excessive government overreach. There is ample scientific evidence that wearing masks could make transmission of Covid more likely. Masks make communication more difficult. Reading lips is necessary for those who have any degree of hearing loss or who are trying to understand anyone with an accent. Masks are a barrier for English language learners or those studying a foreign language. Psychologically it distances people and increases the frequency, duration, and severity of mental illnesses. I find it difficult to breathe after wearing a mask for a period of time and I find I am less active. Citizens should be free to make their own choices.

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

SEE DEPARTMENT RESPONSE TO COMMENT 85535

86023 John Susong,

Rinker Materials

9/25/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86023>

Opposing Permanent Standard for Infectious Disease Prevention

I work in the precast concrete industry. We produce essential products to support the infrastructure needs of the Commonwealth, I oppose adopting a Permanent Standard for Infectious Disease Prevention: SARS-CoV-2 Virus That Causes COVID-19, 16VAC25-220.

- As a critical part of the Construction Industry we are an essential business that has been performing critical work in the Commonwealth since the onset of the pandemic. The health and safety of all employees is the top priority of our company. A culture of safety is our primary operating principle. We implemented the CDC and OSHA COVID-19 guidelines for construction as soon as they were published and are in compliance with the CARES Act mandates.

- We worked for four and a half months under CDC and OSHA guidelines before the Emergency Temporary Standard became effective, July 27,2020. During those months we implemented critical safety measures to ensure the health of our employees. The federal guidelines for construction were working and additional regulations were duplicative and unnecessary.

- The science of COVID-19 is continuously being updated. The CDC and OSHA guidelines are frequently updated to reflect the science. The Emergency Temporary Standard, proposed in April 2020, is outdated and inflexible. If the standard were to become permanent, it would continue to require businesses to comply with outdated regulations. What was thought to be true about the transmission of SARS-CoV-2 in April, is no longer accurate. As an example, the disinfection standard requirements are based on practices that now may not provide meaningful reduction in transmission. An hour or more a day is spent disinfecting tools and equipment. It is time consuming and burdensome to continue with practices no longer scientifically relevant.

- The costs of the required training (16VAC25-220-70 and 16VAC25-220-80) average a total of 2 hours per employee. Developing the Infectious Disease Preparedness and Response Plan (16VAC25-220-70), not including implementation, requires approximately 40 hours by a supervisory level employee. These hours are in addition to and impede other job functions.

- Non-medically trained individuals now are required to perform health screenings. Screening each employee on average, takes thirty minutes at the start of a shift. Individuals must take accountability for their own health and not report to work if they are exhibiting the symptoms of COVID-19. After six months, Virginians should be very well aware of those symptoms. Our company, as mandated by the CARES Act, provides the Paid Sick Leave necessary for employees to stay home if they are ill.

- Under the umbrella of Construction, our job tasks fall into the “Low” and “Medium” categories as defined in 16VAC25-220-30. The standards use “Grave” danger to regulate ALL businesses in Virginia, yet the great majority of deaths in Virginia (79% or 2269 as of September 23rd Virginia Department of Health Dashboard) were patients over the age of 70. As it is unlikely many over the age of 70 were actively still in the workplace, that leaves 613 deaths over 6 months or a death rate in Virginia of.007% based on a population of 8,536,000 (2019 US Census Bureau). Further, 54% (1556) of deaths were patients in long-term care and correctional facilities. As not all of those deaths fall into the over 70 category, that means less than 613 deaths were potentially working Virginians. Where they were exposed to the virus is not provided in the data. The definition of “Grave” danger for “low” and “medium” risk category needs to be revisited. These categories should be removed from the Temporary Standard and never be part of any Permanent Standard.

I am opposed to any amendment to include other flus, viruses, colds, or other communicable diseases in any permanent standard. There is no one-size fits all plan to combat a wide variety of infectious illnesses.

The Emergency Standards are burdensome, obsolete, difficult to enforce, costly in time and money, and lack flexibility to adapt to current science and innovation. I am STRONGLY OPPOSED to the adoption of these as a Permanent Standard for what is a temporary health situation.

I remain committed to the health and safety of our employees. I appreciate the opportunity to make a public comment.

SEE DEPARTMENT RESPONSE TO COMMENT 84956

SEE DEPARTMENT RESPONSE TO COMMENT 86359

86024 Asher Smith 9/25/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86024>

Strongly oppose

Overreach. Leave it up to the establishments

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

86026 Justin Smith 9/25/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86026>

Strongly Opposed

I am STRONGLY opposed to a permanent mandate from the Governor.

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

86027 anonymous 9/25/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86027>

Vehemently opposed

It seems that this is just another kneejerk reaction to an inflated problem. 70% of all VA deaths have been in people over 70. Just 613 people under 70 have succumbed to this "pandemic". Yet, we've crippled our economy and stripped freedoms from the remaining 8.5 million residents. Common sense must rule the day. Please don't further hurt VA small businesses by forcing further restrictions on them. Many have already been ruined, and have seen their life's dreams crushed by this situation. By making the restrictions permanent, you'll only force more hard working Virginians into misery. Other states have lifted their restrictions with no visible consequences. Don't make Virginia into a model of "what not to do". Please.

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

86028 anonymous 9/25/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86028>"Opposed



This virus is not permanent. Why are laws being created that are?

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

86030 Brian McPeters 9/25/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86030>

Strongly Opposed

While COVID-19 is a challenge, this policy is knee jerk reaction that is not good for the workers or the companies. Further, it is readily apparent that while the pandemic is a concern government must be careful to understand the limited role they can take in spread of an infectious disease.

The real question to be answered in response to this legislation is does this just make 'us' feel better or does it really make a worker safer. This does little to make a worker safer besides create more jobs for lawyers.

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

86031 Linda L Lawrence 9/25/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86031>

Adopt the ETS

As a recent retiree from an organization whose leader told me on my last day of work that he wasn't worried about the virus, that he thought it was 'over-blown' by the media, I believe a formal standard must be in place and employers must be required to comply. My former workplace DID have strong safety measures in place, but because it was required. For many, that will be the only avenue available to protect our workers. Some employers will see no reason to implement and maintain any safeguards in the work place without an OSHA standard as official guidance.

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SEE DEPARTMENT RESPONSE TO COMMENT 84196

86033 anonymous 9/25/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86033>

Strongly Opposed

This is over regulation for small businesses especially when things return to normal.

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

86034 Harry Meador 9/25/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86034>

Strongly Oppose

I am a small business owner in Virginia who opposes making the COVID-19 Workplace Safety Emergency Standard permanent. Six months into the pandemic, I have learned to adapt to this unprecedented time by implementing safety protocols from a number of federal and state entities to ensure physical distancing and extensive sanitization. I want to keep my employees and customers safe because I care about their welfare.

Now is not the time to make the emergency temporary standard permanent when it's likely this pandemic will be temporary. Imposing "one size fits all" COVID-19 regulations on all employers is unreasonable especially when guidance is continually changing as we learn more about the virus. The Board needs to take the time to see what challenges employers are facing implementing the emergency regulations before taking any further action.

My company takes its responsibility for protecting its employees seriously. Making the COVID-19 emergency regulations permanent will only make a difficult situation worse for employers and employees. I remain concerned about the impact many of the provisions of the emergency regulations are having on my business and encourage the Board to not make them permanent.

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The Standard does not require vaccinations.

SEE DEPARTMENT RESPONSE TO COMMENT 85680

86036 Barbara Buchanan 9/25/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86036>

Permanently Wearing Masks. I am strongly opposed to this!

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

SEE DEPARTMENT RESPONSE TO COMMENT 85535

86038 anonymous 9/25/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86038>

Strongly Opposed

Strongly opposed! You are killing small businesses and taking our constitutional rights as American's!

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

86039 anonymous 9/25/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86039>

I Oppose making COVID-19 Emergency Regulations permanent

I am a small business operator in Virginia who opposes making the COVID-19 Workplace Safety Emergency Standard permanent. My company acts responsibly in protecting its employees.

It is time for the state of emergency to be lifted and Virginia Citizens to be allowed to return to ""normal"" life.

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

86040 anonymous 9/25/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86040>"NO!!

Absolutely opposed!!!

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

86042 Tom Hamlet 9/25/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86042>

Proposed Regulations on Covid 19

Strongly oppose making regulations permanent

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

86043 Aimee Connerton 9/25/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86043>

Proposed Emergency Regulation Rejection

Workers need to be able to get back to work and life needs to get back to somewhat normal. Forcing employers to put unrealistic procedures and protections is not productive. Employees and employers should be allowed to make their own decisions.

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

86044 Michele Mattioli

9/25/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86044>

make worker protections permanent

I urge you to make Virginia's first-in-the-nation worker protections permanent. This pandemic has shone a bright light on the inequities in our systems. Policy changes like these worker protections can even the playing field for our neighbors, who do vital and meaningful work in our society and who deserve our protection.

Sincerely,

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SEE DEPARTMENT RESPONSE TO COMMENT 84196

86045 Bettie Guion

9/25/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86045>

Mask wearing. I have asthma. I have tried every type of mask on the market. I cannot breathe in them. The lack of oxygen to my lungs causes me to cough incessantly. I do not see how the low numbers of cases and deaths at this point warrant the requirement for the citizens of Virginia to still wear masks. Friends are constantly getting headaches, exhaustion and nausea from wearing masks all day for work. School children need oxygen to keep their minds alert to take in information all day. There have been numerous studies that show the masks we are wearing do not keep out the minuscule droplets of Covid. The popular disposable ones even say on the box they do not protect the wearer from the virus. Even OSHA regulations confirm this. The only masks that are truly effective are fitted to the individual and only used in highly controlled settings for surgeries with superior air quality and extra HVAC circulation. Yes, people over a certain age or with compromised immune systems need to be careful. If wearing a mask makes a person feel more comfortable, it could be voluntary, but mandatory mask wearing I believe does more harm than good now that we know more about the numbers of Covid and how to treat it.

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

SEE DEPARTMENT RESPONSE TO COMMENT 85535

86046 Denise Luc NPS (Public School?) 9/25/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86046>

I teach in NPS and am very concerned that without the protective standard, children and those they come into contact with will spread the disease impacting all around and our economy. Please weigh the issues carefully remembering that the resulting illnesses and deaths will greatly impact our economy. Many teachers are in the older at risk age range and that will also impact the education that our future generations receive.

Additionally:

- The permanent standard is necessary to protect working people in Virginia
- COVID isn't going away and there continue to be outbreaks
- Another wave is likely very soon
- Without permanent protections, workers will be at risk
- Airborne transmission requires the strong standard.
- Needed for all workers - no exceptions
- A strong permanent standard will be useful for future pandemics
- Clear standards coming from one agency of authority simplifies things for employers and workers
- Standard requirements do not change with no notice as federal recommendations have been doing
- Based off science instead of influence from big business interference or political whims
- CDC/education exceptions makes it confusing and is impractical for employers - it should be removed
- The ETS is a strong standard and should be made permanent
- The standard is effective when employers implement the protections
- Standard is based off scientific information, long-standing occupational H&S practices, and health & safety recommendations
- Protections are important for controlling airborne hazards, which SARS-CoV-2 clearly is
- The standard is a programmatic standard, so instead of being overly prescriptive, each employer is required to implement a program tailored to their workplace using scientific-based and longstanding workplace control practices
- Highlight importance of key components for all at-risk workers: risk assessment, plan, training, etc.
- Key components are based off current OSHA standards and familiar to employers and workers
- Return to work requirements align with current science.
- Ventilation requirements are in line with industry standards (ASHRAE)
- Respiratory protection is clearly defined and required for workers who are deemed at risk
- Face coverings are clearly defined and required according to previous VA mandates and helps control the spread of droplet transmission
- Recommendations for improvement:
- Removing CDC exception
- 6 foot rule is not an effective control for airborne exposure - the virus travels farther. Ventilation, reduced persons and time in spaces, and other controls must be combined with distancing
- Medical removal for known infections, exposures, or when recommended by a medical or public health professional, with removal protections

☒The employer must maintain the employee's base earnings, seniority, and other rights and benefits that existed at the time of removal until cleared for return to work

◦Strengthen the involvement of worker/rep involvement in the plan - the language is good, but it happens less often in practice. VOSH should ensure their educational material and enforcement efforts are clear that this must be done.

•OSHA has a longstanding history of helping employers with compliance and enforcement discretion with employers who are making good faith efforts.

◦A permanent standard is needed to protect all workers, as COVID isn't going away and will help protect workers from future pandemics

◦The ETS is a strong, comprehensive standard that sets clear requirements based off longstanding practices and current science and should be made permanent

◦VA should move forward with the permanent standard rule-making with haste in order to ensure all workers are protected from COVID permanently

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SEE DEPARTMENT RESPONSE TO COMMENT 84196

SEE DEPARTMENT RESPONSE TO COMMENT 85974

86047 anonymous 9/25/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86047>

Permanently requiring PPE and vaccinations is gross overreach on the very freedoms our country was founded upon. Not only will this permanent requirement be overreaching on our freedom (be it religious, basic right to life, liberty, and the pursuit of happiness, etc.), it violates basic human rights by forcibly injecting someone with unwanted vaccinations where the results have not had years of testing and results. It is too soon to create permanent requirements that will hinder the physical health of adults and children and only prolong the COVID-19 outbreak. The unknown risks and now CDC backtracking on the results of masks, etc is exactly why more time is needed to remain temporary requirements. Making this permanent will also result in the detriment of small businesses. As it's likely this pandemic will be temporary, imposing "one size fits all" COVID-19 regulations on all employers is unreasonable and unnecessary. The overreach into small businesses that make this country what it is will be catastrophic in the end. The government should support it's citizens and their decisions, not further hinder their pursuit of life, liberty, and happiness with permanent solutions for a temporary problem.

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The Standard does not require vaccinations.

SEE DEPARTMENT RESPONSE TO COMMENT 84956

SEE DEPARTMENT RESPONSE TO COMMENT 85535

86048 Daniel Blount 9/25/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86048>

Permanent mask mandate strongly opposed

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

SEE DEPARTMENT RESPONSE TO COMMENT 85535

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86049 Jim Rainero 9/25/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86049>

Policies for covid 19 testing

I am against the permanent testing procedures for Covid-19 testing

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The issue of the differences between the Standard's return to work requirement and those of the CDC will be addressed in the revised proposed permanent standard. A Frequently Asked Question (FAQ) provided by DOLI addresses the issue as it pertains to the current Emergency Temporary Standard (ETS).

On July 22, 2020, the CDC changed its guidance with regard to symptoms-based strategies from exclusion for 10 days after symptom onset and resolution of fever for at least 3 days to exclusion for 10 days after symptom onset and resolution of fever for at least 24 hours (i.e., the change was from 72 hours to 24 hours). For persons who never develop symptoms (i.e., asymptomatic), isolation and other precautions can be discontinued 10 days after the date of their first positive RT-PCR test for SARS-CoV-2 RNA.

16VAC25-220-10.G.1 provides in part that:

To the extent that an employer actually complies with a recommendation contained in CDC guidelines, whether mandatory or non-mandatory, to mitigate SARS-CoV-2 virus and COVID-19 disease related hazards or job tasks addressed by this standard, and provided that the CDC recommendation provides equivalent or greater protection than provided by a provision of this standard, the employer's actions shall be considered in compliance with this standard.... (Emphasis added).

Employers who comply with the above-referenced change in CDC guidance issued July 22, 2020, will be considered to be providing protection equivalent to protection provided by complying with the requirements in the ETS.

However, nothing in the FAQ shall be construed to prohibit an employer from complying with the symptom-based or time-based strategies for return to work determinations in the ETS. (See §40 FAQ 18, <https://www.doli.virginia.gov/cononavirus-covid-19-faqs/>)

SEE DEPARTMENT RESPONSE TO COMMENT 84237

86050 Debbi Hetrick 9/25/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86050>

Strongly Oppose

The research that I have been doing in an ongoing study to find out how much wearing a mask actually helps the prevention of this virus has led me to understand with certainty that a mask only helps to prevent the spread of bacteria not viruses. Since Covid-19 is a virus, I do not understand why any health department would even suggest that this is helpful to the average person. I would however, like to see an encouragement of a healthy lifestyle which would build the immune system thus lowering the chances of either getting the virus or reducing it's severity. This would include healthy eating, exercise, cleanliness, good sleep and the reduction of alcohol, smoking and drug use. Our bodies are naturally designed to fight off infections and the exposure to them helps to build your immune system. This, along with the numbers of hospitalization and deaths being so minor compared with the population, seem to be in complete disproportion to the hype this virus has received. I therefore, would like to encourage this committee to truly evaluate actual, truthful statistics, in their decision and not base it on widely populated misinformation.

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

SEE DEPARTMENT RESPONSE TO COMMENT 85535

86051 Sheryl Smith 9/25/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86051>

Strongly opposed

I am very much opposed to wearing masks permanently for many reasons, some medical, some social, some emotional. This is overreach and violation of personal space and rights once the Covid emergency

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SEE DEPARTMENT RESPONSE TO COMMENT 85535

86052 Nancy R Morgan 9/25/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86052>

Please make permanent protection for workers

I support making permanent protection for workers. Virginia ranks very low on national ratings for worker rights; comprehensive safety rules for employers is a step in the right direction to support our workers, and consequently our Virginia families.

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SEE DEPARTMENT RESPONSE TO COMMENT 84196

86053 Chris Chase 9/25/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86053>



Making ETS permanent

Strongly Oppose

SEE DEPARTMENT RESPONSE TO COMMENT 84237

86054 Everett Anderson 9/25/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86054>"Opposed

No changes to health standards should be made due to any short term infection outbreak until years of independent study determine they are safe and effective.

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

86055 Cynthia Gunnoe 9/25/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86055>

Oppose permanent COVID 19 regulations

As a small business owner, the state mandated COVID 19 regulations are onerous and a definite overreach of influence the the VA Dept. of Labor. They were drafted with very little input from interested parties. They go above and beyond the federal guidelines. We do not need additional state guidelines on top of the federal guidelines. Employers in VA are capable of running their business' efficiently and safely with out having the burdens that VOSH is placing on them. Please do not make these guidelines permanent policy.

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The proposed permanent standard has been subject to the following notice and comment procedures. The Virginia Safety and Health Codes Board held a 60 day written comment period for the Proposed Permanent Standard, with the comment period running from August 27, 2020 to September 25, 2020. The Board held a Public Hearing on September 30, 2020. A revised draft of the Proposed Permanent Standard will be published with an additional 30 day comment period prior to any Board action.

SEE DEPARTMENT RESPONSE TO COMMENT 84956

86056 Suzanne Lewis Lewis Construction of VA Inc 9/25/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86056>

STRONGLY OPPOSED TO PERMANENT COVID 19 STANDARD

Members of the Safety and Health Code Board,

I am part of an underground utility contractor here in Virginia. We provide essential service to support the infrastructure needs in the Commonwealth. I oppose adopting a Permanent Standard for Infectious Disease Prevention: SARS-CoV-2 Virus that causes COVID 19, 16VAC25-220.

I am opposed to any amendment to include other flus, viruses, colds or other communicable diseases in any permanent standard. There is no one size fits all plan to combat a wide variety of infectious diseases.

The emergency standards are burdensome, obsolete, difficult to enforce, costly in time and money, and lack flexibility to adapt to current science and innovation. I am STRONGLY OPPOSED to the adoption of these as permanent standard for what is a temporary health situation.

I remain committed to the health and safety of my coworkers and employees and thank you for the opportunity to publically comment.

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The Standard does not cover other infectious diseases like influenza, tuberculosis, etc.

SEE DEPARTMENT RESPONSE TO COMMENT 84956

86057 Heith Fenner 9/25/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86057>

Hi my name is Heith Fenner and I am a lifelong resident of Va . As a union representative of local 400 and former long time employee of Giant Food I have a good understanding of retail food working conditions and enviroment. It is very important that employers maintain and improve there sanitation and cleaning standards to slow and stop the spread of the coronavirus amongst the general public and front line essential workers. Also the employees need continued hazard pay and pay protections that cover them by there employers the entire time they are out sick with or quarantined due to the virus . The 2 week pay offered by some often comes up short and many employees don't have vacation time sick days or short term disability pay to cover there needs . This puts many retail workers and others in financial distress and vulnerable when that's the last thing they need. I appreciate the oppportunity to make a few comments . Thanks and be well!

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"SEE DEPARTMENT RESPONSE TO COMMENT 84196

The VOSH program does not have the legal authority to require hazard pay.

The Department does not plan to recommend changes to sick leave provisions in the Standard.

The Standard does not require employers to provide sick leave to employees. It does reference the Families First Coronavirus Response Act (FFCRA) at 16VAC25-220-40.B.6:

6. To the extent feasible and permitted by law, including but not limited to the Families First Coronavirus Response Act, employers shall ensure that sick leave policies are flexible and consistent with public health guidance and that employees are aware of these policies.

Further information about the FFCRA and sick leave policies can be found at:

<https://www.dol.gov/agencies/whd/pandemic/ffcra-employee-paid-leave>

86058 "Cara Sanfacon,

Maid Right of Richmond VA 9/25/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86058>

Strongly Oppose

I am a small business owner in Virginia who opposes making the COVID-19 Workplace Safety Emergency Standard permanent. Six months into the pandemic, I have learned to adapt to this unprecedented time by implementing safety protocols from a number of federal and state entities to ensure physical distancing and extensive sanitization. I want to keep my employees and customers safe because I care about their welfare.

Now is not the time to make the emergency temporary standard permanent when it's likely this pandemic will be temporary. Imposing "one size fits all" COVID-19 regulations on all employers is unreasonable especially when guidance is continually changing as we learn more about the virus. The Board needs to take the time to see what challenges employers are facing implementing the emergency regulations before taking any further action.

My company takes its responsibility for protecting its employees seriously. Making the COVID-19 emergency regulations permanent will only make a difficult situation worse for employers and employees. I remain concerned about the impact many of the provisions of the emergency regulations are having on my business and encourage the Board to not make them permanent. Making these regulations, which were never adequately discussed with the businesses who actually have to implement them, permanent is ridiculous. Small businesses like mine work very hard to make sure their employees stay safe so we can continue to operate and not lose our livelihood.

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SEE DEPARTMENT RESPONSE TO COMMENT 85680

86059 Holly Porter, Delmarva Poultry Industry, Inc. 9/25/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86059>

Strongly Oppose Permanent Standard

Dear Mr. Withrow:

Thank you for the opportunity to comment on the adoption of a permanent standard pertaining to COVID-19. The Delmarva Poultry Industry, Inc. (DPI) is the 1,700-member trade association representing the chicken growers, companies and allied businesses in Delaware, the Eastern Shore of Maryland and the Eastern Shore of Virginia. In particular, we have two chicken company members in Accomack county that employ thousands of Virginia residents and contract with more than 60 growers. Our comments reflect the views of DPI and do not constitute a statement of admission on behalf of individual members of DPI.

To be clear, employee health and safety has been the number one priority of the Delmarva chicken companies, followed closely by providing an abundant food supply during this crisis. And the efforts that have been made have worked – prior to any regulations, emergency or permanent, being implemented. In the month of July, the Virginia Department of Health reported 13 cases associated with meat and poultry processing facilities, down from 25 in June, while the state overall saw an increase.

DPI continues to have many of the same concerns with the permanent standard as we did with the emergency temporary standards and urges the Virginia Department of Labor and Industry (DOLI) not to

promulgate the proposed permanent standard because the regulations are not necessary and will not allow for flexibility as more is learned about this virus. Virginia should not be making permanent regulations that are specific to a temporary virus – which we all believe COVID is.

Both the United States Occupational Safety and Health Administration (OSHA) and the Centers for Disease Control and Prevention (CDC) have issued guidance, updated with regularity as new information is learned about the disease, to employers regarding preventative actions that can be taken to protect worker health and safety and mitigate against transmission of the disease at workplaces.

As we've seen over the past few months, the pandemic requires swift action and flexibility; enacting a permanent regulation prevents that from occurring. It is clearly stated on CDC's website "This is a new virus, and CDC is actively working to learn more. We will provide updates as they become available." However, standard regulations will not allow businesses to make take those updates into account. We have seen that happen already with CDC updating interim guidance, in particular for critical infrastructure workers, allowing for workers that have had potential exposure to continue working, as long as they are asymptomatic and precautions are taken.

DPI would recommend rather than creating a permanent standard, the emergency temporary standard should allow for extension as long as the executive order is in place. This makes the most sense rather than setting a precedent of a permanent standard on a temporary issue.

The chicken community on the Eastern Shore of Virginia already recognizes that employee safety is a priority, and we will continue to follow all guidance that is provided from CDC, based on any updates that scientists and researchers discover as they learn more about coronavirus. However, these regulations are not going to provide any additional safety to the employees of Virginia and we urge DOLI to not promulgate them.

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SEE DEPARTMENT RESPONSE TO COMMENT 84956

86060 Debby Hudson 9/25/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86060>

Strongly Opposed

I am opposed to the government regulating what should be a personal decision of daily life.

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

86061 Ed Eagle 9/25/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86061>

Strongly Oppose Adopting a Permanent Standard

I am a HR and Safety manager in the precast concrete industry. We continue to produce essential concrete products to support the infrastructure needs of the Commonwealth and I am oppose adopting a Permanent Standard for COVID 19 or any additional changes to it.

We have been following the CDC and other guidelines since March to protect our employees and we will continue to do so. The health and safety of our people is our biggest priority.

There is no one-size fits all plan to combat the wide variety of infectious illnesses and adding in more items such as colds, flu, etc. and making employers try to police it is too much. Adding more rules and regulations to this issue and pushing to hold employers accountable for something they did not create is just over the top crazy.

This Emergency Standards is burdensome, obsolete, difficult to enforce, very costly in time and money, and quite frankly was simply never needed. We must have the flexibility to adapt to current science and innovation that is required to handle this issue and having to be tied to a permanent standard is not the answer. I am STRONGLY OPPOSED to the adoption of these as a Permanent Standard.

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SEE DEPARTMENT RESPONSE TO COMMENT 85680

86062 Jason Dunlavey, Branscome Inc. 9/25/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86062>

Strongly Oppose Adopting a Permanent Standard

Members of the Safety and Health Code Board,

As a Project Manager in the heavy construction industry, I oppose adopting a Permanent Standard for Infectious Disease Prevention: SARS-CoV-2 Virus That Causes COVID-19, 16VAC25-220.

- Construction is an essential business performing critical work in the Commonwealth since the onset of the pandemic. The health and safety of all employees is the top priority of our company. A culture of safety is our primary operating principle. We implemented the CDC and OSHA COVID-19 guidelines for construction as soon as they were published and are in compliance with the CARES Act mandates.
- Construction worked for four and a half months under CDC and OSHA guidelines before the Emergency Temporary Standard became effective, July 27,2020. During those months we implemented critical safety measures to ensure the health of our employees. The federal guidelines for construction were working and additional regulations were duplicative and unnecessary.
- The science of COVID-19 is continuously being updated. The CDC and OSHA guidelines are frequently updated to reflect the science. The Emergency Temporary Standard, proposed in April 2020, is outdated and inflexible. If the standard were to become permanent, it would continue to require businesses to comply with outdated regulations. What was thought to be true about the transmission of SARS-CoV-2 in April, is no longer accurate. As an example, the disinfection standard requirements are based on practices that now may not provide meaningful reduction in transmission. An hour or more a day is spent disinfecting tools and equipment. It is time consuming and burdensome to continue with practices no longer scientifically relevant.
- The costs of the required training (16VAC25-220-70 and 16VAC25-220-80) average a total of 2 hours per employee. Developing the Infectious Disease Preparedness and Response Plan (16VAC25-220-70), not including implementation, requires approximately 40 hours by a supervisory level employee. These hours are in addition to and impede other job functions.

- Non-medically trained individuals now are required to perform health screenings. Screening each crew on average, takes thirty minutes at the start of a shift. Individuals must take accountability for their own health and not report to work if they are exhibiting the symptoms of COVID-19. After six months, Virginians should be very well aware of those symptoms. Our company, as mandated by the CARES Act, provides the Paid Sick Leave necessary for employees to stay home if they are ill.

- Construction tasks fall into the “Low” and “Medium” categories as defined in 16VAC25-220-30. The standards use “Grave” danger to regulate ALL businesses in Virginia, yet the great majority of deaths in Virginia (79% or 2269 as of September 23rd Virginia Department of Health Dashboard) were patients over the age of 70. As it is unlikely many over the age of 70 were actively still in the workplace, that leaves 613 deaths over 6 months or a death rate in Virginia of.007% based on a population of 8,536,000 (2019 US Census Bureau). Further, 54% (1556) of deaths were patients in long-term care and correctional facilities. As not all of those deaths fall into the over 70 category, that means less than 613 deaths were potentially working Virginians. Where they were exposed to the virus is not provided in the data. The definition of “Grave” danger for “low” and “medium” risk category needs to be revisited. These categories should be removed from the Temporary Standard and never be part of any Permanent Standard.

I am opposed to any amendment to include other flus, viruses, colds, or other communicable diseases in any permanent standard. There is no one-size fits all plan to combat a wide variety of infectious illnesses.

The Emergency Standards are burdensome, obsolete, difficult to enforce, costly in time and money, and lack flexibility to adapt to current science and innovation. I am STRONGLY OPPOSED to the adoption of these as a Permanent Standard for what is a temporary health situation.

I remain committed to the health and safety of my coworkers and thank you for the opportunity to publically comment.

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SEE DEPARTMENT RESPONSE TO COMMENT 84956

SEE DEPARTMENT RESPONSE TO COMMENT 86359

86063 anonymous

9/25/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86063>

I oppose COVOD mandates

I am strongly opposed to the COVID mandates becoming permanent. We were supposed to be under them to “flatten the curve”. Well, that has happened, as well as now knowing more about COVID and seeing it isn’t as deadly as previously thought. We need to stop government overreach and putting undue burden on businesses of all sizes, but specifically on small businesses. The extra precautions don’t really provide the needed protection and just end up dividing us more as a society that is already divided. Please use common sense. Stop the unnecessary mandates!! We are adults and most people are following the rules without big brother mandating everything. Why don’t you focus on public safety and stop the violence on our streets and support our police rather than policing private citizens.

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

## Strongly Oppose Adopting a Permanent Standard

Members of the Safety and Health Code Board,

As an Project Manager in the heavy construction industry, I oppose adopting a Permanent Standard for Infectious Disease Prevention: SARS-CoV-2 Virus That Causes COVID-19, 16VAC25-220.

- Construction is an essential business performing critical work in the Commonwealth since the onset of the pandemic. The health and safety of all employees is the top priority of our company. A culture of safety is our primary operating principle. We implemented the CDC and OSHA COVID-19 guidelines for construction as soon as they were published and are in compliance with the CARES Act mandates.
- Construction worked for four and a half months under CDC and OSHA guidelines before the Emergency Temporary Standard became effective, July 27, 2020. During those months we implemented critical safety measures to ensure the health of our employees. The federal guidelines for construction were working and additional regulations were duplicative and unnecessary.
- The science of COVID-19 is continuously being updated. The CDC and OSHA guidelines are frequently updated to reflect the science. The Emergency Temporary Standard, proposed in April 2020, is outdated and inflexible. If the standard were to become permanent, it would continue to require businesses to comply with outdated regulations. What was thought to be true about the transmission of SARS-CoV-2 in April, is no longer accurate. As an example, the disinfection standard requirements are based on practices that now may not provide meaningful reduction in transmission. An hour or more a day is spent disinfecting tools and equipment. It is time consuming and burdensome to continue with practices no longer scientifically relevant.
- The costs of the required training (16VAC25-220-70 and 16VAC25-220-80) average a total of 2 hours per employee. Developing the Infectious Disease Preparedness and Response Plan (16VAC25-220-70), not including implementation, requires approximately 40 hours by a supervisory level employee. These hours are in addition to and impede other job functions.
- Non-medically trained individuals now are required to perform health screenings. Screening each crew on average, takes thirty minutes at the start of a shift. Individuals must take accountability for their own health and not report to work if they are exhibiting the symptoms of COVID-19. After six months, Virginians should be very well aware of those symptoms. Our company, as mandated by the CARES Act, provides the Paid Sick Leave necessary for employees to stay home if they are ill.
- Construction tasks fall into the "Low" and "Medium" categories as defined in 16VAC25-220-30. The standards use "Grave" danger to regulate ALL businesses in Virginia, yet the great majority of deaths in Virginia (79% or 2269 as of September 23rd Virginia Department of Health Dashboard) were patients over the age of 70. As it is unlikely many over the age of 70 were actively still in the workplace, that leaves 613 deaths over 6 months or a death rate in Virginia of .007% based on a population of 8,536,000 (2019 US Census Bureau). Further, 54% (1556) of deaths were patients in long-term care and correctional facilities. As not all of those deaths fall into the over 70 category, that means less than 613 deaths were potentially working Virginians. Where they were exposed to the virus is not provided in the data. The definition of "Grave" danger for "low" and "medium" risk category needs to be revisited. These categories should be removed from the Temporary Standard and never be part of any Permanent Standard.

I am opposed to any amendment to include other flus, viruses, colds, or other communicable diseases in any permanent standard. There is no one-size fits all plan to combat a wide variety of infectious illnesses.

The Emergency Standards are burdensome, obsolete, difficult to enforce, costly in time and money, and lack flexibility to adapt to current science and innovation. I am STRONGLY OPPOSED to the adoption of these as a Permanent Standard for what is a temporary health situation.

I remain committed to the health and safety of my coworkers/employees and thank you for the opportunity to publically comment.

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SEE DEPARTMENT RESPONSE TO COMMENT 84956

SEE DEPARTMENT RESPONSE TO COMMENT 86359

86067 Anthony Bowers, CSP, ColonialWebb 9/25/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86067>

Oppose the Standard

Dear Safety and Health Codes Board Members,

On behalf of ColonialWebb (CW), I urge you to oppose the adoption of a Permanent Standard for SARS-CoV-2, which will make permanent the current temporary standards.

In the wake of a global pandemic, America's construction industry was deemed essential. Hundreds of VA construction companies have remained open and operating throughout 2020. The ability to continue work was in large part due to the sophistication of the men and women who swiftly adapted to new health and safety measures to protect employees and their loved ones.

CW has spent money beyond our budget and has invested countless hours to keep our teammates safe. This has included implementing prescreening, engineering our facility, controlling occupancy limits, staggering schedules/breaks, enforcing safe distancing, abiding by stay-at-home and return-to-work orders, posting signage, adding sanitary stations, rewriting daily procedures, and more. We have also complied with all government mandates regarding this pandemic.

The current ETS require a one-size-fits-all approach for business across the state to implement procedures to stop the spread of SARS-Cov-2. Thus, we at CW have many concerns regarding making these standards permanent and respectfully ask you to vote to oppose the adoption of a Permanent Standard for SARS-CoV-2, for these main reasons:

1. Creates confusion because of conflicting federal and state regulations:

VA employers have access to guidance and resources from the CDC, OSHA, and VHD to help stop the spread of SARS-Cov-2. Certain additional requirements to the standards - particularly the return-to-work requirements - contradict that guidance and recommendations. Contradicting guidance becomes more convoluted in cases where CW has operations and worksites in other states.



To reduce confusion when deciding which requirements to follow, employers should be able to utilize current, nationwide guidance. This would result in a consistent, clear message for our teammates, conveyed through CW policy.

2. Enforces premature mandates for an unprecedented event, while data and health recommendations continue to evolve:

CDC and VHD guidance continues to evolve as evidenced by recent revisions to recovery/return to work guidance. By adopting these proposed permanent standards, it saddles VA employers with a standard that may not reflect the latest breakthroughs on this "fluid and dynamic" virus.

VA employers should instead be encouraged to follow the latest CDC guidance without the need to interpret a standard that could be outdated the moment it is published. This creates hazardous risks for employers and their employees.

3. Increases liability risk due to vague language and unclear implementation threshold:

While employers make their best effort to comply with guidance as well as required ETS, they still cannot control what employees do after-hours, which is their greatest risk of exposure. These standards place undue responsibility and liability on employers for actions occurring outside of the workplace.

Adopting a standard for such a specific virus sets a dangerous precedent. There is high probability that this virus will soon be manageable, even preventable. A permanent standard implies that mandates - prescreens, face covers, etc. - will still be required even after an available vaccine or more controlled scenario of the virus is in place. A permanent standard to a non-permanent virus is unnecessary.

4. Fosters a distracted and diluted focus on other core safety precautions:

The complex requirements of the proposed permanent standard is taking focus away from the traditional, serious safety risks. The one-size-fits-all standards cause employers to spend an inordinate amount of time interpreting and implementing new procedures. The quest to stay compliant will keep employers from getting fined or shut down, but it comes at the cost of not being able to focus on ongoing core - fatal four - safety risks.

Before there were federal or state requirements, CW was intuitively procuring the necessary tools and training for our teammates to be safe and successful: this includes hand sanitizer, disinfectant, face coverings, dust masks, respirators, workplace controls (distancing & occupancy), as well as work processes in HVAC (work in air streams) and Plumbing (work on clogged lines) at facilities that could contain infectious diseases.

Through our efforts, CW believes that the 40 hours we spend together are the safest place for our teammates to be during this pandemic. CW is committed to protecting our people and complying with all federal, state, and local regulations. That said, adopting a permanent standard for a temporary pandemic will not make VA's workers safer and will harm business in the process. For many reasons, a few listed above, I urge you to oppose the adoption of a Permanent Standard for SARS-CoV-2.

Instead of setting regulation, the VOSH consultation program - an effective force in keeping VA's workplaces safe and healthy - should be tasked to prepare a standard curriculum for all employers to use in training employees as well as provide online consultative services for helping employers develop infectious disease preparedness and response plans and practices.

Thank you for taking the time to evaluate my response. Most importantly, thank you for your efforts in making VA a safe and healthy place to work.

Respectfully,

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SEE DEPARTMENT RESPONSE TO COMMENT 84956

Review of all COVID-19 related inspections under the Emergency Temporary Standard is conducted centrally by the Department with both a programmatic and legal review prior to a decision to issue or not issue violations/penalties to assure consistent enforcement across the Commonwealth. The Department does not anticipate any significant increase in litigation with regard to the Emergency Temporary Standard or any permanent standard.

86069 Sharon Ellis 9/25/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86069> STRONGLY OPPOSE  
MAKING COVID 19 MANDATES PERMANENT!! MASK MANDATES ARE UNCONSTITUTIONAL!!

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

SEE DEPARTMENT RESPONSE TO COMMENT 85535

86070 scotty 9/25/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86070>

Strongly Oppose

I am STRONGLY OPPOSED to making this permanent as we are discovering new data daily about the spread, containment and Nature of this virus, along with the types and the effectiveness of PPE, and the depths of the devastating economic impacts felt across our State.

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

86073 PoloMule LLC 9/25/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86073>

HELL NO!

Government overreach is never a good thing.

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

86075 Kathy Cantrell 9/25/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86075>"NO

I am definitely NOT in favor of this!!!

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

86076 Ruth 9/25/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86076>

STRONGLY OPPOSE MASK MANDATE. This poses limits Virginians' freedom to make decisions for themselves and their families.

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

SEE DEPARTMENT RESPONSE TO COMMENT 85535

86080 Di Wilson 9/25/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86080>Pls vote no. I am opposed to permanent mask mandate for inside or out. Thank you for your time & service to our state.

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

SEE DEPARTMENT RESPONSE TO COMMENT 85535

86081 Charles Smiley 9/25/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86081>

STRONGLY OPPOSE. .

Ridiculous.

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

86084 John Palatiello, Executive Director, AFFILIATE OF NATIONAL SOCIETY OF PROFESSIONAL SURVEYORS 9/25/2020 <https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86084>

Dear Members of the Safety and Health Codes Board:

The Virginia Association of Surveyors (VAS) is a statewide professional association with membership of hundreds of licensed surveyors based in Virginia and others who do business in Virginia.

The Safety and Health Codes Board on July 15, 2020, adopted an “Emergency Temporary Standard for Infectious Disease Prevention” related to COVID-19. Now, the Board is considering adopting a Permanent Standard for Infectious Disease Prevention: SARS-CoV-2.

VAS strongly opposes the Board’s adoption of a Permanent Standard.

Surveying is a professional service and was deemed “essential” in the early weeks of the pandemic, by Governor Northam’s EO 53. Hundreds of Virginia surveyors have continued working in a safe manner. Our profession’s success during the pandemic has been due to quickly adapting to the Centers for Disease Controls (CDC) and Virginia Department of Health (VDH) recommendations to control or prevent infectious disease spread.

VAS opposes the Board’s adoption of a Permanent Standard for these reasons:

- Conflicts with federal and state regulations; causes confusion

Virginia employers follow CDC, VDH, and OSHA guidance to help slow or prevent the spread of COVID. Certain regulations in the proposed Permanent Standard contradict other federal and state guidance – particularly the return-to-work criteria. The conflicting guidance is particularly troublesome to surveyors who work in adjoining states. Employers should follow nationwide guidance with particular attention to a state’s recommendations where known elevated risks are present.

- A permanent standard for an evolving, unprecedented event is unwise

As COVID science continues to evolve, so do CDC and VDH recommendations for best practices. Adopting permanent standards that cements in place certain workplace requirements fails to appreciate that such permanent standards may become ineffective in the future. Instead, employers should be encouraged to follow CDC and VDH guidance as circumstances warrant.

- Employers may experience increased risks due to unforeseen, uncontrollable actions

Virginia employers make best efforts to comply with CDC and VDH guidance. However, employees on their own time may not appropriately comply with federal and state guidance. The proposed permanent standards places an undue liability risk on employers for actions that may take place outside of normal business hours and off employer-controlled premises or job sites.

- Adopting a permanent standard for a specific virus is a bad precedent

It is everyone’s hope that an effective vaccine will be developed in the near future and the COVID virus will be significantly controlled or eradicated. Adopting a permanent standard for this virus suggests that certain workplace actions – such as face coverings and physical distancing, and daily health screenings, among others – will be required despite a dramatically reduced threat of spread or an eradicated virus. A permanent standard for a non-permanent infectious disease circumstance is unwise and burdensome.

The surveying profession has risen to the occasion and effectively responded to the COVID public health crisis, as has many industries and professions. No matter the merit perceived by some for adopting an “emergency temporary standard,” there is considerably less merit for adopting a Permanent Standard for an evolving and hopefully resolvable public health circumstance.

VAS strongly opposes the proposed Permanent Standard and respectfully urges the Board to not adopt it.

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SEE DEPARTMENT RESPONSE TO COMMENT 84956

Review of all COVID-19 related inspections under the Emergency Temporary Standard is conducted centrally by the Department with both a programmatic and legal review prior to a decision to issue or not issue violations/penalties to assure consistent enforcement across the Commonwealth. The Department does not anticipate any significant increase in litigation with regard to the Emergency Temporary Standard or any permanent standard.

86088 Dianne Ewell 9/25/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86088>

Strongly Oppose the Permanent covid-19 standard

I am a small business owner in Virginia who opposes making the Covid-19 Workplace Safety Emergency Standard permanent.

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SEE DEPARTMENT RESPONSE TO COMMENT 84956

86090 Randy McClure, Rinker Materials 9/25/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86090>

STRONGLY OPPOSED

I am a employee of Rinker Materials and have been in the precast concrete industry for many years. We produce essential products to support the infrastructure needs of the Commonwealth, I oppose adopting a Permanent Standard for Infectious Disease Prevention: SARS-CoV-2 Virus That Causes COVID-19, 16VAC25-220.

- As a critical part of the Construction Industry we are an essential business that has been performing critical work in the Commonwealth since the onset of the pandemic. The health and safety of all employees is the top priority of our company. A culture of safety is our primary operating principle. We implemented the CDC and OSHA COVID-19 guidelines for construction as soon as they were published and are in compliance with the CARES Act mandates.

- We worked for four and a half months under CDC and OSHA guidelines before the Emergency Temporary Standard became effective, July 27,2020. During those months we implemented critical safety measures to ensure the health of our employees. The federal guidelines for construction were working and additional regulations were duplicative and unnecessary.

- The science of COVID-19 is continuously being updated. The CDC and OSHA guidelines are frequently updated to reflect the science. The Emergency Temporary Standard, proposed in April 2020, is outdated and inflexible. If the standard were to become permanent, it would continue to require businesses to comply with outdated regulations. What was thought to be true about the transmission of SARS-CoV-2 in April, is no longer accurate. As an example, the disinfection standard requirements are based on practices that now may not provide meaningful reduction in transmission. An hour or more a day is spent disinfecting tools and equipment. It is time consuming and burdensome to continue with practices no longer scientifically relevant.

- The costs of the required training (16VAC25-220-70 and 16VAC25-220-80) average a total of 2 hours per employee. Developing the Infectious Disease Preparedness and Response Plan (16VAC25-220-70), not including implementation, requires approximately 40 hours by a supervisory level employee. These hours are in addition to and impede other job functions.

- Non-medically trained individuals now are required to perform health screenings. Screening each employee on average, takes thirty minutes at the start of a shift. Individuals must take accountability for their own health and not report to work if they are exhibiting the symptoms of COVID-19. After six months, Virginians should be very well aware of those symptoms. Our company, as mandated by the CARES Act, provides the Paid Sick Leave necessary for employees to stay home if they are ill.

- Under the umbrella of Construction, our job tasks fall into the “Low” and “Medium” categories as defined in 16VAC25-220-30. The standards use “Grave” danger to regulate ALL businesses in Virginia, yet the great majority of deaths in Virginia (79% or 2269 as of September 23rd Virginia Department of Health Dashboard) were patients over the age of 70. As it is unlikely many over the age of 70 were actively still in the workplace, that leaves 613 deaths over 6 months or a death rate in Virginia of.007% based on a population of 8,536,000 (2019 US Census Bureau). Further, 54% (1556) of deaths were patients in long-term care and correctional facilities. As not all of those deaths fall into the over 70 category, that means less than 613 deaths were potentially working Virginians. Where they were exposed to the virus is not provided in the data. The definition of “Grave” danger for “low” and “medium” risk category needs to be revisited. These categories should be removed from the Temporary Standard and never be part of any Permanent Standard.

I am opposed to any amendment to include other flus, viruses, colds, or other communicable diseases in any permanent standard. There is no one-size fits all plan to combat a wide variety of infectious illnesses.

The Emergency Standards are burdensome, obsolete, difficult to enforce, costly in time and money, and lack flexibility to adapt to current science and innovation. I am STRONGLY OPPOSED to the adoption of these as a Permanent Standard for what is a temporary health situation.

I remain committed to the health and safety of my colleagues, customers and the general public and thank you for the opportunity to publically comment on this very important issue.

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SEE DEPARTMENT RESPONSE TO COMMENT 86359

86092 Julie Hunter 9/25/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86092>

Strongly support making ETS permanent

The permanent standard is necessary to protect working people in Virginia. COVID isn't going away and there continue to be outbreaks with another wave likely. Clear standards coming from one agency of authority simplifies things for employers and workers. The ETS is based off scientific information, long-standing occupational H&S practices, and health & safety recommendations from experts. The ETS is a strong standard and should be made permanent.

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SEE DEPARTMENT RESPONSE TO COMMENT 84196

86093 anonymous 9/25/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86093>

strongly oppose making hard times harder for small businesses

Please consider the impact this could have on all people. Those that run businesses and those that work for them.

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SEE DEPARTMENT RESPONSE TO COMMENT 84956

86094 Nelson 9/25/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86094>

Strongly Opposed

I am strongly opposed to making this regulation permanent.

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

86095 Ben Steele 9/25/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86095>

Members of the Safety and Health Code Board,

As an employee in the heavy construction industry, I oppose adopting a Permanent Standard for Infectious Disease Prevention: SARS-CoV-2 Virus That Causes COVID-19, 16VAC25-220.

I am opposed to any amendment to include other flus, viruses, colds, or other communicable diseases in any permanent standard. There is no one-size fits all plan to combat a wide variety of infectious illnesses.

The Emergency Standards are burdensome, obsolete, difficult to enforce, costly in time and money, and lack flexibility to adapt to current science and innovation. I am STRONGLY OPPOSED to the adoption of these as a Permanent Standard for what is a temporary health situation.

I remain committed to the health and safety of my coworkers and thank you for the opportunity to publicly comment.

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The Standard does not cover other infectious diseases like influenza, tuberculosis, etc.

SEE DEPARTMENT RESPONSE TO COMMENT 85680

SEE DEPARTMENT RESPONSE TO COMMENT 84956

86096 Joan Squires 9/25/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86096>

Strongly Opposed

I strongly oppose the making of mask wearing PERMANENT. IMO there is not enough known about COVID 19 to make any PERMANENT mandates for the people of Virginia at this time.

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

86100 Lisa Dotson 9/25/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86100>

Emergency Standard

Strongly Oppose making this permanent!!

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

86101 David 9/25/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86101>

I am Strongly Opposed

I am strongly opposed to making a permanent order from a controversial emergency order given during a temporary situation.

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

86102 William Leyden 9/25/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86102>

Reactionary and short sighted

Any permanent standard must address the requirements for all infectious disease outbreaks. It is more effective and efficient to establish a broad standard for each category of risk, i.e.: Airborne, Waterborne, Bodily fluid etc. Creating a standard for a Novel Virus potentially excludes other similar hazards. Invest the effort to address this properly or prepare to do it over next time a Novel Infection occurs.

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The Standard does not cover other infectious diseases like influenza, tuberculosis, etc.



The use of the word “permanent” in reference to the Standard reflects the fact that, if adopted, the Standard does not currently have a date on which it would expire. However, the Board has the authority to amend or repeal the Standard as the workplace hazards associated with the SARS-CoV-2 virus and COVID-19 disease evolve and eventually lessen.

The Safety and Health Codes Board has the option to begin consideration of a comprehensive infectious disease standard at any time; however the Department recommends that the focus for now remain on addressing SARS-CoV-2 and COVID-19 workplace hazards.

86103 Stan Epps Jr. - Commonwealth Window Tinting 9/25/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86103>

OPPOSED

**STRONGLY WITH ALL MY HEART OPPOSE ANYTHING TO DO WITH COVID OR WEARING MASK.**

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

86105 Crtisty Robinson 9/25/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86105>

Strongly Oppose Adopting a Permanent Standard

Members of the Safety and Health Code Board--

As CFO for an excavation & grading company in the heavy construction industry, I oppose adopting a Permanent Standard for Infectious Disease Prevention: SARS-CoV-2 Virus That Causes COVID-19, 16VAC25-220.

I am opposed to any amendment to include other flus, viruses, colds, or other communicable diseases in any permanent standard. There is no one-size fits all plan to combat a wide variety of infectious illnesses.

The Emergency Standards are burdensome, obsolete, difficult to enforce, costly in time and money, and lack flexibility to adapt to current science and innovation. I am STRONGLY OPPOSED to the adoption of these as a Permanent Standard for what is a temporary health situation.

I remain committed to the health and safety of our employees and thank you for the opportunity to publically comment.

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The Standard does not cover other infectious diseases like influenza, tuberculosis, etc.

SEE DEPARTMENT RESPONSE TO COMMENT 85680

86106 Marbel Personal training Marbel Personal training 9/25/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86106>

STRONGLY OPPOSED!!!

I am strongly opposed. This is ridiculous and stupid. Don't let this happen.

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

86107 Colleen Bogert 9/25/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86107>I am opposed to wearing a mask

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

SEE DEPARTMENT RESPONSE TO COMMENT 85535

86108 anonymous 9/25/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86108>

Strongly Opposed: Town Hall - permanent mask wearing proposed in all Businesses

When venturing out into common areas and interacting with others we are wearing masks. In our office space we already have appropriate spacing, cleaning and hand washing, as well as an option for employees to work from home as needed, this seems to be going too far.

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

86110 Sandy Riley 9/25/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86110>

Strongly oppose

Strongly oppose

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

86111 Teri Buck 9/25/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86111>ABSOLUTELY NOT! Strongly oppose ANY permanent regulations concerning COVID19! Why would anyone suggest imposing permanent mask-wearing when we all know a vaccine is imminent? I am a business owner and this is ludicrous--and

obviously just another Democrat abuse of power and an attempt to keep their opponents silent. This will NOT happen, in The Name of Jesus!

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

SEE DEPARTMENT RESPONSE TO COMMENT 85535

86112 Charlotte Malerich Arlington Public Library (commenting as individual) 9/25/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86112>

Yes: Mark the Standards Permanent, Protect the Frontline

Thank you for the opportunity to comment on this important issue. I am an assistant in a public library and my coworkers and I have been back at work, serving the public every day since June 15. Based on the best public health guidance available, we are using strict mask requirements, social distancing, plexiglas barriers, and extra cleaning to keep ourselves and our patrons safe. Right now, the library is a lifeline for people who feel isolated and anxious, who need reliable information as well as a chance to escape and to use their imaginations. Our patrons are toddlers learning to read and parents learning to teach their children at home, all the way to seniors who won't brave the grocery store themselves but will come to the library for their favorite book. Every day, multiple people tell me, ""Thank you for being here,"" ""Thank you for what you're doing for us,"" ""Thank you for figuring this out. We missed the library so much!""

My coworkers are proud of the work we're doing and the services we're offering. We are also mortal. We have young children at home, elderly parents and grandparents; we are cancer survivors, asthmatics, and diabetics. My husband has lost two members of his family to Covid-19; one of my coworkers has lost six. Another coworker has two members of her family currently hospitalized. We go to work every day with the knowledge that we might be exposing ourselves, and bringing the virus back to our loved ones.

Covid-19 is no joke. And it will be with us long past January. So far, no one in our library has tested positive, but that's not the case in libraries around us that haven't followed the same safety protocols. Right now, the VOSH standards are protecting us, but if these rules go away, and we have to spend 40 hours a week in a place that doesn't keep us safe, my coworkers -- my workplace family -- are going to face potentially lifelong effects and some may even die. That's not acceptable.

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SEE DEPARTMENT RESPONSE TO COMMENT 84196

86115 Virginia Hospital & Healthcare Association Virginia Hospital & Healthcare Association  
9/25/2020 <https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86115>

THIS COMMENT WAS ALSO SUBMITTED DIRECTLY TO THE DEPARTMENT AT:

<https://www.doli.virginia.gov/proposed-permanent-standard-for-infectious-disease-prevention-for-covid-19/>

On behalf of the Virginia Hospital & Healthcare Association's (VHHA) 26 member health systems, with more than 125,000 employees, thank you for the opportunity to comment on the Department of Labor and Industry's (the Department) Proposed Permanent Standard regarding Infectious Disease Prevention: SARS-

CoV-2 Virus That Causes COVID-19 (hereafter referred to as the “permanent regulation”). Since early March, Virginia’s hospitals and health systems have been on the frontline treating patients inflicted with the COVID-19 virus and playing a leading role in the Commonwealth’s response to the pandemic. Throughout these efforts, Virginia hospitals have remained steadfastly committed to our top priority – the safety of our patients, visitors, employees, and the communities we serve.

As the Commonwealth continues its important work to reopen businesses and jump start our economy, ensuring that workers across the state can return to their normal activities safely is critically important. However, we are concerned that the broadly applicable nature of the permanent regulation, as well as several specific provisions, will have burdensome and costly implications, at the same time as hospitals and health systems continue to care for COVID-19 patients, reopen facilities, and face mounting financial pressures.

We also question whether adopting a permanent regulation specific to COVID-19 is necessary or appropriate. The Commonwealth will undoubtedly face other pandemics or public health threats from communicable disease that involve different safety precautions than those indicated for COVID-19. Accordingly, we believe that a more general standard that sets forth a high-level framework rather than disease-specific criteria should be considered for permanent regulations. For example, the permanent regulations could be simplified in a manner that recognizes the threat posed by COVID-19, but more generally provides a basic series of steps employers would undertake for any pandemic or communicable disease of public health threat (e.g., risk assessment, environmental and administrative controls, infection control plans). That is, the regulations need not be disease specific and could simply require best practices for disease infection and control that apply generally.

Additionally, regardless of whether a permanent standard is specific to COVID-19 or communicable disease more generally, its applicability and enforcement should be tied to an executive order or an order of public health emergency declaring a state of emergency due to a communicable disease of public health threat. As proposed, the permanent standard would remain in effect in perpetuity, even when we are able to contain and offer effective treatment for COVID-19. Similarly, in the event of a few cases or a localized outbreak of a highly contagious disease that if more widespread might warrant a public health emergency on a statewide basis, the regulations should not be applicable and enforceable to an employer hundreds of miles away where there are no cases until such time as there is a recognized public health threat in the region.

As noted in our public comment on the emergency regulations, infection prevention and control is a daily, ongoing focus within Virginia hospitals and health systems. Operating under the oversight of the Centers for Disease Control and Prevention (CDC), the Centers for Medicare & Medicaid Services (CMS), the Virginia Department of Health (VDH), and various other accreditation and regulatory authorities, hospitals and our ancillary facilities are required to consistently demonstrate that their patients and staff receive and provide care in a safe environment. This includes development and implementation of comprehensive infection control plans, quality improvement programs, managing supply chain, training employees and caregivers, ensuring employees have the resources they need, planning for future health emergencies, and working with congregate care settings to institute strong infection control practices, among other activities.

In other words, infection prevention and control and ensuring the safety of our patients and employees are not a new focus for Virginia hospitals and health systems. They are ingrained components of our daily operations. Imposing new and separate regulatory requirements, many of which duplicate the policies and protocols already in place within our facilities, will unnecessarily result in burdensome new compliance costs without meaningfully improving our ongoing efforts to protect our patients and employees. Consequently, we recommend that Subsection G.1 of § 10 – which states that an employer in compliance with CDC

publications regarding COVID-19 will be considered in compliance with the standard/regulation – be amended to acknowledge these requirements and explicitly state that hospitals, health systems, and other facilities under their control that are in compliance with the broader industry standards set forth by state and federal health care regulatory entities are deemed in compliance with the permanent regulation and not subject to enforcement actions for failure to comply with any specific requirement under the permanent regulation that is already addressed in these broader industry standards.

Subsection B.5 of § 40 prohibits employers from permitting known or suspected COVID-19 employees or others to report to or be allowed to remain at work. While the intent of this prohibition is clear, as a practical matter it is problematic to require ongoing monitoring of all employees who may be experiencing symptoms that are not visible without examination or inquiry. Furthermore, it is difficult or impossible to enforce where the employee or other person does not physically report to a facility or building under the surveillance and control of the employer as distinct from a teleworking arrangement. To address this, the prohibition could be limited to not “knowingly” permitting the employee to report to or be allowed to remain at work. Alternatively, the prohibition could be limited to those employees who report COVID-19 to the employer under Subsection B.3 of § 40. Additionally, this subsection should be amended to explicitly state that hospitals and health systems that follow the CDC guidance pertaining to exposed healthcare workers returning to work will not be subject to enforcement actions under the permanent regulation.

Subsection B.6. of § 40 requires employers to ensure that their “sick leave policies are flexible and consistent with public health guidance...” While we have no doubt that this subsection is well-intended, we believe that requiring “flexible” sick leave policies is vague and presents an opportunity for broad interpretation that may expose employers to unnecessary and costly litigation. Furthermore, we believe that determinations regarding required sick leave are best left to employers allowing them to design more comprehensive policies that include sick leave along with other paid leave and child and caregiver support benefits that provide relief when employee absence or assistance for a family member is required due to illness. Even if consideration were made for a revision that requires employers to adhere to applicable federal and state law regarding sick leave, such a clause would be redundant and unnecessary. Therefore, VHHA recommends this subsection be removed in its entirety.

The requirement in Subsection B.7 of § 40 is unnecessary and inappropriate to impose on employers. Those subcontractors and companies that provide contract or temporary employees are presumably subject to these regulations by virtue of being an employer in their own right and an upstream employer should not bear this burden. Furthermore, such encouragement is more appropriate coming from the Department.

Subsection B.8. of § 40 requires employers to notify their employees within 24 hours if an employee, subcontractor, contractor, temporary employee, or other person who was present at the place of employment within the previous 14 days tests positive for COVID-19. This requirement poses a challenge for hospitals. Given the inherently higher risk of exposure in the health care setting, notifying every employee of a hospital or health system each time an employee tests positive will require an unreasonable level of ongoing notification. Even assuming a blast e-mail or similar broad communication meets the requirement, notifying every employee – clinical or non-clinical – upon a positive test of essentially anyone entering the facility within a 14-day period is unrealistic and could have Health Insurance Portability and Accountability Act (HIPAA) privacy implications.

In addition to our above concerns, we respectfully request clarification as to the definition of “place of employment.” “Place of employment” is ambiguous and could mean at the same facility or job site. The Department has clarified this text in its Coronavirus (COVID-19) FAQs to mean “work site.” However, the use of “work site” is equally ambiguous and does not present a clear standard by which an employer is able to

comply and achieve the intended purpose of this provision. To address this issue, VHHA recommends the Department provide greater clarification as to the parameters in which employers must report outbreaks, such as limiting the definition of “place of employment” to specific units, floors, or offices as opposed to an entire facility.

Furthermore, we are concerned about the Department’s response to reports of an outbreak. We have received a copy of a letter from the Department sent in response to a report of an outbreak indicating that the employer must conduct an internal investigation and report those findings to the Department. However, the provided “Non-Mandatory Investigative Tool” was more applicable to a slip and fall than an outbreak of a communicable disease and does not provide clear guidance as to the scope and extent of the investigation required. Therefore, VHHA recommends the Department adopt a form or specific criteria in the permanent regulations that detail the information required by the Department when an employer conducts an internal investigation of an outbreak. Furthermore, greater flexibility in the timeline for completion of the internal investigation would be helpful. It is critical that, in the event of an outbreak, resources are immediately directed towards mitigating further contraction of the disease and excessive reporting and investigation requirements may detract from these important activities.

Similar to our concerns with the ambiguity of the use of “place of employment,” the definition of “Lower” contained within § 30 states that “[e]mployees in this category have minimal occupational contact with employees, other persons, or the general public...” “Minimal occupational contact” is undefined and does not provide clear guidance to employers seeking to comply with the permanent regulations.

Subsections B.1. and B.2. of § 40 include language that appears to permit employers to choose between strategies for determining whether an employee known or suspected to be infected with COVID-19 will be allowed to work, such as a symptom-based, test-based, or time-based strategy. However, the permanent regulations note in these subsections that determination of what test will be used is “depend[ent] on local healthcare and testing circumstances.” The permanent regulations do not state who makes the determination whether “local healthcare and testing circumstances” would support the use of one strategy for allowing an employee to return to work over another. Furthermore, testing supply availability and turnaround time have continued to be an ongoing issue for healthcare providers. By requiring employers who lack knowledge regarding “local healthcare and testing circumstances” to choose between the return to work strategies that include a testing-based strategy, the permanent regulations could further strain an already broken supply chain. As such, we recommend that the text “depending on local healthcare and testing circumstances” be removed from the permanent regulations.

Subsection D of § 40 requires employers to ensure that employees observe physical distancing while on the job and during paid breaks on the employer’s property. For large employers or for employers with expansive property or multiple staggered shifts, such an obligation may be impractical or impossible to enforce. VHHA recommends that this provision be modified to require that the employer “shall establish policies and procedures designed to ensure that employees observe physical distancing while on the job and during paid breaks on the employer’s property.” This creates a standard that allows the employer to monitor compliance where feasible, encourages reports of non-compliance, but does not apply “strict liability” to the employer in the event there is non-compliance despite reasonable efforts to prevent it.

Subsection B.6. of § 50 requires “employers use precautions associated with Biosafety Level 3 (BSL-3)...when handling specimens from [patients or persons] known or suspected to be infected with [COVID-19].” The Department’s Coronavirus (COVID-19) FAQs provide greater specificity and correctly identify the ambiguity of this Subsection. The net effect of the FAQ is to indicate that the applicable standard for the job tasks identified as “high” and “very high” in performance of laboratory tests and specimen handling is BSL-2. As

such, we respectfully request the Department specify that BSL-2 special precautions apply to those job tasks or otherwise incorporate the interpretation contained within the Department's Coronavirus (COVID-19) FAQs as they pertain to the BSL-3 special precautions.

Subsections C.1. of both §§ 50 and 60 require employers, to the extent feasible, to prescreen or survey each covered employee who is not COVID-19 symptomatic prior to each shift. Depending on the size of a hospital, a single shift could involve several hundred, if not more, employees. Some of those employees are clinical and treat COVID-19 patients, some are clinical and do not treat COVID-19 patients, and many others do not serve in clinical roles and are at minimal risk of exposure to infectious disease. Hospitals across the Commonwealth have already deployed numerous policies and protocols for screening health care workers that may be or have been exposed to COVID-19. Expanding those policies and protocols to every worker across a hospital or health system will substantially increase the burden on staff. This section should be amended to clarify that lower risk staff that do not serve in clinical roles and are at minimal risk of exposure to infectious disease are not required to be subject to the same screening requirements applicable to higher risk employees.

In closing, while COVID-19 may be the first pandemic in recent years to broadly impact the Commonwealth, Virginia's hospitals and health systems deal with issues surrounding infection prevention and control, patient and workforce safety, and employee wellness on a daily basis. We have long-established policies and protocols governing these aspects of our operations and work closely with a variety of regulatory authorities to promote a safe care environment for our patients and our employees. Our utmost priority always has been and always will be the safety of our patients, visitors, employees, and the communities we serve.

We appreciate the intent behind the permanent regulation and believe that the Department should work with industries with less experience in infection control and prevention and fewer resources to help mitigate and prevent further community spread of COVID-19 in the workplace. However, for reasons discussed here, the additional and duplicative requirements are unnecessary for hospitals and health systems and will have numerous burdensome and costly implications for them. Furthermore, the permanent regulations contain ambiguities that open hospitals and health systems to an uncertain and/or inconsistent interpretations by Department officials despite good faith efforts of hospitals and health systems to comply. We also question whether the permanent regulation should be specific to COVID-19 and believe that any such regulation should only be in effect for the duration of the public health emergency.

Thank you again for the opportunity to comment on the permanent regulation. Please do not hesitate to contact Brent Rawlings ([brawlings@vhha.com](mailto:brawlings@vhha.com), 804-965-1228) or me at your convenience if we can provide any additional information regarding our suggested modifications.

Sincerely,

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SEE DEPARTMENT RESPONSE TO COMMENT 84956

The Safety and Health Codes Board has the option to begin consideration of a comprehensive infectious disease standard at any time; however the Department recommends that the focus for now remain on addressing SARS-CoV-2 and COVID-19 workplace hazards.

The Department notes that the Standard provides flexibility to business through 16VAC25-220-10.G.1 which provides that "To the extent that an employer actually complies with a recommendation contained in CDC guidelines, whether mandatory or non-mandatory, to mitigate SARS-CoV-2 virus and COVID-19 disease

related hazards or job tasks addressed by this standard, and provided that the CDC recommendation provides equivalent or greater protection than provided by a provision of this standard, the employer's actions shall be considered in compliance with this standard. An employer's actual compliance with a recommendation contained in CDC guidelines, whether mandatory or non-mandatory, to mitigate SARS-CoV-2 and COVID-19 related hazards or job tasks addressed by this standard shall be considered evidence of good faith in any enforcement proceeding related to this standard." The Department does not intend to recommend any change to 16VAC25-220-10.G.1. A specific reference to "hospitals, health systems, and other facilities under their control" is unnecessary as the above provision applies to all employers wishing to take advantage of its provisions.

The Department does not intend to recommend any change to 16VAC25-220-40.B.5. Although it is a generally accepted practice, the Standard does not specifically require that employers check the temperatures of employees. 16VAC25-220-50.C.1 provides that "Prior to the commencement of each work shift, prescreening or surveying shall be required to verify each covered employee does not have signs or symptoms of COVID-19." Employers are provided the flexibility to determine what form of prescreening they will use to determine that "each covered employee does not have signs or symptoms of COVID-19." No specific reference to "hospitals and health systems that follow the CDC guidance pertaining to exposed healthcare workers returning to work" for the reasons stated above.

With regard to the notification requirements to employees in 16VAC25-220-40.B.8, the Standard specifically references HIPAA. The standard also excludes having to notify employees when the infected person is a patient hospitalized on the basis of being known or suspected to be infected with SARS-CoV-2 virus. The Department does not plan to recommend the elimination of reporting requirements with the exception that it does intend to recommend a change in the VDH notification requirements to the trigger number of positive cases.

The Department does not intend to define further the term place of employment than it has already done in the FAQ referenced by the Commenter. 16VAC25-220-10.H specifically provides that: "H. Nothing in the standard shall be construed to require employers to conduct contact tracing of the SARS-CoV-2 virus or COVID-19 disease." The Commenter's suggestion that further limiting language should be added such as a reference to "to specific units, floors, or offices as opposed to an entire facility." Such language would cause undue confusion and conflict with 16VAC25-220-10.H. Since employees on a workshift in a multi-story building must enter the building and access their floor through elevators/stairs and presumably have the potential to access different floors in the building when on meal breaks, the limiting language suggested by the Commenter would be unworkable.

With regard to the Commenter's reference to a "non-mandatory investigative tool," the issue raised concern investigation procedures implemented by VOSH that are not within the purview of the Standard. The Commenter should contact the VOSH Compliance Directors to deal with this issue.

The Department intends to recommend a definition of "minimal occupational contact" be added to the revised proposed standard.

The issue of the differences between the Standard's return to work requirement and those of the CDC will be addressed in the revised proposed permanent standard. A Frequently Asked Question (FAQ) provided by DOLI addresses the issue as it pertains to the current Emergency Temporary Standard (ETS).

On July 22, 2020, the CDC changed its guidance with regard to symptoms-based strategies from exclusion for 10 days after symptom onset and resolution of fever for at least 3 days to exclusion for 10 days after symptom onset and resolution of fever for at least 24 hours (i.e., the change was from 72 hours to 24 hours).



For persons who never develop symptoms (i.e., asymptomatic), isolation and other precautions can be discontinued 10 days after the date of their first positive RT-PCR test for SARS-CoV-2 RNA.

16VAC25-220-10.G.1 provides in part that:

To the extent that an employer actually complies with a recommendation contained in CDC guidelines, whether mandatory or non-mandatory, to mitigate SARS-CoV-2 virus and COVID-19 disease related hazards or job tasks addressed by this standard, and provided that the CDC recommendation provides equivalent or greater protection than provided by a provision of this standard, the employer's actions shall be considered in compliance with this standard.... (Emphasis added).

Employers who comply with the above-referenced change in CDC guidance issued July 22, 2020, will be considered to be providing protection equivalent to protection provided by complying with the requirements in the ETS.

However, nothing in the FAQ shall be construed to prohibit an employer from complying with the symptom-based or time-based strategies for return to work determinations in the ETS. (See §40 FAQ 18, <https://www.doli.virginia.gov/cononavirus-covid-19-faqs/>)

The Department intends to recommend that the return to work provisions of the standard be updated to reflect current CDC and VDH guidance.

The Department intends to recommend a language change to 16VAC25-220-40.D.

The Department intends to recommend a language change to 16VAC25-220-50.B.6.

Screening requirements in 16VAC25-220-50 (very high and high risk classification) and 16VAQC25-220-60 (medium risk classification), by definition do not apply to employees that an employer classifies as "low" risk classification as that term is defined in the Standard.

86116 David Silverman

9/25/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86116>

STRONGLY OPPOSE THIS MANDATE

I am a small business owner in Virginia who opposes making the COVID-19 Workplace Safety Emergency Standard permanent. Six months into the pandemic, I have learned to adapt to this unprecedented time by implementing safety protocols from a number of federal and state entities to ensure physical distancing and extensive sanitization. I want to keep my employees and customers safe because I care about their welfare. I spent hours reading, educating and documenting all these protocols that were mandated for this TEMPORARY need.

Now is not the time to make the emergency temporary standard permanent when it's likely this pandemic will be temporary. Imposing "one size fits all" COVID-19 regulations on all employers is unreasonable especially when guidance is continually changing as we learn more about the virus. The Board needs to take the time to see what challenges employers are facing implementing the emergency regulations before taking any further action.

My company takes its responsibility for protecting its employees seriously. Making the COVID-19 emergency regulations permanent will only make a difficult situation worse for employers and employees. I remain concerned about the impact many of the provisions of the emergency regulations are having on my business

and encourage the Board to not make them permanent. What happens when these protocols are no longer deemed appropriate. What happens when this virus adapts and changes making these mandates obsolete to prevent spread? What happens when a new threat comes along that has different needs? There are so many questions that this mandate does not address. There are enough costs and risks on small business already. This could amount to the "Cure being worse than the virus". Lets not forget, while any death is a tragedy, trying to protect a very small segment by making the entirety live like this is not appropriate and can cause other issues resulting in other death as well.

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SEE DEPARTMENT RESPONSE TO COMMENT 84956

86117 Christopher Walker David Allen Company 9/25/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86117>

Workplace Emergency Standards COVID - 19

We oppose making COVID -19 workplace emergency standards permanent.

We are an employee owned Virginia business who has proactively invested in training, and equipment and initiated safety protocols consistent with state and national requirements in order to protect our team members and our workplace against COVID - 19. We do not believe in permanently imposing constrictive emergency standards. We have and will continue to adapt to workplace safety protocols including masks, social distancing and specific sanitization and disinfecting practices to keep our teams safe and working.

We considered our staff and workplace "Essential" long before it was confirmed by the Commonwealth of Virginia. It is not necessary to permanently impose one size fits all measures for what should be (we pray) a temporary necessity.

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SEE DEPARTMENT RESPONSE TO COMMENT 84956

86120 David Armstrong 9/25/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86120>

Temporary covid-19 regulations becoming permanent

Strongly opposed

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

86122 Dennis Edwards, CHST,OHST 9/25/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86122>

Vote no to the proposed permanent standard

Prior to attempting to adopt any permanent standard, members of the Safety and Health Codes Board need to ask themselves, where is the data? Where is the data that supports the need for a permanent standard for COVID-19? Has the ETS truly prevented additional spread of the virus? What about VOSH compliance inspections and citations surrounding non-compliance of the ETS? Have any occurred? Have they made a difference? What is the state of small business in Virginia? Are businesses struggling because of the mandates in place?

By announcing the intent to make the ETS permanent at the same time that it was enacted, VOSH made it clear that they were not interested in data. At face value this seems to be an entirely political move. Let's make the governor look great for enacting the first permanent COVID standard.

Many of the requirements in this standard are vague and overly burdensome for small employers. Employers can do their best to implement what is required but at anytime, a client or customer that refuses to abide by policies can ruin every protection that was in place. Trying to enforce protections with the general public can lead to employees being put in a harmful situation. Is this what we want?

This standard is not consistent with CDC and even VDH guidelines. Why are two Virginia agencies putting out conflicting information? This standard locks employers into obsolete data. Information around COVID changes daily but somehow this standard that was created months ago will protect everyone even though everything has now changed.

Most employers have gone above and beyond to protect their employees during this pandemic. The ETS was not even warranted and now we want to ensure that we lock employers into following these requirements indefinitely. What happens once the pandemic is under control and is no longer considered a pandemic? Employers will be forced to continue wasting money that they don't have on protections that aren't needed.

Has anyone really considered the stress that this puts on the employees? You know, the ones that this standard is supposed to protect. Mask wearing makes communication with others very difficult. It also affects the mood and mental state of employees. Masks make other tasks unsafe due to fogging of glasses, limitations on vision and other factors.

Several parts of this standard rely on employees doing the right thing. Employees that can't afford to be off are not going to answer their screening questions honestly. Many employees will not wash their face coverings as prescribed. Are we to believe that everyone is sanitizing and washing appropriately? So no one will ever be in a hurry and forget?

The standard implies that the employer is responsible for any exposure that an employee receives to include exposures during their personal time. Most of those exposures do occur when an employee is not at work. It is ridiculous for an employer to have to bend over backwards to prevent virus exposures when an employee can leave work and go to a restaurant, a rally, a sporting event, a party, etc. and all the protecting that employer did has just been wiped away.

This standard gives the exemption for education institutions yet they are some of the biggest offenders for enforcing the protections. This was where the board caved to the governor's desires.

The ETS was not well thought out. There was no opportunity for stakeholders to give proper feedback. There is no data to support the need for this to be permanent. The ETS needs to be allowed to expire giving employers the ability to adapt to current guidelines for employee protections.

Vote no to making the ETS permanent.

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SEE DEPARTMENT RESPONSE TO COMMENT 84956

The issue of the differences between the Standard's return to work requirement and those of the CDC will be addressed in the revised proposed permanent standard. A Frequently Asked Question (FAQ) provided by DOLI addresses the issue as it pertains to the current Emergency Temporary Standard (ETS).

On July 22, 2020, the CDC changed its guidance with regard to symptoms-based strategies from exclusion for 10 days after symptom onset and resolution of fever for at least 3 days to exclusion for 10 days after symptom onset and resolution of fever for at least 24 hours (i.e., the change was from 72 hours to 24 hours). For persons who never develop symptoms (i.e., asymptomatic), isolation and other precautions can be discontinued 10 days after the date of their first positive RT-PCR test for SARS-CoV-2 RNA.

16VAC25-220-10.G.1 provides in part that:

To the extent that an employer actually complies with a recommendation contained in CDC guidelines, whether mandatory or non-mandatory, to mitigate SARS-CoV-2 virus and COVID-19 disease related hazards or job tasks addressed by this standard, and provided that the CDC recommendation provides equivalent or greater protection than provided by a provision of this standard, the employer's actions shall be considered in compliance with this standard.... (Emphasis added).

Employers who comply with the above-referenced change in CDC guidance issued July 22, 2020, will be considered to be providing protection equivalent to protection provided by complying with the requirements in the ETS.

However, nothing in the FAQ shall be construed to prohibit an employer from complying with the symptom-based or time-based strategies for return to work determinations in the ETS. (See §40 FAQ 18, <https://www.doli.virginia.gov/cononavirus-covid-19-faqs/>)

86123 Elaine Bowling 9/25/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86123>

Proposed mandatory mask legislation

STRONGLY OPPOSED. For a 99.96% recovery rate government is considering this dark behavior modification to disarm and hypnotize citizens into robotic submission. Just stop now.

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

86124 Elaine Bowling (multiple comments) 9/25/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86124>

STRONGLY OPPOSED- no mandatory mask legislation!! STRONGLY OPPOSED. For a 99.96% recovery rate government is considering this dark behavior modification to disarm and hypnotize citizens into robotic submission. Just stop now.

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

SEE DEPARTMENT RESPONSE TO COMMENT 85535

86126 M. Leon

9/25/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86126>

Strongly OPPOSE - more considerations and research needed

1) More research must be done to show long-term effects of wearing the various types of masks for prolonged periods of time (ex: 8-hour work shift).

2) More research and information must be dispensed on how each type of masks work and which should be worn when you do have COVID-19 and when you don't have COVID-19.

3) Exceptions must be considered for mental health and physical health reasons such as asthma, and clearly stated in any type of executive order.

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

SEE DEPARTMENT RESPONSE TO COMMENT 85535

86127 Brian Gingrich

9/25/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86127>

STRONGLY OPPOSE

I am strongly opposed to a standard regulation for two reasons:

1. There is not enough data on covid-19 to establish accurate regulations. As more information is learned and treatments are developed, any standards would need to be constantly revised to keep up with the latest information. This could potentially force businesses both large and small to spend valuable resources on an ever-changing program.

2. We cannot possibly have one standard that would be suited to every size and type of business out there. A standard regulation could force business to adopt practices that are neither helpful to nor practical for their safe operation.

We need to continue to let business decide for themselves how they can best defend themselves against the spread of the virus

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

SEE DEPARTMENT RESPONSE TO COMMENT 85535

86128 Jen Arcidicono 9/25/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86128>

Please make worker protections permanent

Workers should not have to sacrifice their health and safety to earn a living, especially during an ongoing global pandemic. Thank you.

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SEE DEPARTMENT RESPONSE TO COMMENT 84196

86129 Tim Meyer Rinker Materials 9/25/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86129>

Strongly oppose Adopting a Permanent Standard

As a Critical part of the Construction Industry we worked 4 1/2 months under CDC and Osha guidelines before the Emergency Temporary Standard became effective on July 27th 2020. During these months we implemented critical safety measures to ensure the health and safety of our employees. The federal guidelines were working and additional regulations were duplicative and unnecessary.

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SEE DEPARTMENT RESPONSE TO COMMENT 84956

86132 Mike Lowry 9/25/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86132>

Workplace Safety Emergency Standard

Is a small business owner I'm opposed to making the COVID-19 Workplace Safety Standard permanent. We always put employees safety first and do not feel it necessary to make this standard permanent at this time.

My employees and I feel this pandemic will be temporary and making the standard permanent takes away the hope people have that things will get better.

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SEE DEPARTMENT RESPONSE TO COMMENT 84956

86133 Laurie Riddle 9/25/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86133>

I STRONGLY OPPOSE ANY ATTEMPT TO PERMANENTLY MANDATE THE WEARING OF FACIAL MASKS. The Governor needs to step back and allow us to make our own health decisions.

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

SEE DEPARTMENT RESPONSE TO COMMENT 85535

86134 Carol Moneyppenny 9/25/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86134>"Temporary COVID-19 Regulations Becoming Permanent

STRONGLY OPPOSED TO THIS BECOMING PERMANENT. YOU ARE TRYING TO KILL THE BUSINESSES IN VIRGINIA SO THAT THEY HAVE TO RELY ON THE GOVERNMENT FOR MONEY AND THAT'S NOT HOW IT SHOULD BE. THIS IS WRONG. DO NOT MAKE THESE COVID-19 REGULATIONS PERMANENT.

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SEE DEPARTMENT RESPONSE TO COMMENT 84956

The Department has no response to the Commenter's political commentary.

86141 Tammy Hill 9/25/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86141>"STRONGLY OPPOSE!

STRONGLY OPPOSE!

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

86143 Penny Bogert 9/25/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86143>

Temporary COVID 19 regulations becoming permanent

My husband and I strongly OPPOSE making COVID 19 regulations permanent. We believe we should take it day by day and not make a permanent decision concerning COVID 19 regulations that may not be necessary in the future. Seems like an over reaction., pushing a specific agenda. Why? Leave it TEMPORARY. As long as these temporary guidelines are in effect, in a sense it is permanent (for now) anyway.

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

86144 Carl Braun 9/25/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86144>

STRONGLY OPPOSE

I Strongly Oppose making the mandate permanent. This is an overreach of power and against our constitutional freedom.

" SEE DEPARTMENT RESPONSE TO COMMENT 84237

86145 David Johnson, DuPont 9/25/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86145>"DuPont - Opposition to Permanent Standard for Infectious Disease Prevention re SARS-CoV-2

TO: Safety and Health Codes Board

FR: DuPont / Spruance / Richmond, Virginia / David Johnson, Plant Manager

Thank you for the opportunity to comment on the Virginia Department of Labor and Industry's Safety and Health Codes Board Permanent Standard for Infectious Disease Prevention: SARS-CoV-2 Virus That Causes COVID-19, 16 VAC24-220 (collectively, the "Regulations"). These comments are provided on behalf of DuPont.

DuPont has maintained a manufacturing presence in Virginia for over 90 years. Our three manufacturing locations in Virginia employ over 2000 employees and contractors. In addition, our Tyvek® protective apparel and our Dupont Teijin Films Melinex® film have played a critical role in protecting the front line essential workers in battling this pandemic.

Safety and Health is a core value at DuPont. Keeping the workplace safe, which has always been a cornerstone of our operation, has taken on new meaning during the past six months. The need to take extra precautions to protect the safety and health of our employees in the workplace as we continue to operate essential businesses is a value we share. While we appreciate and support critical measures which must be enacted to guard the health and safety of our employees, their families, co-workers and the communities in which they live, we believe the Regulations as drafted create concerns for many employers.

We respectfully submit the comments below addressing our specific concerns of the proposed Regulations:

- Ventilation requirements

- Section 60.B.1.b Requiring "Low" and "Medium" risk facilities to maintain HVAC systems in accordance with manufacturers' instructions does not address the potential hazard (if any) as it relates to ventilation.

- The language does not account for older facilities, as upgrading the ventilation in those facilities may be infeasible.

- Recommended changes: ASHRAE standards 62.1, 62.2 and 170 should be struck entirely and the Board adopt the CDC guidelines to adequately address the issue.

- ☑Increase ventilation rates.

- ☑Ensure ventilation systems operate properly and provide acceptable indoor air quality for the current occupancy level for each space.

- ☑Increase outdoor air ventilation, using caution in highly polluted areas.

- ☑Disable demand controlled ventilation (DCV).

- ☑Further open minimum outdoor air dampers (as high as 100%) to reduce or elimination recirculation. Provide for flexibility to accommodate thermal comfort or humidity needs in cold or hot weather.

- ☑Improve central air filtration to the MERV-13 or the highest compatible with the filter rack and seal edges of the filter to limit bypass.

- ☑Check filters to ensure they are within service life and appropriately installed.



☒ Keep systems running longer hours, 24/7 if possible, to enhance air exchanges in the building space.

- Suspected cases of COVID-19 – Symptoms

- Section 30, “Symptomatic” definition – This definition includes a broad array of symptoms – “fever or chills, cough, shortness of breath or difficulty breathing, fatigue, muscle or body aches, headache, new loss of taste or smell, sore throat, congestion or runny nose, nausea or vomiting, or diarrhea.”

☒ This includes just about every illness. It’s overly broad given that the employer must act if a worker is exhibiting these symptoms.

☒ Data regarding the incubation period is still uncertain.

☒ The symptoms listed are not uniformly listed in all CDC, OSHA and VDH guidance documents.

- Section 40.A.4 – The employer must treat any such person exhibiting these symptoms as being “suspected COVID-19” case.

- Section 40.5 – The employer shall not allow any suspected case to report to work or be allowed to remain at work.

- Section 40.C – A suspected case cannot return until 3 days since last symptom and 10 days since first symptom. So, someone that exhibits muscle aches after a long day must “sit” for almost 14 days? Or someone with a running nose? This is overly broad.

- Recommended change: Narrow the symptoms that trigger a “Suspected case” to the CDC list to avoid abuse. Include a provision that would allow the employee to return to work upon if an initial COVID-19 test is negative.

- PPE and no credit for the use of face coverings

- Section 30, “PPE” definition includes surgical masks but not face coverings.

- Section 40.H – The draft states “. . . employers shall ensure compliance with respiratory protection and personal protective equipment standards applicable to its industry. “

☒ First, there are no industry standards on this. So essentially, it will be up to OSHA’s discretion whether someone should have worn a surgical mask or respirator instead of allowing the person to wear a face covering.

☒ Second, the supply of PPE continues to ebb and flow, and this regulation will be in place for an undetermined period of time but at a minimum for the duration of the pandemic. That could be a problem if the supply of surgical masks contracts again.

☒ Finally, if employers are required to outfit workers in PPE instead of requiring face coverings simply because they are in 6 feet of another person, and the supply of surgical masks continues to be strained, employers will have to issue respirators to employers and fit test those employees. The availability of fit testing is currently strained as well, so much so that many providers discontinued this vital service during the pandemic. The agency is surely not suggesting that workers be provided and instructed to wear respirators without being properly fit tested.

☒ Recommended Change: Allow the use of face coverings and surgical masks for work within six feet of others.

◦Section 40.F – Again, the draft requires an “. . . employer shall ensure compliance with respiratory protection and person protective equipment standards applicable to its industry” when multiple people occupy a vehicle is both impractical and vague and inconsistent with the CDC guidance for rideshares and other public vehicles. (<https://www.cdc.gov/coronavirus/2019-ncov/daily-life-coping/using-transportation.html>.)

◦Recommended change: When multiple employees are occupying a vehicle for work purposes, the employer shall ensure all occupants wear a face covering, allow fresh air ventilation (i.e., open window) and limit occupancy to improve social distancing. If the employer cannot perform these tasks, the employer shall ensure compliance with respiratory protection and personal protective equipment standards applicable to the employer's industry.

- Cleaning common spaces

◦The requirement that “. . . common spaces . . . [be] cleaned and disinfected at the end of each shift” is impractical for 24/7 operations with multiple and overlapping shifts as mandated Section 60.C.1.d. (staggered shifts). To enact this provision as written would require constant cleaning and disinfecting around the clock.

◦Recommended change: Allow employers to clean periodically based upon usage of the common area, not to be less than once every 12 hours.

Your time and consideration of the above stated proposals are appreciated.

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#### SEE DEPARTMENT RESPONSE TO COMMENT 84956

The Department acknowledges the comment and notes that the ASHRAE air handling requirements issue raised by the Commenter is undergoing a legal review.

The Department intends to recommend changes to the Standard to update references to signs and symptoms.

With regard to the issue of PPE raised by the Commenter, the Department has provided a Frequently Asked Question (FAQ) on the subject, §40, FAQ 12, which provides: 12. We are not aware of any “industry standards” for PPE in regular trucking operations. Except for certain hazardous material operations, we are not aware of any PPE requirements for the operation of trucks or loading and unloading activities.

All federal OSHA identical standards and regulations enforced by VOSH in General Industry (29 CFR Part 1910) apply to general industry employers like the trucking industry, except where otherwise exempted by §4(b)(1) of the OSH Act of 1970. Two such standards are the Personal Protective Equipment (PPE) (1910.132[1]) and Respiratory Protection (1910.134[2]) standards. COVID-19 is a respiratory disease that spreads easily through airborne transmission between persons in contact with each other inside six feet, so the PPE and Respirator Standards are considered applicable.

While the ETS contains specific requirements for an employer to determine the level of exposure risk to the SARS-CoV-2 virus at its workplace (very high, high, medium, or lower risk), generally the determination in most workplace settings outside of healthcare and emergency response will result in either a medium or lower risk classification depending on whether employees are required to work inside six feet of other persons (employees, customers, etc.) or not.

Employers must first implement engineering, administrative, and work practice controls to eliminate or reduce the frequency of contact with others inside of six feet to the extent feasible. Where it is not feasible

to eliminate contact with others inside of six feet, medium risk employers must determine what level of personal protective equipment (PPE) must be provided and worn as the last line of protection for employees against the virus. This is done through conducting a hazard assessment to determine personal protective equipment (PPE) requirements for employees. 16VAC25-220-60.D (medium risk).

For medium risk job tasks, the ETS requires “employers to provide and employees to wear face coverings who, because of job tasks cannot feasibly practice physical distancing from another employee or other person if the [PPE] hazard assessment has determined that personal protective equipment, such as respirators or surgical/medical procedure masks, was not required for the job task.” 16VAC25-220-60.C.1.k.

The ETS also requires for medium risk job tasks “employers to provide and employees in customer facing jobs to wear face coverings.” 16VAC25-220-60.C.1.l.

The FAQ can be found at: <https://www.doli.virginia.gov/cononavirus-covid-19-faqs/>

The Department intends to recommend revisions to 16VAC25-220-40.F, which currently provides: ""F. When multiple employees are occupying a vehicle for work purposes, the employer shall ensure compliance with respiratory protection and personal protective equipment standards applicable to the employer's industry.

The Department intends to recommend revisions to 16VAC25-220-40.K.5 which currently provides: ""5. All common spaces, including bathrooms, frequently touched surfaces, and doors, shall at a minimum be cleaned and disinfected at the end of each shift. All shared tools, equipment, workspaces, and vehicles shall be cleaned and disinfected prior to transfer from one employee to another.""

86147 Ruth Summers 9/25/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86147>

Oppose Emergency Mandates Becoming Permanent

I strongly oppose these mandates as currently written becoming permanent. I believe this is overreaching and some of these will cause undue hardship on the citizens and especially small business in Virginia.

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SEE DEPARTMENT RESPONSE TO COMMENT 84956

86148 anonymous 9/25/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86148>

Stongly OPPOSE!!!

Strongly OPPOSE to this insane legislation - would like my freedom back please!!!!

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This Standard is not being proposed as legislation to the General Assembly. The Standard is being considered for adoption by the Virginia Safety and Health Codes Board pursuant to Va. Code §40.1-22(6a) and would be enforced by the Department of Labor and Industry’s (DOLI) Virginia Occupational Safety and Health (VOSH) Program.

SEE DEPARTMENT RESPONSE TO COMMENT 84237

86149 Tari Foltz 9/25/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86149>"Strongly oppose!!!!!"

Strongly oppose!!!!!"

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

86151 Neiman C. Young, County Administrator King George County Board of Supervisors 9/25/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86151>

In Opposition to the Permanency of the DOLI Emergency Standards

On behalf of the King George County Board of Supervisors, I would like to register our opposition to establishing the DOLI emergency standards in response to COVID-19 as permanent policy for local governments and small businesses.

The Board's attempt to establish these emergency orders as permanent policy undermines the Commonwealth's legislative process and illegally affords a regulatory agency the ability to step outside of their authority (or lack thereof) to craft statutory policy. This is a dangerous precedence that degrades transparency and erases the elected representation of our citizens who will be affected by said policies.

In addition, the DOLI standards create an awesome burden on local business. We understand that we must sometimes compromise convenience for the sake of public health. However, this new initiative is an attempt by DOLI to burden us all well beyond the eventual dissolution of the current state of emergency.

We ask that you reconsider this egregious approach to managing policy. Rather, we ask that you pursue an appropriate approach to the DOLI standards by affording the General Assembly, the Senate, and subsequently the general public, the opportunity to have a voice in the guidelines that will affect us all.

Respectfully,

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The VOSH program has clear statutory and regulatory jurisdiction over workplace safety and health issues in the Commonwealth, including the potential for spread of infectious diseases among employees and employers, and when those employees and employers are potentially exposed to other persons who may be carriers of the infectious diseases (patients, customers, independent contractors, etc.).

SEE DEPARTMENT RESPONSE TO COMMENT 84956

The proposed permanent standard has been subject to the following notice and comment procedures. The Virginia Safety and Health Codes Board held a 60 day written comment period for the Proposed Permanent Standard, with the comment period running from August 27, 2020 to September 25, 2020. The Board held a Public Hearing on September 30, 2020. A revised draft of the Proposed Permanent Standard will be published with an additional 30 day comment period prior to any Board action.

86152 Virginia Retail Federation Virginia Retail Federation 9/25/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86152>

THIS COMMENT WAS ALSO SUBMITTED DIRECTLY TO THE DEPARTMENT AT:

<https://www.doli.virginia.gov/proposed-permanent-standard-for-infectious-disease-prevention-for-covid-19/>

Strongly Oppose Permanent Standard

RE: Comments of the Virginia Retail Federation

VA Department of Labor and Industry, Safety and Health Codes Board

Permanent Standard for Infectious Disease Prevention: SARS-CoV-2 Virus That Causes COVID-19, 16VAC25-220

To Whom It May Concern:

Thank you for the opportunity to comment on the Virginia Department of Labor and Industry's announced intent to Adopt a Permanent Standard for Infectious Disease Prevention: SARS-CoV-2 Virus That Causes COVID-19, 16VAC25-220. We are commenting on behalf of Virginia Retail Federation. Virginia Retail Federation is the statewide retail association advocating on behalf of retailers large and small across the Commonwealth. Our members will be directly impacted by the attempt to implement one-size-fits-all COVID-19 Regulations on businesses throughout Virginia.

Virginia's retail businesses need certainty and consistency in any regulatory program. This ensures that the regulated community understands the requirements of the program, and that all parties can work together to satisfy the regulatory requirements.

Our Members oppose the adoption of a Permanent Standard by The Virginia Safety and Health Codes Board. We assert that adopting 16VAC25-220 as permanent regulations is overly burdensome, unnecessary, and violates existing law. The science of COVID-19 is continuously being updated. Therefore, the CDC and OSHA guidelines are frequently updated to reflect this. If the Emergency Temporary Standard were to become permanent, it would continue to require businesses to comply with outdated regulations.

This is not the time to impose a permanent standard. The ETS has only just become fully implemented on the day that these public comments are due (September 25, 2020), so retailers have not had sufficient time and opportunity to voice the challenges of implementation of the ETS. In addition, there has not been evaluation of the ETS by DOLI analyzing how many businesses are out of compliance because of the failure to notify impacted businesses.

If the Board believes it should move forward with a Permanent Standard, it must include these important provisions:

- 1.The sunset clause from the ETS into the Permanent Standard – meaning the Regulations would expire with the Governor's State of Emergency
- 2.The specific changes the Virginia Business Coalition recommend in their submitted comments. These changes ensure the implementation and enforcement of the standard is reasonable, fair, and attainable.
- 3.Here are several priorities of Virginia Retail Federation. a.Amend § 10G to the agency's original language with clarification on providing "safe harbor" for employers who follow CDC and OSHA guidance. We believe

that, as currently written, it is unclear who determines which version of CDC guidance an employer may reference for purposes of compliance.

b. Eliminate requirements for physical separation of employees at low and medium risk businesses by a permanent, solid floor to ceiling wall. Higher risk businesses have more flexibility to use smaller temporary barriers like Plexiglas sneeze guards.

c. Eliminate all human resource policies from the Regulations such sick leave, telework, flexible worksites, flexible work hours, flexible meeting and travel, the delivery of services or the delivery of products. These policies exceed the Board's authority as it relates to workplace hazards.

d. Amend common space sanitation requirements. Requiring common spaces to be cleaned and disinfected at the end of each shift is impractical for 24/7 operations with multiple and overlapping shifts. The Regulations should be amended to provide for a time-based alternative such as every 8, 12, or 24 hours exempting FDA regulated facilities.

e. Eliminate HVAC requirements for medium risk businesses (16VAC25-220-60(B)). Requiring retroactive compliance with a 2019 ASHRAE HVAC standard is premature at best. Any permanent regulations should follow existing processes contained in the Virginia Uniform Statewide Building Code (USBC) which utilize appropriate industry investigation and recommendations.

f. Eliminate the requirement that medium risk employers should complete a COVID-19 infections disease preparedness and response plan. This mandate is overly burdensome and not necessary at this risk level.

g. Increase the amount of time employers must train their employees. The current timetable is unachievable. The ETS should be amended to provide employers another sixty (60) days to comply.

h. Eliminate language protecting employees who report to news media or social media (16VAC25-220-90). Whistleblower protection is intended to protect employee complaints to the responsible government regulatory agency.

i. Revise requirements related to transportation of employees who travel in the same vehicle. This standard is impractical and vague.

In addition, Virginia Retail Federation requests that the Virginia Safety and Health Codes Board issue an additional sixty (60) day comment period on 16VAC25-220 requesting that employers provide recommended improvements to the Emergency Temporary Standard for consideration by the Board.

We strongly urge the Board not to approve any amendments to the Regulations that would incorporate other infectious diseases. There is no one-size-fits-all plan to combat a wide variety of infectious illnesses.

As previously stated, we believe it is extremely unreasonable to apply one-size-fits-all COVID-19 Regulations to all employers across the Commonwealth. We recommend that the Board reject the regulations, establish a new sixty day public comment period for a revised ETS or abandon the ETS completely and rely upon the General Duty Clause and Federal, State and Industry guidance to protect workers as is been effectively done in the overwhelming majority of other States.

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SEE DEPARTMENT RESPONSE TO COMMENT 84956

The Department does not intend to recommend any change to 16VAC25-220-10.G.1. The Department notes that the Standard provides flexibility to business through 16VAC25-220-10.G.1 which provides that "To the

extent that an employer actually complies with a recommendation contained in CDC guidelines, whether mandatory or non-mandatory, to mitigate SARS-CoV-2 virus and COVID-19 disease related hazards or job tasks addressed by this standard, and provided that the CDC recommendation provides equivalent or greater protection than provided by a provision of this standard, the employer's actions shall be considered in compliance with this standard. An employer's actual compliance with a recommendation contained in CDC guidelines, whether mandatory or non-mandatory, to mitigate SARS-COV-2 and COVID19 related hazards or job tasks addressed by this standard shall be considered evidence of good faith in any enforcement proceeding related to this standard." It is the Department's position that similarly situated employees and employers exposed to the same or even more serious hazards or job task should all be provided the same basic level of safety and health protections, which is what the current language in 16VAC25-220-10.G.1 provides for.

The language referenced by the Commenter (physical separation of employees at low-risk businesses by a permanent, solid floor to ceiling wall) is one method described in the Standard for mitigating the spread of SARS-CoV2; however, employers are not required to do so.

The Department intends to recommend a language change to the Standard that makes this clear.

The Department does not plan to recommend changes to sick leave provisions in the Standard.

The Standard does not require employers to provide sick leave to employees. It does reference the Families First Coronavirus Response Act (FFCRA) at 16VAC25-220-40.B.6:

6. To the extent feasible and permitted by law, including but not limited to the Families First Coronavirus Response Act, employers shall ensure that sick leave policies are flexible and consistent with public health guidance and that employees are aware of these policies.

Further information about the FFCRA and sick leave policies can be found at:  
<https://www.dol.gov/agencies/whd/pandemic/ffcra-employee-paid-leave>

The Department intends to recommend language changes to the business consideration language in 16VAC25-220-70.C.5 to make clear that the language is related to occupational safety and health concerns.

The Department respectfully disagrees with the Commenter's assertion that mitigation strategies (referred to by the Commenter as ""human resource policies"") to prevent the spread of SARS-CoV-2 in the workplace exceeds the authority of the Board. The Department intends to recommend some language changes to the provisions referenced by the Commenter.

The Department intends to recommend revisions to 16VAC25-220-40.K.5 which currently provides: ""5. All common spaces, including bathrooms, frequently touched surfaces, and doors, shall at a minimum be cleaned and disinfected at the end of each shift. All shared tools, equipment, workspaces, and vehicles shall be cleaned and disinfected prior to transfer from one employee to another.""

The Department acknowledges the comment and notes that the ASHRAE air handling requirements issue raised by the Commenter is undergoing a legal review.

The Department does not intend to recommend any change to which employers are required to develop and implement an Infectious disease preparedness and response plan under 16VAC25-220-70. The current requirement exempts employers with 10 or fewer employees which eases the burden on the smallest employers with the most limited resources. The Department notes that a free template for a plan is provided on the Department's website at: <https://www.doli.virginia.gov/covid-19-outreach-education-and-training/>

In addition, the Department strongly encourages Virginia's small business owners to take advantage of free and confidential occupational safety and health onsite and virtual consultation and training services to address COVID-19 compliance issues. More information about the VOSH Consultation Services can be found at: <https://www.doli.virginia.gov/vosh-programs/consultation/>

The Department intends to recommend a language change to the amount of time permitted to train employees under the Standard.

The Department does not intend to recommend any change to 16VAC25-220-90.C as it is the position of the Department that it reflects the current state of case law on the subject.

Pursuant to Va. Code §40.1-51.2:1, employees are protected from discrimination when they engage in activities protected by Title 40.1 of the Code of Virginia ("because the employee has filed a safety or health complaint or has testified or otherwise acted to exercise rights under the safety and health provisions of this title for themselves or others.").

Whether an employee engaged in a "protected activity" under Title 40.1 is very fact specific, but can include occupational safety and health information shared by an employee about their employer on a social media or other public platform in certain situations.

16VAC25-220-90.C provides that:

No person shall discharge or in any way discriminate against an employee who raises a reasonable concern about infection control related to the SARS-CoV-2 virus and COVID-19 disease to the employer, the employer's agent, other employees, a government agency, or to the public such as through print, online, social, or any other media.

If an employee raises an unsubstantiated COVID-19 related claim or makes a false COVID-19 related claim against their employer through print, online, social, or any other media, such an act by an employee would not be considered "reasonable" under the ETS and disciplinary action taken against the employee in accordance with the employer's human resource policies would not be considered "discrimination" under the ETS/ER or Va. Code §40.1-51.2:1.

The Department intends to recommend revisions to 16VAC25-220-40.F, which currently provides: ""F. When multiple employees are occupying a vehicle for work purposes, the employer shall ensure compliance with respiratory protection and personal protective equipment standards applicable to the employer's industry.

The proposed permanent standard has been subject to the following notice and comment procedures. The Virginia Safety and Health Codes Board held a 60 day written comment period for the Proposed Permanent Standard, with the comment period running from August 27, 2020 to September 25, 2020. The Board held a Public Hearing on September 30, 2020. A revised draft of the Proposed Permanent Standard will be published with an additional 30 day comment period prior to any Board action. A public hearing will also be held.

86154 Jessica Powell 9/25/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86154>

No mask mandate. I am opposing this mask mandate. No thank you. Jesus is the way the truth and the life. I will follow Him all the days of my life . God bless you and direct your decisions governor.

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

SEE DEPARTMENT RESPONSE TO COMMENT 85535

86155 gail tabor 9/25/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86155>

STRONGLY OPPOSE!! Mask are extremely unhealthy. Only those that choose to wear them should do so.

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

SEE DEPARTMENT RESPONSE TO COMMENT 85535

86156 Cynthia Smith 9/25/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86156>

No to Mandatory masks! Please do not pass legislation for permanent masks to prevent Co-vid transmission. This will only shut us down more economically. A vaccine will be available this year and masks are to not prevent infections. It may slow it down, but this should be punitive for Virginia's businesses. If you wNt to do something to help economy, shut down the violent protests that are masked as "freedom of expression".

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

SEE DEPARTMENT RESPONSE TO COMMENT 85535

86157 Mary 9/25/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86157>

Strongly oposses government power grab! NO to mandatory masks!

NO to mandatory masks!

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

SEE DEPARTMENT RESPONSE TO COMMENT 85535

86158 Martina Langton 9/25/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86158>

No mask mandate

Please leave decisions up to individuals and businesses and do not impose mandates.

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

SEE DEPARTMENT RESPONSE TO COMMENT 85535

86159 Stephen 9/25/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86159>

Virus regulations

Strongly oppose any permanent regulations or requirements. My business with over 150 employees has been open throughout the pandemic and have only had two positive tests and no cross contamination from the affected employees.

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SEE DEPARTMENT RESPONSE TO COMMENT 84956

86161 Chase 9/25/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86161>

No.

No.

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

86162 "CDS Tractor Trailer Training

9/25/2020 <https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86162>

No need to Over Regulate

As a small, essential business, we quickly implemented the CDC guidelines and have not experienced a virus outbreak. Students and staff are self-quarantining if they have been in contact with a positive Covid person.

The implementation of the guidelines added extra expenses for CDS to bear. Adding more regulation would be difficult to maintain and is not necessary based on the practices we have in place.

We take protecting our students and staff seriously and do not feel making additional, permanent regulations is necessary, especially since there is hope for a vaccine in the near future. We feel this is government overreach.

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SEE DEPARTMENT RESPONSE TO COMMENT 84956

86163 craig tabor 9/25/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86163>I strongly oppose the Virginia Governor and legislator's attempt to impose a permanent mask mandate. This is a clear violation of my constitutional rights which take precedent over any mandates imposed by the Virginia government.

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

SEE DEPARTMENT RESPONSE TO COMMENT 85535

86164 Katrina 9/25/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86164>

Strongly oppose!!!! We do not have enough research on the permanent impact that wearing a mask all the time has. This sets up a situation for harassment for people who can not wear a mask for medical reasons. Please vote "NO" to this stripping of a freedom to breath freely!

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

SEE DEPARTMENT RESPONSE TO COMMENT 85535

86165 Troy Dow 9/25/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86165>

Opposed to any Permanent Standard

As an employer of over 350 employees in the commonwealth of Virginia I am opposed to making this temporary standard permanent. I believe that the temporary standard added little or no additional protection to our employees.

The move to make this measure permanent will continue to place an unfair burden on Virginia employers, and provide no additional protection to employees.

This is another overreach from this administration into the private sector under the guise of public safety. The pandemic has been devastating on the business community and these type of burdensome regulations just add to an already bad situation.

I urge you to vote no on making this permanent, and let the business community continue to do the right things for our employees and provide them with a safe workplace.

Regards,

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SEE DEPARTMENT RESPONSE TO COMMENT 84956

86168 Jay Langton 9/25/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86168>

Strongly Oppose

It is not right for any government in thenl USA...Local, State or Federal to imposenon the freedom of life, liberty, or the pursuit of happiness. This suggested law infringes on our basic rights as citizens!

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

86169 Chris Neikirk 9/25/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86169>

Oppose making temporary COVID-19 Restrictions Permanent at this time

I am a small business owner in Virginia who opposes making the COVID-19 Workplace Safety Emergency Standard permanent. Six months into the pandemic, I have learned to adapt to this unprecedented time by implementing safety protocols from a number of federal and state entities to ensure physical distancing and extensive sanitization. I want to keep my employees and customers safe because I care about their welfare.

Now is not the time to make the emergency temporary standard permanent when it's likely this pandemic will be temporary. Imposing "one size fits all" COVID-19 regulations on all employers is unreasonable especially when guidance is continually changing as we learn more about the virus. The Board needs to take the time to see what challenges employers are facing implementing the emergency regulations before taking any further action.

My company takes its responsibility for protecting its employees seriously. Making the COVID-19 emergency regulations permanent will only make a difficult situation worse for employers and employees. I remain concerned about the impact many of the provisions of the emergency regulations are having on my business and encourage the Board to not make them permanent.

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SEE DEPARTMENT RESPONSE TO COMMENT 84956

86170 Jenifer 9/25/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86170>

MANDATORY MASKS=TYRANNY! vehemently oppose the Virginia Governor and legislator's attempt to impose a permanent mask mandate. This is a clear, direct violation of my constitutional rights which is without precedent and an egregious, tyrannical overreach!

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

SEE DEPARTMENT RESPONSE TO COMMENT 85535

The Department has no response to the Commenter's political commentary.

86171 Zack Shiffer 9/25/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86171>

NO to making COVID-19 regulations a permanent standard

I strongly oppose making the temporary COVID-19 regulations for business a permanent standard. This adds additional costs to a business that quite frankly may not be able to afford it. We do care about our employees and support good hygiene, but this is going way overboard. We sanitize our business at regular intervals, which is good practice anyway. But for the government to come out with a list of COVID-19 requirements that will become standard even after COVID has gone away is excessive.

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SEE DEPARTMENT RESPONSE TO COMMENT 84956

86173 Valerie Gibson 9/25/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86173>

Strongly Oppose Permanent Mandates

These mandates should, at most, be a temporary measure only, and I strongly oppose making them permanent so prematurely. The mask portion, especially, is unhealthy long-term and should be optional for those who are at higher risk. Additionally, novel viruses that make an appearance once every 100 years should not be used as an opportunity for imposing additional (overreaching) government control and taking away the basic rights of citizens. I would also expect our government to be vigilant in ensuring overall and long-term public safety by exploring the health effects of these mandates through the collection of additional, long-term data from multiple credible studies on the true effectiveness and long-term effects of these measures (particularly continual of masks and over-sanitization with poisonous, harmful chemicals) before making a permanent decision for its citizens.

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SEE DEPARTMENT RESPONSE TO COMMENT 84956

SEE DEPARTMENT RESPONSE TO COMMENT 85535

86176 Susan Clark 9/25/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86176>

Strongly support permanent standard for workplace safety

As more research is conducted, we learn that COVID-19 is not easily eliminated. Trends for the winter do not look good. I strongly support permanent standards to ensure workplace safety. Our economy can only benefit if workers are healthy and are not afraid to go to work because of the virus. Employers appreciate

permanence to guide their actions. It is expensive to plan and have to change again. Permanent standards are the way to move forward.

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SEE DEPARTMENT RESPONSE TO COMMENT 84196

86178 Faith Wagner 9/25/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86178>

Strongly oppose Intent to Permanently Wear Masks

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

SEE DEPARTMENT RESPONSE TO COMMENT 85535

86180 Mary Barhydt 9/25/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86180>

Strongly Support

The workers we depend on to provide out food, staff our restaurants and butcher our meat need to be protected. Our employers need clear standards in order to protect their employees efficiently. Please make Virginia's ETS a permanent protection by enacting it into law.

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SEE DEPARTMENT RESPONSE TO COMMENT 84196

86181 Betty Groth, Pinnacle Construction and Development Corp 9/25/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86181>

Strongly Oppose the Standard

Strongly Oppose the Standard

Dear Safety and Health Codes Board Members,

On behalf of Pinnacle Construction and Development Corporation, I urge you to oppose the adoption of a Permanent Standard for SARS-CoV-2, which will make permanent the current temporary standards.

A brief summary of concerns:

1.It's confusing: the standard conflicts with federal and state regulations and ever-changing guidance and recommendations. Language is vague.

2.It's burdensome: review, response, training and implementation of the standard imposes a substantial cost in time and money for the Virginia companies who have been able to remain in business.

3.It's unnecessary: a permanent standard for a temporary health situation simply doesn't make sense.

4.It's obsolete and inflexible: the temporary standard was obsolete upon issuance. The permanent standard is similarly inflexible and doesn't take in to account the updated scientific findings and recommendations.

As an essential business with ongoing construction projects including affordable housing and assisted living facilities, we implemented our initial action and response plan in early April. This plan, and related safety protocols based on current state and federal requirements has helped protect our team members and our workplace.

We do not believe in permanently imposing constrictive emergency standards. We have and will continue to adapt to workplace safety protocols including masks, social distancing and specific sanitization and disinfecting practices to keep our teams safe and working.

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SEE DEPARTMENT RESPONSE TO COMMENT 84956

Review of all COVID-19 related inspections under the Emergency Temporary Standard is conducted centrally by the Department with both a programmatic and legal review prior to a decision to issue or not issue violations/penalties to assure consistent enforcement across the Commonwealth. The Department does not anticipate any significant increase in litigation with regard to the Emergency Temporary Standard or any permanent standard.

86183 Christopher Taggart, Atlantic Bulk Carrier 9/25/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86183>

Emergency Infectious Disease Regulations

These temporary regulations from the Department of Labor are capricious, burdensome and, quite possibly, run afoul of existing regulations on privacy. As an essential service, trucking has continued throughout the current pandemic to provide needed goods and services to sustain the population and the economy. Trucking has been able to do this by making commonsense adjustments to its operations, both on the road and within its shops and offices necessary to continue daily operations. Men and women within the trucking industry have spent countless hours poring over guidelines and recommendations for medical and industry experts to draft continuation plans that work best for their operations and provide the most practical level of safeguards for their employees.

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SEE DEPARTMENT RESPONSE TO COMMENT 84956

With regard to the privacy issue raised, the Standard specifically references the Health Insurance Portability and Accountability Act (HIPAA) in two places when dealing with potential employee and employer privacy concerns (16VAC25-220-40.B.8 and 16VAC25-220-70.C.3.b).

86185 Evelyn Guess 9/25/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86185>

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Opposition to mandatory masks. This is government overreach and a backdoor method to legislate this. You certainly have kept this quiet with the help of the media.

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

SEE DEPARTMENT RESPONSE TO COMMENT 85535

86186 Libby Shiffer 9/25/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86186>

Strongly oppose

I am writing today to voice my strong opposition to making the COVID-19 Workplace Safety Emergency Standard permanent. We do not know that the pandemic is going to be permanent, so it does not make sense to put in place permanent requirements related to the pandemic. Also, the regulations do not take in to consideration that different businesses need to function differently. I believe business owners are competent to take care of their employees and customers and do not need yet more regulations thrown on them.

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SEE DEPARTMENT RESPONSE TO COMMENT 84956

86187 Donna Fall 9/25/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86187>

Strongly Oppose

No way! This is a terrible idea.

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

86188 James Bethany 9/25/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86188>

Permanent Mask Mandate? Ridiculous and unconstitutional. Strongly opposed. The serious overreach of government has got to come to an end. The use of a temporary crisis to try to use "emergency powers" designed to safeguard public health with a mandate which institutionalizes permanent changes which abridge or remove our constitutional rights is despicable. We now know the real "science" regarding Covid-19 does not support such an action, even on a temporary basis, much less a permanent one.

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

SEE DEPARTMENT RESPONSE TO COMMENT 85535



86189 Andre Fredette 9/25/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86189>

STRONGLY OPPOSE

Mandatory mask rules violate individual rights and freedom of the citizenry to choose how they wish to act in protecting themselves. We do NOT NEED new laws further encumbering citizens. People should be free to wear masks if they want, but it should absolutely not be a requirement let alone a criminal charge for not wearing one. Secondly, there is very little scientific evidence supporting the efficacy of masks against COVID-19 and there is substantial evidence showing sustained mask wearing has negative health effects which clearly outweigh any mild benefit in COVID-19 mitigation.

DO NOT violate the individual's right to make their own health decisions by making masks mandatory.

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

SEE DEPARTMENT RESPONSE TO COMMENT 85535

86190 Bryan Dunn 9/25/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86190>

Hell No! Strongly Opposed

Mandatory masking of a free people is an attempt to force submission and pander to cowards. You wannabe tyrants have far exceeded any legitimate authority. Stop living in fear and panic.

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

SEE DEPARTMENT RESPONSE TO COMMENT 85535

The Department has no response to the Commenter's political commentary.

86191 Samuel Parker 9/25/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86191>

Permanent Covid 19 Polciy

I am a small business owner in Virginia who opposes the Covid 19 Emergency Policy on a permanent basis. Our office took measures to control the virus by working from home, using face masks, and hand sanitizer.

Thanks,

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SEE DEPARTMENT RESPONSE TO COMMENT 84956

86192 Rosemary Baggott 9/25/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86192>

Public Mandates

STRONGLY OPPOSE MANDATORY WEARING OF MASKS IN PUBLIC. UNCONSTITUTIONAL AND UNNECESSARY.

SEE DEPARTMENT RESPONSE TO COMMENT 84237

86193 anonymous 9/25/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86193>

NO to compulsory mask wearing

SEE DEPARTMENT RESPONSE TO COMMENT 84237

SEE DEPARTMENT RESPONSE TO COMMENT 85535

86194 Laura Bouchard 9/25/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86194> OPPOSE mask mandate.  
OPPOSE! I oppose the Governor and legislators' attempt to make masks mandatory in Virginia. This is in violation of my constitutional rights and the rights of ALL VIRGINIANS. Give us back our state!

SEE DEPARTMENT RESPONSE TO COMMENT 84237

SEE DEPARTMENT RESPONSE TO COMMENT 85535

86197 Ric Richardson 9/25/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86197>

Strongly Oppose

I am strongly opposed to the rush through of this standard. There is too much impact on the workers involved in this issue to rush to publish the standard. There needs to be more research and data to support the changes you are trying to implement. Covid has been a moving target from the beginning with still, 7 months later, no clear understanding of the virus or its mutations. The scientist can't even agree on their conclusions. We shouldn't implement a permanent standard until science has a better understanding.

SEE DEPARTMENT RESPONSE TO COMMENT 84956

## Oppose Permanent Standard

Dear Safety and Health Codes Board Members:

On behalf of R. E. Lee Companies, Inc. , we urge you to oppose the adoption of Permanent Safety Standard for Infectious Disease Prevention: SARS-CoV-2 / 16VAC25-220, which will make permanent the current temporary standards for employers in an effort to control, prevent, and mitigate the spread of SARS-CoV-2.

In the wake of a global pandemic, America's construction industry was deemed essential. Hundreds of Virginia construction companies have remained open and operating throughout 2020. The ability to continue work was in large part due to the sophistication of the men and women who swiftly adapted to new safety measures to protect employees and their families.

R. E. Lee Companies, Inc. has spent money beyond their budget and has invested countless hours to keep employees safe. This has included implementing temperature checks, enforcing social distancing, abiding the stay-at-home and return-to-work orders, posting signage, adding sanitary stations, rewriting daily safety procedures, adjusting work schedules and manpower and more. REL has also complied with all government mandates regarding this pandemic. We have also worked closely with state epidemiologists to be informed on best practices to prevent the spread of SARS-CoV-2 on site.

The current Emergency Temporary Standards require a one-size-fits-all approach for businesses across the state to implement procedures to prevent the spread of SARS-CoV-2. Therefore, we have many concerns with making these standards permanent and respectfully ask you vote to oppose the adoption of the Permanent Safety Standard for these reasons:

### 1. Creates confusion because of conflicting federal and state regulations

Virginia employers have access to guidance and resources from the CDC, VHD, and OSHA to help slow the spread of COVID-19. Certain additional requirements in the proposed permanent standards - particularly the return to work criteria - contradict the other guidance and recommendations. The contradicting guidance becomes even more convoluted in cases where Virginia-based companies have worksites in multiple states. To reduce confusion when deciding which requirements to follow, companies should be able to utilize current nation-wide guidance. This creates a consistent and clear message for all employers to convey through company instituted policies.

### 2. Enforces premature mandates for an unprecedented event when data and health recommendations continue to evolve

Guidance from the CDC and VHD continues to evolve as evidenced by the recent revisions to recovery/return to work guidelines. By adopting these proposed permanent standards, it saddles Virginia's employers with a standard that may not reflect the latest breakthroughs on the virus. Employers should instead be encouraged to follow the latest CDC guidelines without the need to interpret a permanent standard that could potentially be outdated the moment it is published. This creates hazardous risks for employers and their employees.

### 3. Increases liability risk due to vague language and unclear threshold for implementation

While companies make their best effort to comply with guidance or required standards, they still cannot control what employees do after hours during the largest exposure risk. These proposed permanent standards place undue responsibility and liability on employers for actions outside of normal business hours.

Furthermore, adopting a permanent standard for such a specific virus is a dangerous precedent. There is a high probability that this virus will soon be manageable and even preventable. Adopting a permanent standard implies that mandates, including face coverings, social distancing, common area closures, daily pre-screenings, and more will still be required after an available vaccine or more controlled scenario of the virus is in place. A permanent standard on a non-permanent pandemic is an unnecessary model.

#### 4. Fosters a distracted and diluted focus on other core safety precautions

The complex requirements of the proposed permanent standard are taking focus away from traditional and serious safety risks. These standards are a one-size-fits-all, causing employers to spend an inordinate amount of time interpreting and implementing new procedures. The quest to stay compliant will keep companies from getting fined or shut down, but it comes at the cost of not being able to focus on ongoing core safety risks.

R. E. Lee Companies values the safety and health of all our employees, and we continue to take proactive measures every day to ensure everyone makes it home safely to their families. We monitor closely the risk and pivot quickly to meet new needs. Providing us the flexibility to adopt safety and health policies and procedures that fit each individual situation is the best way to ensure the safety of Virginia's workers. Creating a permanent standard for a temporary crisis will not make Virginia's workers safer and will harm business in the process.

Thank you in advance for considering this response.

Sincerely,

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SEE DEPARTMENT RESPONSE TO COMMENT 84956

At its core the Standard is a risk management system to prevent or limit the spread in the workplace of the SARS-CoV-2 virus which causes COVID-19.

It is designed to provide basic protections for all employees and employers within the jurisdiction of the Virginia Occupational Safety and Health program.

It provides certain mandatory requirements for all employers and specific additional requirements for Very High, High, and Medium risk job tasks centered around mitigation of hazards.

The Standard is also designed to incentivize employers to make changes in the workplace that will enable employees in certain situations to be classified to a reduced level of risk (e.g., from high to medium or from medium to lower), thereby also reducing the employer's compliance and cost burdens.

Review of all COVID-19 related inspections under the Emergency Temporary Standard is conducted centrally by the Department with both a programmatic and legal review prior to a decision to issue or not issue violations/penalties to assure consistent enforcement across the Commonwealth. The Department does not anticipate any significant increase in litigation with regard to the Emergency Temporary Standard or any permanent standard.

86201 Ric Richardson 9/25/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86201>

Respirator in vehicle language

Page 20, Section E references ""respiratory Protection"" in vehicles. With distracted driving being such a prevalent topic in society, adding an respirator to a driver is such a bad idea. We already know that people spend a lot of time fidgeting with face coverings of any type which would add another distraction.

Also, we have seen how face coverings or respirators are causing fogging of prescription glasses as well as safety glasses. No one that I am aware of has found the magic solution to stopping this fogging. Requiring a driver who is also required to wear glasses to drive to wear a face covering of any type creates a greater danger due to fogged glasses.

Please consider removing or modifying this section if you push this forward.

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16VAC25-220-40.F provides: "F. When multiple employees are occupying a vehicle for work purposes, the employer shall ensure compliance with respiratory protection and personal protective equipment standards applicable to the employer's industry. If the employer is concerned that employee use of a face covering may present a greater safety or health hazard to employees than compliance with the Standard (e.g., the inability to communicate coherently with another employee during a potentially hazardous job task) the issue needs to be assessed during the personal protective equipment (PPE) hazard assessment process required either under the Standard (see 16VAC25-220-50.D for very high and high risk situations, and 16VAC25-220.60.D for medium risk situations) or 1910.132(d) for general industry employers. The PPE hazard assessment process will allow the employer to identify any potential situations where there may be a greater hazard presented and develop alternative protections for employees.

86202 Sam Stewart 9/25/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86202>

Covid-19 maNDATES

I agree with our Federal Attorney General that all the mandates related to the covid-19 pandemic are the biggest infringement on our civil liberties since slavery. The government mandate effects have been worse than the effects of the disease. Give us our liberty back. Give us common sense guidelines and get out of the way. The statistics show a positive test result does not mean death.

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

The Department has no response to the Commenter's political commentary.

86203 anonymous 9/25/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86203>

COVID Emergency regulations

I am a business owner in Virginia, and I oppose making the COVID-19 Workplace Safety Emergency Standard permanent.

Six months into the pandemic, I have learned to adapt to this unprecedented time by implementing industry-specific guidance from the Governor, the Virginia Health Department, the CDC, and OSHA to ensure physical distancing and extensive sanitization. I want to keep my employees safe because I care about their welfare.

Now is not the time to make the emergency temporary standard permanent when it's likely this pandemic will be temporary. Imposing "one size fits all" COVID-19 regulations on all employers and employees is unreasonable especially when guidance is continually changing as we learn more about the virus and how best to protect against it's spread. Knowing the temporary standard expires in February 2021, there is plenty of time for the Board to wait until we know more about how long the pandemic could last before taking any further action.

My company takes its responsibility for protecting our employees seriously. Making the COVID-19 emergency regulations permanent will only make a difficult situation worse for employers and employees. I remain concerned about the impact many of the provisions of the emergency regulations are having on my business and encourage the Board to not make them permanent.

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SEE DEPARTMENT RESPONSE TO COMMENT 85680

86204 Joe Szakos 9/25/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86204>

Please protect essential workers

Virginia was the first state in the country to pass comprehensive safety rules for employers.

Our workers are important and we need to make sure they are protected as they do their jobs. Let's not take any shortcuts.

Please make these safety rules PERMANENT.

Thank you for the opportunity to comment.

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SEE DEPARTMENT RESPONSE TO COMMENT 84196

86207 HCA Virginia Health System  
9/25/2020 <https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86207>

Opposed to Adoption of Permanent Standard for Infectious Disease Prevention:

HCA Virginia Health System opposes the adoption of a permanent standard for Infectious Disease Prevention: SARS-CoV-2 Virus That Causes COVID-19, 16VACC25-220. We support instead, a sunset of the current temporary standard at the end of the Governor's state of emergency for COVID-19. However, should the Commonwealth move to adopt the standards as permanent, the language should be amended to exclude hospitals and health care providers who already go to extraordinary lengths for infection control due to the stringent standards for our patient and staff care. Or, at a minimum, the original language should be amended to provide a "safe harbor" for hospital and health care providers who follow CDC guidance as the sole standard. As such, we believe that the phrase "and provided that the CDC recommendation provides equivalent or greater protection than provided by a provision of this standard" should be deleted. Finally, we are also in support of the comments offered by the Virginia Hospital and Healthcare Association submitted during this comment period.

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The use of the word "permanent" in reference to the Standard reflects the fact that, if adopted, the Standard does not currently have a date on which it would expire. However, the Board has the authority to amend or repeal the Standard as the workplace hazards associated with the SARS-CoV-2 virus and COVID-19 disease evolve and eventually lessen.

The issue of an exemption from the Emergency Temporary Standard for hospitals and healthcare providers was previously considered by the Safety and Health Codes Board and not adopted.

Employees and employers in the healthcare industry are exposed to the same and even greater COVID-19 related hazards and job tasks as employees in other industries. It is the Department's position that similarly situated employees and employers exposed to the same or even more serious hazards or job task should all be provided the same basic level of safety and health protections. An exemption from the Standard for employers and employees in the healthcare industry is therefore inappropriate.

With regard to the "safe harbor" issue, the Department notes that the Standard provides flexibility to business through 16VAC25-220-10.G.1 which provides that "To the extent that an employer actually complies with a recommendation contained in CDC guidelines, whether mandatory or non-mandatory, to mitigate SARS-CoV-2 virus and COVID-19 disease related hazards or job tasks addressed by this standard, and provided that the CDC recommendation provides equivalent or greater protection than provided by a provision of this standard, the employer's actions shall be considered in compliance with this standard." The Standard is clear that employer's wishing to take advantage of 16VAC25-220-10.G.1 must comply with both mandatory and non-mandatory provisions in the specific CDC guidelines, and those provisions must provide equivalent or greater protection than provided by a provision of the Standard.

SEE DEPARTMENT RESPONSE TO COMMENT 84956

86208 rebecca sanchez

9/25/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86208>

Stongly oppose any legislation for permanent mask wearing in Va. STRONGLY OPPOSE IMPOSING ON PERSONAL FREEDOM IN THIS MANNER.

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

SEE DEPARTMENT RESPONSE TO COMMENT 85535

86209 maggie 9/25/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86209>

no madatory mask or vaccines

It is against an individuals own personal constitution and the Countrys Constitution to require mandatory masks or vaccines and you know full well it isn't about health and safety and never has or will be about health and safety. This is all about control and destruction. It is nothing but communism.

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Vaccines are not required by the Standard.

SEE DEPARTMENT RESPONSE TO COMMENT 84237

SEE DEPARTMENT RESPONSE TO COMMENT 85535

The Department has no response to the Commenter's political commentary.

86210 Leigh Musselman - Branscome, Inc. 9/25/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86210>

STONGLY OPPOSE ADOPTING A PERMANENT PERMANENT STANDARD

I STRONGLY OPPOSE TO AN ADOPTION OF THESE AS A PERMANENT STANDARD FOR WHAT IS A TEMPORARY HEALTH SITUATION. The COVID science 19 is continually updated. In addition, we have implemented critical safety measures to ensure the health of our employees.

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

86211 Thomas J Nelson Jr 9/25/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86211>

COVID-19 Workplace Regulations

I am a small business owner here in VA. We've implemented the necessary safety and cleaning protocols for our business based on the greater good of our customers, vendors and employees .

Based on the relative unknown and fluid nature of COVID, and the inconsistent, incomplete and erratic medical, scientific and government recommendations. It is FAR TOO PREMATURE to propose, let a lone implement any permanent legislation surrounding COVID-19 regulations in the work place.

I remain committed to protecting myself, my employees and our customers, however these steps are premature and excessive.

Respectfully,

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SEE DEPARTMENT RESPONSE TO COMMENT 84956

86212 T. Lowry, Walkabout 9/25/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86212>

Vote against hurting businesses- Vote no to keep Covid rules permanent

Please vote NO against making rules that were supposed to be temporary due to Covid, permanent. Businesses/employers struggle enough and more regulations are expensive to administer. Keep employees employed and choices for employees by not putting businesses out of business. Let businesses work on their business instead of dealing with more government mandates.

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SEE DEPARTMENT RESPONSE TO COMMENT 84956

86213 Deidre W Schilling 9/25/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86213>

Permanent mask for infectious diseases

Strongly opposed!

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

86214 anonymous 9/25/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86214>

Strongly oppose

I strongly oppose any legislation that would make permanent any mandate to wear masks.

This Standard is not being proposed as legislation to the General Assembly. The Standard is being considered for adoption by the Virginia Safety and Health Codes Board pursuant to Va. Code §40.1-22(6a) and would be enforced by the Department of Labor and Industry's (DOLI) Virginia Occupational Safety and Health (VOSH) Program.

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

86215 Michelle Fatta 9/25/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86215>

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Forcing individuals to wear masks is unconstitutional. Punishing businesses creates fear. Our Country needs to adhere to the US Constitution. Enforcing mandates by using Fear Punishment and Control tactics will never work!! Keeping the public safe means allowing everyone the opportunity to hear the truth about a disease first. Demanding a person to wear a mask for Fear and Control and political motives is wrong. Demanding businesses to comply with unconstitutional mandates is called communism THIS IS NOT REPRESENTING THE TYPE OF GOVERNMENT THAT IS FOR THE PEOPLE AND BY THE PEOPLE!! WE ARE A REPUBLICAN GOVERNMENT!! You are in office because somebody voted for you!! YOU do not have the right to demand people to wear a mask!! EVER!

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

SEE DEPARTMENT RESPONSE TO COMMENT 85535

86216 Ramona Sanders, Virginia Organizing, Shenandoah Valley 9/25/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86216>

"Make Temporary Standards Permanent

We could experience a serious resurgence of the virus during the cold months this fall and winter. Unfortunately, the Coronavirus may be with us for a long time. We need to have strong protections in place to ensure the safety of our workplaces. This is especially important for workplaces in health care and meat and poultry plants where terrible outbreaks have occurred in the past but the threat is real in all workplaces and the standards mandate the necessary safety measures appropriate to the level of risk, whether it is low, medium or high.

We need permanent standards to ensure that workers are protected even if doing so costs money or slows production. Workers and their families and communities must not be sacrificed to profit or any other ""imperatives."" The moral imperative is to protect the lives of workers and their loved ones and to do that we need permanent mandatory and enforceable standards. This action could save the lives and health of many precious human beings. Thank you,

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SEE DEPARTMENT RESPONSE TO COMMENT 84196

86218 Michael 9/25/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86218>

Eliminate forced wearing of mask! It is against our Freedom to mandate wearing of masks. Do not make this mandatory since the masks do not work to reduce the spread of this disease.

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

SEE DEPARTMENT RESPONSE TO COMMENT 85535

86219 S. Rivera 9/25/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86219>

Covid-19

Managers and or HR fail to notify employees of positive test results in a timely manner. The person may be out a week or so before we are notified that they tested positive. This is one of many reasons we need permanent enforcement of the rule requiring them to do.

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SEE DEPARTMENT RESPONSE TO COMMENT 84196

86221 Darcy Carroll 9/25/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86221>

Opposed to permanent adoption of emergency temporary standard

I am opposed to making the current emergency temporary standard permanent as it is written. There are inconsistencies and will be inconsistencies as more information is learned. There is vague wording which places an undue burden on businesses.

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SEE DEPARTMENT RESPONSE TO COMMENT 84956

86222 James Oyler-GEN 9/25/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86222>

Covid Work place regulations becoming permanent

I don't think at this time it is appropriate to implement and extend these policies beyond February. We can review them at that time and make appropriate changes/revisions but as we all know things are constantly changing with this as will the policy. We all need to take this seriously but not go overboard!!

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SEE DEPARTMENT RESPONSE TO COMMENT 84956

86225 Christopher Houlihan 9/25/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86225>

Permanent Standards are an unnecessary drag on business

There is no reason to make the temporary standards permanent. These standards may address the issue with COVID, but there is no reason to think that they will be appropriate for other potential infectious diseases in the future.

The world functioned fine without these standards before COVID, and it will function fine without these standards after COVID is finally under control. To make these standards permanent would be an unnecessary drag on the economic recovery of our state, and permanent weight around the neck of Virginia business owners.

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SEE DEPARTMENT RESPONSE TO COMMENT 84956

86226 "Nicole Riley, National Federation of Independent Business; Virginia 9/25/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86226>

THIS COMMENT WAS ALSO SUBMITTED DIRECTLY TO THE DEPARTMENT AT:

<https://www.doli.virginia.gov/proposed-permanent-standard-for-infectious-disease-prevention-for-covid-19/>

Small Businesses Oppose a Permanent Standard

Dear Members of the Virginia Safety and Health Codes Board:

On behalf of the Virginia small business members of the National Federation of Independent Business (NFIB), we are submitting the following comments related to your intent to adopt a Permanent Standard for Infectious Disease Prevention: SARS-CoV-2 Virus That Causes COVID-19, 16VAC25-220 (otherwise further to as "the Regulations").

Our organization represents approximately 6000 small businesses and 60,000 employees across a broad swath of industries from manufacturing, retail, restaurants, agricultural and forestry companies, healthcare, construction, to professional services.

As we enter the 28th week of Virginia's State of Emergency related to containing the spread of COVID-19, Virginia's many small business owners have faced intense stress as their businesses were ordered to close or operate in an extremely limited capacity. The economic turmoil suffered by small businesses during the global pandemic has only somewhat abated as Virginia has gradually reopened. Many small business owners have watched helplessly as their revenue slowed to a trickle or dried up entirely. According to NFIB's monthly Small Business Optimism Index, optimism has dropped and reports of expected better business conditions in the next six months have deteriorated. Owners continue to temper their expectations of future economic conditions as the COVID-19 public health crisis is expected to continue.

Despite these challenging times, many small businesses adapted and implemented protocols to protect their employees and customers from exposure to the coronavirus by following the guidance issued from many federal and state government entities including the CDC, OSHA, and the Governor's executive orders. Now Virginia small business owners are doing their best to comply with the Emergency Temporary Standard (ETS). The last thing business owners need as they rebuild their businesses during this critical time is additional one-size-fits-all, static government regulations and red tape.

Virginia businesses need certainty and consistency in any regulatory program. This ensures that the regulated community understands the requirements of the program, and that all parties can work together to satisfy the regulatory requirements.

Therefore, NFIB requests the Virginia Safety and Health Codes Board rejects a Permanent Standard. Adopting 16VAC25-220 as permanent regulations will be overly burdensome for small businesses. The science of

COVID-19 is continuously being updated. Therefore, the CDC and OSHA guidelines are frequently updated to reflect this. If the ETS were to become permanent, it would continue to require small businesses to comply with outdated regulations and would constrain employers from pursuing the adaptable, innovative, data-driven, and effective approach to protecting worker health and safety that is proving crucial during this pandemic.

Now is not the time to impose a permanent standard. The ETS will not even be fully implemented until September 25 (the due date for these public comments) so small businesses have had no time to voice the challenges they've encountered implementing the ETS. Nor has there been an effective evaluation of the ETS by DOLI on what impact the Regulations will have on small businesses in accordance with the Small Business Regulatory Flexibility Act/Small Business Regulatory Enforcement Fairness Act (SBREFA).

If the Board believes it should move forward with a Permanent Standard, it must include these important provisions:

1.The sunset clause from the ETS into the Permanent Standard so the Regulations will expire with the Governor's State of Emergency

2.The specific recommendations from the Business Coalition to ensure the implementation and enforcement of any Permanent Standard is reasonable, fair, and attainable. Here are several of NFIB's priorities for amendments to any Permanent Standard and you can review all 36 recommendations in the Addendum NFIB is submitting to the Department for inclusion to our comments since they exceed the 3000 word limit.

- Amend § 10G to the agency's original language with clarification on providing "safe harbor" for employers who follow CDC and OSHA guidance. It is unclear who determines which version of CDC guidance an employer may reference for purposes of compliance.
- Eliminate requirements for physical separation of employees at low and medium risk businesses by a permanent, solid floor to ceiling wall. Higher risk businesses have more flexibility to use smaller temporary barriers like Plexiglas sneeze guards.
- Eliminate all human resource policies from the Regulations such sick leave, telework, flexible worksites, flexible work hours, flexible meeting and travel, the delivery of services or the delivery of products. These policies exceed the Board's authority as it relates to workplace hazards.
- Amend common space sanitation requirements. Requiring common spaces to be cleaned and disinfected at the end of each shift" is impractical for 24/7 operations with multiple and overlapping shifts. The Regulations should be amended to provide for a time-based alternative such as every 8, 12, or 24 hours exempting FDA regulated facilities.
- Eliminate HVAC requirements for medium risk businesses (16VAC25-220-60(B)). Requiring retroactive compliance with a 2019 ASHRAE HVAC standard is premature at best. Any permanent regulations should follow existing processes contained in the Virginia Uniform Statewide Building Code (USBC) which utilize appropriate industry investigation and recommendations.
- Eliminate the requirement that medium risk employers should complete a COVID-19 infections disease preparedness and response plan. This mandate is overly burdensome and not necessary at this risk level.
- Increase the amount of time employers must train their employees. The current timetable is unachievable. The ETS should be amended to provide employers another sixty (60) days to comply.

- Eliminate language protecting employees who report to news media or social media (16VAC25-220-90). Whistleblower protection is intended to protect employee complaints to the responsible government regulatory agency.
- Revise requirements related to transportation of employees who travel in the same vehicle. This standard is impractical and vague.

Further, NFIB requests the Virginia Safety and Health Codes Board issue an additional sixty (60) day comment period on 16VAC25-220 requesting that employers provide recommended improvements to the Emergency Temporary Standard for consideration by the Board.

NFIB strongly asks the Board NOT to approve any amendments to the Regulations that would incorporate other infectious diseases. There is no one-size-fits-all plan to combat a wide variety of infectious illnesses.

#### Conclusion

It is unreasonable to impose one-size-fits-all COVID-19 regulations on all employers when they reduce a business' flexibility to quickly alter workplace procedures to remain safe during the ever-changing circumstances of this pandemic especially when each industry has its own needs. By approving a Permanent Standard, the Commonwealth is freezing current scientific understanding into place which is unnecessary and poses more risk for our businesses and workers.

It is also profoundly inappropriate to bypass the formal regulation process altogether by attempting to codify guidance and Executive Orders as a reasonable replacement. Further, it is confusing why the Regulations are being pursued when the Emergency Temporary Standard has not been fully implemented and has so many significant problems.

Therefore, it is NFIB's recommendation that the Board reject the regulations, establish a new sixty (60) day public comment period for a revised ETS or abandon the ETS entirely and rely upon the General Duty Clause and Federal, State, Industry guidance to protect workers as is being effectively done in 49 other states.

While facing devastating economic conditions Virginia's businesses continue to keep the safety and health of their employees as their top priority as they reopen and increase their business operations. We hope the Board will see fit to give Virginia's small businesses an opportunity to rebuild their businesses, restore their customer base and rehire their employees without imposing additional costly regulations.

Best Regards,

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"SEE DEPARTMENT RESPONSE TO COMMENT 84956

The Department does not intend to recommend any change to 16VAC25-220-10.G.1. The Department notes that the Standard provides flexibility to business through 16VAC25-220-10.G.1 which provides that "To the extent that an employer actually complies with a recommendation contained in CDC guidelines, whether mandatory or non-mandatory, to mitigate SARS-CoV-2 virus and COVID-19 disease related hazards or job tasks addressed by this standard, and provided that the CDC recommendation provides equivalent or greater protection than provided by a provision of this standard, the employer's actions shall be considered in compliance with this standard. An employer's actual compliance with a recommendation contained in CDC guidelines, whether mandatory or non-mandatory, to mitigate SARS-COV-2 and COVID19 related hazards or job tasks addressed by this standard shall be considered evidence of good faith in any enforcement proceeding related to this standard." It is the Department's position that similarly situated employees and

employers exposed to the same or even more serious hazards or job task should all be provided the same basic level of safety and health protections, which is what the current language in 16VAC25-220-10.G.1 provides for.

The language referenced by the Commenter (physical separation of employees at low-risk businesses by a permanent, solid floor to ceiling wall) is one method described in the Standard for mitigating the spread of SARS-CoV2; however, employers are not required to do so.

The Department intends to recommend a language change to the Standard that makes this clear.

The Department does not plan to recommend changes to sick leave provisions in the Standard.

The Standard does not require employers to provide sick leave to employees. It does reference the Families First Coronavirus Response Act (FFCRA) at 16VAC25-220-40.B.6:

6. To the extent feasible and permitted by law, including but not limited to the Families First Coronavirus Response Act, employers shall ensure that sick leave policies are flexible and consistent with public health guidance and that employees are aware of these policies.

Further information about the FFCRA and sick leave policies can be found at:

<https://www.dol.gov/agencies/whd/pandemic/ffcra-employee-paid-leave>

The Department intends to recommend language changes to the business consideration language in 16VAC25-220-70.C.5 to make clear that the language is related to occupational safety and health concerns.

The Department respectfully disagrees with the Commenter's assertion that mitigation strategies (referred to by the Commenter as ""human resource policies"" ) to prevent the spread of SARS-CoV-2 in the workplace exceeds the authority of the Board. The Department intends to recommend some language changes to the provisions referenced by the Commenter.

The Department intends to recommend revisions to 16VAC25-220-40.K.5 which currently provides: ""5. All common spaces, including bathrooms, frequently touched surfaces, and doors, shall at a minimum be cleaned and disinfected at the end of each shift. All shared tools, equipment, workspaces, and vehicles shall be cleaned and disinfected prior to transfer from one employee to another.""

The Department acknowledges the comment and notes that the ASHRAE air handling requirements issue raised by the Commenter is undergoing a legal review.

The Department does not intend to recommend any change to which employers are required to develop and implement an Infectious disease preparedness and response plan under 16VAC25-220-70. The current requirement exempts employers with 10 or fewer employees which eases the burden on the smallest employers with the most limited resources. The Department notes that a free template for a plan is provided on the Department's website at: <https://www.doli.virginia.gov/covid-19-outreach-education-and-training/>

In addition, the Department strongly encourages Virginia's small business owners to take advantage of free and confidential occupational safety and health onsite and virtual consultation and training services to address COVID-19 compliance issues. More information about the VOSH Consultation Services can be found at: <https://www.doli.virginia.gov/vosh-programs/consultation/>

The Department intends to recommend a language change to the amount of time permitted to train employees under the Standard.

The Department does not intend to recommend any change to 16VAC25-220-90.C as it is the position of the Department that it reflects the current state of case law on the subject.

Pursuant to Va. Code §40.1-51.2:1, employees are protected from discrimination when they engage in activities protected by Title 40.1 of the Code of Virginia (“because the employee has filed a safety or health complaint or has testified or otherwise acted to exercise rights under the safety and health provisions of this title for themselves or others.”).

Whether an employee engaged in a “protected activity” under Title 40.1 is very fact specific, but can include occupational safety and health information shared by an employee about their employer on a social media or other public platform in certain situations.

16VAC25-220-90.C provides that:

No person shall discharge or in any way discriminate against an employee who raises a reasonable concern about infection control related to the SARS-CoV-2 virus and COVID-19 disease to the employer, the employer’s agent, other employees, a government agency, or to the public such as through print, online, social, or any other media.

If an employee raises an unsubstantiated COVID-19 related claim or makes a false COVID-19 related claim against their employer through print, online, social, or any other media, such an act by an employee would not be considered “reasonable” under the ETS and disciplinary action taken against the employee in accordance with the employer’s human resource policies would not be considered “discrimination” under the ETS/ER or Va. Code §40.1-51.2:1.

The Department intends to recommend revisions to 16VAC25-220-40.F, which currently provides: ""F. When multiple employees are occupying a vehicle for work purposes, the employer shall ensure compliance with respiratory protection and personal protective equipment standards applicable to the employer's industry.

SEE DEPARTMENT RESPONSE TO COMMENT 85680

Va. Code §40.1-22(6a) under which the Emergency Temporary Standard (ETS) was adopted does not permit the ETS to be extended beyond 6 months.

The Standard does not cover other infectious diseases like influenza, tuberculosis, etc."

86227 Tricia Eagle

9/25/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86227>

Opposed to Temporary Standard becoming permanent

I am a small business owner in Virginia who opposes making this temporary standard permanent. Way before the ETS was approved (without public comment), we already learned to adapt by implementing protocols from CDC guidelines and and state entities to ensure physical distancing and proper sanitation and protection. I want to keep my employees and customers safe because I care about their welfare. But, I also, cannot control what they do once they leave work in regards to social distancing and protecting themselves.

Now is not the time to make this broad and over-reaching emergency temporary standard permanent when this pandemic is likely to be temporary. Imposing ""one size fits all"" regulations on all employers is unreasonable especially when guidance is frequently and continually changing as we learn about this virus.



The board needs to take the time to see what challenges employers face implementing these emergency regulations before taking further action.

We take our responsibility for protecting our employees seriously. I remain concerned about the impact the emergency regulations have on my business now, and in the future and I encourage the board to NOT make them permanent.

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SEE DEPARTMENT RESPONSE TO COMMENT 85680

86230 kirk miller 9/25/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86230>

Oppose Covid Workplace Regulations

I am opposed to these regulations because of the unfair burden it puts on small businesses. These mandated policies will financially hurt small businesses requiring them to go way beyond what is reasonable in the workplace for employee safety.

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SEE DEPARTMENT RESPONSE TO COMMENT 84956

86232 Anthony Pistone, American Federation of State, County & Municipal Employees 9/25/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86232>

Please Make the ETS Permanent!

My name is Anthony Pistone and I am a member of the American Federation of State, County & Municipal Employees (AFSCME). I have served Arlington County in the Water, Sewer, and Streets division of Environmental Services for four years. My primary job responsibility is to operate an asphalt truck as part of a road maintenance crew. Road maintenance is often loud and fast paced, making it hard to be constantly conscientious of physical distancing while at a work site.

Since the onset of the pandemic, in the interest of being compliant of federal and state guidelines, the county has been providing us with face masks. While this does not eliminate the risk of exposure to COVID-19 or other communicable illness, it serves as source control to curb the spread. The County also halted the standard practice of commuting to job sites in full vehicles at the onset of the pandemic. For several months, my crew rode one to a vehicle, a necessary change then and a practice we should return to. Presently, my crew commutes to worksites two to a car, with two of us in the asphalt truck and two in the utility truck.

While the work we do has us out in the community and in close contact with the public, the measures that the County has implemented toward being complaint with VOSH ETS has meant some measure of protection for us.

We need VOSH to make the emergency temporary standard permanent to protect employees against the risk of exposure. The risk presented by COVID-19 has not passed and it is of the utmost importance that employers have clear directives as to what steps must be taken to protect employees and the public. Strong

enforcement mechanisms will mean more compliance. Virginia has shown leadership in being first in the nation to enact these temporary emergency standards, and they can continue to lead by making the standards permanent. We urge you to protect Virginian workers and our families.

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SEE DEPARTMENT RESPONSE TO COMMENT 84196

86235 Jenna 9/25/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86235>

Oppose permanent COVID measures!! Masks should never be required for American citizens. Each person needs to breathe in fresh oxygen, instead of carbon monoxide within his or her mask. Masks begin to also recycle bacteria that starts to grow in front of a person's mouth and nose. Mandatory masks will begin to break down a person's health as well as their freedom to choose...

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

SEE DEPARTMENT RESPONSE TO COMMENT 85535

86236 Kathy Shiffer 9/25/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86236>

COVID-19 Workplace Safety Emergency Standard

My husband and I are small business owners. We are writing to state our opposition to making the COVID-10 Workplace Safety Emergency Standard permanent. As you know, this time of pandemic has been challenging for all citizens, and among the hardest-hit have been small business owners. We have struggled to keep our doors open while maintaining the safety of our employees and customers. In a small business such as ours, employees are like family to us and we care deeply about their welfare. We have gone to great lengths to comply with the law and with common sense efforts to keep them safe. None of this has been without great effort and sacrifice, however. To make permanent the COVID-19 Workplace Safety Emergency Standard would impose a crushing burden on us and would make small business even more difficult to operate than it now is. We urge you to NOT take this action.

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SEE DEPARTMENT RESPONSE TO COMMENT 84956

86237 David Broder, President, SEIU Virginia 512 9/25/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86237>

Strong support for permanent standards to protect workers from COVID-19

On behalf of the dedicated public service workers, including many of those in healthcare, who are members of SEIU Virginia 512, we commend the DOLI staff and Safety and Health Codes Board for developing and

approving emergency temporary standards in a timely manner. We write in support of the Proposed Permanent Standard for Infectious Disease Prevention for COVID-19, which would make these essential standards a permanent protection for workers in Virginia. A permanent standard is necessary to protect working families throughout our commonwealth because COVID-19 is likely to remain a pressing reality for years to come. A strong permanent standard is further needed to help prepare workers and employers to weather future novel viruses likely to emerge.

The Proposed Permanent Standard for Infectious Disease Prevention for COVID-19 would maintain important protections for working people and communities in Virginia and provide continuity with the emergency temporary standards, thereby reducing the challenges employers and employees would face from changing regulations that are rarely based on science, but instead political whim. Clear standards coming from one agency of authority simplifies things for employers and workers, which will make the standard easier to implement and reduce confusion.

COVID-19 is spread through droplets and airborne particles and is easily transmissible. An airborne hazard like this virus makes strong protections essential to a safe workplace, and by extension, safe home and communities. This standard is strong and based on scientific information and long-standing occupational health and safety practices. The standard is programmatic, so each employer is required to implement a program tailored to their workplace using scientific-based and longstanding workplace control practices. This allows workers across the state in a variety of industries and settings to gain protections and employers to implement procedures tailored to that workplace.

We strongly support the provisions in the standard that require employers to provide greater transparency and communication when someone in the workplace has been infected with COVID-19, while still complying with the Americans with Disabilities Act and other applicable Virginia laws and regulations.

We have two recommendations to strengthen the standards. While we applaud DOLI and the Board for prioritizing physical distancing, which is one of the best ways to prevent person-to-person spread, we do urge the Board to consider the airborne nature of this virus and dispense with the current 6 foot rule as an effective control for airborne exposure. Ventilation, efforts to control and reduce persons and time in spaces and enclosed areas, and other engineering and administration controls must be combined with distancing to effectively mitigate airborne transmission of the virus. Please consider more revising this provision.

Finally, we urge you to clarify that under medical removal for known infections, exposures, or when recommended by a medical or public health professional, workers are afforded removal protections including maintaining the employee's base earnings, seniority, and other rights and benefits that existed at the time of removal until cleared for return to work.

Thank you for considering these comments on behalf of the hard-working members of SEIU Virginia 512. The ETS is a strong, comprehensive standard that sets clear requirements based on longstanding practices and current science, and should be made permanent while implementing the changes we outlined above regarding the 6 foot standard for physical distancing, and medical removal of workers. We urge you to do what is right to protect Virginia's workers and adopt the proposed Permanent Standard.

In Solidarity,

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SEE DEPARTMENT RESPONSE TO COMMENT 84196

SEE DEPARTMENT RESPONSE TO COMMENT 85974

86238 "Samuel R. Brumberg

Counsel to the VMDAEC" Virginia, Maryland & Delaware Association of Electric Cooperatives  
(VMDAEC) 9/25/2020 <https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86238>

Virginia's Electric Cooperatives' Comments

Dear Ladies and Gentlemen:

The purpose of this letter is to reiterate our request for a utility industry exemption to the Board's latest permanent COVID rulemaking proposal. Virginia's fourteen electric cooperatives continue to have concerns about the Board's current rulemaking initiative.

We remain concerned that this rulemaking, as applied to electric utilities, may disrupt utility operations and make electric line workers less—not more—safe. While not in any way downplaying the dangers of COVID-19—the danger of electrocution is a greater danger than COVID-19. Our safety practices aim to prevent electrocution, and the Emergency Temporary Standard arguably makes it more likely as applied to line workers and technical personnel.

Therefore, we would like to request that the exemption for field and operational personnel operating in the open air, including performing aerial linework, noted in the recording of the Board's meeting concerning PPE, be made explicit in the permanent safety standard. Given the colloquy between Mr. Withrow and Board Member Hoover during the Board's discussions regarding the Emergency Temporary Standard, it appears that the Department agrees with us that this type of exemption is wholly appropriate.

If this were to happen, it would give us regulatory certainty, remove conflicts with other federal and state regulatory requirements, and keep Cooperatives out of the untenable position in which they find themselves at the moment, operating under the Emergency Temporary Standard. For the reasons stated in my June 22, 2020, comments on the Emergency Temporary Standard, we request this clarification.

Secondly, and more generally, we would also remark that: (i) the Permanent Standard should still contain a sunset date and be of a length certain; (ii) the Permanent Standard continues to limit flexibility in response to a very fluid situation; (iii) the Permanent Standard should not be expanded to cover other infectious diseases (The Cooperatives are not health care organizations and do not employ health care professionals as a matter of course.); and (iv) should the Permanent Standard be substantively amended by the Board, another round of notice and comment, if not formal public comment, should be allowed.

Safety is part of our culture—part of everything we do as electric cooperatives. Our own industry safety regimen as mandated by other applicable state and federal law must take precedence over any other COVID-related requirements. Thank you for your kind attention to this matter and consideration of these comments, and if you have any questions, please do not hesitate to contact me.

Respectfully submitted,

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The Commenter has not provided a description of what hazards are created by the Standard for field and operational personnel operating in the open air, including performing aerial linework, so the Department cannot directly address their concern. Generally speaking, If the employer is concerned that compliance with

a provision of the Standard, particularly with regard to personal protective equipment requirements, may present a greater safety or health hazard to employees than compliance with the Standard (e.g., the inability of one employee to communicate coherently with another employee during a potentially hazardous job task) the issue needs to be assessed during the personal protective equipment (PPE) hazard assessment process required either under the Standard (see 16VAC25-220-50.D for very high and high risk situations, and 16VAC25-220.60.D for medium risk situations) or 1910.132(d) for general industry employers. The PPE hazard assessment process will allow the employer to identify any potential situations where there may be a greater hazard presented and develop alternative protections for employees.

With regard to the ""sunset"" provision issue, the use of the word "permanent" in reference to the Standard reflects the fact that, if adopted, the Standard does not currently have a date on which it would expire. However, the Board has the authority to amend or repeal the Standard as the workplace hazards associated with the SARS-CoV-2 virus and COVID-19 disease evolve and eventually lessen.

The issue of exemption for certain industries from the Emergency Temporary Standard was previously considered by the Safety and Health Codes Board and not adopted. It is the Department's position that similarly situated employees and employers exposed to the same or even more serious hazards or job task should all be provided the same basic level of safety and health protections. The Department does not support an exemption in this case.

SEE DEPARTMENT RESPONSE TO COMMENT 84956

86239 Karen Miller 9/25/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86239>

STRONGLY OPPOSE ADOPTION OF PERMANENT STANDARD FOR INFECTIOUS DISEASE PREVENTION

I am a small business owner in Virginia who opposes making the COVID-19 Workplace Safety Emergency Standard permanent. Six months into the pandemic, I have learned to adapt to this unprecedented time by implementing safety protocols from a number of federal and state entities to ensure physical distancing and extensive sanitization. I want to keep my employees and customers safe because I care about their welfare.

Now is not the time to make the emergency temporary standard permanent when it's likely this pandemic will be temporary. Imposing ""one size fits all"" COVID-19 regulations on all employers is UNREASONABLE especially when guidance is continually changing as we learn more about the virus. The Board needs to take the time to see what challenges employers are facing implementing the emergency regulations before taking any further action.

Making the COVID-19 emergency regulations permanent will only make a difficult situation worse for employers and employees. I remain concerned about the impact the provisions of the emergency regulations are having on my business and encourage the Board to not make them permanent.

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SEE DEPARTMENT RESPONSE TO COMMENT 85680

86242 Crystal Cooper 9/25/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86242>

Do not extend COVID policy indefinitely

It is inappropriate and premature to extend workplace COVID-19 policies indefinitely. Policies are still changing all of the time. Additionally, we are looking forward to a time when we are not dealing with this, and if that is not the case, the public should be informed immediately. Otherwise, the facts are that this is an ever-changing situation, and therefore, policies should be re-visited quarterly, at least, rather than extended indefinitely.

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SEE DEPARTMENT RESPONSE TO COMMENT 84956

86243 MaDena DuChemin Bay Aging 9/25/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86243>

Emergency Temporary Standard COVID-19-Do not permanently extend as written

I recommend that you review the letter from the Virginia Chamber of Commerce and adopt the recommended changes if this standard is to become permanent. The safety of employees is critical; however, the ETS as written has conflicting language throughout and is in need of modification.

Thank you for your consideration.

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SEE DEPARTMENT RESPONSE TO COMMENT 84956

86244 Piotr Sliwka (multiple comments) 9/25/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86244>

Safety at work and after work.

I am for the strongest COVID-19 job related protections in Virginia to remain permanent, because these protections have been found to keep influenza levels very low in Australia. In addition, Virginia Assembly and the governor must finish Virginia Medicaid expansion by striking down and removing 80 hours per month of working or volunteering, because low income Virginia residents must not be forced to work nor volunteer any number of hours to qualify for state Medicaid.

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SEE DEPARTMENT RESPONSE TO COMMENT 84196

86247 Veterianrians 9/25/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86247>

Oppose

Strongly Oppose standards becoming permanent. While the temporary measures were needed to limit the short term impact, making burdensome and unrealistic to enforce standards permanent is just more

legislation that is a detriment to our economy. This would be more legislation that will be difficult to interpret and will certainly be inconsistently enforced.

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This Standard is not being proposed as legislation to the General Assembly. The Standard is being considered for adoption by the Virginia Safety and Health Codes Board pursuant to Va. Code §40.1-22(6a) and would be enforced by the Department of Labor and Industry's (DOLI) Virginia Occupational Safety and Health (VOSH) Program.

SEE DEPARTMENT RESPONSE TO COMMENT 84237

86249 Christy Martin 9/25/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86249>

NO MORE MASKS! I am shocked that anyone would think people would think wearing masks inside forever is a good idea. Masks hurt businesses and people will not patronize businesses if they have to wear a mask and the economy will get worse. I am 57 and I have never witnessed anything like this! H1N1 was more dangerous to children and we didn't wear masks. We live in America and I have a mastered degree and am perfectly capable of deciding when I need to stay at home and when or if I need a mask. NO MORE MASK WEARING!

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

SEE DEPARTMENT RESPONSE TO COMMENT 85535

86251 anonymous 9/25/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86251>

STRONGLY OPPOSE ETS

STRONGLY OPPOSE!!!

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

86256 Brandon Robinson, CEO Associated General Contractors of Virginia - 9/25/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86256>

Dear Safety and Health Codes Board Members,

On behalf of the Associated General Contractors of Virginia (AGCVA), Virginia's largest and most influential construction trade organization, we urge you to oppose the adoption of Permanent Safety Standard for Infectious Disease Prevention: SARS-CoV-2 / 16VAC25-220, which will make permanent the current temporary standards for employers in an effort to control, prevent, and mitigate the spread of SARS-CoV-2.

In the wake of a global pandemic, America's construction industry was deemed essential. Hundreds of Virginia construction companies have remained open and operating throughout 2020. The ability to continue work was in large part due to the sophistication of the men and women who swiftly adapted to new safety measures to protect employees and their families.

The construction industry has spent money beyond their budget and has invested countless hours to keep employees safe. This has included implementing temperature checks, enforcing social distancing, abiding the stay-at-home and return-to-work orders, posting signage, adding sanitary stations, rewriting daily safety procedures, and more. The industry has also complied with all government mandates regarding this pandemic.

The current Emergency Temporary Standards require a one-size-fits-all approach for businesses across the state to implement procedures to prevent the spread of SARS-CoV-2. Therefore, AGCVA and its members have many concerns with making these standards permanent and respectfully ask you vote to oppose the adoption of the Permanent Safety Standard for these reasons:

1. Creates confusion because of conflicting federal and state regulations

Virginia employers have access to guidance and resources from the CDC, VDH, and OSHA to help slow the spread of COVID-19. Certain additional requirements in the proposed permanent standards - particularly the return to work criteria - contradict the other guidance and recommendations. The contradicting guidance becomes even more convoluted in cases where Virginia-based companies have worksites in multiple states. To reduce confusion when deciding which requirements to follow, companies should be able to utilize current nation-wide guidance. This creates a consistent and clear message for all employers to convey through company instituted policies.

2. Enforces premature mandates for an unprecedented event when data and health recommendations continue to evolve

Guidance from the CDC and VDH continues to evolve as evidenced by the recent revisions to recovery/return to work guidelines. By adopting these proposed permanent standards, it saddles Virginia's employers with a standard that may not reflect the latest breakthroughs on the virus. Employers should instead be encouraged to follow the latest CDC guidelines without the need to interpret a permanent standard that could potentially be outdated the moment it is published. This creates hazardous risks for employers and their employees.

3. Increases liability risk due to vague language and unclear threshold for implementation

While companies make their best effort to comply with guidance or required standards, they still cannot control what employees do after hours during the largest exposure risk. These proposed permanent standards place undue responsibility and liability on employers for actions outside of normal business hours.

Furthermore, adopting a permanent standard for such a specific virus is a dangerous precedent. There is a high probability that this virus will soon be manageable and even preventable. Adopting a permanent standard implies that mandates, including face coverings, social distancing, common area closures, daily pre-screenings, and more will still be required after an available vaccine or more controlled scenario of the virus is in place. A permanent standard on a non-permanent pandemic is an unnecessary model.

4. Fosters a distracted and diluted focus on other core safety precautions

The complex requirements of the proposed permanent standard are taking focus away from traditional and serious safety risks. These standards are one-size-fits-all, causing employers to spend an inordinate amount



of time interpreting and implementing new procedures. The quest to stay compliant will keep companies from getting fined or shut down, but it comes at the cost of not being able to focus on ongoing core safety risks.

AGCVA represents an industry with a concerted effort focused on the safety and health of its workforce. Providing these companies the flexibility to adopt safety and health policies and procedures that fit each individual situation is the best way to ensure the safety of Virginia's workers. Creating a permanent standard for a temporary crisis will not make Virginia's workers safer and will harm business in the process.

Sincerely,

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SEE DEPARTMENT RESPONSE TO COMMENT 84956

SEE DEPARTMENT RESPONSE TO COMMENT 85680

At its core the Standard is a risk management system to prevent or limit the spread in the workplace of the SARS-CoV-2 virus which causes COVID-19.

It is designed to provide basic protections for all employees and employers within the jurisdiction of the Virginia Occupational Safety and Health program.

It provides certain mandatory requirements for all employers and specific additional requirements for Very High, High, and Medium risk job tasks centered around mitigation of hazards.

The Standard is also designed to incentivize employers to make changes in the workplace that will enable employees in certain situations to be classified to a reduced level of risk (e.g., from high to medium or from medium to lower), thereby also reducing the employer's compliance and cost burdens.

Review of all COVID-19 related inspections under the Emergency Temporary Standard is conducted centrally by the Department with both a programmatic and legal review prior to a decision to issue or not issue violations/penalties to assure consistent enforcement across the Commonwealth. The Department does not anticipate any significant increase in litigation with regard to the Emergency Temporary Standard or any permanent standard.

86257 Tee 9/25/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86257>

Strongly oppose permanent workplace measures

Strongly oppose permanent covid standards, sets precedent for future draconian measures! There are people who are unable to comply due to personal health issues (their doctor advises against mask-wearing, for example, due to possible respiratory aggravation due to mask). One size does not fit all!

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SEE DEPARTMENT RESPONSE TO COMMENT 85680

86258 Michelle Bielovitz

9/25/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86258>

The masks are dangerous. Masks do not protect from viruses since the viruses go through them, but they do make people sick. These things happened to people that I personally know. They restrict essential oxygen causing acidosis. They activate latent viruses. Actually spread disease since the moisture from a mask collects viruses and bacteria.

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

SEE DEPARTMENT RESPONSE TO COMMENT 85535

86259 Joyce W Robbins

9/25/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86259>

16 VAC 25-220

OPPOSED

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

86261 Bruce Whitehurst,

Virginia Bankers Association

9/25/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86261>

Oppose Adoption of Permanent Standard

The Virginia Bankers Association (“VBA”) represents banks of all sizes and charters and has served as the organized voice for Virginia’s \$615 billion banking industry and its 42 thousand employees since 1893. We appreciate the opportunity to comment on the Department of Labor and Industry’s notice of its intent to adopt a permanent standard for Infectious Disease Prevention: SARS-CoV-2 Virus That Causes COVID-19.

The VBA opposes the adoption of the permanent standard. Virginia banks have remained open throughout the coronavirus pandemic providing important banking and financial services to their customers and communities. Protecting the health and safety of bank customers and employees has been, and continues to be, of paramount importance and a priority for our members. Virginia banks have invested significant time and resources altering their processes and service delivery models to ensure those protections, as well as complying with federal and state governmental requirements and best practices.

The permanent standard, as proposed, lacks: necessary clarity; flexibility to adapt to the continued change in the understanding of the virus; consistency with changing federal guidance; and, an appreciation of specific industry circumstances. Further, a permanent standard for a temporary threat is illogical and unnecessary; therefore, the regulation should not extend beyond the expiration of the Governor’s State of Emergency related to COVID-19. The burden to comply with the proposed permanent standards along with the potential risks in significant enforcement fines and litigation only further harm both Virginia banks and their small business customers during this already perilous economic time. In addition to these concerns, the VBA

supports the comments and concerns that the Virginia Chamber has submitted in regard to any potential permanent standard to be adopted by the Safety and Health Codes Board.

In summary, the VBA opposes the adoption of the permanent standard. Thank you for the opportunity to provide comments. If you have any questions, please feel free to contact me at 804-819-4701 or [bwhitehurst@vabankers.org](mailto:bwhitehurst@vabankers.org).

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SEE DEPARTMENT RESPONSE TO COMMENT 84956

86263 Porter Hardy, Smartmouth Brewing 9/25/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86263>

Opposition to COVID-19 Standards becoming permanent

Hello,

I am the President of a microbrewery in the Hampton Roads area but with distribution throughout the state. Today, I am asking you to hold off on making the emergency temporary standards (ETS) relating to COVID-19 permanent.

As a small business we have been significantly impacted by COVID-19. Our number one priority is the safety of our employees and customers and, I believe, we have been very reasonable with implementing proper safety protocol. While there are certain things about the ETS that I would change (it is way beyond what other states are requiring of small businesses) I can understand the need for government oversight in this unprecedented time. Making the ETS permanent, however, seems rash and unnecessary. At some point, the pandemic will be over and while we may face a similar issue in the future more temporary regulations could be issued at that point. I see no reason to make these standards permanent and I worry about the administrative burden for businesses with no real positive impact on the safety of customers and employees.

Thank you for your time,

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SEE DEPARTMENT RESPONSE TO COMMENT 84956

86265 Joel Shank Dynamic Aviation 9/25/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86265>

ETS Impact on Business

Dear Commissioner Davenport and Members of the Safety and Health Codes Board,

The health and safety of our state's workforce should continue to be the top priority for state legislators and businesses. The business community supports clear and consistent workplace health protection protocols; however, I remain concerned that the impact of the current ETS provisions have on businesses and I encourage you to not make them permanent.

However, if the Board does decide to move forward with a permanent standard, I recommend that several components of the standard be tweaked to provide businesses with appropriate flexibility. Most importantly, the ETS needs to not have conflict with state and federal regulations to reduce confusion and complexity for state businesses and employees.

In addition, the Board should strongly consider the financial impact these permanent standards will have on businesses that are already struggling due to the economic impacts from the pandemic.

Thank you for your consideration.

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SEE DEPARTMENT RESPONSE TO COMMENT 84956

The Department is not aware of any conflicts of the Standard with federal regulations. Federal OSHA does not have an infectious disease regulation that applies to SARS-CoV-2 and COVID-19."

86267 P Prentice Best 9/25/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86267>

Permanent Standards for COVID/Infectious disease

The COVID virus has brought to our attention the need for standard procedures to protect workers and to limit contagion, however, making these requirements permanent does not seem to be in our best interests. Let us learn from this experience, but do not adopt rigid rules and requirements that become a burden to small businesses and to individuals.

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SEE DEPARTMENT RESPONSE TO COMMENT 84956

86268 Chris Cook 9/25/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86268>

STRONGLY OPPOSE!!!

Get out of our business!!!

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

86269 "Gregory Trucking Co., Inc

9/25/2020 <https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86269>

Oppose permanent Covid workplace regulations

We are a small business, 24 employees, and do not need more regulations forced on us. In today's business world we must watch every penny spent. Our employees are like ""family"" and we take care of them. Again, I don't need help running my business or taking care of om employees.

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SEE DEPARTMENT RESPONSE TO COMMENT 84956

86270 Hunter Merrill 9/25/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86270> OSHA Covid Regulations

Strongly oppose. Do not regulate on issues that science does not even understand.

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

86274 Latane Ware Branch Civil, Inc 9/25/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86274>

STRONGLY OPPOSE!

As the Business Development Manager for Branch Civil, Inc. in the heavy construction industry, I oppose adopting a Permanent Standard for Infectious Disease Prevention: SARS-CoV-2 Virus That Causes COVID-19, 16VAC25-220.

- Construction is an essential business performing critical work in the Commonwealth since the onset of the pandemic. The health and safety of all employees is the top priority of our company. A culture of safety is our primary operating principle. We implemented the CDC and OSHA COVID-19 guidelines for construction as soon as they were published and are in compliance with the CARES Act mandates.
- Construction worked for four and a half months under CDC and OSHA guidelines before the Emergency Temporary Standard became effective, July 27, 2020. During those months we implemented critical safety measures to ensure the health of our employees. The federal guidelines for construction were working and additional regulations were duplicative and unnecessary.
- The science of COVID-19 is continuously being updated. The CDC and OSHA guidelines are frequently updated to reflect the science. The Emergency Temporary Standard, proposed in April 2020, is outdated and inflexible. If the standard were to become permanent, it would continue to require businesses to comply with outdated regulations. What was thought to be true about the transmission of SARS-CoV-2 in April, is no longer accurate. As an example, the disinfection standard requirements are based on practices that now may not provide meaningful reduction in transmission. An hour or more a day is spent disinfecting tools and equipment. It is time consuming and burdensome to continue with practices no longer scientifically relevant.
- The costs of the required training (16VAC25-220-70 and 16VAC25-220-80) average a total of 2 hours per employee. Developing the Infectious Disease Preparedness and Response Plan (16VAC25-220-70), not including implementation, requires approximately 40 hours by a supervisory level employee. These hours are in addition to and impede other job functions.

•Non-medically trained individuals now are required to perform health screenings. Screening each crew on average, takes thirty minutes at the start of a shift. Individuals must take accountability for their own health and not report to work if they are exhibiting the symptoms of COVID-19. After six months, Virginians should be very well aware of those symptoms. Our company, as mandated by the CARES Act, provides the Paid Sick Leave necessary for employees to stay home if they are ill.

•Construction tasks fall into the “Low” and “Medium” categories as defined in 16VAC25-220-30. The standards use “Grave” danger to regulate ALL businesses in Virginia, yet the great majority of deaths in Virginia (79% or 2269 as of September 23rd Virginia Department of Health Dashboard) were patients over the age of 70. As it is unlikely many over the age of 70 were actively still in the workplace, that leaves 613 deaths over 6 months or a death rate in Virginia of.007% based on a population of 8,536,000 (2019 US Census Bureau). Further, 54% (1556) of deaths were patients in long-term care and correctional facilities. As not all of those deaths fall into the over 70 category, that means less than 613 deaths were potentially working Virginians. Where they were exposed to the virus is not provided in the data. The definition of “Grave” danger for “low” and “medium” risk category needs to be revisited. These categories should be removed from the Temporary Standard and never be part of any Permanent Standard.

I am opposed to any amendment to include other flus, viruses, colds, or other communicable diseases in any permanent standard. There is no one-size fits all plan to combat a wide variety of infectious illnesses.

The Emergency Standards are burdensome, obsolete, difficult to enforce, costly in time and money, and lack flexibility to adapt to current science and innovation. I am STRONGLY OPPOSED to the adoption of these as a Permanent Standard for what is a temporary health situation.

I remain committed to the health and safety of my coworkers/employees and thank you for the opportunity to publically comment.

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SEE DEPARTMENT RESPONSE TO COMMENT 84956

SEE DEPARTMENT RESPONSE TO COMMENT 86359

86275 Rose Davis

9/25/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86275>

Absolutely positively no permanent mask wearing. With the death rate in Virginia being 0.000299, according to statistics from the Virginia department of health, mask restrictions should be lifted not made permanent. As of September 8th, 2020, there were 2,686 confirmed or probable covid deaths listed on VDH. Using an estimated population of Virginia at 8.536 million, the percent is 0.000299. Continued use of masks is unnecessary.

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

SEE DEPARTMENT RESPONSE TO COMMENT 85535

### Strongly Oppose Adopting a Permanent Standard

As an employee and Project Manager in the heavy construction industry, I oppose adopting a Permanent Standard for Infectious Disease Prevention: SARS-CoV-2 Virus That Causes COVID-19, 16VAC25-220.

- Construction is an essential business performing critical work in the Commonwealth since the onset of the pandemic. The health and safety of all employees is the top priority of our company. A culture of safety is our primary operating principle. We implemented the CDC and OSHA COVID-19 guidelines for construction as soon as they were published and are in compliance with the CARES Act mandates.
- Construction worked for four and a half months under CDC and OSHA guidelines before the Emergency Temporary Standard became effective, July 27, 2020. During those months we implemented critical safety measures to ensure the health of our employees. The federal guidelines for construction were working and additional regulations were duplicative and unnecessary.
- The science of COVID-19 is continuously being updated. The CDC and OSHA guidelines are frequently updated to reflect the science. The Emergency Temporary Standard, proposed in April 2020, is outdated and inflexible. If the standard were to become permanent, it would continue to require businesses to comply with outdated regulations. What was thought to be true about the transmission of SARS-CoV-2 in April, is no longer accurate. As an example, the disinfection standard requirements are based on practices that now may not provide meaningful reduction in transmission. An hour or more a day is spent disinfecting tools and equipment. It is time consuming and burdensome to continue with practices no longer scientifically relevant.
- The costs of the required training (16VAC25-220-70 and 16VAC25-220-80) average a total of 2 hours per employee. Developing the Infectious Disease Preparedness and Response Plan (16VAC25-220-70), not including implementation, requires approximately 40 hours by a supervisory level employee. These hours are in addition to and impede other job functions.
- Non-medically trained individuals now are required to perform health screenings. Screening each crew on average, takes thirty minutes at the start of a shift. Individuals must take accountability for their own health and not report to work if they are exhibiting the symptoms of COVID-19. After six months, Virginians should be very well aware of those symptoms. Our company, as mandated by the CARES Act, provides the Paid Sick Leave necessary for employees to stay home if they are ill.
- Construction tasks fall into the "Low" and "Medium" categories as defined in 16VAC25-220-30. The standards use "Grave" danger to regulate ALL businesses in Virginia, yet the great majority of deaths in Virginia (79% or 2269 as of September 23rd Virginia Department of Health Dashboard) were patients over the age of 70. As it is unlikely many over the age of 70 were actively still in the workplace, that leaves 613 deaths over 6 months or a death rate in Virginia of .007% based on a population of 8,536,000 (2019 US Census Bureau). Further, 54% (1556) of deaths were patients in long-term care and correctional facilities. As not all of those deaths fall into the over 70 category, that means less than 613 deaths were potentially working Virginians. Where they were exposed to the virus is not provided in the data. The definition of "Grave" danger for "low" and "medium" risk category needs to be revisited. These categories should be removed from the Temporary Standard and never be part of any Permanent Standard.

I am opposed to any amendment to include other flus, viruses, colds, or other communicable diseases in any permanent standard. There is no one-size fits all plan to combat a wide variety of infectious illnesses.

The Emergency Standards are burdensome, obsolete, difficult to enforce, costly in time and money, and lack flexibility to adapt to current science and innovation. I am STRONGLY OPPOSED to the adoption of these as a Permanent Standard for what is a temporary health situation.

I remain committed to the health and safety of my coworkers/employees and thank you for the opportunity to publicly comment.

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SEE DEPARTMENT RESPONSE TO COMMENT 86359

86277 Brian Gordon Apartment and Office Building Association of Metropolitan Washington (AOBA)  
9/25/2020 <https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86277>

#### AOBA Opposition to Proposed Building Standards

On behalf of the Apartment and Office Building Association of Metropolitan Washington (AOBA), I write to express our members' concerns and opposition with proposed permanent workplace safety standards (16VAC25-220).

AOBA's member companies own and operate a collective portfolio of roughly 71 million square feet of commercial office space and over 286,000 multifamily residential units located throughout Northern Virginia. Also represented by AOBA are over 200 companies who provide products and services to the real estate industry. These businesses are directly impacted by the proposed permanent workplace safety standards.

As building owners and managers, our members have been on the front lines and on the leading edge of efforts to control, prevent and mitigate the spread of the COVID-19 virus. We have worked diligently to keep our members informed in order to ensure that they remain in compliance with ever-evolving and difficult-to-navigate standards, regulations and best practices governing capacity and operational limitations, social distancing, cleaning and disinfection, testing and reporting, etc. Our industry's actions clearly demonstrate that we share in the stated objective of the proposed standards – to protect employees, tenants and visitors to our buildings. However, the proposed regulations exceed the purview of the Safety and Health Codes Board, add a layer of complexity and inconsistency with existing federal standards and guidance, and heap unreasonable and exorbitant costs on Virginia business at a time when they already face tremendous challenges due to the COVID-19 pandemic.

AOBA has joined as a member of the Virginia Business Coalition, from which you have also received comments. We share in the broader concerns voiced by the coalition in their September 25 letter. Our industry is particularly concerned, though, with proposed regulations which encroach upon the Commonwealth's highly regarded codes development process, especially those that pertain to required retrofits of existing buildings and building systems. While the Department of Labor and Industry has functional design authority under the Virginia Uniform Statewide Building Code (USBC) for occupational safety, USBC 103.5/COV 36-98 state that functional design is for "building activities not covered by the USBC." Several provisions of the proposed permanent workplace safety standards exceed this license.

For instance, air handler installation and design fall squarely within the purview of the USBC. While restricted to those businesses that fall under the "high-risk" category, these requirements will broadly impact commercial office buildings that house medical laboratories, medical/chiropractic and other treatment-related practices as tenants. These businesses are not just located in hospital facilities or medical office



buildings. If such businesses are classified as “high or very high risk,” the entire building will be required to come into compliance with the updated standards. Additionally, the definition of “suspected to be” infected casts a broad net that can include virtually any one entering that tenant’s space that could subject an entire building’s HVAC system to meet retrofit its air circulation systems at tremendous cost. Similarly, proposed requirements dictating the construction of floor-to-ceiling barriers are also construction-related and thereby covered under the USBC.

These proposed requirements represent a substantial cost to Virginia businesses and ignore the longstanding tenet of building codes application wherein buildings constructed to the code in place at the time of construction are deemed in compliance and not forced to retrofit and conform to requirements put into place subsequent to their development. This policy is clearly articulated in the Code of Virginia, Sections 36-103 and 26-99.01. Section 36-103 provides, in part, that “any building or structure, for which a building permit has been issued or on which construction has commenced...shall remain subject to the building regulations in effect at the time of such issuance or commencement of construction. However, the Board may adopt and promulgate...building regulations that facilitate the maintenance, rehabilitation, development and reuse of existing buildings at the least possible cost...Subsequent reconstruction renovation, repair or demolition of such buildings or structures shall be subject to the pertinent construction and rehabilitation provisions of the Building Code. The provisions of this section shall be applicable to all equipment.”

Virginia’s codes development process, overseen by the Board of Housing and Community Development (BHCD), has been nationally recognized for incorporating the input of experts and stakeholders across the spectrum to produce the most functionally sound building standards. AOBA opposes any effort to usurp the authority of BHCD, the rightfully positioned and empowered entity to determine appropriate requirements pertaining to such matters. The Safety and Health Codes Board lacks sufficient authority, process and expertise to unilaterally adopt regulations pertaining to such matters.

We thank you for your consideration of our comments and concerns.

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The Department acknowledges the comment and notes that the ASHRAE air handling requirements issue raised by the Commenter is undergoing a legal review.

SEE DEPARTMENT RESPONSE TO COMMENT 84956

86278 W Kevin Watterson, MD

9/25/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86278>

Do NOT Support

This proposal is premature and, frankly, best described as histrionic.

This proposal is markedly burdensome on small businesses for a disease that the vast majority of people who contract the disease recover or are never symptomatic.

It also presumes that vaccination is an inevitable failure or that there will always be ""a next pandemic"".

This proposal will have the obvious (so that no one can ever plead ""unintended"" consequence of killing new business creation and taking out current small businesses that are just hanging on.

Stop this foolishness now!

" COVID-19 vaccines will be an important part of the Commonwealth's and the country's ability to significantly reduce the ongoing spread of the SARS-CoV-2 virus in the workplace and in the community. However, with the projected population-level efficacy of COVID-19 vaccine to be 50-70%, no one can definitively state that someone vaccinated will not subsequently be free from infection. There is also anecdotal information and scientific surveys that appear to indicate that a certain sector of the American population will refuse to be vaccinated. Accordingly, it is anticipated that SARS-CoV-2 will continue to infect a certain sector of the populace and be present in the workplace for months and years to come.

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SEE DEPARTMENT RESPONSE TO COMMENT 84956"

86279 Sheila Stone Nurse 9/25/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86279>

extend covid workplace protections. I'm a nurse.

COVID-19 is very contagious, and spreads exponentially: each case therefore increases the risk for all of us. As a nurse, I see that people have to work or risk joblessness and homelessness. When workers are unable to protect themselves or others because of the conditions of their workplace, it leads to preventable risk and spread. Since every single case increases the risk for some health care worker, I feel that not mandating precautions exposes not only specific workers, but health care workers, to unnecessary risk. As a nurse, I feel ""expendable"" when society doesn't protect us. I signed up to serve humanity in times of suffering, but not to die preventably.

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SEE DEPARTMENT RESPONSE TO COMMENT 84196

86280 Mary H 9/25/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86280>

Strongly Opposed to such burdens upon businesses.

Excessive government regulations hinders free market

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

86281 anonymous 9/25/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86281>

COVID regulations vote

SAMPLE COMMENTS

I am a small business owner in Virginia who opposes making the COVID-19 Workplace Safety Emergency Standard permanent. Six months into the pandemic, I have learned to adapt to this unprecedented time by implementing safety protocols from a number of federal and state entities to ensure physical distancing and extensive sanitization. I want to keep my employees and customers safe because I care about their welfare.

Now is not the time to make the emergency temporary standard permanent when it's likely this pandemic will be temporary. Imposing "one size fits all" COVID-19 regulations on all employers is unreasonable especially when guidance is continually changing as we learn more about the virus. The Board needs to take the time to see what challenges employers are facing implementing the emergency regulations before taking any further action.

My company takes its responsibility for protecting its employees seriously. Making the COVID-19 emergency regulations permanent will only make a difficult situation worse for employers and employees. I remain concerned about the impact many of the provisions of the emergency regulations are having on my business and encourage the Board to not make them permanent.

Thank you for reading my comments

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SEE DEPARTMENT RESPONSE TO COMMENT 85680

86282 Paula Shinkle 9/25/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86282>

STRONGLY OPPOSE PERMANENT FACE MASKS!!!

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

SEE DEPARTMENT RESPONSE TO COMMENT 85535

86284 L Trish Philon 9/25/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86284>

Permanent, enforceable protective standards are required for workers' and our community's health.

The temporary standards during the Covid-19 pandemic need to become permanent and enforceable for the protection and safety of the workers and the larger community. As a retired public health nurse, I respectfully urge you to consider the health and welfare of essential workers.

Thank you.

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SEE DEPARTMENT RESPONSE TO COMMENT 84196

86285 Don Lockard

9/25/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86285>

Strongly Oppose

This administration has over reacted and over regulated since the very beginning of the COVID19 event. Making this policy permanent is not going to advance safety in the least and will have the chilling affect of hurting businesses; especially small businesses. This administration has proven that they are willing to implement draconian measures that have no basis in reality and making these temporary rules permanent; continues to punish businesses forever. Please stop the panic mode and try governing with an eye toward economics instead of politics and control.

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SEE DEPARTMENT RESPONSE TO COMMENT 84956

86288 Jon Lawson, CSP

9/25/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86288>

Proposal an Undue Burden on Virginia's Businesses

By federal regulation, the common cold and flu are exempt from OSHA's recordkeeping and reporting requirements (29 CFR Part 1904.5(b)(2)(vii)): the rationale for the exemption is that the spread of the cold and flu are so pervasive that is typically near-impossible to identify the source of infection; i.e., there would be no reasonable way to determine whether it was more likely than not that the illness was caused by an exposure in the workplace. The scale of infection of COVID-19 is expected to soon spread like the flu and common cold, with such overlap of symptoms a permanent standard for COVID-19 is an undue burden to Virginia's businesses. Work-relatedness for non-hospital workplaces have already been relaxed by Federal OSHA.

Symptom overlap of flu and common colds will trigger employee absenteeism that cannot be navigated successfully. A ten-day quarantine for any related symptoms (e.g. runny nose or cough) is simply too restrictive.

A need for an off-ramp, when a vaccine or herd immunity is achieved, should be entered into the standard to allow workers and business to eventually return to normal operations.

The information about COVID-19 has evolved daily, recommendations have changed frequently, a permanent standard is pre-mature at this point.

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"SEE DEPARTMENT RESPONSE TO COMMENT 84956

With regard to the issue of comparing SARS-CoV-2 and Covid-19 to influenza and the common cold, there are a number of significant differences which are discussed in detail in the Department's Briefing Package on the Emergency Temprary Standard dated June 23, 2020, which can be found at:

<https://www.doli.virginia.gov/wp-content/uploads/2020/06/BP-Emergency-Regulation-Under-2.2-4011-SARS-CoV-2-That-Causes-COVID-19-FINAL-6.23.2020.pdf> (e.g., lack of a vaccine, limited treatment options,

infection fatality rate; there is currently no vaccine; treatment options are still limited; superspreader transmission, etc.).

COVID-19 vaccines will be an important part of the Commonwealth's and the country's ability to significantly reduce the ongoing spread of the SARS-CoV-2 virus in the workplace and in the community. However, with the projected population-level efficacy of COVID-19 vaccine to be 50-70%, no one can definitively state that someone vaccinated will not subsequently be free from infection. There is also anecdotal information and scientific surveys that appear to indicate that a certain sector of the American population will refuse to be vaccinated. Accordingly, it is anticipated that SARS-CoV-2 will continue to infect a certain sector of the populace and be present in the workplace for months and years to come.

86289 John Viar 9/25/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86289>

Before you jump to something as drastic as permanent mask requirement, let's see the scientific evidence that backs up the benefit of masks. I am not talking someone's opinion, simulation, or the "expert" say they work. We have already seen how accurate the experts have been with something that has supposedly killed no more people than what a bad flu season does. Provide undisputable scientific evidence derived from multiple experiments where masks have been proven to be effective. Sample experiment would be to put 6 doctors with six different types of mask on in a room with 6 COVID positive patients for 30 minutes. Add a doctor with no mask and no underlying conditions to the room for good measure. If in 14 days none of the doctors with masks get COVID and the doctor without the mask comes down with COVID, then you might have an argument for masks. Until that time you really don't know if the mask work, so no more mandatory mask orders. The hospitalizations and deaths from COVID have dropped dramatically. Most people who come down with it now describe it as a bad flu/cold that last for ~ 3-5 days. Wait till the first of 2021 to even consider this action.

SEE DEPARTMENT RESPONSE TO COMMENT 84237

SEE DEPARTMENT RESPONSE TO COMMENT 85535

86291 Kelly Lowery 9/25/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86291>

STRONGLY OPPOSE !!!!!!!

Strongly oppose to extend this.

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

86297 Jim Atkinson 9/25/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86297>

Oppose government overreach

This is one more government overreach action. Such regulation causes severe negative impacts to business and the daily lives of Virginia citizens by imparting more and more government involvement in everyone's daily lives. The government proves again and again that it cannot manage control it gives itself. The ridiculously backlogged state of the Virginia DMV that exists today is a perfect example of government run programs that become a bottleneck to people's lives and our economic well-being.

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

86299 anonymous 9/25/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86299>

As a teacher, an expecting mother, and an active member in my community I must comment on this. Wearing a mask indoors all the time...EVEN IF I AM ALONE... Is outrageous. Here is my decent: -The CDC has now stated that masks are not a solution. That the bacteria is SO SMALL that it can fit through any hole/porous surface. However we are still required to wear them.

-Masking your face prior to the pandemic was a crime. This mandate and potential change would then essentially give permission to an individual that wanted to hide their face while committing a crime ways to conceal their identity. -When you are alone in your work place (stating this as a teacher who is alone in her classroom for 90% of her day) it is not necessary to cover your face. -As a pregnant woman, I am depriving not only myself of clean oxygen but also my unborn child. I have nearly fainted from wearing a mask in the grocery store. Masks are not healthy. And I will fight this because I will not deprive my child of his daily needs in the fetal state just as I will never deprive my child of his basic needs when he is born. -It has also been proven that masks that are not cleaned regularly or disposed of can cause a person to contract Legionnaires. Which can be just as dangerous as a severe case of Covid. -Studies have now proven that children that have not gone through puberty (and do not have any underlying health conditions) do not have symptoms bigger than a common cold or they appear a-symptomatic. Why continue to force small children to wear a mask when they cannot contract or disperse the virus the same as an adult or teen?! -If you continue to infringe on the rights of your constituents, when will you realize that you have gone too far? I am so disappointed in my local and state representatives for not representing ME and the very large portion of the population that does not agree with how the pandemic is being handled. They are not looking at credible sources. They are making decisions based off of fear and peer pressure from people with deep pockets.

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

SEE DEPARTMENT RESPONSE TO COMMENT 85535

86300 anonymous 9/25/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86300>

STRONGLY OPPOSE

STRONGLY OPPOSE!!!!!!!!!! LISTEN TO THE PEOPLE - A MAJORITY OF THE CONVERSATIONS ABOUT THIS IS TO STRONGLY OPPOSE!!! LISTEN TO THE COMMENTS OF THE PEOPLE ABOUT THIS - DO NOT MAKE THIS PERMANENT IS WHAT I'M HEARING

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

86302 JohnFlannigan 9/25/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86302>

Permanent Standard for Infectious Disease Prevention: SARS-CoV-2 Virus That Causes COVID-19, 16VAC25

Members of the Safety and Health Code Board,

As an employee in the heavy construction industry, I oppose adopting a Permanent Standard for Infectious Disease Prevention: SARS-CoV-2 Virus That Causes COVID-19, 16VAC25-220.

- Construction is an essential business performing critical work in the Commonwealth since the onset of the pandemic. The health and safety of all employees is the top priority of our company. A culture of safety is our primary operating principle. We implemented the CDC and OSHA COVID-19 guidelines for construction as soon as they were published and are in compliance with the CARES Act mandates.
- Construction worked for four and a half months under CDC and OSHA guidelines before the Emergency Temporary Standard became effective, July 27,2020. During those months we implemented critical safety measures to ensure the health of our employees. The federal guidelines for construction were working and additional regulations were duplicative and unnecessary.
- The science of COVID-19 is continuously being updated. The CDC and OSHA guidelines are frequently updated to reflect the science. The Emergency Temporary Standard, proposed in April 2020, is outdated and inflexible. If the standard were to become permanent, it would continue to require businesses to comply with outdated regulations. What was thought to be true about the transmission of SARS-CoV-2 in April, is no longer accurate. As an example, the disinfection standard requirements are based on practices that now may not provide meaningful reduction in transmission. An hour or more a day is spent disinfecting tools and equipment. It is time consuming and burdensome to continue with practices no longer scientifically relevant.
- The costs of the required training (16VAC25-220-70 and 16VAC25-220-80) average a total of 2 hours per employee. Developing the Infectious Disease Preparedness and Response Plan (16VAC25-220-70), not including implementation, requires approximately 40 hours by a supervisory level employee. These hours are in addition to and impede other job functions.
- Non-medically trained individuals now are required to perform health screenings. Screening each crew on average, takes thirty minutes at the start of a shift. Individuals must take accountability for their own health and not report to work if they are exhibiting the symptoms of COVID-19. After six months, Virginians should be very well aware of those symptoms. Our company, as mandated by the CARES Act, provides the Paid Sick Leave necessary for employees to stay home if they are ill.
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age of 70. As it is unlikely many over the age of 70 were actively still in the workplace, that leaves 613 deaths over 6 months or a death rate in Virginia of .007% based on a population of 8,536,000 (2019 US Census Bureau). Further, 54% (1556) of deaths were patients in long-term care and correctional facilities. As not all of those deaths fall into the over 70 category, that means less than 613 deaths were potentially working Virginians. Where they were exposed to the virus is not provided in the data. The definition of “Grave” danger for “low” and “medium” risk category needs to be revisited. These categories should be removed from the Temporary Standard and never be part of any Permanent Standard.

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The Emergency Standards are burdensome, obsolete, difficult to enforce, costly in time and money, and lack flexibility to adapt to current science and innovation. I am STRONGLY OPPOSED to the adoption of these as a Permanent Standard for what is a temporary health situation.

I remain committed to the health and safety of my coworkers and thank you for the opportunity to publically comment.

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SEE DEPARTMENT RESPONSE TO COMMENT 86359

86304 J.T. Kessler, Virginia School Boards Association 9/25/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86304>

Oppose Permanent Standards

Department of Labor and Industry,

The Virginia School Boards Association (VSBA) appreciates the opportunity to provide our concern regarding the adoption of permanent standards for the prevention of infectious diseases. VSBA opposes the adoption of permanent standards for the SARS-CoV-2 Virus that causes COVID-19 because they fail to provide flexibility to assess and adapt to research from medical professionals on how the virus spreads in the population. Further, a permanent standard that would extend beyond the expiration of the Governor’s State of Emergency related to COVID-19, is problematic and unnecessary.

Local school boards across the Commonwealth are adopting plans for the reopening of schools based on guidance from the Centers for Disease Control, the Virginia Department of Health, and the Virginia Department of Education. Each school board is dedicated to protecting the health and safety of their students, faculty, and staff. To guarantee safety, school boards have invested substantial amounts of resources to ensure their facilities and operations meet all requirements to comply with federal and state government guidance for the mitigation of COVID-19.

VSBA urges the Department of Labor and Industry to reject making the emergency standards permanent.

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SEE DEPARTMENT RESPONSE TO COMMENT 84956

The Department notes that the Standard provides flexibility to schools through 16VAC25-220-10.G.2 “A public school division or private school that submits its plans to the Virginia Department of Education to



move to Phase II and Phase III that are aligned with CDC guidance for reopening of schools that provide equivalent or greater levels of employee protection than a provision of this standard and who operate in compliance with the public school division's or private school's submitted plans shall be considered in compliance with this standard. An institution's actual compliance with recommendations contained in CDC guidelines or the Virginia Department of Education guidance, whether mandatory or non-mandatory, to mitigate SARS-CoV-2 and COVID-19 related hazards or job tasks addressed by this standard shall be considered evidence of good faith in any enforcement proceeding related to this standard.

86305 Anonymous 9/25/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86305>

Consent of the governed? Not this time.

Virginia bureaucrats , you clearly do not have the consent of the citizens of this commonwealth. Please act accordingly.

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

86306 Pat Strickland VP Operations, Monogram Food Solutions 9/25/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86306>

Monogram Foods is Opposed to Permanent Standard, Infectious Disease Prevention

Re: 16VAC25-220, Proposed Permanent Standard, Infectious Disease Prevention: SARS-CoV-2 Virus That Causes COVID-19

Our organization places the wellbeing of our team members first and above all else, in all situations.

We have worked cooperatively with the Virginia Department of Health, as well as the Health Departments of several other states in which we are an essential manufacturer of food products. We also have established a cooperative relationship with Virginia DOLI/VOSH while managing this global pandemic.

We have found, in all cases, in the states where we work, the people in these government agencies have the same goal as we do – protecting people at home, in the community and in the workplace. We embrace the sharing of best practices to slow the spread of this pandemic, and without hesitation provide all of the protections we can in the workplace, complemented with a saturation of education to help our team members while at home and in the community.

Matters of public health are just that – matters of public health. Tuberculosis outbreaks, the common cold, the flu, and pandemics – are within the jurisdiction, including enforcement of the Virginia Dept. of Health, as well as local supporting health agencies.

The original, and sustained intent of the OSH Act is to require employers to evaluate and mitigate risks in the workplace, to provide protections to their employees of those risks that are a result of the hazards of the work in the workplace. The Act was not and is not intended for the employer to take a primary role in the accountability for spread of the common cold, the flu, or a global pandemic. These are social health issues and should not leak into the DOLI window of regulations and enforcement as it is outside of their scope.

## DOLI / VOSH SHOULD HAVE NO STANDARD FOR COVID 19, EITHER TEMPORARY OR PERMANENT AFFECTING THE MANUFACTURING SEGMENT

- It is not the original or sustained interpretation of the OSH Act to hold an employer accountable for illnesses that are not directly attributable to the conditions and work instructions within the workplace. The intention of the OSH Act is to impose upon employers to provide a workplace free from safety hazards related to the work being performed, that are under control of the employer.
- This burden on employers – which is not present in surrounding states, if faced with a permanent standard, jeopardizes the level of competition for industry and jobs in the Commonwealth of Virginia. This can result in loss of industry and jobs – because it is overbearing and inconsistent with surrounding states.
- Development and subsequent promulgation of workplace safety standards by DOLI/VOSH is intended to have a process of checks, balances and science building a foundation beneath them. What we know about the novel Covid virus and protections are unproven science and are evolving continuously. There is not enough solid, proven information available to allow such a permanent standard to survive the necessary checks and balances.

## DOLI / VOSH CAN PLAY AN IMPORTANT, VALUABLE ROLE IN SLOWING THE SPREAD AND CONTAINMENT OF THE PANDEMIC

- We believe that the intentions of the ETS and its proposed transition to a permanent standard are well-intended. However, it is inappropriate to create a permanent standard without the proper process flow. Properly channeling well intentions and resources through consulting / assistance channels could help create a better scenario.
- DOLI/VOSH has existing and successful Consultation Services. These services are an asset and can be mobilized to assist employers slow the spread of the virus. For example, The State of Wisconsin; The Industrial Hygiene technical resources for Wisconsin OSHA Outreach program are based out of the University of Wisconsin. The State of Wisconsin has temporarily repurposed these resources to an additional level of separation from the OSHA compliance arm. In cooperation with the Wisconsin Dept of Health, the State is sending in teams of Industrial Hygienists, learning and sharing best practices throughout the State by visiting and consulting with manufacturing operations. This is a clear commitment from the State of Wisconsin to truly try and help employers contribute to the slowing and containment of the spread without the discussion of enforcement.

## IF THERE IS NO CHOICE BUT TO HAVE A TEMPORARY OR PERMANENT STANDARD

- The current ETS and potentially the permanent standards, the threshold for reporting Covid positive cases to VOSH is not properly developed. It is static and does not respect the dynamics of a 15-employee workplace vs a 2,000-employee workplace. The current, static representation of three positive exposures of employees at the worksite should be transitioned to an indexed, dynamic representation for reporting. The State of California, to create an escalation threshold (SB-1159) uses 4% of the workforce. A more appropriate criteria would be 4 cases for employers with 0-100 employees, 4% of the workforce in a 30-day sampling window for employers with more than 100 employees at a site.
- If there is to be a permanent standard, there would need to be specific criteria regarding enforcement windows. The standard should only be active during a period of pandemic as declared by the CDC and or VDH.

- The standard must have agility for modification to stay consistent with ongoing advances and learnings in detecting and controlling spread of the virus. The currently ETS is already outdated to updated guidance from the CDC.

Sincerely,

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SEE DEPARTMENT RESPONSE TO COMMENT 84956

While many people become infected with SARS-CoV-2 in community settings that are not work-related, every person that becomes infected who is also an employee becomes a potential workplace source and transmitter of the virus if they report to work while still capable of transmitting the disease. There are numerous documented examples of the workplace spread SARS-CoV-2, which is also considered to be highly contagious. The introduction of an infectious disease into a workplace setting, regardless of the source, constitutes a workplace health hazard subject to regulation and enforcement by VOSH.

The VOSH program has clear statutory and regulatory jurisdiction over workplace safety and health issues in the Commonwealth, including the potential for spread of infectious diseases among employees and employers, and when those employees and employers are potentially exposed to other persons who may be carriers of the infectious diseases (patients, customers, independent contractors, etc.).

The states of Virginia, Washington, Michigan and Oregon have adopted COVID-19 related workplace safety and health regulations.

16VAC25-220-40.B.8.e requires employers to notify the Department within 24 hours of the discovery of three or more employees present at the place of employment within a 14-day period testing positive for SARS-CoV-2 virus during that 14-day time period.

DOLI and the Virginia Department of Health (VDH) have collaborated on a Notification Portal for employers to report COVID-19 cases in accordance with Emergency Temporary Standard (ETS) Sections 16VAC25-220-40.B.8.d and -40.B.8.e that satisfies COVID-19 reporting requirements for both agencies. The portal went live on September 28, 2020. Here is a link:

<https://www.doli.virginia.gov/report-a-workplace-fatality-or-severe-injury-or-covid-19-case/>

The Department does not plan to recommend the elimination of reporting requirements to the Department of Health, although it does intend to recommend a change to the trigger number of positive cases.

At its core the Standard is a risk management system to prevent or limit the spread in the workplace of the SARS-CoV-2 virus which causes COVID-19.

It is designed to provide basic protections for all employees and employers within the jurisdiction of the Virginia Occupational Safety and Health program.

It provides certain mandatory requirements for all employers and specific additional requirements for Very High, High, and Medium risk job tasks centered around mitigation of hazards.

The Standard is also designed to incentivize employers to make changes in the workplace that will enable employees in certain situations to be classified to a reduced level of risk (e.g., from high to medium or from medium to lower), thereby also reducing the employer's compliance and cost burdens.

86307 Debbie Kozak 9/25/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86307>

#### Support for Permanent Standards

My name is Debbie Kozak and I am a public employee in Virginia and member of the American Federation of State County & Municipal Employees (AFSCME). I have been working in the mental health field for 36 years and when Covid hit, thankfully my agency granted my physician request to telework. I am living with health conditions that put me at a higher risk of exposure and impact from the coronavirus.

Recently, when our workplace began preparing for the implementation of an electronic health records system, I struggled to obtain an accommodation to attend the related training virtually, rather than on-site. That's why we need the standards in place that protect us from having to enter an unsafe work environment to be made permanent. We need strong enforcement mechanisms so that employers in Virginia know that safety of employees and our citizens comes first. Please make the Temporary Emergency Standards permanent.

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SEE DEPARTMENT RESPONSE TO COMMENT 84956

86310 Virginia Plumbing and Mechanical Inspectors Association Virginia Plumbing and Mechanical Inspectors Association 9/25/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86310>

#### Strongly Oppose Mandatory Use of ASHRAE 62.1 and 62.2

The Virginia Uniform Statewide Building Code (USBC) Part I incorporates the 2015 International Mechanical Code per Section 101.2, which provides ventilation requirements for new construction in Chapter 4. ASHRAE 62.1 or 62.2, in whole, are not referenced in the USBC. In fact, the only reference is to Appendix A of ASHRAE 62.1 for system ventilation efficiency as an option and ASHREA 62.2 is not referenced at all. Aside from the incredible cost of retrofitting existing buildings in order to provide compliance to 2019 ASHRAE Standards 62.1 and 62.2, USBC Part II incorporates the 2015 International Existing Building Code per Section 101.2, which provides limited retrofit requirements referenced in Section 103.3. These retrofit requirements do not include provisions for ventilation upgrades. Code of Virginia section 36-98 states "The Board [Board of Housing and Community Development] is hereby directed and empowered to adopt and promulgate a Uniform Statewide Building Code. Such building code shall supersede the building codes and regulations of the counties, municipalities and other political subdivisions and state agencies.". The proposed ASHRAE standards are building code regulations, which are superseded by the USBC. " "The Department acknowledges the comment and notes that the ASHRAE air handling requirements issue raised by the Commenter is undergoing a legal review.

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SEE DEPARTMENT RESPONSE TO COMMENT 84956

86311 Nate 9/25/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86311>

## Opposition to a permanent standard

I am an Environmental Health & Safety Professional at a small business in Virginia who opposes making the COVID-19 Workplace Safety Emergency Standard permanent. Six months into the pandemic, I have learned to adapt to this unprecedented time by implementing safety protocols from a number of federal and state entities to ensure physical distancing and extensive sanitization. I want to keep my employees and customers safe because I care about their welfare.

Now is not the time to make the emergency temporary standard permanent when it's likely this pandemic will be temporary. Imposing "one size fits all" COVID-19 regulations on all employers is unreasonable especially when guidance is continually changed as we learn more about the virus. The Board needs to take the time to see what challenges employers are facing implementing the emergency regulations before taking any further action.

My company takes its responsibility for protecting its employees seriously. Making the COVID-19 emergency regulations permanent will only make a difficult situation worse for employers and employees. I remain concerned about the impact many of the provisions of the emergency regulations are having on my business and encourage the Board to not make them permanent.

Respectfully,

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SEE DEPARTMENT RESPONSE TO COMMENT 85680

86313 Brett Vassey, Virginia Manufacturers Association (VMA) 9/25/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86313>

Emergency Temporary Standard/Emergency Regulation: COVID-19

It is unreasonable to apply "one size fits all" COVID-19 Regulations to all employers and employees. It is also profoundly inappropriate to bypass the formal regulation process altogether by attempting to codify "guidance" and Executive Orders as a reasonable replacement. Further, it is confusing why the Regulations are being pursued when § 16VAC25-220 has not been fully implemented and has so many significant problems.

Therefore, it is the VMA's recommendation that the Board withdraw its "Intent to Adopt a Permanent Standard for Infectious Disease Prevention: SARS-CoV-2 Virus That Causes COVID-19, 16VAC25-220." The VMA also requests that the Virginia Safety and Health Codes Board issue an additional sixty (60) day public comment period on 16VAC25-220 requesting that employers provide recommended improvements to the Emergency Temporary Standard (ETS) or abandon the ETS altogether and rely upon the "General Duty Clause" and Federal, State, Industry guidance to protect workers as is being effectively done in 48 other states. Finally, if the Board proceeds with Regulations, it should not consider any amendments to the Regulations that would incorporate other infectious diseases.

The VMA's detailed comments exceed the characters allowed by this system and it has submitted an electronic copy of the comments to Princy Doss and Jay Withrow, Virginia Department of Labor & Industry.

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SEE DEPARTMENT RESPONSE TO COMMENT 85680

The states of Virginia, Washington, Michigan and Oregon have adopted COVID-19 related workplace safety and health regulations.

86314 Carolyn Automotive Parts Inc/API Service Center9/25/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86314>

STRONGLY OPPOSE

I strongly oppose Covid 19 regulations becoming permanent. This would be ridiculous due to the conflicted news reports about mask issues like carbon dioxide and reduced oxygen intake we don't know the health problems this may be causing especially long term.

Small businesses are already struggling to stay in business many have closed. Sales are down and expenses are up due to all of the sanitary supplies and mask we are having to buy not to mention the \$1,500.00 plexiglass we had to install.

This is a temporary health issue we need to get back to normal as soon as possible, do all these precautionary measures for another month or two and see where we are then.

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SEE DEPARTMENT RESPONSE TO COMMENT 84956

An economic impact analysis/cost analysis will be prepared for the revised proposed permanent standard.

86315 Virginia Business Coalition Virginia Business Coalition 9/25/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86315>

Emergency Temporary Standard/Emergency Regulation: COVID-19

The Virginia Business Coalition, a group of 33 leading business associations across the Commonwealth, oppose these Regulations.

The detailed comments of the Coalition have been submitted electronically to Jay Withrow and Princy Doss, Virginia Department of Labor & Industry.

Sincerely,

Apartment and Office Building Association Associated Builders and Contractors -Virginia Associated General Contractors of Virginia Delmarva Poultry Industry, Inc. Hampton Roads Chamber of Commerce Harrisonburg – Rockingham Chamber of Commerce Heavy Construction Contractors Association National Federation of Independent Business Northern Virginia Chamber of Commerce Northern Virginia Transportation Alliance Precast Concrete Association of Virginia Richmond Area Municipal Contractors Association Shellfish Growers of Virginia Thomas Jefferson Institute for Public Policy Virginia Agribusiness Council Virginia Assisted Living Association Virginia Association of Roofing Professionals Virginia Association for Home Care and Hospice Virginia Automatic Merchandising Association Virginia Forestry Association Virginia Forest Products

Association Virginia Loggers Association Virginia Manufactured and Modular Housing Association Virginia Manufacturers Association Virginia Peninsula Chamber of Commerce Virginia Poultry Federation Virginia Retail Federation Virginia Retail Merchants Association Virginia Seafood Council Virginia Trucking Association Virginia Veterinary Medical Association Virginia Wholesalers and Distributors Association Virginia Wineries Association

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SEE DEPARTMENT RESPONSE TO COMMENT 84956

86316 Beverley Ambs 9/25/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86316>

DOLI standard on COVID-19

I live in a small rural Virginia town in southside Virginia that has worked very hard to struggle with the demands and standards brought forth from this pandemic. Most of our businesses are small and many of them family owned. This standard is cumbersome and poorly written. It seems to have been developed for large companies and corporations with the legal, administrative and compliance staffs to handle the regulations obviously written in legalize to purposely confuse the general public. In my small town our businesses are struggling to stay afloat and their businesses open. They are working to provide much needed services to ""normalize"" living here and to pay their bills and employees. They do not have time to work 10 - 12 hours a day for their businesses, take care of home responsibilities and family, SLEEP, and meet these tedious standards. They are doing their best to meet the CDC and State guidelines - which they strive to be in compliance with. This is an unnecessary burden to small businesses in small communities. If this standard is so important, why was it buried in the back of the Sports section of The Richmond Times-Dispatch on July 27, 2020 and no notice on the front page of the paper about this?

I agree with others that this is a burden to our businesses that are struggling with the economic burdens of this pandemic as well as the trouble staffing their businesses with competent team members. How many regulatory organizations does it take to kill the small businesses in Virginia with duplicity in standards and regulations? Where is the time and money for these standards and guidelines supposed to come from?

Does the State of Virginia plan to continue to battle COVID-19 forever? If not, then why make this regulation permanent? We have not done anything like this in the past and this seems to have been developed to create busy work for our small businesses. What is this going to do to help the businesses in Virginia grow? I understand the need for guidelines, but not for multiple duplicate standards in addition. My next question is - how do you plan to monitor this - by hiring staff and costing the public and businesses funds that they already do not have?

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SEE DEPARTMENT RESPONSE TO COMMENT 84956

The Standard was not designed to be a "one size fits all" regulatory approach.

At its core the Standard is a risk management system to prevent or limit the spread in the workplace of the SARS-CoV-2 virus which causes COVID-19.

It is designed to provide basic protections for all employees and employers within the jurisdiction of the Virginia Occupational Safety and Health program.

It provides certain mandatory requirements for all employers and specific additional requirements for Very High, High, and Medium risk job tasks centered around mitigation of hazards.

The Standard is also designed to incentivize employers to make changes in the workplace that will enable employees in certain situations to be classified to a reduced level of risk (e.g., from high to medium or from medium to lower), thereby also reducing the employer's compliance and cost burdens.

86318 Josh Krider

9/25/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86318>

Opposed!

I run a business in Virginia, and I oppose making the COVID-19 Workplace Safety Emergency Standard permanent.

Six months into the pandemic, we have learned to adapt to this unprecedented time by implementing industry-specific guidance from the Governor, the Virginia Health Department, the CDC, and OSHA to ensure physical distancing and extensive sanitization. I want to keep my employees safe because I care about their welfare.

Now is not the time to make the emergency temporary standard permanent when it's likely this pandemic will be temporary. Imposing "one size fits all" COVID-19 regulations on all employers and employees is unreasonable especially when guidance is continually changing as we learn more about the virus and how best to protect against it's spread. Knowing the temporary standard expires in February 2021, there is plenty of time for the Board to wait until we know more about how long the pandemic could last before taking any further action.

My company takes its responsibility for protecting our employees seriously. Making the COVID-19 emergency regulations permanent will only make a difficult situation worse for employers and employees. I remain concerned about the impact many of the provisions of the emergency regulations are having on my business and encourage the Board to not make them permanent.

Respectfully,

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SEE DEPARTMENT RESPONSE TO COMMENT 85680

86320 Dawn A Wright

9/25/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86320>

EMERGENCY STANDARD

Now is not the time to make the emergency temporary standard permanent when it's likely this pandemic will be temporary. Imposing "one size fits all" COVID-19 regulations on all employers is unreasonable



especially when guidance is continually changing as we learn more about the virus. The Board needs to take the time to see what challenges employers are facing implementing the emergency regulations before taking any further action. We have learned to adapt to this unprecedented time by implementing safety protocols from a number of federal and state entities to ensure physical distancing and extensive sanitization. We want to keep our employees and customers safe because I care about their welfare.

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SEE DEPARTMENT RESPONSE TO COMMENT 85680

86321 Mark Federici, President, United Food and Commercial Workers, Local 400 9/25/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86321>

Dear Board:

On behalf of the nearly 10,000 members of the UFCW Local 400 in Virginia, who have been risking their lives working on the front lines of the pandemic, we urge the Virginia Safety and Health Standards Board to promulgate a strong permanent standard which will protect workers from contracting COVID-19.

We strongly support the Virginia Emergency Temporary Standard (ETS) that has been passed and enacted. It has been effective and is protecting workers from infection. All of our employers in the Commonwealth have taken steps to comply with the standard, including providing training, which has created safer workplaces. However, the ETS is set to end on January 27, 2021, and we know the threat of COVID-19 will continue. Another wave of infections is anticipated, and without permanent protections, workers will continue to be put at risk.

UFCW Local 400 represents 30,000 workers in grocery stores, pharmacies, poultry and food processing, and in the seafood industry across the mid-Atlantic. To date, over 631 members of the Union have tested positive for COVID-19, including over 336 in Virginia, and 7 members have died as a result of the virus. We implore you keep these members safe going forward by passing a strong permanent standard.

The following steps have been taken by UFCW employers in Virginia, since the ETS went into effect:

- Classified jobs by risk category;
- Directed employees to monitor for signs and symptoms of COVID-19;
- Implemented, in consultation with UFCW Local 400, enhanced sick leave benefits and flexible attendance policies;
- Established a system to notify employees and their union within 24 hours of their exposure to someone known to be infected with SARS-CoV-2;
- Established return-to-work policies for employees known or suspected to be infected with SARS-CoV-2;
- Increased physical distancing by decreasing customer shopping limits, staggering shifts, engineering controls (e.g. closing every other check stand, moving time clocks away from congested areas, one-way aisles at grocery stores, Plexiglas shields where physical distancing is more difficult);
- Used signage and verbal announcements to promote physical distancing;
- Controlled access to and expanded employee breakrooms;

- Provided hand washing facilities and hand sanitizer, allowed more frequent breaks for hand washing;
- Provided masks and hand sanitizer to workers utilizing shared vans to get to work;
- Mandated mask wearing, provided employees with masks free of charge;
- Increased the frequency of common space cleaning and sanitizing;
- Implemented curbside pickup and home delivery options;
- Implemented an infectious disease preparedness and response plan;
- Identified the person responsible for administering the infectious disease preparedness and response plan;
- Provided training on the hazards and characteristics of the SARS-CoV-2 virus and COVID-19 disease, the requirements of the emergency standard, risk factors for employees with underlying health conditions, safe and healthy work practices, PPE- best practices and limitations, and the anti-discrimination provisions of the standard; and
- Implemented or aligned policies and/or contractual provisions protecting employees who exercise rights under the emergency standard from discrimination.

It is important to note that not all of our employers proactively implemented these measures, and there have been times when employers were lax in enforcement. The ETS also provides our union with important enforcement mechanisms as well.

We are in full support of a strong, permanent standard and recommend the following elements from the temporary standard be retained in the permanent standard:

- The permanent standard should be based on scientific information and long-standing occupational health and safety practices.
- The permanent standard should clearly articulate that SARS-CoV-2 is an airborne hazard, the protections laid out in the standard are important for controlling airborne hazards and the ventilation requirements are in line with industry standards (ASHRAE).
- The permanent standard should be a programmatic standard which means each employer is required to implement a program tailored to their workplace using scientific-based and long-standing workplace control practices.
- The permanent standard should include return to work requirements that align with current science.
- The permanent standard should include clearly defined respiratory protection and what is required for workers who are deemed at risk.
- The permanent standard should include training for all workers, risk assessment of the workplace, and infection control plans in the workplace.
- The permanent standard should clearly define and require face coverings.

We recommend the following elements be removed or strengthened to ensure that the standard fully protects all workers.

- The permanent standard should not include the CDC exception because it will make the standard easier to implement and enforce, and less prone to inconsistencies.

- The permanent standard should emphasize ventilation combined with social distancing. Scientific research has found that the virus can travel as an aerosol, further than 6 feet in an indoor space, therefore the six-foot rule for social distance alone may not be enough to reduce spread of the virus.
- The permanent standard should include language on medical removal for known infections, exposures, or when recommended by a medical or public health professional, with removal protections. The employer must maintain the employee's base earnings, seniority, and other rights and benefits that existed at the time of removal until cleared for return to work.
- The permanent standard should strengthen the involvement of workers and labor representatives in the plan. VOSH should ensure their educational material and enforcement efforts are clear that this must be done.

We strongly believe that a permanent standard simplifies things for employers, workers, and their unions. A permanent standard issued by Virginia OSHA will facilitate all parties working together to achieve the goal of protecting workers from this deadly illness.

Regards,

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SEE DEPARTMENT RESPONSE TO COMMENT 84196

SEE DEPARTMENT RESPONSE TO COMMENT 85974"

86322 Kyle Allwine, Fredericksburg Regional Chamber of Commerce 9/25/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86322>

Fredericksburg Regional Chamber OPPOSES This Action

The health and safety of our workforce and customers is the top priority for employers in Virginia. The business community supports clear and consistent workplace health protection protocols; however, these protocols must be flexible. Every industry and work environment are different. Defining the standards that businesses must follow will require strong public-private coordination. We encourage the Virginia Safety and Health Codes Board to consider the various industry comments that you receive to ensure effective safety protocols and eliminate any potential obstacles to reopening. We are concerned that the draft emergency standards, as currently written, contain several inconsistencies with state and federal regulations. In order to avoid confusion and contradictions, we suggest the Board regulation better align with OSHA and CDC guidance.

A few examples of these inconsistencies are:

- The definition of employee should be limited to full/part time employees who receive W2s. (See ETS/ER COVID Regulation, Section E, Page 5)
- The definition of "Medium" risk jobs should be changed to align with the OSHA definition. (See OSHA, <https://www.osha.gov/Publications/OSHA3990.pdf>.)
- Regarding notifications, Section 7 on Page 18 should be limited to notifying individuals who had close contact, as defined by the CDC, in the two days prior to the onset of symptoms or, for asymptomatic

individuals, two days prior to the positive test. (See CDC, p.23, <https://www.cdc.gov/coronavirus/2019-ncov/php/contact-tracing/contacttracing-plan/contact-tracing.html>.)

- Regarding Return to Work, the application of the suspected definition is inconsistent. The regulation applies the Return to Work guidelines of a COVID-19 case, but then not requiring contact tracing. It should either be a case (suspected or confirmed) that is traced or not a case (Page 18).
- The definition of surgical masks is inconsistent with recently published OSHA guidance. Clarification is needed to explicitly state that surgical masks are considered a form of PPE with respect to splashes/sprays of bodily fluid, not droplets. Per OSHA, the masks can be used to prevent the transmission of large droplets from the wearer, but they do not protect the wearer against airborne transmissible infectious agents (Pages 13-14).
- Regarding serologic testing for COVID-19 antibodies should be removed because the CDC does not recommend employers to track or require antibody testing. Some employees may want this information, but it is unnecessarily invasive from a privacy perspective to require reporting to employers. (Section 40.A.3 on pages 16-17) • A “suspected” case should be treated the same as a COVID-19 case, but only if other criteria are also considered. There is no standard definition for a “clinical”, “suspected”, “presumed”, or “probable” case and those terms tend to be used interchangeably. The factors generally considered are: severity and length of symptoms, result of medical evaluation, testing availability, and current community transmission. The proposed definition of “suspected” is just the list of possible symptoms, which CDC does not say is suspected but simply says may be symptoms consistent with COVID-19. Keeping all symptoms out for 10 days regardless of other considerations, is not supported by any current standard medical guideline. The intent seems to not rely solely on testing for determination, but it is overly broad to just list the CDC symptoms as the only criteria to consider.

The Board should also consider the burden requiring the creation of an Infectious Disease Preparedness and Response Plan might have on small businesses in the Commonwealth. Most of these businesses have little to no experience in creating such a process document. This new standard will be costly for these businesses to hire outside professionals to create these plans. They will then have to take time to both implement and train their workforce to comply with the new standards. This is on top of the many other recently released regulations from federal, state and local governmental bodies.

Lastly, we believe that enforcement of these provisions should be handled with understanding and leniency. Virginia businesses, many of which have been devastated by the economic impact of this pandemic, are working hard to remain safely operational for their workforce and customers; however, the shifting regulatory landscape continues to be a significant challenge, especially for Virginia’s small businesses. As the Board implements these new emergency standards, it is our hope that they will refrain from overenforcement and not penalize businesses that have given a good faith effort in following these complicated rules that continue to change.

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#### SEE DEPARTMENT RESPONSE TO COMMENT 84956

Review of all COVID-19 related inspections under the Emergency Temporary Standard is conducted centrally by the Department with both a programmatic and legal review prior to a decision to issue or not issue violations/penalties to assure consistent enforcement across the Commonwealth. The Department does not anticipate any significant increase in litigation with regard to the Emergency Temporary Standard or any permanent standard.

The Department does not intend to recommend a change to the definition of “employee” in the Standard, which reflects current statutory, regulatory and case law.

The Department does not intend to change the definition of medium risk exposure. That definition applies to SARS-CoV-2 and COVID-19 related hazards and job tasks, not “jobs”.

The term “close contact” is not used in the ETS. The term “close contact” is used by the CDC for determining when contact tracing should be conducted and is defined as “any individual within 6 feet of an infected person for at least 15 minutes.” 16VAC25-220-10.H specifically provides that:

H. Nothing in the standard shall be construed to require employers to conduct contact tracing of the SARS-CoV-2 virus or COVID-19 disease.

The Standard does not address the issue of “quarantine”. “Quarantine” is separation of people who were in “close contact” with a person with COVID-19 from others. The Standard does address the issue of “isolation”.

“Isolation” is the separation of people with COVID-19 from others. People in isolation need to stay home and separate themselves from others in the home as much as possible. Requirements for returning to work from isolation is covered by the ETS in 16VAC25-220-40.C. However, please note that in lieu of complying with 16VAC25-220-40.C, employers may comply with recently updated CDC guidelines (see §40 FAQ 18, <https://www.doli.virginia.gov/cononavirus-covid-19-faqs/>).

The issue of the differences between the Standard's return to work requirement and those of the CDC will be addressed in the revised proposed permanent standard. A Frequently Asked Question (FAQ) provided by DOLI addresses the issue as it pertains to the current Emergency Temporary Standard (ETS).

On July 22, 2020, the CDC changed its guidance with regard to symptoms-based strategies from exclusion for 10 days after symptom onset and resolution of fever for at least 3 days to exclusion for 10 days after symptom onset and resolution of fever for at least 24 hours (i.e., the change was from 72 hours to 24 hours). For persons who never develop symptoms (i.e., asymptomatic), isolation and other precautions can be discontinued 10 days after the date of their first positive RT-PCR test for SARS-CoV-2 RNA.

16VAC25-220-10.G.1 provides in part that:

To the extent that an employer actually complies with a recommendation contained in CDC guidelines, whether mandatory or non-mandatory, to mitigate SARS-CoV-2 virus and COVID-19 disease related hazards or job tasks addressed by this standard, and provided that the CDC recommendation provides equivalent or greater protection than provided by a provision of this standard, the employer's actions shall be considered in compliance with this standard.... (Emphasis added).

Employers who comply with the above-referenced change in CDC guidance issued July 22, 2020, will be considered to be providing protection equivalent to protection provided by complying with the requirements in the ETS.

However, nothing in the FAQ shall be construed to prohibit an employer from complying with the symptom-based or time-based strategies for return to work determinations in the ETS. (See §40 FAQ 18, <https://www.doli.virginia.gov/cononavirus-covid-19-faqs/>)

The Department intends to recommend that the return to work provisions of the standard be updated to reflect current CDC and VDH guidance.

The Department does not intend to change the definition of surgical/medical procedure mask as that definition is consistent with Food and Drug Administration (FDA) guidance. The FDA regulates surgical/medical procedure masks.

16VAC25-220-40.B.4 of the COVID-19 Emergency Temporary Standard (ETS), provides that “Employers shall develop and implement policies and procedures for employees to report when employees are experiencing symptoms consistent with COVID-19, and no alternative diagnosis has been made (e.g., tested positive for influenza)....” Such employees are then classified as “Suspected to be infected with SARS-CoV-2 virus” and may not report to the workplace until they have been cleared for return to work in accordance with ETS requirements. In situations where there is the possibility for an alternative diagnosis (such as allergies, the common cold, the flu, an ear infection, etc.) the employer has a number of options, including but not limited to, a positive test for influenza or the employee obtaining an alternative diagnosis from a medical authority.

In addition, the Virginia Department of Health provides the following guidance:

If the employee DID NOT have close contact with a COVID-19 case or an area with substantial COVID-19 transmission, but does have signs or symptoms and tested negative for SARS-CoV-2, the negative test can be considered as supporting an “alternative diagnosis”, and the person would not be considered suspected to be infected with SARS-CoV-2 virus. The employee must remain out of work until signs and symptoms have resolved and the employee has been fever-free for at least 24 hours without the use of fever-reducing medicine (unless symptoms are due to a known non-infectious cause, such as allergies).

NOTE: It is important to remember that a negative test for SARS-CoV-2 only means that the person wasn’t infected at the time the test was taken. If the person is ill one week, tests negative for SARS-CoV-2, and recovers from their illness, only to become ill again soon after, there is always the potential that the repeat illness may be related to COVID. Each illness should be handled as a distinct situation, meaning, the employee should not always be considered to be COVID-19 negative because they tested negative previously.

The Department does not intend to recommend any change to which employers are required to develop and implement an Infectious disease preparedness and response plan under 16VAC25-220-70. The current requirement exempts employers with 10 or fewer employees which eases the burden on the smallest employers with the most limited resources. The Department notes that a free template for a plan is provided on the Department’s website at: <https://www.doli.virginia.gov/covid-19-outreach-education-and-training/>

In addition, the Department strongly encourages Virginia’s small business owners to take advantage of free and confidential occupational safety and health onsite and virtual consultation and training services to address COVID-19 compliance issues. More information about the VOSH Consultation Services can be found at: <https://www.doli.virginia.gov/vosh-programs/consultation/>

Review of all COVID-19 related inspections under the Emergency Temporary Standard is conducted centrally by the Department with both a programmatic and legal review prior to a decision to issue or not issue violations/penalties to assure consistent enforcement across the Commonwealth. The Department does not anticipate any significant increase in litigation with regard to the Emergency Temporary Standard or any permanent standard.

86325 Dorothy A Jaeckle

9/25/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86325>

I am strongly opposed to any mandate to the general population. Choice for those at risk

Wearing masks should be a choice for those at risk. At this point all the mandates and regulations should be lifted. Places and events should be given a risk level (with the underlying data that identified those risks- (tracing results, number of cases, ages, severity, deaths). Citizens should then choose where they are comfortable.

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

86326 anonymous 9/25/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86326>

Department of Labor and Industry Announces Intent to Adopt a Permanent Standard for Infectious Disease

I strongly oppose this permanent standard.

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

86327 Terry Sopher Sr 9/25/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86327>

Yes PERMANENT regs but update to reflect latest science expertise re C19

I commend VA for planning to make permanent regulations and guidance. This is vital to recover the economy, stabilize businesses and resume effective education. Failing to institute effective management & control of C19 will result in more extended disruption of economy, more failure of businesses, & extended deprivation of income & education. Those who oppose govmt action like these proposed regulations, do not understand that FAILURE to do so will result in more economic disruption, business bankruptcy and job & income losses.

IMPROVE the regulations & guidance to be fully consistent with the very latest Covid research results that provide guidance on how to more effectively manage & end the C19 pandemic in USA. I refer you to the National Academies of Sciences Aug.26-27, 2020, workshop: ""Airborne Transmission of SARS-CoV-2"" The latest research confirms airborne transmission is a significant transmission source that must be properly managed if we are to end the pandemic & its disruption of economy, business, education, and community life. [see link: Airborne Transmission of SARS-CoV-2 ].

Consistent with this latest medical science/research, [AND encourage more rapid recovery of VA businesses, economy, jobs, education, health infrastructure & personnel; & to prevent further loss of lives, health, livelihoods], I recommend you add an introductory section of the regs/guidance that is worded something like the following:

""Our goal is to minimize transmission of C19 in order to protect citizens' health, prevent deaths, and minimize further disruption of the VA economy, businesses, jobs, education, & livelihoods. Synthesis of the latest scientific/medical research emphasizes 2 key points: (1) NO SINGLE STEP by itself will be effective in controlling C19; (2) C19's human toll & disruption of economy/business/jobs/livelihoods can best be achieved with a combination of simultaneous steps. That combination of steps includes the following: (1) universal

mask wearing indoors; (2) minimum physical distancing of 6 ft., even while wearing masks; (3) effective cleaning & disinfection of surfaces; (4) indoor air filtration to at least MERV 13 level; (5) higher than normal indoor ventilation rates providing at least 6 air changes per hour to dilute any indoor air concentrations of infectious virus particles. Consistent with this scientific guidance, VA's intent is to be a leader in promoting the adoption & practice of this combination of approaches to achieve maximum & timely protection of Virginian's health and livelihood.""

I urge revisions of the proposed regs/guidelines to adopt and reflect the following points that are based on the latest, sound medical/science research on C19 related topics.

1. universal mask wearing indoors is the ONLY effective means of controlling & managing the pandemic given that (a) quick response testing is NOT widely available; (b) it may take 14-21 days for a person to develop symptoms, but they can be infectious from day #1; (c) many people can be either ASYMPTOMATIC or have mild symptoms mistaken for a common cold or flu; (d) it is NOT TRUE THAT A MASK does not protect the wearer from others' viruses; (e) normal breathing, talking, etc emits a large cloud/plume of large & microscopic particles that travel much farther than 6 ft indoors & such cloud can be very infectious if from an infected person.

2. the most effective--& preferred--filter mask/face covering for everyone [nonmedical] is either (a) an N95 NIOSH tested & approved disposable filtering face piece, or (b) an K95 one authorized by FDA & preferably sampl tested by NIOSH. DIY & many other masks/face coverings seldom are effective at filtering out most virus-sized particles.

3. 16VAC25-220-30 definitions section should be revised to reflect the above referenced latest science info.

4. 16VAC25-220-30 definition of AIR needs revision to provide the following: air exhausted outside must NOT occur in the following situations: (1) where the exhausted air will be directed toward areas people occupy or frequent; (2) where exhausted air may cross contaminate the building's ventilation air intake zone.

5. definition of ""Disinfectants"". (a) selected EPA-registered disinfectants should AVOID those containing substances known to cause adverse health effects, such as those containing quaternary ammonia that is a known respiratory irritant. (b) This section improperly refers to 'killing' viruses--the correct reference would be to 'neutralizing' or making 'nonviable', given that viruses are technically NOT alive.

6. Face shields: it should be noted that face shields ONLY protect from large wet droplets, but do NOT prevent exposure to the airborne particles that can get to the eyes or be inhaled when the air plume merely goes around the edges of the shield. Face shields must be combined with filtering face mask to effectively protect the person from inhaling airborne particles.

7. Definition of 'face coverings': based on latest research it is wrong to assert that face coverings are 'not intended to protect the wearer...."

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SEE DEPARTMENT RESPONSE TO COMMENT 84196

SEE DEPARTMENT RESPONSE TO COMMENT 85974

The Standard does not contain a face covering mandate for the general public. That issue is the purview of the Virginia Department of Health and Governor's Executive Orders (e.g., Executive Order 63).



The issue of N-95 respirators raised by the Commenter is appropriate to address during the personal protective equipment (PPE) hazard assessment process required in General Industry under 1910.132.

The Department notes that the ASHRAE air handling requirements are undergoing a legal review which may result in recommended changes that could address some of air handling issues raised by the Commenter.

The Department does not intend to recommend revising the standard to address the Commenter's concern about those disinfectants containing substances known to cause adverse health effects, such as those containing quaternary ammonia that is a known respiratory irritant. That issue is more appropriately dealt with under the requirements of the Hazard Communication Standard applicable to the employer's industry.

The Department intends to recommend revisions to the Standard dealing with face shield issues.

The Department intends to recommend a change to the definition of face covering.

86328 William Cornell 9/25/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86328>

Absolutely Not

This is an insane infringement upon personal liberty with no justification. The Pandemic is over. The death rates all across the world have plummeted, hospitalizations are incredibly low, and the most folks under the age of 90 will suffer mild if any symptoms. This is an outrageous abuse of power by politicians with no grasp of reality, of science, of statistics, or of the huge unintended impacts their overreaction to COVID has caused. Economic, emotional, educational, and psychological damage is real. And the masks do NOT stop the spread of COVID.

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

The Department has no response to the Commenter's political commentary."

86330 Scott Tilley, General Counsel, STIHL Incorporated 9/25/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86330>

Significant concerns with proposed permanent standard

STIHL Incorporated is the largest manufacturer and one of the largest private employers in Virginia Beach. As a manufacturer of essential equipment under the CISA definition, STIHL has been following CDC guidance for critical infrastructure workers since the beginning of the pandemic. The lack of clarity in the Emergency Temporary Standard, as well as inconsistencies with the CDC and other agencies/guidance (and even within itself) have been of significant concern to manufacturers and essential employers like STIHL. The "one size fits all" approach of this standard cannot work for the diversity of businesses, and even manufacturers, in the Commonwealth. It is even more concerning that such inconsistencies and lack of clarity are making their way into the Proposed Permanent Standard. STIHL remains committed to protecting the safety of its employees while fulfilling its critical role as an essential manufacturer. Thus, for the reasons stated above, STIHL joins in the detailed comments submitted by the Virginia Manufacturers Association and the Virginia

Chamber of Commerce in opposing the adoption of the Proposed Permanent Standard or at least delaying it until the detailed comments and concerns can be sufficiently addressed.

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SEE DEPARTMENT RESPONSE TO COMMENT 85680

The issue of the differences between the Standard's return to work requirement and those of the CDC will be addressed in the revised proposed permanent standard. A Frequently Asked Question (FAQ) provided by DOLI addresses the issue as it pertains to the current Emergency Temporary Standard (ETS).

On July 22, 2020, the CDC changed its guidance with regard to symptoms-based strategies from exclusion for 10 days after symptom onset and resolution of fever for at least 3 days to exclusion for 10 days after symptom onset and resolution of fever for at least 24 hours (i.e., the change was from 72 hours to 24 hours). For persons who never develop symptoms (i.e., asymptomatic), isolation and other precautions can be discontinued 10 days after the date of their first positive RT-PCR test for SARS-CoV-2 RNA.

16VAC25-220-10.G.1 provides in part that:

To the extent that an employer actually complies with a recommendation contained in CDC guidelines, whether mandatory or non-mandatory, to mitigate SARS-CoV-2 virus and COVID-19 disease related hazards or job tasks addressed by this standard, and provided that the CDC recommendation provides equivalent or greater protection than provided by a provision of this standard, the employer's actions shall be considered in compliance with this standard.... (Emphasis added).

Employers who comply with the above-referenced change in CDC guidance issued July 22, 2020, will be considered to be providing protection equivalent to protection provided by complying with the requirements in the ETS.

However, nothing in the FAQ shall be construed to prohibit an employer from complying with the symptom-based or time-based strategies for return to work determinations in the ETS. (See §40 FAQ 18, <https://www.doli.virginia.gov/cononavirus-covid-19-faqs/>)

86332 anonymous

9/25/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86332>

Strongly oppose!

I strongly oppose any more restrictions or permanent requirements in Virginia. Humans have been subjected to viruses for thousands of years. We defeat them by developing a strong immune system and herd immunity. Masks, social distancing and other lockdown measures cause more harm than good because they delay herd immunity, cause mental health issues, and cause more businesses to close due to the impossibility of maintaining these draconian measures while trying to run a business profitably. Let people take care of their own health!

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SEE DEPARTMENT RESPONSE TO COMMENT 84956

"The Virginia Forest Products Association ("VFPA") appreciates the opportunity to comment on the Virginia Department of Labor and Industry's Permanent Standard for Infectious Disease Prevention: SARS-CoV-2 Virus That Causes COVID-19, 16 VAC 25-220 (collectively, the "Regulations"). The VFPA has previously commented on the Emergency Temporary Standard; we urge you once again to align any standard with CDC and OSHA guidance. Further, we strongly oppose this proposed regulation that adopts a permanent standard for a temporary pandemic.

VFPA's members are primarily small to medium-sized businesses, many of them family owned and operated and most with under 50 employees. A number of our member mills do not provide health insurance or paid sick leave; they simply cannot afford it. Any additional regulation adds to costs and imposes recordkeeping burdens that are unnecessary. The temporary regulation we are currently following is problematic in a number of areas. We are very concerned that a permanent regulation would enshrine directives that are in conflict with federal regulation and Virginia Code, and will leave our members with expensive mandates.

Specifically, VFPA respectfully requests that:

Section 10g should be amended to the agency's original language providing "safe harbor" for employers who follow CDC and OSHA guidance.

Vague language in Section 40 be stricken regarding sick leave policies. Virginia Code does NOT require that employers provide sick leave, paid or otherwise. It is unconstitutionally vague and it exceeds the agency's statutory authority to direct insurance or benefit coverage. The agency's purview is oversight of the physical work environment; the Code has not given it oversight for employee benefits nor the ability to cite or fine employers for not providing benefits.

Language in Section 40 regarding "Return to Work" should be amended to mirror the latest CDC Guidance issued August 10 regarding the time-based return-to-work rule. The CDC now recommends at least 10 days symptom-free before returning to work, not 3 as stated in the regulation. Again, this regulation should be consistent in all ways with CDC medical guidance.

Language in Section 70 ("Infectious Disease Preparedness and Response Plan"), Item 6, should be stricken. No business should be responsible for those not under their direct employment to comply with this regulation, nor should they be sanctioned when non-employees violate any part of this regulation.

Language in Section 70 should be eliminated regarding requirements to include business considerations (e.g., how to handle supply chain issues, crosstraining to prepare for staff shortages) that have nothing to do with employee safety. Again, these internal business operational decisions are beyond the legal authority and purview of the agency.

All of the language in Section 90 regarding discrimination against employees who raise concerns to the public through social media should be stricken. There is no other similar protection we are aware of for employees to distribute potentially damaging and unfounded information against an employer with impunity.

The duty of employers to report positive employees to the Department of Health should be eliminated, as health care providers are already reporting this data to the Health Department.

Finally, we would strongly suggest that this Permanent Standard sunsets with the Governor's State of Emergency, just as the Emergency Temporary Standard does. Again, without this sunset, regulations will be in effect for a pandemic that, with the advent of a vaccine, will no longer be necessary.

In closing, we would like to reiterate our opposition to a permanent standard for COVID-19. However, should a permanent standard be adopted we strongly urge a sunset provision with the specific changes cited above.

Thank you for this opportunity to comment.

Sincerely,

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"SEE DEPARTMENT RESPONSE TO COMMENT 84956

With regard to the ""safe harbor"" issue, the Department notes that the Standard provides flexibility to business through 16VAC25-220-10.G.1 which provides that "To the extent that an employer actually complies with a recommendation contained in CDC guidelines, whether mandatory or non-mandatory, to mitigate SARS-CoV-2 virus and COVID-19 disease related hazards or job tasks addressed by this standard, and provided that the CDC recommendation provides equivalent or greater protection than provided by a provision of this standard, the employer's actions shall be considered in compliance with this standard." The Standard is clear that employer's wishing to take advantage of 16VAC25-220-10.G.1 must comply with both mandatory and non-mandatory provisions in the specific CDC guidelines, and those provisions must provide equivalent or greater protection than provided by a provision of the Standard.

The Department does not plan to recommend that 16VAC25-220-10.G be returned to its original language. It is the Department's position that similarly situated employees and employers exposed to the same or even more serious hazards or job task should all be provided the same basic level of safety and health protections. The Standard's language in 16VAC25-220-10.G assures such protections.

The Department does not plan to recommend changes to sick leave provisions in the Standard.

The Standard does not require employers to provide sick leave to employees. It does reference the Families First Coronavirus Response Act (FFCRA) at 16VAC25-220-40.B.6:

6. To the extent feasible and permitted by law, including but not limited to the Families First Coronavirus Response Act, employers shall ensure that sick leave policies are flexible and consistent with public health guidance and that employees are aware of these policies.

Further information about the FFCRA and sick leave policies can be found at:  
<https://www.dol.gov/agencies/whd/pandemic/ffcra-employee-paid-leave>

The Department does not plan to recommend that 16VAC25-220-10.G be returned to its original language. It is the Department's position that similarly situated employees and employers exposed to the same or even more serious hazards or job task should all be provided the same basic level of safety and health protections. The Standard's language in 16VAC25-220-10.G assures such protections.

The Department disagrees that the sick leave language referenced is unconstitutionally vague. The Standard does not require employers to provide sick leave to employees. It does reference the Families First Coronavirus Response Act (FFCRA) at 16VAC25-220-40.B.6:

6. To the extent feasible and permitted by law, including but not limited to the Families First Coronavirus Response Act, employers shall ensure that sick leave policies are flexible and consistent with public health guidance and that employees are aware of these policies.

Further information about the FFCRA and sick leave policies can be found at:  
<https://www.dol.gov/agencies/whd/pandemic/ffcra-employee-paid-leave>

The language referred to by the Commenter in 16VAC25-220-70.C.6 states ""Provide for the prompt identification and isolation of known or suspected to be infected with the SARS-CoV-2 virus employees away from work, including procedures for employees to report when they are experiencing symptoms of COVID-19. This provision applies to employees of the employer, not employees of other employers such as contractors.

The Department does not plan to recommend the elimination of reporting requirements to the Department of Health, although it does intend to recommend a change to the trigger number of positive cases. DOLI and the Virginia Department of Health (VDH) have collaborated on a Notification Portal for employers to report COVID-19 cases in accordance with Emergency Temporary Standard (ETS) Sections 16VAC25-220-40.B.8.d and -40.B.8.e that satisfies COVID-19 reporting requirements for both agencies. The portal went live on September 28, 2020. Here is a link:

<https://www.doli.virginia.gov/report-a-workplace-fatality-or-severe-injury-or-covid-19-case/>

The Department intends to recommend language changes to the ""business consideration"" language in 16VAC25-220-70.C.5 referenced by the Commenter to make clear that the language is related to occupational safety and health concerns.

The Department does not intend to recommend any change to 16VAC25-220-90.C as it is the position of the Department that it reflects the current state of case law on the subject.

Pursuant to Va. Code §40.1-51.2:1, employees are protected from discrimination when they engage in activities protected by Title 40.1 of the Code of Virginia ("because the employee has filed a safety or health complaint or has testified or otherwise acted to exercise rights under the safety and health provisions of this title for themselves or others.").

Whether an employee engaged in a "protected activity" under Title 40.1 is very fact specific, but can include occupational safety and health information shared by an employee about their employer on a social media or other public platform in certain situations.

16VAC25-220-90.C provides that:

No person shall discharge or in any way discriminate against an employee who raises a reasonable concern about infection control related to the SARS-CoV-2 virus and COVID-19 disease to the employer, the employer's agent, other employees, a government agency, or to the public such as through print, online, social, or any other media.

If an employee raises an unsubstantiated COVID-19 related claim or makes a false COVID-19 related claim against their employer through print, online, social, or any other media, such an act by an employee would not be considered "reasonable" under the ETS and disciplinary action taken against the employee in accordance with the employer's human resource policies would not be considered "discrimination" under the ETS/ER or Va. Code §40.1-51.2:1.

86334 anonymous 9/25/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86334>

Strongly oppose this issue!

I strongly oppose the creation of even more restrictions and regulations. These lockdowns, masks and social distancing are creating an even bigger medical crisis related to mental health, suicide, delayed medical treatments, domestic violence, and others.

Businesses cannot operate the way they want and the cost of trying to maintain these ridiculous mandates are causing many to go out of business and therefore causing a budget shortfall due to lack of tax revenue.

Let people and businesses take care of themselves. We the people do not want you imposing any restrictions on our life, liberty and pursuit of happiness!

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SEE DEPARTMENT RESPONSE TO COMMENT 84956

86335 anonymous 9/25/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86335>

Strongly oppose

Strongly oppose

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

86337 anonymous 9/25/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86337>

Very much opposed!

I am strongly opposed to any further restrictions or regulations causing hardships for businesses and individuals. We have survived many viruses in the past, and we do not need the government interfering in businesses any more. Small business can barely survive under the restrictions already in place. Let everyone alone and let us get back to normal-and never, ever do this again! Our constitutional rights are not diminished just because there is a virus.

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SEE DEPARTMENT RESPONSE TO COMMENT 84956

86338 Janet Wainwright UFCW local 400 9/25/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86338>

Protect workers

ensure customers and workers wear mask or shields. Protect workers jobs if they contract the disease.  
Employer checks temps of all employees.

free testing by employers

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SEE DEPARTMENT RESPONSE TO COMMENT 84196

86339 Gloria Wolcott 9/25/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86339>

that mandates additional requirements for Virginia employers related to workplace safety due to COVI

NO WAY. THIS IS WRONG. THIS IS SOCIALISM MANDATE AND I STRONGLY OPPOSE!!!

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

The Department has no response to the Commenter's political commentary.

86340 anonymous 9/25/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86340>

DOLI rules permanent

STRONGLY OPPOSED.

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

86341 anonymous 9/25/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86341>

STRONGLY OPPOSED

STRONGLY OPPOSED

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

86342 David Hutton 9/25/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86342>

Strongly opposed to these regulations.

Strongly opposed to these regulations. Very detrimental to small businesses in the Commonwealth.

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SEE DEPARTMENT RESPONSE TO COMMENT 84956

86344 Debbie Berkowitz National Employment Law Project 9/25/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86344>

We strongly Support A Permanent Standard

Dear Commissioner Davenport and Members of the Safety and Health Codes Board,

The National Employment Law Project (NELP) submits the following comments in strong support of the adoption of a Permanent Standard for Infectious Disease Prevention: SARS-CoV-2 Virus that Causes COVID-19, 16 VA 25-220. This standard must be applicable to every employer, employee, and place of employment in the Commonwealth of Virginia within the jurisdiction of the Virginia Occupational Safety and Health Program. We urge the Virginia Safety and Health Codes Board and the Department of Labor and Industries to adopt as permanent the current Emergency Temporary Standard[i] on COVID-19 with a few recommended changes to strengthen the rule.

NELP is a non-profit law and policy organization with 50 years of experience providing research, advocacy, and public education to advance the employment and labor rights of the nation's workers. NELP seeks to ensure that all employees, and especially the most vulnerable ones, receive the full protection of employment laws, including health and safety protections. NELP's Worker Health & Safety Program Director, Deborah Berkowitz, is a former OSHA official and expert in OSHA enforcement and health and safety standards. NELP works with unions such as the United Food and Commercial Workers Union and the International Brotherhood of Teamsters in Virginia (VA), as well as VA based community and worker rights organizations such as Virginia Legal Aid Justice Center and the Virginia Interfaith Center for Public Policy. NELP also works with employers through the American Sustainable Business Council.

In this pandemic, protecting workers from exposure to COVID-19 at work will ensure that workplaces don't become vectors of COVID-19 infection that then spread back out into the community. This week, we mark the startling fact that our nation has now seen over 200,000 deaths from COVID-19 and 6.9 million cases,[ii] a clear sign the virus is not disappearing. The number of deaths continues to climb, as do outbreaks nationwide and in Virginia. Without permanent protections at work, workers will be at unnecessary risk. NELP urges the Board and DLI to do their job and protect workers and the public by implementing a permanent standard.

We have seen firsthand in just a few short months since it went into effect, how the Virginia Emergency Temporary Standard for COVID-19 has protected workers. For example, NELP provided technical assistance in a situation where workers were very concerned about unsafe conditions related to COVID-19, and then they read the standard and realized their employer had an obligation to provide certain protections and raised these issues. In addition, we are aware of a complaint filed right after the standard was implemented that alleged violations of the standard. It resulted in immediate changes in the workplace once Virginia OSH began its inspections.

The Emergency Temporary Standard (16VAC25-220) is a common-sense standard based on science and long-standing effective occupational health and safety practices. We support all the key protective provisions of the standard that seamlessly work together to create a strong and effective standard (Section 10 through



Section 90), including the requirement for assessing the workplace for hazards and job tasks that can potentially expose employees to COVID-19; the return to work protective requirements; the notification requirements of positive cases to workers, health departments, tenants, and VOSHA; requirements for cleaning and disinfecting; requirements to provide handwashing /hand sanitizers; the comprehensive anti-retaliation language in 16VAC25-220-90; and the requirements for ventilation, physical distancing, masks, protective equipment and training. Virginia must make this standard permanent.

We strongly support the adoption of the Emergency Temporary Standard as a permanent standard with the following suggestions:

1.Delete 16VAC25-220-10 G. This clause must be deleted so that it is clear to all covered businesses that they must comply with this standard. Standards are set so workers though out the state are guaranteed a certain level of uniform protection. Employers are always free to implement more protective measures. This clause is confusing to both workers and employers about what is required, and this must be deleted from the standard.[iii]

2.Include in 16VAC25-220-40 C the requirement that workers who have been in close contact with someone who has COVID-19 shall not report to work until they have quarantined for 14 days per CDC guidance.[iv] This must include a requirement that the employer must provide up to two weeks of paid reassignment or sick leave in addition to whatever benefits to which the worker would otherwise be entitled (such leave will be provided at 40 hours per week for full-time employees and on a pro-rata basis for part time employees.)

We thank you for your time and consideration. Since early February, we have known that COVID-19 has been spreading in the workplace. Though all workers either on the job now, or returning to work in the near future, are at risk of illness and death, Black and Latinx[v] workers and other workers of color, including immigrants, are more likely to be in frontline jobs and these communities have disproportionate rates of serious illness and death related to COVID-19. If exposure to COVID -19 is not mitigated at work, it will continue to spread in the workplace and then back out into the community. The Virginia Safety and Health Codes Board and the DLI must do their job and approve this standard to protect workers in the great state of Virginia, and thus all Virginians.

Sincerely,

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SEE DEPARTMENT RESPONSE TO COMMENT 84196

SEE DEPARTMENT RESPONSE TO COMMENT 85974

86345 Hampton Roads Association for Commercial Real Estate Hampton Roads Association for Commercial Real Estate 9/25/2020 <https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86345>

HRACRE REQUEST TO AMEND THE REGULATION

Ladies and Gentlemen:

Thank you for the opportunity to comment on the Virginia Department of Labor and Industry's ("DOLI") recommended regulations adopting a Permanent Standard for Infectious Disease Prevention: SARS-CoV-2 Virus That Causes COVID-19, 16 VAC 25-220 (the "Regulation"). This comment letter is provided on behalf of the Hampton Roads Association for Commercial Real Estate ("HRACRE").

As the primary representative for the commercial real estate industry in the Hampton Roads area, HRACRE has 458 members who will be directly impacted by any unintended consequences from extensions of COVID-19 regulations. As is expected of the commercial real estate industry, safety is a top priority, and HRACRE continues to support legislation and regulations that protect individuals from this deadly pandemic. An overly broad approach to infection mitigation, however, will inflict unnecessary damage on an already burdened industry.

HRACRE strongly advises the board that it is unreasonable to apply the Regulation for an open-ended time frame. The current Regulation proposes that COVID-19 safety regulations would last without any official termination date or date for reevaluation. This type of open-ended regulation would unnecessarily burden the commercial real estate industry. Further, the lack of a termination date requires DOLI to engage in this same laborious rule making process to end the regulations once the COVID-19 pandemic subsides. A simple amendment causing the Regulation to sunset with the Governor's State of Emergency Declarations would achieve several goals: 1) give the commercial real estate industry clarity and security on which to plan operations, and 2) provide the government with a self-imposed duty to reevaluate the need for the Regulation.

Therefore, HRACRE recommends that the board amend the Regulation to terminate simultaneously with the expiration of the Governor's State of Emergency Declarations.

Sincerely,

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SEE DEPARTMENT RESPONSE TO COMMENT 84956

86346 Tom Klancer 9/25/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86346>

Strongly support

Face coverings are shown to be the most effective defense we have against the spread of COVID-19. The people of Virginia must be able to trust that they can stay safe while continuing to keep the economy afloat. The proposed protections will help keep employees, employers, and the general public safe.

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SEE DEPARTMENT RESPONSE TO COMMENT 84196

86347 Jane Elliott 9/25/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86347>

Completely Opposed to COVID permanent standards!

I am completely opposed to making Covid restrictions a permanent regulation. These current restrictions have produced nothing but negative effects on individuals, families, society, businesses, and most importantly, worship services.

Please stop these stifling restrictions before our way of life is completely destroyed.

SEE DEPARTMENT RESPONSE TO COMMENT 84237

86348 Vanessa Patterson, Richmond Area Municipal Contractors Association 9/25/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86348>

Heavy Construction Strongly Opposes Adopting a Permanent Standard

Members of the Safety and Health Code Board,

The Richmond Area Municipal Contractors Association (RAMCA) represents companies in heavy construction and their associate partners who provide products and services to the industry. For 55 years, RAMCA has worked cooperatively on a broad range of important issues relating to the infrastructure needs of the Commonwealth. RAMCA provides a forum designed to improve the business practices and the construction environment in which our employees work. The health and safety of our employees is our highest priority. On behalf of RAMCA, I oppose adopting a Permanent Standard for Infectious Disease Prevention: SARS-CoV-2 Virus that Causes COVID-19, 16VAC25-220.

- Construction is an essential industry. As such, our members have been performing critical work from the onset of the pandemic. The health and safety of all employees and the community around us is the top priority of our companies. Promoting a culture of safety is a primary operating principle of our employers. The industry, already regulated under multiple federal and state occupational health and safety programs, began implementing CDC and OSHA Guidelines for COVID-19 in the construction workplace as soon as they were published.
- Virginia’s Emergency Temporary Standard (ETS) for COVID-19 became effective four and a half months after the State of Emergency was declared and ensuing Executive Orders took affect. During those months, the construction industry implemented critical safety measures to ensure the health of their employees. The federal guidelines for construction were working.
- What was believed to be true about the transmission of SARS-CoV-2 virus in April, when the ETS was proposed to the Administration, has changed, rendering the ETS outdated. As the ETS was not effective until July 27, 2020, our industry had long been operating successfully under the CDC and OSHA guidelines.
- As the science has changed, the ETS has not, nor do they have the flexibility to do so as either science changes or innovation occurs. As an example, the disinfection standard requirements are based on practices that now may not provide meaningful reduction in transmission. The disinfection standards for tools and equipment are burdensome and time consuming. An hour a day or more is spent by each crew in some cases. Procurement of necessary disinfection items is time consuming, distracts from other job functions, and supply chain issues still impact the ability to obtain disinfectant approved for use against SARS-CoV-2 as defined in 16VA25-220-30.
- The cost to the industry, employing 184,4901 Virginians, to train all employees on the symptoms of COVID-19 and transmission of the SARS-CoV-2 Virus (16VAC25-220-80) at a mean hourly wage of \$24.492 for an average of one hour, is an industry wide expense of \$4.5M. After four and half months of Virginians living during the pandemic with the nonstop coverage, the symptoms and transmission information were widely known rendering this requirement unnecessary.

- The cost to the industry of the training requirements of the Infectious Disease Preparedness and Response Plan (16VAC25-220-70), for all 184,490 employees for an additional hour is an added \$4.5M expense for an industry-wide total of \$9.0M of training expenses. This does not include the cost of time and labor to create individual company plans of approximately 40 hours by a supervisory level employee. To have placed this financial burden on the industry is unconscionable, particularly during a time of high unemployment in the state due to business closures mandated by Executive Orders from the administration. The industry has a critical shortage of qualified workers and those funds could be spent training and hiring unemployed workers. The industry would have been better served investing those funds in workforce development and training programs such as the Heavy Equipment Operator (HEO) programs in the community college system that serves as a pipeline of candidates for well-paying jobs in heavy construction. \$9.0M is a year of salary for 180 new employees including tuition reimbursement for the 12-week certification.

- The ETS require non-medically trained individuals to be in the health screening business. Daily screenings add another 30 minutes at the start of a shift. Multiply that by every shift of every crew and less work is being accomplished across the Commonwealth. Individuals must take accountability for their own health and not report to work if they are exhibiting symptoms of COVID-19. It's been over six months; Virginians should be very well aware of COVID-19 symptoms. RAMCA member companies have generous paid sick leave policies that cover COVID-19 absences. This relieves the employee of being forced to choose between working and staying home. These daily screenings take crew leaders away from performing their other job duties, impacting overall productivity.

- The nature of the construction bidding process did not allow companies to properly bid jobs to include the increased costs of disinfecting materials, man hours spent cleaning and the man hours necessary to perform health screenings. If these burdensome standards become permanent and lack the flexibility to change with the science, future bids will include these increased costs of doing business, ultimately increasing costs of future projects for the Commonwealth.

- Construction job tasks falls into the "Low" and "Medium" (16VAC25-220-30) exposure category. The ETS use "Grave" danger to regulate ALL businesses in Virginia, yet the great majority of deaths in the Commonwealth were patients over 70 years old. On September 23rd, 2020 the Virginia Department of Health (VDH) Dashboard reported 79% or 2269 of the 2882 reported deaths were 70+. It is unlikely many of those over the age of 70 were actively still in the workforce. Of the total 2882, the remaining 613 deaths over the 6 month period represent a .007% death rate in Virginia based on the population of 8,536,0003. Further as of September 23rd, 54% or 1556 deaths were patients in long-term care and correctional facilities. As not all of the 1556 deaths fall into the over 70 category, it is likely that less than 613 deaths were potentially working Virginians. Employment data or how and where exposure occurred is not included in the reporting.

- With the likely death rate for working Virginians to be less than .007%, the definition of "Grave" danger used to regulate ALL businesses in Virginia, must be reviewed. There is no empirical evidence that "Low" and "Medium" risk workplaces present a "grave" danger to employees. In fact, as the ETS has been in place for less than 2 months, the CDC and OSHA guidelines the Construction industry has been using for the past six months have effectively protected the health and safety of our workers.

Further, I am firmly opposed to any amendment to include other flus, viruses, cold or other communicable diseases in any permanent standard. There is no one-size fits all plan to combat a wide variety of infectious illnesses.

The ETS is burdensome, obsolete, difficult to enforce, costly in time and money, and lacks the flexibility to adapt to current science and innovation. I am strongly opposed to the adoption of these as a Permanent Standard for what is a temporary health emergency.

The construction industry remains committed to the safety of our workers and the citizens of the Commonwealth. I welcome the opportunity to work with all stakeholders to develop any necessary policies regarding the health and safety of workers in the construction industry.

Thank you for the opportunity to publicly comment.

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SEE DEPARTMENT RESPONSE TO COMMENT 84956

SEE DEPARTMENT RESPONSE TO COMMENT 86359

86349 Kim Pierpoint, Pierpoint Construction, Inc. 9/25/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86349>

Opposed to permanant COVID 19 restrictions

I am opposed to making the emergency face covering restrictions permanent. Businesses should be allowed to make safety decisions for their customers based on health data provided. For example if safe distancing is practiced, the face masks are not necessary. If employees have separated work spaces, masks are not necessary.

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SEE DEPARTMENT RESPONSE TO COMMENT 84196

86351 Kristal Rose 9/25/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86351>

I strongly oppose making the wearing of masks a permanent mandate! Masks do little to protect against the spread of viruses and have greatly increased the crime rates. I fear for my children every time we have to go to a store wearing masks, their identity is covered and human trafficking is rampant in our country. Also larceny, shoplifting, and crime in general has increased since mandating the wearing of masks. In fact, wearing a mask in public was illegal until recently for good reason and needs to be made that way again!

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SEE DEPARTMENT RESPONSE TO COMMENT 85535

86353 Karen Winstead 9/25/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86353>

No mask mandates. As a health care provider and a citizen of Virginia, I am totally against any mandate for any type of health care prevention or treatment. The reports coming from the CDC and our own VDH show

that even when the numbers testing Covid positive are increasing, the actual numbers of people sick with Covid requiring hospitalization remains minimal. Covid is not a health care emergency and even in the event that it was, the mandate to wear masks and social distance should be left to the individual based on their individual health status, philosophy of health, and the recommendations of their health care provider. The state government has NO role in mandating individual's health practices or beliefs.

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SEE DEPARTMENT RESPONSE TO COMMENT 84956

SEE DEPARTMENT RESPONSE TO COMMENT 85535

86354 Burgess Inspections, Inc. Burgess Inspections, Inc. 9/25/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86354>

Adopting 16VAC25-220 as permanent regulations

As a small business owner I request the board to reject adopting the temporary standard as a permanent regulation. The CDC recommendations regarding safety protocols for COVID-19 have changed numerous times as they have learned more about the virus. It is not practical to create a permanent regulation while science of the virus continues to unfold. The permanent requirements would restrict employers flexibility to make necessary changes when new safety recommendations are issued. I recommend Virginia follow recommended safety protocols issued by the CDC and OSHA.

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SEE DEPARTMENT RESPONSE TO COMMENT 84956

The issue of the differences between the Standard's return to work requirement and those of the CDC will be addressed in the revised proposed permanent standard. A Frequently Asked Question (FAQ) provided by DOLI addresses the issue as it pertains to the current Emergency Temporary Standard (ETS).

On July 22, 2020, the CDC changed its guidance with regard to symptoms-based strategies from exclusion for 10 days after symptom onset and resolution of fever for at least 3 days to exclusion for 10 days after symptom onset and resolution of fever for at least 24 hours (i.e., the change was from 72 hours to 24 hours). For persons who never develop symptoms (i.e., asymptomatic), isolation and other precautions can be discontinued 10 days after the date of their first positive RT-PCR test for SARS-CoV-2 RNA.

16VAC25-220-10.G.1 provides in part that:

To the extent that an employer actually complies with a recommendation contained in CDC guidelines, whether mandatory or non-mandatory, to mitigate SARS-CoV-2 virus and COVID-19 disease related hazards or job tasks addressed by this standard, and provided that the CDC recommendation provides equivalent or greater protection than provided by a provision of this standard, the employer's actions shall be considered in compliance with this standard.... (Emphasis added).

Employers who comply with the above-referenced change in CDC guidance issued July 22, 2020, will be considered to be providing protection equivalent to protection provided by complying with the requirements in the ETS.

However, nothing in the FAQ shall be construed to prohibit an employer from complying with the symptom-based or time-based strategies for return to work determinations in the ETS. (See §40 FAQ 18, <https://www.doli.virginia.gov/conronavirus-covid-19-faqs/>)

86355 David Neubeiser, ACS 9/25/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86355>

Strongly Oppose!

No new regulations. I am completely opposed to making Covid restrictions a permanent regulation. These current restrictions have produced nothing but negative effects on individuals, families, society, businesses, and most importantly, worship services.

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

86359 Vanessa Patterson, Precast Concrete Association of Virginia 9/25/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86359>

THIS COMMENT WAS ALSO SUBMITTED DIRECTLY TO THE DEPARTMENT AT:  
<https://www.doli.virginia.gov/wp-content/uploads/2020/10/PCAV-Comments-Permanent-Standard-for-Infectious-Disease-Prevention-SARS-CoV-2-Virus.pdf>

Precast Concrete Industry Strongly Opposes Adopting a Permanent Standard

Members of the Safety and Health Code Board,

The Precast Concrete Association of Virginia (PCAV) represents companies in the precast concrete industry that produce essential products to support the infrastructure needs of the Commonwealth. On behalf of the PCAV, I oppose adopting a Permanent Standard for Infectious Disease Prevention: SARS-CoV-2 Virus that Causes COVID-19, 16VAC25-220.

- The producers of precast concrete products and the associate partners who provide necessary elements used in the manufacturing process, are a critical part of the Construction industry. Construction is an essential industry and as such, our members have been manufacturing critical infrastructure related products from the onset of the pandemic. The health and safety of all employees and the community around us is the top priority of our companies. Promoting a culture of safety is a primary operating principle of our employers. The industry, already regulated under multiple federal and state occupational health and safety programs, began implementing CDC and OSHA Guidelines for COVID-19 in the construction workplace as soon as they were published.
- Virginia’s Emergency Temporary Standard (ETS) for COVID-19 became effective four and a half months after the State of Emergency was declared and ensuing Executive Orders went into affect. During those months, the PCAV members implemented critical safety measures to ensure the health of their employees. The federal guidelines for construction were working.

- What was believed to be true about the transmission of SARS-CoV-2 virus in April, when the ETS was proposed to the Administration, has changed, rendering the ETS outdated. As the ETS was not effective until July 27, 2020, our industry had long been operating successfully under the CDC and OSHA guidelines.
- As the science has changed, the ETS have not, nor do they have the flexibility to do so as either science changes or innovation occurs. As an example, the disinfection standard requirements are based on practices that now may not provide meaningful reduction in transmission. The disinfection standards for tools and equipment are burdensome and time consuming. An hour a day or more is spent by each crew in some cases. Procurement of necessary disinfection items is time consuming, distracts from other job functions, and supply chain issues still impact the ability to obtain disinfectant approved for use against SARS-CoV-2 as defined in 16VA25-220-30.
- The costs to the industry, employing 184,4901 Virginians, to train all employees on the symptoms of COVID-19 and transmission of the SARS-CoV-2 Virus (16VAC25-220-80) at a mean hourly wage of \$24.492 for an average of one hour, is an industry wide expense of \$4.5M. After four and half months of Virginians living during the pandemic with the nonstop coverage, the symptoms and transmission information were widely known rendering this requirement unnecessary.
- The cost to the industry of the training requirements of the Infectious Disease Preparedness and Response Plan (16VAC25-220-70), for all 184,490 employees for an additional hour is an added \$4.5M expense for an industry-wide total of \$9.0M of training expenses. This does not include the cost of time and labor to create individual company plans of approximately 40 hours by a supervisory level employee. To have placed this financial burden on the industry is unconscionable, particularly during a time of high unemployment in the state due to business closures mandated by Executive Orders from the administration. \$9.0M would be a year of salary for 180 new employees.
- The ETS require non-medically trained individuals to be in the health screening business. Daily screenings add another 30 minutes at the start of a shift. Multiply that by every shift and less work is being accomplished across the Commonwealth. Individuals must take accountability for their own health and not report to work if they are exhibiting symptoms of COVID-19. It's been over six months; Virginians should be very well aware of COVID-19 symptoms. PCAV member companies have generous paid sick leave policies that cover COVID-19 absences. This relieves the employee of being forced to choose between working and staying home. These daily screenings take leaders away from performing their other job duties, impacting overall productivity.
- If these burdensome standards become permanent and lack the flexibility to change with the science, future product pricing will include increased costs of doing business, ultimately increasing costs of future projects for the Commonwealth.
- Construction job tasks falls into the "Low" and "Medium" (16VAC25-220-30) exposure category. The ETS use "Grave" danger to regulate ALL businesses in Virginia, yet the great majority of deaths in the Commonwealth were patients over 70 years old. On September 23rd, 2020 the Virginia Department of Health (VDH) Dashboard reported 79% or 2269 of the 2882 reported deaths were 70+. It is unlikely many of those over the age of 70 were actively still in the workforce. Of the 2882, the remaining 613 deaths over a 6 month period represent a .007% death rate in Virginia based on the population of 8,536,0003. Further as of September 23rd, 54% or 1556 deaths were patients in long-term care and correctional facilities. As not all of the 1556 deaths fall into the over 70 category, it is likely that less than 613 deaths were potentially working Virginians. Employment data or how and where exposure occurred is not included in the reporting.



•With the likely death rate for working Virginians to be less than .007%, the definition of “Grave” danger used to regulate ALL businesses in Virginia, must be reviewed. There is no empirical evidence that “Low” and “Medium” risk workplaces present a “grave” danger to employees. In fact, as the ETS has been in place for less than 2 months, the CDC and OSHA guidelines the Construction industry has been using for the past six months have effectively protected the health and safety of our workers.

In addition, I am firmly opposed to any amendment to include other flus, viruses, cold or other communicable diseases in any permanent standard. There is no one-size fits all plan to combat a wide variety of infectious illnesses.

The ETS is burdensome, obsolete, difficult to enforce, costly in time and money, and lacks the flexibility to adapt to current science and innovation. I am strongly opposed to the adoption of these as a Permanent Standard for what is a temporary health emergency.

The construction industry remains committed to the safety of our workers and the citizens of the Commonwealth. I welcome the opportunity to work with all stakeholders to develop any necessary policies regarding the health and safety of workers in the precast concrete sector of the construction industry.

Thank you for the opportunity to publicly comment.

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SEE DEPARTMENT RESPONSE TO COMMENT 84956

An economic impact analysis/cost analysis will be prepared for the revised proposed permanent standard.

The Department would request more information from the Commenter on how it takes 30 minutes to screen individual employees. Although it is a generally accepted practice, the Standard does not specifically require that employers check the temperatures of employees. 16VAC25-220-50.C.1 provides that ""Prior to the commencement of each work shift, prescreening or surveying shall be required to verify each covered employee does not have signs or symptoms of COVID-19."" Employers are provided the flexibility to determine what form of prescreening they will use to determine that ""each covered employee does not have signs or symptoms of COVID-19.""

The phrase ""grave danger"" is not used in the Standard. The Commenter is correct that the significant majority of construction job tasks and hazards are properly classified as medium or lower risk. The Department's Briefing Package on the Emergency Temporary Standard dated June 23, 2020 details the findings of the Safety and Health Codes Board concerning the grave danger that SARS-CoV-2 and COVID-19 present to employees (<https://www.doli.virginia.gov/wp-content/uploads/2020/06/BP-Emergency-Regulation-Under-2.2-4011-SARS-CoV-2-That-Causes-COVID-19-FINAL-6.23.2020.pdf>).

The Department notes that in recent years, VOSH has investigated an average of approximately 35 to 40 occupationally related fatalities per year. As of October 30, 2020, VOSH has investigated over 30 employee deaths attributable to COVID-19 alone. The large majority of those cases remain under investigation to determine if they were occupationally related or not, and if occupationally related, whether violations of the Emergency Temporary Standard or mandatory requirements in Governor's Executive Orders should be cited or not. Review of all COVID-19 related inspections under the Emergency Temporary Standard is conducted centrally by the Department with both a programmatic and legal review prior to a decision to issue or not issue violations/penalties to assure consistent enforcement across the Commonwealth.

The Department respectfully disagrees with the Commenter's suggestion that the Standard should be revised to remove risk classification categories.

At its core the Standard is a risk management system to prevent or limit the spread in the workplace of the SARS-CoV-2 virus which causes COVID-19.

It is designed to provide basic protections for all employees and employers within the jurisdiction of the Virginia Occupational Safety and Health program.

It provides certain mandatory requirements for all employers and specific additional requirements for Very High, High, and Medium risk job tasks centered around mitigation of hazards.

The Standard is also designed to incentivize employers to make changes in the workplace that will enable employees in certain situations to be classified to a reduced level of risk (e.g., from high to medium or from medium to lower), thereby also reducing the employer's compliance and cost burdens.

The Standard does not cover other infectious diseases like influenza, tuberculosis, etc.

86360 anonymous Contact tracer company9/25/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86360>

#### Standard recommendations

Even for a public health organization like ours, it's a significant effort to pull together the plan and the training within 60 days, even though we were already doing everything required in the plan. Please consider provided a grace period (perhaps 30 days) for finalization of the plan and implementation of the training on the plan, especially if we can provide documentation that the policies and practices outlined in the plan were largely already in effect.

Our organization employs contact tracers. Contact tracers are specifically referenced in the Standard among jobs that have direct personal contact. While in some jurisdictions, contact tracers are going door to door, this is not so much the case in Virginia. Most contact tracing is done by telephone across the country and in Virginia. I would suggest changing the references to contact tracers to community outreach workers.

Thank you.

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The Department acknowledges the issues raised by the Commenter (training time period and contact tracers), and will consider potential language changes in the revised proposed Standard.

86361 anonymous 9/25/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86361>

I oppose making DOLI regulations permanent

I oppose making DOLI regulations permanent.

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

86362 J.R. Mallory Mallory Electric Co. 9/25/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86362>

Strongly Oppose

To whom it may concern,

We are an electrical contracting company in VA and we are strongly opposed to making this standard permanent. Having been labeled an essential business, we have remained open and operating throughout the duration of the COVID-19 pandemic. Countless man hours have been lost implementing additional safety measures, writing plans directed specifically at COVID-19 related risks, and changing work processes to adhere to safety requirements. Management has had to dedicate time to interpret vague and subjective requirements of this standard.

All of these have resulted in the following:

Increased overhead costs

reduced production

delayed project completions

increased safety risks in hot weather

Our stance is that this is an infringement on individual and corporate rights by the state of VA.

Sincerely,

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SEE DEPARTMENT RESPONSE TO COMMENT 84956

An economic impact analysis/cost analysis will be prepared for the revised proposed permanent standard.

With regard to the heat stress issue raised by the Commenter, if an employer is concerned that employee use of a face covering may present a greater safety or health hazard to employees exposed to hot environments than compliance with the Standard (e.g., the inability to communicate coherently with another employee during a potentially hazardous job task) the issue needs to be assessed during the personal protective equipment (PPE) hazard assessment process required either under the Standard (see 16VAC25-220-50.D for very high and high risk situations, and 16VAC25-220.60.D for medium risk situations) or 1910.132(d) for general industry employers. The PPE hazard assessment process will allow the employer to identify any potential situations where there may be a greater hazard presented due to hot environments and develop alternative protections for employees.

In addition, 16VAC25-220-80.B.f provides that training on the standard provided to employees shall include with regard to PPE: "Heat-related illness prevention including the signs and symptoms of heat-related illness..."

VACo Comments on Proposed Permanent Standard for COVID -19 Infectious Disease Prevention

On behalf of the Virginia Association of Counties (VACo) I offer the following comments regarding the proposed permanent standard:

(1) The standard is to protect the health and safety of employees for a disease with currently no available vaccine and limited effective treatment. The entirety of the standard includes numerous requirements that will be unnecessary once the pandemic ends. Given such, and the practical and financial implications associated with this eventuality, VACo recommends consideration be given to incorporating a provision into the permanent standard that suspends the requirements once the spread and impacts of the virus have been limited;

(2) The requirements for the implementation of "return to work" procedures are too prescriptive for a situation where testing and monitoring for symptoms of the virus continues to evolve. VACo recommends that counties as employers only be required to adhere to the latest Virginia Department of Health (VDH) guidance that includes a decision tree to use in determining next steps for employees who are sick and may or may not get a COVID test; and

(3) The requirement that air handling systems, at a minimum, comply with ANSI/ASHRAE standards 62.1 and 62.2 (ASHRAE 2019a, 2019) is neither technically or financially feasible for our members. Additionally, this 2019 standard has yet to be incorporated in the Virginia Building Code. VACo recommends that the requirement only be that a facility's current air handling system be maintained in accordance with manufacturers instructions.

Thank for you for the opportunity to comment on the proposed standard.

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SEE DEPARTMENT RESPONSE TO COMMENT 84956

The issue of the differences between the Standard's return to work requirement and those of the CDC will be addressed in the revised proposed permanent standard. A Frequently Asked Question (FAQ) provided by DOLI addresses the issue as it pertains to the current Emergency Temporary Standard (ETS).

On July 22, 2020, the CDC changed its guidance with regard to symptoms-based strategies from exclusion for 10 days after symptom onset and resolution of fever for at least 3 days to exclusion for 10 days after symptom onset and resolution of fever for at least 24 hours (i.e., the change was from 72 hours to 24 hours). For persons who never develop symptoms (i.e., asymptomatic), isolation and other precautions can be discontinued 10 days after the date of their first positive RT-PCR test for SARS-CoV-2 RNA.

16VAC25-220-10.G.1 provides in part that:

To the extent that an employer actually complies with a recommendation contained in CDC guidelines, whether mandatory or non-mandatory, to mitigate SARS-CoV-2 virus and COVID- 19 disease related hazards or job tasks addressed by this standard, and provided that the CDC recommendation provides equivalent or greater protection than provided by a provision of this standard, the employer's actions shall be considered in compliance with this standard.... (Emphasis added).

Employers who comply with the above-referenced change in CDC guidance issued July 22, 2020, will be considered to be providing protection equivalent to protection provided by complying with the requirements in the ETS.

However, nothing in the FAQ shall be construed to prohibit an employer from complying with the symptom-based or time-based strategies for return to work determinations in the ETS. (See §40 FAQ 18, <https://www.doli.virginia.gov/cononavirus-covid-19-faqs/>)

The Department acknowledges the comment and notes that the ASHRAE air handling requirements issue raised by the Commenter is undergoing a legal review.

86365 Andrew Washintgon, Executive Director AFSCME District Council 20 9/25/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86365>

Strongly Support the Proposed Permanent Standard

Dear Safety and Health Code Board:

The American Federation of State, County and Municipal Employees (AFSCME) District Council 20 strongly supports the proposed permanent standard for Infectious Disease Prevention: SARS-CoV-2 the Virus That Causes COVID-19. We urge you to adopt and implement a permanent standard that includes the changes we recommend.

AFSCME District Council 20 represents public service employees in Virginia. Our members include healthcare workers, bus operators, maintenance technicians, custodians and more. We advocate for fairness in the workplace, excellence in public services and freedom and opportunity for all working families. An important part of our mission is to advocate for our members in their workplaces, including their health and safety. Frontline workers are crucial in the fight against COVID-19, and they need and deserve adequate protections.

Since the pandemic began, District Council 20 has surveyed public service workers about their employers' responses to COVID-19 and whether those efforts have been enough to keep essential workers safe on the job and adequate to support those who have been teleworking. Public workers have raised their concerns of inadequate safety measures and supplies of personal protective equipment.

We applaud the Board's efforts to adopt a permanent standard. Mere guidelines and recommendations for protecting workers against COVID-19 have not and will not provide the level of protection workers need. Given the continuing threat that COVID-19 poses to Virginia's workers, the Board and the Virginia Occupational Safety and Health program (VOSH) should move quickly to adopt the proposed permanent standard.

In adopting a final standard, we urge you to make the following improvements:

- Eliminate §16VAC25-220-10. G.1. — the proposed standard's safe harbor that deems an employer's compliance with CDC recommendations for mitigating SARS-CoV-2- and COVID-19- related hazards or job tasks addressed by this standard as constituting compliance with the standard. The standard must be a mandatory requirement that supersedes any recommendations or guidelines.

- Adopt additional employer recordkeeping requirements, including:

- 1.COVID-19 Exposure Logs.

## 2. Records of PPE stockpile (inventory) and availability.

In addition to adopting a permanent standard, it is essential that VOSH show that it is committed to enforcing it. Although the COVID-19 Emergency Temporary Standard (ETS) established strong worker protections<sup>[1]</sup> that addressed employer and employee communication regarding COVID-19 cases, we note that some employers are failing to communicate with employees. For example, the City of Norfolk's Department of Utilities did not notify its workers that one of the Department's employees had contracted COVID-19. The union learned of this case separately after that employee had died from the disease. Going forward, it will be important for VOSH to address employer noncompliance by actively enforcing the ETS and permanent standard.

While the focus today is necessarily on the current pandemic, new infectious diseases will continue to emerge, threatening the safety of workers, their families and our community. To prepare for and protect against when that happens, we also urge you to apply the lessons of today to develop and adopt a separate permanent standard that would apply to all infectious diseases.

The proposed standard is an important step forward for working people in Virginia. It will help protect workers, their families and our communities from this virus and reopen the economy safely. Therefore, AFSCME District Council 20 urges the Board to take immediate action to adopt and enforce the Infectious Disease Prevention: SARS-CoV-2 Virus that Causes COVID-19 and incorporate the improvements we have recommended. We appreciate the opportunity to provide these comments. If you have any questions, please feel free to contact me.

Sincerely,

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SEE DEPARTMENT RESPONSE TO COMMENT 84196

SEE DEPARTMENT RESPONSE TO COMMENT 85974

Federal OSHA's Recordkeeping regulation contains requirements for employer maintenance of injury and illness logs in part 1904. <https://www.osha.gov/laws-regs/regulations/standardnumber/1904/>. Section 1904 contains recording criteria, <https://www.osha.gov/laws-regs/regulations/standardnumber/1904/1904.4>. OSHA provides further guidance at: <https://www.osha.gov/memos/2020-05-19/revised-enforcement-guidance-recording-cases-coronavirus-disease-2019-covid-19>

The VOSH program is prohibited from requiring or allowing recordkeeping requirements contrary to those set by federal OSHA so that a consistent, statistically reliable national data collection system can be maintained. See 16VAC25-60-190.A.2, <http://leg1.state.va.us/cgi-bin/legp504.exe?000+reg+16VAC25-60-190>, "2. No variances on record keeping requirements required by the U.S. Department of Labor shall be granted by the commissioner...."

The Safety and Health Codes Board has the option to begin consideration of a comprehensive infectious disease standard at any time; however the Department recommends that the focus for now remain on addressing SARS-CoV-2 and COVID-19 workplace hazards.

The Department does not intend to recommend adding a requirement for employer to maintain records of PPE stockpile (inventory) and availability; however, the Department does intend to recommend revised language to 16VAC25-220-70.C.4.d that employers required to maintain an Infectious disease preparedness

and response plan address contingency plans for situations where supply chains for safety and health related products and services may be impacted by the pandemic.

86366 anonymous

9/25/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86366>

STRONGLY OPPOSED to permanent SARS-CoV-2 standard

Why would a permanent standard for work place polices regarding SARS-CoV-2 be put into place at this stage in the pandemic? The current policy makes perfect sense as we attempt to slow the spread of the virus and reduce the chance for anyone to contract it. It does not make sense for that policy to be made permanent while several vaccines are in stage 3 clinical trials and many experts predict that a successful vaccine will be available in 2021. I suggest extending the current standard from 6 months to 1 year post-inception, and then reassess the need/timeline at that time.

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

Va. Code §40.1-22(6a) under which the Emergency Temporary Standard (ETS) was adopted does not permit the ETS to be extend beyond 6 months.

The use of the word “permanent” in reference to the Standard reflects the fact that, if adopted, the Standard does not currently have a date on which it would expire. However, the Board has the authority to amend or repeal the Standard as the workplace hazards associated with the SARS-CoV-2 virus and COVID-19 disease evolve and eventually lessen.”

86367 anonymous

9/25/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86367>

I oppose making DOLI regulations permanent

I oppose making DOLI regulations permanent.

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

86369 Donna Grebas

9/25/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86369>

ABSOLUTELY OPPOSED!

This is an unconstitutional power grab by leftist bureaucrats who like nothing better than to try and take away our Constitutional rights! I am ABSOLUTELY OPPOSED to this. No. No. No. We will not comply with draconian rules made by unelected OR elected officials.

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

The Department has no response to the Commenter's political commentary.

86370 R.L. Mallory, Westwood Apartments 9/25/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86370>

Strongly Oppose

To whom it may concern,

We are an an apartment complex in Hampton, VA that provides our own management and maintenance and we are strongly opposed to making this standard permanent. Having been labeled an essential business, we have remained open and operating throughout the duration of the COVID-19 pandemic. Countless man hours have been lost implementing additional safety measures, writing plans directed specifically at COVID-19 related risks, and changing work processes to adhere to safety requirements. Management has had to dedicate time to interpret vague and subjective requirements of this standard.

All of these have resulted in the following:

Increased overhead costs

reduced production

delayed project completions

increased safety risks in hot weather

Our stance is that this is an infringement on individual and corporate rights by the state of VA.

Sincerely,

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SEE DEPARTMENT RESPONSE TO COMMENT 84956

With regard to concern about safety risks in hot weather, if an employer is concerned that employee use of a face covering may present a greater safety or health hazard to employees exposed to hot environments than compliance with the Standard (e.g., the inability to communicate coherently with another employee during a potentially hazardous job task) the issue needs to be assessed during the personal protective equipment (PPE) hazard assessment process required either under the Standard (see 16VAC25-220-50.D for very high and high risk situations, and 16VAC25-220.60.D for medium risk situations) or 1910.132(d) for general industry employers. The PPE hazard assessment process will allow the employer to identify any potential situations where there may be a greater hazard presented due to hot environments and develop alternative protections for employees.

In addition, 16VAC25-220-80.B.f provides that training on the standard provided to employees shall include with regard to PPE: "Heat-related illness prevention including the signs and symptoms of heat-related illness...."

86371 Tom Tracy, Virginia Turfgrass Council 9/25/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86371>



## Concerns

The Virginia Turfgrass Council represents a multibillion-dollar Virginia industry. Our members and affiliates nurture the entire green environment. From sports fields to wildlife meadows, from home landscapes to living roofs, and from golf courses to wetlands, our industry is hard at work. I am writing on their behalf to express concerns regarding the proposed Permanent Standard Infectious Disease Prevention for the SARS-CoV-2 Virus that Causes COVID-19.

Our primary concern lies not with the need to protect customers, employees, and employers from the virus. Months of proactive steps taken by turfgrass and landscape businesses clearly reveal our commitment to that need. In early spring, when Governor Northam was contemplating shutting down certain business activities in order to protect Virginians, our industry was allowed to continue operating. Lawns were cut, landscapes were installed and maintained, sensitive environmental sites were protected, and many other services were preformed while adhering to – or even surpassing – SARS-CoV-2 safety recommendations and mandates.

The precedence of converting a temporary, emergency measure designed for a specific virus to a permanent mandate concerns us. While the SARS-CoV-2 virus will likely not fully disappear, its impact on our society will diminish. Effective vaccines currently being developed will become widely available and treatment options will continue to improve. Experts predict at least one vaccine will be approved and distributed within the year. Treatment options for persons with COVID-19 have vastly improved since the pandemic began. In the coming months, treatment options will increase to minimize the virus' effects.

The turfgrass and landscape industries applaud the Department of Labor and Industry for its work in protecting Virginians. The Emergency Temporary Standard enacted on July 27 is just one example of that great work.

Going forward, we ask the Department of Labor and Industry to look to the future. Please do not lock the entire state into a permanent set of regulations tied to particular methodology applicable at a particular point in history designed for a specific disease.

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## SEE DEPARTMENT RESPONSE TO COMMENT 84956

COVID-19 vaccines will be an important part of the Commonwealth's and the country's ability to significantly reduce the ongoing spread of the SARS-CoV-2 virus in the workplace and in the community. However, with the projected population-level efficacy of COVID-19 vaccine to be 50-70%, no one can definitively state that someone vaccinated will not subsequently be free from infection. There is also anecdotal information and scientific surveys that appear to indicate that a certain sector of the American population will refuse to be vaccinated. Accordingly, it is anticipated that SARS-CoV-2 will continue to infect a certain sector of the populace and be present in the workplace for months and years to come.

86372 James Lundt

9/25/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86372>

No mask. strongly oppose any further move to deprive Americans of their rights as citizens. No one has provided scientific evidence that masks or facial coverings do anything to prevent infections outside of a sterile environment.

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

SEE DEPARTMENT RESPONSE TO COMMENT 85535

86373 Anthony Grebas 9/25/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86373>

Burden on liberty

It is a great travesty for liberty when government feels it can mandate any restrictions on a free people.

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

86374 Anonymous 9/25/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86374>

STRONGLY OPPOSED to making COVID-19 ETS PERMANENT!

I strongly oppose making this very burdensome requirements on business owners permanent. Small business is the backbone of this economy and these requirements are not only very difficult to enforce but in addition, put a great deal of liability and additional cost on the small business owner. This COVID-19 pandemic has been brutal on small business. Please don't exacerbate this pain with permanent restrictions and burdensome requirements on small business.

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SEE DEPARTMENT RESPONSE TO COMMENT 84956

86375 Andi Scott 9/25/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86375>

Strongly Opposed! Protect our freedoms! Wearing masks have been more harmful to our health. I consulted a doctor in Chesterfield and skin rashes and weakened lungs due to jobs that require face coverings. Allowing the opportunity to breathe normally without face coverings will not increased the likelihood of deaths, but will allow our immune systems to fight all viruses, including covid-19. I strongly oppose making face coverings permanent.

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

SEE DEPARTMENT RESPONSE TO COMMENT 85535

86376 Craig Spiering 9/25/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86376>

End Covid Restrictions and Mask Mandates

Virginia businesses and citizens are suffering. End restrictions limiting gatherings and customer amounts. End mask restrictions. None of these measures have been scientifically proven to be effective to prevent the spread of this virus, but they have been effective at putting people out of work, closing business and causing citizens to walk around in an unnecessary state of fear.

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SEE DEPARTMENT RESPONSE TO COMMENT 84956

SEE DEPARTMENT RESPONSE TO COMMENT 85535

86377 Christopher Cummings 9/25/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86377>

Absolutely opposed. I am entirely opposed to anything like a permanent mask mandate. The current mask mandate is unwarranted, unhelpful, and inconsistent with individual liberty. The CDC itself in a May 2020 study found no appreciable effect from mask wearing on transmission of influenza virus. Coronavirus and influenza virus are comparable in size and the correlation is obvious. Masks are a symbolic gesture and not an efficacious tool. Even if masks were a helpful adjunct to hygiene and sanitation, government mandates for their use are abusive and destructive of civil rights. Voluntary guidelines are a different matter. Government should refrain from acting where it is not competent to make educated decisions, as in the case of the coronavirus. The science has been all over the map with routine contradictions in guidance. Do NOT establish any kind of permanent mask requirement.

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

SEE DEPARTMENT RESPONSE TO COMMENT 85535

86378 Catherine McGuirk 9/25/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86378>

Completely opposed to wearing masks

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

SEE DEPARTMENT RESPONSE TO COMMENT 85535

86379 Steve Sallman, United Steelworkers 9/25/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86379>

## Strongly Support - 16 VAC 25-220 Proposed Permanent Standard

Comments of the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL-CIO, CLC (USW) on the 16 VAC 25-220 Proposed Permanent Standard – Infectious Disease Prevention: SARS-CoV-2 Virus That Causes COVID-19

These comments are submitted on behalf of the members of the USW. We commend Governor Ralph Northam for his order and we thank the Virginia Department of Labor and Industry (VDLI) for their hard work on the Emergency Temporary Standard (ETS) as well as the opportunity to comment on the proposed permanent standard. The ETS is a solid standard. We strongly support it becoming a permanent standard for all workers – no exceptions, and offer our suggestions for improvement.

### 1. The Permanent Standard is Essential to Protect Working People in Virginia

COVID-19 will not end anytime soon. As winter approaches, so does the cold and flu season. People will be moving indoors, ventilation systems may not be adequate, and windows and doors are being closed. We expect an uptick in cases or perhaps a second wave with increased airborne transmission of viral aerosol. Isolation and quarantine of those exposed has and will be vitally important. Virginia's workers need robust protections against COVID-19, without permanent protections they will be at risk. Workplaces have and continue to have outbreaks occurring in different industries and sectors, including USW represented workplaces. <https://www.vdh.virginia.gov/coronavirus/coronavirus/covid-19-in-virginia-outbreaks/>

A strong permanent standard will safely get Virginia's economy moving again. Employers and workers will benefit by having a permanent standard for future infectious diseases that will save lives and prevent the spread. The VDLI and Virginia Occupational Safety and Health (VOSH) Program has a longstanding history of helping employers with compliance and enforcement discretion with employers who are making good faith efforts.

### 2. One Agency with Authority Needs to Provide a Clear Standard for Employers and Workers

Recently, the Centers for Disease Control and Prevention (CDC) published improved guidance on their webpage only to have it taken down on September 21. The CDC reversed itself and claimed the guidelines it posted on coronavirus airborne transmission were wrong. Changes such as this in the CDC's guidelines appear to be about politics and corporate influence rather than science. The CDC references in the standard must be removed or keep what is in place in the ETS. Having one agency and authority to work with is good for both employers and workers – VDLI can better handle that. This also eliminates any political interference. Standard requirements do not change with no notice as CDC recommendations have been doing. The CDC exceptions makes it confusing and is impractical for employers - it needs removed.

### 3. The ETS is a Strong Standard and Should Be Made Permanent

The USW believes the standard is effective, but only if employers comply and implement the protections. The standard is based off scientific information, long-standing occupational health and safety practices, and recommendations making it most effective. The protections are important for controlling airborne hazards, which SARS-CoV-2 clearly is. Respiratory protection is clearly defined and required for workers who are deemed at risk. Also, face coverings are clearly defined and required according to previous Virginia mandates. More importantly in the hierarchy of controls, ventilation requirements are in line with industry standards per the American Society of Heating, Refrigerating and Air-Conditioning Engineers (ASHRAE). This helps control the spread of droplet and aerosol transmission. The standard should continue to be a programmatic standard. Instead of it being overly specific and prescriptive, employers are required to implement their own

program that fits their workplace using scientific-based and longstanding workplace hazard control practices. The engineering, administrative and work practice controls highlight the importance of key components for all at-risk workers by using risk assessments, plans, training, and more. Additionally, the key components are based off current OSHA standards and familiar to employers, workers and employee representatives. References on the return to work requirements are solid and align with current science.

#### 4. Recommendations for Improvement

As previously mentioned, the CDC exceptions need removed to eliminate confusion and it is impractical for employers.

SARS-CoV-2 is clearly an airborne hazard and the hierarchy of controls must be applied as the six-foot rule is not an effective control for airborne transmission of viral aerosol. Airborne aerosol transmission involves viral particles that can float in the air for long periods of time over distances well beyond six feet. Ventilation, reduced persons and time in spaces, and other controls must be combined with distancing.

Strengthen the involvement of workers and their representatives' involvement in the Infectious Disease Preparedness and Response Plan. The language is good, but it happens less often in practice. Active safety committee members have proven to be a valuable asset for employers to achieve compliance, and most importantly, protect workers. USW safety reps also conduct regular assessments to proactively identify and rectify problems with the employer. At one USW represented workplace, the safety committee plays a key role in designing, deploying and maintaining 48 sanitizing stations located strategically throughout the workplace. Workers and their representatives' participation is key for an employer to maintain safe workplaces. VOSH should ensure their educational materials and enforcement efforts bring attention to this fundamental element.

Medical removal for known infections, exposures, or when recommended by a medical or public health professional, with removal protections is needed. Employers must maintain the employee's base earnings, seniority, and other rights and benefits that existed at the time of removal until cleared for return to work.

Case reporting requirements – a case management system is needed on what employers are to do when an employer has a case and the follow-up steps needed.

In conclusion, a permanent standard is needed to protect all workers, as COVID is not going away and will help protect all workers from future pandemics. The ETS is a strong, comprehensive standard that sets clear requirements based off longstanding practices and current science and should be made permanent. We strongly encourage Virginia to move forward with the permanent standard rulemaking with speed in order to ensure all workers are protected from COVID permanently. All VOSH standards protect the health and safety of Virginia's workers. This one goes further. Other hazards can cause families to mourn and communities to suffer economically. But the actual injury does not spread beyond the injured worker. If a construction worker is injured in a fall, his/her family does not face an increased risk of falls. If a chemical worker contracts leukemia from benzene exposure, he/she will not infect others in his community with cancer. COVID-19 is different. Infections acquired at work can spread far beyond the workplace, as we have seen with nursing homes and meatpacking plants. A permanent standard will make all Virginians safer. We urge the Commonwealth to adopt a permanent standard without delay.

Respectfully submitted,

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SEE DEPARTMENT RESPONSE TO COMMENT 85974

The Standard contains a framework for managing cases:

1. Identify cases.

16VAC25-220-40.B.4 provides that “Employers shall develop and implement policies and procedures for employees to report when employees are experiencing symptoms consistent with COVID-19, and no alternative diagnosis has been made (e.g., tested positive for influenza). Such employees shall be designated by the employer as “suspected to be infected with SARS-CoV-2 virus.”

2. Remove from work known cases and those “suspected to be infected with SARS-CoV-2 virus”

16VAC25-220-40.B.5 provides that “Employers shall not permit employees or other persons known or suspected to be infected with SARS-CoV-2 virus to report to or remain at the work site or engage in work at a customer or client location until cleared for return to work.”

3. Notify employees and others of known cases.

16VAC25-220-40.B.8 provides “To the extent permitted by law, including HIPAA, employers shall establish a system to receive reports of positive SARS-CoV-2 tests by employees, subcontractors, contract employees, and temporary employees (excluding patients hospitalized on the basis of being known or suspected to be infected with SARS-CoV-2 virus) present at the place of employment within the previous 14 days from the date of positive test....”

4. Provide for return to work.

16VAC25-220-40.C.1 provides that “The employer shall develop and implement policies and procedures for employees known or suspected to be infected with the SARS-CoV-2 virus to return to work....”

Federal OSHA’s Recordkeeping regulation contains requirements for employer maintenance of injury and illness logs in part 1904. <https://www.osha.gov/laws-regs/regulations/standardnumber/1904/>. Section 1904 contains recording criteria, <https://www.osha.gov/laws-regs/regulations/standardnumber/1904/1904.4>. OSHA provides further guidance at: <https://www.osha.gov/memos/2020-05-19/revised-enforcement-guidance-recording-cases-coronavirus-disease-2019-covid-19>

The VOSH program is prohibited from requiring or allowing recordkeeping requirements contrary to those set by federal OSHA so that a consistent, statistically reliable national data collection system can be maintained. See 16VAC25-60-190.A.2, <http://leg1.state.va.us/cgi-bin/legp504.exe?000+reg+16VAC25-60-190>, “2. No variances on record keeping requirements required by the U.S. Department of Labor shall be granted by the commissioner....”

86380 Robert "Bobby" Scott, House Committee on Education and Labor 9/25/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86380>

I was very pleased that the Commonwealth of Virginia approved an Emergency Temporary OSHA Standard (ETS) to protect workers against COVID-19 last July, and I applaud the Governor for his leadership on this issue. In the absence of any attempt from the federal Occupational Safety and Health Administration (OSHA) to issue strong protections for the millions of workers exposed to COVID-19, Virginia’s actions are critical to preventing workplace infections.

Virginia now needs to issue a permanent standard to protect the Commonwealth's workers from exposure to COVID-19. This country is a long way from the end of this pandemic. Even if a safe and effective vaccine is developed in the next several months, it may not be until late 2021 that enough supply is available to ensure the protection of all Virginians. There are now over 7 million confirmed COVID-19 cases in the U.S., and over 200,000 deaths. Virginia has experienced over 140,000 Covid-19 cases and over 3,000 deaths. While the overall infection numbers are currently leveling off in Virginia, continued vigilance is necessary if we are to prevent another wave of infection as schools open and people move inside as winter approaches. Recent outbreaks have been identified at the Deerfield Correctional Center,[1] the Pamunkey Regional Jail in Hanover,[2] and the the Heritage Hall and Lynn Care Center nursing homes in Warren County.[3]

Nationally, workers continue to be at risk. The CDC reports that 710 health care workers have died from COVID-19 and those numbers are based on only 24% of states responding.[4] The Centers for Medicare and Medicaid Services reports 868 fatalities among nursing home staff alone, including 16 Virginia nursing home staff.[5] Furthermore, more than 250 food processing workers have died from COVID-19, most in meat processing facilities. Over 1200 meat processing workers have been infected in Virginia and ten have died.[6]

Virginia has issued a strong, protective ETS based on scientific information and long-standing, proven occupational workplace safety and health practices, and the permanent standard should closely track the ETS. The Virginia Department of Labor and Industry remains ready to provide any technical assistance that employers need to comply with the provisions of the standard.

The following measures are particularly important and should be maintained in the final standard:

- Exposure assessment and determination: The Exposure Assessment will ensure that each employer develops worker protection measures that are tailored to the specific workplace and that there are no "one-size-fits-all" requirements. The exposure assessment will also ensure that businesses are able to relax requirements when the crisis eventually abates.
- Anti-retaliation protections: We continue to hear about workers being retaliated against for reporting unsafe work conditions or using their own personal protective equipment. For workers to feel secure to report unsafe conditions and to participate in the process of improving workplace safety, it is essential that workers continue to have strong protections against retaliation.

Personal protective equipment, particularly N-95 respirators, continue to be in short supply,[7] making it important that workers are allowed to provide their own, more effective personal protective equipment without being retaliated against.

- Reporting requirements: Reporting requirements are necessary in order to monitor work-related outbreaks and ensure that employees and other building occupants are aware of outbreaks that may present a hazard to employees in the workplace or building.
- Training: It is vitally important that all workers, at every level of risk, receive basic training on the hazards they are facing and how to protect themselves. Like other requirements of the standard, the training would be tailored to the specific level of risk in each individual workplace.

A permanent standard is particularly important considering that federal OSHA continues to refuse to issue an enforceable COVID-19 standard or any kind of broad infectious disease standard that covers airborne diseases. This leaves workers in nursing homes, meat packing plants, prisons, warehouses and many other workplaces at high risk of infection. As the numbers of COVID-19 infections continue to rise across the country, protecting our workers is essential to stopping the spread of this virus and reviving the economy.

In conclusion, I commend the respective agencies responsible for developing the ETS and your important work on a permanent COVID-19 standard. Virginia's ETS was a thoughtful response to the COVID-19 pandemic. The Commonwealth's leadership has set the example for the rest of the country as evidenced by other state OSHA plans that are now moving to adopt a COVID-19 ETS.

Please contact me or Jordan Barab, Senior Labor Policy Advisor for the Committee on Education and Labor, at [jordan.barab@mail.house.gov](mailto:jordan.barab@mail.house.gov) if you have any questions.

Sincerely,

[1] <https://www.wdbj7.com/2020/09/23/va-department-of-corrections-working-with-vdh-cdc-to-manage-covid-19-outbreak-at-deerfield-correctional-center/>.

[2] <https://abcnews.go.com/US/covid-19-outbreak-virginia-jail-infects-124-inmates/story?id=72925115>.

[3] [https://www.nvdaily.com/nvdaily/two-new-local-outbreaks-havent-lead-to-any-deaths/article\\_9992845e-1317-5020-adc5-d36e4c906720.html](https://www.nvdaily.com/nvdaily/two-new-local-outbreaks-havent-lead-to-any-deaths/article_9992845e-1317-5020-adc5-d36e4c906720.html).

[4] [https://covid.cdc.gov/covid-data-tracker/?CDC\\_AA\\_refVal=https%3A%2F%2Fwww.cdc.gov%2Fcoronavirus%2F2019-ncov%2Fcases-updates%2Fcases-in-us.html#health-care-personnel](https://covid.cdc.gov/covid-data-tracker/?CDC_AA_refVal=https%3A%2F%2Fwww.cdc.gov%2Fcoronavirus%2F2019-ncov%2Fcases-updates%2Fcases-in-us.html#health-care-personnel).

[5] [https://urldefense.proofpoint.com/v2/url?u=https-3A\\_\\_data.cms.gov\\_Special-2DPrograms-2DInitiatives-2DCOVID-2D19-2DNursing-2DHome\\_COVID-2D19-2DNursing-2DHome-2DDataset\\_s2uc-2D8wpx&d=DwMFaQ&c=L93KkjKsAC98uTvC4KvQDdTDRzAeWDDRmG6S3YXIIH0&r=7fKcacT2MhxelN8y4LqEWU8scM1SXDIlicsHK8PN738&m=E4SzQsvxfGBsVj3k8mfBgyCSNLydY0WS\\_VRerDY8yEQ&s=Nwsm\\_sH9dt67t3\\_kqC41TE0s-8EgmX7TiDLTtYBYUtk&e=](https://urldefense.proofpoint.com/v2/url?u=https-3A__data.cms.gov_Special-2DPrograms-2DInitiatives-2DCOVID-2D19-2DNursing-2DHome_COVID-2D19-2DNursing-2DHome-2DDataset_s2uc-2D8wpx&d=DwMFaQ&c=L93KkjKsAC98uTvC4KvQDdTDRzAeWDDRmG6S3YXIIH0&r=7fKcacT2MhxelN8y4LqEWU8scM1SXDIlicsHK8PN738&m=E4SzQsvxfGBsVj3k8mfBgyCSNLydY0WS_VRerDY8yEQ&s=Nwsm_sH9dt67t3_kqC41TE0s-8EgmX7TiDLTtYBYUtk&e=).

[6] <https://thefern.org/2020/04/mapping-covid-19-in-meat-and-food-processing-plants/>.

[7] <https://www.washingtonpost.com/graphics/2020/local/news/n-95-shortage-covid/>.

CommentID: 86380

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SEE DEPARTMENT RESPONSE TO COMMENT 84196

86381 Jonathan Francoeur 9/25/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86381>

Vehemently opposed to making COVID-19 mandate restrictions permanent.

I am strongly opposed to make any of Governor Northam's executive order mandates related to COVID-19 permanent.

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

86382 Eric Terry, "Virginia Restaurant, Lodging & Travel Association



THIS COMMENT WAS ALSO SUBMITTED DIRECTLY TO THE DEPARTMENT AT:

<https://www.doli.virginia.gov/proposed-permanent-standard-for-infectious-disease-prevention-for-covid-19/>

VRLTA Comments Re The Proposed Regulation

RE: Adoption of Permanent Standard for Infectious Disease Prevention SARS-CoV-2 Virus that Causes COVID-19, 16 VAC 25-220

On behalf of the Virginia Restaurant, Lodging & Travel Association, we want to take this opportunity to share our organization's comments regarding the Virginia Department of Labor and Industry's (VDOLI) intent to adopt the emergency regulation for preventing COVID-19 in places of employment as a permanent standard.

Hospitality and tourism related businesses have been working diligently to comply with COVID-19 related requirements from the Governor's Executive Orders (EO), Virginia Department of Health (VDH), Virginia Department of Labor and Industry (VDOLI) and applicable federal requirements.

In fact, the hospitality and tourism industry has strived to protect the public and their staff throughout this public. The American Hotel & Lodging Association created the Safe Stay program, and the National Restaurant Association developed the ServeSafe Dining Commitment/ COVID-19 trainings. Major hotel brands, including Marriott, Hilton, and others also have implemented rigorous cleaning protocols as well. These lessons were created in accordance with the guidance issued by public health authorities, including the U.S. Centers for Disease Control. Regrettably, VDOLI has failed to accept these hospitality industry specific education programs even after much encouragement from our industry to get these recognized as satisfying training and safety criteria of the ETS.

In our review of the emergency temporary standards (ETS) that were adopted by your agency, we noticed many of the concerns that we expressed inadequately addressed.

The ETS was approved ostensibly to provide a means of ensuring employees and the public were protected during the temporary COVID-19 emergency; however, your agency is now seriously considering establishing these as permanent standards.

Eventually, COVID-19 will have viable treatments and vaccines. Therefore, it's misguided to establish these requirements as a permanent standard that will be perennial. As a result, hospitality and tourism businesses will need to comply with these onerous regulations after successful treatments and vaccines have been established.

As you may be aware, hospitality related businesses have been one of the most heavily impacted by COVID-19. These businesses have already been absorbing huge costs just to comply with existing requirements from VDH, EOs, CDC, and national trainings. Making the VDOLI standard permanent will place these businesses in a more precarious situation. We currently anticipate that almost 25% of restaurants in Virginia will permanently close, and these regulations will increase the rate of permanent closures.

Therefore, we believe that it's imprudent to transition the ETS to a permanent standard, but should your agency move forward with making these standards permanent here are our suggestions:

- Exempt hotels, restaurants, and campgrounds that train their staff in either the American Hotel & Lodging Association (AHLA) Stay Safe, national hotel brand trainings and guidance, National Restaurant Association (NRA) ServeSafe Dining Commitment, or National Association of RV Parks and Campgrounds (ARVC) Re-

Opening RV Parks and Campgrounds procedures and follow necessary protocols included in these respective programs.

- Remove the requirements included in 16VAC25-220-60 B. 1. b. which applies to medium risk businesses and stipulates all building in Virginia must meet the most updated HVAC systems guidelines. This requirement should only be applicable for replacing units or new construction.
- Amend the standards to reflect the original draft language that provided safe harbor to employers following federal guidance, such as that contained in CDC and OSHA.
- Clarify what is considered “minimal contact” in the standard.
- Strike the language pertaining to sick leave policies. Restaurants are already bound to follow the FDA food code which stipulates that employees who are sick should remain at home. Moreover, employers are already required to provide sick leave to employees under the FFCRA.
- Remove the redundant stipulation that employers report positive cases to VDH. Health care providers already required to alert VDH of positive test results.
- Remove the requirement for hand sanitizer be available as it’s not in line with public health officials. The CDC only requires that hand sanitizer be available as a substitute for hand washing, whereas the VDH considers it a best practice.
- Adjust the time based “return-to-work” rule to align with the CDC requirement.
- Sunset the regulation when the Governor’s State of Emergency concludes for COVID-19.

As noted above, there are many issues with the proposed language in the permanent standard that appears to conflict with public health guidelines and requirements. This ambiguity is why VRLTA believes it’s best to not make these standards permanent. We remain of the belief that hospitality related businesses that follow national health and safety procedures from AHLA, NRA, and ARVC should be exempt from the VDOLI regulations as these procedures were developed in accordance with CDC guidelines.

For these reasons, we strongly believe that the best approach is to not adopt the ETS as a permanent regulation. However, if you do promulgate them, we believe the adjustments outlined above will provide the means to address the public health issues pertinent to mitigating transmission of COVID-19.

Sincerely,

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"SEE DEPARTMENT RESPONSE TO COMMENT 84956

The Department does not intend to recommend an exemption specifically tailored to hotels, restaurants, and campgrounds based on guidelines set by its industry. The Department notes that the Standard provides flexibility to business through 16VAC25-220-10.G.1 which provides that “To the extent that an employer actually complies with a recommendation contained in CDC guidelines, whether mandatory or non-mandatory, to mitigate SARS-CoV-2 virus and COVID-19 disease related hazards or job tasks addressed by this standard, and provided that the CDC recommendation provides equivalent or greater protection than provided by a provision of this standard, the employer's actions shall be considered in compliance with this standard. An employer's actual compliance with a recommendation contained in CDC guidelines, whether mandatory or non-mandatory, to mitigate SARS-COV-2 and COVID19 related hazards or job tasks addressed

by this standard shall be considered evidence of good faith in any enforcement proceeding related to this standard.”

Employees and employers in the hotels, restaurants, and campgrounds industries are exposed to the same COVID-19 related hazards and job tasks as employees in other industries. It is the Department's position that similarly situated employees and employers exposed to the same or even more serious hazards or job task should all be provided the same basic level of safety and health protections.

The Department acknowledges the comment and notes that the ASHRAE air handling requirements issue raised by the Commenter is undergoing a legal review.

The Department does not plan to recommend that 16VAC25-220-10.G be returned to its original language. As noted above, it is the Department's position that similarly situated employees and employers exposed to the same or even more serious hazards or job task should all be provided the same basic level of safety and health protections. The Standard's language in 16VAC25-220-10.G assures such protections.

The Department intends to recommend a definition of "minimal occupational contact" be added to the revised proposed standard.

The Department does not plan to recommend changes to sick leave provisions in the Standard.

The Standard does not require employers to provide sick leave to employees. It does reference the Families First Coronavirus Response Act (FFCRA) at 16VAC25-220-40.B.6:

6. To the extent feasible and permitted by law, including but not limited to the Families First Coronavirus Response Act, employers shall ensure that sick leave policies are flexible and consistent with public health guidance and that employees are aware of these policies.

Further information about the FFCRA and sick leave policies can be found at:  
<https://www.dol.gov/agencies/whd/pandemic/ffcra-employee-paid-leave>

The Department does not plan to recommend the elimination of reporting requirements to the Department of Health, although it does intend to recommend a change to the trigger number of positive cases.

DOLI and the Virginia Department of Health (VDH) have collaborated on a Notification Portal for employers to report COVID-19 cases in accordance with Emergency Temporary Standard (ETS) Sections 16VAC25-220-40.B.8.d and -40.B.8.e that satisfies COVID-19 reporting requirements for both agencies. The portal went live on September 28, 2020. Here is a link:

<https://www.doli.virginia.gov/report-a-workplace-fatality-or-severe-injury-or-covid-19-case/>

The Department does not intend to recommend the removal of hand sanitizers from the Standard. Use of hand sanitizers is well-recognized method to mitigate the spread of SARS-CoV-2. Also see DOLI Frequently Asked Questions §40, FAQ 9 and §40, FAQ 17 at: <https://www.doli.virginia.gov/cononavirus-covid-19-faqs/>

The issue of the differences between the Standard's return to work requirement and those of the CDC will be addressed in the revised proposed permanent standard. A Frequently Asked Question (FAQ) provided by DOLI addresses the issue as it pertains to the current Emergency Temporary Standard (ETS).

On July 22, 2020, the CDC changed its guidance with regard to symptoms-based strategies from exclusion for 10 days after symptom onset and resolution of fever for at least 3 days to exclusion for 10 days after symptom onset and resolution of fever for at least 24 hours (i.e., the change was from 72 hours to 24 hours).

For persons who never develop symptoms (i.e., asymptomatic), isolation and other precautions can be discontinued 10 days after the date of their first positive RT-PCR test for SARS-CoV-2 RNA.

16VAC25-220-10.G.1 provides in part that:

To the extent that an employer actually complies with a recommendation contained in CDC guidelines, whether mandatory or non-mandatory, to mitigate SARS-CoV-2 virus and COVID-19 disease related hazards or job tasks addressed by this standard, and provided that the CDC recommendation provides equivalent or greater protection than provided by a provision of this standard, the employer's actions shall be considered in compliance with this standard.... (Emphasis added).

Employers who comply with the above-referenced change in CDC guidance issued July 22, 2020, will be considered to be providing protection equivalent to protection provided by complying with the requirements in the ETS.

However, nothing in the FAQ shall be construed to prohibit an employer from complying with the symptom-based or time-based strategies for return to work determinations in the ETS. (See §40 FAQ 18, <https://www.doli.virginia.gov/cononavirus-covid-19-faqs/>)

The Department intends to recommend that the return to work provisions of the standard be updated to reflect current CDC and VDH guidance.

86383 Stuart Webel 9/25/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86383>

Strongly Opposed

I am a small business owner in the Richmond area. I have seen first hand how government regulation compliance costs businesses and ultimately consumers a great deal of money and freedom. While most regulations are well intentioned, the potential exists, without any due process, to literally regulate any company out of business or regulate any individual into bankruptcy.

We, as a community, agreed to abide by ""safety guidelines"" earlier this year in order to ""flatten the curve"" and reduce the strain on health care providers dealing with COVID19. We complied at GREAT personal cost. Now we are being told that the arbitrary safety guidelines, which seem to change at the whim of unnamed ""experts"" are to be made permanent?! I say that if these rules are to be made permanent, let it be done through the General Assembly and Governor by way of a new State law. Let it be done by those who are accountable to the voting public; not nameless bureaucrats with no accountability!

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SEE DEPARTMENT RESPONSE TO COMMENT 84956

86385 Catherine McGuirk 9/25/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86385>

absolutely NO covid Masks ! Mask wearing ought to be voluntary

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

SEE DEPARTMENT RESPONSE TO COMMENT 85535

86387 Bill Collins 9/25/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86387>

Masks do little to nothing to prevent spread. Alex Berenson: 'Wear a mask' social pressure has 'real consequences'. 'Masks are, at best, marginally useful indoors in crowded settings'.  
<https://www.foxnews.com/media/alex-berenson-wear-a-mask-social-pressure-has-real-consequences>. Alex Berenson claims there is 'very, very little evidence' that 'universal masking' slows coronavirus spread. 'I don't know what has changed in the science'. <https://www.foxnews.com/media/alex-berenson-little-evidence-masking-slows-coronavirus>

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

SEE DEPARTMENT RESPONSE TO COMMENT 85535

86388 John Thorp 9/25/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86388>

OPPOSE MASK REQUIREMENT MANDATE. Please let the people make their own decision about this, thank you.

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

SEE DEPARTMENT RESPONSE TO COMMENT 85535

86389 anonymous 9/25/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86389>

Absolutely NO to Face Masks. We absolutely cannot down the road to wearing face masks on any basis. This is an egregious assault on our personal liberty and freedoms. No to Face Masks and other pandemic precautions which have done absolutely nothing.

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

SEE DEPARTMENT RESPONSE TO COMMENT 85535

86392 Eugene McGuirk 9/25/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86392>

No permanent mask ruling. Gentlemen: An article on the CDC website states that masks do not prevent the spread of viruses like Covid-19. Articles by doctors in peer reviewed journals state that masks do not prevent the spread of viruses, even in operating rooms. There is absolutely no need to generate a ruling to force masks on the public in Virginia. Each citizen should have the right to decide for himself/herself whether mask wearing is warranted. As a voter, I insist that you do not make a regulation that makes mask wearing mandatory.

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

SEE DEPARTMENT RESPONSE TO COMMENT 85535

86393 Cannon Moss, Virginia Railroad Association 9/25/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86393>

Proposed Permanent Standard for Infectious Disease Prevention: SARS-CoV-2 Virus That Causes COVID-19

The Virginia Railroad Association (“VRA”) respectfully submits these comments to the Virginia Department of Labor and Industry’s (the “Department’s”) proposed Permanent Standard for Infectious Disease Prevention: SARS CoV-2 Virus That Causes COVID-19, 16VAC25-220 (the “Proposed Permanent Standard”). VRA is concerned that the Proposed Permanent Standard would create uncertainty and significant burdens for its railroad members, who typically follow federal standards to operate their rail networks and are currently doing so in managing the health risks presented by the SARS CoV-2 pandemic. Below, VRA proposes modest changes to the Proposed Permanent Standard to address these concerns, to better position Virginia’s railroads to continue to provide reliable, essential service to their customers, and to avoid unreasonably burdening interstate commerce.

VRA’s Interest in the Application of Federal Policy to its Members’ Operations

VRA is a trade association representing the freight rail industry in the Commonwealth of Virginia, whose membership includes two Class I railroads and nine regional (Class II) and short line (Class III) railroads. VRA also has many customer members and associate members who depend on reliable rail transportation to conduct their business. The total freight rail network in the Commonwealth of Virginia consists of over 3000 miles of track, which interconnects with neighboring states, the District of Columbia, and important international trade facilities such as the Port of Virginia. This interconnected network provides many of Virginia’s industrial, manufacturing, and agricultural businesses with access to markets throughout North America and the world, giving them a substantial competitive advantage. In addition to providing substantial economic benefits to the customers in Virginia who are served by VRA’s railroad members, freight rail also offers many environmental benefits over competing modes of transportation, including reduced pollution, increased fuel efficiency, and reduced highway congestion.

Because of the substantial advantages of connecting their customers to a nationwide freight rail network that is the envy of the world, VRA’s members heavily rely on a national policy of regulating railroad operations at the federal level. Applying state or local operational regulations to railroad transportation in Virginia that are out of step with national policy will create potential barriers to accessing the nationwide freight rail network, disadvantaging not only VRA’s railroad members but also Virginia businesses that depend on rail access to markets and would be at a significant competitive disadvantage without it.

## VRA's Concern with the Proposed Permanent Standard

Earlier this year the Federal Railroad Administration issued a Safety Advisory encouraging railroads to familiarize themselves with federal recommendations and

guidance related to COVID-19, including guidance issued by the Centers for Disease Control and Prevention ("CDC"). 85 FR 20,335 (April 10, 2020). That Safety Advisory further encouraged railroads "to take action consistent with" these federal recommendations and guidance. *Id.* at 20,336. The railroad members of VRA have taken this guidance to heart. They are following the CDC's COVID-19 guidance and other federal recommendations to keep their employees and their workplaces safe and healthy as they continue to provide essential services to their customers during the pandemic.

VRA's concern is that adoption of the Proposed Permanent Standard as written will create confusion and unnecessary operational burdens for railroads operating in the Commonwealth of Virginia because it does not square entirely with the federal COVID-19 guidelines the FRA encouraged all US railroads to follow in its Safety Advisory. This confusion would arise in part because although some railroad activities are clearly beyond the jurisdiction of Virginia's occupational and safety laws, others may not be. The Proposed Permanent Standard would apply "to every employer, employee, and place of employment in the Commonwealth of Virginia within the jurisdiction of the VOSH program...." Proposed 16VAC25-220-10(C). Virginia's occupational safety and health statutes, regulations, and laws generally apply to every employer, employee, and place of employment in the Commonwealth, with certain exceptions. 16VAC25-60-20. One of those exceptions is where the federal Occupational Safety and Health Act of 1970 does not apply. 16VAC25-60-20(2). While many activities performed by railroads are not within OSHA's jurisdiction because they are subject to regulation by the Federal Railroad Administration ("FRA"), other railroad activities are not regulated by the FRA and are within OSHA's jurisdiction. See, FRA Policy Statement, 43 FR 10583 (March 14, 1978). Therefore, on its face, the Proposed Permanent Standard would purport to regulate those railroad activities within OSHA's jurisdiction.

The problem is that while the Proposed Permanent Standard recognizes that some employers in the Commonwealth are following CDC guidance to control the spread of COVID-19, following that guidance is only deemed to be compliant with the Proposed Permanent Standard "provided that the CDC recommendation provides equivalent or greater protection than provided by a provision of this standard." 16VAC25-220-10(G.1) (Emphasis added). It is unclear how a railroad in the Commonwealth would determine whether a particular CDC recommendation it intends to continue following "provides equivalent or greater protection" than an analogous provision of the Proposed Permanent Standard. While following CDC guidance "shall be considered evidence of good faith in any enforcement proceeding" (*Id.*), that is cold comfort to VRA's railroad members, who will wonder not only whether such "evidence of good faith" will be sufficient to carry the day in any enforcement proceeding, but also whether an eventual

determination that following CDC recommendations was not sufficient to comply with state law will expose them to civil liability. That decision will not necessarily be made by the Department, but by a judge or a jury.

The uncertainty that would be created by the Proposed Permanent Standard will put Virginia railroads in the very unfortunate position of having to guess at which set of standards it should follow. Even after analyzing whether an activity falls within FRA's jurisdiction or OSHA's - which in and of itself is often a complex undertaking that sometimes yields less than clear answers - a Virginia railroad doing its best to follow the rules may then have to ask itself whether following CDC guidance provides "equivalent or greater protection" than the Proposed Permanent Standard - a question impossible to answer with any degree of certainty.

What will make it especially difficult for railroads operating in Virginia is figuring out how to apply a different set of rules once a state border is crossed. Railroads are network businesses, with complex interstate operations. The two Class I railroads that operate in Virginia, CSX Transportation, Inc. and Norfolk Southern Railway Company, have extensive networks that reach most of the Northeastern United States, the Midwest, and the South. Several smaller railroads with Virginia operations also operate in other states. Even those railroads operating solely in Virginia interchange traffic with interstate carriers and could be impacted by a set of state COVID-19 standards that do not align precisely with federal recommendations. Applying one set of rules to a carrier's Virginia operations, and another set of rules elsewhere on the carrier's network, would introduce complexity that would ultimately burden interstate commerce. That burden would grow even larger if other states were to follow Virginia's lead and provide similarly weak assurances that following CDC guidelines will be sufficient to comply with state COVID-19 regulations.

Forcing railroads to try to manage their complex multi-state networks within a patchwork of different state operational regulations would undermine federal interstate transportation policy, which heavily favors one set of standards created at the federal level. This policy preference was perhaps best expressed by Congress in the Interstate Commerce Commission Termination Act (the "ICCTA"), which vests exclusive jurisdiction over interstate transportation by rail carriers in a federal agency – the Surface Transportation Board. 49 USC 10501(b). The Board's broad grant of exclusive jurisdiction has been interpreted to preempt a broad range of state and local laws when applied to railroads. See, e.g., *City of Auburn v. United States*, 154 F.3d 1025 (9th Cir. 1998), cert. denied 527 U.S. 1022 (1999); *Soo Line R.R. v. City of Minneapolis*, 38 F.Supp. 2d 1096 (D. Minn. 1998); *Burlington Northern Santa Fe Corp. v. Anderson*, 959 F.Supp. 1288 (D. Mon. 1997).

#### VRA's Proposed Revision to the Proposed Permanent Standard

Fortunately, VRA believes that its concerns with the Proposed Permanent Standard can be addressed by a modest change to subsection (G.1) of 16VAC25-220-10. VRA proposes revising that subsection by adding the bold text below:

G.1. To the extent an employer actually complies with a recommendation contained in CDC guidelines, whether mandatory or non-mandatory, to mitigate SARS-CoV-2 virus and COVID-19 disease related hazards or job tasks addressed by this standard, and provided that the CDC recommendation provides equivalent or greater protection than provided by a provision of this standard, the employer's actions should be considered in compliance with this standard. An employer's actual compliance with a recommendation contained in CDC guidelines, whether mandatory or non-mandatory, to mitigate SARS-CoV-2 and COVID-19 related hazards or job tasks addressed by this standard shall be considered evidence of good faith in any enforcement proceeding related to this standard. Anything to the contrary in this section notwithstanding, to the extent that an employer engaged in interstate commerce complies with a recommendation contained in CDC guidance or other federal standards or guidelines, whether mandatory or non-mandatory, to mitigate SARS-CoV-2 and COVID-19 related hazards or job tasks addressed by this standard, the employer's actions shall be considered in compliance with this standard.

By making this minor change to the Proposed Permanent Standard, the Department will address the concerns of VRA and its members, while better aligning its proposed regulation with federal transportation policy and the ICCTA.

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SEE DEPARTMENT RESPONSE TO COMMENT 84956



The Commenter contends that Virginia's unique COVID-19 standard would present compliance burdens for its members because it differs from federal OSHA requirements that apply in states covered by federal OSHA jurisdiction. Virginia currently has nine other unique standards and regulations in addition to the proposed COVID-19 Standard that apply to the Commenter's members. <https://www.doli.virginia.gov/vosh-programs/virginia-unique/>. The Department sees no reason to treat the situation of its COVID-19 Standard any differently than the application of its other unique standards. We respectfully disagree that the act of comparing a particular CDC guideline that an employer wants to rely on to the language in Virginia's COVID-19 standard is an "impossible" task.

The Commenter also suggests that its members would have difficulty in "figuring out how to apply a different set of rules once a state border is crossed." The same argument could be made with regard to Virginia's other unique standards. Again, the Department sees no reason to treat the situation of its COVID-19 Standard any differently than the application of its other unique standards.

When Congress established the OSH Act of 1970, it had the opportunity to establish a system that would suit the needs of the Commenter's members, but it chose to allow states, such as Virginia, to apply for state plan status under §18 of the OSH Act. Virginia has such a state plan, and as a sovereign Commonwealth has the legal right to establish standards and regulations that are at least as effective as that of federal OSHA in providing protections for Virginia employees and employers, This includes the ability to adopt standards and regulations that are more stringent than federal OSHA's or cover a hazard or industry that OSHA has yet to provide protective standards and regulations for.

The Department does not plan to recommend that 16VAC25-220-10.G be changed as suggested by the Commenter. It is the Department's position that similarly situated employees and employers exposed to the same or even more serious hazards or job task should all be provided the same basic level of safety and health protections. The Standard's language in 16VAC25-220-10.G assures such protections.

86394 "Bruce Stambaugh

" 9/25/2020 <https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86394>

All workers deserve better conditions

Please make the temporary work standards permanent for Virginia's poultry workers. They need to be protected.

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SEE DEPARTMENT RESPONSE TO COMMENT 84196

86395 Sean Williams

Airlines for America® (A4A)" 9/25/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86395>

objection to permanence

Re: public comment period re: permanent standard for Infectious Disease Prevention: SARS-CoV-2 Virus That Causes COVID-19, 16VAC25-220

Airlines for America® (A4A) is the principal trade and service organization of the U.S. airline industry. We value our ongoing relationship with the Commonwealth of Virginia as we work together to address the COVID-19 crisis. Like you, our top priority is the safety and wellbeing of crewmembers, passengers, employees and the Virginia public, while continuing to provide essential cargo and passenger air services that are critical to our nation's economic recovery.

A4A respectfully requests that the Emergency Temporary Standards (ETS) not be made permanent, maintaining their sunset with the Governor's State of Emergency. If the Board decides to move forward with a permanent standard, then several components of the standard will need to be addressed to resolve inconsistencies with state and federal regulations and constitutional concerns. The ETS, if made permanent, would make mandatory a snapshot of CDC guidelines that are flexible and evolving, reflecting best practices based on contemporary knowledge of a new virus. This remains to be a rapidly evolving situation and that body of knowledge expands daily, and the recommended best practices are routinely updated to reflect new information. Mandating today's guidelines would calcify permanent best practices based on current knowledge, which could quickly become outdated, fail to incorporate new guidelines and result in unnecessary requirements. .

In addition, many of the requirements of the ETS remain proscriptive and seemingly designed for closed worksites, like office buildings or manufacturing plants, rather than locations where multiple businesses – many of which have limited or no relationship to each other – operate, such as airports. In such a context, the layering of obligations concerning non-employees – such as providing PPE or notifying of known or suspected cases – are difficult to implement. In addition, any required notification should be limited to obligating employers notify other companies if one of their own employees test positive and notifying their employees if any person at the worksite tests positive. There should be no requirement that employers notify contractor or subcontractor employees of third-party employee positive tests.

A4A urges the Board to refrain from permanent regulations and that the Board instead adopt the CDC's more flexible approach that recommends best practices based on the best information available at the time.

We greatly appreciate the ongoing collaborative efforts to combat COVID-19 and look forward to further dialogue.

Sincerely,

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SEE DEPARTMENT RESPONSE TO COMMENT 84956

The Department does not plan to recommend that the notification requirements to subcontractors, etc., referenced by the Commenter, be removed from the Standard. The intent of the notification requirement is to provide employees information of a "possible" exposure so that employees can make decisions for themselves on the appropriate course of action to take. The Department notes that the notification provision in the Standard referenced by the Commenter would only require notification by the employer to one of its own subcontractors. So in the situation described by the Commenter, vendor number one with a know to be infected employee would only be required to notify another vendor number two at the site, if vendor number two was a subcontractor to the vendor number one."

Do not make the ETS COVID-19 Standard Permanent

RE: Proposed Permanent Standard for Infectious Disease Prevention: SARS-CoV-2 Virus That Causes COVID-19, 16VAC25-220

On behalf of the Heavy Construction Contractors Association (HCCA), we are pleased to submit comments related to the proposed permanent Standard for Infectious Disease Prevention: SARS-CoV-2 Virus That Causes COVID-19, 16VAC25-220.

HCCA represents over 170 companies with 40,000 employees in Northern Virginia. HCCA is a nonprofit organization comprised of infrastructure contractors and related firms that work collectively to make a positive impact on the construction industry, the economy and the quality of life for the benefit of Northern Virginia and surrounding areas

Despite the pandemic, our members continue to construct and repair roads, prepare construction sites for homes, commercial businesses, data centers and build and maintain the water and sewer systems for these sites to ensure the continued growth of the Commonwealth.

Given the potential for danger in these jobs, safety is at the forefront of everything we do. Our member companies are proud of their track records in employee safety, and in particular, have worked diligently during the COVID-19 pandemic to ensure that transportation construction continues in as safe a manner as possible.

We have learned a significant amount about working with the omnipresent threat of COVID-19, and have the following suggestions to offer based on our experiences.

First and foremost, we do not believe the Emergency Temporary Standard should be made permanent.

If a permanent standard is enacted, it should only relate to the current public health crisis related to COVID-19. All companies have enacted new protocols in the last six months. This has required many employees without any medical training to become de facto health officers to determine if employees may be infected. With cooler weather coming, cold and flu cases will likely increase. Since teleworking is not an option for most roles in infrastructure construction, companies utilize the best information they have – most of which is required to be reported by the employee – to determine an employee's fitness to work. Expanding this permanent standard any further would create additional, unnecessary challenges for industries such as ours.

The emergency temporary standard (ETS) language regarding Centers for Disease Control (CDC) guidelines is vague and confusing. Guidance from the CDC is constantly changing, and employers are in the untenable position of determining whether that guidance provides equivalent or greater protection than the ETS. If this standard becomes permanent, it will become even more challenging. To bring greater clarity to the situation, those adhering to CDC guidance should be deemed in compliance, without having to determine how it comports with a potentially permanent Virginia standard. As an example, we have learned that airborne transmission is far more likely than transmission from surfaces. The CDC guidelines have the ability to adjust to the latest science, whereas a permanent standard does not.

The (ETS) lumps indoor and outdoor construction together in the medium exposure risk category. HCCA membership firms participate only in outdoor construction projects. These two types of construction are very different when it comes to potential exposure. Indoor construction is more likely to occur in confined spaces that share heating and air conditioning units. In fact, during the development of the ETS, most of the examples that were shared where COVID-19 had been contracted occurred in indoor settings. Social Distancing is the better control method. Road and infrastructure construction projects take place in very large

work sites, allowing opportunities for social distancing. Only in circumstances when some workers find themselves in confined spaces, such as trenching, should the risk level rise to medium. Transportation and infrastructure construction firms constantly provide confined space training for employees. Additionally, employees that operate heavy equipment normally do so by themselves, much like a delivery driver. Delivery drivers are defined as low exposure risk by the ETS. We believe outdoor construction should be included in the low risk exposure category.

Face covering requirements need more definition and flexibility based on the circumstances in which they are being used. While many employees are required to wear face coverings, it is important to understand the impact on other safety equipment and the employee's well-being. Face coverings can lead to safety glasses fogging up, creating a greater hazard for someone operating around heavy equipment. In extreme heat conditions, which are often exacerbated by placing hot asphalt, face coverings can increase the potential for heat-related illness. They can also muffle speech, making communication on a noisy job site challenging. How to wear a face covering needs to be defined. Given the risk associated with certain transportation construction activities, additional flexibility should be given to employers to make practical adjustments that provide the best protection for their employees.

We support requiring firms to have a written plan and conduct training for all employees regarding COVID related hazards and risks. What is missing from VOSH are standard templates that will promote consistency and clarity. Currently, the responsibility to draft and execute COVID related protocols to comply with the ETS falls on the employer and employee representative. If the Board had determined they need to issue permanent standards, the Board should also provide how those standards should be conducted.

The Board should clarify which industries are exempt from the standard. Several industries have been and continue to be exempt from the Department of Labor's jurisdiction on this matter. Several industries oversight is with other government entities and this should be stated. The standards need to clarify which industries are exempt from the standard.

Safety is at the core of what contractors do every day, all day. We take the work and the risk and figure out how to accomplish the task safely. Given that our member companies, which have been essential businesses since the onset of the pandemic, have gained valuable experience safely working with the threat of COVID-19 and within the parameters of the ETS. We strongly believe that these changes need to be made if a permanent standard is to be created.

Sincerely,

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SEE DEPARTMENT RESPONSE TO COMMENT 84956

The Department respectfully disagrees with the Commenter's suggestion that the Standard establishes company "Health officers." No such language is included in the Standard. For instance, although it is a generally accepted practice, the Standard does not specifically require that employers check the temperatures of employees. 16VAC25-220-50.C.1 provides that "Prior to the commencement of each work shift, prescreening or surveying shall be required to verify each covered employee does not have signs or symptoms of COVID-19." Employers are provided the flexibility to determine what form of prescreening they will use to determine that "each covered employee does not have signs or symptoms of COVID-19."

OSHA provides guidance on screening employees in the construction industry that can be used by non-medical personnel at: <https://www.osha.gov/SLTC/covid-19/construction.html>.

The Department notes that the Standard provides flexibility to business through 16VAC25-220-10.G.1 which provides that “To the extent that an employer actually complies with a recommendation contained in CDC guidelines, whether mandatory or non-mandatory, to mitigate SARS-CoV-2 virus and COVID-19 disease related hazards or job tasks addressed by this standard, and provided that the CDC recommendation provides equivalent or greater protection than provided by a provision of this standard, the employer’s actions shall be considered in compliance with this standard. An employer’s actual compliance with a recommendation contained in CDC guidelines, whether mandatory or non-mandatory, to mitigate SARS-COV-2 and COVID19 related hazards or job tasks addressed by this standard shall be considered evidence of good faith in any enforcement proceeding related to this standard.”

The Department does not intend to recommend any change to 16VAC25-220-10.G.1. A specific reference to “hospitals, health systems, and other facilities under their control” is unnecessary as the above provision applies to all employers wishing to take advantage of its provisions.

While the Standard lists a number of industries under the definition of “medium” exposure risk level, the language specifically states that “Medium exposure risk hazards or job tasks may include, but are not limited to, operations and services in...(Emphasis added). The definition of “medium” exposure risk level does not classify the listed industries as medium risk, but instead when read in conjunction with other portions of the Standard, indicates that the listed industries “may” fall into that category, depending on how the employer assesses and classifies the types of hazards employees are exposed to and the type of job tasks they undertake, in accordance with the requirements in 16VAC25-220-40.B, which provides that:

B. Exposure assessment and determination, notification requirements, and employee access to exposure and medical records.

1. Employers shall assess their workplace for hazards and job tasks that can potentially expose employees to the SARS-CoV-2 virus or COVID-19 disease. Employers shall classify each job task according to the hazards employees are potentially exposed to and ensure compliance with the applicable sections of this standard for very high, high, medium, or lower risk levels of exposure. Tasks that are similar in nature and expose employees to the same hazard may be grouped for classification purposes.

The Standard also provides in 16VAC25-220-10.E.1 provides in part:

E. Application of this standard to a place of employment will be based on the exposure risk level presented by SARS-CoV-2 virus-related and COVID-19 disease-related hazards present or job tasks undertaken by employees at the place of employment as defined in this standard (i.e., very high, high, medium, and lower risk levels).

1. It is recognized that various hazards or job tasks at the same place of employment can be designated as very high, high, medium, or lower exposure risk for purposes of application of the requirements of this standard.

The Department agrees with the Commenter that when physical distancing can be maintained - either indoors or outdoors - that is a preferred method of mitigating the spread of the SARS-CoV-2 virus. Conversely, when physical distancing cannot be observed – whether inside or outside – the Standard requires the employer consider other mitigation strategies.

The Department agrees that the hazards and job tasks for an equipment operator that works alone are appropriate to classify as lower risk exposure.

....

## PPE

16VAC25-220-40.F provides: ""F. When multiple employees are occupying a vehicle for work purposes, the employer shall ensure compliance with respiratory protection and personal protective equipment standards applicable to the employer's industry. If the employer is concerned that employee use of a face covering may present a greater safety or health hazard to employees than compliance with the Standard (e.g., the inability to communicate coherently with another employee during a potentially hazardous job task) the issue needs to be assessed during the personal protective equipment (PPE) hazard assessment process required either under the Standard (see 16VAC25-220-50.D for very high and high risk situations, and 16VAC25-220.60.D for medium risk situations) or 1910.132(d) for general industry employers. The PPE hazard assessment process will allow the employer to identify any potential situations where there may be a greater hazard presented and develop alternative protections for employees.

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## Heat Illness

If the employer is concerned that employee use of a face covering may present a greater safety or health hazard to employees to employees exposed to hot environments than compliance with the Standard (e.g., the inability to communicate coherently with another employee during a potentially hazardous job task) the issue needs to be assessed during the personal protective equipment (PPE) hazard assessment process required either under the Standard (see 16VAC25-220-50.D for very high and high risk situations, and 16VAC25-220.60.D for medium risk situations) or 1910.132(d) for general industry employers. The PPE hazard assessment process will allow the employer to identify any potential situations where there may be a greater hazard presented due to hot environments and develop alternative protections for employees.

In addition, 16VAC25-220-80.B.f provides that training on the standard provided to employees shall include with regard to PPE: "Heat-related illness prevention including the signs and symptoms of heat-related illness...."

The Department notes that a free template for a plan is provided on the Department's website at: <https://www.doli.virginia.gov/covid-19-outreach-education-and-training/>

In addition, the Department strongly encourages Virginia's small business owners to take advantage of free and confidential occupational safety and health onsite and virtual consultation and training services to address COVID-19 compliance issues. More information about the VOSH Consultation Services can be found at: <https://www.doli.virginia.gov/vosh-programs/consultation/>

86397 Paul and Catherine

9/25/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86397>

Enough with the Masks!!! No more controlling our lives! We can make the decision ourselves.

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

SEE DEPARTMENT RESPONSE TO COMMENT 85535

86398 Judith D LePera 9/25/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86398>

Worker protections

I am speaking in favor of making standards for protection of our poultry workers permanent. The industry is important for our economy, and it should afford its workers adequate pay and health and safety protections to the utmost degree possible.

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SEE DEPARTMENT RESPONSE TO COMMENT 84196

86399 Abigail Gaines 9/25/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86399>

Permanent standards to protect poultry workers - in favor of

To the Virginia Safety and Health Safety Board:

I am in favor of making the emergency temporary standards to protect Virginia poultry workers from Covid-19 permanent. Note that I am a resident of Harrisonburg, Virginia

Thank you.

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SEE DEPARTMENT RESPONSE TO COMMENT 84196

86401 Amalgamated Transit Union Amalgamated Transit Union 9/25/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86401>

Enact the Permanent Covid-19 Standard to Protect Virginia Workers

BEFORE THE VIRGINIA SAFETY AND HEALTH CODES BOARD 16 VAC 25-220 Proposed Permanent Standard  
Infectious Disease Prevention: SARS-CoV-2 Virus that Causes Covid-19

Comments in Support of the Proposed Permanent Standard by the

Amalgamated Transit Union

The Amalgamated Transit Union (the "ATU") submits the following Comments in strong support of the permanent standard regarding infectious disease prevention and the SARS-CoV-2 virus that causes Covid-19 that is under consideration by the Virginia Safety and Health Codes Board (the "Board"). As the labor union representing bus, rail, and paratransit workers employed throughout Virginia, the ATU comes to the Board to present the pressing and immediate safety concerns that its Virginia members carry with them every day as they perform the essential work of connecting Virginians to jobs, medical care, and life-sustaining services in the midst of the Covid-19 pandemic.

The pandemic has not eliminated these transportation needs, nor has it diminished ATU members' dedication to serving the riding public. Fortunately, since the adoption in July 2020 of the Virginia emergency

temporary standard regarding SARS-CoV-2 and Covid-19 (the “ETS”), ATU members have been able to perform their public service with enhanced access to personal protective equipment (“PPE”), more personal space, improved communications with employers regarding Covid-19 infections at worksites, and other important protections. As the pandemic persists and medical and scientific experts forecast an increase in infections, it is essential to maintain the protections provided by the ETS in the form of the permanent standard now under consideration. Only the certainty and predictability of a permanent standard can keep ATU members safe on the job and give riders confidence that they will be safe on transit, thereby enabling the recovery both of transit systems themselves and of the communities they serve.

Of course, the benefits of a permanent standard are not limited to ATU members. All Virginia workers are safer with effective Covid-19 protections in place – and when workers are safer, Virginia is safer. That is why the national AFL-CIO and its Virginia federation – which represents workers across employment sectors and across the Commonwealth – have also submitted comments in strong support of the proposed permanent standard. The ATU endorses these comments and urges the Board to adopt the improvements to the proposed permanent standard that the AFL-CIO proposes.

In addition to the improvements set forth in the AFL-CIO comments, the following updates – tailored to transit workers’ needs – are also necessary to enable the permanent standard to provide comprehensive SARS-CoV-2 protection to ATU members and to all Virginia workers:

**Establishment of confined space-specific air filtration standards** – The proposed permanent standard recognizes the importance of enhanced air filtration to mitigating the spread of SARS-CoV-2 at medium-risk worksites, including transit agencies, by requiring employers at such sites to install air-handling systems that are consistent with certain guidelines developed by the American National Standards Institute (“ANSI”) and the American Society of Heating, Refrigerating and Air-Conditioning Engineers (“ASHRAE”). However, despite specifically designating transit worksites as medium-risk, the proposed permanent standard contains air filtration requirements designed only for buildings – not for transit vehicles and other confined areas. The ANSI and ASHRAE standards cited might be adequate for indoor spaces with substantial airflow and with ample space between workers, but they are insufficient for confined workspaces like buses, where workers spend extended periods in small, poorly-ventilated areas filled with an ever-shifting selection of members of the public – any one of whom could carry and spread SARS-CoV-2. Given the growing scientific consensus that SARS-CoV-2 spreads via airborne aerosols that people generate when they breathe and speak, it is clear that transit workers’ extended exposure to large numbers of potentially infected individuals increases the likelihood that they will contract Covid-19 – and correspondingly increases the necessity of filtration standards that are appropriate for confined spaces. In the transit context, such enhanced filtration should include a requirement for employers to equip vehicles with air filters with a minimum efficiency reporting value (a “MERV”) of thirteen or higher.

**Introduction of fresh-air ventilation systems** – The proposed permanent standard recognizes the importance of enhanced ventilation systems to mitigating the spread of SARS-CoV-2. In confined workspaces like transit vehicles, such systems must include fresh-air ventilation, which pumps outside air into the workspace and sends inside air out. Simply requiring employers to equip transit vehicles and other confined workspaces with openable windows is insufficient. To ensure the level of airflow necessary to disperse aerosols that might carry SARS-CoV-2, the permanent standard must require employers to install fresh-air ventilation systems that are appropriate for any confined workspaces under their control.

**Inclusion of UV-C light requirement** – Light bulbs emitting ultraviolet C (“UV-C”) waves are effective in killing SARS-CoV-2 when installed in building and vehicle ventilation systems. The permanent standard therefore should require an employer to install such bulbs at all worksites and in all workspaces, including vehicles,



whenever the employer – in consultation with workers and their representatives – determines that they would mitigate the spread of the virus.

Strengthening of requirements for employers to install physical barriers – The proposed permanent standard recognizes the importance of physical barriers to protecting workers from others who might spread SARS-CoV-2. However, the standard’s call for employers at medium-risk worksites to install such barriers “[t]o the extent feasible...where such barriers will aid in mitigating the spread of SARS-CoV-2...” is insufficient. This is particularly true regarding confined workspaces like transit vehicles, where workers cannot maintain enough distance from others to protect themselves from potentially infectious aerosols. Instead, the standard must require an employer to consult with workers and their representatives when determining whether physical barriers would reduce SARS-CoV-2 spread at the worksite – and if that is indeed the case, the standard must require the employer to install such barriers unless the employer can prove that doing so would pose an undue financial burden. SARS-CoV-2 is too dangerous, and barriers are too important to mitigating that danger, for decisions regarding barriers to be left to the employer’s sole discretion.

Reduction of transit vehicle capacities – One of the most effective ways to limit the airborne transmission of SARS-CoV-2 in a confined space where physical distancing is impossible – like a bus, rail car, or paratransit van – is to limit the number of passengers. Under the permanent standard, transit employers should be required to limit passenger loads to twenty-five percent of a vehicle’s capacity and to use a portion of the newly-available space to create a buffer zone between transit workers and passengers, where no passenger seating is permitted.

Establishment of rear door boarding requirements for transit – When passengers board buses and certain rail cars using the front door, they pass so close to the vehicle operator that the operator cannot remain protected from potentially infectious aerosols. The permanent standard must therefore require transit employers to utilize rear door boarding for the duration of the SARS-CoV-2 pandemic except for those passengers with a bona fide need to utilize any accessibility equipment that might be connected to the front door. To the extent that rear door boarding might complicate an employer’s fare collection, the employer may implement off-board collection, install collection points near rear doors, or forego fares altogether. Certain transit employers across Virginia already have implemented these measures successfully, and the permanent standard should require the rest to follow suit.

Introduction of vehicle “out of service” standards – Whenever a worker or a member of the public who has tested positive for Covid-19, who is suspected of being positive, who has been exposed to the virus, or who reasonably believes they have been exposed enters or uses a vehicle – including a transit vehicle – there is a substantial probability that the vehicle has been contaminated by SARS-CoV-2. To protect workers who are using or who might use a potentially contaminated vehicle, the permanent standard should require an employer to place such a vehicle out of service immediately upon discovering its potential contamination. Further, the standard must require the employer to fully ventilate the vehicle with fresh air and to fully clean and disinfect it before returning it to service. Given the high risk involved in such cleaning, the permanent standard must require an employer to provide PPE to workers completing the task that includes, as a minimum, N-95 masks, face shields, goggles, gloves, and protective gowns.

Inclusion of Customer mask/face covering requirement – As discussed above, there is a growing scientific consensus that SARS-CoV-2 spreads through airborne aerosol transmission. Most medical and scientific experts agree that individuals release substantially fewer aerosols while wearing masks or face coverings and that the consistent use of masks or face coverings in public is vital to reducing the spread of SARS-CoV-2. When a public space is also a worksite, as it is for ATU members and all other Virginia workers providing services to the public, the wearing of masks and face coverings becomes a worker protection matter. It

likewise becomes a matter for permanent standard, which should obligate employers to require all members of the public entering a worksite to wear a mask or face covering unless doing so is impossible for bona fide medical reasons.

Establishment of N-95 mask guidance for medium-risk jobs – The fact that the proposed permanent standard classifies a given job – like transit operations – as medium-risk does not mean that workers are unlikely to contract Covid-19 at work. Instead, as detailed above, transit workers face elevated SARS-CoV-2 risks as a result of their extended exposure in confined spaces to potentially infected individuals. Most medical and scientific experts agree that an N-95 mask is among the best defenses to such exposure. The permanent standard should therefore require employers in medium-risk worksites to use every effort, including coordination with the Commonwealth in government-led purchasing efforts, to procure N-95 masks and to provide them to workers.

Enhancement of protections to account for the airborne spread of SARS-CoV-2 – There is a growing scientific consensus that SARS-CoV-2 spreads through the air over distances greater than six feet. Therefore, the permanent standard should use a greater distance measurement when determining whether job tasks bring workers close enough to others to pose a hazard, when defining “physical distancing,” when deciding how far apart employers must keep their workers from others, and when making all other distance-based determinations. The permanent standard also should include worksite ventilation requirements that are more protective than those in the ETS to ensure that ventilation systems protect workers from aerosols emanating from areas more than six feet away.

Increase in opportunities for workers and their representatives to participate in hazard assessment and safety planning processes – Due to workers’ routine presence at their worksites and intimate familiarity with their jobs, workers and their representatives are best-positioned to understand worksite hazards and to propose solutions. Yet, the proposed permanent standard calls for the involvement of workers and their representatives in SARS-CoV-2 safety processes only to the extent of determining whether workers need PPE to protect themselves from SARS-CoV-2 in certain workplaces. The permanent standard should expand such consultations by providing for worker and representative involvement each and every time employers assess worksites for SARS-CoV-2 hazards and/or develop hazard-mitigation plans, and should contain robust enforcement provisions to ensure that employers are held accountable for engaging in substantive consultations.

Expansion of provisions for removing infected and potentially infected individuals from the worksite – The only way to ensure that a worker who has tested positive for Covid-19, who is suspected to be infected, who has been exposed, or who reasonably believes they have been exposed does not spread SARS-CoV-2 at a worksite is to allow the worker to stay home – without any loss of pay, benefits, or seniority – until the worker is no longer capable of transmitting the virus. Without these protections, infected or potentially infected workers must choose between earning a living and attending to their health and that of their community. This stark tradeoff creates an unacceptable risk that a worker will choose the certainty of maintaining their earnings over the uncertainty of potentially spreading SARS-CoV-2. This result becomes more likely the longer the pandemic-driven recession continues. However, the proposed permanent standard requires an employer to allow time away from work for only those workers who have tested positive for Covid-19 or who suspect that they have the disease. No such protections exist for workers who know they have been exposed to SARS-CoV-2 or who reasonably believe that to be the case. Equally concerning is the fact that the proposed permanent standard does not require employers to pay workers for time off due to Covid-19 concerns or to maintain their benefits or seniority. Under these circumstances, neither workers nor the public enjoys adequate protection from SARS-CoV-2. The Board must therefore expand the permanent

standard to allow all infected and potentially infected workers to take consequence-free time off until they test negative and/or are symptom-free.

Clarification of employer's contact tracing responsibility – Pursuant to the worker notification provisions in the proposed permanent standard, an employer must notify any workers who might have been exposed at the worksite to a coworker who has tested positive for Covid-19. The employer must provide the same notification to other employers whose employees were present at the worksite at the same time as the infected worker. Yet, the proposed standard states that employers need not engage in contact tracing regarding SARS-CoV-2 or Covid-19. These provisions are contradictory. An employer cannot determine who might have been exposed to an infected worker without determining who came into contact with and/or reasonably might have come into contact with that worker – that is, without conducting contact tracing. The notification provisions are essential, and the permanent standard's contact tracing language must be consistent with them.

Enhancement of employer notification responsibilities – As discussed above, the proposed permanent standard requires an employer to notify any of its own workers who might have been exposed at the worksite to a coworker who has tested positive for Covid-19 and to provide the same notification to the employer of any other workers who might have been exposed. However, workers known to be positive for Covid-19 are not the only ones capable of spreading SARS-CoV-2; this group also includes workers suspected to be positive, workers who know they have been exposed to the virus, and workers who reasonably believe themselves to have been exposed. To maintain the health of workers and their communities, an employer must therefore collect reports of suspected positives, known exposures, and suspected exposures; determine which workers need to be notified of these reports; and make the necessary notifications.

Clarification of employer cleaning responsibilities – The proposed permanent standard recognizes the importance of regular worksite cleaning and of providing workers with the materials necessary to keep their workspaces clean. For the prescribed cleaning regimens to be effective, however, workers must have time to clean, must be paid for that time, and must be protected both from the cleaning chemicals they use and from any SARS-CoV-2 virus that might be propelled into the air during cleaning. Therefore, the permanent standard should require employers to provide workers with paid time to clean the worksite at the end or beginning of each shift and should provide them with the PPE that workers, their representatives, and the employer determine to be appropriate for the relevant cleaning tasks.

The protections in the ETS have proven invaluable to ATU members in Virginia as they carry on their essential yet dangerous work during the Covid-19 pandemic. They are ever-mindful, however, of the temporary nature of these protections, and they wonder how they will keep themselves safe on the job after the ETS expires in January, in the midst of a widely anticipated resurgence in Covid-19 infections. Given that more than eighty ATU members have tragically succumbed to Covid-19, the stakes could not be higher.

In the face of a virus that poses extraordinary and increasing dangers to Virginia workers, it is clear that now is not the time to allow the protections of the ETS to disappear; instead, the Board must act immediately to renew and strengthen them. Although some commenters might claim that the cost of the proposed protections is too great a burden on employers, the reality is just the opposite: By acting in accordance with an expanded version of the proposed permanent standard, employers have the opportunity to ensure the continued viability and success of their businesses by creating conditions under which their workers can survive, thrive, and continue the work that makes business possible. ATU members and all Virginia workers require comprehensive SARS-CoV-2 protection, and the continued viability of the Commonwealth's economy depends on it. The ATU therefore urges the Board to adopt the proposed permanent standard, incorporating the essential modifications and additions listed above.

SEE DEPARTMENT RESPONSE TO COMMENT 84196

SEE DEPARTMENT RESPONSE TO COMMENT 85974

The Department notes that the ASHRAE air handling requirements are undergoing a legal review which may result in recommended changes that could address some of air handling issues raised by the Commenter.

The Department does not intend to change the Standard's provisions dealing with installation of physical barriers as it is appropriate to consider feasibility (both technological and economic) when selecting mitigation strategies, whether on a mass transit vehicle or a fixed worksite.

The issue of N-95 respirators raised by the Commenter is appropriate to address during the personal protective equipment (PPE) hazard assessment process required in General Industry under 1910.132.

The Department does not intend to recommend the addition to the standard of medical removal protections or guaranteed compensation requirements for employees who are away from work due to COVID-19 issues.

Some employees will be able to use sick leave during the time they are away from work. While the Standard does not require employers to provide sick leave to employees, it does reference the Families First Coronavirus Response Act (FFCRA) at 16VAC25-220-40.B.6:

6. To the extent feasible and permitted by law, including but not limited to the Families First Coronavirus Response Act, employers shall ensure that sick leave policies are flexible and consistent with public health guidance and that employees are aware of these policies.

Further information about the FFCRA and sick leave policies can be found at:

<https://www.dol.gov/agencies/whd/pandemic/ffcra-employee-paid-leave>

Some employees will be able to receive workers' compensation while they are away from work.

[http://www.vwc.state.va.us/sites/default/files/documents/COVID-19-Statistics-FAQs\\_0.pdf](http://www.vwc.state.va.us/sites/default/files/documents/COVID-19-Statistics-FAQs_0.pdf)

The Department does not intend to recommend that employer be required to conduct contact tracing. That issue falls within the purview of the Virginia Department of Health.

16VAC25-220-10.C provides that the Standard applies "to every employer, employee, and place of employment in the Commonwealth of Virginia within the jurisdiction of the VOSH program...." The Standard does not contain a face covering mandate for the general public. That issue is the purview of the Virginia Department of Health and Governor's Executive Orders (e.g., Executive Order 63).

DOLI and VOSH do not have jurisdiction over ""rolling stock.""

The Department does not intend to recommend any additional employee involvement language to the Standard. Such involvement is currently required in 16VAC25-220-50.D.1.a, 16VAC25-220-60.D.1.a, and 16VAC25-220-70.C.2.

The Department does not intend to recommend adding requirements that employers be required to provide pay for cleaning activities by employees. Payment of wage issues fall under Va. Code §40.1-29, <https://law.lis.virginia.gov/vacode/40.1-29/>, and not within the enabling statutes of the VOSH program.

86403 anonymous

9/25/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86403>

Freedom of C H O I C E

To Whom It May Concern,

According to right reason and personal freedom, the question of whether to mask or not seems to fall squarely in the realm of a person's right to choose!! If someone wants to wear a mask and feels protected that way, by all means, they should be free to do that. On the other hand, it's my body and my choice!!!! I strenuously object to the government demanding that I put something on my body to which I do not consent. The laws should not trample freedoms -- intelligent people can weigh the risks and make an informed choice (and of course, live with the consequences of that choice.) FREEDOM of Choice for America!!!!

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

SEE DEPARTMENT RESPONSE TO COMMENT 85535

86404 Robert Hartnett 9/25/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86404> Strongly oppose any mandatory mask rules. There is no good reason for mandatory mask rules or laws. There is proof in countries such as Sweden who was much more successful overall in dealing with the virus and NEVER had a mask mandate nor did they ever shut down. There is also good science behind repeated wearing of masks causing other problems and making people sick. It is bad policy for a government with such a mild virus to mandate such a thing and have a direct assault on our rights.

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

SEE DEPARTMENT RESPONSE TO COMMENT 85535

86405 Richard Hatch, Communications Workers of America 9/25/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86405>

The Communications Workers of America (CWA) District 2-13 strongly supports a permanent Standard for Infectious Disease Prevention: SARS-CoV-2 Virus That Causes COVID-19. The current pandemic will continue for an indeterminate period of time, well after the Virginia Emergency Temporary Standard (ETS) expires at the end of January 2021. Strong, COVID-19 workplace protections will continue to save lives, slow the spread of COVID-19, and will dampen the health and economic impact of COVID-19 on employers, workers, and the community. Virginia should continue to lead the way in adopting a strong, permanent, ENFORCEABLE, COVID-19 infectious disease standard.

The Communications Workers of America is a Labor Union representing workers in various industries and sectors across the United States, Canada and Puerto Rico. In Virginia we represent approximately 6,500 workers across the Commonwealth. This includes Virginia workers in the industries of telecom, airlines,

media, retail, manufacturing, and healthcare. We also represent workers at the American Red Cross, Virginia Department of Corrections and the Virginia Department of Juvenile Justice.

We have seen first-hand the devastation that COVID-19 has had on workers across the country, including Virginia. Hundreds of our members have become infected with this deadly disease and too many have died. The Virginia Emergency Temporary Standard has already provided a critical means for improving workplace conditions and protecting workers.

The ETS is a start, but there are areas we believe should be strengthened in the permanent standard which must do everything it can to protect workers within the Commonwealth. Our concerns are as follows:

1. Correctional facilities, jails, detention centers, and juvenile detention centers are unique environments and MUST have increased and more comprehensive workplace controls and protections. Outbreaks continue at Department of Corrections (DOC) facilities. We strongly feel that these facilities need the following requirements written into the standard to ensure safety:

- a. Stop all entrance into the facilities for anyone not incarcerated or employed and assigned to that individual facility;
- b. Test ALL staff, resident/inmate, officer, deputy, etc. within the facility as a baseline and then regularly to ensure asymptomatic and pre-symptomatic COVID-19 positive individuals do not expose others and continue to spread the disease;
- c. Mandate respirator use, not "face coverings" for all employees and require enhanced protocols and protections for all inmates/residents when they are transported or removed from their normal pod.

2. This standard must also have clear requirements for workers in uncontrolled environments such as those who must enter and work in residences or other businesses, including health care facilities. This category of worker has no way of identifying a threat until after they are exposed and become ill and an employer has no way of ensuring that this is a safe environment, even with pre-screening of customers. There is a further concern these workers can inadvertently expose the public as they move throughout their day, house to house or business to business, if they do not know they are infected. Procedures such as "curbside" service in retail and in "no contact" delivery for packages or food are in place to recognize the danger in carrying this disease from person to person. This category of worker who routinely enters uncontrolled environments such as residences, businesses, and other facilities (including health care), however, must often enter a dwelling to repair, test, or install equipment and they are subject to a much higher degree of danger that then continues to be carried to the next residence. In order to protect these workers and to mitigate the exposure risk for others we strongly believe these workers should have the following, mandated protections in the permanent standard:

- a. These workers must be issued NIOSH-certified respirators, not "face coverings" that are not regulated or certified in any way, as well as other appropriate Personal Protective Equipment (PPE) prior to entering unknown environments. Employers should be required to follow the Respiratory Protection standard, 16VAC25-90-1910.134.
- b. Employers must ensure that workers have enough tools and equipment to minimize sharing of equipment, including vehicles. In the rare event this does not happen, all shared equipment must be sterilized prior to use by another employee.
- c. Requirements should be put in place to protect workers who must inhabit or travel in a shared work vehicle. The current language in the ETS, 16VAC25-220-40 Mandatory requirements for all employers, Section

F, "When multiple employees are occupying a vehicle for work purposes, the employer shall ensure compliance with respiratory protection and personal protective equipment standards applicable to the employer's industry," does not provide any meaningful protection and is toothless. For example, there are no industry requirements for respiratory protection or other PPE for telecommunications employees who may travel together in the cab of a two person line vehicle or for members of a news crew traveling together in a news van. The standard should specify requirements for shared work/travel in vehicles, such as ventilation protocols (bringing in outside air instead of recirculating air or traveling with the windows open, etc.), respiratory protection, and cleaning/disinfecting protocols.

d. Employers must also be required to screen customers or locations prior to dispatching an employee to determine possible high risk scenarios.

3. Respirators, not face coverings, should be required to protect Professionals who collect blood and plasma. These employees must be close to, and physically touch, individuals who are donating blood/plasma. Blood drives may occur in indoor environments not controlled by the employer and/or in vehicles designed for the purpose, where there is increased risk of airborne exposure.

4. The permanent standard should increase protections to prevent against airborne exposure, particularly in indoor environments. SARS-CoV-2 aerosols can remain suspended in air and travel beyond six feet. A separation of six feet, particularly in an indoor or enclosed environment, is very important, but not sufficient to protect against airborne transmission.

We urge the Safety and Health Codes Board to adopt as permanent an improved version of "16 VAC 25-220 Proposed Permanent Standard, Infectious Disease Prevention: SARS-CoV-2 Virus That Causes COVID-19" to continue to protect workers from COVID-19 throughout this pandemic and as protection against future outbreaks.

Sincerely,

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SEE DEPARTMENT RESPONSE TO COMMENT 84196

The Department does not intend to recommend revising the Standard to address access and egress issues at jails and correctional facilities. Control over access and egress issues at jails and correctional facilities falls under the purview of either the controlling authority and/or the Virginia Department of Health.

The Department does not intend to recommend any changes to the pre-screening requirements in the Standard. 16VAC25-220-50.C.1 provides that ""Prior to the commencement of each work shift, prescreening or surveying shall be required to verify each covered employee does not have signs or symptoms of COVID-19."" Employers are provided the flexibility to determine what form of prescreening they will use to determine that ""each covered employee does not have signs or symptoms of COVID-19.""

16VAC25-220-10.C provides that the Standard applies "to every employer, employee, and place of employment in the Commonwealth of Virginia within the jurisdiction of the VOSH program...." The Standard does not contain a either a respirator or face covering mandate for the general public, including prisoners. That issue is the purview of the Virginia Department of Health and Governor's Executive Orders (e.g., Executive Order 63).

The issue of N-95 respirators raised by the Commenter is appropriate to address during the personal protective equipment (PPE) hazard assessment process required in General Industry under 1910.132.

The Commenter references industries that have always been covered by 1910.132, Personal Protective Equipment Standard, which requires employers to conduct hazard assessments of the workplace to determine what PPE is required. This includes an assessment of what kind of infectious disease hazards employees might encounter, pre- and post-COVID19, when visiting a private home. The Standard does not change this basic requirement for the Commenter's industry, so there should be no confusion about what protections such employer's need to provide. If pre-COVID-19, such an employer rightly considered the potential for its employees to be exposed to, for instance, tuberculosis at a private home, conducting the same type of assessment for COVID-19 should not present any substantial difficulties. The proper assessment will determine whether and what kind of PPE and/or respiratory protection equipment is required.

The Department notes that the Standard that employee involvement is currently required for hazard assessment determinations in 16VAC25-220-50.D.1.a and 16VAC25-220-60.D.1.a.

86406 Margaret 9/25/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86406>

I strongly oppose this mask mandate.

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

SEE DEPARTMENT RESPONSE TO COMMENT 85535

86407 anonymous 9/25/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86407>

Face masks do not work. Please, please, let us get some common sense. Face masks make us breathe a lot more carbon dioxide than we should. I know you get a kick out of regulating our lives, but let us be reasonable and civil. Our tradition of freedom is getting eroded. Is this by design? A "veiled" attempt to make us do other things that may kill us?

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

SEE DEPARTMENT RESPONSE TO COMMENT 85535

86408 Wayne Perry 9/25/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86408>

Opposition to permanent DOLI standards

The idea that temporary standards that would apply to a infectious disease process that is/will be mitigated with a nearly permanent solution (education, vaccination, herd immunity, etc) would be so quickly made into permanent and lasting fiscal and operational demands for the business community is outrageous. Most of the mitigation that is currently being demanded of businesses and individuals does NOTHING to change the



actual transmission and rates of the disease. Not to mention the rates of death which are not that far off from a typical flu season. None of this is done for flu or other diseases (SARS, H1N1, Zika, etc) nor should it have been done. Putting a one-way directional sign on the floor of an aisle is nonsensical; how does this change the transmission. There needs to be common-sense guidelines, such as distancing and limited contact, but the current DOLI standards that are in place are INAPPROPRIATE AS A CURRENT MEASURE and SHOULD NOT BE MADE PERMANENT. Each individual customer and each individual business - just as they do with every other interaction - needs to make a risk-reward analysis and provide the appropriate service environment based on their customer base and their business type. A gym with college students is not the same as a thrift shop at an assisted-living and they should NOT be treated as if everyone was exactly the same. We need LESS regulation and compulsion and MORE critical thinking and individual responsibility. People make a risk assessment every day when they decide to get in their automobile and drive on the roadway. These are individual decisions and should NOT be some fascistic hand-down from bureaucrats sitting behind some desk and having no idea what is involved in actually running a business and operating an organization. DO NOT MAKE THESE INTO PERMANENT REQUIREMENTS!!!

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SEE DEPARTMENT RESPONSE TO COMMENT 84956

COVID-19 vaccines will be an important part of the Commonwealth's and the country's ability to significantly reduce the ongoing spread of the SARS-CoV-2 virus in the workplace and in the community. However, with the projected population-level efficacy of COVID-19 vaccine to be 50-70%, no one can definitively state that someone vaccinated will not subsequently be free from infection. There is also anecdotal information and scientific surveys that appear to indicate that a certain sector of the American population will refuse to be vaccinated. Accordingly, it is anticipated that SARS-CoV-2 will continue to infect a certain sector of the populace and be present in the workplace for months and years to come.

86409 Herb 9/25/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86409>

I OPPOSE THE MASK MANDATE!

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

SEE DEPARTMENT RESPONSE TO COMMENT 85535

86410 Anonymous 9/25/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86410>

Oppose This!

Oppose this. It is premature, for one thing. Covid-19 is not permanent, so why are you trying to make a regulation permanent for something that is NOT, in this case, this disease. We are over-regulated as it is, and you will add to the burdent on Virginia citizens. Additionally, you should be using common sense instead of trying to increase bureaucratic power over Virginia citizens. STOP this. We are fed up already with masks and distancing, etc., which have been shown to be needless and useless.

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

SEE DEPARTMENT RESPONSE TO COMMENT 85535

86411 Karen 9/25/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86411> I strongly oppose any mask mandates.

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

SEE DEPARTMENT RESPONSE TO COMMENT 85535

86413 Mikayla 9/25/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86413>

According to right reason and personal freedom, the question of whether to mask or not seems to fall squarely in the realm of a person's right to choose!! If someone wants to wear a mask and feels protected that way, by all means, they should be free to do that. On the other hand, it's my body and my choice!!!! I strenuously object to the government demanding that I put something on my body to which I do not consent. The laws should not trample freedoms -- intelligent people can weigh the risks and make an informed choice (and of course, live with the consequences of that choice.) FREEDOM of Choice for America!!!!

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

SEE DEPARTMENT RESPONSE TO COMMENT 85535

86414 Cindy Shelton, Stafford County Board of Supervisors 9/25/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86414>

Return to Common Sense

All,

As an elected official I know we have all learned a lot during this Pandemic. The fear and panic of March gave way to daily emergency operations updates and weekly town halls. From afar, it appeared as if we changed our minds constantly and didn't know what we were doing. It was true.

As Local elected officials we have the latitude to ask deep questions and the ability to receive answers daily quickly. Those who wrote this bill appear to be disconnected from that source of knowledge. We were briefed on OSHA standards, employee policies and requirements-all meant to ensure we did not have a knee jerk reaction and legislate myopically.

This bill does not follow standard and definitions at the federal level nor consider the impact on small businesses. Mandating businesses to do things never takes in consideration their business model and may have no impact on containing the emergency-which is the intended impact.

I honor the compassion this bill started with and suggest some of the language be re considered as it conflicts with OSHA and employee standards. Businesses will thrive or be ignored in this environment as people will not go where they perceive poor standards are being followed. In the world of instant responses, mask and sanitation missteps are quickly communicated and close down a business. Let's let the people drive the business success or failure, not an intentionally bureaucratic organization whose laws are costly to implement, costly to enforce, and overburden smart thinking residents. They are informed.

This Standard is not being proposed as legislation to the General Assembly. The Standard is being considered for adoption by the Virginia Safety and Health Codes Board pursuant to Va. Code §40.1-22(6a) and would be enforced by the Department of Labor and Industry's (DOLI) Virginia Occupational Safety and Health (VOSH) Program.

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SEE DEPARTMENT RESPONSE TO COMMENT 84956

The Department notes that the basic framework for the Standard (classifying COVID-19 hazards and job tasks by risk classification - very high, high, medium and lower - is based on a document prepared by federal OSHA which can be found at: <https://www.osha.gov/Publications/OSHA3990.pdf>

At its core the Standard is a risk management system to prevent or limit the spread in the workplace of the SARS-CoV-2 virus which causes COVID-19.

It is designed to provide basic protections for all employees and employers within the jurisdiction of the Virginia Occupational Safety and Health program.

It provides certain mandatory requirements for all employers and specific additional requirements for Very High, High, and Medium risk job tasks centered around mitigation of hazards.

The Standard is also designed to incentivize employers to make changes in the workplace that will enable employees in certain situations to be classified to a reduced level of risk (e.g., from high to medium or from medium to lower), thereby also reducing the employer's compliance and cost burdens.

86415 Frederick 9/25/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86415>

I vehemently oppose any further mask mandate. It is unscientific and countries without it have fared better than those with it. Also extremely unhygienic.

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

SEE DEPARTMENT RESPONSE TO COMMENT 85535

86416 Heidi 9/25/2020

[https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86416Mask Mandate- NONO MASK MANDATE](https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86416MaskMandate-NONOMASKMANDATE)

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

SEE DEPARTMENT RESPONSE TO COMMENT 85535

86417 Anonymous 9/25/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86417>

NO to Permanent Standard for Infectious Disease Prevention

Absolutely NO to any permanent standard for penalties of an executive order 63 and all subsequent EOs related to this.

Department of Labor and Industry Announces Intent to Adopt a Permanent Standard for Infectious Disease Prevention: SARS-CoV-2 Virus That Causes COVID-19, 16VAC25-220

Remove ALL mask mandates which are unconstitutional to all Virginians.

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

SEE DEPARTMENT RESPONSE TO COMMENT 85535

86418 Elizabeth Higgins 9/25/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86418>I do not support mandatory masks as it appears the COVID 19 virus is most deadly to those with comorbid health issues. It also appears to be on the level of the flu -and we haven't treated the public with flu preventions at work! Work places are different in their daily human contact and need to determine for themselves what standards are appropriate. State oversight with penalties for noncompliance are not needed!

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

SEE DEPARTMENT RESPONSE TO COMMENT 85535

86419 Anonymous 9/25/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86419>

Strongly Oppose

I oppose making the COVID-19 Workplace Safety Emergency Standard permanent.

Six months into the pandemic, I have learned to adapt to this unprecedented time by implementing industry-specific guidance from the Governor, the Virginia Health Department, the CDC, and OSHA to ensure physical distancing and extensive sanitization. I want to keep my employees safe because I care about their welfare.

Now is not the time to make the emergency temporary standard permanent when it's likely this pandemic will be temporary. Imposing "one size fits all" COVID-19 regulations on all employers and employees is unreasonable especially when guidance is continually changing as we learn more about the virus and how best to protect against its spread. Knowing the temporary standard expires in February 2021, there is plenty of time for the Board to wait until we know more about how long the pandemic could last before taking any further action.

My company takes its responsibility for protecting our employees seriously. Making the COVID-19 emergency regulations permanent will only make a difficult situation worse for employers and employees. I remain concerned about the impact many of the provisions of the emergency regulations are having on my business and encourage the Board to not make them permanent.

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SEE DEPARTMENT RESPONSE TO COMMENT 85680

86420 Annie Sparrow 9/25/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86420>

No mask please. Until the science is fully understood, and actually fully articulated, this should not be put into law.

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

SEE DEPARTMENT RESPONSE TO COMMENT 85535

86421 Cara Simaga Stericycle, Inc. (Stericycle) 9/25/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86421>

Comments on 16VAC25-220, Proposed Permanent Standard Infectious Disease Prevention: SARS-CoV-2 Virus

Stericycle, Inc. (Stericycle) appreciates the opportunity to submit comments to the Commonwealth of Virginia Department of Labor and Industry (the Department) on 16VAC25-220, Proposed Permanent Standard Infectious Disease Prevention: SARS-CoV-2 Virus That Causes COVID-19 (the Standard). Stericycle is a publicly traded corporation (NASDAQ: SRCL) based in Bannockburn, Illinois. In 2019, we had estimated revenues of approximately \$3.3B. Our services include compliant collection, transportation and treatment of medical waste, collection/disposal of pharmaceutical waste, and consulting/training programs to help educate our customers on the proper handling of these regulated waste streams. In the Commonwealth of Virginia, Stericycle operates a Regulated Medical Waste (RMW) transfer station in Richmond, secure document destruction facilities in Chantilly, Ashland, and Hampton, as well as mobile document destruction facilities in Salem and Waynesboro. In all there are approximately 114 employees in the state throughout our different divisions servicing Virginia businesses. Our corporate vision is to be leaders in "Protecting What Matters."

Overall, we appreciate the concern that the Department has for employees that could be exposed to SARS-CoV-2, the virus that causes Coronavirus Disease 2019 (COVID-19). We share the same concern and had already put together plans and requirements for our employees to follow, many of which are like those in the Standard. However, we do have some concerns with the Standard and respectfully submit the following comments.

#### Comments/Suggested Edits to Definitions

- “Exposure risk level” means an assessment of the possibility that an employee could be exposed to the hazards associated with SARS-CoV-2 virus and the COVID-19 disease. The exposure risk level assessment should address all risks and all modes of transmission including airborne transmission, as well as transmission by asymptomatic and presymptomatic individuals. Risk levels should be based on the risk factors present that increase risk exposure to COVID-19 and are present during the course of employment regardless of location. ◦Stericycle Comment: This definition of “Exposure risk level” should include all examples of modes of transmission, airborne, droplet, and contact. Assessing risk related to these modes of transmission should be the primary focus, rather than potential transmission by asymptomatic or presymptomatic individuals. This sets an unrealistic expectation for the employer to know who would be asymptomatic or presymptomatic. The key for evaluating exposure risk level and identifying the elements is to set up the hierarchy of controls. This is best accomplished through looking at the modes of transmission. We propose that the new definition should state “Exposure risk level means an assessment of the possibility that an employee could be exposed to the hazards associated with SARS-CoV-2 virus and the COVID-19 disease. The exposure risk level assessment should address all risks and all modes of transmission including airborne transmission, droplets, and contact. Risk levels should be based on the risk factors present that increase risk exposure to COVID-19 and are present during the course of employment regardless of location.”

- “May be infected with SARS-CoV-2 virus” means any person not currently a person known or suspected to be infected with SARS-CoV-2 virus and not currently vaccinated against the SARS-CoV-2 virus. ◦Stericycle Comment: This definition and all uses should be removed from the Standard. This definition essentially defines the majority of the population and should not be included or referenced in the Standard as it is overly broad and overreaching.

- “Occupational exposure” means the state of being actually or potentially exposed to contact with SARS-CoV-2 virus or COVID-19 disease related hazards at the work location or while engaged in work activities at another location ◦Stericycle Comment: Remove “potentially exposed” from this definition as potential exposure should not be equated to “occupational exposure”. If all potential exposures to hazards were to be defined as “occupational exposures”, employers would need to constantly report each “near miss” by an employee (eg. an employee almost cut themselves, or they tripped but didn’t hurt themselves, etc.). Reporting of “near miss” or “potential incidents” is not a condition that is required today; additionally, considering the unknowns about the modes of transmission and spread of this virus, it would be impractical for employers.

- “Suspected to be infected with SARS-CoV-2 virus” means a person who has signs or symptoms of COVID-19 but has not tested positive for SARS-CoV-2, and no alternative diagnosis has been made (e.g., tested positive for influenza). ◦Stericycle Comment: Remove this term and all uses in the Standard. If a patient didn’t test positive for SARS-CoV-2, that likely means they are not infected and thus should not be “suspected to be infected”. If they didn’t test, but have symptoms related to COVID-19, this definition and its later uses imply that the employer must treat them in the same way as an employee that has tested positive for COVID-19. It is reasonable for an employer to have screening measures and plans in place should employees exhibit COVID-19 symptoms, but, treating these employees as though they have been positively diagnosed with

COVID-19 could be perceived to be discriminatory. Also, there are many COVID-19 symptoms that are similar to influenza and other illnesses, until more is known about the virus and the disease it causes, treating those with these similar symptoms as though they are COVID-19 positive is not reasonable.

Additionally, the term “hazard assessment” is used throughout the document but is not defined. We recommend using the term “job safety analysis” instead of “hazard assessment” and defining the term in the definitions section, as this is the term used to comply with current regulations. Though assessing the hazards in a workplace is helpful, it is better to look at specific employee tasks when evaluating risk, determining PPE requirements, etc. The term “hazard assessment”, as we understand, it is too broad as it only prescribes the hazard. A job safety analysis looks at a specific task to then assign measures to mitigate, eliminate, or reduce the hazard.

#### Reporting of Positive Cases

Section 16VAC25-220-40(B)(8) prescribes requirements for reporting of positive cases. We have concerns with Subparagraphs (d) and (e) which require notification to contact government agencies (the Department and the Virginia Department of Health). Where there is a positive case of COVID-19, it should be the responsibility of the employee or their physician to contact these agencies, unless the employee contracted the virus at their workplace. If the employee did not contract the virus at their workplace, the workplace should not be responsible for reporting the case. A similar situation, for reference, would be if an employee injured themselves outside of work; even if the injury impacts their work, for example a driver broke their leg skiing and cannot drive due to the injury, this situation is not reportable to the Federal Occupational Safety and Health Agency (OSHA) or the Department today. Due to how the disease is spread, it remains difficult to determine whether an employee contracted the disease at work or outside of work through interaction with their family and/or community; the current wording potentially assumes that an employee contracted the disease at their workplace which is not reasonable. Additionally, Subparagraph (c) requires notification of a positive case to building owners; this section should be re-worded to focus on buildings with multiple employers/tenants as it would be extraneous to notify a building owner if only one tenant occupies the building.

#### Comments Regarding Infectious Disease Preparedness and Response Plan

Section 16VAC25-220-70 outlines requirements for Infectious Disease Preparedness and Response Plans. We have concerns with the following subsections:

C(3)(a)(iii) – This section specifies that employers consider situations for their plan where employees work more than one job or engage in tasks that present a very high, high, or medium level of exposure risk. We question the legality of asking employees about additional jobs and recommend that this section be stricken.

C(3)(b) – This section specifies that employers consider individual risk factors of their employees; number of health conditions are then listed. This entire section should be stricken as it is in conflict with privacy laws (such as HIPAA) and could put employers at risk.

Finally, we ask that the Department include a template to assist the regulated community in developing their plans. C(3)(a)(iii) and C(3)(b)

#### Employee Training

We agree with the Department on requiring employee training related to COVID-19. Section 16VAC25-220-80(E) outlines situations where retraining is required, however, it does not specify how soon retraining must be done nor does it specify what must be included in the training. For example, if an employee does not

understand a specific component of the training they received, do they need to be retrained on that specific component, or, go through the entire training again? Also, would new information that is learned on COVID-19 or SARS-CoV-2 warrant retraining? Finally, the Department should consider that some employees may purposely choose to not follow the training and employers should be able to document evidence of such circumstances as constant retraining would prove futile.

We appreciate the opportunity to comment on the Standard.

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#### SEE DEPARTMENT RESPONSE TO COMMENT 84196

The Department notes that the Commenter's questions about exposure risk level are addressed in 16VAC25-220-10.E.2: Factors that shall be considered in determining exposure risk level include, but are not limited to:

a. The job tasks being undertaken, the work environment (e.g. indoors or outdoors), the known or suspected presence of the SARS-CoV-2 virus, the presence of a person known or suspected to be infected with the SARS-CoV-2 virus, the number of employees and other persons in relation to the size of the work area, the working

distance between employees and other employees or persons, and the duration and frequency of employee exposure through contact inside of six feet with other employees or persons (e.g., including shift work exceeding 8 hours per day); and

b. The type of hazards encountered, including potential exposure to the airborne transmission of SARS-CoV-2 virus; contact with contaminated surfaces or objects, such as tools, workstations, or break room tables, and shared spaces such as shared workstations, break rooms, locker rooms, and entrances and exits to the facility;

shared work vehicles; and industries or places of employment where employer sponsored shared transportation is a common practice, such as ride-share vans or shuttle vehicles, car-pools, and public transportation, etc.

The Department does not intend to recommend that the definition of "May be infected with SARS-CoV-2 virus" be removed from the Standard. While many people become infected with SARS-CoV-2 in community settings that are not work-related, every person that becomes infected who is also an employee becomes a potential workplace source and transmitter of the virus if they report to work while still capable of transmitting the disease. There are numerous documented examples of the workplace spread SARS-CoV-2, which is also considered to be highly contagious. The introduction of an infectious disease into a workplace setting, regardless of the source, constitutes a workplace health hazard subject to regulation and enforcement by VOSH. The VOSH program has clear statutory and regulatory jurisdiction over workplace safety and health issues in the Commonwealth, including the potential for spread of infectious diseases among employees and employers, and when those employees and employers are potentially exposed to other persons who may be carriers of the infectious diseases (patients, customers, independent contractors, etc.).

The Department does not intend to recommend that the definition of "occupational exposure" be revised. It is based on a longstanding definition contained the VOSH Field Operations Manual (FOM) and federal OSHA's FOM.



The Department does not intend to recommend that the definition of "Suspected to be infected with SARS-CoV-2 virus". The definition includes persons who have not yet been tested for SARS-CoV-2.

The term "hazard assessment" is based on requirements in federal OSHA standard 1910.132(d), which has been in place and understood by the regulated community for decades.

The Department does not plan to recommend the elimination of reporting requirements to the Department of Health, although it does intend to recommend a change to the trigger number of positive cases. The Department does not plan to recommend the elimination of reporting requirements to the Department of Labor and Industry.

DOLI and the Virginia Department of Health (VDH) have collaborated on a Notification Portal for employers to report COVID-19 cases in accordance with Emergency Temporary Standard (ETS) Sections 16VAC25-220-40.B.8.d and -40.B.8.e that satisfies COVID-19 reporting requirements for both agencies. The portal went live on September 28, 2020. Here is a link:

<https://www.doli.virginia.gov/report-a-workplace-fatality-or-severe-injury-or-covid-19-case/>

The Department does not intend to recommend changes to 16VAC25-220-70 based on the Commenter's suggestions. The Department is not aware of any legal restrictions against an employer establishing a policy that employees inform them about outside jobs.

The Commenter's concern about HIPAA implications is addressed by the wording of the Standard in 16VAC25-220-70.C.3.b: "To the extent permitted by law, including HIPAA".

A template for an Infectious disease preparedness and response plan is available at:

<https://www.doli.virginia.gov/covid-19-outreach-education-and-training/>

The Standard is designed to provide employers some flexibility in determining the time frame in which retraining is provided and the topics that need to be covered.

For employees who refuse to follow training provided, see 16VAC25-60-260.B and -260.C, which provide:

B. A citation issued under subsection A of this section to an employer who violates any VOSH law, standard, rule, or regulation shall be vacated if such employer demonstrates that:

1. Employees of such employer have been provided with the proper training and equipment to prevent such a violation;
2. Work rules designed to prevent such a violation have been established and adequately communicated to employees by such employer and have been effectively enforced when such a violation has been discovered;
3. The failure of employees to observe work rules led to the violation; and
4. Reasonable steps have been taken by such employer to discover any such violation.

C. For the purposes of subsection B of this section only, the term "employee" shall not include any officer, management official, or supervisor having direction, management control, or custody of any place of employment that was the subject of the violative condition cited.

86422 Phillip 9/25/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86422> Absolutely against any type of mask mandate/requirement. Freedom of choice.

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

SEE DEPARTMENT RESPONSE TO COMMENT 85535

86423 Chris 9/25/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86423>

If you are sick, stay home. No more masks! "SEE DEPARTMENT RESPONSE TO COMMENT 84237

SEE DEPARTMENT RESPONSE TO COMMENT 85535

86427 Holly Woodward 9/25/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86427>

Opposed to mask mandate

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

SEE DEPARTMENT RESPONSE TO COMMENT 85535

86428 Daryl P. Carr 9/25/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86428>

Making ETS regulations permanent

To say making the wearing of masks and social distancing permanent is governmental over reach is an understatement. There is no sound reason, medical or otherwise to impose these restrictions on business here in Virginia. These restrictions will ultimately cause many business to close up or move out of state. This just smacks of government wanting to control the people. If you move forward, the people will ultimately be heard at the ballot box.

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SEE DEPARTMENT RESPONSE TO COMMENT 84956

The Department has no response to the Commenter's political commentary.

86429 Thomas L McFadden 9/25/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86429> Mask wearing by healthy people is voodoo science. Do you people want Virginia to lead the nation in voodoo science? After 7 months

of this suppose "pandemic" and the 144,433 "confirmed or probable cases" including the 80,000 "confirmed cases" asserted by the Virginia Department of Health since July 1st, only about 18,150 Virginians have ever required hospitalization because these people are not sick! That is 0.2 of 1% of 144,433 cases! It's supposed to be a "deadly disease" but according to VDH, only 1 person under 20 has died and only 7 between 20-30. Unlike most jurisdictions, VDH does not report underlying conditions but based on national statistics, 96% of those who dies did have underlying conditions. Who died? According to VDH, Virginia has 3,136 deaths in a population of 8.5 million and of those 2301 were persons over 70. If the VDH wasn't so incompetent, it would not have allowed nursing homes and elder care facilities to become "killing fields." If you people are destroying Virginia's economy because of Democrat Party politics, shame on you.

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

SEE DEPARTMENT RESPONSE TO COMMENT 85535

86430 Julie Zaepfel 9/25/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86430>

As a constituent of the Commonwealth of Virginia for 29 years, I oppose any permanent measure that mandates citizens to wear a mask while in public places. It is unreasonable to have a permanent mandate when there is no scientific or medical reason to do so.

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

SEE DEPARTMENT RESPONSE TO COMMENT 85535

86431 Hugh Owens 9/25/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86431>

Strongly Oppose Mask Mandate

As author Bryan Fischer has stated:

A review of the scientific literature on COVID-19 reveals that, simply put, "masks and respirators do not work. There have been extensive randomized controlled trial (RCT) studies, and meta-analysis reviews of RCT studies, which all show that masks and respirators do not work to prevent respiratory influenza-like illnesses, or respiratory illnesses believed to be transmitted by droplets and aerosol particles."

The reason is that none of the available masks has a mesh that's fine enough to capture the COVID-19 particles. In fact, the known facts of physics and biology say that masks cannot work. "The main transmission path is long-residence-time aerosol particles (< 2.5 µm), which are too fine to be blocked, and the minimum-infective dose is smaller than one aerosol particle." (Emphasis mine.) In other words, it only takes a dose smaller than one aerosol particle to infect someone, and none of the masks can capture even a single particle that small.

Here's a sample of the medical literature on the subject:

Jacobs, J. L. et al. (2009) “Face mask use in HCW (Health Care Workers) was not demonstrated to provide benefit in terms of cold symptoms or getting colds” (which of course are caused by viruses). Plus, the health care workers were significantly more likely to experience headaches.

Cowling, B. et al. (2010) “None of the studies reviewed showed a benefit from wearing a mask, in either HCW or community members in households therein.

bin-Reza et al. (2012) “There were 17 eligible studies. ... None of the studies established a conclusive relationship between mask/respirator use and protection against influenza infection.”

Smith, J.D. et al. (2016) “We identified six clinical studies ... . In the meta-analysis of the clinical studies, we found no significant difference between N95 respirators and surgical masks in associated risk of (a) laboratory-confirmed respiratory infection, (b) influenza-like illness, or (c) reported work-place absenteeism.”

Offeddu, V. et al. (2017) “Evidence of a protective effect of masks or respirators against verified respiratory infection (VRI) was not statistically significant.”

Radonovich, L.J. et al. (2019) “Among outpatient health care personnel, N95 respirators vs medical masks as worn by participants in this trial resulted in no significant difference in the incidence of laboratory-confirmed influenza.”

Long, Y. et al. (2020) “There were no statistically significant differences in preventing laboratory-confirmed influenza, laboratory-confirmed respiratory viral infections, laboratory-confirmed respiratory infection, and influenza-like illness using N95 respirators and surgical masks.”

Conclusion: “No RCT study with verified outcome shows a benefit for HCW or community members in households to wearing a mask or respirator. There is no such study. There are no exceptions. Likewise, no study exists that shows a benefit from a broad policy to wear masks in public.... All of this to say that: if anything gets through (and it always does, irrespective of the mask), then you are going to be infected. Masks cannot possibly work. It is not surprising, therefore, that no bias-free study has ever found a benefit from wearing a mask or respirator in this application.”

It’s long past time for our health officials to start dealing in actual science instead of the pseudo-science they’ve been peddling since the beginning of this self-induced, panic-driven hysteria. They should begin today to broadcast loud and clear that there is no known benefit arising from wearing a mask in a viral respiratory illness epidemic.

The bottom line is quite simple: Masks do not work, cannot work, and never will work.

To impose mandatory masking is an outrage against sound science, liberty, and common sense.

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

SEE DEPARTMENT RESPONSE TO COMMENT 85535

86432 Hannah Gulasky 9/25/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86432>

No Masks! This is a free country and it should be each person's choice to wear a mask or not. If someone feels as though they need to wear a mask for their own safety that's perfectly fine but we should not be forced.

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

SEE DEPARTMENT RESPONSE TO COMMENT 85535

86434 Beth D. Rhinehart, President & CEO Bristol TN/VA Chamber of Commerce 9/25/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86434>"Strongly Oppose Adopting a Permanent Standard - Bristol TN/VA Chamber Comments

On behalf of our Chamber Board of Directors and entire membership, I appreciate the opportunity to speak to the proposed Permanent Standard for COVID for ID Prevention: SARS-CoV-2 Virus that causes COVID-19, 16VAC25-220. We have received numerous calls and emails of outreach from our membership who share grave concern for the overly burdensome proposal to move the temporary standards for safety protocols to a permanent status. We feel that this consideration is an overreach of the current status that will create an undue and unnecessary regulatory nightmare for businesses. Our businesses have been compliant with the best information available from healthcare and scientific experts at present. We do not know what lies ahead with regard to new and innovative approaches to this virus, and urge you to be cautious and conservative when making decisions (in perpetuity) without all of the information yet known or developed. By making these standards permanent we are ignoring the potential for changing science and thus more flexibility and opportunity for our already struggling businesses to remain both safe and productive. This regulation should sunset at the expiration of Governor Northam's Executive Order as stipulated in the Emergency Temporary Standard (ETS). Again, making this permanent at this time is making a decision without all of the pertinent and critical information needed for a good decision.

Businesses have worked for four and a half months under CDC and OSHA guidelines before the ETS became effective July 27, 2020. During those months businesses implemented critical safety measures to ensure the health of their employees. The guidelines are working and quite frankly additional regulations are duplicative and unnecessary.

The cost of continued required training is yet another burden to already struggling businesses and the hours associated with the training takes time away from other necessary workloads and duties.

We strongly urge you to listen to the business community and place value on their experiences shared with you. They are your stakeholders, along with their employees and families. Good policy making and decision making should always include the stakeholders interest. Therefore, we implore you to reconsider adoption of a permanent standard and instead allow the ETS to remain as previously adopted and direct regulators to work with stakeholders to address concerns in the ETS.

The Emergency Standards are burdensome, obsolete, difficult to enforce, costly in time and money, and lack flexibility to adapt to current science and innovation. We are strongly opposed to the adoption of these as a Permanent Standard for what is a temporary health situation.

Thank you, in advance, for your consideration and the opportunity to provide input.

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SEE DEPARTMENT RESPONSE TO COMMENT 84956

86435 Troy Suter 9/25/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86435>

Do NOT make the Standard Permanent

As an executive of a small Virginia business I strongly oppose making the COVID-19 Workplace Safety Emergency Standard permanent. Along with the vast majority of small businesses we have responded to the pandemic by acting to protect our employees and our customers. Our business has learned to adapt to these unforeseeable circumstances by implementing safety protocols developed from a number of federal and state sources. We care about our employees' and our clients' health because without them our business does not exist.

Our business readily complied with the emergency temporary standard, but making these standards permanent is unnecessary at this time and an example of gross regulatory overreach. The impact COVID-19 is having on our communities is changing rapidly and so is the science - and all in a positive direction! The Board should NOT move at this time to make the Standard permanent when it's likely this pandemic will be temporary. Imposing "one size fits all" COVID-19 regulations on all employers is unreasonable especially when guidance is continually changing as we learn more about the virus. The temporary standards are not expiring for months, and the Board should take the time to monitor not only the health impact of the virus over time but also the challenges employers are facing implementing the emergency regulations before taking any further action.

We are told repeatedly by our elected officials, unelected bureaucrats, and the media that we must follow the science. If this is true then show us the science. The Board has not shown us the science because consistent science does not exist. Different jurisdictions, states and nations responded in widely varying ways to the pandemic with widely varying results. The government should not impose regulations on the People based simply upon what the Board feels or wishes to be true about the science. . Should the Board move to make the standards permanent at this time, then in my view the Board exposes its true motivation an nothing more than a raw grab for power.

Our company has taken this virus seriously and responded accordingly. Making the emergency standards permanent at this time only serves to increase mistrust of governmental officials and heighten tensions in our communities. The Board must exercise restraint and resist the typical bureaucratic reflex to ""not let an opportunity go to waste."" If making the standards permanent is indeed necessary then let the legislators take up the issue in the appropriate forum where the People can hold them accountable for their actions.

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SEE DEPARTMENT RESPONSE TO COMMENT 85680

86436 Virginia Association of Community-Based Providers Virginia Association of Community-Based Providers 9/25/2020 <https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86436>

Please do not make the emergency temporary standards permanent

The Virginia Association of Community-Based Providers (VACBP) represents small businesses across Virginia that provide behavioral health and substance use disorder treatment to Virginia's most vulnerable residents, including its Medicaid members. Our members have significant concerns about taking action to make the COVID-19 Workplace Safety Emergency Standard permanent without more thoughtful consideration and engagement by small businesses like those who are members of the VACBP to evaluate the impact on businesses, their employees and those they serve.

Now six months into the pandemic, our members have taken extraordinary measures to adapt to this unprecedented time while ensuring compliance with licensing standards and CDC requirements. They are singularly focused on keeping their employees and those they serve healthy and safe.

With the current temporary emergency standards in place, there is time to conduct a more thorough review and consider what standards warrant being permanent. Imposing "one size fits all" approach by subjecting COVID-19 regulations on all employers is not prudent without a more thoughtful and inclusive review, especially when guidance is continually changing as we learn more about the virus.

We strongly urge the Board to take the time to determine how best to ensure the safe operation of Virginia businesses and the safety of their employees and, for our members, their patients. Thank you for your consideration of the VACBP's concerns related to this very important manner.

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SEE DEPARTMENT RESPONSE TO COMMENT 85680

86437 Jessica Oplak 9/25/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86437>

strongly disagree

Now is not the time to make the emergency temporary standard permanent when it's likely this pandemic will be temporary. Imposing "one size fits all" COVID-19 regulations on all employers and employees is unreasonable especially when guidance is continually changing as we learn more about the virus and how best to protect against it's spread. Knowing the temporary standard expires in February 2021, there is plenty of time for the Board to wait until we know more about how long the pandemic could last before taking any further action.

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SEE DEPARTMENT RESPONSE TO COMMENT 84956

86438 "Virginia Pannabecker,  
" Virginia Organizing 9/25/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86438>

STRONGLY SUPPORT! As a worker, I thank you for creating these guidelines.

I was thrilled to see the Emergency Temporary Standard and am equally so to see the Proposed Permanent Standard for 16VAC25-220, Infectious Disease Prevention: SARS-CoV-2 Virus That Causes COVID-19.

As a worker in Virginia, who often works with many different people in a service capacity, I see the requirements of this standard as critical to keeping all of us safe: me, my family, my colleagues, my workplace, and my community.

Thank you for developing these in detail - having been part of developing my workplace's reopening plan and other workplace guidelines, I believe these standards are critical to ensuring that all of us know what all of us: employees, employers, our workplaces need to consider to reduce spread of SARS-CoV-2 Virus that causes COVID-19.

Now that we have all become accustomed to these important safety guidelines, practices, and re-configurations of workplaces and methods of working, it's more critical than ever to maintain these standards in a permanent form until there comes a time when COVID-19 is not at this level of spread and threat to our overall community health and well-being.

Now that measures are in place in workplaces, it is easier and we are focused more on maintenance and continual improvement of processes in our current environment, while continuing to follow these safety standards. We can do this and we can continue to do this as long as such standards are needed to reduce the spread of COVID-19 in our communities.

Please keep all current content

To the Workers who voiced concerns and urged development of these standards: thank you for your critical work on all our behalf!

To the Department of Labor and Industry and the Safety and Health Codes Board: Thank you for listening to the concerns and health and safety needs of Virginia workers - your work in developing and maintaining these standards is much appreciated!

To business owners and associations, and some workers who previously opposed these standards and who may continue to do so: these are reasonable standards that not only protect workers and your colleagues, they also protect you, your family, your friends, and your community. They support you in demonstrating your commitment to a safe and healthy workplace and to everyone's well being. We're all happier and more productive when we're safe and well. Let's all work together to continue to follow these standards and ensure we all get through this pandemic as safely as possible.

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SEE DEPARTMENT RESPONSE TO COMMENT 84196

86439 anonymous 9/25/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86439>

Strongly oppose

strongly oppose

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SEE DEPARTMENT RESPONSE TO COMMENT 84237



86440 Stephen Costanzo 9/25/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86440>

Strongly Opposed to Mask Mandates. Breathing in your own carbon dioxide on a regular basis from mask wearing can cause pleurisy and other health problems for healthy people.

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

SEE DEPARTMENT RESPONSE TO COMMENT 85535

86441 anonymous 9/25/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86441>

Strongly oppose

It is my opinion that making this temporary standard permanent is a bureaucratic over-reach and a knee-jerk reaction to the 2020 Covid19 outbreak. It does not allow for adjustments and flexibility as research and statistics regarding the transmission and treatment of the virus continue to develop. It is likely to cause incalculable harm to both small and large businesses, resulting in a continuing downward spiral of the economy in our Commonwealth. This type of standard was not adopted for other influenza strains that were just as or more deadly than the current strain. Masks are ineffective, and their continuous use may have unforeseen long term negative effects. Additionally, the mask mandate is an encroachment on individual liberties. I vigorously oppose a permanent statewide standard.

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SEE DEPARTMENT RESPONSE TO COMMENT 84956

With regard to the issue of comparing SARS-CoV-2 and Covid-19 to influenza and the common cold, there are a number of significant differences which are discussed in detail in the Department's Briefing Package on the Emergency Temporary Standard dated June 23, 2020, which can be found at:  
<https://www.doli.virginia.gov/wp-content/uploads/2020/06/BP-Emergency-Regulation-Under-2.2-4011-SARS-CoV-2-That-Causes-COVID-19-FINAL-6.23.2020.pdf> (e.g., lack of a vaccine, limited treatment options, infection fatality rate; there is currently no vaccine; treatment options are still limited; superspreader transmission, etc.).

86443 Lee 9/25/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86443>

Permanent Implementation of Labor Rules - Oppose

First, I appreciate the effort to make workplaces safe. I do think that the agency is doing what it thinks is in the best interest of its constituents. But, this rule reaches too far. The government needs to refrain from encroaching on freedoms that are unrelated to significantly combating something that has not been substantially studied, analyzed and peer-reviewed. This rule is a knee jerk reaction to a situation that the state government is wholly unqualified to command in such a short time. In fact, the longer this COVID 19 virus has been in the U.S. the less dangerous it appears.

Please don't waste Virginian's taxpayer money on fashioning rules that have not been substantially studied, vetted and analyzed over an appreciable length of time, and by many experts beyond those in the government in Va. The cost to taxpayers and business taxpayers of such an over-inclusive rule is to further deteriorate business in Virginia. This cost does not justify the results. I think that the ""rules"" proposed need to be completely re-written and permit less restrictions, but perhaps more incentive for voluntary compliance. Businesses are diverse, patrons are diverse, and COVID isn't as virulent or contagious as the the rule assumes to sustain its reasonableness. Isn't the idea to raise revenue from thriving businesses? Your own government jobs may be in peril if you succeed to raise unemployment and impair businesses in Va. You won't have the tax revenue to sustain your own jobs.

Bottom line, study, analyze, peer-review, assess, collaborate over time to come up with workable non-restrictive solutions involving strong incentives to encourage voluntarily compliance.

Respectfully, No More Masks, Please

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SEE DEPARTMENT RESPONSE TO COMMENT 84956

SEE DEPARTMENT RESPONSE TO COMMENT 85535

86445 Laura Steere 9/25/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86445>

OPPOSE!! Small businesses will be hurt further!

We are small business owners in Virginia who opposes making the COVID-19 Workplace Safety Emergency Standard permanent. Six months into the pandemic, we have learned to adapt to this unprecedented time by implementing safety protocols from a number of federal and state entities to ensure physical distancing and extensive sanitization. We want to keep my employees and customers safe because we care about their welfare.

Now is not the time to make the emergency temporary standard permanent when it's likely this pandemic will be temporary although COVID may be permanent. Imposing "one size fits all" COVID-19 regulations on all employers is unreasonable especially when guidance is continually changing as we learn more about the virus. The Board needs to take the time to see what challenges employers are facing implementing the emergency regulations before taking any further action.

Our non-profit organization takes its responsibility for protecting its employees seriously. Making the COVID-19 emergency regulations permanent will only make a difficult situation worse for employers and employees. We remain concerned about the impact many of the provisions of the emergency regulations are having on our business and encourage the Board to not make them permanent

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SEE DEPARTMENT RESPONSE TO COMMENT 85680

86447 Tracy Armentrout, Stuarts Draft Daycare Center, LLC 9/25/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86447>

## Workplace Safety Emergency Regulations

I am a small business owner in Virginia who opposes making the COVID-19 Workplace Safety Emergency Standard permanent. Six months into the pandemic, I have learned to adapt to this unprecedented time by implementing safety protocols from a number of federal and state entities to ensure physical distancing and extensive sanitization. I want to keep my employees and customers safe because I care about their welfare.

Now is not the time to make the emergency temporary standard permanent when it's likely this pandemic will be temporary. Imposing "one size fits all" COVID-19 regulations on all employers is unreasonable especially when guidance is continually changing as we learn more about the virus. The Board needs to take the time to see what challenges employers are facing implementing the emergency regulations before taking any further action. I have had no support from any state agency to run my daycare business. It seems everyday, we are being thrown a different regulation. This week the DOLI issued a mandate that all daycare workers wear facemask. This is absurd. We work with small children, and communication and emotional response through facial expression is a major milestone for young children.

I understand the virus is real, but the response to this illness is the biggest hoax in history.

My company takes its responsibility for protecting its employees seriously. Making the COVID-19 emergency regulations permanent will only make a difficult situation worse for employers and employees. Hiring staff is one of the biggest problems we have at the daycare. Mainly because the federal government thought it was a good idea to incentivize people to sit at home and make more more doing nothing than to work. I remain concerned about the impact many of the provisions of the emergency regulations are having on my business and encourage the Board to not make them permanent. We need a normal environment sooner than later.

On November 4, 2020, this entire scheme will be over.

Fed up with the litigation, and Governor. He is the biggest joke.

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SEE DEPARTMENT RESPONSE TO COMMENT 84956

SEE DEPARTMENT RESPONSE TO COMMENT 85535

The Department has no response to the Commenter's political commentary."

86448 Amber Gaul

9/25/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86448>

Masks. Absolutely NO! We should have a choice to wear one or NOT wear one. This is ridiculous and has gone on long enough!

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

SEE DEPARTMENT RESPONSE TO COMMENT 85535

86449 Jamie S 9/25/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86449>

Strongly opposed!

Il am strongly opposed to mandatorymasking. It descrimates against those with healthy or moral issues with it.

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

SEE DEPARTMENT RESPONSE TO COMMENT 85535

86452 Sara McFadden 9/25/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86452>Strongly oppose this proposal! What next mandatory Burqas? FREE YOUR FACE!!! 99.9% recovery rate. Strongly oppose. Face coverings should never be mandated. Will the government next mandate dresscode by fining people who dont wear a full Burqa? This virus has a 99.9% recovery rate. Stop the hysteria. Stop forcing businesses to enforce governments arbitrary "mandates." Stop lying to the people.

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

SEE DEPARTMENT RESPONSE TO COMMENT 85535

86453 " Thomas Centrella  
9/25/2020 <https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86453>

Unjust, Unhealthy, Unreasonable. Please do not adopt the proposed policy to make mask-wearing permanent in Virginia. This is unjust to the people of Virginia. It is oppressive and unreasonable. It is also unhealthy. It cannot be good for people to have to constantly wear face coverings. I am strongly opposed to this resolution. I ask all public officials to please reject this unconstitutional proposal.

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

SEE DEPARTMENT RESPONSE TO COMMENT 85535

86454 Amber Arrighi 9/25/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86454>

No masks. Absolutely not. This goes against our constitutional rights. Wearing a mask all day at work on a normal circumstance to now wearing one almost all day everyday is beyond ridiculous. We are essentially breathing in our own toxins throughout the day while wearing these masks which is lowering our immune

systems making us more susceptible to other medical conditions. NO MASK. Let's go back the normal and begin living our lives again. If we get it we get just like flu.

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

SEE DEPARTMENT RESPONSE TO COMMENT 85535

86455 Heidi 9/25/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86455>

Strongly oppose this proposal! What next mandatory Burqas? FREE YOUR FACE!!! 99.9% recovery rate

Strongly oppose. Face coverings should never be mandated. Will the government next mandate dresscode by fining people who dont wear a full Burqa? This virus has a 99.9% recovery rate. Stop the hysteria. Stop forcing businesses to enforce governments arbitrary ""mandates."" Stop lying to the people.

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"SEE DEPARTMENT RESPONSE TO COMMENT 84956

SEE DEPARTMENT RESPONSE TO COMMENT 85535

The Department has no response to the Commenter's political commentary.

86456 John 9/25/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86456> I strongly oppose wearing masks and view it a violation of my rights to permanently mandate mask wearing.

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

SEE DEPARTMENT RESPONSE TO COMMENT 85535

86458 Amina Goheer 9/25/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86458>

Strongly in favor of the standards

These standards provide absolutely necessary guidance to managers and supervisors on how to create a safe workspace for employees. Most workplaces have no idea how to manage workspaces, work procedures, and personnel guidance at a time of crisis, much less a worldwide pandemic. These standards give employers measurable and direct guidelines to follow that can ensure the safety of their employees.

Likewise, these standards allow employees to keep their workplaces accountable to the public health measures necessitated by this pandemic. If employees feel that their safety is at risk, they can reference these standards when discussing worksite safety with their employers.

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SEE DEPARTMENT RESPONSE TO COMMENT 84196

86460 Jon Fidero 9/25/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86460>

No masks. They are not effective or necessary.

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

SEE DEPARTMENT RESPONSE TO COMMENT 85535

86461 Irma Powell 9/25/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86461>

Oppose this unnatural initiative

These mandates from the beginning have been opposed to OSHA standards and common sense. Human beings need air. You are trading one problem for a myriad of others. It is an assault on our personal autonomy and our God given freedom to make our own determination regarding risk/benefit as regards our own health. 80 pre-covid studies show clearly the minimal benefit if not detrimental effect of wearing masks. Medicine has become politicised and is threatening our personal freedoms. You were elected to protect our freedoms. Please do so.

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"SEE DEPARTMENT RESPONSE TO COMMENT 84956

This Standard is not being proposed as legislation to the General Assembly. The Standard is being considered for adoption by the Virginia Safety and Health Codes Board pursuant to Va. Code §40.1-22(6a) and would be enforced by the Department of Labor and Industry's (DOLI) Virginia Occupational Safety and Health (VOSH) Program.

The Department notes that the basic framework for the Standard (classifying COVID-19 hazards and job tasks by risk classification - very high, high, medium and lower - is based on a document prepared by federal OSHA which can be found at: <https://www.osha.gov/Publications/OSHA3990.pdf>

At its core the Standard is a risk management system to prevent or limit the spread in the workplace of the SARS-CoV-2 virus which causes COVID-19.

It is designed to provide basic protections for all employees and employers within the jurisdiction of the Virginia Occupational Safety and Health program.

It provides certain mandatory requirements for all employers and specific additional requirements for Very High, High, and Medium risk job tasks centered around mitigation of hazards.

The Standard is also designed to incentivize employers to make changes in the workplace that will enable employees in certain situations to be classified to a reduced level of risk (e.g., from high to medium or from medium to lower), thereby also reducing the employer's compliance and cost burdens.

86462 Alex Starr 9/25/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86462>

STRONGLY oppose

I strongly oppose making this nonsense permanent.

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

86463 Suzie 9/25/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86463>

Enough is enough with the mandated mask wearing. With the Governor himself pushing mask wearing and still catching COVID - we all know it doesn't work. Mandating face coverings is a clear violation of our First Amendment freedoms and is not necessary to prevent disease spread as proven over and over by countless physicians. Open up our businesses and return our freedoms!

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

SEE DEPARTMENT RESPONSE TO COMMENT 85535

86464 Rebecca Dayton 9/25/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86464>

Mask Mandate is unconstitutional! Absolutely I oppose making any type of face mask mandate permanent. We do not need it. It limits our American pursuit of life, liberty, and happiness.

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

SEE DEPARTMENT RESPONSE TO COMMENT 85535

86466 Kimberly 9/25/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86466>"Recall Ralph

Absolutely not! Absurd.

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"SEE DEPARTMENT RESPONSE TO COMMENT 84237

86467 Annette 9/25/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86467>

I strongly oppose the adoption of masks and social distancing requirements to be permanent requirements. Socially we will only weaken our individual immune systems and not have developed the herd immunity that seems healthier for everyone.

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

SEE DEPARTMENT RESPONSE TO COMMENT 85535

86468 anonymous 9/25/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86468>

Unconstitutional!!

This is insanity. We as free Americans should be able to decide our own risk and act accordingly. Since when do we require big brother to tell us how to live our lives. End this madness!

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"SEE DEPARTMENT RESPONSE TO COMMENT 84237

SEE DEPARTMENT RESPONSE TO COMMENT 85535

86469 anonymous 9/25/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86469>

Strongly Oppose - VA Business Coalition should seek Injunction

With regard to Va. Code §40.1-22(4) which provides that ""The Board shall study and investigate all phases of safety in business establishments, the application of this title thereto, and shall serve as advisor to the Commissioner,"" that provision does not apply to the adoption of this Standard.

It is completely reasonable to assume that the legal requirements of Code of VA (CoV) 40.22-4 were disregarded in the execution of this standard. CoV 40.1-22 requires that the Safety and Health Codes Board (SHCB) ""study and investigate all phases of safety in business establishments"" as it relates to the standard. Certainly many other occupational laws have required many years of investigative research, composition, feedback by stakeholders, rewriting based on stakeholder feedback and passage into law. It is inconceivable that this requirement of VA law could be executed by the SHCB in the short 45-90 days it took to execute this standard. This duty is owed to VA taxpayers by the State of Virginia.

There were several significant and onerous changes, and numerous other changes included in the 7/15/20 final version of the standard that were not included in the 6/23/20 draft version of the standard that was available for public comment under the provision of 6VAC25-60-170, Public Participation in the Adoption of



Standards, that now must be executed and burdened by employers as of 8/26/20. Specifically the final language added to 16VAC25-220-40.A.8(c)-(e) creates the potential for inflated positive test case rate recording, thus allowing a catalyst to slow the full "reopening of Virginia", causing further financial hardships. 16VAC25-220-80.G.1 substantially complicates and burdens employers in their execution of employee training by summarizing 35 pages of standard into understandable layperson terms.

For these reasons, as well as many others that cant be presented in 3000 words, the VA Business Coalition should seek a Declarative Judgement and Temporary Injunction of the entire standard allowed by CoV 40.1-22.7.

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SEE DEPARTMENT RESPONSE TO COMMENT 84956

The proposed permanent standard has been subject to the following notice and comment procedures. The Virginia Safety and Health Codes Board held a 60 day written comment period for the Proposed Permanent Standard, with the comment period running from August 27, 2020 to September 25, 2020. The Board held a Public Hearing on September 30, 2020. A revised draft of the Proposed Permanent Standard will be published with an additional 30 day comment period prior to any Board action."

86470 Eileen 9/25/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86470>

Masks harbor disease and lower the immune system! Absolutely NO mandated masks!!

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

SEE DEPARTMENT RESPONSE TO COMMENT 85535

86471 J. Harry 9/25/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86471>"STRONGLY OPPOSE

Overreach and unnecessary!

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

86472 Rich Jenkins 9/25/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86472>

Oppressive regulation once COVID is over

I've been supportive of the requirements Virginia has set forth for combatting COVID but it isn't healthy or necessary for my business or for Virginia's economy to continue the requirements after COVID is beaten. As it is, I'm dismayed that the board is not keeping pace with the CDC and leaving expensive and oppressive

requirements in place when even the CDC doesn't require them (such as the 2 week employee quarantine for air travel).

Virginia Small Business is dying, especially in the service and hospitality industries. I see it every time I go out, and I know it as my network of fellow business owners dwindles away. We're facing staffing shortages caused by the federal unemployment subsidy, a minimum wage increase at a time when we have no money left, and now the prospect these overwhelming disease response requirements will be made permanent. Where will Virginians work if Richmond keeps smashing us down? Don't do this to us.

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SEE DEPARTMENT RESPONSE TO COMMENT 84956

COVID-19 vaccines will be an important part of the Commonwealth's and the country's ability to significantly reduce the ongoing spread of the SARS-CoV-2 virus in the workplace and in the community. However, with the projected population-level efficacy of COVID-19 vaccine to be 50-70%, no one can definitively state that someone vaccinated will not subsequently be free from infection. There is also anecdotal information and scientific surveys that appear to indicate that a certain sector of the American population will refuse to be vaccinated. Accordingly, it is anticipated that SARS-CoV-2 will continue to infect a certain sector of the populace and be present in the workplace for months and years to come.

86473 Wayne Teel 9/25/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86473>

Poultry workers protection

Poultry processing is a messy, dirty, repetitive and mind numbing job. Most people won't do it, so we hire those who come here from other places, sometimes legally, sometimes not, to do what we will not. The we subject them the abuse of speeding lines of birds. They are already fast, and create various repetitive motion problems, but companies still want to increase line speeds. For covid we slowed them down. This has a positive impact on worker health (more distancing) and worker moral (less stress, better pride in work.) So why would we consider abandoning this slow down? Shouldn't we care for those who prepare and package our food? I think the wise course of action is to make the regulations designed to help workers in the time of Covid-19 permanent so these people can enjoy and increased quality of life, such as it is for those who are paid not far above minimum wage.

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SEE DEPARTMENT RESPONSE TO COMMENT 84196

86474 Dale Bennett, Virginia Trucking Association 9/25/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86474>

THIS COMMENT WAS ALSO SUBMITTED DIRECTLY TO THE DEPARTMENT AT:

<https://www.doli.virginia.gov/proposed-permanent-standard-for-infectious-disease-prevention-for-covid-19/>

RE: Comments of the Virginia Trucking Association

VA Department of Labor and Industry, Safety and Health Codes Board

## 16VAC25-220, Proposed Permanent Standard: Infectious Disease Prevention: SARSCoV2 Virus That Causes COVID-19

To Whom It May Concern:

Thank you for the opportunity to comment on the consideration of 16VAC25-220, Proposed Permanent Standard: Infectious Disease Prevention: SARS-CoV2 Virus That Causes COVID-19 by the Virginia Safety and Health Codes Board (collectively, the "Regulations"). These comments are provided on behalf of the Virginia Trucking Association (VTA).

As background, the VTA is the statewide association of trucking companies, private fleet operators, industry suppliers, and other firms interested in the well-being of motor freight motor transportation at the local, state and national level. Our membership includes family-owned and corporate trucking businesses engaged in the transport of goods and services throughout the Commonwealth of Virginia and the United States. The VTA membership includes companies that are headquartered in Virginia as well as companies headquartered in other states that have locations in Virginia and/or operate commercial vehicle in and through the Commonwealth.

It is well known that throughout the COVID-19 pandemic, the trucking industry has continued to operate as an essential service, providing critical transportation of the essential goods and services needed to sustain the population and the economy. Professional truck drivers are the heroes who have kept moving to ensure everyone has the goods they need to get through these challenging times.

The trucking industry has been able to continue operating by making commonsense adjustments to its operations, both on the road and within its shops and offices necessary to continue daily operations. Safety and Human Resources professionals within the trucking industry have spent countless hours poring over guidelines and recommendations from medical and industry experts to draft continuation plans that work best for their operations and provide the highest and most practical level of safeguards for their employees to protect them from COVID-19.

Our position on safety has never wavered: Safety is of paramount importance. Since the onset of the COVID-19 pandemic, the VTA's member companies have remained committed to this principle, and as the Commonwealth and our nation begin to enter the recovery phase, the safety and health of their employees will continue to guide their decision-making.

Trucking holds the keys to the economic recovery of Virginia and the nation, and as an industry, we are prepared to meet that challenge. However, to meet that challenge, the industry cannot be hindered with burdensome, impractical and unclear regulations such as the current Emergency Temporary Standard (ETS) that is being considered as a permanent standard.

Therefore, we respectfully request that Board not adopt the ETS as 16VAC25-220, Permanent Standard: Infectious Disease Prevention: SARS-CoV2 Virus That Causes COVID-19.

Support of Comments filed by the Virginia Business Coalition.

The VTA is a member of the Virginia Business Coalition. We strongly support the comments filed by the Business Coalition and incorporate the concerns and issues they raised as part of these comments filed on behalf of the VTA. The remainder of these comments address concerns and issues with adoption of the ETS as a permanent standard.

The "One Size Fits All" ETS is Impractical in Many Ways for Trucking

The “One Size Fits All” approach of the proposed permanent standard makes compliance impractical and difficult for a highly mobile workforce like the trucking industry.

The interstate nature of trucking requires a national regulatory scheme that provides certainty and uniformity needed to provide efficient transportation services. Virginia has mostly followed this approach by adopting Virginia regulations that mirror federal OSHA regulations. Thus, any trucking fleet or driver knows they are in compliance while operating or working in the Commonwealth if they comply with the federal OSHA standards.

The issue of a federal ETS for COVID-19 has already been adjudicated at the federal level, with the US Court of Appeals for the District of Columbia Circuit denying the the AFL-CIO’s May 18 petition as explained in the Business Coalition’s comments. Virginia’s adoption of the ETS as its own permanent standard will continue an uncertain and non-uniform compliance situation for trucking fleets operating in and through Virginia.

#### Specific Compliance Concerns and Issues for Trucking

We believe the ETS was drafted based on application to employers and employees in fixed facilities and workplaces, with little consideration for the compliance challenges imposed on trucking fleets and truck drivers. We assume that all trucking employees would be classified as “lower” or “medium” risk and will address these comments to the requirements for all employers and employees classified in those two risk categories.

The VTA has previously submitted to the Department a series of questions about how the ETS would be applied and enforced against the trucking industry. We greatly appreciate Department staff responding to the some of the questions we submitted, however several of our questions have yet to be addressed and we are still unclear about some of the issues we raised.

1. A very important question that we are still not clear about is whether the Department intends to follow the federal interpretation of jurisdictional issues between federal OSHA and the U.S. DOT. Federal OSHA states, “While traveling on public highways, the [U.S.] Department of Transportation (DOT) has jurisdiction. However, while loading and unloading trucks, OSHA regulations govern the safety and health of the workers and the responsibilities of employers to ensure their safety at the warehouse, at the dock, at the rig, at the construction site, at the airport terminal and in all places truckers go to deliver and pick up loads.”

Without clear guidance from the Department on this question, trucking fleets operating in Virginia are uncertain about exactly when their drivers are subject to the ETS and when they are not.

Additionally, in its answer to a question we posed about “industry standards” for PPE in regular trucking operations, the Department stated that “All federal OSHA identical standards and regulations enforced by VOSH in General Industry (29 CFR Part 1910) apply to general industry employers like the trucking industry, except where otherwise exempted by §4(b)(1) of the OSH Act of 1970. Two such standards are the Personal Protective Equipment (PPE) (1910.132[1]) and Respiratory Protection (1910.134[2]) standards. COVID-19 is a respiratory disease that spreads easily through airborne transmission between persons in contact with each other inside six feet, so the PPE and Respirator Standards are considered applicable.”

Does the Department’s response mean that any PPE and/or face coverings requirements in the ETS do not apply to two truck drivers operating subject to U.S. DOT regulations in a “team operation” on the highways of the Commonwealth occupying the same truck cab where a six-foot distance is impossible to achieve?

2. Another important, unresolved question involves “Exposure risk level.” We believe the vast majority of employees in the trucking industry, especially truck drivers, would be considered to have “Lower” exposure

risk hazards or job tasks. However, if a truck driver is performing loading or unloading activities at a facility or business listed in the definition of “Medium” exposure risk hazards or job tasks, would that driver then be considered to be at a “medium” exposure risk level and subject to the requirements of the ETS for that exposure risk level?

3. The prescreening or surveying requirement in § 60.B.1.b is very difficult, if not impossible, for employers of truck drivers to comply with. Long-haul truck drivers are on the road working for weeks at a time. They change shifts after taking off-duty rest periods mandated by the federal government while they are on the road. Because such drivers do not regularly return to their employer’s physical facility between every shift, we are not sure how their employers would conduct this prescreening or surveying. Does the phrase “to the extent feasible” in B.1. mean that trucking employers in the situation described above will not be considered in violation of § 60.B.1.b?

4. We continue to strongly object to the whistleblower protection for employee complaints published to the news media and on social media in § 90.C. OSHA already provides whistleblower protection for truck drivers under the Surface Transportation Assistance Act (STAA). Under STAA, an employer may not discharge or in any manner retaliate against truck drivers for refusing to operate a vehicle because they have a reasonable apprehension of serious injury to themselves. We believe this widely-known whistleblower protection for truck drivers is adequate for truck drivers to report any infectious disease safety concerns they may have.

Additionally, we strongly oppose any protections for workers that allow them to post any derogatory or disparaging comments about former or current employers to the public such as through print, online, social, or any other media. Whistleblower protection should be provided for employees to file complaints with government agencies where they can be fully investigated and acted on and not for public posts on social and other media where there is no accountability for the accuracy of the content, other than expensive legal action by the employer.

#### Conclusion

It is unreasonable to apply these “one size fits all” COVID-19 regulations to all employers and employees, especially an interstate business like trucking with a highly mobile workforce that does not work in brick and mortar facilities. Regulations written to address fixed facilities and businesses are impractical and difficult to comply with for the trucking industry as illustrated in the questions we have asked.

Safety is of paramount importance to the trucking industry as we continue to provide essential transportation service as we begin to reopen the economy. We will continue to provide the highest and most practical level of safeguards for our employees to protect them from COVID-19 as freight demand increases as our economy recovers. However, to efficiently meet that challenge, the industry cannot be hindered with the burdensome, impractical and unnecessary ETS as a permanent standard.

There are flaws in the ETS that need to be addressed and there is still confusion and uncertainty about application and enforcement of the ETS on trucking fleet employers. Therefore, we respectfully request that the Board reject adoption of the ETS as a permanent standard and utilize the sufficient authority and enforcement powers it already has to address the concerns of unsafe work environments.

Please contact me if you need any additional information or have any questions regarding these comments or the trucking industry.

Sincerely,

"SEE DEPARTMENT RESPONSE TO COMMENT 85680

Jurisdiction issue:

Summary: there are three main principles in 4(b)(1) situations: (1) OSHA cannot enforce its authority with respect to working conditions over which another Federal agency has exercised its authority even if the other agency's standards are not as stringent or as stringently enforced as OSHA's; (2) if a Federal agency fails to exercise its authority with respect to working conditions, OSHA has jurisdiction to inspect and to cite for violations of standards; and (3) a negative exercise of authority can oust OSHA from jurisdiction. It must be noted, however, that 4(b)(1) situations must be considered on a case by case basis and deference given to a sister agency's interpretation of its authority. (Emphasis added).

<https://www.osha.gov/laws-regs/standardinterpretations/1989-07-10>

In order for the Department to give a definitive answer on the jurisdiction question, the Commenter will need to provide additional information, including what regulatory action DOT has taken to address SARS-CoV-2 and COVID-19; and which if any existing regulations could be interpreted to provide employees protection against SARS-CoV-2 and COVID-19.

Background:

The Commenter notes that federal OSHA states, "While traveling on public highways, the [U.S.] Department of Transportation (DOT) has jurisdiction. However, while loading and unloading trucks, OSHA regulations govern the safety and health of the workers and the responsibilities of employers to ensure their safety at the warehouse, at the dock, at the rig, at the construction site, at the airport terminal and in all places truckers go to deliver and pick up loads." <https://www.osha.gov/trucking-industry/other-federal-agencies>

However, the above statement is not as straightforward as it seems. Congress, in section 4(b)(1) of the OSH Act of 1970, took into account the other Federal agencies which in the exercise of their statutory responsibilities may issue regulations or standards which affect occupational safety and health issues. Section 4(b)(1) provides, in pertinent part:

Nothing in this Act shall apply to working conditions with respect to which other Federal agencies . . . exercise statutory authority to prescribe or enforce standards or regulations affecting occupational safety and health.

The various federal Circuits across the United States have interpreted section 4(b)(1) and its application differently. For instance, a discussion by OSHA of how the 4th Circuit, which includes Virginia, has ruled states:

"The most common type of circumstances involving section 4(b)(1) of the OSH Act is where there is a statute whose primary purpose is to protect the public and transportation equipment but which also protects employees in the sense that in the effort to protect the public, the employees are also protected. Examples of this type of legislation are most of the statutes administered and enforced by the Department of Transportation (DOT). A practical example is the Federal Aviation Administration (FAA) In FAA's efforts to protect the flying public and air transport cargo, the crew of the aircraft are necessarily protected at the same time by the same FAA regulations.

Whenever a Section 4(b)(1) issue is presented in the context of a DOT statute which is designed to protect the public, transportation equipment, or cargo, the issue is usually of the type that is known popularly as the "gap theory," or "hazard-by-hazard" approach. That is, the question is whether the other agency has an enforceable regulation which, if that agency chooses to enforce that regulation, would reduce or eliminate the workplace hazard in question. If the other agency has no such regulation applicable to the hazard, then there exists a "gap" in worker protection which is filled by the residual jurisdiction of the OSH Act with its very broad coverage intended by Congress as the means for assuring ". . . every working man and woman in the Nation safe and healthful working conditions." Sec. 2(b), OSH Act, P.L. 91-596; see also, Northwest Airlines, Inc., 8 OSHC 1982, 1980 OSHD 24,751 (1980), petition for review dismissed, Nos. 80-4218, 80-4222 (2d Cir. 1981).

The so called "gap theory" has also been upheld by the courts. In the courts' decision, however, this same issue is cast in terms of the Section 4(b)(1) term "working conditions." In general, it can be stated that the following line of appellate court decisions affirm the "hazard-by-hazard" approach even though the courts sometimes have chosen different words which have to be explained and understood in context. For example, in *Southern Railway v. OSHRC*, 539 F.2d 335 (4th Cir. 1976) cert. denied 429 U.S. 999, 97 S.Ct. 525, the Fourth Circuit defined the term "working conditions" in Section 4(b)(1) as meaning "the environmental area in which an employee customarily goes about his daily tasks." That phrase of the court's decision seems to extend the term "working conditions" beyond hazards, but the phrase is not clear because while geographically, so to speak, the environmental area is broad under that decision, the "area" has no meaning if not viewed in terms of the regulations and hazards present in that area."

A far better articulation of the "hazard-by-hazard" approach is found in a Fifth Circuit case; that is, in *Southern Pacific v. Usery*, 539 F.2d 386 (5th Cir. 1976), cert. denied 434 U.S. 874, 98 S.Ct. 222. In this case, the Fifth Circuit defined the term "working conditions" in Section 4(b)(1) to mean to include "surroundings" or "hazards" which the court stated could be a location, a grouping of items, or a single item. In *Southern Railway* in the Fourth Circuit and the Fifth Circuit's *Southern Pacific* definitions, we see, when viewed together, a narrowing of the term "working conditions." The most recent decisions even more clearly articulate the scope of Section 4(b)(1); that is, if the other agency's regulation (or the lack of one) does not cover the hazard in question, then the OSH Act's requirements are not preempted. For example, in *Donovan v. Red Star Marine Services Inc.*, 739 F.2d 774 (2d Cir. 1984), cert. denied 470 U.S. 1003, 105 S.Ct. 1355, the Second Circuit did not preempt OSHA's regulation of noise aboard an inspected vessel because, while the Coast Guard generally covered such vessels, the Coast Guard confined its regulation to life saving and fire-fighting equipment and had issued no noise abatement regulation. The Eleventh Circuit also analyzed a Section 4(b)(1) issue in the same way. In *re Inspection of Norfolk Dredging Co.*, 783 F.2d 1526 (11th Cir. 1986), reh. denied, 790 F.2d 88 (11th Cir. 1986), cert. denied 107 S.Ct. 271 (1986), the Eleventh Circuit did not preempt OSHA application to crane operations because the Coast Guard simply did not have regulations addressing crane hazards. The Eleventh Circuit in *Norfolk Dredging* stated that, "the effect of Section 4(b)(1) turns upon the precise working conditions at issue . . ."

....

There is no industry-wide exemption for motor vehicle common carriers, *Greyhound Lines, Inc.*, 5 OSHC 1132, 1977-78 OSHD 21,610 (1977), nor is there any industry-wide exemption for over-the-road truckers, *Lee way Motor Freight, Inc.*, 4 OSHC 1968, 1976-77 OSHD 21,464 (1977).

However, as discussed previously in the analysis of the term "working conditions" or the "gap theory," if OMCS has a regulation addressing a certain working condition (or hazard), then OSHA would be preempted from applying its standards to that hazard. The lead OSHA case on this issue under Section 4(b)(1) in the

context of OMCS' jurisdiction is Mushroom Transportation Co., Docket No. 1588, 1973-74, CCH OSHD 16,881 (R.C. 1973). Mushroom involved the hazard of possible movement of trucks while they were being loaded or unloaded with the use of powered industrial trucks. Both OSHA and OMCS had regulations dealing with brakes as well as other methods of preventing unwanted movement of a truck during loading and unloading operations. The Commission held that because the OMCS had such a regulation covering the same hazard as the OSHA standard, the OSH Act's standard was held inapplicable pursuant to the provisions of section 4(b)(1) of the OSH Act.(1)

....

Mushroom also stands for the proposition that the other agency's regulation need not be as stringent as the OSHA standard to effectuate preemption of the OSH standard. The Review Commission stated:

Once another Federal agency exercises its authority over specific working conditions, OSHA cannot enforce its own regulations covering the same conditions. Section 4(b)(1) does not require that another agency exercise its authority in the same manner or in an equally stringent manner. [Footnote omitted; emphasis supplied.] Mushroom, supra, 16,881 at 21,491.

To our knowledge, there have been no decisions of OSHRC or the courts since Mushroom specifically involving truck or bus operators. Citations have been issued, but these were mainly for alleged violations in loading areas and maintenance and repair shops.

....

In conclusion, as we can see from the cases, there are three main principles in 4(b)(1) situations: (1) OSHA cannot enforce its authority with respect to working conditions over which another Federal agency has exercised its authority even if the other agency's standards are not as stringent or as stringently enforced as OSHA's; (2) if a Federal agency fails to exercise its authority with respect to working conditions, OSHA has jurisdiction to inspect and to cite for violations of standards; and (3) a negative exercise of authority can oust OSHA from jurisdiction. It must be noted, however, that 4(b)(1) situations must be considered on a case by case basis and deference given to a sister agency's interpretation of its authority. (Emphasis added).

<https://www.osha.gov/laws-regs/standardinterpretations/1989-07-10>

....

Other issues raised by the Commenter:

While the Standard lists a number of industries under the definition of "medium" exposure risk level, the language specifically states that "Medium exposure risk hazards or job tasks may include, but are not limited to, operations and services in....(Emphasis added). The definition of "medium" exposure risk level does not classify the listed industries as medium risk, but instead when read in conjunction with other portions of the Standard, indicates that the listed industries "may" fall into that category, depending on how the employer assesses and classifies the types of hazards employees are exposed to and the type of job tasks they undertake, in accordance with the requirements in 16VAC25-220-40.B, which provides that:

B. Exposure assessment and determination, notification requirements, and employee access to exposure and medical records.

1. Employers shall assess their workplace for hazards and job tasks that can potentially expose employees to the SARS-CoV-2 virus or COVID-19 disease. Employers shall classify each job task according to the hazards employees are potentially exposed to and ensure compliance with the applicable sections of this standard for



very high, high, medium, or lower risk levels of exposure. Tasks that are similar in nature and expose employees to the same hazard may be grouped for classification purposes.

The Standard also provides in 16VAC25-220-10.E.1 provides in part:

E. Application of this standard to a place of employment will be based on the exposure risk level presented by SARS-CoV-2 virus-related and COVID-19 disease-related hazards present or job tasks undertaken by employees at the place of employment as defined in this standard (i.e., very high, high, medium, and lower risk levels).

1. It is recognized that various hazards or job tasks at the same place of employment can be designated as very high, high, medium, or lower exposure risk for purposes of application of the requirements of this standard.

Although it is a generally accepted practice, the Standard does not specifically require that employers check the temperatures of employees. 16VAC25-220-50.C.1 provides that ""Prior to the commencement of each work shift, prescreening or surveying shall be required to verify each covered employee does not have signs or symptoms of COVID-19."" Employers are provided the flexibility to determine what form of prescreening they will use to determine that ""each covered employee does not have signs or symptoms of COVID-19.""

The Department does not intend to recommend any change to 16VAC25-220-90.C as it is the position of the Department that it reflects the current state of case law on the subject.

Pursuant to Va. Code §40.1-51.2:1, employees are protected from discrimination when they engage in activities protected by Title 40.1 of the Code of Virginia ("because the employee has filed a safety or health complaint or has testified or otherwise acted to exercise rights under the safety and health provisions of this title for themselves or others.").

Whether an employee engaged in a "protected activity" under Title 40.1 is very fact specific, but can include occupational safety and health information shared by an employee about their employer on a social media or other public platform in certain situations.

16VAC25-220-90.C provides that:

No person shall discharge or in any way discriminate against an employee who raises a reasonable concern about infection control related to the SARS-CoV-2 virus and COVID-19 disease to the employer, the employer's agent, other employees, a government agency, or to the public such as through print, online, social, or any other media.

If an employee raises an unsubstantiated COVID-19 related claim or makes a false COVID-19 related claim against their employer through print, online, social, or any other media, such an act by an employee would not be considered "reasonable" under the ETS and disciplinary action taken against the employee in accordance with the employer's human resource policies would not be considered "discrimination" under the ETS/ER or Va. Code §40.1-51.2:1.

86475 Rob 9/25/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86475>

Enough - strongly oppose!

There is no need for masks or social distancing. The virus is nothing more than a common cold (info suppressed by CDC)! MSM is lying! Mortality rates are extremely low - around those of the flu and we don't do the same for the flu! If masks work, why do we need to social distance? If social distancing works, why masks? If either works, why lock downs? The point is, we don't need any of it. If this was truly lethal, people would be dying everywhere. Stop trampling on our First Amendment right to choose whether to wear a mask, etc.!

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

SEE DEPARTMENT RESPONSE TO COMMENT 85535

With regard to the issue of comparing SARS-CoV-2 and Covid-19 to influenza and the common cold, there are a number of significant differences which are discussed in detail in the Department's Briefing Package on the Emergency Temporary Standard dated June 23, 2020, which can be found at:  
<https://www.doli.virginia.gov/wp-content/uploads/2020/06/BP-Emergency-Regulation-Under-2.2-4011-SARS-CoV-2-That-Causes-COVID-19-FINAL-6.23.2020.pdf> (e.g., lack of a vaccine, limited treatment options, infection fatality rate; there is currently no vaccine; treatment options are still limited; superspreader transmission, etc.)."

86476 Kathleen Pelton 9/25/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86476>

NO! Permanent mask wearing...NO! We strongly oppose permanent mask wearing in Virginia!! Do not do this and impose it on Virginia residents!

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

SEE DEPARTMENT RESPONSE TO COMMENT 85535

86477 Erika Yalowitz member of the American Federation of State County & Municipal Employees (AFSCME) 9/25/2020 <https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86477>

Strong Support for Permanent Standards

My name is Erika Yalowitz, a member of the American Federation of State County & Municipal Employees (AFSCME) and frontline public employee serving as a juvenile court intake officer and probation counselor. I take a deep sense of pride in being there for my clients at some of the most difficult times of their lives, and having the chance to support children at risk and survivors of domestic violence.

I balance my work in public service with being a wife and a mother to my school-age child. As a parent, like many of my co-workers, I am concerned about the risk of exposure and bringing this virus home to our families.

We need VOSH to make the emergency temporary standard permanent to protect employees against the risk of exposure, have one set of requirements that employers must comply with, and protections for all employees. We need strong enforcement mechanisms so that employers take these standards seriously.

Thank you for making Virginia the first in the nation to enact these temporary emergency standards and I urge you to protect Virginian workers and our families.

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SEE DEPARTMENT RESPONSE TO COMMENT 84196

86478 Freddie Williams, Jr member of the American Federation of State County & Municipal Employees (AFSCME) 9/25/2020 <https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86478>

make the Emergency Temporary Standards Permanent!

My name is Freddie Williams, Jr. and I am a member of the American Federation of State, County & Municipal Employees (AFSCME). I have served Arlington County in the Water, Sewer, and Streets division of Environmental Services for six years. Currently, I work as a Crew Leader supervising the work of three road crews. I take pride in my work and I want to see the county continue to prioritize our safety.

While the work we do has us out in the community and in close contact with the public, the county's implemented measures to comply with the ETS. This has meant some measure of protection for us. Prior to the pandemic, it was typical practice for road crews to ride out to job sites four people in each vehicle. These conditions made physical distancing impossible..

However, in response to the newly implemented VOSH requirements, the county has enacted the practice of having employees ride alone. The impact of that decision alone has made a world of difference in mitigating risk of potential exposure.

We need the Board to make the emergency temporary standard permanent so it continues to protect employees against the risk of exposure. The risk presented by COVID-19 has not passed and it is of the utmost importance that employers have clear directives as to what steps must be taken to protect employees and the public. Strong enforcement mechanisms will mean more compliance. Virginia has shown leadership in being first in the nation to enact these temporary emergency standards, and they can continue to lead by making the standards permanent. We urge you to protect Virginian workers and our families.

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SEE DEPARTMENT RESPONSE TO COMMENT 84196

86479 Thomas Dodson, Unlimited Air Mechanical 9/25/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86479>

I am a business owner in Virginia, and I oppose making the COVID-19 Workplace Safety Emergency Standard permanent.

Six months into the pandemic, I have learned to adapt to this unprecedented time by implementing industry-specific guidance from the Governor, the Virginia Health Department, the CDC, and OSHA to ensure physical distancing and extensive sanitization. I want to keep my employees safe because I care about their welfare.

Now is not the time to make the emergency temporary standard permanent when it's likely this pandemic will be temporary. Imposing "one size fits all" COVID-19 regulations on all employers and employees is unreasonable especially when guidance is continually changing as we learn more about the virus and how best to protect against it's spread. Knowing the temporary standard expires in February 2021, there is plenty of time for the Board to wait until we know more about how long the pandemic could last before taking any further action.

My company takes its responsibility for protecting our employees seriously. Making the COVID-19 emergency regulations permanent will only make a difficult situation worse for employers and employees. I remain concerned about the impact many of the provisions of the emergency regulations are having on my business and encourage the Board to not make them permanent.

Respectively,

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SEE DEPARTMENT RESPONSE TO COMMENT 85680

86480 Barbara Clark 9/25/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86480>

Strongly Oppose

Scientists have said that a mask does nothing to protect you from the covid virus, they have loudly proclaimed that wearing a mask every single day, touching your face, especially wearing a cloth mask that never gets clean, and picks up lots of bacteria will only get you sick. Even wearing a paper mask just once will pick up a lot of bacteria.

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

SEE DEPARTMENT RESPONSE TO COMMENT 85535

86481 anonymous 9/25/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86481>

NO, NO, NO to ANY MASK MANDATE!!!!!!!!!!!!!! We Virginians do NOT want any mask mandate. Not temporary. Not semi-permanent. Not permanent. Masks do not protect anyone from a virus, not even the N95 masks. All they do is give people a false sense of security. Mask wearers are also ending up getting sick from respiratory diseases and skin problems. They are dividing all of us. Probably just what you legislators want. You are treating us Virginians as little, ignorant children who can't figure out how to take care of our health. You, the government, have no business telling us what to do as far as our health is concerned. Leave us alone to make our own decisions. We are quite capable.

Shame on you for trying to get this into law behind our backs. Shame on you.

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

SEE DEPARTMENT RESPONSE TO COMMENT 85535

86482 Tiffany Clark 9/25/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86482>

Strongly Oppose. Scientist, even Dr Fauci have proclaimed that wearing a mask is just symbolic, we do not need a law that is symbolic.

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

SEE DEPARTMENT RESPONSE TO COMMENT 85535

86483 Anastasia Clark 9/25/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86483>

Strongly Oppose. It is time for the government to take their hands off our bodies. I refuse to wear a mask on my face or anywhere else for that matter.

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

SEE DEPARTMENT RESPONSE TO COMMENT 85535

86484 Alexandra Clark 9/25/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86484>

Mandatory masks are not about SAFETY but about SOCIAL CONTROL! The truth needs to be told; mandatory masks are not about safety but about social control! Virologist Dr. Judy Mikovits, PhD offered a science-based warning about wearing face masks: "The masks on walks outside and while driving in your car is mind blowing to me. Do you not know how unhealthy it is to keep inhaling your carbon dioxide and restricting proper oxygen flow? I honestly cannot believe how non-logical we have become! We as a society seem to just listen to (perceived) authority without question. I don't see a whole lot of critical thought happening here, I'm sorry to say. Why I opt NOT to wear a mask. Well, let me break it down for you. The body requires AMPLE amounts of oxygen for optimal immune health. Especially during a so-called 'pandemic'. Proper oxygenation of your cells and blood is ESSENTIAL for the body to function as it needs to in order to fight off any illness. Masks will hamper oxygen intake. Unless you are working in a hospital setting, it is NOT necessary. But go ahead and hold onto to your security blanket if it makes you feel better. I do not listen to the government when it tries to instruct me on how to maintain health, nor do I trust their 'stats' (which we know are based on unconfirmed numbers). Dr. Russell Blaylock also warns that not only do face masks fail to protect the healthy

from getting sick, but they also create serious health risks to the wearer. The bottom line is that if you are not sick, you should not wear a face mask. <https://www.technocracy.news/blaylock-face-masks-pose-serious-risks-to-the-healthy/>

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

SEE DEPARTMENT RESPONSE TO COMMENT 85535

86486 Ashley Clark 9/25/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86486>

Strongly Oppose

The country of Sweden never mandated mask nor did they have any lockdown resulting in only one death. It is time for our government to remember who it is they are working for and stop being so politically correct, you were hired and elected to use logic and science not personal emotions.

See Time.com article entitled ""The Swedish COVID-19 Response Is a Disaster. It Shouldn't Be a Model for the Rest of the World"", <https://time.com/5899432/sweden-coronavirus-disaster/>

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

86488 Steve Akridge Virginia Automotive Association 9/25/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86488>

VAA Opposes Permanent ETS

Regarding the DOLI Board consideration of adopting permanent standards for COVID-19, our organization opposes such, and encourages you to not make the ETS permanent. Our members are all small business owners, and their employees and customers are the life blood of their businesses. Thus, they are committed to keeping their work environment safe for both employees and customers. As I had mentioned to you in previous communications, the very nature of our building layout in this industry, naturally gives social distancing for employees. In addition, most offer numerous methods to achieve contactless service, so customers can get necessary repairs to keep their vehicles safe while minimizing their interaction with the shop. No one is expecting this pandemic to last forever, and thus business owners should not be forced to comply with these regulations on a permanent basis. Many of the provisions of ETS are not consistent with federal guidelines, and are a challenge for our members' small businesses. Our owners are doing every thing they can to survive, keep their employees employed, and maintain a safe work environment. We respectfully request you not make the ETS regulations permanent, and ask you sunset these when the Governor's state of emergency ends. Thank you for your consideration.

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SEE DEPARTMENT RESPONSE TO COMMENT 84956

The Department notes that one of its Frequently Asked Questions (FAQ) addresses the issue of automotive dealers and repair shops and provides the following information from §10 FAQ 14:

14. What exposure risk classifications apply at automotive sales and repair businesses?

To determine appropriate protections for employees from the SARS-CoV-2 virus under the ETS, employers must first “assess their workplace for hazards and job tasks that can potentially expose employees to the SARS-CoV-2 virus or COVID-19 disease. Employers shall classify each job task according to the hazards employees are potentially exposed to and ensure compliance with the applicable sections of this standard for very high, high, medium, or lower risk levels of exposure. Tasks that are similar in nature and expose employees to the same hazard may be grouped for classification purposes.” 16VAC25-220-40.B.1. (Emphasis added).

Definitions for very high, high, medium, or lower risk levels of exposure can be found in 16VAC25-220-10.

NOTE: Employees classified as lower risk “do not require contact inside six feet with persons known to be, or suspected of being, or who may be infected with SARS-CoV-2. Employees in this category have minimal occupational contact with other employees, other persons, or the general public, such as in an office building setting; or are able to achieve minimal occupational contact through the implementation of engineering, administrative and work practice controls.... 16VAC25-220-10. (Emphasis added).

In addition, (for lower risk classifications) “Employee use of face coverings for contact inside six feet of coworkers, customers, or other persons is not an acceptable administrative or work practice control to achieve minimal occupational contact. However, when it is necessary for an employee to have brief contact with others inside the six feet distance a face covering is required.” 16VAC25-220-10. (Emphasis added).

You discussed in your letter that:

- The natural layout of our locations lends our work spaces to be more than six feet of social (physical) distancing.
- Our service bays are spaced farther apart than six feet, and because of this, our employees performing their required duties are not in contact with other employees or customers.
- These businesses are offering numerous options so their customers have minimal to no contact with the employees of the store.
- Concierge pickup and delivery services of the vehicle, after hour exterior key drop services, complimentary
- Uber rides home or to work, phone payments and more insure a safe experience for our member’s customers with little or no contact.
- In addition, our member store employees wear face coverings and gloves, and exterior surfaces are continuously cleaned and sanitized.
- The customer’s vehicle is sanitized before being returned.

If your member’s employees are able to maintain physical distancing of 6 feet from other persons (employees, customers, etc.) at all times, than it is appropriate for their job tasks to be classified as “lower risk.”

As noted above, the definition for “lower risk” also provides that “when it is necessary for an employee to have brief contact with others inside the six feet distance a face covering is required”, and still allows the job tasks to remain classified as “lower risk.”

The main situation VOSH can envision that might cause some difficulties in risk classification, would be for those job tasks, if any, where employees are required to work inside six feet with each other for more than “brief” contact (e.g. encountering another person in a hallway that does not allow for physical distancing of 6 feet). If such job tasks exist, then that would result in those job tasks being classified as “medium” risk, which would mean additional requirements in the ETS would apply. This type of determination will have to be made on a case by case basis by your members based on the definitions in the ETS.

VOSH would also take this opportunity to note your members’ ongoing obligation to comply with other existing VOSH standards and regulations such as those for personal protective equipment, respiratory protection equipment, hazard communication, etc., which are not impacted by the ETS for lower risk classifications, but do protect against other workplace hazards (hearing loss, chemical hazards, welding hazards, etc.).

At its core the ETS is a risk management system to prevent or limit the spread in the workplace of the SARS-CoV-2 virus. It provides certain mandatory requirements for all employers and additional requirements commensurate with increased levels of risks associated with certain workplace hazards and job tasks. The ETS also provides employers with a level of flexibility to achieve compliance and incentivizes employers to establish mitigation strategies that will eliminate or substantially decrease employee exposure to the virus.

While the ETS provides specific additional requirements for very high, high and medium risk work environments centered around mitigation of hazards and redesign of job tasks, it is also designed to incentivize employers to make changes that will allow job tasks to be reclassified to lower risk. Any actions that your members can take in redesigning work that will enable them to reclassify a medium risk job task to lower risk will both reduce the likelihood of employees spreading the virus as well as the regulatory burden on your member’s company.

VOSH encourages you to suggest your members consider working with our Consultation Program for small employers (up to 250 employees at one site or 500 nationwide) which is available to provide free, confidential consultation and training services. The program also has 3 consultants that are available as demand allows to work with large employers.

<https://www.doli.virginia.gov/vosh-programs/consultation/>

FAQs can be found at: <https://www.doli.virginia.gov/cononavirus-covid-19-faqs/>

86489 Michael Clark 9/25/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86489>

Mandatory-mask policies provide a foundation to weaponize against American liberty!

“Mandatory-masking policies provide a valuable foundation to weaponize the virus against American liberty—now and in the future.” <https://thefederalist.com/2020/05/27/mandatory-masks-arent-about-safety-theyre-about-social-control/>

What happened to the American spirit that fought against tyranny and for freedom? Fought for what is right and defending the truth? Submitting to tyrants or least evil men who are promising safety and protection is



the way of communism. The point of the masks is to plant the seed for much bigger growth towards communism. The masks are being pushed to teach the American people that if we want to get some sense of normal, we have to accept abnormality. If we want to save each other we have to submit to the mask, though it does not have any scientific backing or common sense. If everyone is wearing a mask, it is the social pressure that we must accept this new status quo. Each freedom we give up, as small as it may be, is priming the American spirit to be tamed to the communistic way of thinking and living. There is an agenda to the masks and one which we should question and not overlook.

It's time to remove the mask of this evil agenda!

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

SEE DEPARTMENT RESPONSE TO COMMENT 85535

86490 Jenniver Myers 9/25/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86490>"Strongly oppose a permanent standard.

I strongly oppose making this a permanent standard. It was meant to be temporary.

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

86491 Steve Cherry 9/25/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86491>

Mask mandate is unconstitutional. Enough of the pretending we're all in danger of dying of COVID 19. Please stop trying to turn our country into a communist controlled police state. I say let us live free or die. Masks are for clowns and actors but not for patriots and definitely not for me.

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

SEE DEPARTMENT RESPONSE TO COMMENT 85535

86492 Tracy Allen 9/25/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86492>

NO MASKS

You people at the VDH have got to be out of your freakin minds. No, no, and hell no. No more masks.! Enough of this nonsense.

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

SEE DEPARTMENT RESPONSE TO COMMENT 85535

86494 Mary Torres 9/25/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86494>

Tyrannical Mask mandates!

Strongly oppose and down right reject any mask mandate!!! Give me air or give me death!!!! Dictator Northam needs to quit violating his constituents rights for political reasons. Either he doesn't practice what he is trying to mandate or it doesn't work anyway or he and his wife wouldn't have covid now!! The black box needs to stop.

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

SEE DEPARTMENT RESPONSE TO COMMENT 85535

86495 Carolyn McNamara 9/25/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86495>

No permanent ban with such a high penalty

No permanent ban with such a high penalty.

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

86496 Christopher Eck 9/25/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86496>

COVID Mandate

This is another example of the states unconstitutional overreach. This should NOT be Approved, It is trying to make permanent what are ""temporary"" emergency orders. DO NOT APPROVE!!!!!!

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

86497 Marie Lundberg 9/25/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86497>

Mask requirements

Strongly oppose the proposed requirements.

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

SEE DEPARTMENT RESPONSE TO COMMENT 85535

86499 Griffin E 9/25/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86499>

NO, NO, NO mask mandates!!! Stop this now!!

This governor has completely gone out of control with his ""Emergency Orders""!! This has got to stop .SEE DEPARTMENT RESPONSE TO COMMENT 84237

SEE DEPARTMENT RESPONSE TO COMMENT 85535

86500 Nicholas Clark 9/25/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86500>

What happened to my body my choice?

I won't be getting sicker!!!

Dr. Russell Blaylock, a neurosurgeon, wrote that masks could make you sicker.

It could also create a “deadly cytokine storm” in some by wearing the masks on a daily basis, especially if worn for several hours.

“When a person is infected with a respiratory virus, they will expel some of the virus with each breath. If they are wearing a mask, especially an N95 mask or other tightly fitting mask, they will be constantly rebreathing the viruses, raising the concentration of the virus in the lungs and the nasal passages. We know that people who have the worst reactions to the coronavirus have the highest concentrations of the virus early on. And this leads to the deadly cytokine storm in a selected number.

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

SEE DEPARTMENT RESPONSE TO COMMENT 85535

86501 Andrew Clark 9/25/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86501>

Masks do more HARM to workers!!! Think about this: The recovery rate is 98% but people are acting like this is the worst incurable disease of the century. And remember mask wearing is only 14% effective, but it is mandatory for your health? This video here from two great doctors in Bakersfield, CA was censored by big tech because it goes against the One World domination to force you to wear these masks that are not healthy and all the facts support that!: [https://www.thenewmovement.org/uploads/b/109805546-223370554866481218/doctors\\_318.mp4](https://www.thenewmovement.org/uploads/b/109805546-223370554866481218/doctors_318.mp4)

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

SEE DEPARTMENT RESPONSE TO COMMENT 85535

86503 M.C. Tritle 9/25/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86503>

Strongly, vehemently oppose.

This is an outrageous response to what the CDC's own statistics point out is the equivalent of a strong flu. Why the overreaching desire to control when there isn't even a standard for mask requirements in the first place? Demonstrate sanity and rationality beyond the current moments panic and say "no" to this nonsense.

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

SEE DEPARTMENT RESPONSE TO COMMENT 85535

With regard to the issue of comparing SARS-CoV-2 and Covid-19 to influenza and the common cold, there are a number of significant differences which are discussed in detail in the Department's Briefing Package on the Emergency Temporary Standard dated June 23, 2020, which can be found at:

<https://www.doli.virginia.gov/wp-content/uploads/2020/06/BP-Emergency-Regulation-Under-2.2-4011-SARS-CoV-2-That-Causes-COVID-19-FINAL-6.23.2020.pdf> (e.g., lack of a vaccine, limited treatment options, infection fatality rate; there is currently no vaccine; treatment options are still limited; superspreader transmission, etc.).

86504 V. Tritle 9/25/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86504>

Absolutely oppose this bizarre effort.

Say no to petty tyranny and the desire to control others.

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

86505 VA Resident 9/25/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86505>

Opposed to unconstitutional mask mandates! I am strongly opposed to the unconstitutional overreach of the current governor in Va. The damage, deviousness and mental instability displayed by those who sincerely believe that a mask is actually keeping them protected is only one example of the terrible results of mandating masks. Even if the governor and his administration does not have any regard for intellectual integrity or truth, for the sake of our beautiful state and dear residents of Virginia do not mandate mask wearing!

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

SEE DEPARTMENT RESPONSE TO COMMENT 85535

86506 Matthew 9/25/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86506>

No Mask Mandate . This 100% unconstitutional. The CDC data, regardless of what the MSM will comment on, states that masks do not work. Doctors state that masks do not work. Stop the tyranny.

[https://wwwnc.cdc.gov/eid/article/26/5/19-0994\\_article](https://wwwnc.cdc.gov/eid/article/26/5/19-0994_article). <https://www.primarydoctor.org/masks-not-effect>

<https://www.cebm.net/covid-19/masking-lack-of-evidence-with-politics/>. Look at Sweden:

<https://www.thetimes.co.uk/article/sweden-beating-coronavirus-with-herd-immunity-expert-claims-pmmww8b7k>

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

SEE DEPARTMENT RESPONSE TO COMMENT 85535

86507 Gabrielle Tuttle 9/25/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86507>

Opposed to the mask mandate.

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

SEE DEPARTMENT RESPONSE TO COMMENT 85535

86508 Christine Werne 9/25/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86508>

Strongly oppose

while I appreciate the temporary nature, I see no benefit in these regulations becoming permanent

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

86509 Rose Mary Cosby 9/25/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86509>

mask wearing opposed

Strongly oppose any mask wearing mandate

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

SEE DEPARTMENT RESPONSE TO COMMENT 85535

86510 Regina Schmiedicke 9/25/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86510>

Strongly oppose mask mandate!

I strongly oppose the mandate to wear masks at places of employment. I have asthma and this means sometimes I have difficulty with shortness of breath and breathing in general. Face coverings or face shields can make this condition worse. I do not want to be forced to wear a mask in order to work!

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

SEE DEPARTMENT RESPONSE TO COMMENT 85535

86511 Xavier Torres 9/25/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86511>

Oppose mask mandate

I am opposed to renewing the mask mandate. This is unconstitutional and not enforceable by law enforcement. It is time to stop playing games with people's lives.

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

SEE DEPARTMENT RESPONSE TO COMMENT 85535

86512 Jason Seibel 9/25/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86512>

oppose

oppose

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

86513 Andrew Knepper 9/25/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86513>

## Oppose Unconstitutional Face Mask Order

The proposed face mask requirements are unconstitutional and unfairly target business owners. They will not be held up in court. There is absolutely no reason to make a permanent order for a temporary problem. Stop this nonsense immediately. Our leaders in Virginia should be ashamed of themselves.

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

SEE DEPARTMENT RESPONSE TO COMMENT 85535

86514 George Huger 9/25/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86514>

No Permanent Policy at this Time.

I believe that it is a little premature to establish a permanent Standard Operating Procedure and State Regulation. I believe that permanent regulations should be based on solid facts. There are no real facts that are known about this virus at this time. And this commission is not making policy on facts. This policy is based on political rhetoric and media hysterics. The responsible way for government to operate is to wait until the real causes and effects are know and make good educated decisions. It seems rather irresponsible for an administration that creates policy based on facts to rush into a permanent policy before all the facts are even really know. Why not wait and get right or just realize we already have too many regulations.

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SEE DEPARTMENT RESPONSE TO COMMENT 84956

86515 Mary M 9/25/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86515>

Oppose

I do not agree with this mandate. The death rate of the virus does not warrant it.

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

86516 Adam Haas 9/25/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86516>

Protect Poultry Workers

It's extremely important that we make the emergency covid 19 measures permanent for poultry workers. These workers are staples of our communities and economy. This industry is a powerful force in our community and we need to support them. If we give up on the building blocks of our community we are giving up on ourselves. We need to strengthen and support the forces that make our area great and prosperous.

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SEE DEPARTMENT RESPONSE TO COMMENT 84196

86517 anonymous 9/25/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86517>

Do not agree to be permanent

Citizens and businesses should be allowed the right to unmasked opportunities providing all participants are healthy along with otherwise following safety and sanitation guidelines

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SEE DEPARTMENT RESPONSE TO COMMENT 84956

86519 Malcolm Cameron 9/25/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86519>

Make Emergency Work Standards for COVID-19 Permanent Standards

For the health, safety and well being of all workers, it is imperative that the emergency work standards now in effect due to COVID 19 be made permanent.

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SEE DEPARTMENT RESPONSE TO COMMENT 84196

86520 Michael Snell-Feikema, Community Solidarity with the Poultry Workers 9/25/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86520>

Making the Emergency Temporary Standards on Covid-19 in the Workplace Permanent

Virginia led the way with the Emergency Temporary Standards creating the first in the nation mandatory and enforceable standards protecting workers in the workplace from Covid-19. These standards have not only benefited the workers of Virginia they have also set a positive example for all states. Making the standards permanent will not only ensure protection for workers and establish a common standard that all companies must adhere to in Virginia, it will also continue to set an example for the rest of the country, an example that is sorely needed in this period of national crisis.

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SEE DEPARTMENT RESPONSE TO COMMENT 84196

86521 Christine Centrella 9/25/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86521>

Oppose Mandate of Permanent Wearing of Masks



I oppose the mandate requiring the permanent wearing of masks in Virginia.

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

SEE DEPARTMENT RESPONSE TO COMMENT 85535

86522 Donna 9/25/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86522>

I say no to Masks! I am 90 years old and I do not wear a mask. Why? Because you know, and I know - THEY DO NOT WORK. Stop the lying and stop the control. This is unlawful.

---

SEE DEPARTMENT RESPONSE TO COMMENT 84237

SEE DEPARTMENT RESPONSE TO COMMENT 85535

86523 Darden Brock 9/25/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86523>

opposed

I'm completely opposed to the mask mandate. The science does not back this up. We deserve freedom choice.

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

SEE DEPARTMENT RESPONSE TO COMMENT 85535

86525 anonymous 9/25/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86525>

Strongly oppose to permanently wearing masks. This is a temporary solution to a temporary problem.

Strongly oppose to making masks permanent. Temporary solution to a temporary problem.

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

EE DEPARTMENT RESPONSE TO COMMENT 85535

86526 Laura Dent 9/25/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86526>

Make the emergency temporary standards to protect Virginia workers from Covid-19 permanent

We need permanent standards to ensure that workers are protected even if doing so costs money or slows production. Workers and their families and communities must not be sacrificed to profit or any other ""imperatives."" The moral imperative is to protect the lives of workers and their loved ones and to do that we need permanent mandatory and enforceable standards. It could save the lives and health of many precious human beings. Thank you,

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SEE DEPARTMENT RESPONSE TO COMMENT 84196

86527 Connie Youngman 9/25/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86527>

Absolutely no to permanent mandates!

I am adamantly opposed to wearing masks. I have seen no convincing evidence that they help to stop the spread of the virus and I strongly believe that we are being controlled through fear. Nor will I consent to any vaccine.

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

SEE DEPARTMENT RESPONSE TO COMMENT 85535

86528 Phil Bailey 9/25/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86528>

there is absolutely no reason for government interference for a short term situation

There is no reason for the government to put long term regulation in to a short term situation. Unnecessary burden.

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

86529 Andria M 9/25/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86529>

Oppose mask mandate. If people want to wear masks it should be voluntary.

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

SEE DEPARTMENT RESPONSE TO COMMENT 85535

86530 Katy Vander Woude 9/25/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86530>

Opposed by healthcare professional. I am strongly opposed to the covid health regulations, especially the mask mandate. I am a healthcare professional. I have done hours of research on covid. This "virus" has never been determined infectious from the beginning. Face coverings for not do what people think. Wearing them is going to make people more sick. End the fear. End the insanity. We are not afraid.

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

SEE DEPARTMENT RESPONSE TO COMMENT 85535

86531 anonymous 9/25/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86531>

No to the mask mandate.

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

SEE DEPARTMENT RESPONSE TO COMMENT 85535

86532 anonymous 9/25/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86532>

No to masks!

No to masks! They don't stop the virus.

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"SEE DEPARTMENT RESPONSE TO COMMENT 84237

SEE DEPARTMENT RESPONSE TO COMMENT 85535

86533 anonymous 9/25/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86533>

Absolutely oppose mask mandates...

Absolutely oppose mask mandates. Don't need the govt to tell me how to stay healthy. I'm perfectly capable of taking care of my health... have been doing so for 68 years!

Govt should be protecting my freedom and rights... nothing more!

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

SEE DEPARTMENT RESPONSE TO COMMENT 85535

86534 Tracy Allen-Eck 9/25/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86534>

NO to COVID mandates and ESPECIALLY the mandatory MASK requirement. STOP it NOW!!!!!!!!!!!!

First, we as Virginians were asked to help slow the curve of the COVID virus for the sole purpose of reducing the number of deaths and over crowding the hospitals. The over crowding of the hospitals never happened and death count has continued to decrease. Now, the Northam has changed the original reason for the masks and not fully opening up to eliminate the virus. Now he is purely looking at the number of cases. How ridiculous and outrageous!! And now, he has decided to continue to put our state in a State of Emergency so that he can basically, be a dictator. This must stop!!! This has deeply hurt our kids with all the ridiculous mandates for the schools. There are more kids seeking counseling now then ever. And the CDC has changed their message on the use of masks more than 8 times since this started. They have changed their message at least monthly on whether masks help or hurt or do nothing. Whether a vaccination will be good or limited or now a vaccination is going to be less effective then a mask. This is the CDC's last message to America. And you want to go by what the CDC recommends, not mandates. It's time to take the chains off of Virginians. We should decide if we want to wear a mask or not. Whether we want to take a vaccination or not. And stop hurting the businesses. Let them decide on how they want to handle this situation. You have already put enough people out of work.

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"SEE DEPARTMENT RESPONSE TO COMMENT 84237

SEE DEPARTMENT RESPONSE TO COMMENT 85535

86535 anonymous 9/25/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86535>

NO

I am opposed to all COVID-19 regulations becoming permanent in Virginia. Businesses should be able to operate at the scale they were previously, and residents should be able to choose whether or not to wear masks and social distance.

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

SEE DEPARTMENT RESPONSE TO COMMENT 85535

86536 Michael Turner 9/25/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86536>

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No to mask mandates

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

SEE DEPARTMENT RESPONSE TO COMMENT 85535

86537 Michael Turner 9/25/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86537>No to mask mandates

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

SEE DEPARTMENT RESPONSE TO COMMENT 85535

86538 anonymous 9/25/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86538>"Strongly oppose permanent mask mandates. Vote NO!

I absolutely oppose the proposed permanent mask mandate for VA residents. We, the people, need the freedom to make the decision for our health. Protect our individual freedom we are entitled to. Vote NO!

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

SEE DEPARTMENT RESPONSE TO COMMENT 85535

86539 Leonidas 9/25/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86539>

This is madness!

I do not support this measure

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

86540 Patrick, Nurse Practitioner 9/25/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86540>

No to indefinite covid restrictions. As a healthcare provider I firmly belief in the importance of human contact with my patients. By pushing an agenda that hides who I am as a person, and hides who my patients are is a dangerous and inhumane measure. Please stop acting like masks and gloves do anything, and show me a study that shows masks work against a droplet illness in SOCIETY, not in a hospital...a well conditioned

immune system is where we should be devoting our time and effort. Furthermore, according to statistics published by the CDC on 9-10-2020, the recovery rate for this illness is in excess of 99%...for the vast majority of the population. Stop using ideological based medicine and start using actual evidence.

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

SEE DEPARTMENT RESPONSE TO COMMENT 85535

86541 Megan Getz 9/25/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86541>

Strongly Opposed to mask mandate!

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

SEE DEPARTMENT RESPONSE TO COMMENT 85535

86542 anonymous 9/25/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86542>

Mandate for permanent face masks. NO. NO, NO. NO !!!

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

SEE DEPARTMENT RESPONSE TO COMMENT 85535

86543 Rachel Williams 9/25/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86543>

Opposed to permanent mandate. Strongly disagree with a permanent mask mandate.

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

SEE DEPARTMENT RESPONSE TO COMMENT 85535

86544 Robert Hickson 9/25/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86544>

Opposed fully

I fully oppose this declared intention: dubious sociology, dubious rules, a tragic constriction for the children and their faces.

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

86545 Dale Dean 9/25/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86545>

No, in the strongest way possible, no.

No I do not support this

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

86546 Jennifer Webb 9/25/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86546>

Support for Permanent VOSH Standards

My name is Jennifer Webb and I have been in the City of Norfolk Department of Utilities for seven (7) years and I am performing essential Frontlines work as an Engineering Technician I.

I am also a single mother of eight (8) school aged children, which I am the sole provider and protector.

I worry about the safety and health of my children.

My daughter who is 4 years old, is a COVID-19 survivor.

As a mother of children that have underlying health/ medical conditions, I worry at work every day that I will bring this virus home to my children.

I support the proposed VOSH permanent standard for infectious disease prevention for COVID-19.

The City of Norfolk is not properly notifying us when an employee has tested positive or has been exposed, or if we work within close proximity of a worker who has tested positive for COVID-19.

I am the bread winner in my household.

I honestly do not know what I would do if I contracted this dreaded virus. How would I be able to provide for my household? These are scary times!

Recently, I have had to split my time between transporting my kids back and forth to their doctor appointments and working ten (10) hours days, so this pandemic has brought about serious personal and professional challenges for me.

We also need access to PPE when we cannot properly stay physically distanced from our coworkers.

Right now, during the pandemic, we are riding four (4) and five (5) employees to a vehicle with no shields to protect and/or distance ourselves.

Other Norfolk Employees and I, with the support of Health and Safety experts from AFSCME District Council 20 and the AFSCME International have been advocating to improve VOSH Standards for some time and recently reached out to several City of Norfolk officials to meet and make suggestions to help further these efforts.

The City of Norfolk, on one occasion provided employees a pack of masks, but once they were no longer useable and out of stock, we were told we were on our own.

How could this happen?

The standard should include, at minimum a (daily; weekly; monthly; quarterly) mask distribution protocol and COVID-19 exposure log, as well as requirements for managing cases.

Please consider my advocacy for a permanent VOSH Standard to protect Front-Line Essential Workers in the City of Norfolk.

Thank you.

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SEE DEPARTMENT RESPONSE TO COMMENT 84196

86547 anonymous 9/25/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86547>

NO MASK MANDATES!!! This is a free country!!! Enough controlling!!!

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

SEE DEPARTMENT RESPONSE TO COMMENT 85535

86548 anonymous 9/25/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86548>

We will live free or die fighting. Don't you dare try and make me wear a mask permanently.

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

SEE DEPARTMENT RESPONSE TO COMMENT 85535

86549 Tim Wagner 9/25/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86549>

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It's Time To Stop All Masking. There is no remaining scientific basis to force any masking whatsoever. The CDC has admitted that less than ten thousand people in the entire United States have died of Covid-19 alone. All others had 2 to 3 other co-morbid conditions that would have soon taken their lives. The harm caused by the mental anguish and oxygen deprivation associated with masking is far worse than the virus itself. Furthermore, in comparison, more people have died of heart disease in the past week than have died of Covid-19 alone in the 6+ months since it was discovered. I say, stop masking now!

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

SEE DEPARTMENT RESPONSE TO COMMENT 85535

86550 Tonya R 9/25/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86550>

I strongly oppose a mask mandate.

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

SEE DEPARTMENT RESPONSE TO COMMENT 85535

86551 G.J. Stanford 9/25/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86551>

COVID 19 permanent mandates

Strongly opposed.

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

86552 Gregory Whitaker 9/25/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86552>

Absurd Proposal

I strongly oppose this proposal.

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

86553 Natalie Klaiber 9/25/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86553>"Strongly oppose mask mandates

I strongly oppose mask mandates!

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

SEE DEPARTMENT RESPONSE TO COMMENT 85535

86555 Susan Wilcox CIH CSP 9/25/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86555>

Permanent std

No ! VA does not need this. There is absolutely no justification for it. Period. We don't have a standard for any other communicable disease. This is not an occupational health issue. It is a public health issue. VOSH is way out of bounds here.

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

86556 anonymous 9/25/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86556>

Face mask

Stop mandatory wearing of face masks!

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

SEE DEPARTMENT RESPONSE TO COMMENT 85535

86557 anonymous 9/25/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86557>

Strongly Oppose Mandatory Masks in va

I Strongly Oppose Mandatory Masks in Va

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

SEE DEPARTMENT RESPONSE TO COMMENT 85535

86558 David Furlong 9/25/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86558>

Please make the emergency standards permanent

Let's protect the Workers and their communities in Virginia from covid-19 for the entire duration of this pandemic. Make the standards permanent and help create a healthy and productive workplace environment. The standards allow the workers some input into their workplace and keeps everyone safe - even beyond the workplace walls. It's the right thing to do! Let's do it!

Regards,

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SEE DEPARTMENT RESPONSE TO COMMENT 84196

86559 Doris Crouse-Mays and Rebecca Reindel, AFL-CIO9/25/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86559>

AFL-CIO Comments on Virginia's Efforts to Adopt a Permanent OSHA COVID-19 Standard

Re: "Department of Labor and Industry Announces Intent to Adopt a Permanent Standard for Infectious Disease Prevention: SARS-CoV-2 Virus That Causes COVID-19, 16VAC25-220"

To Whom it May Concern:

The Virginia AFL-CIO, a state federation of the national AFL-CIO, represents over 300,000 union members and their families. With over 300 affiliated local unions in the Commonwealth, unions represent workers in a broad range of industries including healthcare, first response, food processing, manufacturing, hospitality, construction, transportation, utilities, grocery and retail service, education, and others; in private and public sectors; in stationary and mobile workplaces. Our members work side-by-side millions of non-unionized workers.

The Virginia AFL-CIO commends the Commonwealth, through its Department of Labor and Industry and Safety and Health Codes Board, for being the first state to expeditiously and thoughtfully issue a strong, comprehensive emergency temporary standard (ETS) to protect workers from the SARS-CoV-2 virus and to promulgate a permanent standard. The response by the Virginia government to reduce the spread of COVID-19 by addressing workplace exposures in a permanent standard is groundbreaking and will continue to make Virginia a premier state because of its response to the COVID-19 pandemic. At least 144,433 Virginians have been infected and 3,136 have died [The New York Times. Covid in the U.S.: Latest Map and Case Count. Updated Sep. 25, 2020, 5:24pm ET. Accessed Sep. 25, 2020, 8:30pm ET]. We urge the Safety and Health Codes Board to swiftly approve the proposed permanent standard with several recommended improvements and to remain vigilant in protecting working people in Virginia.

The permanent standard must be finalized and issued to protect working people.

Early in the pandemic, it was clear that the spread of COVID-19 would continue to be aggressive, workplace outbreaks were inextricably linked with community spread and preventive measures were needed in both workplaces and the community. The ETS is only effective for six months and will expire on January 27, 2021. Issuing a permanent standard to prevent workplace exposures is fundamental to continuing to mitigate the spread of COVID-19 in Virginia as our nation continues to struggle with the virus surge. While this programmatic standard is specific to COVID-19, it also is the foundation for addressing other infectious

disease exposures in the workplace that lead to illness and death and prepares employers for future pandemics.

Even though overall COVID-19 outbreaks in Virginia have decreased over the past several months, there continue to be outbreaks in many sectors: Since August 1, there have been 97 outbreaks in long term care facilities, 70 in congregate settings, 19 in correctional facilities, 20 in health care facilities, and 57 in education settings, with more being reported daily. Outbreaks in education have not decreased; instead, 67% of the education outbreaks have occurred since August 1 [<https://www.vdh.virginia.gov/coronavirus/coronavirus/covid-19-in-virginia-outbreaks/>].

The rise in outbreaks within the education sector, right as schools reopen, shows how essential it is for the OSHA standard to cover all workplaces under its jurisdiction, without exemptions. To ensure there are no gaps in protections for any workers, the permanent standard must be promulgated expeditiously to cover all working people in Virginia.

The Virginia OSHA standard simplifies requirements for employers to protect workers from COVID-19.

A permanent COVID-19 standard increases the clarity for what employers must do to keep workers protected from COVID-19 on the job—for employers who must implement control measures and workers to know how their employers must protect them. The standard is issued and enforced by one agency, creating clear authority for who holds employers accountable for maintaining safe workplaces.

Guidelines that are less protective than the proposed standard and not enforceable continue to leave workers and their families and communities at very serious risk. Currently there are more than 100 different CDC guidance documents that change on a regular basis with no notification to the public or employers. Guidelines include piecemeal recommendations with no enforcement, so employers often implement some elements and not others, leaving workers without comprehensive and consistent protections.

The permanent VOSH COVID-19 standard would make the strong, comprehensive workplace protections in Virginia the floor level of protections, instead of the ceiling. Removing the current references in §16VAC25-220-10.G to the CDC guidelines and Department of Education guidelines avoids confusion and impractical options for employers. These provisions also create unnecessary complications for inspectors in evaluating employer compliance. It is much simpler for the Board to remove these provisions to ensure that employers have one reputable and clear source for requirements that improve working conditions and that workers have clarity in the actions their employer must take.

The proposed standard, or ETS, is a strong comprehensive standard based on current science and long-standing occupational safety and health practices.

The proposed standard was created by the Safety and Health Codes Board after public input and with occupational safety and health, public health, and industry expertise. The ETS approved by the board is a comprehensive standard using a programmatic approach to require employers to assess the hazards of SARS-CoV-2 in their workplaces and then, according to the risks identified in the hazard assessment, implement control measures using sound safety practices. The tiered risk classifications and programmatic approach allows employers to tailor their infection control plans to their workplace instead of being overly prescriptive.

The standard also includes requirements, in alignment with other programmatic OSHA standards such as bloodborne pathogens and respiratory protection, for commonsense control measures following the hierarchy of controls. The comprehensive approach in the standard is necessary to protect workers from all transmission routes of SARS-CoV-2: contact, large droplet, and small aerosol particles through the air. The

science is overwhelming that the virus is airborne, that these small aerosol particles travel farther than six feet, and can linger in the air, which makes the virus more contagious, especially in certain settings. Evidence from major COVID-19 workplace outbreaks also supports the need for airborne transmission precautions: these major outbreaks have occurred where workers are densely packed with poor ventilation and only basic protections that might address contact and droplet transmission, but not airborne.

The key elements of the proposed standard are consistent with other OSHA programmatic standards and employers and workers are familiar with their structure and expectations. Some of the necessary standard elements that are key to protecting workers from COVID-19 include:

- Hazard assessment. It is essential for all employers, with worker involvement, to assess the hazards in their workplace to determine what, if any, control measures should be implemented. This is a requirement in every OSHA standard and necessary for all employers. We support the proposed provision.
- Infectious disease preparedness and response plan. Employers must address the risk of COVID-19 in their workplace by developing and implementing a plan that incorporates the engineering, administrative, work practice, and personal protective equipment controls necessary to address those risks. This standard provision allows the plan to be tailored to each individual workplace, can be as simple or in depth as necessary to address the extent of risks in a workplace and increases the reliability that the protections will be comprehensive and communicated to all necessary parties, especially in multi-employer worksites. It is the key provision to a programmatic standard and directly relies on the hazard assessment being performed. We support the proposed provision.
- Reporting and notification. It is essential for all known COVID-19 cases in the workplace to be properly communicated to the necessary parties for workers to make informed decisions about their and their families' health, to facilitate prompt follow-up and contact tracing for positive cases, and to identify and investigate potential outbreaks. This provision is the only requirement for cases and outbreaks of infections to be systematically reported by employers. Without this provision, there are no requirements in Virginia that collect employment and case data. We support the proposed provisions, but encourage the Board to adopt the recommended change to the outbreak definition discussed below.
- Removal of persons who are known or suspected to be infected. The proposed standard includes provisions we support to ensure that no known or suspected persons remain on the work site. This is essential to prevent spread of the virus in the workplace. However, we encourage the Board to consider expanding those who cannot remain on the worksite to those who have a known exposure to COVID-19 to reduce the risk of asymptomatic and presymptomatic transmission. These critical public health measures must include additional protections for workers who must be removed from the worksite to prevent the virus spread. These recommendations are further discussed below.
- Return to work. The proposed standard includes return to work provisions that are in line with preventive recommendations from the CDC. However, CDC guidelines are constantly changing with no notification to the public and due to business demands instead of new virus or disease information. The proposed return to work provisions ensure that no one known or suspected to be infected with SARS-Cov-2 is in the workplace continuing to spread the virus to others. The return to work provisions also include sick leave provisions which need to be maintained in order to keep infected workers out of the worksite and encourage reporting of cases. Workers without sick leave are at an economic disadvantage to remain out of the workplace when required by the standard to protect their coworkers and community. This provision is especially important as the current proposed standard has no additional requirements to protect workers from retaliation if they

become or are suspected to be infected or to encourage workers to remain at home when potentially contagious.

- Training. Training is essential to ensure that all workers understand the risks associated with exposure to the SARS-CoV-2 virus and COVID-19 cases in their workplace, the measures their employers are taking to protect them, and the tools and protections they need to safely perform their job tasks. The proposed tiered approach ensures all workers receive information commensurate with their workplace setting. We support these provisions.
- Ventilation requirements. We strongly support the specific ventilation provisions in the proposed standard as SARS-CoV-2 is an airborne transmissible virus and the proper ventilation and supply of fresh air is essential to reducing spread indoors.
- Respiratory protection. The proposed standard clearly defines respiratory protection and requires the appropriate assessment to determine the level of protection needed, as well as specifies appropriate respiratory protection for higher risk settings such as health care. We support these provisions.
- Face coverings. The proposed standard clearly defines face coverings, their limitations and their purpose to reduce the spread of droplet particles from the wearer. We support the proposed requirements for the use of face coverings by the public and workers who do not need respiratory protection based on the hazard assessment.

We encourage the Board to improve the proposed standard in the following areas.

I.As explained above, section §16VAC25-220-10.G must be removed as the allowance of compliance with CDC guidance or the Department of Education guidance creates confusion and it is much simpler for everyone to follow one comprehensive OSHA standard.

II.The scientific evidence that the virus causing COVID-19 primarily spreads through airborne transmission is overwhelming and well-recognized by the scientific community and in the proposed standard. Airborne viruses travel farther in the air than six feet, and the six-foot guideline is based on the estimated distance large droplets travel and not aerosolized virus particles. However, the proposed standard consistently refers to six-feet when physical distancing. Physical distancing should occur at the maximum distance possible, at a minimum of six feet, and be implemented in combination with other control measures for airborne transmission, including ventilation, reduction of persons in one area, reduced time spent in areas, and respirators when deemed necessary by the hazard assessment.

III.Medical removal requirements for those who have been exposed to SARS-CoV-2, or recommended by a medical or public health professional, must be added to the proposed standard. One of the most important control measures is to prevent known or exposed workers from entering the workplace. The proposed standard recognizes this by including the provision that does not allow employers to permit employees or other persons known or suspected to be infected with the virus to remain on the premises. See §16VAC25-220-40.A.5. It is logical to assume that workers with a known exposure to the virus may be infected with the virus and should also not be allowed on the premises until cleared for work. The final standard should include these individuals in the medical removal provisions to reduce the risk of asymptomatic and pre-symptomatic transmission. For workers who cannot report to work due to COVID-19 illness or exposure, the employer should provide up to two weeks of paid reassignment or sick leave in addition to whatever benefits to which the worker would otherwise be entitled. Additionally, all workers who are not allowed on the premises under the standard, must be protected from any retaliation or loss of benefits. The standard must require that employers maintain the employee's base earnings, seniority, and other rights and benefits that existed at the

time of removal until cleared for return to work. These protections encourage workers, who otherwise would be afraid of retaliation, to report known exposures. These provisions are common in OSHA standards where continued presence at work can result in additional harm to the worker or, as in the case of COVID-19, coworkers, including in OSHA's lead, formaldehyde, benzene, methylenedianiline, cadmium, methylene chloride, and beryllium standards.

IV. The proposed standard includes necessary reporting and notification requirements to VOSH when there is a workplace outbreak. To be consistent with the state's definition, we recommend an update to the "outbreak" definition from "three or more employees present at the place of employment within a 14-day period testing positive for SARS-CoV-2 virus during that 14-day time period" to "two or more employees" within the same time frame [<https://www.vdh.virginia.gov/coronavirus/coronavirus/covid-19-in-virginia-outbreaks/>]. This change would also be in alignment with current outbreak definition from the Council of State and Territorial Epidemiologists [[https://cdn.ymaws.com/www.cste.org/resource/resmgr/ps/positionstatement2020/Interim-20-ID-02\\_COVID-19.pdf](https://cdn.ymaws.com/www.cste.org/resource/resmgr/ps/positionstatement2020/Interim-20-ID-02_COVID-19.pdf)].

V. While the proposed standard includes strong language for employers to include workers and worker representatives in the hazard assessment and development and review of the infection control plan, in practice, employers often fail to involve workers and their representatives in these processes. VOSH should ensure that both employers and workers are fully aware of the standard provisions through their educational materials and enforcement directives.

Arguments that a permanent standard is burdensome are unfounded.

OSHA has a longstanding history of helping employers with compliance and enforcement discretion with employers who are making good faith efforts. In the public Safety and Health Codes Board meetings, VOSH made clear their intention to educate employers about the standard's requirements. We encourage the agency to issue a clear and comprehensive enforcement directive and any helpful guidance to ensure employers understand the requirements under the standard.

Finalizing a standard that utilizes the proposed programmatic approach not only protects workers where there is risk of exposure to SARS-CoV-2, but reduces the requirements for employers when there is less risk. The proposed standard requires employers to perform a hazard assessment to first determine the risk and then implement strategies to control the risk. When there is no risk, for example, in the event that the virus is no longer a hazard in the workplace due to an effective vaccine or another reason, an employer would no longer have a hazard to control and no further requirements of the standard would apply. This scope and applicability is the structure of all OSHA standards. For example, the OSHA lead standard only applies to employers that perform job tasks where there is lead present as a workplace hazard.

Virginia is the leader in requiring strong OSHA protections during the COVID-19 pandemic: it was the first state to issue an emergency temporary standard and is the first moving forward with the necessary permanent standard. The proposed standard, or ETS, is a strong comprehensive standard that is based soundly on current science and longstanding occupational safety and health practices and is saving lives. Virginia will be a model for employers to prepare for future pandemics. We strongly recommend that the Virginia Safety and Health Codes Board expeditiously finalize and make the ETS a permanent standard with several improvements.

Sincerely,

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SEE DEPARTMENT RESPONSE TO COMMENT 84196

SEE DEPARTMENT RESPONSE TO COMMENT 86379

The Department does not plan to recommend changes to the reporting requirements to the Department, although it does intend to recommend a change to the trigger number of positive cases for reporting to the Virginia Department of Health.

DOLI and the Virginia Department of Health (VDH) have collaborated on a Notification Portal for employers to report COVID-19 cases in accordance with Emergency Temporary Standard (ETS) Sections 16VAC25-220-40.B.8.d and -40.B.8.e that satisfies COVID-19 reporting requirements for both agencies. The portal went live on September 28, 2020. Here is a link:

<https://www.doli.virginia.gov/report-a-workplace-fatality-or-severe-injury-or-covid-19-case/>

86560 The Forresters 9/25/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86560>

Opposed to this erosion of our freedom.

Strongly opposed to this!

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

86561 anonymous 9/25/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86561>

No mandatory mask in hot factories. People will be passing out in hot unconditioned factories which poses a health risk to employers and employees.

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

SEE DEPARTMENT RESPONSE TO COMMENT 85535

Heat Illness

If the employer is concerned that employee use of a face covering may present a greater safety or health hazard to employees exposed to hot environments than compliance with the Standard (e.g., the inability to communicate coherently with another employee during a potentially hazardous job task) the issue needs to be assessed during the personal protective equipment (PPE) hazard assessment process required either under the Standard (see 16VAC25-220-50.D for very high and high risk situations, and 16VAC25-220.60.D for medium risk situations) or 1910.132(d) for general industry employers. The PPE hazard assessment process will allow the employer to identify any potential situations where there may be a greater hazard presented due to hot environments and develop alternative protections for employees.



In addition, 16VAC25-220-80.B.f provides that training on the standard provided to employees shall include with regard to PPE: "Heat-related illness prevention including the signs and symptoms of heat-related illness...."

86562 Jane Wagner 9/25/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86562>

Strongly Opposed To All Masking

I strongly oppose this proposal and all masking mandates anywhere.

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

SEE DEPARTMENT RESPONSE TO COMMENT 85535

86563 anonymous 9/25/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86563>

No masks!

NO MORE MASKS!!

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

SEE DEPARTMENT RESPONSE TO COMMENT 85535

86564 anonymous 9/25/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86564>

strongly oppose

I strongly oppose making the restrictions permanent.

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

86565 Angela Cash 9/25/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86565>

NO TO FACE MASKS!

Please! No to face masks! You are putting great fear into our children and causing great dissent among people for something that is not 100% effective. This is no way to live!

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

SEE DEPARTMENT RESPONSE TO COMMENT 85535

86566 Kerry Costanzo 9/25/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86566>

STRONGLY opposed to mask mandate!!

STRONGLY opposed to mask mandate!

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

SEE DEPARTMENT RESPONSE TO COMMENT 85535

86567 Christine Baker 9/25/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86567>

No mandatory masks!! There are too many detrimental health risks associated with wearing a mask, but even more importantly, criminals take full advantage of this mandate in order to harm people, property, and commit terrible crimes. People who fear getting sick should be free to wear one, but no one should be forced to wear one!

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

SEE DEPARTMENT RESPONSE TO COMMENT 85535

86568 anonymous 9/25/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86568>"Virus prevention

This is the most ridiculous idea. It's

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

86569 Virginia Resident 9/25/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86569>

No to Permanent Mandates

It is apparent the motivating principle to institute a ""permanent"" regulation is to cause the most discontent and economic disruption prior to the election in the hope that enough voters will place the blame on

President Trump and turn him out of office. The side benefit of imposing draconian controls on businesses is to continue economic suppression so as to have increasing numbers of the public throw themselves at the altar of the State and beg for scraps and to be ruled (not governed) by the ""experts"" who always know what is better for the rabble than would the rabble ever be able to discern.

BTW, since statistics show seasonal flu is much more deadly to school children than the CCP virus has proven to be, where has been the urgent, permanent regulatory impetus to dictate school operations to prevent those deaths?

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

The Department has no response to the Commenter's political commentary."

86570 Jeff Martin, Lynchburg Water Resources 9/25/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86570>

comment of potential of permanent standard

With the development and adoption of the Emergency Temporary Standard Infectious Disease Prevention: SARS-CoV-2 Virus that causes COVID-19 regulations, Virginia clearly demonstrated their commitment to employee health and safety. This temporary standard motivated many organizations to take initial or additional steps to protect employees. This temporary standard also modified some established aspects of current health and safety regulations such as, reporting requirements, redefining what could be considered a potential workplace exposure, and the employers responsibility in determining work relatedness of incidents.

Now the question is whether to move this standard from being a temporary standard to a permanent standard. In some aspects, having programs or procedures in place to protect employees from the potential impact of viruses are beneficial. There are many studies that show the financial impact to organizations from the common cold and flu viruses that can spread through a workforce. Having measures that employers can implement to try and better control these potentials will only benefit everyone involved.

However, having a permanent standard that addresses one specific virus or that modifies established health and safety standards may not be the best approach. First, a permanent standard does not allow for the flexibility to adjust to new research or procedures that may be determined to be more applicable. As an example, the temporary standard has guidelines for an employee to return to work after a COVID illness. As time progresses we can assume that research and treatment options may change the medically acceptable steps for this to occur. Will the standard be flexible enough to allow employers to keep up with the research? Even during the life of this temporary standard VDH has provided new and updated guidance and will a permanent standard allow practices, procedures, and programs to be modified to keep up with these recommendations from another state agency?

Second, exposure potential for this virus is not limited to the workplace. In fact, in many instances the exposure potential is greater outside the work environment and employers are being held somewhat responsible for this potential. We have groups of employees that socialize together outside the work environment attending birthday parties, taking family vacations together, family outings together, attending weddings and funerals. If a group of employees become infected due to this contact outside the work place employers are required to notify VDH and VOSH. Why are employers held responsible for these non-work

related exposure potentials? Traditionally it has been the employers responsibility to determine work relatedness for exposures and incidents but that has now been removed for this virus. Further, with medical providers notifying VDH of positive COVID tests why is this being repeated with the employer responsible for reporting as well, especially if there is evidence that it was a non-work related exposure?

Third, there are letters of interruption indicating that exposure and getting the flu is not typically considered a work related exposure, even in the medical field. This temporary standard changes this for COVID. Are we ready to make this level of change in health and safety regulations in a permanent standard? Why not address the flu as well?

I am not against some standard or practice that allows an employer to take steps to protect employees from all viruses. Some of the measures in this temporary standard will to some degree help keep the flu and common cold out of the workplace. But no matter if an organization complies with every health and safety regulation, every VDH guidance document, unless they operate a clean-room facility, this virus, any virus, can find its way into a facility. Is it the best practice to hold employers accountable from a financial standpoint, being fined, for having a virus in the workplace that cannot be fully controlled?

Would it not be better to use the General Duty clause or Administrative Manual to allow employers to follow the guidance or recommendations of the research and health care industry to protect employees? A process that allows for this level of flexibility in programs and practices would make it easier for employers to adjust as we learn more about this virus. My organization has taken steps to comply with this temporary standard, we have increased employee training, increased cleaning and disinfecting, invested in equipment, have employees working remotely, prescreen employees, mandated PPE usage and with all these steps the virus can still impact our employees. Is a permanent standard really the best option at this time? Is the concern for being fined really the best approach at this time in the history of this virus?

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SEE DEPARTMENT RESPONSE TO COMMENT 84956

The issue of the differences between the Standard's return to work requirement and those of the CDC will be addressed in the revised proposed permanent standard. A Frequently Asked Question (FAQ) provided by DOLI addresses the issue as it pertains to the current Emergency Temporary Standard (ETS).

On July 22, 2020, the CDC changed its guidance with regard to symptoms-based strategies from exclusion for 10 days after symptom onset and resolution of fever for at least 3 days to exclusion for 10 days after symptom onset and resolution of fever for at least 24 hours (i.e., the change was from 72 hours to 24 hours). For persons who never develop symptoms (i.e., asymptomatic), isolation and other precautions can be discontinued 10 days after the date of their first positive RT-PCR test for SARS-CoV-2 RNA.

16VAC25-220-10.G.1 provides in part that:

To the extent that an employer actually complies with a recommendation contained in CDC guidelines, whether mandatory or non-mandatory, to mitigate SARS-CoV-2 virus and COVID- 19 disease related hazards or job tasks addressed by this standard, and provided that the CDC recommendation provides equivalent or greater protection than provided by a provision of this standard, the employer's actions shall be considered in compliance with this standard.... (Emphasis added).

Employers who comply with the above-referenced change in CDC guidance issued July 22, 2020, will be considered to be providing protection equivalent to protection provided by complying with the requirements in the ETS.

However, nothing in the FAQ shall be construed to prohibit an employer from complying with the symptom-based or time-based strategies for return to work determinations in the ETS. (See §40 FAQ 18, <https://www.doli.virginia.gov/conronavirus-covid-19-faqs/>)

The Department intends to recommend that the return to work provisions of the standard be updated to reflect current CDC and VDH guidance.

While many people become infected with SARS-CoV-2 in community settings that are not work-related, every person that becomes infected who is also an employee becomes a potential workplace source and transmitter of the virus if they report to work while still capable of transmitting the disease. There are numerous documented examples of the workplace spread SARS-CoV-2, which is also considered to be highly contagious. The introduction of an infectious disease into a workplace setting, regardless of the source, constitutes a workplace health hazard subject to regulation and enforcement by VOSH.

The VOSH program has clear statutory and regulatory jurisdiction over workplace safety and health issues in the Commonwealth, including the potential for spread of infectious diseases among employees and employers, and when those employees and employers are potentially exposed to other persons who may be carriers of the infectious diseases (patients, customers, independent contractors, etc.).

The Standard does not cover other infectious diseases like influenza, tuberculosis, etc.

The Safety and Health Codes Board has the option to begin consideration of a comprehensive infectious disease standard at any time; however the Department recommends that the focus for now remain on addressing SARS-CoV-2 and COVID-19 workplace hazards.

The Department notes that the Standard provides flexibility to business through 16VAC25-220-10.G.1 which provides that “To the extent that an employer actually complies with a recommendation contained in CDC guidelines, whether mandatory or non-mandatory, to mitigate SARS-CoV-2 virus and COVID-19 disease related hazards or job tasks addressed by this standard, and provided that the CDC recommendation provides equivalent or greater protection than provided by a provision of this standard, the employer's actions shall be considered in compliance with this standard. An employer's actual compliance with a recommendation contained in CDC guidelines, whether mandatory or non-mandatory, to mitigate SARS-COV-2 and COVID19 related hazards or job tasks addressed by this standard shall be considered evidence of good faith in any enforcement proceeding related to this standard.

86571 Mitchell Kaneff 9/25/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86571>

No masks No masks!

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

SEE DEPARTMENT RESPONSE TO COMMENT 85535

86572 Davis 9/25/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86572>

No mandatory masks

We are opposed to mandatory masking.

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

SEE DEPARTMENT RESPONSE TO COMMENT 85535

86573 Jim Clark

9/25/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86573>

No more masks!

There is not even any concrete evidence that masks work! Also the CDC came out and said 94% of COVID deaths were not actually COVID related. Stop the madness!!

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

SEE DEPARTMENT RESPONSE TO COMMENT 85535

86574 Caleb

9/25/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86574>

Say NO to permanent masks!

I have been absolutely fed up with this whole ""mandatory mask policy"" crap. If the government of VA wishes to make mask-wearing permanent, then we might as well suffocate to death! Besides, this bogus COVID-19 virus only hurts the elderly and those with a history of terminal illnesses. If you want to make mask-wearing permanent, then do it to the elderly and terminally ill!

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

SEE DEPARTMENT RESPONSE TO COMMENT 85535

86575 Bristow resident

9/25/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86575>

NO to mandatory masks

Mandating masks is a hysterical reaction to the pandemic, especially as the CDC statistics show that people under 70 years old have less than 1% death rate from it. There is also no scientific evidence that masks protect from viruses; only that they make it harder to breathe!

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

SEE DEPARTMENT RESPONSE TO COMMENT 85535

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86576 bruce busching 9/25/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86576>

the importance of standards

I simply hope you follow up with meaningful enforcement of standards. We here in the Shenandoah Valley face terrible working conditions especially in the poultry plants.

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SEE DEPARTMENT RESPONSE TO COMMENT 84196

86577 Mandy 9/25/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86577>

No to masks

Please say not to mask wearing. We know more about this virus now and we need to get back to speaking with each other. I have yet to see a mask for sale that even protects from the virus. Most I have seen recently say ""not for medical use"", or ""does not protect against coronavirus"". The guidelines should be to wear one if you are sick and have a cough, not for everyone.

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

SEE DEPARTMENT RESPONSE TO COMMENT 85535

86579 RTM 9/25/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86579>

Mandatory masks are a bad idea. Mandatory masks would cause alot of problems legally, along with the flu being more dangerous overall. It's a terrible idea.

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

SEE DEPARTMENT RESPONSE TO COMMENT 85535

86580 Teresamaria Randall 9/25/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86580>

Don't force the public to wear masks!

Do not force us to wear masks that have no proof of helping spread contamination of Covid 19.

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

SEE DEPARTMENT RESPONSE TO COMMENT 85535

86581 Mary O'Connell 9/25/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86581> "No to Masks

Enough, no more mask mandates

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

SEE DEPARTMENT RESPONSE TO COMMENT 85535

86582 Frank Lucia 9/25/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86582>

Opposed to mandatory mask wearing.

Opposed to mandatory mask wearing.

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

SEE DEPARTMENT RESPONSE TO COMMENT 85535

86583 Kathryn 9/25/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86583>

No masks

The science does not support wearing masks. It gives people a false sense of security. Those working with the vulnerable should wear them; other citizens should not be required to do so.

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

SEE DEPARTMENT RESPONSE TO COMMENT 85535

86585 Gordon Dixon, Virginia Transportation Construction Alliance 9/25/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86585>



On behalf of the Virginia Transportation Construction Alliance (VTCA), we are pleased to submit comments related to the proposed permanent Standard for Infectious Disease Prevention.

Our detailed comments on this important matter exceed the limits of this software and the full comments, have been submitted to Ms. Doss prior to the deadline. The abbreviated version is below:

We have learned a significant amount about working with the omnipresent threat of COVID-19, and have the following suggestions to offer based on our experiences.

If a permanent standard is enacted, it should only relate to the current public health crisis related to COVID-19. All companies have enacted new protocols in the last six months. This has required many employees without any medical training to become de facto health officers to determine if employees may be infected. With cooler weather coming, cold and flu cases will likely increase. Since teleworking is not an option in most transportation construction jobs, companies utilize the best information they have – most of which is required to be reported by the employee – to determine an employee’s fitness to work. Expanding this permanent standard any further would create additional, unnecessary challenges for industries such as ours.

The emergency temporary standard (ETS) language regarding Centers for Disease Control (CDC) guidelines is vague and confusing. Guidance from the CDC is constantly changing, and employers are in the untenable position of determining whether that guidance provides equivalent or greater protection than the ETS. If this standard becomes permanent, it will become even more challenging. To bring greater clarity to the situation, those adhering to CDC guidance should be deemed in compliance, without having to determine how it comports with a potentially permanent Virginia standard. As an example, we have learned that airborne transmission is far more likely than transmission from surfaces. The CDC guidelines have the ability to adjust to the latest science, whereas a permanent standard does not.

The (ETS) lumps indoor and outdoor construction together in the medium exposure risk category. These two types of construction are very different when it comes to potential exposure. Indoor construction is more likely to occur in confined spaces that share heating and air conditioning units. In fact, during the development of the ETS, most of the examples that were shared where COVID-19 had been contracted occurred in indoor settings. Social Distancing is the better control method. Road construction projects take place over many miles of road, allowing opportunities for social distancing. Only in circumstances when transportation workers find themselves in confined spaces, such as trenching, should the risk level rise to medium. Transportation construction firms constantly provide confined space training for employees. Additionally, employees that operate heavy equipment normally do so by themselves, much like a delivery driver. Delivery drivers are defined as low exposure risk by the ETS. We believe outdoor construction should be included in the low risk exposure category.

Face covering requirements need more definition and flexibility based on the circumstances in which they are being used. While many employees are required to wear face coverings, it is important to understand the impact on other safety equipment and the employee’s well-being. Face coverings can lead to safety glasses fogging up, creating a greater hazard for someone operating around heavy equipment. In extreme heat conditions, face coverings can increase the potential for heat-related illness. They can also muffle speech, making communication on a noisy job site challenging.

We support requiring firms to have a written plan and conduct training for all employees regarding COVID related hazards and risks. What is missing from VOSH are standard templates that will promote consistency and clarity. Currently, the responsibility to draft and execute COVID related protocols to comply with the ETS falls on the employer and employee representative. If the Board had determined they need to issue permanent standards, the Board should also provide how those standards should be conducted.

Given that our member companies, which have been essential businesses since the onset of the pandemic, have gained valuable experience safely working with the threat of COVID-19 and within the parameters of the ETS. We strongly believe that these changes need to be made if a permanent standard is to be created.

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SEE DEPARTMENT RESPONSE TO COMMENT 84956

With regard to the "safe harbor" issue, the Department notes that the Standard provides flexibility to business through 16VAC25-220-10.G.1 which provides that "To the extent that an employer actually complies with a recommendation contained in CDC guidelines, whether mandatory or non-mandatory, to mitigate SARS-CoV-2 virus and COVID-19 disease related hazards or job tasks addressed by this standard, and provided that the CDC recommendation provides equivalent or greater protection than provided by a provision of this standard, the employer's actions shall be considered in compliance with this standard."

The Standard is clear that employer's wishing to take advantage of 16VAC25-220-10.G.1 must comply with both mandatory and non-mandatory provisions in the specific CDC guidelines, and those provisions must provide equivalent or greater protection than provided by a provision of the Standard.

The Department does not plan to recommend that 16VAC25-220-10.G be returned to its original language. It is the Department's position that similarly situated employees and employers exposed to the same or even more serious hazards or job task should all be provided the same basic level of safety and health protections. The Standard's language in 16VAC25-220-10.G assures such protections.

While the Standard lists a number of industries under the definition of "medium" exposure risk level, the language specifically states that "Medium exposure risk hazards or job tasks may include, but are not limited to, operations and services in...(Emphasis added). The definition of "medium" exposure risk level does not classify the listed industries as medium risk, but instead when read in conjunction with other portions of the Standard, indicates that the listed industries "may" fall into that category, depending on how the employer assesses and classifies the types of hazards employees are exposed to and the type of job tasks they undertake, in accordance with the requirements in 16VAC25-220-40.B, which provides that:

B. Exposure assessment and determination, notification requirements, and employee access to exposure and medical records.

1. Employers shall assess their workplace for hazards and job tasks that can potentially expose employees to the SARS-CoV-2 virus or COVID-19 disease. Employers shall classify each job task according to the hazards employees are potentially exposed to and ensure compliance with the applicable sections of this standard for very high, high, medium, or lower risk levels of exposure. Tasks that are similar in nature and expose employees to the same hazard may be grouped for classification purposes.

The Standard also provides in 16VAC25-220-10.E.1 provides in part:

E. Application of this standard to a place of employment will be based on the exposure risk level presented by SARS-CoV-2 virus-related and COVID-19 disease-related hazards present or job tasks undertaken by employees at the place of employment as defined in this standard (i.e., very high, high, medium, and lower risk levels).

1. It is recognized that various hazards or job tasks at the same place of employment can be designated as very high, high, medium, or lower exposure risk for purposes of application of the requirements of this standard.

16VAC25-220-40.F provides: "F. When multiple employees are occupying a vehicle for work purposes, the employer shall ensure compliance with respiratory protection and personal protective equipment standards applicable to the employer's industry. If the employer is concerned that employee use of a face covering may present a greater safety or health hazard to employees than compliance with the Standard (e.g., the inability to communicate coherently with another employee during a potentially hazardous job task) the issue needs to be assessed during the personal protective equipment (PPE) hazard assessment process required either under the Standard (see 16VAC25-220-50.D for very high and high risk situations, and 16VAC25-220.60.D for medium risk situations) or 1910.132(d) for general industry employers. The PPE hazard assessment process will allow the employer to identify any potential situations where there may be a greater hazard presented and develop alternative protections for employees.

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#### Heat Illness

If the employer is concerned that employee use of a face covering may present a greater safety or health hazard to employees to employees exposed to hot environments than compliance with the Standard (e.g., the inability to communicate coherently with another employee during a potentially hazardous job task) the issue needs to be assessed during the personal protective equipment (PPE) hazard assessment process required either under the Standard (see 16VAC25-220-50.D for very high and high risk situations, and 16VAC25-220.60.D for medium risk situations) or 1910.132(d) for general industry employers. The PPE hazard assessment process will allow the employer to identify any potential situations where there may be a greater hazard presented due to hot environments and develop alternative protections for employees.

In addition, 16VAC25-220-80.B.8.f provides that training on the standard provided to employees shall include with regard to PPE: "Heat-related illness prevention including the signs and symptoms of heat-related illness...."

86586 Susan Weber 9/25/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86586>

Re mandatory masks - Absolutely Opposed

Absolutely opposed to mandatory masks

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

SEE DEPARTMENT RESPONSE TO COMMENT 85535

86588 anonymous 9/25/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86588>

Oppose required face masks

Oppose any required face mask orders.

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

SEE DEPARTMENT RESPONSE TO COMMENT 85535

86587 Mike Gooch 9/25/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86587>

Absolutely no to permanent masks. Open up businesses. You cannot mandate what is done in homes!!!

Absolutely no to permanent masks. Open up businesses. You cannot mandate what is done in homes!!!  
absolutely no to permanent masks! Open up businesses and no monitoring of homes!

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

SEE DEPARTMENT RESPONSE TO COMMENT 85535

86589 anonymous 9/25/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86589>

Permanent Standard does NOT make sense

While the current standard makes sense to protect the public in a temporary public health crisis, it does not make sense to make this a permanent standard. There are several clinical trials underway for a vaccine and at some point the standard will no longer be needed to manage public health.

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SEE DEPARTMENT RESPONSE TO COMMENT 84956

COVID-19 vaccines will be an important part of the Commonwealth's and the country's ability to significantly reduce the ongoing spread of the SARS-CoV-2 virus in the workplace and in the community. However, with the projected population-level efficacy of COVID-19 vaccine to be 50-70%, no one can definitively state that someone vaccinated will not subsequently be free from infection. There is also anecdotal information and scientific surveys that appear to indicate that a certain sector of the American population will refuse to be vaccinated. Accordingly, it is anticipated that SARS-CoV-2 will continue to infect a certain sector of the populace and be present in the workplace for months and years to come."

86590 anonymous 9/25/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86590>

Factual vs. Emotional. Please refer to facts as opposed to the emotional response generated mostly by media outlets. You may believe that masking is reducing viral spread but the fact of the matter is, most masks being worn provide little to no protection from the virus. Most masks are generic PPE, not N95 masks that shield airborne viruses. Is there data to support that cotton and other basic masking reduces viral spread? Italy did not implement such stringent guidelines and we have made zero attempt to implement their obvious best practice. The current masking does not prevent spread of any virus that's thought to be spread via saliva

droplets or respiratory function. Stop perpetrating fear and focus on factual information to lead the people that placed you in office. True leaders don't instill fear, they lead to adapt and overcome.

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

SEE DEPARTMENT RESPONSE TO COMMENT 85535

86591 anonymous 9/25/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86591>

Mask mandate is unconstitutional. Enough of the pretending we're all in danger of dying of COVID 19. Please stop trying to turn our country into a communist controlled police state. I say let us live free or die. Masks are for clowns and actors but not for patriots and definitely not for me.

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

SEE DEPARTMENT RESPONSE TO COMMENT 85535

86592 Lareta H Finger 9/25/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86592>

All Workers Deserve Better Conditions

""Essential"" workers, such as those in poultry plants, need protection from Covid-19. Many have become. The protections they have had must be made permanent and enforceable, not voluntary. Would you want these protections if you worked there?

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SEE DEPARTMENT RESPONSE TO COMMENT 84196

86593 Delane Karalow 9/25/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86593>

Opposed to Masking Mandates

I am adamantly opposed to any mandatory mask requirements. The guidelines and recommendations are changing daily. The CDC has even just changed their recommendation regarding masks: they are increasingly shown to be less effective. More importantly, the mandating of masks is unconstitutional and goes beyond the constitutional powers of the Governor of Virginia. Furthermore, there are many who cannot wear masks for their own health reasons and disabilities. No to masking.

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

SEE DEPARTMENT RESPONSE TO COMMENT 85535

86594 James Schlosser 9/25/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86594>

Drop the mask mandate

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

SEE DEPARTMENT RESPONSE TO COMMENT 85535

86595 Cheryl 9/25/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86595>

NO MASK MANDATE

Absolutely NO mask mandate. This has gotten out of hand. The government has no business criminalizing this issue nor should they punish businesses. This madness needs to stop.

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

SEE DEPARTMENT RESPONSE TO COMMENT 85535

86596 Nandan Kenkeremath, Leading Edge Policy And Strategy 9/25/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86596>

Part I --The Governor Mandating These Standards Was Illegal--Bad Process

In Executive Order 63, Governor Northam ordered standards that apply to all employers with certain parameters and through an emergency process that avoided notice and comment rulemaking, regulatory impact statements, and regulatory flexibility analysis for small business. The Governor had no authority to do this. The Safety and Health Codes Board has to follow the statutory standards and authority. None of those standards include orders from the Governor. The sweep of these standards, lack of workability, and the broad threats to employers across Virginia started with a mandate that the Board should not have considered. That mandate poisoned the process.

The emergency temporary standard upon which this proposed permanent standard is based failed to meet the statutory tests that each component by necessary for each portion of the regulated community it applies to address a grave danger. At a time with Virginia is reopening, claiming that all employers, inside, outside, small, large, customer facing or not pose a grave danger is not correct. The Board has not considered and has displayed no intelligent conversation whether the full sweep and each component of the emergency temporary standard (ETS) and now the proposed permanent standard are necessary and that it is necessary to not provide a regulatory impact analysis and a regulatory flexibility analysis. The danger from those

analyses is to DOLI and the Board because those analysis would allow for comment on the factual and needless burdens of the rule.

Given that the Federal Occupational Safety and Health Administration has guidelines and certain rules, and that agency effectively argued against creating these kinds of regulations mean that the federal agency does not believe such regulations are useful, let alone necessary to address a grave danger, feasible, and supported by evidence about each requirement.

The immediate effective date of the ETS indicates the failure of the Board to consider the feasibility of the ETS, and their lack of capacity to therefor understand the impacts of anything more permanent. Few employers are aware of the ETS and obviously cannot be in compliance. The Board and DOLI have failed to take the responsible steps to roll-out information about the requirements before simply applying them-- a step that made virtually every employer in non-compliance on day

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The Department's Briefing Package on the Emergency Tempoary Standard with background an legal justifications can be found at: <https://www.doli.virginia.gov/wp-content/uploads/2020/06/BP-Emergency-Regulation-Under-2.2-4011-SARS-CoV-2-That-Causes-COVID-19-FINAL-6.23.2020.pdf>

SEE DEPARTMENT RESPONSE TO COMMENT 84237

86597 Allen Hill 9/25/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86597>

Strongly oppose Masks. Besides the basic constitutional violations of any mask mandate, there are numerous studies (national and international) demonstrating that masks, including surgical masks do not provide protection against airborne viruses. \* See CDC, OSHA, and other studies. \* Emerging Infectious Diseases \*[www.cdc.gov/eid](http://www.cdc.gov/eid)\*Va. \*Association of Physicians and surgeons. Reveals micron levels of viruses and numerous mask filtration levels. Additionally, the actual numbers of deaths for Covid solely, not those with multiple comorbidities is 9,000-10,000 not 200,000. This is the common cold, not a pandemic. Thank you providing this forum for response to the mask issue in Virginia.

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

SEE DEPARTMENT RESPONSE TO COMMENT 85535

86598 Virginia taxpayer 9/25/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86598>

Strongly oppose mandatory masks. Not to masks.

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

SEE DEPARTMENT RESPONSE TO COMMENT 85535

86599 Christina

9/25/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86599>

Strongly opposed to mandatory mask wearing., its unhealthy and unsafe, does not scientifically stop. Science does not back up effectiveness of mask wearing, stop being politically opposed to the people!

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SEE DEPARTMENT RESPONSE TO COMMENT 85535

86600 Nandan Kenkeremath, Leading Edge Policy And Strategy

9/25/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86600>

OPPOSE-- Part II--The Suspected Covid Provisions Are Unworkable And Harm Employees and Employers

The Board has stated that a person ""suspected"" of COVID is someone who has one of a long list of potential symptoms-- including a cough, a sneeze, a headache, fatigue. Such a symptom the poses a burden on someone-- it is unclear whether it is the employer, employee or doctor-- to show that the symptoms are not COVID by some standard. Proving a negative is not possible. Even people without symptoms cannot prove they do not have COVID at any point in time. This scheme where employees must leave a work site because of symptom like a cough would wreak havoc if it was taken seriously. Given that this rule has been in place for two months are there any examples of an employer taking this scheme seriously? We deprive people of work in all settings due to one of these symptoms. Nor is every work situation the same. Some sites are outside. Others may not face customers. For someone who is not shown to have COVID but simply has the symptoms a cold, this massive intrusion into the workplace is unwarranted and unfair. The return to work criteria are equally oppressive. The Board will force employees who need the work to lose it. Some of the employees may be temporary or contract and there may be no further opportunities for such employees.

Everyone is not a government worker who is working remotely from home. Some people have other jobs. We have to care about their employment and their employer. A rule that does not work is not supported and of no help to anyone.

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SEE DEPARTMENT RESPONSE TO COMMENT 84956

16VAC25-220-40.B.4 of the COVID-19 Emergency Temporary Standard (ETS), provides that “Employers shall develop and implement policies and procedures for employees to report when employees are experiencing symptoms consistent with COVID-19, and no alternative diagnosis has been made (e.g., tested positive for influenza)...” Such employees are then classified as “Suspected to be infected with SARS-CoV-2 virus” and may not report to the workplace until they have been cleared for return to work in accordance with ETS requirements. In situations where there is the possibility for an alternative diagnosis (such as allergies, the common cold, the flu, an ear infection, etc.) the employer has a number of options, including but not limited to, a positive test for influenza or the employee obtaining an alternative diagnosis from a medical authority. In addition, the Virginia Department of Health provides the following guidance:

If the employee DID NOT have close contact with a COVID-19 case or an area with substantial COVID-19 transmission, but does have signs or symptoms and tested negative for SARS-CoV-2, the negative test can be



considered as supporting an “alternative diagnosis”, and the person would not be considered suspected to be infected with SARS-CoV-2 virus. The employee must remain out of work until signs and symptoms have resolved and the employee has been fever-free for at least 24 hours without the use of fever-reducing medicine (unless symptoms are due to a known non-infectious cause, such as allergies).

NOTE: It is important to remember that a negative test for SARS-CoV-2 only means that the person wasn't infected at the time the test was taken. If the person is ill one week, tests negative for SARS-CoV-2, and recovers from their illness, only to become ill again soon after, there is always the potential that the repeat illness may be related to COVID. Each illness should be handled as a distinct situation, meaning, the employee should not always be considered to be COVID-19 negative because they tested negative previously.

The issue of the differences between the Standard's return to work requirement and those of the CDC will be addressed in the revised proposed permanent standard. A Frequently Asked Question (FAQ) provided by DOLI addresses the issue as it pertains to the current Emergency Temporary Standard (ETS).

On July 22, 2020, the CDC changed its guidance with regard to symptoms-based strategies from exclusion for 10 days after symptom onset and resolution of fever for at least 3 days to exclusion for 10 days after symptom onset and resolution of fever for at least 24 hours (i.e., the change was from 72 hours to 24 hours). For persons who never develop symptoms (i.e., asymptomatic), isolation and other precautions can be discontinued 10 days after the date of their first positive RT-PCR test for SARS-CoV-2 RNA.

16VAC25-220-10.G.1 provides in part that:

To the extent that an employer actually complies with a recommendation contained in CDC guidelines, whether mandatory or non-mandatory, to mitigate SARS-CoV-2 virus and COVID-19 disease related hazards or job tasks addressed by this standard, and provided that the CDC recommendation provides equivalent or greater protection than provided by a provision of this standard, the employer's actions shall be considered in compliance with this standard.... (Emphasis added).

Employers who comply with the above-referenced change in CDC guidance issued July 22, 2020, will be considered to be providing protection equivalent to protection provided by complying with the requirements in the ETS.

However, nothing in the FAQ shall be construed to prohibit an employer from complying with the symptom-based or time-based strategies for return to work determinations in the ETS. (See §40 FAQ 18, <https://www.doli.virginia.gov/cononavirus-covid-19-faqs/>)

86601 Heather West 9/25/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86601>Natural Rights > China Virus —No mask mandates! Dear Legislators and Bureaucrats, We never bought into this masking garbage and any attempt to permanently (!) force it down the throats of Virginians will be met with fury, lawsuits and defiance. Wear a mask if you want to, but you will NOT get me or my family or my neighbors to cave on this issue. Masks are harmful to wearers and utterly useless against the spread of viruses. Why do you wish to institutionalize your stupidity? Not buying it one bit. Take your mask and go home. As for me and my house, we will NOT mask. You're all a bunch of bullies and thugs, by the way, with zero and I mean ZERO science backing up these bizarre ideas. "SEE DEPARTMENT RESPONSE TO COMMENT 84237

SEE DEPARTMENT RESPONSE TO COMMENT 85535

"

86602 Mari Duda 9/25/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86602>

Don't make the law a joke--by forcing the public to wear a mask you are creating a situation to not take law enforcement seriously. Masks are for each of us to do our part, but if you want to make our individual health a concern, then also add in mandatory vitamin d and c which is proven to greatly lower cv19 effects. And while you are at it add in the correct amount of health foods per day. And mandatory sunshine! I'm already laughing.

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

SEE DEPARTMENT RESPONSE TO COMMENT 85535

86603 Terry Forrester 9/25/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86603>

Do Not make mask wearing in public mandatory. The masks that the stores provide you to wear say on the side of their box that they are not effective in preventing the transmission of virus. So what is the point of wearing them?

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

SEE DEPARTMENT RESPONSE TO COMMENT 85535

86604 Neil Garrison 9/25/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86604>

All Workers Deserve Better Conditions

Temporary protections for Virginia workers, particularly those in the poultry industry, due to Covid-19 should be made permanent. These workers ARE essential workers, and they deserve the respect and dignity we assign all other laborers in Virginia.

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SEE DEPARTMENT RESPONSE TO COMMENT 84196

86605 Tom H 9/25/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86605>"STRONGLY OPPOSE

As a business owner I strongly oppose this permanent regulation. I think it is much to soon for anything permanent. We need to wait and see what is going to happen with COVID before we make anything permanent.

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Va. Code §40.1-22(6a) under which the Emergency Temporary Standard (ETS) was adopted does not permit the ETS to be extend beyond 6 months.

SEE DEPARTMENT RESPONSE TO COMMENT 84956

86606 M J Whitaker 9/25/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86606>

NO MANDATORY FACE MASKS! Unhealthy and no absolute guarantee against contagious Covid-19 virus!

SEE DEPARTMENT RESPONSE TO COMMENT 84237

SEE DEPARTMENT RESPONSE TO COMMENT 85535

86607 Beth Brown 9/25/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86607>

Strongly oppose mask mandate

I strongly oppose wearing masks and view it a violation of my rights to permanently mandate mask wearing.

SEE DEPARTMENT RESPONSE TO COMMENT 84237

SEE DEPARTMENT RESPONSE TO COMMENT 85535

86608 KLB 9/25/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86608>"Opposed

A permanent standard written for a specific virus, that is still poorly understood, is not warranted. Especially in an environment where policies seem to made on emotion and with political motives, rather than based purely on science. In the future it will likely not properly address a different virus while the one it is written for will no longer pose a threat. As such, the effort to establish such a standard is a misuse to public funds.

SEE DEPARTMENT RESPONSE TO COMMENT 84956

86609 Rani 9/25/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86609>

No Mask! Enough with the mask nonsense!! Please are sick of it and no one believes mask helps. In fact wearing mask is actually does more harm then good. Look at our Governor who supposedly wore mask the entire time and his staff and he still got Covid!! Northam proved it himself mask doesn't work!!! Open our schools up and let's get on with our life!! We are adults we know how to take care of ourself!!

SEE DEPARTMENT RESPONSE TO COMMENT 84237

SEE DEPARTMENT RESPONSE TO COMMENT 85535

86610 Rebecca Norris 9/25/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86610>

Strongly oppose you stamping your feet all over We the People

Unconstitutional. Unscientific.

I strongly oppose you trampling the Rights of We the People. HIPPA laws are already being violated! Crimes are rising, sounds like you are hoping to embolden more criminal activities by this, since doctors and science are making this mandate obsolete.

God love you.

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

For those commenters who argued that that certain gubernatorial mandates (e.g., "face mask" mandate) are unconstitutional, according to the Office of the Attorney General on at least twelve occasions the Governor's COVID-19 restrictions have been upheld by circuit courts throughout the Commonwealth. Two of these specifically challenged the face covering requirements. Schilling et al. v. Northam, CL20-799 (Albemarle Co. Cir. Ct. July 20, 2020); Strother, et al. v. Northam, CL20-260 (Fauquier Co. Cir. Ct. June 29, 2020).

With regard to the privacy issue raised, the Standard specifically references the Health Insurance Portability and Accountability Act (HIPAA) in two places when dealing with potential employee and employer privacy concerns (16VAC25-220-40.B.8 and 16VAC25-220-70.C.3.b).

The Department has no response to the Commenter's political commentary."

86611 Betty Clarke 9/25/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86611>

No mask mandate in any public spaces. The wearing of mask should be left up to individuals choice. Well people should never be made to wear mask or be quarantined. Only if you are sick or compromised. Personal choice and personal responsibility should rule.

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

SEE DEPARTMENT RESPONSE TO COMMENT 85535

86612 Cara Hoover 9/25/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86612>

Permanent Standard is UNNECESSARY

My first question is - why are we making a permanent standard? Pandemics are not permanent. Historically, pandemics of a novel virus or virus strain, have remained at pandemic levels for an average of 18 months. This simple fact highlights that there is no need for permanent standards to be in place for the mitigation of SARS-CoV-2 spread in the workplace. I certainly think it is necessary to protect employees health and their job security during a pandemic. Making a standard such as this permanent is not scientifically or financially sound.

As I read through the guidelines, keeping in mind this would be permanent, I find it absolutely absurd that the DOLI wants to force coworkers, people with whom we spend the most amount of time with secondary to our families, to not be able to eat lunch in fellowship (aka, NOT socially distanced) once the pandemic wanes. Social interaction, particularly in the workplace, reduces workplace stress, while increasing productivity, communication, and comradery.

I also find it quite hypocritical that within this standard lies anti-discrimination wording for persons who wish to exercise their ""rights"" as laid out by the standard when persons who exercise their rights to NOT adhere to the Executive Order mandates (not law) or they fall into the medically exempt category are significantly discriminated against, in public and the workplace.

Please reconsider the need for a permanent implementation of such measures. We will be though this soon enough.

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"SEE DEPARTMENT RESPONSE TO COMMENT 84956

The Department of Labor and Industry's (DOLI) Virginia Occupational Safety and Health (VOSH) program only has jurisdiction when there is an employer - employee relationship. It has not legal authority to investigation discrimination against members of the general public."

86613 Nandan Kenkeremath, (multiple comments) Leading Edge Policy And Strategy 9/25/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86613>

OPPOSE -- Part III-- Including THE GOVERNOR'S ILLEGAL ORDERS INFRINGES ON THE RIGHT OF ASSOCIATION

The Emergency Temporary Standard and this Proposed Rule both include compliance with the Governors Executive Orders (and the Orders of the Health Commissioners) as requirements under this standards. That means the Board illegally purported to expand the penalties associated with the illegal Orders. Those orders already carry criminal penalties of up to a year in jail-- for failing to wear a mask in an indoor building or for a boyfriend and girlfriend who do not reside together from walking together or sitting together at a religious wedding, at a farmers market, or an amusement park. That is because the Governor believes he can define who may be close and who cannot in settings he thinks he should regulate. This is an assault on freedom of association and there has never been a government definition like the one the Governor has come up with. Now the Safety and Health Codes Board wants to double down on this absurd concept. The Board apparently agrees that two people who do not live in the same house should not stand or sit together in certain settings. There is no rationale for the distinctions. At a religious services it must only be a family member but at a restaurant it is a party. In a farmers market it is a family member. In the mandatory guidelines from the Virginia Department of health people may not stand next to one another if they are not from the same

household at performing arts, concert venues, movie theaters, drive in entertainment, sports venues, botanical gardens, zoos, fairs, carnivals, amusement parks, museums, aquariums, historic racing facilities, bowling alleys, skating rinks, arcades, amusement parks, farmers market and at religious service.

I have my own sense of who I should or should not stand beside. I don't need a government definition telling me otherwise. Governor Northam claims he can define who may stand together and who may not. Same household is ok. Like a frat house. A couple who does not live together-- not ok. Seriously, none of this works and it is all an assault on fundamental rights.

Employers or venue owners should not be asking whether people are from the same family or from the same household. And the government should not compel them to do so.

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SEE DEPARTMENT RESPONSE TO COMMENT 84956

The Department of Labor and Industry's (DOLI) Virginia Occupational Safety and Health (VOSH) program only has jurisdiction when there is an employer - employee relationship. It has not legal authority to enforce provisions of Executive Orders against members of the general public.

86614 anonymous 9/25/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86614>

Masks don't work

Masks are useless and ineffective. Stop oppressing people.

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

SEE DEPARTMENT RESPONSE TO COMMENT 85535

86615 anonymous 9/25/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86615>

Just stop.

This standard is unnecessary, capricious, and tyrannical. By implementing it, you will be further begging for noncompliance, resulting in arrests and violence by authorities against innocent people

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

86616 Karen Thorp 9/25/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86616>"No to mask mandate

No to mask mandate

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

SEE DEPARTMENT RESPONSE TO COMMENT 85535

86617 anonymous 9/25/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86617>

99% survival rate...this is a joke

prove this virus is cause for such a drastic measure. Then prove that masks are effective. At this rate you'll have us wear masks for regular flu seasons. What happened to washing hands as a preventative? How about encouraging people to get enough vitamin D and C? How about instead of handing out masks that people don't even know how to use effectively, that the manufacturer themselves state clearly on the box "this mask does not prevent against viruses...", you hand out incentives to get healthy! This is a gross overreach of your power and you are mistaken if you think the people of Virginia will stand for it.

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

SEE DEPARTMENT RESPONSE TO COMMENT 85535

The United States Census Bureau as of October 28, 2020, estimates the current population of the U. S. to be approximately 330,513,000, <https://www.census.gov/popclock/>. If 1% of the U. S. Population dies from SARS-CoV-2 or complications involving COVID-19, the number of deaths would be 330,513. The current U.S. death toll is calculated to be 212,328 by the CDC as of October 28, 2020, approximately two-thirds of the 1% figure cited by the Commenter, and that only over a 7 month period, <https://www.cdc.gov/nchs/nvss/vsrr/covid19/index.htm>.

86618 Tina Qu 9/25/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86618>

NO MASK MANDATE OR LAW

NO MASKS!!!! JUST STOP IT.

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

SEE DEPARTMENT RESPONSE TO COMMENT 85535

86619 mel 9/25/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86619>

This is bull. Unconstitutional. Northam is Hitler  
violating my rights

SEE DEPARTMENT RESPONSE TO COMMENT 84237

SEE DEPARTMENT RESPONSE TO COMMENT 85535

The Department has no response to the Commenter's political commentary.

86620 Karen 9/25/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86620>

Heck no masks must go! I adamantly disagree with the "permanent mask mandate" as I believe it is a direct infliction on our basic and fundamental rights of freedom to live and move freely and not be subject to any restrictions... as it relates to the Declaration of Human Rights.

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

SEE DEPARTMENT RESPONSE TO COMMENT 85535

86621 Turner Deanna 9/25/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86621>

Strongly oppose

Strongly oppose

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

86622 Steven Hart, Ph.D, P.E. 9/25/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86622>

Please do not do this to me and my dreams

I have a full time day job teaching Civil Engineering at Virginia Military Institute. Prior to that I served in the Army for 26 years. I also have a 150 acre farm I operate with my family. We have started a farmers market on the farm and hope one day to have a general store, a folk school, and multiple cottage industries. I am writing this to you at 10:30 pm after an 18 hour day.

I always tell my students to read the assignment before writing, but I can't do that with this rule. It's FORTY SEVEN pages long. This type of rule is DEATH to small businesses. What hours of the day am I supposed to spend reading this thing, much less trying to comply? Furthermore, it is simply another directive from another unelected bureaucrat imposed on the citizens where our government is telling us ""You must comply or else!" and from which we have no redress.



My area of teaching and research expertise has been Critical Infrastructure Risk Management and Resilience for 13 years. In that field we have learned we should "" make risk informed decisions."" Risk is a function of consequence, threat, and vulnerability. The rules we have applied in this situation have made almost no allowance for variations in consequence and vulnerability for populations, circumstances, and local conditions. They apply concepts like building occupancy, which is an architectural concept to ensure sufficient fire egress, in an arbitrary manner (where is the science behind 50%?) for purposes for which they are not designed or suitable. They consider only one dimension of a multi-dimension problem. For every bit of help they might provide, they provide harm in other areas.

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SEE DEPARTMENT RESPONSE TO COMMENT 84956

With regard to the issue of managing risk, at its core the Standard is a risk management system to prevent or limit the spread in the workplace of the SARS-CoV-2 virus which causes COVID-19.

It is designed to provide basic protections for all employees and employers within the jurisdiction of the Virginia Occupational Safety and Health program.

It provides certain mandatory requirements for all employers and specific additional requirements for Very High, High, and Medium risk job tasks centered around mitigation of hazards.

The Standard is also designed to incentivize employers to make changes in the workplace that will enable employees in certain situations to be classified to a reduced level of risk (e.g., from high to medium or from medium to lower), thereby also reducing the employer's compliance and cost burdens.

86623 Virginia taxpayer 9/25/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86623> Opposed! No to mandated masks.

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

SEE DEPARTMENT RESPONSE TO COMMENT 85535

"

86624 Sean V 9/25/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86624>

Opposed

In attempting to make a rule that works for all this proposed permanent rule introduces a great number of edge cases that will only be resolved with litigation. As a temporary measure, such recommendations are welcome. As a permanent regulation there is need for much more consideration and flexibility for change or we risk making the pandemic's effects worse.

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SEE DEPARTMENT RESPONSE TO COMMENT 84956

Review of all COVID-19 related inspections under the Emergency Temporary Standard is conducted centrally by the Department with both a programmatic and legal review prior to a decision to issue or not issue violations/penalties to assure consistent enforcement across the Commonwealth. The Department does not anticipate any significant increase in litigation with regard to the Emergency Temporary Standard or any permanent standard.

86625 Marie 9/25/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86625>

NO to YOUR CONTROLLING MANDATES

•You are living in America. Where do you get off thinking you can control citizens? You know damn well this is about a power grab. Virginia will not support you or any of your savage ideas. NO TO A FREAKIN MASK MANDATE. Too funny.

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

SEE DEPARTMENT RESPONSE TO COMMENT 85535

The Department has no response to the Commenter's political commentary.

86626 Ruth Stolfus Jost poultry worker 9/25/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86626>

Work safety

Please keep protections for poultry workers. We may be facing a long period of vulnerability to COVID 19, but more important is the long term safety of these hard working folks on into the future.

And wait, it's not just the employees we're protecting here. It's all of us!

We know from Ebola, SARS, MERS, that viral spread of disease is part of life for humans.

The higher costs imposed by extra safety measures are more than outweighed by savings from preventive health of the public. The costs will be passed on to be paid by all of us in purchasing our food -- fairest outcome and the only smart thing to do.

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SEE DEPARTMENT RESPONSE TO COMMENT 84196

86627 Immune Compromised 9/25/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86627>

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NAY to Compulsory General Masking Permanently. Compulsory masking for those on Mars, the Moon, and surgery rooms is arguably reasonable. Masking in China and other areas polluted with smog is another arguably reasonable safeguard. But a jump to permanently veiling each human from a microbe-- how can the risk-benefit balance? So much has been lost already. Mandated masking has already increased concussions by inducing fainting spells, decreased human visibility and communication. (Masking is especially not recommended during exertion-- including exercise.) I would like to know how effective compulsion has been against the wars on drugs and corruption, as that is an arguably more important way to preserve health and wealth.

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

SEE DEPARTMENT RESPONSE TO COMMENT 85535

86629 anonymous 9/25/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86629>

NO MASK

Absolutely NO mask mandate. I heard a doctor say that ""wearing a mask is like trying to keep mosquitoes out of your yard with a chainlink fence. Also, I heard doctors say that masks are a hazard to your health. We were told by the National Dentists Association that masks are the cause of gum disease, cavities, and bad breath. It is also the cause of respiratory problems and allergies. Not to mention ---the government taking over you life by dictating to you how THEY want you to live ----they just want to control our lives because they think we are stupid. They Control with fear. GET RID OF THOSE MASKS!!!! STAY OUT OF OUR LIVES!!!!

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

SEE DEPARTMENT RESPONSE TO COMMENT 85535

86630 Burt 9/25/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86630>

No mask mandate

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

SEE DEPARTMENT RESPONSE TO COMMENT 85535

86631 RA 9/25/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86631>

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Absolutely NO to masks! Stop the farce now. the whole thing is a lie and not based on medical science - only about controlling the people of VA. Take your form of government back to Communist China.

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

SEE DEPARTMENT RESPONSE TO COMMENT 85535

86632 anonymous VA resident 9/25/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86632>

Opposed to mandatory masks and further mandates regarding coronavirus

Absolutely opposed to any other legislation or mandates regarding covid-19.

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

SEE DEPARTMENT RESPONSE TO COMMENT 85535

86633 anonymous 9/25/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86633>

NO TO MANDATED MASKS! What happened to “my body my choice??” This is matter of personal choice. The state of our health has never been a concern before so why is it now? We will not stand for decisions being made for us. We are not sheep and this is not the Black Plague. We will survive this. Those at risk can choose to stay home but do not take away the freedom of Americans.

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

SEE DEPARTMENT RESPONSE TO COMMENT 85535

86634 Jessica Bauer 9/25/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86634>

Strongly oppose all mandates regarding mask usage. Www.modelhealthshow.com/maskfacts Please read the many studies that show masks do not work.

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

SEE DEPARTMENT RESPONSE TO COMMENT 85535

86635 VA tax payer 9/25/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86635> NO. MASKS DONT PREVENT COVID. YOU ARE A PRIME EXAMPLE OF THAT NOW. We ALL KNOW you are fear mongering worthless man. We ALL KNOW masks don't prevent the spread of covid. YOU ARE A PRIME EXAMPLE OF THAT NOW. "SEE DEPARTMENT RESPONSE TO COMMENT 84237

SEE DEPARTMENT RESPONSE TO COMMENT 85535

86636 Mary Nowakowski 9/25/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86636>

Mandatory mask wearing is unnecessary. Not only is it unnecessary, but it can, and has been shown to cause other respiratory issues. Never before has the medical field had the patient "wear a mask for the safety of others", even with tuberculosis patients. It has been the practice for the medical professionals to wear masks if a patient has a known case, and in the case of TB patients, if signs and symptoms are present but test results have not come back. But for the last 6 months, the entire world has gone bats over this. Because of all of this, we now are having unusual numbers of cases of TB and other severe respiratory issues. In addition to the medical concerns, there is the use of masks to cover faces and remove the individuality of those masked. Thus, making it harder to identify with others, while removing culpability from those inciting riots and perpetuating crimes. Any time the government is willing to remove our rights for "safety" they are trying to incite fear and see how far we as Americans are willing to give up to stay "safe". I would rather die for my freedom, than live in slavery to any man. Signed by an American Medical Veteran

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

SEE DEPARTMENT RESPONSE TO COMMENT 85535

86637 anonymous 9/25/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86637>"No to masks

No to mask mandates!

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

SEE DEPARTMENT RESPONSE TO COMMENT 85535

86638 anonymous 9/25/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86638>

Genuine health concern or government control

many face masks are simply face coverings porous enough to let the Covid 19 virus through with ease. Even the well know N95 filter can allow some viruses through with openings up to 3 microns as the Covid 19 virus can be less than 3 microns. Masks should be only voluntary not government mandated as further intrusion

on our personal freedom. It seems there are forces within government using this Covid-19 issue as an excuse to goin more control over our lives. Not cool!

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

SEE DEPARTMENT RESPONSE TO COMMENT 85535

"

86639 anonymous 9/25/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86639>

Strongly Oppose Mandatory Masks in VA!!!

Strongly Oppose Mandatory Masks in VA

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

SEE DEPARTMENT RESPONSE TO COMMENT 85535

86640 anonymous 9/25/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86640>

Strongly Oppose Mandatory Masks in VA!!!

Strongly Oppose Mandatory Masks in VA

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

SEE DEPARTMENT RESPONSE TO COMMENT 85535

86641 TAMMY PICKUREL 9/25/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86641>

No Mask, Open up. Wearing a cloth mask is like trying to stop fly's with Chicken wire. We need to see peoples whole face. we are doing damage to our children with the masks.

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

SEE DEPARTMENT RESPONSE TO COMMENT 85535

86642 Va tax payer 9/25/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86642>

No mandated mask

No to mandated mask!

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

SEE DEPARTMENT RESPONSE TO COMMENT 85535

86643 anonymous 9/25/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86643>

NO TO MANDATORY MASKS

NO TO MANDATORY MASKS!!!!!!!!!!!!!!

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

SEE DEPARTMENT RESPONSE TO COMMENT 85535

86644 Va tax payer 9/25/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86644>

NO MANDATORY MASKS!!!!!!!!!!

NO MANDATORY MASKS!!!!!!!!!!

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

SEE DEPARTMENT RESPONSE TO COMMENT 85535

86645 Boss 9/25/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86645> will not tolerate mandatory masks

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

SEE DEPARTMENT RESPONSE TO COMMENT 85535

86646 " Nandan Kenkeremath (multiple comments),

Leading Edge Policy And Strategy 9/25/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86646>

## OPPOSE ---Part IV--Unworkable and No Record The Emergency Temporary Standards Work Now

On paper the emergency temporary standard and proposed permanent standard are unfair and unworkable on so many levels. One factor in the law authorizing the Safety and Health Codes Board to act is the feasibility of the standards and experience gained under this and other health and safety laws. We know that the Federal Occupational Safety and Health Board replied to Richard Trumka stating that the Federal guidelines should not be turned into regulations. The Board obviously did not follow that recommendation. So now we have two months of experience under the emergency temporary standard (ETS). It is imperative that DOLI and the Board assess-- how has that worked out. The Board was in so much of a rush that there could be only 10-days of comment, no response to comment document, no regulatory impact analysis, and no regulatory flexibility analysis for small business. Well now that the Board ignored all the things a responsible regulatory group would do-- what is the record on the program. First, can DOLI and the Board run a survey on whether are even aware of the ETS. Which workers have been sent home to not work due having a suspected covid symptom. Do we have ANY case studies or surveys. What reporting has occurred. Who has installed a barrier? How many have been found to fall under the suspected COVID category. What tests have been reported by the testing system in the rule. Where is the evaluation of this real program before seeking comments on a permanent rule. We need another comment period, with a regulatory flexibility analysis, a regulatory impact analysis and actual data about this poorly formed program.

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The measures that the Commenter suggests should have been taken during the development of the Emergency Temporary Standard were inapplicable to its adoption.

The proposed permanent standard has been subject to the following notice and comment procedures. The Virginia Safety and Health Codes Board held a 60 day written comment period for the Proposed Permanent Standard, with the comment period running from August 27, 2020 to September 25, 2020. The Board held a Public Hearing on September 30, 2020. A revised draft of the Proposed Permanent Standard will be published with an additional 30 day comment period prior to any Board action.

An economic impact analysis/cost analysis will be prepared for the revised proposed permanent standard.

86647 Valerie Cudnik 9/25/2020

<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86647>

Masks forever? Not on your life

Surely any proposal to have the general public wear masks long term must be a bad joke. That or the school where you got your medical degree needs to have its credentials revoked. There is ABSOLUTELY NO SCIENTIFIC RESEARCH to support such an idiotic idea.

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

SEE DEPARTMENT RESPONSE TO COMMENT 85535



86648 anonymous 9/25/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86648>

NO to MANDATORY MASKS

I do not agree with mandatory masks at all!"

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

SEE DEPARTMENT RESPONSE TO COMMENT 85535

86649 EcoScan 9/25/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86649>"No mandatory masks

No mandatory masks"

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SEE DEPARTMENT RESPONSE TO COMMENT 84237

SEE DEPARTMENT RESPONSE TO COMMENT 85535

86655 anonymous 9/25/2020  
<https://townhall.virginia.gov/L/ViewComments.cfm?CommentID=86655>

How is this even being considered? NO NO NO

Following the poor example of those such as our governor, this is yet another publicity stunt. Yet another pandering measure by those in government. Why make a calculated decision based on confirmed, measurable data? No, lets just try to be the first to be able to say we did something even if that something has no evidence to support that that it in itself is not harmful. Our government is going to destroy our economy and strip so many families of what they have spent generations building just so they can say for now that they were doing the ""most good"" as they saw it in the moment. They might protect the health of some if this passes but they will certainly destroy countless lives. What do you thinks they will have to say to console you or your loved ones when you and them are out of business or out of a job because of these types of dictations to small businesses? There is not one person in our local state or federal government who is in any position to tell me that they know better than me how to safely operate my business. Look at the Northams now. I would hardly call him a subject matter expert.

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SEE DEPARTMENT RESPONSE TO COMMENT 84956

## WRITTEN COMMENTS SENT DIRECTLY TO DOLI

10001 Thomas Calhoun, Jeion Ward, Tina Williams American Federation of Teachers 9.30.2020  
<https://www.doli.virginia.gov/wp-content/uploads/2020/10/American-Federation-of-Teachers-Public-Comment-ot-Proposed-Permanent-Standard-9.30.2020.pdf>

RE: Proposed Permanent Standard: Infectious Disease Prevention: SARS-CoV2 Virus That Causes COVID-19

Dear Mr. Withrow,

On behalf of American Federation of Teachers, Virginia and our thousands of members that work diligently in our public schools to provide quality education to our students, we strongly urge you to make the emergency standard permanent. We appreciate your leadership on this issue and the adoption of the temporary standard to help protect public school staff and students during this challenging crisis. We want to ensure that as Virginia students and staff return to school, they are healthy and safe.

Some schools across Virginia have already started the year 100% in person or with a hybrid model.

According to the Virginia Department of Education, 10 school districts are 100% in person and 54 districts are partially in person. This means that currently, 64 of the 132 school districts in Virginia have some component of staff and students in buildings. Across the state, some school staff and families have been in buildings over the summer for laptop distribution and some have already tested positive or been exposed to COVID-19 while in schools and we expect these numbers to increase as educators return to in person classes. The permanent standard is necessary to protect our school community as we return to in person learning.

We all want to return to school, but we must return to school safely with proper science-based safeguards in place for our school staff, students and families. COVID-19 is a difficult situation that everyone is navigating and it is critical that school districts have one clear, consistent standard in place that protects all school staff from our teachers to our custodians to our bus drivers to food service workers and instructional support staff. Every single staff member and student in Virginia deserves to be protected from COVID-19 at work. Standards at each school should not change due to federal inaction or political pressure.

As schools across the country begin to reopen, we unfortunately have seen what happens when strong health and safety measures such as physical distancing, proper PPE, training, and reporting of infections are not in place. The science is clear. Schools are high risk settings for spread of COVID-19. The temporary standard will help decrease the spread of COVID-19 in our schools and we must make it permanent to limit community transmission. Each workplace and school district is different across Virginia and this standard is important because each workplace will be able to implement a tailored program of control practices that will help keep everyone safe. This is particularly important for staff in our schools who, by the nature of their job cannot be 6 feet from their students (for example those who work with students that have certain disabilities, speech pathologists, etc), or their students cannot wear face-coverings in the classroom. Having a permanent standard that establishes strong health and safety practices will help isolate and control the spread of COVID-19.

The temporary standard was the first step we needed to help make our schools safer – now we need to make sure it is permanent because COVID-19 is not going away anytime soon. We need a strong, comprehensive, and enforceable standard with no loopholes for employers that outlines clear requirements based on sound science and proven successful practices. We urge the Virginia Department of Labor and Industry to move

forward with the permanent standard rulemaking right away to protect teachers, support staff, students, and our families. Our schools are open now and our school community needs these protections permanently.

Sincerely,

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SEE DEPARTMENT RESPONSE TO COMMENT 84196

10002 Brian Gordon Apartment and Office Building Association of Metropolitan Washington 9.25.2020  
<https://www.doli.virginia.gov/wp-content/uploads/2020/10/AOBA-Comments-re-DOLI-Proposed-Permanent-Workplace-Safety-Standards-9-25-20.pdf>

SEE MR. GORDON'S COMMENT 86277

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SEE DEPARTMENT RESPONSE TO COMMENT 86277

10003 Larry E. Jackson Appalachian Power 10.1.2020 N/A "Appalachian Power would like to go on the record as being opposed to the proposed Permanent Workplace Standards. We as a company have worked very hard to protect our employees, contractors, customers, and other stakeholders from the impacts of COVID-19. We go well above the suggestions of the CDC. An additional layer of regulations is not helpful.

Thank you for this opportunity to comment.

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SEE DEPARTMENT RESPONSE TO COMMENT 84956

10004 Christopher Eck 9.25.2020 <https://www.doli.virginia.gov/wp-content/uploads/2020/09/Christopher-Eck.pdf>

The announced "Intent to Adopt a Permanent Standard for Infectious Disease Prevention

Virginia DLI's Safety: SARS-CoV-2 Virus That Causes COVID-19, 16VAC25-220" by the Virginia

Department of Labor & Industry's Safety & Health Codes Board is a spectacular example of unconstitutional governmental overreach that is not based in law, but rather on Governor Ralph

Northam's purportedly "temporary" emergency powers as exercised through a dizzying number of constantly changing Executive Orders.

Since the beginning of the year, Governor Northam has issued over 20 executive orders related to both COVID and the ongoing leftist, civil unrest that his administration has tolerated. He has amended these emergency orders over two dozen times, preventing Virginians from being able to clearly understand as to what they are being admonished to comply. These orders have led to administrative agencies, such as yours, proposing or adopting new rules (all without proper legislative oversight) to further restrict the freedoms and liberties of the citizens of Virginia - a Commonwealth which once prided itself on being one of the nurturing

parents of our American Republic through its several Founding Fathers: George Washington, Thomas Jefferson, James Madison, George Mason, and others. Given the Governor's unbridled use of the executive pen to adopt on a whim without the consent of the elected assemblies a host of constantly changing rules - I won't deign to call them ""laws"" because executive orders are not law - who among us Virginians even knows what is legal or illegal, what is punishable or unpunishable? I can tell you that probably none of you even in Richmond can either decipher or keep track of this slippery descent into authoritarian control.

These petty tyrannical acts are not founded on curbing the disease through a studied, scientific analysis of the virus, but rather on fear and control. If the decisions being made by Governor Northam, his cabinet, and officials in Richmond were based on science, most (if not all) of the COVID restrictions would be ending, not increasing, as they are in Florida. Recently compiled national data that was released by the CDC in late August indicates that 94% of the people that have died while infected with COVID had comorbidities (often several), leaving only 6% that died of COVID alone. It has been revealed that the COVID case and death rates across the country have been grossly in error, with numerous examples of people listed as dying of COVID when the actual cause of death was anything from a motorcycle accident to alcohol poisoning. This practice of overlisting COVID deaths has been perversely incentivized by the practice of giving more aid money to treatment facilities for COVID cases, thus encouraging false overreporting. Most recently, if one were to assume that the infection numbers and fatality cases were accurate (and that appears to be untrue), the CDC's own numbers demonstrate that, even if someone is infected with COVID, the infection fatality ratio is a fraction of a percent (meaning more than 99% of the people will recover) for all age categories, including those over 70 who are stated to be among the most vulnerable. Additionally, numerous practicing physicians both in the United States and abroad have shown a very high recovery rate using therapeutics and safe decades-used medications such as hydroxychloroquine (HCQ) or asthma-inhibiting corticosteroids, but this information has been regularly suppressed by Governor Northam's administration and other states' governors. For Virginia's governor to agree with the position of ""my body, my choice"" with regard to providing abortions up to the moment of birth in the Commonwealth, it is odd that he won't allow or promote Virginia's citizens to choose medical procedures that might aid in their recovery, such as the use of HCQ and asthma medications, even if they only work on some people. Let the people choose.

If your Board and Department passes these rules, it would be a further infringement on the liberties and freedoms of Virginians without being based on either good evidence or undisputed science. If these proposals were actually based on science, then the Board and Department should be able to readily publish a list and links to those sources for which these decisions are based - sources both for and against - and allow the public to comment on the foundational information for which you rely. Let the wisdom of the crowd decide - isn't that the ""democratic"" basis for governing? But, if I am to guess, that is unlikely to take place.

So, now the current administration in Richmond is treading down a dangerous road, one that the governor's odious executive orders seem to be designed - in the words of Jefferson -- ""for the sole purpose of fatiguing [us] into compliance with his measures."" Jefferson's masterful language in the Declaration of Independence - that we are all endowed with ""certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness"" - are not now constitutionally diminished by any governordeclared state of emergency. This is true because there is no ""except for COVID"" clause in either the constitution of the nation or that of Virginia.

Like at the time of the American Revolution - a war for which several of my ancestors served - we the people are petitioning for a redress of our grievances for the oppressions of our state government in Richmond. I pray that you will provide my comments and those of the multitude of other written pleas that have been submitted against the passage of these new rules to both your Board and your Department. Perhaps people

imbued with authority to make these decisions, such as you, will listen to your fellow Virginians in this matter and the related petitions calling for the end to the current emergency. If not, there is a storm of discontent developing among those of us who have patiently played by the rules hoping to contribute to the common good and health of the Commonwealth, while we have witnessed successive abuses by this administration of its authority and its failures to ensure safety to the life, safety, and property of law-abiding Virginians as they were perpetrated by people breaking both the laws and the emergency orders. The laws and rules are meaningless if they are not equally applied to all people. In sum, the approval of these new and more restrictive COVID rules is intolerable and should not go forward. If that is not what occurs, then I'm sure it will be reflected in good measure at the ballot box in

November and in subsequent election cycles.

I thank you in advance for your consideration of these remarks and trust that you and the Board will do what is right and not what is politically expedient.

SEE DEPARTMENT RESPONSE TO COMMENT 84237

The Department notes that in recent years, VOSH has investigated an average of approximately 35 to 40 occupationally related fatalities per year. As of October 30, 2020, VOSH has investigated over 30 employee deaths attributable to COVID-19 alone. The large majority of those cases remain under investigation to determine if they were occupationally related or not, and if occupationally related, whether violations of the Emergency Temporary Standard or mandatory requirements in Governor's Executive Orders should be cited or not.

For those commenters who argued that certain gubernatorial mandates (e.g., "face mask" mandate) are unconstitutional, according to the Office of the Attorney General on at least twelve occasions the Governor's COVID-19 restrictions have been upheld by circuit courts throughout the Commonwealth. Two of these specifically challenged the face covering requirements. *Schilling et al. v. Northam*, CL20-799 (Albemarle Co. Cir. Ct. July 20, 2020) ; *Strother, et al. v. Northam*, CL20-260 (Fauquier Co. Cir. Ct. June 29, 2020).

The Department has no response to the Commenter's political commentary.

10005 Rachel Downey Richmond Academy of Medicine (Dermatology Associates of Virginia PC) 9.29.2020  
<https://www.doli.virginia.gov/wp-content/uploads/2020/10/Dermatology-Associates-of-Virginia-PC-Public-Comments-to-the-Proposed-Permanent-Standard-09.29.2020.pdf>

RE: Comments on 16 VAC 25-220, Permanent Standard for Infectious Disease Prevention: SARS-CoV-2 Virus That Causes COVID-19

On behalf of the Richmond Academy of Medicine, its Board of Trustees, its nearly 2100 member physicians, nurse practitioners, physician assistants and medical administrators, and its numerous physician practices, I am writing to provide the following comments on 16 VAC 25- 220, the permanent standard for COVID-19 prevention and mitigation in the workplace.

We have several concerns with the draft permanent standard as written and the burden it will place on the health care system beyond the emergency period.

1. The requirement for employers to report positive SARS- CoV-2 test results to VDH should be eliminated. All clinical labs are already required to report all positive test results. This is duplicative reporting and unnecessarily burdensome.
2. The proposed draft standards are already out of touch with current CDC, NIH, and VDH guidelines. As an example, the test-based strategy for return to work is no longer advised because of new scientific information. Language throughout the document should be used which makes compliance with changing medical and scientific standards possible.
3. Language must be included that specifically limits application of these measures to a period of declared public health emergency due to COVID-19. As written, the proposed permanent standard will apply to Virginia businesses indefinitely, including beyond the time at which COVID-19 is no longer a critical public health emergency. Consequently, health care providers will still be required to comply with the strict requirements in this standard years from now when most people have been immunized and effective treatments have been developed.
4. If these standards become permanent, access to health and medical care will be significantly negatively affected as the regulations will go on beyond the declared critical public health emergency. The current standards as written would limit patient access to providers by permanently requiring minimal number of patients in medical waiting rooms, spacing requirements for patients and staff (a large burden on physician offices with limited space), restricting staff team work, and continued cost to ensure all staff remain in PPE beyond a time when it is medically indicated. We are already seeing an increase in cardiac deaths, worsening cancer diagnoses, and increased emergent care due to lessened care capacity and patients delaying care.

We respectfully request the above changes to the draft permanent standard to provide clarity and certainty for health care providers and employers in the Commonwealth.

Sincerely,

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SEE DEPARTMENT RESPONSE TO COMMENT 84956

The Department does not plan to recommend the elimination of reporting requirements to the Department of Health, although it does intend to recommend a change to the trigger number of positive cases.

DOLI and the Virginia Department of Health (VDH) have collaborated on a Notification Portal for employers to report COVID-19 cases in accordance with Emergency Temporary Standard (ETS) Sections 16VAC25-220-40.B.8.d and -40.B.8.e that satisfies COVID-19 reporting requirements for both agencies. The portal went live on September 28, 2020. Here is a link:

<https://www.doli.virginia.gov/report-a-workplace-fatality-or-severe-injury-or-covid-19-case/>

The issue of the differences between the Standard's return to work requirement and those of the CDC will be addressed in the revised proposed permanent standard. A Frequently Asked Question (FAQ) provided by DOLI addresses the issue as it pertains to the current Emergency Temporary Standard (ETS).

On July 22, 2020, the CDC changed its guidance with regard to symptoms-based strategies from exclusion for 10 days after symptom onset and resolution of fever for at least 3 days to exclusion for 10 days after symptom onset and resolution of fever for at least 24 hours (i.e., the change was from 72 hours to 24 hours). For persons who never develop symptoms (i.e., asymptomatic), isolation and other precautions can be discontinued 10 days after the date of their first positive RT-PCR test for SARS-CoV-2 RNA.

16VAC25-220-10.G.1 provides in part that:

To the extent that an employer actually complies with a recommendation contained in CDC guidelines, whether mandatory or non-mandatory, to mitigate SARS-CoV-2 virus and COVID-19 disease related hazards or job tasks addressed by this standard, and provided that the CDC recommendation provides equivalent or greater protection than provided by a provision of this standard, the employer's actions shall be considered in compliance with this standard.... (Emphasis added).

Employers who comply with the above-referenced change in CDC guidance issued July 22, 2020, will be considered to be providing protection equivalent to protection provided by complying with the requirements in the ETS.

However, nothing in the FAQ shall be construed to prohibit an employer from complying with the symptom-based or time-based strategies for return to work determinations in the ETS. (See §40 FAQ 18, <https://www.doli.virginia.gov/cononavirus-covid-19-faqs/>)

The Department intends to recommend that the return to work provisions of the standard be updated to reflect current CDC and VDH guidance.

10006 Hugh Joyce James River Air Conditioning 9.25.2020 <https://www.doli.virginia.gov/wp-content/uploads/2020/09/Hugh-Joyce-James-Rive-Air-Conditioning-Co.-9.25.2020.pdf>

At this time I would oppose these rules becoming permanent. They were passed for an emergency and far more review would need to take place before they should become permanent, especially regarding impact on small business and the service industries.

SEE DEPARTMENT RESPONSE TO COMMENT 84956

10007 Bruce Donato K&A First Aid 9.22.2020 <https://www.doli.virginia.gov/wp-content/uploads/2020/09/KA-First-Aid-Public-Comments-to-Proposed-Permanent-for-COVID-19-9.22.2020.pdf>

Public Comment on 16VAC25-220, Proposed Permanent Standard, Infectious Disease

Prevention: SARS-CoV-2 Virus That Causes COVID-19

To whom it may concern;

As a nationally recognized and awarded safety professional, biosafety professional, and someone who has been lecturing on the pandemic since March, 2020, I would ask that the following be addressed prior to considering making the ETS permanent. My first comment is that OSHA standards take years to approve to assure that they are clear and try to address potential questions, difficulty in complying or enforcing, and to analysis the cost impact. Trying to put a standard in place in less than 6 months most likely will have significant mistakes in it. If possible, I would suggest you address concerns expressed by myself and other interested parties and either modify and extend the ETS or issue a new ETS rather than make a permanent standard. If you choose to move forward with a permanent standard, please remember to focus on the intent

of the standard (reduction in disease transmission at work to an acceptable risk while allowing employers to continue to function in a reasonable fashion).

An overarching concern is the reference to CDC guidelines. Reference to consensus standards in OSHA regulations are required to follow a specific standard and does not allow for an outside organization (e.g. ANSI, NFPA) to make changes which are automatically covered by OSHA regulations. The CDC is not a consensus organization and the CDC has repeatedly changed its message on best practice. While some of the changes are done based upon new information, in the opinion of infection control professionals, several changes have been made without any basis in confirmed or peer review data or a minimal amount of anecdotal data. To require an employer to follow

CDC guidelines is providing a “moving target” which I believe is not acceptable in a permanent standard, rather specifics must be defined. If there is significant new evidence, then compliance officers can use the general duty clause or other similar enforcement can be made.

As this standard is being written, several vaccines are in phase 3 clinical trials. If these were to prove effective, there is no mention of requirement of getting vaccinated or declining such as the bloodborne pathogen standard. This is another example of why a permanent standard should not be put in place at this time.

Specific areas of concerns in the proposed Permanent Standard are highlighted with comments in the attached document.

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"SEE DEPARTMENT RESPONSE TO COMMENT 84956

THE COMMENTER'S COMMENTS AND DEPARTMENT RESPONSES ARE SUMMARIZED BELOW:

16VAC25-220-10.A

A. This standard is designed to establish requirements for employers to control, prevent, and mitigate the spread of SARS-CoV-2, the virus that causes coronavirus disease 2019 (COVID-19) to and among employees and employers.

Comment: Why “SARS-CoV-2” and not infection control.

Response: The Department does not understand the question. The Standard is designed to mitigate the spread of SARS-CoV-2 in the workplace.

16VAC25-220-10.E.2

2. Factors that shall be considered in determining exposure risk level include, but are not limited to:

Comment: What training or expertise does VOSH have to determine these factors compared to another biosafety or infection control expert?

Response: The VOSH program has clear statutory and regulatory jurisdiction over workplace safety and health issues in the Commonwealth, including the potential for spread of infectious diseases among employees and employers, and when those employees and employers are potentially exposed to other persons who may be carriers of the infectious diseases (patients, customers, independent contractors, etc.). VOSH has occupational safety and health professionals in charge of its programs and also receives the advice



and assistance of the Virginia Department of Health. See Va. Code 40.1-51.  
<https://law.lis.virginia.gov/vacode/40.1-51/>

#### 16VAC25-220-10.E.2.a

a. The job tasks being undertaken, the work environment (e.g. indoors or outdoors), the known or suspected presence of the SARS-CoV-2 virus....

Comment: Suspected is not defined. This definition has changed many times since the beginning of the pandemic.

Response: The Department does not intend to recommend a definition of "suspected." The term "'Suspected to be infected with SARS-CoV-2 virus" is defined in the Standard.

#### 16VAC25-220-10.G.1

To the extent that an employer actually complies with a recommendation contained in

CDC guidelines, whether mandatory or non-mandatory, to mitigate SARS-CoV-2 virus and COVID-19 disease related hazards or job tasks addressed by this standard, and provided that the CDC recommendation provides equivalent or greater protection than provided by a provision of this standard, the employer's actions shall be considered in compliance with this standard....

Comment: This is allowing changes outside the scope of the Safety and Health Codes Board to be enforced under a VOSH standard. This has already created confusion with the ETS.

Response: The language referenced by the Commenter is not an enforceable provision in the standard. The language instead allows employers who follow CDC mandatory and non-mandatory guidance to be considered in compliance with the Standard, provided that protection equivalent to provisions of the Standard is provided.

#### 16VAC25-220-10.G.1

....An employer's actual compliance with a recommendation contained in CDC guidelines, whether mandatory or non-mandatory, to mitigate SARS-COV-2 and COVID19 related hazards or job tasks addressed by this standard shall be considered evidence of good faith in any enforcement proceeding related to this standard.

Comment: This is an ambiguous statement. Does this mean that an employer cannot be cited. This statement needs to be better defined.

Response: No. Va. Code §40.1-49.4.A.4(a) provides that "4. (a) The Commissioner shall have the authority to propose civil penalties for cited violations in accordance with subsections G, H, I, and J of this section. In determining the amount of any proposed penalty he shall give due consideration to the appropriateness of the penalty with respect to the size of the business of the employer being charged, the gravity of the violation, the good faith of the employer, and the history of previous violations."

#### 16VAC25-220-10.G.2

2. A public or private institution of higher education that has received certification from the

State Council of Higher Education of Virginia that the institution's re-opening plans are in compliance with guidance documents, whether mandatory or non-mandatory, developed by the Governor's Office in

conjunction with the Virginia Department of Health shall be considered in compliance with this standard, provided the institution operates in compliance with its certified reopening plans and the certified reopening plans provide equivalent or greater levels of employee protection than this standard....

Comment: This is a quote from the SCHEV website. Certification by SCHEV does not constitute "approval" of a plan, but rather that the 26 criteria have been addressed as outlined. Personal spot checks of the 26 criteria and some of the plans "certified" by SCHEV do not meet the requirements of the ETS or this proposed permanent standard.

Response: See Department Frequently Asked Question (FAQ) §10, FAQ 13:

13. Are Virginia Public School and municipal employees in Virginia covered by the ETS? In some cases, especially like school Occupational and Physical Therapists, for example, frequent and personal contact with students is likely less than 6 feet and involve regular physical contact. For municipal employees, some may have the same presumably Medium Risk exposures as their skill-set counterparts in Industry.

Yes. See answer to §10 - FAQ 1, above. Also, with regard to public and private schools, please note that 16VAC25-220-10.G.2 provides in part:

2. "...A public school division or private school that submits its plans to the Virginia Department of Education to move to Phase II and Phase III that are aligned with CDC guidance for reopening of schools that provide equivalent or greater levels of employee protection than a provision of this standard and who operate in compliance with the public school division's or private school's submitted plans shall be considered in compliance with this standard. An institution's actual compliance with recommendations contained in CDC guidelines or the Virginia Department of Education guidance, whether mandatory or non-mandatory, to mitigate SARS-CoV-2 and COVID-19 related hazards or job tasks addressed by this standard shall be considered evidence of good faith in any enforcement proceeding related to this standard.

As provided in the ETS, Phase II and Phase III plans that are aligned with CDC provisions that a public school division or private school complies with must provide equivalent or greater protection to employees than a provision in the ETS in order for the employer's implementation actions to be considered in compliance with the ETS.

Should a VOSH onsite inspection of a school occur, VOSH will evaluate the employer's plan and have to verify employer compliance with the plan through the inspection process (e.g., conduct interviews, etc.).

16VAC25-220.10.G.2

A public school division or private school that submits

its plans to the Virginia Department of Education to move to Phase II and Phase III that are aligned with CDC guidance for reopening of schools that provide equivalent or greater levels of employee protection than a provision of this standard and who operate in compliance with the public school division's or private school's submitted plans shall be considered in compliance with this standard.

Comment: This is another example of using CDC guidelines to define a VOSH standard. The CDC guidelines should not be used. Also this indicates that the school needs only to submit and that there is no review of their program being aligned except for a self-evaluation. The document Final-Phase-Guidance-for-Virginia-Schools-6.9.20.pdf for lack of a better term is "wishy-washy" with its use of the words, "should" and "may" rather than definitive words such as "must".

Response: The language referenced by the Commenter is not an enforceable provision in the standard. The language instead allows schools who actually follow their plans to be considered in compliance with the Standard, provided that protection equivalent to provisions of the Standard is provided.

Should a VOSH onsite inspection of a school occur, VOSH will evaluate the plan's equivalency to the Standard and have to verify employer compliance with the plan through the inspection process (e.g., conduct interviews, etc.).

16VAC25-220-20. Effective date.

This standard shall take effect [to be determined, but no later than January 27, 2021]

Comment: How can a no later than date be set when there can be so many unanswered questions?

Response: The effective date is to be set by the Safety and Health Codes Board. The ETS lapses on January 26, 2021.

16VAC25-220-30

Definition of "Airborne infection isolation room" or "AIIR," formerly a negative pressure isolation room, means a single-occupancy patient-care room used to isolate persons with a suspected or confirmed airborne infectious disease....

Comment: Why single occupancy? AIIR typically can be used to quarantine more than one person. Single occupancy may be a restriction that cannot be met if there is an outbreak that overwhelms the system.

Response: The definition is consistent with CDC guidelines.

16VAC25-220-30

Definition of "Cleaning" means the removal of dirt and impurities, including germs, from surfaces. Cleaning alone does not kill germs. But by removing the germs, cleaning decreases their number and therefore any risk of spreading infection.

Comment: "Germs" are not defined. Please note that virus and bacteria are not defined. Since viruses are not technically alive they cannot be killed but only inactivated. If terms such as germs are to be used they should be well defined and technically accurate statements such as inactivated or non-infectious or viable should be used and defined properly.

Response: The Department does not intend to recommend a definition of germ.

16VAC25-220-30

Definition of "Disinfecting" means using chemicals approved for use against SARS-CoV-2, for example EPA registered disinfectants, to kill germs on surfaces....

Comment: Disinfectants do not kill viruses.

Response: The definition of "disinfecting" is consistent with CDC guidance. Disinfecting chemicals are a well-recognized mitigation strategy against the spread of SARS-CoV-2.

16VAC25-220-30

Definition of "Duration and frequency of employee exposure" means how long ("duration") and how often ("frequency") an employee is potentially exposed to the SARS-CoV-2 virus or COVID-19 disease. Generally, the greater the frequency or length of exposure, the greater the probability is for potential infection to occur. Frequency of exposure is generally more significant for acute acting agents or situations, while duration of exposure is generally more significant for chronic acting agents or situations. An example of an acute SARS-CoV-2 virus or COVID-19 disease situation would be an unprotected customer, patient, or other person coughing or sneezing directly into the face of an employee. An example of a chronic situation would be a job task that requires an employee to interact either for an extended period of time inside six feet with a smaller static group of other employees or persons or for an extended period of time inside six feet with a larger group of other employees or persons in succession but for periods of shorter duration.

Comment: This ["extended period of time"] is vague and should be better defined.

Response: The Department does not intend to recommend a definition of "extended period of time."

16VAC25-220-30

Definition of "Economic feasibility".

Comment: Should this reference specifically OSHA's interpretation of being economically feasible?

Response: The Standard's definition of "economic feasibility" is based on a longstanding definition contained the VOSH Field Operations Manual (FOM) and federal OSHA's FOM. The Department does not intend to recommend any change to the definition.

16VAC25-220-30

Definition of "Engineering control" means the use of substitution, isolation, ventilation, and equipment modification to reduce exposure to SARS-CoV-2 virus and COVID-19 disease related workplace hazards and job tasks.

Comment: Substitution typically shows up in hierarchy of controls as "elimination or substitution" rather than engineering controls.

Response: The Standard's definition of "Engineering control" is based on a longstanding definition contained the VOSH Field Operations Manual (FOM). The Department does not intend to recommend any change to the definition.

16VAC25-220-30

Definition of "Exposure risk level" and "High" exposure risk hazards or job tasks...3. First responder services provided to a patient, resident, or other person known or suspected to be infected with the SARS-CoV-2 virus;....

AND

4. Medical transport services (loading, transporting, unloading, etc.) provided to patients known or suspected to be infected with the SARS-CoV-2 virus (e.g., ground or air emergency transport, staff, operators, drivers, pilots, etc.); and

Comment: This sentence is not clear. Does this mean all patients or residents that first responders [and medical transport services] come in contact with or only those who are known or suspected of being infected? I would suggest removal of the known or suspected language.

Response: The language addresses only those who are known or suspected of being infected. The Department does not intend to recommend a change to the definitions. The Commenter's suggested change would result in a major conflict with the definition of "Medium" exposure risk hazards or job tasks.

16VAC25-220-30

Definition of "Exposure risk level" and "High" exposure risk hazards or job tasks... 5. Mortuary services involved in preparing (e.g., for burial or cremation) the bodies of persons who are known or suspected to be infected with the SARS-CoV-2 virus at the time of their death.

Comment: Should this [mortuary services] be a very high risk level?

Response: If a particular mortuary service hazard or job task met the definition of "very high" it would be classified as "very high" under the Standard.

16VAC25-220-30

Definition of "Exposure risk level" and "Medium" exposure risk hazards or job tasks...exposure risk hazards or job tasks are those not otherwise classified as very high or high exposure risk in places of employment that require more than minimal occupational contact inside six feet with other employees....

Comment: Minimal Occupational Contact"" needs to be defined clearly. Time and location are critical. Outdoor exposure risks are different than indoor. Well ventilated areas are different risks than poorly ventilated. The number of individuals in an area also should be defined of minimal risk.

The Department intends to recommend a definition of ""minimal occupational contact"" be added to the revised proposed standard.

16VAC25-220-30

Definition of "Exposure risk level" and "Medium" exposure risk hazards or job tasks...1. Poultry, meat, and seafood processing; agricultural and hand labor; commercial transportation of passengers by air, land, and water; on campus educational settings in schools, colleges, and universities; daycare and afterschool settings; restaurants and bars; grocery stores, convenience stores, and food banks; drug stores and pharmacies; manufacturing settings; indoor and outdoor construction settings; correctional facilities, jails, detentions centers, and juvenile detention centers; work performed in customer premises, such as homes or businesses; retail stores; call centers;....

Comment: Students are not typically considered employees. How will this be addressed?

Construction sites should also be listed in lower risk to avoid confusion. Most construction jobs can be designed to be lower risk with appropriate administrative controls. Should these [correctional facilities, jails, detentions centers, and juvenile detention centers] be considered ""high"" risk?

Response: The Standard does not apply to the general public or non-employed students, but it does apply to employees schools, colleges and universities. While the Standard lists a number of industries under the definition of "medium" exposure risk level, the language specifically states that "Medium exposure risk hazards or job tasks may include, but are not limited to, operations and services in....(Emphasis added). The definition of "medium" exposure risk level does not classify the listed industries as medium risk, but instead when read in conjunction with other portions of the Standard, indicates that the listed industries "may" fall into that category, depending on how the employer assesses and classifies the types of hazards employees

are exposed to and the type of job tasks they undertake, in accordance with the requirements in 16VAC25-220-40.B, which provides that:

B. Exposure assessment and determination, notification requirements, and employee access to exposure and medical records.

1. Employers shall assess their workplace for hazards and job tasks that can potentially expose employees to the SARS-CoV-2 virus or COVID-19 disease. Employers shall classify each job task according to the hazards employees are potentially exposed to and ensure compliance with the applicable sections of this standard for very high, high, medium, or lower risk levels of exposure. Tasks that are similar in nature and expose employees to the same hazard may be grouped for classification purposes.

The Standard also provides in 16VAC25-220-10.E.1 provides in part:

E. Application of this standard to a place of employment will be based on the exposure risk level presented by SARS-CoV-2 virus-related and COVID-19 disease-related hazards present or job tasks undertaken by employees at the place of employment as defined in this standard (i.e., very high, high, medium, and lower risk levels).

1. It is recognized that various hazards or job tasks at the same place of employment can be designated as very high, high, medium, or lower exposure risk for purposes of application of the requirements of this standard.

16VAC25-220-30

Definition of "Exposure risk level" and "Lower" exposure risk hazards or job tasks....1. Installation of floor to ceiling physical barriers constructed of impermeable material and not subject to unintentional displacement (e.g., such as clear plastic walls at convenience stores behind which only one employee is working at any one time);....

Comment: This is an unreasonable requirement [floor to ceiling physical barriers]. There is no evidence that a floor to ceiling barrier is required. I would suggest removal of the words "floor to ceiling" and let a safety or infection control professional make a case by case assessment of adequate physical barriers.

Response: The language referenced by the Commenter (physical separation of employees at low-risk businesses by a permanent, solid floor to ceiling wall) is one method described in the Standard for mitigating the spread of SARS-CoV2; however, employers are not required to do so. The Department intends to recommend revised language which will make this clear.

16VAC25-220-30. Definitions.

Comment: The Commenter highlights a number of different terms (e.g. "Face covering," "Face shield," "Feasible," etc. and states that the terms "should be under definitions."

The Department does not understand the Commenter's statements as the referenced terms are contained in 16VAC25-220-30, Definitions.

16VAC25-220-30

Definition of "Exposure risk level" and "Lower" exposure risk hazards or job tasks...

Employee use of face coverings for contact inside six feet of coworkers, customers, or other persons is not an acceptable administrative or work practice control to achieve minimal occupational contact. However, when

it is necessary for an employee to have brief contact with others inside the six feet distance a face covering is required.

Comment: This is a very strong and restrictive comment without any peer reviewed scientific basis. Studies previously done and peer reviewed indicated that face coverings make a significant impact. Example of articles that show the effectiveness are Milton in ""PLOS Pathogens"", March 2013 or Leung in ""Nature Medicine"" May 2020. As a biosafety professional, 100% proper use of face coverings should be considered an acceptable administrative control.

Response: The language referenced, "is not an acceptable administrative or work practice control to achieve minimal occupational contact," is intended to make clear that a hazard or job task classified as medium cannot be reclassified merely because the employee wears a face covering.

16VAC25-220-30

Definition of ""Filtering facepiece respirator"" means a negative pressure air purifying particulate respirator with a filter as an integral part of the facepiece or with the entire facepiece composed of the filtering medium. Filtering facepiece respirators are certified for use by the National Institute for Occupational Safety and Health (NIOSH).

Comment: Should be under definitions. Please confirm that this is the definition that wants to be used. Outside of the USA this definition does not require NIOSH certification. I would clarify that if being used per the respiratory protection standard, that NIOSH certification is required.

Response: The definition is accurate. The Standard only applies in the Commonwealth of Virginia.

16VAC25-220-30

Definition of ""surgical/medical procedure mask."" The Department does not intend to change the definition of surgical/medical procedure mask as that definition is consistent with Food and Drug Administration (FDA) guidance. The FDA regulates surgical/medical procedure masks.

16VAC25-220-30

Definition of ""Occupational exposure"" means the state of being actually or potentially exposed to contact with SARS-CoV-2 virus or COVID-19 disease related hazards at the work location or while engaged in work activities at another location.

Comment: Should be under definitions. The word ""potentially"" should be clearly defined. As written it can be interpreted as everyone or only someone working in an emergency room.

Response: The Department does not intend to recommend that the definition of "occupational exposure" be revised. It is based on a longstanding definition contained in the VOSH Field Operations Manual (FOM) and federal OSHA's FOM.

16VAC25-220-30

Definition of ""Respirator"" means a protective device that covers the nose and mouth or the entire face or head to guard the wearer against hazardous atmospheres. Respirators are certified for use by the National Institute for Occupational Safety and Health (NIOSH). Respirators may be (i) tightfitting, which means either a

half mask that covers the mouth and nose or a full face piece that covers the face from the hairline to below the chin or (ii) loose-fitting, such as hoods or helmets that cover the head completely.

Comment: Should be under definitions. Not significant but OSHA still recognizes nose clamps as respirators so technically they do not ""cover"" the nose. Filtering face pieces should also be included in this definition. The definition may need to highlight voluntary use also.

Response: The Department does not intend to recommend a change to the definition. There is separate definition of ""Filtering facepiece respirator." There is a federal OSHA policy on ""voluntary"" use of respirators that VOSH considers to be policy in Virginia.

16VAC25-220-30

Definition of ""Signs of COVID-19"" include trouble breathing, persistent pain or pressure in the chest, new confusion, inability to wake or stay awake, bluish lips or face, etc.

Comment: Should be under definitions. I would be curious where surgical masks are considered PPE. It is my understanding that they are worn as way to keep an area sterile such as during surgery and not to protect the wearer.

Response: The Department intends to recommend changes to the Standard to update references to signs, symptoms and symptomatic.

16VAC25-220-30

Definition of ""Suspected to be infected with SARS-CoV-2 virus"" means a person who has signs or symptoms of COVID-19 but has not tested positive for SARS-CoV-2, and no alternative diagnosis has been made (e.g., tested positive for influenza).

Comment: Should be under definitions. Same general comment as mentioned under ""Signs of COVID-19"". Someone that has been in close contact with a known infected person may also be suspected and that is not addressed here.

Response: The Standard does not address the issue of ""quarantine"". ""Quarantine"" is separation of people who were in ""close contact"" with a person with COVID-19 from others. The Standard does address the issue of ""isolation"".

""Isolation"" is the separation of people with COVID-19 from others. People in isolation need to stay home and separate themselves from others in the home as much as possible. Requirements for returning to work from isolation is covered by the ETS in 16VAC25-220-40.C. However, please note that in lieu of complying with 16VAC25-220-40.C, employers may comply with recently updated CDC guidelines (see §40 FAQ 18, <https://www.doli.virginia.gov/cononavirus-covid-19-faqs/>).

16VAC25-220-40

Mandatory requirements for all employers.

Comment: For companies whose employees are in the lower risk group, all the requirements may be considered excessive. They also may cause unwanted panic from employees. This section may be more applicable to all employers except those with only lower risk. A shorter section just for lower risk may make sense.



Response: The Department respectfully disagrees that the mandatory requirements would be excessive for lower risk hazards and job tasks and does not intend to recommend and changes to 16VAC25-220-40. All of the sections are appropriate to apply to lower risk hazards and job tasks, exception in situations where the language in the standard is clearly inapplicable (e.g., 16VAC25-220-40.H, “Where the nature of an employee’s work or the work area does not allow the employee to observe physical distancing requirements, employers shall ensure compliance with respiratory protection and personal protective equipment standards applicable to its industry.”).

#### 16VAC25-220-40.B.3.

Serological testing, also known as antibody testing, is a test to determine if persons have been infected with SARS-CoV-2 virus. Serological testing has not been determined if persons who have the antibodies are immune from infection.

Comment: I do not understand what these 2 paragraphs are trying to say. Why would testing results not be able to be used for decision making?

Response: The serologic testing language in the Standard is consistent with CDC guidance. The Department does not intend to recommend any change to the subsection. <https://www.cdc.gov/coronavirus/2019-ncov/lab/resources/antibody-tests-guidelines.html>

#### 16VAC25-220-40.B.5

5. Employers shall not permit employees or other persons known or suspected to be infected with SARS-CoV-2 virus to report to or remain at the work site or engage in work at a customer or client location until cleared for return to work (see subsection C of this section)....

Comment: This is very restrictive. If someone has allergies but does not have an alternative diagnosis, would an employer need to send them home. Most people with allergies do not have this diagnosis formalized. That is just one example. A better definition of suspected is needed.

Response: The Department does not intend to recommend that the definition of “Suspected to be infected with SARS-CoV-2 virus.”

16VAC25-220-40.B.4 of the COVID-19 Emergency Temporary Standard (ETS), provides that “Employers shall develop and implement policies and procedures for employees to report when employees are experiencing symptoms consistent with COVID-19, and no alternative diagnosis has been made (e.g., tested positive for influenza)....” Such employees are then classified as “Suspected to be infected with SARS-CoV-2 virus” and may not report to the workplace until they have been cleared for return to work in accordance with ETS requirements. In situations where there is the possibility for an alternative diagnosis (such as allergies, the common cold, the flu, an ear infection, etc.) the employer has a number of options, including but not limited to, a positive test for influenza or the employee obtaining an alternative diagnosis from a medical authority.

In addition, the Virginia Department of Health provides the following guidance:

If the employee DID NOT have close contact with a COVID-19 case or an area with substantial COVID-19 transmission, but does have signs or symptoms and tested negative for SARS-CoV-2, the negative test can be considered as supporting an “alternative diagnosis”, and the person would not be considered suspected to be infected with SARS-CoV-2 virus. The employee must remain out of work until signs and symptoms have resolved and the employee has been fever-free for at least 24 hours without the use of fever-reducing medicine (unless symptoms are due to a known non-infectious cause, such as allergies).

NOTE: It is important to remember that a negative test for SARS-CoV-2 only means that the person wasn't infected at the time the test was taken. If the person is ill one week, tests negative for SARS-CoV-2, and recovers from their illness, only to become ill again soon after, there is always the potential that the repeat illness may be related to COVID. Each illness should be handled as a distinct situation, meaning, the employee should not always be considered to be COVID-19 negative because they tested negative previously.

16VAC25-220-40.B.6

To the extent feasible and permitted by law, including but not limited to the Families First Coronavirus Response Act, employers shall ensure that sick leave policies are flexible and consistent with public health guidance and that employees are aware of these policies.

Comment: How does this apply to a VOSH standard. This is a separate law that may change that is not relative to the intent of this standard.

Response: The Department does not plan to recommend changes to sick leave provisions in the Standard. The Standard does not require employers to provide sick leave to employees. It does reference the Families First Coronavirus Response Act (FFCRA) at 16VAC25-220-40.B.6:

Further information about the FFCRA and sick leave policies can be found at:  
<https://www.dol.gov/agencies/whd/pandemic/ffcra-employee-paid-leave>

16VAC25-220-40.B.8.d

d. The Virginia Department of Health within 24 hours of the discovery of a positive case; and

Comment: Should provide the ""how to"" report.

Response: DOLI and the Virginia Department of Health (VDH) have collaborated on a Notification Portal for employers to report COVID-19 cases in accordance with Emergency Temporary Standard (ETS) Sections 16VAC25-220-40.B.8.d and -40.B.8.e that satisfies COVID-19 reporting requirements for both agencies. The portal went live on September 28, 2020. Here is a link:

<https://www.doli.virginia.gov/report-a-workplace-fatality-or-severe-injury-or-covid-19-case/>

16VAC25-220-40.B.8.e

e. The Virginia Department of Labor and Industry within 24 hours of the discovery of three or more employees present at the place of employment within a 14-day period testing positive for SARS-CoV-2 virus during that 14-day time period.

Comment: Need to clarify that this means one physical location and not all locations within a company.

Response: See Department Frequently Asked Question (FAQ) §40, FAQs 7 and 8:

7. If an employee tests positive, but was not at a facility or jobsite where other employees could have been exposed, does that positive test have to be reported under 16VAC25-220-40.A.8.d or §16VAC25-220-40A.8.e?

No. The reporting provisions in 16VAC25-220-40.A.8 only apply to situations where an employee was “present at the place of employment within the previous 14 days from the date of positive test.”

8. Regarding the notification requirements of 16VAC25-220-40.A.8.e, does “place of employment” mean that the 3 or more employees who test positive in a 14-day period work at the same facility or jobsite rather than the same employer regardless of location?

In the context of 16VAC25-220-40.A.8.e, “place of employment” means that the 3 or more infected employees worked at the same work site within the previous 14 days from the date of positive test.

FAQs can be found at: <https://www.doli.virginia.gov/cononavirus-covid-19-faqs/>

#### 16VAC25-220-40.C.1

The employer shall develop and implement policies and procedures for employees known or suspected to be infected with the SARS-CoV-2 virus to return to work using either a symptom-based or test-based strategy, depending on local healthcare and testing circumstances.

Comment: Due to the constantly changing landscape, this section should not be so definitive. Treatments may become available that allow for a quicker return to work. Vaccinations may have an impact on return to work. This section should be more of a guidance based on current science and not “today's science”.

The subsections may not be relevant in just a few months and should not be part of a permanent standard.

Response: The Department intends to recommend that the return to work provisions of the standard be updated to reflect current CDC and VDH guidance.

#### 16VAC25-220-40.C.2.b

b. The test-based strategy excludes an employee from returning to work until negative results of an FDA Emergency Use Authorized COVID-19 molecular assay for detection of SARS-CoV-2 RNA from at least two consecutive respiratory specimens collected 24 hours or more apart (total of two negative specimens).

Comment: A permanent standard should not reference a FDA EUA. The EUA is designed to be temporary.

Response: The Department intends to recommend that the return to work provisions of the standard be updated to reflect current CDC and VDH guidance.

#### 16VAC25-220-40.E.1.c

c. Employees shall be required to clean and disinfect the immediate area in which they were located prior to leaving, or the employer may provide for cleaning and disinfecting of the common area or room at regular intervals throughout the day, and between shifts of employees using the same common area or room (i.e., where an employee or groups of employees have a designated lunch period and the common area or room can be cleaned in between occupancies).

Comment: “Shift” needs to be defined. When you have staggered arrivals the term shift may vary. Is 8 ours the maximum definition of “shift”?

Response: The criteria for a “shift” is unique to every employer. The Department does not intend to recommend a definition of the term “shift.”

#### 16VAC25-220-40.F

F. When multiple employees are occupying a vehicle for work purposes, the employer shall ensure compliance with respiratory protection and personal protective equipment standards applicable to the employer's industry.

Comment: Why is respiratory protection required rather than a risk assessment? This implies that when two or more employees are in the same vehicle a full respiratory protection program including medical evaluations and fit testing are required. It does not take into account availability of respirators, physical health of individuals or financial hardship. It also does not account for individuals who co-habitat outside the work area or who car pool to and/or from work.

Response: Section 1910.132 is the Personal Protective Equipment standard that requires employers (along with 16VAC25-220-50.D and -60.D) that requires employers to conduct a risk assessment, which could then implicate the need for PPE, such as respiratory protection equipment.

16VAC25-220-40.G

G. Employers shall also ensure compliance with mandatory requirements of any applicable Virginia executive order or order of public health emergency.

Comment: Why is this mentioned? It is implied by the executive order when issued.

Response: The language is included to make clear employer obligations.

16VAC25-220-40.H

H. Where the nature of an employee's work or the work area does not allow the employee to observe physical distancing requirements, employers shall ensure compliance with respiratory protection and personal protective equipment standards applicable to its industry.

Comment: Why can an employer not use a risk assessment from a qualified individual? Physical distancing is not the only way to achieve acceptable risk so requiring respiratory protection is overkill.

Response: "Physical distancing" is a core component and one of the primary, widely-recognized mitigation strategies. The Department does not plan to recommend a change to the referenced language.

16VAC25-220-40.J

J. Requests to the Department for religious waivers from the required use of respirators,

Comment: Need to define "Department."

Response: This is a reference to the Department of Labor and Industry. The Department will recommend the language be changed to "Department of Labor and Industry."

16VAC25-220-40.K.5

2. Employees that interact with customers, the general public, contractors, and other persons shall be provided with and immediately use supplies to clean and disinfectant surfaces contacted during the interaction where there is the potential for exposure to the

SARS-CoV-2 virus by themselves or other employees.

Comment: Has any consideration been given to supply chain shortages?

Response: “Interrupted supply chains” are referenced in 16VAC25-220-70.C.4.d, Infectious disease response and preparedness plan. The concept of “feasibility” referenced multiple times in the Standard encompasses such issues as supply chain shortages that impact an employer’s ability to provide supplies use to mitigate the spread of SARS-CoV-2.

16VAC25-220-40.K.5

5. All common spaces, including bathrooms, frequently touched surfaces, and doors, shall at a minimum be cleaned and disinfected at the end of each shift. All shared tools, equipment, workspaces, and vehicles shall be cleaned and disinfected prior to transfer from one employee to another.

Comment: What about port-a-johns?

Response: This issue is addressed by a Department Frequently Asked Question (FAQ), §40, FAQ 13:

13. The ETS calls for cleaning and disinfecting of common spaces, including bathrooms at the end of each shift 16VAC25-220-40.K.5. Does this requirement include port-a-johns or privies at construction or other work sites?

NOTE: Normally, port-a-johns or privies are rented from a service company and the agreement specifies the number of cleanings and servicing. They are normally serviced and cleaned two or three times per week, depending on the use, time of year or need due to site conditions. The servicing and cleaning is performed by an employee of the rental/service company providing the “johnny”.

Yes. 16VAC25-220-40.K.5 applies to port-a-johns or privies.

FAQs can be found at: <https://www.doli.virginia.gov/cononavirus-covid-19-faqs/>

Comment: Define “shift.”

Response: The criteria for a “shift” is unique to every employer. The Department does not intend to recommend a definition of the term “shift.”

16VAC25-220-40.K.9

9. It is recognized that various hazards or job tasks at the same place of employment can be designated as very high, high, medium, or lower as presenting potential exposure risk for purposes of application of the requirements of this standard. In situations other than emergencies, the employer shall ensure that protective measures are put in place to prevent cross-contamination.

Comment: Cross contamination of what? This section is on disinfection?

Response: The reference to “cross-contamination” concerns the potential for employees exposed to very high or high hazards or job tasks moving through or interacting with employees in areas of the worksite that have medium or lower hazards or job tasks which could result in cross-contamination.

16VAC25-220-50.B

Commenter reference to ASHRAE standards.

Response: The Department acknowledges the comment and notes that the ASHRAE air handling requirements issue raised by the Commenter is undergoing a legal review.

16VAC25-220-50.B.2

2. For employers not covered by subdivision 1 of this subsection, ensure that air-handling systems where installed are appropriate to address the SARS-CoV-2 virus and COVID-19 disease related hazards and job tasks that occur at the workplace:

a. Are maintained in accordance with the manufacturer’s instructions; and

b. Comply with subdivision 1 b of this subsection.

Comment: This is confusing [“b. Comply with subdivision 1 b of this subsection.]. If they are not very high or high risk why are they covered by the same requirements?

Response: 16VAC25-220-50.B.5 apply to very high and high risk hazards and job tasks. Subdivision B.1 applies to “healthcare facilities and other places of employment treating, caring for, or housing persons with known or suspected to be infected with the SARS-CoV-2 virus.” Subdivision B.2 applies to all other employers with very high or high risk hazards and job tasks.

See §50, FAQ 2, which provides:

2. 16VAC25-220-50.B.2 starts off with 'For employers not covered by subdivision 1 of this subsection...'" Can you give some examples of employers that are not covered by subdivision 1 that must comply with subdivision 2?

16VAC25-220-50.B.1.a and 1.b apply to “healthcare facilities and other places of employment treating, caring for, or housing persons with known or suspected to be infected with the SARS-CoV-2 virus” and requires that appropriate air handling systems are installed and maintained in accordance with the requirements of subdivision 1a and 1.b.

Laboratories that handle the SARS-CoV-2 virus would be one example of an employer not covered by 16VAC25-220-50.B.1 that would be covered by subdivision B.2 because they don’t treat, care for or house persons with known or suspected to be infected with the SARS-CoV-2 virus.

Please note that 16VAC25-220-50.B.2 applies to “air-handling systems where installed.”

<https://www.doli.virginia.gov/cononavirus-covid-19-faqs/>

5. For postmortem activities, employers shall use autopsy suites or other similar isolation facilities when performing aerosol-generating procedures on the bodies of known or suspected to be infected with the SARS-CoV-2 virus persons at the time of their death.

Comment: Previously these [“autopsy suites”] were not defined at high risk.

Response: The reference to “autopsy suites” does not represent a change from the language of the ETS.

16VAC25-220-50.B.6

6. Employers shall use special precautions associated with Biosafety Level 3 (BSL-3), as defined by the U.S. Department of Health and Human Services Publication No. (CDC) 21-

1112 “Biosafety in Microbiological and Biomedical Laboratories” (Dec. 2009),

Comment: Why BL-3. The NIH lists this as BL-2 unless it is large scale. Testing labs are not equipped to function at a BL-3 level.

Response: See FAQ §50, FAQ 3, <https://www.doli.virginia.gov/conronavirus-covid-19-faqs/>. The Department intends to recommend a language change to 16VAC25-220-50.B.6.

16VAC25-220-50.B.7

7. To the extent feasible, employers shall install physical barriers, (e.g., clear plastic sneeze guards, etc.), where such barriers will aid in mitigating the spread of SARS-CoV-2 and

COVID-19 virus transmission.

Comment: This makes sense [“clear plastic sneeze guards”] but is inconsistent with the floor to ceiling requirements previously mentioned.

Response: The language referenced by the Commenter (physical separation of employees at low-risk businesses by a permanent, solid floor to ceiling wall) is one method described in the Standard for mitigating the spread of SARS-CoV2; however, employers are not required to do so. The Department intends to recommend revised language which will make this clear.

16VAC25-220-50.C.4

4. An employer shall post signs requesting patients and family members to immediately report symptoms of respiratory illness on arrival at the healthcare facility and use disposable face coverings.

Comment: Why specify “disposable.”

Response: The reference is made to “disposable” as it is a recognized infection control procedure to dispose of used face coverings in a healthcare setting.

16VAC25-220-50.C.5

5. An employer shall offer enhanced medical monitoring of employees during COVID-19 outbreaks.

Comment: This is not defined.

Response: The Department does not intend to recommend a definition for “enhanced medical monitoring.”

16VAC25-220-50.C.10.g

g. Deliver products through curbside pick-up.

Comment: Would the term “non-contact” be more inclusive?

Response: The Department does intend to recommend any changes to the referenced language. Other provisions in the Standard would require either physical distancing, face covering or other PPE that would assure no contact or minimal occupational contact.

16VAC25-220-50.D

Comment: “Gown” is not defined. Would protective body covering be more generic?

Response: The Department intends to recommend additional descriptive language for the term “gown.”

16VAC25-220-60.B

Commenter reference to ASHRAE standards.

Response: The Department acknowledges the comment and notes that the ASHRAE air handling requirements issue raised by the Commenter is undergoing a legal review.

16VAC25-220-70.C.8

Identify the mandatory and non-mandatory recommendations in any CDC guidelines

Comment: This is a moving target and hard to require it to be in a procedure.

Response: The language referenced by the Commenter only applies to those employers who wish to take advantage of 16VAC25-220-10.G which permits employers to rely on mandatory and non-mandatory CDC guidance as long as it provides an equivalent level of protection as provisions in the ETS. The Department does not intend to recommend a change to the provision as it is appropriate for such employers to keep current with and CDC guidance changes that they intend to rely on.

10008 Nandan Keneremath Leading Edge 9.25.2020 <https://www.doli.virginia.gov/wp-content/uploads/2020/10/Leading-Edge-Comments-On-Proposed-Permanent-Covid-Standards-9.25.2020.pdf>

Safety and Health Codes Board

RE: Comments On Proposed on VA Department of Labor and Industry, Safety and Health Codes Board Proposed Permanent Standard Based on Emergency Temporary Standard For Infectious Disease

Prevention: SARS-CoV-2 Virus That Causes COVID-19, 16VAC25-220

To Whom It May Concern:

Thank you for the opportunity to comment on the Virginia Department of Labor and Industry's Safety and Health Codes Board proposed 16 VAC 25-220, Permanent Standard/Regulation, Infectious Disease Prevention: SARS-CoV-2 Virus That Causes COVID-19. The proposed rule is based entirely on the Emergency Temporary Standard (ETS) on the same subject. I am a concerned citizen and lawyer with extensive background in regulatory law and policy. I have worked on dozens of statutory programs for many years as Senior Counsel to the Energy and Commerce Committee in the U.S. House of Representatives and worked in the Office of General Counsel for the U.S. Environmental Protection Agency. I have substantial concerns with the ETS and the proposed rule and strongly recommend the Board withdraw the ETS and this proposal.

#### COMMENTS

I have reviewed both the process and substance of numerous illegal and unwise mandates in Executive Orders from Governor Northam and in Orders of Public Health Emergency from Health Commissioner Norman Oliver in 2020. I have also reviewed the Emergency Temporary Standard (ETS) which was hastily, illegally and unwisely mandated by the Governor under Executive Order 63 and was hastily, illegally and unwisely promulgated by the Virginia Safety and Health Codes Board under the special authority of Va. Code § 40.1-22(6a)

I. The Illegal Mandates Of Governor Northam In EO 63 Regarding an Emergency Temporary Standard Or Rule Undermine the Validity of the ETS

On May 26, 2020, Governor Ralph Northam issued a revised Executive Order 63 that provides in part:

"E. Department of Labor and Industry



Except for paragraph B above, this Order does not apply to employees, employers, subcontractors, or other independent contractors in the workplace. The Commissioner of the Virginia Department of Labor and Industry shall promulgate emergency regulations and standards to control, prevent, and mitigate the spread of COVID-19 in the workplace. The regulations and standards adopted in accordance with §§ 40.1-22(6a) or 2.2-4011 of the Code of Virginia shall apply to every employer, employee, and place of employment within the jurisdiction of the Virginia Occupational Safety and Health program as described in 16 Va. Admin. Code § 25-60-20 and Va. Admin.

Code § 25-60-30. These regulations and standards must address personal protective equipment, respiratory protective equipment, and sanitation, access to employee exposure and medical records and hazard communication. Further, these regulations and standards may not conflict with requirements and guidelines applicable to businesses set out and incorporated into Amended Executive Order 61 and Amended Order of Public Health Emergency Three.”(Emphasis added).

Although EO 63 does not mention the Safety and Health Codes Board, the Governor issued a news release which says in part: “The Governor is also directing the Commissioner of the Department of Labor and Industry to develop emergency temporary standards for occupational safety that will protect employees from the spread of COVID-19 in their workplaces. These occupational safety standards will require the approval by vote of the Virginia Safety and Health Codes Board and must address personal protective equipment, sanitation, record-keeping of incidents, and hazard communication. Upon approval, the Department of Labor and Industry will be able to enforce the standards through civil penalties and business closures.” (emph

The Governor’s directives in EO 63 as mandates to the Department of Labor and Industry are illegal, in excess of authority and inconsistent with law. The directive fails all of the tests related to Separation of Powers and also violates the independence of the Board itself, which is a separate statutory creation of the General Assembly with separate duties and powers from those of the Governor.

The Governor’s mandate that “The Commissioner of the Virginia Department of Labor and Industry shall promulgate emergency regulations and standards to control, prevent, and mitigate the spread of COVID-19 in the workplace” was issued in excess of the Governor’s authority and is, therefore, void. Workplace standards and whether they are emergency standards are set forth in the basic laws and policies of this Commonwealth or implemented by the Board following regular and reasonable procedures. Workplace standards in this Commonwealth have never been based on unilateral directives from the Governor and no such authority is available to the Governor.

The Governor’s mandate that “The regulations and standards adopted in accordance with §§ 40.1-22(6a) or 2.2-4011 of the Code of Virginia shall apply to every employer, employee, and place of employment within the jurisdiction of the Virginia Occupational Safety and Health program” is both in excess of the Governor’s authority and unlawfully constrains the lawful discretion of the Virginia Safety and Health Codes Board. The mandate goes beyond policies and standards under the basic laws, and presupposes the regulations at issue meet the statutory standards for an application to every employer, employee, and place of employment. Moreover, the scope of any regulations under the basic laws must be decided by the Board through a process based on statutory policies and standards, rather than by directive from the Governor.

The directive in EO63 that “[t]hese regulations and standards must address personal protective equipment, respiratory protective equipment, and sanitation, access to employee exposure and medical records and hazard communication” is unlawful because the scope of any regulations under the basic laws must be decided by the Board through a process based on statutory policies and standards, rather than by directive

from the Governor. The directive in EO63 that “[t]hese regulations and standards may not conflict with the requirements and guidelines applicable to businesses set out and incorporated into

Amended Executive Order 61 and Amended Order of Public Health Emergency Three” is unlawful because the scope of any regulations under the basic laws must be decided by the Board through a process based on statutory policies and standards, rather than by directive from the Governor.

The illegal directives from the governor poisoned the process the Board used to adopt the ETS as well as its scope and substance contrary to the requirements of law and in violation of Separation of Powers. The Governor’s directive that the Board not issue any regulation which conflicts with Executive

Orders or Orders of Public Health Emergency is codified as 16VAC25-220-10(F). Such a provision is unlawful. The Governor has no authority to cabin the lawful exercise of authority or discretion by executive agencies with a separate legal existence or to subvert all otherwise-lawful regulation in the

Commonwealth to his whims. Nor can the independent agencies abdicate the responsibility that the legislature has given them to regulate in a manner that meets certain legislative policies and procedures out of a desire not to adopt regulations which conflict with the governor’s aims.

It is clear that neither DOLI Staff nor the Board ever questioned the authority of the Governor's E063 mandates. DOLI’s website states “In accordance with Executive Order 63, the Department presented to the Safety and Health Codes Board an emergency temporary standard/emergency regulation to address COVID-19, applicable to all employers and employees covered by Virginia Occupational Safety and Health (VOSH) program jurisdiction.” In document styled Draft Safety and Health Codes Board Public Hearing and Meeting Minutes, June 24, 2020, the second sentence describes the Governor’s directive in EO 63. The draft agenda for the July 24, 2020 describes the directives in EO 63 under Summary of Rulemaking Process. The final result reflects the Governor's mandates in all ways. The ETS was promulgated under the only two processes-- both emergency process--presented by DOLI staff as options. These process by-passed the provisions of the Virginia Administrative Process Act (VAPA) including ordinary notice and comment proceedings, regulatory impact analyses, regulatory flexibility analyses and other provisions of VAPA. To date there has been no regulatory impact analysis or regulatory flexibility analyses for the public to comment on. It's as if those factors do not matter to the Governor or the Board.

## II. The ETS Failed To Meet the Requirements Of Law Which Cannot Support The Scope and Unworkable Provisions of the Rule

The Safety and Health Codes Board (the Board) is authorized by Va. Code §40.1-22(5) to: “adopt, alter, amend, or repeal rules and regulations to further, protect and promote the safety and health of employees in places of employment over which it has jurisdiction and to effect compliance with the federal OSH Act of 1970...as may be necessary to carry out its functions established under this title.” (emphasis added). Va. Code §40.1-22(5) provides that rules must be to the extent “feasible” and be supported by the “best available evidence”. To restate this point, any standard must be necessary and supported by best available evidence. It is not evidence that COVID-19 is dangerous. It is evidence that the standard is necessary. The Board shall evaluate the “feasibility of the standards” and experience gained under this and other health and safety laws.

The unwise procedural path that the Board chose to go through carries a higher burden before promulgating any regulation or component of a regulation. Under Va. Code §40.1-22(6a), the Board must determine that the components of the ETS must be “necessary to protect” employees from “grave danger.” The provision is an unusual and extraordinary provision that avoids ordinary rulemaking. Judicial review of such

action demands ""substantial evidence"" supporting the Board's choices. The Board did not meet these standards for the rule. The key point is it is that the standards do not apply to the rule on an assumption the scope and structure of the rule does not have alternatives.

Nothing required nor allows the Board to consider an up or down assessment without evaluating whether the full scope and each and every mandate of the rule is necessary to protect employees from a grave danger, is feasible, and supported by substantial evidence. The key is to consider alternatives.

For example, the ETS itself has categories of risk. The Governor's mandates poisoned the process and the Government's mandates are not substantial evidence or proof of necessity or anything else relevant to the decision of the Board. This is so, even the Governor appoints most members of the Board. The Board has legal obligations and acquiescing to illegal mandates is not consistent with those legal obligations. The text of the final ETS does not itself contain findings that all the major components of the final ETS are necessary to meet a "grave danger." The issue is not whether any ETS is necessary to meet the "grave danger" standard but whether all of the substantial elements of this ETS as applied across the scope of every employer in Virginia is necessary under the procedures of Va. Code §40.1-22(6a).

### III. Multiple Components and the Regulatory Sweep of the ETS Fails To Meet the Statutory Standards A. The Board Did Not Consider Whether The Full Sweep And Each Component Meets The Statutory Standards

The record shows a vote related to the adoption of AN emergency standard. The minutes show that Mr. Withrow stated that the "staff of the Department of Labor and Industry recommends that the Board find that SARS-CoV-2 and COVID-19 related hazards and job task employee exposures constitute a grave danger to employees in Virginia that necessitate the adoption of AN emergency temporary standard to protect Virginia employees from the spread of the SARS-CoV-2 virus which causes COVID-19 under Va. Code §40.1-22(6a). (emphasis added). The aforementioned statement by Mr. Withrow was noted as following a discussion of the briefing package up to p. 136. (Note, the draft summary of the draft ETS starts on p. 153). The Board had a discussion related to the recommendation and whether there was a grave danger and if there is a need for an emergency temporary standard. The motion was made, properly seconded, and carried.

Since a regulation with a scope that applied to all employers and contained all of the instructions of the EO 63 was the only thing provided to the Board, there is no indication that the Board considered alternatives and the components of the overall ETS to see if all components and their full scope were "necessary" to address a "grave danger" and "feasible" and supported by "substantial evidence in the record as a whole." Proceeding through this unusual approach that did not provide a comment period that satisfied VAPA, that had no regulatory impact analysis, and provided for no regulatory flexibility analysis, and the Board's decision to follow the express directions of the Governor to the exclusion of considering any other option, left the Board's administrative record unlawfully cabined and renders its decision unsupported by substantial evidence and unlawful. There is also no indication that the Board provided a response to significant comments from the 10-day comment period, nor any indication that the Board was presented a significant discussion of comments.

### B. The Board Has Not Shown That The Sweep, Components or Approach of the Standards Are Necessary To Protect Against A Grave Danger Considering that the Federal Occupational Health And Safety Administration Has Guidelines and Certain Rules And Recommended Against the Basic Action The Board Has Taken

The Federal Occupational Safety and Health Administration ("OSHA") took the position that it will not be promulgating an emergency standard pursuant to its authority under the OSH Act of 1970, instead opting to rely upon many voluntary guidelines for various business sectors. There is no evidence the Board

meaningfully considered OSHA's regulatory framework, even though the Virginia Code provides that OSHA standards are presumptively lawful when adopted by the Board under its powers.

The Safety and Health Codes Board has failed to meet the standard of finding that the full scope of the ETS are "necessary" to address a "grave danger" to use the extraordinary process of Va. Code §40.1-22(6)(a) and do not have "substantial evidence" in the record for this finding. There are many reasons the ETS fails on this front. First, it is important to consider the scope of the rule. The rule covers virtually every private and public employer in Virginia. Second, the rule is unworkable. Under the ETS, a single cough means an employee cannot work for 10 days. The ETS requires unrealistic reporting and planning burdens for every employer regardless of whether that employment situation is substantially above the background risk facing Virginians in multiple settings. That is not a burden that is proportional or reasonable for the risk and does not warrant the exceptional use of 40.22 (6a). By their own statements and structure of the rule, the Board has stated 4 levels of risk from low to very high. Yet the rule poses substantial requirements on all levels. Additionally, the Board cannot justify how it can simultaneously designate parties to be a "low" risk while still regulating those same parties on the basis that they face "grave danger." The Board has provided no comparative assessment or statement to support its finding of "grave danger." More importantly the Board has not shown that the burdens in the ETS are necessary to address a grave danger.

The US Department of Labor and US Court of Appeals for the District of Columbia Circuit have already provided direction on this issue. On April 28, 2020, AFL-CIO President, Richard Trumka, petitioned US Secretary of Labor Eugene Scalia to adopt a Department of Occupational Safety and

Health Administration (OSHA) emergency temporary standard for COVID-19. On April 30, 2020, US Secretary of Labor Eugene Scalia rejected the AFL-CIO petition from April 28, 2020, and stated:

"Coronavirus is a hazard in the workplace. But it is not unique to the workplace or (except for certain industries, like health care) caused by work tasks themselves. This by no means lessens the need for employers to address the virus. But it means that the virus cannot be viewed in the same way as other workplace hazards."

The letter also states ""your letter disparages OSHA's guidelines as 'only voluntary', suggesting that there are no compliance obligations on employers. That is false... Indeed, the contents of the rule detailed in your letter add nothing to what is already known and recognized (and in many instances required by the general duty clause itself). Compared to that proposed rule, OSHA's industry specific guidance is far more informative for workers and companies about the steps to be taken in their particular workplaces"" That is one of the reasons OSHA has considered tailored guidance to be more valuable than the rule you describe.""

On June 11, 2020, the US Court of Appeals for the District of Columbia Circuit denied the AFL-CIO's May 18 petition. The Board has not shown evidence that the myriad requirements it imposed are "necessary" with substantial evidence to address a "grave danger" and "feasible." First, for the requirements to be ""necessary"" and ""feasible"" they would need to be operationally workable and "necessary" in the sense that the timing concerns warranted the extraordinary step of not following the ordinary requirements of VAPA. VAPA would require economic impact analyses, regulatory flexibility analyses and a more meaningful comment period than provided by the Board.

The general duty requirements of Va. Code § 40.1-51.1 (a) of the Code of Virginia apply to all employers covered by the Virginia State Plan for Occupational Safety and Health. Under this provision "...it shall be the duty of every employer to furnish to each of his employees safe employment and a place of employment that is free from recognized hazards that are causing or are likely to cause death or serious physical harm to his

employees..” Accordingly, the baseline for understanding what is “necessary” to address a “grave danger” should be viewed against the baseline that employers already have legal obligations relating to COVID-19.

The rules are not “feasible” because the Board has not provided adequate time or taken sufficient steps to roll-out and educate the employers within the scope of the rule about the rule and compliance with the rule. The rule is massively complicated. There is no evidence that the Board has taken steps to make all Virginia employers aware of the rule and set-up appropriate steps for such a massive program.

C. The Immediately Effective Date Was Not Feasible And Neither the Board Nor DOLI Has Properly Provided A Roll-out for Regulations Of Such Immense Sweep The immediate effective date of the ETS upon publication in the City of Richmond is irrational and not feasible. The training requirements effective dates are equally irrational as there was no time provided for businesses to evaluate their obligations and options to control the virus before beginning training. The Board has unreasonably exposed businesses to threats of compliance enforcement action for steps they cannot take in the time frame set out in the rule. Such actions are not consistent with the Constitution of Virginia because the Board is depriving businesses and citizens of liberty without the fundamental due process rights of sufficient notice and time for compliance. The scheme per se sets up a regime of arbitrary enforcement since few if any employers were likely in compliance as of its effective date and could not have realistically been in compliance.

D. The “Suspected” COVID Provisions are Unworkable, Vague and Not Supported by Evidence The operation of the ETS’s “suspected” COVID provisions are unworkable. The term “suspected to be infected with SARS-CoV-2 virus” means a person that has signs or symptoms of COVID-19 but has not tested positive for SARS-CoV-2 and no alternative diagnosis has been made.” See §16VAC25-220-30. However, the ETS does not define “symptoms.” The ETS does have a definition of “symptomatic.” “Symptomatic” means the employee is experiencing symptoms similar to those attributed to COVID-19 including fever or chills, cough, shortness of breath or difficulty breathing, fatigue, muscle or body aches, headache, new loss of taste or smell, sore throat, congestion or runny nose, nausea or vomiting, or diarrhea. Symptoms may appear in 2 to 14 days after exposure to the virus. §16VAC25-220-30.

Assuming the term “symptomatic” contains the relevant “symptoms” — a point which is not clear — then the universe of employees with suspected COVID-19 that pose the stated risk includes, among a broader universe, anyone who has a cough or headache or sore throat or congestion or runny nose, or fatigue, as just some examples. Pursuant to the ETS, employers are required to develop and implement policies and procedures for employees to report when they are experiencing symptoms consistent with COVID-19, at least when no alternative diagnosis has been made (e.g., tested positive for influenza). Such employees shall be designated by the employer as “suspected to be infected with SARSCoV-2 virus.” See §16VAC25-220-40 A(4) It is unrealistic to expect employers and contractors, including small and medium sized employers to evaluate alternative diagnosis or expect timely assessments by medical personnel in the time frames for the kinds of low level symptoms described. There is no evidence that this is feasible or that this approach is necessary or even useful to addressing a “grave danger.” If anything, the ETS creates a situation in which employees will be skittish to cooperate at all.

Pursuant to the ETS, employers are required to prohibit employees or other persons known or suspected to be infected with the SARS-CoV-2 virus to report to or remain at the work site or engage in work at a customer or client location until cleared for return to work. See §16VAC25-220-40.B and

§16VAC25-220-40 A(5). Similar language covers subcontractors. See §16VAC25-220-40 A(7) .No employee or subcontractor can return to the worksite until at least 72 hours since the signs of any symptom have passed and ten days have elapsed, whichever period is longer. See §16VAC25-220-40.B.

The return-to-work test-based strategy is also problematic because of the lack of testing availability. The regulation also requires compliance with symptom-based strategy if a known asymptomatic employee refuses to be tested. The Rule is asking both employers and employees to affect their business and livelihood based symptoms that cannot be evaluated as being beyond ordinary and common circumstances. This is neither workable, feasible, nor supported by an evidence of operation. E. The Board Is Effectively Implementing A Quarantine Policy Which Is Beyond The Authority

Of the Board And In Conflict with The Requirements Of the Quarantine And Isolation Provisions

F. The Board Lacks Authority Over Sick Leave Policies And Recitation To Such Policies In the ETS Is Illegal

Meanwhile, §16VAC25-220-40 (B)(6) states that ""employers shall ensure that sick leave policies are flexible and consistent with public health guidance..."" Although the ETS contains language that is vague and threatens potential penalties, the Safety and Health Codes Board does not have authority over sick leave policies. Therefore the Board's statement with regard to such policies is illegal and in excess of authority. The Board should eliminate all human resource policies from the Regulations such sick leave, telework, flexible worksites, flexible work hours, flexible meeting and travel, the delivery of services or the delivery of products. The statement regarding sick leave nonetheless illustrates the problem with the ETS. An employee who coughs or sneezes has to lose work for a significant period of time. That may deny that employee important employment opportunities, the ability to contribute to specific projects, and cause great disruption.

G. The Testing and Reporting Scheme Is Unreasonable and Requires Agreement with Third Parties Who May Or May Not Cooperate

The ETS has a test reporting scheme that penalizes employers who cannot gain agreements with third parties and operate within unrealistic time frames and at risk for mishandling the privacy of medical information. See §16VAC25-220-40 A(8). The system for reporting positive tests includes

employees, subcontractors, contract employees, temporary employees, building owners, tenants, residents in a building, and 24 time frames is overly broad, not shown to be necessary, and not feasible for the full scope of employers.

H. The Provisions Asking Building or Facility Owners to Require All Employer Tenants to Satisfy Requirements is Beyond the Boards Authority The provisions referencing building owners and tenants seem to imply third party obligations and third party cooperation with employers. At best this is unclear but the source of authority for the Board beyond employers themselves is unclear. The lack of authority makes employer obligations unfair because of the necessary reliance on third parties.

I. The ETS Does Not Have A Rational Approach to Economic Feasibility That Meets The Statutory Standards

The ETS definition of economic feasibility at §16VAC25-220-30 is impermissible. The rule defines "economic feasibility" to mean the employer is financially able. The standard does not ask whether the employer could stay in business or avoid releasing employees in order to find the funds to pay for the costs of the rule. The failure to provide an economic impact assessment or regulatory flexibility analysis for comment compounds this problem.

J. The Physical Separation Requirements Are Not Rational

The ETS states under the definition of physical distancing pursuant to §16VAC25-220-30 that "physical separation of an employee from other employees or persons by a permanent, solid floor to ceiling wall constitutes physical distancing from an employee or other person stationed on the other side of the wall.""

Yet, as pointed out in comments to the Board, physical separation does not have to be achieved by permanent or floor to ceiling walls. Temporary plexiglass and other hard surface barriers are regularly used to retrofit workstations, counters and cubicles as physical separation “shields” or barriers for employees. On information and belief, the Board did not consider that alternative.

#### K. The HVAC Requirements For Medium Risk Businesses Are Not Reasonable

Requiring retroactive compliance with a 2019 ASHRAE HVAC standard is not reasonable. Any permanent regulation should follow existing process contained in the Uniform Statewide Building Code (USBC) which utilize appropriate industry investigation and recommendations. There is insufficient evidence that this requirement is workable or is necessary to address a grave danger.

#### L. Prohibiting Consideration of Serologic Tests Is Anti-Science And Illegal

Pursuant §16VAC25-220-40(A)(3), employers are prohibited from even considering serologic test results in deciding when an employee can return to work. A prohibition on using relevant medical information for decisions is an unprecedented political restriction of medical assessments. Not only has

the Board seen fit to prohibit serologic testing from being conclusive or determinative of any issue, but the Board has outright prohibited employers from considering scientific evidence in their decision making. Such an across-the-board prohibition is per se unreasonable and unnecessary.

The ETS frequently refers to the standards applicable to the industry which is language that may be appropriate for guidance but is too vague to be meaningful. This is compounded by numerous vague and unworkable definitions. For example, the physical distancing requirement in the ETS is unworkable and ambiguous. Distancing is not available for restaurant wait staff, personal services, physical instructors. The application of this rule is overly broad, unclear and not justified.

#### M. If the Permanent Standard Is Adopted It Should Sunset When Evidence Of Any Utility Is Reduced By Reduced Transmission of COVID-19

The onerous requirements of the permanent standards are not likely useful and do not address a grave danger when the Governor either removes the Declaration of a State of Emergency or when COVID-19 transmission rates among employers or categories of employers are found to be low.

Accordingly, there should be a sunset clause.

#### N. Much Of the ETS Is Ambiguous and Vague Creating Problems Under Due Process Under the Virginia Constitution and In General

One of the largest sources of vagueness is the Suspected Covid provisions which really have so many convolutions and distinctions that science cannot make and employers cannot reasonably interpret. Workers rights and employers liabilities turn on these vagaries. In addition there are many other vague provisions. The proposed regulations frequently refer to the standards applicable to the “industry” which is language that may be appropriate for guidance but is too vague to be meaningful and should be removed from the ETS and consideration for Regulations. It is unclear about which version of CDC guidance an employer may reference for purposes of compliance with the Regulations found in 16VAC25-220-10(G) since guidance is changing so rapidly. It is also unclear who determines that the “CDC recommendation provides equivalent or greater protection than provided by this standard.”

Is the general contractor or owner exposed to potential citation if the subcontractor violates any of the provisions of the ETS or Regulations without providing this information to the employer? This liability should

not be shifted to an employer and the relationship is unclear. Similarly, the provisions apply to building owners and tenants and their relationships to employers is unclear and likely outside of the authority of the Board.

The entire structure relating the rules to the Executive Orders and Orders of Public Health emergencies as discussed below create massive uncertainties from overlapping schemes and questions on what supercedes what. This is especially so since the Orders have been changing all the time.

There is language protecting employees who refuse to work because they “feel” unsafe. The criteria for protected work refusals are already in the Administrative Regulatory Manual and this provision is just adding more confusion. All-in-all, as drafted, enforcing these provisions should be found void for vagueness and lack of due process.

#### IV. Inclusion of Mandates Enforcing Executive Orders And Orders Of Public Health Emergency Is Illegal And Beyond Delegated Authority

Pursuant to §16VAC25-220-40 (F) of the ETS, the Board has illegally included in the ETS the variable and illegal rules in Orders provided by the Governor and Health Commissioner. Indeed, the structure of the ETS includes any Order they may provide such that the Board has impermissibly delegated its authority under §16VAC25-220-40 (F) to the Governor and Health Commissioner. Under the ETS, there has been no comment process to review the underlying Orders by the Governor or Commissioner. There is no public docket for the Orders, no regulatory impact statements, no regulatory flexibility analysis, and no opportunity for public comment. There was no discussion by the Board of the interaction of the Orders and the emergency rule. Including compliance with such Executive Orders as an enforceable mandate of the ETS constitutes an unlawful expansion of the Board’s authority and that

"NOTE: CONTINUATION OF COMMENT 10008

of the Governor and essentially creates an extra statutory enforcement mechanism for the Governor’s orders which was never contemplated by the legislature. A similar problem exists for 16VAC25-220-10 (F) which states this Standard shall not conflict with requirements and guidelines applicable to businesses set out in any applicable Virginia executive order or order of public health emergency. We do not always not the sources of such Orders and whether they may supercede actual regulations. Effectively, this provision delegates authority to the Governor or Health Commissioner and fails to satisfy the statutory standards for rules by the Board. Moreover, the shifting sands create vagueness and uncertainty.

#### IV. The Mandates In the Existing EO 67 And Related Order Of Public Health Emergency Are Illegal And Thus, The Incorporation Of Such Mandates Are Further Illegal And Fail The Statutory Standards For the Board

Having included the orders of the Governor and Health Commissioner in the ETS, the Board has included illegal and orders which violate the Virginia Constitution. For months on end, the Executive Branch in Virginia has taken numerous actions to subject millions of Virginians and tens of thousands of

Virginia businesses to harmful and burdensome regulations, most carrying the threat of criminal sanction, and nearly all without legal precedence, justification, or authority The mandates of the Governor and Health Commissioner infringe on multiple fundamental rights of the Plaintiffs including their freedom of assembly, freedom of association, free exercise of religion, free speech, privacy, and due process of law. The infringements on these rights are further compounded by numerous instances of unequal treatment. The mandates in the various Orders of the Governor and Health Commissioner are illegal in at least three fundamental ways. A government actor



may only permissibly infringe on fundamental rights under the Virginia Constitution if: (A) they have followed procedures required by law, and (B) they are operating pursuant to a permissible delegation of legislative authority, and (C) they meet the high standards for infringing on multiple rights under the Virginia Constitution. For virtually every one of the “emergency” mandates, the Executive Orders have not met any of these basic thresholds, let alone all three. However, the situation is even worse here because they Orders have not only violated these elemental principles here-and-there in separate areas of the law, but they have violated all of them simultaneously and cumulatively in each area of law.

#### A. The Mandates in the Governors Orders Violated Procedures Required By Law And Are Therefore Illegal Under the ETS

VAPA applies to the rules in the Orders because of the specific definitions in VAPA. VAPA provides that a “rule” or “regulation” means any statement of general application, having the force of law, affecting the rights or conduct of any person, adopted by an agency in accordance with the authority conferred on it by applicable basic laws. VAPA defines a covered agency as “any authority, instrumentality, officer, board or other unit of the state government empowered by the law to make regulations or decide cases.” Absent the status of operating as an administrative agency neither the Governor nor the Health Commissioner would have an authority create regulations, even to fill in ostensible legislative gaps. Both the Governor and Health Commissioner in this context can only be described as one of the listed entities empowered by to make regulations as defined by the VAPA definition of a “rule” or “regulation.”

The orders, regulations, and rules at issue in this case were published and are not internal guidance or mere clarifications of other law. Through the Orders, the Governor and Health Commissioner purported to create law and to hold citizens and businesses in Virginia subject to them.

VAPA is intended to be a default or catch-all source of administrative due process, applicable whenever the basic law fails to provide process. In summary, VAPA governs an agency's actions except where that agency's basic law provides its own due process or where VAPA expressly exempts a particular agency or its actions. *School Bd. v. Nicely*, 12 Va. App. 1051, 1060, 408 S.E.2d 545, 550 (1991). See also Va. Code §§ 2.2-4002. Accordingly, VAPA applies to both Va. Code §§ 44-167.17 and 32.1-13.

#### B. The Governor and Health Commissioner Did Not Operate Under a Permissible Delegation of Rulemaking Authority And, Accordingly, the Mandates In The Orders Violate Separation Of Powers

The Governor and Health Commissioner have created rules of general applicability that threaten criminal sanctions on individuals, businesses, and churches in Virginia. Generally, and in the first instance, the creation of law must go through the General Assembly. Accordingly, the Executive Branch can only create such rules where there is a permissible grant of rulemaking authority from an enactment of law from the General Assembly through the established Constitutional process. The Orders reference the Governor's powers under Article V of the Constitution of Virginia, Virginia Code § 44-146.17, and “any other applicable law.” Likewise, the Health Commissioner relies on the powers provided in Va. Code §§ 32.1-13, 20, and 35.1-10.

The Virginia Constitution does not provide the power to create law to the Executive Branch in the first instance, and nothing in Article V provides such authority. Separation of Powers regarding the creation of law is a fundamental precept of our Constitutional Republic and is protected in several ways in the Constitution of Virginia. Va. Const. Art. I, §5 states “The legislative, executive, and judicial departments shall be separate and distinct, so that none exercises the powers properly belonging to the others, nor any person exercise the power of more than one of them at the same time; provided, however, administrative agencies may be created by the General Assembly with such authority and duties as the General Assembly may prescribe.” Va. Const. Art. I, § 6. states that:

That all elections ought to be free; and that all men, having sufficient evidence of permanent common interest with, and attachment to, the community, have the right of suffrage, and cannot be taxed, or deprived of, or damaged in, their property for public uses, without their own consent, or that of their representatives duly elected, or bound by any law to which they have not, in like manner, assented for the public good.(emphasis added)

Virginia's Constitution has consistently maintained, in one form or another since 1776, "[t]hat all power of suspending laws, or the execution of laws, by any authority, without consent of the representatives of the people, is injurious to their rights, and ought not to be exercised." VA. CONST. art. I, § 7 (emphasis added). See generally Howell, 292 Va. at 344-48, 788 S.E.2d at 720-22. Va. Const. Art. III, § 1 states: The legislative, executive, and judicial departments shall be separate and distinct, so that none exercises the powers properly belonging to the others, nor any person exercise the power of more than one of them at the same time; provided , however, administrative agencies may be created by the General Assembly with such authority and duties as the General Assembly may prescribe.

Va. Const. Art. IV , § 1 states that ""The legislative power of the Commonwealth shall be vested in a General Assembly, which shall consist of a Senate and House of Delegates. No law shall be enacted except by bill. (emphasis added). Quite simply, the Legislative Power resides with the General Assembly with participation by the Governor through a Constitutional process. Separation of Powers belongs to and is for the benefit of the citizens of Virginia. The legislature may not give the Legislative Power to the Executive Branch.

"Deeply embedded in the Virginia legal tradition is 'a cautious and incremental approach to any expansions of the executive power.'" Howell v. McAuliffe, 292 Va. 320, 327, 788 S.E.2d 706, 710 (2016) (quoting Gallagher v. Commonwealth, 284 Va. 444, 451, 732 S.E.2d 22, 25 (2012)). This tradition reflects our belief that the "concerns motivating the original framers in 1776 still survive in Virginia," including their skeptical view of the "the unfettered exercise of executive power."

No previous Governor or Virginia legislature has ever placed a statewide numerical limitation on assembly or provided a government definition of who may or may not sit or stand together in certain settings, among other basic infringements. Furthermore, there is simply no legal or constitutional basis for running a government by executive order for months on end. No prior Executive Order in Virginia history has authorized the complete shut-down of the Virginia economy, mandated the closing of Virginia's public and private schools, limited lawful assemblies to 10 or 50 people or prescribed who can and cannot sit with one another in different settings.

The Governor and Health Commissioner apparently believe the General Assembly through language in Va. Code §§ 44-146.17 and 32.1-13 has provided for the Commonwealth to be a de facto autocracy whenever a "public health emergency" is unilaterally declared. That is not the law of this Commonwealth, nor could it possibly be construed as such. In Virginia, ""delegations of legislative power are valid only if they establish specific policies and fix definite standards to guide the official, agency, or board in the exercise of the power. Delegations of legislative power which lack such policies and standards are unconstitutional and void."" Ames v. Town of Painter, 239 Va. 343, 349 (1990) (emphasis added). See also Bell v. Dorey Elec. Co., 248, Va. 378, 380, 448 S.E. 2d 622, 623 (1994). In Bell, the Virginia Supreme Court agreed with the trial court that:

"[t]he requirement of sufficient legislative standards was not satisfied by the general direction in the statute that the regulations be designed to protect and promote the safety and health of employees. The General Assembly cannot delegate its legislative power accompanied only by such a broad statement of general policy. Bell at 448 S.E. 2d 622, 624 (1994) The Bell Court noted that the directives from the legislature must provide sufficient legislative standards to guide the relevant agency and also establish a legally discernable

standard by which a court could review subsequent challenges to the Board's rules. The Bell Court emphasized that these legislative standards placed in the statute by the General Assembly provide a ceiling on the type of rules which may be adopted. The Governor and Health Commissioners interpretation of Va. Code §§ 44-146.17 and

32.1-13 (as applied through the Orders) would be an unconstitutional delegation of authority and does not meet the tests of Ames or Bell. The substance and process (or lack thereof) related to the Orders have made the Separation of Powers issue worse in every dimension. The Governor and Health Commissioner have chosen the tool of infringing on fundamental Constitutional rights as key elements of the rules they published through their view of Va. Code §§ 44-146.17 and 32.1-13. They have claimed VAPA does not apply and have, thus, provided no public docket, no forum for public comment, no regulatory impact statements, no regulatory flexibility analysis, no response to comments, no outline of the comments they have received through private processes. The Virginia Board of Public Health did not meet regarding the rules in the Orders.

#### C. The Requirements To Shut Down Businesses For Failure To Follow Individual Requirements Is Beyond Authority

EO67 provides numerous requirements for a variety of businesses regarding distancing, seating, cleaning, and face masks. In the last paragraph for many of these provisions the Order states "If any such business cannot adhere to these requirements, it must close." The same language applies to religious services pursuant to B. 1 (F) of the EO67. Pursuant to EO67 A (13), regarding enforcement the Governor and Health Commissioner state in part: The Virginia Department of Health shall have authority to enforce section A of this Order. Any willful violation or refusal, failure, or neglect to comply with this Order, issued pursuant to §

32.1-13 of the Code of Virginia, is punishable as a Class 1 misdemeanor pursuant to § 32.1-27 of the Code of Virginia. The State Health Commissioner may also seek injunctive relief in circuit court for violation of this Order, pursuant to § 32.1-27 of the Code of Virginia. In addition, any agency with regulatory authority over a business listed in section A may enforce this Order as to that business to the extent permitted by law. The Order's provision requiring closure of a business effectively operates as a sanctions for the other requirements in the order. Such a sanction, however, is provided for under Va. Code § 32.1-27 only as part of a carefully-crafted legislative scheme which protects due process rights and provides for judicial review. The creation of a sanction unilaterally by the Governor or Health Commissioner absent such judicial review is in excess of their delegated authority.

D. The Executive Orders and Orders of Public Health Emergency Incorporated By The Board Impermissibly Infringe On Fundamental Rights of Assembly and Association Under the Virginia Constitution VA. Const., Art. I, § 12 states: ""the General Assembly shall not pass any law abridging the freedom of speech or of the press, nor the right of the people peaceably to assemble ...." By definition, a numerical limitation by the state on the size of assemblies is an infringement on the right to peaceably assemble. A statewide limitation on the size of assemblies in Virginia is unprecedented. Moreover, the infringement on the right of assembly has uneven application under the rules of the orders. For months, there was a 10-person, and then a 50-person, restriction on assembly, including for weddings, celebrations, sporting events, family reunions, and Easter church services. Now the restriction has a higher limit (but includes a restriction on occupancy in certain settings that are lower limits). However, these same restrictions did not and do not now apply to a large meeting of lawyers at a law firm. Countless individuals performing functions together through their employment is not a "gathering" under the Order. Crowds are allowed at a Walmart, Lowes, or other large "essential" stores without those restrictions. After numerical limits of 10 persons in Phase One and 50 in Phase Two, the numerical limits on assembly are 250 under EO 67. These limitations on assembly included arbitrary government definitions of "family" as part of defining the 10-person limit. EO 68 generally has gone

back to a 50-person limit on assembly. The limits on assembly apply in certain circumstances, but not in others, without apparent reasons being given to attempt to justify the distinctions.

EO 67 Third Amended and various standards referred to in that Order incorporate a separate document styled "Safer at Home: Phase Three Guidelines For All Business Sectors" (hereinafter "Guidelines"). Despite its use of the term "guidelines," the document has sections called ""best practices"" and sections described as "Mandatory Requirements." It states that establishments must either implement these mandatory requirements or close. The requirements vary by setting, but the settings are generally parallel to EO 67. The mandatory requirements in the Guidelines, however, use materially different terms than those used in EO 67. Where EO 67 has a "family" exception for distancing, the "mandatory requirements" provisions employ the term "members of the same household" and the term "at all times" in various sections. Curiously, the definition of "Family members" in EO 67 would not even include a married couple who are not currently "residing in the same household." For Farmers markets, "non-essential" brick and mortar retail establishments, indoor and outdoor swimming pools, and horse and other livestock shows, the Guidelines use the narrower terms "household," whereas EO 67 uses the term "family." For purposes of the right of assembly in

innumerable situations, and especially given that such rules apply to all Virginians, distinctions like this have major implications, particularly when violating them carries a criminal penalty. This regulatory inconsistency also deprives every Virginian of due process because it makes it impossible for anyone to know with whom they may gather and when without risking committing a criminal offense. Notably, the Guidelines language for performing arts venues, concert venues, movie theaters, drive in entertainment, sports venues, botanical gardens, zoos, fairs, carnivals, amusement parks,

museums, aquariums, historic horse racing facilities, bowling alleys, skating rinks, arcades, amusement parks, trampoline parks, fairs, carnivals, arts and craft facilities, escape rooms, trampoline parks, public and private social clubs, and all other entertainment centers and places of public amusement all use the term "members of the same household" as an exception. However, that term is not used in EO 67 itself. For Horse Racing Racetracks, the Mandatory Guidelines say all must observe distancing, but exceptions--whether household or family-- are not included.

A government scheme that prohibits every instance of physical proximity among individuals within six feet of one another, based on nothing more than the government's arbitrary and unilateral classification of their relationship statuses, is an infringement of fundamental rights under the Virginia

Constitution. The right of association is both an integral part of the right of assembly and also a separate fundamental right. Ordinary conversations at a distance much closer than 6 or 10 feet is also important to the right of free speech. It is the kind of speech that can, and in many instances, must occur among two people or a few people to maintain their right to privacy without others intruding or overhearing. At issue is nothing less than the right of a free people to determine, apart from government rules or coercion, with whom they can sit or whom they can stand next to, perhaps to have a private conversation or maybe simply to hold hands – or frankly any other manner of close personal activity. Virginians have a fundamental right in who they choose to dance with, who to hold close, who to have a normal conversation with, and, generally, who to be next to as long as the other person wants the same. All Virginians "have certain inherent rights, of which, when they enter into a state of society, they cannot, by any compact, deprive or divest their posterity; namely, the enjoyment of life and liberty, with the means of acquiring and possessing property, and pursuing and obtaining happiness and safety." Va. Const., Art. I, § 1. The Constitution of Virginia notes the desire to have a government that is most effectually secured against the dangers of maladministration. Va. Const., Art. I, § 3. Virginians have a fundamental freedom of speech and assembly. Va. Const., Art. I, § 12. We know that

“No free government, nor the blessings of liberty, can be preserved to any people, but ...by frequent recurrence to fundamental principles.” Va. Const., Art. I, § 15.

A government definition of who can be close to other people and who cannot, imposed broadly, indefinitely, arbitrarily, and unilaterally upon all Virginians is a profound and impermissible assault on their fundamental rights. EO 67 provides several definitions of who may associate without distancing, which apply in certain settings but not in others. Several elements of EO 67 require maintaining a 6-foot or 10-foot distance in certain settings for certain groups but not others based on a definition in the order of either family or household. The Virginia Supreme Court has stated that provisions of the Constitution of Virginia that are substantively similar to those in the United States Constitution will be afforded the same meaning. See, e.g., *Shivaee*, 270 Va. at 119, 613 S.E.2d at 574 (“due process protections afforded under the Constitution of Virginia are co-extensive with those of the federal constitution.”); *Habel v. Industrial Development*

*Authority*, 241 Va. 96, 100, 400 S.E.2d 516, 518 (1991) (federal construction of the Establishment Clause in the First Amendment “helpful and persuasive” in construing the analogous state constitutional provision). While the First Amendment does not, by its terms, protect a “right of association,” the

United States Supreme Court has recognized such a right in certain circumstances. *Dallas v. Stanglin*, 490 U.S. 19, 23-24 (1989). In *Roberts v. United States Jaycees*, 468 U.S. 609 (1984), the Court defined the right at issue to include choices to enter into and maintain certain intimate human relationships and the separate but related right to “expressive association.” E. The Boards Adoption Of The Impermissible Infringements On Constitutional Rights Of Assembly and Association Place Employers In An Unreasonable And Unworkable Situation By penalizing employers for not following impermissible infringements on Constitutional rights by the Governor, the Health Commissioner, and the Board itself, the ETS forces employers to participate in an illegal scheme. There should be no government definition of who must distance versus not distance based on relationships which neither the government nor businesses can reasonably assess. In various settings the Board would have employers ask customers about their family or household relationships to enforce the distancing requirements. This is not a workable scheme. There is no evidence after many months that this scheme has yielded any benefit other than to threaten all with criminal sanctions. The Board would penalize a wedding venue because a boyfriend and girlfriend not residing in the same house sat together at a religious service or walked at a farmers market together. These requirements have never been feasible and now the Board has adopted them and added to their enforcement structure. The requirements of the Board unreasonably force employers to inquire about matters that cannot be easily proven and places employers in the position of facing liability for discrimination. The requirements if enforced by a local police department would place those police officers at threat for damages under a section 1983 civil rights suit. There is nothing reasonable or workable about these provisions.

#### V. The Board Continues Its Failure Under VAPA And The Logical Assessment Of Other Statutory Law

##### A. The Board Must Provide a Regulatory Impact Analysis and Regulatory Flexibility Analysis For Public Comment

To date there has been no regulatory impact analyses or regulatory flexibility analysis. The ETS commendably and specifically states in 16VAC § 25-60-10 (B) that “this standard shall not be extended or amended without public participation in accordance with the Virginia Administrative Process Act (§

2.2-4000 et seq. of the Code of Virginia) and 16VAC25-60-170.” Note the citation is the full scope of VAPA. Public participation under VAPA ordinarily includes comments on a regulatory impact analysis and regulatory flexibility analysis, but none have been provided for this comment period. Beyond the specific provisions in VAPA, the requirement to ensure that rules are necessary and feasible requires the same analysis. This is all

on top of the lack of credible process for the ETS itself. The ETS originated on April 23, 2020 from a petition and model language provided by the Legal Aid Justice Center, Virginia

Organizing, and Community Solidarity with the Poultry Workers to Governor Northam, Commissioner Oliver, Attorney General Herring, Commissioner Davenport, and Director Graham. On June 12, 2020, the Administration posted the ETS for ten (10) calendar days or six (6) workdays for public comment and then barred public testimony before the Board during its multiple hearings over four weeks. The Board also violated its own bylaws on several occasions including allowing representatives of the DEQ Director and Virginia Health Commissioner to both vote, not posting agenda properly, not providing public notice properly, and barring public testimony at hearings.

#### B. The Board and DOLI Should Provide An Analysis Of What Has Happened Related To Operation of the ETS and Employers In Virginia Over the Past Two Months

The unfortunate ETS has been effective since July 27, 2020. It is incumbent on the Board and DOLI to provide information on its operation. This should include a survey of what employers know about the standards, what reporting as occurred, how many employees have been sent home, and some assessment of how the operation of the rules have impacted the transmission of COVID based on actual evidence supporting such assessment. In conversations with multiple employers, there seems to be almost no understanding that the rules exist much less compliance. This is a point that strongly ways against the hasty promulgation of a rule that threatens businesses but for which the Board and DOLI have done little to explain.

#### RECOMMENDATIONS

For the reasons discussed above the Board should remove the illegal, ill-considered, and unworkable ETS. The Board should not promulgate a permanent standard based on the unworkable and illegal scheme that has been presented by the ETS. The Board should nonetheless provide or obtain a regulatory impact statement and regulatory flexibility analysis concerning the rules including an opportunity for public comment. The Board should obtain an evaluation of the implementation of the ETS prior to its removal. The Governor and Health Commissioner should withdraw the illegal and unworkable mandates in E067 and other Executive Orders and the Board should reject these standards. The Board should provide a response to comments document that covers both the ETS and the permanent rule comments. That document need not address each comment when they are part of a similar group but should provide responses to all significant comments.

Sincerely"

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NOTE: THE COMMENTER IS A PARTY TO A LAWSUIT CHALLENGING THE LEGALITY OF 16VAC25-220 Emergency Temporary Standard (ETS) Infectious Disease Prevention: SARS-CoV-2 Virus That Causes COVID-19 As Adopted by the Safety and Health Codes Board on July 15, 2020. LEGAL ISSUES RAISED BY THE COMMENTER THAT RELATE TO THE ONGOING LITIGATION WILL NOT BE ADDRESSED FOR THAT REASON.

NOTE: TO THE EXTENT THAT THE COMMENTER DISCUSSES THE LEGALITY OF ORDERS OF PUBLIC HEALTH EMERGENCY BY THE HEALTH COMMISSIONER OR EMERGENCY DECLARATIONS AND EXECUTIVE ORDERS OF THE GOVERNOR, THE DEPARTMENT CONSIDERS SUCH COMMENTS TO NOT BE GERMANE TO THIS STANDARD AND PROVIDES NO RESPONSE.

For those commenters who argued that that certain gubernatorial mandates (e.g., "face mask" mandate) are unconstitutional, according to the Office of the Attorney General on at least twelve occasions the Governor's

COVID-19 restrictions have been upheld by circuit courts throughout the Commonwealth. Two of these specifically challenged the face covering requirements. Schilling et al. v. Northam, CL20-799 (Albemarle Co. Cir. Ct. July 20, 2020); Strother, et al. v. Northam, CL20-260 (Fauquier Co. Cir. Ct. June 29, 2020).

See the Department's Briefing Package on the Emergency+M1054 Temporary Standard dated June 23, 2020, for information supporting the Safety and Health Codes Board decision to adopt the ETS, which can be found at: <https://www.doli.virginia.gov/wp-content/uploads/2020/06/BP-Emergency-Regulation-Under-2.2-4011-SARS-CoV-2-That-Causes-COVID-19-FINAL-6.23.2020.pdf>

SEE DEPARTMENT RESPONSE TO COMMENT 84956

The Commenter's references to actions or inactions on the part of federal OSHA have no bearing on the actions of the Board. The Board and the VOSH program have clear statutory and regulatory jurisdiction over workplace safety and health issues in the Commonwealth, including the potential for spread of infectious diseases among employees and employers, and when those employees and employers are potentially exposed to other persons who may be carriers of the infectious diseases (patients, customers, independent contractors, etc.).

The Commenter references issues of feasibility. Feasibility is defined (based on longstanding definitions of OSHA and VOSH in their respective Field Operations Manuals) and referenced numerous times in the Standard to provide a level of flexibility to employers to achieve compliance with the requirements of the Standard and to mitigate the spread of SARS-CoV-2 to employees while at work.

Here is a summary of the defense:

Infeasibility Defense (previously known as the "impossibility" defense)

A citation may be vacated if the employer proves that:

1. The means of compliance prescribed by the applicable standard would have been infeasible under the circumstances in that either:
  - a. Its implementation would have been technologically or economically infeasible or
  - b. Necessary work operations would have been technologically or economically infeasible after its implementation; and
2. Either:
  - a. An alternative method of protection was used or
  - b. There was no feasible alternative means of protection.

The Commenter references the definition of "suspected to be infected with SARS-CoV-2 virus" and alternative diagnosis issues.

16VAC25-220-40.B.4 of the COVID-19 Emergency Temporary Standard (ETS), provides that "Employers shall develop and implement policies and procedures for employees to report when employees are experiencing symptoms consistent with COVID-19, and no alternative diagnosis has been made (e.g., tested positive for influenza)...." Such employees are then classified as "Suspected to be infected with SARS-CoV-2 virus" and may not report to the workplace until they have been cleared for return to work in accordance with ETS requirements. In situations where there is the possibility for an alternative diagnosis (such as allergies, the

common cold, the flu, an ear infection, etc.) the employer has a number of options, including but not limited to, a positive test for influenza or the employee obtaining an alternative diagnosis from a medical authority.

In addition, the Virginia Department of Health provides the following guidance:

If the employee DID NOT have close contact with a COVID-19 case or an area with substantial COVID-19 transmission, but does have signs or symptoms and tested negative for SARS-CoV-2, the negative test can be considered as supporting an “alternative diagnosis”, and the person would not be considered suspected to be infected with SARS-CoV-2 virus. The employee must remain out of work until signs and symptoms have resolved and the employee has been fever-free for at least 24 hours without the use of fever-reducing medicine (unless symptoms are due to a known non-infectious cause, such as allergies).

NOTE: It is important to remember that a negative test for SARS-CoV-2 only means that the person wasn’t infected at the time the test was taken. If the person is ill one week, tests negative for SARS-CoV-2, and recovers from their illness, only to become ill again soon after, there is always the potential that the repeat illness may be related to COVID. Each illness should be handled as a distinct situation, meaning, the employee should not always be considered to be COVID-19 negative because they tested negative previously.

The Commenter references the issue of return to work.

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NOTE: It is important to remember that a negative test for SARS-CoV-2 only means that the person wasn’t infected at the time the test was taken. If the person is ill one week, tests negative for SARS-CoV-2, and recovers from their illness, only to become ill again soon after, there is always the potential that the repeat illness may be related to COVID. Each illness should be handled as a distinct situation, meaning, the employee should not always be considered to be COVID-19 negative because they tested negative previously.

The Department intends to recommend that the return to work provisions of the standard be updated to reflect current CDC and VDH guidance.

The Commenter raises the issue of quarantine.



The Standard does not address the issue of ""quarantine"". "Quarantine" is separation of people who were in "close contact" with a person with COVID-19 from others. The Standard does address the issue of ""isolation"".

"Isolation" is the separation of people with COVID-19 from others. People in isolation need to stay home and separate themselves from others in the home as much as possible. Requirements for returning to work from isolation is covered by the ETS in 16VAC25-220-40.C. However, please note that in lieu of complying with 16VAC25-220-40.C, employers may comply with recently updated CDC guidelines (see §40 FAQ 18, <https://www.doli.virginia.gov/cononavirus-covid-19-faqs/>).

The Commenter raises the issue of notification requirements between building owners and tenants.

The Standard does not apply to non-business tenants in an apartment building.

The Department does not plan to recommend that the notification requirements to tenants be removed from the Standard. The Department notes that the Standard does not apply to non-business tenants in an apartment building. The intent of the notification requirement is to provide employees information of a "possible" exposure so that employees can make decisions for themselves on the appropriate course of action to take.

The language referenced by the Commenter (physical separation of employees at low-risk businesses by a permanent, solid floor to ceiling wall) is one method described in the Standard for mitigating the spread of SARS-CoV2; however, employers are not required to do so.

The Department intends to recommend a language change to the Standard that makes this clear.

The Commenter raises the issue of serologic testing. The serologic testing language in the Standard is consistent with CDC guidance.

The Commenter requests clarification of the word ""industry"" in reference to applicable standards. OSHA and VOSH standards and regulations fall into the following categories: Construction Industry, Agricultural Industry, Maritime Industry and General Industry (all employers not covered by Construction, Agricultural or Maritime Industry Standards are covered by the General Industry Standards).

The proposed permanent standard has been subject to the following notice and comment procedures. The Virginia Safety and Health Codes Board held a 60 day written comment period for the Proposed Permanent Standard, with the comment period running from August 27, 2020 to September 25, 2020. The Board held a Public Hearing on September 30, 2020. A revised draft of the Proposed Permanent Standard will be published with an additional 30 day comment period prior to any Board action. A public hearing will also be held.

The Department's Briefing Package on the Emergency Temporary Standard with background on the use and limitations of the general duty clause: <https://www.doli.virginia.gov/wp-content/uploads/2020/06/BP-Emergency-Regulation-Under-2.2-4011-SARS-CoV-2-That-Causes-COVID-19-FINAL-6.23.2020.pdf>

10009 Melina Davis Medical Society of Virginia 9.22.2020 <https://www.doli.virginia.gov/wp-content/uploads/2020/09/Medical-Society-of-Virginia-Public-Comments-to-the-Proposed-Permanent-Standard-9.23.2020.pdf>

SEE MS. DAVIS'S COMMENT 85449

SEE DEPARTMENT RESPONSE TO COMMENT 85549

10010 Nicole Riley National Federation of Independent Business 9.25.2020  
<https://www.doli.virginia.gov/wp-content/uploads/2020/09/NFIB-Public-Comments-Proposed-Permanent-Standard-9.25.2020.pdf>

SEE MS. RILEY'S COMMENT 86226

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SEE DEPARTMENT RESPONSE TO COMMENT 86226

10011 Vanessa Patterson Precast Concrete Association of Virginia 9.25.2020  
<https://www.doli.virginia.gov/wp-content/uploads/2020/10/PCAV-Comments-Permanent-Standard-for-Infectious-Disease-Prevention-SARS-CoV-2-Virus.pdf>

SEE MS. PATTERSON'S COMMENT 863359

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SEE DEPARTMENT RESPONSE TO COMMENT 863359

10012 Vanessa Patterson Richmond Area Municipal Contractors Association 9.25.2020  
<https://www.doli.virginia.gov/wp-content/uploads/2020/10/Richmond-Area-Municipal-Contractors-Association-Public-Comments-Permanent-Standard-9.25.2020.pdf>

SEE MS. PATTERSON'S COMMENT 86348

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SEE DEPARTMENT'S RESPONSE TO COMMENT 86348

10013 Robert C. Scott Committee on Education and Labor 9.25.2020  
<https://www.doli.virginia.gov/wp-content/uploads/2020/09/Committee-on-Education-and-Labor-VA-Permanent-Standard-Comments-9.25.2020.pdf>

SEE REPRESENTATIVE SCOTT'S COMMENT 86380

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SEE DEPARTMENT RESPONSE TO COMMENT 86380

10014 David Broder SEUI VA 512 9.25.2020 <https://www.doli.virginia.gov/wp-content/uploads/2020/09/SEIU-VA-512-Public-Comment-DOLI-Prop-Perm-Standards-for-COVID-9.25.2020.pdf>

SEE MR. BRODER'S COMMENT 86327

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SEE DEPARTMENT'S RESPONSE TO COMMENT 86327

10015 Donald Hall Virginia Automobile Dealers Association 9.25.2020  
<https://www.doli.virginia.gov/wp-content/uploads/2020/09/Virginia-Automobile-Dealers-Association-Public-Comments-9.25.2020.pdf>

Re: 16VAC25-220, Proposed Permanent Standard, Infectious Disease Prevention: SARS-CoV-2 Virus That Causes COVID-19, July 24, 2020.

The Virginia Automobile Dealers Association (VADA) represents more than 450 franchised new car and truck dealers in the Commonwealth which employ over 60,000 Virginians. Throughout this pandemic, our members have steered their businesses through challenging times. Virginia's new car dealers, through their service departments, have ensured Virginians have had safe and well-functioning vehicles to access food, healthcare, and other necessities of life. Dealers have also continued to sell vehicles to Virginians who need them in this vital time. Indeed, the pandemic has provided a reminder that, even in times of crisis, franchised auto dealers serve their communities as drivers of the economy, providers of necessary transportation, and sources of familiarity. Like all Virginia employers, our dealers members have operated during this pandemic with great consideration for Emergency Temporary Standard (ETS) for Infectious Disease Prevention: SARS-CoV-2 Virus That Causes COVID-19, in addition to all other state and federal directives and recommendations. Dealers have adjusted business practices to provide healthy and safe environments for customers and employees, while complying with the myriad regulations and obligations put on them since March.

As the Safety and Health Codes Board considers a permanent standard, we ask that the draft regulation be amended to clarify that the regulation will only remain in effect during the current health emergency. As written, the draft permanent standard would apply to businesses indefinitely.

Along with the rest of the Commonwealth and the country, we follow the reports of treatments and vaccines and are optimistic that COVID-19 will no longer be a public health threat that requires comprehensive and extensive measures to combat it, including the regulations in the proposed permanent standard. At the point that the public health threat is ameliorated, the permanent standard should no longer remain in effect. We appreciate your time and attention to this important matter. Thank you.

SEE DEPARTMENT RESPONSE TO COMMENT 84956

The Department notes that one of its Frequently Asked Questions (FAQ) addresses the issue of automotive dealers and repair shops and provides the following information from §10 FAQ 14:

14. What exposure risk classifications apply at automotive sales and repair businesses?

To determine appropriate protections for employees from the SARS-CoV-2 virus under the ETS, employers must first "assess their workplace for hazards and job tasks that can potentially expose employees to the

SARS-CoV-2 virus or COVID-19 disease. Employers shall classify each job task according to the hazards employees are potentially exposed to and ensure compliance with the applicable sections of this standard for very high, high, medium, or lower risk levels of exposure. Tasks that are similar in nature and expose employees to the same hazard may be grouped for classification purposes.” 16VAC25-220-40.B.1. (Emphasis added).

Definitions for very high, high, medium, or lower risk levels of exposure can be found in 16VAC25-220-10.

NOTE: Employees classified as lower risk “do not require contact inside six feet with persons known to be, or suspected of being, or who may be infected with SARS-CoV-2. Employees in this category have minimal occupational contact with other employees, other persons, or the general public, such as in an office building setting; or are able to achieve minimal occupational contact through the implementation of engineering, administrative and work practice controls.... 16VAC25-220-10. (Emphasis added).

In addition, (for lower risk classifications) “Employee use of face coverings for contact inside six feet of coworkers, customers, or other persons is not an acceptable administrative or work practice control to achieve minimal occupational contact. However, when it is necessary for an employee to have brief contact with others inside the six feet distance a face covering is required.” 16VAC25-220-10. (Emphasis added).

You discussed in your letter that:

- The natural layout of our locations lends our work spaces to be more than six feet of social (physical) distancing.
- Our service bays are spaced farther apart than six feet, and because of this, our employees performing their required duties are not in contact with other employees or customers.
- These businesses are offering numerous options so their customers have minimal to no contact with the employees of the store.
- Concierge pickup and delivery services of the vehicle, after hour exterior key drop services, complimentary
- Uber rides home or to work, phone payments and more insure a safe experience for our member’s customers with little or no contact.
- In addition, our member store employees wear face coverings and gloves, and exterior surfaces are continuously cleaned and sanitized.
- The customer’s vehicle is sanitized before being returned.

If your member’s employees are able to maintain physical distancing of 6 feet from other persons (employees, customers, etc.) at all times, than it is appropriate for their job tasks to be classified as “lower risk.”

As noted above, the definition for “lower risk” also provides that “when it is necessary for an employee to have brief contact with others inside the six feet distance a face covering is required”, and still allows the job tasks to remain classified as “lower risk.”

The main situation VOSH can envision that might cause some difficulties in risk classification, would be for those job tasks, if any, where employees are required to work inside six feet with each other for more than “brief” contact (e.g. encountering another person in a hallway that does not allow for physical distancing of 6 feet). If such job tasks exist, then that would result in those job tasks being classified as “medium” risk, which

would mean additional requirements in the ETS would apply. This type of determination will have to be made on a case by case basis by your members based on the definitions in the ETS.

VOSH would also take this opportunity to note your members' ongoing obligation to comply with other existing VOSH standards and regulations such as those for personal protective equipment, respiratory protection equipment, hazard communication, etc., which are not impacted by the ETS for lower risk classifications, but do protect against other workplace hazards (hearing loss, chemical hazards, welding hazards, etc.).

At its core the ETS is a risk management system to prevent or limit the spread in the workplace of the SARS-CoV-2 virus. It provides certain mandatory requirements for all employers and additional requirements commensurate with increased levels of risks associated with certain workplace hazards and job tasks. The ETS also provides employers with a level of flexibility to achieve compliance and incentivizes employers to establish mitigation strategies that will eliminate or substantially decrease employee exposure to the virus.

While the ETS provides specific additional requirements for very high, high and medium risk work environments centered around mitigation of hazards and redesign of job tasks, it is also designed to incentivize employers to make changes that will allow job tasks to be reclassified to lower risk. Any actions that your members can take in redesigning work that will enable them to reclassify a medium risk job task to lower risk will both reduce the likelihood of employees spreading the virus as well as the regulatory burden on your member's company.

VOSH encourages you to suggest your members consider working with our Consultation Program for small employers (up to 250 employees at one site or 500 nationwide) which is available to provide free, confidential consultation and training services. The program also has 3 consultants that are available as demand allows to work with large employers.

<https://www.doli.virginia.gov/vosh-programs/consultation/>

FAQs can be found at: <https://www.doli.virginia.gov/cononavirus-covid-19-faqs/>

10016 Steve Akridge Virginia Automotive Association 9.22.2020

<https://www.doli.virginia.gov/wp-content/uploads/2020/09/Virginia-Automotive-Association-Public-Comment-to-Proposed-Permanent-Standard-09.22-2020.pdf>

Regarding the DOLI Board consideration of adopting permanent standards for COVID-19, our organization opposes such, and encourages you to not make the ETS permanent. Our members are all small business owners, and their employees and customers are the life blood of their businesses.

Thus, they are committed to keeping their work environment safe for both employees and customers. As I had mentioned to you in previous communications, the very nature of our building layout in this industry, naturally gives social distancing for employees. In addition, most offer numerous methods to achieve contactless service, so customers can get necessary repairs to keep their vehicles safe while minimizing their interaction with the shop.

No one is expecting this pandemic to last forever, and thus business owners should not be forced to comply with these regulations on a permanent basis. Many of the provisions of ETS are not consistent with federal guidelines, and are a challenge for our members' small businesses. Our owners are doing everything they can to survive, keep their employees employed, and maintain a safe work environment. We respectfully request

you not make the ETS regulations permanent, and ask you sunset these when the Governor's state of emergency ends. Thank you for your consideration.

Sincerely

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SEE DEPARTMENT'S RESPONSE TO COMMENT 86488

10017 Philip Boykin Virginia Beer Wholesalers Association 9.15.2020

<https://www.doli.virginia.gov/wp-content/uploads/2020/09/Virginia-Beer-Wholsalers-Association-9.15.2020-Comment-to-Permanent-Standard.pdf>

Re: Comment on 16 VAC 25-220, Permanent Standard for Infectious Disease Prevention: SARS-CoV-2 Virus That Causes COVID-19

On behalf of the Virginia Beer Wholesalers Association (VBWA) , I provide the following comment on 16 VAC 25-220, the permanent standard for COVID-19 prevention and mitigation in the workplace. Since the beginning of the public health emergency period in March, Virginia beer distributors have adopted extensive safety measures to prevent the spread of the SARS-CoV-2 virus and ensure the safe delivery of beer. After the Emergency Temporary Standard became effective in July, beer distributors have continued to enhance those measures and work hard to ensure compliance with the standard. We appreciate the diligence put in by the Safety and Health Codes Board thus far, but we have concerns with the draft permanent standard and the potential burden it could put on businesses beyond the emergency period. As such, we respectfully request that the Board clarify the applicability of the permanent standard so that it is only in effect during a declared public health emergency related to COVID-19.

The permanent standard, as currently written, will apply to businesses indefinitely, including at such a foreseeable time at which COVID-19 is no longer an emergent public health threat. That means 5 years from now when most people have been immunized and effective treatments have been developed, businesses will still be required to comply with the strict requirements in this standard.

Public health experts largely agree that the SARS-CoV-2 virus will never fully disappear.

However, like the seasonal flu and other viruses, more effective treatments and vaccines will eventually become common so as to remove the emergent and critical nature of the public health threat. Accordingly, it is foreseeable that current prevention measures like face coverings, crowd limitations, and social distancing will no longer be necessary at such a time.

We understand that such a time might not occur for another year or more and therefore appreciate the need for a permanent standard to be in place. However, there should be effectuation language included to the effect that specifically limits application of these measures to a period of declared public health emergency due to COVID-19. That way, once the emergency period is over, businesses can operate without the burden of complying with regulations that are no longer necessary to protect public health. And if there is a future outbreak of COVID-19 in Virginia that necessitates a declaration of public health emergency, this regulation could then become effective again.

We respectfully request this effectuation provision be included in the permanent standard to provide clarity and certainty for businesses in the Commonwealth.

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SEE DEPARTMENT RESPONSE TO COMMENT 84956

10018 Nicole Riley, Brett Vassey, Jodi Roth Virginia Business Coalition 9.25.2020

<https://www.doli.virginia.gov/wp-content/uploads/2020/09/Virginia-Business-Coalition-Public-Comments-on-Proposed-Permanent-Standard-9.25.2020-1.pdf>

and

<https://www.doli.virginia.gov/wp-content/uploads/2020/09/Virginia-Manufacturers-Association-VDOLI-COVID-19-Comments-Addendum-9.25.2020.pdf>

RE: Comments of the Virginia Business Coalition

VA Department of Labor and Industry, Safety and Health Codes Board

Permanent Standard for Infectious Disease Prevention: SARS-CoV-2 Virus That Causes COVID-19, 16VAC25-220

Thank you for the opportunity to comment on the Virginia Department of Labor and Industry’s announced intent to Adopt a Permanent Standard for Infectious Disease Prevention: SARS-CoV-2 Virus That Causes COVID-19, 16VAC25-220 (collectively, the “Regulations”).

These comments are provided on behalf of the Virginia Business Coalition (“Coalition”). The Business Coalition represents every sector of Virginia’s economy. The Business Coalition is comprised of the 33 leading business associations across the Commonwealth whose members will be directly affected by the attempt to apply “one size fits all” COVID-19 Regulations to all businesses in the Commonwealth. The Business Coalition is committed to protecting employees, contractors, suppliers, and communities from COVID-19 infection.

Coalition members are regulated under multiple federal and state occupational health and safety programs, and, as a result, participate actively in the development of Regulations and the implementation of related safety programs. As the delegated occupational health and safety agency in Virginia, the Department of Labor and Industry (“DOLI”) is responsible for most, but not all, of those safety programs, and Coalition believes that DOLI’s regulatory activities should be deliberative, transparent, and consistent with Federal guidance. Coalition members are interested in a uniform and coordinated approach to federally delegated health and safety regulations. As such, our members participate in national trade groups, and have worked to develop best management practices and implemented hierarchy of controls to protect their workforce from

COVID-19 infections as proscribed by all Federal regulatory agencies. Coalition Members have also historically addressed and mitigated the potential risks of prior infectious outbreaks, such as H1N1, under existing Federal and State regulation and guidance. Accordingly, the Coalition is uniquely positioned to participate in the public process associated with the development of the Regulations.

#### I. Summation of Business Coalition’s Comments

Virginia businesses need certainty and consistency in any regulatory program. This ensures that the regulated community understands the requirements of the program, and that all parties can work together to satisfy the regulatory requirements.

A. The Virginia Safety and Health Codes Board should not adopt a Permanent Standard. The Coalition asserts that adopting 16VAC25-220 as permanent regulations is overly burdensome, unnecessary, and violates existing law. The science of COVID-19 is continuously being updated. Therefore, the CDC and OSHA guidelines are frequently updated to reflect this. If the ETS were to become permanent, it would continue to require businesses to comply with outdated regulations. Now is not the time to impose a permanent standard. The ETS will not even be fully implemented until September 25 (the due date for these public comments) so businesses have had no time to voice the challenges they've encountered implementing the ETS. Nor has there been an effective evaluation of the ETS by DOLI analyzing how many organizations are out of compliance because of the Administration's failure to notify affected businesses and what impact the Regulations have on small businesses in accordance with the Small Business Regulatory Flexibility Act/Small Business Regulatory Enforcement Fairness Act (SBREFA).

B. If the Board believes it should move forward with a Permanent Standard, it must include these important provisions:

(1) The sunset clause from the ETS into the Permanent Standard so the Regulations will expire with the Governor's State of Emergency

(2) The specific changes businesses recommend ensuring the implementation and enforcement of the standard is reasonable, fair, and attainable. Here are several priorities of the Coalition and you can review all 35 recommendations in Section IV – Regulations Complaint (page 7-12 of this letter)

- Amend § 10G to the agency's original language with clarification on providing "safe harbor" for employers who follow CDC and OSHA guidance. It is unclear who determines which version of CDC guidance an employer may reference for purposes of compliance.
- Eliminate requirements for physical separation of employees at low and medium risk businesses by a permanent, solid floor to ceiling wall. Higher risk businesses have more flexibility to use smaller temporary barriers like Plexiglas sneeze guards.
- Eliminate all human resource policies from the Regulations such sick leave, telework, flexible worksites, flexible work hours, flexible meeting and travel, the delivery of services or the delivery of products. These policies exceed the Board's authority as it relates to workplace hazards.
- Amend common space sanitation requirements. Requiring common spaces to be cleaned and disinfected at the end of each "shift" is impractical for 24/7 operations with multiple and overlapping shifts. The Regulations should be amended to provide for a time-based alternative such as every 8, 12, or 24 hours exempting FDA regulated facilities.
- Eliminate HVAC requirements for medium risk businesses (16VAC25-220-60(B)). Requiring retroactive compliance with a 2019 ASHRAE HVAC standard is premature at best. Any permanent regulations should follow existing processes contained in the Virginia Uniform Statewide Building Code (USBC) which utilize appropriate industry investigation and recommendations.
- Eliminate the requirement that medium risk employers should complete a COVID-19 infections disease preparedness and response plan. This mandate is overly burdensome and not necessary at this risk level.
- Increase the amount of time employers must train their employees. The current timetable is unachievable. The ETS should be amended to provide employers another sixty (60) days to comply.



- Eliminate language protecting employees who report to news media or social media (16VAC25-220-90). Whistleblower protection is intended to protect employee complaints to the responsible government regulatory agency.
- Revise requirements related to transportation of employees who travel in the same vehicle. This standard is impractical and vague.

C. Further, the Coalition requests the Virginia Safety and Health Codes Board issue an additional sixty (60) day comment period on 16VAC25-220 requesting that employers provide recommended improvements to the Emergency Temporary Standard for consideration by the Board.

D. The Coalition strongly asks the Board not to approve any amendments to the Regulations that would incorporate other infectious diseases. There is no one-size-fits all plan to combat a wide variety of infectious illnesses.

II. Federal Complaint: USDOL and US Court of Appeals for the District of Columbia Circuit Have Already Provided Direction.

On April 28, 2020, AFL-CIO President, Richard Trumka, petitioned US Secretary of Labor Eugene Scalia to adopt a Department of Occupational Safety and Health Administration (OSHA) emergency temporary standard for COVID-19.

On April 30, 2020, US Secretary of Labor Eugene Scalia rejected the AFL-CIO petition from April 28, 2020, and stated, “Coronavirus is a hazard in the workplace. But it is not unique to the workplace or (except for certain industries, like health care) caused by work tasks themselves.

This by no means lessens the need for employers to address the virus. But it means that the virus cannot be viewed in the same way as other workplace hazards.” Secretary Scalia went on to say that, “...the contents of the rule detailed in your letter add nothing to what is already known and recognized (and in many instances required by the general duty clause itself). Compared to that proposed rule, OSHA's industry-specific guidance is far more informative for workers and companies about the steps to be taken in their particular workplaces. That is one of the reasons

OSHA has considered tailored guidance to be more valuable than the rule you describe” (see Addendum).

On May 18, 2020, the American Federation of Labor and Congress of Industrial Organizations (“AFL-CIO”) petitioned this Court to issue a writ of mandamus under the All Writs Act, 28 U.S.C. § 1651(a), compelling Respondent Occupational Safety and Health Administration,

United States Department of Labor (“OSHA”) to issue—within thirty (30) days of this Court’s grant of the writ—an Emergency Temporary Standard for Infectious Diseases (“ETS”) aimed at protecting workers from COVID-19i.

On May 19, 2020, OSHA issued an “Updated Interim Enforcement Response Plan for Coronavirus Disease 2019 (COVID-19)” that provided instructions and guidance to Area Offices and compliance safety and health officers (CSHOs) for handling COVID-19-related complaints, referrals, and severe illness reports (see Addendum).

On May 29, 2020, the Chamber of Commerce of the United States, The National Federation of Independent Business, Restaurant Law Center, The Air Conditioning Contractors of America, Independent Electrical Contractors, The National Fisheries Institute, and National Association of Home Builders filed a brief of amici

curiae in support of respondent occupational safety and health administration and denial of the emergency petition ii.

On June 11, 2020, the US Court of Appeals for the District of Columbia Circuit denied the AFL-CIO May 18 petition iii.

### III. State Complaint: Emergency Temporary Standard (ETS) Cannot be Adopted as Regulation.

The Coalition is aware that the ETS originated on April 23, 2020 from a petition and model language provided by the Legal Aid Justice Center, Virginia Organizing, and Community Solidarity with the Poultry Workers to Governor Northam, Commissioner Oliver, Attorney General Herring, Commissioner Davenport, and Director Graham. On June 12, 2020, the

Administration posted the ETS for ten (10) calendar days or six (6) workdays for public comment and then barred public testimony before the Board during its multiple hearings over four weeks.

The Board also violated its own bylaws on several occasions including allowing representatives of the DEQ Director and Virginia Health Commissioner to both vote, not posting agenda properly, not providing public notice properly, and barring public testimony at hearings. The result was an ETS with significant problems that cannot become permanent Regulations.

Virginia businesses need certainty and consistency in any regulatory program. This ensures that the regulated community understands the requirements of the program, and that all parties can work together to satisfy the regulatory requirements. The Coalition asserts that the Administration did not comply with the Virginia Administrative Process Act (VAPA)

requirements for the adoption of the ETS or the proposed permanent Regulations, nor has there been an effective evaluation of the ETS including but not limited to an analysis of how many organizations are out of compliance because of the Administration's failure to notify affected businesses.

Title 44, as the original source of emergency authority, speaks to the Governor's powers related to communicable diseases (such as COVID-19). Specifically, Va. Code § 44-146.17 (1) permits the Governor to ""address exceptional circumstances that exist relating to an order of quarantine or an order of isolation ... for an affected area of the Commonwealth pursuant to ... Va. Code§ 32.1-48.05, et seq."" To date, no such orders of quarantine or isolation under Title 32.1 have been issued. It is our assertion that when there are no orders of quarantine or isolation, the Governor cannot create his own regulatory structure - un-tethered to the Code and ungoverned by the Virginia Administrative Process Act (VAPA).

The Governor specifically directed the DOLI to issue regulations with the parameters set by the Governor instead of those -set out in law. He demanded that such rules be done in an emergency fashion outside ordinary procedures under VAPA. In demanding these ""Emergency Temporary Standard"" (ETS) regulations that govern every employer in Virginia, they must necessarily claim that every employment context in Virginia poses a ""grave danger"" and that all such mandates are supported by ""substantial evidence"" and are ""necessary"" to adequately address the public health threat. The Board not only acquiesced to the Governor's demand, but it went even further by incorporating the Governor's current (and constantly changing) Executive Orders (and any subsequent Executive Orders) into their rules to which all Virginia employers are now subject. The Coalition objects to including any reference to compliance with the Governor's Executive Orders in the ETS or the Regulations (see § 16VAC25-220-10 & 40).

The Coalition also asserts that the Board ignored language that limits what constitutes an emergency for purposes of a rule under that chapter. An ""Emergency"" is defined as: any occurrence, or threat thereof,

whether natural or manmade, which results or may result in substantial injury or harm to the population ... and may involve governmental

action beyond that authorized or contemplated by existing law because governmental inaction for the period required to amend the law to meet the exigency would work immediate and irrevocable harm upon the citizens or the environment of the Commonwealth or some clearly defined portion or portions thereof Va. Code§ 44-146.16 (emphasis added). Thus, for purposes of the emergency authority, ""emergency"" is a period of time during which the Chief Executive must act because there is not time to ""amend the law"" through legislative means. This is a legislative restriction consistent, in part, with concerns over Separation of Powers. See also *Wisconsin Legislature v. Palm*, 2020 Wisc. LEXIS 121 (""Constitutional law has generally permitted the Governor to respond to emergencies without the need for legislative approval ... But the Governor 's emergency powers are premised on the inability to gain legislative approval given the nature of the emergency."").

In regard to COVID-19, the state of emergency was declared on March 12, 2020 – the same day that the Virginia State Legislature adjourned its regular session but the Governor could have issued a contemporaneous request for the legislature to remain in session to address this emergency. Further, the Governor convened a Special Session of the Virginia General Assembly on August 18 and they are still in session. Yet, the Governor has not sought legislative authorization to implement either the ETS or permanent Regulations. In fact, the text of the final ETS (Regulations) does not itself contain findings that the all the major components of the final ETS are necessary to meet a ""grave danger."" The issue is not whether any ETS (Regulations) is necessary to meet the ""grave danger"" standard but whether all of the substantial elements of the ETS as applied across the scope of every employer in Virginia is necessary under the procedures of Va. Code§ 40.1-22(6a). Therefore, logically, the Board cannot justify how it can simultaneously designate parties to be a ""low"" or ""medium"" risk while still regulating those same parties on the basis that they face ""grave danger."" As of September 23, 2020, the Virginia Department of Health (VDH) reported the following COVID-19 statistics iv:

- 135,626 confirmed positive cases;
- 2,882 fatalities;
- 17,038 hospitalized and discharged patients;
- 21% use of available hospital ventilators;
- 52% ICU & ICU surge bed occupancy; and
- 0 hospitals with PPE problems.

However, VDH has not reported how many of the positive cases, hospitalizations or fatalities have occurred from workplace exposure and the specific type of workplaces where people were infected (e.g., ""Low"" or ""Medium"" vs. ""High"" or ""Very High"" risk). VDH also reported that 79% of all deaths (2,269) were among patients over 70 years old and 54% of all confirmed deaths were among patients in long term care facilities and correctional facilities. These data alone require the Board to revisit its ""grave danger"" determination for all workplaces. DOLI is proposing a wholly new regulatory and enforcement program that, based on the Regulations, will impact every business in the Commonwealth. The public participation and stakeholder involvement procedures outlined in the VAPA are designed to ensure that the impacts of a proposal such as this are fully understood. However, the ETS will not even be fully implemented until September 25 (the due date for these public comments) and DOLI has not assessed the impact of the Regulations on businesses as

should be assessed in accordance with the Small Business Regulatory Flexibility Act/Small Business Regulatory Enforcement Fairness Act (SBREFA). The practical matter of fact is that employers have still not complied with 16VAC25-220 largely because the Commonwealth took no responsibility to notify employers with 11+ employees of the ETS compliance requirements and deadlines.

The Regulations also confuse guidance and regulations. Guidance is not Regulation. Codifying guidance as regulation bypasses public scrutiny. If any agency or Executive can simply change Regulations by issuing guidance, then the statutory basis for VOSH regulation will cease to exist as will public notice and comment.

The Coalition asserts that the general duty requirements of Va. Code§ 40.1-51.1 (a) of the Code of Virginia apply to all employers covered by the Virginia State Plan for Occupational Safety and Health. Under this provision "" ... it shall be the duty of every employer to furnish to each of his employees safe employment and a place of employment that is free from recognized hazards that are causing or are likely to cause death or serious physical harm to his employees .. "" Accordingly, the baseline for understanding what is ""necessary"" to address a ""grave danger"" should be viewed against the baseline that employers already have legal obligations relating to COVID19. The "General Duty Clause," along with CDC, FEMA, OSHA guidance and employer innovation, is adequate to protect workers as is proven by 49 other states.

#### IV. Regulations Complaint:

In addition to the fairness, transparency and regulatory process concerns expressed, and actions already taken by OSHA, the US Court of Appeals for the District of Columbia Circuit, and the VA Safety and Health Codes Board, the COALITION has identified the following specific concerns about the proposed Regulations (and their underlying ETS).

1. The text of the Regulations does not itself contain findings that the all the major components of the final ETS are necessary to meet a ""grave danger."" The issue is not whether any ETS is necessary to meet the ""grave danger"" standard but whether all of the substantial elements of this proposed Regulation as applied across the scope of every employer in Virginia is necessary under the procedures of Va. Code§ 40.1-22(6a).

2. The engineering controls proposed in the Emergency Temporary Standard (ETS) from Virginia's Department of Labor and Industry, effective July 27, 2020, stipulate compliance with the 2019 version of ASHRAE Standard 62.1 and 62.2, Ventilation for Acceptable Indoor Air Quality. These engineering controls represent an overreach of the regulatory process since it is impractical for Owners of existing buildings, absent of any pending major renovations, to comply with standards that precede the time when the facilities were designed and constructed. Building HVAC systems in use have been designed, constructed, and commissioned in accordance with strict building code requirements in effect at the time of issuing the Certificate of Occupancy. The engineering controls in the ETS should only require systems to be maintained and operated in accordance with their system design and related manufacturer requirements as of the date of the Certificate of Occupancy or subsequent upgrade to the system. Although the Department of Labor and Industry utilized the language of the ETS as a basis for the proposed regulation, it is imperative to tailor any permanent regulation for a magnitude and duration commensurate to the risk presented. The COVID-19 pandemic methods of transmission are not fully understood, yet regulations are being proposed to significantly change large components of buildings to address those methods of transmission.

Requiring retroactive compliance with a 2019 ASHRAE HVAC standard without fully understanding the real risk from the HVAC system on the building occupants for virus dispersion is premature at best. It should be left to the industry trade groups to determine the most effective design and performance requirements for existing and new HVAC systems and any permanent regulations should follow existing processes contained in

the Virginia Uniform Statewide Building Code (USBC) which utilize appropriate industry investigation and recommendations.

3. The hand sanitizer definition is imprecise and should be expanded to more than “60% alcohol” because it will result in hazards for certain pharmaceutical manufacturing operations. Clarifications issued by DOLI in its ETS FAQ document should be incorporated into an amended ETS or Regulations.

4. The Regulations’ employee risk assessment review process conflicts with current OSHA Guidance (Guidance on Preparing Workplace for COVID-19, OSHA 3990-03 2020) since it confuses job tasks with employee job classifications.

5. Requiring that the “...common spaces...[to be] cleaned and disinfected at the end of each shift” is impractical for 24/7 operations with multiple and overlapping shifts. This type of standard does not fit all businesses, specifically those that already have FDA cleaning standards. The ETS should be amended to provide for a time-based alternative such as every

8, 12, or 24 hours, exempt FDA regulated facilities, and any Regulations should reflect the same.

6. The Regulations state under the definition of physical distancing pursuant to § 16VAC25-220-30 that “physical separation of an employee from other employees or persons by a permanent, solid floor to ceiling wall constitutes physical distancing from an employee or other person stationed on the other side of the wall.” Physical separation does not have to be achieved by permanent or floor to ceiling walls. Temporary plexiglass and other hard surface barriers are regularly used to retrofit workstations, counters and cubicles as physical separation “shields” or barriers for employees, particularly when coupled with PPE or face masks. To complicate matters further, § 16VAC25-220-50 (applicable to hazards or job tasks classified as very high or high exposure risk) specifically states that “physical barriers” are “e.g., clear plastic sneeze guards, etc.). How can physical barriers be permanent solid walls for “low” or “medium” risks, but plastic sneeze guards are allowable for “high” or “very high” risks? These references should be removed from the ETS and consideration for Regulations.

7. The Safety and Health Codes Board does not have authority over organizational sick leave policies, telework policies, flexible worksites, flexible work hours, flexible meeting and travel, the delivery of services or the delivery of products. Therefore, its § 16VAC25-220-60 statements regarding such policies exceeds its authority and should be removed from the ETS and consideration for Regulations. Also, if left to the discretion of each VOSH inspector, will failure to satisfy of an inspector constitute a citable offense?

8. The Regulations frequently refer to the standards applicable to the “industry” which is language that may be appropriate for guidance but is too vague to be meaningful and should be removed from the ETS and consideration for Regulations.

9. It is unclear about which version of CDC guidance an employer may reference for purposes of compliance with the Regulations found in 16VAC25-220-10(G) since guidance is changing so rapidly. It is also unclear who determines that the “CDC recommendation provides equivalent or greater protection than provided by this standard.”

10. Requiring “respiratory protection” and “personal protective equipment standards applicable to the employer’s industry” in vehicles with more than 1 person is impractical and vague. Does “vehicle” include golf carts, planes, heavy equipment, boats/barges/ships, trucks, and trains? There are other controls, when used together, that should be considered and the ETS should be amended to reflect so. Why not allow administrative controls (e.g., social distancing) in low-hazard situations, such as two or three employees

riding several rows apart on a large bus or employees seated at a distance in an uncovered vehicle? The Regulations should not incorporate this provision.

11. Requiring “Access to common areas...” to be controlled by “limiting the occupancy of the space, and requirements for physical distancing” is too imprecise. FEMA recommends a calculation of 113 square feet per person. The ETS should be amended to recognize this measurement and Regulations should do the same. There should also be accommodating language inserted in both for “closed or controlled” restroom access to ensure ADA compliance.

12. Regulations should sunset based upon an event not a date.

13. Employers should have more time to update their COVID-19 infectious disease preparedness and response plans. There should also be a threshold for mandating change to a COVID-19 infectious disease preparedness and response plan.

14. All employers should not have to complete a COVID-19 infectious disease preparedness and response plan. This mandate is overly burdensome and “medium” risk facilities should not be regulated at this level.

15. Employers should have more time to train their employees and communicate with their contractors. The current timetable is unachievable. The ETS should be amended to provide employers another sixty (60) days to comply.

16. The definition of “duration and frequency of employee exposure” is too imprecise and inconsistent with CDC guidance. This will also change the definition of “physical distancing” or “social distancing” as well as “occupational exposure.” For example, is the proper duration and frequency 15 minutes of exposure less than 6 feet to another person in an 8-hour shift?

Does the use of face coverings and/or surgical/medical procedure masks and/or respirators extend the allowable duration of exposure?

17. The definition of “technical feasibility” requires the “existence of technical ‘know-how’...” which is an imperceptible standard of knowledge. Further, disqualifying an employer from invoking “technical feasibility” arguments because the employer’s “level of compliance lags significantly behind that of the employer’s industry” assumes a great deal of industry knowledge within DOL and that employers lagging behind their peers choose to do so – every company has different economic realities. This is an unachievable standard and should be removed from the ETS and any consideration for Regulations.

18. The Regulations define “economic feasibility” to mean the employer is financially able. The standard does not ask whether the employer could stay in business or avoid releasing employees to pay for the costs of the Regulations. The ETS and Regulations should be amended as such.

19. “Feasible” cannot be defined as both “technical” and “economic.” Something can be technically feasible but not economically feasible at the same time. This should be referenced against OSHA guidelines and clarified.

20. Is the definition of “Joint Employment Relationship” the same as the USDOL definition? It is unclear and creating a new definition would not be acceptable.

21. The “Known to be infected with SARS-CoV-2 virus” definition establishes an impossible standard because the employer “...knew or with reasonable diligence should have known that the person has tested positive...” and a plaintiff only has to argue that the employer did not employ “reasonable diligence” which is undefined. This appears to be a litigation trap rather than a health and safety standard.

22. The “May be infected with SARS-CoV-2 virus” definition should have the words “or suspected to be infected with SARS-CoV-2 virus...” removed. An employer has no way to determine if someone is “suspected” of COVID-19 exposure.

23. The definition of “Symptomatic” is problematic for three reasons: 1) Data regarding the incubation period is still uncertain. Reports are now being published that suggest 5 days, 11.5 days or 14 days v; 2) The symptoms listed here are not uniformly listed in all CDC, OSHA and VDH guidance documents; and 3) Employers will be sending thousands of employees home due to allergy, cold or regular flu symptoms as well as potentially quarantining them pending two successive negative COVID-19 tests (which are still not readily available).

24. The Regulations would require employers to classify each employee for risk level of exposure. As proposed this review process conflicts with current OSHA Guidance (Guidance on Preparing Workplace for COVID-19, OSHA 3990-03 2020), since it confuses job tasks with employee job classifications. Guidance requires assessing employees by hazards and tasks. Risk assessments should be done by tasks not job titles. This would be a massive burden for employers – imagine individual assessments for an employer with 2,000 employees. Further, OSHA Guidance is predicated on the use of a risk management process to determine appropriate control measures. The draft Regulation deviates to mandate specific control measures in workplace situations, regardless of potential exposures or other mitigating circumstances arising from the required risk assessment process.

25. The Regulations reference employees reporting of symptoms but there is no clear definition of the number or combination of symptoms an individual must have to be deemed symptomatic. That ambiguity, which is equally ambiguous in CDC guidance, is what VOSH could seek to clarify in the ETS.

26. The Return to Work” Regulations referencing “an employer may rely on... a policy that involves consultation with appropriate healthcare professionals concerning when an employee has satisfied the symptoms based strategy requirements...will constitute compliance with the requirements of this subsection” must be clarified because someone with a diagnosed sinus infection or allergic reaction must be allowed to return to work faster than 72 hours plus 10 days if cleared by a physician. Also, the time-based return-to-work rule requiring three days of being symptom-free (following the ten-day period since the onset of symptoms) should be changed to one, making it consistent with the new CDC standard.

27. § 16VAC25-220-40 K.8 requires that employers provide mobile crews with “transportation immediately available to nearby toilet facilities and handwashing facilities...” This mandate has nothing to do with COVID-19 infections and should be removed from the ETS and consideration for Regulations.

28. Is the general contractor or owner exposed to potential citation if the subcontractor violates any of the provisions of the ETS or Regulations without providing this information to the employer? Why is this liability being shifted to the employer? Does this now set a precedent for other regulatory issues?

29. The return-to-work test-based strategy is problematic because of the lack of testing availability. The regulation also requires compliance with symptom-based strategy if a known asymptomatic employee refuses to be tested.

30. The ETS and Regulations require both handwashing facilities and hand sanitizer. CDC and OSHA guidance requires one, but not both, which makes sense given recent hand sanitizer shortages. One or the other, but not necessarily both in all workplaces should be considered for amending the ETS and any consideration for Regulations.

31. The Regulations require a certified hazard assessment for each workplace but provides no timeline for completion. Is a new certified hazard assessment required after every change in guidance? How long do employers have after the Regulations are implemented to certify hazard assessments? How long will it take for employers to get the proper consultants to certify these hazard assessments? Is employer liability increased during this waiting period?

32. § 16VAC25-220-90 provides protection for employee complaints published by the news media and social media. Some employers have policies restricting statements to the press or statements reflecting poorly on their employers. Whistleblower protection is intended to protect employee complaints to the responsible government regulatory agency. The language “or to the public such as through print, online, social, or any other media” should be struck from the ETS and from consideration for Regulations.

33. § 16VAC25-220-80 includes a training mandate for “Heat-related illness prevention...” that has no connection to COVID-19 infection protection.

34. Eliminate the requirement to report positive cases to the Department of Health. Health care providers are already doing this according to inquiries to the Virginia Health Department when asked how to make such reports.

35. Eliminate language protecting employees who refuse to work because they “feel” unsafe. The criteria for protected work refusals are already in the Administrative Regulatory Manual.

36. Strike requirements of owners of buildings and facilities to report COVID cases to employer tenants. It exceeds the intent of OSHA rules to require employers to provide employment and a place of employment that is free of recognized hazards.

#### V. Recommendations.

A. Voluntary Compliance Assistance VOSH should provide online and consultative services for helping employers develop COVID-19 infectious disease preparedness and response plans. VOSH should prepare and maintain a standard curriculum for all employers to use in training employees by risk category

#### VI. Conclusion.

It is unreasonable to apply one-size-fits-all COVID-19 Regulations to all employers and employees. It is also profoundly inappropriate to bypass the formal regulation process altogether by attempting to codify guidance and Executive Orders as a reasonable replacement. Further, it is confusing why the Regulations are being pursued when the

Emergency Temporary Standard has not been fully implemented and has so many significant problems. Therefore, it is the Coalition’s recommendation that the Board reject the Regulations, establish a new sixty (60) day public comment period for a revised ETS or abandon the ETS entirely and rely upon the General Duty Clause and Federal, State, Industry guidance to protect workers as is being effectively done in 49 other states.

Sincerely

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NOTE: THERE CURRENTLY ARE LAWSUITS CHALLENGING THE LEGALITY OF 16VAC25-220 Emergency Temporary Standard (ETS) Infectious Disease Prevention: SARS-CoV-2 Virus That Causes COVID-19 As Adopted by the Safety and Health Codes Board on July 15, 2020. LEGAL ISSUES RAISED BY THE COMMENTER THAT RELATE TO THE ONGOING LITIGATION WILL NOT BE ADDRESSED FOR THAT REASON.



## SEE DEPARTMENT RESPONSE TO COMMENT 84956

The Department does not intend to recommend any change to 16VAC25-220-10.G.1. The Department notes that the Standard provides flexibility to business through 16VAC25-220-10.G.1 which provides that "To the extent that an employer actually complies with a recommendation contained in CDC guidelines, whether mandatory or non-mandatory, to mitigate SARS-CoV-2 virus and COVID-19 disease related hazards or job tasks addressed by this standard, and provided that the CDC recommendation provides equivalent or greater protection than provided by a provision of this standard, the employer's actions shall be considered in compliance with this standard. An employer's actual compliance with a recommendation contained in CDC guidelines, whether mandatory or non-mandatory, to mitigate SARS-COV-2 and COVID19 related hazards or job tasks addressed by this standard shall be considered evidence of good faith in any enforcement proceeding related to this standard." It is the Department's position that similarly situated employees and employers exposed to the same or even more serious hazards or job task should all be provided the same basic level of safety and health protections, which is what the current language in 16VAC25-220-10.G.1 provides for.

The language referenced by the Commenter (physical separation of employees at low-risk businesses by a permanent, solid floor to ceiling wall) is one method described in the Standard for mitigating the spread of SARS-CoV2; however, employers are not required to do so. The Department intends to recommend a language change to the Standard that makes this clear.

The Department does not plan to recommend changes to sick leave provisions in the Standard. The Standard does not require employers to provide sick leave to employees. It does reference the Families First Coronavirus Response Act (FFCRA) at 16VAC25-220-40.B.6:

6. To the extent feasible and permitted by law, including but not limited to the Families First Coronavirus Response Act, employers shall ensure that sick leave policies are flexible and consistent with public health guidance and that employees are aware of these policies.

Further information about the FFCRA and sick leave policies can be found at:  
<https://www.dol.gov/agencies/whd/pandemic/ffcra-employee-paid-leave>

The Department intends to recommend language changes to the business consideration language in 16VAC25-220-70.C.5 to make clear that the language is related to occupational safety and health concerns.

The Department respectfully disagrees with the Commenter's assertion that mitigation strategies (referred to by the Commenter as ""human resource policies"" ) to prevent the spread of SARS-CoV-2 in the workplace exceeds the authority of the Board. The Department intends to recommend some language changes to the provisions referenced by the Commenter.

The Department intends to recommend revisions to 16VAC25-220-40.K.5 which currently provides: ""5. All common spaces, including bathrooms, frequently touched surfaces, and doors, shall at a minimum be cleaned and disinfected at the end of each shift. All shared tools, equipment, workspaces, and vehicles shall be cleaned and disinfected prior to transfer from one employee to another.""

The Department acknowledges the comment and notes that the ASHRAE air handling requirements issue raised by the Commenter is undergoing a legal review.

The Department does not intend to recommend any change to which employers are required to develop and implement an Infectious disease preparedness and response plan under 16VAC25-220-70. The current requirement exempts employers with 10 or fewer employees which eases the burden on the smallest

employers with the most limited resources. The Department notes that a free template for a plan is provided on the Department's website at: <https://www.doli.virginia.gov/covid-19-outreach-education-and-training/>. In addition, the Department strongly encourages Virginia's small business owners to take advantage of free and confidential occupational safety and health onsite and virtual consultation and training services to address COVID-19 compliance issues. More information about the VOSH Consultation Services can be found at: <https://www.doli.virginia.gov/vosh-programs/consultation/>

The Department intends to recommend a language change to the amount of time permitted to train employees under the Standard.

The Department does not intend to recommend any change to 16VAC25-220-90.C as it is the position of the Department that it reflects the current state of case law on the subject.

Pursuant to Va. Code §40.1-51.2:1, employees are protected from discrimination when they engage in activities protected by Title 40.1 of the Code of Virginia ("because the employee has filed a safety or health complaint or has testified or otherwise acted to exercise rights under the safety and health provisions of this title for themselves or others.").

Whether an employee engaged in a "protected activity" under Title 40.1 is very fact specific, but can include occupational safety and health information shared by an employee about their employer on a social media or other public platform in certain situations.

16VAC25-220-90.C provides that:

No person shall discharge or in any way discriminate against an employee who raises a reasonable concern about infection control related to the SARS-CoV-2 virus and COVID-19 disease to the employer, the employer's agent, other employees, a government agency, or to the public such as through print, online, social, or any other media.

If an employee raises an unsubstantiated COVID-19 related claim or makes a false COVID-19 related claim against their employer through print, online, social, or any other media, such an act by an employee would not be considered "reasonable" under the ETS and disciplinary action taken against the employee in accordance with the employer's human resource policies would not be considered "discrimination" under the ETS/ER or Va. Code §40.1-51.2:1.

The Department intends to recommend revisions to 16VAC25-220-40.F, which currently provides: ""F. When multiple employees are occupying a vehicle for work purposes, the employer shall ensure compliance with respiratory protection and personal protective equipment standards applicable to the employer's industry.

SEE DEPARTMENT RESPONSE TO COMMENT 85680

Va. Code §40.1-22(6a) under which the Emergency Temporary Standard (ETS) was adopted does not permit the ETS to be extended beyond 6 months.

The Standard does not cover other infectious diseases like influenza, tuberculosis, etc.

The states of Virginia, Washington, Michigan and Oregon have adopted COVID-19 related workplace safety and health regulations.

The proposed permanent standard has been subject to the following notice and comment procedures. The Virginia Safety and Health Codes Board held a 60 day written comment period for the Proposed Permanent Standard, with the comment period running from August 27, 2020 to September 25, 2020. The Board held a

Public Hearing on September 30, 2020. A revised draft of the Proposed Permanent Standard will be published with an additional 30 day comment period prior to any Board action. A public hearing will also be held.

The Standard does not address the issue of "quarantine". "Quarantine" is separation of people who were in "close contact" with a person with COVID-19 from others. The Standard does address the issue of "isolation".

"Isolation" is the separation of people with COVID-19 from others. People in isolation need to stay home and separate themselves from others in the home as much as possible. Requirements for returning to work from isolation is covered by the ETS in 16VAC25-220-40.C. However, please note that in lieu of complying with 16VAC25-220-40.C, employers may comply with recently updated CDC guidelines (see §40 FAQ 18, <https://www.doli.virginia.gov/cononavirus-covid-19-faqs/>).

The Department notes that in recent years, VOSH has investigated an average of approximately 35 to 40 occupationally related fatalities per year. As of October 30, 2020, VOSH has investigated over 30 employee deaths attributable to COVID-19 alone. The large majority of those cases remain under investigation to determine if they were occupationally related or not, and if occupationally related, whether violations of the Emergency Temporary Standard or mandatory requirements in Governor's Executive Orders should be cited or not.

Review of all COVID-19 related inspections under the Emergency Temporary Standard is conducted centrally by the Department with both a programmatic and legal review prior to a decision to issue or not issue violations/penalties to assure consistent enforcement across the Commonwealth. The Department does not anticipate any significant increase in litigation with regard to the Emergency Temporary Standard or any permanent standard.

The Department acknowledges the comment and notes that the ASHRAE air handling requirements issue raised by the Commenter is undergoing a legal review.

The Department does not intend to recommend any changes to hand sanitizer requirements or to include information from the FAQ on the issue - use of qualifying language such as "where feasible" is sufficient to address the Commenter's concerns.

The Department disagrees that there is any confusion created by use of the term "job tasks" as opposed to "employee job classifications." Employee job classifications are based on the job tasks employees perform.

The Department intends to recommend revisions to 16VAC25-220-40.K.5 which currently provides: "5. All common spaces, including bathrooms, frequently touched surfaces, and doors, shall at a minimum be cleaned and disinfected at the end of each shift. All shared tools, equipment, workspaces, and vehicles shall be cleaned and disinfected prior to transfer from one employee to another."

The language referenced by the Commenter (physical separation of employees at low-risk businesses by a permanent, solid floor to ceiling wall) is one method described in the Standard for mitigating the spread of SARS-CoV2; however, employers are not required to do so. The Department intends to recommend a language change to the Standard that makes this clear.

OSHA and VOSH standards and regulations fall into the following categories: Construction Industry, Agricultural Industry, Maritime Industry and General Industry (all employers not covered by Construction, Agricultural or Maritime Industry Standards are covered by the General Industry Standards).

The Department intends to recommend revisions to 16VAC25-220-40.F, which currently provides: ""F. When multiple employees are occupying a vehicle for work purposes, the employer shall ensure compliance with respiratory protection and personal protective equipment standards applicable to the employer's industry.

The current ""occupancy limit"" language in the Standard provides flexibility for employer to decide how best to mitigate the spread of SARS-CoV-2. While the Commenter's suggestion to incorporate a FEMA recommendation of 113 square feet per person could serve as one method for an employer to determine occupancy limits, it would increase the compliance burden on employers generally and is not recommended by the Department.

The Department does not intend to recommend any change to train employees on the Infectious disease preparedness and response plan under 16VAC25-220-70, currently set at 60 days. The Department does not intend to recommend any change to which employers are required to develop and implement an Infectious disease preparedness and response plan under 16VAC25-220-70. The current requirement exempts employers with 10 or fewer employees which eases the burden on the smallest employers with the most limited resources. The Department notes that a free template for a plan is provided on the Department's website at: <https://www.doli.virginia.gov/covid-19-outreach-education-and-training/>In addition, the Department strongly encourages Virginia's small business owners to take advantage of free and confidential occupational safety and health onsite and virtual consultation and training services to address COVID-19 compliance issues. More information about the VOSH Consultation Services can be found at: <https://www.doli.virginia.gov/vosh-programs/consultation/>

The Department acknowledges the issues raised by the Commenter (training time for employees), and will consider potential language changes in the revised proposed Standard.

The definition of "duration and frequency of employee exposure" is based on longstanding VOSH policy contained in its Field Operations Manual. The Department does not intend to recommend any change to the definition.

The reference in the Standard to ""joint employment"" is meant to reflect OSHA and Virginia case law on the issue.

The reference in the Standard to ""knew or with reasonable diligence should have known"" is based on longstanding OSHA and VOSH case law.

The term ""suspected to be infected with SARS-CoV-2 virus"" is clearly defined in the Standard, so the Department will not recommend that the phrase be removed from the definition of "May be infected with SARS-CoV-2 virus."

The Department intends to recommend changes to the Standard to update references to signs, symptoms and symptomatic.

The language referenced by the Commenter (Requiring employers to determine the risk of each employee instead of basing that on their job tasks) is not accurate. The Standard specifically provides in 16VAC25-220-40.B.1 that "Employers shall assess their workplace for hazards and job tasks that can potentially expose employees to the SARS-CoV-2 virus or COVID-19 disease. Employers shall classify each job task according to the hazards employees are potentially exposed...."

16VAC25-220-40.B.4 of the COVID-19 Emergency Temporary Standard (ETS), provides that "Employers shall develop and implement policies and procedures for employees to report when employees are experiencing symptoms consistent with COVID-19, and no alternative diagnosis has been made (e.g., tested positive for

influenza)....” Such employees are then classified as “Suspected to be infected with SARS-CoV-2 virus” and may not report to the workplace until they have been cleared for return to work in accordance with ETS requirements. In situations where there is the possibility for an alternative diagnosis (such as allergies, the common cold, the flu, an ear infection, etc.) the employer has a number of options, including but not limited to, a positive test for influenza or the employee obtaining an alternative diagnosis from a medical authority.

In addition, the Virginia Department of Health provides the following guidance:

If the employee DID NOT have close contact with a COVID-19 case or an area with substantial COVID-19 transmission, but does have signs or symptoms and tested negative for SARS-CoV-2, the negative test can be considered as supporting an “alternative diagnosis”, and the person would not be considered suspected to be infected with SARS-CoV-2 virus. The employee must remain out of work until signs and symptoms have resolved and the employee has been fever-free for at least 24 hours without the use of fever-reducing medicine (unless symptoms are due to a known non-infectious cause, such as allergies).

NOTE: It is important to remember that a negative test for SARS-CoV-2 only means that the person wasn’t infected at the time the test was taken. If the person is ill one week, tests negative for SARS-CoV-2, and recovers from their illness, only to become ill again soon after, there is always the potential that the repeat illness may be related to COVID. Each illness should be handled as a distinct situation, meaning, the employee should not always be considered to be COVID-19 negative because they tested negative previously.

The issue of the differences between the Standard's return to work requirement and those of the CDC will be addressed in the revised proposed permanent standard. A Frequently Asked Question (FAQ) provided by DOLI addresses the issue as it pertains to the current Emergency Temporary Standard (ETS).

On July 22, 2020, the CDC changed its guidance with regard to symptoms-based strategies from exclusion for 10 days after symptom onset and resolution of fever for at least 3 days to exclusion for 10 days after symptom onset and resolution of fever for at least 24 hours (i.e., the change was from 72 hours to 24 hours). For persons who never develop symptoms (i.e., asymptomatic), isolation and other precautions can be discontinued 10 days after the date of their first positive RT-PCR test for SARS-CoV-2 RNA.

16VAC25-220-10.G.1 provides in part that:

To the extent that an employer actually complies with a recommendation contained in CDC guidelines, whether mandatory or non-mandatory, to mitigate SARS-CoV-2 virus and COVID-19 disease related hazards or job tasks addressed by this standard, and provided that the CDC recommendation provides equivalent or greater protection than provided by a provision of this standard, the employer's actions shall be considered in compliance with this standard.... (Emphasis added).

Employers who comply with the above-referenced change in CDC guidance issued July 22, 2020, will be considered to be providing protection equivalent to protection provided by complying with the requirements in the ETS.

However, nothing in the FAQ shall be construed to prohibit an employer from complying with the symptom-based or time-based strategies for return to work determinations in the ETS. (See §40 FAQ 18, <https://www.doli.virginia.gov/cononavirus-covid-19-faqs/>)

The Department intends to recommend that the return to work provisions of the standard be updated to reflect current CDC and VDH guidance.

The Commenter references language in § 16VAC25-220-40 K.8, which requires that employers provide mobile crews with “transportation immediately available to nearby toilet facilities and handwashing facilities...” This language comes directly from existing OSHA standards and because it concerns sanitation, a core element of the Standard, the Department will not recommend any change to the Standard.

In situations involving multi-employer worksites, the Department has a regulation on the subject multi-employer worksite responsibilities and the multi-employer worksite defense, which can be found at 16VAC25-60-260.F and -260.G. <http://leg1.state.va.us/cgi-bin/legp504.exe?000+reg+16VAC25-60-260>. Additional information can also be found on the topic in the VOSH Field Operations Manual at <https://townhall.virginia.gov/L/ViewGDoc.cfm?gdid=5354>.

The Department does not intend to recommend the removal of hand sanitizers from the Standard. Use of hand sanitizers is well-recognized method to mitigate the spread of SARS-CoV-2. Also see DOLI Frequently Asked Questions §40, FAQ 9 and §40, FAQ 17 at: <https://www.doli.virginia.gov/cononavirus-covid-19-faqs/> Handwashing facilities, which are required in OSHA and VOSH standards and regulations, are not always immediately or readily accessible for employees who need to disinfect their hands without leaving their immediate work area.

16VAC25.60.D.1 provides that ""Employers covered by this section and not otherwise covered by the VOSH Standards for General Industry (16VAC25-90-1910)..."", which means it applies to those employers not in general industry. If an employer has already completed a hazard assessment under 1910.132 that addressed SARS-CoV-2 and COVID-19 related hazards and job tasks, then they do not have to complete another one. It is the Department's position that general industry employers are required to update their pre-COVID-19 PPE hazard assessments. No specific period of time to complete the hazard assessment is included in 1910.132 or the ETS/proposed permanent standard.

The Standard does not apply to non-business tenants in an apartment building.

The Department does not plan to recommend that the notification requirements to tenants be removed from the Standard. The Department notes that the Standard does not apply to non-business tenants in an apartment building. The intent of the notification requirement is to provide employees information of a “possible” exposure so that employees can make decisions for themselves on the appropriate course of action to take.

The Commenter's references to actions or inactions on the part of federal OSHA have no bearing on the actions of the Board. The Board and the VOSH program have clear statutory and regulatory jurisdiction over workplace safety and health issues in the Commonwealth, including the potential for spread of infectious diseases among employees and employers, and when those employees and employers are potentially exposed to other persons who may be carriers of the infectious diseases (patients, customers, independent contractors, etc.).

The Department's Briefing Package on the Emergency Temporary Standard with background an legal justifications can be found at: <https://www.doli.virginia.gov/wp-content/uploads/2020/06/BP-Emergency-Regulation-Under-2.2-4011-SARS-CoV-2-That-Causes-COVID-19-FINAL-6.23.2020.pdf>

The Department's Briefing Package on the Emergency Temporary Standard with background on the use and limitations of the general duty clause: <https://www.doli.virginia.gov/wp-content/uploads/2020/06/BP-Emergency-Regulation-Under-2.2-4011-SARS-CoV-2-That-Causes-COVID-19-FINAL-6.23.2020.pdf>

The Department does not plan to recommend the elimination of reporting requirements to the Department of Health, although it does intend to recommend a change to the trigger number of positive cases.

DOLI and the Virginia Department of Health (VDH) have collaborated on a Notification Portal for employers to report COVID-19 cases in accordance with Emergency Temporary Standard (ETS) Sections 16VAC25-220-40.B.8.d and -40.B.8.e that satisfies COVID-19 reporting requirements for both agencies. The portal went live on September 28, 2020. Here is a link:

<https://www.doli.virginia.gov/report-a-workplace-fatality-or-severe-injury-or-covid-19-case/>

10019 Dean Caven Virginia Cardiovascular Specialists 9.22.2020

<https://www.doli.virginia.gov/wp-content/uploads/2020/09/Virginia-Cardiovascular-Specialists-Public-Comment-to-Proposed-Permanent-Standard-9.24.2020.pdf>

RE: Comments on 16 V AC 25-220, Permanent Standard for Infectious Disease Prevention: SA RS-CoV-2

Virus That Causes COVID-19

On behalf of the Virginia Cardiovascular Specialists (VCS), I am providing the following comments on 16 V AC 25- 220, the permanent standard for COVID-19 prevention and mitigation in the workplace. VCS is a private cardiology and our physicians and staff have been on the front lines fighting the spread of COVID-19 in

Virginia for more than six months. We have implemented extensive measures and follow detailed requirements and guidelines set forth by the Department of Health and Human Services (HHS), Centers for Disease Control and Prevention (CDC), Virginia Department of Health (VDH), and the Virginia Department of Labor and

Industry (DOLI) to prevent, mitigate, and control the spread of COVID-19 in communities across the Commonwealth. We are grateful for the work put in by the Safety and Health Codes Board on the Emergency Temporary Standard, but we have significant concerns with the draft permanent standard as written and the potential burden it could put on our practice, our staff and our ability to provide care to our patients beyond the emergency period.

Accordingly, as it considers the implementation of a permanent standard, we respectfully request that the Safety and Health Codes Board: 1) Eliminate the requirement for employers to report positive SARS CoV-2 test results to VDH; 2) Clarify the return to work requirements regarding the test-based strategy; 3) Clarify the applicability of the permanent standard so that it is only in effect during a declared public health emergency related to COVID-19. First, under the CARES Act, all clinical laboratories and testing providers in Virginia, many of which are physician practices, are required to report the results of any test to detect SARS-CoV-2 to VDH. As such, all positive tests are already being reported to VDH by the testing provider. Requiring an employer to report the test result to VDH in addition to that is duplicative and unnecessarily burdensome. We respectfully request this requirement be removed from the permanent standard. Second, the draft permanent standard's test-based strategy for "Return to Work" is in conflict with recommendations from VDH and CDC. The draft permanent standard requires employers to select either a test-based strategy or a non-test-based strategy for determining whether employees known to be infected with SARS-CoV-2 can return to work. The test-based strategy would require the employee to have obtained two negative test results more than 24 hours apart. The problem is that a person may test positive for the virus for up to 120 days after being infected, even though the person is no longer infectious and the virus contagious after 10-20 days, depending on the severity. Therefore, VDH and CDC recommend that a person who tests positive for

SARS-CoV-2 not be tested again within three months. However, if an employer chooses to use the test-based strategy to determine whether employees can return to work, those employees could be absent from work unnecessarily for up to three months. In such a case, the employee would be forced to take unpaid leave if they do not have enough paid time off to cover the period beyond that which is required under the Families First Coronavirus Response Act and the Family and Medical Leave Act. Although the draft permanent standard would allow employers to select the non-test-based strategy for compliance, the option for a test-based strategy creates confusion for health care providers and employers already under a significant amount of pressure complying with other laws, regulations, and guidelines. Accordingly, we respectfully request the test-based strategy for known SARS-CoV-2 cases be eliminated or clarified in the permanent standard.

Lastly but most importantly, the permanent standard, as currently written, will apply to Virginia businesses indefinitely, including at such a foreseeable time at which COVID-19 is no longer a critical public health emergency. Consequently, health care providers will still be required to comply with the strict requirements in this standard three years from now when most people have been immunized and effective treatments have been developed. The current standards as written would limit patient access to providers by requiring minimal number of patients in the lobby at one time; spacing requirements for staff will be a large burdens on physician offices with limited space and importance of staff team work, and continued cost to ensure all staff remain in

#### PPE

Most public health experts agree that the SARS-CoV-2 virus will never fully disappear. Over time, however, more effective treatments and vaccines will be developed to eliminate effectively the emergent public health threat. Accordingly, it is foreseeable that current prevention measures like those contained in this draft permanent standard will no longer be necessary in that instance.

We understand that such a time might not occur for another year and therefore appreciate the need for the possible extension of the temporary standard to be in place but not a permanent standard. Many business continue to struggle to keep their doors open and imposing stringent standards outside of a declared public health emergency could impose significant hardships. We request that language be included to the effect that specifically limits application of these measures to a period of declared public health emergency due to COVID-19; in this way businesses can operate without the burden of complying with regulations that are no longer necessary to protect public health once the public health emergency is over. And if there is a future outbreak of COVID-19 in Virginia that necessitates a declaration of public health emergency, this regulation could then become effective again.

We respectfully request the above changes to the draft permanent standard to provide clarity and certainty for health care providers and employers in the Commonwealth.

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SEE DEPARTMENT RESPONSE TO COMMENT 84956

The Department does not plan to recommend changes to sick leave provisions in the Standard.

The Standard does not require employers to provide sick leave to employees. It does reference the Families First Coronavirus Response Act (FFCRA) at 16VAC25-220-40.B.6:

6. To the extent feasible and permitted by law, including but not limited to the Families First Coronavirus Response Act, employers shall ensure that sick leave policies are flexible and consistent with public health guidance and that employees are aware of these policies.



Further information about the FFCRA and sick leave policies can be found at:  
<https://www.dol.gov/agencies/whd/pandemic/ffcra-employee-paid-leave>

The issue of the differences between the Standard's return to work requirement and those of the CDC will be addressed in the revised proposed permanent standard. A Frequently Asked Question (FAQ) provided by DOLI addresses the issue as it pertains to the current Emergency Temporary Standard (ETS).

On July 22, 2020, the CDC changed its guidance with regard to symptoms-based strategies from exclusion for 10 days after symptom onset and resolution of fever for at least 3 days to exclusion for 10 days after symptom onset and resolution of fever for at least 24 hours (i.e., the change was from 72 hours to 24 hours). For persons who never develop symptoms (i.e., asymptomatic), isolation and other precautions can be discontinued 10 days after the date of their first positive RT-PCR test for SARS-CoV-2 RNA.

16VAC25-220-10.G.1 provides in part that:

To the extent that an employer actually complies with a recommendation contained in CDC guidelines, whether mandatory or non-mandatory, to mitigate SARS-CoV-2 virus and COVID-19 disease related hazards or job tasks addressed by this standard, and provided that the CDC recommendation provides equivalent or greater protection than provided by a provision of this standard, the employer's actions shall be considered in compliance with this standard.... (Emphasis added).

Employers who comply with the above-referenced change in CDC guidance issued July 22, 2020, will be considered to be providing protection equivalent to protection provided by complying with the requirements in the ETS.

However, nothing in the FAQ shall be construed to prohibit an employer from complying with the symptom-based or time-based strategies for return to work determinations in the ETS. (See §40 FAQ 18, <https://www.doli.virginia.gov/cononavirus-covid-19-faqs/>)

The Department intends to recommend that the return to work provisions of the standard be updated to reflect current CDC and VDH guidance.

10020 Jessica Rossner Virginia Department of Health <https://www.doli.virginia.gov/wp-content/uploads/2020/09/Virginia-Department-of-Health-Public-Comment-9.23.2020.pdf>

SEE MS. ROSSNER'S COMMENTS 85536 AND 85545

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The Department has addressed VDH's comments in its revised draft of the proposed standard.

10021 David Salley Virginia Ear Nose and Throat 9.25.2020 <https://www.doli.virginia.gov/wp-content/uploads/2020/09/Virginia-Ear-Nose-Throat-Public-Comment-to-Proposed-Permanent-Standard-9.25.2020.pdf>

Physicians and physician assistants have been on the front lines fighting the spread of COVID-19 in Virginia for more than six months. Medical practices have implemented extensive measures and follow detailed requirements and guidelines set forth by the Department of Health and Human Services (HHS), Centers for Disease Control and Prevention (CDC), Virginia Department of Health (VDH), and the Virginia Department of

Labor and Industry (DOLI) to prevent, mitigate, and control the spread of COVID-19 in communities across the Commonwealth. We are appreciative of the work put in by the Safety and Health Codes Board on the Emergency Temporary Standard, but we have several concerns with the draft permanent standard as written and the potential burden it could put on MSV members beyond the emergency period.

As the Board considers the implementation of a permanent standard, we respectfully request that the Safety and Health Codes Board:

- 1) The requirement for employers to report positive SARS-CoV-2 test results to VDH be eliminated;
- 2) The return to work requirements regarding the test-based strategy be further clarified; and
- 3) The applicability of the permanent standard be further clarified so that it is only in effect during a declared public health emergency related to COVID-19.

First, under the CARES Act, all clinical laboratories and testing providers in Virginia, many of which are physician practices, are required to report the results of any test to detect SARS-CoV-2 to VDH. As such, all positive tests are already being reported to VDH by the testing provider. Requiring an employer to report the test result to VDH in addition to that is duplicative and unnecessarily burdensome. We respectfully request this requirement be removed from the permanent standard.

Second, the draft permanent standard's test-based strategy for "Return to Work" is in conflict with recommendations from VDH and CDC. The draft permanent standard requires employers to select either a test-based strategy or a non-test-based strategy for determining whether employees known to be infected with SARS-CoV-2 can return to work. The test-based strategy would require the employee to have obtained two negative test results more than 24 hours apart. The problem is that a person may test positive for the virus for up to 120 days after being infected, even though the person is no longer infectious and the virus contagious after 10-20 days, depending on the severity.[1]

Therefore, VDH and CDC recommend that a person who tests positive for SARS-CoV-2 not be tested again within three months. However, if an employer chooses to use the test-based strategy to determine whether employees can return to work, those employees could be absent from work unnecessarily for up to three months. In such a case, the employee would be forced to take unpaid leave if they do not have enough paid time off to cover the period beyond that which is required under the Families First Coronavirus Response Act and the Family and Medical Leave Act. Although the draft permanent standard would allow employers to select the non-test-based strategy for compliance, the option for a test-based strategy creates confusion for health care providers and employers already under a significant amount of pressure complying with other laws, regulations, and guidelines. Accordingly, we respectfully request the test-based strategy for known SARS-CoV-2 cases be eliminated or clarified in the permanent standard.

Lastly, the permanent standard, as currently written, will apply to Virginia businesses indefinitely, including at such a foreseeable time at which COVID-19 is no longer a critical public health emergency. Consequently, health care providers will still be required to comply with the strict requirements in this standard three years from now when most people have been immunized and effective treatments have been developed. Most public health experts agree that the SARS-CoV-2 virus will never fully disappear. Over time, however, more effective treatments and vaccines will be developed to eliminate effectively the emergent public health threat. Accordingly, it is foreseeable that current prevention measures like those contained in this draft permanent standard will no longer be necessary in that instance. We understand that such a time might not occur for another year or more and therefore appreciate the need for a permanent standard to be in place. However, we request that language be included to the effect that specifically limits application of these

measures to a period of declared public health emergency due to COVID-19. That way businesses can operate without the burden of complying with regulations that are no longer necessary to protect public health once the public health emergency is over. And if there is a future outbreak of COVID-19 in Virginia that necessitates a declaration of public health emergency, this regulation could then become effective again.

We respectfully request the above changes to the draft permanent standard to provide clarity and certainty for health care providers and employers in the Commonwealth.

Sincerely,

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SEE DEPARTMENT RESPONSE TO COMMENT 84956

The Department does not plan to recommend the elimination of reporting requirements to the Department of Health, although it does intend to recommend a change to the trigger number of positive cases.

DOLI and the Virginia Department of Health (VDH) have collaborated on a Notification Portal for employers to report COVID-19 cases in accordance with Emergency Temporary Standard (ETS) Sections 16VAC25-220-40.B.8.d and -40.B.8.e that satisfies COVID-19 reporting requirements for both agencies. The portal went live on September 28, 2020. Here is a link:

<https://www.doli.virginia.gov/report-a-workplace-fatality-or-severe-injury-or-covid-19-case/>

The issue of the differences between the Standard's return to work requirement and those of the CDC will be addressed in the revised proposed permanent standard. A Frequently Asked Question (FAQ) provided by DOLI addresses the issue as it pertains to the current Emergency Temporary Standard (ETS).

On July 22, 2020, the CDC changed its guidance with regard to symptoms-based strategies from exclusion for 10 days after symptom onset and resolution of fever for at least 3 days to exclusion for 10 days after symptom onset and resolution of fever for at least 24 hours (i.e., the change was from 72 hours to 24 hours). For persons who never develop symptoms (i.e., asymptomatic), isolation and other precautions can be discontinued 10 days after the date of their first positive RT-PCR test for SARS-CoV-2 RNA.

16VAC25-220-10.G.1 provides in part that:

To the extent that an employer actually complies with a recommendation contained in CDC guidelines, whether mandatory or non-mandatory, to mitigate SARS-CoV-2 virus and COVID-19 disease related hazards or job tasks addressed by this standard, and provided that the CDC recommendation provides equivalent or greater protection than provided by a provision of this standard, the employer's actions shall be considered in compliance with this standard.... (Emphasis added).

Employers who comply with the above-referenced change in CDC guidance issued July 22, 2020, will be considered to be providing protection equivalent to protection provided by complying with the requirements in the ETS.

However, nothing in the FAQ shall be construed to prohibit an employer from complying with the symptom-based or time-based strategies for return to work determinations in the ETS. (See §40 FAQ 18, <https://www.doli.virginia.gov/cononavirus-covid-19-faqs/>)

The Department intends to recommend that the return to work provisions of the standard be updated to reflect current CDC and VDH guidance.

RE: Intent to Adopt a Permanent Standard for Infectious Disease Prevention: SARS-CoV-2 Virus That Causes COVID-19, 16VAC25-220

The Virginia Farm Bureau Federation (VFBF) appreciates the opportunity to comment on the proposed Permanent Standard for COVID for Infectious Disease Prevention: SARS-CoV-2 Virus That Causes COVID-19, 16VAC25-220.

The health and safety of our 35,000 farm family members continues to be our top priority during the ongoing pandemic. We understand and support the need for clear and consistent workplace health protection protocols, however, we remain concerned about the impact many of the provisions of the emergency temporary standards have on the agriculture industry, and farm families, and encourage you to oppose making them a permanent standard. Virginia's farmers and agriculture industry have worked together, and have worked with national affiliates to develop best practices and address the COVID-19 pandemic head on and in a manner that protects our farm families, employees, and consumers of our products. DOLI's proposed permanent standard has been presented in a way that gives us great concern over its feasibility and legality.

Guidance issued by OSHA, CDC, and VDH has been well-considered and provides Virginia farm employers with the flexibility to adapt to evolving knowledge regarding the transmission of the novel coronavirus and effective means and methods to slow or prevent transmission. The industry has already invested millions of dollars and implemented unprecedented safety measures to protect the workforce and maintain the food supply. The different sectors of our industry have followed guidelines from the CDC, U.S. Department of Labor, and the Virginia Department of Agriculture and Consumer Services (VDACS).

In addition to the proposed permanent standard, we oppose any amendment to expand the scope to cover other infectious diseases. The standard, as drafted, contains specific mitigation practices and protocol to the novel coronavirus, as it exists today. Many of those mitigation practices would not prevent the spread of other infectious diseases, let alone the ever-evolving pandemic we are currently grappling with. This is a product of the hasty, and unscientific manner in which the Emergency Temporary Standard was adopted, and reflects the lack of adequate time for public input. We urge the Board not to make the same mistake with a regulation designed to last long into the future, beyond this current pandemic, and Administration.

VFBF appreciates the opportunity to file these comments. It is our hope that the board will oppose extending these standards on a permanent basis, and trust the Board will prevent an environment of overenforcement and not penalize farm operations that have given a good faith effort in following these complicated rules that continue to change on a frequent basis.

Thank you for your consideration of these comments.

Sincerely,"

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SEE DEPARTMENT RESPONSE TO COMMENT 84956

The Standard does not cover other infectious diseases like influenza, tuberculosis, etc.

The proposed permanent standard has been subject to the following notice and comment procedures. The Virginia Safety and Health Codes Board held a 60 day written comment period for the Proposed Permanent Standard, with the comment period running from August 27, 2020 to September 25, 2020. The Board held a Public Hearing on September 30, 2020. A revised draft of the Proposed Permanent Standard will be published with an additional 30 day comment period prior to any Board action. A public hearing will also be held.

10023 Keith Hare Virginia Health Care Association 9.25.2020

<https://www.doli.virginia.gov/wp-content/uploads/2020/09/Virginia-Health-Care-Association-Public-Comment-to-the-Proposed-Permanent-Standard-9.25.2020.pdf>

Subject: Comments on 16 VAC 25-220, Permanent Standard for Infectious Disease Prevention: SARSCoV-2 Virus That Causes COVID-19

On behalf of the Virginia Health Care Association-Virginia Center for Assisted Living (VHCA-VCAL), I provide the following comments on 16 VAC 25-220, the permanent standard for COVID-19 prevention and mitigation in the workplace. Fighting the virus and its spread has been the priority for Virginia's nursing facilities and assisted living communities for more than six months and will remain our top priority for the foreseeable future. As such, long term care facilities have implemented extensive measures and follow detailed requirements and guidelines set forth by the Centers for Medicare and

Medicaid Services (CMS), Centers for Disease Control and Prevention (CDC), Virginia Department of Health (VDH), the Virginia Department of Social Services (DSS), local health departments, and most recently the Virginia Department of Labor and Industry (DOLI) to prevent, mitigate, and control the spread of COVID-19 in long term care facilities. We appreciate the work of the Safety and Health Codes Board thus far, but we have several concerns with the draft permanent standard as written and the potential burden it could put on long term care facilities beyond the emergency period.

Accordingly, VHCA-VCAL respectfully requests that the Board: 1) eliminate the duplicative requirements for employers to report positive SARS-CoV-2 test results to VDH and DOLI; 2) clarify the return to work requirements regarding the test-based strategy; and 3) clarify the applicability of the permanent standard so that it is only in effect during a declared public health emergency related to COVID-19.

#### Reporting Testing Results

Under the CARES Act, all clinical laboratories and testing providers in Virginia, which include long term care facilities, are required to report the results of any test to detect SARS-CoV-2 to VDH. As such, all positive tests are already being reported to VDH by the testing provider. Requiring employers to report test results to VDH and DOLI in addition to the testing provider is duplicative and unnecessarily burdensome. We respectfully request these requirements be stricken from the permanent standard.

#### Return to Work Requirements

There appears to be a conflict in how DOLI and VDH treat testing for SARS-CoV-2. Under its "Return to Work" requirements, the draft permanent standard requires employers to select either a test-based strategy or a non-test-based strategy for determining whether employees known to be infected with

SARS-CoV-2 can return to work. The test-based strategy would require the employee to have obtained two negative test results more than 24 hours apart. This is problematic because the individual may continue to

test positive for the virus for up to 120 days after being infected, even though the individual is no longer infectious and the virus is not contagious after 10-20 days, depending on the severity.[1]

Therefore, VDH and CDC recommend that a person who tests positive for SARS-CoV-2 not be tested again within three months.

However, if a facility chooses to use the test-based strategy under the DOLI standard to determine whether employees can return to work, those employees could be absent from work unnecessarily for up to three months. In such a case, the employee would be forced to take unpaid leave if they do not

[1] Duration of Isolation and Precautions for Adults with COVID-19, Centers for Disease Control and Prevention

(<https://www.cdc.gov/coronavirus/2019-ncov/hcp/durationisolation.html#:~:text=Recovered%20persons%20can%20continue%20to,Recovered%20and%20infectiousness%20i>

s%20unlikely.) have enough paid time off to cover the period beyond that which is required under the Families First Coronavirus Response Act and the Family and Medical Leave Act. Although the draft permanent standard would allow facilities to select the non-test-based strategy for compliance, the option for a test-based strategy creates confusion for facilities already under a significant amount of pressure complying with other laws, regulations, and guidelines. This conflict also has the potential to affect public health policy at the state level if testing providers are then required to report several positive test results for the same individual. As the draft is written currently, VDH could be sent duplicative and unnecessary reports from both the testing provider that reported the positive test result and the employer/facility that is required to report positive cases. This scenario could create supply issues for much-needed testing materials such as nasopharyngeal swabs as well as put a strain on resources at VDH to sift through duplicative data. Accordingly, we respectfully request the test-based strategy for known SARS-CoV-2 cases be eliminated or clarified in the permanent standard.

#### Applicability of the Permanent Standard

Lastly, the permanent standard, as currently written, will apply to Virginia businesses indefinitely, potentially surpassing a foreseeable time at which COVID-19 is no longer a critical public health emergency. Consequently, businesses would still be required to comply with the strict requirements in this standard three years from now when most people may have been immunized and effective treatments have been developed. Most public health experts agree that the SARS-CoV-2 virus will never fully disappear. However, like the seasonal flu and other viruses, more effective treatments and vaccines will be developed such that the virus will no longer be an emergent public health threat. Accordingly, it is foreseeable that current prevention measures like those contained in this draft permanent standard will no longer be necessary at such a time.

We understand that such a time might not occur for another year or more and therefore appreciate the need for a permanent standard to be in place. However, we request that language be included that specifically limits application of these measures to a period of declared public health emergency due to

COVID-19. Once the emergency period is over, businesses can operate without the burden of complying with regulations that are no longer necessary to protect public health. And if there is a future outbreak of COVID-19 in Virginia that necessitates a declaration of public health emergency, this regulation could become effective again.

We respectfully request the above changes to the draft permanent standard to provide clarity and certainty for long term care facilities in the Commonwealth.

Sincerely,

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SEE DEPARTMENT RESPONSE TO COMMENT 10021

10024 Sean Connaughton Virginia Hospital and Health Care Association 9.25.2020  
<https://www.doli.virginia.gov/wp-content/uploads/2020/09/Virginia-Hospital-and-Healthcare-Association-Comment-on-Permanent-Regulations-092520.pdf>

SEE MR. CONNAUGHTON'S COMMENT 86115

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SEE DEPARTMENT RESPONSE TO COMMENT 86115

10025 Brett Vassey Virginia Manufactureres Association 9.25.2020  
<https://www.doli.virginia.gov/wp-content/uploads/2020/09/Virginia-Manufacturers-Association-Public-Comments-on-Proposed-Permanent-Regulation-9.25.2020.pdf>

And

<https://www.doli.virginia.gov/wp-content/uploads/2020/09/Virginia-Manufacturers-Association-VDOLI-COVID-19-Comments-Addendum-9.25.2020.pdf>

RE: Comments of the Virginia Manufacturers Association

VA Department of Labor and Industry, Safety and Health Codes Board Permanent Standard for Infectious Disease Prevention: SARS-CoV-2 Virus That Causes COVID-19, 16VAC25-220

Thank you for the opportunity to comment on the Virginia Department of Labor and Industry's announced intent to Adopt a Permanent Standard for Infectious Disease Prevention: SARS-CoV-2 Virus That Causes COVID-19, 16VAC25-220 (collectively, the "Regulations").

These comments are provided on behalf of the Virginia Manufacturers Association ("VMA"). Virginia's manufacturing sector includes more than 6,750 manufacturing facilities that employ over 230,000 individuals, contribute \$43 billion to the gross state product, and account for

80% of the Commonwealth's goods exports to the global economy. VMA advocates for science-based, practical health and safety regulations. VMA's members will be directly affected by the Regulations, which apply "one size fits all" COVID-19 Regulations across all business sectors in the Commonwealth. VMA members are heavily regulated under multiple federal and state occupational health and safety programs, and, as a result, participate actively in the development of Regulations and the implementation of related safety programs. As the delegated occupational health and safety agency in Virginia, the Department of Labor and Industry ("DOLI") is responsible for most, but not all, of those safety programs, and VMA believes that DOLI's regulatory activities should be deliberative, transparent, and consistent with Federal guidance. VMA members are interested in a uniform and coordinated approach to Federally delegated health and safety

regulations. As such, our members participate in national trade groups, and have worked to develop best management practices and implemented hierarchy of controls to protect their workforce from COVID-19 infections as proscribed by all Federal regulatory agencies. VMA Members have also historically addressed and mitigated the potential risks of prior infectious outbreaks, such as H1N1, under existing Federal and State regulation and guidance. Further, VMA and its Members have taken aggressive action in complying with the VA COVID-19 Emergency Temporary Standard (ETS), 16VAC25-220, including but not limited to establishing its own VA COVID-19 ETS compliance training program. Accordingly, the VMA and VMA members are uniquely positioned to participate in the public process associated with the development of the Regulations.

The VMA and its member companies are committed to protecting employees, contractors, suppliers, and communities from COVID-19 infection. We have led the development of industry best-practices, provided ETS compliance training, instituted a COVID-19 Model Action Plan, implemented COVID-19 pandemic protection training, developed a rapid response decontamination service, assisted with increasing testing sites, maintained a COVID-19 Resource Center, commercialized a PPE Sourcing Center, distributed over 4,000 cloth masks from the U.S.

Department of Health & Human Services to chemical and allied product essential workers, assisted the Virginia Department of Emergency Management (VDEM) increase domestic supplies, donations and production of PPE (including over 100,000 bottles of hand sanitizer, 1,250 Tyvek®

400 hooded coveralls, and a UV-C sanitation cabinet for public health workers), contributed to the Governor's COVID-19 Business Task Force, and implemented the MFG Makes Virginia Safer Pledge.

However, the VMA asserts that adopting 16VAC25-220 as permanent Regulations is overly burdensome, unnecessary, and violates existing law. As such, the VMA requests that the Virginia Safety and Health Codes Board withdraw its "Intent to Adopt a Permanent Standard for

Infectious Disease Prevention: SARS-CoV-2 Virus That Causes COVID-19, 16VAC25-220." The VMA also requests that the Virginia Safety and Health Codes Board issue an additional sixty (60) day public comment period on 16VAC25-220 requesting that employers provide recommended

improvements to the Emergency Temporary Standard (ETS) or abandon the ETS altogether and rely upon the "General Duty Clause" and Federal, State, Industry guidance to protect workers as is being effectively done in 48 other states. Finally, should the Board proceed with Regulations, the Board should not consider any amendments to the Regulations that would incorporate other infectious diseases.

The following comments outline our specific complaints related to the Regulations.

I. Federal Complaint: USDOL and US Court of Appeals for the District of Columbia Circuit Have Already Provided Direction.

On April 28, 2020, AFL-CIO President, Richard Trumka, petitioned US Secretary of Labor Eugene Scalia to adopt a Department of Occupational Safety and Health Administration (OSHA) emergency temporary standard for COVID-19.

On April 30, 2020, US Secretary of Labor Eugene Scalia rejected the AFL-CIO petition from April 28, 2020, and stated, "Coronavirus is a hazard in the workplace. But it is not unique to the workplace or (except for certain industries, like health care) caused by work tasks themselves. This by no means lessens the need for employers to address the virus. But it means that the virus cannot be viewed in the same way as other workplace hazards." Secretary Scalia went on to say that, "...the contents of the rule detailed in your letter add nothing to what is already known and recognized (and in many instances required by the general duty



clause itself). Compared to that proposed rule, OSHA's industry-specific guidance is far more informative for workers and companies about the steps to be taken in their particular workplaces. That is one of the reasons OSHA has considered tailored guidance to be more valuable than the rule you describe" (see

Addendum). On May 18, 2020, the American Federation of Labor and Congress of Industrial Organizations ("AFL-CIO") petitioned this Court to issue a writ of mandamus under the All Writs Act, 28 U.S.C. § 1651(a), compelling Respondent Occupational Safety and Health Administration,

United States Department of Labor ("OSHA") to issue—within thirty (30) days of this Court's grant of the writ—an Emergency Temporary Standard for Infectious Diseases ("ETS") aimed at protecting workers from COVID-19ii .

On May 19, 2020, OSHA issued an "Updated Interim Enforcement Response Plan for Coronavirus Disease 2019 (COVID-19)" that provided instructions and guidance to Area Offices and compliance safety and health officers (CSHOs) for handling COVID-19-related complaints, referrals, and severe illness reports (see Addendum). On May 29, 2020, the Chamber of Commerce of the United States, The National Federation of Independent Business, Restaurant Law Center, The Air Conditioning Contractors of America, Independent Electrical Contractors, The National Fisheries Institute, and National

Association of Home Builders filed a brief of amici curiae in support of respondent occupational safety and health administration and denial of the emergency petition iii. On June 11, 2020, the US Court of Appeals for the District of Columbia Circuit denied the AFL-CIO May 18 petition. iv. State Process & Transparency Complaint: Emergency Temporary Standard (ETS) Cannot be Adopted as Regulation.

The VMA is aware that the ETS originated on April 23, 2020 from a petition and model language provided by the Legal Aid Justice Center, Virginia Organizing, and Community Solidarity with the Poultry Workers to Governor Northam, Commissioner Oliver, Attorney General Herring, Commissioner Davenport, and Director Graham. On June 12, 2020, the Administration posted the ETS for ten (10) calendar days or six (6) workdays for public comment and then barred public testimony before the Board during its multiple hearings over four weeks.

The Board also violated its own bylaws on several occasions including allowing representatives of the DEQ Director and Virginia Health Commissioner to both vote, not posting agenda properly, not providing public notice properly, and barring public testimony at hearings. The result was an

ETS with significant problems that cannot become permanent Regulations.

Virginia businesses need certainty and consistency in any regulatory program. This ensures that the regulated community understands the requirements of the program, and that all parties can work together to satisfy the regulatory requirements. The VMA asserts that the

Administration did not comply with the Virginia Administrative Process Act (VAPA) requirements for the adoption of the ETS or the proposed permanent Regulations (e.g., "The Board shall notify its members of all meetings or public hearings of the Board not less than 30 calendar

days prior to the scheduled date of such meeting or hearing and have a notice to the public regarding the meeting posted on the Department's website"), nor has there been an effective evaluation of the ETS including but not limited to an analysis of how many organizations are out of compliance because of the Administration's failure to notify affected businesses or the economic impact on small businesses. Title 44, as the original source of emergency authority, speaks to the Governor's powers related to communicable diseases (such as COVID-19). Specifically, Va. Code § 44-146.17 (1) permits the Governor to ""address

exceptional circumstances that exist relating to an order of quarantine or an order of isolation ... for an affected area of the Commonwealth pursuant to ... Va. Code§ 32.1-48.05, et seq." To date, no such orders of quarantine or isolation under Title 32.1 have been issued. It is our assertion that when there are no orders of quarantine or isolation, the Governor cannot create his own regulatory structure - untethered to the Code and ungoverned by VAPA.

The Governor specifically directed the DOLI to issue regulations with the parameters set by the Governor instead of those set out in law. He demanded that such rules be done in an emergency fashion outside ordinary procedures under VAPA. In demanding these "Emergency

Temporary Standard" (ETS) regulations that govern every employer in Virginia, they must necessarily claim that every employment context in Virginia poses a "grave danger" and that all such mandates are supported by "substantial evidence" and are "necessary" to adequately address the public health threat. The Board not only acquiesced to the Governor's demand, but it went even further by incorporating the Governor's current (and constantly changing) Executive Orders (and any subsequent Executive Orders) into their rules to which all Virginia employers are now subject. The VMA objects to including any reference to compliance with the Governor's Executive Orders in the ETS or the Regulations (see § 16VAC25-220-10 & 40).

The VMA also asserts that The Board ignored language that limits what constitutes an emergency for purposes of a rule under that chapter. An "Emergency" is defined as: any occurrence, or threat thereof, whether natural or manmade, which results or may result in substantial injury or harm to the population ... and may involve governmental action beyond that authorized or contemplated by existing law because governmental inaction for the period required to amend the law to meet the exigency would work immediate and irrevocable harm upon the citizens or the environment of the (emphasis added).

Thus, for purposes of the emergency authority, "emergency" is a period of time during which the Chief Executive must act because there is not time to "amend the law" through legislative means. This is a legislative restriction consistent, in part, with concerns over Separation of Powers. See also *Wisconsin Legislature v. Palm*, 2020 Wisc. LEXIS 121 ("Constitutional law has generally permitted the Governor to respond to emergencies without the need for legislative approval ... But the Governor 's emergency powers are premised on the inability to gain legislative approval given the nature of the emergency."). In regard to COVID-19, the state of emergency was declared on March 12, 2020 – the same day that the Virginia General Assembly adjourned its regular session but the Governor could have issued a contemporaneous request for the legislature to remain in session to address this emergency. Further, the Governor convened a Special Session of the Virginia General Assembly on August 18 and they are still in session. Yet, the Governor has not sought legislative authorization to implement either the ETS or permanent Regulations. In fact, the text of the final

ETS (Regulations) does not itself contain findings that all the major components of the final ETS are necessary to meet a "grave danger." The issue is not whether any ETS (Regulations) is necessary to meet the "grave danger" standard but whether all of the substantial elements of the

ETS, as applied across the scope of every employer in Virginia, is necessary under the procedures of Va. Code§ 40.1-22(6a). Therefore, logically, the Board cannot justify how it can simultaneously designate parties to be a "low" or "medium" risk while still regulating those same parties on the basis that they face "grave danger."

As of September 23, 2020, the Virginia Department of Health (VDH) reported the following COVID-19 statisticsvi:

- 135,626 confirmed positive cases;
- 2,882 fatalities;
- 17,038 hospitalized and discharged patients;
- 21% use of available hospital ventilators;
- 52% ICU & ICU surge bed occupancy; and
- 0 hospitals with PPE problems.

However, VDH has not reported how many of the positive cases, hospitalizations or fatalities have occurred from workplace exposure and the specific type of workplaces where people were infected (e.g., “Low” or “Medium” vs. “High” or “Very High” risk). VDH also reported that 79% of all deaths (2,269) were among patients over 70 years old and 54% of all confirmed deaths were among patients in long term care facilities and correctional facilities. These data alone require the Board to revisit its “grave danger” determination for all workplaces.

DOLI is proposing a wholly new regulatory and enforcement program that, based on the Regulations, will impact every business in the Commonwealth. The public participation and stakeholder involvement procedures outlined in the VAPA are designed to ensure that the impacts of a proposal such as this are fully understood. However, the ETS will not even be fully implemented until September 25 (the due date for these public comments) and DOLI has not assessed the impact of the Regulations on manufacturers or their supply chain which should be assessed in accordance with the Small Business Regulatory Flexibility Act/Small Business Regulatory Enforcement Fairness Act (SBREFA). The practical matter of fact is that employers have still not complied with 16VAC25-220 largely because the Commonwealth took no responsibility to notify employers with 11+ employees of the ETS compliance requirements and deadlines.

The Regulations also confuse guidance and regulations. Guidance is not Regulation. Codifying guidance as regulation bypasses public scrutiny. If any agency or Executive can simply change Regulations by issuing guidance, then the statutory basis for VOSH regulation will cease to exist as will public notice and comment. Again, the VMA objects to including any reference to compliance with the Governor’s Executive Orders in the ETS or the Regulations (see § 16VAC25-220-10 & 40).

The VMA asserts that the general duty requirements of § 40.1-51.1 (a) of the Code of Virginia apply to all employers covered by the Virginia State Plan for Occupational Safety and Health. Under this provision ""...it shall be the duty of every employer to furnish to each of his

employees safe employment and a place of employment that is free from recognized hazards that are causing or are likely to cause death or serious physical harm to his employees..." Accordingly, the baseline for understanding what is ""necessary"" to address a ""grave danger"" should be viewed against the baseline that employers already have legal obligations relating to COVID-19. The “General Duty Clause,” along with CDC, FEMA, OSHA guidance and employer innovation, is adequate to protect workers in the manufacturing sector and manufacturing supply chain as is proven by 48 other states.

### III. Regulations Complaint:

In addition to the fairness, transparency and regulatory process concerns expressed, and actions already taken by OSHA, the US Court of Appeals for the District of Columbia Circuit, and the VA Safety and Health Codes Board (“Board”), the VMA has identified the following specific concerns about the proposed Regulations (and their underlying ETS).

1. The text of the Regulations does not itself contain findings that all the major components of the final ETS are necessary to meet a ""grave danger."" The issue is not whether any ETS is necessary to meet the ""grave danger"" standard but whether all of the substantial elements of this proposed Regulation as applied across the scope of every employer in Virginia is necessary under the procedures of Va. Code § 40.1-22(6a).

2. Requiring "Low" and "Medium" risk facilities to maintain HVAC systems in accordance with manufacturers' instructions does not address the potential hazard (if any) as it relates to ventilation. Requiring ASHRAE standards 62.1, 62.2 and 170 should be struck entirely from the ETS and consideration for Regulations. In addition, the language does not account for older facilities, as upgrading the ventilation in those facilities may be infeasible. The VMA also asserts that the Safety and Health Codes Board does not have the authority to require such a physical alteration to all business facilities, especially without a Small Business Regulatory Flexibility Act/Small Business Regulatory Enforcement Fairness Act (SBREFA) assessment.

The VMA recommends that the Board adopt the CDC guidelines listed below (where feasible) to adequately address the issue:

- Increase ventilation rates.
- Ensure ventilation systems operate properly and provide acceptable indoor air quality for the current occupancy level for each space.
- Increase outdoor air ventilation, using caution in highly polluted areas. With a lower occupancy level in the building, this increases the effective dilution ventilation per person.
- Disable demand-controlled ventilation (DCV).
- Further open minimum outdoor air dampers (as high as 100%) to reduce or eliminate recirculation. Provide for flexibility to accommodate thermal comfort or humidity needs in cold or hot weather.
- Improve central air filtration to the MERV-13 or the highest compatible with the filter rack, and seal edges of the filter to limit bypass.
- Check filters to ensure they are within service life and appropriately installed.
- Keep systems running longer hours, 24/7 if possible, to enhance air exchanges in the building space.

3. The hand sanitizer definition is imprecise and should be expanded to more than "60% alcohol" because it will result in hazards for certain pharmaceutical manufacturing operations. Clarifications issued by DOLI in its ETS FAQ document should be incorporated into an amended ETS or Regulations.

4. The Regulations' employee risk assessment review process conflicts with current OSHA Guidance (Guidance on Preparing Workplace for COVID-19, OSHA 3990-03 2020) since it confuses job tasks with employee job classifications.

5. Requiring that the "...common spaces... [to be] cleaned and disinfected at the end of each shift" is impractical for 24/7 operations with multiple and overlapping shifts. This type of standard does not fit all businesses, specifically those that already have FDA cleaning standards. The ETS should be amended to provide for a time-based alternative such as every 8, 12, or 24 hours; exempt FDA regulated facilities; and any Regulations should reflect the same.

6. The Regulations state under the definition of physical distancing pursuant to § 16VAC25-220-30 that ""physical separation of an employee from other employees or persons by a permanent, solid floor to ceiling wall constitutes physical distancing from an employee or other person stationed on the other side of the

wall." Physical separation does not have to be achieved by permanent or floor to ceiling walls. Temporary plexiglass and other hard surface barriers are regularly used to retrofit workstations, counters and cubicles as physical separation "shields"

or barriers for employees, particularly when coupled with PPE or face masks. To complicate matters further, § 16VAC25-220-50 (applicable to hazards or job tasks classified as very high or high exposure risk) specifically states that "physical barriers" are "e.g., clear plastic sneeze guards, etc.). How can physical barriers be permanent solid walls for "low" or "medium" risks, but plastic sneeze guards are allowable for "high" or "very high" risks? These references should be removed from the ETS and consideration for Regulations.

7. The Board does not have authority over organizational sick leave policies, flexible worksites, flexible work hours, flexible meeting and travel, teleworking, the delivery of services or the delivery of products. Therefore, its § 16VAC25-220-60 statements regarding such policies exceeds its authority and should be removed from the ETS and consideration for Regulations. Also, if left to the discretion of each VOSH inspector, will failure to satisfy of an inspector constitute a citable offense?

8. The Regulations frequently refer to the standards applicable to the "industry" which is language that may be appropriate for guidance but is too vague to be meaningful and should be removed from the ETS and consideration for Regulations.

9. It is unclear about which version of CDC guidance an employer may reference for purposes of compliance with the Regulations since guidance is changing so rapidly. It is also unclear who determines that the "CDC recommendation provides equivalent or greater protection than provided by this standard."

10. Requiring "respiratory protection" and "personal protective equipment standards applicable to the employer's industry" in vehicles with more than 1 person is impractical and vague. Does "vehicle" include golf carts, planes, heavy equipment, boats/barges/ships, trucks, and trains? There are other controls, when used together, that should be considered and the ETS should be amended to reflect so. Why not allow administrative controls (e.g., social distancing) in low-hazard situations, such as two or three employees riding several rows apart on a large bus or employees seated at a distance in an uncovered vehicle? The Regulations should not incorporate this provision. In addition, the language is inconsistent with CDC guidance for rideshares and other public vehicles. ([https://www.cdc.gov/coronavirus/2019-](https://www.cdc.gov/coronavirus/2019-ncov/daily-life-coping/using-transportation.html)

[ncov/daily-life-coping/using-transportation.html](https://www.cdc.gov/coronavirus/2019-ncov/daily-life-coping/using-transportation.html)) Employers should be allowed only require face coverings while in the vehicle provided the occupants follow CDC guidelines.

11. § 16VAC25-220-40 F & H require "respiratory protection" but "face covering or mask" is effective - especially when in conjunction with other controls such as prescreening and temperature checking. Further, surgical and N95 masks are still not readily available, and imported alternatives have been found to have extensive quality issues. Additionally, N95 masks require fit testing, which is unrealistic for this application. The recommendation is to delete "respiratory protection" and replace it with "face covering or mask" in both sections of the ETS and consideration for Regulations.

12. Requiring "Access to common areas..." to be controlled by "limiting the occupancy of the space, and requirements for physical distancing" is too imprecise. FEMA recommends a calculation of 113 square feet per person. The ETS should be amended to recognize this measurement and Regulations should do the same. There should also be accommodating language inserted in both for "closed or controlled" restroom access to ensure ADA compliance.

13. Regulations should sunset based upon an event not a date.

14. Employers should have more time to update their COVID-19 infectious disease preparedness and response plans. There should also be a threshold for mandating change to a COVID-19 infectious disease preparedness and response plan.
15. All employers should not have to complete a COVID-19 infectious disease preparedness and response plan. This mandate is overly burdensome and “medium” risk facilities should not be regulated at this level.
16. Employers should have more time to train their employees and communicate with their contractors. The current timetable is unachievable. The ETS should be amended to provide employers another sixty (60) days to comply.
17. The definition of “duration and frequency of employee exposure” is too imprecise and inconsistent with CDC guidance. This will also change the definition of “physical distancing” or “social distancing” as well as “occupational exposure.” For example, is the proper duration and frequency 15 minutes of exposure less than 6 feet to another person in an 8-hour shift? Does the use of face coverings and/or surgical/medical procedure masks and/or respirators extend the allowable duration of exposure?
18. The definition of “technical feasibility” requires the “existence of technical ‘know-how’...” which is an imperceptible standard of knowledge. Further, disqualifying an employer from invoking “technical feasibility” arguments because the employer’s “level of compliance lags significantly behind that of the employer’s industry” assumes a great deal of industry knowledge within DOLI and that employers lagging behind their peers choose to do so – every company has different economic realities. This is an unachievable standard and should be removed from the ETS and any consideration for Regulations.
19. The Regulations define “economic feasibility” to mean the employer is financially able. The standard does not ask whether the employer could stay in business or avoid releasing employees to pay for the costs of the Regulations. The ETS and Regulations should be amended as such.
20. “Feasible” cannot be defined as both “technical” and “economic.” Something can be technically feasible but not economically feasible at the same time. This should be referenced against OSHA guidelines and clarified.
21. Is the definition of “Joint Employment Relationship” the same as the USDOL definition? It is unclear and creating a new definition would not be acceptable.
22. The “Known to be infected with SARS-CoV-2 virus” definition establishes an impossible standard because the employer “...knew or with reasonable diligence should have known that the person has tested positive...” and a plaintiff only has to argue that the employer did not employ “reasonable diligence” which is undefined. This appears to be a litigation trap rather than a health and safety standard.
23. The “May be infected with SARS-CoV-2 virus” definition should have the words “or suspected to be infected with SARS-CoV-2 virus...” removed. An employer has no way to determine if someone is “suspected” of COVID-19 exposure.
24. The definition of “Symptomatic” is problematic for three reasons: 1) Data regarding the incubation period is still uncertain. Reports are now being published that suggest 5 days, 11.5 days or 14 days<sup>vii</sup>; 2) The symptoms listed here are not uniformly listed in all CDC, OSHA and VDH guidance documents; and 3) Employers will be sending thousands of employees home due to allergy, cold or regular flu symptoms as well as potentially quarantining them pending two successive negative COVID-19 tests (which are still not readily available).

25. The Regulations reference employees' reporting of symptoms but there is no clear definition of the number or combination of symptoms an individual must have to be deemed symptomatic. That ambiguity, which is equally ambiguous in CDC guidance, is what VOSH could seek to clarify in the ETS.

26. The Regulations would require employers to classify each employee for risk level of exposure. As proposed this review process conflicts with current OSHA Guidance (Guidance on Preparing Workplace for COVID-19, OSHA 3990-03 2020), since it confuses job tasks with employee job classifications. Guidance requires assessing employees by hazards and tasks. Risk assessments should be done by tasks not job titles. This would be a massive burden for employers – imagine individual assessments for an employer with 2,000 employees. Further, OSHA Guidance is predicated on the use of a risk management process to determine appropriate control measures. The draft Regulation deviates to mandate specific control measures in workplace situations, regardless of potential exposures or other mitigating circumstances arising from the required risk assessment process.

27. The return-to-work Regulations referencing “an employer may rely on... a policy that involves consultation with appropriate healthcare professionals concerning when an employee has satisfied the symptoms based strategy requirements...will constitute compliance with the requirements of this subsection” must be clarified because someone with a diagnosed sinus infection or allergic reaction (same symptoms as COVID-19) must be allowed to return to work faster than 72 hours plus 10 days if cleared by a physician. This section of the ETS and any Regulations should align with the new CDC guidelines.

28. The return-to-work test-based strategy is problematic because of the lack of testing availability. The regulation also requires compliance with symptom-based strategy if a known asymptomatic employee refuses to be tested. The test-based strategy does not consider recent national and public health findings that COVID-19 can leave behind residual RNA in people that have otherwise recovered from the virus and are no longer contagious. In other words, a person may test positive long after they have recovered from the virus and are no longer contagious because the test picks up on the residual RNA left behind. We need to defer to the most recent guidance of public health officials and medical providers. Allow employers to defer to public health officials and medical providers when determining return-to-work. The language as written is a serious problem because it memorializes a strategy when the experts are still in the process of learning more about the virus.

29. § 16VAC25-220-40 K.8 requires that employers provide mobile crews with “transportation immediately available to nearby toilet facilities and handwashing facilities...” but has nothing to do with COVID-19 infections and should be removed from the ETS and consideration for

Regulations.

30. Is the general contractor or owner exposed to potential citation if the subcontractor violates any of the provisions of the ETS or Regulations without providing this information to the employer? Why is this liability being shifted to the employer? Does this now set a precedent for other regulatory issues?

31. The ETS and Regulations require both handwashing facilities and hand sanitizer. CDC and OSHA guidance requires one, but not both, which makes sense given recent hand sanitizer shortages. One or the other, but not necessarily both in all workplaces should be amended in the ETS and any consideration for Regulations.

32. The Regulations require a certified hazard assessment for each workplace but provides no timeline for completion. Is a new certified hazard assessment required after every change in guidance? How long do employers have after the Regulations are implemented to certify hazard assessments? How long will it take

for employers to get the proper consultants to certify these hazard assessments? Is employer liability increased during this waiting period?

33. § 16VAC25-220-90 provides protection for employee complaints published by the news media and social media. Some employers have policies restricting statements to the press or statements reflecting poorly on their employers. Whistleblower protection is intended to protect employee complaints to the responsible government regulatory agency. The language “or to the public such as through print, online, social, or any other media” should be struck from the ETS and from consideration for Regulations.

34. There should be no enforcement without prior notice to an employer. The Regulations have no identifiable “due process” for employers involving a “whistleblower,” and no requirement that complaints filed with DOLI require identification of the plaintiff. Anonymous complaints should not be allowed in cases involving these Regulations – disgruntled employees, punitive customers, and unethical competitors could use complaints for destructive purposes. The employer should be afforded due process to defend themselves against accusations of safety violations and this should be included in the ETS and consideration for Regulations.

35. § 16VAC25-220-80 includes a training mandate for “Heat-related illness prevention...” that has no connection to COVID-19 infection protection. In addition, it cannot be a coincidence that the agency issued a Notice of Intended Regulatory Action (NOIRA) on Heat Illness Prevention viii on 4/2/20 and that document has been with the Secretary of Commerce and Trade for 161 days but a heat-related illness prevention training mandate was inserted into the ETS and now the Regulations. This should be removed from the ETS and from consideration for

Regulations.

36. § 16VAC25-220-40 requires employers to notify VDH within 24 hours of the discovery of a positive case. This is a redundant activity, healthcare professionals already notify VDH, and it should be struck from the ETS and consideration for Regulations.

37. § 16VAC25-220-40 requires employers to notify DOLI within 24 hours of the discovery of 3 or more employees “present at the place of employment” within a 14-day period testing positive. This number is arbitrary and is certainly less meaningful the larger the facility. This regulatory requirement is not relevant if VDH is properly managing its contract tracing responsibilities and should be removed from the ETS and consideration for Regulations. Another alternative could be requiring notice only if 3 or more employees are verified to have been infected at work and the incidents are recordable.

38. § 16VAC25-220-40 I states that “nothing in this standard shall require the use of a respirator, surgical/medical procedure mask, or face covering by an employee for whom doing so would be contrary to the employee’s health or safety because of a medical condition...” but there is no accommodation process similar to the ADA identified for employers to follow. This should be incorporated into the ETS and consideration for Regulations.

## V. General Questions Regarding Regulations.

### A. Need for Regulations

Is there a need for the Regulations or simply an enhanced penalty for employers that willfully violate basic COVID-19 safety guidance?

### B. General Duty Clause



VOSH has failed to demonstrate an inability to enforce CDC, OSHA, or other agency COVID-19 safety guidance through the “General Duty Clause.” The general duty requirements of § 40.1-51.1 (a) of the Code of Virginia apply to all employers covered by the Virginia State Plan for Occupational Safety and Health. This code section specifically states that under this provision "" ...it shall be the duty of every employer to furnish to each of his employees safe employment and a place of employment that is free from recognized hazards that are causing or are likely to cause death or serious physical harm to his employees..." So, why does VOSH have difficulty enforcing guidance through the “General Duty Clause” on an employer that willfully violates basic COVID19 safety guidance?

C. Timeline. The Regulations are lacking a clear or reasonable timeline for when employers must be in compliance and how long they have to react to regulatory changes.

VI. Recommendations.

A. Voluntary Compliance Assistance

VOSH should provide online and consultative services for helping employers develop COVID-19 infectious disease preparedness and response plans. VOSH should prepare and maintain a standard curriculum for all employers to use in training employees by risk category.

VII. Conclusion.

It is unreasonable to apply “one size fits all” COVID-19 Regulations to all employers and employees. It is also profoundly inappropriate to bypass the formal regulation process altogether by attempting to codify “guidance” and Executive Orders as a reasonable replacement. Further, it is confusing why the Regulations are being pursued when § 16VAC25-220 has not been fully implemented and has so many significant problems. Therefore, it is the VMA’s recommendation that the Board withdraw its “Intent to Adopt a Permanent Standard for Infectious Disease Prevention: SARS-CoV-2 Virus That Causes COVID-19, 16VAC25-220.” The VMA also requests that the Virginia Safety and Health Codes Board issue an additional sixty (60) day public comment period on 16VAC25-220 requesting that employers provide recommended improvements to the Emergency Temporary Standard (ETS) or abandon the ETS altogether and rely upon the “General Duty Clause” and Federal, State, Industry guidance to protect workers as is being effectively done in 48 other states. Finally, if the Board proceeds with Regulations, the Board should not consider any amendments to the Regulations that would incorporate other infectious diseases.

Sincerely

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NOTE: THE COMMENTER IS A PARTY TO A LAWSUIT CHALLENGING THE LEGALITY OF 16VAC25-220 Emergency Temporary Standard (ETS) Infectious Disease Prevention: SARS-CoV-2 Virus That Causes COVID-19 As Adopted by the Safety and Health Codes Board on July 15, 2020. LEGAL ISSUES RAISED BY THE COMMENTER THAT RELATE TO THE ONGOING LITIGATION WILL NOT BE ADDRESSED FOR THAT REASON.

SEE DEPARTMENT RESPONSE TO COMMENT 84956

The Department does not intend to recommend any change to 16VAC25-220-10.G.1. The Department notes that the Standard provides flexibility to business through 16VAC25-220-10.G.1 which provides that “To the extent that an employer actually complies with a recommendation contained in CDC guidelines, whether mandatory or non-mandatory, to mitigate SARS-CoV-2 virus and COVID-19 disease related hazards or job tasks addressed by this standard, and provided that the CDC recommendation provides equivalent or greater

protection than provided by a provision of this standard, the employer's actions shall be considered in compliance with this standard. An employer's actual compliance with a recommendation contained in CDC guidelines, whether mandatory or non-mandatory, to mitigate SARS-COV-2 and COVID19 related hazards or job tasks addressed by this standard shall be considered evidence of good faith in any enforcement proceeding related to this standard." It is the Department's position that similarly situated employees and employers exposed to the same or even more serious hazards or job task should all be provided the same basic level of safety and health protections, which is what the current language in 16VAC25-220-10.G.1 provides for.

The language referenced by the Commenter (physical separation of employees at low-risk businesses by a permanent, solid floor to ceiling wall) is one method described in the Standard for mitigating the spread of SARS-CoV2; however, employers are not required to do so. The Department intends to recommend a language change to the Standard that makes this clear.

The Department does not plan to recommend changes to sick leave provisions in the Standard. The Standard does not require employers to provide sick leave to employees. It does reference the Families First Coronavirus Response Act (FFCRA) at 16VAC25-220-40.B.6:

6. To the extent feasible and permitted by law, including but not limited to the Families First Coronavirus Response Act, employers shall ensure that sick leave policies are flexible and consistent with public health guidance and that employees are aware of these policies.

Further information about the FFCRA and sick leave policies can be found at:  
<https://www.dol.gov/agencies/whd/pandemic/ffcra-employee-paid-leave>

The Department intends to recommend language changes to the business consideration language in 16VAC25-220-70.C.5 to make clear that the language is related to occupational safety and health concerns.

The Department respectfully disagrees with the Commenter's assertion that mitigation strategies (referred to by the Commenter as ""human resource policies"" ) to prevent the spread of SARS-CoV-2 in the workplace exceeds the authority of the Board. The Department intends to recommend some language changes to the provisions referenced by the Commenter.

The Department intends to recommend revisions to 16VAC25-220-40.K.5 which currently provides: ""5. All common spaces, including bathrooms, frequently touched surfaces, and doors, shall at a minimum be cleaned and disinfected at the end of each shift. All shared tools, equipment, workspaces, and vehicles shall be cleaned and disinfected prior to transfer from one employee to another.""

The Department acknowledges the comment and notes that the ASHRAE air handling requirements issue raised by the Commenter is undergoing a legal review.

The Department does not intend to recommend any change to which employers are required to develop and implement an Infectious disease preparedness and response plan under 16VAC25-220-70. The current requirement exempts employers with 10 or fewer employees which eases the burden on the smallest employers with the most limited resources. The Department notes that a free template for a plan is provided on the Department's website at: <https://www.doli.virginia.gov/covid-19-outreach-education-and-training/>. In addition, the Department strongly encourages Virginia's small business owners to take advantage of free and confidential occupational safety and health onsite and virtual consultation and training services to address COVID-19 compliance issues. More information about the VOSH Consultation Services can be found at: <https://www.doli.virginia.gov/vosh-programs/consultation/>

The Department intends to recommend a language change to the amount of time permitted to train employees under the Standard.

The Department does not intend to recommend any change to 16VAC25-220-90.C as it is the position of the Department that it reflects the current state of case law on the subject.

Pursuant to Va. Code §40.1-51.2:1, employees are protected from discrimination when they engage in activities protected by Title 40.1 of the Code of Virginia (“because the employee has filed a safety or health complaint or has testified or otherwise acted to exercise rights under the safety and health provisions of this title for themselves or others.”).

Whether an employee engaged in a “protected activity” under Title 40.1 is very fact specific, but can include occupational safety and health information shared by an employee about their employer on a social media or other public platform in certain situations.

16VAC25-220-90.C provides that:

No person shall discharge or in any way discriminate against an employee who raises a reasonable concern about infection control related to the SARS-CoV-2 virus and COVID-19 disease to the employer, the employer’s agent, other employees, a government agency, or to the public such as through print, online, social, or any other media.

If an employee raises an unsubstantiated COVID-19 related claim or makes a false COVID-19 related claim against their employer through print, online, social, or any other media, such an act by an employee would not be considered “reasonable” under the ETS and disciplinary action taken against the employee in accordance with the employer’s human resource policies would not be considered “discrimination” under the ETS/ER or Va. Code §40.1-51.2:1.

The Department intends to recommend revisions to 16VAC25-220-40.F, which currently provides: ""F. When multiple employees are occupying a vehicle for work purposes, the employer shall ensure compliance with respiratory protection and personal protective equipment standards applicable to the employer's industry.

SEE DEPARTMENT RESPONSE TO COMMENT 85680

Va. Code §40.1-22(6a) under which the Emergency Temporary Standard (ETS) was adopted does not permit the ETS to be extended beyond 6 months.

The Standard does not cover other infectious diseases like influenza, tuberculosis, etc.

The states of Virginia, Washington, Michigan and Oregon have adopted COVID-19 related workplace safety and health regulations.

The proposed permanent standard has been subject to the following notice and comment procedures. The Virginia Safety and Health Codes Board held a 60 day written comment period for the Proposed Permanent Standard, with the comment period running from August 27, 2020 to September 25, 2020. The Board held a Public Hearing on September 30, 2020. A revised draft of the Proposed Permanent Standard will be published with an additional 30 day comment period prior to any Board action. A public hearing will also be held.

The Standard does not address the issue of ""quarantine"". “Quarantine” is separation of people who were in “close contact” with a person with COVID-19 from others. The Standard does address the issue of ""isolation"".

“Isolation” is the separation of people with COVID-19 from others. People in isolation need to stay home and separate themselves from others in the home as much as possible. Requirements for returning to work from isolation is covered by the ETS in 16VAC25-220-40.C. However, please note that in lieu of complying with 16VAC25-220-40.C, employers may comply with recently updated CDC guidelines (see §40 FAQ 18, <https://www.doli.virginia.gov/cononavirus-covid-19-faqs/>).

The Department notes that in recent years, VOSH has investigated an average of approximately 35 to 40 occupationally related fatalities per year. As of October 30, 2020, VOSH has investigated over 30 employee deaths attributable to COVID-19 alone. The large majority of those cases remain under investigation to determine if they were occupationally related or not, and if occupationally related, whether violations of the Emergency Temporary Standard or mandatory requirements in Governor's Executive Orders should be cited or not.

Review of all COVID-19 related inspections under the Emergency Temporary Standard is conducted centrally by the Department with both a programmatic and legal review prior to a decision to issue or not issue violations/penalties to assure consistent enforcement across the Commonwealth. The Department does not anticipate any significant increase in litigation with regard to the Emergency Temporary Standard or any permanent standard.

The Department acknowledges the comment and notes that the ASHRAE air handling requirements issue raised by the Commenter is undergoing a legal review.

The Department does not intend to recommend any changes to hand sanitizer requirements or to include information from the FAQ on the issue - use of qualifying language such as “where feasible” is sufficient to address the Commenter's concerns.

The Department disagrees that there is any confusion created by use of the term “job tasks” as opposed to “employee job classifications.” Employee job classifications are based on the job tasks employees perform.

The Department intends to recommend revisions to 16VAC25-220-40.K.5 which currently provides: “5. All common spaces, including bathrooms, frequently touched surfaces, and doors, shall at a minimum be cleaned and disinfected at the end of each shift. All shared tools, equipment, workspaces, and vehicles shall be cleaned and disinfected prior to transfer from one employee to another.”

The language referenced by the Commenter (physical separation of employees at low-risk businesses by a permanent, solid floor to ceiling wall) is one method described in the Standard for mitigating the spread of SARS-CoV2; however, employers are not required to do so. The Department intends to recommend a language change to the Standard that makes this clear.

The Department intends to recommend revisions to 16VAC25-220-40.F, which currently provides: “F. When multiple employees are occupying a vehicle for work purposes, the employer shall ensure compliance with respiratory protection and personal protective equipment standards applicable to the employer's industry.

OSHA and VOSH standards and regulations fall into the following categories: Construction Industry, Agricultural Industry, Maritime Industry and General Industry (all employers not covered by Construction, Agricultural or Maritime Industry Standards are covered by the General Industry Standards.

The Department intends to recommend revisions to 16VAC25-220-40.F, which currently provides: “F. When multiple employees are occupying a vehicle for work purposes, the employer shall ensure compliance with respiratory protection and personal protective equipment standards applicable to the employer's industry.

The current ""occupancy limit"" language in the Standard provides flexibility for employer to decide how best to mitigate the spread of SARS-CoV-2. While the Commenter's suggestion to incorporate a FEMA recommendation of 113 square feet per person could serve as one method for an employer to determine occupancy limits, it would increase the compliance burden on employers generally and is not recommended by the Department.

The Department does not intend to recommend any change to train employees on the Infectious disease preparedness and response plan under 16VAC25-220-70, currently set at 60 days. The Department does not intend to recommend any change to which employers are required to develop and implement an Infectious disease preparedness and response plan under 16VAC25-220-70. The current requirement exempts employers with 10 or fewer employees which eases the burden on the smallest employers with the most limited resources. The Department notes that a free template for a plan is provided on the Department's website at: <https://www.doli.virginia.gov/covid-19-outreach-education-and-training/>In addition, the Department strongly encourages Virginia's small business owners to take advantage of free and confidential occupational safety and health onsite and virtual consultation and training services to address COVID-19 compliance issues. More information about the VOSH Consultation Services can be found at: <https://www.doli.virginia.gov/vosh-programs/consultation/>

The Department acknowledges the issues raised by the Commenter (training time for employees), and will consider potential language changes in the revised proposed Standard.

The definition of "duration and frequency of employee exposure" is based on longstanding VOSH policy contained in its Field Operations Manual. The Department does not intend to recommend any change to the definition.

The reference in the Standard to ""joint employment"" is meant to reflect OSHA and Virginia case law on the issue.

The reference in the Standard to ""knew or with reasonable diligence should have known"" is based on longstanding OSHA and VOSH case law.

The term ""suspected to be infected with SARS-CoV-2 virus"" is clearly defined in the Standard, so the Department will not recommend that the phrase be removed from the definition of "May be infected with SARS-CoV-2 virus."

The Department intends to recommend changes to the Standard to update references to signs, symptoms and symptomatic.

The language referenced by the Commenter (Requiring employers to determine the risk of each employee instead of basing that on their job tasks) is not accurate. The Standard specifically provides in 16VAC25-220-40.B.1 that "Employers shall assess their workplace for hazards and job tasks that can potentially expose employees to the SARS-CoV-2 virus or COVID-19 disease. Employers shall classify each job task according to the hazards employees are potentially exposed...."

16VAC25-220-40.B.4 of the COVID-19 Emergency Temporary Standard (ETS), provides that "Employers shall develop and implement policies and procedures for employees to report when employees are experiencing symptoms consistent with COVID-19, and no alternative diagnosis has been made (e.g., tested positive for influenza)...." Such employees are then classified as "Suspected to be infected with SARS-CoV-2 virus" and may not report to the workplace until they have been cleared for return to work in accordance with ETS requirements. In situations where there is the possibility for an alternative diagnosis (such as allergies, the

common cold, the flu, an ear infection, etc.) the employer has a number of options, including but not limited to, a positive test for influenza or the employee obtaining an alternative diagnosis from a medical authority.

In addition, the Virginia Department of Health provides the following guidance:

If the employee DID NOT have close contact with a COVID-19 case or an area with substantial COVID-19 transmission, but does have signs or symptoms and tested negative for SARS-CoV-2, the negative test can be considered as supporting an “alternative diagnosis”, and the person would not be considered suspected to be infected with SARS-CoV-2 virus. The employee must remain out of work until signs and symptoms have resolved and the employee has been fever-free for at least 24 hours without the use of fever-reducing medicine (unless symptoms are due to a known non-infectious cause, such as allergies).

NOTE: It is important to remember that a negative test for SARS-CoV-2 only means that the person wasn’t infected at the time the test was taken. If the person is ill one week, tests negative for SARS-CoV-2, and recovers from their illness, only to become ill again soon after, there is always the potential that the repeat illness may be related to COVID. Each illness should be handled as a distinct situation, meaning, the employee should not always be considered to be COVID-19 negative because they tested negative previously.

The issue of the differences between the Standard's return to work requirement and those of the CDC will be addressed in the revised proposed permanent standard. A Frequently Asked Question (FAQ) provided by DOLI addresses the issue as it pertains to the current Emergency Temporary Standard (ETS).

On July 22, 2020, the CDC changed its guidance with regard to symptoms-based strategies from exclusion for 10 days after symptom onset and resolution of fever for at least 3 days to exclusion for 10 days after symptom onset and resolution of fever for at least 24 hours (i.e., the change was from 72 hours to 24 hours). For persons who never develop symptoms (i.e., asymptomatic), isolation and other precautions can be discontinued 10 days after the date of their first positive RT-PCR test for SARS-CoV-2 RNA.

16VAC25-220-10.G.1 provides in part that:

To the extent that an employer actually complies with a recommendation contained in CDC guidelines, whether mandatory or non-mandatory, to mitigate SARS-CoV-2 virus and COVID-19 disease related hazards or job tasks addressed by this standard, and provided that the CDC recommendation provides equivalent or greater protection than provided by a provision of this standard, the employer's actions shall be considered in compliance with this standard.... (Emphasis added).

Employers who comply with the above-referenced change in CDC guidance issued July 22, 2020, will be considered to be providing protection equivalent to protection provided by complying with the requirements in the ETS.

However, nothing in the FAQ shall be construed to prohibit an employer from complying with the symptom-based or time-based strategies for return to work determinations in the ETS. (See §40 FAQ 18, <https://www.doli.virginia.gov/cononavirus-covid-19-faqs/>)

The Department intends to recommend that the return to work provisions of the standard be updated to reflect current CDC and VDH guidance.

The Commenter references language in § 16VAC25-220-40 K.8, which requires that employers provide mobile crews with “transportation immediately available to nearby toilet facilities and handwashing facilities...” This language comes directly from existing OSHA standards and because it concerns sanitation, a core element of the Standard, the Department will not recommend any change to the Standard.

In situations involving multi-employer worksites, the Department has a regulation on the subject multi-employer worksite responsibilities and the multi-employer worksite defense, which can be found at 16VAC25-60-260.F and -260.G. <http://leg1.state.va.us/cgi-bin/legp504.exe?000+reg+16VAC25-60-260>. Additional information can also be found on the topic in the VOSH Field Operations Manual at <https://townhall.virginia.gov/L/ViewGDoc.cfm?gdid=5354>.

The Department does not intend to recommend the removal of hand sanitizers from the Standard. Use of hand sanitizers is well-recognized method to mitigate the spread of SARS-CoV-2. Also see DOLI Frequently Asked Questions §40, FAQ 9 and §40, FAQ 17 at: <https://www.doli.virginia.gov/cononavirus-covid-19-faqs/> Handwashing facilities, which are required in OSHA and VOSH standards and regulations, are not always immediately or readily accessible for employees who need to disinfect their hands without leaving their immediate work area.

16VAC25.60.D.1 provides that ""Employers covered by this section and not otherwise covered by the VOSH Standards for General Industry (16VAC25-90-1910)..."" which means it applies to those employers not in general industry. If an employer has already completed a hazard assessment under 1910.132 that addressed SARS-CoV-2 and COVID-19 related hazards and job tasks, then they do not have to complete another one. It is the Department's position that general industry employers are required to update their pre-COVID-19 PPE hazard assessments. No specific period of time to complete the hazard assessment is included in 1910.132 or the ETS/proposed permanent standard.

The Standard does not apply to non-business tenants in an apartment building.

The Department does not plan to recommend that the notification requirements to tenants be removed from the Standard. The Department notes that the Standard does not apply to non-business tenants in an apartment building. The intent of the notification requirement is to provide employees information of a "possible" exposure so that employees can make decisions for themselves on the appropriate course of action to take.

The Commenter's references to actions or inactions on the part of federal OSHA have no bearing on the actions of the Board. The Board and the VOSH program have clear statutory and regulatory jurisdiction over workplace safety and health issues in the Commonwealth, including the potential for spread of infectious diseases among employees and employers, and when those employees and employers are potentially exposed to other persons who may be carriers of the infectious diseases (patients, customers, independent contractors, etc.).

The Department's Briefing Package on the Emergency Temporary Standard with background and legal justifications can be found at: <https://www.doli.virginia.gov/wp-content/uploads/2020/06/BP-Emergency-Regulation-Under-2.2-4011-SARS-CoV-2-That-Causes-COVID-19-FINAL-6.23.2020.pdf>

The Department's Briefing Package on the Emergency Temporary Standard with background on the use and limitations of the general duty clause: <https://www.doli.virginia.gov/wp-content/uploads/2020/06/BP-Emergency-Regulation-Under-2.2-4011-SARS-CoV-2-That-Causes-COVID-19-FINAL-6.23.2020.pdf>

When a Whistleblower investigation is initiated, a formal notice letter is sent to both the Complainant and the Respondent employer notifying them of the investigation. Both parties are provided the opportunity to submit position papers and be interviewed prior to any decision being made on the merits of the case.

The Commenter referenced the fact that 16VAC25-220-80.B.8.f provides that training on the standard provided to employees shall include with regard to PPE: "Heat-related illness prevention including the signs

and symptoms of heat-related illness....” The Department intends to recommend a revision to this requirement to make clear that it relates COVID-19 related hazards specifically (e.g., impact of wearing a respirator in a hot environment).

The Department does not plan to recommend the elimination of reporting requirements to the Department of Labor and Industry. The Department does not plan to recommend the elimination of reporting requirements to the Department of Health, although it does intend to recommend a change to the trigger number of positive cases.

DOLI and the Virginia Department of Health (VDH) have collaborated on a Notification Portal for employers to report COVID-19 cases in accordance with Emergency Temporary Standard (ETS) Sections 16VAC25-220-40.B.8.d and -40.B.8.e that satisfies COVID-19 reporting requirements for both agencies. The portal went live on September 28, 2020. Here is a link:

<https://www.doli.virginia.gov/report-a-workplace-fatality-or-severe-injury-or-covid-19-case/>

The Commenter suggests that an "accommodation" process be added to the Standard in 16VAC25-220-40.I, similar to that provide in the Americans With Disabilities Act (ADA). The Department does not intend to revised the language in the standard as the ADA already applies to such accommodation situations as indicated in the Department's Frequently Asked Question (FAQ) §10, FAQ 16: 16. We have an employee who's doctor is requesting accommodations related to COVID-19 exposure that are expensive and not sustainable and we are looking for guidance on how to proceed.

The situation you raise falls under the Americans With Disabilities Act (ADA) which is enforced by the Equal Employment Opportunity Commission (EEOC). We are not experts on the ADA, but here is a link to their webpage with guidance on the ADA and COVID-19 issues. You need to research the core issue of whether the “high risk” category that the employee falls into is a “medical condition” that meets the definition of a “disability” under the ADA or not. Section D contains FAQs on “reasonable accommodations” that are provided to employees with a disability. You will also see the term “undue hardship” referenced, which you should research to see if it applies to your company’s situation.

<https://www.eeoc.gov/wysk/what-you-should-know-about-covid-19-and-ada-rehabilitation-act-and-other-eeo-laws>

FAQs can be found at: <https://www.doli.virginia.gov/cononavirus-covid-19-faqs/>

10026 Hobey Bauhan Virginia Poultry Federation 09.25.20 <https://www.doli.virginia.gov/wp-content/uploads/2020/09/Virginia-Poultry-Federation-Comments-on-Permanent-DOLI-Standard-9-25-20.pdf>

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

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 COVID19, 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,

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SEE DEPARTMENT RESPONSE TO COMMENT 84956

The Department notes that the Standard provides flexibility to business through 16VAC25-220-10.G.1 which provides that “To the extent that an employer actually complies with a recommendation contained in CDC guidelines, whether mandatory or non-mandatory, to mitigate SARS-CoV-2 virus and COVID-19 disease related hazards or job tasks addressed by this standard, and provided that the CDC recommendation provides equivalent or greater protection than provided by a provision of this standard, the employer's actions shall be considered in compliance with this standard. An employer's actual compliance with a recommendation contained in CDC guidelines, whether mandatory or non-mandatory, to mitigate SARS-COV-2 and COVID19 related hazards or job tasks addressed by this standard shall be considered evidence of good faith in any enforcement proceeding related to this standard.”

The Department's Briefing Package on the Emergency Temporary Standard with background on the use and limitations of the general duty clause: <https://www.doli.virginia.gov/wp-content/uploads/2020/06/BP-Emergency-Regulation-Under-2.2-4011-SARS-CoV-2-That-Causes-COVID-19-FINAL-6.23.2020.pdf>

The proposed permanent standard has been subject to the following notice and comment procedures. The Virginia Safety and Health Codes Board held a 60 day written comment period for the Proposed Permanent Standard, with the comment period running from August 27, 2020 to September 25, 2020. The Board held a Public Hearing on September 30, 2020. A revised draft of the Proposed Permanent Standard will be published with an additional 30 day comment period prior to any Board action. A public hearing will also be held.

10027 Cannon Moss Virginia Railroad Association 09.25.2020 <https://www.doli.virginia.gov/wp-content/uploads/2020/09/Virginia-Railroad-Association-Public-Comments-to-Proposed-Permanent-Standard-9.25.2020.pdf>

SEE MR. MOSS'S COMMENT 86152

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SEE DEPARTMENT RESPONSE TO COMMENT 86152

10028 Robert Melvin Virginia Restaurant Lodging and Travel Association 09.25.2020 <https://www.doli.virginia.gov/wp-content/uploads/2020/09/Virginia-Restaurant-Lodging-Travel-Association-Public-Comment-9.25.2020.pdf>

SEE MR. MELVIN'S COMMENT 86382

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SEE DEPARTMENT RESPONSE TO COMMENT 86382

10029 Jodi Roth Virginia Retail Federation 09.25.2020 <https://www.doli.virginia.gov/wp-content/uploads/2020/09/Virginia-Retail-Federation-Comments-on-VA-COVID-19-ETS-9.25.2020.pdf>

SEE MS. ROTH'S COMMENT 86152

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SEE DEPARTMENT RESPONSE TO COMMENT 86152

10030 Gordon Dixon Virginia Transportation Construction Alliance 09.25.2020  
<https://www.doli.virginia.gov/wp-content/uploads/2020/09/Virginia-Transportation-Construction-Alliance-Public-Comments-to-the-Permanent-Standard-9.25..pdf>

SEE MR. DIXON'S COMMENT 86585

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SEE DEPARTMENT RESPONSE TO COMMENT 86585

10031 P. Dale Bennett Virginia Trucking Association 09.25.2020 <https://www.doli.virginia.gov/wp-content/uploads/2020/10/Virginia-Trucking-Association-Infectious-Disease-Permanent-Standards-Comments-9.25.2020.pdf>

SEE MR. BENNETT'S COMMENT 86474

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SEE DEPARTMENT RESPONSE TO COMMENT 86474

10032 Samuel R. Brumberg Virginia, Maryland & Delaware AEC Collective 09.25.2020  
<https://www.doli.virginia.gov/wp-content/uploads/2020/09/Virginia-Maryland-Delaware-AEC-Proposed-Permanent-Standard-9.25.2020.pdf>

SEE MR. BRUMBERG'S COMMENT 86238

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SEE DEPARTMENT RESPONSE TO COMMENT 86238

10033 Lucien W. Roberts Richmond Medical Group Management Association 9.24.2020

Social distancing causes problems in waiting rooms (limits capacity and some patients need someone to help them), Lack of consistency between DOLI, VDH, and other regulatory bodies (example return to work symptom based or test based), financial cost (employee dedicated to pre-screenings, masks, shields, gloves, other preventative measures)

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SEE DEPARTMENT RESPONSE TO COMMENT 84956

16VAC25-220-10.C provides that the Standard applies “to every employer, employee, and place of employment in the Commonwealth of Virginia within the jurisdiction of the VOSH program....” The Standard does not address the rights or protections of the general public.

The issue of the differences between the Standard's return to work requirement and those of the CDC will be addressed in the revised proposed permanent standard. A Frequently Asked Question (FAQ) provided by DOLI addresses the issue as it pertains to the current Emergency Temporary Standard (ETS).

On July 22, 2020, the CDC changed its guidance with regard to symptoms-based strategies from exclusion for 10 days after symptom onset and resolution of fever for at least 3 days to exclusion for 10 days after symptom onset and resolution of fever for at least 24 hours (i.e., the change was from 72 hours to 24 hours). For persons who never develop symptoms (i.e., asymptomatic), isolation and other precautions can be discontinued 10 days after the date of their first positive RT-PCR test for SARS-CoV-2 RNA.

16VAC25-220-10.G.1 provides in part that:

To the extent that an employer actually complies with a recommendation contained in CDC guidelines, whether mandatory or non-mandatory, to mitigate SARS-CoV-2 virus and COVID-19 disease related hazards or job tasks addressed by this standard, and provided that the CDC recommendation provides equivalent or greater protection than provided by a provision of this standard, the employer's actions shall be considered in compliance with this standard.... (Emphasis added).

Employers who comply with the above-referenced change in CDC guidance issued July 22, 2020, will be considered to be providing protection equivalent to protection provided by complying with the requirements in the ETS.

However, nothing in the FAQ shall be construed to prohibit an employer from complying with the symptom-based or time-based strategies for return to work determinations in the ETS. (See §40 FAQ 18, <https://www.doli.virginia.gov/cononavirus-covid-19-faqs/>)

The Department intends to recommend that the return to work provisions of the standard be updated to reflect current CDC and VDH guidance.

## PUBLIC HEARING ORAL COMMENTS

20001 Brett Vassey Virginia Manufacturers Association 9/30/2020

<https://www.doli.virginia.gov/wp-content/uploads/2020/10/SHCB-Public-Hearing-on-Permanent-Standard-9.30.2020.mp4>

Brett Vassey starts at 16:01. VMA submitted a 13 page written comment. VMA also submitted comments to townhall. It is unreasonable to apply “one size fits all” COVID-19 regulations to all employers and employees. Codifying guidance and Governor’s Executive Orders is not a reasonable replacement for regulation and is illegal. HVAC starts at 18:40 Requiring “Low” and “Medium” risk facilities to maintain HVAC systems in accordance with manufacturers’ instructions does not address the potential hazard (if any) as it relates to ventilation. Requiring ASHRAE standards 62.1, 62.2 and 170 should be struck entirely from the ETS and consideration for Regulations. In addition, the language does not account for older facilities, as upgrading the ventilation in those facilities may be infeasible.

The VMA also asserts that the Safety and Health Codes Board does not have the authority to require such a physical alteration to all business facilities – this is a multi-million-dollar cost. See the written comment that the VMA sent to the Agency on 09.25.20 regarding HVAC suggestions. Requiring that the “...common spaces... [to be] cleaned and disinfected at the end of each shift” is impractical for 24/7 operations with multiple and overlapping shifts.

The Board does not have authority over organizational sick leave policies, flexible worksites, flexible work hours, flexible meeting and travel, teleworking, the delivery of services or the delivery of products. Physical separation starts at 19:32 The Regulations state under the definition of physical distancing pursuant to § 16VAC25-220-30 that "physical separation of an employee from other employees or persons by a permanent, solid floor to ceiling wall constitutes physical distancing from an employee or other person stationed on the other side of the wall." Physical separation does not have to be achieved by permanent or floor to ceiling walls. Temporary plexiglass and other hard surface barriers are regularly used to retrofit workstations, counters and cubicles as physical separation "shields" or barriers for employees, particularly when coupled with PPE or face masks. To complicate matters further, § 16VAC25-220-50 (applicable to hazards or job tasks classified as very high or high exposure risk) specifically states that “physical barriers” are “e.g., clear plastic sneeze guards, etc.). How can physical barriers be permanent solid walls for “low” or “medium” risks, but plastic sneeze guards are allowable for “high” or “very high” risks? These references should be removed from the ETS and consideration for Regulations. In the definitions section, 16 VAC25-220-30, physical distancing definition has the sentence: "physical separation of an employee from other employees or persons by a permanent, solid floor to ceiling wall constitutes physical distancing from an employee or other person stationed on the other side of the wall." It may make sense to make it clear that this sentence is just explaining that if there is a wall separating coworkers, you don't have to maintain 6 feet between the two workers.

Requiring “respiratory protection” and “personal protective equipment standards applicable to the employer’s industry” in vehicles with more than 1 person is impractical and vague. There should be no enforcement without prior notice to an employer. The Regulations have no identifiable “due process” for employers involving a “whistleblower,” and no requirement that complaints filed with DOLI require identification of the plaintiff. § 16VAC25-220-80 includes a training mandate for “Heat-related illness prevention...” that has no connection to COVID-19 infection protection. In addition, it cannot be a coincidence that the agency issued a Notice of Intended Regulatory Action (NOIRA) on Heat Illness Prevention on 4/2/20 and that document has been with the Secretary of Commerce and Trade for 161 days but a heat-

related illness prevention training mandate was inserted into the ETS and now the Regulations. The ETS training and plan dates are not feasible. Regulations should sunset based upon an event not a date.

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SEE DEPARTMENT RESPONSE TO COMMENT 85680

SEE DEPARTMENT RESPONSE TO COMMENT 10025

20002 Hobey Bauhan Virginia Poultry Federation 9/30/2020 <https://www.doli.virginia.gov/wp-content/uploads/2020/10/SHCB-Public-Hearing-on-Permanent-Standard-9.30.2020.mp4>

Hobey Bauhan starts at 27:53. Virginia Poultry Federation submitted a written comment as well. Mr Bauhan began his remarks by explaining who Virginia Poultry Federation represents. He stated the statistics of the COVID cases for the industry, emphasizing how the numbers of cases in the industry have dramatically decreased. VPF does not like "one size fits all" approach the given changing situation. VPF thinks CDC is a better method to guide employers and would like VOSH to use the General Duty clause to cite employers. Mr. Bauhan and VPF opposed ETS and opposes the Permanent standard. He stated if the permanent standard does proceed, VPF would like a sunset clause, wants it to expire with the state of emergency. ETS was hastily, improperly adopted. Vague and confusing, anything beyond this, we need more public input. VPF would like the ETS to expire in January or at the most, expire with the state of emergency.

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SEE DEPARTMENT RESPONSE TO COMMENT 85680

SEE DEPARTMENT RESPONSE TO COMMENT 10026"

20003 Marcia Tetterton Virginia Association for Home Care and Hospice 9/30/2020 <https://www.doli.virginia.gov/wp-content/uploads/2020/10/SHCB-Public-Hearing-on-Permanent-Standard-9.30.2020.mp4>

Marcia Tetterton begins at 31:55. Ms. Tetterton began explaining who the Virginia Association for Home Care and Hospice (VAHCH) is who they represent. Ms. Tetterton stated that the COVID virus has affected those in nursing and assisted living facilities particularly hard, giving statistics for death from COVID, over half from long term care institutions. Providers and employees have been on the front lines of this virus. We already have complex emergency plans in place. No matter how many times we practice, we need the ability to adapt every day. You treat every patient as if they have a virus. We looked to our emergency plan and then went to CDC and the WHO. We ordered more PPE and made sure everyone was retrained in safety protocol. Staff and patients were afraid, various organizations were giving conflicting information. VAHCH relied heavily on information coming from VDH. We did not need DOLI to issue regulations. We already have plenty of regulations to cover us. We value our workforce. The amount of time spent on training depends on the situation and should not be reduced to an easy arbitrary checklist. Safe harbor provision is fraught with ambiguity. The guidelines change regulations are restrictive and inflexible which can be unsafe in a healthcare setting. HVAC comments begin at 35:49. The HVAC standards are confusing for the home health care worker. How does it apply: who would be responsible? The workplace is a private home. This has

created duplicative work. Mr. Tetterton does not like the record keeping aspect. She thinks the sick leave provision is an overreach.

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SEE DEPARTMENT RESPONSE TO COMMENT 84956

With regard to the "safe harbor" issue, the Department notes that the Standard provides flexibility to business through 16VAC25-220-10.G.1 which provides that "To the extent that an employer actually complies with a recommendation contained in CDC guidelines, whether mandatory or non-mandatory, to mitigate SARS-CoV-2 virus and COVID-19 disease related hazards or job tasks addressed by this standard, and provided that the CDC recommendation provides equivalent or greater protection than provided by a provision of this standard, the employer's actions shall be considered in compliance with this standard." The Standard is clear that employer's wishing to take advantage of 16VAC25-220-10.G.1 must comply with both mandatory and non-mandatory provisions in the specific CDC guidelines, and those provisions must provide equivalent or greater protection than provided by a provision of the Standard.

The Department does not plan to recommend that 16VAC25-220-10.G be returned to its original language. It is the Department's position that similarly situated employees and employers exposed to the same or even more serious hazards or job task should all be provided the same basic level of safety and health protections. The Standard's language in 16VAC25-220-10.G assures such protections.

The Department acknowledges the comment and notes that the ASHRAE air handling requirements issue raised by the Commenter is undergoing a legal review.

The Commenter references the difficulties with providing employee safety and health protections for mobile employees that work at private homes.

First, it should be noted that the Standard does not address the rights or protections of the general public, and more specifically, it does not contain a face covering mandate for the general public. That issue is the purview of the Virginia Department of Health and Governor's Executive Orders (e.g., Executive Order 63).

The Commenter represents an industry that has always been covered by 1910.132, Personal Protective Equipment Standard, which requires employers to conduct hazard assessments of the workplace to determine what PPE is required. This includes an assessment of what kind of infectious disease hazards employees might encounter, pre- and post-COVID19, when visiting a private home. The Standard does not change this basic requirement for the Commenter's industry, so there should be no confusion about what protections such employer's need to provide. If pre-COVID-19, such an employer rightly considered the potential for its employees to be exposed to tuberculosis at a private home, conducting the same type of assessment for COVID-19 should not present any substantial difficulties.

20004 Kim Bobo Virginia Interfaith Center for Public Policy 9/30/2020  
<https://www.doli.virginia.gov/wp-content/uploads/2020/10/SHCB-Public-Hearing-on-Permanent-Standard-9.30.2020.mp4>

Kim Bobo starts at 37:58. She is the executive director of Virginia Interfaith Center for Pulic Policy. She began with explaining who the organization is and what they have done so far to help with the COVID crisis. Virginia Interfaith supported the ETS and is proud of the job that Virginia has done. 20 states in which cases are

higher and going up but not Virginia. There are 9 states in which cases were lower but have started to increase, but not Virginia. CVases are lower and staying lower. The standard is one of the policies that is affecting the cases. It is working. Things may get worse this fall and winter. Please enact a permanent standard. If there is new science based information, alter or strengthen the standard but keep the framework. She stated she'd like the board to encourage the Governor to add money to budget to add staff to help deal with the COVID crisis. She then thanked the Board, the Governor, Ray Davenport, DOLI staff, etc.

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SEE DEPARTMENT RESPONSE TO COMMENT 84196

20005 Nicole Riley National Federation of Independent Business 9/30/2020  
<https://www.doli.virginia.gov/wp-content/uploads/2020/10/SHCB-Public-Hearing-on-Permanent-Standard-9.30.2020.mp4>

Nicole Riley begins at 41:15. Start here. She is the Virginia State Director of the National Federation of Independent businesses. (NFIB) She explained who she represents in Virginia, many types of industries. Many of the businesses they represent have closed, many are under a lot of stress. Despite these challenges, small businesses have adapted, using the CDC guidance and complying with the executive orders from the Governor. The last thing they need is a "one size fits all" static permanent standard. The reasons NFIB oppose this standard are as follows: 1. The situation is temporary, all of us expect this pandemic to end. The science is continually changing. It could create a situation where the employer would have to comply with. 2. There is no sunset date. Section 20 has no mention of a sunset clause like in the ETS. 3. The standard is burdensome to comply with; Ms. Riley then echoed Mr. Vassey's comments. The standard is confusing and costly. Even the state recognizes how expensive it is; the House Budget that was approved included 25 million dollars in Federal Cares act money for state agencies to be compliant with the standard. 4. Has there been any analysis of the standard for its effectiveness, any data on how many complaints have been filed and closed, how many work related deaths have been found, etc. Ms. Riley was asked about what information she wants.

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SEE DEPARTMENT'S RESPONSE TO COMMENT 86226

20006 Kyle Shreve Virginia Agribusiness Council 9/30/2020 <https://www.doli.virginia.gov/wp-content/uploads/2020/10/SHCB-Public-Hearing-on-Permanent-Standard-9.30.2020.mp4>

Kyle Shreve begins at 46:58. He is the executive director of the Virginia Agribusiness Council. (VAC). VAC opposes the standard. It's an unnecessary static standard that does not allow for changes when the guidance changes. However, if the board moves forward, VAC would like the perm standard to expire when the Governor's state of emergency expires. If a vaccine or conditions changes, and large swaths of the population become vaccinated, many of the sections of the standard will become obsolete. The council appreciates that the standard included the language allowing compliance by following the latest CDC publication---but standard should make that clear as original version of the ETS did. The permanent standard is another layer that adds confusion. We believe it's sufficient to just use the guidance. At 49:03 If however, the board moves forward with the standard, we ask that the board amend Section 10G to go back to the original language, allowing compliance by complying with the CDC guidance. In addition, there was not enough public input.



There are provisions in the ETS that are already out of date and impossible to comply with. Stakeholders would like sufficient time to offer public input.

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SEE DEPARTMENT'S RESPONSE TO COMMENT 85927

20007 Jeff Perkins Boxley Materials Company and Virginia Transportation Construction Alliance.  
9/30/2020 <https://www.doli.virginia.gov/wp-content/uploads/2020/10/SHCB-Public-Hearing-on-Permanent-Standard-9.30.2020.mp4>

Jeff Perkins begins at 50:30. Mr. Perkins is the President of the Virginia Transportation Construction Alliance. (VTCA) He is also the president of Boxley Materials. VTCA also submitted written comments to DOLI. VTCA opposes the permanent standard. 1. It is not practical. The science is evolving. There is a likelihood the provisions will become obsolete. HVAC begins at 51:56. 2. Engineering controls: Even medium risk employers have to make sure their Air handling systems comply with the American National Standards Institute, the American Society of Heating Refrigerating, Air Conditioning Engineering standards, which include outdoor ventilation. These ETS standards are likely to be in a constant state of change considering CDC's evolving guidance. Some of the changes are not supported by science which is what we should follow. 3. Starts at 52:47 CDC deference--ETS does not give enough leeway to the changing guidance. Standard should go back to allowing compliance with the standard by complying with CDC guidance. 4. begins at 53:17 Place of employment. You have to notify DOLI if there are 3 cases of covid in a place of employment within 14 days and notify all employees at place of employment within 24 hours of a positive case. Place of employment is not defined. The concept is a vague concept especially in a construction setting. If 3 employees take a lunch break, travel in the same car and allow contract COVID, is the car a place of employment? 5. Starts at 54:20. Unintended consequences with VOSH--ETS states it is designed to compliment and enhance VOSH rules. There are industry specific concerns in the construction industry who already have to comply with PPE specifics in their line of work. The ETS states when multiple employees are occupying a vehicle for work purposes, the employer must ensure compliance with PPE and respiratory requirements applicable to their industry. This could be interpreted to mean an employee would need a new N-95 mask every day employees share a work vehicle. This cannot be what the standard intends, but it could be interpreted in this fashion. 6. Starts at 55:02 Third party contractors--It could be a challenge to obtain information on employees of other contractors for contact tracing purposes. If a jobsite has companies A,B,C and D on a site and an employee from company D has an employee that test positive or experiences symptoms, it can be difficult if not impossible to get this information back to companies A, B, and C, who all have liability. Mr. Perkins was cut off here.

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SEE DEPARTMENT RESPONSE TO COMMENT 86585

20008 David Broder SEIU Virginia 512 9/30/2020 <https://www.doli.virginia.gov/wp-content/uploads/2020/10/SHCB-Public-Hearing-on-Permanent-Standard-9.30.2020.mp4>

David Broder begins at 56:19. Mr. Broder is the elected president of SEIU Virginia 512. There are townhall comments too. The union is made up of essential health care workers and public service workers. Commends the staff and board for creating it was literally a lifesaver. He speaks in strong support of the proposed

permanent standard. There is no way out of this pandemic without a permanent standard to protect workers across the commonwealth. He has 2 suggestions to strengthen it with regard to the 6 foot social distancing requirement and the medical removal of workers which he submitted during the 60 day comment period. We have two recommendations to strengthen the standards. While we applaud DOLI and the Board for prioritizing physical distancing, which is one of the best ways to prevent person- to person spread, we do urge the board to consider the airborne nature of this virus and dispense with the current 6 foot rule as an effective control for airborne exposure. Ventilation, efforts to control and reduce persons and time in spaces and enclosed areas, and other engineering and administration controls must be combined with distancing to effectively mitigate airborne transmission of the virus. Please consider more revising this provision. Finally, we urge you to clarify that under medical removal for known infections, exposures, or when recommended by a medical or public health professional, workers are afforded removal protections including maintaining the employee's base earnings, seniority, and other rights and benefits that existed at the time of removal until cleared for return to work. He then gives an example from one of their mental health workers. Prior to the ETS, when one of the members tested positive, their coworkers were not notified, their worksite was not cleaned in a timely manner, they were not given the correct PPE. This is not acceptable but there were no repercussions. The ETS made it safe with less fear that they will get sick or bring it home to their loved one. One of their members was living in a hotel room she could not afford because she was so afraid she would bring it home to her family. After the ETS was adopted, she no longer needed to fear this.

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SEE DEPARTMENT RESPONSE TO COMMENT 86327

20009 Jodi Roth Virginia Retail Federation 9/30/2020 <https://www.doli.virginia.gov/wp-content/uploads/2020/10/SHCB-Public-Hearing-on-Permanent-Standard-9.30.2020.mp4>

Jodi Roth begins at 1:00:42. Ms. Roth is commenting on behalf of Virginia Retail Federation. VRF also submitted written comments on 09.25.20 that does have substantive recommendations. VRF also submitted townhall comments. Our members are directly affected by the one-sized fits all standard. Members oppose the adoption of a permanent standard. We assert it is overly burdensome, unnecessary and violates existing law. 1. The situation is temporary. There is no sunset date. No analysis of effectiveness of ETS. No analysis to determine how the current ETS was implemented. Businesses have had no time to voice the challenges they have encountered implementing the ETS. No effective analysis on how many businesses are out of compliance. There has been no analysis on what impact the regulation has had on small businesses as required by law. There is no true safe harbor provision. The agency should put back in original language of section 10G. They want to rely on general duty clause.

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SEE DEPARTMENT RESPONSE TO COMMENT 86152

20010 Brandon Robinson Associated General Contractors of Virginia (AGCVA) 9/30/2020  
<https://www.doli.virginia.gov/wp-content/uploads/2020/10/SHCB-Public-Hearing-on-Permanent-Standard-9.30.2020.mp4>

Brandon Robinson begins at 1:19:13. Mr. Robinson submitted a comment via townhall as well. Mr. Robinson is with Associated General Contractors of Virginia. Members are in commercial construction. They are

members of the Virginia Business Coalition as well. They take pride in the safety of our workforce. They have leaned into their existing robust safety policies that are already in place. They ask for no permanent solution to temporary problem. They ask for no one size fits all approach. The science is evolving. These standards are permanent. They require compliance with standard that may one day have outdated guidance in them due to evolving nature of understanding of the virus. The standard is extremely burdensome to employers. Most exposure is happening outside of the workplace. Should employers be punished through these standards by actions outside of their control. Focus may be shifted away with other safety concerns on the jobsite. It was hastily put together and does not reflect the latest scientific guidance. We ask that the standard not be made permanent.

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SEE DEPARTMENT RESPONSE TO COMMENT 86256

20011 Nandan Kenkeremath Leading Edge Policy & Strategy, LLC 9/30/2020  
<https://www.doli.virginia.gov/wp-content/uploads/2020/10/SHCB-Public-Hearing-on-Permanent-Standard-9.30.2020.mp4>

Nandan Kenkeremath begins at 1.22:14. He is a lawyer with Leading Edge Policy & Strategy, LLC . He also submitted written comments directly to DOLI. He has substantial concerns with the ETS and the proposal. He wants the ETS and the proposal to be withdrawn. In his estimation, the language is filled with language that is not workable and the benefits do not outweigh the cost. He submitted detailed comments to DOLI. He submitted multiple comments to DOLI that are substantive to Townhall. Mandates of the Gov. in 63 are not legal, he does not have authority to demand full sweep of all employers and only contemplate emergency standards process. Each component and each modicum of the scope of the standard needs to be looked at. Suspected COVID provisions are substantial and not workable. The list of symptoms includes a cough, cold, headache. Employees could be sent home for any of these multiple times. It's a violation of both employer and employee rights. ETS specifically said Cross referencing of executive orders adds layers of confusion to the standard. It's not really in DOLI's authority to delegate to the executive the penalties of DOLI. The two systems do not work well together. There are many provisions that are problematic and each one needs to be considered. SEE DEPARTMENT RESPONSE TO COMMENT 10008

20012 Terrance DurkinRoanoke Regional Chamber of Commerce 9/30/2020  
<https://www.doli.virginia.gov/wp-content/uploads/2020/10/SHCB-Public-Hearing-on-Permanent-Standard-9.30.2020.mp4> Terrance Durkin begins at 1.26:57. He is Vice president of public policy for the Roanoke Regional Chamber of Commerce. They strongly opposed the proposed permanent standard. It's a temporary problem. SEE DEPARTMENT RESPONSE TO COMMENT 84956

20013 Donald Baylor National Coalition of Public Safety Officers 9/30/2020  
<https://www.doli.virginia.gov/wp-content/uploads/2020/10/SHCB-Public-Hearing-on-Permanent-Standard-9.30.2020.mp4>

Donald Baylor begins at 1.27:55. He also made comments on townhall. He is a member of National Coalition of Public Safety Officers, we strongly urge support to make the standards permanent. He heard much today for temporary measures, but all of the information from the science, the indication is not COVID will be with us much longer. Even with a vaccine on the market. We have to consider the effects we know COVID causes in the long term. These standards save lives, they will continue to save lives if made permanent. Just in the DOC alone, we have 3639 offenders who have tested positive from the virus. Currently, we have 261 active

cases amongst offenders. There have been 31 deaths amongst offenders. We currently have 71 active cases amongst staff and one COVID death in DOC and another at the Hampton Roads regional jail. We urge the board to continue to make these standards permanent.

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SEE DEPARTMENT RESPONSE TO COMMENT 85746

20014 Vance Young ATU Local 1764 9/30/2020 <https://www.doli.virginia.gov/wp-content/uploads/2020/10/SHCB-Public-Hearing-on-Permanent-Standard-9.30.2020.mp4>

Vance Young begins at 1.31:21. He is with ATU Local 1764. This unions represents bus operators, mechanics and cleaners at Fairfax connector. It's important to require Employers are required to clean and disinfect the area where employees are working. He works for Transdev does not clean their buses everyday. Every 4th or 5th bus will be cleaned. We find trash on the bus everyday. This lets us know they are not disinfecting the buses. Some of them stay out 23 hours a day. We ask each operator bring out a different bus so that the bus won't be out everyday. The state needs to enforce these requirements. It's important the employers tell employees when an employee tests positive. There were some employees who tested positive. The company never told the employees, they only found out from Fairfax county dept of health, 10 or 12 days later. Employers should require members of the public to wear masks on the bus, but rules are not enforced. Supposedly Transdev requires masks on the bus. It's impossible for us the bus operators to enforce the rules because we get disciplined, but then if we don't enforce the rules, we get disciplined. It's too dangerous for an operator to try to enforce a mask rule. Operators are being attacked nationwide.

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SEE DEPARTMENT RESPONSE TO COMMENT 84196

20015 Joe Lerch Virginia Association of Counties 9/30/2020 <https://www.doli.virginia.gov/wp-content/uploads/2020/10/SHCB-Public-Hearing-on-Permanent-Standard-9.30.2020.mp4> Joe Lerch begins at 1.40:57. He also made comments on townhall. He is with Virginia Association of Counties. 1. potential need for sunset date. Once there is a vaccine, an effective treatment, we need certainty. 2. Return to work standard--CDC has updated guidance as has VDH. Recommend that employers must adhere to latest to VDH guidance for return to work. 3. Air handling requirements for high and medium risk categories. VA building code currently references the 2013 standard for a building under construction today so a brand new building currently under construction would not be in compliance with the standard. They believe a simpler way to do it would be to say that Buildings with HVAC units simply must be maintained in accordance with the manufacturer's instructions.

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SEE DEPARTMENT RESPONSE TO COMMENT 86364

20016 P.Dale Bennett Virginia Trucking Association 9/30/2020 <https://www.doli.virginia.gov/wp-content/uploads/2020/10/SHCB-Public-Hearing-on-Permanent-Standard-9.30.2020.mp4>

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P. Dale Bennett begins at 1:36.57. He also made comments on townhall. He also made written comments directly to DOLI See cell He is with Virginia Trucking Association. Industry to continuing to operate during this pandemic. Our employers have taken every step possible to ensure safety and health. Our frustration is that the standard is overly burdensome. It was drafted more with fixed facilities in mind which is different than highly mobile workforce. We submitted a series of questions that the department and Jay Withrow have answered for us but some are still outstanding. Jurisdictional issue--when does USDOT have jurisdiction and when does VOSH take over outside of the cab. Regulations are imposing costs to comply with and the jurisdictional requirements raise a questions with PPE requirements. 2 person team in truck cannot maintain 6 feet of social distancing, are they required to wear a mask for 4-5 hours to leave Hampton Roads to head out of the state to another facility. There are some flaws in the ETS. There is still some uncertainty we request the board not move forward until issues can be addressed.

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SEE DEPARTMENT RESPONSE TO COMMENT 86474

20017 Doris Crouse-Mays Virginia AFL-CIO9/30/2020 <https://www.doli.virginia.gov/wp-content/uploads/2020/10/SHCB-Public-Hearing-on-Permanent-Standard-9.30.2020.mp4>

Doris Crouse-Mays begins at 1:56.40. She is the president of VA AFL-CIO. She commends the commonwealth for being the 1st in the nation to create a standard. Permanent standard will continue to make VA a premier state in COVID control. It must be adopted. Ms. Crouse Mays, along with Rebecca Reindel submitted comments on townhall on behalf of the AFLCIO. See cell #913. The substantive comments on townhall that might be considered are: Airborne viruses travel farther in the air than six feet, and the six feet guideline is based on the estimated distance large droplets travel and not aerosolized virus particles. However, the proposed standard consistently refers to six-feet when physical distancing. Physical distancing should occur at the maximum distance possible, at a minimum of six feet, and be implemented in combination with other control measures for airborne transmission, including ventilation, reduction of persons in one area, reduced time spent in areas, and respirators when deemed necessary by the hazard assessment. One of the most important control measures is to prevent known or exposed workers from entering the workplace. The proposed standard recognizes this by including the provision that does not allow employers to permit employees or other persons known or suspected to be infected with the virus to remain on the premises. See §16VAC25-220-40.A.5. It is logical to assume that workers with a known exposure to the virus may be infected with the virus and should also not be allowed on the premises until cleared for work. The final standard should include these individuals in the medical removal provisions to reduce the risk of asymptomatic and pre-symptomatic transmission. Additionally, all workers who are not allowed on the premises under the standard, must be protected from any retaliation or loss of benefits. The standard must require that employers maintain the employee's base earnings, seniority, and other rights and benefits that existed at the time of removal until cleared for return to work. These protections encourage workers, who otherwise would be afraid of retaliation, to report known exposures. The proposed standard includes necessary reporting and notification requirements to VOSH when there is a workplace outbreak. To be consistent with the state's definition, we recommend an update to the "outbreak" definition from "three or more employees present at the place of employment within a 14-day period testing positive for SARS-CoV-2 virus during that 14-day time period" to "two or more employees" within the same time frame [<https://www.vdh.virginia.gov/coronavirus/coronavirus/covid-19-in-virginia-outbreaks/>]. This change would also be in alignment with current outbreak definition from the Council of State and Territorial Epidemiologists

SEE DEPARTMENT RESPONSE TO COMMENT 86559

20018 Charlotte Brody, RN BlueGreen Alliance 9/30/2020 <https://www.doli.virginia.gov/wp-content/uploads/2020/10/SHCB-Public-Hearing-on-Permanent-Standard-9.30.2020.mp4>

Charlotte Brody, RN begins at 1.45:12. She submitted townhall comments. Ms. Brody is with Bluegreen Alliance. She explained the various groups that make up the Bluegreen Alliance. 1. masks--we know that they reduce transmission. Wearing a mask is common courtesy. It means my liberty ends where your safety begins. Masks have been a political football that DOLI does not need to engage in. 2. preparedness--the basics of virus control have not changed--distancing, masking, hand washing, cleaning, training, notification, haven't changed. Claiming this risk is temporary will result in mistakes we have already made. 3. guidance is not regulation. Bluegreen alliance asks you to resist the urge to add more safe harbor language. Recommendations are advisory in nature and language may result in employers choosing very different prevention measures. The clarity will level the playing field, protecting not just those employees whose employers have voluntarily chosen to strictly follow guidelines, but everyone.

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SEE DEPARTMENT RESPONSE TO COMMENT 85807

20019 Clayton Medford Northern Virginia Chamber of Commerce 9/30/2020 <https://www.doli.virginia.gov/wp-content/uploads/2020/10/SHCB-Public-Hearing-on-Permanent-Standard-9.30.2020.mp4>

Clayton Medford begins at 1.50:57. He is with Northern Virginia Chamber of Commerce. NOVA CC also submitted townhall comments under Julie Coons. Some are substantive, regarding HVAC again. He began by explaining what one member was doing by early summer. All the things that were put in place prior to the standard cost the member \$350,000 for that one employer for these things. Gloves, since May have gone up 400%. Sanitizers still twice the price than they were during the pandemic. He makes the arguments the members went above and beyond to adhere to the CDC guidelines so they want the ETS to be allowed to expire. He urged the board to consider NOVA CC's written comments submitted to townhall.

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SEE DEPARTMENT RESPONSE TO COMMENT 85755

20020 Jennifer M. Walle Troutman Sanders 9/30/2020 <https://www.doli.virginia.gov/wp-content/uploads/2020/10/SHCB-Public-Hearing-on-Permanent-Standard-9.30.2020.mp4>

Jennifer M. Walle begins at 2.09:18. She is with Troutman Sanders and represents Association of Electric Cooperatives. 14 members across the commonwealth. They submitted a written comment that is published on our website. See cell # 1074 for more information. They request a utility exemption and want it expressly

stated in the standard. The linemen work in the open air. They also ask for a sunset date. The letter specifically makes reference to a colloquy between Jay Withrow and themselves, and it is their understanding the department agrees aerial linemen should be excluded from the standard.

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SEE DEPARTMENT RESPONSE TO COMMENT 86238

20021 Karen McElfish, MD Virginia Conference United Methodist Women 9/30/2020  
<https://www.doli.virginia.gov/wp-content/uploads/2020/10/SHCB-Public-Hearing-on-Permanent-Standard-9.30.2020.mp4> Karen McElfish, MD begins at 2.03:28. She is with Virginia Conference United Methodist Women. She supports the proposed permanent standard. Maintain rights and benefits of employees when they must be removed from the workforce temporarily.

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SEE DEPARTMENT RESPONSE TO COMMENT 84196

20022 Laura Karr Amalgamated Transit Union 9/30/2020 <https://www.doli.virginia.gov/wp-content/uploads/2020/10/SHCB-Public-Hearing-on-Permanent-Standard-9.30.2020.mp4>

Laura Karr begins at 2.05:10. She is with Amalgamated Transit Union. Amalgamated Transit Union submitted townhall comments. They are in strong support of the permanent standard. The comments on townhall that might be considered: Establishment of confined space-specific air filtration standards--The proposed permanent standard recognizes the importance of enhanced air filtration to mitigating the spread of SARS-CoV-2 at medium-risk worksites, including transit agencies, by requiring employers at such sites to install air-handling systems that are consistent with certain guidelines developed by the American National Standards Institute ("ANSI") and the American Society of Heating, Refrigerating and Air-Conditioning Engineers ("ASHRAE"). However, despite specifically designating transit worksites as medium-risk, the proposed permanent standard contains air filtration requirements designed only for buildings – not for transit vehicles and other confined areas. The ANSI and ASHRAE standards cited might be adequate for indoor spaces with substantial airflow and with ample space between workers, but they are insufficient for confined workspaces like buses, where workers spend extended periods in small, poorly-ventilated areas filled with an ever-shifting selection of members of the public – any one of whom could carry and spread SARS-CoV-2. Given the growing scientific consensus that SARS-CoV-2 spreads via airborne aerosols that people generate when they breathe and speak, it is clear that transit workers' extended exposure to large numbers of potentially infected individuals increases the likelihood that they will contract Covid-19 – and correspondingly increases the necessity of filtration standards that are appropriate for confined spaces. In the transit context, such enhanced filtration should include a requirement for employers to equip vehicles with air filters with a minimum efficiency reporting value (a "MERV") of thirteen or higher. Jay, many of the comments discuss taking out the HVAC requirements for buildings as they cite standards that are not even required for a new building by the building code (I have not confirmed this to be the case). However, if true, might it make sense to relax the standard for indoor buildings but increase the protection for confined spaces like buses, assuming the science supports this. To ensure the level of airflow necessary to disperse aerosols that might carry SARS-CoV-2, the permanent standard must require employers to install fresh-air ventilation systems that are appropriate for any confined workspaces under their control. I did a little research and it seems like the benefit may outweigh

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t the risks, but we can look into this if you are interested in inclusion in the standard. Introduction of vehicle “out of service” standards – Whenever a worker or a member of the public who has tested positive for Covid-19, who is suspected of being positive, who has been exposed to the virus, or who reasonably believes they have been exposed enters or uses a vehicle – including a transit vehicle – there is a substantial probability that the vehicle has been contaminated by SARS-CoV-2. To protect workers who are using or who might use a potentially contaminated vehicle, the permanent standard should require an employer to place such a vehicle out of service immediately upon discovering its potential contamination. Further, the standard must require the employer to fully ventilate the vehicle with fresh air and to fully clean and disinfect it before returning it to service. Given the high risk involved in such cleaning, the permanent standard must require an employer to provide PPE to workers completing the task that includes, as a minimum, N-95 masks, face shields, goggles, gloves, and protective gowns. Though not in support, the Virginia Trucking Association also notes that the Standard does not really contemplate mobile workforces. Maybe we should consider including a section on this workforce.

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SEE DEPARTMENT RESPONSE TO COMMENT 86401

20023 Felicia Miller United Food and Commercial Local 400 9/30/2020  
<https://www.doli.virginia.gov/wp-content/uploads/2020/10/SHCB-Public-Hearing-on-Permanent-Standard-9.30.2020.mp4>

Felicia Miller begins at 2.2.10:48. She is with United Food and Commercial Local 400. Local 400 did submit townhall comments, made by the President Mark Federici. She has been with Safeway for 36 years. She works at the deli. Customers have gotten aggressive with workers when they don't want to wear a mask. Check stand customers are right on top of the customers. Safeway has seen 50 COVID cases so far. The ETS has helped to face the continued dangers. We need the enhanced safety measures. Please protect me and my coworkers and make the standard permanent.

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SEE DEPARTMENT RESPONSE TO COMMENT 86231

20024 Mike Wilson United Food and Commercial Workers, Local 400 9/30/2020  
<https://www.doli.virginia.gov/wp-content/uploads/2020/10/SHCB-Public-Hearing-on-Permanent-Standard-9.30.2020.mp4>

Mike Wilson begins at 2.22:37. He is also with United Food and Commercial Workers, Local 400. They were very pleased with the ETS and the impact that it has had. 7 in their union have died from the virus. Many of the employers have complied with the standard, training has been helpful. They are in full support of permanent standard. Wants the airborne hazards to be recognized in the standard. Wants 6ft rule to be minimum, can travel farther than 6 ft. Wants removal protections--leave people at the same level of status, benefits, etc., he then gets cut off.

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SEE DEPARTMENT RESPONSE TO COMMENT 86231



20025 Emily Reynolds Hamptons Roads Chamber of Commerce 9/30/2020  
<https://www.doli.virginia.gov/wp-content/uploads/2020/10/SHCB-Public-Hearing-on-Permanent-Standard-9.30.2020.mp4>

Emily Reynolds begins at 2.14:13. She is executive director of governmental affairs with Hamptons Roads Chamber of Commerce. They are strongly opposed to the permanent standard. The businesses are struggling to survive. They would be overly burdensome and unnecessary. The guidelines are constantly changing. Sunset clause is needed to expire with the Governor's state of emergency.

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SEE DEPARTMENT RESPONSE TO COMMENT 85244

20026 Jason Yarashes Legal Aid Justice Center/VA Justice Project for Farm and Immigrant Workers  
9/30/2020 <https://www.doli.virginia.gov/wp-content/uploads/2020/10/SHCB-Public-Hearing-on-Permanent-Standard-9.30.2020.mp4>

Jason Yarashes begins at 2.17:19. He is with Legal Aid Justice Center/VA Justice Project for Farm and Immigrant Workers. Legal aid submitted comments via townhall. See cell# 419. The comment is not substantive. He thanks everyone for passing the ETS. People were scared for their lives and they felt like the government was not protecting them. Virginia stepped in and filled that gap. The ETS was not hastily adopted. This was an emergency. The hearings lasted several days and the board considered 1000s of comments. Workers can and have been able to report violations. Workers can use the enforceable standards as a way to push back on employers when they are not complying.

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SEE DEPARTMENT RESPONSE TO COMMENT 85856

20027 Rebecca Reindel AFL-CIO 9/30/2020 <https://www.doli.virginia.gov/wp-content/uploads/2020/10/SHCB-Public-Hearing-on-Permanent-Standard-9.30.2020.mp4>

Rebecca Reindel begins at 2 She is with AFL-CIO. She, along with Doris Crouse-Mays submitted a comment on behalf of AFL-CIO on townhall. She commends VA for issuing the ETS this summer. All evidence tells us COVID will continue well past January. She brings up the issues of COVID traveling distances through the air and wants stronger protections (the argument that 6ft is minimum protection.)

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SEE DEPARTMENT RESPONSE TO COMMENT 86559

20028 MK Fletcher AFL-CIO 9/30/2020 <https://www.doli.virginia.gov/wp-content/uploads/2020/10/SHCB-Public-Hearing-on-Permanent-Standard-9.30.2020.mp4>

MK Fletcher begins at 2.33:51. She is with AFL-CIO. They are in support of the Permanent standard. Known exposed individuals need to be removed from the workplace. Encourage the board to adopt that those

employees known exposure at work, should be considered as suspected to have COVID and remove from the worksite.

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SEE DEPARTMENT RESPONSE TO COMMENT 86559

20029 Robert B. Melvin Virginia Restaurant, Lodging, & Travel Association 9/30/2020  
<https://www.doli.virginia.gov/wp-content/uploads/2020/10/SHCB-Public-Hearing-on-Permanent-Standard-9.30.2020.mp4>

Robert B. Melvin begins at 2:38:59. He is with Virginia Restaurant, Lodging, & Travel Association. Also made townhall comments. Mr. Melvin submitted comments to the department that appear on our website. Those comments again bring up the HVAC requirements, as well as consider clarifying what "minimal contact" constitutes. Strike sick leave sections. Adjust return to work to CDC newest guideline.

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SEE DEPARTMENT RESPONSE TO COMMENT 86382



**COMMONWEALTH of VIRGINIA**  
**DEPARTMENT OF LABOR AND INDUSTRY**

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November 4, 2020

**VIRGINIA DEPARTMENT OF LABOR AND INDUSTRY**  
**VIRGINIA OCCUPATIONAL SAFETY AND HEALTH PROGRAM**  
**PROPOSED PERMANENT STANDARD FOR INFECTIOUS DISEASE**  
**PREVENTION OF SARS-COV-2 WHICH CAUSES COVID-19, 16VAC25-220**

**DEPARTMENT STANDARD RESPONSES TO ISSUES RAISED**  
**BY PUBLIC COMMENTERS**

**Background**

The Department received 993 written comments through the Virginia Regulatory Townhall for the 60 day written comment period from August 27, 2020 to September 25, 2020.

There were 33 written comments sent directly to the Department during the 60 day written comment period, although a number of those were also posted by the Commenter on the Virginia Regulatory Townhall.

There were 29 oral comments received during the public hearing on September 30, 2020.

Following are Department standard responses to issues raised by public commenters.

## **1. “No Mask Only” comments.**

Over 200 comments were received in response to the Proposed Permanent Standard for Infectious Disease Prevention of the SARS-CoV-2 Virus That Causes COVID-19, 16VAC25-220 (“Standard”), solely opposed to any form of face covering (or “face mask”) requirement. The following responses are provided by VOSH in response to face covering issues raised by the comments:

### The standard does not contain a public face covering mandate

16VAC25-220-10.C provides that the Standard applies “to every employer, employee, and place of employment in the Commonwealth of Virginia within the jurisdiction of the VOSH program....” The Standard does not contain a face covering mandate for the general public. That issue is the purview of the Virginia Department of Health and Governor’s Executive Orders (e.g., Executive Order 63<sup>1</sup>).

The Standard does require employees to wear either personal protective equipment, respiratory protection equipment, or face coverings in situations where physical distancing of six feet from other persons cannot be maintained.

### Face covering requirements are not unconstitutional

For those commenters who argued that that certain gubernatorial mandates (e.g., “face mask” mandate) are unconstitutional, according to the Office of the Attorney General on at least twelve occasions the Governor’s COVID-19 restrictions have been upheld by circuit courts throughout the Commonwealth.<sup>2</sup> Two of these specifically challenged the face covering requirements. *Schilling et al. v. Northam*, CL20-799 (Albemarle Co. Cir. Ct. July 20, 2020)<sup>3</sup>; *Strother, et al. v. Northam*, CL20-260 (Fauquier Co. Cir. Ct. June 29, 2020).<sup>4</sup>

### Regulation versus legislation

Some commenters were under the impression that the Standard was being proposed as legislation to the General Assembly. That is incorrect. The Standard is being considered for adoption by the Virginia Safety and Health Codes Board pursuant to Va. Code §40.1-22(6a)<sup>5</sup> and would be enforced by the Department of Labor and Industry’s (DOLI) Virginia Occupational Safety and Health (VOSH) Program.

### Permanence of the standard

Some commenters raised concerns about a face covering mandate being “permanent”. The use of the word “permanent” in reference to the Standard reflects the fact that, if adopted, the Standard does not currently have a date on which it would expire.

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<sup>1</sup> <https://www.governor.virginia.gov/media/governorvirginiagov/executive-actions/EO-63-and-Order-Of-Public-Health-Emergency-Five---Requirement-To-Wear-Face-Covering-While-Inside-Buildings.pdf>

<sup>2</sup> <https://oag.state.va.us/media-center/news-releases/1769-july-21-2020-herring-again-successfully-defends-mask-requirement> (July 21, 2020, accessed Aug. 3, 2020).

<sup>3</sup> Accessible at <https://oag.state.va.us/files/2020/Schilling-et-al-v-Northam.pdf>.

<sup>4</sup> Accessible at <https://www.oag.state.va.us/files/2020/maskRequirementsCase.pdf>.

<sup>5</sup> <https://law.lis.virginia.gov/vacode/40.1-22/>

However, the Board has the authority to amend or repeal the Standard as the workplace hazards associated with the SARS-CoV-2 virus and COVID-19 disease evolve and eventually lessen.

#### A medical exemption is provided for face coverings

Some commenters expressed concern about any face covering requirement that could present medical problems for a person with a pre-existing medical condition, such as asthma, etc. 16VAC25-220-40.I provides that:

“I. Nothing in this standard shall require the use of a respirator, surgical/medical procedure mask, or face covering by any employee for whom doing so would be contrary to the employee's health or safety because of a medical condition....”

Situations involving employers with an employee with a medical condition that does not allow them to wear a face covering when required while performing job tasks where physical distancing of six feet cannot be maintained are subject to requirements of the Americans With Disabilities Act (ADA). The ADA is enforced by the federal Equal Employment Opportunity Commission (EEOC).

The following link to the EEOC webpage with guidance on the ADA and COVID-19 issues can be used to research the core issue of whether the “high risk” category that the employee falls into is a “medical condition” that meets the definition of a “disability” under the ADA or not. Section D contains FAQs on “reasonable accommodations” that are provided to employees with a disability. The term “undue hardship” is referenced, and should be researched to see if it applies to the employer’s situation.

<https://www.eeoc.gov/wysk/what-you-should-know-about-covid-19-and-ada-rehabilitation-act-and-other-eeo-laws>

#### Commenters suggesting that sick people stay home instead of requiring the wearing of face coverings

Some commenters suggested that sick people stay home instead of requiring the wearing of face coverings. 16VAC25-220.B.5 specifically requires employers to assure that employees either known or suspected of being infected with SARS-CoV-2 not report to or remain at the work site or engage in work at a customer or client location until cleared for return to work.

However, it is well-documented in scientific literature that an estimated 20%<sup>6</sup> or more of persons infected with SARS-CoV-2 have no symptoms (are “asymptomatic”), while others may be infected and not show symptoms for several days (presymptomatic). Accordingly, simply telling sick people to stay home does not address the problem of potential asymptomatic and presymptomatic spread of SARS-CoV-2.

“Epidemiologic studies have documented SARS-CoV-2 transmission during the pre-

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<sup>6</sup> <https://www.healthline.com/health-news/20-percent-of-people-with-covid-19-are-asymptomatic-but-can-spread-the-disease#Only-20%-remained-asymptomatic>

symptomatic incubation period, and asymptomatic transmission has been suggested in other reports. Virologic studies have also detected SARS-CoV-2 with RT-PCR low cycle thresholds, indicating larger quantities of viral RNA, and cultured viable virus among persons with asymptomatic and pre-symptomatic SARS-CoV-2 infection.

The exact degree of SARS-CoV-2 viral RNA shedding that confers risk of transmission is not yet clear. Risk of transmission is thought to be greatest when patients are symptomatic since viral shedding is greatest at the time of symptom onset and declines over the course of several days to weeks. However, the proportion of SARS-CoV-2 transmission in the population due to asymptomatic or pre-symptomatic infection compared to symptomatic infection is unclear.”<sup>7</sup>

#### Face coverings help in protecting against infection spread in the community and at work

“During a pandemic, cloth masks may be the only option available; however, they should be used as a last resort when medical masks and respirators are not available.”<sup>8</sup>

....

The general public can use cloth masks to protect against infection spread in the community. In community settings, masks may be used in 2 ways. First, they may be used by sick persons to prevent spread of infection (source control), and most health organizations (including WHO and CDC) recommend such use. In fact, a recent CDC policy change with regard to community use of cloth masks<sup>9</sup> is also based on high risk for transmission from asymptomatic or presymptomatic persons.<sup>10</sup> According to some studies, ~25%–50% of persons with COVID-19 have mild cases or are asymptomatic and potentially can transmit infection to others. So in areas of high transmission, mask use as source control may prevent spread of infection from persons with asymptomatic, presymptomatic, or mild infections. If medical masks are prioritized for healthcare workers, the general public can use cloth masks as an alternative. Second, masks may be used by healthy persons to protect them from acquiring respiratory infections; some randomized controlled trials have shown masks to be efficacious in closed community settings, with and without the practice of hand hygiene.<sup>11</sup> Moreover, in a widespread pandemic, differentiating asymptomatic from healthy persons in the community is very difficult, so at least in high-transmission areas, universal face mask use may be beneficial. The general public should be educated about mask use because cloth masks may give users a false sense of protection because of their limited protection against acquiring infection.<sup>12</sup> Correctly putting on and taking off cloth masks improves

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<sup>7</sup> <https://www.cdc.gov/coronavirus/2019-ncov/hcp/clinical-guidance-management-patients.html>

<sup>8</sup> <http://www.ijic.info/article/view/11366>

<sup>9</sup> <https://www.cdc.gov/coronavirus/2019-ncov/hcp/ppe-strategy/face-masks.html>

<sup>10</sup> <https://bmcinfectdis.biomedcentral.com/articles/10.1186/s12879-019-4109-x>

<sup>11</sup> MacIntyre CR, Chughtai AA. Facemasks for the prevention of infection in healthcare and community settings. *BMJ*. 2015;350(apr09 1):h694.

<sup>12</sup> Institute of Medicine. Reusability of facemasks during an influenza pandemic: facing the flu. Washington (DC): The National Academies Press; 2006.

protection.<sup>13</sup> Taking a mask off is a high-risk process<sup>14</sup> because pathogens may be present on the outer surface of the mask and may result in self-contamination during removal.<sup>15</sup>

### Commenter's statements expressing a refusal to wear face coverings

To the extent that the commenters who opposed a mandatory face covering requirement can be considered to represent any significant percentage of people living, working or traveling through Virginia, their views expressing a refusal to wear masks in public or business settings, unintentionally strengthens the case for a face covering (or other personal protective equipment and respiratory protection equipment) requirement in the Standard.

The stated commenters bolster the credibility of research presented to the Board by the VOSH during the adoption process for the Emergency Temporary Standard (ETS),<sup>16</sup> that employees will face a higher risk of virus exposure in the coming months because a certain segment of the population will refuse to wear face coverings or observe physical distancing of at least 6 feet when interacting with employees.

### **2. Commenter's suggestion that a permanent standard is not needed.**

The use of the word "permanent" in reference to the Standard reflects the fact that, if adopted, the Standard does not currently have a date on which it would expire. However, the Board has the authority to amend or repeal the Standard as the workplace hazards associated with the SARS-CoV-2 virus and COVID-19 disease evolve and eventually lessen.

### **3. Commenter's suggestion that it is not VOSH's job to "police" infections likely caused outside the workplace.**

While many people become infected with SARS-CoV-2 in community settings that are not work-related, every person that becomes infected who is also an employee becomes a potential workplace source and transmitter of the virus if they report to work while still capable of transmitting the disease. There are numerous documented examples of the workplace spread SARS-CoV-2, which is also considered to be highly contagious. The introduction of an infectious disease into a workplace setting, regardless of the source, constitutes a workplace health hazard subject to regulation and enforcement by VOSH.

### **4. Commenter's suggestion that COVID-19 protections are better left to the Virginia Department of Health and Local Health Departments.**

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<sup>13</sup> <https://wwwnc.cdc.gov/eid/article/26/10/20-0948-t1>

<sup>14</sup> <https://www.sciencedirect.com/science/article/pii/S0196655318306801?via%3Dihub>

<sup>15</sup> <https://bmcinfectdis.biomedcentral.com/articles/10.1186/s12879-019-4109-x>

<sup>16</sup> <https://www.doli.virginia.gov/wp-content/uploads/2020/07/RIS-filed-RTD-Final-ETS-7.24.2020.pdf>

The VOSH program has clear statutory and regulatory jurisdiction over workplace safety and health issues in the Commonwealth, including the potential for spread of infectious diseases among employees and employers, and when those employees and employers are potentially exposed to other persons who may be carriers of the infectious diseases (patients, customers, independent contractors, etc.).

While the Virginia Department of Health (VDH) has some statutory and regulatory responsibilities in certain industries (restaurant permitting, temporary labor camp permitting, nursing home licensing, etc.), its primary focus is public safety, customer safety and patient safety. VDH has very limited and in some cases no enforcement options when it comes to requiring many of Virginia's industries to limit the spread of SARS-CoV-2 among employees and employers in the workplace.

In such cases where VDH does intervene in a workplace setting that does not fall under its jurisdiction, it will attempt to obtain the employer's agreement with Governor's Executive Orders, but it does not attempt to obtain the employer's agreement to comply with VOSH laws, standards, and regulations, such as VOSH's COVID-19 ETS or other applicable VOSH standards and regulations (e.g., personal protective equipment, respiratory protective equipment, etc.).

In cases where either an employer refuses to comply with Governor's Executive Orders or VDH suspects potential violations of VOSH laws, standards and regulations, it will make a referral to VOSH for either an informal investigation or an onsite inspection. Accordingly, it is neither legal nor appropriate from a policy standpoint for VOSH to cede jurisdiction to VDH to handle all COVID-19 issues.

##### **5. Definition of “suspected to be infected with sars-cov-2 virus” and the option for an alternative diagnosis.**

16VAC25-220-40.B.4 of the COVID-19 Emergency Temporary Standard (ETS), provides that “Employers shall develop and implement policies and procedures for employees to report when employees are experiencing symptoms consistent with COVID-19, and no alternative diagnosis has been made (e.g., tested positive for influenza)...” Such employees are then classified as “Suspected to be infected with SARS-CoV-2 virus” and may not report to the workplace until they have been cleared for return to work in accordance with ETS requirements. In situations where there is the possibility for an alternative diagnosis (such as allergies, the common cold, the flu, an ear infection, etc.) the employer has a number of options, including but not limited to, a positive test for influenza or the employee obtaining an alternative diagnosis from a medical authority.

In addition, the Virginia Department of Health provides the following guidance:

If the employee DID NOT have close contact with a COVID-19 case or an area with substantial COVID-19 transmission, but does have signs or symptoms and tested negative for SARS-CoV-2, the negative test can be considered as supporting an “alternative diagnosis”, and the person would not be considered suspected to be infected with SARS-CoV-2 virus. The employee must remain out of work until signs and symptoms have resolved and the employee has been fever-free for at least 24 hours



without the use of fever-reducing medicine (unless symptoms are due to a known non-infectious cause, such as allergies).

NOTE: It is important to remember that a negative test for SARS-CoV-2 only means that the person wasn't infected at the time the test was taken. If the person is ill one week, tests negative for SARS-CoV-2, and recovers from their illness, only to become ill again soon after, there is always the potential that the repeat illness may be related to COVID. Each illness should be handled as a distinct situation, meaning, the employee should not always be considered to be COVID-19 negative because they tested negative previously.

#### **6. Commenter's suggestion that businesses are already subject to too many regulations.**

There is substantial scientific evidence and infection, hospitalization and death statistics that support the conclusion that SARS-CoV-2 presents a danger to employees in the workplace.

It is the Department's position that the danger posed to employees and employers by the SARS-CoV-2 virus and COVID-19 disease are necessary and appropriate to regulate after the expiration of the current COVID-19 Emergency Temporary Standard (ETS) on January 26, 2021. The number of COVID-19 daily infections in Virginia and the United States continue to support the conclusion of ongoing widespread community transmission and the continuing possibility of the introduction of SARS-CoV-2 into Virginia's workplaces for many months to come. It is well recognized that one or more vaccines will not be widely available to the public and employees until well after January 26, 2021.

The Department also believes that the Standard will ultimately help businesses to grow and bring customers back when those customers see that employers are providing employees with appropriate protections required by the Standard from SARS-CoV-2. If customers don't feel safe because employees don't feel safe, it will be hard for a business to prosper in a situation where there is ongoing community spread.

#### **7. Commenter's suggestion that employers should just have to comply with CDC and Virginia Department of Health requirements.**

The Department notes that the Standard provides flexibility to business through 16VAC25-220-10.G.1 which provides that "To the extent that an employer actually complies with a recommendation contained in CDC guidelines, whether mandatory or non-mandatory, to mitigate SARS-CoV-2 virus and COVID-19 disease related hazards or job tasks addressed by this standard, and provided that the CDC recommendation provides equivalent or greater protection than provided by a provision of this standard, the employer's actions shall be considered in compliance with this standard. An employer's actual compliance with a recommendation contained in CDC guidelines, whether mandatory or non-mandatory, to mitigate SARS-COV-2 and COVID19 related hazards or job tasks addressed by this standard shall be considered evidence of good faith in any enforcement proceeding related to this standard."

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The Department does not intend to recommend any change to 16VAC25-220-10.G.1. A specific reference to "hospitals, health systems, and other facilities under their control" is unnecessary as the above provision applies to all employers wishing to take advantage of its provisions.

**8. Commenter’s suggestion that public and private institutions of higher education and public and private schools should just have to comply with CDC, Virginia Department of Health and/or SCHEV requirements.**

The Department notes that the Standard provides flexibility to schools through 16VAC25-220-10.G.2 which provides that “Public and private institutions of higher education that have received certification from the State Council of Higher Education of Virginia that the institution’s re-opening plans are in compliance with guidance documents, whether mandatory or non-mandatory, developed by the Governor’s Office in conjunction with the Virginia Department of Health, shall be considered in compliance with this standard, provided the institution operates in compliance with their certified reopening plans and the certified reopening plans provide equivalent or greater levels of employee protection than this standard.”

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The Department notes that the Standard provides flexibility to schools through 16VAC25-220-10.G.2 “A public school division or private school that submits its plans to the Virginia Department of Education to move to Phase II and Phase III that are aligned with CDC guidance for reopening of schools that provide equivalent or greater levels of employee protection than a provision of this standard and who operate in compliance with the public school division’s or private school’s submitted plans shall be considered in compliance with this standard. An institution’s actual compliance with recommendations contained in CDC guidelines or the Virginia Department of Education guidance, whether mandatory or non-mandatory, to mitigate SARS-CoV-2 and COVID-19 related hazards or job tasks addressed by this standard shall be considered evidence of good faith in any enforcement proceeding related to this standard.”

**9. Return to work requirements in the standard are different from the CDC requirements.**

The issue of the differences between the Standard's return to work requirement and those of the CDC will be addressed in the revised proposed permanent standard. A Frequently Asked Question (FAQ) provided by DOLI addresses the issue as it pertains to the current Emergency Temporary Standard (ETS).

On July 22, 2020, the CDC changed its guidance with regard to symptoms-based strategies from exclusion for 10 days after symptom onset and resolution of fever for at least 3 days to exclusion for 10 days after symptom onset and resolution of fever for at least 24 hours (i.e., the change was from 72 hours to 24 hours). For persons who never develop symptoms (i.e., asymptomatic), isolation and other precautions can be

discontinued 10 days after the date of their first positive RT-PCR test for SARS-CoV-2 RNA.

16VAC25-220-10.G.1 provides in part that:

To the extent that an employer actually complies with a recommendation contained in CDC guidelines, whether mandatory or non-mandatory, to mitigate SARS-CoV-2 virus and COVID-19 disease related hazards or job tasks addressed by this standard, and provided that the CDC recommendation provides equivalent or greater protection than provided by a provision of this standard, the employer's actions shall be considered in compliance with this standard.... (Emphasis added).

Employers who comply with the above-referenced change in CDC guidance issued July 22, 2020, will be considered to be providing protection equivalent to protection provided by complying with the requirements in the ETS.

However, nothing in the FAQ shall be construed to prohibit an employer from complying with the symptom-based or time-based strategies for return to work determinations in the ETS. (See §40 FAQ 18,

<https://www.doli.virginia.gov/cononavirus-covid-19-faqs/>)

**10. Commenter's suggestion that if workers aren't willing to take responsibility for themselves out in public then employers should not be forced to take the responsibility for them.**

The Commenter asks why employers should provide strong workplace protections to prevent the spread of SARS-CoV-2, when employees can get infected anyway by not maintaining the same kind of protections in their private life, and then apparently bring that infection back into the workplace. It is exactly because there currently is a real possibility that infections obtained outside of work – whether by an employee, or a customer, or a patient, or a subcontractor – that employers need to maintain workplace COVID-19 protections for those employees who do act responsibly away from work.

**11. Political commentary.**

The Department has no response to the Commenter's political commentary.

**12. Notice and comment procedures followed on the Standard.**

The proposed permanent standard has been subject to the following notice and comment procedures. The Virginia Safety and Health Codes Board held a 60 day written comment period for the Proposed Permanent Standard, with the comment period running from August 27, 2020 to September 25, 2020. The Board held a Public Hearing on September 30, 2020. A revised draft of the Proposed Permanent Standard will be published with an additional 30 day comment period prior to any Board action. A public hearing will also be held.

**13. The Department does not anticipate a large increase in litigation with regard to the Emergency Temporary Standard or any permanent standard.**

Review of all COVID-19 related inspections under the Emergency Temporary Standard is conducted centrally by the Department with both a programmatic and legal review prior to a decision to issue or not issue violations/penalties to assure consistent enforcement across the Commonwealth. The Department does not anticipate any significant increase in litigation with regard to the Emergency Temporary Standard or any permanent standard.

#### **14. No substantive issues raised.**

The Department acknowledges the Comment and has no additional response as the Commenter did not raise any substantive issues.

#### **15. Travel regulations.**

The Standard does not contain travel regulations.

#### **16. Six foot separation at all times.**

If your employees are able to maintain physical distancing of 6 feet from other persons (employees, customers, etc.) at all times, than it is appropriate for their job tasks to be classified as “lower risk.” Please note that the definition for “lower risk” also provides that “when it is necessary for an employee to have brief contact with others inside the six feet distance a face covering is required”, and still allows the job tasks to remain classified as lower risk.

Employers that are able to modify job tasks and mitigate potential exposure to SARS-CoV-2 to the extent that they can classify their employees as lower risk greatly reduce their compliance burden under the Standard. Such employers will not have to comply with the additional requirements contained in 16VAC25-220-60 for medium risk hazards and job tasks; nor will they have to develop an infectious disease preparedness and response plan under 16VAC25-220-70.

Finally, such employers will be able avoid the large majority of the training requirements under 16VAC25-220-80, with the exception that employees have to be provided with written or oral information on the hazards and characteristics of SARS-COV-2 and the symptoms of COVID-19 and measures to minimize exposure. The Department has developed an information sheet which satisfies this requirement which can be found at: <https://www.doli.virginia.gov/wp-content/uploads/2020/07/Lower-Risk-Training-1.pdf>.

#### **17. Greater hazard issues.**

The Standard requires employers to provide and employees in customer facing positions to wear a face covering. If the employer is concerned that employee use of a face covering may present a greater safety or health hazard to employees than compliance with the Standard (e.g., the inability to communicate coherently with another employee during a potentially hazardous job task) the issue needs to be assessed during the personal protective equipment (PPE) hazard assessment process required either under the Standard (see 16VAC25-220-50.D for very high and high risk situations, and

16VAC25-220.60.D for medium risk situations) or 1910.132(d) for general industry employers. The PPE hazard assessment process will allow the employer to identify any potential situations where there may be a greater hazard presented and develop alternative protections for employees.

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## PPE

16VAC25-220-40.F provides: "F. When multiple employees are occupying a vehicle for work purposes, the employer shall ensure compliance with respiratory protection and personal protective equipment standards applicable to the employer's industry. If the employer is concerned that employee use of a face covering may present a greater safety or health hazard to employees than compliance with the Standard (e.g., the inability to communicate coherently with another employee during a potentially hazardous job task) the issue needs to be assessed during the personal protective equipment (PPE) hazard assessment process required either under the Standard (see 16VAC25-220-50.D for very high and high risk situations, and 16VAC25-220.60.D for medium risk situations) or 1910.132(d) for general industry employers. The PPE hazard assessment process will allow the employer to identify any potential situations where there may be a greater hazard presented and develop alternative protections for employees.

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## Heat Illness

If the employer is concerned that employee use of a face covering may present a greater safety or health hazard to employees exposed to hot environments than compliance with the Standard (e.g., the inability to communicate coherently with another employee during a potentially hazardous job task) the issue needs to be assessed during the personal protective equipment (PPE) hazard assessment process required either under the Standard (see 16VAC25-220-50.D for very high and high risk situations, and 16VAC25-220.60.D for medium risk situations) or 1910.132(d) for general industry employers. The PPE hazard assessment process will allow the employer to identify any potential situations where there may be a greater hazard presented due to hot environments and develop alternative protections for employees.

In addition, 16VAC25-220-80.B.8.f provides that training on the standard provided to employees shall include with regard to PPE: "Heat-related illness prevention including the signs and symptoms of heat-related illness...."

## **18. Regulation versus legislation.**

This Standard is not being proposed as legislation to the General Assembly. The Standard is being considered for adoption by the Virginia Safety and Health Codes Board pursuant to Va. Code §40.1-22(6a) and would be enforced by the Department of Labor and Industry's (DOLI) Virginia Occupational Safety and Health (VOSH) Program.

**19. Similarly situated employees should be provided the same level of protection (request for healthcare industry exemption from the standard).**

Employees and employers in the healthcare industry are exposed to the same and even greater COVID-19 related hazards and job tasks as employees in other industries. It is the Department's position that similarly situated employees and employers exposed to the same or even more serious hazards or job task should all be provided the same basic level of safety and health protections.

An exemption from the Standard for employers and employees in the healthcare industry is therefore inappropriate.

**20. The Standard does not address the rights of the general public.**

16VAC25-220-10.C provides that the Standard applies “to every employer, employee, and place of employment in the Commonwealth of Virginia within the jurisdiction of the VOSH program....” The Standard does not address the rights or protections of the general public.

**21. Small business resources.**

The Department acknowledges that all of its VOSH laws, standards and regulations can serve to place compliance burdens on employers and employees, particularly in the small business sector. The Department also believes that employers that embrace providing sound and comprehensive workplace safety and health protections can make their business more efficient and profitable through such benefits as reduced injuries, illnesses and fatalities, reduced workers’ compensation costs, reduced insurance costs, improvements in morale and innovation, and increased productivity.

The Department strongly encourages Virginia’s small business owners to take advantage of free and confidential occupational safety and health onsite and virtual consultation and training services to address COVID-19 compliance issues. More information about the VOSH Consultation Services can be found at: <https://www.doli.virginia.gov/vosh-programs/consultation/>

In addition, free Outreach, Training, and Educational materials to assure compliance with COVID-19 requirements can be found at: <https://www.doli.virginia.gov/covid-19-outreach-education-and-training/>

**22. “At will employment”.**

The Department has no response concerning the Commenter's reference to "at will employment" in Virginia other than to note that employers within the jurisdiction of the VOSH program are required to provide safe and health workplaces for their employees.

**23. Other States that have adopted COVID-19 related workplace safety and health regulations.**

The states of Virginia, Washington, Michigan and Oregon have adopted COVID-19 related workplace safety and health regulations.

#### **24. Whistleblower provision in 16VAC25-220-90.C does not provide protection for unsubstantiated or false claims against an employer.**

The Department does not intend to recommend any change to 16VAC25-220-90.C as it is the position of the Department that it reflects the current state of case law on the subject.

Pursuant to Va. Code §40.1-51.2:1, employees are protected from discrimination when they engage in activities protected by Title 40.1 of the Code of Virginia (“because the employee has filed a safety or health complaint or has testified or otherwise acted to exercise rights under the safety and health provisions of this title for themselves or others.”).

Whether an employee engaged in a “protected activity” under Title 40.1 is very fact specific, but can include occupational safety and health information shared by an employee about their employer on a social media or other public platform in certain situations.

16VAC25-220-90.C provides that:

No person shall discharge or in any way discriminate against an employee who raises a reasonable concern about infection control related to the SARS-CoV-2 virus and COVID-19 disease to the employer, the employer’s agent, other employees, a government agency, or to the public such as through print, online, social, or any other media.

If an employee raises an unsubstantiated COVID-19 related claim or makes a false COVID-19 related claim against their employer through print, online, social, or any other media, such an act by an employee would not be considered “reasonable” under the ETS and disciplinary action taken against the employee in accordance with the employer’s human resource policies would not be considered “discrimination” under the ETS/ER or Va. Code §40.1-51.2:1.

#### **25. ASHRAE air handling requirements.**

The Department acknowledges the comment and notes that the ASHRAE air handling requirements issue raised by the Commenter is undergoing a legal review.

#### **25. Quarantine and isolation explained.**

The Standard does not address the issue of “quarantine”. “Quarantine” is separation of people who were in “close contact” with a person with COVID-19 from others. The Standard does address the issue of “isolation”.

“Isolation” is the separation of people with COVID-19 from others. People in isolation need to stay home and separate themselves from others in the home as much as possible. Requirements for returning to work from isolation is covered by the ETS in 16VAC25-220-40.C. However, please note that in lieu of complying with 16VAC25-220-40.C, employers may comply with recently updated CDC guidelines (see §40 FAQ 18, <https://www.doli.virginia.gov/cononavirus-covid-19-faqs/>).

## **26. Economic impact analysis/cost analysis.**

An economic impact analysis/cost analysis will be prepared for the revised proposed permanent standard.

## **27. VOSH penalties.**

Any penalties collected by the Commonwealth in response to VOSH COVID-19 related inspections is deposited in the General Fund of the Commonwealth and not the Department of Labor and Industry's budget.

## **28. The Standard does not cover other infectious diseases.**

The Standard does not cover other infectious diseases like influenza, tuberculosis, etc.

## **29. Employee temperature checks are not specifically required during prescreening.**

Although it is a generally accepted practice, the Standard does not specifically require that employers check the temperatures of employees. 16VAC25-220-50.C.1 provides that "Prior to the commencement of each work shift, prescreening or surveying shall be required to verify each covered employee does not have signs or symptoms of COVID-19." Employers are provided the flexibility to determine what form of prescreening they will use to determine that "each covered employee does not have signs or symptoms of COVID-19."

## **30. Safe harbor issue.**

With regard to the "safe harbor" issue, the Department notes that the Standard provides flexibility to business through 16VAC25-220-10.G.1 which provides that "To the extent that an employer actually complies with a recommendation contained in CDC guidelines, whether mandatory or non-mandatory, to mitigate SARS-CoV-2 virus and COVID-19 disease related hazards or job tasks addressed by this standard, and provided that the CDC recommendation provides equivalent or greater protection than provided by a provision of this standard, the employer's actions shall be considered in compliance with this standard."

The Standard is clear that employer's wishing to take advantage of 16VAC25-220-10.G.1 must comply with both mandatory and non-mandatory provisions in the specific CDC guidelines, and those provisions must provide equivalent or greater protection than provided by a provision of the Standard.

The Department does not plan to recommend that 16VAC25-220-10.G be returned to its original language. It is the Department's position that similarly situated employees and employers exposed to the same or even more serious hazards or job task should all be provided the same basic level of safety and health protections. The Standard's language in 16VAC25-220-10.G assures such protections.

## **31. FAQs.**



Frequently Asked Questions (FAQs) are available at:  
<https://www.doli.virginia.gov/cononavirus-covid-19-faqs/>

### **32. Price gouging for PPE.**

Price gouging complaints during a state of emergency in Virginia can be filed with the Office of the Attorney General (OAG): [https://www.oag.state.va.us/consumer-protection/index.php?option=com\\_content&view=article&id=181#:~:text=File%20a%20Price%20Gouging%20complaint,Office%20of%20Weights%20and%20Measures.](https://www.oag.state.va.us/consumer-protection/index.php?option=com_content&view=article&id=181#:~:text=File%20a%20Price%20Gouging%20complaint,Office%20of%20Weights%20and%20Measures.)

### **33. Face covering definition.**

The Department intends to recommend a change to the definition of face covering.

### **34. Commenter's suggestion that only Virginia citizens should be able to file comments.**

The Department does not have any control over who can file comments to standards and regulations. That is within the purview of the General Assembly.

### **35. Commenter's suggestion that the Standard is "one size fits all".**

The Department disagrees that the Standard is a "one size fits all" regulatory approach.

At its core the Standard is a risk management system to prevent or limit the spread in the workplace of the SARS-CoV-2 virus which causes COVID-19.

It is designed to provide basic protections for all employees and employers within the jurisdiction of the Virginia Occupational Safety and Health program.

It provides certain mandatory requirements for all employers and specific additional requirements for Very High, High, and Medium risk job tasks centered around mitigation of hazards.

The Standard is also designed to incentivize employers to make changes in the workplace that will enable employees in certain situations to be classified to a reduced level of risk (e.g., from high to medium or from medium to lower), thereby also reducing the employer's compliance and cost burdens.

### **36. Vaccinations.**

COVID-19 vaccines will be an important part of the Commonwealth's and the country's ability to significantly reduce the ongoing spread of the SARS-CoV-2 virus in the workplace and in the community. However, with the projected population-level efficacy of COVID-19 vaccine to be 50-70%, no one can definitively state that someone vaccinated will not subsequently be free from infection.

There is also anecdotal information and scientific surveys that appear to indicate that a certain sector of the American population will refuse to be vaccinated. Accordingly, it is anticipated that SARS-CoV-2 will continue to infect a certain sector of the populace and be present in the workplace for months and years to come.

The Department does not intend to include a requirement in the Standard for employees to be vaccinated; however, the Standard is designed to incentivize employers to implement mitigation strategies against the spread of SARS-CoV-2, and vaccinations are one such strategy.

### **37. Physical separation of employees at low-risk businesses by a permanent, solid floor to ceiling wall.**

The language referenced by the Commenter (physical separation of employees at low-risk businesses by a permanent, solid floor to ceiling wall) is one method described in the Standard for mitigating the spread of SARS-CoV2; however, employers are not required to do so.

The Department intends to recommend a language change to the Standard that makes this clear.

### **38. Risk classification by job task and hazard.**

The language referenced by the Commenter (Requiring employers to determine the risk of each employee instead of basing that on their job tasks) is not accurate. The Standard specifically provides in 16VAC25-220-40.B.1 that “Employers shall assess their workplace for hazards and job tasks that can potentially expose employees to the SARS-CoV-2 virus or COVID-19 disease. Employers shall classify each job task according to the hazards employees are potentially exposed....”

### **39. Cleaning and disinfecting at the same intervals.**

The language referenced by the Commenter (All businesses must clean and disinfect at the same intervals whether it’s a 9 to 5 office setting or a factory with round-the-clock shifts. Again, imposing burdens without any rationale.) is assumed by the Department to refer to 16VAC25-220-40.K.5 which provides “All common spaces, including bathrooms, frequently touched surfaces, and doors, shall at a minimum be cleaned and disinfected at the end of each shift.”

The Department disagrees that there is no rationale for the requirement. The provision states that the cleaning will take place “at the end of each shift”, the rationale being to prevent the spread of the SARS-CoV-2 virus from one group of employees to another (employers with multiple shifts); or from the same group of employees from one day to another when they have been away from work during the time in between shifts and potentially exposed to SARS-CoV-2 in the interim, or for locations where customers enter, for the same reason.

### **40. Comprehensive infectious disease standard.**

The Safety and Health Codes Board has the option to begin consideration of a comprehensive infectious disease standard at any time; however the Department recommends that the focus for now remain on addressing SARS-CoV-2 and COVID-19 workplace hazards.

### **41. Privacy issues.**

With regard to the privacy issue raised, the Standard specifically references the Health Insurance Portability and Accountability Act (HIPAA) in two places when dealing with potential employee and employer privacy concerns (16VAC25-220-40.B.8 and 16VAC25-220-70.C.3.b).

#### **42. Exemption from the Standard for hospitals and healthcare providers.**

The issue of an exemption from the Emergency Temporary Standard for hospitals and healthcare providers was previously considered by the Safety and Health Codes Board and not adopted.

#### **43. Commenter's suggestion that the ETS conflicts with federal regulations.**

The Department is not aware of any conflicts of the Standard with federal regulations. Federal OSHA does not have an infectious disease regulation that applies to SARS-CoV-2 and COVID-19.

#### **44. Commenter's comparison of COVID-19 with influenza and common cold.**

With regard to the issue of comparing SARS-CoV-2 and Covid-19 to influenza and the common cold, there are a number of significant differences which are discussed in detail in the Department's Briefing Package on the Emergency Temporary Standard dated June 23, 2020, which can be found at: <https://www.doli.virginia.gov/wp-content/uploads/2020/06/BP-Emergency-Regulation-Under-2.2-4011-SARS-CoV-2-That-Causes-COVID-19-FINAL-6.23.2020.pdf> (e.g., lack of a vaccine, limited treatment options, infection fatality rate; there is currently no vaccine; treatment options are still limited; superspreader transmission, etc.).

#### **45. The ETS cannot be extended.**

Va. Code §40.1-22(6a) under which the Emergency Temporary Standard (ETS) was adopted does not permit the ETS to be extended beyond 6 months.

#### **46. The framework of the Standard is based on an OSHA document.**

The Department notes that the basic framework for the Standard (classifying COVID-19 hazards and job tasks by risk classification - very high, high, medium and lower - is based on a document prepared by federal OSHA which can be found at: <https://www.osha.gov/Publications/OSHA3990.pdf>

At its core the Standard is a risk management system to prevent or limit the spread in the workplace of the SARS-CoV-2 virus which causes COVID-19.

It is designed to provide basic protections for all employees and employers within the jurisdiction of the Virginia Occupational Safety and Health program.

It provides certain mandatory requirements for all employers and specific additional requirements for Very High, High, and Medium risk job tasks centered around mitigation of hazards.

The Standard is also designed to incentivize employers to make changes in the workplace that will enable employees in certain situations to be classified to a reduced level of risk (e.g., from high to medium or from medium to lower), thereby also reducing the employer's compliance and cost burdens.

#### **47. VOSH Anti-discrimination jurisdiction.**

The Department of Labor and Industry's (DOLI) Virginia Occupational Safety and Health (VOSH) program only has jurisdiction when there is an employer - employee relationship. It has no legal authority to investigate discrimination against members of the general public.

#### **48. VOSH jurisdiction to enforce Executive Orders.**

The Department of Labor and Industry's (DOLI) Virginia Occupational Safety and Health (VOSH) program only has jurisdiction when there is an employer - employee relationship. It has no legal authority to enforce provisions of Executive Orders against members of the general public.

#### **49. COVID-19 U.S. Death toll.**

The United States Census Bureau as of October 28, 2020, estimates the current population of the U. S. to be approximately 330,513,000, <https://www.census.gov/popclock/>. If 1% of the U. S. Population dies from SARS-CoV-2 or complications involving COVID-19, the number of deaths would be 330,513. The current U.S. death toll is calculated to be 212,328 by the CDC as of October 28, 2020, approximately two-thirds of the 1% figure cited by the Commenter, and that only over a 7 month period, <https://www.cdc.gov/nchs/nvss/vsrr/covid19/index.htm>.

#### **50. Potential language change recommendations to the Standard (Examples).**

The Department acknowledges the issues raised by the Commenter (training time period and contact tracers), and will consider potential language changes in the revised proposed Standard.

The Department intends to recommend a definition of "minimal occupational contact" be added to the revised proposed standard.

The Department intends to recommend language changes to the "business consideration" language in 16VAC25-220-70.C.5 referenced by the Commenter to make clear that the language is related to occupational safety and health concerns.

The Department intends to recommend that the return to work provisions of the standard be updated to reflect current CDC and VDH guidance.

The Department intends to recommend revisions to 16VAC25-220-40.F, which currently provides: "F. When multiple employees are occupying a vehicle for work purposes, the employer shall ensure compliance with respiratory protection and personal protective equipment standards applicable to the employer's industry.

The Department intends to recommend a language change to 16VAC25-220-40.D.

The Department intends to recommend a language change to 16VAC25-220-50.B.6.

The Department intends to recommend revisions to 16VAC25-220-40.K.5 which currently provides: "5. All common spaces, including bathrooms, frequently touched surfaces, and doors, shall at a minimum be cleaned and disinfected at the end of each shift. All shared tools, equipment, workspaces, and vehicles shall be cleaned and disinfected prior to transfer from one employee to another."

The Department intends to recommend a language change to the amount of time permitted to train employees under the Standard.

The Commenter referenced the fact that 16VAC25-220-80.B.8.f provides that training on the standard provided to employees shall include with regard to PPE: "Heat-related illness prevention including the signs and symptoms of heat-related illness...." The Department intends to recommend a revision to this requirement to make clear that it relates COVID-19 related hazards specifically (e.g., impact of wearing a respirator in a hot environment).

### **51. Work-relatedness of COVID-19 employee infection.**

16VAC25-220-40.B.8.e requires employers to notify the Department within 24 hours of the discovery of three or more employees present at the place of employment within a 14-day period testing positive for SARS-CoV-2 virus during that 14-day time period.

DOLI and the Virginia Department of Health (VDH) have collaborated on a Notification Portal for employers to report COVID-19 cases in accordance with Emergency Temporary Standard (ETS) Sections 16VAC25-220-40.B.8.d and -40.B.8.e that satisfies COVID-19 reporting requirements for both agencies. The portal went live on September 28, 2020. Here is a link:

<https://www.doli.virginia.gov/report-a-workplace-fatality-or-severe-injury-or-covid-19-case/>

If an employer is contacted by VOSH either through an informal investigation (phone/fax/email/letter) or as a result of an onsite inspection, it will be provided the opportunity to present information on whether it believes the employee's infection occurred as a result of a workplace exposure or was contracted away from work.

### **52. Request for exposure log and requirements for managing cases.**

The Standard contains a framework for managing cases:

1. Identify cases.

16VAC25-220-40.B.4 provides that "Employers shall develop and implement policies and procedures for employees to report when employees are experiencing symptoms consistent with COVID-19, and no alternative diagnosis has been made (e.g., tested

positive for influenza). Such employees shall be designated by the employer as “suspected to be infected with SARS-CoV-2 virus.”

2. Remove from work known cases and those “suspected to be infected with SARS-CoV-2 virus.”

16VAC25-220-40.B.5 provides that “Employers shall not permit employees or other persons known or suspected to be infected with SARS-CoV-2 virus to report to or remain at the work site or engage in work at a customer or client location until cleared for return to work.”

3. Notify employees and others of known cases.

16VAC25-220-40.B.8 provides “To the extent permitted by law, including HIPAA, employers shall establish a system to receive reports of positive SARS-CoV-2 tests by employees, subcontractors, contract employees, and temporary employees (excluding patients hospitalized on the basis of being known or suspected to be infected with SARS-CoV-2 virus) present at the place of employment within the previous 14 days from the date of positive test...”

4. Provide for return to work.

16VAC25-220-40.C.1 provides that “The employer shall develop and implement policies and procedures for employees known or suspected to be infected with the SARS-CoV-2 virus to return to work...”

Federal OSHA’s Recordkeeping regulation contains requirements for employer maintenance of injury and illness logs in part 1904. <https://www.osha.gov/laws-regs/regulations/standardnumber/1904/>. Section 1904 contains recording criteria, <https://www.osha.gov/laws-regs/regulations/standardnumber/1904/1904.4>. OSHA provides further guidance at: <https://www.osha.gov/memos/2020-05-19/revise-enforcement-guidance-recording-cases-coronavirus-disease-2019-covid-19>

The VOSH program is prohibited from requiring or allowing recordkeeping requirements contrary to those set by federal OSHA so that a consistent, statistically reliable national data collection system can be maintained. See 16VAC25-60-190.A.2, <http://leg1.state.va.us/cgi-bin/legp504.exe?000+reg+16VAC25-60-190>, “2. No variances on record keeping requirements required by the U.S. Department of Labor shall be granted by the commissioner....”

**53. How does an employer determine employee exposure in the context of 16VAC25-220-40.B.8.a ([notify:] The employer's own employees who may have been exposed, within 24 hours of discovery of the employees possible exposure....”)**

16VAC25-220-40.B.8.a provides in part:

8. To the extent permitted by law, including HIPAA, employers shall establish a system to receive reports of positive SARS-CoV-2 tests by employees, subcontractors, contract employees, and temporary employees (excluding

patients hospitalized on the basis of being known or suspected to be infected with SARS-CoV-2 virus) present at the place of employment within the previous 14 days from the date of positive test, and the employer shall notify:

a. The employer's own employees who may have been exposed, within 24 hours of discovery of the employees possible exposure,...

The following Frequently Asked Question was developed by the Department on this issue (§40, FAQ 24, <https://www.doli.virginia.gov/cononavirus-covid-19-faqs/>

24. The owners of a salon have a question about alerting the employees at their workplace when an employee tests positive for COVID-19. They are under the impression that only employees in “close contact” (as defined by the CDC) with the positive employee must be alerted. The salon has a strict physical distancing requirement of six feet or more for employees, so they alerted no one at the workplace of the positive case. Is this correct?

No. Employees were required to be notified. The term “close contact” is not used in the ETS. The term “close contact” is used by the CDC for determining when contact tracing should be conducted and is defined as “any individual within 6 feet of an infected person for at least 15 minutes.” 16VAC25-220-10.H specifically provides that:

H. Nothing in the standard shall be construed to require employers to conduct contact tracing of the SARS-CoV-2 virus or COVID-19 disease.

16VAC25-220.40.B.8.a requires employers to notify their “own employees who may have been exposed, within 24 hours of discovery of the employees’ possible exposure....”

Just because an employer has a strict policy of physical distancing as the company alleges does not mean that all employees, customers or persons complied at all times. The intent of the notification requirement is to provide employees information of a “possible” exposure so that employees can make decisions for themselves on the appropriate course of action to take.

In a situation such as a typical beauty salon where the “footprint” of the floor space would not be considered large, and all employees work in the same work space on the same floor, the employer must notify all employees that were “present at the place of employment within the previous 14 days from the date of positive test.”

#### **54. Commenter suggests its industry should be “classified” as lower instead of medium.**

While the Standard lists a number of industries under the definition of “medium” exposure risk level, the language specifically states that “Medium exposure risk hazards or job tasks **may include**, but are not limited to, operations and services in....(Emphasis added). The definition of “medium” exposure risk level does not classify the listed industries as medium risk, but instead when read in conjunction with other portions of the Standard, indicates that the listed industries “may” fall into that category, depending on how the employer assesses and classifies the types of hazards

employees are exposed to and the type of job tasks they undertake, in accordance with the requirements in 16VAC25-220-40.B, which provides that:

B. Exposure assessment and determination, notification requirements, and employee access to exposure and medical records.

1. Employers shall assess their workplace for hazards and job tasks that can potentially expose employees to the SARS-CoV-2 virus or COVID-19 disease. Employers shall classify each job task according to the hazards employees are potentially exposed to and ensure compliance with the applicable sections of this standard for very high, high, medium, or lower risk levels of exposure. Tasks that are similar in nature and expose employees to the same hazard may be grouped for classification purposes.

The Standard also provides in 16VAC25-220-10.E.1 provides in part:

E. Application of this standard to a place of employment will be based on the exposure risk level presented by SARS-CoV-2 virus-related and COVID-19 disease-related hazards present or job tasks undertaken by employees at the place of employment as defined in this standard (i.e., very high, high, medium, and lower risk levels).

1. It is recognized that various hazards or job tasks at the same place of employment can be designated as very high, high, medium, or lower exposure risk for purposes of application of the requirements of this standard.

#### **55. Employer's responsibility to establish screening procedures.**

The Department respectfully disagrees with the Commenter's suggestion that the Standard "establishes company "Health officers" to become de facto certified, accredited, licensed doctors to diagnose symptoms and the health of employees." No such language is included in the Standard.

For instance, although it is a generally accepted practice, the Standard does not specifically require that employers check the temperatures of employees. 16VAC25-220-50.C.1 provides that "Prior to the commencement of each work shift, prescreening or surveying shall be required to verify each covered employee does not have signs or symptoms of COVID-19." Employers are provided the flexibility to determine what form of prescreening they will use to determine that "each covered employee does not have signs or symptoms of COVID-19."

OSHA provides guidance on screening employees in the construction industry that can be used by non-medical personnel at: <https://www.osha.gov/SLTC/covid-19/construction.html>.

#### **56. Sick leave issue.**

The Department does not plan to recommend changes to sick leave provisions in the Standard.



The Standard does not require employers to provide sick leave to employees. It does reference the Families First Coronavirus Response Act (FFCRA) at 16VAC25-220-40.B.6:

6. To the extent feasible and permitted by law, including but not limited to the Families First Coronavirus Response Act, employers shall ensure that sick leave policies are flexible and consistent with public health guidance and that employees are aware of these policies.

Further information about the FFCRA and sick leave policies can be found at: <https://www.dol.gov/agencies/whd/pandemic/ffcra-employee-paid-leave>

### **57. Notification requirement for tenants.**

The Standard does not apply to non-business tenants in an apartment building.

The Department does not plan to recommend that the notification requirements to tenants be removed from the Standard. The Department notes that the Standard does not apply to non-business tenants in an apartment building. The intent of the notification requirement is to provide employees information of a “possible” exposure so that employees can make decisions for themselves on the appropriate course of action to take.

### **58. Hand sanitizers.**

The Department does not intend to recommend the removal of hand sanitizers from the Standard. Use of hand sanitizers is well-recognized method to mitigate the spread of SARS-CoV-2. Also see DOLI Frequently Asked Questions §40, FAQ 9 and §40, FAQ 17 at: <https://www.doli.virginia.gov/cononavirus-covid-19-faqs/> Handwashing facilities, which are required in OSHA and VOSH standards and regulations, are not always immediately or readily accessible for employees who need to disinfect their hands without leaving their immediate work area.

### **59. Notification to Department of Health.**

The Department does not plan to recommend the elimination of reporting requirements to the Department of Health, although it does intend to recommend a change to the trigger number of positive cases.

DOLI and the Virginia Department of Health (VDH) have collaborated on a Notification Portal for employers to report COVID-19 cases in accordance with Emergency Temporary Standard (ETS) Sections 16VAC25-220-40.B.8.d and -40.B.8.e that satisfies COVID-19 reporting requirements for both agencies. The portal went live on September 28, 2020. Here is a link:

<https://www.doli.virginia.gov/report-a-workplace-fatality-or-severe-injury-or-covid-19-case/>

### **60. Whistleblower refusal to work provision.**

The Department does not plan to recommend eliminating the Whistleblower provision regarding refusal to work referenced by the Commenter.

16VAC25-220-90.D was added by the Safety and Health Codes Board, not by DOLI. It is a restatement of current regulatory requirements in 16VAC25-60-110 and specifically refers to that section, and is considered by the Board to be a restatement of employee rights consistent with current law.

### **61. Classification of hazards and job tasks.**

The Standard already requires that employers assess and classify the types of hazards employees are exposed to and the type of job tasks they undertake, in accordance with the requirements in 16VAC25-220-40.B.

### **62. PPE hazard assessments under 1910.132 and the ETS.**

16VAC25.60.D.1 provides that "Employers covered by this section and not otherwise covered by the VOSH Standards for General Industry (16VAC25-90-1910)...." which means it applies to those employers not in general industry. If, as the Commenter notes, they have already completed a hazard assessment under 1910.132 that addressed SARS-CoV-2 and COVID-19 related hazards and job tasks, then they do not have to complete another one.

It is the Department's position that general industry employers are required to update their pre-COVID-19 PPE hazard assessments.

### **63. Notification to employers about the ETS.**

While the Department constantly strives to improve information dissemination about its programs, and will continue to look for new ways to do so, it feels that there was widespread notice to the business community and the general public about the adoption of the Emergency Temporary Standard through print, television, and social media.

### **64. PPE and Respirators in Prison and Jail Environments.**

It is the Department's position that general industry employers, such as prisons and jails, are required to update their pre-COVID-19 PPE hazard assessments and take into account SARS-CoV-2 and COVID-19 related hazards and job tasks, particularly where known COVID-19 persons are housed. In such situations, it is the Department's position that enhanced personal protective equipment beyond face coverings, up to and including respirators, would be a minimum requirement under 1910.132 and 1910.134 in certain situations.

### **65. COVID-19 Employee Deaths.**

The Department notes that in recent years, VOSH has investigated an average of approximately 35 to 40 occupationally related fatalities per year. As of October 30, 2020, VOSH has investigated over 30 employee deaths attributable to COVID-19 alone. The large majority of those cases remain under investigation to determine if they were occupationally related or not, and if occupationally related, whether violations of the

Emergency Temporary Standard or mandatory requirements in Governor's Executive Orders should be cited or not.

#### **66. PPE supply and cost; insurance reimbursement.**

The Department does not have legal authority to regulate supply chains for items such as personal protective equipment (PPE) and other products, but is well aware of the shortages of such items at various times as N-95 respirators, cleaning and disinfecting chemicals, hand sanitizer and other medical products to provide safety and health protections to employees.

The Standard was designed to provide employers with flexibility and takes into account the “feasibility” of an employer to comply with certain requirements, particularly in areas involving PPE that is not readily commercially available at this time.

See Federal OSHA’s” Enforcement Guidance for Respiratory Protection and the N95 Shortage Due to the Coronavirus Disease 2019 (COVID-19) Pandemic” (which employers in Virginia can rely on) for further information and guidance on respiratory protection. <https://www.osha.gov/memos/2020-04-03/enforcement-guidance-respiratory-protection-and-n95-shortage-due-coronavirus>

Please note that price gouging complaints during a state of emergency in Virginia can be filed with the Office of the Attorney General (OAG):

[https://www.oag.state.va.us/consumer-protection/index.php?option=com\\_content&view=article&id=181#:~:text=File%20a%20Price%20Gouging%20complaint,Office%20of%20Weights%20and%20Measures.](https://www.oag.state.va.us/consumer-protection/index.php?option=com_content&view=article&id=181#:~:text=File%20a%20Price%20Gouging%20complaint,Office%20of%20Weights%20and%20Measures.)

The Department does not have legal authority to regulate the rate at which insurance companies reimburse medical practices.

#### **67. Technical feasibility definition.**

The Standard's definition of "technical feasibility" is based on a longstanding definition contained the VOSH Field Operations Manual (FOM) and federal OSHA's FOM. The Department does not intend to recommend any change to the definition.

#### **68. Infeasibility defense.**

Feasibility is defined (based on longstanding definitions of OSHA and VOSH in their respective Field Operations Manuals) and referenced numerous times in the Standard to provide a level of flexibility to employers to achieve compliance with the requirements of the Standard and to mitigate the spread of SARS-CoV-2 to employees while at work.

Here is a summary of the defense:

Infeasibility Defense (previously known as the “impossibility” defense)

A citation may be vacated if the employer proves that:

1. The means of compliance prescribed by the applicable standard would have been infeasible under the circumstances in that either:

- a. Its implementation would have been technologically or economically infeasible or
  - b. Necessary work operations would have been technologically or economically infeasible after its implementation; and
2. Either:
    - a. An alternative method of protection was used or
    - b. There was no feasible alternative means of protection.

NOTE: Evidence as to the unreasonable economic impact of compliance with a standard may be relevant to the infeasibility defense.

Source: Occupational Safety and Health Law, Randy S. Rabinowitz, 2nd Edition (2002)

### **69. Signs and symptoms.**

The Department intends to recommend changes to the Standard to update references to signs, symptoms and symptomatic.

### **70. Human resource policies.**

The Department respectfully disagrees with the Commenter's assertion that mitigation strategies (referred to by the Commenter as "human resource policies") to prevent the spread of SARS-CoV-2 in the workplace exceeds the authority of the Board.

The Department intends to recommend some language changes to the provisions referenced by the Commenter.

### **71. Infectious disease preparedness and response plan.**

The Department does not intend to recommend any change to which employers are required to develop and implement an Infectious disease preparedness and response plan under 16VAC25-220-70. The current requirement exempts employers with 10 or fewer employees which eases the burden on the smallest employers with the most limited resources. The Department notes that a free template for a plan is provided on the Department's website at: <https://www.doli.virginia.gov/covid-19-outreach-education-and-training/>

In addition, the Department strongly encourages Virginia's small business owners to take advantage of free and confidential occupational safety and health onsite and virtual consultation and training services to address COVID-19 compliance issues. More information about the VOSH Consultation Services can be found at: <https://www.doli.virginia.gov/vosh-programs/consultation/>

### **72. Definition of employee.**

The Department does not intend to recommend a change to the definition of "employee" in the Standard, which reflects current statutory, regulatory and case law.

### **73. Definition of medium.**

The Department does not intend to change the definition of medium risk exposure. That definition applies to SARS-CoV-2 and COVID-19 related hazards and job tasks, not "jobs."

### **74. Surgical/medical procedure mask definition.**

The Department does not intend to change the definition of surgical/medical procedure mask as that definition is consistent with Food and Drug Administration (FDA) guidance. The FDA regulates surgical/medical procedure masks.

### **75. Multi-employer worksites where there is no contractual relationship between the employers.**

The Department does not plan to recommend that the notification requirements to subcontractors, etc., referenced by the Commenter, be removed from the Standard.

The intent of the notification requirement is to provide employees information of a "possible" exposure so that employees can make decisions for themselves on the appropriate course of action to take. The Department notes that the notification provision in the Standard referenced by the Commenter would only require notification by the employer to one of its own subcontractors. So in the situation described by the Commenter, vendor number one with a known to be infected employee would only be required to notify another vendor number two at the site, if vendor number two was a subcontractor to the vendor number one.

### **76. Physical distancing in construction.**

The Department agrees with the Commenter that when physical distancing can be maintained - either indoors or outdoors - that is a preferred method of mitigating the spread of the SARS-CoV-2 virus. Conversely, when physical distancing cannot be observed – whether inside or outside – the Standard requires the employer consider other mitigation strategies.

### **77. OSHA and DOT jurisdiction issues for trucking companies.**

The Commenter notes that federal OSHA states, "While traveling on public highways, the [U.S.] Department of Transportation (DOT) has jurisdiction. However, while loading and unloading trucks, OSHA regulations govern the safety and health of the workers and the responsibilities of employers to ensure their safety at the warehouse, at the dock, at the rig, at the construction site, at the airport terminal and in all places truckers go to deliver and pick up loads." <https://www.osha.gov/trucking-industry/other-federal-agencies>

However, the above statement is not as straightforward as it seems. Congress, in section 4(b)(1) of the OSH Act of 1970, took into account the other Federal agencies which in the exercise of their statutory responsibilities may issue regulations or standards which affect occupational safety and health issues. Section 4(b)(1) provides, in pertinent part:

Nothing in this Act shall apply to working conditions with respect to which other Federal agencies . . . exercise statutory authority to prescribe or enforce standards or regulations affecting occupational safety and health.

The various federal Circuits across the United States have interpreted section 4(b)(1) and its application differently. For instance, a discussion by OSHA of how the 4th Circuit, which includes Virginia, has ruled states:

“The most common type of circumstances involving section 4(b)(1) of the OSH Act is where there is a statute whose primary purpose is to protect the public and transportation equipment but which also protects employees in the sense that in the effort to protect the public, the employees are also protected. Examples of this type of legislation are most of the statutes administered and enforced by the Department of Transportation (DOT). A practical example is the Federal Aviation Administration (FAA) In FAA's efforts to protect the flying public and air transport cargo, the crew of the aircraft are necessarily protected at the same time by the same FAA regulations.

Whenever a Section 4(b)(1) issue is presented in the context of a DOT statute which is designed to protect the public, transportation equipment, or cargo, the issue is usually of the type that is known popularly as the "gap theory," or "hazard-by-hazard" approach. That is, the question is whether the other agency has an enforceable regulation which, if that agency chooses to enforce that regulation, would reduce or eliminate the workplace hazard in question. If the other agency has no such regulation applicable to the hazard, then there exists a "gap" in worker protection which is filled by the residual jurisdiction of the OSH Act with its very broad coverage intended by Congress as the means for assuring ". . . every working man and woman in the Nation safe and healthful working conditions." Sec. 2(b), OSH Act, P.L. 91-596; see also, Northwest Airlines, Inc., 8 OSHC 1982, 1980 OSHD 24,751 (1980), petition for review dismissed, Nos. 80-4218, 80-4222 (2d Cir. 1981).

The so called "gap theory" has also been upheld by the courts. In the courts' decision, however, this same issue is cast in terms of the Section 4(b)(1) term "working conditions." In general, it can be stated that the following line of appellate court decisions affirm the "hazard-by-hazard" approach even though the courts sometimes have chosen different words which have to be explained and understood in context. For example, in *Southern Railway v. OSHRC*, 539 F.2d 335 (4th Cir. 1976) cert. denied 429 U.S. 999, 97 S.Ct. 525, the Fourth Circuit defined the term "working conditions" in Section 4(b)(1) as meaning "the environmental area in which an employee customarily goes about his daily tasks." That phrase of the court's decision seems to extend the term "working conditions" beyond hazards, but the phrase is not clear because while geographically, so to speak, the environmental area is broad under that decision, the "area" has no meaning if not viewed in terms of the regulations and hazards present in that area.”

A far better articulation of the "hazard-by-hazard" approach is found in a Fifth Circuit case; that is, in *Southern Pacific v. Usery*, 539 F.2d 386 (5th Cir. 1976), cert. denied 434 U.S. 874, 98 S.Ct. 222. In this case, the Fifth Circuit defined the term "working conditions" in Section 4(b)(1) to mean to include "surroundings" or "hazards" which the court stated could be a location, a grouping of items, or a single item. In *Southern Railway* in the Fourth Circuit and the Fifth Circuit's *Southern Pacific* definitions, we see, when viewed together, a narrowing of the term "working conditions." The most recent decisions even more clearly articulate the scope of Section 4(b)(1); that is, if the other agency's regulation (or the lack of one) does not cover the hazard in question, then the OSH Act's requirements are not preempted. For example, in *Donovan v. Red Star Marine Services Inc.*, 739 F.2d 774 (2d Cir. 1984), cert. denied 470 U.S. 1003, 105 S.Ct. 1355, the Second Circuit did not preempt OSHA's regulation of noise aboard an inspected vessel because, while the Coast Guard generally covered such vessels, the Coast Guard confined its regulation to life saving and fire-fighting equipment and had issued no noise abatement regulation. The Eleventh Circuit also analyzed a Section 4(b)(1) issue in the same way. In *re Inspection of Norfolk Dredging Co.*, 783 F.2d 1526 (11th Cir. 1986), reh. denied, 790 F.2d 88 (11th Cir. 1986), cert. denied 107 S.Ct. 271 (1986), the Eleventh Circuit did not preempt OSHA application to crane operations because the Coast Guard simply did not have regulations addressing crane hazards. The Eleventh Circuit in *Norfolk Dredging* stated that, "the effect of Section 4(b)(1) turns upon the precise working conditions at issue . . ."

....

There is no industry-wide exemption for motor vehicle common carriers, *Greyhound Lines. Inc.*, 5 OSHC 1132, 1977-78 OSHD 21,610 (1977), nor is there any industry-wide exemption for over-the-road truckers, *Lee way Motor Freight. Inc.*, 4 OSHC 1968, 1976-77 OSHD 21,464 (1977).

However, as discussed previously in the analysis of the term "working conditions" or the "gap theory," if OMCS has a regulation addressing a certain working condition (or hazard), then OSHA would be preempted from applying its standards to that hazard. The lead OSHA case on this issue under Section 4(b)(1) in the context of OMCS' jurisdiction is *Mushroom Transportation Co.*, Docket No. 1588, 1973-74, CCH OSHD 16,881 (R.C. 1973). *Mushroom* involved the hazard of possible movement of trucks while they were being loaded or unloaded with the use of powered industrial trucks. Both OSHA and OMCS had regulations dealing with brakes as well as other methods of preventing unwanted movement of a truck during loading and unloading operations. The Commission held that because the OMCS had such a regulation covering the same hazard as the OSHA standard, the OSH Act's standard was held inapplicable pursuant to the provisions of section 4(b)(1) of the OSH Act.(1)

....

Mushroom also stands for the proposition that the other agency's regulation need not be as stringent as the OSHA standard to effectuate preemption of the OSH standard. The Review Commission stated:

Once another Federal agency exercises its authority over specific working conditions, OSHA cannot enforce its own regulations covering the same conditions. Section 4(b)(1) does not require that another agency exercise its authority in the same manner or in an equally stringent manner. [Footnote omitted; emphasis supplied.] Mushroom, supra, 16,881 at 21,491.

To our knowledge, there have been no decisions of OSHRC or the courts since Mushroom specifically involving truck or bus operators. Citations have been issued, but these were mainly for alleged violations in loading areas and maintenance and repair shops.

....

**In conclusion, as we can see from the cases, there are three main principles in 4(b)(1) situations: (1) OSHA cannot enforce its authority with respect to working conditions over which another Federal agency has exercised its authority even if the other agency's standards are not as stringent or as stringently enforced as OSHA's; (2) if a Federal agency fails to exercise its authority with respect to working conditions, OSHA has jurisdiction to inspect and to cite for violations of standards; and (3) a negative exercise of authority can oust OSHA from jurisdiction. It must be noted, however, that 4(b)(1) situations must be considered on a case by case basis and deference given to a sister agency's interpretation of its authority.** (Emphasis added).

<https://www.osha.gov/laws-regs/standardinterpretations/1989-07-10>

### **78. Serologic testing.**

The serologic testing language in the Standard is consistent with CDC guidance.

<https://www.cdc.gov/coronavirus/2019-ncov/lab/resources/antibody-tests-guidelines.html>

### **79. Applicable industry standards.**

OSHA and VOSH standards and regulations fall into the following categories: Construction Industry, Agricultural Industry, Maritime Industry and General Industry (all employers not covered by Construction, Agricultural or Maritime Industry Standards are covered by the General Industry Standards).

### **80. Briefing package for ETS.**



The Department's Briefing Package on the Emergency Temporary Standard with background and legal justifications can be found at: <https://www.doli.virginia.gov/wp-content/uploads/2020/06/BP-Emergency-Regulation-Under-2.2-4011-SARS-CoV-2-That-Causes-COVID-19-FINAL-6.23.2020.pdf>

### **81. Occupancy limit.**

The current "occupancy limit" language in the Standard provides flexibility for employer to decide how best to mitigate the spread of SARS-CoV-2. While the Commenter's suggestion to incorporate a FEMA recommendation of 113 square feet per person could serve as one method for an employer to determine occupancy limits, it would increase the compliance burden on employers generally and is not recommended by the Department.

### **82. Training period for Infectious disease preparedness and response plan.**

The Department does not intend to recommend any change to train employees on the Infectious disease preparedness and response plan under 16VAC25-220-70, currently set at 60 days. In addition, the Department strongly encourages Virginia's small business owners to take advantage of free and confidential occupational safety and health onsite and virtual consultation and training services to address COVID-19 compliance issues. More information about the VOSH Consultation Services can be found at: <https://www.doli.virginia.gov/vosh-programs/consultation/>

### **83. Multi-employer worksite situations.**

In situations involving multi-employer worksites, the Department has a regulation on the subject multi-employer worksite responsibilities and the multi-employer worksite defense, which can be found at 16VAC25-60-260.F and -260.G.

<http://leg1.state.va.us/cgi-bin/legp504.exe?000+reg+16VAC25-60-260>. Additional information can also be found on the topic in the VOSH Field Operations Manual at <https://townhall.virginia.gov/L/ViewGDoc.cfm?gdid=5354>.

### **84. General duty clause uses and limitations.**

The Department's Briefing Package on the Emergency Temporary Standard with background on the use and limitations of the general duty clause:

<https://www.doli.virginia.gov/wp-content/uploads/2020/06/BP-Emergency-Regulation-Under-2.2-4011-SARS-CoV-2-That-Causes-COVID-19-FINAL-6.23.2020.pdf>

### **85. Six foot physical distancing requirement.**

The Department does not intend to revise the definition of physical distancing or to eliminate physical distancing as a recognized mitigation strategy. The six foot physical distancing requirement remains a best practice recognized by the CDC and VDH.

### **86. Medical removal.**

The Department does not intend to recommend the addition of medical removal protections to the Standard.

[OPTION 2: The Department does not intend to recommend the addition to the standard of medical removal protections or guaranteed compensation requirements for employees who are away from work due to COVID-19 issues.]

Some employees will be able to use sick leave during the time they are away from work. While the Standard does not require employers to provide sick leave to employees, it does reference the Families First Coronavirus Response Act (FFCRA) at 16VAC25-220-40.B.6:

6. To the extent feasible and permitted by law, including but not limited to the Families First Coronavirus Response Act, employers shall ensure that sick leave policies are flexible and consistent with public health guidance and that employees are aware of these policies.

Further information about the FFCRA and sick leave policies can be found at: <https://www.dol.gov/agencies/whd/pandemic/ffcra-employee-paid-leave>

Some employees will be able to receive workers' compensation while they are away from work. [http://www.vwc.state.va.us/sites/default/files/documents/COVID-19-Statistics-FAQs\\_o.pdf](http://www.vwc.state.va.us/sites/default/files/documents/COVID-19-Statistics-FAQs_o.pdf)

### **87. Employee involvement.**

The Department does not intend to recommend any additional employee involvement language to the Standard. Such involvement is currently required in 16VAC25-220-50.D.1.a, 16VAC25-220-60.D.1.a, and 16VAC25-220-70.C.2.

### **88. Records of PPE stockpile (inventory) and availability.**

The Department does not intend to recommend adding a requirement for employer to maintain records of PPE stockpile (inventory) and availability; however, the Department does intend to recommend revised language to 16VAC25-220-70.C.4.d that employers required to maintain an Infectious disease preparedness and response plan address contingency plans for situations where supply chains for safety and health related products and services may be impacted by the pandemic.

### **89. Mobile employees working at private homes.**

The Commenter references the difficulties with providing employee safety and health protections for mobile employees that work at private homes.

First, it should be noted that the Standard does not address the rights or protections of the general public, and more specifically, it does not contain a face covering mandate for the general public. That issue is the purview of the Virginia Department of Health and Governor's Executive Orders (e.g., Executive Order 63).

The Commenter represents an industry that has always been covered by 1910.132, Personal Protective Equipment Standard, which requires employers to conduct hazard assessments of the workplace to determine what PPE is required. This includes an assessment of what kind of infectious disease hazards employees might encounter, pre- and post-COVID19, when visiting a private home. The Standard does not change this basic requirement for the Commenter's industry, so there should be no confusion about what protections such employer's need to provide. If pre-COVID-19, such an employer rightly considered the potential for its employees to be exposed to, for instance, tuberculosis at a private home, conducting the same type of assessment for COVID-19 should not present any substantial difficulties.

#### **90. ASHRAE legal issue and air handling issues.**

The Department notes that the ASHRAE air handling requirements are undergoing a legal review which may result in recommended changes that could address some of air handling issues raised by the Commenter.

#### **91. N-95 respirator determinations.**

The issue of N-95 respirators raised by the Commenter is appropriate to address during the personal protective equipment (PPE) hazard assessment process required in General Industry under 1910.132.

#### **92. Contact tracing.**

The Department does not intend to recommend any additional employee involvement language to the Standard. Such involvement is currently required in 16VAC25-220-50.D.1.a, 16VAC25-220-60.D.1.a, and 16VAC25-220-70.C.2.

#### **93. Paid time for cleaning.**

The Department does not intend to recommend adding requirements that employers be required to provide pay for cleaning activities by employees. Payment of wage issues fall under Va. Code §40.1-29, <https://law.lis.virginia.gov/vacode/40.1-29/>, and not within the enabling statutes of the VOSH program.

#### **94. Disinfectant selection.**

The Department does not intend to recommend revising the standard to address the Commenter's concern about those disinfectants containing substances known to cause adverse health effects, such as those containing quaternary ammonia that is a known respiratory irritant. That issue is more appropriately dealt with under the requirements of the Hazard Communication Standard applicable to the employer's industry.

#### **95. Face shield.**

The Department intends to recommend revisions to the Standard dealing with face shield issues.

#### **96. Jail and correctional facility issues.**

The Department does not intend to recommend revising the Standard to address access and egress issues at jails and correctional facilities. Control over access and egress issues at jails and correctional facilities falls under the purview of either the controlling authority and/or the Virginia Department of Health.

The Department does not intend to recommend any changes to the pre-screening requirements in the Standard. 16VAC25-220-50.C.1 provides that "Prior to the commencement of each work shift, prescreening or surveying shall be required to verify each covered employee does not have signs or symptoms of COVID-19." Employers are provided the flexibility to determine what form of prescreening they will use to determine that "each covered employee does not have signs or symptoms of COVID-19."

The Commenter references industries that have always been covered by 1910.132, Personal Protective Equipment Standard, which requires employers to conduct hazard assessments of the workplace to determine what PPE is required. This includes an assessment of what kind of infectious disease hazards employees might encounter, pre- and post-COVID19, when visiting a private home. The Standard does not change this basic requirement for the Commenter's industry, so there should be no confusion about what protections such employer's need to provide. If pre-COVID-19, such an employer rightly considered the potential for its employees to be exposed to, for instance, tuberculosis at a private home, conducting the same type of assessment for COVID-19 should not present any substantial difficulties. The proper assessment will determine whether and what kind of PPE and/or respiratory protection equipment is required.

The Department notes that the Standard that employee involvement is currently required for hazard assessment determinations in 16VAC25-220-50.D.1.a and 16VAC25-220-60.D.1.a.

#### **97. Definition of "May be infected with SARS-CoV-2 virus".**

The Department does not intend to recommend that the definition of "May be infected with SARS-CoV-2 virus" be removed from the Standard. While many people become infected with SARS-CoV-2 in community settings that are not work-related, every person that becomes infected who is also an employee becomes a potential workplace source and transmitter of the virus if they report to work while still capable of transmitting the disease. There are numerous documented examples of the workplace spread SARS-CoV-2, which is also considered to be highly contagious. The introduction of an infectious disease into a workplace setting, regardless of the source, constitutes a workplace health hazard subject to regulation and enforcement by VOSH. The VOSH program has clear statutory and regulatory jurisdiction over workplace safety and health issues in the Commonwealth, including the potential for spread of infectious diseases among employees and employers, and when those employees and employers are potentially exposed to other persons who may be carriers of the infectious diseases (patients, customers, independent contractors, etc.).

#### **98. Occupational exposure definition.**

The Department does not intend to recommend that the definition of “occupational exposure” be revised. It is based on a longstanding definition contained the VOSH Field Operations Manual (FOM) and federal OSHA's FOM.

**99. Definition of "Suspected to be infected with SARS-CoV-2 virus".**

The Department does not intend to recommend that the definition of "Suspected to be infected with SARS-CoV-2 virus." The definition includes persons who have not yet been tested for SARS-CoV-2.

**100. Second jobs.**

The Department does not intend to recommend changes to 16VAC25-220-70 based on the Commenter's suggestions. The Department is not aware of any legal restrictions against an employer establishing a policy that employees inform them about outside jobs.

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COMMONWEALTH OF VIRGINIA  
DEPARTMENT OF LABOR AND INDUSTRY  
PUBLIC HEARING ON PERMANENT STANDARD  
THE VIRGINIA SAFETY AND HEALTH CODES BOARD  
ELECTRONIC MEETING

WEDNESDAY, SEPTEMBER 30, 2020

ELECTRONIC MEETING

9:15 A.M.

1 BOARD MEMBERS PRESENT:

2

3 Mr. Louis J. ("Lou") Cernak, Jr.

4 Ms. Milagro ("Milly") Rodriguez

5 Mr. John D. Fulton

6 Mr. Charles L. ("Chuck") Stiff, Chair

7 Ms. Anna E. Jolly

8 Mr. Thomas A Thurston

9 Mr. Courtney M. Malveaux

10 Ms. Tina Hoover

11 Mr. Michael A. Luce

12 Mr. Phil Glaize (absent)

13 Mr. Travis M. Parsons

14 Mr. Patrick S. Bolling, JD, MA

15 Mr. Kenneth W. Richardson, II

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## APPEARANCES VIA WEBEX

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1 MR. STIFF: Good morning, everybody. My name  
2 is Chuck Stiff and I am Chairman of the Safety and Health  
3 Codes Board. Along with my fellow Board Members, we'd  
4 like to welcome everyone to this Public Hearing today.

5 This morning the Board is holding a virtual  
6 Public Hearing for the purpose of consideration of 16 VA  
7 25-220, Proposed Permanent Standard, Infectious Disease  
8 Prevention, SARS-COV2 Virus that causes COVID-19 by the  
9 Virginia Safety and Health Codes Board pursuant to  
10 Virginia Code §40.1-22(6a).

11 The sole purpose of this hearing is for the  
12 Board to listen and take comments from the public  
13 regarding this proposed regulatory action, Infectious  
14 Disease Prevention, SARS-COV2 virus that causes COVID-19.  
15 Depending on the number of commenters, the ability of  
16 Board Members to ask questions and receive answers from  
17 commenters may be limited or not possible. The ability  
18 of the Board Members to ask questions and receive answers  
19 will be at the discretion of the Chair. Board Members  
20 will not be answering or debating substantive questions  
21 about the proposed permanent standard during this public  
22 hearing, but may seek to ask clarification questions of  
23 today's commenters if there is sufficient time.

24 Today is not designed to be a question and  
25 answer session. The Board's goal for today is to receive

1 as much input from as many members of the public as  
2 possible. The public will get another opportunity to  
3 discuss this proposed standard with the Board. Based  
4 upon the comments the Board receives today as well as  
5 written comments the Agency has already received from the  
6 Town Hall Comment Forum that took place from July 27 to  
7 September 25, 2020, the Agency will likely propose  
8 revisions to the proposed permanent standard for the  
9 Board to consider.

10 Any changes recommended by the Agency will also  
11 be the subject of a Public Comment Period before any  
12 Board meeting to consider adoption. At that time, the  
13 Board will schedule a meeting for the purpose of  
14 considering Board adoption of the proposed permanent  
15 standard, giving proper notice to the public.

16 Prior to any vote being taken at the meeting,  
17 there will be an opportunity for the public to address  
18 the Board again, as well as the ability of the Board to  
19 ask questions and be asked questions by the presenters.

20 More information regarding the process for  
21 public participation at the next Board meeting will be  
22 posted on the regulatory Town Hall website, the  
23 Department of Labor and Industry's website, and the  
24 Richmond Times-Dispatch once that meeting is scheduled.

25 All individuals who offer their comment today

1 already signed up to speak by sending an email to Ms.  
2 Doss, Director of Policy and Planning. Ms. Doss compiled  
3 the list of commenters in the order she received in  
4 emails, using the names and telephone numbers, if  
5 applicable, provided in the emails she received. That  
6 list was then given to our meeting organizer.

7           If you are one of today's commenters, please  
8 check right now to be sure that you have signed in to  
9 this Webex using the full name you provided to Ms. Doss  
10 in your email. If you did not log on using the name  
11 provided to Ms. Doss, the meeting organizer will not know  
12 who to unmute. If you did not log in using the log-in  
13 credentials provided to Ms. Doss, log out right now and  
14 log back in using those credentials.

15           Likewise, if you are utilizing the audio  
16 conference only option, please check now to ensure you  
17 have called in using the telephone number you provided to  
18 Ms. Doss in your email. If you are not calling from that  
19 phone number, please hang up now and dial back into this  
20 meeting using the telephone number provided to Ms. Doss.

21           I will now wait for three minutes to give  
22 today's commenters time to check, ensure they have logged  
23 in, and have called using the credentials they sent to  
24 Ms. Doss.

25

1 (Pause.)

2  
3 MR. STIFF: Now that everyone has had time to  
4 check their connection, I will now turn to the list of  
5 those who will be offering public comment today to share  
6 information on the process to be followed.

7 Speakers will be called to address the Board in  
8 the order in which they sent an email to Ms. Doss. Once  
9 Ms. Doss calls your name, a meeting organizer will unmute  
10 that person's connection. Once you are unmuted and it is  
11 established that the Board can hear you, you will be  
12 given five minutes to speak. At the end of five minutes,  
13 your connection will be muted again. The five-minute  
14 time limit is to ensure that the Board gets to hear from  
15 all of those who have signed up to speak.

16 Board Members, please refrain from interrupting  
17 the speaker during the speaker's allotted five minutes.  
18 If there is time for clarification questions from the  
19 Board, I will wait for the speaker's time to expire, then  
20 ask the Board for any clarification questions they may  
21 have.

22 Along those lines, Board Members, please  
23 remember that this is a public hearing, not a public  
24 meeting in which business is conducted by the Board. Our  
25 purpose today is to accept and hear public comment on

1 this proposed permanent standard. There will be no  
2 formal recognition today as this is not a Board Meeting.  
3 So if I acknowledge you today to ask a clarification  
4 question to a speaker, please refrain from making a  
5 motion. All motions should be left for the next Board  
6 meeting on the proposed permanent standard. Again, today  
7 is to hear from the public about this standard.

8 I would like to make one final remark on  
9 conduct that is expected at this hearing. While the  
10 Board understands that many in the community have strong  
11 feelings about this proposed permanent standard, we do  
12 expect all of those participating to communicate with  
13 respect to the seriousness of this matter and to the  
14 Board. The Chair may ask the meeting organizer to mute  
15 the connection in which meeting decorum is not upheld.  
16 Depending on the situation, the meeting organizer may  
17 mute the connection on his own and it will be within my  
18 discretion to ask the meeting organizer to unmute the  
19 connection or keep it muted. So please keep this in mind  
20 when it is your turn to speak.

21 I will now ask Ms. Doss to read the first name  
22 on the list of commenters.

23 MS. DOSS: Good morning. The first name is  
24 Brett Vassey. He is a representative of Virginia  
25 Manufacturers Association.

1 MR. STIFF: Good morning, Mr. Vassey. We will  
2 just make sure we can hear you.

3 MR. VASSEY: Good morning, Mr. Chairman, Brett  
4 Vassey.

5 MR. STIFF: Thank you. You may start your  
6 remarks now.

7 MR. VASSEY: Mr. Chairman, Members of the  
8 Board, thank you for the opportunity to speak today and  
9 tackling the difficult decisions ahead of you. We  
10 understand what is at stake and we appreciate  
11 transparency and public participation as the foundation  
12 of good regulation.

13 The VMA has been the trade association for  
14 manufacturers since 1922. There are about 6,750  
15 manufacturing facilities, 230,000 employees in the State  
16 of Virginia and we have had a long history of advocacy  
17 and work with the Agency and with the legislature on  
18 health and safety regulations and voluntary compliance.

19 Our member companies are committed to  
20 protecting employees, contractors, suppliers, and  
21 communities from COVID infection and that's the lens  
22 through which we work today and make our comments. In  
23 addition, we are a member of the Virginia Business  
24 Coalition. It's a coalition of 33 business associations,  
25 many on the line today who will make additional comments

1 to mine today.

2 I have provided the Board a 13-page detailed  
3 complaint on the permanent regulation for your  
4 consideration. We have covered the issues dealing with  
5 federal, state process and the regulation itself, but in  
6 the interest of time, I'm just going to cover a couple of  
7 highlights that I'd like you to laser in on, if you  
8 would, please.

9 Number one, the one-size-fits-all regulation  
10 for all employers just simply doesn't apply and it may  
11 require the Board to reconsider the grave danger  
12 determination for all workplaces now that we have some  
13 very good data on fatalities in particular.

14 Second, codifying the Governor's executive  
15 orders is illegal. There are a number of provisions and  
16 a number of speakers today who will address that in more  
17 detail, but delegating that authority is not within the  
18 statute nor contemplated by the General Assembly. So we  
19 ask that to be removed from any future consideration.

20 Third, ongoing concerns about Administrative  
21 Process Act, I want to highlight one in particular, the  
22 Small Business Regulatory Flexibility Act determination.  
23 We do not see any clear guidance that's been provided to  
24 the Board as far as the economic impact that is critical  
25 for any of your decision making that needs to be part of



1 a future ETS or permanent regulation or your next steps.

2 Next, on our determination as far as our  
3 concerns, let me get really granular with some things we  
4 think just don't belong on the ETS.

5 The HVAC system requirements in the draft  
6 regulation and in the proposed permanent regulation  
7 doesn't address the potential hazard, if any, as it  
8 relates to ventilation. It also asserts the Safety and  
9 Health Board has authority over our physical operation of  
10 our business facilities, which you don't. This is a  
11 multi-million-dollar impact. We ask the Board to  
12 reconsider the HVAC requirements.

13 Common space being cleaned at each shift  
14 doesn't accommodate for multiple shifts that are  
15 overlapping. It has created quite a disturbance in the  
16 industry. We ask for a lot more flexibility,  
17 particularly FDA regulated facilities.

18 Also, as far as Board authority, we contend and  
19 assert that the Board does not have authority over sick  
20 leave policies, flexible worksites, flexible work hours,  
21 flexible meeting and travel, teleworking, or delivery of  
22 services and delivery of products. We ask that to be  
23 removed from any future consideration because of that  
24 legality.

25 Next, on physical distancing, we ask for that

1 to be harmonized when it comes to separation of walls and  
2 barriers. There are two different standards set in the  
3 same code in the temporary standard which make no sense  
4 to us. One references in §30 physical separation being  
5 physical barriers that are solid walls floor to ceiling,  
6 and then in the very high and high hazard areas it  
7 references separation barriers being allowed to be sneeze  
8 guards. We think that has to be fixed. It's, again,  
9 another big issue.

10           Respiratory protection for individuals in cars,  
11 we think that that needs to be harmonized and allow for  
12 face coverings.

13           And then also prior notice for due process, if  
14 there is a case, we think that employers need due process  
15 in any consideration of there's been an assertion of an  
16 infection or an improper protection of an employee.

17           We also think that the heat related illness  
18 prevention insert into this is non-related. It needs to  
19 be struck entirely.

20           As far as the training is concerned, quite  
21 frankly, we found it just to be not feasible for small  
22 employers. The deadlines were unachievable, both the 30  
23 day and 60 day. We would estimate that less than 10  
24 percent of Virginia businesses are actually in full  
25 compliance with this and it needs to be reconsidered.

1           And then finally, there needs to be a sunset  
2 based upon a date, not an event.

3           So in closing, we would ask the Board to  
4 reconsider this permanent regulation. We oppose the  
5 insertion of a permanent regulation and we would ask that  
6 you consider another 60-day process --

7

8           (Speaker muted due to expiration of  
9 five-minute time allowance.)

10

11           MS. DOSS: Thank you, Mr. Vassey. Your five  
12 minutes just ended.

13           MR. STIFF: Thank you, Mr. Vassey, for your  
14 remarks.

15           Board Members, does anyone have any questions  
16 for clarification of Mr. Vassey?

17           Somebody, I think, is talking, but we can't  
18 hear them. On this end I'm just hearing a couple  
19 syllables.

20           MR. MALVEAUX: Mr. Chairman, Courtney Malveaux.  
21 Can you hear me?

22           MR. STIFF: Just barely.

23           MR. MALVEAUX: I'll try to speak up. I  
24 understand that (inaudible).

25           MR. STIFF: Mr. Malveaux, I can't hear you.

1 Can you call back in perhaps or get closer to the  
2 microphone. I don't know also if you're working through  
3 your computer or through the telephone. It may be better  
4 to work through the telephone, if not.

5 We'll hold for just a moment to allow Mr.  
6 Malveaux to reconnect.

7

8 (Pause.)

9

10 Mr. Malveaux, are you back with us?

11 MR. MALVEAUX: Can you hear me.

12 MR. STIFF: Yes, I can hear you. Go ahead.

13 MR. MALVEAUX: Oh, great. Thank you. I  
14 understand (inaudible).

15 MR. STIFF: Mr. Malveaux, you're cutting in and  
16 out again.

17 MR. MALVEAUX: Economic impact, I'd like to  
18 know what (inaudible).

19 MR. STIFF: We can't make out what you're  
20 saying.

21 MR. MALVEAUX: Don't worry about it.

22 MR. STIFF: Are you dialing in through  
23 telephone or computer?

24 MS. TRICE: Hi, Chuck. It's Holly Trice. I've  
25 called Courtney on his cell phone and we're going to try

1 to do it this way.

2 Go ahead, Courtney.

3 MR. MALVEAUX: Mr. Chairman, can you hear me?

4 MR. STIFF: Yes, go ahead.

5 MR. MALVEAUX: Just one question. I wanted to  
6 ask Mr. Vassey to elaborate on the economic impact. I  
7 understand that was pursuant to the Small Business  
8 Regulatory Flexibility Act. If he could just share --  
9 just elaborate a little bit in terms of what the economic  
10 impact is either to his members or to the private sector  
11 or public sector.

12 MR. STIFF: Okay. So you're clarifying the  
13 small business impact?

14 MR. MALVEAUX: Yes, sir.

15 MR. STIFF: Mr. Vassey.

16 MR. VASSEY: Mr. Chairman, we have a couple of  
17 data points we can share. We did start up a training  
18 program for our members just to be in compliance. For an  
19 11-person facility, the training costs ran for them  
20 between \$1,000 to \$1,800 per company. The engineering  
21 controls that they had to put in place were in addition  
22 to that. The HVAC assessments were in addition to that.  
23 There were a couple of other costs that were a little  
24 less clear because it depended upon the facility, like  
25 PPE. And then once you extrapolate that to larger

1 facilities that have very complicated health -- excuse  
2 me, hazard assessment and exposure assessments that they  
3 had to develop and very complicated disease preparedness  
4 and prevention plans, the numbers started to get much,  
5 much larger.

6 And the HVAC piece, I can only tell you that  
7 we've had some larger facilities who said that their  
8 costs are running into the millions now. When they added  
9 all the costs related to compliance it would be a large  
10 number.

11 I don't have anything that I can give you as  
12 far as a study on the total cost, but I can absolutely  
13 verify we have trained over 300 companies that for small  
14 employers the minimum price tag is \$1,000 for an  
15 11-employee facility to about \$1,800. And that's just  
16 training alone.

17 MR. STIFF: Thank you, Mr. Vassey. Appreciate  
18 your remarks today.

19 Ms. Doss, may I have the next name.

20 MS. DOSS: Yes. The next speaker is Hobey  
21 Bauhan from the Virginia Poultry Federation.

22 MR. STIFF: Welcome, Mr. Bauhan. Just want to  
23 establish we can hear you.

24 MR. BAUHAN: Good morning, Mr. Chairman. Can  
25 you hear me?

1 MR. STIFF: Yes. Thank you. You may start  
2 your remarks now.

3 MR. BAUHAN: Great. Thank you. I'm Hobey  
4 Bauhan. I'm President of Virginia Poultry Federation.  
5 Virginia Poultry Federation is a statewide trade  
6 association. We represent all sectors of the poultry  
7 industry throughout Virginia. The poultry industry is  
8 Virginia's largest sector of agriculture. About eight  
9 poultry processing companies employ around 15,000 people  
10 and we also have about 1,100 family farms in Virginia  
11 that raise poultry.

12 Safety is number one priority in the poultry  
13 industry and we've made a lot of strides over many years.  
14 Poultry plants in Virginia were successful in  
15 implementing COVID-19 prevention measures well prior to  
16 adoption of the ETS and will continue to make worker  
17 safety a top priority.

18 According to data posted by the Virginia  
19 Department of Health, about 94 percent of 1,228 cases  
20 among poultry workers occurred in April and May, with a  
21 dramatic decline after that. There were 25 cases in  
22 June, 13 in July, and just 4 in August. The data shows  
23 that the industry's implementation of OSHA, CDC, and VDH  
24 guidance was successful.

25 In addition to our successful implementation of

1 protective measures when the pandemic struck last spring,  
2 our industry is now working diligently to comply with the  
3 ETS.

4           The Federation was opposed to the ETS when it  
5 was adopted this summer and submitted detailed comments  
6 setting forth our reasons. Among our reasons, a  
7 one-size-fits-all static regulation is inappropriate in  
8 light of the changing scientific understanding of  
9 COVID-19. OSHA and CDC guidance are updated frequently  
10 and are a more appropriate mechanism to guide protective  
11 measures. VOSH already had the ability under OSHA's  
12 general duty clause to cite a company that fails to take  
13 actions to protect its workers from COVID-19 as  
14 recommended by OSHA and CDC.

15           For these and other reasons, we also now oppose  
16 adoption of a permanent standard. Disease pandemics are  
17 temporary. Any regulations addressing them should also  
18 be temporary.

19           If the Department does proceed with a permanent  
20 standard, it should include the sunset clause from the  
21 ETS so that the regulations expire with the Governor's  
22 state of emergency.

23           The process by which DOLI adopted the ETS was  
24 flawed and inappropriate because it did not allow for  
25 adequate stakeholder input. The ETS was hastily adopted



1 without adequate time for consideration for detailed  
2 written comments, much less an opportunity for public  
3 testimony. The result was an ETS with ambiguous and  
4 confusing provisions that led to many questions among the  
5 regulated community. Anything beyond what is currently  
6 in place should allow for substantially more stakeholder  
7 input.

8 In conclusion, we respectfully ask the  
9 Department and the Board to allow the ETS to expire in  
10 January or at least to ensure any regulation beyond  
11 January sunsets with the state of emergency.

12 Thank you for your consideration.

13 MR. STIFF: Thank you, Mr. Bauhan, for your  
14 remarks.

15 Board Members, does anyone have a clarification  
16 question?

17

18 (No Board Members responded.)

19

20 MR. STIFF: Ms. Doss, may I have the next name.

21 MS. DOSS: The next speaker is Marcia  
22 Tetterton. She represents the Virginia Association for  
23 Home Care and Hospice.

24 MR. STIFF: Good morning, Ms. Tetterton. Just  
25 want to establish we can hear you.

1 MS. TETTERTON: Good morning, Mr. Chair.

2 MR. STIFF: You may start your remarks now.

3 MS. TETTERTON: Great. Thank you very much for  
4 allowing me the opportunity to address these regulations.  
5 My name is Marcia Tetterton. I am the Executive Director  
6 of the Virginia Association for Home Care and Hospice.  
7 It's a 37-year old trade association representing  
8 approximately 2,000 home care and hospice agencies  
9 licensed and medicare certified in Virginia. We employ  
10 approximately 30,000 folks in home care and hospice.

11 There's no question the COVID-19 virus has been  
12 a challenge for all Virginians, but none as much as those  
13 residing in nursing and assisted living facilities. Our  
14 thoughts and prayers have been with the staff, the  
15 residents, and their families.

16 Recent Virginia Department of Health data  
17 indicates a little over half of the deaths from COVID-19  
18 have been in these long-term care institutions. Most of  
19 the residents have very complex medical needs and  
20 multiple chronic diseases. Home care and hospices are  
21 licensed health care services. Our providers and their  
22 employees have been on the front line of this virus.

23 We are required by both state and federal  
24 regulations to have pretty complex emergency preparedness  
25 plans. We're also required to do tabletop exercises. No

1 matter how many times they're conducted and practiced and  
2 emergency plans are developed and implemented, we truly  
3 need the ability to adapt every day for every patient  
4 that is in their private residence.

5 As health care providers, we operate in a world  
6 of universal precautions. For the lay person that means  
7 you treat every patient as if they have a virus, an  
8 infection, or are contagious.

9 Our firm first reaction as a community was to  
10 look at our emergency preparedness plan, check with the  
11 CDC guidelines and the World Health Organization, and  
12 then we went down a litany of things like order more PPE,  
13 order more enhanced and more sophisticated PPE. Go back  
14 to our training and in-services and make sure all the  
15 staff knew how to use the equipment and followed safety  
16 protocols. We even had those same discussions and  
17 trainings with families.

18 Staff, patients, and families were afraid.  
19 While the information on the virus was inconsistent and  
20 the World Health Organization and the CDC were saying  
21 very different things, we relied heavily on the Virginia  
22 Department of Health to help stabilize these scenarios.  
23 We did not need the Department of Labor and Industry to  
24 issue regulations. We already had regulatory standards,  
25 best practices based on evidence and we value our

1 workforce.

2 In home care and hospice, the amount of time  
3 spent on training is based on best practices and desired  
4 outcomes, not an arbitrary number that becomes an easy  
5 check-off for an inspector.

6 The notion of a safe harbor for following CDC  
7 guidelines is truly fraught with ambiguity. I want to  
8 bring to your attention again CDC guidelines change.  
9 Sometimes they changed two and three times a day early  
10 on. Things have stabilized.

11 Regulations by nature are very restrictive and  
12 inflexible. In a health care setting this approach can  
13 be very unsafe, unsafe for our workforce and unsafe for  
14 patients. We need to rely on evidence-based best  
15 practices.

16 While we believe and understand the general  
17 intent of the regulation is to protect the health and  
18 safety of the workers, they are built upon standards that  
19 have not been tested nor do we know that they actually  
20 protect workers from this particular virus.

21 For example, the HVAC standard is confusing for the home  
22 care community since our workplace is a private home.  
23 It's unclear how this standard would apply and who would  
24 be responsible.

25 While we believe home care providers are

1 compliant with the intent of the standard, it has created  
2 a significant amount of duplicative work. We were  
3 required to capture complaints in a specific format and  
4 require employees' signature and training on specific  
5 standards, a standard that had nothing to do with the  
6 care that we provide.

7 Another area was the concern with the paid sick  
8 leave. We fail to see why the Virginia Department of  
9 Labor and Industry (inaudible) a regulation when, in  
10 fact, this issue has failed to pass several times by the  
11 General Assembly. We believe this was an over reach. In  
12 fact, many of our employers already had to meet that  
13 requirement under the first Coronavirus Response Act.

14  
15 (Speaker muted due to expiration of  
16 five-minute time allowance.)

17  
18 MR. STIFF: Thank you, Ms. Tetterton, for your  
19 remarks.

20 Board Members, does anyone have any  
21 clarification questions?

22  
23 (No Board Members responded.)

24  
25 MR. STIFF: Ms. Doss, may I have the next name.

1 MS. DOSS: Yes. The next name is Robert  
2 Melvin; although we do not see him logged in.

3 So we're going to move on to the next name on  
4 the list. It's Kim Bobo. She's with the Virginia  
5 Interfaith Center for Public Policy.

6 MR. STIFF: Ms. Bobo, we'll just establish  
7 connection. Can we hear you?

8 MS. BOBO: Good morning.

9 MR. STIFF: Good morning, Ms. Bobo. You may  
10 start your remarks now.

11 MS. BOBO: All right. Thank you. Good  
12 morning. I'm Kim Bobo, Executive Director of the  
13 Virginia Interfaith Center for Public Policy, the  
14 Commonwealth's largest and oldest faith-based social  
15 justice organization. We advocate economic, racial,  
16 social, and environmental justice in Virginia's policies  
17 and practices. Our faith traditions have a special  
18 concern for people living in poverty and employed in low  
19 wage sectors, like many of our essential service workers.

20 In the first few months of the pandemic, we  
21 sewed masks and delivered them to grocery store workers.  
22 We shared information with faith leaders about how people  
23 could apply for unemployment or get food or prevent  
24 evictions. We have faith communities support farm  
25 workers and poultry workers when they were being hit hard

1 by the pandemic. We've worked closely with the  
2 Governor's staff on getting the word out through faith  
3 communities.

4 We also supported the emergency temporary  
5 standard. This standard provided clear guidance to our  
6 congregations, related faith-based non-profits, and  
7 businesses that employ Virginia's workers. I'm proud of  
8 Virginia. Thanks to this Board for passing the standard  
9 and overall I'm proud of the way Virginia has managed  
10 this crisis. As of yesterday's reports, there were 20  
11 states in which new cases are higher and staying higher.  
12 Not us. There were nine states in which new cases are  
13 lower, but going up. Not us either. We are in the  
14 states where new cases are lower and are staying lower.  
15 There are obviously lots of policies that affect new  
16 cases, but the standard is one of those policies. It is  
17 working.

18 No one thinks COVID-19 will be gone by the time  
19 this standard ends. In fact, many in the medical  
20 community believe things could get worse this fall and  
21 winter whilst we need to continue with and build on what  
22 works.

23 Please enact a permanent standard that  
24 maintains the clear and strong standards for all  
25 employers. If there is new science-based information

1 such as 6 feet isn't enough social distancing, alter or  
2 strengthen the guidelines appropriately, but keep the  
3 clarity and the broad-based coverage. Please pass this  
4 permanent standard. And we urge you to encourage the  
5 Governor to add staff to VOSH so they have adequate  
6 resources to enforce the standard.

7 Thank you to the Board Members for all of your  
8 work. Thank you to the Governor for his leadership. And  
9 thank you to Ray Davenport and his team for the  
10 dedication to safety in the workplace. Thank you.

11 MR. STIFF: Thank you, Ms. Bobo, for your  
12 remarks.

13 Board Members, does anyone have any  
14 clarification questions.

15  
16 (No Board Members reponded.)

17  
18 MR. STIFF: Ms. Doss, may I have the next name.

19 MS. DOSS: Yes, Mr. Stiff. The next name on  
20 the list is Nicole Riley. She's with the National  
21 Federation of Independent Business.

22 MR. STIFF: Welcome, Ms. Riley. We'll first  
23 establish that we can hear you.

24 MS. RILEY: Yes, Good morning, Mr. Chairman.  
25 How are you?



1           MR. STIFF: Good. Thank you. You may start  
2 your remarks now.

3           MS. RILEY: Great. Thank you, Mr. Chairman and  
4 Members of the Board. Nicole Riley. I'm the Virginia  
5 State Director for the National Federation of  
6 Interdependent Business, NFIB. We represent  
7 approximately 6,000 small business owners throughout the  
8 Commonwealth in just about every facet of the economy.  
9 Think about the insurance agency in Chesterfield, the  
10 road builder in Abington, the truck stop in Chesapeake,  
11 the Main Street retailer in Lexington, the florist in  
12 Fairfax, and the restaurant owner in Danville. We're all  
13 throughout the Commonwealth over a number of types of  
14 industries who all have very special specific work  
15 environments and we think that plays a role in how they  
16 try to implement these standards.

17           Thank you for this opportunity to provide you  
18 the perspective of small businesses. They and many of  
19 their small business colleagues have really faced intense  
20 stress over the last six months. Many of them either had  
21 their business closed or they operated in an extremely  
22 limited capacity. They've lost a lot of revenue. Most  
23 of my non-essential retail members talk about losses of  
24 50 to 90 percent of their monthly sales. I have a hotel  
25 member that said he finally stopped losing money in July

1 only to find out that there won't be any college football  
2 crowds this fall to help sustain him through the end of  
3 the year. A lot of small business owners out there are  
4 really feeling the financial crisis that the pandemic has  
5 brought.

6 But despite these challenging times, small  
7 businesses quickly adapted and implemented protocols to  
8 protect their employees and customers. They used CDC  
9 guidance. They used the Governor's executive orders  
10 regarding reopening. So now they're obviously trying to  
11 busily comply with the emergency temporary standard, but  
12 the last thing that our business owners need at this time  
13 as they rebuild their businesses is a permanent  
14 one-size-fits-all government regulation.

15 The reason that NFIB is opposed to making the  
16 ETS a permanent standard is for a couple of reasons.  
17 Number one, the situation is temporary. All of us expect  
18 this pandemic to end. Also, the science of the COVID-19  
19 virus is continuously being updated. So if you make the  
20 ETS permanent, it really potentially could require  
21 businesses to comply with outdated regulations and stifle  
22 their ability and flexibility to pursue innovative,  
23 effective approaches to protecting worker health and  
24 safety.

25 Second, there's no sunset date. When you look

1 at §20 in the permanent standard proposal before you,  
2 related to effective and expiration dates, there is no  
3 mention of a sunset clause like there was in the ETS. I  
4 listened to the July deliberations, all four meetings,  
5 all of those hours. The Board made it pretty clear that  
6 they believe this pandemic is going to be temporary in  
7 nature and, therefore, the regulations need to be  
8 temporary in nature.

9 If the Board intends to move forward with any  
10 standard when the ETS expires, our small business owners  
11 expect the business owners to stick by its decision to  
12 end the regulations at the end of the pandemic.

13 Third, the standard is pretty burdensome for  
14 businesses to comply. You've already heard from Mr.  
15 Vassey on a number of specific points that are included  
16 in his comments, from the manufacturers that are included  
17 in mine from NFIB, and also part of the Business  
18 Coalition of which we're also a member. These are  
19 specific concerns that our members have come across as  
20 they've tried to implement this. Overall, our members  
21 have found the standard to be pretty confusing.

22 It's also costly. They've had to hire  
23 consultants, take workers out of production to do  
24 additional training. Even the state recognizes that it  
25 is costly to comply because the House budget that was

1 just approved yesterday on the House floor included \$25  
2 million in federal CARES Act money for the state agencies  
3 to become compliant with the DOLI regulations.

4 So there is a cost and we just have to make  
5 sure that there's a balance between cost and the  
6 effectiveness of the standard.

7 Fourth, we really want to know has there been  
8 any analysis by the staff, by the Department, to  
9 determine the effectiveness of the current ETS before  
10 imposing a permanent standard. As far as the public  
11 knows, there really hasn't been any analysis provided to  
12 the Board to show how the current ETS has been  
13 implemented, data on how many complaints have been filed,  
14 how many work related deaths have been determined. What  
15 types of questions has the Department received from --

16

17 (Speaker muted due to expiration of  
18 five-minute time allowance.)

19

20 MR. STIFF: Thank you, Ms. Riley, for your  
21 remarks.

22 Board Members, does anyone have any  
23 clarification questions for Ms. Riley.

24

25 (No Board Members responded.)

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MR. STIFF: Ms. Doss, may I have the next name.

MS. DOSS: The next name on the list is Kyle Shreve. He's with Virginia Agribusiness Council.

MR. STIFF: Thank you.

Mr. Shreve, let's first establish that we can hear you.

MR. SHREVE: Good morning, Mr. Chairman. Can you hear me?

MR. STIFF: Yes. Thank you. You may start your remarks now.

MR. SHREVE: Thank you. Good morning, Mr. Chairman and Members of the Board. My name is Kyle Shreve and I am the Executive Director of the Virginia Agribusiness Council. The Council is a member-based trade association representing the agriculture and forestry industries contributing \$91 billion of economic impact to the Commonwealth.

We opposed the adoption of the emergency temporary standard and we continue to oppose the standard as a necessary static and one-size-fits-all policy that does not allow the different industry sectors to adapt to the latest science and guidelines for mitigation.

However, should the Board decide to make the standard permanent, the Council urges the Board to

1 include a provision repealing the standard if the  
2 Governor removes the state of emergency. If a vaccine or  
3 conditions change and it's distributed in the next 12  
4 months, large sections of the standard will be  
5 unnecessary and outdated. Public health pandemics are a  
6 temporary threat and do not need a permanent standard and  
7 should sunset when the Governor's state of emergency  
8 expires or a specific date over the next year.

9 The Council appreciates the inclusion of  
10 language in the ETS allowing compliance by following the  
11 latest CDC publication; however, that provision should be  
12 made clear as the Department's original language did.  
13 Our industry has already invested millions of dollars in  
14 implementing unprecedented safety measures to protect  
15 their workforce and maintain the food supply chain.

16 The different sectors of the industry followed  
17 guidance from the CDC, U.S. Department of Labor, Virginia  
18 Department of Health, Virginia Department of Agriculture  
19 and Consumer Services, and the Governor's Phase 3  
20 guideline.

21 Each individual farm, agribusiness, farm winery  
22 and cidery, saw mill, paper mill, etcetera, provides  
23 multiple services, engages customers differently,  
24 processes products differently, and are diversified  
25 operations with different types of agricultural

1 production.

2 The permanent regulation is another layer from  
3 another agency that leads to confusion and endangers the  
4 very workers the standard seeks to protect.

5 Again, we oppose the adoption of the permanent  
6 standard and believe guidance is sufficient to adequately  
7 protect the workforce. However, if the Board moves  
8 forward, we ask the Board to amend §10G to the Agency's  
9 original language with clarification on providing for  
10 compliance for employers who follow CDC and OSHA  
11 guidance.

12 Finally, the emergency temporary standard was  
13 adopted hastily and without adequate time for public  
14 input. As you've heard from others today, there are  
15 measures currently contained in the ETS that are already  
16 out of date or simply impossible to achieve for any  
17 business. We urge the Board not to make the same mistake  
18 with the regulation designed to last well into the  
19 future. So we would ask that any amendments that are  
20 proposed or adopted by the Board at a later date be given  
21 sufficient time for stakeholders to comment on the  
22 impacts of those revisions.

23 We appreciate the opportunity to provide  
24 comment today. I'd be happy to answer any questions the  
25 Board has. We reiterate our opposition to making the ETS

1 a permanent standard. Thank you.

2 MR. STIFF: Thank you, Mr. Shreve, for your  
3 remarks.

4 Board Members, does anyone have any  
5 clarification questions for Mr. Shreve?

6  
7 (No Board Members responded.)

8  
9 MR. STIFF: Ms. Doss, may I have the next name.

10 MS. DOSS: Jeff Perkins. He's with Boxley  
11 Materials Company and Virginia Transportation  
12 Construction Alliance.

13 MR. STIFF: Okay. Thank you.

14 Mr. Perkins, let's first establish we can hear  
15 you.

16 MR. PERKINS: Good morning, Mr. Chairman. Can  
17 you hear me?

18 MR. STIFF: Yes, sir. Thank you. You may  
19 start your remarks now.

20 MR. PERKINS: Mr. Chairman and Members of the  
21 Board, my name is Jeff Perkins. I'm here today as the  
22 President of the Virginia Transportation Construction  
23 Alliance representing more than 300 companies and tens of  
24 thousands of employees across the Commonwealth.

25 Virginia Transportation Construction Alliance



1 is the leading advocate and only state association  
2 exclusively dedicated to serving the contractors,  
3 aggregate producers, engineers, suppliers, and service  
4 providers who design, build, and maintains Virginia's  
5 transportation network.

6 I'm also President of Boxley Materials Company  
7 in Roanoke. Boxley is a vertically integrated  
8 construction materials company that produces aggregate,  
9 asphalt, block, brick, hardscapes, concrete, and slate  
10 products in Central and Southwest Virginia. We employ  
11 over 400 employees and their safety is our number one  
12 core value.

13 This morning I'm requesting that you do not  
14 make the emergency temporary standard permanent for the  
15 following reasons:

16 1. Practicality: The overarching concern here  
17 is that adopting permanent regulations on COVID makes  
18 little sense when the science is evolving and CDC  
19 guidance continues to change. Making these standards  
20 permanent at this stage is simply not practical as there  
21 is a very real likelihood that much of what employers are  
22 going to be required to follow indefinitely will be  
23 obsolete or shown to have no impact whatsoever on the  
24 virus.

25 2. Engineering controls: Even employers with

1 medium risk employees, as many construction industry  
2 personnel are characterized per the regulation, are to  
3 ensure their air handling systems comply with the  
4 American National Standards of the American Society of  
5 Heating, Refrigerating, Air Conditioning, Engineering  
6 standards which include requirements for outdoor air  
7 ventilation in most residential and non-residential  
8 spaces. These ETS standards are likely to be in a  
9 constant state of change considering CDC evolving  
10 guidance.

11           Some of these changes are not supported by the  
12 science and this is what should guide these standards.  
13 This is especially key to the construction industry which  
14 was already complying to a substantial degree with OSHA  
15 ventilation (inaudible) regulation, and particulate  
16 matter regulations.

17           3. CDC Deference: The ETS does not give  
18 enough leeway to the fact that science and health  
19 information about the virus is changing. If the ETS  
20 simply deferred back to CDC by stating if employers are  
21 in compliance with CDC guidance, then they are in  
22 compliance with the standard, but instead, the ETS only  
23 references the CDC when the CDC guidance is equal to or  
24 more stringent than ETS regulations.

25           4. Place of Employment: The ETS requires

1 employers notify DOLI if they have three positive test  
2 cases in a place of employment within 14 days. The ETS  
3 also requires employers to notify all employees at the  
4 place of employment within 24 hours of a positive test  
5 case. This idea of place of employment is undefined.  
6 The concept of place of employment is a vague concept,  
7 especially in the construction industry where employees  
8 may be working at different job sites day to day or may  
9 go weeks without interacting with other employees at  
10 another part of the facility. This is also a concern  
11 with employers with contractors, not technically their  
12 employees, at certain jobsites as well.

13           There is even concern that if three employees  
14 travel together to get lunch during a break and they  
15 share a car ride without masks, all come down with the  
16 virus, is this considered a place of employment that is  
17 reportable?

18           5. Unintended Consequences with VOSH: The ETS  
19 states that it is designed to supplement and enhance  
20 existing VOSH laws and rules. However, there are some  
21 industry-specific concerns considering construction  
22 employees are already compliant with specifics as to  
23 their PPE and their line of work. ETS rules impose --  
24 like when multiple employers are occupying a vehicle for  
25 work purposes, the employee shall ensure compliance with

1 respiratory protection and personal protective equipment  
2 standards applicable to the employer's industry.

3 This could be read to require a new N95 mask  
4 each day construction employees share common vehicles.  
5 This simply cannot be the intent of the ETS, but it could  
6 be the technical interpretation.

7 6. Third-Party Contractors: Obtaining  
8 information about other companies working on the same  
9 project can be a challenge when it comes to conducting  
10 contact tracing. If companies A, B, C, and D all have  
11 employees working on a construction project and an  
12 employee of Company D tests positive or experiences  
13 symptoms, it can be difficult if not impossible for this  
14 information to make its way to companies A, B, and C, who  
15 all have liability and responsibility with regard to  
16 engaging an immediate --

17  
18 (Speaker muted due to expiration of  
19 five-minute time allowance.)

20  
21 MR. STIFF: Thank you, Mr. Perkins, for your  
22 remarks.

23 Board Members, does anyone have any  
24 clarification questions?

25

1 (No Board Members responded.)

2

3 MR. STIFF: Ms. Doss, can I have the next name.

4 MS. DOSS: Yes. The next name is David Broder  
5 with SEIU Virginia 512.

6 MR. STIFF: Okay. Thank you.

7 Mr. Broder, we'll first establish connection.

8 MR. BRODER: Yes, thank you, Mr. Chairman. Can  
9 you hear me okay?

10 MR. STIFF: We can hear you. Thank you. You  
11 may start your remarks now.

12 MR. BRODER: Thank you. Good morning, Mr.  
13 Chairman, Members of the Board. I appreciate this  
14 opportunity to testify. My name is David Broder and I'm  
15 proud to serve as the elected president of SEIU Virginia  
16 512. Our union members are essential health care and  
17 public service workers. We are nurses, social workers,  
18 home care providers. We are trash collectors, park  
19 staff, mental health professionals, child educators, and  
20 so many more.

21 On behalf of our hard-working members, I want  
22 to commend the staff and Board for developing and  
23 approving an emergency temporary standard in a timely  
24 way.

25 Your work was literally a life saver.

1 I'm here this morning to speak in strong support of the  
2 proposed permanent standard for infections disease  
3 prevention for COVID-19 which would make these essential  
4 temporary standards a permanent protection for workers in  
5 Virginia.

6 I want to be very clear this morning. There is  
7 no way out of this pandemic or the next pandemic without  
8 a permanent standard to protect workers, our families,  
9 and our communities across the Commonwealth. Without a  
10 permanent standard, we will not be able to protect those  
11 currently on the job or get those who are without work  
12 back to the job safely.

13 While we strongly support the permanent  
14 standard, we do have two suggestions to strengthen it  
15 regarding the 6-foot standard for physical distancing and  
16 the medical removal of workers which we have submitted in  
17 detailed written comments.

18 I want to respect your time this morning and so  
19 I'd like to focus on what these standards mean for actual  
20 working people and I'd like to share an example from  
21 front line mental health workers. I think we can all  
22 agree that mental health workers are needed now more than  
23 ever. They have been on the job every single day of this  
24 pandemic, but prior to the emergency temporary standards,  
25 when one of our members tested positive for COVID after

1 working directly with the public, their co-workers were  
2 not notified. Their worksite was not cleaned in a timely  
3 manner. They were not given the PPE they needed. I  
4 think we can all agree that this was unacceptable and yet  
5 there was no recourse. That is why you acted.

6           Once the standards were adopted, front line  
7 mental health care workers in this very same worksite  
8 were able to successfully demand notification, the  
9 ability to quarantine, a clean worksite, and access to  
10 PPE. They were able to do their work. They are able to  
11 do their work right now with less fear that they will get  
12 sick, that they will bring this disease home to their  
13 children, to their aging parents.

14           One of our members was living in a hotel room  
15 that she could not afford rather than go home and risk  
16 her family's health. Thanks to these standards, they no  
17 longer have to do that. That is why this is so  
18 important.

19           I want to thank you again for considering these  
20 comments today and our written comments on behalf of our  
21 hard working members. We urge you all to continue to do  
22 what is right to protect Virginia's workers and adopt the  
23 proposed permanent standard. Thank you all very much.

24           MR. STIFF: Thank you, Mr. Broder for your  
25 remarks.

1 Board Members, does anyone have any  
2 clarification questions for Mr. Broder?

3

4 (No Board Members responded.)

5

6 MR. STIFF: Ms. Doss, may I have the next name.

7 MS. DOSS: Yes. The next name is Jodi Roth.

8 She's with Virginia Retail Federation.

9 MR. STIFF: Thank you.

10 Ms. Roth, let's first establish contact.

11 MS. ROTH: Good morning, Mr. Chairman. Can you  
12 hear me?

13 MR. STIFF: Yes.

14 MS. ROTH: Thank you. Mr. Chairman and Members  
15 of the Board, thank you for the opportunity to comment on  
16 the Virginia Department of Labor and Industry's announced  
17 intent to adopt a permanent standard for infectious  
18 disease prevention as it relates to COVID-19. I'm  
19 commenting on behalf of Virginia Retail Federation.

20 Virginia Retail Federation is a statewide  
21 retail association advocating on behalf of retailers  
22 large and small across the Commonwealth. Our members  
23 will be directly impacted by the attempt to implement a  
24 one-size-fits-all COVID-19 regulation on businesses  
25 throughout Virginia.



1 Virginia retail businesses need certainty and  
2 consistency in any regulatory program. This ensures the  
3 regulated community understands the requirements of the  
4 program and that all parties can work together to satisfy  
5 the regulatory requirements.

6 Our members oppose the adoption of the  
7 permanent standards by the Virginia Safety and Health  
8 Codes Board. We assert that adoption of 16 VAC 25-220 as  
9 a permanent regulation is overly burdensome, unnecessary,  
10 and violates existing law.

11 I would like to highlight the five major  
12 reasons that have been brought to your attention already  
13 by previous speakers this morning. That the situation is  
14 temporary, that there is no sunset date, the fact that  
15 the standard is burdensome for business to comply, no  
16 analysis to determine the effectiveness of current ETS.  
17 There has been no analysis provided to the Board to  
18 determine how the current ETS is being implemented.

19 In fact, the ETS was just fully implemented on  
20 September 25, the due date for public comments. So  
21 businesses had no time to voice the challenges they've  
22 encountered implementing the ETS, nor has there been an  
23 effective evaluation of the ETS by DOLI analyzing how  
24 many organizations are out of compliance because of the  
25 administration's failure to notify affected businesses

1 and what impact the regulations have had on small  
2 businesses in accordance with the Small Business  
3 Regulatory Flexibility Act, Small Business Regulatory  
4 Enforcement Fairness Act which the Agency is required to  
5 do.

6 In addition, there is no true safe harbor  
7 provision to provide incentives for business to comply  
8 with the regulation. The standards include the Agency's  
9 original language in §10G to those businesses who are  
10 doing the right thing and complying with the CDC  
11 guidance.

12 In closing, as previously stated, we believe it  
13 is extremely unreasonable to apply one-size-fits-all  
14 COVID-19 regulations to all employers across the  
15 Commonwealth. We recommend that the Board reject the  
16 regulations, establish a new 60-day public comment period  
17 for a revised ETS and abandon the ETS completely and rely  
18 upon the general duty clause and federal, state, and  
19 industry guidance to protect workers as has been  
20 effectively done in the overwhelmingly majority of other  
21 states. We have managed to keep our state numbers low  
22 without these burdensome regulations. Thank you, sir.

23 MR. STIFF: Thank you, Ms. Roth. We appreciate  
24 your remarks.

25 Board Members, does anyone have any

1 clarification questions for Ms. Roth?

2

3 (No Board Members responded.)

4

5 MR. STIFF: Hearing no questions, we will  
6 recess at this time for ten minutes and reconvene after  
7 the recess. Thank you all.

8

9 (A ten-minute recess was taken.)

10

11 MR. STIFF: We will now reconvene the Public  
12 Hearing of the Safety and Health Codes Board, September  
13 30, 2020.

14 Ms. Doss, if you can hear me, can I have the  
15 next name.

16 MS. DOSS: Yes. Chairman, were you able to ask  
17 if any of the Board Members had questions for Ms. Roth?

18 MR. STIFF: I'll ask again.

19 Does anyone on the Board have any clarification  
20 questions for Ms. Roth?

21

22 (No Board Members responded.)

23

24 MR. STIFF: Ms. Doss, may I have the next name.

25 MR. MALVEAUX: Mr. Chairman, this is Courtney

1 Malveaux. Can you hear me?

2 MR. STIFF: Yes.

3 MR. MALVEAUX: If you don't mind, may I ask a  
4 question of Ms. Riley? I tried to ask when she was cut  
5 off. Would that be permissible?

6 MR. STIFF: Who is this?

7 MR. MALVEAUX: Courtney Malveaux.

8 MR. STIFF: I know that. Who do you want to  
9 ask?

10 MR. MALVEAUX: Nicole Riley.

11 MR. STIFF: Is Ms. Riley still online?

12 MR. MALVEAUX: If not, maybe Ms. Roth can  
13 answer the question because she raised a similar point.

14 MR. RILEY: Hi, Mr. Chairman, this is Nicole  
15 Riley. I'm here.

16 MR. STIFF: Thank you, Ms. Riley.

17 Mr. Malveaux, please ask the clarification  
18 question.

19 MR. MALVEAUX: Sure. Thanks for indulging me.  
20 I couldn't get my audio on.

21 You were cut off, Ms. Riley, on your last  
22 point. There was information you were asking from the  
23 Agency. Could you elaborate on that. You were cut off.

24 MS. RILEY: Sure. Yes. We just think that it  
25 probably would be a good idea for the Board to be able to

1 get information from the staff on implementation of the  
2 ETS before moving forward with a permanent standard.  
3 That's things like how many employers did they hear from  
4 and what were some of the issues they brought up, you  
5 know, how many consultations they've done, how many  
6 complaints. We just think those are all really good data  
7 points that could help illuminate to the effectiveness of  
8 the ETS, what changes may be needed if the Board chooses  
9 to go with a permanent standard.

10 Certainly, from our members' perspective,  
11 safety is definitely a high priority. We just want to  
12 make sure that we're not, you know, being required to do  
13 duplicative requirements and things. If we can spend  
14 more time building our business, that's just as good for  
15 our workers as well. That's what we would ask that the  
16 Board request from the staff. Thank you.

17 MR. STIFF: Thank you, Ms. Riley.

18 Thank you, Mr. Malveaux.

19 Ms. Doss, can we have the next name.

20 MS. DOSS: Yes. The next name is Brandon  
21 Robinson. He's with Associated General Contractors of  
22 Virginia.

23 MR. STIFF: Thank you.

24 Mr. Robinson, can we establish that we can hear  
25 you.

1 MR. ROBINSON: Yes, sir. Good morning.

2 MR. STIFF: Good morning, Mr. Robinson. Thanks  
3 for your remarks. Your time starts now.

4 MR. ROBINSON: Yes, sir. Thank you for the  
5 opportunity. My name is Brandon Robinson. I represent  
6 the Associated General Contractors of Virginia. So our  
7 members are in commercial construction. They build  
8 schools, universities, hospitals, retail locations,  
9 hotels, and so much more. We're also a member of the  
10 Virginia Business Coalition, so one of many members to  
11 provide comments this morning.

12 Our members take pride in their health and  
13 safety records because a healthy and safe workforce is a  
14 productive workforce. The changes brought about by the  
15 global pandemic have been a challenge to our members;  
16 however, they've adjusted. They've leaned into their  
17 existing, robust safety programs to ensure workers can  
18 remain on jobsites and work safely. Construction is not  
19 only an essential business, it's a vital business.

20 Today I ask you not to create a permanent  
21 solution to a temporary problem. I ask you not to adopt  
22 a one-size-fits-all approach. Every day the science  
23 behind this disease evolves as we learn more and devise  
24 better ways to keep people safe. These standards are  
25 permanent. They would require businesses to comply with

1 standards that may not reflect the latest scientific  
2 evidence as to how to keep workers safe.

3           Second, the standard is extremely burdensome to  
4 businesses. In our members' experience, much of the  
5 exposure risks to workers occurs outside of business  
6 hours where employers have no control over the exposure  
7 potential. Should businesses be punished through  
8 enforcement of these standards by actions outside of  
9 their control?

10           Third, our members are concerned that the  
11 permanence and the focus on these regulations during this  
12 temporary pandemic may shift focus away from other  
13 jobsite safety concerns. Over the years our members have  
14 spent considerable resources to make jobsites safer. The  
15 complexity of these regulations will require businesses  
16 to spend considerable resources again to fit this  
17 one-size-fits-all approach.

18           As I said earlier, this standard really creates  
19 a permanent solution to a temporary problem. It was  
20 hastily put together and does not, we think, reflect the  
21 latest science on this deadly virus or enable us to  
22 continue to adjust to this science. It puts an undue  
23 burden on business and will do more harm than good. So  
24 we ask you on behalf of the businesses who literally  
25 build Virginia's schools, health care facilities, and so

1 much more to not make these permanent. That conclude my  
2 remarks.

3 MR. STIFF: Thank you, Mr. Robinson, for your  
4 remarks.

5 Board Members, does anyone have any  
6 clarification questions?

7

8 (No Board Members responded.)

9

10 MR. STIFF: Ms. Doss, may I have the next name.

11 MS. DOSS: Yes, sir, Nandan Kenkeremath. He's  
12 with Leading Edge Policy & Strategy, LLC.

13 MR. STIFF: Okay. Thank you.

14 Mr. Ken --

15 MR. KENKEREMATH: Can you hear me?

16 MR. STIFF: Yes, we can hear you. You can  
17 start your remarks now.

18 MR. KENKEREMATH: Thank you, Mr. Chairman and  
19 Members of the Board. I'm a concerned citizen and lawyer  
20 with extensive background in regulatory law and policy.  
21 I worked on dozens of statutory programs for many years,  
22 senior counsel for the Energy and Commerce Committee in  
23 the U.S. House of Representatives. Worked in the Office  
24 of General Counsel for the U.S. EPA.

25 I have substantial concerns with the ETS and



1 strongly recommend the Board withdraw the ETS and this  
2 proposal. The language in the ETS is, from my  
3 assessment, inexperienced, filled with provisions that  
4 are not workable, and do not have benefits that outweigh  
5 the costs relative to the baseline of OSHA laws and  
6 previous Virginia Laws.

7 I've submitted detailed and comprehensive  
8 comments under the name Leading Edge Policy & Strategy.  
9 I understand these will be posted on the DOLI website.  
10 I'm also happy to send this directly to the Board  
11 Members. I'm eager to answer questions at any time.

12 It is not appropriate to simply approve or  
13 disapprove in the whole of a proposal provided by DOLI  
14 staff or to simply make minor modifications. The  
15 mandates of the Governor in Executive Order 63 are not  
16 legal. He does not have the authority to demand a rule  
17 of full sweep of every employer and to only consider  
18 emergency procedure process. That is just directive.  
19 It's directive to not provide economic impact analysis,  
20 regulatory flexibility analysis, both of which were  
21 needed and are needed now.

22 The Board needs to consider whether each of  
23 several statutory standards, including the necessity,  
24 level of risk, feasibility, substantial evidence applies  
25 for each component and for each modicum of the scope of

1 the rule, not just the rule as a whole. It must consider  
2 fundamental alternatives such as whether each component  
3 is necessary in the medium or low-risk category. That  
4 did not happen before the emergency temporary standard.

5 I wanted to speak about the expected COVID  
6 provision. I think they are substantial, not workable.  
7 The list of symptoms are in the alternative and include a  
8 cough or a sneeze or a headache. You can be sent home  
9 for any of those things. That could be repeated through  
10 many cycles. It requires an alternative diagnosis. It's  
11 unclear who makes that diagnosis. Testing time, lots of  
12 time to return. There's a violation of both employer and  
13 employee rights. I don't know that anybody's following  
14 it. It would be like the shutdown we faced earlier this  
15 year.

16 As a matter of procedure, I mentioned that the  
17 ETS specifically said the standard shall not be extended  
18 or amended without public participation in accordance  
19 with the Virginia Administrative Process Act and it cites  
20 to the whole act et seq. that includes the economic  
21 impact analysis, regulatory and flexibility analysis.  
22 Those were supposed to be done and still are supposed to  
23 be done before a comment period. People are supposed to  
24 be able to comment on those issues.

25 Lastly, I just wanted to talk about the cross

1     referencing of the executive orders. This adds layers of  
2     confusion to the rule and not really in your authority to  
3     delegate to the executive -- of DOLI. But these two  
4     systems don't work very well together. The EOs  
5     themselves have not had any public process, no public  
6     dockets. As indicated in my comments, they infringe on  
7     fundamental rights of association.

8             Just in closing, look, I wanted to associate  
9     myself with the comments of the various organizations  
10    that have spoken before on their concerns of the rule,  
11    but believe that there are many, many provisions that are  
12    problematic and they need to be evaluated, each one at a  
13    time. Thank you for the opportunity to speak.

14            MR. STIFF: Thank you, Mr. Kenkeremath, for  
15    your remarks.

16            Board Members, do you have any clarification  
17    questions?

18  
19            (No Board Members responded.)

20  
21            MR. STIFF: Ms. Doss, may I have the next name.

22            MS. DOSS: Yes, sir. The next name is Terrance  
23    Durkin. He's with Roanoke Regional Chamber of  
24    Commerce.

25            MR. STIFF: Thank you.

1           Mr. Durkin, let's first establish we can hear  
2 you.

3           MR. DURKIN: Good morning, Mr. Chairman.

4           MR. STIFF: Thank you, Mr. Durkin. You may  
5 start your remarks now.

6           MR. DURKIN: Thank you, Mr. Chairman, Members  
7 of the Board. I'm Terry Durkin, Vice President of Public  
8 Policy for the Roanoke Regional Chamber and we strongly  
9 oppose this measure. I don't have much to add that  
10 hasn't already been brought up by previous speakers, but  
11 I just ask that Board Members really consider our concern  
12 of placing burdensome permanent restrictions on  
13 businesses to solve what will be a temporary problem.  
14 Thank you.

15           MR. STIFF: Thank you, Mr. Durkin.

16           Board Members, do you have any clarification  
17 questions?

18

19           (No Board Members responded.)

20

21           MR. STIFF: Ms. Doss, may I have the next  
22 name.

23           MS. DOSS: Donald Baylor with the National  
24 Coalition of Public Safety Officers.

25           MR. STIFF: Mr. Baylor, first we'll just

1 establish we can hear you.

2 MR. BAYLOR: Okay. Can you hear me?

3 MR. STIFF: Yes, sir, Mr. Baylor. Thank you  
4 and you may start your remarks now.

5 MR. BAYLOR: Okay. Thank you, Mr. Chairman,  
6 Members of the Board. As a member of CWA and NCPSO,  
7 which is the National Coalition of Public Safety  
8 Officers, we strongly urge support in making these  
9 standards permanent. I've heard much today about a  
10 temporary fix or temporary measures, but from all the  
11 information that has been delivered from the scientists  
12 and the experts in tracking these diseases, the  
13 indication is that COVID will be with us much longer than  
14 the -- even putting a vaccine on the market.

15 We know that it's going to be with us for some  
16 time and we have to consider as well the effects that we  
17 know COVID causes on the individual that is affected by  
18 this virus, long-term effects is what scientists are  
19 telling us. So these standards save lives and if we  
20 continue to use these standards, adopt these standards  
21 and make them permanent, they will continue to save  
22 lives.

23 I represent employees in Virginia Department of  
24 Corrections and Juvenile Justice. Just in the Department  
25 of Corrections alone, we've already had within the

1 population 3,639 individuals who have tested positive  
2 from the virus. Active cases onsite right now is 261.  
3 There have been 31 positive deaths of COVID among  
4 (inaudible). We also currently in the Department of  
5 Corrections have 71 active cases among staff, one COVID  
6 death in the Department of Corrections and another at the  
7 Hampton Roads Regional Jail.

8 This is a destructive disease and to say that  
9 it's just a temporary situation is misleading at best.  
10 We know that this virus is going to be with us for some  
11 time. The standards that are put in place save lives and  
12 we would urge the Board to continue and make these  
13 standards permanent. Thank you.

14 MR. STIFF: Thank you, Mr. Baylor, for your  
15 remarks.

16 Board Members, do any of you have any  
17 clarification questions?

18  
19 (No Board Members responded.)

20  
21 MR. STIFF: Ms. Doss, may I have the next name.

22 MS. DOSS: Yes. The next name is Vance Young.  
23 He's with ATU Local 1764.

24 MR. STIFF: Thank you.

25 Mr. Young, we'll first establish contact.

1 MR. YOUNG: Good morning, Mr. Chairman. Can  
2 you hear me?

3 MR. STIFF: Yes, Mr. Young. Thank you. You may  
4 start your remarks now.

5 MR. YOUNG: First, I would like to say thank  
6 you, Mr. Chairman, for hearing me this morning. I'm  
7 Vance Young. I'm with ATU Local 1764. We represent the  
8 bus operators, the mechanics and cleaners in Fairfax  
9 Connector.

10 First, I'd like to say it's important for the  
11 employers to be required to clean and disinfect the areas  
12 where people work and it's important that the state  
13 government enforce these requirements.

14 I work for a contractor named Transdev.  
15 Transdev doesn't clean their buses every day. Every  
16 fourth, fifth bus will get cleaned. We find dirt and  
17 trash on our buses daily. This shows us that they don't  
18 clean the buses. They don't sanitize the buses and the  
19 buses could be contaminated with the Coronavirus. The  
20 buses stay out. Some of them stay out 23, 23 and a half  
21 hours a day. We ask that each operator bring out a  
22 different bus so that bus wouldn't be out there all day.  
23 The company has refused those requests.

24 This shows that the Board should keep the  
25 workplace cleaning and disinfection requirements in place

1 as part of the permanent COVID standard and should  
2 enforce these requirements. Employers don't always do  
3 the right thing on their own.

4 It's important for employers to be required to  
5 notify workers immediately when someone in the workplace  
6 tests positive. We had a few members to test positive  
7 for COVID. We only found out after some of the people  
8 was contacted by Fairfax County Department of Health.  
9 The company didn't tell us and that was almost 10 to 12  
10 days later.

11 So if the company won't give us the information  
12 about someone being positive, we hope that the standard  
13 will force them to give that information so we all can be  
14 protected.

15 The employers should have to require members of  
16 the public to wear masks on the bus or when they're close  
17 to us in the work environment. Supposedly, Transdev  
18 requires passengers to wear masks on the bus, but they  
19 don't enforce the rules. They make it impossible for us  
20 operators to enforce the rules because when we enforce  
21 the rule they discipline us. When we don't enforce the  
22 rules, they discipline us for that too. Plus, it's too  
23 dangerous for operators to try and enforce a mask rule.  
24 Operators are being attacked nationwide for any and  
25 everything.



1           So this permanent standard should make it clear  
2           that the employers' job is to require masks and to make  
3           sure that members of the public wear them. We would hope  
4           that you will make this permanent standard a law. Thank  
5           you very much.

6           MR. STIFF: Thank you, Mr. Young, for your  
7           remarks.

8           Board Members, do any of you have any  
9           clarification questions for Mr. Young?

10

11           (No Board Members responded.)

12

13           MR. STIFF: Ms. Doss, may I have the next name.

14           MS. DOSS: Yes, sir. Joe Lerch with Virginia  
15           Association of Counties.

16           MR. STIFF: Thank you.

17           Mr. Lerch, we'll just make sure we can hear  
18           you. Mr. Lerch?

19           Ms. Doss, do we know if Mr. Lerch is on with us  
20           today?

21           MS. DOSS: We're checking. Mr. Chairman, it  
22           doesn't appear that Mr. Lerch has called in or is logged  
23           onto the meeting.

24           MR. STIFF: Okay. Ms. Doss, can I have the  
25           next name.

1 MS. DOSS: Yes, sir. The next name is P. Dale  
2 Bennett. He is with Virginia Trucking Association.

3 MR. STIFF: Thank you.

4 Mr. Bennett, first, we'll establish contact.

5 MR. BENNETT: Good morning, Mr. Chairman. Can  
6 you hear me?

7 MR. STIFF: Yes, Mr. Bennett. Thank you and  
8 you may start your remarks now.

9 MR. BENNETT: Thank you, Mr. Chairman. I'm  
10 speaking this morning on behalf of Virginia Trucking  
11 Association.

12 As you know, our industry has continued to  
13 operate throughout this pandemic to deliver the goods  
14 that folks have needed to be able to carry on with their  
15 daily lives as they have been shut in at home and  
16 otherwise restricted from carrying out their normal  
17 day-to-day activities.

18 For that reason our employers have taken every  
19 step possible and poured over the guidelines and all  
20 kinds of regulations to ensure the safety and health of  
21 their employees so they could fulfill that critical role.

22 A lot of the frustration that our members are  
23 expressing is that these regulations are overly  
24 burdensome, sometimes confusing compared with what  
25 they're receiving out of Washington as far as guidance as

1 to what they can do.

2           There also is concern that the ETS was drafted  
3 more with fixed facilities in mind which is a different  
4 environment than a highly mobile industry like trucking  
5 with a highly mobile workforce. We submitted a series of  
6 questions to the Department and I know that Mr. Withrow  
7 and his staff have been working very, very hard in  
8 implementing these regulations and developing them and  
9 providing guidance and compliance materials. We've had  
10 some of the questions answered, but we've got some very  
11 important questions that are still outstanding that have  
12 created some confusion with our folks.

13           For example, the jurisdictional issue of when  
14 does the US DOT have jurisdiction over a truck driver in  
15 the cab of a truck and operating on the road and then  
16 when does VOSH jurisdiction take over outside of the cab.  
17 We believe that these regulations are certainly imposing  
18 costs for our people to comply with.

19           An example why the jurisdictional question is  
20 important is with the requirements for PPE. The question  
21 has been raised if I have a team of drivers in trucking  
22 where it's two drivers in one truck cab that operate as a  
23 team operation, they cannot maintain 6-foot social  
24 distancing. They have been operating throughout this  
25 pandemic without a problem. Are they now required to

1 both wear PPE for the four or five hours that it takes  
2 them to, say, leave Hampton Roads and out of the State of  
3 Virginia to head to another facility.

4 There are also some questions about interstate  
5 carriers that have drivers that come into Virginia and  
6 pick up and load and conduct various activities as well.

7 In conclusion, I'd just like to say we think  
8 that there are some flaws in the ETS that need to be  
9 addressed, that there's still some confusion and  
10 uncertainty about the application and enforcement of the  
11 ETS on trucking fleet employees. Therefore, we  
12 respectfully request that the Board not proceed with  
13 consideration of adoption of the ETS as a permanent  
14 standard until these issues can be addressed and sorted  
15 out. Then we can get some real feedback from our members  
16 about the impact it has had on their operation in trying  
17 to implement these requirements and the unique challenges  
18 that occur in trucking, to assess all of that before we  
19 move forward to a permanent standard.

20 Thank you very much and I'd be happy to answer  
21 any questions.

22 MR. STIFF: Thank you, Mr. Bennett, for your  
23 remarks.

24 Board Members, do any of you have any  
25 clarification questions for Mr. Bennett?

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(No Board Members responded.)

MR. STIFF: Ms. Doss, did we get in contact with Mr. Lerch?

MS. DOSS: Yes, sir. I had Mr. Lerch's number. Mr. Lerch is on the line. He is with Virginia Association of Counties.

MR. STIFF: Mr. Lerch, we'll first establish contact so we can hear you.

MR. LERCH: Yes, Mr. Chairman, can you hear me?

MR. STIFF: Yes. Thank you, Mr. Lerch. You may start your remarks now.

MR. LERCH: Thank you. Mr. Chairman, Members of the Board, Joe Lerch with the Virginia Association of Counties. I'll just have three things to point out.

First, similar to other comments, both written and today in the hearing, we do point to a concern about the potential need for a sunset date for the permanent standard. Once there is a vaccine being an effective treatment, we need some certainty that some of the requirements of the permanent standard will not have impacts on both operating and capital budgets for our members.

Second point, the return to work guidance or

1 the return to work standard, as it's been pointed out,  
2 the CDC has recently changed its guidance which has also  
3 been updated with VEH. What we recommend, rather than  
4 having a return to work standard in this reg, that simply  
5 employers be required to adhere to the Virginia  
6 Department of Health guidance, includes the decision to  
7 use in determining next steps for employees who are sick  
8 and may or may not get a COVID test.

9 And then a final point that's been raised  
10 earlier, but I'll go into a little detail, is the air  
11 handling requirement for settings where you have high  
12 risk and medium risk workers. It's referenced as ASHRAE  
13 2019 standard. We understand in talking to both Virginia  
14 Building Code officials that actually the Virginia  
15 Building Code references for new construction right now  
16 is the 2013 standard. It will be going to the 2018  
17 standard within the next year. Likely this 2019 standard  
18 won't even be implemented until the year 2023. A  
19 building under construction today, the certificate of  
20 occupancy would already be not in compliance with the  
21 standard.

22 We think a simpler way to do this and makes a  
23 lot more sense and to avoid a lot of cost is to simply  
24 say that buildings that have the requirement for the air  
25 handling under this statute simply must be maintained in

1 accordance with the manufacturer's instructions.

2 So that is it and thank you for the opportunity  
3 to comment.

4 MR. STIFF: Thank you, Mr. Lerch, for your  
5 remarks.

6 Board Members, do any of you have any  
7 clarification questions for Mr. Lerch?

8

9 (No Board Members responded.)

10

11 MR. STIFF: Thank you.

12 Ms. Doss, may I have the next name.

13 MS. DOSS: Yes, sir. Doris Crouse-Mays with  
14 Virginia AFL-CIO.

15 MR. STIFF: Ms. Crouse-Mays, first we'll  
16 establish we can hear you. Ms. Crouse-Mays, are you with  
17 us?

18 MS. TRICE: Chuck, this is Holly Trice. I am  
19 getting information that we have unmuted her. She is on.  
20 Can you try to call her one more time.

21 MR. STIFF: Sure.

22 Ms. Crouse-Mays, are you with us? Ms.  
23 Crouse-Mays, can you hear us?

24 MS. TRICE: Chuck, we'll get in touch with her  
25 and come back around to her at the end. Try to figure

1 out why we can't hear her.

2 MR. STIFF: Okay.

3 Ms. Doss, may I have the next name.

4 MS. DOSS: Yes. The next name is Charlotte  
5 Brody, RN. She is with BlueGreen Alliance.

6 MR. STIFF: Okay.

7 Ms. Brody, we'll just first establish contact.

8 MS. BRODY: Yes, I'm here. Can you hear me?

9 MR. STIFF: Yes, Ms. Brody. Thank you. You may  
10 start your remarks now.

11 MS. BRODY: Thank you. I'm Charlotte Brody, a  
12 registered nurse, a resident of Esmont, Virginia and the  
13 Vice President for Occupational and Environmental Health  
14 for the BlueGreen Alliance, a national coalition that  
15 unites America's largest labor unions and its most  
16 influential environmental organizations to solve today's  
17 environmental challenges in ways that create and maintain  
18 quality jobs and build a stronger, fairer economy.

19 The United Steel Workers, Shipbuilders in  
20 Newport News and the Sierra Club Hikers in (inaudible)  
21 are both part of the seven national unions and six  
22 national environmental organizations that make up the  
23 BlueGreen Alliance.

24 I want to use my time to talk about three  
25 things, masks, preparedness, and guidance. Of the 993



1 comments sent in about turning the emergency temporary  
2 standard into a permanent standard, half express outrage  
3 at being required to wear a mask, not specifically on the  
4 job, but anywhere.

5 As a registered nurse, as a 72-year-old member  
6 of a vulnerable population, as an American, I am saddened  
7 by this perversion of a public health measure. There is  
8 so much we do not yet understand about the Coronavirus,  
9 but we do know that masks reduce transmission. In the  
10 simplest of terms, your wearing a mask protects me and my  
11 wearing a mask protects you. It's courtesy. It's  
12 empathy. It's a recognition that my liberty ends where  
13 your risk of infection begins. It's a tragedy that masks  
14 have become a political football, but VOSH doesn't have  
15 to play political football. You have to protect workers  
16 and by doing that lower the risk of community  
17 transmission. The emergency temporary standard and the  
18 proposed permanent standard do that.

19 Second, I want to address why it's important to  
20 make the temporary standard permanent. While many other  
21 speakers have pointed out we're learning new things about  
22 COVID every week, the basics of virus control that are in  
23 the standard, distancing, masking, hand washing,  
24 cleaning, training, notification haven't changed. If we  
25 would have implemented these basics since February, how

1 many lives would have been saved and how many lives can  
2 we still save by having systems in place that will reduce  
3 the virus spread in February 2021 or April or June?

4 Claiming that the risk is just temporary will result in  
5 repeating the mistakes we've already made, mistakes that  
6 have cost lives. Preparedness expenditures are almost  
7 always less costly than panic reaction expenditures.

8 Third, guidance is not regulation and cannot be  
9 enforced. The BlueGreen Alliance asks you to resist the  
10 effort to add additional safe harbor language. The use  
11 of terms consider, may choose, encourage, should, and  
12 recommend in the guidance documents issued by CDC and  
13 U.S. OSHA leave employers and workers without any clear  
14 framework for COVID safety. How can a worker or an  
15 employer determine what is needed for a safe and  
16 healthful workplace when U.S. OSHA states in their March  
17 2020 guidance, The recommendations are advisory in  
18 nature, informational in content, and are intended to  
19 assist employers in providing a safe and healthful  
20 workplace?

21 This language may result in two long-term care  
22 facility owners or two poultry processing plants from  
23 using CDC and OSHA guidance documents to consider and  
24 choose very different COVID safety procedures.

25 In Virginia the ETS sets out a well defined set

1 of steps that all workplaces must take to protect  
2 employees from COVID-19. This clarity levels the playing  
3 field and provides protection for all workers, not just  
4 those lucky enough to have an employer who has  
5 voluntarily determined to strictly follow the CDC and  
6 OSHA advice.

7 The impossibility of clearly defining what  
8 following CDC and OSHA guidance actually means makes a  
9 safe harbor for employers who follow CDC or OSHA guidance  
10 unenforceable and dangerous. A Virginia meat or poultry  
11 plant could argue that they deserve safe harbor status  
12 because they follow the interim guidance from CDC or OSHA  
13 to consider engineering controls or social distancing,  
14 even if their consideration led the facilities' decision  
15 makers to do nothing (inaudible) these important safety  
16 measures.

17 The provided -- the CDC recommendations provide  
18 equivalent --

19  
20 (Speaker muted due to expiration of  
21 five-minute time allowance.)

22  
23 MR. STIFF: Thank you, Ms. Brody, for your  
24 remarks.

25 Board Members, do you have any clarification

1 questions for Ms. Brody?

2

3

(No Board Members responded.)

4

5

MR. STIFF: Ms. Doss, may I have the next name.

6

MS. DOSS: Yes, sir. The next name is Clayton

7

Medford. He is with Northern Virginia Chamber of

8

Commerce.

9

MR. STIFF: Mr. Medford, first, let's establish

10

contact.

11

MR. MEDFORD: Good morning, Mr. Chairman.

12

MR. STIFF: Good morning. Thank you. You may

13

start your remarks now.

14

MR. MEDFORD: Thank you and Board Members for

15

this opportunity. My name is Clayton Medford with the

16

Northern Virginia Chamber of Commerce. I first want to

17

associate myself with the Virginia Business Coalition's

18

comments, both the written and the spoken today,

19

particularly around the concern that this is the

20

one-size-fits-all regulation that will not lead to the

21

intended conclusion of keeping people safer and will in

22

fact cause businesses a significant amount of money.

23

I want to talk a little bit about what our

24

members did prior to the adoption of the emergency

25

temporary standard. We worked with members to develop

1 some back-to-work guidelines and learned what they were  
2 doing and what they had already done at that time. So  
3 this was in June.

4 I had one member that has about 70,000 square  
5 feet in Northern Virginia and D.C. Part of their  
6 physical alterations to their office included limiting  
7 two people on an elevator, markings on the floors, signs  
8 inside and outside, marking pathways, putting signs in  
9 stairwells, limiting deliveries and guests, buying bags  
10 of PPE for each employee, that's sanitizer, masks, card  
11 entries to all doors to enable them to trace where people  
12 had been throughout the day in case there was a positive  
13 test. Again, all of this done early summer.

14 For this one member, those physical alterations  
15 cost them around \$350,000, a little bit more than \$5 a  
16 square foot. That's the signs, that's the cleaning,  
17 that's the equipment, and the PPE and the cost of all  
18 those things continues to rise. I'll talk about that in  
19 a second.

20 What another member, who at the time, and this  
21 was in June, said that the way they do business had  
22 forever changed because of the safety precautions that  
23 they had taken and the changes they made to their  
24 business' way of operation because of following CDC and  
25 OSHA guidelines and going really above and beyond. I

1 should say that our members are primarily off-the-space  
2 workers and have been able to transition quickly to  
3 working from home, but this kind of standard will prevent  
4 them from going back because of all of the significant  
5 changes that our members have made to bring people back  
6 safely, they simply can't afford to do any more. They  
7 can't physically alter their space any more to bring back  
8 people. This will prevent people from going to the  
9 office and spending money on things like gas and lunches  
10 and the kind of economic activity, the smaller economic  
11 activity that buoys our small businesses.

12 Finally, we had one member who has 55 offices  
13 and 8,000 employees around the country. As of the end of  
14 May, they had adopted a company-wide standard based on  
15 CDC and OSHA guidelines based on keeping employees and  
16 customers safe in an area where they had an office of the  
17 highest transmission rate. In essence, if they had an  
18 office in Fort Worth with a 20 percent transmission rate  
19 and an office in Fairfax with a 5 percent transmission  
20 rate, the safety guidelines were the same in both. So  
21 they went above and beyond in keeping their employees and  
22 their customers safe.

23 Finally, talking about the cost of PPE. Gloves  
24 since May have gone up almost 200 percent, that's  
25 nitrile, latex, and vinyl. Masks, the N95 masks were

1 four times as expensive as they were before the pandemic  
2 and hard to source. The three-ply masks have dropped in  
3 cost, but still around twice the price they were  
4 pre-pandemic. Hand sanitizer, same way, going down, but  
5 still twice the price they were pre-pandemic. Paper  
6 goods across the board are still around 10 percent higher  
7 than they were.

8 Our members have made significant investments  
9 in their physical space and in their employees and in  
10 their customers, to say nothing of all the changes  
11 they've had to make in training and developing online  
12 training modules for management and for their employees  
13 to keep people safe. They have the most to lose if their  
14 employees were to get sick. They've gone above and  
15 beyond what the CDC and OSHA guidelines told them was  
16 safe in March, April, May, and June before this emergency  
17 standard was even announced. They had already brought  
18 people back.

19 I should say that the member that spent  
20 \$350,000, that was in order to bring back 25 percent of  
21 their workforce. So only 25 percent can come back and it  
22 cost them that much just to bring those people back.

23 Finally, I just want to close out by saying we  
24 understand where the desire is here, but we would  
25 strongly encourage you to take a look at the Virginia

1 Business Coalition's written comments and the specific  
2 changes we'd like to see there. Also, just consider at  
3 the very least allowing this emergency temporary standard  
4 to expire and work with us and recognize the fact that so  
5 many businesses are around the Commonwealth -- all  
6 businesses that are able to continue to --

7

8 (Speaker muted due to expiration of  
9 five-minute time allowance.)

10

11 MR. STIFF: Thank you, Mr. Medford, for your  
12 remarks.

13 Board Members, do you have any clarification  
14 questions for Mr. Medford?

15

16 (No Board Members responded.)

17

18 MR. STIFF: Ms. Doss, may I have the next name.

19 MS. DOSS: Mr. Chairman, we were able to  
20 contact Ms. Doris Crouse-Mays with the Virginia  
21 AFL-CIO.

22 MR. STIFF: Okay.

23 Welcome, Ms. Crouse-Mays. First of all, can we  
24 establish contact, so we can hear you.

25 MS. CROUSE-MAYS: Yes, Mr. Chairman, can you



1 hear me?

2 MR. STIFF: Yes. Thank you. You may start  
3 your remarks now.

4 MS. CROUSE-MAYS: Again, thank you, Mr.  
5 Chairman and Members of the Committee. My name is Doris  
6 Crouse-Mays and I'm President of the Virginia AFL-CIO.  
7 So on behalf of the Virginia AFL-CIO, first and foremost,  
8 we commend the Commonwealth for being the first state to  
9 issue an emergency temporary standard, ETS, to protect  
10 all workers from COVID-19 and to take the next  
11 (inaudible) step to finalize a permanent standard.

12 The response by Virginia to reduce the spread  
13 of COVID-19 through addressing workplace exposures in a  
14 permanent standard is ground breaking and will continue  
15 to make Virginia a premiere state in COVID-19 response  
16 measures.

17 We urge the Safety and Health Codes Board to  
18 swiftly approve the proposed permanent standard. The  
19 permanent standard must be issued to protect working  
20 people, our community and its consumers and its business  
21 providers. Issuing a permanent standard to protect the  
22 citizens of the Commonwealth, the working people, and our  
23 families from COVID-19 is extremely important to  
24 continuing the prevention of the spread of COVID-19.

25 The ETS is only effective for six months and

1 will expire sooner rather than later. Since the first  
2 few months of the pandemic, it was clear that the spread  
3 of COVID-19 would continue. Workplace (inaudible) were  
4 connected to community spread and protection is needed to  
5 be put in place in both workplaces and the community.

6 I say again, a permanent standard is necessary.  
7 This is important as we do not know the outlook of the  
8 virus and the longevity of its effects on our community,  
9 especially as we enter flu and allergy season where  
10 immune systems will be weaker than during the summer  
11 months. There is no telling what will be next for  
12 Virginia.

13 We need to understand that without the  
14 consumers and workers companies may not thrive. A  
15 permanent standard would not have a negative effect on  
16 their quarterly numbers, but it can be proven that with  
17 these safety standards in place, there would be an  
18 increase in consumer confidence because customers will  
19 not just feel safe, but know that they are safe as they  
20 frequent their favorite businesses.

21 Two, those workers that have continuously put  
22 themselves in harm's way throughout this entire pandemic  
23 thus far will have a safe haven and boost in morale as  
24 they will know that going to work and coming home safe to  
25 their family and friends is not a life or death situation

1 nor is their livelihood the last thing on the company's  
2 mind.

3 Recognizing the importance of workplace  
4 exposures, the ETS temporarily addresses the risk in  
5 Virginia until the permanent rule can be finalized and  
6 issued. The permanent rule will continue to address the  
7 risk that remains as our nation continues to surge with  
8 the virus.

9 The final standard will also be useful to  
10 prepare employers to have plans and protections in place  
11 in the event of future pandemics. While this standard is  
12 (inaudible) standard is the foundation for addressing  
13 other infectious diseases. For these reasons, the  
14 permanent standard must follow the ETS and cover all  
15 working people at risk in Virginia without exception.

16 The rise in outbreaks within the education  
17 sector right as schools reopened shows how essential it  
18 is for OSHA standards to cover all workplaces. Other  
19 guidelines that are less protective than the proposed  
20 standard continue to leave workers and their families and  
21 communities at increase risk. Virginia has taken action  
22 through the ETS and we must finalize these protections  
23 for every worker.

24 Upon closing, the Virginia AFL-CIO urges the  
25 Safety and Health Codes Board to swiftly approve the

1 purposed permanent standard for all Virginians are  
2 counting on it. Thank you.

3 MR. STIFF: Thank you, Ms. Crouse-Mays, for  
4 your remarks.

5 Board Members, do you have any clarification  
6 questions for Ms. Crouse-Mays?

7

8 (No Board Members responded.)

9

10 MR. STIFF: Ms. Doss, may I have the next name.

11 MS. DOSS: Yes, sir. Jennifer M. Walle. She's  
12 with Troutman-Sanders.

13 MR. STIFF: Okay.

14 Ms. Walle, first, we'll establish contact.

15 MS. WALLE: Good morning; yes, sir.

16 MR. STIFF: We can hear you. Thank you. You  
17 may start your remarks now. Ms. Walle, are you still  
18 with us?

19 Ms. Doss, did we lose Ms. Walle.

20 MS. DOSS: Yes. We can circle back to Ms.  
21 Walle. The next person in line is Brandon Robinson. He  
22 is with Associated General Contractors of Virginia.

23 MR. STIFF: Thank you.

24 Mr. Robinson, first, we'll establish contact.

25 MR. ROBINSON: Good morning. I already had

1 comments about 30 minutes ago, but I'm happy to reiterate  
2 those comments.

3 MR. STIFF: I thought that sounded familiar.  
4 We'll go to the next name. Thank you.

5 MR. ROBINSON: Yes, sir.

6 MS. DOSS: The next name is Karen McElfish.  
7 She's an M.D. with Virginia Conference United Methodist  
8 Women.

9 MR. STIFF: Dr. McElfish, first, we'll  
10 establish contact.

11 DR. MCELFISH: Good morning. Can you hear me?

12 MR. STIFF: Yes, and you may start your remarks  
13 now.

14 DR. MCELFISH: Thank you, Mr. Chairman and  
15 Members of the Board. My name is Dr. Karen McElfish and  
16 I am in support of the proposed permanent standard for  
17 COVID-19. As a retired physician and as a faith leader  
18 representing almost 10,000 Virginia United Methodist  
19 women, I speak both on medical as well as moral grounds.

20 We need a permanent standard that protects all  
21 workers in Virginia without exception based on strong  
22 evidence of the risks of airborne droplet and aerosol  
23 transmission from the SARS-CoV-2 virus.

24 Additionally, if removal of an employee is  
25 recommended by a medical or public health official, the

1 employee's earnings, rights, and benefits must be  
2 maintained.

3 By implementing strong standards, we protect  
4 all of us during this time of ongoing pandemic which is  
5 very likely to be affecting us for many months ahead.

6 Additionally, a strong permanent standard now  
7 will be useful in protecting us in future pandemics.

8 Thank you.

9 MR. STIFF: Thank you, Dr. McElfish, for your  
10 remarks.

11 Board Members, do you have any clarification  
12 questions?

13

14 (No Board Members responded.)

15

16 MR. STIFF: Ms. Doss, may we have the next  
17 name.

18 MS. DOSS: Yes, sir. Laura Karr. She's with  
19 Amalgamated Transit Union.

20 MR. STIFF: Okay.

21 Welcome, Ms. Karr. First, we'll establish that  
22 we can hear you.

23 MS. KARR: Yes. Good morning.

24 MR. STIFF: Good morning. You may start your  
25 remarks now.

1 MS. KARR: As stated, my name is Laura Karr.  
2 I'm Associate General Counsel for the Amalgamated Transit  
3 Union or the ATU. The ATU represents bus, rail, and  
4 paratransit workers across Virginia. You heard from our  
5 member Vance Young earlier today.

6 The ATU stands with the AFL-CIO and the other  
7 labor union commenters in strong support of the adoption  
8 of a permanent standard protecting workers from the  
9 SARS-CoV-2 Coronavirus.

10 Already under the temporary standard or ETS  
11 passed by this Board, ATU members have enjoyed safer  
12 workplaces and better communications from their employers  
13 about Coronavirus hazards at work.

14 With increased cases forecast for this winter  
15 just when the ETS will expire, now is the time for the  
16 Board to make these protections permanent so workers can  
17 continue to support themselves, their families, and the  
18 Virginia economy in the face of a dangerous pandemic that  
19 will continue for the foreseeable future.

20 Now is also the time for the Board to improve  
21 the proposed standard so that it protects workers, like  
22 many ATU members, who are employed in mobile and confined  
23 workplaces like transit vehicles.

24 A transit vehicle isn't like a stationary  
25 workplace. It's a small area with limited ventilation

1 that's populated by an ever changing selection of  
2 passengers, any one of whom could spread the Coronavirus.  
3 Under these conditions transit workers need protections  
4 that aren't yet part of the proposed permanent standard.  
5 These include the following eight items:

6 1. Requiring employers to install air filters with  
7 a rating of MERV 13 or higher in transit vehicles. The  
8 filtration systems that meet the criteria cited in the  
9 proposed standards aren't designed for transit vehicles  
10 and they don't function well in those vehicles.

11 2. Requiring employers to equip transit vehicles  
12 with ventilation systems that actively pump fresh air in  
13 and expel stale air out.

14 3. Requiring employers to equip ventilation systems  
15 with UVC light bulbs which are proven to be effective in  
16 killing the Coronavirus.

17 4. Requiring employers to consult with workers and  
18 their representatives to decide when physical barriers  
19 between workers or between workers and the public would  
20 reduce the spread of Coronavirus and, if so, requiring  
21 employers to install those barriers.

22 5. Requiring employers to reduce transit vehicle  
23 capacities to 25 percent which will reduce operators'  
24 exposure to the virus.

25 6. Requiring transit employers to use rear door



1 boarding to keep passengers and operators as far apart as  
2 possible and to allow for the establishment of  
3 no-passenger buffer zones at the front of the vehicles.

4 7. Requiring employers to put a transit vehicle out  
5 of service immediately upon discovering that a person who  
6 might have COVID-19 has been on board and requiring  
7 employers to give workers adequate personal protective  
8 equipment when they clean potentially contaminated  
9 vehicles.

10 8. Requiring employers to enforce mask requirements  
11 for members of the public who enter transit vehicles and  
12 businesses.

13 By making these improvements along with the  
14 other changes listed in the ATU's written comments, this  
15 Board can keep transit workers safe from the Coronavirus  
16 and allow the Virginia communities that depend on transit  
17 to move toward recovery.

18 The proposed permanent standard is not an undue  
19 burden on businesses. Instead, it is an essential  
20 workplace protection that creates the conditions  
21 necessary for workers and their employers to survive and  
22 thrive despite the pandemic. The ATU urges this Board to  
23 enact the permanent standard with improvements. And I  
24 thank you for your attention.

25 MR. STIFF: Thank you, Ms. Karr. We appreciate

1 your comments.

2 Board Members, do you have any clarification  
3 questions?

4

5 (No Board Members responded.)

6

7 MR. STIFF: Ms. Doss, may I have the next name.

8 MS. DOSS: Yes, Chairman. We were able to get  
9 in contact with Ms. Jennifer M. Walle with  
10 Troutman-Sanders.

11 MR. STIFF: Okay.

12 Ms. Walle, we'll establish contact.

13 MS. WALLE: Yes, sir. Good morning. Are you  
14 able to hear me?

15 MR. STIFF: Yes. Thank you. You may start  
16 your remarks now.

17 MS. WALLE: Thank you, Mr. Chairman, Members of  
18 the Board. Jennifer Walle with Troutman Pepper on behalf  
19 of the Association of Electric Cooperatives. I would  
20 like to thank you for the opportunity to comment today.

21 Our 14 members across the Commonwealth would  
22 like to reiterate our comments submitted in our written  
23 letter to the Board requesting a utility industry  
24 exemption. Given what appears to be agreement by the  
25 Department that it is safe for linemen to operate

1 outdoors without a face covering, we respectfully ask  
2 that this is expressly stated in the regulation.

3 This exemption for field and operational  
4 personnel working in the open air would give the  
5 Cooperative regulatory certainty and remove conflicts  
6 with other federal and state regulatory requirements.

7 Should the temporary standard become permanent,  
8 we respectfully request this clarification and also ask  
9 that the standard contain a sunset date. We  
10 thank the Board for their continued hard work and  
11 dedication.

12 MR. STIFF: Thank you, Ms. Walle, for your  
13 remarks.

14 Board Members, do you have any clarification  
15 questions?

16  
17 (No Board Members responded.)

18  
19 MR. STIFF: If not, Ms. Doss, may I have the  
20 next name.

21 MS DOSS: Yes, Chairman. Felicia Miller with  
22 United Food and Commercial Local 400.

23 MR. STIFF: Thank you.

24 Ms. Miller, we'll first just establish that we  
25 can hear you.

1 MS. MILLER: Good morning, Mr. Chairman. Can  
2 you hear me?

3 MR. STIFF: Yes. Thank you. And you may start  
4 your remarks now.

5 MS. MILLER: Good morning, Mr. Chairman and the  
6 Board. Hello. My name is Felicia Miller. I have been  
7 with Safeway Inc. for 36 years. I currently work at  
8 Safeway in Warrenton. I currently work in the deli and  
9 I'm a shop steward for my union. As a Virginian  
10 who has been put in a position of being an essential  
11 worker since the pandemic began over six months ago, I  
12 was proud we were the first state to adopt an emergency  
13 temporary standard of health and safety in the workplace.  
14 Because of the advocacy of myself and my coworkers  
15 through our union, we have been able to get Safeway to  
16 put some protective measures in place, including social  
17 distancing, plexiglass at the cash registers, mandatory  
18 mask wearing, and even a brief time hazardous pay.

19 Unfortunately, as the pandemic has continued,  
20 the focus of safety and protection and the appreciation  
21 of workers like myself and my coworkers who were called  
22 essential and heroes at first has changed. People are  
23 not following the rules. In the deli the size of the  
24 counter gives me some protection and distance from the  
25 customers, but the check stand customers are right on top

1 of the cashiers, despite the plexiglass barrier and the  
2 markers on the floors. Most customers do the right thing  
3 to protect us and wear their masks properly, but others  
4 do not and some have even gotten aggressive with the  
5 staff when asked to wear their face protection.

6 Safeway store employees in Virginia have seen  
7 close to 50 COVID cases and we are seeing more every day.

8 I can tell you today that the emergency  
9 temporary standard you approved of in July has helped  
10 Safeway along with other employers in Virginia  
11 implementing a training program for employees on safety.  
12 That has helped remind everyone about the continued  
13 dangers we face and we know the dangers will continue  
14 with no vaccine and winter coming.

15 We need these enhanced safety measures to  
16 continue for as long as the virus is still spreading.  
17 Please, please protect me and my coworkers by  
18 strengthening the standards and making them permanent. I  
19 thank you.

20 MR. STIFF: Thank you, Ms. Miller, for your  
21 remarks.

22 Board Members, do you have any clarification  
23 questions for Ms. Miller?

24

25 (No Board Members responded.)

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MR. STIFF: Ms. Doss, may I have the next name.

MS. DOSS: Yes, Chairman. Mike Wilson. He is with United Food and Commercial Workers Local 400.

MR. STIFF: Okay. Thank you.

Mr. Wilson, let's first establish contact. Mr. Wilson, are you with us?

MS. TRICE: Chuck, this is Holly Trice. He is on, but he is not connected to audio. I'll reach out to him.

MR. STIFF: Okay.

Ms. Doss, may I have the next name.

MS. DOSS: Yes, Chairman. The next name is Emily Reynolds. She is with the Hampton Roads Chamber of Commerce..

MR. STIFF: Okay. Thank you.

Ms. Reynolds, if you would, just make sure we can hear you.

MS. REYNOLDS: Good morning, Mr. Chair. Can you hear me?

MR. STIFF: Yes. Thank you and you may start your remarks now.

MS. REYNOLDS: Thank you so much. Mr. Chair, Members of the Board, my name is Emily Reynolds and I'm

1 the Executive Director of Governmental Affairs for the  
2 Hampton Roads Chamber. The Hampton Roads Chamber  
3 is a premiere pro-business organization representing more  
4 than 1,200 members. The Chamber supports public policies  
5 that strengthen free enterprise and regional  
6 collaboration efforts that promote economic development  
7 and conditions for businesses to succeed.

8 The Hampton Roads Chamber is strongly opposed  
9 to the Department of Labor and Industry's COVID-19  
10 emergency regulations becoming permanent. Businesses,  
11 especially our small businesses, are already struggling  
12 to survive these hard economic times and regulations only  
13 increase the burden on them. At a time where some  
14 reports estimate that 25 percent of businesses will shut  
15 down permanently, these regulations threaten to drive  
16 those numbers even higher.

17 Virginia businesses need certainty and  
18 consistency in any regulatory program. This ensures that  
19 the regulated community understands the requirements of  
20 the program and that all parties can work together to  
21 satisfy the regulatory requirements. We believe  
22 the Board should not adopt a permanent standard for the  
23 following reasons:

24 Permanent regulations would be overly  
25 burdensome and unnecessary. Businesses are already

1 incurring expensive costs to comply with the ETS. Even  
2 the state recognizes the cost to comply with CDC and DOLI  
3 regulations as outlined in the House amendment to the  
4 state budget that was approved yesterday.

5 The science of COVID-19 is continuously being  
6 updated; therefore, the CDC and OSHA guidelines are  
7 frequently updated to reflect the science.

8 If the ETS were to become permanent, it would  
9 continue to require businesses to comply with outdated  
10 regulations.

11 Finally, a sunset clause so the regulations  
12 will expire with the Governor's State of Emergency should  
13 be included in any recommendation pushed forward by the  
14 Board. The expectation is the pandemic will end, and  
15 when that happens, so should any regulations.

16 While facing devastating economic conditions,  
17 Virginia's businesses continue to keep the safety and  
18 health of their employees as their top priority. They  
19 respectfully request that you reject the proposed  
20 permanent emergency regulations. Thank you for your time  
21 and your consideration.

22 MR. STIFF: Thank you, Ms. Reynolds, for your  
23 remarks.

24 Board Members, do you have any clarification  
25 questions for Ms. Reynolds?



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(No Board Members Responded.)

MR. STIFF: Ms. Doss, may I have the next name or did we get in touch with --

MS. DOSS: No, sir. We have not established contact with Mr. Wilson yet. We are going to move on to Mr. Jason Yarashes. He is with Legal Aid Justice Center/Virginia Justice Project for Farm and Immigrant Workers.

MR. STIFF: Okay. Thank you.

Mr. Yarashes, we'll just first establish contact.

MR. YARASHES: Yes. Can you hear me, Mr. Chairman?

MR. STIFF: Yes. Thank you and you may start your remarks now.

MR. YARASHES: Thank you. Good morning to Mr. Chairman and Members of the Board. Let me start off by thanking the Governor and the Administration for prioritizing this historic health and safety issue in the Commonwealth and really throughout the world. Thank you to the Department of Labor and Industry for drafting the standards and facilitating the process and thanks to the Board for passing the ETS and for now taking the steps to

1 consider the proposed permanent standard.

2 As mentioned by way of background, my name is  
3 Jason Yarashes. I'm the Lead Attorney and Program  
4 Coordinator at the Legal Aid Justice Center. We partner  
5 with communities and clients to achieve justice for low  
6 income folks throughout the state. Specifically, my team  
7 works throughout the entire Commonwealth to help identify  
8 deeply felt needs of the worker community and help lift  
9 up those voices to the surface to ensure they're  
10 addressed.

11 Now, the Board will consider many important  
12 comments today. I'll venture to keep mine brief. As a  
13 threshold, I'd really like to emphasize that the ETS  
14 passed by this Board arose based on the voice of the  
15 workers throughout the Commonwealth. This was not  
16 confined to a few workers in a few places. A wide scale  
17 widely documented concern across all industries, all  
18 socioeconomic multi-racial backgrounds in all parts of  
19 the state, from rural to urban. It takes courage to  
20 speak up with real power balances in place. It really  
21 does not happen that much historically. So why did it  
22 happen this time?

23 People in the Commonwealth were literally  
24 scared for their lives and they did not feel like the  
25 government was protecting them. The federal government

1 did not step up and protect the health of its citizens,  
2 so states were required to step in. That's exactly what  
3 Virginia did here.

4 Virginia filled the gap and jumped in to  
5 protect everyone around the state and the Board should be  
6 proud of what they did by becoming a leader in the nation  
7 and you should continue that positive trend by passing  
8 this important permanent standard.

9 I fully appreciate the perspective of everyone  
10 giving public comments today. Everyone brings a  
11 different voice for their constituents in Virginia. To  
12 that end, a few thoughts:

13 The ETS was not hastily adopted. I'll state  
14 the obvious. This is an emergency. That's why the  
15 Governor and the Department invoked this law. If this is  
16 not a historic emergency, I don't know what is. Plus, as  
17 the Members of the Board were immanently aware, the  
18 hearings lasted several days and they considered  
19 thousands of comments.

20 Second, we've heard comments about workers  
21 feeling more in danger due to there being an enforceable  
22 standard. My team's role is representing vulnerable,  
23 low-wage workers throughout every part of the  
24 Commonwealth and I can state definitively that no worker  
25 I've spoken with, either before or after the passage of

1 the standards, feels those standards will endanger them  
2 more. That line of thought has been dispelled by workers  
3 across Virginia and across the country since the  
4 inception of the standards.

5 So what's happened since the passing of the  
6 standards? On our team we've seen at least two really  
7 great developments. First, workers can and have been  
8 able to report violations to the government based on a  
9 law that has teeth instead of recommendations.

10 This is a key aspect of protecting workers  
11 throughout the Commonwealth, particularly most low-wage,  
12 essential workers that bravely went into work when the  
13 rest of us were socially distancing.

14 Second, maybe more importantly, workers can use  
15 the enforceable standards as a way to push back on  
16 employers themselves who are not abiding by these  
17 commonsense regulations.

18 Many workers have sought out our advice not to  
19 run to the government to seek an inspection, a violation,  
20 or some other civil redress. Instead, they did so with  
21 accurate information on enforceable laws to ensure the  
22 workplace is safe. More often than not, when folks came  
23 to us, workers went back to employers to request  
24 training, social distancing measures, sanitation, and  
25 disinfection. Those requests did not proliferate into

1 massive fines for employers' or owners' inspections.  
2 Instead, it resulted in meaningful, fruitful  
3 conversations between employers and employees.

4 So such is to say, information and data that is  
5 provided based on violations, inspections are going to be  
6 tremendously important for consideration. It really  
7 doesn't capture the full picture of the amazing impact  
8 this standard has made for the workforce of Virginia.  
9 And it wouldn't happen with unenforceable standards.

10 Finally, I commend the businesses across the  
11 state that were already stepping up to protect the  
12 workers when there were just recommendations and since  
13 the enforceable standard, but businesses were not  
14 following the recommendations before the ETS and now are  
15 not following the new standards are gaining a competitive  
16 advantage. This standard balances the playing field for  
17 businesses that are doing the right thing while at the  
18 same time protecting the essential workforce. This  
19 standard protects not only the workers, but also the  
20 businesses that are protecting workers.

21 Thank you for your time and I ask you to please  
22 pass this important and timely permanent standard.

23 MR. STIFF: Thank you, Mr. Yarashes, for your  
24 remarks.

25 Board Members, do you have any questions for

1 clarification?

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(No Board Members responded.)

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MR. STIFF: Ms. Doss, may I have the next name.

6

MS. DOSS: Yes. We're going to try to speak to

7

Mr. Mike Wilson again. Mr. Wilson is with the United

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Food and Commercial Workers Local 400.

9

MR. STIFF: Mr. Wilson, can we hear you?

10

MR. WILSON: Yes. Can you hear me?

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MR. STIFF: Yes, Mr. Wilson. Thank you. You

12

may start your remarks now.

13

MR. WILSON: Great. Thank you so much and I

14

apologize for the difficulties I was having here with the

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audio. My name is Mike Wilson. I'm with the United Food

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and Commercial Workers, Local 400. We represent around

17

30,000 grocery, food processing, retail, and health care

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workers, among others, across the Mid-Atlantic, including

19

about 10,000 members here in the Commonwealth of

20

Virginia.

21

We were very pleased with the emergency

22

temporary standard that was passed over the summer and

23

the impact that it's had for the safety and health of our

24

members and others in the retail and food industry and

25

health care. We definitely strongly support seeing it

1 made permanent.

2 To date over 361 members of our union have  
3 tested positive -- sorry. Over 631 members of our union  
4 have tested positive for COVID-19, including over 336 in  
5 Virginia. Seven have died from the virus.

6 We really think that these standards becoming  
7 permanent will go a long way towards reducing the number  
8 of people who contract the virus at work and, you know,  
9 obviously that would reduce the number of fatalities and  
10 illnesses that are a result of it.

11 Many of our employers have complied with the  
12 standard since it's been in place. It's been very  
13 helpful for our emergency people to have the training  
14 that allows them to understand the purpose and use of  
15 PPE, how to keep themselves safe at work, you know,  
16 making sure that they're notified when there's an illness  
17 in the workforce that might impact them, having  
18 established return-to-work policies and, you know, having  
19 controlled access to breakrooms and things like that to  
20 increase social distancing. Pretty much most  
21 of our employers did proactively implement these  
22 measures, but it's really the fact that there's  
23 enforcement that is, you know, kind of the stick part of  
24 this that has really helped make sure that all of our  
25 employers have compliance after we've gotten in touch

1 with them and pushed them on it a little bit. Without  
2 those enforcement mechanisms prior to this being in place  
3 and in our jurisdictions where we operate, we haven't  
4 seen the same level of compliance.

5           So we're obviously in full support of a strong  
6 permanent standard. Want to make sure that when it  
7 happens, that it's based on scientific information and  
8 long-standing occupational health and safety practices,  
9 that it clearly articulates that we're facing an airborne  
10 hazard and the protections laid out control airborne  
11 hazards and ventilation requirements are in line with  
12 industry standards. Any permanent standard is -- that  
13 each employer is required to implement (inaudible) to  
14 their own workplace. Using the assigned space and  
15 long-standing workplace control practices outlined and  
16 that the permanent standard include return-to-work  
17 requirements that align with current science.

18           Again, it should include clearly defined  
19 respiratory protection and what is required for workers  
20 for being at risk. It should include training for all  
21 workers, risk assessment of the workplace, and infection  
22 control in the workplace. It should clearly define and  
23 require face coverings.

24           Again, these are all things that prior to the  
25 implementation of the emergency temporary standard it was



1 very hit and miss whether or not employers in our  
2 industries were complying with these things when they  
3 were recommendations from the CDC or, you know,  
4 un-enforced recommendations from Federal OSHA. Having  
5 the standard in place has really moved things forward in  
6 terms of safety throughout the Commonwealth, especially  
7 in retail, food processing, and health care.

8           We'd like to see some things removed or  
9 strengthen as this becomes permanent. Definitely believe  
10 that the permanent standard should not include the CDC  
11 exception because it will make the standard easier to  
12 implement and enforce without that and less  
13 inconsistencies. Definitely want to see the permanent  
14 standard emphasize ventilation, social distancing.  
15 Research has found that the virus can travel as an  
16 aerosol further than 6 feet in indoor spaces. A 6-foot  
17 rule for social distance alone may not be enough to  
18 reduce spread. That's particularly of concern to us in  
19 meat processing facilities as well as in grocery stores  
20 and inside health care facilities.

21           The permanent standard should include language  
22 on medical removal for known infections, exposures, or  
23 when recommended by a medical or public health  
24 professional with removal protections. Employers should  
25 maintain the employees' base earning, seniority, and

1 other rights and benefits that existed at the time of the  
2 removal until they're returned to work.

3 Again, People need to be able to take  
4 themselves out of the workplace if they're ill so that  
5 they can recover and come back to work without losing  
6 economically.

7 The permanent standard should strengthen the  
8 involvement of workers and labor representatives in the  
9 plan. Need to make sure that educational material --

10

11 (Speaker muted due to expiration of  
12 five-minute time allowance.)

13

14 MR. STIFF: Thank you, Mr. Wilson, for your  
15 remarks.

16 Board Members, do you have any clarification  
17 questions for Mr. Wilson at this time?

18

19 (No Board Members responded.)

20

21 MR. STIFF: Ms. Doss, may I have the next name.

22 MS. DOSS: So we want to switch on the list for  
23 the next speaker. It would be Rebecca Reindel with  
24 AFL-CIO.

25 MR. STIFF: Okay.

1 Ms. Reindel, first let's establish contact.

2 MS. REINDEL: Hi, Mr. Chairman, can you hear  
3 me?

4 MR. STIFF: Yes. Thank you. You may start  
5 your remarks now.

6 MS. REINDEL: Great. Thank you so much.  
7 Thanks, Mr. Chairman. Thank you to the Board for  
8 listening to all of this testimony today. I'm Rebecca  
9 Reindel. I'm the Safety and Health Director at the  
10 National AFL-CIO. We represent 55 unions nationally and  
11 internationally. We have a long history of strengthening  
12 and working with industry and governments on OSHA  
13 standards.

14 We really commend Virginia for doing such an  
15 incredible job this summer on issuing the emergency  
16 temporary standard for COVID-19. It was clearly needed  
17 and clearly has had a significant impact on people's  
18 lives and on people's livelihoods.

19 The state Board did this -- promulgated an  
20 issue that's ETS with industry input, with labor input,  
21 input from the public and worked together to build a  
22 standard that is protective, that saved lives, that it's  
23 structured to be adaptable across different workplaces,  
24 that businesses have been able to comply with as you've  
25 heard in this testimony already today. And in

1 conjunction with the standard, DOLI has provided great  
2 services and compliance assistance, out reach, education,  
3 and training materials that have supplemented and allowed  
4 employers to further comply with the standard.

5 The ETS also has avoided duplication and  
6 actually has increased coordination and efficiency  
7 between Virginia government agencies. The Board worked  
8 within its statutory requirements for an emergency OSHA  
9 standard. They allowed public comment period, business  
10 and worker input, and today's the next step to moving  
11 that forward, more public participation after another  
12 comment period. This time we had 60 days for that  
13 comment period. So we're in a good place here.

14 The standard must be made permanent though. We  
15 need to keep moving. On this notion that having  
16 protections beyond the expiration of the ETS in January  
17 is unnecessary. It's actually the opposite. All  
18 evidence tells us that COVID will continue well past  
19 January, will continue to create major workplace  
20 outbreaks, community outbreaks if we do not implement  
21 stronger protections and if we don't keep the ones that  
22 we have. This is simply a reality based on the evidence.

23 In fact, January is in the middle of winter  
24 when cases are expected to surge. January is when the  
25 virus entered our country earlier this year because of

1 how easily it is spread and especially spread during  
2 these months. We've already seen the surge beginning in  
3 other states as this science has predicted.

4           So issuing and following a standard from OSHA  
5 specifically is important because OSHA standards make a  
6 big difference and they save lives. OSHA has a long  
7 history and authority in workplaces, very clear authority  
8 that other agencies do not have. They are the single  
9 source of authority for simplifying things for employers  
10 and for workers. Guidance isn't enough. It's why the  
11 ETS was necessary. It's why the permanent standard is  
12 necessary.

13           There are over 100 CDC guidance documents plus  
14 other guidances that change daily. They have no  
15 widespread notification to anyone when they change or  
16 what was changed. This is not helpful to anyone and it  
17 only makes it harder to keep up guidance or  
18 recommendations and they can be very politically driven  
19 and they're not based on scientific evidence. The OSHA  
20 standard is evidence based.

21           The airborne transmission of this virus, the  
22 science is clear on this. We know that the SARS-CoV-2  
23 virus travels distances through the air, especially in  
24 high-risk settings like indoor settings. It's why it's  
25 so contagious. We know that from looking at the cases

1 across the country.

2           The science means something though. It  
3 requires comprehensive controls. It's not about just  
4 protecting workers from droplet exposures or contact  
5 exposures. So not just cleaning or touching or being  
6 near someone. It's about prevention measures and  
7 controls that reflect the reality that we're dealing  
8 with, with airborne transmission.

9 Preventing workplace exposures to infectious diseases  
10 like COVID-19 is not about throwing a bunch of PPE and  
11 Band-Aid measures at folks to see what sticks or to do  
12 what's convenient or to cherry pick from guidelines.  
13 It's about planning and identifying the most important  
14 measures and the most effective measures.

15           That's why this plan or programmatic approach  
16 that Virginia has taken is so important. So thank you so  
17 much for your time today.

18           MR. STIFF: Thank you, Ms. Reindel, for your  
19 remarks.

20           Board Members, do you have any clarification  
21 questions?

22

23           (No Board Members responded.)

24

25           MR. STIFF: Thank you.

1 Ms. Doss, may I have the next name.

2 MS. DOSS: Yes, Mr. Chairman. The next name is  
3 M.K. Fletcher with AFL-CIO.

4 MS. FLETCHER: Hi. Can you hear me?

5 MR. STIFF: Yes, Ms. Fletcher. Thank you. You  
6 may start your remarks now.

7 MS. FLETCHER: Great. Thank you. Thank you  
8 for this time today. I just want to build off of  
9 Rebecca's comments on the need for a permanent standard  
10 and comment on the quality of the ETS to protect working  
11 people in Virginia.

12 The ETS is a strong, comprehensive standard  
13 that ensures that risks are identified and control  
14 measures are implemented using sound, safety practices  
15 according to the plan. This standard approach is common  
16 in OSHA standards, including bloodborne pathogens and  
17 respiratory protection standards, just for a few  
18 examples. We commend Virginia for taking this  
19 commonsense approach to controlling infectious diseases  
20 in this standard.

21 The hazardous assessment and plan are at the  
22 heart of the programmatic standard. The tiered risk  
23 classifications along with the programmatic approach  
24 allows employers to tailor their infection control plans  
25 to their workplace instead of being overly prescriptive.

1 It's essential for all employers with worker involvement  
2 to assess the hazards in their workplace and to determine  
3 what, if any, control measures should be implemented. If  
4 COVID-19 hazards are not present in the workplace, then  
5 no control measures are needed to mitigate the risk,  
6 naturally releasing the burden to employers if the virus  
7 is no longer an issue. This is how OSHA standards work  
8 for all workplace hazards.

9 An employer's plan can be as simple or in depth  
10 as necessary to address the risks in the workplace and  
11 size of the workplace. It's the opposite of a  
12 one-size-fits-all regulation. The engineer controls,  
13 such as ventilation, administrative controls such as  
14 limiting individuals in an area, respirators and other  
15 PPE and face coverings are all included in the standard  
16 to ensure that all possible control measures are outlined  
17 for employers so that they can easily implement them in  
18 the workplace if deemed necessary by the risk assessment.

19 The reporting and notification provisions in  
20 this standard are also essential. Public health best  
21 practices to control the spread of a virus are to  
22 identify those who are infected, follow up to determine  
23 who else was exposed, and then prevent all of those  
24 individuals from spreading the virus further. The ETS  
25 has strong provisions to ensure that all known infections



1 are properly communicated to the necessary parties for  
2 prompt follow-up and investigation to occur if needed.

3 Without these provisions there are no  
4 requirements in Virginia that collect and link employment  
5 and infection information. The other essential  
6 provisions in line with the public health practices are  
7 the removal of known, exposed individuals from situations  
8 where they could expose others. The current ETS  
9 provisions ensure that infected individuals are not in  
10 the workplace where they will expose coworkers and the  
11 public.

12 We encourage the Board to also consider that  
13 workers who have known exposure at work and have been  
14 notified of this exposure under the standard should be  
15 considered suspected to be infected. This is essential  
16 in commonsense considering their risk of asymptomatic and  
17 pre-symptomatic transmission.

18 Workers who must not remain at the worksite due  
19 to infection or exposure must be protected from any  
20 retaliation or loss of benefits. The sick leave  
21 protections in the ETS help to ensure that workers are  
22 not at an economic disadvantage when they must remain out  
23 of work. Protecting workers encourages workers who would  
24 otherwise be afraid of retaliation to report known  
25 exposures. These provisions are common in OSHA standards

1 such as lead, formaldehyde, most recently beryllium, but  
2 there are many others I can list.

3 Another key provision is training. It's  
4 important that all workers understand the risk associated  
5 with COVID-19 in their workplace, the measures employers  
6 are taking to protect them, and the tools and protections  
7 they need to perform their job safely.

8 The tiered approach in the ETS ensures all  
9 workers receive information appropriate for their work  
10 setting. Training is extremely common and necessary in  
11 all OSHA standards.

12 I want to close by thanking the State of  
13 Virginia for doing a strong, comprehensive standard for  
14 COVID-19 that is protecting our workers, families, and  
15 communities. We urge the Board to make the ETS  
16 permanent. As you've heard from the workers who have  
17 spoken here today, it is needed to save lives. Thank  
18 you.

19 MR. STIFF: Thank you, Ms. Fletcher, for your  
20 remarks.

21 Board Members, do you have any clarification  
22 questions for Ms. Fletcher.

23

24 (No Board Members responded.)

25

1 MR. STIFF: Ms. Doss, do we have any additional  
2 names to revisit?

3 MS. DOSS: Yes, Mr. Chairman. We have one last  
4 speaker, Robert B. Melvin with Virginia Restaurant,  
5 Lodging & Travel Association.

6 MR. STIFF: Okay. Thank you.

7 Mr. Melvin, first, we can establish contact.

8 MR. MELVIN: Yes, I'm here.

9 MR. STIFF: Thank you. You may start your  
10 remarks now.

11 MR. MELVIN: Members of the Board, thank you  
12 very much for the time today. I very much appreciate  
13 (inaudible).

14 I'm sure many of you are aware that the  
15 (inaudible).

16 Regrettably, at this point in time, we're  
17 anticipating that -- according to surveys that we've  
18 conducted of restaurants in Virginia 58 percent of  
19 restaurants (inaudible) or closing (inaudible). In  
20 addition to that, approximately 50 percent of restaurants  
21 are having issues with -- they're paying more on  
22 (inaudible) costs currently than they were at this same  
23 time last year.

24 We're also seeing that hotels, they're  
25 deeply struggling as well here in Virginia. For example,

1 we know that as of September 2020 the number of hotel  
2 related jobs have -- it's gone from 52,000 hotel related  
3 jobs to 20,000 hotel related jobs. Without additional  
4 assistance from the state or federal agencies we're  
5 looking at getting -- it's looking like it could be about  
6 36,000 job losses here in Virginia. That's not to  
7 mention that out of 1,500 hotels around Virginia, that  
8 1,000 of them are going to be closing absent additional  
9 support. As you can tell, the situation is dire for the  
10 hospitality and tourism industry.

11           There are things that can be done.  
12 Additional support to these businesses and even just  
13 trying to work with us as we try to do throughout this  
14 whole process as ETS has been implemented. The American  
15 Hotel and Lodging Association has established a COVID-19  
16 safety and training program called the Safe Day Program.  
17 This program follows CDC guidelines and also there's the  
18 national Restaurant Association COVID-19 training.

19           All of these have in mind keeping  
20 employees safe and keeping them healthy and keeping the  
21 public healthy. These are standards that follow these  
22 public policies, the public health guidelines and  
23 requirements from the CDC. We're just merely asking for  
24 you all to accept these as meeting the needs of keeping  
25 the hospitality businesses safe and healthy because,

1 honestly, they are in a unique situation and they have  
2 also gone and done a tremendous amount to try to keep the  
3 public and their employees safe and they continue to do  
4 so.

5 I'm sure you heard a whole lot about how  
6 we need to help out employees. If all of these jobs  
7 disappear, there won't be jobs for these employees. I  
8 would just like to leave you with that. So thank you  
9 very much for your time and consideration today.

10 MR. STIFF: Thank you, Mr. Melvin, for  
11 your remarks.

12 Board Members, do you have any  
13 clarification questions for Mr. Melvin?

14  
15 (No Board Members responded.)

16  
17 MR. STIFF: Mr. Melvin, you may want to  
18 make sure that your remarks are submitted in writing and  
19 I will be going over instructions on that in a moment.  
20 At the very, very beginning, it was a bit difficult to  
21 make out all of it, so I just want to let you know that.

22 Ms. Doss, do we have any other names?

23 MS. DOSS: Mr. Chairman, there are no  
24 other names on the list.

25 MR. STIFF: Okay. Thank you, Ms. Doss.

1 I wish to thank all of the speakers for  
2 their interest and for taking the time to provide  
3 comments to assist the Board in its deliberations on this  
4 regulatory issue.

5 Anyone who participated today may also  
6 submit a written versions of any comments by email to  
7 Princey.Doss@DOLI.Va.gov no later than 5 p.m. on October  
8 1, 2020.

9 As I stated at the start of the hearing,  
10 in the coming weeks the Board will be scheduling a Board  
11 meeting to consider the proposed permanent standard  
12 further. Proper notice of the meeting will be given and  
13 the public will have another opportunity to discuss the  
14 proposed permanent standard with the Board, ask any  
15 further questions they have, and provide further input.

16 I want to thank everyone once again. I  
17 extend my thanks to all the Safety and Health Codes Board  
18 Members, all participants, the Agency for helping today.  
19 This hearing of the Safety and Health Codes Board is now  
20 concluded at 11:55 a.m. Thank you all.

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COMMONWEALTH OF VIRGINIA,  
COUNTY OF CHESTERFIELD, to wit:

I, Lisa Wright, a Notary Public for the State of Virginia at Large, do hereby certify that the foregoing transcription of the September 30, 2020, Public Hearing on Permanent Standard of the Safety and Health Codes Board is true and correct to the best of my ability.

Given under my hand this 13th day of October 2020.

\_\_\_\_\_  
Lisa A. Wright  
Notary Public for the  
State of Virginia at Large