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June 22, 2020

Members

Virginia Safety and Health Codes Board
Virginia Department of Labor and Industry
600 E. Main Street, Suite 207
Richmond, VA 23219

Submitted via email to jay.withrow@doli.virginia.gov and online at <https://townhall.virginia.gov/L/entercomment.cfm?generalnoticeid=1118>

RE: 16 VAC 25-220, Emergency Temporary Standard/Emergency Regulation Infectious Disease Prevention: SARS-CoV-2 Virus That Causes COVID-19

Dear Virginia Safety and Health Codes Board Members:

Public Citizen, a nonprofit consumer advocacy group with more than 14,000 members and supporters in Virginia and more than 500,000 members and supporters nationwide, strongly urges the Virginia Safety and Health Codes Board (the Board) to adopt 16 VAC 25-220 — Emergency Temporary Standard/Emergency Regulation Infectious Disease Prevention: SARS-CoV-2 Virus That Causes COVID-19 — with one important revision as described below.

Implementation of an emergency temporary standard for COVID-19 by the Commonwealth of Virginia is critical given the reckless refusal of the U.S. Occupational Safety and Health Administration to issue a mandatory federal emergency temporary standard for protecting workers from COVID-19.

The ongoing COVID-19 pandemic, which is surging across the country, remains a national public health emergency that will continue for many more months, if not years, to pose a significant threat to the health and safety of workers at the forefront of exposure to the coronavirus, including health care workers, first responders, transportation workers, social service workers, and meat-processing plant workers, among others.

An adequate and immediate mandatory standard for COVID-19 is critical to preventing the rapid spread of the disease in the workplace setting, as well as the broader community. This is particularly the case for health care workers and first responders. If these workers contract COVID-19 or are subject to prolonged quarantine because of potential exposure, they will not be available to assist and treat other infected patients, which would impede severely the ability of Virginia's health care system to stem the COVID-19 pandemic, as well as handle the usual flow of patients with other acute and chronic diseases. In addition, infected health care workers and first responders who have no or minimal symptoms could transmit the infection to vulnerable

patients at high risk of dying from COVID-19. These factors together would exacerbate this ongoing public health crisis.

Moreover, with COVID-19 cases cropping up among workers at food processing plants around Richmond and on farms and ranches around Harrisonburg, it is important to put protections in place immediately to prevent the spread of this disease. The food supply chain is more essential than ever, and we cannot afford the substantial disruptions an outbreak would cause to it. As summer heats up, farms and ranches will be particularly busy, and illnesses related to heat stress may make it harder for workers to fend off the coronavirus. Thus, it is critical that the proposed emergency standard to protect workers from COVID-19 be firmly in place as soon as possible. (Separately, we urge the Board to enact protections for employees in high-temperature workplaces, such as shade and water breaks, to protect against dangerous heat stress illness.)

Regarding 16 VAC 25-220 as proposed, we urge you to delete the following paragraph on page 6:

G. To the extent that an employer complies with requirements contained in CDC [the Centers for Disease Control and Prevention] publications to mitigate SARS-CoV-2 and COVID 19 related hazards or job tasks addressed by this standard/regulation, the employer's actions shall be considered in compliance with this standard/regulation.

The above paragraph would substantially undermine the protections intended under the proposed standard because the CDC publications on COVID-19 do not stipulate requirements or standards but instead provide only recommendations that are not binding on employers. For example, the CDC publications are filled with non-mandatory recommendations to employers in the meat and poultry industry that include phrases such as "consider this" or do this "if possible." Thus, employers would be able to assert that they are in compliance with these suggestions if they simply considered and then decided not to implement them. Allowing such a gaping loophole would eviscerate the proposed standard. We urge you to delete paragraph G on page 6 and then finalize the standard as quickly as possible.

Thank you for the opportunity to comment on this urgent public health matter.

Sincerely,

/s/

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Director
Public Citizen's Health Research Group

/s/

Juley Fulcher, J.D., Ph.D.
Worker Health and Safety Advocate
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