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VIA ELECTRONIC MAIL

Ms. Princy Doss
Director of Policy, Planning and Public Information
Virginia Department of Labor and Industry
600 E. Main Street, Suite 207
Richmond, VA 23219
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Re: Emergency Temporary Standard/Emergency Regulation, Infectious Disease Prevention, SARS-CoV-2 Virus That Causes COVID-19, §16 VAC 25-220

Dear Ms. Doss:

Thank you for the opportunity to comment on 16 VAC 25-220, the emergency temporary standard and emergency regulation to address the prevention of COVID-19 in the workplace. On behalf of its food retail and wholesale industry members, the Virginia Food Industry Association (VFIA) respectfully requests your consideration of changes to the emergency temporary standard to ensure it is enhancing existing processes without unnecessarily burdening retail grocers and wholesalers who have already put into place substantive safeguards to protect, associates, vendors and customers.

The VFIA is a nonprofit trade association that serves as an advocate for the retail and wholesale food industries in the Commonwealth of Virginia. Collectively, VFIA's members employ more than 55,000 people at more than 530 retail locations. VFIA shares the department's objective to exercise safety and health precautions in our stores, and throughout the pandemic, VFIA members have safely and effectively maintained in-store sanitization and safety standards.

In these comments, VFIA shares some additional thoughts and suggestions for changes to 16 VAC 25-220 in order to enhance the consistency and clarity of requirements that apply to employers in the Commonwealth.

1. Federal and State Uniformity

§10.G. This provision states that compliance with CDC guidelines shall be considered as compliance with this standard/regulation. However, the proposed standards contain many requirements over and above current CDC guidelines. If this section is intended to apply to the entire set of standards (not just §10), then it should be clarified that these proposed standards

are actually best practices or guidelines, and to the extent they conflict with CDC guidelines, such CDC guidelines shall govern.

2. Employee Assessment Flexibility

§40.A.2 – Inform and Encourage employees to self-monitor signs and symptoms; While we support passive self-administered employee assessments, VFIA is opposed to prescreening and surveying every employee. For Medium Risk employers, such as retail grocers, the ETS calls for prescreening and surveying every associate (60B1A), presumably via active methods tracked and monitored by employers. Such a requirement would be challenging and costly, with limited effectiveness above and beyond the passive self-monitoring. VFIA supports §40.A.2, and opposes §60.B.1a as currently written.

§40.A.3. This section requires development of policies/procedures for employees to self-report when testing positive for anti-SARS-CoV-2 antibodies through serologic testing. The EEOC recently stated that employers cannot require COVID-19 antibody tests, as opposed to tests for the actual virus.

Therefore, the standards should clarify that antibody testing is not required by these standards, and employers' written policies should not require them either.

3. Notification and Recordkeeping

§40.A.7 Requires employers to notify employees within 24 hours of discovery of possible exposure. We would ask that this be clarified to indicate notification is only required to those employees who potentially came into contact with the infected employee and/or worked in the same work area, or as otherwise recommended by CDC. Many employees may never share a shift with a positive associate. Notification should not be more broadly required to all employees of the company. Such notification would be challenging and virtually impossible to reach out to every contractor, and vendor following a report of a positive test. Even contacting all associates within 24 hours would be challenging. Additionally, many retail grocers' stores are leased, and it may be difficult to even notify building owners within 24 hours. The VFIA recommends the agency adopt the CDC "close contact" definition for potential exposure - *Someone who was within 6 feet of an infected person for at least 15 minutes starting from 2 days before illness onset (or, for asymptomatic patients, 2 days prior to specimen collection) until the time the patient is isolated).*

§40.A.8 VFIA supports clarifying that the provision directing employers collect or store COVID-related exposure or medical records does not imply to retail grocers. Specifically, the association suggests that employers not measuring COVID-19 exposure or maintaining associate medical records should be exempt from this provision. If an exemption is not provided, then further clarification would be helpful as to what potential exposure and medical records impacted businesses would make available to associates.

4. Return to Work and In-Store Protocols

§40.B.1 As drafted, the test-based strategy identified in the return to work protocols is overly cumbersome and could be more easily addressed through a properly-authenticated note/release from the employees' health care provider (or at least allow for that option).

§40.C. While retail grocers and food industry wholesalers have strongly endorsed social distancing practices, the requirement within the regulation that notes that employers should "ensure" physical distancing while on the job or during paid breaks is overly burdensome to the employer. While employers can provide notices, develop and implement policies, put into place in-store markers as well as enforces corporate policies, some employee accountability is necessary to maintain social distancing.

§40.H. While retail grocers are open to reviewing waiver requests, the regulation's specificity regarding how requests for religious waivers are handled and the requirement to consult with the Office of the Attorney General (OAG) are concerning for two primary reasons. First, the regulations do not address ADA requests for reasonable accommodation; and second, it is not practical consult to the OAG every time an employee raises an accommodation issue.

§ 40.I.2 Sanitization within retail grocery stores is prioritized by VFIA members, but the current language in the draft states that "employees that interact with customers, the general public, contractors, and other persons, shall be provided with and immediately use disinfectant supplies to clean surfaces contracted during the transaction," and it could be interpreted to mean that every touch point must be cleaned after every touch/transaction.

§ 40.I.8 The VFIA agrees that the availability of hand sanitizer is important, but market constraints may limit the amount of product available. The regulation requires hand sanitizer to be available to employees and mentions that employees assigned to a work station where job tasks require frequent interaction inside 6 feet with other persons must have hand sanitizer at their station. We request that this be revised to permit flexibility to include access to areas where hand washing can occur or hand sanitizer should there be product shortfalls.

§ 60.A.1.b The regulation also requires compliance with minimum American National Standards Institute (ANSI)/American Society of Heating, Refrigerating and Air-Conditioning Engineers (ASHRAE) Standards 62.1 and 62.2. Instead, VFIA recommends general adherence to "industry standards" to avoid any suggestion that guidelines for certain air filtration mechanisms must exist in every single store work area.

5. General Controls Not Applicable to Retail Settings

§60.B. Portions of the regulation are seemingly drafted specifically to address administrative offices, not retail workspaces. The section is prefaced with "To the extent feasible." However, some standards listed are technically "feasible" but not at all practical or necessary in the

grocery store environment. For example, grocery stores are unable to implement flexible worksites and work hours, such as telework, and while it is possible to limit the number of customers in a store at a time, it does not provide for meaningful in-store controls that would not otherwise be addressed by social distancing.

For instance, density and pedestrian traffic issues can be addressed with standing markers and direction pointers throughout the store. We have similar concerns with the broad use of delivery and curbside pickup, which are used at certain retail grocery locations, but cannot be a wholesale replacement for customer shopping.

§60.B.1.a (See comments for §40.A.2) Requires prescreening or surveying each employee *prior to each shift* which is overly burdensome. We propose that this provision be revised to allow employees to submit to a one-time survey, affirming that they are not symptomatic or recently exposed, and certifying that if the employee begins to experience symptoms or has been exposed, they must report that information before attempting to come to work.

§60.B.1.c Limit access to non-employees - this is not possible in the retail grocery environment, and we would respectfully ask to be exempt.

§60.B.1.g While physical distancing practices are in place within retail grocers, it is not always possible to keep employees and other individuals six feet apart. Revising the provision to address more prolonged consistent exposure instead would provide additional clarity and allow for momentary lapses in social distancing.

§70.B The regulations states that planning and training requirements apply to those employees classified as “very high,” “high,” and “medium.” However, this seems to conflict with §80 Training which states that only “very high” or “high” exposure employees are subject to training. We recommend clarification that “medium” classified employees are not bound to the training and certification requirements in these sections.

§70.C.3.c. This addresses the Infectious Disease and Preparedness Plan, but requires consideration of certain contingency plans that may not be feasible for grocery stores, including reduced workforce, etc.

§90.B. This section prohibits discharge or discrimination against any employee who voluntarily provides and wears their own PPE, such as masks. Most retail operations have dress codes which place restrictions on such garments, including the acceptable color/pattern for masks and face coverings. This provision should recognize that if the employee insists on providing his or her own PPE, the employer can still enforce the dress code regarding such mask or face covering without violating this provision.

In closing, the Virginia Food Industry Association hopes that consideration would be given to a phased in approach to enforcement of the various elements – specifically: completion of written task hazard assessments, coordinating and preparing an “Infectious Disease Response and Protection Program”, and executing associate training. There will be additional challenges and expenses associated with certifying/documenting and maintaining training documentation.

Thank you again for your time in considering the concerns laid out above. As always, I am happy to discuss any of these further.

Sincerely,

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