



VIRGINIA TRUCKING ASSOCIATION

4821 Bethlehem Road, Suite 101

Richmond, VA 23230

Phone: (804) 355-5371 ♦ Fax: (804) 358-1374

E-mail: dbennett@vatrucking.org

www.vatrucking.org

P. Dale Bennett
President & CEO

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Submitted Electronically

Jay Withrow, Director
Division of Legal Support, ORA, OPPPI, and OWP
Virginia Department of Labor and Industry
600 E. Main Street, Suite 207
Richmond, VA 23219
jay.withrow@doli.virginia.gov

RE: Comments of the Virginia Trucking Association
VA Department of Labor and Industry, Safety and Health Codes Board
Emergency Temporary Standard/Emergency Regulation, Infectious Disease Prevention:
SARS-CoV-2 Virus That Causes COVID-19

To Whom It May Concern:

Thank you for the opportunity to comment on the Virginia Department of Labor and Industry's recommended 16 VAC 25-220, Emergency Temporary Standard/Emergency Regulation, Infectious Disease Prevention: SARS-CoV-2 Virus That Causes COVID-19 (collectively, the "Regulations"). These comments are provided on behalf of the Virginia Trucking Association (VTA).

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.

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. While most activity ground to a halt across the country, professional truck drivers kept moving. These heroes continue serving on the frontlines, ensuring everyone has the goods they need to get through these challenging times. Truckers are the difference between a fully-stocked grocery store and one lined with empty shelves. They're why doctors and nurses have PPE to protect themselves. They're how test kits get to hot-spots for local officials to use to fight the virus' spread.

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, safety will continue to guide our decision-making.

Safely reopening our economy based on sound science and data will be the ultimate resolution to our economic challenges, and we support the meticulous efforts of public officials to get our nation back to work, balancing safety with the economic and social needs of modern life. And when the economy begins to turn back on, the first step will be repositioning and delivering supplies that fuel commerce and communities, which means the trucking industry will play a critical role as we turn toward recovery.

Trucking holds the keys to restarting America's economic engine, 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 unnecessary regulations such as these proposed emergency regulations.

Therefore, we respectfully request that the proposed emergency regulations be rejected. We believe a more practical and flexible approach is for the Department of Labor and Industry to continue their current process to investigate claims, notify businesses of complaints, work with businesses to ensure they are following proper procedures and issue fair fines when appropriate.

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 the proposed emergency regulations will create in their application to the trucking industry.

Concerns and Issues with Application of Proposed Emergency Regulations to the Trucking Industry

"One Size Fits All" Regulations are Impractical for Trucking

The "One Size Fits All" regulations proposed by the Department make 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 emergency temporary standard 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. Thus, we see no need for Virginia to adopt its own regulations, which would create an uncertain and non-uniform compliance for the trucking fleets operating in and through Virginia.

Specific Compliance Concerns and Issues for Trucking

It appears that the proposed emergency regulations were drafted based on application to employers and employees in fixed facilities and workplaces, without any consideration for compliance challenges that would be imposed on trucking fleets and truck drivers. We assume that all trucking employees would be classified as "medium" or "lower" risk and will address these comments to the requirements for all employers and employees classified in those two risk categories.

1. On page 13, number 4 under the definition of "May be infected with SARS-CoV-2." How are trucking fleets and drivers supposed to know if they have "traveled through a locality, city, town or county, state, or country with moderate or substantial SARS-CoV-2 ongoing community transmission within the last 14 days and had contact with a person inside 6 feet while doing so"? Is DOLI going to create a database that tracks the community transmission status of every locality in the United States through which a truck driver may travel in before entering the Commonwealth? Given the changing nature of community transmission rates, is DOLI going to be able to constantly update such a database? Otherwise it will be impossible for truck drivers and their employers to determine if they have "may be infected with SARS-CoV-2."
2. On page 13, "Face coverings" should be added to the "PPE" definition to reflect CDC guidance for long-haul drivers to wear "cloth face coverings in public settings where other social distancing measures are difficult to maintain".
3. On page 14, the statement 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" is impractical for some trucking operations. Some trucking companies utilize teams of 2 drivers for long-haul trips. In these team operations, one person drives while the other person sits in the passenger seat or rests in the sleeper berth. In these situations, it is impossible for the drivers to maintain 6 feet distance from each other or to install a permanent, solid floor to ceiling wall in the cab of a truck tractor. Thus, no driver in a team operation can meet these requirements for "physical distancing".
4. On page 16, § 40.A.#1 would require employers to classify each employee for risk level of exposure but provides no guidance on who would be qualified to conduct this assessment or what qualifications would be necessary to do so.
5. On page 20, § 40.B.#2 requires employers to ensure that employees observe physical distancing while on the job. As explained in comment #3, compliance with this requirement would be impossible for truck drivers operating as "team" drivers.
6. On page 21, § 40.E requires employers to ensure compliance with respiratory protection and PPE standards applicable to its industry. There are no respiratory protection and PPE standards for the trucking industry for employees driving or riding in a vehicle with other employees. In absence of such standards, would drivers in a team operation as described in comment #3 be required to wear respiratory protection and PPE? If so, what type of respiratory protection and PPE would be required?

7. On page 22, compliance with § 40.I.#5 would be impractical within many maintenance and repair facilities.
8. On page 23, § 40.I.#8 will be difficult for trucking fleets and truck drivers to comply with. Hand sanitizer could be provided to truck drivers while en route or while making pickups or deliveries. However, employers of truck drivers cannot ensure that toilet and handwashing facilities at the many locations they serve meet the requirements of VOSH laws, standards and regulations dealing with sanitation. Also, employers of truck drivers cannot ensure that toilet and handwashing facilities at the locations they serve are immediately available. Truck drivers have historically faced difficulties with some shippers and receivers not allowing them access to their restroom facilities while their trucks are waiting for or engaged in loading and unloading. Since the outbreak of COVID-19, this problem with accessing restroom facilities where drivers can wash their hands has become much more difficult. Unfortunately, employers of truck drivers have no control over the facilities of their shippers and receivers and cannot force them to allow access to toilet and handwashing facilities for drivers.
9. On page 29, the requirement in § 60.B.1.b for prescreening or surveying of truck drivers prior to the commencement of each work shift will be difficult for their employers. 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.
10. On page 35, § 90.C provides whistleblower protection for employee complaints published to the news media and on social media. 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.
11. 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.

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.

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 burdensome, impractical and unnecessary regulations such as these proposed emergency regulations.

Therefore, we respectfully request that the Board reject these proposed emergency regulations 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,

A handwritten signature in black ink that reads "Dale Bennett". The signature is written in a cursive style with a prominent initial "D".

P. Dale Bennett
President & CEO

Cc: Brian Ball, Secretary of Commerce and Trade
Shannon Valentine, Secretary of Transportation
Megan Healey, Chief Workforce Advisor to the Governor
Clark Mercer, Chief of Staff
Ray Davenport, Commissioner of the Department of Labor and Industry