



January 9, 2021

Princy Doss
600 E. Main Street
Suite 207
Richmond, 23219

Jay Withrow
600 E. Main Street
Suite 207
Richmond, 23219

Re: Proposed Permanent Standard for COVID-19 Mitigation [16VAC25-220]

Dear Ms. Doss and Mr. Withrow:

I am writing 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 and static policy that does not allow the different industry sectors to adapt to the evolving science surrounding COVID-19. Employers have a general duty to provide for the safety of their employees from workplace hazards and the Council contends the Department has the authority to sanction employers who fail to do so, including those that fail to protect from COVID-19.

The federal guidance surrounding COVID-19 changes regularly and is likely to change more frequently as the Administration continues to distribute and administer the vaccine. Why would the Board create a static regulation that is unable to adapt to these changing recommendations? We do appreciate the inclusion of the new Section 10.F which allows for compliance with the Permanent Standard by implementing measures from the latest CDC publications. This provision was omitted from a previous draft released by the Department and the Council supports its inclusion should the Board move forward with the Permanent Standard.

We renew our request the Board include a provision repealing the standard if the Governor removes the State of Emergency. The Council disagrees with the method included in the draft Permanent Standard restating the Boards current authority to convene and make a determination of necessity within 14 days. If a state of emergency ceases to exist, why would a standard for mitigation of that emergency continue to be necessary? The Board would have to meet at least once to determine whether the Standard continues to be necessary or should be repealed. If the Board determines amendments are required, more time would be needed for proposed revisions to be drafted and reviewed by the public and the Board. Such amendments should be put through the proper comment period and regulatory review and therefore, delay implementation of a revised standard even further.

During this entire process, our agribusinesses would need to continue to comply with a Permanent Standard that is antiquated and no longer relevant to protecting our workforce. The State of Emergency will end, and if it does, why does Virginia need a Permanent Standard to address a workplace hazard that is no longer a hazard? The Standard should include a sunset when the Governor's State of Emergency expires or a specific date over the next year.

The Council is concerned that the Governor's latest Executive Order and Phase III Guidelines conflict with the provisions of the Emergency Temporary Standard, and would continue to conflict with the Permanent Standard if adopted. It is our understanding that any Executive Orders from the Governor would override the Permanent Standard. Why would the Governor not just issue a standing Executive Order to be revoked when the State of Emergency is no longer in effect? This will continue to lead to confusion for the industry as the Governor continues to revise the Phase III Guidelines in the coming months. The Council's agribusiness members which are public-facing businesses such as farmers markets, farm wineries, and farm breweries and others, have followed the specific provisions governing those businesses contained in the Governor's Phase III Guidelines. These conflicts cause confusion as to which standard they are to be following for compliance and which agency is enforcing those provisions. Our industry has already invested millions of dollars and implemented unprecedented safety measures to protect their workforce and maintain the food supply chain.

All of the different sectors of our industry have developed policies to comply with guidelines from the CDC, U.S. Department of Labor, Virginia Department of Health, Virginia Department of Agriculture and Consumer Services (VDACS) and the changing Executive Orders and 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. These conflicts with the Executive Order should be rectified before adoption of the Permanent Standard.

Finally, we are disappointed that we did not have the opportunity to review and comment on the economic impact study the Department committed to providing. To our knowledge, the report has not been made publicly available before the end of the public comment period. More importantly, the Board itself should have adequate time to review the cost benefit analysis of a Permanent Standard that will continue to have a massive impact on every business and employee in the Commonwealth. We urge the Board to delay action on the Permanent Standard until the Board and the public have adequate time to review the economic impact analysis provided by the contracted third party.

We appreciate the opportunity to comment on the proposed Permanent Standard and would be happy to answer any questions the Board may have.

Sincerely,

Sincerely,



Kyle Shreve
Executive Director
Virginia Agribusiness Council