



VIRGINIA TRUCKING ASSOCIATION

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P. Dale Bennett
President & CEO

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Submitted Electronically

Jay Withrow, Director
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Virginia Department of Labor and Industry
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RE: Comments of the Virginia Trucking Association
re: Proposed Amendments to the Final Permanent Standard for Infectious Disease Prevention of the SARS-CoV-2 Virus That Causes COVID-19, 16VAC25-220

Dear Safety and Health Codes Board Members:

Thank you for the opportunity to comment on the Proposed Amendments to the Final Permanent Standard for Infectious Disease Prevention of the SARS-CoV-2 Virus That Causes COVID-19, 16VAC25-220. 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 that support safe and successful trucking operations. 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, including vaccines, test kits and medical supplies, to sustain the population and the economy.

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.

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 a rigid and burdensome regulation such as the current Emergency Temporary Standard (ETS) that is being considered as a permanent standard.

The Permanent Standard

We believe that the current permanent standard is a static regulatory approach to a pandemic that is temporary and ever-changing as we have this past week with the CDC's latest changes in their guidance in response to the Delta variant. Therefore we believe that the Board should act to repeal the permanent standard.

However, if the Board feels the permanent standard should remain in effect, we strongly urge the Board to adopt Governor Northam's recommendation to amend Section 16VAC25-220-10.E to provide employers with safeguards should they comply with the most recent CDC guidance. We hope the Board will reconsider their earlier rejection of the Governor's recommendation and approve the following language change.

E. To the extent that an employer actually complies with a recommendation contained in CDC guidelines, whether mandatory or nonmandatory, to mitigate SARS-CoV-2 virus and COVID-19 disease related hazards or job tasks addressed by this standard, the employer's actions shall be considered in compliance with the related provisions of 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 a provision of this standard shall be considered evidence of good faith in any enforcement proceeding related to this standard. The Commissioner of Labor and Industry shall consult with the State Health Commissioner for advice and technical aid before making a determination related to compliance with CDC guidelines.

By approving the Governor's recommendation to 16VAC25-220-10.E, the Board will enable employers to focus on and follow the best practices and guidance - and subsequent changes thereto - issued by the CDC as it reacts to ever changing science regarding spread of the virus. For an interstate industry like trucking, it is even more important to have one set of regulations and guidance to simplify compliance and promote uniform understanding of the requirements.

Multiple Employees Occupying the Same Work Vehicle

Although support outright repeal of the permanent standard, or at least approval of the Governor's recommendation, we greatly appreciate the proposed new paragraph 16VAC25-220-40.F.7. We strongly support this amendment that follows NIOSH/CDC guidelines regarding respiratory protection/face coverings for commercial drivers who live in the same household and are the only persons in the vehicle, while occupying the same work vehicle.

However, we do have concerns about Section 16VAC25-220-40.F.4 that requires employers to provide unvaccinated employee(s) occupying a work vehicle with another employee(s) or person(s) with "respiratory protection, such as an N95 filtering face piece respirator." To the best of our knowledge this is a more prescriptive requirement than the federal or any other state government for non-medical and non-first responder employers and employees. For example, the CDC requires face masks but has not

seen the need to prescribe N95 masks to protect persons on public transportation or at transportation hubs throughout the country.

Additionally, with the spread of the Delta variant and potential for an increase in hospitalizations, the demand for N95 masks will increase, which is likely to decrease availability and increases costs for businesses to comply with 16VAC25-220-40.F.4.

We believe that 16VAC25-220-40.F.4 is overly prescriptive and costly and should be deleted from the permanent standard. Section 16VAC25-220-40.F.5 would continue to provide protection for employees by requiring employers to comply with respiratory protection and personal protective equipment standards applicable to the employer's industry.

Conclusion

Thank you for your consideration of our comments and please contact me if you need any additional information or have any questions regarding these comments or how trucking industry is working to protect the health and safety of its workers during the pandemic.

Sincerely,

A handwritten signature in cursive script that reads "Dale Bennett". The signature is written in black ink and is positioned above the typed name and title.

P. Dale Bennett
President & CEO