



DELMARVA POULTRY INDUSTRY, INC.

16686 COUNTY SEAT HIGHWAY • GEORGETOWN, DELAWARE 19947-4881
PHONE: 302-856-9037 E-MAIL: dpi@dpichicken.com
www.dpichicken.org

June 22, 2020

Jay Withrow, Director
Division of Legal Support, VPP, 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 from the Delmarva Poultry Industry, Inc. Regarding Adoption of Emergency Temporary Standard/Regulation pertaining to SARS-CoV-2 Virus That Causes COVID-19, § 16 VAC 25-220

Dear Mr. Withrow:

Thank you for the opportunity to comment on the adoption of emergency temporary standard/regulation pertaining to COVID-19. The Delmarva Poultry Industry, Inc. (DPI) is the 1,700-member trade association representing the chicken growers, companies and allied businesses in Delaware, the Eastern Shore of Maryland and the Eastern Shore of Virginia. In particular, we have two chicken company members in Accomack county that employ thousands of Virginia residents and contract with more than 60 growers.

DPI urges the Virginia Department of Labor and Industry (DOLI) **not to promulgate** the proposed emergency regulations because the regulations **are not necessary and will not offer any additional employee protection that businesses have not already taken**. To be clear, employee health and safety has been the number one priority of the Delmarva chicken companies, followed closely by providing an abundant food supply during this crisis.

Both the United States Occupational Safety and Health Administration (OSHA) and the Centers for Disease Control and Prevention (CDC) have issued guidance, updated with regularity as new information is learned about the disease, to employers regarding preventative actions that can be taken to protect worker health and safety and mitigate against transmission of the disease at workplaces. As we've seen over the past few months, the pandemic requires swift action and flexibility; enacting a premature regulation prevents that from occurring.

Only five months ago did the World Health Organization identify the new respiratory illness found in Wuhan, China as a new coronavirus. Every day we are learning more information about how the virus is spread, what measures may or may not be effective to slow or prevent infection, and what that all means to individuals and employers across the country. The CDC, OSHA, and VDH's guidance to employers has kept abreast with the best available science. There is no scientific basis for regulating beyond what these agencies have recommended to date.

The chicken companies on the Eastern Shore of Virginia have cooperated extensively with the local public health department, the Virginia Department of Health (VDH) as well as CDC and OSHA. As a matter of fact, at the request of the three Governors that comprise the Delmarva peninsula, including Governor Northam, a CDC team was deployed to the

peninsula in early May to assist poultry processing facilities with recommendations and implementation of safety protocols. Once visits were made inside the facilities, the feedback was positive, with very few additional steps needed to be made.

Chicken processing companies had been following the CDC and OSHA guidance as early as late March, and had taken several measures, including:

Engineering Controls

- Erection of physical barriers, such as plastic partitions and curtains, between workers when social distancing is not feasible, including on production lines.
- Erection of physical barriers, such as plastic partitions in break rooms and cafeterias.
- Erection of additional break space, including outside tents, to promote social distancing.

Administrative Controls

- Implementation of social distancing of at least six (6) feet wherever feasible, including in cafeterias and break rooms, on production lines, and other locations throughout facilities.
- Implementation of health and temperature screenings of all employees upon entrance.
- Increased sanitation and disinfection measures throughout facilities, with added measures for high-touched areas and areas where a potential COVID-19 positive employee may have been located.
- Adoption of travel and visitor restrictions.
- Promotion of working remotely where possible.
- Provision of increased flexibility regarding attendance and leave policies.
- Staggering of start times, shifts, and breaks.
- Placing signage throughout workplaces regarding preventative measures taken, including in multiple languages.
- Investigation and contact tracing for any suspected or confirmed COVID-19 employee.
- Establishment of multiple channels of communication for workers to share safety concerns with company management.

“PPE” Controls

- Provision of face coverings to employees at no cost to employees.

And it’s important to note that these businesses are food processing facilities – meaning they already adhere to some of the highest standards of cleaning, sanitation and quality assurance in order to provide the United States with the safest food supply. All of these measures, along with the voluntary testing that was conducted at these locations, are working as the numbers of positive cases throughout the Eastern Shore of Virginia community continue to decrease. How will these emergency regulations change that?

In addition, DPI feels

- It is unreasonable to apply “one size fits all” COVID-19 regulations to all employers and employees.
- Codifying guidance is not a reasonable replacement for regulation.
- These regulations should not be promulgated through an emergency process and without public participation in the meeting of the Health & Safety Codes Board

- OSHA already rejected the AFL-CIO's petition for an emergency temporary standard for COVID-19 and the US Court of Appeals for the District of Columbia Circuit denied their petition for a writ of mandamus to compel OSHA to issue an Emergency Temporary Standard for Infectious Diseases.

Rather than rushing to establish emergency regulations without adequate time or participation needed by the impacted stakeholders, perhaps the state of Virginia should instead help employers comply with the federal guidance that is already in existence through trainings or financial assistance. The chicken community on the Eastern Shore of Virginia already recognizes that employee safety is a priority, and we will continue to follow all guidance that is provided from CDC, based on any updates that scientists and researchers discover as they learn more about coronavirus. However, these regulations are not going to provide any additional safety to the employees of Virginia and we urge DOLI to not promulgate them.

Sincerely,

A handwritten signature in black ink, appearing to read "Holly Porter", with a long horizontal flourish extending to the right.

Holly Porter
Executive Director
Delmarva Poultry Industry, Inc.

cc: The Honorable Bettina Ring, Secretary of Agriculture & Forestry
The Honorable Lynwood Lewis, Senate of Virginia
The Honorable Robert Bloxom, Jr., Virginia House of Delegates
C. Renata Major, Chair, Accomack County Board of Supervisors
Michael Mason, Accomack County Administrator