



June 22, 2020

Submitted Electronically

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RE: Comments on the 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

Dear Ms. Doss and Mr. Withrow:

The Virginia Farm Bureau Federation (VFBF) appreciates 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 on behalf of our 35,000 farm family members.

Virginia Farm Bureau represents farmers engaged in every facet of agricultural production ranging from animal production to crop production to timber production. Each operation may go about this production in a very solitary, mechanized manner or very collaborative, hands-on manner with other individuals. Farmers are interested in a uniform and coordinated approach to federally delegated regulatory developments that apply to COVID-19. National trade groups including American Farm Bureau have worked to develop best management practices and implemented a hierarchy of controls to protect their workforce from COVID-19 infections as proscribed by all federal regulatory agencies. Our organization submits the following feedback as part of the public process associated with the development of the Regulations.

Standards in The Proposed Regulation Are Impossible to Implement

The overwhelming majority of agricultural operations would fall under the "medium" risk category outlined in the proposed regulation, yet the guidelines are not clear about the training requirements for their employees. The Regulation is unclear about whether "medium" level employees would need to train and certify the training

of employees. Section 80 regarding training states that employers with “high” and “very high” risk categories must provide training to employees and certify that the employees have completed this training. However, Section 60, regarding requirements for employers with “medium” risk employees cites that these employers need to comply with Section 80.

Contracted services are ubiquitous in the agriculture industry, whether that comes in the form of trucking, contract application of nutrients and crop protectants, contracted timber harvest and replanting, fluid milk pick-up, H-2A or migrant labor, etc. Many of these services are performed on differing schedules, often guided by seasonality, and it may be impossible to ensure the contracting agent is following the provisions of the Regulation.

These requirements for the medium category will have an outsized negative on smaller businesses as opposed to larger businesses. According to the Virginia Department of Agriculture, the average Virginia farm is 181 acres, and 90+ percent are owned and operated by individuals and families. These small, family-run businesses often have no human resource officer or legal counsel, and would struggle to comply with these proposed regulations on an ever-changing basis. These businesses must develop a risk-based plan, provide training, provide screenings, and keep records with no amount of time built-in to come into compliance or stay in compliance with the Regulation.

This Regulatory Process and Use of Emergency Temporary Standard/Emergency Regulation Are Not Appropriate

DOLI is proposing a wholly new regulatory and enforcement program that, based on the Regulations, will impact every farm in the Commonwealth. The public participation and stakeholder involvement procedures outlined in the VAPA are designed to ensure that the impacts of a proposal such as this are fully understood. This is particularly important here, where DOLI is proposing to develop industry-specific or occupation-specific categories of risk. DOLI does not have information to assess or understand the implications this proposal will have on farms or their supply chain. Thus, stakeholder involvement is especially critical to inform the development of this program and the ten (10) days to review and comment on over 200 pages of dense Regulations, as well as the utilization of an electronic meeting where no public comments will be permitted, is inadequate public transparency and participation. Further, the practical matter of fact is that employers, now three months into the COVID-19 pandemic, have already put into place procedures and controls that may be entirely undone by these Regulations, thus, creating additional regulatory uncertainty that is impractical.

We question whether the Safety and Health Codes Board meeting was properly noticed. The “Meeting Scope” was identified as “General business of the Board” rather than “Public hearing...” or “Discuss particular regulations...” Thus, the purpose of the meeting and the meeting scope are in conflict. Our concern is that many businesses, business organizations, and agricultural groups may not have participated because of this confusion.

Codifying guidance as regulation bypasses public scrutiny as outlined in the section above. If any agency can simply change Regulations by issuing guidance, then the statutory basis for VOSH regulation will cease to exist as will public notice and comment. Further, there is no mechanism for DOLI to communicate regulatory or guidance changes to all employers with 11 or more employees with “medium risk.”

Timelines Are Undefined and Enforceability is Ambiguous

The rule calls for creating and updating a written COVID procedure and retraining employees as new guidelines or best practices are announced. Will there be an enforcement date for such rewriting and retraining all employees? The regulation does not have any referenced timeframe for compliance once the regulation is

approved or to update your employer COVID response plan for your business. Crops must be planted on time, cows must be milked daily – farmers are working on very real and very immediate timelines. Without adequate time to develop and adopt a written plan or train employees, farms will face the loss of crop, endangering the viability of the business and our food supply.

The terms “standard” and “regulation” are used interchangeably in the Regulation, causing confusion for how the provisions will be enforced, and on what timeline. Section 20 refers to the “standard” as being valid for up to six months yet the “regulation” is to be effective for up to eighteen months. How are our members expected to interpret interchangeable terms with differing effective durations and enforceability? The Regulation also requires certain industries and risk levels to comply with certain “guidelines” and “guidance.” We know these guidelines are subject to change at various and rapid frequencies, which would require the regulation to update itself instantaneously without notification to our members.

Summary

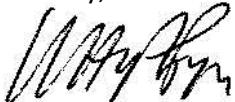
Virginia’s farmers and agriculture industry have worked together, and have worked with national affiliates to develop best practices and address the COVID-19 pandemic head on and in a manner that protects our farm families, employees, and consumers of our products. DOLI’s proposed standard/regulation has been presented in a way that gives us great concern over its feasibility and legality.

Guidance issued by OSHA, CDC, and VDH has been well-considered and provides Virginia farm employers with the flexibility to adapt to evolving knowledge regarding the transmission of the novel coronavirus and effective means and methods to slow or prevent transmission. Our members have developed extensive relationships with various state and federal officials, and worked with these officials to share guidance through webinars and publications that have proved effective in limiting worker exposure to COVID-19.

VFBF appreciates the opportunity to file these comments and ask the board to oppose the Emergency Temporary Standard/Regulation.

Thank you for your consideration of these comments.

Sincerely,



Wayne Pryor
President & CEO
Virginia Farm Bureau