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**Submitted Electronically**

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RE: Comments of the Virginia Retail Federation  
VA Department of Labor and Industry, Safety and Health Codes Board  
Permanent Standard for Infectious Disease Prevention: SARS-CoV-2 Virus That Causes COVID-19,  
16VAC25-220

To Whom It May Concern:

Thank you for the opportunity to comment on the Virginia Department of Labor and Industry's announced intent to Adopt a Permanent Standard for Infectious Disease Prevention: SARS-CoV-2 Virus That Causes COVID-19, 16VAC25-220. We are commenting on behalf of Virginia Retail Federation. Virginia Retail Federation is the statewide retail association advocating on behalf of retailers large and small across the Commonwealth. Our members will be directly impacted by the attempt to implement one-size-fits-all COVID-19 Regulations on businesses throughout Virginia.

Virginia's retail businesses need certainty and consistency in any regulatory program. This ensures that the regulated community understands the requirements of the program, and that all parties can work together to satisfy the regulatory requirements.

**Our Members oppose the adoption of a Permanent Standard by The Virginia Safety and Health Codes Board.** We assert that adopting 16VAC25-220 as permanent regulations is overly burdensome, unnecessary, and violates existing law. The science of COVID-19 is continuously being updated. Therefore, the CDC and OSHA guidelines are frequently updated to reflect this. If the Emergency Temporary Standard were to become permanent, it would continue to require businesses to comply with outdated regulations.

This is not the time to impose a permanent standard. The ETS has only just become fully implemented on the day that these public comments are due (September 25, 2020), so retailers have not had sufficient time and opportunity to voice the challenges of implementation of the ETS. In addition, there has not been evaluation of the ETS by DOLI analyzing how many businesses are out of compliance because of the failure to notify impacted businesses.

**If the Board believes it should move forward with a Permanent Standard, it must include these important provisions:**

- 1) The sunset clause from the ETS into the Permanent Standard – meaning the Regulations would expire with the Governor’s State of Emergency
- 2) The specific changes the Virginia Business Coalition recommend in their submitted comments. These changes ensure the implementation and enforcement of the standard is reasonable, fair, and attainable.
- 3) Here are several priorities of Virginia Retail Federation.
  - a. Amend § 10G to the agency’s original language with clarification on providing “safe harbor” for employers who follow CDC and OSHA guidance. We believe that, as currently written, it is unclear who determines which version of CDC guidance an employer may reference for purposes of compliance.
  - b. Eliminate requirements for physical separation of employees at low and medium risk businesses by a permanent, solid floor to ceiling wall. Higher risk businesses have more flexibility to use smaller temporary barriers like Plexiglas sneeze guards.
  - c. Eliminate all human resource policies from the Regulations such sick leave, telework, flexible worksites, flexible work hours, flexible meeting and travel, the delivery of services or the delivery of products. These policies exceed the Board’s authority as it relates to workplace hazards.
  - d. Amend common space sanitation requirements. Requiring common spaces to be cleaned and disinfected at the end of each shift is impractical for 24/7 operations with multiple and overlapping shifts. The Regulations should be amended to provide for a time-based alternative such as every 8, 12, or 24 hours exempting FDA regulated facilities.
  - e. Eliminate HVAC requirements for medium risk businesses (*16VAC25-220-60(B)*). Requiring retroactive compliance with a 2019 ASHRAE HVAC standard is premature at best. Any permanent regulations should follow existing processes contained in the Virginia Uniform Statewide Building Code (USBC) which utilize appropriate industry investigation and recommendations.
  - f. Eliminate the requirement that medium risk employers should complete a COVID-19 infectious disease preparedness and response plan. This mandate is overly burdensome and not necessary at this risk level.
  - g. Increase the amount of time employers must train their employees. The current timetable is unachievable. The ETS should be amended to provide employers another sixty (60) days to comply.
  - h. Eliminate language protecting employees who report to news media or social media (*16VAC25-220-90*). Whistleblower protection is intended to protect employee complaints to the responsible government regulatory agency.
  - i. Revise requirements related to transportation of employees who travel in the same vehicle. This standard is impractical and vague.

In addition, Virginia Retail Federation requests that the Virginia Safety and Health Codes Board issue an additional sixty (60) day comment period on 16VAC25-220 requesting that employers provide recommended improvements to the Emergency Temporary Standard for consideration by the Board.

We strongly urge the Board not to approve any amendments to the Regulations that would incorporate other infectious diseases. There is no one-size-fits-all plan to combat a wide variety of infectious illnesses.

As previously stated, we believe it is extremely unreasonable to apply one-size-fits-all COVID-19 Regulations to all employers across the Commonwealth. We recommend that the Board reject the regulations, establish a new sixty day public comment period for a revised ETS or abandon the ETS completely and rely upon the General Duty Clause and Federal, State and Industry guidance to protect workers as is been effectively done in the overwhelming majority of other States.

Sincerely,

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