



COMMONWEALTH of VIRGINIA
DEPARTMENT OF LABOR AND INDUSTRY

C. Ray Davenport
COMMISSIONER

Main Street Centre
600 East Main Street, Suite 207
Richmond, Virginia 23219
PHONE (804) 371-2327
FAX (804) 371-6524

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DEPARTMENT OF LABOR AND INDUSTRY (DOLI)
VIRGINIA OCCUPATIONAL SAFETY AND HEALTH (VOSH) PROGRAM

DOLI ADDENDUM

To January 11, 2021, Economic Impact Proposed Standard For Infectious Disease Prevention Of The Sars-Cov-2 Virus That Causes Covid-19,¹ Prepared by Chmura Economics and Analytics.

BACKGROUND

The Virginia Safety and Health Codes Board (“Board”) adopted 16 VAC 25-220, Emergency Temporary Standard (ETS), Infectious Disease Prevention: SARS-CoV-2 Virus That Causes COVID-19, with an effective date of July 27, 2020. The ETS was limited by statute to be in effect for no more than six months, and expires on January 26, 2021. Va. Code §40.1-22(6a) under which the ETS was adopted does not permit the ETS to be extended beyond 6 months.

A permanent replacement standard for the ETS is being considered by the Board, and in accordance with §40.1-22(6a):

“The Board by similar publication shall prior to the expiration of six months give notice of the time and date of, and conduct a hearing on, the adoption of a permanent standard.”

The Board published a proposed permanent standard to replace the ETS on July 27, 2020. During the adoption process for the ETS, the Board made clear that during any process to adopt a permanent replacement standard it would attempt to substantially comply with the core requirements in the APA within the six month time constraint of Va. Code §40.1-22(6a) by

¹ It is the position of the Department based on consultation with the Attorney General that by virtue of Va. Code §40.1-22(6a), the Administrative Process Act does not apply to adoption of either an ETS or permanent replacement standard adopted under the specific procedures outlined in that statute. As noted on page 180 of the June 23, 2020 Briefing Package to the Board regarding proposed adoption of an ETS/emergency regulation, the OAG noted: The clear intent of 40.1-22(6a) and 29 USC Section 655(c) in the OSH Act – is to create an alternative path to a temporary and permanent standard outside of the rigors and processes of the APA.”

holding a sixty day written comment period² and a public hearing³ along with obtaining an Economic Impact Analysis and holding a meeting to consider a final standard.⁴

Although not required by Va. Code §40.1-22(6a) DOLI contracted on behalf of the Board with Chmura Economics and Analytics (“Chmura”) to conduct an economic impact analysis of the standard that would attempt to address elements contained in Va. Code §2.2-4007.04.A.1,⁵ with the exception of three issues: costs associated with property value, fiscal impact on localities and potential funds to implement this standard. The purpose of this Addendum is to address those three issues.

For comparison purposes please see the EIA for VOSH’s Tree Trimming Operations Standard at:

https://townhall.virginia.gov/L/GetFile.cfm?File=92\2513\4713\EIA_DOLI_4713_v2.pdf,

and the EIA for VOSH’s Reverse Signal Procedures - General Industry - Vehicles/Equipment Not Covered by Existing Standards at:

https://townhall.virginia.gov/L/GetFile.cfm?File=92\2040\4053\EIA_DOLI_4053_v1.pdf

DEPARTMENT RESPONSE

1. The Department is not aware of the standard resulting in any additional costs related to impact of the standard on the use and value of private property, including additional costs related to the development of real estate for commercial or residential purposes. While Governor’s Executive Orders (EO) (see the most recent EO 72⁶) have contained restrictions on the use of and operating hours, including closings, of private businesses, the standard contains no such restrictions.
2. Since the standard would apply to all businesses, including state and local government employers, no locality will be particularly affected differently than any other local government entity by adoption of the standard. Any fiscal impact on a locality will be determined by the extent to which individual worksites contain hazards or job tasks which expose employees to risks classified as very high, high, medium or lower.

² The sixty day comment period was held from August 27, 2020 to September 25, 2020.

³ The initial public hearing was held September 30, 2020.

⁴ The Board held a thirty day comment period on a draft revised proposed standard from December 10, 2020 to January 9, 2021, and a second public hearing on January 5, 2021.

⁵ Va. Code §2.2-4007.04.A.1: The economic impact analysis shall include but need not be limited to the projected number of businesses or other entities to which the regulation would apply; the identity of any localities and types of businesses or other entities particularly affected by the regulation; the projected number of persons and employment positions to be affected; the impact of the regulation on the use and value of private property, including additional costs related to the development of real estate for commercial or residential purposes; and the projected costs to affected businesses, localities, or entities of implementing or complying with the regulations, including the estimated fiscal impact on such localities and sources of potential funds to implement and comply with such regulation.

⁶ [https://www.governor.virginia.gov/media/governorvirginiagov/executive-actions/EO-72-and-Order-of-Public-Health-Emergency-Nine-Common-Sense-Surge-Restrictions-Certain-Temporary-Restrictions-Due-to-Novel-Coronavirus-\(COVID-19\).pdf](https://www.governor.virginia.gov/media/governorvirginiagov/executive-actions/EO-72-and-Order-of-Public-Health-Emergency-Nine-Common-Sense-Surge-Restrictions-Certain-Temporary-Restrictions-Due-to-Novel-Coronavirus-(COVID-19).pdf)

Those projected costs by risk category and cost item (e.g., cost of face coverings, physical barriers, employee training, etc.) are delineated on a per employee or per item basis in the Economic Impact Analysis (EIA) prepared by Chmura, and in the view of the Department would be applicable in a local government setting.

Those localities that incur costs uniquely attributable to compliance with the standard will likely use revenue they generate from their own taxes and fees. As noted in the EIA, a number of the requirements with associated costs related to the Commonwealth's response to the COVID-19 pandemic are contained in various Governor's Executive Orders, including most recently Executive Order 72. To the extent that a requirement is included in both Executive Orders and the standard, the Department does not consider the standard to impose any new cost burden on a covered locality.

In addition, many of the costs associated with dealing with workplace hazards associated with COVID-19 are the result of requirements contained in current federal OSHA or VOSH unique standards and regulations already applicable to local governments, and therefore DOLI does not consider them to be new costs associated with adoption of the standard.

Following are federal OSHA identical and state unique standards and regulations applicable in the Construction Industry, Agriculture Industry, Maritime Industry (public sector employment only as OSHA retains jurisdiction over private sector employment in Virginia), and General Industry ("General Industry" covers all employers not otherwise classified as Construction, Agriculture, or Maritime) that can be used in certain situations to address COVID-19 hazards in the workplace:

General Industry

- 1910.132, Personal Protective Equipment in General Industry (including workplace assessment)
- 1910.133, Eye and Face Protection in General Industry
- 1910.134, Respiratory Protection in General Industry
- 1910.138, Hand Protection
- 1910.141, Sanitation in General Industry (including handwashing facilities)
- 1910.1030, Bloodborne pathogens in General Industry
- 1910.1450, Occupational exposure to hazardous chemicals in laboratories in General Industry

Construction Industry

- 1926.95, Criteria for personal protective equipment in Construction
- 1926.102, Eye and Face Protection in Construction
- 1926.103, Respiratory Protection in Construction
- 16VAC25-160, Sanitation in Construction (including handwashing facilities)

Agriculture

- 16VAC25-190, Field Sanitation (including handwashing facilities) in Agriculture

Public Sector Maritime

- 1915.152, Shipyard Employment (Personal Protective Equipment)
- 1915.153, Shipyard Employment (Eye and Face Protection)
- 1915.154, Shipyard Employment (Respiratory Protection)
- 1915.157, Shipyard Employment (Hand and Body Protection)
- 1917.127, Marine Terminal Operations (Sanitation)
- 1917.92 and 1917.1(a)(2)(x), Marine Terminal Operations (Respiratory Protection, 1910.134)
- 1917.91, Marine Terminal Operations (Eye and Face Protection)
- 1917.95, Marine Terminal Operations (PPE, Other Protective Measures)
- 1918.95, Longshoring (Sanitation)
- 1918.102, Longshoring (Respiratory Protection)
- 1918.101, Longshoring (Eye and Face Protection)

Multiple Industries

- 16VAC25-220, Emergency Temporary Standard in General Industry, Construction, Agriculture and Public Sector Maritime
- 1904, Recording and Reporting Occupational Injuries and Illness in General Industry, Construction, Agriculture and Public Sector Maritime
- 1910.142, Temporary Labor Camps (including handwashing facilities) in Agriculture and General Industry
- 1910.1020, Access to employee exposure and medical records in General Industry, Construction, and Public Sector Maritime (excludes Agriculture)
- 1910.1200, Hazard Communication in General Industry, Construction, Agriculture and Public Sector Maritime
- 16VAC25-60-120 (General Industry), 16VAC25-60-130 (Construction Industry), 16VAC25-60-140 (Agriculture), and 16VAC25-60-150 (Public Sector Maritime), Manufacturer's specifications and limitations applicable to the operation, training, use, installation, inspection, testing, repair and maintenance of all machinery, vehicles, tools, materials and equipment (can be used to apply to operation and maintenance of air handling systems in accordance with manufacturer's instructions)

General Duty Clause

In addition, Va. Code §40.1-51.1.A, provides that:

A. It shall be the duty of every employer to furnish to each of his employees safe employment and a place of employment that is free from recognized hazards that are causing or are likely to cause death or serious physical harm to his employees and to comply with all applicable occupational safety and health rules and regulations promulgated under this title.

Otherwise known as the “general duty clause” (the Virginia equivalent to §5(a)(1)) of the OSH Act of 1970), Va. Code §40.1-51.1.A can be used to address “serious” recognized hazards to which employees of the cited employer are exposed through reference to such

things as national consensus standards, manufacturer's requirements, requirements of the Centers for Disease Control (CDC), or an employer's safety and health rules.

To the extent that the general duty clause could be used by the Department to address COVID-19 workplace hazards to the same extent as and in the same manner as the standard were the standard not in effect, the Department does not consider any of the costs associated with such use of the clause to be new costs associated with adoption of the standard.

Potential Cost Centers for Localities on a Per Hour or Per Item Basis by Standard Section

16VAC25-220-40.B

Some requirements overlap with existing regulations and executive orders. Section B is related to exposure assessment, notification requirements, and employee access to exposure and medical records. The current regulations by the federal Occupation Safety and Health Administration (OSHA) have required employers in general industry (excluding construction, agriculture, and maritime industries) to assess workplace hazards. Thus, Section B will not incur additional costs for Virginia businesses except for businesses in construction, agriculture, and maritime industries. For businesses in those three industries, it is estimated that risk assessment, discussion with sub-contractors, notifying employees, and having a system to report positive COVID-19 cases may take approximately four to five hours of staff time to perform.

16VAC25-220-40.C

Section C is related to the return-to-work policies all businesses need to have regarding infected employees, or those suspected to be infected by the SARS-CoV-2 virus. The key component of Section C is that those infected or suspected to be infected are not allowed to return to work. While those stipulations may cause businesses to lose potential revenues, those requirements are already in effect under Virginia Department of Health requirements for isolation of infected employees and quarantine of people who were in close contact with an infected person. The only cost for a business is to develop policies and procedures related to employees. It is estimated that approximately seven to ten hours may be needed to develop such policies. The Virginia Department of Health provides guidelines for this, which could reduce the time needed to develop this plan.

16VAC25-220-40.F

Section F is associated with multiple employees occupying a vehicle for work purposes. Businesses are required to develop a procedure when maintaining social distance is not feasible while traveling for work, and need to provide face coverings for employees. It is estimated that approximately one to two staff hours may be needed to develop such policies. The face covering requirement results in no incremental cost for businesses, as similar stipulations have been in effect due to Executive Order 72; while some restrictions were also in place under previous executive orders, including Amended Executive Order 63.

16VAC25-220-40.J

Section J is related to the use of face shields when the use of face coverings would be “contrary to the employee's health or safety because of a medical condition.” The current OSHA regulation 1910.132 has required employers in general industry (excluding construction, agriculture, and maritime industries) to provide personal protective equipment (PPE) for their employees. Thus, Section J stipulations will not incur additional costs for businesses except for businesses in construction, agriculture, and maritime industries. For businesses in those three industries, face shields can be acquired for a price ranging from \$1.00 to \$7.00 per piece. The cost of face shields is lower if purchased directly from overseas producers, but additional shipping costs will apply, which could be approximately half of the unit price.

16VAC25-220-50.B.5

Subsection B.5 regulates postmortem activities, “employers shall use autopsy suites or other similar isolation facilities when performing aerosol-generating procedures on the bodies of persons known or suspected to be infected with the SARS-CoV-2 virus at the time of their death.” For businesses involved in postmortem activities without such a facility, the cost of construction for a new unit can be substantial in the range of tens of thousand dollars. Rental is an option during the pandemic. It is estimated that rental rate of a cold storage facility with fan-filter unit, based on CDC recommendations, may range from \$2,000 to \$3,000 a month.

16VAC25-220-50.B.7

Subsection B.7 states that “to the extent feasible, employers shall install physical barriers, (e.g., clear plastic sneeze guards, etc.), where such barriers will aid in mitigating the spread of SARS-CoV-2 and COVID-19 virus transmission.” The cost of a physical barrier ranges from \$50 to \$300, depending on the size of such barriers. The cost of physical barriers is lower if purchased directly from overseas producers, but substantial additional shipping costs will apply. In addition, this requirement is optional for businesses and may not result in incremental costs if other mitigation strategies are implemented.

16VAC25-220-50.C.1

Subsection C.1 requires pre-screening or surveying of employees before the commencement of each work shift. Affected businesses will develop a certain screening method and devote staff hours to perform the screening. Guidelines from the Virginia Department of Health for screening include temperature checks and asking several screening questions. It is estimated that the cost of a digital non-contact thermometer ranges from \$20 to \$80. The cost is lower if purchased directly from overseas producers, but additional shipping costs will apply. However, please note that although it is a generally accepted practice, the standard does not specifically require that employers check the temperatures of employees. Businesses need to have dedicated staff to perform screening. It is estimated that screening of each employee may take two to five minutes.

16VAC25-220-50.C.4

Subsection C.4 requires employers to post signs “requesting patients and family members to immediately report signs and/or symptoms of respiratory illness on arrival at the healthcare facility and use disposable face coverings.” The cost of plastic signs ranges from \$6.10 to \$9.40, for workplace uses, depending on the size of signs.

16VAC25-220-50.C.5

Subsection C.5 requires employers to “offer enhanced medical monitoring of employees during COVID-19 outbreaks.” This section does not provide details regarding what constitutes the enhanced medical monitoring. It is assumed that the enhanced medical monitoring may involve checking temperatures and other vital signs of employees such as blood oxygen levels and asking various screening questions. The overall costs involve the purchasing of medical devices as well as assigning employees to perform monitoring. It is estimated that the cost of a digital non-contact thermometers ranges from \$20 to \$80, while cost of blood oxygen monitors range from \$20 to \$50 per unit. It is assumed that since monitoring is an ongoing process, dedicated employees are needed for businesses with a larger number of workers, such as hospitals. A study done by Vanderbilt University Medical Center shows that one full-time monitoring worker is needed for 800 employees.

16VAC25-220-50.C.8

Subsection C.8 requires that “employers shall provide face coverings to non-employees suspected to be infected with SARS-CoV-2 virus to contain respiratory secretions until the non-employees are able to leave the site.” The cost of face coverings, such as a standard disposable face covering, is about \$0.10 per piece, when purchased in bulk.

16VAC25-220-60.B.2

Subsection B.2 states that where feasible, “employers shall install physical barriers, (e.g., clear plastic sneeze guards, etc.), where such barriers will aid in mitigating the spread of SARS-CoV-2 and COVID-19 virus transmission.” The cost of a physical barrier ranges from \$50 to \$300, depending on the size of such barriers. The cost of physical barriers is lower if purchased directly from overseas producers, but additional shipping costs will apply. In addition, this requirement is optional for businesses and may not result in incremental costs if other mitigation strategies are implemented.

16VAC25-220-60.C

Section C concerns administrative and work practice control of employers with medium exposure risk. Subsection C.1.a requires pre-screening or surveying of employees before the commencement of each work shift. Affected businesses will develop certain screening methods and devote staff hours to perform the screening. Guidelines from Virginia Department of Health for screening includes temperature checks and asking several screening questions. It is estimated that the cost of digital non-contact

thermometer ranges from \$20 to \$80. The cost is lower if purchased directly from overseas producers, but additional shipping costs will apply. However, please note that although it is a generally accepted practice, the standard does not specifically require that employers check the temperatures of employees. Business needs to have dedicated staff to perform screenings. It is estimated that screening of each employee may take two to five minutes.

Subsection C.1.b requires that “employers shall provide face coverings to non-employees suspected to be infected with SARS-CoV-2 virus to contain respiratory secretions until the non-employees are able to leave the site.” The cost of face coverings, such as standard disposable face coverings, is about \$0.10 piece, when purchased in bulk.

16VAC25-220-60.D

Section D is related to the personal protection equipment (PPE) in the workplace. It requires employers to assess hazardous risks, complete a written certification, and implement respiratory protection programs. Those requirements are similar to those in 16VAC25-220-40, Section B. The current regulations by Occupational Safety and Health Administration (OSHA) have required employers in general industry (excluding construction, agriculture, and maritime industries) to assess workplace hazards. For businesses in those three industries, it is estimated that risk assessment, discussion with subcontractors, notifying employees, and having a system to report positive COVID-19 cases may take approximately four to five staff hours.

16VAC25-220-70

16VAC25-220-70 is related to the development of a written Infectious Disease Preparedness and Response Plan. It only applies to very high and high-risk employers, as well as medium-risk employers with 11 or more employees. It is estimated that risk assessment and implementation of respiratory protection programs may take approximately 10 to 20 hours of staff time to develop. To mitigate such costs to businesses, Virginia Occupational Safety and Health Administration has provided a free online, editable WORD version of an infectious disease preparedness and response plan that can be used by employers to satisfy the requirements of 16VAC25-220-70. This template can reduce the costs for businesses significantly.

16VAC25-220-80

16VAC25-220-80 is related to providing employees with training on the hazards and characteristics of the SARS-CoV-2 and COVID-19 disease. The training requirement only applies to employers with employees exposed to very high, high, and medium exposure risk. For employers with lower exposure risk, they need to provide information sheets to employees exposed to such hazards.

Typically, developing a training material may take about 40 hours of staff time for training lasting one hour. Delivering the training and maintaining training certifications will also take some staff hours in human resources or management. To mitigate such costs to businesses, VOSH has provided the free online training materials that satisfy

training materials requirements of 16VAC25-220-80. In addition, VOSH has provided a free online training certification form for employers to use. As a result, employers may not need to develop new training materials, and all the business costs are related to training delivery to each employee (about an hour) and staff time to maintain the certifications.

For businesses categorized as having lower exposure risk, preparing information sheets for employees may take a few hours. VOSH has provided a free online two-page document that satisfies the requirements. As a result, the cost for lower-risk businesses is minimal.

DOLI RESOURCES AVAILABLE TO LOCAL GOVERNMENT EMPLOYERS

The Department strongly encourages Virginia's local government employers to take advantage of free and confidential occupational safety and health onsite and virtual consultation and training services to address COVID-19 compliance issues. More information about the VOSH Consultation Services can be found at:

<https://www.doli.virginia.gov/vosh-programs/consultation/>

In addition, free Outreach, Training, and Educational materials to assure compliance with COVID-19 requirements can be found at: <https://www.doli.virginia.gov/covid-19-outreach-education-and-training/>