



**VIRGINIA TRUCKING ASSOCIATION**

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***P. Dale Bennett***  
***President & CEO***

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January 8, 2021

**Submitted Electronically**

Jay Withrow, Director  
Division of Legal Support, ORA, OPPPI, and OWP  
Virginia Department of Labor and Industry  
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RE: Comments of the Virginia Trucking Association  
re: Safety and Health Codes Board intent to adopt Permanent Standard for Infectious Disease  
Prevention: 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 Board's intent to Adopt a Permanent Standard for Infectious Disease Prevention: 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 and services needed to sustain the population and the economy. Professional truck drivers are the heroes who have kept moving to ensure everyone has the goods they need to get through these challenging times. Their jobs have now taken on an even greater importance as distribution of COVID-19 vaccines begins across the country.

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.

Our position on safety has never wavered: Safety is of paramount importance. Since the onset of the COVID-19 pandemic, the VTA's member companies have remained committed to this principle, and as the Commonwealth and our nation begin to enter the recovery phase, the safety and health of their employees will continue to guide their decision-making.

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 burdensome, impractical and unclear regulations such as the current Emergency Temporary Standard (ETS) that is being considered as a permanent standard.

Therefore, we respectfully request that Board not adopt the proposed Permanent Standard: Infectious Disease Prevention: SARS-CoV2 Virus That Causes COVID-19.

### **Support of Comments filed by the Virginia Business Coalition.**

The VTA is a member of the Virginia Business Coalition. We strongly support the comments filed by the Business Coalition and incorporate the concerns and issues they raised as part of these comments filed on behalf of the VTA. The remainder of these comments address issues and concerns about adoption of the proposed permanent standard of particular interest to the trucking industry.

### **Trucking Industry-Related Issues**

1. In the definition of "Lower" exposure risk hazards or job tasks, it is stated that "Employee use of face coverings for contact inside six feet of coworkers, customers, or other persons is not an acceptable administrative or work practice control to achieve minimal occupational contact." This provision conflicts with CDC guidance, "What Long-Haul Truck Driver Employers Need to Know about COVID-19" (<https://www.cdc.gov/coronavirus/2019-ncov/community/organizations/long-haul-trucking-employers.html>). This guidance recommends that employers of long-haul drivers "Take additional precautions to address risks associated with ride-alongs or team driving (two drivers in the cab on a long-haul run) when they cannot be avoided. For example, wear a cloth mask when sharing the cab with someone outside of your household and 6 feet of distance cannot be maintained."

The same conflict exists for CDC guidance, "What Long-Haul Truck Driver Employees Need to Know about COVID-19" (<https://www.cdc.gov/coronavirus/2019-ncov/community/organizations/long-haul-trucking-employees.html>). This guidance recommends that truck drivers:

- "Wear a cloth mask in public, and at work, even when social distancing" and
- "When team driving or ride-alongs are required, wear a cloth mask when sharing the cab with someone who doesn't live with you and you can't stay 6 feet apart."

If the Board proceeds with adoption of the proposed permanent standard, we recommend that it be amended to allow the wearing of a cloth mask by team truck drivers as an acceptable administrative control to achieve minimal occupational contact, as recommended by the CDC. We also recommend that it be amended to recognize that there is no need to require truck driving teams of husbands and wives, or others who live in the same household to wear a face covering mask while occupying the same

truck cab.

2. We commend DOLI staff for including truck drivers in the new definition of “Minimal occupational contact” as recommended in the OSHA Hazard Recognition document cited in the footnote 4. This is a helpful clarification that truck drivers are considered to be working in “lower exposure risk hazards or job tasks.”

### **Additional Comments**

If the Board can demonstrate the validity and necessity of the current Emergency Temporary Standard (ETS) on which the proposed rule is designed, and proceeds with a Permanent Standard, it:

1. Should not expand the standard to include other infectious diseases. As we have learned with COVID-19, all infectious diseases are not the same. We have no idea what protocols will be necessary to respond to and mitigate future infectious diseases, so it does not make sense to create a permanent standard for all infectious diseases.
2. Adopt a sunset clause whereby the Standard will expire at the same time as the Governor’s State of Emergency.
3. Amend § 10G to revert to the agency’s original language with clarification on providing “safe harbor” for employers who follow CDC and OSHA guidance. It is unclear who determines which version of CDC guidance an employer may reference for purposes of compliance. Additionally, as pointed out in our trucking industry-related comments above, we believe there is a conflict between CDC recommendations for truck drivers and their employers and the proposed permanent standard. Conflicts such as this create confusion and uncertainty for employers that hinder their compliance efforts.
4. Eliminate all human resource policies from the Regulations such as 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.
5. Increase the amount of time allowed for employers to train their employees. The current timetable is unachievable. The ETS should be amended to provide employers another sixty (60) days to comply. There is increasing demand for freight transportation and a shortage of qualified drivers to meet that demand. We believe trucking employers should have additional time to complete this training to give them flexibility in scheduling time out of the truck for their drivers to minimize disruptions to the supply chain.

### **Recommendation**

We join the Business Coalition in respectfully requesting that the Virginia Safety and Health Codes Board withdraw its “Intent to Adopt a Permanent Standard for Infectious Disease Prevention: SARS-CoV-2 Virus That Causes COVID-19, 16VAC25-220.”

Instead, if the Board can demonstrate a necessity to pursue regulation, it should do the following:

1. The Board must have the Economic Impact Statement and Regulatory Flexibility Analysis available for a 60-day public comment period.

2. The Board must make the January 4, 2021 proposed rule available for a new 30-day public comment period.

3. Convene a working group of stakeholders to revise and recommend a second COVID-19 Emergency Temporary Standard (ETS) that expires within 6 months of adoption or when the State of Emergency expires.

## **Conclusion**

It is unreasonable to apply these “one size fits all” COVID-19 regulations to all employers and employees, especially an interstate business like trucking with a highly mobile workforce that does not work in brick and mortar facilities. Regulations written to address fixed facilities and businesses are impractical and difficult to comply with for the trucking industry as illustrated in the concerns we have expressed.

Safety is of paramount importance to the trucking industry as we continue to provide essential transportation service as we begin to reopen the economy. We will continue to provide the highest and most practical level of safeguards for our employees to protect them from COVID-19 as our economy recovers and freight demand increases.

We do not believe that the Board should adopt a permanent standard to address a temporary pandemic. Therefore, we recommend that the Board reject the Regulations, provide additional public comment on the newly revised January 4th proposal, including the required economic analysis that has not yet been released. Additionally, the Board should convene a workgroup of stakeholders to revise and recommend a second COVID-19 ETS that expires within 6 months of adoption or when the State of Emergency expires.

Please contact me if you need any additional information or have any questions regarding these comments or the trucking industry.

Sincerely,

A handwritten signature in black ink that reads "Dale Bennett". The signature is written in a cursive style with a horizontal line extending from the end of the name.

P. Dale Bennett  
President & CEO