



**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

**August 20, 2021**

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

DOLI ADDENDUM

To the **August 20, 2021**, Economic Impact Analysis of the Proposed Amendments to the VOSH Standard for Infectious Disease Prevention of the Sars-Cov-2 Virus That Causes Covid-19,<sup>1</sup> 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 expired on January 26, 2021.

A final VOSH Standard for Infectious Disease Prevention of the SARS-CoV-2 Virus That Causes COVID-19, 16VAC25-220, was adopted by the Board and took effect on January 27, 2021.

On June 29, 2021, the Board adopted proposed amendments to the VOSH Standard. During the adoption process for the proposed amendments, the Board made clear that it would attempt to substantially comply with the core requirements in the APA by holding a thirty day written comment period<sup>2</sup> and a public hearing<sup>3</sup> along with obtaining an Economic Impact Analysis

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<sup>1</sup> 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.”

<sup>2</sup> The thirty day comment period was held from July 1, 2021 to July 31, 2021.

<sup>3</sup> The public hearing was held August 5, 2021.

[https://www.doli.virginia.gov/wp-content/uploads/2021/08/VDOLI\\_COVID\\_Amendment\\_20210820.pdf](https://www.doli.virginia.gov/wp-content/uploads/2021/08/VDOLI_COVID_Amendment_20210820.pdf) and holding a meeting to consider final adoption of the proposed amendments.<sup>4</sup>

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 proposed amendments to the VOSH Standard that would attempt to address elements contained in Va. Code §2.2-4007.04.A.1,<sup>5</sup> 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.

NOTE: The Department of Labor and Industry (DOLI) has consulted with the Virginia Department of Health (VDH) about whether revisions should be recommended to the Board's Proposed Amendments to the VOSH Standard originally adopted on June 29, 2021, in response to the CDC's updated guidance for fully vaccinated people issued on July 27, 2021 (requirement in certain situations for fully vaccinated employees to wear face coverings in areas of substantial or high transmission).

<https://www.cdc.gov/coronavirus/2019-ncov/vaccines/fully-vaccinated-guidance.html>

DOLI and VDH are in agreement that some revisions should be recommended to the Board along with the Governor's amendment to 16VAC25-220-10.E., <https://www.doli.virginia.gov/wpcontent/uploads/2021/07/Summary-of-Governor-Northams-Review-of-Proposed-Amendmentsto-16VAC25-220-7.1.2021.pdf>).

The Dept. invited the public to comment on the Revised Proposed Amendments to the VOSH Standard by using the Townhall Comment Forum here. The forum will be open for 7 days from August 16, 2021 to August 23, 2021. <https://townhall.virginia.gov/L/ViewNotice.cfm?GNid=1309>

The EIA prepared by Chmura does not address the above-referenced revisions.

## 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

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<sup>4</sup> The Board is meeting August 26, 2021 to consider final adoption of the proposed amendments and certain revisions recommended by the Department.

<sup>5</sup> 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.

related to the development of real estate for commercial or residential purposes. While Governor's Executive Orders (EO) (see the most recent EO 79<sup>6</sup>) 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 applies 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 whether of the employer's operations are considered "high risk" and the extent to which employees are fully vaccinated or not.

Those projected costs (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 (See Summary Table of Impact in EIA).

[https://www.doli.virginia.gov/wp-content/uploads/2021/08/VDOLI\\_COVID\\_Amendment\\_20210820.pdf](https://www.doli.virginia.gov/wp-content/uploads/2021/08/VDOLI_COVID_Amendment_20210820.pdf)

Those localities that incur costs uniquely attributable to compliance with the standard will likely use revenue they generate from their own taxes and fees. A small number of the requirements with associated costs related to the Commonwealth's response to the COVID-19 pandemic are contained in Governor's Executive Order 79 (K-12 employees must wear face masks (face coverings in VOSH Standard) while on school grounds), and the Transportation Security Administration's (TSA) requirement that employees wear face masks on commercial flights, buses and trains through Jan. 18, 2022.<sup>7</sup>

To the extent that a requirement is included in both an Executive Order and the standard, or a TSA requirement 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 such costs 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

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<sup>6</sup> [https://www.governor.virginia.gov/media/governorvirginiagov/executive-actions/EO-79-and-Order-of-Public-Health-Emergency-Ten-Ending-of-Commonsense-Public-Health-Restrictions-Due-to-Novel-Coronavirus\(COVID-19\).pdf](https://www.governor.virginia.gov/media/governorvirginiagov/executive-actions/EO-79-and-Order-of-Public-Health-Emergency-Ten-Ending-of-Commonsense-Public-Health-Restrictions-Due-to-Novel-Coronavirus(COVID-19).pdf)

<sup>7</sup> The Transportation Security Administration on Tuesday extended a federal requirement that travelers [and employees] wear masks on commercial flights, buses and trains through Jan. 18, 2022."

<https://www.cnbc.com/2021/08/17/biden-administration-set-to-extend-mask-mandate-for-travel-through-mid-january.html>

<https://www.tsa.gov/news/press/releases/2021/04/30/tsa-extends-face-mask-requirement-airports-and-throughout>

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.