



August 23, 2021

Jay Withrow
600 E. Main Street
Suite 207
Richmond, 23219

Via email:

Re: Proposed changes to Permanent Standard regarding COVID-19 Mitigation

Dear Mr. Withrow:

I am writing you today on behalf of the Virginia Agribusiness Council to provide comments regarding the new, revised proposed changes to the Permanent Standard for COVID-19 mitigation.

We continue to believe the Permanent Standard is the wrong mechanism to protect employees, as it is a static, one-size fits all policy that is not flexible to the changing conditions of the pandemic. However, should the Board choose to move forward with the proposed revisions, we offer these comments on the Administration's amendments.

We support and appreciate the proposed deletion of the "equivalent or greater" provision in Section 10.E. The revised section will remove any doubt or confusion for an employer regarding compliance. It will also allow an employer to practice the latest science when it pertains to COVID-19 mitigation without having to choose between the Department and the CDC. We hope the Board will support the clarification as proposed by the Department.

We are strongly opposed to the proposed change to 16VAC25-220-40.C.3, the Return to Work Policy found on pages 26 and 27 of the draft regulation. The proposed language would require an employer to abide by a single VDH employee's recommendations to testing and quarantining with regards to an exposure without any regards to mitigation efforts, vaccination status or extenuating circumstances. It would also not be subject to any regulatory review. This type of authority should not be placed in the hands of one VDH employee and would be a very large shift to quarantining an employee outside of being suspected of being or confirmed COVID-19.

Contacting tracing has been unreliable and tracking exact times of employee exposure with COVID-19 either at the place of employment or outside of the workplace is nearly impossible in a reasonable timeframe. The risk of contracting the disease is greatly diminished if the employee is vaccinated and complying with mitigation efforts. Requiring mandatory quarantining of a simple exposure without the full details of the exposure could result in devastating effects on the industry, especially industries as dependent on timing as the agriculture and forestry industries.

With harvest approaching, this is especially apparent. With certain weather conditions, a harvest window can be extremely narrow. These harvest times can be as short as one or two weeks. If one employee were to be exposed and the VDH professional recommends quarantining an entire work crew, it could undermine that farm's entire harvest. Similarly, if a processing plant needs to quarantine an entire shift causing a shutdown of the facility, regardless of the circumstances of the exposure, agricultural commodities may be stranded on farms and ultimately need be destroyed due to the delay.

For these reasons, we respectfully ask the sentence "If an employee has a known exposure to someone with COVID-19, the employee must follow any testing or quarantine guidance provided by a VDH public health professional" be removed from 16VAC25-220-40.C.3.

We would also request clarification around Section 16VAC25-220-40.F regarding employee travel. We would suggest amending the first sentence of section F to read "or other form of transportation with one or more additional employees or other persons." We are concerned the current language may be interpreted to require face coverings of a single employee traveling in a work vehicle. We would also request the deletion of the employee option for an N95 mask in Number 4 of Section F. N95 masks can be difficult to requisition and can be very cost prohibitive. We certainly have no objection to an employee choosing to utilize an N95 mask should they choose; however, it should not be a necessary requirement of an employer to provide an N95 mask upon request. This would require every employer which provides work vehicles to stock N95 in the event an employee requests. This is unnecessary and a general face covering is sufficient to protect workers traveling in the same vehicle.

We continue to contend that the Permanent Standard is a static, one size fits all program for an ever-evolving health crisis and should be repealed. The regulatory process is ill-equipped to deal with the constantly changing situation. Indeed, the Administration has proposed two different amendments to the standard since the Safety and Health Codes Board last met. Once these new revisions are adopted, the Board will have to meet further to continually update the Standard as needed. However, we hope the Board will seriously consider our suggestions and make every effort to ensure compliance is obtainable should the board adopt the proposed revisions to the Standard.

As always, we are grateful for this opportunity to comment and would be happy to answer any questions the Department or the Board may have.

Sincerely,



Beck Stanley
Director of Government Affairs
Virginia Agribusiness Council