

January 10, 2021

AMMENDMENT – CM

16VAC25-220, DRAFT ~~Final Permanent~~ Emergency Temporary Standard for

Department Response: The Department does not support the proposed amendment. It is the position the Department, after discussions with legal counsel, that the current ETS cannot be extended under Va. Code §40.1-22(6a).

16VAC25-220, **DRAFT** Final Permanent Standard for

Infectious Disease Prevention of the SARS-CoV-2 Virus That Causes COVID-19

As Adopted by the
Safety and Health Codes Board
on _____



VIRGINIA OCCUPATIONAL SAFETY AND HEALTH (VOSH) PROGRAM

VIRGINIA DEPARTMENT OF LABOR AND INDUSTRY (DOLI)

Effective Date: **To be Determined**

16VAC25-220

January 10, 2021

[TEXT HIGHLIGHTED IN **YELLOW** REPRESENTS CHANGES FROM JULY 24, 2020 PROPOSED STANDARD TO DECEMBER 4, 2020 REVISED PROPOSED STANDARD]

[TEXT HIGHLIGHTED IN **BLUE** REPRESENTS CHANGES FROM DECEMBER 10, 2020 REVISED PROPOSED STANDARD TO JANUARY 4, 2021 DRAFT FINAL STANDARD]

[DATES ARE HIGHLIGHTED IN **GREEN**]

[BOARD MEMBER AMENDMENTS ARE IN **RED LETTERING**]

[FOOTNOTES ARE INCLUDED FOR REFERENCE ONLY. FOOTNOTES ARE NOT PART OF THE TEXT OF THE STANDARD AND WOULD NOT BE PUBLISHED WITH ANY ADOPTED FINAL STANDARD.]

DRAFT Final Permanent Standard for

Infectious Disease Prevention of the SARS-CoV-2 Virus That Causes COVID-19

16VAC25-220

16VAC25-220-10. Purpose, scope, and applicability.

A. This standard is designed to establish requirements for employers to control, prevent, and mitigate the spread of SARS-CoV-2, the virus that causes coronavirus disease 2019 (COVID-19) to and among employees and employers.

~~B. This standard shall not be extended or amended without public participation in accordance with the Virginia Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia) and 16VAC25-60-170.~~

C. This standard is adopted in accordance with subdivision 6 a of § 40.1-22 of the Code of Virginia and shall apply to every employer, employee, and place of employment in the

Commonwealth of Virginia within the jurisdiction of the VOSH program as described in 16VAC25-60-20 and 16VAC25-60-30.

DC. This standard is designed to supplement and enhance existing VOSH laws, rules, regulations, and standards applicable directly or indirectly to SARS-CoV-2 virus or COVID-19 disease-related hazards such as, but not limited to, those dealing with personal protective equipment, respiratory protective equipment, sanitation, access to employee exposure and medical records, occupational exposure to hazardous chemicals in laboratories, hazard communication, § 40.1-51.1 A of the Code of Virginia, etc. Should this standard conflict with an existing VOSH rule, regulation, or standard, the more stringent requirement from an occupational safety and health hazard prevention standpoint shall apply.

AMENDMENT - TP AND AJ

16VAC25-220-10.C, Purpose, scope, and applicability.

~~C. Notwithstanding anything to the contrary in this standard, no enforcement action shall be brought against an employer or institution for failure to provide PPE required by this standard, if (i) such PPE is not readily available on commercially reasonable terms, and (ii) the employer or institution makes a good faith effort to acquire or provide such PPE as is readily available on commercially reasonable terms. The Department of Labor and Industry shall consult with the Virginia Department of Health as to the ready availability of PPE on commercially reasonable terms and, in the event there are limited supplies of PPE, whether such supplies are being allocated to high risk or very high risk workplaces.~~

TP: This is unnecessary. In my opinion, this doesn't belong in a standard and any enforcement actions should be determined by the agency using their discretion and not codified in a standard. The agency can and should exercise discretion in issuing citations when employers determine PPE is needed, attempt to obtain it, and cannot. The added language isn't necessary to give the agency authority to exercise discretion, but could provide an excuse to not provide PPE when needed.

AJ: This is an exception that opens the door to anything goes. At least we need to define what "commercially reasonable terms." I will make more comments on this after doing a little research.

Department Response: This language was specifically added by the Administration. The Department does not support removal of the language.

Notwithstanding anything to the contrary in this standard, no enforcement action shall be brought against an employer or institution for failure to provide PPE required by this standard; if (i) such PPE is not readily available on commercially reasonable terms; and (ii) the employer or institution makes a good faith effort to acquire or provide such PPE as is readily available on commercially reasonable terms. The Department of Labor and Industry shall consult with the Virginia Department of Health as to the ready availability of PPE on commercially reasonable terms and, in the event there are limited supplies of PPE, whether such supplies are being allocated to high risk or very high risk workplaces.

DEPARTMENT NOTE: Above language added by Administration.

DOLI interprets the phrase "no enforcement action" to mean that either no citation shall issue, or if a citation has already been issued it shall be vacated, "if such PPE is not readily available on commercially reasonable terms, and the employer or institution makes a good faith effort to acquire or provide such PPE as is readily available on commercially reasonable terms."

DOLI will still retain the right to carry out its statutory authority to conduct informal investigations or onsite inspections and verify employer compliance with this provision.

ED. Application of this standard to a place of employment will be based on the exposure risk level presented by SARS-CoV-2 virus-related and COVID-19 disease-related hazards present or job tasks undertaken by employees at the place of employment as defined in this standard (i.e., very high, high, medium, and lower risk levels).

1. It is recognized that various hazards or job tasks at the same place of employment can be designated as very high, high, medium, or lower exposure risk for purposes of application of the requirements of this standard. It is further recognized that various required job tasks prohibit an employee from being able to observe physical distancing from other persons.

2. Factors that shall be considered in determining exposure risk level include, but are not limited to:

AMENDMENT - CM

16VAC25-220-10.D.2, Purpose, scope, and applicability.

a. The job tasks being undertaken, the work environment (e.g. indoors or outdoors), the known or suspected presence of the SARS-CoV-2 virus, the presence of a person known or suspected to be infected with the SARS-CoV-2 virus, the number of employees and other persons in relation to the size of the work area, the working distance between employees and other employees or persons, and the duration and frequency of employee exposure through contact inside of ~~six feet~~ **close contact** with other employees or persons (e.g., including shift work exceeding 8 hours per day); and

Department Response: The Department does not support the proposed amendment.

The CDC defines “close contact” as “Close contact” means you were within 6 feet of someone who has COVID-19 for a total of 15 minutes or more; you provided care at home to someone who is sick with COVID-19; you had direct physical contact with the person (hugged or kissed them); you shared eating or drinking utensils; or they sneezed, coughed, or somehow got respiratory droplets on you.”

Close contact is used by the CDC and VDH for contact tracing purposes. The standard provides in 16VAC25-220-10.H:

H. Nothing in the standard shall be construed to require employers to conduct contact tracing of the SARS-CoV-2 virus or COVID-19 disease.

Close contact is also used for quarantine purposes. “Quarantine” is separation of people who were in “close contact” with a person with COVID-19 from others. The Standard does not address the issue of “quarantine.”

Requirements for returning to work from “quarantine” is NOT covered by the ETS. Instead, Virginia Department of Health (VDH) guidelines apply (see §40, FAQs 26, 27, 28, 29, 30). <https://www.doli.virginia.gov/cononavirus-covid-19-faqs/>

VOSH does not have the resources to deal with contact tracing and quarantine issues, both currently the responsibility of VDH.

a. The job tasks being undertaken, the work environment (e.g. indoors or outdoors), the known or suspected presence of the SARS-CoV-2 virus, the presence of a person known or suspected to be infected with the SARS-CoV-2 virus, the number of employees and other persons in relation to the size of the work area, the working distance between employees and other employees or persons, and the duration and frequency of employee exposure through contact inside of six feet with other employees or persons (e.g., including shift work exceeding 8 hours per day); and

b. The type of hazards encountered, including exposure to respiratory droplets and potential exposure to the airborne transmission of SARS-CoV-2 virus; contact with contaminated surfaces or objects, such as tools, workstations, or break room tables,

and shared spaces such as shared workstations, break rooms, locker rooms, and entrances and exits to the facility; shared work vehicles; and industries or places of employment where employer sponsored shared transportation is a common practice, such as ride-share vans or shuttle vehicles, car-pools, and public transportation, etc.

AMENDMENT - CM

16VAC25-220-10.F, Purpose, scope, and applicability.

F. This standard shall not conflict with requirements and guidelines applicable to businesses set out in any applicable Virginia executive order or order of public health emergency.

CM: It seems to make sense to reinsert this paragraph, as conflicts between Executive Orders and the standard are raising confusion. Employers need a single, clear rule that does not conflict with other law.

DEPARTMENT RESPONSE: The Department does not support the proposed amendment. After discussions with legal counsel, the Department is recommending removal of the below language. In addition, the language is considered redundant in light of Executive Order 72, Order of Public Health Emergency, Commonsense Surge Restrictions, Certain Temporary Restrictions Due to Novel Coronavirus (COVID-19), adopted on December 14, 2020, which provides as follows:

IV. ADDITIONAL PROVISIONS

A. Construction with the Emergency Temporary Standard “Infectious Disease Prevention: SARS-CoV-2 Virus That Causes COVID-19”

Where the Emergency Temporary Standard “Infectious Disease Prevention: SARS-CoV2 Virus That Causes COVID-19” adopted by the Safety and Health Codes Board of the Virginia Department of Labor and Industry pursuant to 16 Va. Admin. Code §§ 25-60-20 and 25-60-30 conflicts with requirements and guidelines applicable to businesses in this Order, this Order shall govern.

~~F. This standard shall not conflict with requirements and guidelines applicable to businesses set out in any applicable Virginia executive order or order of public health emergency~~

AMENDMENT - CM

16VAC25-220-10.E, Purpose, scope, and applicability.

E. To the extent that an employer complies with requirements contained in CDC publications to mitigate SARS-CoV-2 and COVID-19 related hazards or job tasks addressed by this standard/regulation, the employer's actions shall be considered in compliance with this standard/regulation.

~~E To the extent that an employer actually complies with a recommendation contained in CDC guidelines, whether mandatory or non-mandatory, to mitigate SARS-CoV-2 virus and COVID-19 disease related hazards or job tasks addressed by this standard, and provided that the CDC recommendation provides equivalent or greater protection than provided by a provision of this standard, the employer's actions shall be considered in compliance with this standard. An employer's actual compliance with a recommendation contained in CDC guidelines, whether mandatory or non-mandatory, to mitigate SARS-CoV-2 and COVID19 related hazards or job tasks addressed by a provision of this standard shall be considered evidence of good faith in any enforcement proceeding related to this standard.~~

DEPARTMENT RESPONSE: The Department does not support the proposed amendment.

The original language was submitted by the Administration.

It is the Department's position that similarly situated employees and employers exposed to the same or even more serious hazards or job task should all be provided the same basic level of safety and health protections. The Standard's language in 16VAC25-220-10.G assures such protections.

G.1.E To the extent that an employer actually complies with a recommendation contained in CDC guidelines, whether mandatory or non-mandatory, to mitigate SARS-CoV-2 virus and COVID-19 disease related hazards or job tasks addressed by this standard, and provided that the CDC recommendation provides equivalent or greater protection than provided by a provision of this standard, the employer's actions shall be considered in compliance with this standard. An employer's actual compliance with a recommendation contained in CDC guidelines, whether mandatory or non-mandatory, to mitigate SARS-COV-2 and COVID19 related hazards or job tasks addressed by a provision of this standard shall be considered evidence of good faith in any enforcement proceeding related to this standard. The Commissioner of Labor and Industry shall consult with the State Health Commissioner for advice and technical aid before making a determination related to compliance with CDC guidelines.

DEPARTMENT NOTE: The above sentence was added by the Administration.

REFERENCE: Reference:

§ 40.1-51. State Health Commissioner to provide advice and aid; rules and regulations.

A. The State Health Commissioner shall be responsible for advising and providing technical aid to the Commissioner on matters pertaining to occupational health on request.

B. The Department of Labor and Industry shall be responsible for drafting and submitting to the Virginia Safety and Health Codes Board for adoption rules and regulations pertaining to control measures to protect the health of workers. In formulating rules and regulations pertaining to health, the Department of Labor and Industry shall request the advice and technical aid of the Department of Health.

2F. A public or private institution of higher education that has received certification from the State Council of Higher Education of Virginia that the institution's re-opening plans are in compliance with guidance documents, whether mandatory or non-mandatory, developed by the Governor's Office in conjunction with the Virginia Department of Health shall be considered in

compliance with this standard, provided the institution operates in compliance with its certified reopening plans and the certified reopening plans provide equivalent or greater levels of employee protection than this standard.

AMENDMENT - AJ

16VAC25-220-10.G, Purpose, scope, and applicability.

Create a separate section "G." for "public school division or private school"

AJ: Wasn't this a separate section at one time? It should be because they are 2 different entities.

DEPARTMENT RESPONSE: The Department supports proposed amendment.

G. A public school division or private school that submits its plans to the Virginia Department of Education to move to Phase II and Phase III that are aligned with CDC guidance for reopening of schools that provide equivalent or greater levels of employee protection than a provision of this standard and who operate in compliance with the public school division's or private school's submitted plans shall be considered in compliance with this standard. An institution's actual compliance with recommendations contained in CDC guidelines or the Virginia Department of Education guidance, whether mandatory or non-mandatory, to mitigate SARS-CoV-2 and COVID-19 related hazards or job tasks addressed by a provision of this standard shall be considered evidence of good faith in any enforcement proceeding related to this standard. The Commissioner of Labor and Industry shall consult with the State Health Commissioner for advice and technical aid before making a determination related to compliance with CDC guidelines.

DEPARTMENT NOTE: The above sentence was added by the Administration.

REFERENCE: Reference:

§ 40.1-51. State Health Commissioner to provide advice and aid; rules and regulations.

A. The State Health Commissioner shall be responsible for advising and providing technical aid to the Commissioner on matters pertaining to occupational health on request.

B. The Department of Labor and Industry shall be responsible for drafting and submitting to the Virginia Safety and Health Codes Board for adoption rules and regulations pertaining to control measures to protect the health of workers. In formulating rules and regulations pertaining to health, the Department of Labor and Industry shall request the advice and technical aid of the Department of Health.

QUESTION – AJ:

We use “good faith” in this a lot but I don’t think that most employers know what it is. Why don’t we define this.

DEPARTMENT RESPONSE: The Department does not recommend providing a definition for “good faith.” Legal terms of art such as “good faith” and “reasonable” are usually the subject of case law, and the analysis of which tend to be very fact specific.

H. Nothing in the standard shall be construed to require employers to conduct contact tracing of the SARS-CoV-2 virus or COVID-19 disease.

16VAC25-220-20. Effective dates.

DEPARTMENT NOTE: Sections A and C added by the Administration.

A. Adoption Process.

1. This standard shall take effect ~~to be determined, but no later than January 27, 2021~~ upon approval review by the Governor, and if no revisions are requested, filing with

the Registrar of Regulations and publication in a newspaper of general circulation published in the City of Richmond, Virginia.

2. If the Governor's review results in one or more requested revisions to the standard, the Safety and Health Codes Board shall reconvene to approve, amend, or reject the requested revisions.

3. If the Safety and Health Codes Board approves the requested revisions to the standard as submitted, the standard shall take effect upon filing with the Registrar of Regulations and publication in a newspaper of general circulation published in the City of Richmond, Virginia.

4. Should the Governor fail to review the standard under **subsection A 1** of this section within thirty ~~(30)~~ days of its approval by the Safety and Health Codes Board, the Board will not need to reconvene to take further action, and the standard shall take effect upon filing with the Registrar of Regulations and publication in a newspaper of general circulation published in the City of Richmond, Virginia.

B. The requirements for 16VAC25-220-70 shall take effect on March 26, 2021.

AJ: Since these requirements [for an Infectious disease preparedness and response plan] above were in the original ETS, I don't see why we are giving them 2 months to comply. This only benefits the employers who failed to comply with the ETS. We drafted these for about 20 clients and we can get all of them up to speed in 10 days.

Department Response: The Department recommends retaining the same time period as was in the ETS. Even in a pandemic, new businesses are being opened on a regular basis and should be afforded a sufficient time to develop a plan.

The training requirements in 16VAC25-220-80 shall take effect on March 26, 2021.

AJ: Same is true here [for training] above. We only gave them 30 days for the ETS. Now those who failed to train under the ETS get a bonus by having 2 more months to train. It is unfair to those who complied with the ETS. I would make compliance required on the effective date, because there were virtually no changes to the required curriculum.

Department Response: The Department is recommending an expanded time for employee training from 30 days to 60 days in response to employer concerns expressed during multiple public comment opportunities about the ability to develop and provide effective training to management personnel and employees in 30 days. The Department does not believe the request is unreasonable in light of the unprecedented nature of the pandemic and the need for employers to modify orientation and training materials for new hires and retraining materials for current employees. In addition, new businesses are being opened on a regular basis and should be afforded a sufficient time to develop and provide training.

AMENDMENT - CM

16VAC25-220-20.C, Effective Dates

C. This emergency temporary standard shall expire (i) within six months of its effective date, upon expiration of the Governor's State of Emergency or (ii) when repealed by the Virginia Safety and Health Codes Board.

~~C. Within fourteen (14) days of the expiration of the Governor's COVID-19 State of Emergency and Commissioner of Health's COVID-19 Declaration of Public Emergency, the Virginia Safety and Health Codes Board shall notice a regular, special, or emergency meeting/conduct a regular, special, or emergency meeting to determine whether there is a continued need for the standard.~~

AJ: Wasn't this a separate section at one time? It should be because they are 2 different entities.

DEPARTMENT RESPONSE: The Department supports the proposed amendment.

C. Within fourteen (14) days of the expiration of the Governor's COVID-19 State of Emergency and Commissioner of Health's COVID-19 Declaration of Public Emergency, the Virginia Safety and

Health Codes Board shall notice a regular, special, or emergency meeting/conduct a regular, special, or emergency meeting to determine whether there is a continued need for the standard.

DEPARTMENT NOTE: The new language in 16VAC25-220.20.C requires the Board to make a “determination” of whether there is continued need for the standard. The Department has identified three “determination” options:

- That there is no continued need for the standard;
- That there is a continued need for the standard with no changes; and
- That there is a continued need for a revised standard.

Regardless of the determination, the Department and Board will provide notice and comment opportunities on any changes to or revocation of the standard.

With regard to the phrase “notice a regular, special, or emergency meeting/conduct a regular, special, or emergency meeting to,” the intent of the language is to give the Board the maximum amount of flexibility to “notice” the Board meeting within 14 days even if the Board may not actually meet within 14 days.

16VAC25-220-30. Definitions.

The following words and terms when used in this standard shall have the following meanings unless the context clearly indicates otherwise:

"Administrative control" means any procedure that significantly limits daily exposure to SARS-CoV-2 virus and COVID-19 disease related workplace hazards and job tasks by control or manipulation of the work schedule or manner in which work is performed. The use of personal protective equipment is not considered a means of administrative control.

"Airborne infection isolation room" or "AIIR," formerly a negative pressure isolation room, means a single-occupancy patient-care room used to isolate persons with a suspected or confirmed airborne infectious disease. Environmental factors are controlled in AIIRs to minimize the transmission of infectious agents that are usually transmitted from person to person by

droplet nuclei associated with coughing or aerosolization of contaminated fluids. AIRs provide (i) negative pressure in the room so that air flows under the door gap into the room, (ii) an air flow rate of 6-12 air changes per hour (ACH) (6 ACH for existing structures, 12 ACH for new construction or renovation), and (iii) direct exhaust of air from the room to the outside of the building or recirculation of air through a High Efficiency Particulate Air (HEPA) filter before returning to circulation.

"Asymptomatic" means a person who does not have symptoms.

"Building or facility owner" means the legal entity, including a lessee, that exercises control over management and record keeping functions relating to a building or facility in which activities covered by this standard take place.

"CDC" means Centers for Disease Control and Prevention.

AMENDMENT - CM

16VAC25-220-30, Effective Dates. Definition of "Cleaning"

"Cleaning" means the removal of dirt and impurities, including germs, from surfaces. Cleaning alone does not kill germs. But by removing the germs, cleaning decreases their number and therefore any the risk of spreading infection.

"Cleaning" means the removal of dirt and impurities, including germs, from surfaces. Cleaning alone does not kill germs. But by removing the germs, cleaning decreases their number and therefore any risk of spreading infection.

AJ: Add definition for “Commercially reasonable terms”

"Community transmission," also called "community spread," means people have been infected with SARS-CoV-2 in an area, including some who are not sure how or where they became infected. The level of community transmission is classified by the CDC as:

1. "No to minimal" where there is evidence of isolated cases or limited community transmission, case investigations are underway, and no evidence of exposure in large communal settings (e.g., healthcare facilities, schools, mass gatherings, etc.);¹
2. "Moderate" where there is sustained community transmission with high likelihood or confirmed exposure within communal settings and potential for rapid increase in cases;
3. "Substantial, controlled" where there is large scale, controlled community transmission, including communal settings (e.g., schools, workplaces, etc.); or
4. "Substantial, uncontrolled" where there is large scale, uncontrolled community transmission, including communal settings (e.g., schools, workplaces, etc.).

"COVID-19" means Coronavirus Disease 2019, which is primarily a respiratory disease, caused by the SARS-CoV-2 virus.

¹ <https://www.cdc.gov/coronavirus/2019-ncov/community/community-mitigation.html>

AMENDMENT - CM

16VAC25-220-30, Effective Dates. Definition of "Disinfecting"

"Disinfecting" means using chemicals approved or effective for use against SARS-CoV-2, for example EPA-registered disinfectants, to kill germs on surfaces. The process of disinfecting does not necessarily clean dirty surfaces or remove germs, but killing germs remaining on a surface after cleaning further reduces ~~any~~ the risk of spreading infection.

"Disinfecting" means using chemicals approved for use against SARS-CoV-2, for example EPA-registered disinfectants, to kill germs on surfaces. The process of disinfecting does not necessarily clean dirty surfaces or remove germs, but killing germs remaining on a surface after cleaning further reduces any risk of spreading infection.

AJ: [In definition of "Duration and frequency of employee exposure," change the phrase "the greater the frequency or **length** of exposure" with "the greater the frequency or duration of exposure."

Department Response: It is not a generally accepted practice to use the word being defined ("duration") in the definition for that word ("Duration and frequency of employee exposure"). The Department proposes the following wording to address AJ's comment: "the greater the frequency or length of time of the exposure"

AMENDMENT - CM

16VAC25-220-30, Effective Dates. Definition of "Duration and frequency of employee exposure"

....An example of a chronic situation would be could involve a job task that requires an employee to interact either for an extended period of time ~~inside six feet with~~ within close contact of a smaller static group of other employees or persons or for an extended period of time inside ~~six feet~~ close contact with a larger group of other employees or persons in succession but for periods of shorter duration.

CM: Global change. This gives employers room to follow CDC's changing guidance on close contact.

Department Response: As previously stated, the Department does not support the proposed amendment.

The CDC defines "close contact" as "Close contact" means you were within 6 feet of someone who has COVID-19 for a total of 15 minutes or more; you provided care at home to someone who is sick with COVID-19; you had direct physical contact with the person (hugged or kissed them); you shared eating or drinking utensils; or they sneezed, coughed, or somehow got respiratory droplets on you."

Close contact is used by the CDC and VDH for contact tracing purposes. The standard provides in 16VAC25-220-10.H:

H. Nothing in the standard shall be construed to require employers to conduct contact tracing of the SARS-CoV-2 virus or COVID-19 disease.

Close contact is also used for quarantine purposes. "Quarantine" is separation of people who were in "close contact" with a person with COVID-19 from others. The Standard does not address the issue of "quarantine."

Requirements for returning to work from "quarantine" is NOT covered by the ETS. Instead, Virginia Department of Health (VDH) guidelines apply (see §40, FAQs 26, 27, 28, 29, 30). <https://www.doli.virginia.gov/cononavirus-covid-19-faqs/>

VOSH does not have the resources to deal with contact tracing and quarantine issues, both currently the responsibility of VDH.

"Duration and frequency of employee exposure" means how long ("duration") and how often ("frequency") an employee is potentially exposed to the SARS-CoV-2 virus or COVID-19 disease. Generally, the greater the frequency or length of exposure, the greater the probability is for potential infection to occur. Frequency of exposure is generally more significant for acute acting agents or situations, while duration of exposure is generally more significant for chronic acting agents or situations. An example of an acute SARS-CoV-2 virus or COVID-19 disease situation would be an unprotected could involve a customer, patient, or other person not wearing a face covering or other personal protective equipment, or coughing or sneezing directly into the face of an employee. An example of a chronic situation would be could involve a job task that requires an employee to interact either for an extended period of time inside six feet with a smaller static group of other employees or persons or for an extended period of time inside six feet with a larger group of other employees or persons in succession but for periods of shorter duration.

AMENDMENT - CM

16VAC25-220-30, Effective Dates. Definition of "Economic feasibility"

If an employer's level of compliance lags significantly behind that of its industry, an employer's claim of economic infeasibility will not ~~be accepted~~ support a VOSH decision to decline to take enforcement action.

"Economic feasibility" means the employer is financially able to undertake the measures necessary to comply with one or more requirements in this standard. The cost of corrective measures to be taken will not usually be considered as a factor in determining whether a violation

of this standard has occurred. If an employer's level of compliance lags significantly behind that of its industry, an employer's claim of economic infeasibility will not be accepted.

"Elimination" means a method of exposure control that removes the employee completely from exposure to SARS-CoV-2 virus and COVID-19 disease related workplace hazards and job tasks.

AMENDMENT – AJ

16VAC25-220-30. Definitions, "Employee"

"Employee" means an employee of an employer who is ~~employed~~ engaged in ~~the a~~ business of his employer.

Department Response: The Department does not support the proposed amendment. The above language as it originally appears in the standard comes verbatim from Va. Code §40.1-49.3.

AMENDMENT – CM

16VAC25-220-30. Definitions, "Employee"

"Employee" means an employee of an employer who is employed ~~in a business of~~ by his employer.

Department Response: The Department does not support the proposed amendment. The above language as it originally appears in the standard comes verbatim from Va. Code §40.1-49.3.

"Employee" means an employee of an employer who is employed in a business of his employer. Reference to the term "employee" in this standard also includes, but is not limited to, temporary employees and other joint employment relationships, persons in supervisory or management positions with the employer, etc., in accordance with Virginia occupational safety and health laws, standards, regulations, and court rulings.

AJ: Do people know what this ("joint employment relationships") is?

Department Response: "Joint employment relationship" is another legal term of art that is frequently addressed in case law. The Department does not recommend that a definition be added for that reason. An example of a joint employment relationship is provided immediately before the phrase in the above definition ("temporary employees"): for VOSH/OSHA enforcement purposes, "temporary employees" are jointly employed by the temporary employment agency and the host employer who contracted with the agency for the services of the employee.

"Engineering control" means the use of substitution, isolation, ventilation, and equipment modification to reduce exposure to SARS-CoV-2 virus and COVID-19 disease related workplace hazards and job tasks.

AMENDMENT – CM

16VAC25-220-30. Definitions, "Exposure risk level"

"Exposure risk level" means ~~an assessment of~~ the level of possibility that an employee could be exposed to the hazards associated with SARS-CoV-2 virus and the COVID-19 disease....

Department Response: The Department supports the proposed amendment.

"Exposure risk level" means an assessment of the possibility that an employee could be exposed to the hazards associated with SARS-CoV-2 virus and the COVID-19 disease. The exposure risk level assessment should address all risks and all modes of transmission, including airborne transmission, as well as transmission by asymptomatic and presymptomatic individuals. Risk levels should be based on the risk factors present that increase risk exposure to COVID-19 and are present during the course of employment regardless of location. Hazards and job tasks have been divided into four risk exposure levels: very high, high, medium, and lower:

"Very high" exposure risk hazards or job tasks are those in places of employment with high potential for employee exposure to known or suspected sources of the SARS-CoV-2 virus (e.g., laboratory samples) or persons known or suspected to be infected with the SARS-CoV-2 virus, including, but not limited to, during specific medical, postmortem, or laboratory procedures:

1. Aerosol-generating procedures (e.g., intubation, cough induction procedures, bronchoscopies, some dental procedures and exams, or invasive specimen collection) on a patient or person known or suspected to be infected with the SARS-CoV-2 virus;
2. Collecting or handling specimens from a patient or person known or suspected to be infected with the SARS-CoV-2 virus (e.g., manipulating cultures from patients known or suspected to be infected with the SARS-CoV-2 virus); and
3. Performing an autopsy that involves aerosol-generating procedures on the body of a person known or suspected to be infected with the SARS-CoV-2 virus at the time of their death.

AMENDMENT – CM

16VAC25-220-30. Definitions, “Exposure risk level,” “High”

"High" exposure risk hazards or job tasks are those in places of employment with high potential for employee exposure inside ~~six feet~~ close contact with known or suspected sources of SARS-CoV-2....

Department Response: The Department does not support the proposed amendment.

"High" exposure risk hazards or job tasks are those in places of employment with high potential for employee exposure inside six feet with known or suspected sources of SARS-CoV-2, or with persons known or suspected to be infected with the SARS-CoV-2 virus that are not otherwise classified as very high exposure risk, including, but not limited to:

1. Healthcare (physical and mental health) delivery and support services provided to a patient known or suspected to be infected with the SARS-CoV-2 virus, including field hospitals (e.g., doctors, nurses, cleaners, and other hospital staff who must enter patient rooms or areas);
2. Healthcare (physical and mental) delivery, care, and support services, wellness services, non-medical support services, physical assistance, etc., provided to a patient, resident, or other person known or suspected to be infected with the SARS-CoV-2 virus involving skilled nursing services, outpatient medical services, clinical services, drug treatment programs, medical outreach services, mental health services, home health care, nursing

home care, assisted living care, memory care support and services, hospice care, rehabilitation services, primary and specialty medical care, dental care, COVID-19 testing services, blood donation services, ~~contact tracer services~~, and chiropractic services;

3. First responder services provided to a patient, resident, or other person known or suspected to be infected with the SARS-CoV-2 virus;

4. Medical transport services (loading, transporting, unloading, etc.) provided to patients known or suspected to be infected with the SARS-CoV-2 virus (e.g., ground or air emergency transport, staff, operators, drivers, pilots, etc.); and

5. Mortuary services involved in preparing (e.g., for burial or cremation) the bodies of persons who are known or suspected to be infected with the SARS-CoV-2 virus at the time of their death.

AMENDMENT – TT

16VAC25-220-30. Definitions, “High exposure risk”

6. Correctional facilities, jails detention centers, and juvenile detention centers.

AMENDMENT – CM

16VAC25-220-30. Definitions, “Exposure risk level,” “Medium”

<p>"Medium" exposure risk hazards or job tasks are those not otherwise classified as very high or high exposure risk in places of employment that require more than minimal occupational close contact inside six-foot <u>close contact</u> with other employees, other persons, or the general public who may be infected with SARS-CoV-2</p>
<p>CM: Global change. I believe VOSH intends to make the standard consistent internally and with CDC terminology.</p>
<p>Department Response: The Department does not support the proposed amendment.</p>

"Medium" exposure risk hazards or job tasks are those not otherwise classified as very high or high exposure risk in places of employment that require more than minimal occupational contact inside six feet with other employees, other persons, or the general public who may be infected with SARS-CoV-2, but who are not known or suspected to be infected with the SARS-CoV-2 virus. Medium exposure risk hazards or job tasks may include, but are not limited to, operations and services in:

1. Poultry, meat, and seafood processing; agricultural and hand labor; commercial transportation of passengers by air, land, and water; on campus educational settings in schools, colleges, and universities; daycare and afterschool settings; restaurants and bars; grocery stores, convenience stores, and food banks; drug stores and pharmacies; manufacturing settings; indoor and outdoor construction settings; correctional facilities,

jails, detentions centers, and juvenile detention centers; work performed in customer premises, such as homes or businesses; retail stores; call centers; package processing settings; veterinary settings; personal care, personal grooming , salon, and spa settings; venues for sports, entertainment, movies, theaters, and other forms of mass gatherings; homeless shelters; fitness, gym, and exercise facilities; airports, and train and bus stations; etc.; and

2. Situations not involving exposure to known or suspected sources of SARS-CoV-2: hospitals, other healthcare (physical and mental) delivery and support services in a non-hospital setting, wellness services, physical assistance, etc.; skilled nursing facilities; outpatient medical facilities; clinics, drug treatment programs, and medical outreach services; non-medical support services; mental health facilities; home health care, nursing homes, assisted living facilities, memory care facilities, and hospice care; rehabilitation centers, doctors' offices, dentists' offices, and chiropractors' offices; first responders services provided by police, fire, paramedic and emergency medical services providers, medical transport; contact tracers, etc.

AMENDMENT – CM

16VAC25-220-30. Definitions, “Exposure risk level,” “Lower”

"Lower" exposure risk hazards or job tasks are those not otherwise classified as very high, high, or medium exposure risk that do not require contact inside ~~six feet~~ close contact with persons known to be, or suspected of being, or who may be infected with SARS-CoV-2. Employees in this category have minimal ~~occupational contact~~ close contact with other employees, other persons, or the general public, such as in an office building setting; or are able to achieve minimal ~~occupational contact~~ close contact with others through the implementation of engineering, administrative and work practice controls, such as, but not limited to:

Department Response: The Department does not support the proposed amendment.

"Lower" exposure risk hazards or job tasks are those not otherwise classified as very high, high, or medium exposure risk that do not require contact inside six feet with persons known to be, or suspected of being, or who may be infected with SARS-CoV-2. Employees in this category have minimal occupational contact with other employees, other persons, or the general public, such as in an office building setting; or are able to achieve minimal occupational contact with others through the implementation of engineering, administrative and work practice controls, such as, but not limited to:

1. Installation of floor to ceiling physical barriers constructed of impermeable material and not subject to unintentional displacement (e.g., such as clear plastic walls at convenience stores behind which only one employee is working at any one time);
2. Telecommuting;
3. Staggered work shifts that allow employees to maintain physical distancing from other employees, other persons, and the general public;
4. Delivering services remotely by phone, audio, video, mail, package delivery, curbside pickup or delivery, etc., that allows employees to maintain physical distancing from other employees, other persons, and the general public; and
5. Mandatory physical distancing of employees from other employees, other persons, and the general public.

DEPARTMENT NOTE: Struck through language below moved to 16VAC25-220-40.H per VDH comment.

AMENDMENT – CM

16VAC25-220-30. Definitions, “Exposure risk level,” “Lower”

Employee use of face coverings for contact inside ~~six feet~~ close contact of coworkers, customers, or other persons is not ~~an acceptable~~ sufficient administrative or work practice control to achieve minimal ~~occupational contact~~ close contact.

Department Response: The Department does not support the proposed amendment.

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. ~~However, when it is necessary for an employee to have brief contact with others inside the six feet distance a face covering is required.~~

DEPARTMENT NOTE: With regard to the revised definition of “face covering” below, CDC guidance indicates that face coverings can serve to protect both the wearer and others from the spread of SARS-CoV-2.

<https://www.cdc.gov/coronavirus/2019-ncov/more/masking-science-sars-cov2.html>

“Cloth masks not only effectively block most large droplets (i.e., 20-30 microns and larger)⁹ but they can also block the exhalation of fine droplets and particles (also often referred to as aerosols) smaller than 10 microns.... Studies demonstrate that cloth mask materials can also reduce wearers’ exposure to infectious droplets through filtration, including filtration of fine droplets and particles less than 10 microns.”

“Face covering” means an item made of two or more layers of washable, breathable fabric that fits snugly against the sides of the face without any gaps, completely covering the nose and mouth and fitting securely under the chin. Neck gaiters made of two or more layers of washable, breathable fabric, or folded to make two such layers are considered acceptable face coverings. Face coverings shall not have exhalation valves or vents, which allow virus particles to escape, and shall not be made of material that makes it hard to breathe, such as vinyl.² ~~normally made of cloth, or various other materials with elastic bands or cloth ties to secure over the wearer’s nose and mouth in an effort to contain or reduce the spread of potentially infectious respiratory secretions at the source (i.e., the person’s nose and mouth). A face covering is not normally~~

² <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/diy-cloth-face-coverings.html>

~~intended to protect the wearer, but it may serve as a source control to reduce the spread of virus from the wearer to others.~~ A face covering is not a surgical/medical procedure mask or respirator. A face covering is not subject to testing and approval by a state or government agency, so it is not considered a form of personal protective equipment or respiratory protection equipment under VOSH laws, rules, regulations, and standards.

AJ: [With regard to the revised definition of “face covering” above] Since face coverings are not PPE, it seems to me that they are a work practice control and we should call them such.

“Face shield” means a form of personal protective equipment made of transparent, impermeable materials intended to protect the entire face or portions of the face primarily used for eye protection from droplets or splashes for the person wearing it. A face shield is not a substitute for a face covering, surgical/medical procedure mask, or respirator.³

“Feasible” as used in this standard includes both technical and economic feasibility.

“Filtering facepiece respirator” means a negative pressure air purifying particulate respirator with a filter as an integral part of the facepiece or with the entire facepiece composed of the filtering medium. Filtering facepiece respirators are certified for use by the National Institute for Occupational Safety and Health (NIOSH).

AJ: Add definition for “Good faith.”

³ <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/cloth-face-cover-guidance.html>

The Department does not recommend providing a definition for “good faith.” Legal terms of art such as “good faith” and “reasonable” are usually the subject of case law, and the analysis of which tend to be very fact specific.

“Hand sanitizer” means an alcohol-based hand rub containing at least 60% alcohol, unless otherwise provided for in this standard.

“HIPAA” means Health Insurance Portability and Accountability Act.

“Known to be infected with the SARS-CoV-2 virus” means a person, whether symptomatic or asymptomatic, who has tested positive for SARS-CoV-2, and the employer knew or with reasonable diligence should have known that the person has tested positive for SARS-CoV-2.

AMENDMENT – AJ

16VAC25-220-30, DEFINITIONS, “May be infected with SARS-CoV-2 virus”

“May be infected with SARS-CoV-2 virus” means any person not currently ~~a person~~ known or suspected to be infected with SARS-CoV-2 virus ~~and not currently vaccinated against the SARS-CoV-2 virus.~~

AJ: A “person” is currently a person.

Department Response: The Department supports the amendment.

“May be infected with SARS-CoV-2 virus” means any person not currently a person known or suspected to be infected with SARS-CoV-2 virus ~~and not currently vaccinated against the SARS-CoV-2 virus.~~

AMENDMENT – CM

16VAC25-220-30. Definitions, “Minimal occupational contact”

“Minimal ~~occupational~~ close contact” means no or very limited, brief, and infrequent contact with employees or other persons at the place of employment. Examples include, but are not limited to, remote work (i.e., those working from home); employees with no more than brief contact with others inside ~~six feet~~ close contact (e.g., passing another person in a hallway that does not allow physical distancing of ~~six feet~~ close contact); healthcare employees providing only telemedicine services; a long distance truck driver.

Department Response: The Department does not support the proposed amendment.

“Minimal occupational contact” means no or very limited, brief, and infrequent contact with employees or other persons at the place of employment. Examples include, but are not limited to, remote work (i.e., those working from home); employees with no more than brief contact with others inside six feet (e.g., passing another person in a hallway that does not allow physical distancing of six feet); healthcare employees providing only telemedicine services; a long distance truck driver.⁴

“Occupational exposure” means the state of being actually or potentially exposed to contact with SARS-CoV-2 virus or COVID-19 disease related hazards at the work location or while engaged in work activities at another location.

⁴ <https://www.osha.gov/SLTC/covid-19/hazardrecognition.html>

AMENDMENT – AJ

16VAC25-220-30, DEFINITIONS, "Personal protective equipment"

.... Personal protective equipment for COVID-19 exposure may include, but is not limited to, ~~items such as....~~

AJ: [Add] "for COVID-19 exposure"

Department Response: The Department does not support the addition of the phrase "for COVID-19 exposure" as it adds little to the clarity of the definition, but instead appear to limit the application of definition to situations where there is only known COVID-19 exposure.

If the Board wants to adopt some clarifying language here, the Department would instead recommend "for actual or potential exposure to SARS-CoV-2 or COVID-19...."

The Department supports that part of the amendment that deletes ~~"items such as."~~

"Personal protective equipment" means equipment worn to minimize exposure to hazards that cause serious workplace injuries and illnesses. These injuries and illnesses may result from contact with chemical, radiological, physical, electrical, mechanical, biological, or other workplace hazards. Personal protective equipment may include, but is not limited to, items such as gloves, safety glasses, goggles, shoes, earplugs or muffs, hard hats, respirators, surgical/medical procedure masks, impermeable gowns or coveralls, face shields, coveralls, vests, and full body suits.

AMENDMENT – CM

16VAC25-220-30. Definitions, “Physical distancing”

"Physical distancing" also called "social distancing" means keeping space between yourself and other persons while conducting work-related activities inside and outside of the physical establishment by staying at least ~~six feet~~ close contact from other persons. Physical separation of an employee from other employees or persons by a permanent, solid floor to ceiling wall (e.g., an office setting) constitutes one form of physical distancing from an employee or other person stationed on the other side of the wall, provided that ~~six feet~~ close contact of physical distance is maintained from others around the edges or sides of the wall as well.

Department Response: The Department does not support the proposed amendment.

"Physical distancing" also called "social distancing" means keeping space between yourself and other persons while conducting work-related activities inside and outside of the physical establishment by staying at least six feet from other persons. Physical separation of an employee from other employees or persons by a permanent, solid floor to ceiling wall (e.g., an office setting) constitutes one form of physical distancing from an employee or other person stationed on the other side of the wall, provided that six feet of physical distance is maintained from others around the edges or sides of the wall as well.

"Respirator" means a protective device that covers the nose and mouth or the entire face or head to guard the wearer against hazardous atmospheres. Respirators are certified for use by the National Institute for Occupational Safety and Health (NIOSH). Respirators may be (i) tight-fitting, which means either a half mask that covers the mouth and nose or a full face piece that covers the face from the hairline to below the chin or (ii) loose-fitting, such as hoods or helmets that cover the head completely.

There are two major classes of respirators:

1. Air-purifying, which remove contaminants from the air; and
2. Atmosphere-supplying, which provide clean, breathable air from an uncontaminated source. As a general rule, atmosphere-supplying respirators are used for more hazardous exposures.

"Respirator user" means an employee who in the scope of their current job may be assigned to tasks that may require the use of a respirator in accordance with this standard or required by other provisions in the VOSH and OSHA standards.

"SARS-CoV-2" means ~~a betacoronavirus, like MERS-CoV and SARS-CoV~~the novel virus that causes coronavirus disease 2019, or COVID-19. Coronaviruses are named for the crown-like spikes on their surfaces. ~~The SARS-CoV-2 causes what has been designated as the Coronavirus Disease 2019 (COVID-19).~~

AMENDMENT – AJ AND DEPARTMENT

16VAC25-220-30, DEFINITIONS, “Severely immunocompromised”

AJ: This [definition of “Severely immunocompromised”] does not really define the term. It just gives an example. It needs some work to make it more understandable to the layman.

The Department agrees with the Board member’s comment and proposes the below revision.

“Severely immunocompromised” means a seriously weakened immune system which lowers the body’s ability to fight infection, and may increase the risk of getting severely sick from SARS-CoV-2,⁵ from....

“Severely immunocompromised” means being on chemotherapy for cancer, being within one year out from receiving a hematopoietic stem cell or solid organ transplant, untreated HIV infection with CD4 T lymphocyte count < 200, combined primary immunodeficiency disorder, and receipt of prednisone >20mg/day for more than 14 days.”⁶ The degree of immunocompromise is determined by the treating provider, and preventive actions are tailored to each individual and situation.

⁵ <https://www.cdc.gov/coronavirus/2019-ncov/hcp/return-to-work.html>

⁶ *Id* Footnote 1.

AMENDMENT – AJ AND DEPARTMENT

16VAC25-220-30, DEFINITIONS, “Signs of COVID-19”

AJ: I don't like this term [“abnormalities” in the definition of “Signs of COVID-19”].
The Department agrees with the Board member's comment and proposes the below revision.
"Signs of COVID-19" are abnormalities <u>medical conditions</u>

"Signs of COVID-19" are abnormalities that can be objectively observed, and may include fever, trouble breathing or shortness of breath, cough, persistent pain or pressure in the chest, vomiting, new confusion, inability to wake or stay awake, bluish lips or face, etc.

"Surgical/medical procedure mask" means a mask to be worn over the wearer's nose and mouth that is fluid resistant and provides the wearer protection against large droplets, splashes, or sprays of bodily or other hazardous fluids, and prevents the wearer from exposing others in the same fashion. A surgical/medical procedure mask protects others from the wearer's respiratory emissions. A surgical/medical procedure mask has a looser fitting face seal than a tight-fitting respirator. A surgical/medical procedure mask does not provide the wearer with a reliable level of protection from inhaling smaller airborne particles. A surgical/medical procedure mask is considered a form of personal protective equipment, but is not considered respiratory protection equipment under VOSH laws, rules, regulations, and standards. Testing and approval is cleared by the U.S. Food and Drug Administration (FDA).

"Suspected to be infected with SARS-CoV-2 virus" means a person who has signs or symptoms of COVID-19 but has not tested positive for SARS-CoV-2, and no alternative diagnosis has been made (e.g., tested positive for influenza).

AMENDMENT – AJ AND DEPARTMENT

16VAC25-220-30, DEFINITIONS, "Symptoms of COVID-19"

AJ: As before: "I don't like this term ["abnormalities" in the definition of "Symptoms of COVID-19"].
The Department agrees with the Board member's comment and proposes the below revision.
"Symptoms of COVID-19" are abnormalities <u>medical conditions</u>

"Symptoms of COVID-19" are abnormalities that are subjective to the person and not observable to others, and may include chills, fatigue, muscle or body aches, headache, new loss of taste or smell, sore throat, nausea, congestion or runny nose, diarrhea, etc.

"Symptomatic" means the employee a person is experiencing signs and/or symptoms similar to those attributed to COVID-19 including fever or chills, cough, shortness of breath or difficulty breathing, fatigue, muscle or body aches, headache, new loss of taste or smell, sore throat, congestion or runny nose, nausea or vomiting, or diarrhea. A person may become symptomatic may appear in two 2 to 14 days after exposure to the SARS-CoV-2 virus.

"Technical feasibility" means the existence of technical know-how as to materials and methods available or adaptable to specific circumstances that can be applied to one or more

requirements in this standard with a reasonable possibility that employee exposure to the SARS-CoV-2 virus and COVID-19 disease hazards will be reduced. If an employer's level of compliance lags significantly behind that of the employer's industry, allegations of technical infeasibility will not be accepted.

"USBC" means Virginia Uniform Statewide Building Code.

"VDH" means Virginia Department of Health.

"VOSH" means Virginia Occupational Safety and Health.

AJ: Mask [face covering] wearing is a work practice control.

"Work practice control" means a type of administrative control by which the employer modifies the manner in which the employee performs assigned work. Such modification may result in a reduction of exposure to SARS-CoV-2 virus and COVID-19 disease related workplace hazards and job tasks through such methods as changing work habits, improving sanitation and hygiene practices, or making other changes in the way the employee performs the job.

16VAC25-220-40. Mandatory requirements for all employers.

A. Employers in all exposure risk levels shall ensure compliance with the requirements in this section to protect employees in all exposure risk levels from workplace exposure to the SARS-CoV-2 virus that causes the COVID-19 disease.

AJ: I have some issues with this section but I need to review this more.

B. Exposure assessment and determination, notification requirements, and employee access to exposure and medical records.

1. Employers shall assess their workplace for hazards and job tasks that can potentially expose employees to the SARS-CoV-2 virus or COVID-19 disease. Employers shall classify each job task according to the hazards employees are potentially exposed to and ensure compliance with the applicable sections of this standard for very high, high, medium, or lower risk levels of exposure. Tasks that are similar in nature and expose employees to the same hazard may be grouped for classification purposes.

2. Employers shall inform employees of the methods of and encourage employees to self-monitor for signs and symptoms of COVID-19 if employees suspect possible exposure or are experiencing signs ~~and/or symptoms~~ of an oncoming illness.

AMENDMENT – AJ

16VAC25-220-40.B.8.e, Mandatory requirements for all employers.

<p>3. ...Serological testing has not been determined if persons who have the antibodies are immune from infection. <u>It has not been determined that persons who test positive for the presence of antibodies by serological testing</u> are immune from infection.</p>
<p>Department Response: The Department supports the proposed amendment.</p>

3. Serological testing, also known as antibody testing, is a test to determine if persons have been infected with SARS-CoV-2 virus. Serological testing has not been determined if persons who have the antibodies are immune from infection.

a. Serologic test results shall not be used to make decisions about returning employees to work who were previously classified as known or suspected to be infected with the SARS-CoV-2 virus.

b. Serologic test results shall not be used to make decisions concerning employees who were previously classified as known or suspected to be infected with the SARS-CoV-2 virus about grouping, residing in or being admitted to congregate settings, such as schools, dormitories, etc.

4. Employers shall develop and implement policies and procedures for employees to report when employees they are experiencing signs and/or symptoms consistent with COVID-19, and no alternative diagnosis has been made (e.g., tested positive for influenza). Such employees shall be designated by the employer as “suspected to be infected with SARS-CoV-2 virus.”

5. Employers shall not permit employees or other persons known or suspected to be infected with SARS-CoV-2 virus to report to or remain at the work site or engage in work at a customer or client location until cleared for return to work (see subsection C of this section). Nothing in this standard shall prohibit an employer from permitting an employee known or suspected to be infected with SARS-CoV-2 virus from engaging in teleworking or other form of work isolation that would not result in potentially exposing other employees to the SARS-CoV-2 virus.

AMENDMENT – CM

16VAC25-220-40.B.6, Mandatory requirements for all employers.

6. Employers shall not permit employees or other persons who have had close contact with a person known to be infected with SARS-CoV-2 virus to report to or remain at the work site or engage in work at a customer or client location until the expiration of time as set forth in CDC quarantine guidelines. Nothing in this standard shall prohibit an employer from permitting such an employee or person from engaging in teleworking or other form of work isolation that would not result in potentially exposing other employees to the SARS-CoV-2 virus.

~~To the extent feasible and permitted by law, including but not limited to the Families First Coronavirus Response Act, employers shall ensure that sick leave policies are flexible and consistent with public health guidance and that employees are aware of these policies.~~

Department Response: The Department does not support the proposed amendment.

The CDC defines “close contact” as “Close contact” means you were within 6 feet of someone who has COVID-19 for a total of 15 minutes or more; you provided care at home to someone who is sick with COVID-19; you had direct physical contact with the person (hugged or kissed them); you shared eating or drinking utensils; or they sneezed, coughed, or somehow got respiratory droplets on you.”

Close contact is used by the CDC and VDH for contact tracing purposes. The standard provides in 16VAC25-220-10.H:

H. Nothing in the standard shall be construed to require employers to conduct contact tracing of the SARS-CoV-2 virus or COVID-19 disease.

Close contact is also used for quarantine purposes. “Quarantine” is separation of people who were in “close contact” with a person with COVID-19 from others. The Standard does not address the issue of “quarantine.”

Requirements for returning to work from “quarantine” is NOT covered by the ETS. Instead, Virginia Department of Health (VDH) guidelines apply (see §40, FAQs 26, 27, 28, 29, 30). <https://www.doli.virginia.gov/cononavirus-covid-19-fags/>

VOSH does not have the resources to deal with contact tracing and quarantine issues, both currently the responsibility of VDH.

6. To the extent feasible and permitted by law, including but not limited to the Families First Coronavirus Response Act, employers shall ensure that sick leave policies are flexible and consistent with public health guidance and that employees are aware of these policies.

7. Employers shall discuss with subcontractors and companies that provide contract or temporary employees ~~about~~ the importance and requirement of to exclude from work employees or other persons (e.g., volunteers) who are known or suspected to be infected with the SARS-CoV-2 virus ~~of staying home~~. Subcontractor, contract, or temporary employees known or suspected to be infected with the SARS-CoV-2 virus shall not report to or be allowed to remain at the work site until cleared for return to work. Subcontractors shall not allow their employees known or suspected to be infected with the SARS-CoV-2 virus ~~employees~~ to report to or be allowed to remain at work or on a job site until cleared for return to work.

8. To the extent permitted by law, including HIPAA, employers shall establish a system to receive reports of positive SARS-CoV-2 tests by employees, subcontractors, contract employees, and temporary employees (excluding patients hospitalized on the basis of being known or suspected to be infected with SARS-CoV-2 virus) present at the place of employment within 2 days prior to symptom onset (or positive test if the employee is asymptomatic) until 10 days after onset (or positive test). ~~the previous 14 days from the date of positive test, and the e~~ Employers shall notify:

- a. The employer's own employees who may have been exposed, within 24 hours of discovery of the employees' possible exposure, while keeping confidential the identity of the person known to be infected with SARS-CoV-2 virus ~~person~~ in accordance with the requirements of the Americans with Disabilities Act (ADA) and other applicable federal and Virginia laws and regulations; and

b. In the same manner as subdivision 8 a of this subsection, other employers whose employees were present at the work site during the same time period; and

c. In the same manner as subdivision 8 a of this subsection, the building or facility owner. The building or facility owner will require all employer tenants to notify the owner of the occurrence of a SARS-CoV-2-positive test for any employees or residents in the building. This notification will allow the owner to take the necessary steps to sanitize the common areas of the building. In addition, the building or facility owner will notify all employer tenants in the building that one or more cases have been discovered and the floor or work area where the case was located. The identity of the individual will be kept confidential in accordance with the requirements of the Americans with Disabilities Act (ADA) and other applicable federal and Virginia laws and regulations; and

d. The Virginia Department of Health ~~within 24 hours of the discovery of a positive case.~~ during a declaration of an emergency by the Governor pursuant to § 44-146.17 of the Code of Virginia. Every employer as defined by § 40.1-2 of the Code of Virginia shall report to the Virginia Department of Health (VDH) when the worksite has had two or more confirmed cases of COVID-19 of its own employees present at the place of employment within a 14-day period testing positive for SARS-CoV-2 virus during that 14-day time period. Employers shall make such a report in a manner specified by VDH, including name, date of birth, and contact information of each case, within 24 hours of becoming aware of such cases. Employers shall continue to report all cases until the local health department has closed the outbreak. After the outbreak is

closed, subsequent identification of two or more confirmed cases of COVID-19 during a declared emergency shall be reported, as above. The following employers are exempt from this provision because of separate outbreak reporting requirements contained in 12VAC5-90-90: any residential or day program, service, or facility licensed or operated by any agency of the Commonwealth, school, child care center, or summer camp; and

AMENDMENT – TP

16VAC25-220-40.B.8.e, Mandatory requirements for all employers.

e. The Virginia Department of Labor and Industry within 24 hours of the discovery of ~~three~~ two or more....

TP: This should be changed back to “two” for consistency.

Department Response: The Department does not support the proposed amendment.

VOSH does not have the resources to deal with a notification requirement lowered from three to two. “Three” was chosen because of the previous long time requirement for employers to report catastrophic events where three or more employees were hospitalized.

e. The Virginia Department of Labor and Industry within 24 hours of the discovery of three or more **of its own**⁷ employees present at the place of employment within a 14-day period testing positive for SARS-CoV-2 virus during that 14-day time period.

AMENDMENT – CM

16VAC25-220-40.B.8.f, [NEW] Mandatory requirements for all employers.

f. For the purposes of subsections (d) and (e) of this section, a reported positive SARS-CoV-2 test does not need to be reported more than once, and will not be used for the purpose of identifying more than one outbreak or more than one 14-day period.

CM: The intent is to provide language to clarify that a case does not have to be reported more than once or used to calculate a VDH outbreak or a VOSH 14-day window more than once.

9. Employers shall ensure employee access to the employee's own SARS-CoV-2 virus and COVID-19 disease related exposure and medical records in accordance with the standard applicable to its industry. Employers in the agriculture, public sector marine terminal, and public sector longshoring industries shall ensure employees' access to the employees' own SARS-CoV-2 virus and COVID-19 disease related exposure and medical records in accordance with 16VAC25-90-1910.1020, Access to Employee Exposure and Medical Records.

⁷ See Frequently Asked Question (FAQ) §40, FAQ 21, <https://www.doli.virginia.gov/conronavirus-covid-19-faqs/>

C. Return to work.

AJ: Since the testing option has been removed in accordance with CDC what if an employer wants to test? This should be accepted also. Many employers would prefer to test, because all this counting is a pain to manage. This should indicate that the testing is acceptable.

Department Response: The Department and VDH jointly developed a series of FAQs (§40, FAQs 18, 25, 26, 27, 28, 29 and 30) on the topic of return to work which can be found at <https://www.doli.virginia.gov/cononavirus-covid-19-faqs/>.

Some excerpts follow:

“Isolation” is the separation of people with COVID-19 from others....“Quarantine” is separation of people who were in “close contact” with a person with COVID-19 from others....“Close contact” means you were within 6 feet of someone who has COVID-19 for a total of 15 minutes or more; you provided care at home to someone who is sick with COVID-19; you had direct physical contact with the person (hugged or kissed them); you shared eating or drinking utensils; or they sneezed, coughed, or somehow got respiratory droplets on you....

Requirements for returning to work from “quarantine” is NOT covered by the ETS. Instead, Virginia Department of Health (VDH) guidelines apply (see §40, FAQs 26, 27, 28, 29, 30).

....

[§40, FAQ 29.] Can an employee’s negative test for SARS-CoV-2 after close contact with a COVID-19 case release an employee from quarantine?

No. It is possible for an employee to test negative for SARS-CoV-2 after the close contact and still develop symptoms of COVID-19 up to 14 days after the close contact. Employers and employees must follow appropriate quarantine requirements discussed in FAQs 26 and 27 for employees who were close contacts of a COVID-19 case before allowing such employees to return to work.

....

[§40, FAQ 30] 30. Can you provide some clarification on return to work and diagnosis requirements under the ETS? We want to isolate and test anyone with signs or symptoms of COVID-19 (defined under the ETS as “Suspected to be infected with SARS-CoV-2 virus”), but if the test comes back negative, we want to rule out COVID-19 as the diagnosis and treat the employee like they have a more common and less dangerous illness....

If an employee HAS HAD “close contact” with a COVID-19 case and developed signs or symptoms, but tested negative for SARS-CoV-2, the employee should remain under quarantine for 14 days after last close contact with the COVID-19 case....

However, if the employee DID NOT have close contact with a COVID-19 case or an area with substantial COVID-19 transmission, but does have signs or symptoms and tested negative for SARS-CoV-2, the negative test can be considered as supporting an “alternative diagnosis”, and the person would not be considered suspected to be infected with SARS-CoV-2 virus. The employee must remain out of work until signs and symptoms have resolved and the employee

has been fever-free for at least 24 hours without the use of fever-reducing medicine (unless symptoms are due to a known non-infectious cause, such as allergies).

NOTE: It is important to remember that a negative test for SARS-CoV-2 only means that the person wasn't infected at the time the test was taken. If the person is ill one week, tests negative for SARS-CoV-2, and recovers from their illness, only to become ill again soon after, there is always the potential that the repeat illness may be related to COVID. Each illness should be handled as a distinct situation, meaning, the employee should not always be considered to be COVID-19 negative because they tested negative previously.

1. ~~The e~~ Employer shall develop and implement policies and procedures for employees known or suspected to be infected with the SARS-CoV-2 virus to return to work, ~~using either a symptom-based or test-based strategy, depending on local healthcare and testing circumstances. While an employer may rely on other reasonable options, a policy that involves consultation with appropriate healthcare professionals concerning when an employee has satisfied the symptom-based strategy requirements in subdivision 1 a of this subsection will constitute compliance with the requirements of this subsection.~~

a. ~~For Symptomatic employees~~ known or suspected to be infected with the SARS-CoV-2 virus ~~employees the symptom-based strategy excludes an employee are excluded~~ from returning to work until all three of the following have been met:

~~(i)(1)~~ (1) at least three days (72 ~~t~~ The employee is fever-free (less than 100.0° F) for at least 24 hours), ~~have passed since recovery, defined as resolution of fever without the use of fever-reducing medications,~~

~~and~~ (2) improvement in r Respiratory symptoms, such as (e.g., cough, and shortness of breath), have improved, and

~~(iii)(3) a~~ At least 10 days have passed since symptoms first appeared.

AJ: This section below [continuation of 16VAC25-220-40.C.1.a], while it may be true, does not give the employer any info about what this means or what to do. This just makes me nervous. It needs some clarification.

Department Response: The phrase “consider consultation with infection control experts” means that the employer should consider contacting VDH or other medical professionals about the specific situation.

However, a limited number of employees with severe illness may produce replication-competent virus beyond 10 days that may warrant extending duration of isolation for up to 20 days after symptom onset. Employees who are severely immunocompromised may require testing to determine when they can return to work - consider consultation with infection control experts.

AMENDMENT – CM

16VAC25-220-40.C.1.a, Mandatory requirements for all employers.

However, a limited number of employees with severe illness may produce replication-competent virus beyond 10 days that may warrant extending duration of isolation for up to 20 days after symptom onset. Employees who are severely immunocompromised may require testing to determine when they can return to work - consider consultation with infection control experts. VOSH will consult with VDH when identifying severe employee illnesses that may warrant extended duration of isolation or severely immunocompromised employees required to undergo testing.

CM: This language is intended to help employers define when these additional requirements are necessary.

b. The test-based strategy excludes an employee from returning to work until (i) resolution of fever without the use of fever-reducing medications, (ii) improvement in respiratory symptoms (e.g., cough, shortness of breath), and (iii) negative results of an FDA Emergency Use Authorized COVID-19 molecular assay for detection of SARS-CoV-2 RNA from at least two consecutive respiratory specimens collected 24 hours or more apart (total of two negative specimens).

i. If a known or suspected to be infected with the SARS-CoV-2 virus employee refuses to be tested, the employer compliance with subdivision 1 a of this subsection, symptom-based strategy, will be considered in compliance with this standard. Nothing in this standard shall be construed to prohibit an employer from requiring a known or suspected to be infected with the SARS-CoV-2 virus employee to be tested in accordance with subdivision 1 b of this subsection.

ii. For purposes of this section, COVID-19 testing is considered a "medical examination" under § 40.1-28 of the Code of Virginia. The employer shall not require the employee to pay for the cost of COVID-19 testing for return-to-work determinations.

AJ: [With regard to the RT-PCR test for SARS-CoV-2 RNA referenced below] What about the other types of tests?

Department Response: The language below comes directly from VDH and is based on current CDC guidance.

~~2b. The employer shall develop and implement policies and procedures for Employees known to be infected with SARS-CoV-2 who never develop signs or symptoms asymptomatic employees to return to work using either a time-based or test-based strategy depending on local healthcare and testing circumstances. are excluded from returning to work until 10 days after the date of their first positive RT-PCR test for SARS-CoV-2 RNA. While an employer may rely on other reasonable options, a policy that involves consultation with appropriate healthcare professionals concerning when an employee has satisfied the time-based strategy requirements in subdivision 2 a of this subsection will constitute compliance with the requirements of this subsection.~~

~~a. The time-based strategy excludes an employee from returning to work until at least 10 days have passed since the date of the employee's first positive COVID-19 diagnostic test assuming the employee has not subsequently developed symptoms since the employee's positive test. If the employee develops symptoms, then the symptom-based or test-based strategy shall be used.~~

~~b. The test-based strategy excludes an employee from returning to work until negative results of an FDA Emergency Use Authorized COVID-19 molecular assay for detection of SARS-CoV-2 RNA from at least two consecutive respiratory specimens collected 24 hours or more apart (total of two negative specimens).~~

~~i. If a known to be infected with SARS-CoV-2 asymptomatic employee refuses to be tested, employer compliance with subdivision 2 a of this subsection, time based strategy, will be considered in compliance with this standard. Nothing in this standard shall be construed to prohibit an employer from requiring a known to be infected with SARS-CoV-2 asymptomatic employee to be tested in accordance with subdivision 2 b of this subsection.~~

~~ii.c.~~ For purposes of this section, COVID-19 testing is considered a “medical examination” under § 40.1-28 of the Code of Virginia. ~~The e~~ Employers shall not require ~~the employees~~ to pay for the cost of COVID-19 testing for return to work determinations. If an employer’s health insurance covers the entire cost of COVID-19 testing, use of the insurance coverage would not be considered a violation of 16VAC25-220-40 C, 2 + c.⁸

D. Unless otherwise provided in this standard, employers shall establish and implement policies and procedures that ensure ~~that~~ employees observe physical distancing while on the job and during paid breaks on the employer’s property, including policies and procedures that:

1. Use verbal announcements, signage, or visual cues to promote physical distancing.
2. Decrease worksite density by limiting non-employee access to the place of employment or restrict access to only certain workplace areas to reduce the risk of exposure. ~~3.~~ An employer’s compliance with occupancy limits contained in any applicable Virginia

⁸ See Frequently Asked Question (FAQ) §40, FAQ 23, <https://www.doli.virginia.gov/cononavirus-covid-19-faqs/>

executive order or order of public health emergency will constitute compliance with the requirements in this subsection.

E. Access to common areas, breakrooms, or lunchrooms shall be closed or controlled.

1. If the nature of an employer's work or the work area does not allow employees to consume meals in the employee's workspace while observing physical distancing, an employer may designate, reconfigure, and alternate usage of spaces where employees congregate, including lunch and break rooms, locker rooms, time clocks, etc., with controlled access, provided the following conditions are met:

a. At the entrance of the designated common area or room ~~the employers~~ shall clearly post the policy limiting the occupancy of the space, and requirements for physical distancing, hand washing and hand sanitizing, and cleaning and disinfecting of shared surfaces.

b. ~~The e~~ Employers shall limit occupancy of the designated common area or room so that occupants can maintain physical distancing from each other. ~~The e~~ Employers shall enforce the occupancy limit.

c. Employees shall be required to clean and disinfect the immediate area in which they were located prior to leaving, or ~~the employers~~ may provide for cleaning and disinfecting of the common area or room at regular intervals throughout the day, and between shifts of employees using the same common area or room (i.e., where an employee or groups of employees have a designated lunch period and the common area or room can be cleaned in between occupancies).

d. Hand washing facilities, and hand sanitizer where feasible, are available to employees. Hand sanitizers required for use to protect against SARS-CoV-2 are flammable and use and storage in hot environments can result in a hazard.

AMENDMENT – TT

16VAC25-220-40.F, Mandatory requirements for all employers.

(F) When multiple employees are occupying a vehicle for work purposes, employers shall use the hierarchy of hazard controls to prevent employee exposures by:

1. Eliminating the need for employees to share work vehicles and arrange for alternative means for additional employees to travel to work sites.

2. When employees must share work vehicles because no other alternatives are available, employees shall be provided with respiratory protection, such as an N95 filtering face piece respirator.

3. Increase outside air (e.g. open windows, do not recirculate cabin air), when weather conditions permit.

4. When the work vehicle allows for distancing of employees, e.g. in a van, establish procedures to maximize separation between employees during travel, e.g. setting occupancy limits, sitting in alternate seats.

F. When multiple employees are occupying a vehicle for work purposes, employers shall:

1. ~~the employers shall~~ Ensure compliance with respiratory protection and personal protective equipment standards applicable to the employer's industry. Until adequate supplies of respiratory protection and/or personal protective equipment become readily available for non-medical and non-first responder employers and employees, employers shall provide and employees shall wear face coverings while occupying a work vehicle with other employees or persons.⁹

AJ: [With regard to the above phrase “Ensure compliance with respiratory protection and personal protective equipment standards applicable to the employer's industry.”]

I am not sure that there are any standards currently that require respirators when traveling in a vehicle or mobile equipment. Maybe in an ambulance. I think 99% of the time a face covering would be okay. This is really confusing.

Department Response: To address the question, as an example, §1910.132, Personal Protective Equipment, “applies” to all employers in general industry. The Department has an FAQ on the subject at §40, FAQ 12, which states in part:

All federal OSHA identical standards and regulations enforced by VOSH in General Industry (29 CFR Part 1910) apply to general industry employers like the trucking industry, except where otherwise exempted by §4(b)(1) of the OSH Act of 1970. Two such standards are the Personal Protective Equipment (PPE) (1910.132[1]) and Respiratory Protection (1910.134[2]) standards. COVID-19 is a respiratory disease that spreads easily through airborne transmission between persons in contact with each other inside six feet, so the PPE and Respirator Standards are considered applicable.

While the ETS contains specific requirements for an employer to determine the level of exposure risk to the SARS-CoV-2 virus at its workplace (very high, high, medium, or lower risk), generally the determination in most workplace settings outside of healthcare and emergency response will result in either a medium or lower risk classification depending on whether employees are required to work inside six feet of other persons (employees, customers, etc.) or not.

Employers must first implement engineering, administrative, and work practice controls to eliminate or reduce the frequency of contact with others inside of six feet to the extent feasible. Where it is not feasible to eliminate contact with others inside of six feet, medium risk employers must determine what level of personal protective

⁹ <https://www.cdc.gov/coronavirus/2019-ncov/daily-life-coping/using-transportation.html>

equipment (PPE) must be provided and worn as the last line of protection for employees against the virus. This is done through conducting a hazard assessment to determine personal protective equipment (PPE) requirements for employees. 16VAC25-220-60.D (medium risk).

AJ: [With regard to the above phrase “employers shall provide and employees shall wear face coverings while occupying a work vehicle with other employees or persons] I think this is enough. May add, unless transporting a known or suspected Covid-19 case.

2. Provide access to fresh air ventilation (e.g., open windows, do not recirculate cabin air).

3. Where physical distancing cannot be maintained, establish procedures to maximize separation between employees during travel.

~~G. Employers shall also ensure compliance with mandatory requirements of any applicable Virginia executive order or order of public health emergency.~~

DEPARTMENT COMMENT: After discussions with legal counsel, the Department is recommending removal of the above language. In addition, the language is considered redundant in light of Executive Order 72, Order of Public Health Emergency, Commonsense Surge Restrictions, Certain Temporary Restrictions Due to Novel Coronavirus (COVID-19), adopted on December 14, 2020, which provides as follows:

IV. ADDITIONAL PROVISIONS

A. Construction with the Emergency Temporary Standard “Infectious Disease Prevention: SARS-CoV-2 Virus That Causes COVID-19”

Where the Emergency Temporary Standard “Infectious Disease Prevention: SARS-CoV2 Virus That Causes COVID-19” adopted by the Safety and Health Codes Board of the Virginia Department of Labor and Industry pursuant to 16 Va. Admin. Code §§ 25-60-20 and 25-60-30 conflicts with requirements and guidelines applicable to businesses in this Order, this Order shall govern.

AJ: Does [the below section] mean that persons exposed to silica in their job can wear a face covering? This is really confusing and was confusing in the ERS.

Department Response: No. The ETS and the Draft Final Standard only apply to workplace exposures involving employee exposure to SARS-CoV-2 and COVID-19. It is the position of the Department that this standard cannot override existing VOSH/OSHA standards and regulations applicable to other occupational hazards, such as exposure to silica. In the instance of silica, employers must comply with VOSH standards applicable to hazards associated with occupational exposure to silica without any consideration to the provisions of this standard.

HG. Where the nature of an employee's work or the work area does not allow the employee to observe physical distancing requirements **from employees or other persons**, employers shall ensure compliance with respiratory protection and personal protective equipment standards applicable to its industry. **In such situations, and until adequate supplies of respiratory protection and/or personal protective equipment become readily available for non-medical and non-first responder employers and employees, employers shall provide and employees shall wear face coverings.**

AMENDMENT – CM

16VAC25-220-40.H, Mandatory requirements for all employers.

H. When it is necessary for employees solely exposed to lower risk hazards or job tasks to have brief contact with others inside ~~six feet~~ **close contact** (e.g., passing another person in a hallway that does not allow physical distancing of ~~six feet~~ **close contact**), a face covering is required.

Department Response: The Department does not support the proposed amendment.

H. When it is necessary for employees solely exposed to lower risk hazards or job tasks to have brief contact with others inside six feet (e.g., passing another person in a hallway that does not allow physical distancing of six feet), a face covering is required.

AMENDMENT – TP

16VAC25-220-40.I, Mandatory requirements for all employers.

I. Each employer must ensure that all individuals who are not considered an employee (patrons, customers, etc.) at the workplace or other premises subject to the employer's control wear a face covering.

Department Response: The Department does not support this NEW language. Under current Executive Orders, VDH is charged with addressing complaints about non-employees failing to wear face coverings. If VDH cannot resolve the issue successfully with the employer it will coordinate a joint enforcement effort with VOSH/DOLI. If VOSH receives such a complaint currently, it refers the individual to VDH. VOSH does not have the resources to handle these types of complaints at the initial stage of filing.

I. When required by this standard, face coverings shall be worn over the wearer's nose and mouth and extend under the chin.¹⁰

IJ. Nothing in this standard shall require the use of a respirator, surgical/medical procedure mask, or face covering by any employee for whom doing so would be contrary to the employee's health or safety because of a medical condition; however, nothing in this standard shall negate an employer's obligations to comply with personal protective equipment and respiratory protection standards applicable to its industry.

¹⁰ <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/about-face-coverings.html>

1. Although face shields are not considered a substitute for face coverings as a method of source control and not used as a replacement for face coverings among people without medical contraindications, face shields may provide some level of protection against contact with respiratory droplets. In situations where a face covering cannot be worn due to medical contraindications, employers shall provide and employees shall wear either:¹¹

a. A face shield that wraps around the sides of the wearer's face and extends below the chin; or

b. A hooded face shield; and

c. To the extent feasible, employees wearing face shields in accordance with this subsection shall observe physical distancing requirements in this standard.

2. Face shield wearers shall wash their hands before and after removing the face shield and avoid touching their eyes, nose and mouth when removing it.

3. Disposable face shields shall only be worn for a single use and disposed of according to manufacturer instructions.

4. Reusable face shields shall be cleaned and disinfected after each use according to manufacturer instructions.

AJ: [With regard to use of the term "contraindication" in the phrase "In situations where a face covering cannot be worn due to medical contraindications, employers shall provide and employees shall wear...."] Can we find another word? Do most people understand this?

¹¹ *Id.*

JK. Requests to the Department for religious waivers from the required use of respirators, surgical/medical procedure masks, or face coverings will be handled in accordance with the requirements of applicable federal and state law, standards, regulations and the U.S. and Virginia Constitutions, after Department consultation with the Office of the Attorney General.

KL. Sanitation and disinfecting.

1. In addition to the requirements contained in this standard, employers shall comply with the VOSH sanitation standard applicable to its industry.
2. Employees that interact with customers, the general public, contractors, and other persons shall be provided with and immediately use supplies to clean and disinfectant surfaces contacted during the interaction where there is the potential for exposure to the SARS-CoV-2 virus by themselves or other employees.

AMENDMENT – AJ

16VAC25-220-40.L.3, Mandatory requirements for all employers. Sanitation and Disinfecting.

3. In addition to the requirements contained in this standard, employers shall comply with the VOSH hazard communication standard applicable to the employers' industry for cleaning and disinfecting materials and hand sanitizers, and have safety data sheets available.

3. In addition to the requirements contained in this standard, employers shall comply with the VOSH hazard communication standard applicable to the employers' industry for cleaning and disinfecting materials and hand sanitizers.

4. Areas in the place of employment where employees or other persons known or suspected to be infected with the SARS-CoV-2 virus ~~employees or other persons~~ accessed or worked shall be cleaned and disinfected prior to allowing other employees access to the areas. Where feasible, a period of 24 hours will be observed prior to cleaning and disinfecting. This requirement shall not apply if the areas in question have been unoccupied for seven or more days.

5. All common spaces, including bathrooms (including port-a-johns, privies, etc.)¹², frequently touched surfaces, and doors, shall at a minimum be cleaned and disinfected at least once during or at the end of ~~each~~ the shift. Where multiple shifts are employed, such spaces shall be cleaned and disinfected no less than once every 12 hours. All shared tools, equipment, workspaces, and vehicles shall be cleaned and disinfected prior to transfer from one employee to another.

¹² See DOLI Frequently Asked Questions (FAQ), §40, FAQ 13, <https://www.doli.virginia.gov/cononavirus-covid-19-faqs/>

AMENDMENT – AJ

16VAC25-220-40.L.5, Mandatory requirements for all employers.

AJ: [In referenced to the above sentence: “All shared tools, equipment, workspaces, and vehicles shall be cleaned and disinfected prior to transfer from one employee to another.”] I would split this up to a separate bullet because it is a different topic.

Department Response: The Department supports the proposed amendment to separate out the above sentence as subdivision 6. and renumber the following sections accordingly.

6. Employers shall ensure that cleaning and disinfecting products are readily available to employees to accomplish the required cleaning and disinfecting. In addition, employers shall ensure use of only disinfecting chemicals and products indicated in the Environmental Protection Agency (EPA) List N for use against SARS-CoV-2.

7. Employers shall ensure that the manufacturer’s instructions for use of all disinfecting chemicals and products are complied with (e.g., concentration, application method, contact time, PPE, etc.).

AMENDMENT – CM

16VAC25-220-40.L.8, Mandatory requirements for all employers.

8. Employees shall have easy, frequent access and permission to use soap and water, and hand sanitizer where feasible, for the duration of work. Employees assigned to a work station where job tasks require frequent interaction inside ~~six feet~~ close contact with other persons shall be provided with hand sanitizer where feasible at the employees work station.

Department Response: The Department does not support the proposed amendment.

8. Employees shall have easy, frequent access and permission to use soap and water, and hand sanitizer where feasible, for the duration of work. Employees assigned to a work station where job tasks require frequent interaction inside six feet with other persons shall be provided with hand sanitizer where feasible at the employees work station.

AMENDMENT – AJ

16VAC25-220-40.L.9, Mandatory requirements for all employers.

9. Mobile crews shall be provided with hand sanitizer where feasible for the duration of work at a ~~work-site~~ client and customer location and shall have transportation....

Department Response: The Department does not support the amendment in its current form as mobile work crews also work at locations other than those of a client or customer. If the Board member wishes to include client and customer locations, then the Department recommends the following language:

9. Mobile crews shall be provided with hand sanitizer where feasible for the duration of work at a work site, client or customer location and shall have transportation....

9. Mobile crews shall be provided with hand sanitizer where feasible for the duration of work at a work site and shall have transportation immediately available to nearby toilet facilities and handwashing facilities that meet the requirements of VOSH laws, standards, and regulations dealing with sanitation. Hand sanitizers required for use to protect against SARS-CoV-2 are flammable, and use and storage in hot environments can result in a hazard.

AMENDMENT – AJ

16VAC25-220-40.L.10, Mandatory requirements for all employers.

10.... employers shall ensure that protective measures are put in place to prevent cross-contamination between tasks, areas, and personnel.

910. It is recognized that various hazards or job tasks at the same place of employment can be designated as very high, high, medium, or lower as presenting potential exposure risk for purposes of application of the requirements of this standard. In situations other than emergencies, **the employers** shall ensure that protective measures are put in place to prevent cross-contamination.

EM. Unless otherwise provided in this standard, when engineering, work practice, and administrative controls are not feasible or do not provide sufficient protection, employers shall provide personal protective equipment to their employees and ensure the equipment's proper use in accordance with VOSH laws, standards, and regulations applicable to personal protective equipment, including respiratory protection equipment.

16VAC25-220-50. Requirements for hazards or job tasks classified as very high or high exposure risk.

A. The requirements in this section for employers with hazards or job tasks classified as very high or high exposure risk apply in addition to requirements contained in 16VAC25-220-40, 16VAC25-220-70, and 16VAC25-220-80.

B. Engineering controls.

1. Employers shall ensure that appropriate air-handling systems under their control:

a. Are installed and maintained in accordance with the USBC and manufacturer's instructions in healthcare facilities and other places of employment treating, caring for, or housing persons with known or suspected to be infected with the SARS-CoV-2 virus; and

~~b. Comply with minimum American National Standards Institute (ANSI)/American Society of Heating, Refrigerating and Air-Conditioning Engineers (ASHRAE) Standards 62.1 and 62.2 (ASHRAE 2019a, 2019b), which include requirements for outdoor air ventilation in most residential and nonresidential spaces, and ANSI/ASHRAE/ASHE Standard 170 (ASHRAE 2017a), which covers both outdoor and total air ventilation in healthcare facilities. Based on risk assessments or owner project requirements, designers of new and existing facilities can go beyond the minimum requirements of these standards.~~

b. Where feasible and within the design parameters of the system, are utilized as follows:¹³

i. (1) Increase total airflow supply to occupied spaces provided that a greater hazard is not created (e.g., airflow that is increased too much may make doors harder to open or may blow doors open);

¹³ <https://www.cdc.gov/coronavirus/2019-ncov/community/office-buildings.html>

In ground transportation settings, use natural ventilation (~~i.e., opening windows if possible and safe to do so~~) to increase outdoor air dilution of inside air in a manner that will aid in mitigating the spread of SARS-CoV-2 and COVID-19 virus transmission to employees, and when environmental conditions and transportation safety and health requirements allow;

Department Response: Comment 89008 states “due to the shape of transit vehicles, interior air travels from back to front while a vehicle is in motion. That is, the air – and any virus that it contains – travels directly toward the driver. If the driver’s window is open, this back-to-front airflow grows even stronger. The best way to ensure that the driver benefits from increased outside air is to keep the driver’s and passengers’ windows closed while opening the vehicle’s rear hatch, adjusting the driver’s air vents to blow fresh outside air (or modifying the vents to do so if the vehicle is not equipped with this feature), and operating the vents on high. These steps help to reverse the airflow within the vehicle so that fresh air travels toward the driver, and potentially contaminated air travels to the back of the vehicle and out the rear hatch. The attached ATU factsheet, entitled “Safe Service Now – Covid-19 Bus Airflows and Solutions” provides further information. This guidance should be incorporated into Section 16 VAC 25-220-60(B)(1)(b)(ii) – or, at the very least, the reference to open windows must be removed from that section.”

The above language change deletes the reference to opening windows and provides a performance oriented goal of mitigating the spread of the virus inside the vehicle.

##(2) In ground transportation settings, use natural ventilation (i.e., opening windows if possible and safe to do so) to increase outdoor air dilution of inside air when environmental conditions and transportation safety and health requirements allow;

##(3) Inspect filter housing and racks to ensure appropriate filter fit and check for ways to minimize filter bypass;

iv(4) Increase air filtration to as high as possible in a manner that will still enable the system to provide airflow rates as the system design requires. Ensure compliance with higher filtration values is allowed by the air handler manufacturer's installation instructions and listing;

v(5) Generate clean-to-less-clean air movements by re-evaluating the positioning of supply and exhaust air diffusers and/or dampers and adjusting zone supply and exhaust flow rates to establish measurable pressure differentials;

vi(6) Have staff work in "clean" ventilation zones that do not include higher-risk areas such as visitor reception or exercise facilities (if open);

vii(7) Ensure exhaust fans in restroom facilities are functional and operating continuously when the building is occupied;

viii(8) If the system's design can accommodate such an adjustment and is allowed by the air handler manufacturer's installation instructions and listing, improve central air filtration to MERV-13 and seal edges of the filter to limit bypass;¹⁴and

ix(9) Check filters to ensure they are within service life and appropriately installed.

c. Comply with USBC and applicable referenced American Society of Heating, Refrigerating and Air-Conditioning Engineers (ASHRAE) Standards.

¹⁴ <https://www.ashrae.org/technical-resources/filtration-disinfection#iso>

2. For employers not covered by subdivision 1 of this subsection, ensure that air-handling systems where installed and under their control are appropriate to address the SARS-CoV-2 virus and COVID-19 disease related hazards and job tasks that occur at the workplace:
 - a. Are maintained in accordance with the manufacturer's instructions; and
 - b. Comply with subdivisions 1 b and 1 c of this subsection.
3. Hospitalized patients with known or suspected to be infected with the SARS-CoV-2 virus, where feasible and available, shall be placed in an airborne infection isolation room (AIIRs).
4. Employers shall use AIIRs rooms when available for performing aerosol-generating procedures on patients with known or suspected to be infected with the SARS-CoV-2 virus.
5. For 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 persons at the time of their death.
6. Employers shall use special precautions associated with Biosafety Level 3 (BSL-3), as defined by the U.S. Department of Health and Human Services Publication No. (CDC) 21-1112 "Biosafety in Microbiological and Biomedical Laboratories" (Dec. 2009), which is hereby incorporated by reference, when handling specimens from patients or persons known or suspected to be infected with the SARS-CoV-2 virus patients or persons.

Diagnostic laboratories that conduct routine medical testing and environmental specimen testing for COVID-19 are not required to operate at BSL-3.¹⁵

7. 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.

C. Administrative and work practice controls.

1. Prior to the commencement of each work shift, prescreening or surveying shall be required to verify each covered employee does not have signs or symptoms of COVID-19.

2. In healthcare facilities, ~~an~~ employers shall follow existing guidelines and facility standards of practice for identifying and isolating infected persons and for protecting employees.

3. An Employer shall limit non-employee access to the place of employment or restrict access to only certain workplace areas to reduce the risk of exposure. An employer's compliance with occupancy limits contained in any applicable Virginia executive order or order of public health emergency will constitute compliance with the requirements of this paragraph.

4. An Employer shall 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.

¹⁵ See Frequently Asked Question (FAQ) §50, FAQ 3, <https://www.doli.virginia.gov/cononavirus-covid-19-faqs/>

AJ: [With reference to the above phrase “and use disposable face coverings.”] Why disposable?

Department Response: 16VAC25-220-50 applies to workplace settings with hazards and job tasks classified as very high or high, often in a healthcare setting where infection control procedures call for disposable items.

5. An employer shall offer enhanced medical monitoring of employees during COVID-19 outbreaks.

~~6. An employer shall provide all employees with job-specific education and training on preventing transmission of COVID-19, including initial and routine and refresher training in accordance with 16VAC25-220-80.~~

~~7. To the extent feasible, an employer shall ensure that psychological and behavioral support is available to address employee stress at no cost to the employee.~~

DEPARTMENT NOTE: The above language was accidentally deleted from the December 10, 2020 Revised Proposed Standard when the Word document was converted to PDF.

~~7. In health care settings, an employer shall provide alcohol-based hand sanitizers containing at least 60% ethanol or 70% isopropanol to employees at fixed work sites and to emergency responders and other personnel for decontamination in the field when working away from fixed work sites.~~

~~8. Employers shall provide face coverings to non-employees suspected to be infected with SARS-CoV-2 virus non-employees to contain respiratory secretions until the non-~~

employees are able to leave the site (i.e., for medical evaluation and care or to return home).

AMENDMENT – CM

16VAC25-220-50.C.9.c and .d, Requirements for hazards or job tasks classified as very high or high exposure risk.

c. Increase physical distancing between employees at the worksite to ~~six feet~~ close contact.

d. Increase physical distancing between employees and other persons to ~~six feet~~ close contact.

Department Response: The Department does not support the proposed amendment.

10-9. Where feasible, employers shall:

- a. Implement flexible worksites (e.g., telework).
- b. Implement flexible work hours (e.g., staggered shifts).
- c. Increase physical distancing between employees at the worksite to six feet.
- d. Increase physical distancing between employees and other persons to six feet.

e. Implement flexible meeting and travel options (e.g., use telephone or video conferencing instead of in person meetings; postpone non-essential travel or events; etc.).

f. Deliver services remotely (e.g. phone, video, internet, etc.).

g. Deliver products through curbside pick-up.

D. Personal protective equipment (PPE).

1. Employers covered by this section and not otherwise covered by the VOSH Standards for General Industry (16VAC25-90-1910.132), shall comply with the following requirements for a SARS-CoV-2 virus and COVID-19 disease-related hazard assessment and personal protective equipment selection:

a. The Employer shall assess the workplace to determine if SARS-CoV-2 virus or COVID-19 disease hazards or job tasks are present or are likely to be present that necessitate the use of personal protective equipment (PPE). The Employer shall provide for employee and employee representative involvement in the assessment process.

b. If such hazards or job tasks are present or likely to be present, the employers shall:

(1)(1) Except as otherwise required in the standard, select and have each affected employee use the types of PPE that will protect the affected employee from the SARS-CoV-2 virus or COVID-19 disease hazards identified in the hazard assessment;

(2)(2) Communicate selection decisions to each affected employee; and

~~(3iii)~~(3) Select PPE that properly fits each affected employee.

2. The e Employers shall verify that the required SARS-CoV-2 virus and COVID-19 disease workplace hazard assessment has been performed through a written certification that identifies the workplace evaluated; the person certifying that the evaluation has been performed; the date of the hazard assessment; and the document as a certification of hazard assessment.

3. Unless specifically addressed by an industry specific standard applicable to the employer and providing for PPE protections to employees from the SARS-COV-2 virus or COVID-19 disease (e.g., 16VAC25-175-1926, 16VAC25-190-1928, 16VAC25-100-1915, 16VAC25-120-1917, or 16VAC25-130-1918), the requirements of 16VAC25-90-1910.132 (General requirements) and 16VAC25-90-1910.134 (Respiratory protection) shall apply to all employers for that purpose.

AMENDMENT – TP

16VAC25-220-50.D.4 Requirements for hazards or job tasks classified as very high or high exposure risk.

~~4. Employers shall implement a respiratory protection program in accordance with 16VAC25 90 1910.134 (b) through (d) (except (d)(1)(iii)), and (f) through (m), that covers each employee required to use a respirator.~~

TP: This is outdated/incorrect respiratory protection standard language.

4. The e Employers shall implement a respiratory protection program in accordance with 16VAC25-90-1910.134 (b) through (d) (except (d)(1)(iii)), and (f) through (m), that covers each employee required to use a respirator.

AMENDMENT – CM

16VAC25-220-50.D.5, Requirements for hazards or job tasks classified as very high or high exposure risk.

5. Unless contraindicated by a hazard assessment and equipment selection requirements in subdivision 1 of this subsection, employees classified as very high or high exposure risk shall be provided with and wear gloves, a gown, a face shield or goggles, and a respirator when in contact with or inside ~~six feet~~ close contact of patients or other persons known to be or suspected of being infected with SARS-CoV-2.

Department Response: The Department does not support the proposed amendment.

5. Unless contraindicated by a hazard assessment and equipment selection requirements in subdivision 1 of this subsection, employees classified as very high or high exposure risk shall be provided with and wear gloves, a gown, a face shield or goggles, and a respirator when in contact with or inside six feet of patients or other persons known to be or suspected of being infected with SARS-CoV-2. ~~Where indicated by the hazard assessment and equipment selection requirements in subsection D of this section, such employees shall also be provided with and wear a surgical/medical procedure mask. Gowns shall be large enough to cover the areas requiring protection~~ the correct size to assure protection.

E. Employee training shall be provided in accordance with the requirements of 16VAC25-220-80 of this standard.

16VAC25-220-60. Requirements for hazards or job tasks classified at medium exposure risk.

A. The requirements in this section for employers with hazards or job tasks classified as medium exposure risk apply in addition to requirements contained in 16VAC25-220-40, 16VAC25-70, and 16VAC25-80.

B. Engineering controls.

1. Employers shall ensure that air-handling systems under their control where installed are appropriate to address the SARS-CoV-2 virus and COVID-19 disease related hazards and job tasks that occur at the workplace and:

a. Are maintained in accordance with the manufacturer's instructions; and

b. ~~Comply with minimum American National Standards Institute (ANSI)/American Society of Heating, Refrigerating and Air Conditioning Engineers (ASHRAE) Standards 62.1 and 62.2 (ASHRAE 2019a, 2019b), which include requirements for outdoor air ventilation in most residential and nonresidential spaces, and ANSI/ASHRAE/ASHE Standard 170 (ASHRAE 2017a), which covers both outdoor and total air ventilation in healthcare facilities. Based on risk assessments or owner project requirements, designers of new and existing facilities can go beyond the minimum requirements of these standards.~~

b. Where feasible and within the design parameters of the system, are utilized as follows:¹⁶

(1) Increase total airflow supply to occupied spaces provided that a greater hazard is not created (e.g., airflow that is increased too much may make doors harder to open or may blow doors open);

In ground transportation settings, use natural ventilation ~~(i.e., opening windows if possible and safe to do so)~~ to increase outdoor air dilution of inside air in a manner that will aid in mitigating the spread of SARS-CoV-2 and COVID-19 virus transmission to employees, and when environmental conditions and transportation safety and health requirements allow;

Department Response: Comment 89008 states “due to the shape of transit vehicles, interior air travels from back to front while a vehicle is in motion. That is, the air – and any virus that it contains – travels directly toward the driver. If the driver’s window is open, this back-to-front airflow grows even stronger. The best way to ensure that the driver benefits from increased outside air is to keep the driver’s and passengers’ windows closed while opening the vehicle’s rear hatch, adjusting the driver’s air vents to blow fresh outside air (or modifying the vents to do so if the vehicle is not equipped with this feature), and operating the vents on high. These steps help to reverse the airflow within the vehicle so that fresh air travels toward the driver, and potentially contaminated air travels to the back of the vehicle and out the rear hatch. The attached ATU factsheet, entitled “Safe Service Now – Covid-19 Bus Airflows and Solutions” provides further information. This guidance should be incorporated into Section 16 VAC 25-220-60(B)(1)(b)(ii) – or, at the very least, the reference to open windows must be removed from that section.”

The above language change deletes the reference to opening windows and provides a performance oriented goal of mitigating the spread of the virus inside the vehicle.

¹⁶ <https://www.cdc.gov/coronavirus/2019-ncov/community/office-buildings.html>

ii(2) In ground transportation settings, use natural ventilation (i.e., opening windows if possible and safe to do so) to increase outdoor air dilution of inside air when environmental conditions and transportation safety and health requirements allow;

iii(3) Inspect filter housing and racks to ensure appropriate filter fit and check for ways to minimize filter bypass;

iv(4) Increase air filtration to as high as possible in a manner that will still enable the system to provide airflow rates as the system design requires. Ensure compliance with higher filtration values is allowed by the air handler manufacturer's installation instructions and listing;

v(5) Generate clean-to-less-clean air movements by re-evaluating the positioning of supply and exhaust air diffusers and/or dampers and adjusting zone supply and exhaust flow rates to establish measurable pressure differentials;

vi(6) Have staff work in "clean" ventilation zones that do not include higher-risk areas such as visitor reception or exercise facilities (if open);

vii(7) Ensure exhaust fans in restroom facilities are functional and operating continuously when the building is occupied;

viii(8) If the system's design can accommodate such an adjustment and is allowed by the air handler manufacturer's installation instructions and listing, improve central air filtration to MERV-13 and seal edges of the filter to limit bypass;¹⁷and

¹⁷ <https://www.ashrae.org/technical-resources/filtration-disinfection#iso>

~~ix~~(9) Check filters to ensure they are within service life and appropriately installed.

c. Comply with USBC and applicable referenced American Society of Heating, Refrigerating and Air-Conditioning Engineers (ASHRAE) Standards.

2. Where feasible, employers shall Install physical barriers (e.g., such as clear plastic sneeze guards, etc.), where such barriers will aid in mitigating the spread of SARS-CoV-2 virus transmission.

AMENDMENT – CM

16VAC25-220-60.C.1.e and f, Requirements for hazards or job tasks classified as medium exposure risk.

e. Increase physical distancing between employees at the worksite to ~~six feet~~ close contact.

f. Increase physical distancing between employees and other persons, including customers, to ~~six feet~~ close contact (e.g., drive-through physical barriers) where such barriers will aid in mitigating the spread of SARS-CoV-2 virus transmission, etc.

Department Response: The Department does not support the proposed amendment.

C. Administrative and work practice controls.

1. To the extent feasible, employers shall implement the following administrative and work practice controls:

- a. Prior to the commencement of each work shift, prescreening or surveying shall be required to verify each covered employee does not have signs or symptoms of COVID-19.
- b. Provide face coverings to **non-employees** suspected to be infected with SARS-CoV-2 **non-employees** to contain respiratory secretions until the non-employees are able to leave the site (i.e., for medical evaluation and care or to return home).
- c. Implement flexible worksites (e.g., telework).
- d. Implement flexible work hours (e.g., staggered shifts).
- e. Increase physical distancing between employees at the worksite to six feet.
- f. Increase physical distancing between employees and other persons, including customers, to six feet (e.g., drive-through physical barriers) where such barriers will aid in mitigating the spread of SARS-CoV-2 virus transmission, etc.

DEPARTMENT NOTE: This provision moved to 16VAC25-220-60.A.2 as it is an engineering control. Comment 85910.

~~g. To the extent feasible, install physical barriers (e.g., such as clear plastic sneeze guards, etc.), where such barriers will aid in mitigating the spread of SARS-CoV-2 virus transmission.~~

~~h-g.~~ Implement flexible meeting and travel options (e.g., using telephone or video conferencing instead of in person meetings; postponing non-essential travel or events; etc.).

ih. Deliver services remotely (e.g. phone, video, internet, etc.).

ji. Deliver products through curbside pick-up or delivery.

kj. ~~Require e-E~~ Employers ~~to shall~~ provide and require employees to wear face coverings who, because of job tasks, cannot feasibly practice physical distancing from another employee or other person if the hazard assessment has determined that personal protective equipment, such as respirators or surgical/medical procedure masks, was not required for the job task.

kk. ~~Require e-E~~ Employers ~~to shall~~ provide and require employees in customer or other person facing jobs to wear face coverings.

D. Personal protective equipment.

1. Employers covered by this section and not otherwise covered by the VOSH Standards for General Industry (16VAC25-90-1910.132) shall comply with the following requirements for a SARS-CoV-2 virus and COVID-19 disease-related hazard assessment and personal protective equipment selection:

a. ~~The e-E~~ Employers shall assess the workplace to determine if SARS-CoV-2 or COVID-19 hazards or job tasks are present or are likely to be present that necessitate the use of personal protective equipment (PPE). ~~The e-E~~ Employers shall provide for employee and employee representative involvement in the assessment process. If such hazards or job tasks are present or likely to be present, ~~the employers~~ shall:

i. Except as otherwise required in the standard, select and have each affected employee use the types of PPE that will protect the affected employee from the

SARS-CoV-2 virus or COVID-19 disease hazards identified in the hazard assessment;

ii. Communicate selection decisions to each affected employee; and

iii. Select PPE that properly fits each affected employee.

2. The employer shall verify that the required SARS-CoV-2 virus and COVID-19 disease workplace hazard assessment has been performed through a written certification that identifies the workplace evaluated; the person certifying that the evaluation has been performed; the date of the hazard assessment; and the document as a certification of hazard assessment.

3. Unless specifically addressed by an industry specific standard applicable to the employer and providing for PPE protections to employees from the SARS-COV-2 virus or COVID-19 disease (e.g., 16VAC25-175-1926, 16VAC25-190-1928, 16VAC25-100-1915, 16VAC25-120-1917, or 16VAC25-130-1918), the requirements of 16VAC25-90-1910.132 (General requirements) and 16VAC25-90-1910.134 (Respiratory protection) shall apply to all employers for that purpose.

4. PPE ensembles for employees in the medium exposure risk category will vary by work task, the results of the employer's hazard assessment, and the types of exposures employees have on the job.

AMENDMENT – AJ

16VAC25-220-60.D.5, Requirements for hazards or job tasks classified at medium exposure risk.

Where employees are required to wear respiratory protection for a hazard other than COVID-19 such as silica or asbestos, substituting a surgical mask or face covering is not appropriate. The employer must make reasonable efforts to acquire and use other types of respirators that offer the same or higher protection than the filtering facepiece respirator. This may include an N100 disposable respirator, a nondisposable elastomeric cartridge respirator, or a tight-fitting or loose fitting powered air purifying respirator when disposable N95s are not available.

AJ: I am still very concerned about the early provision that employers don't have to provide PPE if it is not available on commercially feasible terms if they show good faith. In particular, I am referring to respiratory protection. What I see in the field is that masons and concrete workers are wearing face coverings rather than respirators. I do not think this is appropriate. OSHA guidance language is not so generous. I am suggesting that we insert the following language in 60.D.4 or 5 to at least clarify that this is not acceptable and that you can't just say they don't have an N95 or it costs too much.... You can certainly see why switching to a more expensive respirator could fall into your "commercially reasonable terms," particularly if this term is not defined.

Department Response: The Department does not believe the amendment is necessary in its current form and may cause confusion. The ETS and the Draft Final Standard only apply to workplace exposures involving employee exposure to SARS-CoV-2 and COVID-19. It is the position of the Department that this standard cannot override existing VOSH/OSHA standards and regulations applicable to other occupational hazards, such as exposure to silica. In the instance of silica, employers must comply with VOSH standards applicable to hazards associated with occupational exposure to silica without any consideration to the provisions of this standard.

16VAC25-220-70. Infectious disease preparedness and response plan.

A. Employers with hazards or job tasks classified as:

1. Very high and high shall develop and implement a written Infectious Disease Preparedness and Response Plan;
2. Medium with 11 or more employees shall develop and implement a written Infectious Disease Preparedness and Response Plan.

B. The plan and training requirements tied to the plan shall only apply to those employees classified as very high, high, and medium covered by this section.

C. Employers shall designate a person to be responsible for implementing their plan. The plan shall:

1. Identify the name or title of the person responsible for administering the plan. This person shall be knowledgeable in infection control principles and practices as the principles and practices apply to the facility, service, or operation.
2. Provide for employee involvement in development and implementation of the plan.
3. Consider and address the level of SARS-CoV-2 virus and COVID-19 disease risk associated with various places of employment, the hazards employees are exposed to at those sites, and job tasks employees perform at those sites. Such considerations shall include:
 - a. Where, how, and to what sources of the SARS-CoV-2 virus or COVID-19 disease might employees be exposed at work, including:

~~i. (1)~~ The general public, customers, other employees, patients, and other persons;

~~ii. (2)~~ Persons ~~known or suspected to be infected with the SARS-CoV-2 virus~~
~~persons~~ or those at particularly high risk of COVID-19 infection (e.g., local, state,
national, and international travelers who have visited locations with ongoing
COVID-19 community transmission and healthcare employees who have had
unprotected exposures to persons known or suspected to be infected with SARS-
CoV-2 virus ~~persons~~); ~~and~~

~~iii. (3)~~ Situations where employees work more than one job with different
employers and encounter hazards or engage in job tasks that present a very high,
high, or medium level of exposure risk; ~~and~~

iv. Situations where employees work during higher risk activities involving
potentially large numbers of people or enclosed work areas such as at large social
gatherings, weddings, funerals, parties, restaurants, bars, hotels, sporting events,
concerts, parades, movie theaters, rest stops, airports, bus stations, train stations,
cruise ships, river boats, airplanes, etc.¹⁸

AJ: [In reference to the below phrase “b. To the extent permitted by law, including HIPAA, employees’ individual risk factors for severe disease.”] This is not a sentence.

Department Response: The below phrase has to be read in conjunction with 16VAC25-220-70.C.3 which starts “Such considerations shall include: b. To the

¹⁸ <https://www.vdh.virginia.gov/coronavirus/coronavirus/travel-to-areas-with-widespread-ongoing-community-spread/>

<https://www.cdc.gov/coronavirus/2019-ncov/travelers/travel-during-covid19.html>

extent permitted by law, including HIPAA, employees' individual risk factors for severe disease.

b. To the extent permitted by law, including HIPAA, employees' individual risk factors **for severe disease**. For example, people of any age with one or more of the following conditions are at increased risk of severe illness from COVID-19: chronic kidney disease; COPD (chronic obstructive pulmonary disease); immunocompromised state (weakened immune system) from solid organ transplant; obesity (body mass index or BMI of **430**¹⁹ or higher); serious heart conditions, such as heart failure, coronary artery disease, or cardiomyopathies; sickle cell disease; or type 2 diabetes mellitus). Also, for example, people with one or more of the following conditions might be at an increased risk for severe illness from COVID-19: asthma (moderate-to-severe); cerebrovascular disease (affects blood vessels and blood supply to the brain); cystic fibrosis; hypertension or high blood pressure; immunocompromised state (weakened immune system) from blood or bone marrow transplant, immune deficiencies, HIV, use of corticosteroids, or use of other immune weakening medicines; neurologic conditions, such as dementia; liver disease; pregnancy; pulmonary fibrosis (having damaged or scarred lung tissues); smoking; thalassemia (a type of blood disorder); type 1 diabetes mellitus; etc.). **The risk for severe illness from COVID-19 also increases with age.**²⁰

¹⁹ <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-with-medical-conditions.html>

²⁰ <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/older-adults.html>

- c. Engineering, administrative, work practice, and personal protective equipment controls necessary to address those risks.
4. Consider and address contingency plans for situations that may arise as a result of outbreaks and impact employee safety and health, such as:
- a. Increased rates of employee absenteeism (an understaffed business can be at greater risk for accidents),²¹
 - b. The need for physical distancing, staggered work shifts, downsizing operations, delivering services remotely, and other exposure-reducing workplace control measures such as elimination and substitution, engineering controls, administrative and work practice controls, and personal protective equipment; (e.g., respirators, surgical/medical procedure masks, etc.);
 - c. Options for conducting essential operations in a safe and healthy manner with a reduced workforce, including cross-training employees across different jobs in order to continue operations or deliver surge services; and
 - d. Interrupted supply chains or delayed deliveries of safety and health related products and services essential to business operations.

²¹ <https://smallbusiness.chron.com/absenteeism-affect-safety-workplace-62089.html>

AMENDMENT – AJ

16VAC25-220-70.C.5.c, Infectious disease preparedness and response plan.

c. Establish policies and procedures for managing and educating visitors to the procedures at the place of employment.

5. Identify basic infection prevention measures to be implemented:

a. Promote frequent and thorough hand washing, including by providing employees, customers, visitors, the general public, and other persons to the place of employment with a place to wash their hands. If soap and running water are not immediately available, provide hand sanitizers.

b. Maintain regular housekeeping practices, including routine cleaning and disinfecting of surfaces, equipment, and other elements of the work environment.

c. Establish policies and procedures for managing and educating visitors to the place of employment.

6. Provide for the prompt identification and isolation of employees known or suspected to be infected with the SARS-CoV-2 virus employees—away from work, including procedures for employees to report when they are experiencing signs and/or symptoms of COVID-19.

7. Address infectious disease preparedness and response with outside businesses, including, but not limited to, subcontractors who enter the place of employment,

businesses that provide ~~or~~ contract or temporary employees to the employer, and other persons accessing the place of employment to comply with the requirements of this standard and the employer's plan.

8. Identify the mandatory and non-mandatory recommendations in any CDC guidelines or Commonwealth of Virginia guidance documents the employer is complying with, if any, in lieu of a provision of this standard, as provided for in 16VAC25-220-10 G 1 and G 2.

~~9. Ensure compliance with mandatory requirements of any applicable Virginia executive order or order of public health emergency related to the SARS-CoV-2 virus or COVID-19 disease.~~

16VAC25-220-80. Training.

A. Employers with hazards or job tasks classified as very high, high, or medium exposure risk at a place of employment shall provide training on the hazards and characteristics of the SARS-CoV-2 virus and COVID-19 disease to all employees working at the place of employment regardless of employee risk classification. The training program shall enable each employee to recognize the hazards of the SARS-CoV-2 virus and signs and symptoms of COVID-19 disease and shall train each employee in the procedures to be followed in order to minimize these hazards.

B. The training required under subsection A shall include:

1. The requirements of this standard;

AMENDMENT – AJ

16VAC25-220-80.B.2 Training.

2. The mandatory and non-mandatory ~~recommendations~~ provisions in any applicable CDC guidelines....

2. The mandatory and non-mandatory recommendations provisions in any CDC guidelines or State Commonwealth of Virginia guidance documents the employer is complying with, if any, in lieu of a provision of this standard as provided for in section 16VAC25-220-10 EG 1 and EG 2;

3. The characteristics and methods of transmission of the SARS-CoV-2 virus;

4. The signs and symptoms of the COVID-19 disease;

5. Risk factors of for severe COVID-19 illness with including underlying health conditions and advancing age;

6. Awareness of the ability of persons pre-symptomatically and asymptomatically infected with SARS-CoV-2 COVID-19 persons to transmit the SARS-CoV-2 virus;

7. Safe and healthy work practices, including but not limited to, physical distancing, the wearing of face coverings; disinfection procedures, disinfecting frequency, ventilation, noncontact methods of greeting, etc.;

8. Personal protective equipment (PPE):

a. When PPE is required;

- b. What PPE is required;
- c. How to properly don, doff, adjust, and wear PPE;
- d. The limitations of PPE;
- e. The proper care, maintenance, useful life, and disposal of PPE; and
- f. Strategies to extend PPE usage during periods of limited supply; and

AMENDMENT – TT

16VAC25-220-80.B.8.f, TRAINING.

(f) Strategies to extend PPE usage during periods when supplies are not available and no other options are available for protection, as long as the extended use of the PPE does not pose any increased risk of exposure. The training to extend PPE usage shall include the conditions of extended PPE use, inspection criteria of the PPE to determine whether it can or cannot be used for an extended period, and safe storage requirements for PPE used for an extended period.

f.g. Heat-related illness prevention including the signs and symptoms of heat-related illness associated with the use of COVID-19 PPE and face coverings;

9. The anti-discrimination provisions in 16VAC25-220-90; and

10. The employer's Infectious Disease Preparedness and Response Plan, where applicable.

AMENDMENT – AJ

16VAC25-220-80.C, Training.

<p>C. Employers covered by 16VAC25-220-50 shall verify compliance with 16VAC25-220-80 A by preparing a written certification record for those employees exposed to hazards or job tasks classified as very high, high, or medium exposure risk levels.</p>
<p>AJ: I missed this in the ETS that it only applied to very high and high not medium. So they do not have to keep any training records? That is silly and it should apply to all in required to train in accordance to section 80A.</p>
<p>Department Response: The Department does not support the amendment.</p>

C. Employers covered by 16VAC25-220-50 shall verify compliance with 16VAC25-220-80 A by preparing a written certification record for those employees exposed to hazards or job tasks classified as very high, high, or medium exposure risk levels.

1. The written certification record shall contain:

a. The name or other unique identifier of the employee trained,

b. The trained employee's physical or electronic signature,

c. The date of the training, and

d. ~~t~~The name of the person who conducted the training, or for computer-based training, the name of the person or entity that prepared the training materials.

2. A physical or electronic signature is not necessary if other documentation of training completion can be provided (e.g., electronic certification through a training system; security precautions that enable the employer to demonstrate that training was accessed by passwords and usernames unique to each employee, etc.).

AJ: [With regard to 16VAC220-80.D.3 below] These provisions are not significantly different from the provisions of the ETS so employers who complied with the ETS in August should not have to prove that the training was adequate. This is a punishment for those who actually complied with the ETS.

3. If ~~the~~ an employer relies on training conducted by another employer or completed prior to the effective date of this standard, the certification record shall indicate the date the employer determined the prior training was adequate rather than the date of actual training.

D4. The latest training or retraining certification shall be maintained.

E. When the an employer has reason to believe that any affected employee who has already been trained does not have the understanding and skill required by 16VAC25-220-80 A, the employer shall retrain each such employee. Circumstances where retraining is required include, but are not limited to, situations where:

1. Changes in the workplace, SARS-CoV-2 virus or COVID-19 disease hazards exposed to, or job tasks performed render previous training obsolete;
2. Changes are made to the employer's Infectious Disease Preparedness and Response Plan; or
3. Inadequacies in an affected employee's knowledge or use of workplace control measures indicate that the employee has not retained the requisite understanding or skill.

F. Employers with hazards or job tasks classified at lower risk shall provide written or oral information to employees exposed to such hazards or engaged in such job tasks on the hazards and characteristics of SARS-COV-2 and the symptoms of COVID-19 and measures to minimize exposure. The Department of Labor and Industry shall develop an information sheet containing information on the items listed in subsection G, which an employer may utilize to comply with this subsection.

G. The information required under subsection F shall include at a minimum:

1. The requirements of this standard;
2. The characteristics and methods of transmission of the SARS-CoV-2 virus;
3. The signs and symptoms of the COVID-19 disease;
4. The ability of persons, pre-symptomatically and asymptomatically infected with SARS-CoV-2 COVID-19 persons to transmit the SARS-CoV-2 virus;

5. Safe and healthy work practices and control measures, including but not limited to, physical distancing, the benefits of wearing face coverings, sanitation and disinfection practices; and

6. The anti-discrimination provisions of this standard in 16VAC25-220-90.

16VAC25-220-90. Discrimination against an employee for exercising rights under this standard is prohibited.

A. No person shall discharge or in any way discriminate against an employee because the employee has exercised rights under the safety and health provisions of this standard, Title 40.1 of the Code of Virginia, and implementing regulations under 16VAC25-60-110 for themselves or others.

AMENDMENT: AJ

16VAC25-220-90.B, Discrimination against an employee for exercising rights under this standard is prohibited.

AJ: [With regard to the above sentence “No person shall discharge or in any way discriminate against an employee who voluntarily provides and wears the employee's own face covering, provided that the face covering does not create a greater hazard to the employee or create a serious hazard for other employees.] I am concerned that this may affect the employer’s ability to prevent employees from wearing face coverings that are political, sexist, racist, or obscene. I have clients who have experienced these problems.

Department Response: The Department recommends the following revised language:

In situations where face coverings are not provided by the employer, ~~no~~ no person shall discharge or in any way discriminate against an employee who voluntarily provides and wears the employee's own face covering that meets the requirements of this standard, provided that the face covering does not create a greater hazard to the employee or create a serious hazard for other employees. Nothing in this subsection shall be construed to prohibit an employer from establishing and enforcing legally permissible dress code or similar requirements addressing the exterior appearance of personal protective equipment or face coverings.

B. No person shall discharge or in any way discriminate against an employee who voluntarily provides and wears the employee's own personal protective equipment, including but not limited to a respirator, face shield, gown, or gloves, or face covering if such equipment is not provided by the employer, provided that the PPE does not create a greater hazard to the employee or create a serious hazard for other employees. No person shall discharge or in any way discriminate against an employee who voluntarily provides and wears the employee's own face covering,

provided that the face covering does not create a greater hazard to the employee or create a serious hazard for other employees.

AMENDMENT: CM

16VAC25-220-90.C, Discrimination against an employee for exercising rights under this standard is prohibited.

C. No person shall discharge or in any way discriminate against an employee who raises a reasonable concern about infection control related to the SARS-CoV-2 virus and COVID-19 disease to the employer, the employer's agent, other employees, or a government agency, ~~or to the public such as through print, online, social, or any other media.~~

Department Response: The Department does not support the proposed amendment.

The current language reflects current case law on the topic.

C. No person shall discharge or in any way discriminate against an employee who raises a reasonable concern about infection control related to the SARS-CoV-2 virus and COVID-19 disease to the employer, the employer's agent, other employees, a government agency, or to the public such as through print, online, social, or any other media.

AMENDMENT: CM

16VAC25-220-90.D, Discrimination against an employee for exercising rights under this standard is prohibited.

D. Nothing in this standard shall limit an employee from refusing to do work or enter a location that ~~the employee feels~~ is unsafe. ~~However, employees should familiarize themselves with The requirements of 16VAC25-60-110, which contains~~ provide the applicable requirements concerning discharge or discipline of an employee who has refused to complete an assigned task because of a reasonable fear of injury or death.

D. Nothing in this standard shall limit an employee from refusing to do work or enter a location that the employee feels is unsafe. However, employees should familiarize themselves with 16VAC25-60-110, which contains the requirements concerning discharge or discipline of an employee who has refused to complete an assigned task because of a reasonable fear of injury or death.