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Submitted Electronically

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RE: VMA Testimony - Safety and Health Codes Board intent to amend Permanent Standard for Infectious Disease Prevention: SARS-CoV-2 Virus That Causes COVID-19, 16VAC25-220

Dear Safety and Health Codes Board Members:

My name is Brett Vassey. I am the President & CEO of the Virginia Manufacturers Association. Thank you for the opportunity to address you today. I also want to express my appreciation for the extra effort made by the staff, Jay Withrow and Princy Doss in particular, to communicate with the business community over the last eight months.

The Virginia Manufacturers Association ("VMA") represents more than 6,750 manufacturing facilities and suppliers that employ over 238,000 individuals, contribute $45 billion to the gross state product, and account for 80% of the Commonwealth's goods exports to the global economy. VMA advocates for science-based, practical health and safety regulations. VMA's members are directly affected by the "one size fits all" VA COVID-19 Regulations. We thank you for the opportunity to comment on the Virginia Department of Labor and Industry's announced intent to amend the Permanent Standard for Infectious Disease Prevention: SARS-CoV-2 Virus That Causes COVID-19, 16VAC25-220 (collectively, the "Regulations").

Virginia manufacturers and suppliers have protected their employees, contractors, suppliers, customers, and communities from COVID-19 infection by continually updating their COVID-19 protocols to ensure compliance with the latest regulations and guidance imposed by federal, state, and local governments. Despite the additional stress, costs, and time related to compliance, **manufacturing leaders accepted their role in reducing the risk of exposure and spread of the**

virus as well as continuing operations to produce medicine, PPE, food, and invent new products to meet public health needs such as UV sanitation devices and vaccines.

However, the permanent standard is a static regulation for a temporary pandemic. There is no evidence that employers are in full compliance with this standard, nor is their evidence that compliance with OSHA Guidance, CDC Guidance, and Governor's Executive Orders are not protective. 45 states are proof that the Board is over-regulating. As such, we respectfully ask the Board to repeal the permanent standard.

In the event that you do not repeal the permanent standard, I want to resubmit our comments from January 8, 2021 that included dozens of concerns and nearly 30 unanswered questions but today I want to highlight a few specific standards for your consideration:

1. **Requiring "Low" and "Medium" risk facilities to maintain HVAC systems in accordance with manufacturers' instructions does not address the potential hazard (if any) as it relates to ventilation. Requiring ASHRAE standards 62.1, 62.2 and 170 should be struck entirely from Regulations. In addition, the language does not account for older facilities, as upgrading the ventilation in those facilities may be infeasible.**

NOTE: Governor proposed $250 million for HVAC compliance costs for only 197 schools. The VDOLI economic impact assessment of this cost to industry is completely inaccurate and inadequate.

Instead, the VMA recommends that the Board adopt the CDC guidelines listed below (where feasible) to adequately address the issue:

- Increase ventilation rates.
- Ensure ventilation systems operate properly and provide acceptable indoor air quality for the current occupancy level for each space.
- Increase outdoor air ventilation, using caution in highly polluted areas. With a lower occupancy level in the building, this increases the effective dilution ventilation per person.
- Disable demand-controlled ventilation (DCV).
- Further open minimum outdoor air dampers (as high as 100%) to reduce or eliminate recirculation. Provide for flexibility to accommodate thermal comfort or humidity needs in cold or hot weather.
- Improve central air filtration to the MERV-13 or the highest compatible with the filter rack, and seal edges of the filter to limit bypass.
- Check filters to ensure they are within service life and appropriately installed.
- Keep systems running longer hours, 24/7 if possible, to enhance air exchanges in the building space.

2. **Requiring "respiratory protection" and "personal protective equipment standards applicable to the employer's industry" in vehicles with more than 1 person is impractical and vague.** There are other controls, when used together, that should be

considered, and the Regulations should reflect so. The Regulations should not incorporate this provision. Employers should be allowed to only require face coverings while in the vehicle provided the occupants follow CDC guidelines.

3. **§16VAC25-220-90 unreasonably expands protections for employee complaints to the news media and social media without due process for the employer.** The Regulations exceed federal OSHA protections. Some employers have policies restricting statements to the press or statements reflecting poorly on their employers. Whistleblower protection is intended to protect employee complaints to the responsible government regulatory agency. The language "or to the public such as through print, online, social, or any other media" should be struck from the Regulations and protections should be limited only to notification to the responsible government regulatory agency. Further, if a person is proven to have provided false statements on social media and never raised the concerns with the responsible government regulatory agency or management of the company, they should not be insulated from action.

   There should be no enforcement without prior notice to and "due process" for an employer. The Regulations have no identifiable "due process" for employers involving a "whistleblower," and no requirement that complaints filed with DOLI require identification of the plaintiff. Anonymous complaints should not be allowed in cases involving these Regulations – disgruntled employees, punitive customers, and unethical competitors could use complaints for destructive purposes. The employer should be afforded due process to defend themselves against accusations of safety violations and this should be included in the Regulations.

Finally, **we strongly encourage the Board to adopt Governor Northam's recommendation to amend Section 16VAC25-220-10. E to provide employers with a CDC compliance "safe harbor."** We hope the Board will adopt the following language change.

> *E. To the extent that an employer actually complies with a recommendation contained in CDC guidelines, whether mandatory or nonmandatory, to mitigate SARS-CoV-2 virus and COVID-19 disease related hazards or job tasks addressed by this standard, the employer's actions shall be considered in compliance with the related provisions of 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 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.*

Thank you for your consideration.