



June 22, 2020

On behalf of Airlines for America (“A4A”) and our ten member airlines, thank you for the opportunity to comment on the proposed Safety and Health Codes Board, Emergency Temporary Standard/Emergency Regulation 16 VAC 25-220 (“the Proposed Regulation.”)

U.S. airlines were among the first industries to feel the economic impacts of the pandemic and continue to experience the devastating impact of COVID-19. Since the onset of this crisis, our members have been at the forefront of redesigning our business practices with the wellbeing of both our passengers and employees in mind. We wholeheartedly support evidence-based preventive measures to mitigate the spread of the coronavirus. Our members have, on a voluntary basis, adopted enhanced cleaning and sanitization methods throughout our operations, moved many of those who could work remotely to a telework status, implemented personal protective equipment requirements for those employees who cannot work remotely and required face coverings for all travelers and customer-facing employees.. These safety measures were taken with consideration of Center for Disease Control (CDC) guidance, without any binding government requirements and reflect many of the obligations included in the Proposed Regulation.

Despite the extensive proactive measures our members have taken to protect our employees and customers, we are concerned that the Proposed Regulation as drafted is vague, ambiguous and at times redundant and contradictory. Moreover, the regulation converts the CDC guidelines for reducing transmission into mandatory requirements that, as a practical matter, are difficult to comply with in all circumstances. Finally, this remains a rapidly evolving situation and by codifying the CDC’s flexible and evolving guidance, the Proposed Regulation risks setting requirements that will quickly become outdated.

First, the Regulation contains redundant requirements that would be difficult to implement without creating confusion. For example, § 40(A)(6) requires employers to discuss with subcontractors, and companies that provide contract or temporary employees, the importance of sick employees staying home and encourage them to develop non-punitive sick leave policies. Presumably, this Proposed Regulation is applicable not only to the employer, but also to the companies they subcontract with, who are in their own right employers and *also* subject to the Proposed Regulation. It is not clear why employers should be required to discuss requirements with others who are also subject to those requirements.

Similarly, § 40(A)(7) requires employers to notify their employees and other employers present at the worksite of a positive test result among its “own employees, a subcontractor employee, contract, temporary employee, or other person” who was present at the place of employment. However, each of the contractor and subcontractor employers are also required to notify their employees and contractors, requiring duplicative, circular and potentially confusing notification of positive COVID-19 cases. Moreover, because the identity of the individual who tested positive must be kept confidential, this duplicative requirement will confuse whether one, or multiple, cases of COVID-19 were discovered. Any required notification should be limited to obligating employers notify other companies if one of their own employees test positive, and notifying their



employees if any person at the worksite tests positive. There should be no requirement that employers notify contractor or subcontractor employees of third-party employee positive tests.

Many of the requirements are proscriptive and seemingly designed for closed worksites, like office buildings or manufacturing plants, rather than locations where multiple businesses – many of which have limited or no relationship to each other – operate, such as airports. In such a context, the layering of obligations concerning non-employees – such as providing PPE or notifying of known or suspected cases – are difficult to implement.

A second concern is that the regulation makes mandatory a snapshot of CDC guidelines that are themselves flexible and evolving, reflecting best practices based on contemporary knowledge of a new virus. That body of knowledge increases daily, and the recommended best practices evolve to reflect new information. The CDC's requirements on face coverings and masks is one example. As the infections climbed throughout March, the CDC's initial guidance recommended social distancing only and advised against face coverings, except for medical professionals. However, as studies on asymptomatic and pre-symptomatic transmission became available, the CDC revised its guidance to recommend "wearing cloth face coverings in public settings where other social distancing measures are difficult to maintain." The Proposed Regulation calcifies best practices based on current knowledge, which could quickly become outdated and result in unnecessary requirements that fail to incorporate recommended best practices.

A4A urges the Board to refrain from the hasty adoption of such an expansive Proposed Regulation without more careful deliberation and drafting, and recommends that the Board instead adopt the CDC's more flexible approach that recommends best practices based on the best information available at the time.

Sincerely,

Sean Williams