

COVID-19 Regulatory and Legislative Update

Prepared by
The Franklin Partnership, LLC
December 11, 2020



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Nothing contained in here shall be deemed legal advice.

More Resources: www.onevoiceinfo.org

ONE VOICE COVID-19 RAPID RESPONSE WEBSITE

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Agenda

- CDC Quarantine Recommendation
- CDC Releases Ventilation FAQ
- CDC and OSHA issue Cloth Face Covering Statements
- OSHA Frequently Cited Violations Top 10
- IRS News Releases: Unemployment Benefit Reminder & Delay in 7200 Payments
- Treasury, IRS Reiterate Borrowers Cannot Deduct Expenses if Expect Loan Forgiveness
- One Voice Opposing SBA Form 3509 “Necessity Questionnaire”
- SBA Forgiveness Application Data Released
- Legislative Update

All information presented as of December 11, 2020

CDC Guidance: Options to Reduce Quarantine

Options to reduce quarantine

Reducing the length of quarantine may make it easier for people to quarantine by reducing the time they cannot work. A shorter quarantine period also can lessen stress on the public health system, especially when new infections are rapidly rising.

Your local public health authorities make the final decisions about how long quarantine should last, based on local conditions and needs. Follow the recommendations of your local public health department if you need to quarantine. Options they will consider include stopping quarantine

- After day 10 without testing
- After day 7 after receiving a negative test result (test must occur on day 5 or later)

After stopping quarantine, you should

- Watch for symptoms until 14 days after exposure.
- If you have symptoms, immediately self-isolate and contact your local public health authority or healthcare provider.
- Wear a mask, stay at least 6 feet from others, wash their hands, avoid crowds, and take other steps to [prevent the spread of COVID-19](#).

CDC continues to endorse quarantine for 14 days and recognizes that any quarantine shorter than 14 days balances reduced burden against a small possibility of spreading the virus. CDC will continue to evaluate new information and update recommendations as needed. See [Options to Reduce Quarantine for Contacts of Persons with SARS-CoV-2 Infection Using Symptom Monitoring and Diagnostic Testing](#) for guidance on options to reduce quarantine.

December 8, 2020

<https://www.cdc.gov/coronavirus/2019-ncov/if-you-are-sick/quarantine.html>

CDC Issues Building Ventilation FAQ

Ventilation FAQs

Can COVID-19 be transmitted through HVAC (ventilation) systems?



How long will it take to dilute the concentration of infectious particles in a room once they are generated?



Can ventilation filters effectively capture SARS-CoV-2 viral particles?



What is meant by “directional airflow?” How and where should we use it?



What is a HEPA filter and why would I want to use a portable HEPA air cleaner?



Does germicidal ultraviolet (GUV) disinfection kill the virus that causes COVID-19?



What are types of germicidal ultraviolet (GUV) for cleaning and disinfection in the workplace?



Many new air disinfection devices are being marketed for their ability to inactivate the virus that causes COVID-19. How can I tell if they work as advertised?



Centers for Disease Control and Prevention
CDC 24/7: Saving Lives, Protecting People™

December 8, 2020

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

Last Updated Dec. 8, 2020

Content source: National Center for Immunization and Respiratory Diseases (NCIRD), Division of Viral Diseases

CDC Scientific Review: Cloth Face Coverings Can Protect

Source Control to Block Exhaled Virus

Multi-layer cloth masks block release of exhaled respiratory particles into the environment,³⁻⁶ along with the microorganisms these particles carry.^{7,8} 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;^{3,5} which increase in number with the volume of speech¹⁰⁻¹² and specific types of phonation.¹³ Multi-layer cloth masks can both block up to 50-70% of these fine droplets and particles^{3,14} and limit the forward spread of those that are not captured.^{5,6,15,16} Upwards of 80% blockage has been achieved in human experiments that have measured blocking of all respiratory droplets,⁴ with cloth masks in some studies performing on par with surgical masks as barriers for source control.^{3,9,14}

Filtration for Personal Protection

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. The relative filtration effectiveness of various masks has varied widely across studies, in large part due to variation in experimental design and particle sizes analyzed. Multiple layers of cloth with higher thread counts have demonstrated superior performance compared to single layers of cloth with lower thread counts, in some cases filtering nearly 50% of fine particles less than 1 micron.^{14,17-29} Some materials (e.g., polypropylene) may enhance filtering effectiveness by generating triboelectric charge (a form of static electricity) that enhances capture of charged particles^{18,30} while others (e.g., silk) may help repel moist droplets³¹ and reduce fabric wetting and thus maintain breathability and comfort.

November 20, 2020

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

OSHA: Cloth Face Coverings Not PPE



OSHA National News Release

U.S. Department of Labor

November 18, 2020

U.S. Department of Labor Updates Frequently Asked Questions To Address Cloth Face Coverings as Personal Protective Equipment

WASHINGTON, DC – The U.S. Department of Labor's Occupational Safety and Health Administration (OSHA) has published an update to its [Frequently Asked Questions \(FAQ\)](#) to address whether OSHA considers cloth face coverings to be personal protective equipment. The agency is addressing the topic after the Centers for Disease Control and Prevention (CDC) recently determined that some cloth face coverings may serve as source control while also providing the wearer with some personal protection.

The FAQ states that OSHA does not believe enough information is currently available to determine if a particular cloth face covering provides sufficient protection from the coronavirus hazard to be personal protective equipment under OSHA's standard. OSHA's determination is consistent with statements made by the CDC, which has stated it needs more research on cloth facemasks' protective effects, particularly on the combination of materials that maximize blocking and filtering effectiveness.

OSHA continues to encourage workers strongly to wear face coverings when in close contact with others to reduce the risk of spreading the coronavirus, if it is appropriate for the work environment.

Visit OSHA's [COVID-19 webpage](#) for further information and resources about the coronavirus.

Under the Occupational Safety and Health Act of 1970, employers are responsible for providing safe and healthful workplaces for their employees. OSHA's role is to help ensure these conditions for America's working men and women by setting and enforcing standards, and providing training, education and assistance. For more information, visit www.osha.gov.

The mission of the Department of Labor is to foster, promote and develop the welfare of the wage earners, job seekers and retirees of the United States; improve working conditions; advance opportunities for profitable employment; and assure work-related benefits and rights.

###

<https://www.osha.gov/news/newsreleases/national/11182020>

OSHA: Still Recommend Face Coverings; Hazard Exceptions

Should workers wear a cloth face covering while at work, in accordance with the Centers for Disease Control and Prevention recommendation for all people to do so when in public?

OSHA generally recommends that employers encourage workers to wear face coverings at work. Face coverings are intended to prevent wearers who have Coronavirus Disease 2019 (COVID-19) without knowing it (i.e., those who are asymptomatic or pre-symptomatic) from spreading potentially infectious respiratory droplets to others. This is known as source control.

Consistent with the Centers for Disease Control and Prevention (CDC) recommendation for all people to wear cloth face coverings when in public and around other people, wearing cloth face coverings, if appropriate for the work environment and job tasks, conserves other types of personal protective equipment (PPE), such as surgical masks, for healthcare settings where such equipment is needed most.

Employers have the discretion to determine whether to allow employees to wear cloth face coverings in the workplace based on the specific circumstances present at the work site. For some workers, employers may determine that wearing cloth face coverings presents or exacerbates a hazard. For example, cloth face coverings could become contaminated with chemicals used in the work environment, causing workers to inhale the chemicals that collect on the face covering. Over the duration of a work shift, cloth face coverings might also become damp (from workers breathing) or collect infectious material from the work environment (e.g., droplets of other peoples' infectious respiratory secretions). Workers may also need to use PPE that is incompatible with the use of a cloth face covering (e.g., an N95 filtering facepiece respirator).

Where cloth face coverings are not appropriate in the work environment or during certain job tasks (e.g., because they could become contaminated or exacerbate heat illness), employers can provide PPE, such as face shields and/or surgical masks, instead of encouraging workers to wear cloth face coverings. Like cloth face coverings, surgical masks and face shields can help contain the wearer's potentially infectious respiratory droplets and can help limit spread of COVID-19 to others.

Note that cloth face coverings are not considered PPE and cannot be used in place of respirators when respirators are otherwise required.

Learn more about cloth face coverings on the [CDC website](https://www.cdc.gov/covid19/faq.html).

Employers should consider evaluating their accessible communication policies and procedures to factor in potentially providing masks with clear windows to facilitate interaction between employees and members of the public who need to lip-read to communicate.

November 18, 2020

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

OSHA Frequently Cited COVID Violations



Lessons Learned: Frequently Cited Standards Related to COVID-19 Inspections

The following are examples, to date, of requirements that employers have most frequently failed to follow:

- ① Provide a **medical evaluation** before a worker is fit-tested or uses a respirator.
- ② Perform an appropriate **fit test** for workers using tight fitting respirators.
- ③ Assess the workplace to determine if COVID-19 hazards are present, or likely to be present, which will require the use of a **respirator** and/or other **personal protective equipment (PPE)**.
- ④ **Establish, implement, and update** a written respiratory protection program with required worksite-specific procedures.
- ⑤ Provide an appropriate **respirator** and/or other **PPE** to each employee when necessary to protect the health of the employees (ensuring the respirator and/or PPE used is the correct type and size).
- ⑥ Train workers to safely use **respirators** and/or other **PPE** in the workplace, and retrain workers about changes in the workplace that might make previous training obsolete.
- ⑦ Store **respirators** and other **PPE** properly in a way to protect them from damage, contamination, and, where applicable, deformation of the facepiece and exhalation valve.
- ⑧ For any fatality that occurs within 30 days of a work-related incident, **report** the fatality to OSHA within eight hours of finding out about it.
- ⑨ Keep **required records** of work-related fatalities, injuries, and illness.

November 2020

<https://www.osha.gov/SLTC/covid-19/covid-citations-lessons.pdf>

IRS: If Had Employees on Unemployment, They Must Report

Don't forget to report unemployment compensation on your tax return

December 3, 2020

You may be among the millions of people who received or are receiving [unemployment compensation](#) due to the coronavirus pandemic. By law, these benefits are taxable and must be reported on your federal income tax return.

If you received unemployment compensation, you should receive a [Form 1099-G](#) showing the amount you were paid and any federal income tax you elected to have withheld. Some states don't mail this form. If you don't receive one by mail, go to your state's website and download the electronic version.

Federal law allows you to choose a flat 10% withholding from these benefits to cover part or all your federal income tax liability. If you didn't choose voluntary withholding, or make quarterly [estimated tax payments](#) you may get an unexpected tax bill.

<https://www.irs.gov/newsroom/dont-forget-to-report-unemployment-compensation-on-your-tax-return>

IRS: Expect Delays with Employer Credit Payments

IRS Statement about Form 7200 Payments

December 4, 2020

Employers will experience a delay in receiving payments associated with Form 7200, Advance Payment of Employer Credits, processed between late-December and mid-January due to standard end-of-year close out. The IRS will continue to accept and process valid Forms 7200 during this time, and the payment of valid requests during this time will begin to be processed on January 21, 2021. Employers will still receive Letter 6312, Form 7200 Response, if the Form 7200 cannot be processed.

<https://www.irs.gov/newsroom/irs-statement-about-form-7200-payments>

PPP: Treasury, IRS Reiterate Cannot Deduct Expenses

November 18, 2020

PRESS RELEASES

WASHINGTON – The U.S. Treasury Department and Internal Revenue Service (IRS) released guidance today clarifying the tax treatment of expenses where a Paycheck Protection Program (PPP) loan has not been forgiven by the end of the year the loan was received.

Since businesses are not taxed on the proceeds of a forgiven PPP loan, the expenses are not deductible.

This results in neither a tax benefit nor tax harm since the taxpayer has not paid anything out of pocket.

If a business reasonably believes that a PPP loan will be forgiven in the future, expenses related to the loan are not deductible, whether the business has filed for forgiveness or not. Therefore, we encourage businesses to file for forgiveness as soon as possible.

In the case where a PPP loan was expected to be forgiven, and it is not, businesses will be able to deduct those expenses.

“Today’s guidance provides taxpayers with greater clarity and flexibility,” said Secretary Steven T. Mnuchin.

“These provisions ensure that all small businesses receiving PPP loans are treated fairly, and we continue to encourage borrowers to file for loan forgiveness as quickly as possible.”

<https://home.treasury.gov/news/press-releases/sm1187>

IRS Notice
2020-27

IRS Notice
2020-51

Deduction: Treasury Creates Safe Harbor If Loan Not Forgiven

SECTION 1. PURPOSE

This revenue procedure provides a safe harbor allowing a taxpayer to claim a deduction in the taxpayer's taxable year beginning or ending in 2020 (2020 taxable year) for certain otherwise deductible eligible expenses, as defined in section 2.03 of this revenue procedure, if (1) the eligible expenses are paid or incurred during the taxpayer's 2020 taxable year, (2) the taxpayer receives a loan (covered loan) guaranteed under the Paycheck Protection Program (PPP) authorized under section 7(a)(36) of the Small Business Act (15 U.S.C. 636(a)(36)), which at the end of the taxpayer's 2020 taxable year the taxpayer expects to be forgiven in a taxable year after the 2020 taxable year (subsequent taxable year), and (3) in a subsequent taxable year,

the taxpayer's request for forgiveness of the covered loan is denied, in whole or in part, or the taxpayer decides never to request forgiveness of the covered loan, as described in section 3 of this revenue procedure. A taxpayer described in section 3.01 or 3.02 of this revenue procedure may be able to deduct some or all of the eligible expenses on (1) the taxpayer's timely filed, including extensions, original income tax return or information return, as applicable, for the 2020 taxable year; (2) an amended return or an administrative adjustment request (AAR) under section 6227 of the Internal Revenue Code (Code) for the 2020 taxable year, as applicable; or (3) the taxpayer's timely filed, including extensions, original income tax return or information return, as applicable, for the subsequent taxable year.

What IRS Deduction of PPP Expenses Rulings Mean

- IRS reiterated previous position (Notice 2020-32) that borrower receiving loan forgiveness may not deduct the eligible expenses for which forgiveness is granted
- The new IRS Revenue Ruling 2020-27 also clarifies that borrowers who expect to have their loan forgiven may not deduct their expenses
- IRS issued Ruling 2020-27 because some took position that if a loan is not forgiven in 2020 then it remains a loan for that taxable year thereby permitting deduction of expenses
- IRS issued Revenue Procedure 2020-51 to create a safe harbor for borrowers who ultimately do not have all or parts of their loan forgiven or decide to not seek forgiveness
 - Can then claim the deduction or file an amended return
- Bottom Line: Still cannot deduct expenses without Congress making a change; if your loan later is not forgiven, you can file an amended return and deduct expenses

Provision overturning IRS provision included in bipartisan COVID relief bill

If Congress moves on COVID provisions in lame duck session, considerable support for fix

One Voice Filed Comments Opposing SBA PPP Needs Test Form

November 25, 2020

The Honorable Jovita Carranza
Administrator
U.S. Small Business Administration
409 3rd Street SW
Washington, D.C. 20416

RE: Reporting and Recordkeeping Requirements Under OMB Review for the Paycheck Protection Program (PPP) (OMB Control Number: 3245-0407)

Dear Administrator Carranza:

On behalf of the National Tooling and Machining Association and Precision Metalforming Association (“One Voice” or “associations”) and our member companies, we would like to make you aware of unintentional burdens placed on Paycheck Protection Program (PPP) recipients due to SBA Forms 3509 and 3510, the “Loan Necessity Questionnaires.” The questionnaires, as currently written, introduce a confusing and onerous process that could lead the Small Business Administration and the Department of the Treasury to inappropriately question thousands of qualified PPP loans made to small businesses, potentially deny borrowers forgiveness as intended by Congress, and create a distorted perception of a company’s financial situation. On behalf of our combined 1,900 member companies, averaging sixty-eight employees, we ask you to withdraw SBA Forms 3509 and 3510.

SBA Form 3509 FAQ Released

53. **Question:** Why are some PPP borrowers receiving a Loan Necessity Questionnaire (SBA Form 3509 or 3510)?

Answer: As previously announced, SBA is reviewing all loans of \$2 million or more, and other loans as appropriate, for eligibility, fraud or abuse, and compliance with loan forgiveness requirements. As part of this process, SBA is providing a Loan Necessity Questionnaire to lenders for them to provide to PPP borrowers that, together with their affiliates, received loans of \$2 million or more.²⁸ Upon request from their lender, borrowers should return the completed questionnaire to their lender within 10 business days of receipt.

The information that borrowers provide on the questionnaire will help SBA assess those borrowers' certification in their loan application that "[c]urrent economic uncertainty makes this loan request necessary to support the ongoing operations of the Applicant," as required by the CARES Act.

A request to complete the Loan Necessity Questionnaire does not mean that SBA is challenging a borrower's certification that is required by the CARES Act. SBA's assessment of a borrower's certification will be based on the totality of the borrower's circumstances through a multi-factor analysis. As described in FAO #46, SBA will assess whether the borrower had adequate basis for making the required good-faith certification, based on its individual circumstances in light of the language of the certification and SBA guidance. This certification is required to have been made in good faith at the time of the loan application, even if subsequent developments resulted in the loan no longer being necessary. In its review, SBA may take into account the borrower's circumstances and actions both before and after the borrower's certification to the extent that doing so will assist SBA in determining whether the borrower made the statutorily required certification in good faith at the time of its loan application.

After a borrower submits its completed questionnaire, SBA may request additional information, if necessary, to complete its review. When additional information is requested, borrowers will have an opportunity to provide a narrative response to SBA explaining the circumstances that provided the basis for their good-faith loan necessity certification. SBA will make a final determination that a borrower lacked an adequate basis for its loan necessity certification after reviewing any additional information that a borrower chooses to submit. This targeted, multi-step approach will ensure the integrity of the evaluation process and expeditious processing, as well as properly allocate SBA's finite resources to those loans that require additional review.²⁹

December 9, 2020

<https://home.treasury.gov/system/files/136/Paycheck-Protection-Program-Frequently-Asked-Questions.pdf>

SBA Forgiveness Data – Applications Being Approved

Forgiveness Submission & Payment Metrics

Data as of November 22, 12:00 PM ET

Lender Forgiveness Decision Summary

Total Submissions	595,144
Amount	\$83,213,856,942

Payment Summary

Total Payments	367,321
Amount	\$38,432,262,125

<https://www.sba.gov/funding-programs/loans/coronavirus-relief-options/paycheck-protection-program>

COVID-19 Relief Bill Legislative Update

- Bipartisan group proposes \$908 billion compromise
 - Biden, Pelosi, Schumer agree to dollar amount
 - McConnell wants more targeted bill
 - State, local funding deal still problematic for GOP
 - Providing employers with liability protection is McConnell's top priority
 - Democrats pushing back on liability, want Biden to issue general industry standard
 - Senate GOP wants special standards into 2024 and cases transferred to federal courts
 - Liability protection language not detailed in bipartisan \$908 billion proposal
- PPP restart has bipartisan support (no new PPP loans since August 8)
 - Treasury Department still opposing deduction of PPP expenses if loan forgiven
 - Bipartisan proposal includes language permitting deduction PPP expenses; Senate GOP bill does not
 - May include payments to suppliers and for PPE as eligible PPP expense
 - May expand Employee Retention Credit to allow PPP recipients to claim ERTC

Goal is to attach COVID provisions, expiring tax items to government spending bill

\$908 Billion Bipartisan COVID Relief Framework

Paycheck Protection Program & Small Business

- \$300 billion to Small Business Administration
- Funding to allow to allow the hardest-hit small businesses to receive a second forgivable Paycheck Protection Program (PPP) loan.
 - Eligibility would be limited to small businesses with 300 or fewer employees that have sustained a 30 percent revenue loss in any quarter of 2020.
 - Small 501(c)(6) organizations that are not lobbying organizations and that have 150 employees or fewer, such as local chambers of commerce, economic development organizations, and tourism offices, would become eligible for PPP.
 - Forgivable expenses are expanded to include supplier costs and investments in facility modifications and personal protective equipment to operate safely.
 - Business expenses paid for with the proceeds of PPP loans are tax deductible, consistent with Congressional intent in the CARES Act.
- Extension of Section 1112 of the CARES Act, which provides payment of principal, interest, and associated fees on qualifying Small Business Administration (SBA) 7(a), 504 and microloans.
- Funding for SBA loan products to increase guarantees on SBA 7(a) loans and reduce fees on 7(a) and 504 loans; provide loan subsidies for 7(a) loans; and provide Economic Injury Disaster Loan grant advances.

\$908 Billion Bipartisan COVID Relief Framework

Unemployment Assistance

- Extension of all pandemic unemployment insurance programs by 16 weeks, from their expiration at the end of December
- Federal supplemental unemployment insurance benefits expanded by \$300 per week for 16 weeks, from the end of December into April 2021
- \$1 billion for state systems for technology modernization and fraud prevention
- Small administrative adjustments, e.g. to certification requirements and overpayment standards

Liability

- Agreement in principle as the basis for good faith negotiations

Rescissions

- Re-allocates unused Treasury direct loans and excess funds from Federal Reserve facilities authorized in the CARES Act
- Re-invests unspent balances of funds remaining from the Paycheck Protection Program back into the Paycheck Protection Program

COVID-19 Relief Bill Next Steps

- Federal Government spending expires Friday, Dec. 18 at 11:59 PM
- Plan is to attach COVID bill (and tax extenders) to final spending bill
- If cannot reach agreement on final spending bill, could extend current levels into March
- Democrats declined McConnell's offer to move bill without state funding, liability
- White House reentered talks on Wednesday, wants a direct stimulus check
 - White House engagement not seen as helpful to talks, hurts efforts to secure deduction of PPP expenses
 - Mnuchin proposal would have cut unemployment benefits in exchange for one-time \$600 stimulus
 - Trump sending signals he will sign a bill if sent to him
- If going to vote on a bill by Dec. 18, must come to an agreement by Sunday/Monday
 - Will take a day or two to draft language
 - House passage should go quickly if all Democrats stay in line
 - Could see procedural hurdles in Senate that could require two days to pass

Not expecting major stimulus language, more likely to extend not create...

Could a COVID Stimulus Happen in 2021?

- Capitol Hill now is focused on COVID “Relief” *not* “Stimulus”
 - Proposals drafted in summer months included provisions to stimulate economy
 - Congress now out of time to create something new; simply extending existing
- Biden, lawmakers looking to act on a broader bill in February/March
- Size, fate of bill may depend on economy, jobs numbers released Feb. 5 and March 5
- Stimulus bill would focus on workers, businesses, jumpstart economy
 - Continue some form of unemployment support
 - Funding for Career and Technical Education, job training, online learning, apprenticeships
 - Language to increase government procurement of U.S. made goods, vehicles
- However, to pay for programs and stimulus, Congress likely has to raise taxes
 - Could see an actual rate increase but would take GOP votes, meaning unlikely
 - Dozens of tax credits and deductions expire in coming years, could move up expiration date
 - Lawmakers could narrow those eligible for tax breaks, increasing taxes on some

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| US HRC: Prices continue to rise



US steel prices – the sky's the limit?

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