



## Exempt Action Final Regulation Agency Background Document

<b>Agency name</b>	Virginia Department of Labor and Industry/Safety and Health Codes Board
<b>Virginia Administrative Code (VAC) citation</b>	16 VAC 25-11
<b>Regulation title</b>	Public Participation Guidelines for the Safety and Health Codes Board
<b>Action title</b>	Revision of the Public Participation Guidelines for the Safety and Health Codes Board
<b>Final agency action date</b>	July 10, 2008
<b>Document preparation date</b>	July 21, 2008

When a regulatory action is exempt from executive branch review pursuant to § 2.2-4002 or § 2.2-4006 of the Virginia Administrative Process Act (APA), the agency is encouraged to provide information to the public on the Regulatory Town Hall using this form.

Note: While posting this form on the Town Hall is optional, the agency must comply with requirements of the Virginia Register Act, the *Virginia Register Form, Style, and Procedure Manual*, and Executive Orders 21 (02) and 58 (99).

### Summary

*Please provide a brief summary of all regulatory changes, including the rationale behind such changes. Alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation.*

This revision updates the public participation guidelines (PPGs) for the Safety and Health Codes Board, as required by Virginia Administrative Process Act in accordance with the additional requirements of Chapter 321 of the 2008 Acts of Assembly. For the consideration of the Board, Department staff recommended adopting the model PPGs developed by the Department of Planning and Budget (DPB).

### Statement of final agency action

*Please provide a statement of the final action taken by the agency including (1) the date the action was taken, (2) the name of the agency taking the action, and (3) the title of the regulation.*

On July 10, 2008, the Safety and Health Codes Board adopted the model PPGs developed by the Department of Planning and Budget (DPB), to be promulgated as 16 VAC 25-11, with an effective date of October 1, 2008.

### Family impact

*Assess the impact of this regulatory action on the institution of the family and family stability.*

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This final revision will have no impact on the institution of the family and family stability.

**Public Participation Guidelines for the  
Safety and Health Codes Board; Revised; Final  
16VAC25-11**

As Adopted by the

Safety and Health Codes Board

Date: July 10, 2008



**VIRGINIA OCCUPATIONAL SAFETY AND HEALTH PROGRAM**

**VIRGINIA DEPARTMENT OF LABOR AND INDUSTRY**

Effective Date: September 15, 2008

**16 VAC 25-10**

**CHAPTER 10**  
**PUBLIC PARTICIPATION GUIDELINES**  
**Part I**  
**Definitions**

**~~16VAC25-10-10. Definitions.~~**

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

~~"Ad hoc advisory group" means a task force to develop a new regulation, or review current regulations, or revise current regulations, or advise the board on particular issues under consideration for regulation.~~

~~"Administrative Process Act" means Chapter 40 ( § 2.2-4000 et seq.) of Title 2.2 of the Code of Virginia.~~

~~"Board" means the Virginia Safety and Health Codes Board.~~

~~"Commissioner" means the Commissioner of Labor and Industry or his designee.~~

~~"Department" means the Virginia Department of Labor and Industry.~~

~~"Open meeting" means an informal meeting to provide an opportunity for the board or their designee to hear information, receive views and comments, and to answer questions presented by the public on a particular issue or regulation under consideration by the board. It is a meeting to facilitate the informal exchange of information and may be held prior to or during the regulation promulgation process.~~

~~"OSHA" means the Occupational Safety and Health Administration, U.S. Department of Labor.~~

~~"Public hearing" means an informational proceeding conducted pursuant to § 2.2-4007 of the Code of Virginia.~~

~~"Regulation" means any statement of general application, having the force of law, affecting the rights or conduct of any person, promulgated by the board in accordance with the authority conferred upon it by applicable basic law.~~

~~"Secretary" means the Secretary of Commerce and Trade or his designee.~~

## **Part II General Information**

### **~~16VAC25-10-20. Applicability.~~**

~~This chapter shall apply to all regulations subject to the Administrative Process Act which are adopted by the Virginia Safety and Health Codes Board and administered by the Commissioner of Labor and Industry. The guidelines shall not apply to regulations adopted on an emergency basis. This chapter does not apply to regulations exempted from the provisions of the Administrative Process Act (§ 2.2-4002 of the Code of Virginia) or excluded from the operation of Article 2 of the Administrative Process Act (§ 2.2-4006 of the Code of Virginia).~~

### **~~16VAC25-10-30. Purpose.~~**

~~The purpose of this chapter is to ensure that the public and all parties interested in the regulations have a full and fair opportunity to participate at every stage in the development or revision of the regulations.~~

~~The failure of any person to receive any notice or copies of any documents provided under this chapter shall not affect the validity of any regulation otherwise adopted in accordance with this chapter.~~

~~At the discretion of the board, the procedures in Part III (16VAC25-10-60 et seq.) or Part IV (16VAC25-10-110 et seq.) may be supplemented to provide additional public participation in the regulation adoption process or as necessary to meet federal requirements.~~

### **~~16VAC25-10-40. Identification of interested persons and groups.~~**

~~The major groups interested in the regulatory process of the board are:~~

- ~~1. Business and labor associations and organizations such as the Virginia Manufacturers Association and the Virginia State AFL-CIO;~~
- ~~2. Persons, groups, businesses, industries, and employees affected by the specific regulation who have previously expressed an interest by writing or participating in public hearings; and~~
- ~~3. Persons or groups who have asked to be placed on an electronic or mail notification list.~~

**~~16VAC25-10-50. Public involvement with formulation of regulations.~~**

~~A. The board shall accept petitions to develop a new regulation or amend an existing regulation from any member of the public. The board shall consider the petition and respond in accordance with the Administrative Process Act.~~

~~B. The petition, at a minimum, shall contain the following information:~~

- ~~1. Name, mailing address and telephone number of petitioner;~~
- ~~2. E-mail address of petitioner, if applicable;~~
- ~~3. Petitioner's interest in the proposed action;~~
- ~~4. Substance and purpose of the requested rulemaking including recommended regulation or addition, deletion or amendment to a specific regulation;~~
- ~~5. Statement of need and justification for the proposed action;~~
- ~~6. Statement of impact on the petitioner and other affected persons; and~~
- ~~7. Reference to the legal authority of the agency to take the action requested; and~~
- ~~8. Supporting documents, as applicable.~~

**Part III**

**Public Participation Procedures**

**~~16VAC25-10-60. Advisory groups and consultation.~~**

~~A. The board may form a standing or ad hoc advisory group to make recommendations on a proposed regulation. When an ad hoc advisory group is formed, it shall include representatives from the interested persons or groups identified in 16VAC25-10-40. The membership of any ad hoc advisory group shall be selected by the board or, at the board's option, by a committee of board members or, at the direction of the board, by the commissioner.~~

~~B. Ad hoc advisory groups or consultation with groups or individuals will be used when the regulation proposed is unique to Virginia or more stringent than existing federal regulations.~~

~~C. Ad hoc advisory groups or consultation with groups or individuals may be used when:~~

1. The proposed regulation is of wide general impact;
2. The proposed regulation is of wide general interest to the public;
3. The subject of the regulation has not been regulated previously by the board;
4. The board determines this is the most effective method to develop the regulation; or
5. The board determines additional technical expertise and knowledge would be beneficial in developing the regulation.

**16VAC25-10-70. Open meetings.**

The board may schedule an open meeting or meetings to provide information and to receive views and comments and answer questions from the public. The meetings will normally be held at locations throughout the Commonwealth, but if the proposed regulation will apply only to a particular area of the state, it will be held in the affected area. These meetings may be held prior to the beginning of the formal regulatory process or during the Notice of Intended Regulatory Action period or during the 60-day comment period on proposed regulations and will be in addition to any public hearing.

**16VAC25-10-80. Notice of Intended Regulatory Action (NOIRA).**

A. The board shall issue a NOIRA whenever it intends to develop, amend or repeal any regulation subject to the Administrative Process Act (APA). The NOIRA will include all of the information required by the APA.

B. If appropriate, the board will appoint an advisory group as outlined in 16VAC25-10-60.

C. The NOIRA will be disseminated to the public via:

1. Distribution by mail, facsimile, e-mail or other appropriate delivery method to persons interested in the board's regulatory process;
2. Publication in The Virginia Register of Regulations;
3. Posting on the Regulatory Town Hall website; and
4. Posting on agency website.

#### **~~16VAC25-10-90. Proposed regulations.~~**

~~A. After consideration of public comment, the board may prepare a proposed draft regulation and any necessary documentation required for review. If an ad hoc advisory group has been established, the draft regulation shall be developed in consultation with such group.~~

~~B. The board will submit the proposed regulation to a 60-day public hearing or comment period by forwarding the appropriate documents to the Registrar of Regulations and the Regulatory Town Hall by the established submission date for the desired date of publication in The Virginia Register and the beginning of the 60-day comment period. The proposed regulation will also be posted on the agency's website and distributed by mail, facsimile or e-mail to persons on the appropriate notification list.~~

#### **~~16VAC25-10-100. Completion of the adoption process.~~**

~~A. The board shall prepare a summary of the oral and written comments received during the 60-day public comment period and the board's response to the comments. A draft of the board's summary shall be sent to all parties who commented on the proposed regulation. The summary shall be sent at least five days before final adoption of the regulation.~~

~~B. At the end of the 60-day public comment period, the department shall prepare the final proposed regulation.~~

~~C. The final regulation shall be submitted to the board for adoption.~~

~~D. The board shall submit the final regulation to the Registrar of Regulations and the Regulatory Town Hall for publication in The Virginia Register at least 30 days prior to the effective date of the regulation.~~

### **Part IV**

#### **Occupational Safety and Health Standards Promulgated by the U.S. Occupational Safety and Health Administration**

#### **~~16VAC25-10-110. General.~~**

~~The Virginia State Plan for the enforcement of occupational safety and health laws commits the state to adopt regulations that shall be at least as stringent as the standards promulgated by the U.S. Department of Labor, Occupational Safety and Health Administration.~~

~~Accordingly, participation in the formulation of such regulations must occur during the adoption of the regulations at the federal level. To encourage such participation the following actions will be taken.~~



~~16VAC25-10-120. Notice of proposed federal regulatory action.~~

~~A. When advised of proposed federal regulatory action, the board will prepare a general notice of the proposed federal regulatory action for publication on the agency website. The general notice will include:~~

- ~~1. Subject of the proposed regulation;~~
- ~~2. Summary of the issue involved and purpose of the proposed regulation;~~
- ~~3. Timetable for submitting written comments or notification of desire to be heard at hearing or both;~~
- ~~4. Time and place of public hearing;~~
- ~~5. Request that comments be submitted to OSHA with a copy to the Virginia Department of Labor and Industry;~~
- ~~6. Name and address of contact at OSHA; and~~
- ~~7. Copy of proposed regulation or link to OSHA proposed federal action.~~

~~B. The notice will be disseminated to the appropriate persons or groups identified in accordance with 16VAC25-10-40.~~

**CHAPTER 10**  
**PUBLIC PARTICIPATION GUIDELINES**  
**Part I**  
**Purpose and Definitions**

**16VAC25-11-10. Purpose.**

The purpose of this chapter is to promote public involvement in the development, amendment or repeal of the regulations of the Safety and Health Codes Board. This chapter does not apply to regulations, guidelines, or other documents exempted or excluded from the provisions of the Administrative Process Act ( ' 2.2-4000 et seq. of the Code of Virginia).

**16VAC25-11-20. Definitions.**

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

"Administrative Process Act" means Chapter 40 ( ' 2.2-4000 et seq.) of Title 2.2 of the Code of Virginia.

"Agency" means the Safety and Health Codes Board, which is the unit of state government empowered by the agency's basic law to make regulations or decide cases. Actions specified in this chapter may be fulfilled by state employees as delegated by the agency.

"Basic law" means provisions in the Code of Virginia that delineate the basic authority and responsibilities of an agency.

"Commonwealth Calendar" means the electronic calendar for official government meetings open to the public as required by ' 2.2-3707 C of the Freedom of Information Act.

"Negotiated rulemaking panel" or "NRP" means an ad hoc advisory panel of interested parties established by an agency to consider issues that are controversial with the assistance of a facilitator or mediator, for the purpose of reaching a consensus in the development of a proposed regulatory action.

"Notification list" means a list used to notify persons pursuant to this chapter. Such a list may include an electronic list maintained through the Virginia Regulatory Town Hall or other list maintained by the agency.

"Open meeting" means any scheduled gathering of a unit of state government empowered by an agency's basic law to make regulations or decide cases, which is related to promulgating, amending or repealing a regulation.

"Person" means any individual, corporation, partnership, association, cooperative, limited liability company, trust, joint venture, government, political subdivision, or any other legal or commercial entity and any successor, representative, agent, agency, or instrumentality thereof.

"Public hearing" means a scheduled time at which members or staff of the agency will meet for the purpose of receiving public comment on a regulatory action.

"Regulation" means any statement of general application having the force of law, affecting the rights or conduct of any person, adopted by the agency in accordance with the authority conferred on it by applicable laws.

Regulatory action@ means the promulgation, amendment, or repeal of a regulation by the agency.

"Regulatory advisory panel" or "RAP" means a standing or ad hoc advisory panel of interested parties established by the agency for the purpose of assisting in regulatory actions.

"Town Hall" means the Virginia Regulatory Town Hall, the website operated by the Virginia Department of Planning and Budget at [www.townhall.virginia.gov](http://www.townhall.virginia.gov) that has online public comment

forums and displays information about regulatory meetings and regulatory actions under consideration in Virginia and sends this information to registered public users.

"Virginia Register" means the Virginia Register of Regulations, the publication that provides official legal notice of new, amended and repealed regulations of state agencies, which is published under the provisions of Article 6 ( ' 2.2-4031 et seq.) of the Administrative Process Act.

## **Part II**

### **Notification of Interested Persons**

#### **16VAC25-11-30. Notification list.**

A. The agency shall maintain a list of persons who have requested to be notified of regulatory actions being pursued by the agency.

B. Any person may request to be placed on a notification list by registering as a public user on the Town Hall or by making a request to the agency. Any person who requests to be placed on a notification list shall elect to be notified either by electronic means or through a postal carrier.

C. The agency may maintain additional lists for persons who have requested to be informed of specific regulatory issues, proposals, or actions.

D. When electronic mail is returned as undeliverable on multiple occasions at least 24 hours apart, that person may be deleted from the list. A single undeliverable message is insufficient cause to delete the person from the list.

E. When mail delivered by a postal carrier is returned as undeliverable on multiple occasions, that person may be deleted from the list.

F. The agency may periodically request those persons on the notification list to indicate their desire to either continue to be notified electronically, receive documents through a postal carrier, or be deleted from the list.

**16VAC25-11-40. Information to be sent to persons on the notification list.**

A. To persons electing to receive electronic notification or notification through a postal carrier as described in 16VAC25-10-30, the agency shall send the following information:

1. A notice of intended regulatory action (NOIRA).

2. A notice of the comment period on a fast-track, proposed or a repropoed regulation and hyperlinks to, or instructions on how to obtain, a copy of the regulation and any supporting documents.

3. A notice soliciting comment on a final regulation when the regulatory process has been extended pursuant to ' 2.2-4007.06 or 2.2-4013 C of the Code of Virginia.

B. The failure of any person to receive any notice or copies of any documents shall not affect the validity of any regulation or regulatory action.

**Part III**

**Public Participation Procedures**

**16VAC25-11-50. Public comment.**

A. In considering any nonemergency, nonexempt regulatory action, the agency shall afford interested persons an opportunity to submit data, views, and arguments, either orally or in writing, to the agency. Such opportunity to comment shall include an online public comment forum on the Town Hall.

1. To any requesting person, the agency shall provide copies of the statement of basis, purpose, substance, and issues, the economic impact analysis of the proposed or fast-track regulatory action; and the agency's response to public comments received.

2. The agency may begin crafting a regulatory action prior to or during any opportunities it provides to the public to submit comments.

B. The agency shall accept public comments in writing after the publication of a regulatory action in the Virginia Register as follows:

1. For a minimum of 30 calendar days following the publication of the notice of intended regulatory action (NOIRA).
2. For a minimum of 60 calendar days following the publication of a proposed regulation.
3. For a minimum of 30 calendar days following the publication of a re-proposed regulation.
4. For a minimum of 30 calendar days following the publication of a final adopted regulation.
5. For a minimum of 30 calendar days following the publication of a fast-track regulation.
6. For a minimum of 21 calendar days following the publication of a notice of periodic review.
7. Not later than 21 calendar days following the publication of a petition for rulemaking.

C. The agency may determine if any of the comment periods listed in subsection B of this section shall be extended.

D. If the Governor finds that one or more changes with substantial impact have been made to a proposed regulation, he may require the agency to provide an additional 30 calendar days to solicit additional public comment on the changes in accordance with ' 2.2-4013 C of the Code of Virginia.

E. The agency shall send a draft of the agency's summary description of public comment to all public commenters on the proposed regulation at least five days before final adoption of the regulation pursuant to ' 2.2-4012 E of the Code of Virginia.

**16VAC25-11-60. Petition for rulemaking.**

A. As provided in ' 2.2-4007 of the Code of Virginia, any person may petition the agency to consider a regulatory action.

B. A petition shall include but is not limited to the following information:

1. The petitioner's name and contact information;

2. The substance and purpose of the rulemaking that is requested, including reference to any applicable Virginia Administrative Code sections; and

3. Reference to the legal authority of the agency to take the action requested.

C. The agency shall receive, consider and respond to a petition pursuant to ' 2.2- 4007 and shall have the sole authority to dispose of the petition.

D. The petition shall be posted on the Town Hall and published in the Virginia Register.

E. Nothing in this chapter shall prohibit the agency from receiving information or from proceeding on its own motion for rulemaking.

**16VAC25-11-70. Appointment of regulatory advisory panel.**

A. The agency may appoint a regulatory advisory panel (RAP) to provide professional specialization or technical assistance when the agency determines that such expertise is necessary to address a specific regulatory issue or action or when individuals indicate an interest in working with the agency on a specific regulatory issue or action.

B. Any person may request the appointment of a RAP and request to participate in its activities. The agency shall determine when a RAP shall be appointed and the composition of the RAP.

C. A RAP may be dissolved by the agency if:

1. The proposed text of the regulation is posted on the Town Hall, published in the Virginia Register, or such other time as the agency determines is appropriate; or

2. The agency determines that the regulatory action is either exempt or excluded from the requirements of the Administrative Process Act.

**16VAC25-11-80. Appointment of negotiated rulemaking panel.**

A. The agency may appoint a negotiated rulemaking panel (NRP) if a regulatory action is expected to be controversial.

B. A NRP that has been appointed by the agency may be dissolved by the agency when:

1. There is no longer controversy associated with the development of the regulation;

2. The agency determines that the regulatory action is either exempt or excluded from the requirements of the Administrative Process Act; or

3. The agency determines that resolution of a controversy is unlikely.

**16VAC25-11-90. Meetings.**

Notice of any open meeting, including meetings of a RAP or NRP, shall be posted on the Virginia Regulatory Town Hall and Commonwealth Calendar at least seven working days prior to the date of the meeting. The exception to this requirement is any meeting held in accordance with ' 2.2-3707 D of the Code of Virginia allowing for contemporaneous notice to be provided to participants and the public.

**16VAC25-11-100. Public hearings on regulations.**

A. The agency shall indicate in its notice of intended regulatory action whether it plans to hold a public hearing following the publication of the proposed stage of the regulatory action.

B. The agency may conduct one or more public hearings during the comment period following the publication of a proposed regulatory action.

C. An agency is required to hold a public hearing following the publication of the proposed regulatory action when:

1. The agency's basic law requires the agency to hold a public hearing;



2. The Governor directs the agency to hold a public hearing; or

3. The agency receives requests for a public hearing from at least 25 persons during the public comment period following the publication of the notice of intended regulatory action.

D. Notice of any public hearing shall be posted on the Town Hall and Commonwealth Calendar at least seven working days prior to the date of the hearing. The agency shall also notify those persons who requested a hearing under 16VAC25-10-100.C.3.

**16VAC25-10-110. Periodic review of regulations.**

A. The agency shall conduct a periodic review of its regulations consistent with:

1. An executive order issued by the Governor pursuant to ' 2.2-4017 of the Administrative Process Act to receive comment on all existing regulations as to their effectiveness, efficiency, necessity, clarity, and cost of compliance; and

2. The requirements in ' 2.2-4007.1 of the Administrative Process Act regarding regulatory flexibility for small businesses.

B. A periodic review may be conducted separately or in conjunction with other regulatory actions.

C. Notice of a periodic review shall be posted on the Town Hall and published in the Virginia Register.