



COMMONWEALTH of VIRGINIA

DEPARTMENT OF LABOR AND INDUSTRY

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COMMISSIONER

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AGENDA

SAFETY AND HEALTH CODES BOARD

PUBLIC HEARING

State Corporation Commission  
1300 East Main Street, Court Room A, Second Floor  
Richmond, Virginia

Thursday, October 18, 2007  
10:00 a.m.

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I. Call to Order

II. Item for Discussion:

**16 VAC 25-96, Reverse Signal Operation Safety Procedures:**

*For General Industry Part 1910:*

16 VAC 25-96, Proposed Regulation to Amend Reverse Signal Operation Safety Procedures dealing with Vehicular Equipment, Motor Vehicles, Material Handling Equipment and Motor Vehicle Equipment in General Industry, and the related repeal of 16 VAC 25-90-1910.269(p)(1)(ii)

*For the Construction Industry Part 1926:*

16 VAC 25-97, Proposed Regulation to Establish Reverse Signal Operation Safety Requirements for Vehicles, Machinery and Equipment for the Construction Industry; and the related repeal of 16 VAC 25-175-1926.601(b)(4), 16 VAC 25-175-602(a)(9)(ii), and 16 VAC 25-175-1926.952(a)(3)

III. Opportunity for Public Comment on the Proposed Amendments

IV. Adjournment



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**SAFETY AND HEALTH CODES BOARD**

**State Corporation Commission  
1300 East Main Street, Court Room A  
Second Floor  
Richmond, Virginia**

**Thursday, October 18, 2007**

**10:00 a.m.**

**Following Public Hearing which begins at 10:00 a.m.**

1. Call to Order
2. Approval of Agenda
3. Approval of Minutes of June 26, 2007 Meeting
4. Election of Officers
5. Opportunity for the Public to Address the Board on the issues pending before the Board today or on any other topic that may be of concern to the Board or within the scope of authority of the Board.

*This will be the only opportunity for public comment at this meeting. Please limit remarks to 5 minutes in consideration of others wishing to address the Board.*

6. **Old Business**

None

7. **New Business**

- a) Request to Initiate Notice of Intended Regulatory Action (NOIRA) to adopt Regulations Applicable to Tree Trimming Operations
- b) Request to Initiate Notice of Intended Regulatory Action (NOIRA) to adopt Confined Space Standard for Agriculture
- c) Request to Initiate of Intended Regulatory Action (NOIRA) to amend the Administrative Regulations Manual
- d) Periodic Review of Regulations – 16 VAC 25-50, Boiler and Pressure Vessel Rules and Regulations

8. Items of Interest from the Department of Labor and Industry

9. Items of Interest from Members of the Board

10. Meeting Adjournment



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**VIRGINIA SAFETY AND HEALTH CODES BOARD**

**PUBLIC HEARING**

**BRIEFING PACKAGE**

**FOR OCTOBER 18, 2007**

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**Reverse Signal Operation Safety Procedures:**

For General Industry Part 1910:

16 VAC 25-96, Proposed Regulation to Amend Reverse Signal Operation Safety Procedures dealing with Vehicular Equipment, Motor Vehicles, Material Handling Equipment and Motor Vehicle Equipment in General Industry, and the related repeal of 16 VAC 25-90-1910.269(p)(1)(ii).

For the Construction Industry Part 1926:

16 VAC 25-97, Proposed Regulation to Establish Reverse Signal Operation Safety Requirements for Vehicles, Machinery and Equipment for the Construction Industry; and the related repeal of 16 VAC 25-175-1926.601(b)(4), 16 VAC 25-175-602(a)(9)(ii), and 16 VAC 25-175-1926.952(a)(3).

**I. Summary of the Proposed Regulations.**

**Construction Standards**

The VOSH Program seeks the amendment of reverse signal operation safety procedures in standards for the construction industry in §§1926.601(b)(4), 1926.602(a)(9)(ii), and

1926.952(a)(3); and to establish a comprehensive reverse signal operation procedures regulation for all construction vehicles, machinery and equipment with an obstructed view to the rear, whether for operation in off-road work zones or over the road transportation or hauling.

The following boxes highlight the differences between the existing standards on this issue:

§1926.601(b)(4): “No employer shall use any motor vehicle equipment having an obstructed view to the rear unless:

- (i)The vehicle has a reverse signal alarm audible above the surrounding noise level or;
- (ii)The vehicle is backed up only when an observer signals that it is safe to do so.”

§1926.602(a)(9)(ii): “No employer shall permit earthmoving or compacting equipment which has an obstructed view to the rear to be used in reverse gear unless the equipment has in operation a reverse signal alarm distinguishable from the surrounding noise level or an employee signals that it is safe to do so.”

§1926.952(a)(3): “No employer shall use any motor vehicle equipment having an obstructed view to the rear unless:

- (i)The vehicle has a reverse signal alarm audible above the surrounding noise level or;
- (ii)The vehicle is backed up only when an observer signals that it is safe to do so.”

### **General Industry Standard**

The VOSH Program seeks the amendment of the reverse signal operation safety procedures for the Electric Power Generation, Transmission and Distribution standard for general industry contained in §1910.269(p)(1)(ii); and to establish a comprehensive reverse signal operation safety procedures regulation for all general industry vehicles or equipment with an obstructed view to the rear, whether for operation in off-road work zones or over the road transportation or hauling.

The following box highlights the existing standard on this issue:

§1910.269(p)(1)(ii): “No vehicular equipment having an obstructed view to the rear may be operated on off-highway jobsites where any employee is exposed to the hazards created by the moving vehicle unless:

- (i)The vehicle has a reverse signal alarm audible above the surrounding noise level, or;
- (ii)The vehicle is backed up only when a designated employee signals that it is safe to do so.”

The proposed regulation provides additional protection for employees by requiring the following for all vehicles, machinery and equipment in construction and general industry with an obstructed view to the rear, whether for operation in off-road work zones or over the road transportation or hauling:

The back-up alarm requirements in the current regulations at 1910.269(p)(1)(ii), 1926.601(b), 1926.602(a)(9)(ii), 1926.952(a)(3), will be deleted by 16 VAC 25-96, and the regulated community is referred to the new comprehensive proposed regulation at:

Reverse Signal Operation Safety Requirements for Motor Vehicles,  
Machinery and Equipment in General Industry and the Construction  
Industry, 16 VAC 25-97

The new comprehensive proposed regulation at 16 VAC 25-97 will provide that construction and general industry vehicles, machinery and equipment (hereafter referred to as covered vehicles), whether for operation in off-road work zones or over the road transportation or hauling, shall not be operated in reverse unless the vehicle has a reverse signal alarm audible above the surrounding noise level and the vehicle is backed up only when a designated observer or ground guide signals that it is safe to do so. The proposed regulation provides a definition of the phrase “obstructed view to the rear.”

While engaged in signaling activities, designated signalers/ground guides must have no other assigned duties, must not be distracted by such things as personal cellular phones or headsets and must be provided with and wear high visibility/reflective warning garments.

No driver of a covered vehicle will travel in reverse unless they maintain constant visual contact with the designated signaler/ground guide. If visual contact is lost, the driver must immediately stop the vehicle until visual contact is regained and a positive indication is received from the signaler/ground guide that backup operations can proceed. Prior to permitting an employee to engage in any covered activity, the employer shall ensure that each driver of a covered vehicle and each designated signaler/ground guide is trained in the requirements of this section. Refresher training shall be provided by the employer for any driver of a covered vehicle or any designated signaler/ground guide when the driver or designated signaler has been observed to violate the requirements of this section or involved in an accident or near miss accident; or has received an evaluation that reveals that the driver or designated signaler/ground guide is not operating in a safe manner.

Covered vehicles with video or similar technological capability to provide the driver with a full view behind the vehicle are exempt from the requirement to have a designated signaler/ground guide.

Covered vehicles are exempt from the requirement to have a designated signaler/ground guide if the driver visually determines from outside the vehicle that no employees are in

the backing zone and that it is reasonable to expect that no employees will enter the backing zone during reverse operation of the vehicle.

Covered vehicles that were not equipped with a reverse-signal alarm upon manufacture or were not later retrofitted with an alarm are exempt from having a reverse signal alarm audible above the surrounding noise level, but must still comply with other requirements in the proposed regulation.

To the extent that any federal Department of Transportation (DOT) regulation applies to covered vehicles conflicts with this section, the DOT regulation will take precedence.

## II. **Basis, Purpose and Impact of the Proposed Rulemaking.**

### A. **Basis for Proposed Action.**

#### 1. **Existing Federal Identical Standards Are Insufficient**

##### **Construction**

A review of VOSH fatal accident investigations from 1992 to 2005 found 15 fatal vehicle or equipment accidents in construction work zones where employees were struck:

<b><u>Number of fatalities</u></b>	<b><u>Type of vehicle</u></b>
8	dump truck
<u>7</u>	1 each: cement truck, fuel truck, pavement planer, vacuum truck, tandem truck, trackhoe and other- unspecified.
Total 15	

While in some cases it was found that reverse signal alarms were not operational, many accidents occurred even with operational reverse signal alarms. In a situation where an existing standard appears to be applicable, VOSH is often faced with the difficulty of having to document whether a reverse signal alarm was audible over the surrounding construction noise at the time of the accident. This can be problematic at best, since exact accident conditions cannot be recreated. In at least two cases, an employee operating as the signaler was struck by the vehicle when the driver lost sight of the employee while backing-up.

Fatal accidents also occurred to employees engaged in their own work unrelated to such vehicles or equipment where they apparently became de-

sensitized to the familiar and repeated sounds of reverse signal alarms and other construction noise in the work zone.

In addition, the existing standards are limited in their scope and do not apply to all construction vehicles or equipment with an obstructed view to the rear. For instance, §1926.601(b)(4) only applies to motor vehicles on an off-highway jobsite not open to public traffic, and specifically does not apply to earthmoving equipment covered by §1926.602(a)(9)(ii). Neither regulation covers compactors or “skid-steer” equipment.

In VOSH investigations of a back-up accidents involving vehicles or equipment not covered by the previously cited standards, the only enforcement tool available is the use of §40.1-51.1.A. This statutory provision, used in the absence of an applicable regulatory standard, is more commonly referred to as the “general duty clause.” It provides, in part, that:

“It shall be the duty of every employer to furnish to each of his employees safe employment and a place of employment which is free from recognized hazards that are causing or are likely to cause death or serious physical harm to his employees....”

This general wording does not specifically mention hazards associated with vehicles or equipment or any other specific situation. Therefore, according to case law VOSH must document that the hazard in question was “recognized” either through industry recognition (e.g., a national consensus standard), employer recognition (e.g., a company safety rule, or the existence of an operator’s manual for the vehicle), or common sense recognition.

A concern with the use of the general duty clause is that it does not always result in consistent application of safety rules. This occurs as the use of the clause is often fact specific and dependent on a particular industry’s national consensus standard, or employer work rule or equipment operator’s manual.

Another issue regarding the general duty clause is that the statute has been interpreted in case law to only apply to “serious” violations, i.e., those that would cause “death or serious physical harm”. It cannot be used to eliminate “other-than-serious” hazards before they can become serious in nature.



## **General Industry**

The requirements of §1910.269(p)(1)(ii) do not provide adequate protection for employees under the Electric Power Generation, Transmission and Distribution standard and provide no coverage at all for all other areas in general industry.

A review of VOSH fatal accident investigations from 1992 to 2005 found nine fatal accidents in general industry work zones where employees were struck:

<u>Number of fatalities</u>	<u>Type of vehicle</u>
3	logging vehicles
2	garbage trucks
2	tractor-trailer trucks
1	fork lift
<u>1</u>	tow truck
Total 9	

As with the accident history in construction, general industry also had cases where it was found that reverse signal alarms were not operational, but other accidents occurred even with operational reverse signal alarms. Again, as in construction, general industry fatal accidents often occurred to employees who were engaged in their own work who apparently became de-sensitized to the sound of reverse signal alarms and other sounds in the work zone.

In addition, the standard is limited in its scope and does not apply to all general industry vehicles or equipment with an obstructed view to the rear. Section 1910.269(p)(1)(ii) only applies to motor vehicles in the electric power generation, transmission and distribution industry. When VOSH investigates a back-up accident involving a vehicle not covered by the above Part 1910 standard, the only enforcement tool available is the use of §40.1-51.1.A., referred to as the “general duty clause.” The same concerns regarding the use of the statute in the Construction Industry apply to its use in the General Industry sector as well.

## 2. Board Authorization and Mandate

The Safety and Health Codes Board is authorized by Title 40.1-22(5) to:

“... adopt, alter, amend, or repeal rules and regulations to further, protect and promote the safety and health of employees in places of employment over which it has jurisdiction and to effect

compliance with the federal VOSH Act of 1970...as may be necessary to carry out its functions established under this title.”

“In making such rules and regulations to protect the occupational safety and health of employees, the Board shall adopt the standard which most adequately assures, to the extent feasible, on the basis of the best available evidence that no employee will suffer material impairment of health or functional capacity.”

“However, such standards shall be at least as stringent as the standards promulgated by the federal OSH Act of 1970 (P.L.91-596). In addition to the attainment of the highest degree of health and safety protection for the employee, other considerations shall be the latest available scientific data in the field, the feasibility of the standards, and experiences gained under this and other health and safety laws.”

3. Public Comment/Inquiry

The Notice of Intended Regulatory Action was approved by the Board for this action at its March 7, 2006, regular meeting. The 30-day public comment period extended from September 4, 2006, through October 4, 2006.

No comments were received.

**B. Purpose.**

The purpose of the proposed change is to provide more comprehensive protection to employees in construction and general industry work areas exposed to vehicular, machinery and equipment traffic covered by the aforementioned standards and to provide the same degree of protection to employees in similar working conditions where vehicles, machinery and equipment with obstructed views to the rear are not otherwise covered by current regulations. The proposed regulation will apply to all covered vehicles, machinery and equipment in both construction and general industry, whether during operations in off-road work zones or over the road transportation or hauling.

**C. Impact on Employers.**

Employers would be required to train both drivers of covered vehicles, machinery and equipment and designated employee signalers/ground guides on the requirements of the amended and new regulations. Some costs to employers would be associated with the training required under the standard. Other issues

that were added to the proposed regulation to provide employers with flexibility to achieve safe vehicle back-up operations include:

- \* Covered vehicles with video or similar technological capability to provide the driver with a full view behind the vehicle can be operated in reverse without a designated employee signaler/ground guide.
- \* Covered vehicles could be exempted from using a designated employee signaler/ground guide if it has a reverse signal alarm audible above surrounding noise and the driver visually determines from outside the vehicle that no employees are in the backing zone and that it is reasonable to expect that no employees will enter the backing zone during reverse operations.
- \* Covered vehicles that were not equipped with a reverse-signal alarm upon manufacture or later retrofitted with an alarm are exempt from the reverse signal alarm requirement if they either use a designated employee signaler/ground guide, or if the driver visually determines from outside the vehicle that no employees are in the backing zone and that it is reasonable to expect that no employees will enter the backing zone during back-up.
- \* To the extent that any federal Department of Transportation (DOT) regulation applying to covered vehicles conflicts with any proposed regulation adopted by the Board, the DOT regulation would preempt any Board regulation in accordance with Va. Code §40.1-1, which provides in part that:

“...however, nothing in the occupational safety and health provisions of this title or regulations adopted hereunder shall apply to working conditions of employees or duties of employers with respect to which the Federal Occupational Safety and Health Act of 1970 does not apply by virtue of § 4 (b) (1) of the federal act.”

[NOTE: Section 4(b)(1) of the OSH Act provides that “Nothing in this Act shall apply to working conditions of employees with respect to which other Federal agencies...exercise statutory authority to prescribe or enforce standards or regulations affecting occupational safety or health.”]

**D. Impact on Employees.**

Construction and general industry employees across the state would benefit from increased safety requirements from vehicular, machinery and equipment back-up operations. A significant reduction in employee deaths attributed to covered vehicles is anticipated. Employees that are drivers of covered vehicles or

designated signalers/ground guides will have to receive training on the requirements of the proposed regulation.

**E. Impact on the Department of Labor and Industry.**

No significant impact is anticipated on the Department.

Contact Person:

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## **RECOMMENDED ACTION**

Staff of the Department of Labor and Industry recommends that the Safety and Health Codes Board consider for adoption the proposed regulation, 16 VAC 25-96, Proposed Regulation to Amend Reverse Signal Operation Safety Procedures dealing with Vehicular Equipment, Motor Vehicles, Material Handling Equipment and Motor Vehicle Equipment in General Industry, and the related repeal of 16 VAC 25-90-1910.269(p)(1)(ii), and also to consider for adoption the proposed comprehensive regulation, 16 VAC 25-97, Proposed Regulation to Establish Reverse Signal Operation Safety Requirements for Vehicles, Machinery and Equipment for the Construction Industry; and the related repeal of 16 VAC 25-175-1926.601 (b)(4), 16 VAC 25-175-602 (a)(9)(ii), and 16 VAC 25-175-1926.952 (a)(3).

The Department also recommends that the Board state in any motion it may make to amend this regulation that it will receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision of this or any other regulation.

**Reverse Signal Safety Procedures:**

**For General Industry Part 1910: 16 VAC 25-96, Proposed Regulation to Amend Reverse Signal Operation Safety Procedures Dealing with Vehicular Equipment, Motor Vehicles, Material Handling Equipment and Motor Vehicle Equipment in General Industry, and the related repeal of 16 VAC 25-90-1910.269 (p)(1)(ii)**

**and**

**For the Construction Industry Part 1926: 16 VAC 25-97, Proposed Regulation to Establish Reverse Signal Operation Safety Requirements for Vehicles, Machinery and Equipment for the Construction Industry; and the related repeal of 16 VAC 25-175-1926.601 (b)(4), 16 VAC 25-175-602 (a)(9)(ii), and 16 VAC 25-175-1926.952 (a)(3)**

As Adopted by the

Safety and Health Codes Board

Date: \_\_\_\_\_



Reverse Signal Operation Safety Procedures: For General Industry Part 1910: 16 VAC 25-96, Reverse Signal Operation Safety Procedures in dealing with Vehicular Equipment, Motor Vehicles, Material Handling Equipment and Motor Vehicle Equipment in General Industry, and the related repeal of 16 VAC 25-90-1910.269 (p)(1)(ii)

Reverse Signal Operation Safety Procedures: For the Construction Industry P16 VAC 25-97, Reverse Signal Operation Safety Requirements for Motor Vehicles, Machinery and Equipment in General Industry and the Construction Industry; and the related repeal of 16 VAC 25-175-1926.601 (b)(4), 16 VAC 25-175-602 (a)(9)(ii), and 16 VAC 25-175-1926.952 (a)(3)

**16 VAC 25-175-1926. Federal Identical Construction Industry Standards (29 CFR 1926)  
(Proposed)**

**16 VAC 25-90-1910.269. Electric Power Generation, Transmission, and Distribution.**

\* \* \*

(p) Mechanical equipment—(1) General requirements.

\* \* \*

~~ii): No vehicular equipment having an obstructed view to the rear may be operated on off-highway jobsites where any employee is exposed to the hazards created by the moving vehicle unless:~~

~~(A) The vehicle has a reverse signal alarm audible above the surrounding noise level, or;~~

~~B) The vehicle is backed up only when a designated employee signals that it is safe to do so.~~

\* \* \*

**16 VAC 25-175-1926. Federal Identical Construction Industry Standards (29 CFR 1926)  
(Proposed)**

**16 VAC 25-175-1926.601 Motor Vehicles.**

\* \* \*

**(b) General requirements.**

\* \* \*

~~(4): No employer shall use any motor vehicle equipment having an obstructed view to the rear unless:~~

~~i) The vehicle has a reverse signal alarm audible above the surrounding noise level or;~~

~~ii) The vehicle is backed up only when an observer signals that it is safe to do so.~~

\* \* \*

**16 VAC 25-175-1926.602 Material handling equipment.**

a) Earthmoving equipment; General.

\* \* \*

9) Audible alarms. (i) All bidirectional machines, such as rollers, compactors, front-end loaders, bulldozers, and similar equipment, shall be equipped with a horn, distinguishable from the surrounding noise level, which shall be operated as needed when the machine is moving in either direction. The horn shall be maintained in an operative condition.

~~ii) o employer shall permit earthmoving or compacting equipment which has an obstructed view to the rear o the rear to be used in reverse signal unless the equipment has in operation a reverse signal alarm distinguishable from the surrounding noise level or an employee signals that it is safe to do so.~~



**Mechanical Equipment**

(a) General.

\* \* \*

~~(3): No employer shall use any motor vehicle equipment having an obstructed view to the rear unless:~~

~~i) The vehicle has a reverse signal alarm audible above the surrounding noise level or;~~

~~(ii) The vehicle is backed up only when an observer signals that it is safe to do so.~~

CHAPTER 97.

REVERSE SIGNAL OPERATION SAFETY REQUIREMENTS FOR MOTOR VEHICLES,  
MACHINERY AND EQUIPMENT IN GENERAL INDUSTRY AND THE CONSTRUCTION  
INDUSTRY.

16 VAC 25-97-10. Applicability.

This chapter shall apply to all general industry and construction industry vehicles, machinery or equipment capable of traveling in reverse and with an obstructed view to the rear (hereafter referred to as “covered vehicles”), whether intended for operation in off-road work zones or over the road transportation or hauling.

16 VAC-97-20. Definitions.

The phrase “obstructed view to the rear” means anything that interferes with the overall view of the operator of the vehicle to the rear of the vehicle at ground level, and includes, but is not limited to, such obstacles as any part of the vehicle (e.g., structural members); its load (e.g., gravel, dirt, machinery parts); its height relative to ground level viewing; damage to windows or side mirrors, etc., used for rearview movement of the vehicle; restricted visibility due to weather conditions (e.g., heavy fog, heavy snow); or work being done after dark without proper lighting.

16 VAC 25-97-30. Covered vehicle requirements.

No employer shall use any covered vehicle unless:

1. the covered vehicle has a reverse signal alarm audible above the surrounding noise level, and
2. the covered vehicle is backed up only when a designated observer or ground guide signals that it is safe to do so.

**(Proposed)**

16 VAC 25-97-40. Responsibilities while engaged in signing activities.

A. While engaged in signaling activities, the designated observer/ground guide shall:

1. Have no other assigned duties;
2. Not engage in any other activities unrelated to back-up operations other than those related to the covered vehicle being signaled;
3. Not use personal cellular phones, personal head phones or similar items that could pose a distraction for the designated observer/ground; and
4. Be provided with and wear during daytime operations a safety vest or jacket in orange, yellow strong yellow green or fluorescent versions of these colors, reflective warning garments; and
5. Be provided with and wear during nighttime operations a safety vest or jacket with retroreflective material in orange, yellow, white, silver, strong yellow green or a fluorescent version of these colors and shall be visible at a minimum distance of 1,000 feet.

B. Nor driver of a covered vehicle shall travel in reverse unless they maintain constant visual contact with the designated observer/ground guide. If visual contact is lost, the driver shall immediately stop the vehicle until visual contact is regained and a positive indication is received from the designated observer/ground guide to restart back-up operations.

16 VAC 25-97-50. Training.

A. Prior to permitting an employee to engage in any covered activity under this section, the employer shall ensure that each driver of a covered vehicle and each designated observer/ground guide is trained in the requirements of this section.

**16 VAC 25-175-1926. Federal Identical Construction Industry Standards (29 CFR 1926).  
(Proposed)**

16 VAC 25-97-60. Exemptions.

A. Covered vehicles with video or similar technological capability to provide the driver with a full view behind the vehicle are exempt from subdivision 2 of 16 VAC 25-97-30.

B. Covered vehicles are exempt from subdivision 2 of 16 VAC 25-97-30 if the driver visually determines from outside the vehicle that no employees are in the backing zone and that it is reasonable to expect that no employees will enter the backing zone during reverse operation of the vehicle.

C. Covered vehicles that were not equipped with a reverse-signal alarm upon manufacture or were not later retrofitted with an alarm are exempt from subdivision 1 of 16 VAC 25-97-30.

16 VAC 25-97-70. Applicability of federal regulations.

To the extent that any federal Department of Transportation (DOT) regulation applies to covered vehicles conflicts with this section, the DOT regulation shall take precedence.



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**DEPARTMENT OF LABOR AND INDUSTRY**

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**VIRGINIA SAFETY AND HEALTH CODES BOARD**  
**BRIEFING PACKAGE FOR**  
**OCTOBER 18, 2007**

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**Request to Initiate Notice of Intended Regulatory Action (NOIRA)  
to Adopt Regulations Applicable to Tree Trimming Operations**

**I. Action Requested.**

The Virginia Occupational Safety and Health (VOSH) Program requests the Safety and Health Codes Board to authorize the Department to initiate the regulatory process to adopt regulations applicable to Tree Trimming Operations by filing a Notice of Intended Regulatory Action (NOIRA), pursuant to the Virginia Administrative Process Act (§2.2-4007).

**II. Summary of Intended Regulatory Action.**

The VOSH Program seeks to adopt regulations applicable to Tree Trimming Operations. The VOSH Program intends to conduct a review of existing regulations in other states as well as

national consensus standards, such as the American National Standard's Institute (ANSI) Z133.1-2006, Safety Requirements for Arboricultural Operations (With Modifications), for Application to Tree Trimming Operations. The proposal would address non-logging, tree-trimming and cutting operations on residential and commercial work sites.

As an example of existing industry requirements, ANSI-Z133.1-2006 contains the following components:

- General safety requirements (traffic control around the jobsite, emergency procedures and readiness, personal protective equipment, fire protection);
- Electrical hazards (working in proximity to electrical hazards, storm work and emergency conditions, line clearance);
- Safe use of vehicles and mobile equipment used in arboriculture (aerial devices, brush chippers, sprayers and related equipment, stump cutters, vehicles, log loaders, knucklebooms, cranes and related hoists, specialized units, equipment-mounted winches);
- Portable power hand tools (portable electric power tools, chain saws, powered pole tools and backpack power units);
- Hand tools and ladders (cant hooks, cant dogs, peaveys and tongs, wedges, chisels, gouges, chopping tools, ladders);
- Work procedures (ropes and arborist climbing equipment, pruning and trimming, cabling, rigging, tree removal, bush removal and chipping, limbing and bucking, pesticide application); and
- Training.

However, the following issues have been identified with regard to ANSI Z133.1-2006:

- The term “arboriculture” is not defined in sufficient detail.
- Clarification would be needed on the scope of any regulation in the following areas:
  - Line clearance tree-trimming (see 1910.269)
  - Logging operations (see 1910.266)
  - Lot clearing activities involving felling of trees (see 1910.266)
- The document contains “should” or “may” language in some provisions, which means those provisions would not be enforceable. Prescriptive language such as “shall” or “will” language would have to be added.
- VOSH currently enforces ARM §120 (16VAC25-60-120) requiring that employers comply with manufacturer’s specifications and limitations applicable to the operation,

training, use, installation, inspection, testing, repair and maintenance of machinery, vehicles, tools, materials and equipment. ANSI Z133.1-2006 contains provisions that address the use and operation of machinery, vehicles, tools, etc., so any conflicts with ARM §120 (16VAC25-60-120) would have to be corrected (e.g., ANSI Z133.1-2006 contains provisions allowing the use of a crane to lift an individual in an arborist's saddle, but the ability to make such a lift would be contingent on the crane manufacturer's operating instructions).

- ANSI Z133.1-2006 contains provisions addressing traffic safety and references the U. S. Department of Transportation (DOT) Manual on Uniform Traffic Control Devices (MUTCD) and applicable state and local laws and regulations. Although the MUTCD has been adopted by OSHA and VOSH, it has been found to contain a great deal of "should" or "may" language, which means those provisions would not be enforceable. A review of the Virginia Department of Transportation (VDOT) Manual on Uniform Traffic Control Devices would have to be conducted for possible use instead of the federal version.
- ANSI Z133.1-2006 contains provisions addressing first aid and cardiopulmonary resuscitation (CPR). Such provisions would have to be reviewed in light of the Board's current rulemaking which proposes a change in the general industry requirements for first aid/CPR.
- ANSI Z-133.1-2006 addresses the issue of exposure to noise hazards. Such provisions would have to be reviewed against any more stringent requirements contained in the VOSH Noise Standard, 1910.95.
- ANSI Z-133.1-2006 addresses the use of personal protective equipment (PPE). Such provisions would have to be reviewed against any more stringent requirements contained in the VOSH PPE Standards, 1910.132 through 138.
- ANSI Z133.1-2006 contains provisions addressing reverse signal operation of vehicles. Such provisions would have to be reviewed in light of the Board's current rulemaking which proposes a change in the general industry requirements reverse signal operation of vehicles.
- ANSI Z133.1-2006 contains provisions addressing proper use of personal fall arrest systems while working from an aerial lift (permits use of only a body belt and lanyard). Such provisions would have to be reviewed in light of advances in personal protective equipment and current manufacturer's requirements for use of PPE in aerial lifts (full body harness and energy absorbing lanyard are normally required while working from aerial lifts).
- ANSI Z-133.1-2006 addresses the use of cranes. Such provisions would have to be reviewed against any more stringent requirements contained in VOSH Standards 1910.180, Crawler, Locomotive and Truck Cranes, and 1910.184, Slings (e.g. the

- prohibition against employees working under a suspended load of a crane or other hoisting equipment).
- Certain arborist-related terms used in ANSI Z-133.1-2006 are not defined in (e.g., “split-tail system” and “split tails”).

### **III. Basis, Purpose and Impact of the Proposed Rulemaking.**

#### **A. Basis.**

The Safety and Health Codes Board is authorized by Title 40.1-22(5) to: “... adopt, alter, amend, or repeal rules and regulations to further, protect and promote the safety and health of employees in places of employment over which it has jurisdiction and to effect compliance with the federal OSH Act of 1970...as may be necessary to carry out its functions established under this title”.

“In making such rules and regulations to protect the occupational safety and health of employees, the Board shall adopt the standard which most adequately assures, to the extent feasible, on the basis of the best available evidence that no employee will suffer material impairment of health or functional capacity”.

“However, such standards shall be at least as stringent as the standards promulgated by the federal OSH Act of 1970 (P.L.91-596). In addition to the attainment of the highest degree of health and safety protection for the employee, other considerations shall be the latest available scientific data in the field, the feasibility of the standards, and experiences gained under this and other health and safety laws.”

VOSH currently applies the Logging Standard, 1910.266, to arborists/tree trimming operations anytime a tree is “felled,” or cut down. The Logging Standard does not apply to tree trimming activities where the tree is not felled or cut down, so there is no specific regulation to address hazards associated with just trimming trees.

In instances where the Logging Standard does not apply, VOSH has had to use regulations of general application to address some hazards (e.g., 1910.95, Occupational Noise Exposure; 1910.132, Personal protective equipment; 1910.133, Eye and face protection; 1910.135, Head Protection; 1910.136, Foot protection; 1910.151, Medical services and first aid; 1910.67, Vehicle-mounted elevating and rotating work platforms; etc.), and the “general duty clause,” Va. Code §40.1-51.1(a), which provides that:

“It shall be the duty of every employer to furnish to each of his employees safe employment and a place of employment which is free from recognized hazards that are causing or are likely to cause death or serious physical harm to his employees....”

As is evident from the wording of the statute, it does not address in anyway the issue of hazards associated with tree trimming operations. Instead VOSH procedures and court



case law would allow the VOSH Program to issue a general duty violation and base it on a national consensus standard addressing tree trimming hazards (such as the ANSI Z133.1-2006 standard), or some other reliable industry standard the tree trimmer knew of or should have known about. While preferable to no enforcement tool at all, the general duty clause does not provide either the regulated community, employees or the VOSH Program with substantive and consistent procedures and guidance on how to reduce or eliminate tree trimming hazards. Other problems with the use of the general duty clause include the inability to use it to enforce and consensus standard provisions which use “should” or “may” language, and the inability to cite other-than-serious violations.

The arborist industry has complained at times about application of the Logging Standard to their industry because they work in residential neighborhoods and commercial areas, not in a forest; and because they often use teams of workers in directional felling of trees (with the use of ropes) and “piecing out” of trees or cutting down trees in sections (loggers usually do not operate in teams or piece out trees). They consider their work and the hazards they face to be fundamentally different from hazards faced by loggers.

The need for the regulation is very evident when fatality statistics are reviewed. As the chart below demonstrates, since 1993 we have had 46 non-logging, tree trimming/cutting/felling fatalities (7% of all fatalities since 1993), with 34 of those occurring since 2000 (9% of all fatalities since 2000). For an industry of the relatively small size of the tree care industry, this is a very high number of fatal accidents.

Virginia Occupational Safety and Health  
 Tree-Related Fatality Statistics (Non-Logging) as of September 28, 2007

Year	Chipper	Tree Trimming	Aerial Lift	Power Line	Struck-by Vehicle	Site Clearance	Total	Total VOSH Fatalities	Percentage of Tree Fatalities
2007		2					2	30	7%
2006		4		3	1		8	56	14%
2005		1			1		2	59	3%
2004		2		1		1	4	51	8%
2003		4		1			5	47	11%
2002		4					4	48	8%
2001		4			2		6	54	11%
2000		1		2			3	59	5%
<b>subtotal</b>		<b>22</b>	<b>0</b>	<b>7</b>	<b>4</b>	<b>1</b>	<b>34</b>	<b>404</b>	<b>8%</b>
1999		2					2	45	4%
1998				2			2	40	5%
1997	1	1	1			1	4	56	7%
1996		2					2	49	4%
1995							0	32	0%
1994						1		50	0%
1993				1			1	26	4%
<b>subtotal</b>	<b>1</b>	<b>5</b>	<b>1</b>	<b>3</b>	<b>0</b>	<b>2</b>	<b>12</b>	<b>298</b>	<b>4%</b>
<b>total</b>	<b>1</b>	<b>27</b>	<b>1</b>	<b>10</b>	<b>4</b>	<b>3</b>	<b>46</b>	<b>702</b>	<b>7%</b>

SIC Codes: 0782, 0783, 0191, 1623, 1629 and 2411

NOTE: Logging fatalities are not included in the above table.

**B. Purpose.**

The purpose of the proposed change is to reduce/eliminate employee injuries and fatalities by considering for adoption a comprehensive regulation to address non-logging, arborist/tree trimming and cutting operations on residential and commercial work sites.

**C. Impact on Employers.**

Employers with employees in the affected industry would have to familiarize themselves with the requirements of any new regulation and train employees on the requirements of the regulation. Employers should benefit from reductions in injuries and fatalities associated with current unsafe tree trimming practices which would be addressed by any comprehensive regulation.

**D. Impact on Employees.**

Employees would benefit from increased safety protections provided by a comprehensive regulation to address hazards of arborist/tree trimming and cutting operations on residential and commercial work sites. Employees in the affected industry would have to be trained on the requirements of any new regulation.

**E. Impact on the Department of Labor and Industry.**

No significant impact is anticipated on the Department.

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**VIRGINIA SAFETY AND HEALTH CODES BOARD**

**BRIEFING PACKAGE FOR**

**OCTOBER 18, 2007**

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**Request to Initiate Notice of Intended Regulatory Action (NOIRA)  
to Adopt a Confined Space Standard for Agriculture**

**I. Action Requested.**

The Virginia Occupational Safety and Health (VOSH) Program requests the Safety and Health Codes Board to authorize the Department to initiate the regulatory process to adopt a Confined Space Standard for Agriculture by filing a Notice of Intended Regulatory Action (NOIRA), pursuant to the Virginia Administrative Process Act (§2.2-4007).

**II. Summary of Intended Regulatory Action.**

The VOSH Program seeks to adopt a Confined Space Standard for Agriculture which would require agricultural employers to provide protections for employees prior to their entry into a confined space. Protective measures that could be considered include:

- testing of the atmosphere in the confined space immediately prior to entry and, where necessary, during work in the confined space;

- use of an approved ventilation system to ensure removal of harmful air contaminants prior to entry and, where necessary, during work in the confined space;
- use of proper respiratory protective equipment and, where necessary other personal protective equipment to protect employees from harm air contaminants and chemicals;
- where necessary, use by an entrant of a safety harness and lifeline with an attendant present at all times outside the confined space;
- provide that prior to entry into confined spaces, all mechanical, electrical, hydraulic and pneumatic equipment which presents a danger to employees inside the confined space be deenergized, disconnected, locked-out and tagged, blocked-off, or otherwise prevented from operating;
- provide for protective devices such as barriers, guard rails, covers, etc., to prevent employees from falling into, driving machinery into or being engulfed in manure pits, lagoons and other types of agricultural vats and pits; and
- training on what constitutes a confined space in an agricultural setting and what hazards could be present and what safety precautions should be followed under any proposed regulation.

### **III. Basis, Purpose and Impact of the Proposed Rulemaking.**

#### **A. Basis.**

The Safety and Health Codes Board is authorized by Title 40.1-22(5) to: “... adopt, alter, amend, or repeal rules and regulations to further, protect and promote the safety and health of employees in places of employment over which it has jurisdiction and to effect compliance with the federal OSH Act of 1970...as may be necessary to carry out its functions established under this title”.

“In making such rules and regulations to protect the occupational safety and health of employees, the Board shall adopt the standard which most adequately assures, to the extent feasible, on the basis of the best available evidence that no employee will suffer material impairment of health or functional capacity”.

“However, such standards shall be at least as stringent as the standards promulgated by the federal OSH Act of 1970 (P.L.91-596). In addition to the attainment of the highest degree of health and safety protection for the employee, other considerations shall be the latest available scientific data in the field, the feasibility of the standards, and experiences gained under this and other health and safety laws.”

There currently is no law or regulation governing safety requirements for work in confined spaces in agriculture, although employees and employers in essentially every other industry in the Commonwealth are covered by confined space regulations. General industry employers and employees are covered by the Permit Required Confined Space

Standard, 16VAC25-90-1910.146; the construction industry is covered by the Virginia Confined Space Standard for the Construction Industry, 16VAC25-140; and the telecommunications industry is covered by the Virginia Confined Space Standard for the Telecommunications Industry, 16VAC25-70.

Individual industries also have regulations which address confined space hazards:

- 16VAC25-90-1910.252(b)(4) - Welding, Cutting and Brazing (General Industry)
- 16VAC25-175-1926.353(b) - Ventilation and Protection in Welding Cutting and Heating (Construction Industry)
- 16VAC25-90-1910.119(f)(4) - Process Safety Management of Highly Hazardous Chemicals
- 16VAC25-90-1910.272(g) - Grain Handling Facilities

Since 1997, VOSH has investigated five (5) fatal accidents involving confined spaces in agriculture resulting in the deaths of five (5) employees, one (1) owner and three (3) family members:

- 2007 One employee, the owner of the farm, the farmer's wife and 2 daughters were killed when they were overcome by either hydrogen sulfide or methane gas in a manure pit on a dairy farm. The employee and family members consecutively entered the pit in an attempt to rescue the farmer and preceding victims.
- 2003 One employee was killed on a dairy farm while using a tractor to push manure out of a barn down a concrete runway into a holding pond. The tractor ran off the end of the runway and flipped over into the pond, trapping the victim underneath.
- 2003 One employee was killed when he fell into a manure pit on a dairy farm. A steel grate that covered part of the pit had been removed from its protective position.
- 1998 One employee was killed while loading grain from a silo into a truck when the side wall of the silo collapsed, throwing the victim into the silo and grain where he was engulfed by the grain.
- 1997 One employee on a dairy farm was killed while scraping manure with a tractor and bucket up a ramp to a manure pit when the tractor drove into manure pit and overturned.

In the absence of a regulation to cover a hazard in a specific industry, the only enforcement tool available to the VOSH Program is the use of Va. Code §40.1-51.1.A., which is more commonly referred to as the "general duty clause." That section provides in part that:

“It shall be the duty of every employer to furnish to each of his employees safe employment and a place of employment which is free from recognized hazards that are causing or are likely to cause death or serious physical harm to his employees....”

As is evident from the wording of the statute, it does not address directly the issue of confined space hazards. Instead VOSH procedures and court case law would allow the VOSH Program to issue a general duty violation and base it on a national consensus standard addressing confined spaces in agriculture or on some other reliable industry standard the agricultural employer knew of or should have known about. While preferable to no enforcement tool at all, the general duty clause does not provide either the regulated community, employees or the VOSH Program with substantive and consistent procedures and guidance on how to reduce or eliminate confined space hazards in agriculture. Other problems with the use of the general duty clause include the inability to use it to enforce any consensus standard provisions which use “should” or “may” language, and the inability to cite other-than-serious violations.

**B. Purpose.**

The purpose of the proposal is reduce or eliminate injuries, illness and fatal accidents associated with confined space hazards in agriculture, and to provide agricultural employees and employers with protective measures to use before and during entry into agricultural confined spaces to prevent entrants from being exposed to toxic or low oxygen atmospheres, hazardous chemicals and engulfment hazards.

**C. Impact on Employers.**

Employers would have to familiarize themselves and train employees on the requirements of any proposed confined space in agriculture regulation.

**D. Impact on Employees.**

Employees would have to be trained on the requirements of any proposed confined space in agriculture regulation.

**E. Impact on the Department of Labor and Industry.**

The Department would have to designate and train personnel on the on the requirements of any proposed confined space in agriculture regulation.

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## **RECOMMENDED ACTION**

Staff of the Department of Labor and Industry recommends that the Safety and Health Codes Board direct the Department to initiate a Notice of Intended Regulatory Action (NOIRA) to adopt a Confined Space Standard for Agriculture.

The Department also recommends that the Board state in any motion it may make to amend this regulation that it will receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision of this or any other regulation.



*COMMONWEALTH of VIRGINIA*

**DEPARTMENT OF LABOR AND INDUSTRY**

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**VIRGINIA SAFETY AND HEALTH CODES BOARD**

**BRIEFING PACKAGE FOR**

**OCTOBER 18, 2007**

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**Request to Initiate Notice of Intended Regulatory Action (NOIRA)  
to Amend the Administrative Regulations Manual**

**I. Action Requested.**

The Virginia Occupational Safety and Health (VOSH) Program requests the Safety and Health Codes Board to authorize the Department to initiate the regulatory process to amend the Administrative Regulations Manual (ARM), by adding a new section to establish procedures for the Commissioner or his appointed representatives under Va. Code §40.1-6(5) to take and preserve testimony, examine witnesses and administer oaths under Va. Code §§40.1-6(4) and 40.1-10, by filing a Notice of Intended Regulatory Action (NOIRA), pursuant to the Virginia Administrative Process Act (§2.2-4007).

**II. Summary of Intended Regulatory Action.**

The VOSH Program seeks the amendment of VOSH ARM to establish procedures for the Commissioner or his appointed representatives under VA. Code §40.1-6(5) to take and preserve testimony, examine witnesses and administer oaths under Va. Code §§40.1-6(4) and 40.1-10.

Following are the requirements of Va. Code §§40.1-6(4) and 40.1-10:

**Va. Code §40.1-6(4), Powers and duties of the Commissioner.**

“The Commissioner shall:

....

**(4) In the discharge of his duties, have power to take and preserve testimony, examine witnesses and administer oaths** and to file a written or printed list of relevant interrogatories and require full and complete answers to the same to be returned under oath within thirty days of the receipt of such list of questions. “ (Emphasis added).

**Va. Code §40.1-10, Offenses in regard to examinations, inspections, etc.**

**“If any person who may be sworn to give testimony shall willfully fail or refuse to answer any legal and proper question propounded to him concerning the subject of such examination as indicated in §§ 40.1-6,** or if any person to whom a written or printed list of such interrogatories has been furnished by the Commissioner shall neglect or refuse to answer fully and return the same under oath, or if any person in charge of any business establishment shall refuse admission to, or obstruct in any manner the inspection or investigation of such establishment or the proper performance of the authorized duties of the Commissioner or any of his representatives, he shall be guilty of a misdemeanor. **Such person, upon conviction thereof, shall be fined not exceeding \$100 nor less than \$25 or imprisoned in jail not exceeding 90 days, or both.”** (Emphasis added).

The proposed changes would address the following issues:

- \* Specify the wording of the oath to be administered and the manner in which it would be administered;
- \* Explain the manner in which the Commissioner would appoint in writing Department personnel as his representatives having the authority to administer such oaths and have the authority to examine witnesses in accordance with the procedures outlined in the regulation (perhaps allowing for renewal on an annual basis; and of course allowing for the Commissioner to withdraw such authority at any time);
- \* Specify that testimony preserved under the regulation would be recorded by a court reporter;
- \* Specify the level of confidentiality that would attach to any testimony preserved under the statute;
- \* Establish a procedure for the Commissioner or his authorized representatives to follow in the event that any employer refuses to make an employee or supervisor available to provide testimony in accordance with Va. Code 40.1-6(4). This would likely entail an

application for an inspection warrant under 40.1-6(8)(b) for Labor Law, Boiler Safety, and Apprenticeship investigations/inspections, or an application for an inspection warrant under Va. Code §§40.1-49.8 through -49.12 for VOSH investigations/inspections; and

- \* Establish a procedure for the Commissioner or his authorized representatives to follow in the event that any person who has sworn to give testimony willfully refuses or fails to answer any legal and proper question in accordance with Va. Code §§40.1-10 and 40.1-6(4), up to and including referring such refusal to the appropriate Commonwealth's Attorney for prosecution of the individual involved.

### **III. Basis, Purpose and Impact of the Proposed Rulemaking.**

#### **A. Basis.**

The Safety and Health Codes Board is authorized by Title 40.1-22(5) to: "... adopt, alter, amend, or repeal rules and regulations to further, protect and promote the safety and health of employees in places of employment over which it has jurisdiction and to effect compliance with the federal OSH Act of 1970...as may be necessary to carry out its functions established under this title".

"In making such rules and regulations to protect the occupational safety and health of employees, the Board shall adopt the standard which most adequately assures, to the extent feasible, on the basis of the best available evidence that no employee will suffer material impairment of health or functional capacity".

"However, such standards shall be at least as stringent as the standards promulgated by the federal OSH Act of 1970 (P.L.91-596). In addition to the attainment of the highest degree of health and safety protection for the employee, other considerations shall be the latest available scientific data in the field, the feasibility of the standards, and experiences gained under this and other health and safety laws."

In fatal and non-fatal accident investigations particularly and more routine inspections as well, VOSH inspectors are required to interview one or more employees and supervisors. VOSH personnel sometimes encounter witnesses/employees/supervisors who refuse to talk with our inspectors or avoid answering specific questions for a variety of reasons. Although such refusals are rare, they can have a significant impact on the promptness, thoroughness and quality of the investigation.

It is a generally accepted investigative principle that the closer in time to an event that information about the event is obtained from witnesses, the better the chance is that the information will be accurate. Refusals can result in delays in obtaining witness statements immediately after the accident occurs, potentially resulting in altered memories and less accurate information concerning the cause of the accident.

In addition, the investigative process is often a very fluid one, where statements made by one witness can lead to additional questions being asked of other witnesses, or previously

undisclosed documents being obtained from the employer. Such refusals can not only result in the loss of the individuals' testimony, but can also result in the loss of other potential leads in the investigation. Early access to such information will result in higher quality investigations, and better and more accurate outcomes.

When such refusals do occur, the inability to gather crucial information from eyewitnesses and sometimes the testimony of the injured employee greatly hampers the VOSH program's ability to complete a full and fair investigation of the accident in a timely manner - Va. Code §40.1-49.4.A.3 requires VOSH to issue citations within six months following the occurrence of any alleged violation. The Commissioner's statutory authority to take and preserve testimony, examine witnesses and administer oaths, if implemented through regulation, could be used to obtain necessary testimony very early in the investigative process, avoiding delays and potentially altered memories.

**B. Purpose.**

The purpose of the proposal is to provide VOSH personnel with procedures on how to exercise the Commissioner's statutory authority to take and preserve testimony, examine witnesses and administer oaths, in instances where witnesses/employees/supervisors refuse requests for interviews or refuse to answer specific questions posed by a VOSH inspector.

**C. Impact on Employers.**

Employers would have to make employees for private interview as identified by the Commissioner or his representative in accordance with any procedures implementing the statutory requirements in Va. Code §§40.1-6(4) and 40.1-10.

**D. Impact on Employees.**

Employees would have to provide testimony in accordance with any procedures implementing the statutory requirements in Va. Code §§40.1-6(4) and 40.1-10.

**E. Impact on the Department of Labor and Industry.**

The Department would have to designate and train personnel on the procedures implementing the statutory requirements in Va. Code §§40.1-6(4) and 40.1-10.

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## **RECOMMENDED ACTION**

Staff of the Department of Labor and Industry recommends that the Safety and Health Codes Board direct the Department to initiate a Notice of Intended Regulatory Action (NOIRA) to establish procedures in the VOSH Administrative Regulations Manual for the Commissioner or his appointed representatives under 40.1-6(5) to take and preserve testimony, examine witnesses and administer oaths under Va. Code §§40.1-6(4) and 40.1-10.

The Department also recommends that the Board state in any motion it may make to amend this regulation that it will receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision of this or any other regulation.



*COMMONWEALTH of VIRGINIA*

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**VIRGINIA SAFETY AND HEALTH CODES BOARD**

**BRIEFING PACKAGE**

**FOR October 18, 2007**

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**PERIODIC REVIEW OF EXISTING REGULATIONS**

**I. Background and Process**

Governor Kaine issued Executive Order Number 36 (06), "Development and Review of Regulations Proposed by State Agencies." This executive order governs the periodic review of reevaluation of existing regulations and the regulatory process to promulgate new regulations or amend current regulations. All of the regulations promulgated by the Safety and Health Codes Board are included in the periodic review process at least once every four years.

The process of periodic review begins with publication of a Notice of Periodic Review in the Virginia Register. When the Notice of Periodic Review is published, a public comment period of 21 days begins. Following the public comment period (no more than 90 days), the agency will post a report on the Town Hall website indicating either that (1) the board will retain the regulation as is, or (2) the board will begin a regulatory action to amend the regulation.

**II. Current Status**

One regulation of the Safety and Health Codes Board, 16 VAC 25-50, Boiler and Pressure

Vessel Rules and Regulations, has been identified for review in 2007. A notice of periodic review will be published in the Virginia Register. The notice will request public comment for a period of 21 days.

**III. Next Stage of Review**

The staff of the Department of Labor and Industry will be reviewing this regulation and will prepare the report with recommendations to be presented for approval at the next board meeting.

**IV. Action Requested**

None at this time. Approvals on periodic review reports will be requested at future board meetings.

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