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Regulatory
Town Hall

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Notice of Intended Regulatory Action (NOIRA) Agency Background Document

Agency name	Virginia Department of Labor and Industry
Virginia Administrative Code (VAC) citation	16 VAC 25-177; 16 VAC 25-95
Regulation title	16 VAC 25-90-1910.151, Medical Services and First Aid Standards for General Industry, §1910.151(b) and for 16 VAC 25-175-1926.50, Construction Industry, §1926.50 (c)
Action title	Proposed regulation to amend the Medical Services and First Aid Standards for General Industry, §1910.151(b) and for the Construction Industry, §1926.50 (c)
Date this document prepared	March 9, 2006

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 21 (2002) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Purpose

Please describe the subject matter and intent of the planned regulatory action. Also include a brief explanation of the need for and the goals of the new or amended regulation.

The purpose of the proposed change is to provide additional medical and first aid assistance to employees in hazardous occupations in construction and general industry.

Legal basis

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly chapter number(s), if applicable, and (2) promulgating entity, i.e., agency, board, or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.

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.”

Need

Please detail the specific reasons why the agency has determined that the proposed regulatory action is essential to protect the health, safety, or welfare of citizens. In addition, delineate any potential issues that may need to be addressed as the regulation is developed.

The Department of Labor and Industry has determined that the proposed regulatory action is essential for the following reasons:

The general industry and construction first aid standards do not assure that adequate first aid attention for employees will be provided in certain hazardous occupations. They do not include a requirement for training to include CPR as well as first aid; they do not clearly state that designated first aid providers will be available at each work location and work shift; they would allow employers to opt to physically move an employee who had suffered a head or spinal injury by transporting them to a medical facility in an area where emergency medical responders were not available within the prescribed 3 to 4 minute time limit, in lieu of having a trained first aid responder present.

Conversely, the general industry standard is overreaching in requiring first aid training in certain occupational settings where there is no exposure to hazards that could cause death or serious physical harm, such as in an office setting.

[NOTE 1: The construction industry is considered to be a high hazard industry.]

[NOTE 2: For calendar year 2005, the Virginia Occupational Safety and Health (VOSH) Program issued 117 violations of §1910.151(b) in general industry and 424 violations of §1926.50(c) in the construction industry.]

In addition, the standards are confusing and difficult to enforce for the VOSH Program as they do not define the terms “near proximity” and “reasonably accessible,” which by federal OSHA interpretation have been defined to mean a 3 to 4 minute response time for life threatening injuries and up to 15 minutes for non-life threatening injuries. Because the response time for emergency responders varies widely around the state depending on such factors as whether the worksite is in an urban or rural location, whether the medical emergency response facility is staffed 24 hours a day or not, and such vagaries as traffic congestion, road construction and weather, injured employees cannot receive reliable and consistent first aid response to injuries suffered on the job.

According to statistics for the year 2003 from the Department of Emergency Medical Services, EMS providers arrived at the scene of 522,345 calls with an average response time of approximately 12

minutes. Approximately 72% of all reported calls were provided in less than 10 minutes, and approximately 87% of all reported calls were provided in less than 15 minutes.

From an enforcement standpoint, the VOSH Program is often faced with having to document whether an infirmary, clinic or hospital would be accessible within 3-4 minutes by going to such lengths as having to drive from the inspection site to the facility.

Employers in a variety of industries already are required to assure that employee are trained in first aid and CPR, e.g., Employers in the Logging Industry must assure that all logging employees receive first aid and CPR training (see §1910.266(i)(7)); General industry employers in the Electric Power Generation, Transmission and Distribution Industry must assure that trained first aid and CPR providers are present for field work and fixed work locations (see §1910.269(b)(1)); Construction Power Generation and Distribution employers must assure that employees are trained in first aid and CPR (see §1926.950(e)(1)(ii)); Employers in the Telecommunications Industry must assure that employees are trained in first aid CPR (see §1910.268(c)(3)); Employers with a Temporary Labor Camp must assure that a trained first aid and CPR provider is present at the camp (see §1910.142(k)(2)); Employers engaged in Welding, Cutting and Brazing must assure that first aid can be rendered to an injured employee until medical attention can be provided (see §1910.252(c)(13)); Employers involved in Underground Construction, Caissons, Cofferdams and Compressed Air must provide a first aid station at each project (see §1926.803(b)(7)); and Commercial Dive Operation employers must assure that all dive team members are trained in first aid and CPR (see §1910.410(a)(3)).

Substance

Please detail any changes that will be proposed. For new regulations, include a summary of the proposed regulatory action. Where provisions of an existing regulation are being amended, explain how the existing regulation will be changed.

The general industry and construction first aid standards would be amended to assure that adequate first aid attention for employees will be provided in certain hazardous occupations. The standards would be amended to include a requirement for training to include CPR as well as first aid; they would clearly state that designated first aid providers will be available at each covered work location and work shift.

Issues to be considered include:

1. assuring that employers provide employees in hazardous occupations immediate access to first aid and CPR on each work site and for each workshift;
2. allowing an employer to make written arrangements with another contractor/employer on the same job site to provide designated employees to serve as first aid responders, to lessen the cost of compliance with the standard;
3. clarifying that only worksites containing job classifications or workplace hazards that would expose employees to serious physical harm or death would be required to provide immediate access to first aid and CPR; and
4. whether employers who regularly assign individual employees to travel to worksites (e.g., a single delivery driver, plumber, etc.) would be required to either have the employee trained in

first aid or make arrangements with contractors/employers to provide designated first aid responders at the sites to which their employees have traveled.

Alternatives

Please describe all viable alternatives to the proposed regulatory action that have been or will be considered to meet the essential purpose of the action. Also, please describe the process by which the agency has considered or will consider other alternatives for achieving the need in the most cost-effective manner.

The only alternative considered would be to leave the current regulatory language in effect. This would result in the continued current disparity in medical services and first aid protection for employees where first aid responders are not required to be trained in CPR, and interpretations of the current regulations would allow an employer to comply with the regulation by opting to move an employee who had suffered a head or spinal injury by transporting them to a medical facility in an area where emergency medical responders were not available within the prescribed 3 to 4 minute time limit, in lieu of having a trained first aid responder present.

Public participation

Please indicate the agency is seeking comments on the intended regulatory action, to include ideas to assist the agency in the development of the proposal and the costs and benefits of the alternatives stated in this notice or other alternatives. Also, indicate whether a public hearing is to be held to receive comments on this notice.

The agency is seeking comments on the intended regulatory action, including but not limited to 1) ideas to assist in the development of a proposal, 2) the costs and benefits of the alternatives stated in this background document or other alternatives and 3) potential impacts of the regulation. The agency is also seeking information on impacts on small businesses as defined in § 2.2-4007.1 of the Code of Virginia. Information may include 1) projected reporting, recordkeeping and other administrative costs, 2) probable effect of the regulation on affected small businesses, and 3) description of less intrusive or costly alternative methods of achieving the purpose of the regulation.

Anyone wishing to submit written comments may do so at the public hearing or by mail, email or fax to Mr. Jay Withrow, Director of the Office of Legal Support, 13 South Thirteenth Street, Richmond, Virginia 23219, Telephone number: 804.786.9873, fax number: 804.786.8418 and email address: Jay.Withrow@doli.virginia.gov

Written comments must include the name and address of the commenter. In order to be considered comments must be received by the last day of the public comment period.

Although a date has not yet been determined, a public hearing will be held and notice of the hearing may be found on the Virginia Regulatory Town Hall website (www.townhall.virginia.gov) and will be found in the Calendar of Events section of the Virginia Register or Regulations. Once a date has been determined, both oral and written comments may be submitted at that time.

Participatory approach

Please indicate, to the extent known, if advisers (e.g., ad hoc advisory committees, technical advisory committees) will be involved in the development of the proposed regulation. Indicate that 1) the agency is not using the participatory approach in the development of the proposal because the agency has authorized proceeding without using the participatory approach; 2) the agency is using the participatory approach in the development of the proposal; or 3) the agency is inviting comment on whether to use the participatory approach to assist the agency in the development of a proposal.

The agency is not using the participatory approach in the development of the proposal at this time. The Public Participation Guidelines for the Safety and Health Codes Board (16 VAC 25-10-10 *et seq.*) allow for the formation of standing or ad hoc advisory groups to make recommendations on a proposed regulation (16 VAC 25-10-60), but the Board did not opt for such an approach when the NOIRA was approved.

Family impact

Assess the potential impact of the proposed regulatory action on the institution of the family and family stability including to what extent the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.

No impact on the family is anticipated as a result of this intended regulatory action.