

**VIRGINIA SAFETY AND HEALTH CODES BOARD  
PUBLIC PARTICIPATION GUIDELINES  
16 VAC 25-10-10 et seq.**

PART I.

DEFINITIONS.

**16 VAC 25-10-10. Definitions.**

The following words and terms, when used in this chapter, shall have the following meaning, 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 1.1:1 (§ 9-6.14:1 et seq.) of Title 9 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.

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~~“Locality particularly affected” means any locality which bears any identified disproportionate material impact which would not be experienced by other localities.~~

“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 § 9-6.14:7.1 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.

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PART II.

GENERAL INFORMATION.

**16 VAC 25-10-20 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. ~~They~~ 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 (§ 9-6.14:4.1 A and B) or excluded from the operation of Article 2 of the Administrative Process Act (§ 9-6.14:4.1 C).

**16 VAC 25-10-30 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.

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At the discretion of the board, the procedures in Part III (16 VAC 25-10-60 et seq.) or Part IV (16 VAC 25-10-110 et seq.) may be supplemented to provide additional public participation in the regulation adoption process or as necessary to meet federal requirements.

**16 VAC 25-10-40 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 a mailing list.

**16 VAC 25-10-50 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 provide a response within 180 days.

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

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1. Name, mailing address and telephone number of petitioner;
2. Petitioner's interest in the proposed action;
3. Recommended regulation or addition, deletion or amendment to a specific regulation;
4. Statement of need and justification for the proposed action;
5. Statement of impact on the petitioner and other affected persons; and
6. Supporting documents, as applicable.

**PART III.**

**PUBLIC PARTICIPATION PROCEDURES.**

**16 VAC 25-10-60 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 16 VAC 25-10-40. 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

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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.

**16 VAC 25-10-70 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 meeting(s) 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.

**16 VAC 25-10-80 Notice of Intended Regulatory Action (NOIRA).**

~~A. The department, at the direction of the board, will identify persons or groups, as~~

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referred to in 16 VAC 25-10-40, interested in the development of the regulation and assemble the appropriate mailing list.

B. A. The board shall issue a NOIRA whenever it intends to consider the development, amendment or repeal of any regulation. ~~The NOIRA will include:~~

- ~~1. Subject of the proposed regulation;~~
- ~~2. Identification of the persons or groups affected;~~
- ~~3. Summary of the purpose of the proposed regulation and the issues involved;~~
- ~~4. Listing of applicable laws or regulations, and locations where these documents can be reviewed or obtained;~~
- ~~5. Explanation of federal requirements for adoption and specific obligations of the board, if applicable;~~
- ~~6. Request for comments from interested parties and deadline for receipt of the written comments;~~
- ~~7. Notification of time and place of open meeting(s), if the board intends to hold open meetings;~~
- ~~8. Name, address and telephone number of staff person to be contacted for further information; and~~
- ~~9. Statement that the board intends to hold a public hearing on the proposed regulation after it is published.~~

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€. B. If appropriate, the board will appoint an advisory group as outlined in 16 VAC 25-10-60.

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

1. Distribution by mail, facsimile, e-mail or other appropriate delivery method to persons ~~on the appropriate mailing list;~~ interested in the development of the regulation;

2. Publication in the Virginia Register of Regulations;

3. Publication on the Regulatory Town Hall website; and

4. Posting on agency website.

~~3. Publication in a newspaper of statewide circulation; or~~

~~4. Publication in newspaper(s) in localities particularly affected by the regulation.~~

~~The localities particularly affected have been identified by the department at the direction of the board.~~

**16 VAC 25-10-90 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.



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~~B. The commissioner, at the direction of the board, will present the proposed draft to the secretary's office for review and concurrence prior to the formal adoption by the board and the beginning of the 60-day public comment period.~~

~~€. B.~~ The board will submit the proposed regulation to a 60-day public hearing/ comment period by forwarding the ~~following~~ 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: .

- ~~1. Notice of public hearing/comment period, which will contain the following:~~
  - ~~a. The date, time and place of the public hearing (Public hearing is defined in 16 VAC 25-10-10 of this chapter.);~~
  - ~~b. The legal authority of the board to act; and~~
  - ~~c. The name, address and telephone number of an individual to contact for further information and where to submit written comments.~~
- ~~2. Full text of the regulation;~~
- ~~3. Summary of the regulation;~~
- ~~4. Statement of the basis of the regulation, defined as the statutory authority for promulgating the regulation, including an identification of the section number and a brief statement relating the content of the statutory authority to the specific regulation~~

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proposed;

5. ~~Statement of the purpose of the regulation, defined as the rationale or justification for the provisions of a new regulation or changes to an existing regulation, from the standpoint of the public's health, safety or welfare;~~
6. ~~Statement of the substance of the regulation, defined as the identification and explanation of the key provisions of the regulation;~~
7. ~~Statement of the issues of the regulations, defined as the primary advantages and disadvantages for the public, and as applicable for the department or the state, of implementing the new or amended regulatory provisions;~~
8. ~~Statement of the estimated impact, defined as the projected number of persons affected, the projected costs, expressed as a dollar figure or range, for the implementation and compliance with the new regulation or amendments, and the identity of any localities particularly affected by the regulation. The estimated impact shall represent the board's best estimate for the purposes of public review and comment, but the accuracy of the estimate shall in no way affect the validity of the regulation;~~
9. ~~A copy of the written assurance from the Office of the Attorney General which states that the board has the statutory authority to issue the proposed regulation;~~
10. ~~An explanation of how clarity and simplicity were assured in drafting the regulations;~~
11. ~~A statement describing the alternative approaches that were considered to meet the need the proposed regulations address, and assurance that the proposed regulations~~

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~~are the least burdensome available alternative; and~~

~~12. A schedule setting forth when, after the effective date of the regulation, the board will evaluate it for effectiveness and continued need.~~

~~D. Concurrently with the preceding step, the board will submit required documentation to the Governor's office, the Department of Planning and Budget, and the Office of the Secretary of Commerce and Trade.~~

~~E. Upon receipt of the proposed regulation and appropriate documentation, the Registrar of Regulations will publish the summary of the regulation and the public hearing notice in the Virginia Register and in a Richmond area newspaper of general circulation. If applicable, the department will request that the Registrar publish the notice in newspapers in other areas of the state. The department will mail a copy of the notice to persons and groups on the appropriate mailing list.~~

~~F. During the public comment period, the regulation will be available for review concurrently by the following:~~

- ~~1. The public;~~
- ~~2. The Governor;~~
- ~~3. The General Assembly;~~
- ~~4. The Secretary of Commerce and Trade; and~~

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~~5. The Attorney General.~~

**16 VAC 25-10-100. 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.

~~E. The following documents shall be sent to the Registrar's Office. Concurrently, these documents shall be sent to the Governor's Office, the Department of Planning and Budget, and the Office of the Secretary of Commerce and Trade.~~

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1. ~~A copy of the final regulation.~~
2. ~~A current summary and statement as to the basis, purpose, substance, issues, and impact of the regulation.~~
3. ~~The summary of the oral and written comments received during the 60-day public comment period and the board's response to the comments.~~

**PART IV.**

**OCCUPATIONAL SAFETY AND HEALTH STANDARDS**

**PROMULGATED BY THE U. S. OCCUPATIONAL SAFETY AND HEALTH  
ADMINISTRATION.**

**16 VAC 25-10-110. 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.

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**16 VAC 25-10-120. 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 ~~in the Virginia Register~~ 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-; and
8. Link to OSHA proposed federal action.

B. The notice will be disseminated to the appropriate persons or groups identified ~~and~~ ~~placed on a mailing list assembled~~ in accordance with 16 VAC 25-10-40 of this chapter.