

**VIRGINIA DEPARTMENT OF LABOR AND INDUSTRY  
PUBLIC PARTICIPATION GUIDELINES  
16 VAC 15-10-10 et. seq.**

PART I.  
DEFINITIONS.

**16 VAC 15-10-10 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 commissioner 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.

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

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

~~"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 commissioner or his 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 department. It is a meeting to facilitate the informal exchange of information and may be held prior to or during the regulation promulgation process.

"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 commissioner in accordance with the authority conferred upon him 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 15-10-20 Applicability.**

This chapter shall apply to all regulations subject to the Administrative Process Act which are administered by the Commissioner of Labor and Industry, hereafter referred to as commissioner. They 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 15-10-30 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 commissioner, the procedures in Part III may be supplemented to provide additional public participation in the regulation adoption process or as necessary to meet federal requirements.

**16 VAC 15-10-40 Identification of interested persons and groups.**

The major groups interested in the regulatory process of the commissioner 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 15-10-50 Public involvement with formulation of regulations.**

A. The commissioner shall accept petitions to develop a new regulation or amend an existing regulation from any member of the public. The commissioner shall consider the petition and

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provide a response within 180 days.

- B. The petition, at a minimum, shall contain the following information:
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 15-10-60 Advisory groups and consultation.**

A. The commissioner 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 15-10-40. The membership of any ad hoc advisory group shall be selected 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 department;
  4. The department determines this is the most effective method to develop the regulation; or
  5. The department determines additional technical expertise and knowledge would be beneficial in developing the regulation.

**16 VAC 15-10-70 Open meetings.**

The commissioner 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

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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 15-10-80 Notice of Intended Regulatory Action (NOIRA).**

~~A.~~ The department will identify persons or groups, as referred to in 16 VAC 15-10-40, interested in the development of the regulation and assemble the appropriate mailing list.

~~B.~~ A. The department 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 commissioner, 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 commissioner intends to hold open meetings.
- ~~8.~~ Name, address and telephone number of staff person to be contacted for further information.
- ~~9.~~ Statement that the commissioner intends to hold a public hearing on the proposed regulation after it is published.

~~C.~~ B. If appropriate, the commissioner will appoint an advisory group as outlined in 16 VAC 15-10-60.

~~D.~~ 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 in a newspaper of statewide circulation.~~ Publication on the

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4. Regulatory Town Hall website; and  
~~Publication in newspaper(s) in localities particularly affected by the regulation.—  
The localities particularly affected have been identified by the department.  
Posting on the agency website.~~

**16 VAC 15-10-90 Proposed regulations .**

A. After consideration of public comment, the department 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 commissioner will present the proposed draft to the secretary's office for review and concurrence prior to the beginning of the 60-day public comment period.~~

~~C. B.~~ The department 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 this chapter.)~~
  - ~~b. The legal authority of the commissioner to act.~~
  - ~~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 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~~

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~~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 commissioner'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 commissioner 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 are the least burdensome available alternative.~~
- ~~12. A schedule setting forth when, after the effective date of the regulation, the commissioner will evaluate it for effectiveness and continued need.~~

~~D. Concurrently with the preceding step, the commissioner 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~~
- ~~5. The Attorney General~~

**16 VAC 15-10-100 Completion of the adoption process.**

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A. The department shall prepare a summary of the oral and written comments received during the 60-day public comment period and the department's response to the comments. A draft of the department'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 department 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.

~~D. 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.~~

~~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 department's response to the comments.~~