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## Notice of Intended Regulatory Action (NOIRA) Agency Background Document

<b>Agency name</b>	Virginia Department of Labor and Industry/Safety and Health Codes Board
<b>Virginia Administrative Code (VAC) citation(s)</b>	16 VAC 25-200
<b>Regulation title(s)</b>	Virginia Voluntary Protection Program (VPP)
<b>Action title</b>	Proposed regulations to adopt a Virginia Voluntary Protection Program (VPP) Regulation
<b>Date this document prepared</b>	July 15, 2015

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 17 (2014) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

### Subject matter and intent

*Please describe briefly the subject matter, intent, and goals of the planned regulatory action.*

The Virginia Voluntary Protection Program (VPP) is designed to recognize and promote exceptional safety and health management programs. In VPP, the Department of Labor and Industry's Occupational Safety and Health (VOSH) Program, management and labor establish a cooperative relationship at a general industry or public sector workplace that has implemented a strong safety and health program. The planned regulatory action seeks to adopt definitions, rules, regulations and standards required by §40.1-49.13 of the Code of Virginia that are needed to operate the Virginia VPP.

## Legal basis

*Please identify the (1) the agency (includes any type of promulgating entity) and (2) the state and/or federal legal authority for the proposed regulatory action, including the most relevant citations to the Code of Virginia or General Assembly chapter number(s), if applicable. Your citation should include a specific provision, if any, authorizing the promulgating entity to regulate this specific subject or program, as well as a reference to the agency's overall regulatory authority.*

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."

## Purpose

*Please describe 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, please explain any potential issues that may need to be addressed as the regulation is developed.*

The purpose of this NOIRA is to initiate the regulatory process to adopt those definitions, rules, regulations, and standards, required by §40.1-49.13 of the *Code of Virginia*, which are necessary for the operation of the Virginia Voluntary Protection Program (VPP) in a manner that will promote and recognize employer implementation of exceptional safety and health management systems throughout the Commonwealth. Employer adoption of the VPP concepts has consistently resulted in injury and illness rates 50 percent or more below that of the employer's industry as a whole.

## Substance

*Please briefly identify and explain the new substantive provisions that are being considered, the substantive changes to existing sections that are being considered, or both.*

In Virginia, the Voluntary Protection Program (VPP) was instituted in 1996, and is patterned after federal OSHA's VPP, which was originally created in 1982. The VOSH Program adopted VPP as a component of the Department of Labor and Industry's (DOLI) larger mission to "make Virginia a better place in which to work." An employer's membership in VPP is recognized as the nation's highest award that can be

bestowed by a government agency to an employer for excellence in occupational safety and health management systems.

The program has two levels of participation, Star worksite and Merit worksite. Star participants are a select group of worksites that have designed and implemented outstanding safety and health programs, including full and meaningful employee involvement. Merit participants are those that have demonstrated the potential and willingness to achieve Star status and are implementing planned actions to fully meet the VPP Star requirements.

On March 19, 2015, the Virginia General Assembly approved an amendment of the *Code of Virginia* by adding §40.1-49.13, which codifies the VOSH Voluntary Protection Program (VPP) (*see Attachment 1*). Subsection B. of §40.1-49.13 requires the Safety and Health Codes Board to adopt a VPP regulation and provides as follows:

- B. The Safety and Health Codes Board shall adopt definitions, rules, regulations, and standards necessary for the operation of the Voluntary Protection Program in a manner that will promote safe and healthy workplaces throughout the Commonwealth. The standards for the VPP shall include the following requirements for VPP participation:
1. Upper management leadership and active and meaningful employee involvement;
  2. Systematic assessment of occupational hazards;
  3. Comprehensive hazard prevention, mitigation, and control programs;
  4. Employee safety and health training; and
  5. Safety and health program evaluation.

Subsection B. of §40.1-49.13 also provides that current participants may continue as such, but on and after July 1, 2016, their continued participation is conditional upon complying with the standards for participation ultimately adopted by the Safety and Health Codes Board.

Issues that the regulation must address include, but are not limited to:

- Categories of participation (STAR, MERIT, CHALLENGE);
- Ways to participate (site-based in both general industry and construction, mobile workforce, VPP corporate);
- Application requirements;
- Comprehensive safety and health management system requirements;
- Certification process;
- On-site evaluations;
- Annual submissions;
- Re-certification process; and

- Withdrawal or termination

## Alternatives

*Please describe any viable alternatives to the proposal considered and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the action. Also, include discussion of less intrusive or less costly alternatives for small businesses, as defined in § 2.2-4007.1 of the Code of Virginia, of achieving the purpose of the regulation.*

Regulatory action will not assure the continuing federal funding stream of this activity. Codifying the Virginia Voluntary Protection Program (VPP) will allow the program to remain viable and to expand, independent of what federal OSHA enacts regarding the federal VPP.

## Public participation

*Please indicate whether the agency is seeking comments on the intended regulatory action, including 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. Please include one of the following choices: 1) a panel will be appointed and the agency's contact if you're interested in serving on the panel is \_\_\_\_\_; 2) a panel will not be used; or 3) public comment is invited as to whether to use a panel to assist in the development of this regulatory proposal.*

The agency is seeking comments on this regulatory action, including but not limited to: ideas to be considered in the development of this proposal, the costs and benefits of the alternatives stated in this background document or other alternatives, and the 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: projected reporting, recordkeeping, and other administrative costs; the probable effect of the regulation on affected small businesses; and the description of less intrusive or costly alternatives for achieving the purpose of the regulation.

Anyone wishing to submit comments may do so via the Regulatory Town Hall website (<http://www.townhall.virginia.gov>), or by mail, email, or fax to **[Mr. Jay Withrow, Director, Legal Support, VPP, ORA, OPP & OWP, Virginia Department of Labor and Industry, Main Street Centre, 600 East Main Street, Suite 207, Richmond, VA 23219; phone: (804) 786-9873; fax: (804) 786-8418; email address: Withrow.jay@dol.gov]**. Written comments must include the name and address of the commenter. In order to be considered, comments must be received by midnight on the last day of the public comment period.

A public hearing will be held following the publication of the proposed stage of this regulatory action and notice of the hearing will be posted on the Virginia Regulatory Town Hall website (<http://www.townhall.virginia.gov>) and on the Commonwealth Calendar website (<https://www.virginia.gov/connect/commonwealth-calendar>). Both oral and written comments may be submitted at that time.

## VIRGINIA ACTS OF ASSEMBLY -- 2015 SESSION

### CHAPTER 339

*An Act to amend the Code of Virginia by adding a section numbered 40.1-49.13, relating to Safety and Health Codes Board; establishment of a Voluntary Protection Program.*

[H 1768]

Approved March 19, 2015

**Be it enacted by the General Assembly of Virginia:**

**1. That the Code of Virginia is amended by adding a section numbered 40.1-49.13 as follows:**

**§ 40.1-49.13. Voluntary Protection Program.**

*A. As used in this section:*

*"Model system" means an exemplary, voluntarily implemented worker safety and health management system that (i) implements comprehensive safety and health programs that exceed basic compliance with occupational safety and health laws and regulations and (ii) meets the VPP standards adopted by the Safety and Health Codes Board pursuant to subsection B.*

*"Voluntary Protection Program" or "VPP" means a program under which the Commissioner recognizes and partners with workplaces in which a model system has been implemented.*

*B. The Safety and Health Codes Board shall adopt definitions, rules, regulations, and standards necessary for the operation of the Voluntary Protection Program in a manner that will promote safe and healthy workplaces throughout the Commonwealth. The standards for the VPP shall include the following requirements for VPP participation:*

- 1. Upper management leadership and active and meaningful employee involvement;*
- 2. Systematic assessment of occupational hazards;*
- 3. Comprehensive hazard prevention, mitigation, and control programs;*
- 4. Employee safety and health training; and*
- 5. Safety and health program evaluation.*

*C. Applications for participation in the VPP shall be submitted by the workplace's management. Applications shall include documentation establishing to the satisfaction of the Commissioner that the employer meets all standards for VPP participation.*

*D. The Department shall provide for onsite evaluations by VPP evaluation teams of each workplace that has applied to participate in the VPP to determine that the applicant's workplace complies with the standards for VPP participation.*

*E. A workplace's continued participation in the VPP shall be conditioned on compliance with the standards for VPP participation, as determined by periodic onsite evaluations by VPP evaluation teams.*

*F. During periods in which a workplace is a participant in the VPP, the workplace shall be exempt from inspections or investigations under § 40.1-49.4; however, this exception shall not apply to inspections or investigations of the workplace arising from complaints, referrals, fatalities, catastrophes, nonfatal accidents, or significant toxic chemical releases.*

**2. That any workplace that was a participant in the uncodified voluntary protection program conducted by the Department of Labor and Industry prior to July 1, 2015, may continue as a participant in the Voluntary Protection Program established pursuant to § 40.1-49.13 of the Code of Virginia, as created by this act. On and after July 1, 2016, the continued participation by such a workplace in the Voluntary Protection Program shall be conditioned upon the workplace's compliance with the standards for participation in the Voluntary Protection Program adopted by the Safety and Health Codes Board pursuant to subsection B of § 40.1-49.13.**