

Unified Regulatory Plan of the Department of Labor and Industry for State Fiscal Year 2023-24

Prepared for June 23, 2023 updated August 24 2023

Description of Agency:

The Department of Labor and Industry administers the programs for Virginia Occupational Safety and Health, Boiler and Pressure Vessel Safety, and Labor and Employment Law. Acting through the Commissioner, the Department is authorized to adopt regulations necessary and incidental to the performance of duties or execution of powers conferred by Title 40.1 of the Code of Virginia. The Department operates under the supervision of the Virginia Secretary of Labor.

Title of Proposed Regulatory Action or Guidance Document Regulation Governing On-The-Job Training Programs or Other Training Programs - 16 VAC 15-60	
Brief Overview An action that is in the Proposed Stage and currently in the 60-day public comment period to end July 7, 2023. This regulation is required by amended Va. Code 40.1-28-10.A.2, which directs the Commissioner of the Department of Labor and Industry to set regulations to provide standards for on-the-job training or other training programs that can use the training wage provided for in the law. This was an emergency regulation in place since May 2020 and approved by the Governor's Office (9/21/22) for an extension with an April 29, 2023, expiration date in order to complete the regulatory process for a final regulation. The regulatory process is scheduled to be completed by the end of 2023.	
Regulatory Stage (check one box)	<input type="checkbox"/> NOIRA <input checked="" type="checkbox"/> Proposed Rule <input type="checkbox"/> Final Rule <input type="checkbox"/> Emergency Rule <input type="checkbox"/> Fast-Track Rule
Additional Description	<input type="checkbox"/> Expedited Rule <input type="checkbox"/> Exempt Rule <input type="checkbox"/> Guidance Document
Legal Authority	<input type="checkbox"/> Action required by federal statute <input checked="" type="checkbox"/> Action required by state statute <input type="checkbox"/> Discretionary action
Deregulatory Component	
Expected Date	December 2023 for final regulation

Title of Proposed Regulatory Action or Guidance Document**Revision or revocation of Virginia Confined Space Standard for the Telecommunications Industry – 16 VAC 25-70****Brief Overview**

The regulation duplicates in part federal OSHA's Telecommunications Standard, [29 CFR 1910.268](#), providing more stringent protections in certain respects.

The Department believes that economic conditions, or other factors may have significantly changed in the area affected by the regulation:

- The Virginia standard references in 16VAC25-70-40.C the “Bell System Practices for Testing and Ventilating Manholes [§ 620-140-501 (4.01-7.05) (1976)” and provides that when continuous mechanical ventilation conforms to the Bell System Practices, “monitoring for oxygen concentrations in the confined space shall not be required.”¹ The Department is under the understanding that the Bell System Practices are outdated, but has not determined what current testing and ventilation procedures are followed in the industry at Virginia worksites.
- The Virginia standard contains lockout/tagout procedures which predate federal OSHA’s Control of Hazardous Energy Sources (Lockout/Tagout) Standard, 1910.147.²
- The Virginia standard references the NIOSH/OSHA Pocket Guide to Chemical Hazards DHEW (NIOSH) Publication No. 78-210, which has since been updated.³
- The Virginia standard references the American National Standards Institute D6.1-1978, “Manual on Uniform Traffic Control Devices for Streets and Highways, which has since been updated.”⁴

The SHCB will vote on the following recommendations from the Department at their June 27, 2023, board meeting:

The Department recommends that the Board authorize the Department to prepare a Notice of Intended Regulatory Action to consider revision up to and including repeal of portions or the entire standard in light of the above-referenced changed conditions and OSHA interpretations.

The Department also recommends that the Board authorize the Department to appoint a Regulatory Advisory Panel (RAP) pursuant to 16VAC25-11-70 to assist the Department in its review of the standard.⁵

¹ https://etler.com/docs/BSP/620/620-140-501_110.pdf

² <https://www.osha.gov/laws-regs/regulations/standardnumber/1910/1910.147>

³ <https://www.cdc.gov/niosh/docs/2005-149/default.html>

⁴ <https://www.transportation.gov/bipartisan-infrastructure-law/regulations/2022-16781#:~:text=The%20MUTCD%20is%20incorporated%20in,roads%20open%20to%20public%20travel.>

⁵ **16VAC25-11-20. Definitions.**

"Regulatory advisory panel" or "RAP" means a standing or ad hoc advisory panel of interested parties established by the agency for the purpose of assisting in regulatory actions.

<http://leg1.state.va.us/cgi-bin/legp504.exe?000+reg+16VAC25-11-20>

Regulatory Stage (check one box)	<input checked="" type="checkbox"/> NOIRA <input type="checkbox"/> Proposed Rule <input type="checkbox"/> Final Rule	<input type="checkbox"/> Emergency Rule <input type="checkbox"/> Fast-Track Rule
Additional Description	<input type="checkbox"/> Expedited Rule <input type="checkbox"/> Exempt Rule	<input type="checkbox"/> Guidance Document
Legal Authority	<input type="checkbox"/> Action required by federal statute <input type="checkbox"/> Action required by state statute	<input checked="" type="checkbox"/> Discretionary action
Deregulatory Component	Confined space hazards in telecommunications manholes are covered by federal OSHA standards, though the Virginia standard contains some safety and health requirements that are more stringent than the federal standard.	
Expected Date	September 2023	

Title of Proposed Regulatory Action or Guidance Document Amendments to Construction Industry Standard for Sanitation - 16 VAC 25-160
Brief Overview <p>The Virginia standard was originally based on the federal OSHA's Field Sanitation Standard, 1928.110, which provided more stringent safety and health protections for agricultural field workers than was provided for construction workers, and in some areas still does (e.g., 16 VAC 25-160 requires one toilet facility for every 20 employees regardless of the number of employees. 1926.51 requires one toilet facility for the first 20 employees; one toilet and one urinal per 40 employees for sites with 21-200 employees; and one toilet and one urinal per 50 employees for sites of more than 200 employees).</p> <p>Since the original adoption the Virginia standard, federal OSHA has revised its standard which now contains some provisions that are not in 16 VAC 25-160 (e.g., specific provisions for employee showers when required elsewhere in the construction standards). Both standards also share some identical provisions.</p>

16VAC25-11-70. Appointment of regulatory advisory panel.

A. The agency may appoint a regulatory advisory panel (RAP) to provide professional specialization or technical assistance when the agency determines that such expertise is necessary to address a specific regulatory issue or action or when individuals indicate an interest in working with the agency on a specific regulatory issue or action.

B. Any person may request the appointment of a RAP and request to participate in its activities. The agency shall determine when a RAP shall be appointed and the composition of the RAP.

C. A RAP may be dissolved by the agency if:

1. The proposed text of the regulation is posted on the Town Hall, published in the Virginia Register, or such other time as the agency determines is appropriate; or
2. The agency determines that the regulatory action is either exempt or excluded from the requirements of the Administrative Process Act.

<http://leg1.state.va.us/cgi-bin/legp504.exe?000+reg+16VAC25-11-70>

The Department believes that economic conditions, or other factors may have significantly changed in the area affected by the standard. Since the original adoption the Virginia standard, federal OSHA has revised its standard which now contains some provisions that are not in 16 VAC 25-160:

- Employee showers when required elsewhere in the construction standards
- Food handling
- Temporary sleeping quarters (when provided)
- Showers (when required by another Construction Industry standard)
- Change rooms (when required by another Construction Industry standard)

The Department believes there is a continued need for certain parts of the standard, but also believes there is an opportunity to streamline its requirements and consider adoption of federal identical provisions which are currently not addressed by the Virginia standard, while also maintaining certain safety and health requirements that would assure that construction workers are protected at the same level as other Virginia workers (e.g., agricultural field workers).

The SHCB will vote on the following recommendations from the Department at their June 27, 2023, board meeting:

The Department recommends that the Board authorize the Department to prepare a Notice of Intended Regulatory Action to consider revision up to and including repeal of portions or the entire standard in light of the above-referenced changed conditions and OSHA interpretations.

The Department also recommends that the Board authorize the Department to appoint a Regulatory Advisory Panel (RAP) pursuant to 16VAC25-11-160 to assist the Department in its review of the standard.⁶

**Regulatory Stage
(check one box)**

☒ NOIRA

☐ Proposed Rule

☐ Final Rule

☐ Emergency Rule

☐ Fast-Track Rule

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Additional Description	<input type="checkbox"/> Expedited Rule <input type="checkbox"/> Guidance Document <input type="checkbox"/> Exempt Rule
Legal Authority	<input type="checkbox"/> Action required by federal statute <input checked="" type="checkbox"/> Discretionary action <input type="checkbox"/> Action required by state statute
Deregulatory Component	<p>The Department believes there is a continued need for certain parts of the standard, but also believes there is an opportunity to streamline its requirements and consider adoption of federal identical provisions which are currently not addressed by the Virginia standard, while also maintaining certain safety and health requirements that would assure that construction workers are protected at the same level as other Virginia workers (e.g., agricultural field workers).</p>
Expected Date	September 2023