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Notice of Intended Regulatory Action (NOIRA) Agency Background Document

Agency name	Virginia Department of Labor and Industry/Safety and Health Codes Board
Virginia Administrative Code (VAC) Chapter citation(s)	16 VAC 25 - 210
VAC Chapter title(s)	Heat Illness Prevention Standard
Action title	Promulgate Regulations on Heat Illness Prevention
Date this document prepared	July 28, 2026

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Order 19 (2022) (EO 19), any instructions or procedures issued by the Office of Regulatory Management (ORM) or the Department of Planning and Budget (DPB) pursuant to EO 19, the Regulations for Filing and Publishing Agency Regulations (1 VAC 7-10), and the *Form and Style Requirements for the Virginia Register of Regulations and Virginia Administrative Code*.

Brief Summary

Provide a brief summary (preferably no more than 2 or 3 paragraphs) of the subject matter, intent, and goals of this regulatory change (i.e., new regulation, amendments to an existing regulation, or repeal of an existing regulation).

On July 28, 2026, the Virginia Safety and Health Codes Board (Board) adopted a Notice of Intended Regulatory Action (NOIRA) to initiate the regulatory process for a new regulation establishing Heat Illness Prevention Standards to protect workers from heat illness during indoor and outdoor work. Chapters 731 and 732 of the 2026 Acts of Assembly added a new section to the Code of Virginia (§ 40.1-44.2) on standards for heat illness prevention. These chapters mandated that the Board develop and adopt regulations to establish standards designed to protect workers from heat illness during indoor and outdoor work and require employers to implement heat illness prevention plans pursuant to § 40.1-44.2 of the Code of Virginia. This NOIRA is being issued to begin the regulatory process to fulfill that mandate.

Acronyms and Definitions

Define all acronyms or technical definitions used in this form.

The acronyms or technical definitions used in this form are:

- BLS - Bureau of Labor Statistics
- Board - Virginia Safety and Health Codes Board
- Chapters 731 and 732 - Chapters 731 and 732 of the 2026 Acts of Assembly to be codified at § 40.1-44 of the Code of Virginia
- DOLI - Department of Labor and Industry
- NIOSH - National Institute for Occupational Safety and Health
- OSHA - Occupational Safety and Health Administration
- VOSH - Virginia Occupational Safety and Health

Mandate and Impetus

Identify the mandate for this regulatory change and any other impetus that specifically prompted its initiation, (e.g., new or modified mandate, petition for rulemaking, periodic review, or board decision). For purposes of executive branch review, “mandate” has the same meaning as defined in the ORM procedures, “a directive from the General Assembly, the federal government, or a court that requires that a regulation be promulgated, amended, or repealed in whole or part.”

Chapters 731 and 732 of the 2026 Acts of Assembly, codified in § 40.1-44.2 of the Code of Virginia, provide that the Virginia Safety and Health Codes Board, in consultation with DOLI, shall “develop and adopt regulations establishing standards designed to protect workers from heat illness during indoor and outdoor work” and “develop and adopt regulations that require employers to implement heat illness prevention plans pursuant to § 40.1-44.2 of the Code of Virginia.”

Chapters 731 and 732 direct the Board to adopt the regulation no later than May 1, 2028.

Legal Basis

Identify (1) the promulgating agency, and (2) the state and/or federal legal authority for the regulatory change, including the most relevant citations to the Code of Virginia and Acts of Assembly chapter number(s), if applicable. Your citation must include a specific provision, if any, authorizing the promulgating agency to regulate this specific subject or program, as well as a reference to the agency’s overall regulatory authority.

The Virginia Safety and Health Codes Board is the promulgating agency responsible for this regulatory change.

The Board has legal authority to issue these regulations under Chapters 731 and 732, which direct the Board to adopt regulations establishing standards to protect workers from heat illness during indoor and outdoor work, in consultation with DOLI.

Further, the Board has legal authority to issue these regulations pursuant to its general rulemaking authority, found in § 40.1-22(5) of the Code of Virginia, 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....” In exercising its general rulemaking authority “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.” See § 40.1-22(5). “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.” *Id.*

Purpose

Describe the specific reasons why the agency has determined that this regulation is essential to protect the health, safety, or welfare of citizens. In addition, explain any potential issues that may need to be addressed as the regulation is developed.

The purpose of this regulatory action is to meet the mandates set forth in Chapters 731 and 732 of the 2026 Acts of Assembly and to protect workers in Virginia from heat illness during indoor and outdoor work. Every year, thousands of workers across the United States—including workers in the Commonwealth—experience heat-related injuries and illnesses, some of which result in fatalities. This regulation will advance the health, safety, and welfare of Virginia citizens by clearly setting forth evidence-based steps that regulated employers must take to effectively mitigate heat-related injuries, illnesses, and fatalities among Virginia workers. It will establish clear standards for businesses under the jurisdiction of the Virginia State Plan for occupational safety and health.

In developing these regulations, the Board will be guided by the standards created by the Federal Occupational Safety and Health Administration, the 2021 Draft Heat Illness Prevention Standard of the Virginia Department of Labor and Industry, and standards established by expert organizations and other states. The Board will also convene an advisory panel to assist in developing the regulations.¹

Substance

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

The proposed regulatory action will create new occupational safety and health standards addressing employee exposure to heat illness hazards during indoor and outdoor work activities in industries subject to VOSH jurisdiction.

Per § 40.1-44.2, these standards must include requirements for an employer to (i) provide water, access to shade or climate-controlled environments when practicable, rest periods, acclimatization to working in heat, and effective training regarding heat illness prevention; (ii) implement heat and high-heat procedures when the temperature equals or exceeds heat thresholds set by the Board; and (iii) establish effective emergency response procedures.” § 40.1-44.2 also specifies that the regulations must include exemptions for heat exposure during the provision of certain emergency situations and for health exposure lasting no longer than 15 consecutive minutes.

¹ NOTE: VOSH jurisdiction over the maritime industry only extends to state and local government employers and employees. Federal OSHA retains jurisdiction over the maritime industry in the private sector in Virginia.

Additionally, Chapters 731 and 732 of the 2026 Acts of Assembly require the Board to consider the 2021 DOLI draft Virginia Heat Illness Prevention Standard and standards created by the Federal Occupational Safety and Health Administration, the National Institute for Occupational Safety and Health, the American Conference of Governmental Industrial Hygienists, the American National Standards Institute, the Maryland Occupational Safety and Health Division, the Oregon Occupational Safety and Health Division, and the California Division of Occupational Safety and Health as it develops the proposed standards.

Finally, as is required in Chapters 731 and 732, the Board will convene an advisory panel to assist in developing the standard, which will include employee advocates and stakeholders, and stakeholders from the agriculture and business industries and from public institutions of higher education.

Alternatives to Regulation

Describe any viable alternatives to the regulatory change that were considered, and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the regulatory change. 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 regulatory change.

There are no viable alternatives to regulation. Chapters 731 and 732 expressly direct the Board, in consultation with DOLI, to adopt these regulations.

Periodic Review and Small Business Impact Review Announcement

If you wish to use this regulatory action to conduct, and this NOIRA to announce, a periodic review (pursuant to § 2.2-4017 of the Code of Virginia and the ORM procedures), and a small business impact review (§ 2.2-4007.1 of the Code of Virginia) of this regulation, keep the following text. Modify it as necessary for your agency. Otherwise, delete the paragraph below and insert “This NOIRA is not being used to announce a periodic review or a small business impact review.”

This NOIRA is not being used to announce a periodic review or a small business impact review.

Public Participation

Indicate how the public should contact the agency to submit comments on this regulation, and whether a public hearing will be held, by completing the text below. In addition, as required by § 2.2-4007.02 of the Code of Virginia, describe any other means that will be used to identify and notify interested parties and seek their input, such as regulatory advisory panels or general notices.

The agency is providing an opportunity for comments on this regulatory proposal, including but not limited to (i) the costs and benefits of the regulatory proposal, (ii) any alternative approaches, and (iii) the potential impacts of the regulation.

Anyone wishing to submit written comments for the public comment file may do so through the Public Comment Forums feature of the Virginia Regulatory Town Hall web site at: <https://townhall.virginia.gov>. Comments may also be submitted by mail, email or fax to:

Cristin Bernhardt
Regulatory Coordinator
Virginia Department of Labor and Industry
6606 W. Broad Street, Richmond, VA 23230
Email: cristin.bernhardt@doli.virginia.gov
Fax: (804) 786-2376

In order to be considered, comments must be received by 11:59 pm on the last day of the public comment period.

A public hearing will not be held following the publication of the proposed stage of this regulatory action. The Agency will convene a Regulatory Advisory Panel to receive stakeholder input, which is required by Chapters 731 and 732 of the 2026 Acts of Assembly.