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## Exempt Action Final Regulation Agency Background Document

<b>Agency name</b>	Department of Labor and Industry/Safety and Health Codes Board
<b>Virginia Administrative Code (VAC) citation</b>	16 VAC 25-90-1910.401 and 16 VAC 25-90-1910.402
<b>Regulation title</b>	Commercial Diving Operations
<b>Action title</b>	Amendment to Commercial Diving Operations
<b>Final agency action date</b>	April 21, 2004
<b>Document preparation date</b>	May 11, 2004

When a regulatory action is exempt from executive branch review pursuant to § 2.2-4002 or § 2.2-4006(A) of the of the Administrative Process Act (APA) ([townhall.state.va.us/dpbpages/dpb\\_apa.htm](http://townhall.state.va.us/dpbpages/dpb_apa.htm)), the agency is encouraged to provide information to the public on the Regulatory Town Hall using this form.

Note: While posting this form on the Town Hall is optional, the agency must comply with requirements of the Virginia Register Act ([leg1.state.va.us/cgi-bin/legp504.exe?000+cod+2.2-4100](http://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+2.2-4100)), the *Virginia Register Form, Style, and Procedure Manual* ([legis.state.va.us/codecomm/register/download/styl8\\_95.rtf](http://legis.state.va.us/codecomm/register/download/styl8_95.rtf)), and Executive Orders 21 (02) and 58 (99) ([governor.state.va.us/Press\\_Policy/Executive\\_Orders/EOHome.html](http://governor.state.va.us/Press_Policy/Executive_Orders/EOHome.html))

### Summary

*Please provide a brief summary of all regulatory changes, including the rationale behind such changes. Alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation.*

Federal OSHA amended its Commercial Diving Operations (CDO) standard to allow employers of recreational diving instructors and diving guides to comply with an alternative set of requirements instead of the decompression-chamber requirements in the current CDO standards.

In §1910.401, Scope and Application, federal OSHA added a new paragraph (a)(3), covering alternative requirements for recreational diving instructors and diving guides. In §1910.402, Definitions, new definitions for “dive-guiding operations” and “recreational diving instruction” were added. (69 FR 7351) OSHA also added a new mandatory Appendix C to Subpart T of Part 1910 entitled, “Alternative Conditions Under §1910.401(a)(3) for Recreational Diving Instructors and Diving Guides.” This mandatory appendix specifies the conditions under which employers may use this alternative to decompression chambers as required under §1910.423(b)(2) or (c)(3) or §1910.426(b)(1).

The final amendment applies only when diving instructors and diving guides engage in recreational diving instruction and diving-guide duties; use an open circuit, a semi-closed-circuit, or a closed-circuit self-contained underwater-breathing apparatus (SCUBA) supplied with a breathing gas that has a high percentage of oxygen mixed with nitrogen; dive to a maximum depth of 130 feet of sea water; and remain within the no-decompression limits specified for the partial pressure of nitrogen in the breathing-gas mixture. These alternate requirements essentially are the same as the terms of a federal variance granted by OSHA to Dixie Divers, Inc. in 1999. (69 FR 7351)

### Family impact

*Assess the impact of this regulatory action on the institution of the family and family stability.*

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The amendments to these regulations have no impact on the institution of the family or family stability.