



COMMONWEALTH of VIRGINIA
DEPARTMENT OF LABOR AND INDUSTRY

Gary G. Pan
COMMISSIONER

Main Street Centre
600 East Main Street, Suite 207
Richmond, Virginia 23219
PHONE (804) 371-2327
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AGENDA

SAFETY AND HEALTH CODES BOARD MEETING

In person location:

**Fairfield Public Library
1401 N. Laburnum Avenue
Richmond, Virginia 23223**

Virtual Access for public participation:

**Refer to the Third Page of the Agenda for Instructions
on Registering to Make Public Comment and Meeting Access Information**

**June 27, 2023
10:30 AM**

1. Call to Order and Introductions
2. Approval of Agenda
3. Approval of Minutes for Board Meetings held on November 14, 2022
4. Opportunity for the Public to Address the Board on issues pending before the Board today, as well as any other topics that may be of concern to the Board and within its scope of authority.

This will be the only opportunity for public comment at this meeting. Please limit remarks to 5 minutes in consideration of others wishing to address the Board.

5. Old Business

(a) Report on Periodic Reviews of Certain Regulations

1. **16 VAC 25-20:** Regulation Concerning Licensed Asbestos Contractor Notification, Asbestos Project Permits, and Permit Fees
Presenter – Cristin Bernhardt

2. **16 VAC 25-30:** Regulations for Asbestos Emissions Standards for Demolition and Renovation Construction Activities and the Disposal of Asbestos-Containing Construction Wastes – Incorporation by Reference 40 CFR 61.140 through 61.156
Presenter – Cristin Bernhardt

3. **16 VAC 25-40:** Standard for Boiler and Pressure Vessel Operator Certification
Presenter – Princy Doss

4. **16 VAC 25-70:** Virginia Confined Space Standard for the Telecommunications Industry
Presenter – Jay Withrow

5. **16 VAC 25-97:** Reverse Signal Procedures – General Industry – Vehicles/Equipment Not Covered by Existing Standards
Presenter – Jay Withrow

6. **16 VAC 25-160:** Construction Industry Standard for Sanitation
Presenter – Jay Withrow

(b) Status of Periodic Reviews of Certain Regulations

1. **16 VAC 25-50:** Boiler and Pressure Vessel Regulation.

2. **16 VAC 25-60:** Administrative Regulation for the Virginia Occupational Safety and Health Program.

3. **16 VAC 25-145:** Safety Standards for Fall Protection in Steel Erection, Construction Industry.
This regulation provides protection for steel erection workers from falls at or above 10 feet. An exception to this regulation is for employees working as “connectors”.

4. **16 VAC 25-200:** Virginia Voluntary Protection Program (VPP).

Presenter - Princy Doss

6. New Business. None
7. Items of Interest from the Department of Labor and Industry
 - (a) Boiler and Pressure Vessel Inspector Meeting – June 28, 2023
8. Items of Interest from Members of the Board
9. Meeting Adjournment

PUBLIC PARTICIPATION

If you wish to make an Oral Public Comment during the “Opportunity for the Public to Address the Board” period of this meeting, you must follow the instructions below:

- Oral public comments will be received from those persons who have submitted an email to **Princy.Doss@doli.virginia.gov** no later than **12:00 PM (NOON)** on June 26, 2023 indicating that they wish to offer either in person or electronic oral comments. Comments may be offered by these individuals when their name is announced by Ms. Doss. Oral comments will be **restricted to 5 minutes** each.
- **For oral comments received electronically:**
 - When logging onto Microsoft Teams each person must register prior to the meeting.
 - If you wish to make an oral comment and will be utilizing the “audio conference only” option to witness the hearing, ***you must provide the phone number you will be calling in from in your email to Ms. Doss*** so that the administrator will know whom to unmute at the appropriate time.
 - Other important information:
 - All parties will be muted until Ms. Doss announces the name of the person who is next to provide an oral comment.
 - All public participation connections will be muted following the public comment periods.
 - Please login from a location without background noise.

Individuals who offer both in person and virtual comments during the Safety and Health Codes Board Meeting on **June 27, 2023** are encouraged to submit a written version of any comments by email to **Princy.Doss@doli.virginia.gov** no later than **5:00 PM on June 28, 2023**.

INSTRUCTIONS FOR ATTENDING THE SHCB MEETING VIRTUALLY:

Event registration for attendee: <https://bit.ly/3NO9LAD>

FOIA Council Electronic Meetings Public Comment form for submitting feedback on this electronic meeting may be accessed at: <http://foiacouncil.dls.virginia.gov/sample%20letters/welcome.htm>

DRAFT

SAFETY AND HEALTH CODES BOARD
PUBLIC MEETING MINUTES
Monday, November 14, 2022

On November 14, 2022, the Safety and Health Codes Board (“Board”) held a public meeting at 600 East Main Street, Richmond, Virginia. The Board held a hybrid in person meeting with the option for the public to attend virtually, however the board members were required to attend in-person with a quorum.

Notice of the public meeting was provided to the public as required by VA Code §2.2-3708.2 and Executive Order 19 (2022). The notice invited the public to witness the meeting remotely via Microsoft Teams. Notice was provided on the Virginia Regulatory Town Hall’s website here:

[Virginia Regulatory Town Hall View Meeting](#)

A recording of the meeting in its entirety is available here:

https://www.doli.virginia.gov/wp-content/uploads/2022/11/Safety-and-Health-Codes-Board-Meeting-20221114_162255-Meeting-Recording.mp4

BOARD MEMBERS PARTICIPATING:

Mr. Chuck Stiff, Acting Vice-Chair
Mr. Jay Abbott
Mr. Robert Buchler
Ms. Kelly Bundy
Ms. Julie Henderson (VDH)
Ms. Elizabeth (Beth) Lohman (DEQ)
Ms. Lutheria Smith
Mr. Robert Smith
Mr. Thomas Thurston

BOARD MEMBERS ABSENT:

Mr. Lee Biedrycki
Mr. Travis Parsons

STAFF PRESENT:

Mr. Gary Pan, Commissioner of Dept. of Labor & Industry
Mr. Jay Withrow, Director, Legal Support, BLS, VPP, ORA, & OWB
Ms. Princy R. Doss, Director, Policy, Planning, & Public Information
Mr. Richard White, IT Project Manager
Ms. Cristin Bernhardt, Regulatory Coordinator
Ms. Marta Fernandes, Director of VOSH Safety Compliance
Mr. Ron Graham, Director of VOSH Health Compliance
Mr. Larry Capati, VOSH Safety Compliance

OTHERS PARTICIPATING:

Mr. Joshua Laws, Assistant Attorney General
Ms. Lisa Wright, Court Reporter, Chandler & Halasz

CALL TO ORDER

Vice-Chair Stiff called the meeting to order at 10:00 AM. A quorum was present. Vice-Chair Stiff made opening remarks informing the public that this meeting was being held in person for the participating board members with virtual attendance available through Microsoft Teams. Commissioner Pan welcomed the Board and Robert Smith and Lee Biedrycki, two new board members to the SHCB. Lee Biedrycki was unable to attend the meeting and Robert Smith introduced himself and provided his professional background in the boiler and pressure vessel industry.

BOARD MEMBER ROLE CALL

BOARD MEMBER	Present	Absent			
Mr. Jay Abbott	X				
Mr. Lee Biedrycki		X			
Mr. Robert Buchler	X				
Ms. Kelly Bundy	X				
Ms. Julie Henderson (VDH)	X				
Ms. Elizabeth (Beth) Lohman	X				
Mr. Travis Parsons		X			
Ms. Lutheria Smith	X				
Mr. Robert Smith	X				
Mr. Charles ("Chuck") Stiff	X				
Mr. Thomas Thurston	X				
VACANT					
VACANT					
VACANT					
TOTALS	9	2			

APPROVAL OF AGENDA

Vice-Chair Stiff asked the Board if there was any discussion on the agenda. There was none. Vice-Chair Stiff asked if there was a motion to approve the agenda. The motion was made, properly seconded and the roll call vote was conducted. The motion carried.

Motion: Approval of Agenda	Yea	Nay	Abstain	Absent	Other
Mr. Jay Abbott	X				
Mr. Lee Biedrycki				X	
Mr. Robert Buchler	X				
Ms. Kelly Bundy	X				
Ms. Julie Henderson (VDH)	X				
Ms. Elizabeth(Beth) Lohman (DEQ)	X				
Mr. Travis Parsons				X	
Ms. Lutheria Smith	X				
Mr. Robert Smith	X				
Mr. Charles ("Chuck") Stiff	X				
Mr. Thomas Thurston	X				
VACANT					
VACANT					
VACANT					
TOTALS	9			2	

APPROVAL OF MEETING MINUTES

Vice-Chair Stiff then called for discussion and motion for approval of the March 21, 2022 Meeting minutes. Vice-Chair Stiff asked the Board if there was any discussion on the March 21, 2022 minutes. There was none. There was a request for a motion to approve the minutes. The motion was made, properly seconded and the roll call vote was conducted. The motion carried.

Motion: Approval of March 21, 2022 Meeting Minutes	Yea	Nay	Abstain	Absent	Other
Mr. Jay Abbott	X				
Mr. Lee Biedrycki				X	
Mr. Robert Buchler	X				
Ms. Kelly Bundy	X				
Ms. Julie Henderson (VDH)	X				
Ms. Elizabeth(Beth) Lohman (DEQ)	X				
Mr. Travis Parsons				X	
Ms. Lutheria Smith	X				
Mr. Robert Smith	X				
Mr. Charles ("Chuck") Stiff	X				
Mr. Thomas Thurston	X				
VACANT					
VACANT					
VACANT					
TOTALS	9			2	

ELECTION OF OFFICERS

Vice-Chair Stiff called the next item on the agenda, which was the election of officers for the upcoming year. He explained the process for election of officers and the practice of revolving the Chair and Vice-Chair to reflect different representatives each year.

Currently the Chair is an open position with the former Chair, Milly Rodrigues having left the Board and Chuck currently Acting Chair. He asked for nominations for the Chair position and with the nomination of Chuck Stiff as Chair and no other nominations, there was a motion to approve Chuck Stiff as the Chair for the upcoming year. The motion was made, properly seconded and the roll call vote was conducted. The motion carried.

Motion: Approve Chuck Stiff as Chair	Yea	Nay	Abstain	Absent	Other
Mr. Jay Abbott	X				
Mr. Lee Biedrycki				X	
Mr. Robert Buchler	X				
Ms. Kelly Bundy	X				
Ms. Julie Henderson (VDH)	X				
Ms. Elizabeth(Beth) Lohman (DEQ)	X				
Mr. Travis Parsons				X	
Ms. Lutheria Smith	X				
Mr. Robert Smith	X				

Mr. Charles ("Chuck") Stiff	X				
Mr. Thomas Thurston	X				
VACANT					
VACANT					
VACANT					
TOTALS	9			2	

Next was the nominations for Acting Chair. Vice-Chair Still asked for nominations for the Vice-Chair position and with the nomination of Travis Parsons and no other nominations, there was a motion to approve Travis Parsons as the Vice-Chair for the upcoming year. The motion was made, properly seconded and the roll call vote was conducted. The motion carried.

Motion: Approve Travis Parson as Acting Chair	Yea	Nay	Abstain	Absent	Other
Mr. Jay Abbott	X				
Mr. Lee Biedrycki				X	
Mr. Robert Buchler	X				
Ms. Kelly Bundy	X				
Ms. Julie Henderson (VDH)	X				
Ms. Elizabeth(Beth) Lohman (DEQ)	X				
Mr. Travis Parsons				X	
Ms. Lutheria Smith	X				
Mr. Robert Smith	X				
Mr. Charles ("Chuck") Stiff	X				
Mr. Thomas Thurston	X				
VACANT					
VACANT					
VACANT					
TOTALS	9			2	

OPPORTUNITY FOR THE PUBLIC TO ADDRESS THE BOARD

Vice-Chair Stiff called the next item on the agenda, which was the opportunity for the public to address the Board. No members of the public registered to speak by the deadline of November 10, 2022.

Vice-Chair Stiff moved to the next item on the agenda, which was Old Business. He introduced Jay Withrow, Director of Legal Services for the Department of Labor & Industry, to address the Board.

OLD BUSINESS

Mr. Withrow presented the Board with a Report on the Periodic Reviews that were noticed by the Board at the December 3, 2021 board meeting. Mr. Withrow explained the Administrative Process Act ([Va. Code § 2.2-4017](#)), [Executive Order 19 \(2022\)](#), "Development and Review of State Agency Regulations," and the Office of Regulatory Management (ORM) [Procedures for the Review of State Agency Regulations](#) govern the periodic review of existing regulations. Six (6) regulations of the Safety and Health Codes Board (Board) were identified for review in 2021.

Mr. Withrow explained the regulatory process and the Town Hall public comment forum for the Notice of Periodic Reviews that opened May 23, 2021 and closed on June 13, 2022. There were no public comments received during the comment period. Mr. Withrow discussed recent updates to the regulatory process that went into effect on July 1, 2022 based on the Executive Order 19 (2022) and the new requirements for an economic analysis including benefit-cost analysis, local government impact analysis and economic impact on families.

Mr. Withrow went through the 6 regulations that were the subject of the periodic reviews to provide the results of the DOLI review conducted as a result of the December 2021 meeting, while advising the SHCB that there is still the new requirement of the economic impact analysis that needs to be conducted before DOLI can provide a recommendation. DOLI will be researching and gathering information about this new regulatory process and the required information needed and expectations for this economic analysis. Therefore, no board action is required at this time.

Example:

Action Needed

According to the Office of Regulatory Management's [Procedures for the Review of State Agency Regulations](#), the Department must prepare an economic analysis including benefit-cost analysis (**see ATTACHMENT A**), local government impact analysis, and economic impacts on families. Upon completion of the economic analysis, the Department will present its final recommendation to the Board for review and consideration.

NEW BUSINESS

Princy Doss, Director of Policy, Planning and Public Information addressed the Board. The Department requests the permission of the Board to proceed with the periodic review process of the Board's regulations listed below pursuant to the Administrative Process Act ([Va. Code § 2.2-4017](#)), [Executive Order 19 \(2022\)](#), "Development and Review of State Agency Regulations," and the Office of Regulatory Management (ORM) [Procedures for the Review of State Agency Regulations](#).

(a) Notice of Periodic Reviews for 2022

5. [16VAC25-50](#): Boiler and Pressure Vessel Regulation
6. [16VAC25-60](#): Administrative Regulation for the Virginia Occupational Safety and Health Program
7. [16VAC25-145](#): Safety Standards for Fall Protection in Steel Erection, Construction Industry
8. [16VAC25-200](#): Virginia Voluntary Protection Program (VPP)

The Department of Labor and Industry recommends that the Safety and Health Codes Board approve the publication of a Notice of Periodic Review in the Virginia Register for [16VAC25-50](#): Boiler and Pressure Vessel Regulation; [16VAC25-60](#): Administrative Regulation for the Virginia Occupational Safety and Health Program; [16VAC25-145](#): Safety Standards for Fall Protection in Steel Erection, Construction Industry; and [16VAC25-200](#): Virginia Voluntary Protection Program (VPP).

The Department also recommends that the Board state in any motion it may make regarding the periodic review of these regulations that it will receive, consider and respond to petitions by any interested person at any time with respect to the periodic review which will be conducted in accordance with the above-cited [§ 2.2-4017](#) of the Administrative Process Act and [Executive Order 19 \(2022\)](#), “Development and Review of State Agency Regulations”.

Vice-Chair Stiff then called for discussion and motion for approval of the publication of the notice for periodic reviews for the 4 regulations discussed above. Vice-Chair Stiff asked the Board if there was any discussion. There was none. There was a request for a motion to approve the motion. The motion was made, properly seconded and the roll call vote was conducted. The motion carried.

Motion: Approve the publication of the 4 periodic reviews discussed above	Yea	Nay	Abstain	Absent	Other
Mr. Jay Abbott	X				
Mr. Lee Biedrycki				X	
Mr. Robert Buchler	X				
Ms. Kelly Bundy	X				
Ms. Julie Henderson (VDH)	X				
Ms. Elizabeth(Beth) Lohman (DEQ)	X				
Mr. Travis Parsons				X	
Ms. Lutheria Smith	X				
Mr. Robert Smith	X				
Mr. Charles (“Chuck”) Stiff	X				
Mr. Thomas Thurston	X				
VACANT					
VACANT					
VACANT					
TOTALS	9			2	

Vice-Chair Stiff moved to the next item on the agenda, which was Items of Interest from the Department of Labor and Industry. He introduced Jay Withrow, Director of Legal Services for the Department of Labor & Industry, to address the Board.

ITEMS OF INTEREST FROM THE DEPARTMENT OF LABOR AND INDUSTRY

Mr. Withrow addressed the Board to discuss the current status of the OSHA Standards activity at the federal level that will have an impact in Virginia. He presented the Board with the OSHA Semi-Annual Regulatory Agenda with all the current OSHA activities.

Mr. Withrow is the state plan representative for the National Advisory Committee on Occupational Safety and Health (NACOSH) Heat Injury and Illness Prevention Workgroup and discussed the current activity of this workgroup and the basic elements of existing standards and resources for developing a federal regulation. The NACOSH workgroup will meet in December 13, 2022 and then make final report and recommendations to all of NACOSH at their January 3, 2023 meeting.

Mr. Withrow discussed the recent development of VOSH Program Directive on Outdoor and Indoor Heat Related Hazards effective September 29, 2022 based on the OSHA National Emphasis Program (NEP) on Outdoor and Indoor Heat Related Hazards. This program includes inspection programs and procedures for target industries and OSHA solicited random industries.

Mr. Withrow also announced the 25th Virginia Annual Safety and Health Conference to be held in Newport News on November 30 – December 2, 2022. The conference is presented by Virginia Department of Labor and Industry.

ITEMS OF INTEREST FROM MEMBERS OF THE BOARD

Vice-Chair Stiff asked for items of interest from the Members of the Board. There were none.

MEETING ADJOURNMENT

Vice-Chair Stiff adjourned the meeting at 11:28 am.



COMMONWEALTH of VIRGINIA
DEPARTMENT OF LABOR AND INDUSTRY

Gary G. Pan
COMMISSIONER

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VIRGINIA SAFETY AND HEALTH CODES BOARD

BRIEFING PACKAGE

June 27, 2023

Report of Periodic Review of 16VAC25-20

I. Background and Basis

The Administrative Process Act ([Va. Code § 2.2-4017](#)), [Executive Order 19 \(2022\)](#), “Development and Review of State Agency Regulations,” and the Office of Regulatory Management (ORM) [Procedures for the Review of State Agency Regulations](#) govern the periodic review of existing regulations. Six (6) regulations of the Safety and Health Codes Board (Board) were identified for review in 2021:

(a) Periodic Review

16VAC25-20: Regulation Concerning Licensed Asbestos Contractor Notification, Asbestos Project Permits, and Permit Fees

(b) [Va. Code § 2.2-4017](#). Periodic review of regulations:

Each Governor shall mandate through executive order a procedure for periodic review during that Governor's administration of regulations of agencies within the executive branch of state government. The procedure shall include (i) a review by the Attorney General to ensure statutory authority for regulations and (ii) a determination by the Governor whether the regulations are (a) necessary for the protection of public health, safety and welfare and (b) clearly written and easily understandable.

The Governor may require each agency (i) to review all regulations promulgated by that agency to determine whether new regulations should be adopted and old regulations amended or repealed, and (ii) to prepare a written report summarizing the agency's findings about its regulations, its reasons for its findings and any proposed course of action.

(c) **Office of Regulatory Management (ORM) [Procedures for the Review of State Agency Regulations](#)** issued:

Periodic Review of Existing Regulations

All existing state regulations promulgated by executive branch agencies, including those promulgated pursuant to an exemption from the APA, shall be reviewed every four years to determine whether they should be continued without change or be amended or repealed, consistent with the stated objectives of applicable law, to minimize the economic impact on small businesses in a manner consistent with the stated objectives of applicable law, as regarding [§ 2.2-4007.1 of the Code of Virginia](#).

The periodic review shall include: (1) the continued need for the regulation; (2) the nature and complaints or comments received concerning the regulation from the public; (3) the complexity of the regulation; (4) the extent to which the regulation overlaps, duplicates or conflicts with federal or state law or regulation; (5) an economic analysis including benefit-cost analysis (**see ATTACHMENT A**), local government impact analysis, economic impacts on families, and the count of regulatory requirements embedded in the regulation; and (6) the length of time since the regulation has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the regulation.¹

II. Current Status and Process

The Safety and Health Codes Board authorized the Department of Labor and Industry (Department) to begin reviewing the above-noted regulations at its December 3, 2021, meeting. On May 23, 2022, in accordance with Va. Code §§ [2.2-4006](#) through [2.2-4017](#), the Department filed Notices of Periodic Review in the *Virginia Register*.

The Office of the Attorney General (OAG) certified the statutory authority for the six regulations on May 13, 2022. A public comment period of 21 days began on May 23, 2022, and closed on June 13, 2022. **The Department received no comments on any of the standards and regulations.** Following the comment period, the Department staff

¹ Page 13, <https://townhall.virginia.gov/ORM-Procedures-Memo-v2.pdf>

reviewed the regulations and prepared recommendations for the Board's consideration at this meeting.

NOTE: Until recently it was not clear that the [Procedures for the Review of State Agency Regulations](#) were applicable to periodic reviews initiated prior to the adoption of the new Procedures. DOLI was informed by the Department of Planning and Budget (DPB) on November 3, 2022, that the new Procedures apply to any periodic reviews that had not been submitted to the Office of the Governor for review prior to July 30, 2022. For periodic reviews, agencies will have to complete Tables 2, 3 and 4 addressing Direct and Indirect Costs and Benefits based on quantitative factors to Local Partners, Families and Small Businesses (see ATTACHMENT A).

III. Review and Analysis

Pursuant to [Va. Code § 2.2-4007.1 D and E](#), a periodic review of an existing regulation shall consider the following factors:

D. In addition to other requirements of [Va. Code § 2.2-4017](#), all regulations shall be reviewed every four years to determine whether they should be continued without change or be amended or repealed, consistent with the stated objectives of applicable law, to minimize the economic impact on small businesses in a manner consistent with the stated objectives of applicable law....

E. The regulatory review required by this section shall include consideration of:

1. The continued need for the rule;
2. The nature of complaints or comments received concerning the regulation from the public;
3. The complexity of the regulation;
4. The extent to which the regulation overlaps, duplicates, or conflicts with federal or state law or regulation; and
5. The length of time since the regulation has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the regulation.

Regulation Concerning Licensed Asbestos Contractor Notification, Asbestos Project Permits, and Permit Fees, [16 VAC 25-20](#)

The Department last completed a Periodic Review of this regulation in 2017.

With regard to Asbestos and Lead Licensing standards and regulations, [Va. Code § 40.1-51.20.B](#) provides that:

"A licensed asbestos contractor or certified lead contractor shall obtain an asbestos or lead project permit from the Department of Labor and Industry prior to commencing each asbestos or lead project in accordance with this chapter and shall pay directly to the Commissioner a fee as **established by the Safety and Health Codes Board** pursuant to the Administrative Process Act (§ 2.2-4000 et seq.). The fees shall be sufficient but not excessive to cover the cost of administering the program." (Emphasis added).

[Va. Code § 40.1-51.20](#) mandates that all licensed asbestos contractors notify the Department at least twenty days prior to commencement of each asbestos project (the Department has the authority to waive all or any part of the twenty-day notice). The contractor is required to obtain an asbestos project permit and pay the appropriate fee in accordance with this Code section. At least once a year, during an actual project, the Department of Labor and Industry is required "to conduct an on-site unannounced inspection of each licensed asbestos contractor's ... procedures in regard to installing, removing and encapsulating asbestos....."²

The regulation lists the notification requirements for certain asbestos projects conducted by licensed asbestos contractors and provides for the payment of permit fees based on the size of the asbestos project.

The purpose of the regulation, which is mandated by statute, is to reduce the incidence of material impairment of the health of Virginians due to exposure to asbestos in the workplace or as an environmental pollutant.

"What are the hazards of asbestos?"

Asbestos is well recognized as a health hazard and its use is now highly regulated by both OSHA and EPA. Asbestos fibers associated with these health risks are too small to be seen with the naked eye. Breathing asbestos fibers can cause a buildup of scar-like tissue in the lungs called asbestosis and result in loss of lung function that often progresses to disability and death. Asbestos also causes cancer of the lung and other diseases such as mesothelioma of the pleura which is a fatal malignant tumor of the membrane lining the cavity of the lung or stomach. Epidemiologic evidence has increasingly shown that all asbestos fiber types, including the most commonly used form of asbestos, chrysotile, causes mesothelioma in humans."³

² <https://law.lis.virginia.gov/vacode/title40.1/chapter3.2/section40.1-51.21/>

³ <https://www.osha.gov/asbestos>

“What can be done to reduce the hazards of asbestos?”

Worker exposure to asbestos hazards are addressed in specific OSHA standards for the construction industry, general industry and shipyard employment sectors. These standards reduce the risk to workers by requiring that employers provide personal exposure monitoring to assess the risk and hazard awareness training for operations where there is any potential exposure to asbestos. Airborne levels of asbestos are never to exceed legal worker exposure limits. There is no "safe" level of asbestos exposure for any type of asbestos fiber.^{4, 5} Asbestos exposures as short in duration as a few days have caused mesothelioma in humans.^{4, 5, 6, 7} Every occupational exposure to asbestos can cause injury of disease; every occupational exposure to asbestos contributes to the risk of getting an asbestos related disease.⁸ Where there is exposure, employers are required to further protect workers by establishing regulated areas, controlling certain work practices and instituting engineering controls to reduce the airborne levels. The employer is required to ensure exposure is reduced by using administrative controls and provide for the wearing of personal protective equipment. Medical monitoring of workers is also required when legal limits and exposure times are exceeded.”⁴

A public comment period of 21 days began on May 23, 2022, and closed on June 13, 2022. The Department received no comments.

The Department believes the regulation is not overly complex and does not overlap, duplicate, or conflict with federal or state law or regulation.

The Department does not believe that economic conditions, or other factors have significantly changed in the area affected by the regulation.

At this time, the Department believes there is a continued need for the regulation to set and collect sufficient notification fees to support the statutory requirement for the Department "to conduct an on-site unannounced inspection of each licensed asbestos contractor's...procedures in regard to installing, removing and encapsulating asbestos....."⁵

IV. Recommended Action

At this time, the Department of Labor and Industry recommends to the Safety and Health Codes Board that this regulation be retained as is. The Department requests that the Safety and Health Codes Board vote to retain the regulation with no changes.

⁴ *Id.*

⁵ <https://law.lis.virginia.gov/vacode/title40.1/chapter3.2/section40.1-51.21/>

ATTACHMENT A

Office of Regulatory Management
Economic Review Form

Agency name	Department of Labor and Industry
Virginia Administrative Code (VAC) Chapter citation(s)	16 VAC 25-20
VAC Chapter title(s)	Chapter 20. Regulation Concerning Licensed Asbestos Contractor Notification, Asbestos Project Permits, and Permit Fees
Action title	Periodic Review
Date this document prepared	June 13, 2023
Regulatory Stage (including Issuance of Guidance Documents)	Periodic Review

Cost Benefit Analysis

Complete Tables 1a and 1b for all regulatory actions. You do not need to complete Table 1c if the regulatory action is required by state statute or federal statute or regulation and leaves no discretion in its implementation.

Table 1a should provide analysis for the regulatory approach you are taking. Table 1b should provide analysis for the approach of leaving the current regulations intact (i.e., no further change is implemented). Table 1c should provide analysis for at least one alternative approach. You should not limit yourself to one alternative, however, and can add additional charts as needed.

Report both direct and indirect costs and benefits that can be monetized in Boxes 1 and 2. Report direct and indirect costs and benefits that cannot be monetized in Box 4. See the ORM Regulatory Economic Analysis Manual for additional guidance.

Table 1a: Costs and Benefits of the Proposed Changes (Primary Option)

(1) Direct & Indirect Costs & Benefits (Monetized)	<p>Direct Costs: Describe the direct costs of this proposed change here.</p> <p>Indirect Costs: Describe the indirect costs of the proposed change.</p> <p>Direct Benefits: Describe the direct benefits of this proposed change here.</p> <p>Indirect Benefits: Describe the indirect benefits of the proposed change.</p>	
(2) Present Monetized Values	Direct & Indirect Costs	Direct & Indirect Benefits
	(a) Not applicable.	(b) Not applicable.
(3) Net Monetized Benefit	Not applicable.	
(4) Other Costs & Benefits (Non-Monetized)	Not applicable.	
(5) Information Sources	Not applicable.	

Table 1b: Costs and Benefits under the Status Quo (No change to the regulation)

(1) Direct & Indirect Costs & Benefits (Monetized)	<p>Direct Costs: Describe the direct costs of this proposed change here.</p> <p>Indirect Costs: Describe the indirect costs of the proposed change.</p> <p>Direct Benefits: Describe the direct benefits of this proposed change here.</p> <p>Indirect Benefits: Describe the indirect benefits of the proposed change.</p>	
(2) Present Monetized Values	Direct & Indirect Costs	Direct & Indirect Benefits
	(a) Not applicable.	(b) Not applicable.
(3) Net Monetized Benefit		

(4) Other Costs & Benefits (Non-Monetized)	Not applicable.
(5) Information Sources	Not applicable.

Table 1c: Costs and Benefits under Alternative Approach(es)

(1) Direct & Indirect Costs & Benefits (Monetized)	Direct Costs: Describe the direct costs of this proposed change here. Indirect Costs: Describe the indirect costs of the proposed change. Direct Benefits: Describe the direct benefits of this proposed change here. Indirect Benefits: Describe the indirect benefits of the proposed change.	
(2) Present Monetized Values	Direct & Indirect Costs	Direct & Indirect Benefits
	(a) Not applicable.	(b) Not applicable.
(3) Net Monetized Benefit	Not applicable.	
(4) Other Costs & Benefits (Non-Monetized)	Not applicable.	
(5) Information Sources	Not applicable.	

Impact on Local Partners

Use this chart to describe impacts on local partners. See Part 8 of the ORM Cost Impact Analysis Guidance for additional guidance.

Table 2: Impact on Local Partners

(1) Direct & Indirect Costs & Benefits (Monetized)	<ul style="list-style-type: none"> • Direct Costs: Describe the direct costs of this proposed change here. • Indirect Costs: Describe the indirect costs of the proposed change. • Direct Benefits: Describe the direct benefits of this proposed change here. • Indirect Benefits: Describe the indirect benefits of the proposed change. <p>The regulation neither disproportionately affects particular localities, nor affects costs for local governments, unless and to the extent that a local</p>
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government contracts for asbestos removal and the licensed contractor passes along the cost of its asbestos project permit fee to the local government.

Current fees are in 16VAC25-20-30.C and -30.D:

C. An asbestos project permit fee shall be submitted with the completed project notification. The fee shall be in accordance with the following schedule unless a blanket notification is granted under subsection D of this section:

1. \$50 for each project equal to or greater than 10 linear feet or 10 square feet up to and including 260 linear feet or 160 square feet;
2. \$160 for each project of more than 260 linear feet or 160 square feet up to and including 2600 linear feet or 1600 square feet;
3. \$470 for each project of more than 2600 linear feet or 1600 square feet; and
4. If the amount of asbestos is reported in both linear feet and square feet the amounts will be added and treated as if the total were all in square feet for the purposes of this subsection.

D. A blanket notification, valid for a period of one year, may be granted to a contractor who enters into a contract for asbestos removal or encapsulation on a specific site which is expected to last for one year or longer.

1. The contractor shall submit the notification required in [16VAC25-20-30](#) A to the department 20 days prior to the start of the requested blanket notification period. The notification submitted shall contain the following additional information:

- a. The dates of work required by subdivision B 7 of this section shall be every workday during the blanket notification period excluding weekends or state holidays;
- b. The estimate of asbestos to be removed required under subdivision B 5 of this section shall be signed by the owner and the owner's signature authenticated by a notary; and
- c. A copy of the contract shall be submitted with the notification.

2. The asbestos project permit fee shall be 0.5% of the contract price or \$470 whichever is greater. For contracts which require payments per square or linear foot of asbestos removed or encapsulated the contract price shall be the amount of asbestos estimated pursuant to

subdivision B 5 of this section times the per foot charge in the contract;

3. The contractor shall submit an amended notification at least one day prior to each time the contractor will not be on site. The fee for each amended notification shall be \$15;

4. A contractor shall submit an amended notification whenever the actual amount of asbestos removed or encapsulated exceeds the original estimate. If the contract was for a fixed cost regardless of the amount of asbestos the amendment fee shall be \$15. If the contract was based on a price per square or linear foot the amendment fee shall be the difference between the actual amount removed and the estimated amount times the contract price per foot times 0.5% plus \$15; and

5. Cancellation of a blanket notification may be made at any time by submitting a notarized notice of cancellation signed by the owner. The notice of cancellation must include the actual amount of asbestos removed and the actual amount of payments made under the contract. The refund shall be the difference between the original asbestos permit fee paid and either the actual amount of payments made under the contract times 0.5% or \$470 whichever is greater.

The benefit of the regulation, which is mandated by statute, is to reduce the incidence of material impairment of the health of Virginians due to exposure to asbestos in the workplace or as an environmental pollutant. What are the hazards of asbestos?

Asbestos is well recognized as a health hazard and its use is now highly regulated by both OSHA and EPA. Asbestos fibers associated with these health risks are too small to be seen with the naked eye. Breathing asbestos fibers can cause a buildup of scar-like tissue in the lungs called asbestosis and result in loss of lung function that often progresses to disability and death. Asbestos also causes cancer of the lung and other diseases such as mesothelioma of the pleura which is a fatal malignant tumor of the membrane lining the cavity of the lung or stomach. Epidemiologic evidence has increasingly shown that all asbestos fiber types, including the most commonly used form of asbestos, chrysotile, causes mesothelioma in humans.

What can be done to reduce the hazards of asbestos?

Worker exposure to asbestos hazards are addressed in specific OSHA standards for the construction industry, general industry and shipyard employment sectors. These standards reduce the risk to workers by requiring that employers provide personal exposure monitoring to assess the risk and hazard awareness training for operations where there is any

	<p>potential exposure to asbestos. Airborne levels of asbestos are never to exceed legal worker exposure limits. There is no "safe" level of asbestos exposure for any type of asbestos fiber.^{4, 5} Asbestos exposures as short in duration as a few days have caused mesothelioma in humans.^{4, 5, 6, 7} Every occupational exposure to asbestos can cause injury of disease; every occupational exposure to asbestos contributes to the risk of getting an asbestos related disease.⁸ Where there is exposure, employers are required to further protect workers by establishing regulated areas, controlling certain work practices and instituting engineering controls to reduce the airborne levels. The employer is required to ensure exposure is reduced by using administrative controls and provide for the wearing of personal protective equipment. Medical monitoring of workers is also required when legal limits and exposure times are exceeded.</p> <p>Va. Code § 40.1-51.20 mandates that all licensed asbestos contractors notify the Department at least twenty days prior to commencement of each asbestos project (the Department has the authority to waive all or any part of the twenty-day notice). The contractor is required to obtain an asbestos project permit and pay the appropriate fee in accordance with this Code section. Under Va. Code § 40.1-21, at least once a year, during an actual project, the Department of Labor and Industry is required "to conduct an on-site unannounced inspection of each licensed asbestos contractor's ... procedures in regard to installing, removing and encapsulating asbestos....." Such DOLI annual inspections are designed to identify and assure correction of asbestos hazards to reduce or eliminate asbestos exposure to employees and the general public.</p>	
(2) Present Monetized Values	Direct & Indirect Costs	Direct & Indirect Benefits
	(a) See (1) above.	(b) See (1) above.
(3) Other Costs & Benefits (Non-Monetized)	<p>As referenced above, an asbestos contractor working at a local government worksite could be subject to an inspection by DOLI. To the extent that the DOLI inspection delays completion of the project, the local government could experience a delay in use of the specific area under contract.</p> <p>If the DOLI inspection uncovers violations which could have resulted in the release of asbestos fibers in the project area, the contractor would be required to clean up the area before releasing it for use.</p>	
(4) Assistance	Not applicable.	

(5) Information Sources	16VAC25-20-30.C and -30.D https://www.osha.gov/asbestos
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Impacts on Families

Use this chart to describe impacts on families. See Part 8 of the ORM Cost Impact Analysis Guidance for additional guidance.

Table 3: Impact on Families

(1) Direct & Indirect Costs & Benefits (Monetized)	<ul style="list-style-type: none"> • Direct Costs: Describe the direct costs of this proposed change here. • Indirect Costs: Describe the indirect costs of the proposed change. • Direct Benefits: Describe the direct benefits of this proposed change here. • Indirect Benefits: Describe the indirect benefits of the proposed change. <p>The regulation should not result in any costs to families in single family homes or in residential buildings with four or fewer units as projects at such sites are exempt from paying a permit fee. If a family owns a residential building with more than four units, they could experience costs if they contract for asbestos removal and the licensed contractor passes along the cost of its asbestos project permit fee to the family.</p> <p>See benefits listed in Table 2 above.</p>	
(2) Present Monetized Values	Direct & Indirect Costs	Direct & Indirect Benefits
	(a) See Table 2 above.	(b) See Table 2 above.
(3) Other Costs & Benefits (Non-Monetized)	<p>While rare, and usually only in response to a complaint from a family that occupies the building, an asbestos contractor working at a residential worksite could be subject to an inspection by DOLI. To the extent that the DOLI inspection delays completion of the project, the family could experience a delay in use of the specific area under contract.</p> <p>If the DOLI inspection uncovers violations which could have resulted in the release of asbestos fibers in the project area, the contractor would be required to clean up the area before releasing it for use to the family, thus eliminating potential family exposure to asbestos fibers.</p>	
(4) Information Sources	16VAC25-20-30.C and -30.D https://www.osha.gov/asbestos	

Impacts on Small Businesses

Use this chart to describe impacts on small businesses. See Part 8 of the ORM Cost Impact Analysis Guidance for additional guidance.

Table 4: Impact on Small Businesses

<p>(1) Direct & Indirect Costs & Benefits (Monetized)</p>	<ul style="list-style-type: none"> • Direct Costs: Describe the direct costs of this proposed change here. • Indirect Costs: Describe the indirect costs of the proposed change. • Direct Benefits: Describe the direct benefits of this proposed change here. • Indirect Benefits: Describe the indirect benefits of the proposed change. <p>If the small business is a licensed asbestos contractor, they would be required to pay the fees outlined in Table 2 above. The small business has the option to either pass those costs along to its customers or not. As referenced above, a small business that is a licensed asbestos contractor is subject to being inspected by DOLI on an annual basis. If violations are cited, they could result in penalties being issued. The contractor would also be required to correct the violations, which would not normally be passed along to the customer.</p> <p>A small business could experience costs if they contract for asbestos removal and the licensed contractor passes along the cost of its asbestos project permit fee to the small business.</p> <p>See costs and benefits listed in Table 2 above.</p>	
<p>(2) Present Monetized Values</p>	<p>Direct & Indirect Costs</p>	<p>Direct & Indirect Benefits</p>
	<p>(a) See Table 2 above.</p>	<p>(b) See Table 2 above.</p>
<p>(3) Other Costs & Benefits (Non-Monetized)</p>	<p>As referenced above, an asbestos contractor working at a small business could be subject to an inspection by DOLI. To the extent that the DOLI inspection delays completion of the project, the small business could experience a delay in use of the specific area under contract.</p> <p>If the DOLI inspection uncovers violations which could have resulted in the release of asbestos fibers in the project area, the contractor would be required to clean up the area before releasing it for use.</p>	
<p>(4) Alternatives</p>	<p>None. Licensed asbestos contractors are required to pay a permit fee unless otherwise exempt by statute per Va. Code § 40.1-51.20.B.</p>	

(5) Information Sources	16VAC25-20-30.C and -30.D https://www.osha.gov/asbestos Va. Code § 40.1-51.20
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Changes to Number of Regulatory Requirements

For each individual VAC Chapter amended, repealed, or promulgated by this regulatory action, list (a) the initial requirement count, (b) the count of requirements that this regulatory package is adding, (c) the count of requirements that this regulatory package is reducing, (d) the net change in the number of requirements. This count should be based upon the text as written when this stage was presented for executive branch review. Five rows have been provided, add or delete rows as needed. In the last row, indicate the total number for each column.

Table 5: Total Number of Requirements

Chapter number	Number of Requirements			
	Initial Count	Additions	Subtractions	Net Change
16VAC25-20-10	0	0	0	0
16VAC25-20-20	0	0	0	0
16VAC25-20-30	3	0	0	0
16VAC25-20-40	0	0	0	0
TOTAL	3	0	0	0



COMMONWEALTH of VIRGINIA
DEPARTMENT OF LABOR AND INDUSTRY

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VIRGINIA SAFETY AND HEALTH CODES BOARD

BRIEFING PACKAGE

June 27, 2023

Report of Periodic Review of 16VAC25-30

I. Background and Basis

The Administrative Process Act ([Va. Code § 2.2-4017](#)), [Executive Order 19 \(2022\)](#), “Development and Review of State Agency Regulations,” and the Office of Regulatory Management (ORM) [Procedures for the Review of State Agency Regulations](#) govern the periodic review of existing regulations. Six (6) regulations of the Safety and Health Codes Board (Board) were identified for review in 2021:

(d) Periodic Review

16VAC25-30: Regulations for Asbestos Emissions Standards for Demolition and Renovation Construction Activities and the Disposal of Asbestos-Containing Construction Wastes – Incorporation by Reference 40 CFR 61.140 through 61.156

(e) [Va. Code § 2.2-4017](#). Periodic review of regulations:

Each Governor shall mandate through executive order a procedure for periodic review during that Governor's administration of regulations of agencies within the executive branch of state government. The procedure shall include (i) a review by the Attorney General to ensure statutory authority for regulations and (ii) a determination by the Governor whether the regulations are (a) necessary for the protection of public health, safety and welfare and (b) clearly written and easily understandable.

The Governor may require each agency (i) to review all regulations promulgated by that agency to determine whether new regulations should be adopted and old regulations amended or repealed, and (ii) to prepare a written report summarizing the agency's findings about its regulations, its reasons for its findings and any proposed course of action.

(f) **Office of Regulatory Management (ORM) [Procedures for the Review of State Agency Regulations](#)** issued:

Periodic Review of Existing Regulations

All existing state regulations promulgated by executive branch agencies, including those promulgated pursuant to an exemption from the APA, shall be reviewed every four years to determine whether they should be continued without change or be amended or repealed, consistent with the stated objectives of applicable law, to minimize the economic impact on small businesses in a manner consistent with the stated objectives of applicable law, as regarding [§ 2.2-4007.1 of the Code of Virginia](#).

The periodic review shall include: (1) the continued need for the regulation; (2) the nature and complaints or comments received concerning the regulation from the public; (3) the complexity of the regulation; (4) the extent to which the regulation overlaps, duplicates or conflicts with federal or state law or regulation; (5) an economic analysis including benefit-cost analysis (**see ATTACHMENT A**), local government impact analysis, economic impacts on families, and the count of regulatory requirements embedded in the regulation; and (6) the length of time since the regulation has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the regulation.⁶

II. Current Status and Process

The Safety and Health Codes Board authorized the Department of Labor and Industry (Department) to begin reviewing the above-noted regulations at its December 3, 2021, meeting. On May 23, 2022, in accordance with Va. Code §§ [2.2-4006](#) through [2.2-4017](#), the Department filed Notices of Periodic Review in the *Virginia Register*.

The Office of the Attorney General (OAG) certified the statutory authority for the six regulations on May 13, 2022. A public comment period of 21 days began on May 23, 2022, and closed on June 13, 2022. **The Department received no comments on any of the standards and regulations.** Following the comment period, the Department staff reviewed the regulations and prepared recommendations for the Board's consideration at this meeting.

⁶ Page 13, <https://townhall.virginia.gov/ORM-Procedures-Memo-v2.pdf>

NOTE: Until recently it was not clear that the [Procedures for the Review of State Agency Regulations](#) were applicable to periodic reviews initiated prior to the adoption of the new Procedures. DOLI was informed by the Department of Planning and Budget (DPB) on November 3, 2022, that the new Procedures apply to any periodic reviews that had not been submitted to the Office of the Governor for review prior to July 30, 2022. For periodic reviews, agencies will have to complete Tables 2, 3 and 4 addressing Direct and Indirect Costs and Benefits based on quantitative factors to Local Partners, Families and Small Businesses (see ATTACHMENT A).

III. Review and Analysis

Pursuant to [Va. Code § 2.2-4007.1 D and E](#), a periodic review of an existing regulation shall consider the following factors:

D. In addition to other requirements of [Va. Code § 2.2-4017](#), all regulations shall be reviewed every four years to determine whether they should be continued without change or be amended or repealed, consistent with the stated objectives of applicable law, to minimize the economic impact on small businesses in a manner consistent with the stated objectives of applicable law....

E. The regulatory review required by this section shall include consideration of:

1. The continued need for the rule;
2. The nature of complaints or comments received concerning the regulation from the public;
3. The complexity of the regulation;
4. The extent to which the regulation overlaps, duplicates, or conflicts with federal or state law or regulation; and
5. The length of time since the regulation has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the regulation.

Regulations for Asbestos Emissions Standards for Demolition and Renovation Construction Activities and the Disposal of Asbestos-Containing Construction Wastes – Incorporation by Reference 40 CFR 61.140 through 40 CFR 61.156, 16 VAC 25-30

The Department last completed a Periodic Review of this regulation in 2017.

With regard to Asbestos-related NESHAP (National Emissions Standards for Hazardous Air Pollutants) requirements, [Va. Code § 40.1-51.25](#) provides:

A. **The Board** is authorized to formulate definitions, rules, regulations and standards which shall be designed to ensure the proper demolition and renovation of asbestos facilities and effect compliance with the asbestos NESHAP requirements of the federal Environmental Protection Agency. Such standards shall be at least as stringent as the asbestos regulations passed pursuant to § 112 of the Clean Air Act. The regulations shall not promote or encourage any substantial degradation of present air quality in any air basin or region which has an air quality superior to that stipulated in the regulations of the Department of Air Pollution Control. Any regulations adopted by the Board to have general effect in part or all of the Commonwealth shall be filed in accordance with the Virginia Register Act (§ 2.2-4100 et seq.).

B. The Board in making regulations and in approving variances, and the courts in granting injunctive relief under the provisions of this chapter, shall consider facts and circumstances relevant to the reasonableness of the activity involved and the regulations proposed to control it, including:

1. The character and degree of injury to, or interference with, safety, health, or the reasonable use of property which is caused or threatened to be caused;
2. The social and economic value of the activity involved;
3. The suitability of the activity to the area in which it is located; and
4. The scientific and economic practicality of reducing or eliminating the discharge resulting from such activity.
(Emphasis added).

This regulation adopts and incorporates by reference for state use the federal Environmental Protection Agency's (EPA) NESHAP regulations that address human exposure to asbestos as a result of air emissions from demolition and renovation, disposal of asbestos containing waste. If the DOLI regulation did not exist, covered employers would still have to comply with the same federal regulatory provisions and be subject to enforcement by either the Virginia Department of Environmental Quality (DEQ) or the federal Environmental Protection Agency (EPA).

The purpose of the regulation, which is required so that Virginia regulations can "be at least as stringent as the asbestos regulations passed pursuant to [§ 112 of the Clean Air Act](#),"⁷ is to reduce the incidence of material impairment of the health of Virginians due to exposure to asbestos in the workplace or as an environmental pollutant.

The following sections from 40 CFR 61.140 through 61.156 are incorporated by reference:

16VAC25-30-20. Designated standards of performance.

- Subpart 61.140 - Applicability, 40 CFR 61.140⁸
- Subpart 61.141 - Definitions, 40 CFR 61.141
- Subpart 61.145 - Standard for Demolition and Renovation, 40 CFR 61.145 (including figure 3)
- Subpart 61.146 - Standard for Spraying, 40 CFR 61.146
- Subpart 61.148 - Standard for Insulating Materials, 40 CFR 61.148
- Subpart 61.150 - Standard for Waste Disposal, 40 CFR 61.150 (excluding subsection (a)(4) and including figure 4)
- Subpart 61.154 - Standard for Active Waste Disposal Sites, 40 CFR 61.154 (excluding subsection (d))
- Subpart 61.156 - Cross-reference to other Asbestos Regulations, 40 CFR 61.156 (including Table 1)

"What are the hazards of asbestos?"

Asbestos is well recognized as a health hazard and its use is now highly regulated by both OSHA and EPA. Asbestos fibers associated with these health risks are too small to be seen with the naked eye. Breathing asbestos fibers can cause a buildup of scar-like tissue in the lungs called asbestosis and result in loss of lung function that often progresses to disability and death. Asbestos also causes cancer of the lung and other diseases such as

⁷ <https://law.lis.virginia.gov/vacode/title40.1/chapter3.3/section40.1-51.25/>

⁸ <https://www.ecfr.gov/current/title-40/chapter-I/subchapter-C/part-61/subpart-M>

mesothelioma of the pleura which is a fatal malignant tumor of the membrane lining the cavity of the lung or stomach. Epidemiologic evidence has increasingly shown that all asbestos fiber types, including the most commonly used form of asbestos, chrysotile, causes mesothelioma in humans.”⁹

The Department is authorized by [Va. Code § 40.1-26\(5\)](#) to "Investigate any violations of this chapter and regulations." In enforcing the asbestos NESHAP regulations in Virginia, the Department stands in the place of the Virginia Department of Environmental Quality (DEQ) and the federal Environmental Protection Agency (EPA), either of which would otherwise be responsible for conducting the asbestos NESHAP inspections.

A public comment period of 21 days began on May 23, 2022, and closed on June 13, 2022. The Department received no comments.

The Department believes the regulation is not overly complex and does not overlap, duplicate, or conflict with federal or state law or regulation.

The Department does not believe that economic conditions, or other factors have significantly changed in the area affected by the regulation.

At this time, the Department believes there is a continued need for the regulation so the Department can fulfill its statutory obligation to "Investigate any violations of this chapter and regulations.”¹⁰

IV. Recommended Action

At this time, the Department of Labor and Industry recommends to the Safety and Health Codes Board that this regulation be retained as is. The Department requests that the Safety and Health Codes Board vote to retain the regulation with no changes.

⁹ <https://www.osha.gov/asbestos>

¹⁰ <https://law.lis.virginia.gov/vacode/40.1-51.26/>

ATTACHMENT A

Office of Regulatory Management

Economic Review Form

Agency name	Department of Labor and Industry
Virginia Administrative Code (VAC) Chapter citation(s)	16VAC25-30
VAC Chapter title(s)	Chapter 30. Regulations for Asbestos Emissions Standards for Demolition and Renovation Construction Activities and the Disposal of Asbestos Containing Construction Waste – Incorporation By Reference, 40 CFR 61.140 through 61.156
Action title	Periodic Review of Regulations
Date this document prepared	June 13, 2023
Regulatory Stage (including Issuance of Guidance Documents)	Periodic Review of Regulations

Cost Benefit Analysis

Complete Tables 1a and 1b for all regulatory actions. You do not need to complete Table 1c if the regulatory action is required by state statute or federal statute or regulation and leaves no discretion in its implementation.

Table 1a should provide analysis for the regulatory approach you are taking. Table 1b should provide analysis for the approach of leaving the current regulations intact (i.e., no further change is implemented). Table 1c should provide analysis for at least one alternative approach. You should not limit yourself to one alternative, however, and can add additional charts as needed.

Report both direct and indirect costs and benefits that can be monetized in Boxes 1 and 2. Report direct and indirect costs and benefits that cannot be monetized in Box 4. See the ORM Regulatory Economic Analysis Manual for additional guidance.

Table 1a: Costs and Benefits of the Proposed Changes (Primary Option)

(1) Direct & Indirect Costs & Benefits (Monetized)	Direct Costs: Describe the direct costs of this proposed change here. Indirect Costs: Describe the indirect costs of the proposed change. Direct Benefits: Describe the direct benefits of this proposed change here. Indirect Benefits: Describe the indirect benefits of the proposed change.	
(2) Present Monetized Values	Direct & Indirect Costs	Direct & Indirect Benefits
	(a) Not applicable.	(b) Not applicable.
(3) Net Monetized Benefit	Not applicable.	
(4) Other Costs & Benefits (Non-Monetized)	Not applicable.	
(5) Information Sources	Not applicable.	

Table 1b: Costs and Benefits under the Status Quo (No change to the regulation)

(1) Direct & Indirect Costs & Benefits (Monetized)	Direct Costs: Describe the direct costs of this proposed change here. Indirect Costs: Describe the indirect costs of the proposed change. Direct Benefits: Describe the direct benefits of this proposed change here. Indirect Benefits: Describe the indirect benefits of the proposed change.	
(2) Present Monetized Values	Direct & Indirect Costs	Direct & Indirect Benefits
	(a) Not applicable.	(b) Not applicable.
(3) Net Monetized Benefit	Not applicable.	

(4) Other Costs & Benefits (Non-Monetized)	Not applicable.
(5) Information Sources	Not applicable.

Table 1c: Costs and Benefits under Alternative Approach(es)

(1) Direct & Indirect Costs & Benefits (Monetized)	Direct Costs: Describe the direct costs of this proposed change here. Indirect Costs: Describe the indirect costs of the proposed change. Direct Benefits: Describe the direct benefits of this proposed change here. Indirect Benefits: Describe the indirect benefits of the proposed change.	
(2) Present Monetized Values	Direct & Indirect Costs	Direct & Indirect Benefits
	(a) Not applicable.	(b) Not applicable.
(3) Net Monetized Benefit	Not applicable.	
(4) Other Costs & Benefits (Non-Monetized)	Not applicable.	
(5) Information Sources	Not applicable.	

Impact on Local Partners

Use this chart to describe impacts on local partners. See Part 8 of the ORM Cost Impact Analysis Guidance for additional guidance.

Table 2: Impact on Local Partners

(1) Direct & Indirect Costs & Benefits (Monetized)	<ul style="list-style-type: none"> • Direct Costs: Describe the direct costs of this proposed change here. • Indirect Costs: Describe the indirect costs of the proposed change. • Direct Benefits: Describe the direct benefits of this proposed change here. • Indirect Benefits: Describe the indirect benefits of the proposed change. <p>The regulation neither disproportionately affects particular localities, nor affects costs for local governments, unless and to the extent that a local</p>
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	<p>government contracts for asbestos removal and the licensed contractor is inspected by DOLI and/or is found to be in violation of statutory/regulatory requirements.</p> <p>The Department is authorized by Va. Code § 40.1-26(5) to "Investigate any violations of this chapter and regulations." In enforcing the asbestos NESHAP regulations in Virginia, the Department stands in the place of the Virginia Department of Environmental Quality (DEQ) and the federal Environmental Protection Agency (EPA), either of which would otherwise be responsible for conducting the asbestos NESHAP inspections.</p> <p>What are the hazards of asbestos?</p> <p>Asbestos is well recognized as a health hazard and its use is now highly regulated by both OSHA and EPA. Asbestos fibers associated with these health risks are too small to be seen with the naked eye. Breathing asbestos fibers can cause a buildup of scar-like tissue in the lungs called asbestosis and result in loss of lung function that often progresses to disability and death. Asbestos also causes cancer of the lung and other diseases such as mesothelioma of the pleura which is a fatal malignant tumor of the membrane lining the cavity of the lung or stomach. Epidemiologic evidence has increasingly shown that all asbestos fiber types, including the most commonly used form of asbestos, chrysotile, causes mesothelioma in humans.</p> <p>The benefit of the regulation, which is required so that Virginia regulations can "be at least as stringent as the asbestos regulations passed pursuant to § 112 of the Clean Air Act,"¹¹ is to reduce the incidence of material impairment of the health of Virginians due to exposure to asbestos in the workplace or as an environmental pollutant.</p>	
(2) Present Monetized Values	Direct & Indirect Costs	Direct & Indirect Benefits
	(a) See (1) above.	(b) See (1) above.
(3) Other Costs & Benefits (Non-Monetized)	As referenced above, an asbestos contractor working at a local government worksite could be subject to an inspection by DOLI. To the extent that the DOLI inspection delays completion of the project, the local government could experience a delay in use of the specific area under contract.	

¹¹ <https://law.lis.virginia.gov/vacode/title40.1/chapter3.3/section40.1-51.25/>

	If the DOLI inspection uncovers violations which could have resulted in the release of asbestos fibers in the project area, the contractor would be required to clean up the area before releasing it for use.
(4) Assistance	Not applicable.
(5) Information Sources	https://www.osha.gov/asbestos

Impacts on Families

Use this chart to describe impacts on families. See Part 8 of the ORM Cost Impact Analysis Guidance for additional guidance.

Table 3: Impact on Families

(1) Direct & Indirect Costs & Benefits (Monetized)	<ul style="list-style-type: none"> • Direct Costs: Describe the direct costs of this proposed change here. • Indirect Costs: Describe the indirect costs of the proposed change. • Direct Benefits: Describe the direct benefits of this proposed change here. • Indirect Benefits: Describe the indirect benefits of the proposed change. <p>The regulation should not result in any costs to families except to the extent that the family is dealing with the demolition of a residence containing asbestos materials. If the family contracts with a company to demolish the building, the contractor will have to comply with requirements of the regulation and may pass such costs along to the family.</p> <p>If the DOLI regulation did not exist, the contractor would be subject to enforcement by the Virginia Department of Environmental Quality (DEQ) or the federal Environmental Protection Agency (EPA), and have to comply with the same federal regulations, and could pass any costs along to the family as well.</p> <p>See benefits listed in Table 2 above.</p>
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(2) Present Monetized Values	Direct & Indirect Costs	Direct & Indirect Benefits
	(a) See (1) above.	(b) See (1) above.
(3) Other Costs & Benefits (Non-Monetized)	While rare, and usually only in response to a complaint from a family that owns the building, an asbestos contractor working at a residential demolition worksite could be subject to an inspection by DOLI. To the extent that the DOLI inspection delays completion of the demolition project, the family could experience a delay in use of the specific area under contract.	
(4) Information Sources	https://www.osha.gov/asbestos	

Impacts on Small Businesses

Use this chart to describe impacts on small businesses. See Part 8 of the ORM Cost Impact Analysis Guidance for additional guidance.

Table 4: Impact on Small Businesses

(1) Direct & Indirect Costs & Benefits (Monetized)	<ul style="list-style-type: none"> • Direct Costs: Describe the direct costs of this proposed change here. • Indirect Costs: Describe the indirect costs of the proposed change. • Direct Benefits: Describe the direct benefits of this proposed change here. • Indirect Benefits: Describe the indirect benefits of the proposed change. <p>As referenced above, a small business that is a licensed asbestos contractor conducting demolition activities is subject to being inspected by DOLI. If violations are cited, they could result in penalties being issued. The contractor would also be required to correct the violations, which would not normally be passed along to the customer.</p> <p>A small business that contracts for asbestos removal demolition services should not experience any costs associated with a DOLI inspection of its asbestos contractor.</p>
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	See costs and benefits listed in Table 2 above.	
(2) Present Monetized Values	Direct & Indirect Costs	Direct & Indirect Benefits
	(a) See Table 2 above.	(b) See Table 2 above.
(3) Other Costs & Benefits (Non-Monetized)	To the extent that the DOLI inspection delays completion of the demolition project, the small business that hired the asbestos contractor could experience a delay in use of the specific area under contract.	
(4) Alternatives	None. If the DOLI regulation did not exist, covered employers would still have to comply with the same federal regulatory provisions and be subject to enforcement by either the Virginia Department of Environmental Quality (DEQ) or the federal Environmental Protection Agency (EPA).	
(5) Information Sources	https://www.osha.gov/asbestos	

Changes to Number of Regulatory Requirements

For each individual VAC Chapter amended, repealed, or promulgated by this regulatory action, list (a) the initial requirement count, (b) the count of requirements that this regulatory package is adding, (c) the count of requirements that this regulatory package is reducing, (d) the net change in the number of requirements. This count should be based upon the text as written when this stage was presented for executive branch review. Five rows have been provided, add or delete rows as needed. In the last row, indicate the total number for each column.

Table 5: Total Number of Requirements

Chapter number	Number of Requirements			
	Initial Count	Additions	Subtractions	Net Change
16VAC25-30-10	0	0	0	0
16VAC25-30-20	29	0	0	0
16VAC25-30-30	0	0	0	0
TOTAL	29	0	0	0



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VIRGINIA SAFETY AND HEALTH CODES BOARD

BRIEFING PACKAGE

June 27, 2023

Report of Periodic Review of 16 VAC 25-40

I. Background and Basis

The Administrative Process Act ([Va. Code § 2.2-4017](#)), [Executive Order 19 \(2022\)](#), “Development and Review of State Agency Regulations,” and the Office of Regulatory Management (ORM) [Procedures for the Review of State Agency Regulations](#) govern the periodic review of existing regulations. Six (6) regulations of the Safety and Health Codes Board (Board) were identified for review in 2021:

(g) Periodic Reviews

16 VAC 25-40: Standard for Boiler and Pressure Vessel Operator Certification

(h) [Va. Code § 2.2-4017](#). Periodic review of regulations:

Each Governor shall mandate through executive order a procedure for periodic review during that Governor's administration of regulations of agencies within the executive branch of state government. The procedure shall include (i) a review by the Attorney General to ensure statutory authority for regulations and (ii) a determination by the Governor whether the regulations are (a) necessary for the protection of public health, safety and welfare and (b) clearly written and easily understandable.

The Governor may require each agency (i) to review all regulations promulgated by that agency to determine whether new regulations should be adopted and old

regulations amended or repealed, and (ii) to prepare a written report summarizing the agency's findings about its regulations, its reasons for its findings and any proposed course of action.

(i) **Office of Regulatory Management (ORM) [Procedures for the Review of State Agency Regulations](#)** issued:

Periodic Review of Existing Regulations

All existing state regulations promulgated by executive branch agencies, including those promulgated pursuant to an exemption from the APA, shall be reviewed every four years to determine whether they should be continued without change or be amended or repealed, consistent with the stated objectives of applicable law, to minimize the economic impact on small businesses in a manner consistent with the stated objectives of applicable law, as regarding [§ 2.2-4007.1 of the Code of Virginia](#).

The periodic review shall include: (1) the continued need for the regulation; (2) the nature and complaints or comments received concerning the regulation from the public; (3) the complexity of the regulation; (4) the extent to which the regulation overlaps, duplicates or conflicts with federal or state law or regulation; (5) an economic analysis including benefit-cost analysis (**see ATTACHMENT A**), local government impact analysis, economic impacts on families, and the count of regulatory requirements embedded in the regulation; and (6) the length of time since the regulation has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the regulation.¹²

II. Current Status and Process

The Safety and Health Codes Board authorized the Department of Labor and Industry (Department) to begin reviewing the above-noted regulations at its December 3, 2021, meeting. On May 23, 2022, in accordance with Va. Code §§ [2.2-4006](#) through [2.2-4017](#), the Department filed Notices of Periodic Review in the *Virginia Register*.

The Office of the Attorney General (OAG) certified the statutory authority for the six regulations on May 13, 2022. A public comment period of 21 days began on May 23, 2022, and closed on June 13, 2022. **The Department received no comments on any of the standards and regulations.** Following the comment period, the Department staff reviewed the regulations and prepared recommendations for the Board's consideration at this meeting.

¹² Page 13, <https://townhall.virginia.gov/ORM-Procedures-Memo-v2.pdf>

NOTE: Until recently it was not clear that the [Procedures for the Review of State Agency Regulations](#) were applicable to periodic reviews initiated prior to the adoption of the new Procedures. DOLI was informed by the Department of Planning and Budget (DPB) on November 3, 2022, that the new Procedures apply to any periodic reviews that had not been submitted to the Office of the Governor for review prior to July 30, 2022. For periodic reviews, agencies will have to complete Tables 2, 3 and 4 addressing Direct and Indirect Costs and Benefits based on quantitative factors to Local Partners, Families and Small Businesses (see ATTACHMENT A).

III. Review and Analysis

Pursuant to [Va. Code § 2.2-4007.1 D and E](#), a periodic review of an existing regulation shall consider the following factors:

D. In addition to other requirements of [Va. Code § 2.2-4017](#), all regulations shall be reviewed every four years to determine whether they should be continued without change or be amended or repealed, consistent with the stated objectives of applicable law, to minimize the economic impact on small businesses in a manner consistent with the stated objectives of applicable law....

E. The regulatory review required by this section shall include consideration of:

1. The continued need for the rule;
2. The nature of complaints or comments received concerning the regulation from the public;
3. The complexity of the regulation;
4. The extent to which the regulation overlaps, duplicates, or conflicts with federal or state law or regulation; and
5. The length of time since the regulation has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the regulation.

Standard for Boiler and Pressure Vessel Operator Certification, [16 VAC 25-40](#)

The Department last completed a Periodic Review of the regulation in 2017.

With regard to Boiler and Pressure Vessel Safety standards and regulations, [Va. Code § 40.1-51.6](#) states that:

"A. **The Board** is authorized to formulate definitions, rules, regulations and standards which shall be designed for the protection of human life and property from the unsafe or dangerous construction, installation, inspection, operation, maintenance and repair of boilers and pressure vessels in this Commonwealth.

In promulgating such rules, regulations and standards, the Board shall consider any or all of the following:

1. Standards, formulae and practices generally accepted by recognized engineering and safety authorities and bodies.
2. Previous experiences based upon inspections, performance, maintenance and operation.
3. Location of the boiler or pressure vessel relative to persons.
4. Provisions for operational controls and safety devices.
5. Interrelation between other operations outside the scope of this chapter and those covered by this chapter.
6. Level of competency required of persons installing, constructing, maintaining or operating any equipment covered under this chapter or auxiliary equipment.
7. Federal laws, rules, regulations and standards.
(Emphasis added).

[Va. Code § 15.2-910](#) authorizes a local government, at its option, to require boiler pressure vessel operators to obtain a certification from the locality before engaging in the operation and maintenance of boiler and pressure vessels in its jurisdiction.

The purpose of the regulation, which is mandated by statute,¹³ is to ensure statewide uniformity in the determination of the ability, proficiency and qualifications of boiler and pressure vessel operators certified under a local government ordinance. The regulation identifies a list of core competencies to be verified through written examination and establishes two classes of boiler operator certifications depending on the experience and education of the applicant.

¹³ Va. Code § 15.2-910.C provides: "In accordance with the Administrative Process Act (§ 2.2-4000 et seq.), the Safety and Health Codes Board shall establish standards to be used in determining an applicant's ability, proficiency and qualifications."

Chapter 40, Standard for Boiler and Pressure Vessel Operator Certification, contains the following provisions:

[Section 10](#). Definitions

[Section 20](#). Authority and application

[Section 30](#). Certification

[Section 40](#). Exemptions from certification

[Section 50](#). Penalties

[Section 60](#). Revocation or lapse of certification

[Section 70](#). Appeals

A public comment period of 21 days began on May 23, 2022, and closed on June 13, 2022. The Department received no comments.

The Department believes the regulation is not overly complex and does not overlap, duplicate, or conflict with federal or state law or regulation.

The Department assumes that economic conditions, or other factors have significantly changed in the area affected by the regulation since, to the Department's knowledge, no locality has chosen to adopt such an ordinance even though the impetus for the statute came from local government entities.

The Department recommends repealing the regulation contingent on the Department successfully obtaining General Assembly approval to repeal [Va. Code § 15.2-910](#).

IV. Recommended Action

At this time, the Department of Labor and Industry recommends to the Safety and Health Codes Board that this regulation be retained as is. The Department requests that the Safety and Health Codes Board vote to retain the regulation with no changes.

Attachment A

Office of Regulatory Management

Economic Review Form

Agency name	Department of Labor and Industry
Virginia Administrative Code (VAC) Chapter citation(s)	16 VAC 25-40
VAC Chapter title(s)	Chapter 40. Standard for Boiler and Pressure Vessel Operator Certification
Action title	Periodic Review of Regulations
Date this document prepared	June 13, 2023
Regulatory Stage (including Issuance of Guidance Documents)	Periodic Review of Regulations

Cost Benefit Analysis

Complete Tables 1a and 1b for all regulatory actions. You do not need to complete Table 1c if the regulatory action is required by state statute or federal statute or regulation and leaves no discretion in its implementation.

Table 1a should provide analysis for the regulatory approach you are taking. Table 1b should provide analysis for the approach of leaving the current regulations intact (i.e., no further change is implemented). Table 1c should provide analysis for at least one alternative approach. You should not limit yourself to one alternative, however, and can add additional charts as needed.

Report both direct and indirect costs and benefits that can be monetized in Boxes 1 and 2. Report direct and indirect costs and benefits that cannot be monetized in Box 4. See the ORM Regulatory Economic Analysis Manual for additional guidance.

Table 1a: Costs and Benefits of the Proposed Changes (Primary Option)

(1) Direct & Indirect Costs & Benefits (Monetized)	Direct Costs: Describe the direct costs of this proposed change here. Indirect Costs: Describe the indirect costs of the proposed change. Direct Benefits: Describe the direct benefits of this proposed change here. Indirect Benefits: Describe the indirect benefits of the proposed change.	
(2) Present Monetized Values	Direct & Indirect Costs	Direct & Indirect Benefits
	(a) Not applicable.	(b) Not applicable.
(3) Net Monetized Benefit	Not applicable.	
(4) Other Costs & Benefits (Non-Monetized)	Not applicable.	
(5) Information Sources	Not applicable.	

Table 1b: Costs and Benefits under the Status Quo (No change to the regulation)

(1) Direct & Indirect Costs & Benefits (Monetized)	Direct Costs: Describe the direct costs of this proposed change here. Indirect Costs: Describe the indirect costs of the proposed change. Direct Benefits: Describe the direct benefits of this proposed change here. Indirect Benefits: Describe the indirect benefits of the proposed change.	
(2) Present Monetized Values	Direct & Indirect Costs	Direct & Indirect Benefits
	(a) Not applicable.	(b) Not applicable.
(3) Net Monetized Benefit	Not applicable.	

(4) Other Costs & Benefits (Non-Monetized)	Not applicable.
(5) Information Sources	Not applicable.

Table 1c: Costs and Benefits under Alternative Approach(es)

(1) Direct & Indirect Costs & Benefits (Monetized)	<p>Direct Costs: Describe the direct costs of this proposed change here.</p> <p>Indirect Costs: Describe the indirect costs of the proposed change.</p> <p>Direct Benefits: Describe the direct benefits of this proposed change here.</p> <p>Indirect Benefits: Describe the indirect benefits of the proposed change.</p>	
(2) Present Monetized Values	Direct & Indirect Costs	Direct & Indirect Benefits
	(a) Not applicable.	(b) Not applicable.
(3) Net Monetized Benefit	Not applicable.	
(4) Other Costs & Benefits (Non-Monetized)	Not applicable.	
(5) Information Sources	Not applicable.	

Impact on Local Partners

Use this chart to describe impacts on local partners. See Part 8 of the ORM Cost Impact Analysis Guidance for additional guidance.

Table 2: Impact on Local Partners

(1) Direct & Indirect Costs & Benefits (Monetized)	<ul style="list-style-type: none"> • Direct Costs: Describe the direct costs of this proposed change here. • Indirect Costs: Describe the indirect costs of the proposed change. • Direct Benefits: Describe the direct benefits of this proposed change here. • Indirect Benefits: Describe the indirect benefits of the proposed change.
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	<p>The regulation neither disproportionately affects particular localities, nor affects costs for local governments, unless and to the extent that a local government chooses to adopt a regulation that would “require boiler pressure vessel operators to obtain a certification from the locality before engaging in the operation and maintenance of boiler and pressure vessels in its jurisdiction, pursuant to Va. Code § 15.2-910.</p> <p>If a local government chose to adopt an ordinance, it would likely incur costs for establishing staffing, policies, procedures, fiscal processes, etc., to implement the certification process.</p> <p>The DOLI regulation, 16VAC25-40-30, permits local governments to charge a fee for the certification process, the proceeds of which could be used to partially or wholly fund the costs of implementing the ordinance.</p> <p>The statute permits local governments to impose penalties for violations of its local ordinance.</p> <p>To the Department's knowledge no locality has chosen to adopt an ordinance pursuant to Va. Code § 15.2-910.</p> <p>The Department recommends repealing the regulation contingent on the Department successfully obtaining General Assembly approval to repeal Va. Code § 15.2-910.</p>	
(2) Present Monetized Values	Direct & Indirect Costs	Direct & Indirect Benefits
	(a) See (1) above.	(b) See (1) above.
(3) Other Costs & Benefits (Non-Monetized)	None identified.	
(4) Assistance	Not applicable.	
(5) Information Sources	Va. Code § 15.2-910	

Impacts on Families

Use this chart to describe impacts on families. See Part 8 of the ORM Cost Impact Analysis Guidance for additional guidance.

Table 3: Impact on Families

(1) Direct & Indirect Costs & Benefits (Monetized)	<ul style="list-style-type: none"> • Direct Costs: Describe the direct costs of this proposed change here. • Indirect Costs: Describe the indirect costs of the proposed change. • Direct Benefits: Describe the direct benefits of this proposed change here. • Indirect Benefits: Describe the indirect benefits of the proposed change. <p>None identified. The regulation only applies to the certification of commercial operators of boilers and pressure vessels.</p>	
(2) Present Monetized Values	Direct & Indirect Costs	Direct & Indirect Benefits
	(a) See (1) above.	(b) See (1) above.
(3) Other Costs & Benefits (Non-Monetized)	None identified.	
(4) Information Sources	None.	

Impacts on Small Businesses

Use this chart to describe impacts on small businesses. See Part 8 of the ORM Cost Impact Analysis Guidance for additional guidance.

Table 4: Impact on Small Businesses

(1) Direct & Indirect Costs & Benefits (Monetized)	<ul style="list-style-type: none"> • Direct Costs: Describe the direct costs of this proposed change here. • Indirect Costs: Describe the indirect costs of the proposed change. • Direct Benefits: Describe the direct benefits of this proposed change here. • Indirect Benefits: Describe the indirect benefits of the proposed change. <p>If a local government chose to adopt an ordinance pursuant to Va. Code § 15.2-910 and the DOLI regulation, covered small business owners who employed boiler and pressure vessel operators would have to assure that their operators were certified in accordance with the local ordinance. The small business owner could choose to make the cost of certification a condition of employment for its employee and pass the cost of certification along to</p>	
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	<p>the employee, or it could choose to pay the costs associated with certification.</p> <p>If the small business failed to comply with the ordinance, they could be subject to penalties set and enforced by the local government.</p>	
(2) Present Monetized Values	Direct & Indirect Costs	Direct & Indirect Benefits
	(a) See (1) above.	(b) See (1) above.
(3) Other Costs & Benefits (Non-Monetized)	None identified.	
(4) Alternatives	The Department recommends repealing the regulation contingent on the Department successfully obtaining General Assembly approval to repeal Va. Code § 15.2-910 .	
(5) Information Sources	None identified.	

Changes to Number of Regulatory Requirements

For each individual VAC Chapter amended, repealed, or promulgated by this regulatory action, list (a) the initial requirement count, (b) the count of requirements that this regulatory package is adding, (c) the count of requirements that this regulatory package is reducing, (d) the net change in the number of requirements. This count should be based upon the text as written when this stage was presented for executive branch review. Five rows have been provided, add or delete rows as needed. In the last row, indicate the total number for each column.

Table 5: Total Number of Requirements

Chapter number	Number of Requirements			
	Initial Count	Additions	Subtractions	Net Change
16VAC25-40-10	0	0	0	0
16VAC25-40-20	0	0	0	0
16VAC25-40-30	8	0	0	0
16VAC25-40-40	0	0	0	0

16VAC25-40-50	0	0	0	0
16VAC25-40-60	0	0	0	0
16VAC25-40-70	0	0	0	0
TOTAL	8	0	0	0



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VIRGINIA SAFETY AND HEALTH CODES BOARD

BRIEFING PACKAGE

June 27, 2023

Report of Periodic Review of 16 VAC 25-70

I. Background and Basis

The Administrative Process Act ([Va. Code § 2.2-4017](#)), [Executive Order 19 \(2022\)](#), “Development and Review of State Agency Regulations,” and the Office of Regulatory Management (ORM) [Procedures for the Review of State Agency Regulations](#) govern the periodic review of existing regulations. Six (6) regulations of the Safety and Health Codes Board (Board) were identified for review in 2021:

(j) Periodic Reviews

16 VAC 25-70: Virginia Confined Space Standard for the Telecommunications Industry

(k) [Va. Code § 2.2-4017](#). Periodic review of regulations:

Each Governor shall mandate through executive order a procedure for periodic review during that Governor's administration of regulations of agencies within the executive branch of state government. The procedure shall include (i) a review by the Attorney General to ensure statutory authority for regulations and (ii) a determination by the Governor whether the regulations are (a) necessary for the protection of public health, safety and welfare and (b) clearly written and easily understandable.

The Governor may require each agency (i) to review all regulations promulgated

by that agency to determine whether new regulations should be adopted and old regulations amended or repealed, and (ii) to prepare a written report summarizing the agency's findings about its regulations, its reasons for its findings and any proposed course of action.

(I) **Office of Regulatory Management (ORM) [Procedures for the Review of State Agency Regulations](#)** issued:

Periodic Review of Existing Regulations

All existing state regulations promulgated by executive branch agencies, including those promulgated pursuant to an exemption from the APA, shall be reviewed every four years to determine whether they should be continued without change or be amended or repealed, consistent with the stated objectives of applicable law, to minimize the economic impact on small businesses in a manner consistent with the stated objectives of applicable law, as regarding [§ 2.2-4007.1 of the Code of Virginia](#).

The periodic review shall include: (1) the continued need for the regulation; (2) the nature and complaints or comments received concerning the regulation from the public; (3) the complexity of the regulation; (4) the extent to which the regulation overlaps, duplicates or conflicts with federal or state law or regulation; (5) an economic analysis including benefit-cost analysis (**see ATTACHMENT A**), local government impact analysis, economic impacts on families, and the count of regulatory requirements embedded in the regulation; and (6) the length of time since the regulation has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the regulation.¹⁴

II. **Current Status and Process**

The Safety and Health Codes Board authorized the Department of Labor and Industry (Department) to begin reviewing the above-noted regulations at its December 3, 2021, meeting. On May 23, 2022, in accordance with Va. Code §§ [2.2-4006](#) through [2.2-4017](#), the Department filed Notices of Periodic Review in the *Virginia Register*.

The Office of the Attorney General (OAG) certified the statutory authority for the six regulations on May 13, 2022. A public comment period of 21 days began on May 23, 2022, and closed on June 13, 2022. **The Department received no comments on any of the standards and regulations.** Following the comment period, the Department staff reviewed the regulations and prepared recommendations for the Board's consideration at this meeting.

¹⁴ Page 13, <https://townhall.virginia.gov/ORM-Procedures-Memo-v2.pdf>

NOTE: Until recently it was not clear that the [Procedures for the Review of State Agency Regulations](#) were applicable to periodic reviews initiated prior to the adoption of the new Procedures. DOLI was informed by the Department of Planning and Budget (DPB) on November 3, 2022, that the new Procedures apply to any periodic reviews that had not been submitted to the Office of the Governor for review prior to July 30, 2022. For periodic reviews, agencies will have to complete Tables 2, 3 and 4 addressing Direct and Indirect Costs and Benefits based on quantitative factors to Local Partners, Families and Small Businesses (see ATTACHMENT A).

III. Review and Analysis

Pursuant to [Va. Code § 2.2-4007.1 D and E](#), a periodic review of an existing regulation shall consider the following factors:

D. In addition to other requirements of [Va. Code § 2.2-4017](#), all regulations shall be reviewed every four years to determine whether they should be continued without change or be amended or repealed, consistent with the stated objectives of applicable law, to minimize the economic impact on small businesses in a manner consistent with the stated objectives of applicable law....

E. The regulatory review required by this section shall include consideration of:

1. The continued need for the rule;
2. The nature of complaints or comments received concerning the regulation from the public;
3. The complexity of the regulation;
4. The extent to which the regulation overlaps, duplicates, or conflicts with federal or state law or regulation; and
5. The length of time since the regulation has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the regulation.

Virginia Confined Space Standard for the Telecommunications Industry, 16VAC25-70

The Department last completed a Periodic Review of this regulation in 2017.

With regard to VOSH standards and regulations, [Va. Code § 40.1-22\(5\)](#) states that:

“...**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 Occupational Safety and Health Act of 1970 (P.L. 91-596).

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.” (Emphasis added).

This regulation establishes the minimum protection for telecommunication workers against exposure to hazardous chemicals and hazardous atmospheres when working in areas defined as confined spaces (utility access holes, etc.). The standard prescribes basic mandatory practices and procedures which employers must establish and use for employee entry into and work within confined spaces, such as requiring atmospheric testing of confined spaces prior to entry, the use of personal protective equipment where necessary, and ventilation of the space to prevent lack of oxygen or accumulation of toxic atmospheres.

The Virginia Confined Space Standard for the Telecommunications Industry regulation has three goals:

- Reduce the incidence of material impairment of the health of Virginia workers due to workplace exposure to known hazards.
- Provide protection to telecommunication workers equal to that provided to workers in other industries.
- Protect the public’s health, safety and welfare with the least possible cost and intrusiveness to the citizens and businesses of the Commonwealth.

Promulgation History

On March 23, 1987, the Safety and Health Codes Board adopted the unique Virginia standard which regulated entry into confined spaces in General Industry and Construction Industry, as well as in the Telecommunications Industry. During the same meeting, the Board decided to split the proposed standard into two separate standards - one for General Industry and the Construction Industry and the other for the

Telecommunications Industry. The decision to divide the Confined Space Standard resulted from written and oral comments received during the sixty-day comment period and public hearing. On June 29, 1987, amendments to the standards for the construction and telecommunications industries were adopted.

NOTE: The current federal OSHA standard for Telecommunications, including 1910.268(o) which covers work in manholes, was in place in its current form in 1987.

On June 21, 1993, the Safety and Health Codes Board adopted the new federal OSHA identical Permit-Required Confined Spaces Standard, [1910.146](#) (58 Fed. Reg. 4462, January 14, 1993). This new standard addressed confined space hazards in General Industry only. As a result of this adoption of the federal-identical General Industry Confined Spaces standard, the Board also was required to amend the state unique Virginia Confined Space Standards for General and Construction Industry to delete its' General Industry component and renamed the resulting standard as the "Virginia Confined Space Standard for the Construction Industry, CNSP.146". The Virginia unique standards for confined spaces remained in effect for only two industries: Construction and Telecommunications.

On October 29, 2015, the Safety and Health Codes Board adopted the new federal-identical Confined Space Standard for Construction, [1926.1200](#), et seq. as well as the pre-existing related federal-identical standards for both Excavation - 1926.650; and Underground Construction – 1926.800. (80 Fed. Reg. 25365, May 04, 2015). As a result, the Board repealed the related three unique standards: Virginia Confined Space for Construction, Excavation, and Underground Construction. This resulted in leaving only the Virginia unique standard for Telecommunications, 16VAC25-70, as the sole Virginia unique regulation dealing with confined spaces.

As noted above, federal OSHA's Telecommunications Standard for work in manholes at [1910.268\(o\)](#) regulates entry into telecommunications confined spaces, and predates the Virginia standard; although it is not as detailed in protective measures for employees as the Virginia standard The Virginia standard is considered more stringent than the federal standard.

OSHA has issued interpretations¹⁵ that state that where confined space hazards in a telecommunications setting are addressed by [1910.268\(o\)](#), the requirements of that

¹⁵ <https://www.osha.gov/laws-regs/standardinterpretations/1993-05-19>

standard, and neither [1910.146](#) or [1926.1200](#) will apply in federal jurisdictions (See ATTACHMENT B).

However, when confined space hazards in a telecommunications setting are not addressed by [1910.268\(o\)](#), the requirements of either [1910.146](#) or [1926.1200](#) will apply in federal jurisdictions depending on whether the type of work involved is construction or general industry-related (e.g., "For example, a manhole or vault could contain a toxic atmosphere that could not be made safe before entry as required by the Telecommunications Standard. In such cases, work involving hazards not addressed by the Telecommunications standard would be subject to citation under any applicable OSHA standard or regulation, which could include the Confined Spaces in Construction standard."¹⁶

A public comment period of 21 days began on May 23, 2022, and closed on June 13, 2022. The Department received no comments.

During a previous regulatory review in 1996, the Department established an independent review panel to consider the need for the standard or whether it should be eliminated. A subcommittee of employer and employee representatives from Bell Atlantic was established and the panel deferred the final recommendation to the subcommittee. This subcommittee did not agree on a final recommendation. Based on the analysis of this report, the Department recommended to the Safety and Health Codes Board that the regulation be repealed. However, after review by the Safety and Health Codes Board, the Board rejected that recommendation, finding that employees would not be adequately protected if this regulation was repealed.

The Department believes the standard is not overly complex, and does not overlap, duplicate, or conflict with state law or regulation.

The regulation duplicates in part federal OSHA's Telecommunications Standard, 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."¹⁷ The Department is under the understanding that the Bell

¹⁶ <https://www.osha.gov/laws-regs/isa/telecommunications-industry-04032016>

¹⁷ https://etler.com/docs/BSP/620/620-140-501_I10.pdf

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, 1910.147.¹⁸
- The Virginia standard references the NIOSH/OSHA Pocket Guide to Chemical Hazards DHEW (NIOSH) Publication No. 78-210, which has since been updated.¹⁹
- 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."²⁰

IV. Recommended Action:

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.²¹

¹⁸ <https://www.osha.gov/laws-regs/regulations/standardnumber/1910/1910.147>

¹⁹ <https://www.cdc.gov/niosh/docs/2005-149/default.html>

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

²¹ **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>

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>

ATTACHMENT A

Office of Regulatory Management

Economic Review Form

Agency name	Department of Labor and Industry
Virginia Administrative Code (VAC) Chapter citation(s)	16 VAC 25-70
VAC Chapter title(s)	Chapter 70. Virginia Confined Space Standard for the Telecommunications Industry
Action title	Periodic Review of Regulations
Date this document prepared	June 7, 2023
Regulatory Stage (including Issuance of Guidance Documents)	Periodic Review of Regulations

Cost Benefit Analysis

Complete Tables 1a and 1b for all regulatory actions. You do not need to complete Table 1c if the regulatory action is required by state statute or federal statute or regulation and leaves no discretion in its implementation.

Table 1a should provide analysis for the regulatory approach you are taking. Table 1b should provide analysis for the approach of leaving the current regulations intact (i.e., no further change is implemented). Table 1c should provide analysis for at least one alternative approach. You should not limit yourself to one alternative, however, and can add additional charts as needed.

Report both direct and indirect costs and benefits that can be monetized in Boxes 1 and 2. Report direct and indirect costs and benefits that cannot be monetized in Box 4. See the ORM Regulatory Economic Analysis Manual for additional guidance.

Table 1a: Costs and Benefits of the Proposed Changes (Primary Option)

(1) Direct & Indirect Costs & Benefits (Monetized)	<p>Direct Costs: Describe the direct costs of this proposed change here.</p> <p>Indirect Costs: Describe the indirect costs of the proposed change.</p> <p>Direct Benefits: Describe the direct benefits of this proposed change here.</p> <p>Indirect Benefits: Describe the indirect benefits of the proposed change.</p>	
(2) Present Monetized Values	Direct & Indirect Costs	Direct & Indirect Benefits
	(a) Not applicable.	(b) Not applicable.
(3) Net Monetized Benefit	Not applicable.	
(4) Other Costs & Benefits (Non-Monetized)	Not applicable.	
(5) Information Sources	Not applicable.	

Table 1b: Costs and Benefits under the Status Quo (No change to the regulation)

(1) Direct & Indirect Costs & Benefits (Monetized)	<p>Direct Costs: Describe the direct costs of this proposed change here.</p> <p>Indirect Costs: Describe the indirect costs of the proposed change.</p> <p>Direct Benefits: Describe the direct benefits of this proposed change here.</p> <p>Indirect Benefits: Describe the indirect benefits of the proposed change.</p>	
(2) Present Monetized Values	Direct & Indirect Costs	Direct & Indirect Benefits
	(a) Not applicable.	(b) Not applicable.
(3) Net Monetized Benefit	Not applicable.	

(4) Other Costs & Benefits (Non-Monetized)	Not applicable.
(5) Information Sources	Not applicable.

Table 1c: Costs and Benefits under Alternative Approach(es)

(1) Direct & Indirect Costs & Benefits (Monetized)	<p>Direct Costs: Describe the direct costs of this proposed change here.</p> <p>Indirect Costs: Describe the indirect costs of the proposed change.</p> <p>Direct Benefits: Describe the direct benefits of this proposed change here.</p> <p>Indirect Benefits: Describe the indirect benefits of the proposed change.</p>	
(2) Present Monetized Values	Direct & Indirect Costs	Direct & Indirect Benefits
	(a) Not applicable.	(b) Not applicable.
(3) Net Monetized Benefit	Not applicable.	
(4) Other Costs & Benefits (Non-Monetized)	Not applicable.	
(5) Information Sources	Not applicable.	

Impact on Local Partners

Use this chart to describe impacts on local partners. See Part 8 of the ORM Cost Impact Analysis Guidance for additional guidance.

Table 2: Impact on Local Partners

(1) Direct & Indirect Costs & Benefits (Monetized)	<ul style="list-style-type: none"> • Direct Costs: Describe the direct costs of this proposed change here. • Indirect Costs: Describe the indirect costs of the proposed change. • Direct Benefits: Describe the direct benefits of this proposed change here. • Indirect Benefits: Describe the indirect benefits of the proposed change.
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The Virginia standard neither disproportionately affects particular localities, nor affects costs for local governments, unless and to the extent that a local government has employees that work in telecommunications manholes. In such cases, local governments would have to assure compliance with the standard, including training requirements for covered employees. Covered local government operations could also be subject to inspection by the Virginia Occupational Safety and Health (VOSH) program, which could result in the issuance of violations and associated penalties.

Local governments and small businesses also have the opportunity to take advantage of the Virginia Occupational Safety and Health (VOSH) program’s free, confidential Consultation and Training resources.

The Virginia standard provides a comprehensive safety, health and welfare approach to employees exposed to confined space hazards in telecommunication manholes.

The current federal OSHA standard for Telecommunications, including 1910.268(o) which covers work in manholes, was in place in its current form in 1987 when this regulation was adopted in Virginia. 1910.268(o) is not as detailed in protective measures for employees as the Virginia standard. The Virginia standard is considered more stringent than the federal standard (e.g., the Virginia standard requires intermittent and in some circumstances continuous monitoring of the air inside the manhole depending on the hazards involved, while the federal standard only requires testing prior to entry; the Virginia standard requires a written entry permit system for all confined space entries, while the federal standard does not – the permits may be destroyed once a successful entry and exit of the manhole has been accomplished).

The federal Occupational Safety and Health Administration (OSHA) estimated in 2012 that each fatal accident avoided by employers and employees is valued at 9 million dollars (see Information Source section below).

(2) Present Monetized Values	Direct & Indirect Costs	Direct & Indirect Benefits
	(a) See (1) above.	(b) See (1) above.

(3) Other Costs & Benefits (Non-Monetized)	None identified.
--	------------------

(4) Assistance	Not applicable.
(5) Information Sources	<p>https://www.usinflationcalculator.com/inflation/current-inflation-rates/ Data Source: U.S. Bureau of Labor Statistics: All items in U.S. city average, all urban consumers, not seasonally adjusted.</p> <p>92 Fed. Reg. 29686, Amendments to 29 CFR 1904 and 1902, Improve Tracking of Workplace Injuries and Illnesses, Final Rule. Based on the Viscusi & Aldy's (2003) meta-analysis of studies in the economics literature that uses a willingness to pay methodology to estimate the imputed value of life-saving programs.</p>

Impacts on Families

Use this chart to describe impacts on families. See Part 8 of the ORM Cost Impact Analysis Guidance for additional guidance.

Table 3: Impact on Families

(1) Direct & Indirect Costs & Benefits (Monetized)	<ul style="list-style-type: none"> • Direct Costs: Describe the direct costs of this proposed change here. • Indirect Costs: Describe the indirect costs of the proposed change. • Direct Benefits: Describe the direct benefits of this proposed change here. • Indirect Benefits: Describe the indirect benefits of the proposed change. <p>No cost impacts are anticipated for families.</p> <p>See benefits listed in Table 2 above.</p>	
(2) Present Monetized Values	Direct & Indirect Costs	Direct & Indirect Benefits
	(a) See (1) above.	(b) See (1) above.
(3) Other Costs & Benefits (Non-Monetized)	None identified.	
(4) Information Sources	None identified.	

Impacts on Small Businesses

Use this chart to describe impacts on small businesses. See Part 8 of the ORM Cost Impact Analysis Guidance for additional guidance.

Table 4: Impact on Small Businesses

(1) Direct & Indirect Costs & Benefits (Monetized)	<ul style="list-style-type: none"> • Direct Costs: Describe the direct costs of this proposed change here. • Indirect Costs: Describe the indirect costs of the proposed change. • Direct Benefits: Describe the direct benefits of this proposed change here. • Indirect Benefits: Describe the indirect benefits of the proposed change. <p>See Table 2 above for costs and benefits. Small businesses would be impacted in the same manner as local governments.</p>	
(2) Present Monetized Values	Direct & Indirect Costs	Direct & Indirect Benefits
	(a) See (1) above.	(b) See (1) above.
(3) Other Costs & Benefits (Non-Monetized)	<p>To the extent that a DOLI inspection delays completion of work in an area where an employee is working inside a telecommunication manhole, the small business could experience a delay in use of the specific area until the onsite inspection is complete.</p>	
(4) Alternatives	<p>The Department believes that economic conditions, or other factors may have significantly changed in the area affected by the regulation:</p> <ul style="list-style-type: none"> • 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.” 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. • The Virginia standard references the NIOSH/OSHA Pocket Guide to Chemical Hazards DHEW (NIOSH) Publication No. 78-210, which has since been updated. 	

	<ul style="list-style-type: none"> 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. <p>The Department is requesting the Safety and Health Codes Board (Board) to 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 changed conditions and OSHA interpretations.</p> <p>The Department is also requesting 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.</p>
(5) Information Sources	None identified.

Changes to Number of Regulatory Requirements

For each individual VAC Chapter amended, repealed, or promulgated by this regulatory action, list (a) the initial requirement count, (b) the count of requirements that this regulatory package is adding, (c) the count of requirements that this regulatory package is reducing, (d) the net change in the number of requirements. This count should be based upon the text as written when this stage was presented for executive branch review. Five rows have been provided, add or delete rows as needed. In the last row, indicate the total number for each column.

Table 5: Total Number of Requirements

Chapter number	Number of Requirements			
	Initial Count	Additions	Subtractions	Net Change
16VAC25-70-10	0	0	0	0
16VAC25-70-20	0	0	0	0
16VAC25-70-30	8	0	0	0
16VAC25-70-40	6	0	0	0
16VAC25-70-50	3	0	0	0
16VAC25-70-60	2	0	0	0
16VAC25-70-70	4	0	0	0
16VAC25-70-80	4	0	0	0
16VAC25-70-90	3	0	0	0
TOTAL	30	0	0	0

ATTACHMENT B

OSHA Interpretations Concerning Confined Spaces in the Telecommunications Industry

<https://www.osha.gov/laws-regs/standardinterpretations/1993-05-19>

May 19, 1993

Mr. David LeGrande
CWA Coordinator
Occupational Safety and Health
501 Third Street, N.W.
Washington, D.C. 20001-2797

Dear Mr. LeGrande:

Thank you for your letter of March 23, in which you requested a written interpretation of coverage for the telecommunications industry with regard to the new Permit-Required Confined Spaces (PRCS) standard 29 CFR 1910.146. I can make some general observations with respect to the relationship between the PRCS standard, which is a generic standard, and an industry-specific standard, such as the telecommunications standard, 29 CFR 1910.268.

The Occupational Safety and Health Administration (OSHA) provides clear guidance regarding the application of generic standards in 29 CFR 1910.5, Applicability of standards. In particular, 29 CFR 1910.5(c)(1) provides that a particular standard will supersede a generic standard when the "particular standard specifically [applies] to a condition, practice, means, method, operation, or process." Also, [29 CFR 1910.5(c)(2)] states that a generic standard "shall apply...to any employment [and place of employment] in any industry, even though particular standards are also prescribed for the industry...to the extent that none of such particular standards applies."

The telecommunication standard explicitly provides for the application of a generic standard in 29 CFR 1910.268(a)(3), Application, which states "[o]perations or conditions not specifically covered by this section are subject to all the applicable standards contained in this part 1910. See 1910.5(c)."

CFR 1910.146(c)(1) requires all employers, including telecommunications companies to determine if their workplaces contain any confined spaces that meet the definition of "permit-required confined space" (permit space). As a practical matter, an employer who already has information about the hazard(s) in the identified permit spaces may be able to comply with 29 CFR 1910.146(c)(1) without physically surveying each and every space.

Based on 29 CFR 1910.5(c)(1), OSHA has stated that where permit space hazards identified through compliance with paragraph (c)(1) are addressed by 29 CFR 1910.268(o), Underground lines, the telecommunications standard, not the permit space standard, applies (58 FR 4469). The Agency has also stated that, where compliance with 29 CFR 1910.146(c)(1) discloses that a telecommunications employer has permit spaces that pose hazards which are not addressed by 29 CFR 1910.268(o), the employer shall protect any employees assigned to enter those spaces through compliance with the pertinent provisions of 29 CFR 1910.146 (58 FR 4469, Footnote 4).

The measures required by the telecommunications standard (29 CFR 1910.268(o)) for the protection of employees working on underground lines divide into three categories as follows:

- Protection from falling or from falling objects (29 CFR 1910.268(o)(1)(i));
- Availability of first aid assistance where there is reason to believe that safety hazards (such as vehicular or pedestrian traffic hazards not addressed by 29 CFR 1910.268(d)(1) or [1910.268(o)(1)(i)], unusual water hazards, and operations in manholes used jointly by a telecommunication utility and by an electric utility) are present (29 CFR 1910.268(o)(1)(ii) and [1910.268(o)(3)]; and
- Testing the atmospheres of manholes and unvented vaults prior to employee entry and, where atmospheric hazards are detected, ventilating and taking any other measures necessary for safe entry (29 CFR 1910.268(o)(2)).

Therefore, 29 CFR 1910.268(o) rather than 29 CFR 1910.146 applies only to the extent that compliance with the above-described provisions adequately addressed the permit space hazards to which telecommunications employees are exposed.

Regarding your request for OSHA's thoughts as to whether the Agency should revisit the telecommunications coverage issue, OSHA believes that reconsideration is unnecessary because compliance with the existing regulatory scheme will provide comprehensive protection for telecommunications industry employees.

you have further questions regarding application of the standards, please contact [the Office of General Industry Enforcement at (202) 693-1850].

Sincerely,

Roger A. Clark, Director
Directorate of Compliance Programs

[Corrected 4/6/2007]

March 23, 1993

Mr. Roger Clark
Director of Compliance Programs
Occupational Safety and
Health Administration
200 Constitution Avenue, N.W., Room N3468
Washington, D.C. 20210

Dear Mr. Clark:

I am writing to you on behalf of the 600,000 workers represented by the Communications Workers of America (CWA), AFL-CIO, CLC. Some 70,000 represented U.S. telecommunications employees have jobs requiring entry and work within confined spaces.

On January 14, 1993, the Occupational Safety and Health Administration (OSHA) issued the "Permit-Required Confined Spaces Standard for General Industry (1910.146)." As an advocate and supporter regarding the development and promulgation of the standard, CWA applauds OSHA for its action.

Regarding the standard's scope and application, CWA provided verbal and written testimony supporting the inclusion of the telecommunications industry within 1910.146. However, telecommunications industry representatives voiced their desire that telecommunications employers be excluded from coverage of 1910.146 as well as their desire that telecommunications employers continue to be covered by the OSHA Telecommunications Standard 1910.268.

As written, the OSHA Permit-Required Confined Spaces Standard does not specifically exclude the telecommunications industry from coverage. However, in the preamble to the standard, in a very brief discussion of this issue, it is stated:

“under current OSHA practice as outlined in Section 1910(c), confined spaces that are presently regulated in other sections of part 1910 will continue to be regulated under those sections to the extent that permit spaces are already regulated under those sections.”

This has led to a certain amount of confusion as to whether the telecommunications industry is excluded from 1910.146 and, if so, in part or entirely.

As a result of this scenario, CWA requested clarification of the standard's coverage of the telecommunications industry. In discussions with Mr. Don Kallstrom, employed within OSHA's Office of Compliance Programs, my office was provided initial clarification. Mr. Kallstrom stated that the telecommunications industry was covered by both 1910.146 and 1910.268. That is, 1910.146 would apply when evaluating whether the confined space work environment:

- contains or has the potential to contain a hazardous atmosphere;
- contains a substance that has the potential for engulfing an entrant;
- has an internal configuration such that an entrant could be trapped or asphyxiated by inwardly converging walls or by a floor which slopes downward and tapers to a smaller cross-section; or
- contains any other recognized serious safety or health hazard.

If a hazardous work environment was identified, 1910.146 would apply. However, after completing the evaluation, if a hazardous or potentially hazardous work environment was not identified, 1910.268 would apply.

Mr. Kallstrom indicated that such clarification would be provided in the OSHA Field Operations Manual by April 15, 1993, the effective date of 1910.146.

CWA has communicated the above interpretation to its Regional Vice Presidents. In turn, this information has been provided to represented telecommunications companies.

The response from all telecommunications employers has been that they are not covered by 1910.146 at all.

As a result of the response from representatives of the New York Telephone Company, CWA's regional office in New York City requested an interpretation of coverage provided by 1910.146. The OSHA Regional Administrator responded stated that, as stipulated by 29 CFR 1910.5(c)(1) providing for a specific standard (in this case 1910.268) to supersede a generic standard (in this case 1910.146).

Confined spaces which are presently regulated in other specific standards of Part 1910 will continue to be regulated under those sections. For example, telecommunications work in manholes and underground vaults is normally covered under the telecommunications standard, paragraph 1910.268(o). The provisions of 1910.146 would not apply as the provisions of 1910.268(o) protect against the hazards within the manhole or vault. However, confined spaces other than manholes and underground vaults which are entered by telecommunications employees are covered by 1910.146" (see attached correspondence).

CWA believes the Regional Administrator incorrectly interpreted the standard. The union suggests that the aforementioned statement:

Under current OSHA practice, as outlined in Section 1910.5(c), confined spaces that are presently regulated in other sections of Part 1910 will continue to be regulated under these sections, to the extent that permit spaces are already regulated under these sections.

clearly states that there may be instances (e.g., evaluation of environmental conditions and hazardous work environments) where 1910.146 would apply.

In addition, in the January 14, 1993, Federal Register, in which the final rule is contained, footnote 4 at the bottom of page 4469 provides another condition in which telecommunications employers would be covered by 1910.146:

Taking the telecommunications examples further, the Agency can envision manholes that may be more appropriately covered by 1910.146. Although it is rare, manholes can become overwhelmingly contaminated with toxins or other hazardous chemicals. If the work area could not be made safe before entry as required by 1910.268(o)(2)(i)(B), entry would have to be performed under the provisions of 1910.146.

Given the above, CWA would appreciate a written interpretation regarding coverage of the telecommunications industry by 1910.146, the Permit-Required Confined Spaces for General Industry Standard. In addition, the union would appreciate your thoughts as to whether, specific to the telecommunications industry, coverage issues of 1910.146 should be reconsidered or re-visited.

Thank you for your prompt attention to this matter. If you have any questions regarding the union's request, please feel free to contact me at (202) 434-1160.

Sincerely,

David E. LeGrande
CWA Coordinator
Occupational Safety and Health

April 13, 2016

MEMORANDUM FOR: REGIONAL ADMINISTRATORS

THROUGH: DOROTHY DOUGHERTY,
Deputy Assistant Secretary

FROM: DEAN MCKENZIE
Acting Director Directorate of Construction

SUBJECT: Confined Spaces Litigation Settlement

This memorandum sets forth an enforcement policy under which work on or directly related to telecommunications lines and equipment by telecommunications employees in an existing telecommunications manhole or vault will not be subject to citation by OSHA under the Confined Spaces in Construction standards, 29 C.F.R. 1926.1200-1213, if such work is performed in accordance with the Telecommunications standard, 29 C.F.R. 1910.268, and the hazards associated with such work are addressed by the Telecommunications standard. For example, the following work activities performed within an existing manhole or vault would typically fall under this citation policy because, absent unusual circumstances, these activities constitute work on or directly related to telecommunications lines and equipment and involve hazards addressed by the Telecommunications standard: maintenance and repair of telecommunications lines and equipment; testing, locating and inspecting telecommunications lines and equipment; splicing telecommunications lines; and installing and removing telecommunications lines and equipment.

However, not all work related to telecommunications manholes or vaults would fall under this citation policy. For example, constructing telecommunications manholes or vaults, or installing new ducts or horizontal boring for new ducts between existing manholes or vaults, would not fall under this citation policy because these activities do not constitute work on or directly related to telecommunications lines and equipment in existing telecommunications manholes or vaults. Activities outside the scope of this enforcement policy would be subject to citation under any applicable OSHA standard or regulation, which could include the Confined Spaces in Construction standard.

In addition, even where telecommunications employees are performing work on or directly related to telecommunications lines and equipment in existing manholes or vaults, unusual hazards may arise that are not addressed by the Telecommunications standard. For example, a manhole or vault could contain a toxic atmosphere that could not be made safe before entry as required by the Telecommunications standard. In such cases, work involving hazards not addressed by the Telecommunications standard would be subject to citation under any applicable OSHA standard or regulation, which could include the Confined Spaces in Construction standard.



COMMONWEALTH of VIRGINIA
DEPARTMENT OF LABOR AND INDUSTRY

Gary G. Pan
COMMISSIONER

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VIRGINIA SAFETY AND HEALTH CODES BOARD

BRIEFING PACKAGE

June 27, 2023

Report of Periodic Review of 16 VAC 25-97

I. Background and Basis

The Administrative Process Act ([Va. Code § 2.2-4017](#)), [Executive Order 19 \(2022\)](#), “Development and Review of State Agency Regulations,” and the Office of Regulatory Management (ORM) [Procedures for the Review of State Agency Regulations](#) govern the periodic review of existing regulations. Six (6) regulations of the Safety and Health Codes Board (Board) were identified for review in 2021:

(m) Periodic Review

16 VAC 25-97: Reverse Signal Operation Safety Requirements for Motor Vehicles, Machinery and Equipment in General Industry and the Construction Industry

(n) [Va. Code § 2.2-4017](#). Periodic review of regulations:

Each Governor shall mandate through executive order a procedure for periodic review during that Governor's administration of regulations of agencies within the executive branch of state government. The procedure shall include (i) a review by the Attorney General to ensure statutory authority for regulations and (ii) a determination by the Governor whether the regulations are (a) necessary for the protection of public health, safety and welfare and (b) clearly written and easily understandable.

The Governor may require each agency (i) to review all regulations promulgated by that agency to determine whether new regulations should be adopted and old regulations amended or repealed, and (ii) to prepare a written report summarizing the agency's findings about its regulations, its reasons for its findings and any proposed course of action.

(o) **Office of Regulatory Management (ORM) [Procedures for the Review of State Agency Regulations](#)** issued:

Periodic Review of Existing Regulations

All existing state regulations promulgated by executive branch agencies, including those promulgated pursuant to an exemption from the APA, shall be reviewed every four years to determine whether they should be continued without change or be amended or repealed, consistent with the stated objectives of applicable law, to minimize the economic impact on small businesses in a manner consistent with the stated objectives of applicable law, as regarding [§ 2.2-4007.1 of the Code of Virginia](#).

The periodic review shall include: (1) the continued need for the regulation; (2) the nature and complaints or comments received concerning the regulation from the public; (3) the complexity of the regulation; (4) the extent to which the regulation overlaps, duplicates or conflicts with federal or state law or regulation; (5) an economic analysis including benefit-cost analysis (**see ATTACHMENT A**), local government impact analysis, economic impacts on families, and the count of regulatory requirements embedded in the regulation; and (6) the length of time since the regulation has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the regulation.²²

II. Current Status and Process

The Safety and Health Codes Board authorized the Department of Labor and Industry (Department) to begin reviewing the above-noted regulations at its December 3, 2021, meeting. On May 23, 2022, in accordance with Va. Code §§ [2.2-4006](#) through [2.2-4017](#), the Department filed Notices of Periodic Review in the *Virginia Register*.

The Office of the Attorney General (OAG) certified the statutory authority for the six regulations on May 13, 2022. A public comment period of 21 days began on May 23, 2022, and closed on June 13, 2022. **The Department received no comments on any of the standards and regulations.** Following the comment period, the Department staff

²² Page 13, <https://townhall.virginia.gov/ORM-Procedures-Memo-v2.pdf>

reviewed the regulations and prepared recommendations for the Board's consideration at this meeting.

NOTE: Until recently it was not clear that the [Procedures for the Review of State Agency Regulations](#) were applicable to periodic reviews initiated prior to the adoption of the new Procedures. DOLI was informed by the Department of Planning and Budget (DPB) on November 3, 2022, that the new Procedures apply to any periodic reviews that had not been submitted to the Office of the Governor for review prior to July 30, 2022. For periodic reviews, agencies will have to complete Tables 2, 3 and 4 addressing Direct and Indirect Costs and Benefits based on quantitative factors to Local Partners, Families and Small Businesses (see ATTACHMENT A).

III. Review and Analysis

Pursuant to [Va. Code § 2.2-4007.1 D and E](#), a periodic review of an existing regulation shall consider the following factors:

D. In addition to other requirements of [Va. Code § 2.2-4017](#), all regulations shall be reviewed every four years to determine whether they should be continued without change or be amended or repealed, consistent with the stated objectives of applicable law, to minimize the economic impact on small businesses in a manner consistent with the stated objectives of applicable law....

E. The regulatory review required by this section shall include consideration of:

1. The continued need for the rule;
2. The nature of complaints or comments received concerning the regulation from the public;
3. The complexity of the regulation;
4. The extent to which the regulation overlaps, duplicates, or conflicts with federal or state law or regulation; and
5. The length of time since the regulation has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the regulation.

Reverse Signal Operation Safety Requirements for Motor Vehicles, Machinery and Equipment in General Industry and the Construction Industry, [16VAC25-97](#)

The Department last completed a Periodic Review of this regulation in 2017.

With regard to VOSH standards and regulations, [Va. Code § 40.1-22\(5\)](#) states that:

“...**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 Occupational Safety and Health Act of 1970 (P.L. 91-596).

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.” (Emphasis added).

This regulation establishes requirements for the use of construction and general industry vehicles, machinery, and equipment capable of operating in reverse with an obstructed view, such as requiring that vehicles be generally equipped with reverse signal alarms, procedures for the use of a designated observer or ground guide in certain situations, establishing guidelines for drivers and other employees, and requiring employers provide training to employees.

Chapter 97, Reverse Signal Operation Safety Requirements for Motor Vehicles, Machinery and Equipment in General Industry and the Construction Industry, contains the following major provisions:

[Section 10](#), Applicability

[Section 20](#), Definitions

[Section 30](#), Covered vehicle requirements

[Section 40](#), Responsibilities while engaged in reverse signal operation activities

[Section 50](#), Training

The Reverse Signal Procedures regulation has two goals:

- Reduce the incidence of injuries and fatalities of Virginia workers and the public due to the operation of vehicles, machinery, and equipment in reverse.
- Protect the public’s health, safety and welfare with the least possible cost and intrusiveness to the citizens and businesses of the Commonwealth.

Federal OSHA has no comparable comprehensive regulation applicable in general industry and construction, but does have the following regulations which are very limited in scope and employee protections:

The following boxes highlight the differences between the existing regulations on this issue which primarily only require the use of reverse signal alarms:

[Applicable only to "vehicles that operate within an off-highway jobsite, not open to public traffic."]
[1926.601\(b\)\(4\)](#): "No employer shall use any motor vehicle equipment having an obstructed view to the rear unless:
(i)The vehicle has a reverse signal alarm audible above the surrounding noise level or;
(ii)The vehicle is backed up only when an observer signals that it is safe to do so."

[Applicable only to "to the following types of earthmoving equipment: scrapers, loaders, crawler or wheel tractors, bulldozers, off-highway trucks, graders, agricultural and industrial tractors, and similar equipment."]
[1926.602\(a\)\(9\)\(ii\)](#): "No employer shall permit earthmoving or compacting equipment which has an obstructed view to the rear to be used in reverse gear unless the equipment has in operation a reverse signal alarm distinguishable from the surrounding noise level or an employee signals that it is safe to do so."

[Applicable only to logging machines]
[1910.266\(f\)\(2\)\(v\)](#) requires operators of logging machines to determine that no employee is in the path of the machine before starting or moving the machine.

[Applicable only to vehicles or earthmoving or compacting equipment at electric power generation, transmission, and distribution facility off-highway jobsites.
[1910.269\(p\)\(1\)\(ii\)](#): "No motor vehicle or earthmoving or compacting equipment having an obstructed view to the rear may be operated on off-highway jobsites where any employee is exposed to the hazards created by the moving vehicle, unless:
(i)The vehicle has a reverse signal alarm audible above the surrounding noise level, or;
(ii)The vehicle is backed up only when a designated employee signals that it is safe to do so."

The Reverse Signal Operations Standard provides a comprehensive safety, health and welfare approach to employees exposed to the same back-up hazard across construction and general industries.

Construction

A review of VOSH fatal accident investigations from 1992 to September 30, 2007, found 19 fatal vehicle or equipment accidents in construction work zones where employees were struck:

<u>Number of fatalities</u>	<u>Type of vehicle</u>
11	dump truck
<u>8</u>	1 each: cement truck, fuel truck, pavement planer, vacuum truck, bobcat, tandem truck, trackhoe and other-unspecified.
Total 19	

While in some cases it was found that reverse signal alarms were not operational, many accidents occurred even with operational reverse signal alarms. Fatal accidents also occurred to employees engaged in their own work unrelated to such vehicles or equipment where they apparently became de-sensitized to the familiar and repeated sounds of reverse signal alarms and other construction noise in the work zone.

General Industry

A review of VOSH fatal accident investigations from 1992 to September, 2007, found nine fatal accidents in general industry work zones where employees were struck:

<u>Number of fatalities</u>	<u>Type of vehicle</u>
3	logging vehicles
1	garbage trucks
1	fuel truck
3	tractor-trailer trucks
1	fork lift
1	dump truck
<u>1</u>	vehicle not specified
Total 11	

At the time of its adoption, Virginia was averaging two back-up fatal accidents per year. In the years following adoption of the regulation in 2009, Virginia experienced a 50% reduction in fatal back-up accidents.

At the time of adoption, the Department made available to employers a free training program that could be used to meet the training requirements contained in the final regulation. Small businesses also had the opportunity to take advantage of the Virginia Occupational Safety and Health (VOSH) program's free, confidential Consultation and Training resources. Based on information received during the comment periods for the proposed standard, commenters for the construction industry indicated that current rate of pay was \$20 per hour for operators, plus fringes (DOLI assumed a 25% rate for fringes, the total compensation rate is \$25 per hour); and \$15 per hour, plus fringes, for laborers (DOLI assumed a 25% rate for fringes, the total compensation rate is \$18.75 per hour). The Department estimated at that time that training on the final standard would take between 30-60 minutes. Costs for operators would range from \$17.50 to \$25.00 per operator and from \$9.38 to \$18.75 per laborer.

Applying an inflation escalator of 29.3% for the years 2009 to 2022, costs per operator would range from \$22.63 to \$33.33 and from \$12.13 to \$24.24.²³

A public comment period of 21 days began on May 23, 2022, and closed on June 13, 2022. The Department received no comments.

The Department believes the regulation is not overly complex. The regulation does duplicate in small part federal OSHA's very limited construction and general industry standards addressing back-up hazards on off-road worksites only but provides more stringent protections in other respects.

The standard does not overlap, duplicate, or conflict with state law or regulation.

Except for the disruptions related to the COVID-19 pandemic and its aftermath, the Department does not believe that economic conditions, or other factors have significantly changed in the area affected by the regulation.

The Department believes there is a continued need for the standard because of its history in lowering fatal accident rates and because of the lack of a comprehensive federal OSHA standard applicable across affected industries.

IV. Recommended Action

At this time, the Department of Labor and Industry recommends to the Safety and Health Codes Board that this regulation be retained as is. The Department requests that the Safety and Health Codes Board vote to retain the regulation with no changes.

²³ <https://www.usinflationcalculator.com/inflation/current-inflation-rates/>

Data Source: U.S. Bureau of Labor Statistics: All items in U.S. city average, all urban consumers, not seasonally adjusted.

ATTACHMENT A

Office of Regulatory Management

Economic Review Form

Agency name	Department of Labor and Industry
Virginia Administrative Code (VAC) Chapter citation(s)	16 VAC 25-97
VAC Chapter title(s)	Chapter 97. Reverse Signal Operation Safety Requirements for Motor Vehicles, Machinery and Equipment in General Industry and the Construction Industry
Action title	Periodic Review of Regulations
Date this document prepared	June 1, 2023
Regulatory Stage (including Issuance of Guidance Documents)	Periodic Review of Regulations

Cost Benefit Analysis

Complete Tables 1a and 1b for all regulatory actions. You do not need to complete Table 1c if the regulatory action is required by state statute or federal statute or regulation and leaves no discretion in its implementation.

Table 1a should provide analysis for the regulatory approach you are taking. Table 1b should provide analysis for the approach of leaving the current regulations intact (i.e., no further change is implemented). Table 1c should provide analysis for at least one alternative approach. You should not limit yourself to one alternative, however, and can add additional charts as needed.

Report both direct and indirect costs and benefits that can be monetized in Boxes 1 and 2. Report direct and indirect costs and benefits that cannot be monetized in Box 4. See the ORM Regulatory Economic Analysis Manual for additional guidance.

Table 1a: Costs and Benefits of the Proposed Changes (Primary Option)

(1) Direct & Indirect Costs & Benefits (Monetized)	Direct Costs: Describe the direct costs of this proposed change here. Indirect Costs: Describe the indirect costs of the proposed change. Direct Benefits: Describe the direct benefits of this proposed change here. Indirect Benefits: Describe the indirect benefits of the proposed change.	
(2) Present Monetized Values	Direct & Indirect Costs	Direct & Indirect Benefits
	(a) Not applicable.	(b) Not applicable.
(3) Net Monetized Benefit	Not applicable.	
(4) Other Costs & Benefits (Non-Monetized)	Not applicable.	
(5) Information Sources	Not applicable.	

Table 1b: Costs and Benefits under the Status Quo (No change to the regulation)

(1) Direct & Indirect Costs & Benefits (Monetized)	Direct Costs: Describe the direct costs of this proposed change here. Indirect Costs: Describe the indirect costs of the proposed change. Direct Benefits: Describe the direct benefits of this proposed change here. Indirect Benefits: Describe the indirect benefits of the proposed change.	
(2) Present Monetized Values	Direct & Indirect Costs	Direct & Indirect Benefits
	(a) Not applicable.	(b) Not applicable.
(3) Net Monetized Benefit	Not applicable.	

(4) Other Costs & Benefits (Non-Monetized)	Not applicable.
(5) Information Sources	Not applicable.

Table 1c: Costs and Benefits under Alternative Approach(es)

(1) Direct & Indirect Costs & Benefits (Monetized)	Direct Costs: Describe the direct costs of this proposed change here. Indirect Costs: Describe the indirect costs of the proposed change. Direct Benefits: Describe the direct benefits of this proposed change here. Indirect Benefits: Describe the indirect benefits of the proposed change.	
(2) Present Monetized Values	Direct & Indirect Costs	Direct & Indirect Benefits
	(a) Not applicable.	(b) Not applicable.
(3) Net Monetized Benefit	Not applicable.	
(4) Other Costs & Benefits (Non-Monetized)	Not applicable.	
(5) Information Sources	Not applicable.	

Impact on Local Partners

Use this chart to describe impacts on local partners. See Part 8 of the ORM Cost Impact Analysis Guidance for additional guidance.

Table 2: Impact on Local Partners

(1) Direct & Indirect Costs & Benefits (Monetized)	<ul style="list-style-type: none"> • Direct Costs: Describe the direct costs of this proposed change here. • Indirect Costs: Describe the indirect costs of the proposed change. • Direct Benefits: Describe the direct benefits of this proposed change here. • Indirect Benefits: Describe the indirect benefits of the proposed change.
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The regulation neither disproportionately affects particular localities, nor affects costs for local governments, unless and to the extent that a local government has employees that operate vehicles with an obstructed view to the rear. In such cases, local governments would have to assure compliance with the regulation, including training requirements for covered employees. Covered local government operations could also be subject to inspection by the Virginia Occupational Safety and Health (VOSH) program, which could result in the issuance of violations and associated penalties.

At the time of adoption in 2009, the Department made available to employers a free training program that could be used to meet the training requirements contained in the final standard. Local governments and small businesses also had the opportunity to take advantage of the Virginia Occupational Safety and Health (VOSH) program's free, confidential Consultation and Training resources.

Based on information received during the comment periods for the proposed standard, commenters for the construction industry indicated that current rate of pay was \$20 per hour for operators, plus fringes (DOLI assumed a 25% rate for fringes, the total compensation rate is \$25 per hour); and \$15 per hour, plus fringes, for laborers (DOLI assumed a 25% rate for fringes, the total compensation rate is \$18.75 per hour). The Department estimated at that time that training on the final standard would take between 30-60 minutes. Costs for operators would range from \$17.50 to \$25.00 per operator and from \$9.38 to \$18.75 per laborer.

Applying an inflation escalator of 29.3% for the years 2009 to 2022, costs per operator would range from \$22.63 to \$33.33 and from \$12.13 to \$24.24 (see Information Source section below). Local governments and small businesses continue to have access the VOSH program's free, confidential Consultation and Training resources.

The Reverse Signal Operations Standard provides a comprehensive safety, health and welfare approach to employees exposed to the same back-up hazard across construction and general industries.

Federal OSHA has no comparable comprehensive regulation applicable in general industry and construction but does have three minor regulatory requirements for certain construction, logging, and earthmoving equipment on power generation off-highway jobsites.

At the time of its adoption, Virginia was averaging two back-up fatal accidents per year. In the years following adoption of the regulation in 2009, Virginia experienced a 50% reduction in fatal back-up accidents (one fewer employee fatality per year).

	The federal Occupational Safety and Health Administration (OSHA) estimated in 2012 that each fatal accident avoided by employers and employees is valued at 9 million dollars (see Information Source section below).	
(2) Present Monetized Values	Direct & Indirect Costs	Direct & Indirect Benefits
	(a) See (1) above.	(b) See (1) above.
(3) Other Costs & Benefits (Non-Monetized)	To the extent that a DOLI inspection delays completion work in an area where an employee is operating a covered vehicle, the local government could experience a delay in use of the specific area until the onsite inspection is complete.	
(4) Assistance	Not applicable.	
(5) Information Sources	https://www.usinflationcalculator.com/inflation/current-inflation-rates/ Data Source: U.S. Bureau of Labor Statistics: All items in U.S. city average, all urban consumers, not seasonally adjusted. 92 Fed. Reg. 29686, Amendments to 29 CFR 1904 and 1902, Improve Tracking of Workplace Injuries and Illnesses, Final Rule. Based on the Viscusi & Aldy’s (2003) meta-analysis of studies in the economics literature that uses a willingness to pay methodology to estimate the imputed value of life-saving programs.	

Impacts on Families

Use this chart to describe impacts on families. See Part 8 of the ORM Cost Impact Analysis Guidance for additional guidance.

Table 3: Impact on Families

(1) Direct & Indirect Costs & Benefits (Monetized)	<ul style="list-style-type: none"> • Direct Costs: Describe the direct costs of this proposed change here. • Indirect Costs: Describe the indirect costs of the proposed change. • Direct Benefits: Describe the direct benefits of this proposed change here. • Indirect Benefits: Describe the indirect benefits of the proposed change. <p>No cost impacts are anticipated for families.</p> <p>See benefits listed in Table 2 above.</p>
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(2) Present Monetized Values	Direct & Indirect Costs	Direct & Indirect Benefits
	(a) See (1) above.	(b) See (1) above.
(3) Other Costs & Benefits (Non-Monetized)	None identified.	
(4) Information Sources	None identified.	

Impacts on Small Businesses

Use this chart to describe impacts on small businesses. See Part 8 of the ORM Cost Impact Analysis Guidance for additional guidance.

Table 4: Impact on Small Businesses

(1) Direct & Indirect Costs & Benefits (Monetized)	<ul style="list-style-type: none"> • Direct Costs: Describe the direct costs of this proposed change here. • Indirect Costs: Describe the indirect costs of the proposed change. • Direct Benefits: Describe the direct benefits of this proposed change here. • Indirect Benefits: Describe the indirect benefits of the proposed change. <p>See Table 2 above for costs and benefits. Small businesses would be impacted in the same manner as local governments.</p>	
(2) Present Monetized Values	Direct & Indirect Costs	Direct & Indirect Benefits
	(a) See (1) above.	(b) See (1) above.
(3) Other Costs & Benefits (Non-Monetized)	To the extent that a DOLI inspection delays completion work in an area where an employee is operating a covered vehicle, the local government could experience a delay in use of the specific area until the onsite inspection is complete.	
(4) Alternatives	The only alternative considered was repeal of the regulation; which the Department does not believe is supported by fatality data in the covered industries. Since adoption of the standard in 2009, there has been a consistent reduction in fatal reverse signal accidents of 50% over an extended period of time.	
(5) Information Sources	None identified.	

Changes to Number of Regulatory Requirements

For each individual VAC Chapter amended, repealed, or promulgated by this regulatory action, list (a) the initial requirement count, (b) the count of requirements that this regulatory package is adding, (c) the count of requirements that this regulatory package is reducing, (d) the net change in the number of requirements. This count should be based upon the text as written when this stage was presented for executive branch review. Five rows have been provided, add or delete rows as needed. In the last row, indicate the total number for each column.

Table 5: Total Number of Requirements

	Number of Requirements			
Chapter number	Initial Count	Additions	Subtractions	Net Change
16VAC25-97-10	0	0	0	0
16VAC25-97-20	0	0	0	0
16VAC25-97-30	2	0	0	0
16VAC25-97-40	7	0	0	0
16VAC25-97-50	1	0	0	0
TOTAL	10	0	0	0



COMMONWEALTH of VIRGINIA
DEPARTMENT OF LABOR AND INDUSTRY

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VIRGINIA SAFETY AND HEALTH CODES BOARD

BRIEFING PACKAGE

June 27, 2023

Report of Periodic Review of 16 VAC 25-160

I. Background and Basis

The Administrative Process Act ([Va. Code § 2.2-4017](#)), [Executive Order 19 \(2022\)](#), “Development and Review of State Agency Regulations,” and the Office of Regulatory Management (ORM) [Procedures for the Review of State Agency Regulations](#) govern the periodic review of existing regulations. Six (6) regulations of the Safety and Health Codes Board (Board) were identified for review in 2021:

(p) Periodic Reviews

16 VAC 25-160: Construction Industry Standard for Sanitation

(q) [Va. Code § 2.2-4017](#). Periodic review of regulations:

Each Governor shall mandate through executive order a procedure for periodic review during that Governor's administration of regulations of agencies within the executive branch of state government. The procedure shall include (i) a review by the Attorney General to ensure statutory authority for regulations and (ii) a determination by the Governor whether the regulations are (a) necessary for the protection of public health, safety and welfare and (b) clearly written and easily understandable.

The Governor may require each agency (i) to review all regulations promulgated by that agency to determine whether new regulations should be adopted and old regulations amended or repealed, and (ii) to prepare a written report summarizing the agency's findings about its regulations, its reasons for its findings and any proposed course of action.

(r) **Office of Regulatory Management (ORM) [Procedures for the Review of State Agency Regulations](#)** issued:

Periodic Review of Existing Regulations

All existing state regulations promulgated by executive branch agencies, including those promulgated pursuant to an exemption from the APA, shall be reviewed every four years to determine whether they should be continued without change or be amended or repealed, consistent with the stated objectives of applicable law, to minimize the economic impact on small businesses in a manner consistent with the stated objectives of applicable law, as regarding [§ 2.2-4007.1 of the Code of Virginia](#).

The periodic review shall include: (1) the continued need for the regulation; (2) the nature and complaints or comments received concerning the regulation from the public; (3) the complexity of the regulation; (4) the extent to which the regulation overlaps, duplicates or conflicts with federal or state law or regulation; (5) an economic analysis including benefit-cost analysis (**see ATTACHMENT A**), local government impact analysis, economic impacts on families, and the count of regulatory requirements embedded in the regulation; and (6) the length of time since the regulation has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the regulation.²⁴

II. Current Status and Process

The Safety and Health Codes Board authorized the Department of Labor and Industry (Department) to begin reviewing the above-noted regulations at its December 3, 2021, meeting. On May 23, 2022, in accordance with Va. Code §§ [2.2-4006](#) through [2.2-4017](#), the Department filed Notices of Periodic Review in the *Virginia Register*.

²⁴ Page 13, <https://townhall.virginia.gov/ORM-Procedures-Memo-v2.pdf>

The Office of the Attorney General (OAG) certified the statutory authority for the six regulations on May 13, 2022. A public comment period of 21 days began on May 23, 2022, and closed on June 13, 2022. **The Department received no comments on any of the standards and regulations.** Following the comment period, the Department staff reviewed the regulations and prepared recommendations for the Board’s consideration at this meeting.

NOTE: Until recently it was not clear that the [Procedures for the Review of State Agency Regulations](#) were applicable to periodic reviews initiated prior to the adoption of the new Procedures. DOLI was informed by the Department of Planning and Budget (DPB) on November 3, 2022, that the new Procedures apply to any periodic reviews that had not been submitted to the Office of the Governor for review prior to July 30, 2022. For periodic reviews, agencies will have to complete Tables 2, 3 and 4 addressing Direct and Indirect Costs and Benefits based on quantitative factors to Local Partners, Families and Small Businesses (see ATTACHMENT A).

III. Review and Analysis

Pursuant to [Va. Code § 2.2-4007.1 D and E](#), a periodic review of an existing regulation shall consider the following factors:

D. In addition to other requirements of [Va. Code § 2.2-4017](#), all regulations shall be reviewed every four years to determine whether they should be continued without change or be amended or repealed, consistent with the stated objectives of applicable law, to minimize the economic impact on small businesses in a manner consistent with the stated objectives of applicable law....

E. The regulatory review required by this section shall include consideration of:

1. The continued need for the rule;
2. The nature of complaints or comments received concerning the regulation from the public;
3. The complexity of the regulation;
4. The extent to which the regulation overlaps, duplicates, or conflicts with federal or state law or regulation; and
5. The length of time since the regulation has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the regulation.

Construction Industry Standard for Sanitation, 16 VAC 25-160

The Department last completed a Periodic Review of this regulation in 2017.

With regard to VOSH standards and regulations, [Va. Code § 40.1-22\(5\)](#) states that:

“...**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 Occupational Safety and Health Act of 1970 (P.L. 91-596).

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.” (Emphasis added).

The Virginia Construction Sanitation Standard requires construction employers to provide potable drinking water, handwashing facilities, and toilet facilities that meet more stringent requirements than those set forth by the federal OSHA regulation, [1926.51](#).

The Construction Sanitation regulation has three goals:

- Reduce the incidence of material impairment of the health of Virginia workers due to workplace exposure to known hygiene and water quality hazards.
- Require sanitary facilities for construction workers equal to those required for agricultural workers.
- Protect the public’s health, safety and welfare with the least possible cost and intrusiveness to the citizens and businesses of the Commonwealth.

Provision of sanitary facilities and potable drinking water serve to reduce or eliminate the following major categories of occupational diseases: heat-related illnesses, communicable diseases, and urinary tract infections. This regulation is designed to address health hazards associated with poor sanitation conditions at construction sites, such as, insufficient potable water, insufficient hand washing facilities, inadequate toilet

facilities, and the physical harm which may occur due to retention of urine and feces over long periods of time.

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).

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.

A public comment period of 21 days began on May 23, 2022, and closed on June 13, 2022. The Department received no comments.

The Department believes the regulation is not overly complex and does not overlap, duplicate, or conflict with state law or regulation. The standard does duplicate in some part federal OSHA's standard but provides more stringent protections in other respects.

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).

IV. Recommended Action

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.²⁵

²⁵ **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>

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>

ATTACHMENT A

Office of Regulatory Management

Economic Review Form

Agency name	Department of Labor and Industry
Virginia Administrative Code (VAC) Chapter citation(s)	16 VAC 25-160
VAC Chapter title(s)	Chapter 160. Construction Industry Standard for Sanitation
Action title	Periodic Review of Regulations
Date this document prepared	June 7, 2023
Regulatory Stage (including Issuance of Guidance Documents)	Periodic Review of Regulations

Cost Benefit Analysis

Complete Tables 1a and 1b for all regulatory actions. You do not need to complete Table 1c if the regulatory action is required by state statute or federal statute or regulation and leaves no discretion in its implementation.

Table 1a should provide analysis for the regulatory approach you are taking. Table 1b should provide analysis for the approach of leaving the current regulations intact (i.e., no further change is implemented). Table 1c should provide analysis for at least one alternative approach. You should not limit yourself to one alternative, however, and can add additional charts as needed.

Report both direct and indirect costs and benefits that can be monetized in Boxes 1 and 2. Report direct and indirect costs and benefits that cannot be monetized in Box 4. See the ORM Regulatory Economic Analysis Manual for additional guidance.

Table 1a: Costs and Benefits of the Proposed Changes (Primary Option)

(1) Direct & Indirect Costs & Benefits (Monetized)	Direct Costs: Describe the direct costs of this proposed change here. Indirect Costs: Describe the indirect costs of the proposed change. Direct Benefits: Describe the direct benefits of this proposed change here. Indirect Benefits: Describe the indirect benefits of the proposed change.	
(2) Present Monetized Values	Direct & Indirect Costs	Direct & Indirect Benefits
	(a) Not applicable.	(b) Not applicable.
(3) Net Monetized Benefit	Not applicable.	
(4) Other Costs & Benefits (Non-Monetized)	Not applicable.	
(5) Information Sources	Not applicable.	

Table 1b: Costs and Benefits under the Status Quo (No change to the regulation)

(1) Direct & Indirect Costs & Benefits (Monetized)	Direct Costs: Describe the direct costs of this proposed change here. Indirect Costs: Describe the indirect costs of the proposed change. Direct Benefits: Describe the direct benefits of this proposed change here. Indirect Benefits: Describe the indirect benefits of the proposed change.	
(2) Present Monetized Values	Direct & Indirect Costs	Direct & Indirect Benefits
	(a) Not applicable.	(b) Not applicable.
(3) Net Monetized Benefit	Not applicable.	

(4) Other Costs & Benefits (Non-Monetized)	Not applicable.
(5) Information Sources	Not applicable.

Table 1c: Costs and Benefits under Alternative Approach(es)

(1) Direct & Indirect Costs & Benefits (Monetized)	<p>Direct Costs: Describe the direct costs of this proposed change here.</p> <p>Indirect Costs: Describe the indirect costs of the proposed change.</p> <p>Direct Benefits: Describe the direct benefits of this proposed change here.</p> <p>Indirect Benefits: Describe the indirect benefits of the proposed change.</p>	
(2) Present Monetized Values	Direct & Indirect Costs	Direct & Indirect Benefits
	(a) Not applicable.	(b) Not applicable.
(3) Net Monetized Benefit	Not applicable.	
(4) Other Costs & Benefits (Non-Monetized)	Not applicable.	
(5) Information Sources	Not applicable.	

Impact on Local Partners

Use this chart to describe impacts on local partners. See Part 8 of the ORM Cost Impact Analysis Guidance for additional guidance.

Table 2: Impact on Local Partners

(1) Direct & Indirect Costs & Benefits (Monetized)	<ul style="list-style-type: none"> • Direct Costs: Describe the direct costs of this proposed change here. • Indirect Costs: Describe the indirect costs of the proposed change. • Direct Benefits: Describe the direct benefits of this proposed change here. • Indirect Benefits: Describe the indirect benefits of the proposed change.
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	<p>The Virginia standard neither disproportionately affects particular localities, nor affects costs for local governments, unless and to the extent that a local government has employees that engage in work covered by VOSH/OSHA Construction Industry Standards. In such cases, local governments would have to assure compliance with the standard, including toilet facility ratios.</p> <p>NOTE: 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>Covered local government operations could also be subject to inspection by the Virginia Occupational Safety and Health (VOSH) program, which could result in the issuance of violations and associated penalties.</p> <p>Local governments and small businesses also have the opportunity to take advantage of the Virginia Occupational Safety and Health (VOSH) program's free, confidential Consultation and Training resources.</p> <p>The Virginia standard provides a comprehensive safety, health and welfare approach to construction sanitation for employees. Provision of sanitary facilities and potable drinking water serve to reduce or eliminate the following major categories of occupational diseases: heat-related illnesses, communicable diseases, and urinary tract infections. This regulation is designed to address health hazards associated with poor sanitation conditions at construction sites, such as, insufficient potable water, insufficient hand washing facilities, inadequate toilet facilities, and the physical harm which may occur due to retention of urine and feces over long periods of time.</p>	
(2) Present Monetized Values	Direct & Indirect Costs	Direct & Indirect Benefits
	(a) See (1) above.	(b) See (1) above.
(3) Other Costs & Benefits (Non-Monetized)	None identified.	

(4) Assistance	Not applicable.
(5) Information Sources	Not applicable.

Impacts on Families

Use this chart to describe impacts on families. See Part 8 of the ORM Cost Impact Analysis Guidance for additional guidance.

Table 3: Impact on Families

(1) Direct & Indirect Costs & Benefits (Monetized)	<ul style="list-style-type: none"> • Direct Costs: Describe the direct costs of this proposed change here. • Indirect Costs: Describe the indirect costs of the proposed change. • Direct Benefits: Describe the direct benefits of this proposed change here. • Indirect Benefits: Describe the indirect benefits of the proposed change. <p>No cost impacts are anticipated for families.</p> <p>See benefits listed in Table 2 above.</p>	
(2) Present Monetized Values	Direct & Indirect Costs	Direct & Indirect Benefits
	(a) See (1) above.	(b) See (1) above.
(3) Other Costs & Benefits (Non-Monetized)	None identified.	
(4) Information Sources	None identified.	

Impacts on Small Businesses

Use this chart to describe impacts on small businesses. See Part 8 of the ORM Cost Impact Analysis Guidance for additional guidance.

Table 4: Impact on Small Businesses

(1) Direct & Indirect Costs & Benefits (Monetized)	<ul style="list-style-type: none"> • Direct Costs: Describe the direct costs of this proposed change here. • Indirect Costs: Describe the indirect costs of the proposed change. • Direct Benefits: Describe the direct benefits of this proposed change here. • Indirect Benefits: Describe the indirect benefits of the proposed change. <p>See Table 2 above for costs and benefits. Small businesses would be impacted in the same manner as local governments.</p>	
(2) Present Monetized Values	Direct & Indirect Costs	Direct & Indirect Benefits
	(a) See (1) above.	(b) See (1) above.
(3) Other Costs & Benefits (Non-Monetized)	<p>To the extent that a DOLI inspection delays completion of work in an area where an employee is engaged in construction work, the small business could experience a delay in use of the specific area until the onsite inspection is complete.</p>	
(4) Alternatives	<p>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:</p> <ul style="list-style-type: none"> • 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) <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>	

	<p>The Department is requesting the Safety and Health Codes Board (Board) to 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 changed conditions and OSHA interpretations.</p> <p>The Department is also requesting 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.</p>
(5) Information Sources	None identified.

Changes to Number of Regulatory Requirements

For each individual VAC Chapter amended, repealed, or promulgated by this regulatory action, list (a) the initial requirement count, (b) the count of requirements that this regulatory package is adding, (c) the count of requirements that this regulatory package is reducing, (d) the net change in the number of requirements. This count should be based upon the text as written when this stage was presented for executive branch review. Five rows have been provided, add or delete rows as needed. In the last row, indicate the total number for each column.

Table 5: Total Number of Requirements

Chapter number	Number of Requirements			
	Initial Count	Additions	Subtractions	Net Change
16VAC25-160-10	16	0	0	0
16VAC25-160-20	2	0	0	0
16VAC25-160-30	1	0	0	0
TOTAL	19	0	0	0