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## Periodic Review Report of Findings

<b>Agency name</b>	Virginia Department of Labor and Industry/Safety and Health Codes Board
<b>Virginia Administrative Code (VAC) citation</b>	16 VAC 25-73
<b>Regulation title</b>	Regulation Applicable to Tree Trimming Operations
<b>Date this document prepared</b>	October 15, 2019

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Order 14 (as amended, July 16, 2018), the Regulations for Filing and Publishing Agency Regulations (1 VAC7-10), and the *Virginia Register Form, Style, and Procedure Manual for Publication of Virginia Regulations*.

## Acronyms and Definitions

*Please define all acronyms used in this Report. Also, please define any technical terms that are used in the document that are not also defined in the "Definition" section of the regulations.*

Enter statement here

## Legal Basis

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

Section 40.1-22(5) of the Code of Virginia mandates that the Safety and Health Codes Board adopt standards that most adequately assure "...employee safety and health in places of

employment over which it has jurisdiction...”, and that the standards be at least stringent as the standards promulgated by the federal Occupational Safety and Health Administration (OSHA), as required by the federal OSH Act of 1970 (P.L.91-596).

This regulation is based on the American National Standard’s Institute (ANSI) Z133.1-2006, Safety Requirements for Arboricultural Operations (with Modifications), for Application to Tree Trimming Operations. The regulation addresses non-logging, tree-trimming and cutting operations on residential and commercial work sites. The regulation was adopted at the request of and in consultation with representatives of the tree care industry. It is designed to eliminate or reduce injuries, illnesses and fatalities associated with tree trimming hazards.

The current regulation is the least burdensome alternative for the protection of employees working in tree trimming occupations. This regulation closely tracks the industry approved ANSI Z133.1-2006, and does not overlap, duplicate, or conflict with federal or state law or regulation. No alternatives were considered for this regulation because there is no viable alternative to this regulation.

Prior to adoption, VOSH applied the Logging Standard, 1910.266, to arborists\tree trimming operations anytime a tree was “felled,” or cut down. The Logging Standard did not apply to tree trimming activities where a tree was not felled or cut down, so there was no specific regulation to address hazards associated specifically with trimming trees. As noted above, this regulation was adopted at the request of and in consultation with representatives of the tree care industry.

Because the regulation is based on ANSI Z133.1-2006, the regulated community is very familiar with the requirements and procedures designed to eliminate or reduce injuries, illnesses and fatalities associated with tree trimming hazards.

### Alternatives

*Please describe any viable alternatives for achieving the purpose of the regulation that were considered as part of the periodic review. Include an explanation of why such alternatives were rejected and why this regulation is the least burdensome alternative available for achieving its purpose.*

The Department of Labor and Industry did not consider any alternatives to this regulation because there is no viable alternative to this regulation.

### Public Comment

*Please summarize all comments received during the public comment period following the publication of the Notice of Periodic Review, and provide the agency response. Ensure to include all comments submitted: including those received on Town Hall, in a public hearing, or submitted directly to the agency or board. Please indicate if an informal advisory group was formed for purposes of assisting in the periodic review.*

Commenter	Comment	Agency response

No public comments were received on this regulation during the public comment period which began on April 29, 2019, and ended on May 20, 2019. The agency and the Safety and Health

Codes board did not establish an informal advisory group for the purpose of assisting in the periodic review.

**Effectiveness**

*Pursuant to § 2.2-4017, please indicate whether the regulation meets the criteria set out in Executive Order 14 (as amended, July 16, 2018), including why the regulation is (a) necessary for the protection of public health, safety, and welfare, and (b) is clearly written and easily understandable.*

The regulation has three goals:

1. Reduce the incidence of material impairment of the health of Virginians due to exposure to lead in the workplace or as an environmental pollutant.
2. Require certified lead abatement contractors to notify the government of lead abatement projects and pay fees to cover the cost of administering the program.
3. The protection of the public’s health, safety and welfare with the least possible cost and intrusiveness.

The regulation provides the identification of certain lead abatement projects and the tracking of active projects. Section 40.1-51.21 of the Code of Virginia requires that at least once a year, during an actual project, the Department of Labor and Industry conduct an on-site, unannounced inspection of each certified lead abatement contractor’s procedures in regard to the removal of lead-based paint. This inspection ensures protection of the health of the work The regulation provides the identification of certain lead abatement projects and the tracking of active projects. Section 40.1-51.21 of the Code of Virginia requires that at least once a year, during an actual project, the Department of Labor and Industry conduct an on-site, unannounced inspection of each certified lead abatement contractor’s procedures in regard to the removal of lead-based paint. This inspection ensures protection of the health of the workers and also the health of the general public by controlling the release of lead into the environment or residence.

The regulation also provides a concise procedure for the notification and payment of fees associated with lead projects. The fees generated are designed to cover the costs associated with the compliance inspections conducted by the Department.

This regulation is not overly complex and does not overlap, duplicate, or conflict with federal or state law or regulation. The regulation is clearly written and easily understandable

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**Decision**

*Please explain the basis for the rulemaking entity’s decision (retain the regulation as is without making changes, amend the regulation, or repeal the regulation).*

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The Safety and Health Codes Board voted to retain the regulation without change.

### Small Business Impact

*As required by § 2.2-4007.1 E and F of the Code of Virginia, include a discussion of the agency's consideration of: (1) the continued need for the regulation; (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. Also, discuss why the agency's decision, consistent with the stated objectives of applicable law, will minimize the economic impact of regulations on small businesses.*

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