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Periodic Review and Small Business Impact Review Report of Findings

Agency name	Department of Labor and Industry
Virginia Administrative Code (VAC) Chapter citation(s)	16VAC25-145
VAC Chapter title(s)	Safety Standards for Fall Protection in Steel Erection, Construction Industry.
Date this document prepared	March 14, 2025

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

Acronyms and Definitions

Define all acronyms used in this Report, and any technical terms that are not also defined in the "Definitions" section of the regulation.

DOLI – The Department of Labor and Industry
SHCB – Safety and Health Codes Board

Legal Basis

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

Section 40.1-22(5) of the Code of Virginia, 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. 01-596)."

Alternatives to Regulation

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 alternative to this regulation would be to adopt the federal standard instead. The Virginia unique regulation closely mirrors the federal OSHA requirements, with two material differences.

The Board adopted **16 VAC 25-145, Safety Standards for Fall Protection in Steel Erection, Construction Industry**, in 2004 as a Virginia unique regulation. While the regulation closely mirrors the federal OSHA requirements, there are two material differences:

1. Virginia requires fall protection at heights of 10 or more feet above a lower-level. The federal regulation requires fall protection at 15 or more feet above a lower-level, and in certain instances up to 30 feet above a lower-level (controlled decking zones (CDZ)).

The Board determined that a more stringent requirement for fall protection in steel erection operations was imperative to protect the health, safety, and welfare of Virginia workers. Prior to OSHA's adoption of the Steel Erection Standard, VOSH cited §§1926.28(a) and 1926.105(a), to require steel erection employers to provide protection for steel erection workers from falls at or above 10 feet. The 10 foot fall protection requirement adopted by the Board provided an equivalent level of protection to steelworkers as is provided to other construction employees working from scaffolds (10 foot fall protection requirement).

2. Virginia prohibits the use of controlled decking zones (CDZ).

A controlled decking zone, as defined by federal OSHA, allows certain steel workers to be exposed to fall hazards without fall protection up to 2 stories or 30 feet above a lower level, whichever is less (29 CFR 1926.760(c)). Virginia has experienced several fatalities and injuries related to decking operations in such work zones (5 fatal accidents between 1995 and 2008 with fall distances of 2 stories, 24.5', 28', 28' and 30').

Public Comment

Summarize all comments received during the public comment period following the publication of the Notice of Periodic Review, and provide the agency's response. Be sure to include all comments submitted: including those received on Town Hall, in a public hearing, or submitted directly to the agency. Indicate if an informal advisory group was formed for purposes of assisting in the periodic review.

No public comments were received on this regulation during the public comment period which began on March 11, 2024 and ended on April 1, 2024. DOLI did not establish an informal advisory group for the purpose of assisting in the periodic review.

Effectiveness

Pursuant to § 2.2-4017 of the Code of Virginia, indicate whether the regulation meets the criteria set out in the ORM procedures, 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 Safety Standards for Fall Protection in Steel Erection, Construction Industry, protect the safety, health, and welfare of the public by limiting worker exposure to hazards. This regulation is not overly complex and is clearly written. There is no negative impact on the regulated community and the regulation does not overlap, duplicate, or conflict with federal or state law. As a result of this periodic review, the agency determines that the regulation has no negative economic impact on small business.

Decision

Explain the basis for the promulgating agency's decision (retain the regulation as is without making changes, amend the regulation, or repeal the regulation).

If the result of the periodic review is to retain the regulation as is, complete the ORM Economic Impact form.

At the Safety and Health Codes Board meeting held on September 23, 2024, the SHCB approved DOLI's recommendation to retain the regulation without change.

Small Business Impact

As required by § 2.2-4007.1 E and F of the Code of Virginia, discuss the agency's consideration of: (1) the continued need for the regulation; (2) the nature of complaints or comments received concerning the regulation; (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 applicable law, will minimize the economic impact of regulations on small businesses.

This regulation has no real impact on small businesses and does not overlap, duplicate or conflict with federal or state law or regulation. The regulation is not overly complex and is clearly written with no apparent negative impact on the regulated community. The regulation was last reviewed in 2014. There have been little or no change in technology, economic conditions, and other factors which would affect this regulation.
