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Periodic Review and Small Business Impact Findings Where Result is "Retain the Regulation As Is"

Agency name	Virginia Department of Labor and Industry/Safety and Health Codes Board
Virginia Administrative Code (VAC) citation	16 VAC-25-160-10 <i>et seq.</i>
Regulation title	Construction Industry Standard for Sanitation
Date	July 20, 2016

This information is required pursuant to Executive Order 17 (2014).

Legal basis

Please identify the state and/or federal legal authority for the regulation, including: 1) the most relevant law and/or regulation; and 2) promulgating entity, i.e., agency, board, or person.

Section 40.1-22(5) of the Code of Virginia mandates the Safety and Health Codes Board adopt standards that most adequately assure that no employee will suffer material impairment of health or functional capacity and that the standards be at least as stringent as the standards promulgated by federal OSHA. At the time of adoption, the federal Occupational Safety and Health Administration comparable standard for construction was determined by the Board as providing inadequate sanitation safeguards.

Alternatives

Please describe all viable alternatives for achieving the purpose of the existing regulation that have been considered as part of the periodic review process. Include an explanation of why such alternatives were rejected and why this regulation is the least burdensome alternative available for achieving the purpose of the regulation.

The agency has determined that the alternative for achieving the purpose of the existing regulation is to replace the existing regulation with the federal OSHA regulatory standard found at 29 CFR 1926.51. After a review and analysis by the agency, the Safety and Health Codes Board voted during a previous periodic review, to table the agency recommendation that the construction sanitation found at 29 CFR 1926.51. The Board members stated more study was needed on the federal standard to determine if it would be more effective in protecting construction employees in Virginia from illness and disease. With the current regulation, employees are more adequately protected, and it is the least burdensome alternative for the protection of employees in this area.

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. 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 May 23, 2016, and ended on June 14, 2016. 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

Please indicate whether the regulation meets the criteria set out in Executive Order 17 (2014), e.g., is necessary for the protection of public health, safety, and welfare, and is clearly written and easily understandable.

The regulation has three goals:

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

The primary goal of this regulation is 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 Construction Industry Standard for Sanitation is designed to reduce or eliminate the health problems faced by employers and employees working in the construction industry. The provision of these facilities serves to reduce or eliminate the following major categories of occupational diseases: heat-related illness, communicable disease and urinary tract infections.

The regulation is clearly written and easily understandable.

Result

Please state that the reason why the agency is recommending that the regulation should stay in effect without change.

The Department of Labor and Industry and the Safety and Health Codes Board recommend retaining the regulation without change.

Small business impact

In order to minimize the economic impact of regulations on small business, please include, pursuant to § 2.2-4007.1 E and F, 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, include a discussion of the basis for the agency's determination to retain the regulation as is, consistent with the stated objectives of applicable law, to minimize the economic impact of regulations on small businesses.

1) There is a continuing need for this regulation because Virginia employers and employees engaged in construction activities still need access to potable toilet facilities and handwashing facilities, which are in a clean and sanitary condition (in accordance with appropriate public health sanitation practices) without cost to the employees. The potable drinking water must be suitably cool and in sufficient amounts so that it is not completely consumed during the workday. Toilet and handwashing facilities shall be provided, and toilets shall be adequately ventilated with self-closing doors that can be closed and latched from inside to ensure privacy.

2) No comments were received on this regulation during the public comment period which began on May 23, 2016 and concluded on June 14, 2016.

3) This regulation is not overly complex. It has no negative impact on the regulated community and does not overlap, duplicate, or conflict with federal or state law or regulation. Since the date when this regulation became effective, technology, economic conditions, and other factors have not changed in the area affected by the regulation.

As a result of this Periodic Review, the agency has determined that this regulation has no negative economic impact on small businesses. Consistent with the stated objectives of applicable law, the Department of Labor and Industry and the Safety and Health Codes Board have concluded that this regulation should be retained with no changes.