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Regulatory  
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Periodic Review / Retain Regulation  
Agency Background Document

Agency name	Virginia Department of Labor and Industry/Safety and Health Codes Board
Virginia Administrative Code (VAC) citation	16 VAC 25-70-10 et seq.
Regulation title	Virginia Confined Space Standard for the Telecommunications Industry
Document preparation date	July 18, 2013

This form is used when the agency has done a periodic review of a regulation and plans to retain the regulation without change. This information is required pursuant to Executive Orders 14 (2010) and 58 (1999).

Legal basis

The Federal Occupational Safety and Health Administration (OSHA) mandates that State Plan states be at least as effective as Federal OSHA. In addition, section 40.1-22(5) of the Code of Virginia mandates that 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 the standards be at least as stringent as the standards promulgated by Federal OSHA. Thus, Virginia's Confined Space Standard for the Telecommunications Industry must offer the same protections as federal OSHA's 29 CFR 1910.268(o) to be considered to be at least as effective as the federal standard.

The Confined Space Standard for the Telecommunications Industry, 16 VAC 25-70-10 et seq. provides minimum protection for workers against exposure to hazardous chemicals and hazardous atmospheres when working in the telecommunications areas defined as confined spaces. Among other things, the standard requires atmospheric testing of confined spaces prior to entry, the use of personal protective equipment, where necessary, and requires ventilation of the space to prevent accumulation of toxic atmospheres. Federal OSHA does have a similar standard (§1910.268(o)) that regulates entry into telecommunications confined spaces, but has determined that the Virginia regulation is at least as effective as the federal standard.

Alternatives

The alternatives considered for this regulation were whether to retain the existing regulation as promulgated or repeal the regulation and adopt the federal identical confined space standard for telecommunications. It is the determination of the Department that the current regulation is the least burdensome alternative for the protection of employees in the Telecommunications Industry.

Public comment

No public comments were received on this regulation during the public comment period, which began on April 8, 2013 and ended on May 23, 2013. 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**

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. Provide protection to telecommunication workers equal to that provided to workers in other industries.
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 prevent injuries and deaths of telecommunications workers that are required to enter confined spaces. As part of the inspection of any company in the telecommunications industry, the Department reviews compliance with this regulation to ensure that atmospheric testing is being conducted, spaces are ventilated to prevent accumulation of toxic atmospheres, and all necessary personal protective equipment is provided. Since the promulgation of this regulation, compliance with these requirements has increased and there have been no fatalities or serious injuries as a result of entry into telecommunication confined spaces.

The regulation is clearly written and easily understandable.

**Result**

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 agency's determination whether the regulation should be amended or repealed, consistent with the stated objectives of applicable law, to minimize the economic impact of regulations on small businesses.

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Telecommunications companies must meet certain standards pursuant to the U.S. Occupational Safety and Health (OSH) Act (1970) and federal OSHA's 29 CFR 1910.268(o). Therefore, there is a continued need for such a regulation. There were no comments on the regulation during the public comment period. This regulation affects primarily large businesses that are large, often multi-state, companies that do not meet the definition of small business, as defined by the Code of Virginia, subsection A. § 2.2-4007.1, which states:

- A. As used in this section, "small business" means a business entity, including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.

Given the complex nature of the industry that it regulates, the regulation is not overly complex. In general, it does not increase the costs for small businesses, because very few small businesses operate in this industry.

As noted above, companies working in the telecommunications industry must meet certain standards pursuant to the U.S. Occupational Safety and Health (OSH) Act (1970) and federal OSHA's 29 CFR 1910.268(o). This regulation does not overlap, duplicate, or conflict with federal or state law or regulation, as these state regulations are enforced by the Department in lieu of direct federal enforcement as per agreement between the Department and federal OSHA.

This regulation was last subjected to a periodic review in 2009. Since that review, there have been no significant changes in technology, economic conditions, or other factors in the area affected by the regulation. At this time, there is nothing to indicate that the regulation should be amended or repealed, consistent with the stated objectives of applicable law, to minimize the economic impact of regulations on small businesses. The Department believes that the regulation provides a positive cost/benefit to the regulated community, as adherence to the requirements of this regulation may actually lower costs to businesses, by protecting the health and well-being of their employees, thus, shielding the businesses from the costs of litigation due to alleged exposures.

Family impact

This regulation has no impact on the institution of the family or family stability.