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

<b>Agency name</b>	Virginia Department of Labor and Industry/Safety and Health Codes Board
<b>Virginia Administrative Code (VAC) citation</b>	16 VAC-25-70
<b>Regulation title</b>	Virginia Confined Space Standard for the Telecommunications Industry
<b>Date</b>	July 28, 2017

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.

### 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 Virginia regulation is at least as effective as the equivalent federal OSHA standard, 29 CFR Section 1910.268(o). A committee comprised of telecommunication employers and employees was formed during a previous periodic review to discuss adoption of the federal requirements and repeal of the Virginia unique standard; however, the committee did not come to consensus. The Safety and Health Codes Board then rejected a recommendation by the Department to adopt the similar federal standard on the basis that Virginian’s were more adequately protected under the Virginia unique standard. At this time, the Department of Labor and Industry did not reconsider this alternative and the regulation, as written, is at least as effective as the equivalent federal standard.

**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 March 20, 2017, and ended on April 14, 2017. The Department of Labor and Industry 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.*

This 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.

This regulation is effective at protecting the safety, health, and welfare of telecommunication workers who 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 in 1987, 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 not overly complex.

## Result

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

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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.*

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There is a continued need for this regulation because it more adequately protects the safety, health, and welfare of telecommunication workers than the federal standard. The regulation establishes minimum protections against exposure to hazardous chemicals and hazardous atmospheres when working in confined spaces, with the least cost to citizens and businesses of the Commonwealth. No comments were received during this periodic review. The regulation is not overly complex and is clearly written. It does not duplicate, overlap, or conflict with state or federal laws or regulations, and there is no apparent negative impact on the regulated community. The regulation was last reviewed in 2013. There have been little or no changes in technology, economic conditions, and other factors which would affect the regulation.