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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-25-145
Regulation title	Safety Standards for Fall Protection in Steel Erection, Construction Industry
Date	November 8, 2018

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*, 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

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 alternative to this regulation would be to adopt the federal standard in its stead. The Virginia unique regulation closely mirrors the federal OSHA requirements, with three 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.

The Board determined that a more stringent requirement for fall protection in steel erection operations is imperative to protect the health, safety, and welfare of Virginia workers. Between 1993 and 2003, Virginia investigated at least 18 fatalities in the construction industry caused by falls under 15 feet. Between 1983 and 2003, over 50% of VOSH inspections of steel erection operations resulted in serious, repeat, or willful violations and 20% resulted in violations cited under 1926.28(a) fall protection, and 1926.105(a) safety nets.

2. Virginia provides Connectors the option of utilizing personal fall arrest systems when connecting steel which is lifted in the air.

Although a personal fall arrest system can protect workers from the harm of a fall, it can also limit the range of movement of a worker. This can become a hazard when steel is being lifted in the air, as a worker is better protected when afforded the freedom of movement to avoid accidental contact with structural pieces. The federal regulation does not provide such flexibility. The Board determined that a more stringent requirement for fall protection in steel erection operations is imperative to protect the health, safety, and welfare of Virginia workers.

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

A controlled decking zone, as defined by federal OSHA, would allow certain steel workers to be exposed to fall hazards without fall protection. Virginia experienced a number of fatalities and injuries related to such work zones. Controlling access to a CDZ is very challenging for an employer and positions employees for exposure to hazards. The Board determined that prohibition of a CDZ is imperative to protect the health, safety, and welfare of Virginia workers.

Adoption of the federal standard was rejected by the Board because it does not provide enough protections to Virginia workers.

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 July 23, 2018, and ended on August 17, 2018. The Department of Labor and Industry 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, as written, continues to protect the safety, health, and welfare of the public by limiting worker exposure to hazards, with the least cost to citizens and businesses of the Commonwealth. 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.

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 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.

There is a continued need for this regulation because it most adequately protects Virginia workers from hazards in the steel erection industry. The regulation, as written, continues to protect the safety, health, and welfare of the public by limiting worker exposure to hazards, 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 2014. There have been little or no changes in technology, economic conditions, and other factors which would affect the regulation.