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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)	16 VAC 25-97
VAC Chapter title(s)	Reverse Signal Procedures – General Industry – Vehicles/Equipment Not Covered by Existing Standards
Date this document prepared	August 24, 2023

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.

Department – 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 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 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.

This regulation was promulgated in 2009 to address a lack of protection for employees in construction work zones in which vehicles and machinery operate with obstructed views to the rear. Before promulgation, back-up accidents involving a vehicle not covered by existing regulatory standards were cited with the “general duty clause” which had a number of limitations, including not being applied to “other-than-serious” hazards. In development of the more comprehensive standard 16VAC25-97, the Department considered several methods to providing the most adequate employee protections, as well as met with interested parties representing employer and employee interests to gain consensus regarding regulatory language. At this time, the Department of Labor and Industry did not reconsider any of the alternatives previously considered during promulgation.

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 that began on May 23, 2022, and ended on June 13, 2022. The Department and the Safety and Health Codes Board did not establish an informal advisory group for the purpose of assisting in the periodic review.

Commenter	Comment	Agency response

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.

This regulation has two goals:

- Reduce the incidence of injuries and fatalities of Virginia workers and the public due to the operation of vehicles, machinery, and equipment in reverse.
- Protect the public’s health, safety and welfare with the least possible cost and intrusiveness to the citizens and businesses of the Commonwealth.

The regulation protects the safety, health, and welfare of the public by establishing minimum safety standards for reverse signal procedures with the least cost to citizens and businesses of the Commonwealth. These safety standards help to protect human life and property from the dangers of vehicles moving in reverse with an obstructed view. Since the promulgation of this regulation, there has been an approximate 50% decrease in annual fatalities related to reversing work vehicles. The regulation is clearly written and not overly complex.

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.

The Safety and Health Codes Board voted to retain the regulation without change.

The Reverse Signal Operations Standard provides a comprehensive safety, health and welfare approach to employees exposed to the same back-up hazard across construction and general industries.

A review of VOSH fatal accident investigations from 1992 to September 30, 2007, found 19 fatal vehicle or equipment accidents in construction work zones where employees were struck. While in some cases it was found that reverse signal alarms were not operational, many accidents occurred even with operational reverse signal alarms. Fatal accidents also occurred to employees engaged in their own work unrelated to such vehicles or equipment where they apparently became de-sensitized to the familiar and repeated sounds of reverse signal alarms and other construction noise in the work zone.

A review of VOSH fatal accident investigations from 1992 to September, 2007, found nine fatal accidents in general industry work zones where employees were struck.

At the time of its adoption, Virginia was averaging two back-up fatal accidents per year. In the years following adoption of the regulation in 2009, Virginia experienced a 50% reduction in fatal back-up accidents.

There is a continued need for this regulation because it more adequately protects employees in work zones in which vehicles and machinery are operating with an obstructed rear view than the equivalent federal standards. The regulation, as written, continues to protect the safety, health, and welfare of the public by establishing minimum safety standards for reverse signal procedures, 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.

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.

As a result of this periodic review, the Department has determined that the regulation has no negative economic impact on small business.

At the time of adoption, the Department made available to employers a free training program that could be used to meet the training requirements contained in the final regulation. Small businesses also had the opportunity to take advantage of the Virginia Occupational Safety and Health (VOSH) program's free, confidential Consultation and Training resources. Based on information received during the comment periods for the proposed standard, commenters for the construction industry indicated that current rate of pay was \$20 per hour for operators, plus fringes (DOLI assumed a 25% rate for fringes, the total compensation rate is \$25 per hour); and \$15 per hour, plus fringes, for laborers (DOLI assumed a 25% rate for fringes, the total compensation rate is \$18.75 per hour). The Department estimated at that time that training on the final standard would take between 30-60 minutes. Costs for operators would range from \$17.50 to \$25.00 per operator and from \$9.38 to \$18.75 per laborer. Applying an inflation escalator of 29.3% for the years 2009 to 2022, costs per operator would range from \$22.63 to \$33.33 and from \$12.13 to \$24.24.

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