



Virginia
Regulatory
Town Hall

Periodic Review and Retention of Existing Regulations Agency Background Document

Agency Name:	Virginia Department of Labor and Industry/ Safety and Health Codes Board
VAC Chapter Number:	16 VAC 25-70-10 et seq.
Regulation Title:	Virginia Confined Space Standard for the Telecommunications Industry
Action Title:	Periodic Review of Regulation Pursuant to Executive Order 25 (98)
Date:	July 17, 2000

This information is required pursuant to the Administrative Process Act § 9-6.14:25, Executive Order Twenty-Five (98), and Executive Order Fifty-Eight (99) which outline procedures for periodic review of regulations of agencies within the executive branch. Each existing regulation is to be reviewed at least once every three years and measured against the specific public health, safety, and welfare goals assigned by agencies during the promulgation process.

This form should be used where the agency is planning to retain an existing regulation.

Summary

Please provide a brief summary of the regulation. There is no need to state each provision; instead give a general description of the regulation and alert the reader to its subject matter and intent.

16 VAC 25-70-10 et seq. applies to all employers in the telecommunications industry. The regulation prescribes basic mandatory practices and procedures which employers must establish and use for employee entry into and work within confined spaces. The regulation 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.

Basis

Please identify the state and/or federal source of legal authority for the regulation. The discussion of this authority should include a description of its scope and the extent to which the authority is mandatory or discretionary. Where applicable, explain where the regulation exceeds the minimum requirements of the state and/or federal mandate.

The Federal Occupational Safety and Health Administration (OSHA) mandates that State Plan states be at least as effective as Federal OSHA. Also, 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 that the standards be as stringent as the standards promulgated by Federal OSHA. Thus, Virginia's Confined Space Standard for the Telecommunications Industry must be identical to Federal OSHA's 29 CFR 1910.268 (o) or be considered to be as effective as the federal standard.

16 VAC 25-70-10 et seq. provides minimum protection for workers against exposure to hazardous chemicals and hazardous atmospheres when working in telecommunication 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 telecommunication confined spaces, but has determined that the Virginia regulation is at least as effective as the federal standard.

Public Comment

Please summarize all public comment received as the result of the Notice of Periodic Review published in the Virginia Register and provide the agency response. Where applicable, describe critical issues or particular areas of concern in the regulation. Also please 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 30 day public comment period which began April 24, 2000. 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 provide a description of the specific and measurable goals of the regulation. Detail the effectiveness of the regulation in achieving such goals and the specific reasons the agency has determined that the regulation is essential to protect the health, safety or welfare of citizens. Please assess the regulation's impact on the institution of the family and family stability. In addition, please indicate whether the regulation is clearly written and easily understandable by the individuals and entities affected.

The regulation has three goals:

1. Reduce the incidence of material impairment of the health of Virginians due to workplace exposure to known hazards.
2. Provide protection to telecommunications 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 telecommunication 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.

There is no impact on the institution of the family and family stability. The regulation is clearly written and easily understandable.

Alternatives

Please describe the specific alternatives for achieving the purpose of the existing regulation that have been considered as a part of the periodic review process. This description should include an explanation of why such alternatives were rejected and this regulation reflects the least burdensome alternative available for achieving the purpose of the regulation.

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. During the previous regulatory review, the Department established an independent review panel to consider the need for the standard or whether it should be eliminated. After considerable discussion, a subcommittee of employer and employee representatives from Bell Atlantic was established and the panel deferred the final recommendation to the subcommittee. This subcommittee met once, but did not agree on a final recommendation. Based on the analysis of this report, the department recommended to the Safety and Health Codes Board that the regulation be repealed. The Safety and Health Codes Board rejected that recommendation on the basis that employees would not be adequately protected if this regulation was repealed. Thus the current regulation is the least burdensome alternative for the protection of employees in the Telecommunications Industry.

Recommendation

Please state that 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.

Family Impact Statement

Please provide an analysis of the regulation's impact on the institution of the family and family stability including the extent to which it: 1) strengthens or erodes the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourages or discourages economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthens or erodes the marital commitment; and 4) increases or decreases disposable family income.

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