



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 25-150-10
Regulation title	Underground Construction, Construction Industry
Document preparation date	March 16, 2009

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 36 (2006) and 58 (1999).

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.

Virginia Code section 40.1-22(5) 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. 91-596)". Also, federal OSHA mandates that State Plan states be at least as effective as federal OSHA. This regulation is identical to current federal OSHA standards for Underground Construction except the section which provides for application of any requirements under the Virginia Confined Space Standard for the Construction Industry, 16 VAC 25-140-10 *et seq.*, where the standard is more stringent.

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 alternatives considered for this regulation were whether to retain the existing regulation as promulgated or repeal the regulation and adopt the federal identical underground construction regulation for the construction industry. During a previous regulatory review, the Department established an independent review panel to consider the need for the standard or whether it should be eliminated. The panel recommended retention of the regulation in its present form. At this time, the Department is not aware of any alterations in the regulatory environment that would alter that assessment.

The repeal of this regulation would result in the implementation of the federal identical regulation for underground construction. With the current regulation, employees are more adequately protected when engaged in confined space work in underground construction. Based on previous reviews and the current review, the Department has determined the current regulation is the least burdensome alternative for the protection of employees in this area.

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 January 5, 2009, and ended on January 26, 2009. 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 indicate whether the regulation meets the criteria set out in Executive Order 36, e.g., is necessary for the protection of public health, safety, and welfare, and is clearly written and easily understandable.

The regulation has two goals:

1. Reduce the incidence of construction fatalities of Virginia workers due to workplace exposure to known hazards.
2. 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 is essential to protect the health and safety of employees and reduce the incidence of construction fatalities because it provides minimum protections against exposure to hazardous chemicals and hazardous atmospheres and engulfment by physical hazards in underground construction areas. It also provides protections against exposure to improperly energized equipment which might pose a crushing hazard, and exposure to electrical or explosive hazards in underground construction areas defined as confined spaces. Since promulgation of this standard there have not been any confined space-related fatalities in underground construction projects.

The regulation provides substantially similar safety and health protections to employees and employers in the construction industry as that required by mandated regulations in general industry.

The regulation is clearly written and easily understandable.

Result

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

Please provide an analysis of the regulation's impact on the institution of the family and family stability.

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