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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-25-97
Regulation title	Reverse Signal Procedures – General Industry – Vehicles/Equipment Not Covered by Existing Standards
Date	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.

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

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 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.

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 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.

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. 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.