



Virginia  
Regulatory  
Town Hall

## Periodic Review and Retention of Existing Regulations Agency Background Document

<b>Agency Name:</b>	Department of Labor and Industry/Safety and Health Codes Board
<b>VAC Chapter Number:</b>	16 VAC 25-170-10 et seq.
<b>Regulation Title:</b>	Virginia Excavation Standard, Construction Industry
<b>Action Title:</b>	Periodic Review of Regulation Pursuant to Executive Order 25 (98)
<b>Date:</b>	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.*

This regulation requires employers to comply with requirements contained in the Virginia Confined Space Standard for the Construction Industry, 16 VAC 25-140-10 et seq., when working in open excavation areas which also meet the definition of "confined space" in 16 VAC 25-140-10 et seq. The regulations requires employers and employees to test the atmosphere of confined spaces prior to entry; requires, where necessary, the use of personal protective equipment during entry; and requires ventilation of the space to prevent the accumulation of toxic atmosphere.

## 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.*

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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. 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 Excavation 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 that standard is more stringent.

## 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.*

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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.*

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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 primary goal of this regulation is to prevent injuries and deaths of construction industry employees while they are working in excavation areas that also meet the definition of confined space. It provides minimum protections against exposure to hazardous chemicals and hazardous atmospheres and engulfment by physical hazards in excavation 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 excavation areas defined as confined spaces. Since promulgation of this regulation, there has not been any confined space related fatalities on construction worksites, during the excavation phase.

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.*

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The alternatives considered for this regulation were whether to retain the existing regulation as promulgated or repeal the regulation and adopt the federal identical excavation regulation for the construction industry. 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. The panel recommended retention of regulation in its present form.

The repeal of this regulation would result in the implementation of the federal identical regulation for excavation work in construction industry. With the current regulation, employees are more adequately protected when engaged in confined space work in excavation work in construction. Thus the current regulation is the least burdensome alternative for the protection of employees in this area.

**Recommendation**

*Please state that the agency is recommending that the regulation should stay in effect without change.*

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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.*

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