



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 25-160-10 <i>et seq.</i>
Regulation title	Construction Industry Standard for Sanitation
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.

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. At the time of adoption, the federal Occupational Safety and Health Administration comparable standard for construction was determined by the Board as providing inadequate sanitation safeguards.

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 agency has determined that the alternative for achieving the purpose of the existing regulation is to replace the existing regulation with the federal OSHA regulatory standard found

at 29 CFR 1926.51. After a review and analysis by the agency, the Safety and Health Codes Board voted during the previous periodic review, to table the agency recommendation that the regulation be repealed and replaced with the equivalent federal OSHA regulatory standard for construction sanitation found at 29 CFR 1926.51. The Board members stated more study was needed on the federal standard to determine if it would be more effective in protecting construction employees in Virginia from illness and disease. With the current regulation, employees are more adequately protected, and it 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 three goals:

1. Reduce the incidence of material impairment of the health of Virginia workers due to workplace exposure to known hazards.
2. Require sanitary facilities for construction workers equal to those required for agricultural workers.
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 address health hazards associated with poor sanitation conditions at construction sites, such as, insufficient potable water, insufficient hand washing facilities, inadequate toilet facilities, and the physical harm which may occur due to retention of urine and feces over long periods of time. The Virginia Construction Industry Standard for

Sanitation is designed to reduce or eliminate the health problems faced by employers and employees working in the construction industry. The provision of these facilities serves to reduce or eliminate the following major categories of occupational diseases: heat-related illness, communicable disease and urinary tract infections.

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.