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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
Virginia Administrative Code (VAC) citation	16 VAC 25-73
Regulation title	Regulation Applicable to Tree Trimming Operations
Date	October 30, 2015

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.

The Safety and Health Codes Board is authorized by Title 40.1-22(5) to:

"... adopt, alter, amend, or repeal rules and regulations to further, protect and promote the safety and health of employees in places of employment over which it has jurisdiction and to effect compliance with the federal VOSH Act of 1970...as may be necessary to carry out its functions established under this title."

"In making such rules and regulations to protect the occupational safety and health of employees, 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 OSH Act of 1970 (P.L.91-596). In addition to the attainment of the highest degree of health and safety protection for the employee, other considerations shall be the latest available scientific data in the field, the feasibility of the standards, and experiences gained under this and other health and safety laws."

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 purpose of this regulation is to reduce/eliminate employee injuries and fatalities in non-logging, arborist/tree trimming and cutting operations on residential and commercial work sites. There is not a viable alternative to this regulation because:

- Prior to the adoption of this regulation, VOSH applied the Logging Standard, 1910.266, to arborists/tree trimming operations anytime a tree was “felled,” or cut down. However, the Logging Standard does not apply to tree trimming activities where the tree is not felled or cut down, so there was no specific regulation to address hazards associated with the task of trimming trees;
- In instances where the Logging Standard did not apply, VOSH had to use regulations of general application to address some hazards (e.g., 1910.95, Occupational Noise Exposure; 1910.132, Personal protective equipment; 1910.133, Eye and face protection; 1910.135, Head Protection; 1910.136, Foot protection; 1910.151, Medical services and first aid; 1910.67, Vehicle-mounted elevating and rotating work platforms; etc.), and the “general duty clause” of Va. Code §40.1-51.1(a);
- The wording of the statute and the Logging Standard does not in any way address the issue of hazards associated with tree trimming operations, and did not provide the regulated community, employees, or the VOSH Program with substantive and consistent procedures and guidance on how to reduce or eliminate tree trimming hazards; and
- Because of the inadequate fit of the Logging Standard as an enforcement tool for tree trimming, the arborist industry complained locally and nationally about the application of that standard to the hazards of their industry, which they considered to be fundamentally different from the hazards faced by loggers, and they requested that the Department promulgate a regulation to specifically cover Tree Trimming Operations.

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.

There were no comments. No informal advisory group was formed for purposes 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.

The regulation is necessary for the protection of public health, safety, and welfare. The regulation is clearly written and easily understandable.

Result

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

The agency recommends that the regulation remain in effect without change. In its review of this regulation, the agency has determined that there is a continued need for the regulation both because it is an enforcement tool that has been designed specifically for the tree trimming operations that are conducted by the arborist industry, and because spokespersons within that industry specifically requested that the Department promulgate a regulation to specifically cover Tree Trimming Operations.

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.

In its review of this regulation, the agency has determined that there is a continued need for the regulation both because it is an enforcement tool that has been designed specifically for the tree trimming operations that are conducted by the arborist industry, and because spokespersons within that industry specifically requested that the Department promulgate a regulation to specifically cover Tree Trimming Operations. No comments or complaints were received from the public during the Public Comment Period. The regulatory language is clear and avoids complexity. This regulation, which became effective in 2011, does not overlap, duplicate, or conflict with federal or state law or regulation. The current review is the first periodic review to evaluate the regulation. There have not been significant changes in technology, economic conditions, or other factors in the area affected by the regulation since it became effective. The agency has determined that retaining the regulation without amendment is consistent with the stated objectives of applicable law, and is the most effective way to minimize the economic impact of regulations on small businesses.