

MARYLAND REGISTER

Proposed Action on Regulations

Comparison to Federal Standards Submission and Response

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In accordance with Executive Order 01.01.1996.03 and memo dated July 26, 1996, the attached document is submitted to the Department of Business and Economic Development for review.

The Proposed Action is not more restrictive or stringent than corresponding federal standards.

COMAR Codification: 09.12.31.01

Corresponding Federal Standard:

29 CFR Part 1926 Subpart C - General Safety and Health Provisions, Subpart V - Electric Power Transmission and Distribution, Subpart AA - Confined Spaces in Construction.

Discussion/Justification:

Maryland is a state plan state. As such, it is required to adopt rules that are identical to or at least as effective as the Federal OSHA rule. Federal OSHA provides the state plan states with 6 months to adopt a regulation from the time OSHA finalizes their regulation.

TO BE COMPLETED BY DBED

- Agree

-Disagree

Comments:

Commerce does not have the subject matter expertise in this area. However, we believe the Department of Labor, Licensing, and Regulation does and we trust the assertion that the regulation is not more restrictive/stringent than corresponding federal regulations.

Name: Jennifer Cox

Date: 12/14/2015

-Submit to Governor's Office

Governor's Office Response

Comments:

Transmittal Sheet PROPOSED OR REPROPOSED Actions on Regulations	Date Filed with AELR Committee	TO BE COMPLETED BY DSD
	12/15/2015	Date Filed with Division of State Documents
		Document Number
		Date of Publication in MD Register

1. Desired date of publication in Maryland Register: 1/22/2016

2. COMAR Codification

Title Subtitle Chapter Regulation

09 12 31 01

3. Name of Promulgating Authority

Department of Labor, Licensing, and Regulation

4. Name of Regulations Coordinator

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5. Name of Person to Call About this Document

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6. Check applicable items:

New Regulations

Amendments to Existing Regulations

Date when existing text was downloaded from COMAR online: .

Title 09
DEPARTMENT OF LABOR, LICENSING, AND
REGULATION

Subtitle 12 DIVISION OF LABOR AND INDUSTRY

09.12.31 Maryland Occupational Safety and Health Act - Incorporation by Reference of Federal Standards

Authority: Labor and Employment Article, §§2-106(b)(4) and 5-312(b), Annotated Code of Maryland

Notice of Proposed Action

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The Commissioner of Labor and Industry proposes to adopt, though incorporation by reference under COMAR 09.12.31 Maryland Occupational Safety and Health Act — Incorporation by Reference of Federal Standards, amendments relating to Confined Spaces in Construction, 29 CFR Part 1926, published in 80 FR 25366 — 25526 (May 4, 2015).

This action was considered by the Maryland Occupational Safety and Health Advisory Board pursuant to a meeting held on June 17, 2015, notice of which was given in accordance with State Government Article, §10-506(c), Annotated Code of Maryland.

Statement of Purpose

The purpose of this action is to add a new subpart to provide protections to employees working in confined spaces in construction.

Comparison to Federal Standards

There is a corresponding federal standard to this proposed action, but the proposed action is not more restrictive or stringent.

Estimate of Economic Impact

The proposed action has no economic impact.

Economic Impact on Small Businesses

The proposed action has minimal or no economic impact on small businesses.

Impact on Individuals with Disabilities

The proposed action has no impact on individuals with disabilities.

Opportunity for Public Comment

Comments may be sent to Andi Morony, Policy Director, Division of Labor & Industry, Dept. of Labor, Licensing and Regulation, 1100 N. Eutaw Street, Room 604, Baltimore, MD 21202, or call 410-767-2962, or email to andi.morony@maryland.gov, or fax to 410-767-2986. Comments will be accepted through February 22, 2016. A public hearing has not been scheduled.

Economic Impact Statement Part C

A. Fiscal Year in which regulations will become effective: FY 2016

B. Does the budget for the fiscal year in which regulations become effective contain funds to implement the regulations?

Yes

C. If 'yes', state whether general, special (exact name), or federal funds will be used:

Federal/General

D. If 'no', identify the source(s) of funds necessary for implementation of these regulations:

E. If these regulations have no economic impact under Part A, indicate reason briefly:

There is already a confined space standard for general industry. This regulation simply adds a new subpart to provide protections to employees working in confined spaces in construction.

F. If these regulations have minimal or no economic impact on small businesses under Part B, indicate the reason and attach small business worksheet.

There is already a confined space standard for general industry. This regulation simply adds a new subpart to provide protections to employees working in confined spaces in construction.

G. Small Business Worksheet:

Impact Statement Part C — Legislative Information

Part C requests agencies to provide information required by the Department of Legislative Services in its report to the AELR Committee. Answer the questions in the space provided. Part C is not printed in the Maryland Register.

Small Business Analysis Worksheet

This worksheet is designed to assist the agency in determining if and how the proposal impacts small businesses. Quantify the number of affected small businesses and estimates of costs and benefits to small businesses if possible. State Government Article, §2-1505.2, includes the following definitions which are relevant to the analysis:

“Economic impact analysis” means an estimate of the cost or the economic benefit to small businesses that may be affected by a regulation proposed by an agency pursuant to Title 10, Subtitle 1 of this article.

“Small business” means a corporation, partnership, sole proprietorship, or other business entity, including its affiliates, that: (i) is independently owned and operated; (ii) is not dominant in its field; and (iii) employs 50 or fewer full-time employees.

1a. Intended Beneficiaries. Who are the intended beneficiaries of the proposed regulation?

Construction Industry

Are these intended beneficiaries primarily households or businesses?

Businesses

1b. Intended Beneficiaries: Households. If households are the primary intended beneficiaries, will the proposal affect their income or purchasing power such that the volume or patterns of their consumer spending will change? If so, what directions of change would you anticipate? Will these expected spending changes have a disproportionate impact on small businesses? Can you descriptively identify the industries or types of business activities that are impacted?

N/A

1c. Intended Beneficiaries: Businesses. If businesses are the intended beneficiaries, identify the businesses by industry or by types of business activities.

Construction Industry

How will businesses be impacted?

In confined spaces, requirements include a "competent person" to identify all confined spaces, including permit spaces, requiring continuous atmospheric monitoring wherever possible, coordinated activities for multiple employers on a site, continuous monitoring of engulfment hazards, allowing for the suspension of a permit, instead of cancellation, in the event of changes.

Are these Maryland establishments' disproportionately small businesses?

No

If so, how will these Maryland small businesses be affected?

N/A

Can you identify or estimate the present number of small businesses affected?

N/A

Can you estimate the present total payroll or total employment of small businesses affected?

N/A

2a. Other Direct or Indirect Impacts: Adverse. Businesses may not be the intended beneficiaries of the proposal. Instead, the proposal may direct or otherwise cause businesses to incur additional expenses of doing business in Maryland. Does this proposal require Maryland businesses to respond in such a fashion that they will incur additional work-time costs or monetary costs in order to comply?

No

Describe how Maryland establishments may be adversely affected.

Maryland establishments will not be adversely affected by this proposal.

Will Maryland small businesses bear a disproportionate financial burden or suffer consequences that affect their ability to compete?

No

Can you estimate the possible number of Maryland small businesses adversely affected? (Note that small business compliance costs in the area of regulation are the sum of out-of-pocket (cash) costs plus time costs — usually expressed as payroll, akin to calculations for legislative fiscal notes. Precise compliance costs may be difficult to estimate, but the general nature of procedures that businesses must accomplish to comply can be described.)

No.

2b. Other Direct or Indirect Impacts: Positive. Maryland businesses may positively benefit by means other than or in addition to changed consumer spending patterns. How may Maryland businesses be positively impacted by this initiative?

Maryland establishments will be positively impacted by this initiative in that OSHA assumes that the final rule will improve the safety of workers who encounter confined spaces in construction.

Will Maryland small businesses share proportionately or disproportionately in these

gains?

Proportionately

Can you estimate the possible number of Maryland small businesses positively affected?

No

3. Long-Term Impacts. There are instances where the longer run economic impact effect from regulations differ significantly from immediate impact. For example, regulations may impose immediate burdens on Maryland small businesses to comply, but the overall restructuring of the industry as a consequence of monitoring and compliance may provide offsetting benefits to the affected small businesses in subsequent years. Can you identify any long run economic impact effects on Maryland small businesses that over time (a) may compound or further aggravate the initial economic impact described above, or (b) may mitigate or offset the initial economic impact described above?

No

4. Estimates of Economic Impact. State Government Article, §2-1505.2 requires that an agency include estimates, as appropriate, directly relating to: (1) cost of providing goods and services; (2) effect on the work force; (3) effect on the cost of housing; (4) efficiency in production and marketing; (5) capital investment, taxation, competition, and economic development; and (6) consumer choice.

N/A

Attached Document:

Title 09 DEPARTMENT OF LABOR, LICENSING, AND REGULATION

Subtitle 12 DIVISION OF LABOR AND INDUSTRY

Chapter 31 Maryland Occupational Safety and Health Act — Incorporation by Reference of Federal Standards.

Authority: Labor and Employment Article, §§2-106(b)(4), 5-309(a)(1), and 5-312(b), Annotated Code of Maryland

A.- O-1 (text unchanged).

O-2. Confined Spaces in Construction. All amendments and revisions to 29 CFR §1926 that appear in the Federal Register on May 4, 2015 (80 FR 25366—25526) are adopted by reference. Effective date:

P.-ZZ-2 (text unchanged).