



COMMONWEALTH of VIRGINIA
DEPARTMENT OF LABOR AND INDUSTRY

C. Ray Davenport
COMMISSIONER

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AGENDA

SAFETY AND HEALTH CODES

**Main Street Centre
600 East Main Street
12th Floor Conference Room - North
Richmond, Virginia**

Tuesday, March 19, 2019

10:00 a.m.

1. **Call to Order**
2. **Approval of Agenda**
3. **Approval of Minutes for Board Meeting of November 8, 2018**
4. **Opportunity for the Public to Address the Board on the issues pending before the Board today, as well as any other topics that may be of concern to the Board and within its scope of authority.**

This will be the only opportunity for public comment at this meeting. Please limit remarks to 5 minutes in consideration of others wishing to address the Board.

5. **Old Business**

None

6. **New Business**

- a) Amendment of 29 CFR 1926 subpart CC—Cranes and Derricks in Constructions
§1926.1427: Operator training, certification, and evaluation
§1926.1430: Training

Presenter – Jennifer Rose

- b) Amendment of 29 CFR Part 1904 subpart E—Reporting Fatality, Injury and Illness Information to the government
§1904.41: Electronic submission of Employer Identification Number (EIN) and injury and illness records to OSHA.

Presenter – Jay Withrow

- c) Notice of Periodic Reviews for 2019
1. **16 VAC 25-35** Regulation Concerning Certified Lead Contractors Notification, Lead Project Permits and Permit Fees
 2. **16 VAC 25-55** Financial Responsibility of Boiler and Pressure Vessel Contract Fee Inspectors
 3. **16 VAC 25-73** Regulation Applicable to Tree Trimming Operations
 4. **16 VAC 25-75** Telecommunications, General, Approach Distances

Presenter – Holly Trice

- d) Informational Briefing on Heat Stress Hazards in the Workplace

Presenter – Jay Withrow

- e) Informational Briefing on Safety and Health Management System Standards Around the Country Applicable to State and Local Government Employers

Presenter – Jay Withrow

7. **Items of Interest from the Department of Labor and Industry**

8. **Items of Interest from Members of the Board**

9. **Meeting Adjournment**

DRAFT

**SAFETY AND HEALTH CODES BOARD
PUBLIC HEARING AND MEETING MINUTES
THURSDAY, November 8, 2018**

BOARD MEMBERS PRESENT: Mr. Jerome Brooks
Mr. Lou Cernak, Jr.
Dr. Dwight Flammia for Caroline "Carrie" Holsinger
Mr. John Fulton
Mr. Phil Glaize
Ms. Tina Hoover
Ms. Anna Jolly
Mr. Courtney Malveaux
Mr. David Martinez, Newly Elected Chair
Mr. Travis Parsons, Outgoing Chair
Mr. Kenneth Richardson, II
Ms. Milagro Rodriguez
Mr. Chuck Stiff, Newly Elected Vice Chair

BOARD MEMBERS ABSENT: Mr. Tommy Thurston

STAFF PRESENT: Mr. C. Ray Davenport, Commissioner of Dept. of Labor & Industry
Mr. Jay Withrow, Director, Legal Support, VPP, ORA, OPP and OWP
Mr. Ron Graham, Director, VOSH Health Compliance
Ms. Jennifer Rose, Director, VOSH Safety Compliance
Ms. Diane Duell, Director, Legal Services
Ms. Regina Cobb, Senior Management Analyst
Ms. Marta Fernandes, Regional Safety Director
Ms. Holly Trice, Senior Staff Attorney
Mr. Rob Feild, Senior Staff Attorney
Mr. Harvey Trice, Lead Safety and Health Compliance Officer

OTHERS PRESENT: Ms. Beverly Crandell, Safety Program Coordinator, Tidewater
Community College
Joshua Laws, Esq., Assistant Attorney General, OAG
Mr. Anthony Borers, Colonial Webb
Mr. Joe Wesley, CSUSA
Mr. Sam Revenson, Associated Risk Management
Ms. Lisa Wright, Court Reporter, Chandler & Halasz, Stenographic Court
Reporters

ORDERING OF AGENDA

Chair Travis Parsons called the Public meeting to order at 10:00 a.m. A quorum was present. Mr. Parsons, then, welcomed the two new Board members: Ms. Tina Hoover, Employee Representative for Agriculture, and Mr. Phil Glaize, Employer Representative for Agriculture. He added that Dwight Flammia would be filling in for Dr. Holsinger today.

The Chair then acknowledged the pending retirement of Regina Cobb. On behalf of the Board, Mr. Courtney Malveaux made a tribute in memory of the late John Crisanti, Manager of the Office of Policy and Planning and staff support for the Board. Mr. Malveaux presented Commissioner Davenport with a plaque in Mr. Crisanti's memory. In accepting the plaque, Commissioner Davenport thanked the Board. He stated that Mr. Crisanti was a very special member of the Department and he would be sorely missed. Chair Parsons asked everyone to stand for a moment of silence for Mr. Crisanti.

APPROVAL OF AGENDA

Mr. Parsons requested a motion to approve the Agenda. A motion to accept the Agenda was made, properly seconded, and carried by unanimous voice vote.

APPROVAL OF MINUTES

Mr. Parsons asked the Board for a motion to approve the Minutes from the June 14, 2018 Board meeting. A motion was made and properly seconded. The Minutes were approved by unanimous voice vote.

ELECTION OF OFFICERS

Mr. Parsons informed the Board that it was time to elect a Chair and Vice Chair for a term of one year. He mentioned that traditionally, the Board alternates between representatives of labor and management for the Chair and Vice Chair positions with allowances for the representatives for the general public and the insurance industry. He added that the newly elected chair is expected to select a secretary; however, that does not have to take place at this meeting.

Mr. Parsons asked for nominations for Board Chair. Mr. Parsons nominated Mr. David Martinez as Chair. There were no other nominations. The nomination was properly seconded. By voice vote, the Board unanimously elected Mr. Martinez as Board Chair.

Next, Chair Parsons asked for nominations for Board Vice Chair. Mr. Parsons then nominated Mr. Chuck Stiff for the position of Vice Chair. There were no other nominations. The nomination was properly seconded. By voice vote, the Board unanimously elected Mr. Stiff.

PUBLIC COMMENTS

There were no comments from the public.

OLD BUSINESS

There was no old business.

NEW BUSINESS

Revising the Beryllium Standard for General Industry, §1910.1024; Direct Final Rule (DFR); and Confirmation of Effective Date

Mr. Ron Graham, Director of Occupational Health Compliance for the Department, requested that the Board consider for adoption federal OSHA's standard entitled, "Revising the Beryllium Standard for General Industry, §1910.1024, Direct Final Rule (DFR)", as published in 83 FR 19936 on May 7, 2018, and the Confirmation of the DFR's Effective Date, as published in 83 FR 31045 on July 3, 2018.

Mr. Graham reminded the Board of the Board's adoption of federal OSHA's Beryllium Standards for General Industry, Construction as well as Shipyards for state and local government employers. He added that this particular briefing package only pertains to the General Industry standard.

He stated that on May 7, 2018, OSHA published a direct final rule that amended the text of the Beryllium standard for General Industry. He informed the Board that this particular revision deals with beryllium compounds that contain less than 0.1 percent beryllium, or trace amounts of beryllium. Mr. Graham explained that this revision is part of a settlement agreement based on a challenge to OSHA concerning the standard. He explained that there were three definitions that were either revised or added to the standard: "beryllium work area", "emergency", and "clarification for dermal and beryllium contamination".

He stated that, with this action, OSHA has clarified its intent with respect to provisions for disposal and recycling and with respect to provisions that OSHA intends to apply only where skin can be exposed to materials containing at least 0.1 percent by weight.

With the definition of "emergency", Mr. Graham explained that this change clarified circumstances under which the provisions associated with emergencies should apply, including the requirements that employers provide and ensure employee use of respirators and that employers provide medical surveillance to employees exposed in an emergency. He noted that this definition incorporates situations where there might be equipment failure or ruptured containers or where something breaks down that could result in an uncontrolled or unintended release of beryllium.

Mr. Graham discussed a new definition for "dermal contact," which clarifies that the requirements related to dermal contact in the written exposure control plan, washing facilities, medical examinations, and training provisions only apply where contact may occur with materials containing at least 0.1 percent beryllium by weight.

He continued by explaining that, with the revised definition of "beryllium contamination", OSHA's intent that the standard's requirements should not apply to areas where there are no processes or operations involving materials containing at least 0.1% beryllium by weight.

Mr. Graham informed the Board that OSHA published a Direct Final Rule (DFR) on Beryllium in the Federal Register with a statement that the rule will go into effect unless significant adverse comment is received within a specified period of time. OSHA also published an identical concurrent Notice of Preliminary Rulemaking (NPRM). Since OSHA determined that no significant adverse comment was received in response to the DFR, the rule went into effect nationally on July 3, 2018.

Mr. Graham stated that this action should not have any impact on employers, employees, or the Department. He reiterated that this standard clarifies OSHA's intent concerning coverage of the standard and how it applies to trace amounts of beryllium materials.

Additionally, OSHA's cost and savings analyses determined that it would be a net savings for employers, primarily in the aluminum production and coal fired utilities. OSHA's previous analysis determined that implementation of the standard was technologically and economically feasible.

In conclusion, Mr. Graham recommended that the Board adopt the Direct Final Rule on Revising the Beryllium Standard for General Industry, §1910.1024, and the Confirmation of the Effective date of the Direct Final Rule, as authorized by Virginia Code §§40.1-22(5) and 2.2-4006.A.4(c), with an effective date of February 15, 2019.

A motion to accept the Department's recommendation was made and properly accepted. The motion was unanimously approved by voice vote.

Occupational Exposure to Beryllium in General Industry, §1910.1024(o)(2); Final Rule; Limited Extension of Select Compliance Dates

Mr. Graham requested that the Board consider for adoption federal OSHA's Occupational Exposure to Beryllium in General Industry, §1910.1024 (o)(2); Final Rule; Limited Extension of Select Compliance Dates, as published in 83 FR 39351 on August 9, 2018.

He then reminded the Board that the Beryllium Standard was challenged in court, specifically the portions dealing with trace amounts of beryllium. With this amendment, federal OSHA revised §1910.1024(o)(2) of the Beryllium Standard for General Industry to extend the compliance deadline to December 12, 2018 nationally for the certain ancillary provisions to allow time for OSHA time to draft and publish the Notice of Preliminary Rulemaking (NPRM), and to give employers sufficient time to comply.

Paragraphs of §1910.1024 that were affected include: (e), beryllium work areas and regulated areas; (f), methods of compliance; (h), personal protective clothing and equipment; (i), hygiene areas and practices; (j), housekeeping; (m), communication of hazards; and (n), recordkeeping. He also noted the ancillary provisions that are not affected by this amendment, such as, paragraph (c), permissible exposure limits (PELs) for 1910.1024, 1915.1024, and 1926.1124; (d), exposure assessment; (g), respiratory protection; (k), medical surveillance; and (l), medical removal. Paragraphs (c), (d), (g), (k), and (l) became effective September 15, 2018 in Virginia. Requirements for change rooms and showers were unchanged and remain effective on March 11, 2019, and March 10, 2020, respectively.

Mr. Graham informed the Board that this amendment should not have any significant impact on employers, employees, or the Department.

With respect to benefits, the amendment clarifies the standard's intent which should make it easier for employers to comply. It will provide some cost savings to employers who will have additional time to comply with the affected ancillary provisions. OSHA had already determined that it was technologically and economically feasible to enforce the standard.

When asked about which dates are being extended to December 12, 2018 or February 15, 2019, Mr. Graham responded that Federal OSHA extended the dates to December 12, 2018, and the Department of Labor and Industry is requesting that the Board adopt the extension to February 15, 2019 for the provisions affected. Mr. Graham clarified that paragraph (o) of §1910.1024 provides the compliance dates for the standard.

In conclusion, Mr. Graham recommended that the Board adopt the Occupational Exposure to Beryllium in General Industry, §1910.1024 (o)(2); Final Rule; Limited Extension of Select Compliance Dates, as authorized by Virginia Code §§40.1-22(5) and 2.2-4006.A.4(c), with an effective date of February 15, 2019.

A motion to accept the Department's recommendation was made and properly accepted. The motion was unanimously approved by voice vote.

Amendment to the Cotton Dust Standard for General Industry, §1910.1043, CFR Correction

Mr. Ron Graham, Director of Occupational Health Compliance for the Department, requested the Board consider for adoption federal OSHA's revision to the existing Final Rule for the Standard for Cotton Dust in General Industry, as published in 83 FR 30035 on June 27, 2018.

Mr. Graham began by explaining that OSHA streamlined this standard by removing subparagraphs (i)(1)(i)(A) through (F) of §1910.1043, which detailed the components for the employer's education and training program for employees exposed to cotton dust. Provisions removed included: acute and long term health hazards associated with cotton dust; names and descriptions of jobs and processes which could result in exposure to cotton dust at or above the PEL; purpose, proper use and limitations of respirators as required by §1910.1043(f); purpose for and a description of the medical surveillance program, required by §1910.1043(h); and other information in the standard and its appendices to aid exposed employees in understanding the hazards of cotton dust exposure.

Mr. Graham stated that, for the sake of brevity, OSHA's rationale for eliminating those specific requirements is that the requirements are covered by other provisions of the standard.

With respect to impact, Mr. Graham informed the Board that the adoption of this revision would have no impact on employers, employees, or the Department.

On behalf of the Department, Mr. Graham recommended that the Board adopt the Amendment to the Cotton Dust Standard for General Industry, §1910.1043, CFR Correction, as authorized by Virginia Code §§40.1-22(5) and 2.2-4006.A.4(c), with an effective date of February 15, 2019.

A motion to accept the Department's recommendation was made and properly accepted. The motion was approved unanimously by voice vote.

Amendment to the Flammable Liquids Standard for the General Industry, §1910.106, CFR Correction

Mr. Graham requested that the Board consider for adoption federal OSHA's Amendment to the existing Final Rule for the Flammable Liquids Standard for the General Industry, as published in 83 FR 30539 on June 29, 2018.

Mr. Graham noted that this is a correction to what was published in the Code of Federal Regulations. He stated that this amendment essentially deals with the storage of flammable liquids. The standard has certain requirements concerning what types of containers and the volume of flammable and combustible liquids that can be stored in containers.

He explained that the text of this standard was revised and the word “combustible” was eliminated. The purpose of this revision is to more accurately characterize “flammable” or “combustible” storage containers of a certain capacity. He further explained that the difference between flammable and combustible liquid is that flammable liquids have a flash point of 100 degrees Fahrenheit. He added that flash points below 100 degrees Fahrenheit are more dangerous than combustible liquids that have a flash point at or above 100 degrees Fahrenheit. He stated that flammable liquids can catch fire a lot quicker and burn easier at normal working temperatures, whereas combustible liquids require higher than normal temperatures to ignite.

Ms. Anna Jolly noted that OSHA had pretty much stopped using the old term “combustible.” Mr. Graham agreed, but added that the term is still in use in some standards, but not in the flammable standards.

Mr. Graham stated that no impact on employers, employees or the Department is anticipated with the adoption of this amendment. He stated that the standard is economically and technologically feasible, and there should be no additional costs or cost savings for employers or employees or the Department as a result of adopting this amendment.

He concluded by recommending, on behalf of the Department, that the Board adopt the amendment to the Flammable Liquids Standard for the General Industry, §1910.106 – CFR Correction, as authorized by Virginia Code §§40.1-22(5) and 2.2-4006.A.4(c), with an effective date of February 15, 2019.

A motion to accept the Department’s recommendation was made and properly accepted. The motion was approved unanimously by voice vote.

Report on Periodic Review of Certain Existing Regulations

In the absence of Ms. Holly Raney, Regulatory Coordinator for the Department of Labor and Industry, Ms. Regina Cobb, Senior Management Analyst and staff support for the Board, informed the Board that the Administrative Process Act, §2.2-4007.1 D of the *Code of Virginia* requires that regulations of executive branch agencies be reviewed every four years to determine whether they should be continued without change or amended or even repealed, as consistent with the stated objections of applicable law. Additionally, §2.2-4017 of the *Code of Virginia* authorizes the Governor to mandate through executive order a procedure for the periodic review of these regulations – Executive Order 17 (2014), “Development and Review of State Agency Regulations”.

With respect to the current status and process of this regulation, Ms. Cobb reminded the Board that at the June 14, 2018, Board meeting the Board authorized the Department to begin a review process for 16VAC 25-145, Safety Standards for Fall Protection in Steel Erection, Construction Industry. She stated that the review process began on July 23, 2018, with the publication of a Notice of Periodic Review in the *Virginia Register and* certified by the Office of the Attorney General. This was followed by a 21-day public comment period from July 23, 2018 through August 17, 2018. The Department received no comments during this public comment period.

She stated that the Department then reviewed the regulation, in accordance with Virginia Code §2.2-4007.1 D and E for the following factors: continued need for the regulation; complexity of the regulation; extent to which the regulation overlaps, duplicates, or conflicts with federal or state law or regulation; and the length of time since the regulation has been evaluated or the degree to which technology, economic condition, or other factors have changed in the area affected by the regulation.

She noted that the Board adopted 16VAC25-145, Safety Standards for Fall Protection in Steel Erection, Construction Industry, in 2004 as a Virginia unique regulation. She explained that, while the regulation closely mirrors the federal OSHA requirements, this regulation has three material differences: First, Virginia requires fall protection at heights of 10 or more feet above a lower level; whereas, federal OSHA requires fall protection at 15 feet above a lower level. Second, Virginia provides connectors the option of utilizing personal fall arrest systems when connecting steel which is lifted in the air; federal OSHA does not. Third, Virginia prohibits the use of controlled decking zones (CDZ), federal OSHA does not prohibit the use of CDZ.

Ms. Cobb reported that this regulation is not overly complex, is clearly written, has no negative impact on the regulated community, and does not overlap, duplicate, or conflict with federal or state law or regulation.

In conclusions, Ms. Cobb recommended, on behalf of the Department, that 16VAC25-145, Safety Standards for Fall Protection in Steel Erection, Construction Industry, be retained "as is" with no changes.

A motion to accept the Department's recommendation was properly made and seconded. The recommendation was approved unanimously by voice vote.

Items of Interest from the Department of Labor and Industry

Mr. Jay Withrow, Director of the Division of Legal Support, said he had several different items to address. He thanked the Board for recognizing Ms. Cobb's service to the Agency and he thanked her for her service as well.

Second, Mr. Withrow assured the Board that, with the loss of John Crisanti and the retirement of Ms. Cobb, the Department will continue to provide full staffing for the Board. He added that Ms. Holly Raney, who was part of John's staff in helping the Board, currently is on medical leave and is expected back after Thanksgiving. He informed the Board that he has designated two senior staff attorneys, Rob Feild and Holly Trice, in the short-term to help out because John's position has not been filled yet.

Mr. Withrow also thanked the Board for recognizing John Crisanti for his service. Mr. Withrow added the following:

John took a great deal of pride in serving the Board over the years. It was very important to him. He had many battles with the Secretary of the Commonwealth's office about getting members appointed and reappointed.

John was a man of many interests. He was a self-described "gear head". He loved Dodge and Chrysler muscle cars of the '60s and '70s. He was a motorcycle enthusiast. He owned a Norton motorcycle and loved Japanese racing bikes.

One of the times I ever saw him most excited was when he got that Norton motorcycle which was in parts and he didn't have a truck. He asked me if I could help him move that over to his house. He painstakingly put it together and rode with his brother.

John was a very bright person and highly educated. He had a Master's Degree in Public Administration. While there were many times when I think he despised us attorneys, he sure could argue like one when he needed to. He had a rich variety of work experiences. Beside his work for the Department for over 30 years - he started in 1989 - he worked for the New York legislature as a policy and budget analyst overseeing budgets, including those for higher education that were in the billions of dollars.

In his younger days he and his brother worked on oil rigs in Texas and natural gas pipelines in Pennsylvania. I grew up in western Pennsylvania. John grew up in Buffalo. He was an upstate New Yorker. He was a dyed-in-the-wool New Yorker.

As some New Yorkers tend to be, he was direct; could be blunt at times. Tactfulness was not a strong point for him, but he had a great sense of humor. He thought outside of the box. He would be the first to tell you we did not always agree on things, but I always highly valued his ideas and input and the unique ways he would tackle issues. He will be missed.

Mr. Withrow updated the Board on the safety and health penalty regulation for state and local government employers and employees by informing them that the regulation became effective November 1, 2018. He added that there was a 30-day comment period during October. One comment was received, which the Department is still working through from a policy standpoint. He pointed out a detailed fact sheet that he left for everyone to review.

Next, Mr. Withrow shared the comment from the Assistant Director for Virginia Tech's Environmental Health and Safety. The Assistant Director said that Virginia Tech occupies 13 million square feet and has over 15,000 employees and 34,000 students. The main campus includes 213 buildings, 2,600 acres and an airport. Virginia Tech has 11 agricultural research and extension centers, facilities in more than five metropolitan areas, and employees in nearly every county of the state. Virginia Tech's Assistant Director's stated that it is imperative that violations not be applied to Virginia Tech as a singular entity when it comes to repeat violations. His concern was getting a very large penalty for repeat violations. He expressed concern that every violation eventually would become a repeat violation. This issue needs to be carefully evaluated and guidance provided to stakeholders on how this will be handled.

Mr. Withrow explained that the Department has a regional repeat policy, but there is no statewide repeat policy. He, then, invited anyone to provide suggestion or comments. He reminded the Board that the policy needs to be finalized by December 1. He described the roll out for this regulation: web page with background information and an enforcement directive to be issued December 1. There will be free consultation services in the public sector, regardless of the size of the entity.

Commissioner Davenport thanked the Board again for the presentation on John Crisanti's behalf. He said it was a very significant gesture. He too expressed that John would be missed. Commissioner Davenport added that, in regards to John being a New Yorker, "his disposition was unvarnished at times." He also congratulated Ms. Cobb on her retirement.

Commissioner Davenport also welcomed the new Board members and congratulated the members who had been reappointed to another four-year term: Mr. Cernak, Mr. Fulton, Mr. Martinez, Mr. Parsons and Mr. Thurston.

He thanked the Board members for their service and contributions to the safety and health of Virginia's citizenry.

Next, the Commissioner spoke about the recent VOSH safety and health conference held in Williamsburg. He stated that, in addition to Board members in attendance, there were more than 330 registered participants at the conference, which included 100 new attendees.

Commissioner Davenport updated the Board on the year-to-date VOSH fatality inspections by stating that there have been 30. He also mentioned that the Department continues to be short 12 unfunded compliance officer positions. The Department continues to make the administration and the General Assembly aware of the shortage.

He closed by thanking each Board member for their commitment to safety and health.

Items of Interest from Members of the Board

Mr. Stiff recommended that everyone look at the Department's fantastic website which is packed full of information with links – www.doli.virginia.gov

Mr. Parsons mentioned the buzz about two health issues: heat illness and noise. He referenced an organization called Public Citizen, and also distributed a fact sheet entitled, *Protecting Workers from Heat Stress in a Warming Climate*. He said that there is a lot of push for a federal standard on heat illness. He added that California, Washington and Minnesota have requirements for heat illness in their state programs.

He recommended that the Board consider moving forward with a regulation on heat illness because it's a serious issue. Mr. Parsons also provided some statistics that showed that about 32 to 33 people a year die because of heat-related illness across this country.

Mr. Parsons also made the Board aware of noise levels in construction. He stated that there's a national push to decrease noise construction from 90 to 85 decibels.

Mr. Withrow suggested that the Department could research the issue of heat illness and make a presentation to the Board next time about the states that have their own standards.

Meeting Adjournment

There being no further business, a motion was properly made and seconded to adjourn the meeting. The motion was carried unanimously by voice vote. The meeting adjourned at 11:22 a.m.



COMMONWEALTH of VIRGINIA
DEPARTMENT OF LABOR AND INDUSTRY

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COMMISSIONER

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VIRGINIA SAFETY AND HEALTH CODES BOARD

BRIEFING PACKAGE

FOR MARCH 19, 2019

Cranes and Derricks in Construction: Operator Qualification; Final Rule

I. Action Requested

The Virginia Occupational Safety and Health (VOSH) Program requests the Safety and Health Codes Board consider for adoption federal OSHA's amendment of 29 CFR 1926 Subpart CC to revise sections that address crane operator training, certification/licensing and competency as published in *83 FR 56198* on November 9, 2018. <https://www.osha.gov/sites/default/files/laws-regs/federalregister/2018-11-09.pdf>

The proposed effective date is May 15, 2019.

II. Summary and Purpose of the Final Rule

A. Overview

OSHA has updated the agency's standard for cranes and derricks in construction by clarifying each employer's duty to ensure the competency of crane operators through training, certification or licensing, and evaluation. OSHA also altered a provision that required different levels of certification based on the rated lifting capacity of equipment.

While testing organizations are not required to issue certifications distinguished by rated capacities, they are permitted to do so, and employers may accept them or continue to rely on certifications based on crane type alone. Finally, this rule establishes minimum requirements for determining operator competency. This final rule will maintain safety and health protections for workers while reducing compliance burdens.

B. Purpose

The purpose of these amendments is to:

- alter the requirement that crane-operator certification be based on equipment "type and capacity," instead permitting certification based on equipment "type" or "type and capacity";
- continue requiring training of operators;

- clarify and continue the employer duty to evaluate operators for their ability to safely operate equipment covered by subpart CC; and
- require documentation of that evaluation.

The record makes clear that employers need to evaluate operators and provide training when needed to ensure that they can safely operate cranes in a variety of circumstances. Similarly, and also consistent with many employers' current practices, employer evaluation of a crane operator's experience and competency with respect to the particular equipment assigned is essential to ensuring the safe operation of cranes on construction sites.

C. Summary of Operator Competency Requirements

OSHA promulgated a new standard for cranes and derricks in construction, referred to as the "2010 crane standard," on November 10, 2010 (75 FR 47905). It was based on a proposal drafted as the result of negotiated rulemaking and issued on October 9, 2008 (73 FR 59714). Under this cranes standard, except for employees of the U.S. military and the operation of some specified equipment, employers were required to allow only certified operators to operate equipment after November 10, 2014.

In lieu of certification, the rule also allowed operators to operate cranes if licensed by state or local governments whose programs met certain minimum requirements. The standard included a four year, phased-in effective date for the certification requirements. That phase in period was intended to provide time for existing accredited testing organizations to develop programs that complied with the standard's requirements; for operators and employers to prepare for certification testing; and for more testing organizations to become accredited to make certifications available for the operation of the wide variety of cranes used in construction. During the phase in period, employers were required to continue complying with two broad provisions: to ensure that crane operators were competent to operate the equipment safely and, if necessary, to train and evaluate employees who did not have the required knowledge or ability to operate the equipment safely (§ 1926.1427(k)(2)(i) and (ii)) ("employer duties").

1. Legislative History of Operator Certification Requirement

In 1979, OSHA published 29 CFR 1926.550, which specified requirements for crane and derrick operation that were adopted from existing consensus standards. However, crane incidents continued to be a significant cause of injuries and fatalities in the construction industry over the next few decades.

In 2003, OSHA commenced rulemaking by establishing a federal advisory committee, the Cranes and Derricks Negotiated Rulemaking Advisory Committee (C-DAC), to develop a proposal through consensus (see OSHA-S030-2006-0663-0639). C-DAC met eleven times between July 30, 2003, and July 9, 2004, and produced a consensus document that OSHA proposed for comment. OSHA's proposal included a requirement for operator certification by "type and capacity" of the equipment in lieu of the previous general requirement that employers ensure their operators were competent to operate the machinery.

OSHA published its proposal on October 9, 2008 (73 FR 59714). On November 8, 2010, the final rule, including requirements for crane operator certification, became effective. The original date by which all operators were to be certified was November 10, 2014, but OSHA subsequently extended that date to November 10, 2017 (79 FR 57785 (September 26, 2014)) and then further extended it to November 10, 2018 (82 FR 51986 (November 9, 2017)). Prior to the amendments to the standard contained in this current final rule, the separate employer duty to evaluate operators was to cease on the date when operator certification was required.

2. Certification by Crane Rated Lifting Capacity

The 2010 crane standard required operators to become certified and permitted four options for doing so, one of which is certification by a third-party organization. A third-party certification is portable (a new employer can rely on it), but in relying upon a third-party certification as confirmation of an operator's knowledge and operating skills, employers need to know what kind of equipment the certification applies to when making determinations about which equipment an operator can operate at the worksite. The 2010 final rule provided that third-party certification must indicate the equipment types and the rated capacities that an individual is certified to operate. The other certification options, which are not portable, do not require certification by capacity.

To address the concerns that testing organizations might offer certification for a variety of crane capacities but yet not offer a certification for the particular capacity of crane matching the equipment to which operators would be assigned, OSHA added subparagraph § 1926.1427(b)(2) to the 2010 crane standard. That paragraph clarified that the certification must list the type and rated lifting capacity of the crane in which the operator was tested, and for purposes of complying with the 2010 crane standard the operator would be "deemed qualified" to operate cranes of the same type that have equal or lower rated lifting capacity of the crane in which they were tested.

III. The Need for the Rule

A. Employer's Duty to Evaluate its Operators

This final rule revises the prior 2010 crane standard to make permanent the employer duty to evaluate operators that would not expire on the date certification is required. Under the revised standard, the employer's evaluation is established as a critical element to ensure safe equipment operations on construction worksites. Third-party certification is portable so that operators do not need to be re-certified just because they switch employers; employers can rely on previous training the operator has received from other employers (or labor organizations) because the revised standard requires that every employer evaluate an employee first as an operator-in-training before permitting him or her to operate equipment without oversight.

An employer's evaluation assesses different operator skills than certification tests. Whereas certification provides a verification of an operator's basic operating skills and crane knowledge such as reading load charts, recognizing basic crane hazards, inspecting the equipment, knowledge of applicable regulations, and familiarity with basic crane functions to control the boom and load line, employer evaluation will allow for verification of specific skills an operator needs but does not appear during the certification practical exam. Examples of these activities include inspecting the equipment; assessing unstable loads; hoisting loads of irregular size; operation from a barge; personnel hoisting; rigging the load; leveling the crane; hoisting in tight spaces where there is greater opportunity for damaging parts of the crane other than the load line; making judgments about wind speed and other environmental factors that can impact the performance of the equipment; performing multiple crane lifts; traveling with or without a load; operating near power lines; hoisting light loads; and hoisting blind picks where the operator cannot see the load.

B. Elimination of the Requirement to Certify Based on Capacity of Crane

After receiving feedback from shareholders that the capacity requirement does not provide a significant safety benefit because the lifting capacity of equipment is not a meaningful component of operator testing, OSHA determined that employee certification by capacity of crane should no longer be required; rather, it may be an option for those employers who wish to use it. This change is reflected in § 1926.1427(d)(1)(ii)(B).

IV. Summary and Explanation of the Amendments to Subpart CC

A. **Paragraph (a)—Duty to Train, Certify or License and Evaluate Operators**

Paragraph (a) sets out the employer's responsibility to ensure that each operator completes three steps before the employer permits the operator to operate equipment covered by subpart CC without continuous supervision. In the regulatory text, OSHA refers to this entire three-step process as "qualification." Each operator must be trained to do the crane activities that will be performed, be certified/licensed in accordance with subpart CC, and be evaluated on his or her competence to safely operate the equipment that will be used.

The new approach provides a clearer structure than the previous format of the standard, which was not designed to accommodate both certification and evaluation. In addition, the final rule makes clear that post-certification training is required. The new final rule contemplates operators still needing additional training after they are certified, such as training to operate a new type of crane, perform new tasks, or handle new controls in a crane that differs from previous models they have operated. The current certification/licensing requirement, which is the centerpiece of the previous operator requirements, remains largely unchanged under the revised standard, with the exception that different certifications for different capacities of cranes would no longer be required.

In the final rule, OSHA is permanently retaining an employer assessment duty but has re-located it to paragraph (a) to increase comprehension of the standard's requirements.

i. **Paragraphs (a)(1) to (a)(3)**

Paragraphs (a)(1) to (3) provide limited exceptions to the general requirement in paragraph (a) that operators must be trained, certified, and evaluated before operating equipment. Paragraph (a)(1) permits an employee to operate equipment as an "operator-in training" prior to being certified and evaluated, provided that he or she is supervised and operates the equipment in accordance with the training requirements in paragraph (b). This is the only means by which an individual may operate equipment prior to being trained, certified, and evaluated as competent to do so. The revised standard also permits certified/licensed operators to operate equipment as operators-in-training before successfully completing an evaluation.

B. **Paragraph (b)—Operator Training**

Paragraph (b) now sets forth minimum requirements for training, specifies requirements for trainers, and establishes limitations on the scope of activities for operators-in-training. The training requirements of revised paragraph (b) are largely the same as the previous rule but also clarify that employers must continue to address operator training needs after the operator has been certified and demonstrated competency through employer evaluation on specific equipment. Paragraph (b) further clarifies that the employer's training duty is both **equipment-specific** and **task-specific**, and extends until the employer has satisfactorily evaluated the operator-in-training in accordance with paragraph (f)—evaluation, or if any retraining or subsequent training is required to perform the assigned tasks.

i. **Paragraph (b)(1)**

Paragraph (b)(1) requires the employer to provide the operator-in-training with instruction on the subjects in paragraph (j). Under the revised standard, even after the operator-in-training is determined competent by employer evaluation, the employer's training duty can continue when the operator operates new equipment or performs tasks that require new skills or knowledge.

- ii. **Paragraph (b)(2)**
Paragraph (b)(2) requires the employer to ensure that a trainer continuously monitors operators-in-training during all crane operations. This requirement is identical to the previous requirement for continuous monitoring under previous paragraph (f)(3).
 - iii. **Paragraph (b)(3)**
Paragraph (b)(3) requires the employer to assign the operator-in-training only tasks that are within his or her ability. This requirement is substantively identical to the requirement under previous paragraph (f)(2). Also, paragraph (b)(3) retains a revised version of the limitations specified in previous paragraph (f)(5), which precluded operators-in-training from operating equipment next to energized power lines; from hoisting personnel; or from performing multiple-equipment lifts, multi-lift rigging operations, or lifts over shafts, cofferdams or in a tank farm.
 - iv. **Paragraph (b)(4)**
Paragraph (b)(4) prescribes minimum requirements for monitored training of operators-in-training and trainers who monitor operators-in-training. Paragraph (b)(4)(i)(A) requires that the trainer must be an employee or agent of the operator-in-training's employer. Paragraph (b)(4)(i)(B) requires that the trainer must "have the knowledge, training, and experience necessary to direct the operator-in-training on the equipment in use."
 - v. **Paragraph (b)(5)**
Paragraph (b)(5) requires the employer to provide retraining when, based on the performance of the operator or an assessment of the operator's knowledge, there is an indication that retraining is necessary. This language is identical to the requirement in previous § 1926.1430(g)(2) but is included in paragraph (b) to consolidate all substantive training requirements to the extent practical for operators covered under § 1926.1427.
- C. Paragraph (c)—Operator Certification and Licensing**
Paragraph (c) retains the certification and licensing structure of the 2010 crane standard with only a few minor modifications intended to improve comprehension of certification/ licensing requirements. First, OSHA moved the military qualification provisions of previous § 1926.1427(e)(4) to the exception in paragraph (a), as noted earlier. Second, OSHA removed the reference to an "option" with respect to mandatory compliance with previous state and local licensing requirements.

When a state or local government issues operator licenses for equipment covered under subpart CC, and that government licensing program meets the requirements specified in the standard, then employers must ensure that equipment operators are properly licensed when working in the state or local jurisdiction, even if the operator is also certified by a nationally accredited certification organization. However, the state or local license would satisfy OSHA's certification requirement: OSHA will not require an operator who obtains such a state or local license to also obtain a separate certification from a nationally accredited certification organization or an employer-audited program. The content of revised paragraph (c)(1) is virtually identical to provisions in § 1926.1427(e)(2) of the 2010 crane rule, with one exception: Revised (c)(1)(v).

- i. **Paragraph (c)(1)(v)**
As in the 2010 crane standard, this final rule includes minimum "federal floor" criteria for state and local crane operator licensing. If a license does not meet the minimum "federal floor" criteria specified in OSHA's crane standard (see revised § 1427(c)(1) and (j)), then the state or locality could still enforce its own licensing requirements, but employers operating

cranes for construction within that jurisdiction could not rely on that license to satisfy OSHA's operator certification requirement. The employer must then comply with one of the other options for certification/qualification specified by this final rule.

ii. Paragraph (c)(2)

Paragraph (c)(2) specifies the certification requirements for two remaining situations: The construction occurs in a state or local jurisdiction that does not require licensing of equipment operators, or the construction occurs in a state or local jurisdiction where the licensing program does not meet the "federal floor" of requirements established in this standard. In each of those situations, the operator would have to be certified in accordance with paragraph (d) (third-party certification) or (e) (audited employer program) of this section.

iii. Paragraph (c)(3)

Paragraph (c)(3) requires employers to provide at no cost to employees the certification or licensing required by § 1926.1427. This revised requirement is almost identical to that of § 1926.1427(a)(4) of the previous rule, except that it has been revised to clarify that it applies to all operators certified or licensed after the effective date of the new standard, not just those operators who were "employed by the employer on November 8, 2010," as previous § 1926.1427(a)(4) stated.

iv. Paragraph (c)(4)

Paragraph (c)(4) retains, without change, the content of previous § 1926.1427(g), which states that a testing entity is permitted to provide training as well as testing services as long as the criteria of the applicable accrediting agency (in the option selected) for an organization providing both services are met.

D. Paragraph (d)—Certification by an Accredited Crane Operator Testing Organization

Compliance with the requirements of paragraph (d) is the option that OSHA expects the vast majority of employers to use. Paragraph (d) retains, with some non-substantive language clarification and two exceptions discussed below, the requirements of previous paragraph § 1926.1427(b) and is unchanged from the proposal. First, the most significant change is that paragraph (d)(1)(ii)(B) replaces the references to certification by "type and capacity" that appeared in previous paragraph (b)(1)(ii)(B) with "type, or type and capacity." Second, the revision does not include the reference in previous § 1926.1427(b)(2) to an employee being "deemed qualified" to operate equipment under certain conditions if no accredited testing organization offers certification examinations for a specific type of equipment. Instead the revision replaces "deemed certified" with "deemed to have complied with the certification requirements of this section." This change is intended to avoid the misconception that an operator could be considered competent to safely operate equipment without also being evaluated and determined competent by the operator's employer.

E. Paragraph (e)—Audited Employer Program

The substantive content of paragraph (e) is the same as previous § 1926.1427(c). It sets out the parameters for a non-portable certification program administered by the employer and audited by a third party.

F. Paragraph (f)—Evaluation

Paragraph (f) sets out specific requirements that employers must follow to conduct an operator evaluation, including evaluation criteria, minimum qualifications for the person conducting the evaluation, documentation, and re-evaluation requirements.

- i. Paragraph (f)(1)**
Paragraph (f)(1) requires employers to evaluate their operators and specifies the two goals of the evaluation: Ensure that the operator has (1) the ability to safely perform the assigned work, and (2) the necessary skills, knowledge, and ability to recognize and avert risks in order to safely operate the actual equipment that will be used.. In paragraph (f)(1)(i), OSHA provides a list of performance-based criteria to ensure that the evaluation encompasses various aspects of the equipment, such as safety devices, operational aids, software, and the size and configuration of the equipment. Paragraph (f)(1)(ii) focuses on the importance of the operator’s ability to perform specific tasks, such as blind lifts, personnel hoisting, and multi-crane lifts.
- ii. Paragraph (f)(2)**
For operators already employed by an employer, paragraph (f)(2) allows that employer to rely on its “previous assessments of the operator in lieu of conducting a new evaluation” of that operator. OSHA’s final rule does not require employers to make each existing operator re-sit for formal re-evaluations on all applicable equipment and perform different tasks when the employer has already previously assessed that operator prior to the effective date of the rule and determined that he or she is qualified to safely operate such equipment for certain tasks.
- iii. Paragraph (f)(4)**
Paragraph (f)(4) establishes minimum criteria for the person who performs the required evaluation of an operator-in-training. The evaluation must be conducted by an individual who possesses the knowledge, training, and experience necessary to assess operators. Such knowledge, training, and experience is not necessarily the same as the knowledge, training, and experience to perform the particular construction operations or processes oneself.
- iv. Paragraph (f)(5)**
Paragraph (f)(5) permits the employer to allow an operator to operate equipment other than the specific equipment on which the operator was evaluated, as long as the employer can demonstrate that the new equipment does not require substantially different skills, knowledge, or abilities to operate. An additional evaluation would be required before an operator would be allowed to operate equipment that requires substantially different skills, knowledge, or abilities to operate.
- v. Paragraph (f)(6)**
Paragraph (f)(6) requires the employer to document the evaluation of each operator and to ensure that the documentation is available at the worksite.
- vi. Paragraph (f)(7)**
Paragraph (f)(7) requires the employer to re-evaluate an operator whenever the employer is required to retrain the operator under § 1926.1427(b)(5). Section 1926.1427(b)(5) requires retraining if the operator’s performance or an evaluation of the operator’s knowledge indicate that retraining is necessary.

This might include a wide variety of feedback, such as (but not limited to) information from an onsite supervisor or safety manager, contractor, or other person that the operator was operating equipment unsafely, OSHA citations, a crane near miss, or other incidents that indicate unsafe operation of the crane. The reevaluation must target the deficiency in skills, knowledge, or ability to recognize and avert risk that triggered the retraining, but need not include a reevaluation of other previously evaluated skills, knowledge, or ability. Reevaluations would need to be conducted by a person who meets the requirements of paragraph (f)(4).

G. Paragraph (g)—Reserved

This paragraph is reserved because the text at previous § 1926.1427(g) was moved to revised paragraph § 1926.1427(c)(4). The provision was moved to improve clarity of certification program requirements.

H. Paragraph (h)—Language and Literacy Requirements

Previous paragraph § 1926.1427(h) allowed operators to be certified in a language other than English, provided that the operator understands that language. Revised paragraph (h) is nearly identical to previous paragraph (h) with one exception. The last sentence of paragraph (h)(2) has been reworded to clarify that an operator is permitted to operate equipment only when he or she is furnished materials that are necessary for safe operation of the equipment and required by subpart CC, such as operations manuals and load charts, in the language of the operator's certification.

I. Paragraph (i)—Reserved

J. Paragraph (j)—Certification Criteria

Paragraph (j) specifies criteria that must be met by an accredited testing organization under revised paragraph (d) and an audited employer program under revised paragraph (e). The criteria specified by revised paragraph (j) of this section are the same as those specified under previous § 1926.1427(j). However, the introductory regulatory text in the previous version of § 1926.1427(j) states that "qualification and certifications" must be based, at a minimum, on several criteria for the written and practical tests found in § 1926.1427(j)(1) and (2). Revised paragraph (j) deletes the words "qualification and" because they are no longer necessary: Under the revised rule, a certification issued by an audited employer program is intended to be equivalent to that of an accredited testing program for purposes of complying with OSHA's rule.

K. Paragraph (k)—Effective Date

The effective date of this final rule applies to the certification requirements and all but one of the amendments. OSHA decided to allow 90 days after the publication of the final rule for employers to conform their practices for evaluating their operators, including documenting the evaluations, to the requirements of OSHA's standard.

L. Section 1926.1430(c)—Conforming Changes to Operator Training

OSHA amended only paragraph (c) of the training requirements in § 1926.1430 by replacing the substantive operator training requirements with a reference to § 1926.1427(a) and (b).

M. Sections 1926.1436(q)—Derricks, 1926.1440(a)—Sideboom Cranes, and 1926.1441(a) Equipment with a Rated Hoisting/Lifting Capacity of 2000 pounds or Less

OSHA had proposed making the employer evaluation requirements to the following group of equipment otherwise exempt from the requirements of § 1926.1427: Derricks, sideboom cranes, and equipment with a rated hoisting/ lifting capacity of 2,000 pounds or less. OSHA still requires employers to train operators of this equipment in accordance with the requirements of this standard.

V. Impact

A. Impact on Employers

The total annual cost of the final rule comprises these cost items: Evaluations (those previously calculated with offsets from the removal of the requirements to certify by capacity and with the additional evaluation costs to account for new skills and tasks), documentation of the evaluations (including the one-time first year evaluation documentation for existing, currently employed

operators without such documentation), and training costs. The cost savings is due to averting the need for all operators who currently have a type only certification to obtain a type-and-capacity certification. At a discount rate of 3 percent the sum of those parts is a cost savings of \$1,752,000. Using a discount rate of 7 percent there are cost savings of \$2,388,000.

The largest cost element of the revisions to the rule is an evaluation requirement with associated training of \$79.22 per training and \$90.04 for each operator evaluation, for a total of \$169.25. Small businesses will, by definition, have few operators, and the \$169.25 cost for each operator evaluation with training will not be a significant impact for even the smallest businesses. At an hourly wage of \$43.25, the annual salary for an operator is \$86,500, so this operator evaluation cost is 0.2% of an operator's annual salary. Hence, OSHA certifies that this final rule will not have a significant economic impact on a substantial number of small entities.

See Section VI. below for more information on total cost and Virginia's costs.

B. Impact on Employees

The final rule 2010 cranes standard found that construction workers suffer 89 fatal injuries per year from the types of equipment covered by this final standard. Of that number, OSHA estimated that 21 fatalities would be avoided by compliance with the final standard. In addition, OSHA estimated that the final standard would prevent 175 non-fatal injuries each year. OSHA did not make additional findings in this final rule. OSHA did note that since the 2010 crane standard was promulgated, Crane related fatalities have continued to occur. According to the Census of Fatal Occupational Injuries, 47 crane operators were killed between 2011 and 2014 (this does not include accidents with non-fatal injuries or crane incidents causing fatalities or injuries to workers other than the crane operator).¹

C. Impact on DOLI

It is anticipated that any impact on DOLI resulting from adoption of these standards would be negligible. Any such costs would be related to training VOSH compliance staff on the standard.

Federal regulations 29 CFR 1953.23(a) and (b) require that Virginia, within six months of the occurrence of a federal program change, to adopt identical changes or promulgate equivalent changes which are at least as effective as the federal change. The Code of Virginia reiterates this requirement in § 40.1-22(5). Adopting these revisions will allow Virginia to conform to the federal program change.

VI. Benefit, Cost, and Feasibility

A. Technologic Feasibility, Economic Feasibility and Cost Effectiveness

1. Technological Feasibility

OSHA determined that the final rule is technologically feasible because many employers already comply with all the provision of the revised rule and the revised rule would not require any new technology.

2. Economic Feasibility

OSHA determined that the most significant costs of the amendments are associated with the requirements to perform the operator competency evaluation, document the evaluations, and provide any additional training needed by operators. OSHA estimates employers impacted by

¹ Bureau of Labor Statistics, Census of Fatal Occupational Injuries (2011 forward), Fatalities to Crane and Tower Operators, series ID FWU50X53702X8PN00, available at <http://www.bls.gov/iif/data.htm>.

this rule employ approximately 117,130 crane operators. OSHA estimates the annual cost to the industry will be \$1,481,000 for the performance of operator competency evaluations, \$62,000 for documenting those evaluations, and \$94,000 for any additional training needed for operators. OSHA's estimate of the total annual cost of compliance is \$1,637,000.

OSHA also expects some cost savings from the changes to the rule, including a large onetime cost savings of \$25,678,000 from dropping the requirement that crane operators be certified by capacity because that change eliminates the need for a very large number of operators to get an additional certification. OSHA also estimates that a small number of ongoing annual certifications due to an operator moving to a higher capacity crane would also no longer be needed, producing an additional annual cost savings of \$426,000. These various elements lead, at a 3 percent discount rate over 10 years, to net annual cost savings of \$1,752,000. At a discount rate of 7 percent there are annual cost savings of \$2,388,000.

SUMMARY TABLE-ANNUALIZED COSTS

	3% Discount rate	7% Discount rate
Initial evaluations	\$1,428,000	\$1,428,000
new evaluations	64,000	64,000
ongoing documentation evaluation	62,000	62,000
Training	64,000	94,000
Initial evaluation documentation (annualized)	47,000	67,000
non-capacity certifications - current population (cost savings, 10 years annualized)	(3,010,000)	(3,658,000)
non-capacity certifications - ongoing (cost savings)	(426,000)	(426,000)
Total	(1,752,000)	(2,388,000)

To determine Virginia's comparable costs, VOSH uses the formula (federal costs provided) x .02685= Virginia's costs. The Table below summarizes Virginia's costs using this formula:

SUMMARY TABLE –ANNUALIZED COSTS VIRGINIA²

	3% discount rate	7% discount rate
Initial Evaluations		
New evaluations	\$38,341.80	\$38,341.80
Ongoing Documentation	\$1,449.90	\$1,449.90
Training	\$1,664.70	\$1,664.70
Initial Evaluation Documentation (annualized)	\$2,523.90	\$2,523.90
Non Capacity Certifications, Current Population (cost savings, 10 years annualized)	\$1261.95	\$1530.45
Non Capacity Certifications ongoing, (cost savings)	(\$80,818.50)	(\$98,163.60)
	(\$11,438.10)	(\$11,483.10)
Total	(\$47041.20)	(\$64,177.80)

OSHA has concluded that, on average, the impact of costs on employers will be low because most employers are currently providing some degree of operator training and performing operator competency evaluations to comply with the previous 29 CFR 1926.1427(k), and were

² The Preamble estimates that there are approximately 117,130 crane operators impacted by this rule. However, this number is not broken down by state.

previously doing so to comply with §§ 1926.550, 1926.20(b)(4), and 1926.21(b)(2). Employers who currently provide insufficient training will incur new compliance costs.³

Although OSHA anticipates that a few employers might incur significant new costs, OSHA concluded that, for purposes of the Regulatory Flexibility Act, the changes to the standard will not have a significant economic impact on a substantial number of small entities. In addition, because the vast majority of employers already invest the resources necessary to comply with the provisions of the revised standard, the agency concludes that the revised standard is economically feasible.

3. Benefits

OSHA's 2010 Cranes and Derricks in Construction standard included an extensive analysis of the benefits attributed to preventing crane-related fatalities and serious injuries. In that analysis, OSHA relied on IMIS injury data made available in 2008 (see 75 FR 48093), finding that the standard would prevent 175 injuries and 22 fatalities per year for a total annual benefit of \$209.3 million (75 FR 48079–48080). OSHA, in the proposal for this rule, preliminarily concluded that allowing certification by type only would result in no loss of benefits.

The safety benefit of the rule is the prevention of injuries or fatalities resulting when operators certified to operate the type of crane assigned still lack the knowledge or skill to operate that crane for the assigned task. The 2010 crane rule estimated annual net benefits at \$55.2 million in 2010 dollars (75 FR 47914). Since there are cost savings for this final rule, net benefits of the joint 2010 final rule and this final rule are vastly greater than zero.

OSHA believes that the revised rule, which makes the evaluation duty permanent and includes more detailed evaluation documentation requirements, would make it more likely an employer conducts the appropriate type of evaluation and therefore more likely that such incidents would be avoided in the future. By specifying the elements to be evaluated, OSHA expects the evaluations to be more effective at preventing injuries by identifying operator limitations in a timely manner.

Contact Person:

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³ For more in depth analysis of how OSHA calculated the cost, see *Cranes and Derricks in Construction: Operator Qualification*, 83 FR 56198. This can be found at <https://www.osha.gov/sites/default/files/laws-regs/federalregister/2018-11-09.pdf>. The cost analysis begins on page 56233 and runs through 56240.

RECOMMENDED ACTION

Staff of the Department of Labor and Industry recommends that the Safety and Health Codes Board adopt the Amendments to Operator training, certification, and evaluation, §1926.1427 and Training, §1926.1430 of the Final Rule for Cranes and Derricks in Construction, as authorized by Virginia Code §§ 40.1-22(5) and 2.2-4006.A.4(c), with an effective date of May 15, 2019.

The Department also recommends that the Board state in any motion it may make to amend this regulation that it will receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision of this or any other regulation which has been adopted in accordance with the above-cited subsection A.4(c) of the Administrative Process Act.

**Cranes and Derricks in Construction:
Amendments to §1926.1427 and §1926.1430**

**As Adopted by the
Safety and Health Codes Board**

Date: _____



VIRGINIA OCCUPATIONAL SAFETY AND HEALTH PROGRAM

VIRGINIA DEPARTMENT OF LABOR AND INDUSTRY

Effective Date: _____

**16VAC25-175-1926.1427, Operator Training, Certification and Evaluation
16 VAC-175-1926.1430, Training**

When the regulations, as set forth in the Operator Training, Certification and Evaluation, §1926.1427 and §1926.1430, of the Final Rule for Cranes and Derricks in Construction, are applied to the Commissioner of the Department of Labor and Industry and/or to Virginia employers, the following federal terms shall be considered to read as below:

Federal Terms

VOSH Equivalent

29 CFR

VOSH Standard

Assistant Secretary

Commissioner of Labor and Industry

Agency

Department

November 9, 2018

May 15, 2019

impose additional or more stringent requirements than an existing standard. State Plans do not have to amend their standards, although OSHA may encourage them to do so. The 28 OSHA-approved State Plans are: Alaska, Arizona, California, Connecticut, Hawaii, Illinois, Indiana, Iowa, Kentucky, Maine, Maryland, Michigan, Minnesota, Nevada, New Mexico, New Jersey, New York, North Carolina, Oregon, Puerto Rico, South Carolina, Tennessee, Utah, Vermont, Virginia, Virgin Islands, Washington, and Wyoming. Connecticut, Illinois, New Jersey, New York, Maine, and the Virgin Islands have OSHA-approved State Plans that apply to State and local government employees only.

The amendments to OSHA's cranes standard in this final rule require employers to permanently implement evaluations of crane operators, whereas the previous evaluation duty had been temporary with a fixed end date. These evaluations must be documented and include more specificity than the previous temporary employer duty to assess and train operators under § 1926.1427(k)(2). Accordingly, State Plans are required to adopt an "at least as effective" change to their standard.

OSHA is also removing the previous requirement for crane operators to be certified by crane capacity as well as crane type. Because this change removes a requirement rather than imposing one, State Plans are not be required to make this change, but may do so if they so choose.

F. Unfunded Mandates Reform Act

When OSHA issued the final Cranes and Derricks in Construction rule in 2010 (75 FR 47900), it reviewed the rule according to the Unfunded Mandates Reform Act of 1995 (UMRA; 2 U.S.C. 1501 *et seq.*) and Executive Order 12875 (56 FR 58093). OSHA concluded that the final rule did not meet the definition of a "Federal intergovernmental mandate" under the UMRA because OSHA standards do not apply to State or local governments except in States that voluntarily adopt State Plans. OSHA further noted that the 2010 rule imposed costs of over \$100 million per year on the private sector and, therefore, required review under the UMRA for those costs, but concluded that its 2010 final economic analysis met that requirement.

As discussed above in Section III.A (Final Economic Analysis and Regulatory Flexibility Analysis) of this preamble, this final rule has cost savings of approximately \$1.8 million per year. Therefore, for the purposes of the UMRA, OSHA certifies that this final

rule would not mandate that State, local, or tribal governments adopt new, unfunded regulatory obligations, or increase expenditures by the private sector of more than \$100 million in any year.

G. Consultation and Coordination With Indian Tribal Governments

OSHA reviewed this final rule in accordance with Executive Order 13175 (65 FR 67249) and determined that it will not have "tribal implications" as defined in that order. The final rule will not have substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

H. Executive Order 13771: Reducing Regulation and Controlling Regulatory Costs

Consistent with E.O. 13771 (82 FR 9339, January 30, 2017), OSHA has estimated at a 3 percent discount rate, there are net annual cost savings of \$1,752,000, and at a discount rate of 7 percent there is an annual cost savings of \$2,368,000. This rule is an E.O. 13771 deregulatory action. Details on the estimated costs and cost savings estimates for this rule can be found in the final rule's economic analysis.

List of Subjects in 29 CFR Part 1926

Certification, Construction industry, Cranes, Derricks, Occupational safety and health, Qualification, Safety, Training.

Signed at Washington, DC, on November 5, 2018.

Lozan Sweatt,

Deputy Assistant Secretary of Labor for Occupational Safety and Health.

For the reasons stated in the preamble of this final rule, OSHA is amending 29 CFR part 1926 as follows:

PART 1926—SAFETY AND HEALTH REGULATIONS FOR CONSTRUCTION

Subpart CC—Cranes and Derricks in Construction

■ 1. The authority citation for subpart CC continues to read as follows:

Authority: 42 U.S.C. 3701 *et seq.*; 29 U.S.C. 655, 656, 657; Secretary of Labor's Order No. 5-2007 (72 FR 31150) or 1-2012 (77 FR 3002), as applicable; and 29 CFR part 1901.

■ 2. Revise § 1926.1427 to read as follows:

§ 1926.1427 Operator training, certification, and evaluation.

(a) *General requirements for operators.* The employer must ensure that each operator is trained, certified/licensed, and evaluated in accordance with this section before operating any equipment covered under subpart CC, except for the equipment listed in paragraph (a)(2) of this section.

(1) *Operation during training.* An employee who has not been certified/licensed and evaluated to operate assigned equipment in accordance with this section may only operate the equipment as an operator-in-training under supervision in accordance with the requirements of paragraph (b) of this section.

(2) *Exceptions.* Operators of derricks (see § 1926.1436), sideboom cranes (see § 1926.1440), or equipment with a maximum manufacturer-rated hoisting/lifting capacity of 2,000 pounds or less (see § 1926.1441) are not required to comply with § 1926.1427. Note: The training requirements in those other sections continue to apply for the training requirement for operators of sideboom cranes, follow section 1926.1430(c).

(3) *Qualification by the U.S. military.* (i) For purposes of this section, an operator who is an employee of the U.S. military meets the requirements of this section if he/she has a current operator qualification issued by the U.S. military for operation of the equipment. An employee of the U.S. military is a Federal employee of the Department of Defense or Armed Forces and does not include employees of private contractors.

(ii) A qualification under this paragraph is:

(A) Not portable: Such a qualification meets the requirements of paragraph (a) of this section only where the operator is employed by (and operating the equipment for) the employer that issued the qualification.

(B) Valid for the period of time stipulated by the issuing entity.

(c) *Operator training.* The employer must provide each operator-in-training with sufficient training, through a combination of formal and practical instruction, to ensure that the operator-in-training develops the skills,

knowledge, and ability to recognize and avert risk necessary to operate the equipment safely for assigned work.

(1) The employer must provide instruction on the knowledge and skills listed in paragraphs (j)(1) and (2) of this section to the operator-in-training.

(2) The operator-in-training must be continuously monitored on site by a trainer while operating equipment.

(3) The employer may only assign tasks within the operator-in-training's ability. However, except as provided in paragraph (b)(3)(v) of this section, the operator-in-training shall not operate the equipment in any of the following circumstances unless certified in accordance with paragraph (c) of this section:

(i) If any part of the equipment, load line, or load (including rigging and lifting accessories), if operated up to the equipment's maximum working radius in the work zone (see § 1926.1408(a)(1)), could get within 20 feet of a power line that is up to 350 kV, or within 50 feet of a power line that is over 350 kV.

(ii) If the equipment is used to hoist personnel.

(iii) In multiple-equipment lifts.

(iv) If the equipment is used over a shaft, cofferdam, or in a tank farm.

(v) In multiple-lift rigging operations, except where the operator's trainer determines that the operator-in-training's skills are sufficient for this high-skill work.

(4) The employer must ensure that an operator-in-training is monitored as follows when operating equipment covered by this subpart:

(i) While operating the equipment, the operator-in-training must be continuously monitored by an individual ("operator's trainer") who meets all of the following requirements:

(A) The operator's trainer is an employee or agent of the operator-in-training's employer.

(B) The operator's trainer has the knowledge, training, and experience necessary to direct the operator-in-training on the equipment in use.

(ii) While monitoring the operator-in-training, the operator's trainer performs no tasks that detract from the trainer's ability to monitor the operator-in-training.

(iii) For equipment other than tower cranes, the operator's trainer and the operator-in-training must be in direct line of sight of each other. In addition, they must communicate verbally or by hand signals. For tower cranes: The operator's trainer and the operator-in-training must be in direct communication with each other.

(iv) The operator-in-training must be monitored by the operator's trainer at all times, except for short breaks where all of the following are met:

(A) The break lasts no longer than 15 minutes and there is no more than one break per hour.

(B) Immediately prior to the break the operator's trainer informs the operator-in-training of the specific tasks that the operator-in-training is to perform and

limitations to which he/she must adhere during the operator trainer's break.

(C) The specific tasks that the operator-in-training will perform during the operator trainer's break are within the operator-in-training's abilities.

(6) *Retraining.* The employer must provide retraining in relevant topics for each operator when, based on the performance of the operator or an evaluation of the operator's knowledge, there is an indication that retraining is necessary.

(c) *Operator certification and licensing.* The employer must ensure that each operator is certified or licensed to operate the equipment as follows:

(1) *Licensing.* When a state or local government issues operator licenses for equipment covered under subpart CC, the equipment operator must be licensed by that government entity for operation of equipment within that entity's jurisdiction if that government licensing program meets the following requirements:

(i) The requirements for obtaining the license include an assessment, by written and practical tests, of the operator applicant regarding, at a minimum, the knowledge and skills listed in paragraphs (j)(1) and (2) of this section.

(ii) The testing meets industry-recognized criteria for written testing materials, practical examinations, test administration, grading, facilities/equipment, and personnel.

(iii) The government authority that oversees the licensing department/office has determined that the requirements in paragraphs (c)(1)(ii) and (iii) of this section have been met.

(iv) The licensing department/office has testing procedures for re-licensing designed to ensure that the operator continues to meet the technical knowledge and skills requirements in paragraphs (j)(1) and (2) of this section.

(v) For the purposes of compliance with this section, a license is valid for the period of time stipulated by the licensing department/office, but no longer than 5 years.

(2) *Certification.* When an operator is not required to be licensed under paragraph (c)(1) of this section, the operator must be certified in accordance with paragraph (d) or (e) of this section.

(3) *No cost to employees.* Whenever operator certification/licensure is required under this section, the employer must provide the certification/licensure at no cost to employees.

(4) *Provision of testing and training.* A testing entity is permitted to provide training as well as testing services as long as the criteria of the applicable

governmental or accrediting agency (in the option selected) for an organization providing both services are met.

(d) *Certification by an accredited crane operator testing organization.* (1) For a certification to satisfy the requirements of this section, the crane operator testing organization providing the certification must:

(i) Be accredited by a nationally recognized accrediting agency based on that agency's determination that industry-recognized criteria for written testing materials, practical examinations, test administration, grading, facilities/equipment, and personnel have been met.

(ii) Administer written and practical tests that:

(A) Assess the operator applicant regarding, at a minimum, the knowledge and skills listed in paragraphs (j)(1) and (2) of this section.

(B) Provide certification based on equipment type, or type and capacity.

(iii) Have procedures for operators to re-apply and be re-tested in the event an operator applicant fails a test or is decertified.

(iv) Have testing procedures for recertification designed to ensure that the operator continues to meet the technical knowledge and skills requirements in paragraphs (j)(1) and (2) of this section.

(v) Have its accreditation reviewed by the nationally recognized accrediting agency at least every 3 years.

(2) If no accredited testing agency offers certification examinations for a particular type of equipment, an operator will be deemed to have complied with the certification requirements of this section for that equipment if the operator has been certified for the type that is most similar to that equipment and for which a certification examination is available. The operator's certificate must state the type of equipment for which the operator is certified.

(3) A certification issued under this option is portable among employers who are required to have operators certified under this option.

(4) A certification issued under this paragraph is valid for 5 years.

(e) *Audited employer program.* The employer's certification of its employee must meet the following requirements:

(1) *Testing.* The written and practical tests must be either:

(i) Developed by an accredited crane operator testing organization (see paragraph (d) of this section), or

(ii) Approved by an auditor in accordance with the following requirements:

(A) The auditor is certified to evaluate such tests by an accredited crane

operator testing organization (see paragraph (d) of this section).

(D) The auditor is not an employee of the employer.

(C) The approval must be based on the auditor's determination that the written and practical tests meet nationally recognized test development criteria and are valid and reliable in assessing the operator applicants regarding, at a minimum, the knowledge and skills listed in paragraphs (f)(1) and (2) of this section.

(D) The audit must be conducted in accordance with nationally recognized auditing standards.

(2) *Administration of tests.* (i) The written and practical tests must be administered under circumstances approved by the auditor as meeting nationally recognized test administration standards.

(ii) The auditor must be certified to evaluate the administration of the written and practical tests by an accredited crane operator testing organization (see paragraph (d) of this section).

(iii) The auditor must not be an employee of the employer.

(iv) The audit must be conducted in accordance with nationally recognized auditing standards.

(3) *Timing of audit.* The employer program must be audited within 3 months of the beginning of the program and at least every 3 years thereafter.

(4) *Requalification.* The employer program must have testing procedures for re-qualification designed to ensure that the operator continues to meet the technical knowledge and skills requirements in paragraphs (f)(1) and (2) of this section. The re-qualification procedures must be audited in accordance with paragraphs (e)(1) and (2) of this section.

(5) *Deficiencies.* If the auditor determines that there is a significant deficiency ("deficiency") in the program, the employer must ensure that:

(i) No operator is qualified until the auditor confirms that the deficiency has been corrected.

(ii) The program is audited again within 180 days of the confirmation that the deficiency was corrected.

(iii) The auditor files a documented report of the deficiency to the appropriate Regional Office of the Occupational Safety and Health Administration within 15 days of the auditor's determination that there is a deficiency.

(iv) Records of the audits of the employer's program are maintained by the auditor for 3 years and are made available by the auditor to the Secretary

of Labor or the Secretary's designated representative upon request.

(3) *Audited-program certificates.* A certification under this paragraph is:

(i) Not portable: Such a certification meets the requirements of paragraph (c) of this section only where the operator is employed by (and operating the equipment for) the employer that issued the certification.

(ii) Valid for 5 years.

(5) *Evaluation.* (1) Through an evaluation, the employer must ensure that each operator is qualified by a demonstration of:

(i) The skills and knowledge, as well as the ability to recognize and avert risk, necessary to operate the equipment safely, including those specific to the safety devices, operational aids, software, and the size and configuration of the equipment. Size and configuration includes, but is not limited to, lifting capacity, boom length attachments, luffing jib, and counterweight set-up.

(ii) The ability to perform the hoisting activities required for assigned work, including, if applicable, blind lifts, personnel hoisting, and multi-crane lifts.

(2) For operators employed prior to December 10, 2015, the employer may rely on its previous assessments of the operator in lieu of conducting a new evaluation of that operator's existing knowledge and skills.

(3) The definition of "qualified" in § 1926.32 does not apply to paragraph (f)(1) of this section: Possession of a certificate or degree cannot, by itself, cause a person to be qualified for purposes of paragraph (f)(1).

(4) The evaluation required under paragraph (f)(1) of this section must be conducted by an individual who has the knowledge, training, and experience necessary to assess equipment operators.

(5) The evaluator must be an employee or agent of the employer. Employers that assign evaluations to an agent retain the duty to ensure that the requirements in paragraph (f) are satisfied. Once the evaluation is completed successfully, the employer may allow the operator to operate other equipment that the employer can demonstrate does not require substantially different skills, knowledge, or ability to recognize and avert risk to operate.

(6) The employer must document the completion of the evaluation. This document must provide: The operator's name; the evaluator's name and signature; the date; and the make, model, and configuration of equipment used in the evaluation. The employer

must make the document available at the worksite while the operator is employed by the employer. For operators assessed per paragraph (f)(2) of this section, the documentation must reflect the date of the employer's determination of the operator's abilities and the make, model and configuration of equipment on which the operator has previously demonstrated competency.

(7) When an employer is required to provide an operator with retraining under paragraph (b)(5) of this section, the employer must re-evaluate the operator with respect to the subject of the retraining.

(g) *(Reserved)*

(h) *Language and literacy requirements.* (1) Tests under this section may be administered verbally, with answers given verbally, when the operator candidate:

(i) Passes a written demonstration of literacy relevant to the work.

(ii) Demonstrates the ability to use the type of written manufacturer procedures applicable to the class/type of equipment for which the candidate is seeking certification.

(2) Tests under this section may be administered in any language the operator candidate understands, and the operator's certification documentation must note the language in which the test was given. The operator is only permitted to operate equipment that is furnished with materials required by this subpart, such as operations manuals and load charts, that are written in the language of the certification.

(i) *(Reserved)*.

(j) *Certification criteria.* Certifications must be based on the following:

(1) A determination through a written test that:

(i) The individual knows the information necessary for safe operation of the specific type of equipment the individual will operate, including all of the following:

(A) The controls and operational/ performance characteristics.

(B) Use of, and the ability to calculate (manually or with a calculator), load/ capacity information on a variety of configurations of the equipment.

(C) Procedures for preventing and responding to power line contact.

(D) Technical knowledge of the subject matter criteria listed in appendix C of this subpart applicable to the specific type of equipment the individual will operate. Use of the appendix C criteria meets the requirements of this provision.

(E) Technical knowledge applicable to the suitability of the supporting ground and surface to handle expected loads, site hazards, and site access.

(f) This subpart, including applicable incorporated materials.

(ii) The individual is able to read and locate relevant information in the equipment manual and other materials containing information referred to in paragraph (j)(1)(i) of this section.

(2) A determination through a practical test that the individual has the skills necessary for safe operation of the equipment, including the following:

(i) Ability to recognize, from visual and auditory observation, the items listed in § 1926.1412(d) (shift inspection).

(ii) Operational and maneuvering skills.

(iii) Application of load chart information.

(iv) Application of safe shut-down and securing procedures.

(k) *Effective dates.* (1) Apart from the evaluation and documentation requirements in paragraphs (a) and (f), this section is effective on December 10, 2018.

(2) The evaluation and documentation requirements in paragraphs (a) and (f) are effective on February 7, 2019.

■ 3. Amend § 1926.1430 by:

■ a. Revising paragraphs (c)(1) and (2);

■ b. Removing paragraph (c)(3); and

■ c. Redesignating paragraph (c)(4) as paragraph (c)(3).

The revisions read as follows:

§ 1926.1430 Training.

(c) * * *

(1) The employer must train each operator in accordance with § 1926.1427(a) and (b), on the safe operation of the equipment the operator will be using.

(2) The employer must train each operator covered under the exception of § 1926.1427(a)(2) on the safe operation of the equipment the operator will be using.

HR Dec. 2018 2493 Filed 11-7-18; 4:15 pm
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COMMONWEALTH of VIRGINIA
DEPARTMENT OF LABOR AND INDUSTRY

C. Ray Davenport
COMMISSIONER

VIRGINIA SAFETY AND HEALTH CODES BOARD

BRIEFING PACKAGE

For March 19, 2019

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**Electronic Submission of Employer Identification Number (EIN)
and Injury and Illness Records to OSHA; Final Rule**

I. Action Requested

The Virginia Occupational Safety and Health (VOSH) Program requests that the Safety and Health Codes Board consider for adoption federal OSHA's Final Rule on Electronic Submission of Employer Identification Number (EIN) and Injury and Illness Records to OSHA, as published on January 25, 2019 in 84 FR 380.

The proposed effective date is May 15, 2019.

II. Summary of the Standard

To protect worker privacy, the Occupational Safety and Health Administration (OSHA) is amending the recordkeeping regulation by rescinding the requirement for establishments with 250 or more employees to electronically submit information from OSHA Forms 300^a and 301^b. These establishments will continue to be required to maintain those records on-site, and OSHA and VOSH will continue to obtain them as needed through inspections and enforcement actions.

In addition to reporting required after severe injuries^c, establishments will continue to submit information from their Form 300A^d. Such submissions provide OSHA with ample data that it will continue seeking to fully utilize.

OSHA is also amending the recordkeeping regulation to require covered employers to submit their Employer Identification Number (EIN) electronically with their injury and illness data, which will facilitate use of the data and may help reduce duplicative employer reporting.

^a The OSHA Form 300 is the Log of Work-Related Injuries and Illnesses.

^b The OSHA Form 301 is the Injury and Illness Incident Report.

^c Employers are required to report to VOSH AND OSHA fatal accidents within 8 hours; and amputations, hospitalizations of one or more employees, AND employee loss of an eye within 24 hours. Va. Code 40.1-51.1.D and 29 CFR 1904.39.

^d The OSHA Form 300A is the Summary of Work-Related Injuries and Illnesses.

Nothing in the final rule revokes an employer's duty to maintain OSHA Forms 300 and 301 for OSHA inspection. These actions together will allow OSHA to improve enforcement targeting⁶ and compliance assistance, decrease burden on employers, and protect worker privacy and safety.

III. Basis, Purpose and Impact of the Amendment

A. Basis

OSHA's regulation at 29 CFR 1904 requires employers with more than 10 employees in most industries to keep records of occupational injuries and illnesses at their establishments:

- record each recordable employee injury and illness on an OSHA Form 300, which is the "Log of Work-Related Injuries and Illnesses," or equivalent.
- prepare a supplementary OSHA Form 301 "Injury and Illness Incident Report" or equivalent that provides additional details about each case recorded on the OSHA Form 300.
- at the end of each year, prepare a summary report of all injuries and illnesses on the OSHA Form 300A, which is the "Summary of Work-Related Injuries and Illnesses," and post the form in a visible location in the workplace.

The current recordkeeping regulation also requires establishments with 250 or more employees that are required to keep OSHA injury and illness records to electronically submit information from the OSHA Forms 300, 300A, and 301 to OSHA annually. Establishments with 20–249 employees in certain designated industries are required to electronically submit information only from the OSHA Form 300A—the summary form.

NOTE: The requirement for covered employers to report electronically data from OSHA Forms 300 and 301 was originally scheduled to take effect on March 2, 2019. OSHA never updated the Injury Tracking Application to allow for entry of Form 300 and 301 data, and this final rule eliminates the requirement.

OSHA has determined that the final rule will benefit worker privacy by preventing routine government collection of information that may be quite sensitive, including descriptions of workers' injuries and the body parts affected, and thereby avoiding the risk that such information might be publicly disclosed under the Freedom of Information Act (FOIA), by court order, or through the Injury Tracking Application.

OSHA also determined that the new requirement for establishments to submit their EIN will help both OSHA and BLS make full use of the data the agencies collect. Collecting the EIN is helpful to understanding exactly which establishment the Form 300A data represents, linking establishments between databases, and tracking data over time. The difficulties involved in matching and tracking establishments by name and address

⁶ OSHA's Site Specific Targeting program uses data from the Information Tracking Application to create a "planned" inspection program for its enforcement program in general industry.

https://www.osha.gov/sites/default/files/enforcement/directives/i8-01_CPL-02_0.pdf

introduce uncertainty, which in turn reduces the utility of the data collected. A numerical identifier that is common over time and between databases eliminates these uncertainties.

Collecting the EIN is also a positive first step towards eliminating duplicative reporting to OSHA and BLS in the future.

B. Purpose

To protect worker privacy, this final rule eliminates the requirement that establishments with 250 or more employees that are required to keep OSHA injury and illness records, submit information electronically from their OSHA Forms 300 and 301.

To facilitate use of the data and help reduce duplicative employer reporting, OSHA is requiring covered employers to submit their Employer Identification Number (EIN) electronically along with their injury and illness data submission.

C. Impact on Employers

The final rule reduces substantially the number of injury and illness records employers are required to submit electronically on an annual basis to OSHA's Injury Tracking Application (ITA), by eliminating the requirement to enter data from their OSHA Forms 300 and 301.

OSHA estimates that without the final rule, covered establishments with 250 or more employees would have to report 775,210 injury and illness cases per year to OSHA through the Injury Tracking Application.

The final rule adds a new requirement that covered employers submit to OSHA their EIN electronically along with their injury and illness data submission.

D. Impact on Employees

OSHA determined that the rescission of the requirement to submit electronically the Forms 300 and 301 data will benefit worker privacy by preventing routine government collection of information that may be quite sensitive, including descriptions of workers' injuries and the body parts affected.

OSHA has determined that, at this time, avoiding this risk to worker privacy outweighs the uncertain incremental benefits to enforcement gained from electronically collecting the data.

E. Impact on the Department of Labor and Industry

No additional impact on the Department is anticipated from the adoption of this amendment.

Federal regulations 29 CFR 1953.23(a) and (b) require that Virginia, within six months of the occurrence of a federal program change, to adopt identical changes or promulgate equivalent changes which are at least as effective as the federal change. The Virginia

Code reiterates this requirement in § 40.1-22(5). Adopting these revisions will allow Virginia to conform to the federal program change.

F. Benefits

The final rule reduces substantially the number of records employers are required to submit electronically on an annual basis to OSHA's Injury Tracking Application (ITA).

OSHA estimates that the rule would have net national cost savings of \$15.9 million per year at a 3 percent discount rate, including \$8.4 million per year for the private sector and \$7.5 million per year for the government. The net cost savings to Virginia private sector employers is estimated at approximately \$225,540 per year at a 3 percent discount rate.

G. Costs^f

OSHA estimates that the first year costs for existing covered employers nationwide (463,192) to enter their Employer Identification Number into OSHA's Injury Tracking Application is a cost per establishment of \$4.75 for a total of approximately \$2,199,000. The cost to Virginia employers is estimated to be approximately \$59,000.

OSHA further estimates that there will be an average of 10.15% new establishments every year nationwide that may be covered by the regulation (47,012) which will result in an additional cost of approximately \$223,000 per year. The cost to Virginia employers is estimated to be approximately \$5,990.00 per year.

OSHA estimates that the rule would have net national cost savings of \$15.9 million per year at a 3 percent discount rate, including \$8.4 million per year for the private sector and \$7.5 million per year for the government. The net cost savings to Virginia private sector employers is estimated to be approximately \$225,540 per year at a 3 percent discount rate.

and \$8,375,500 at a 7 percent discount rate.

TABLE 1—TOTAL COST SAVINGS AND TOTAL ADDITIONAL COSTS OF THE FINAL RULE²¹

Cost savings element	PEA annual cost savings	FEA annual cost savings ²¹
Cost savings for eliminating electronic submission of post-1904 records by establishments with 250 or more employees (Total Private Sector Savings)	\$5,629,173	\$9,831,000
Total Government Schedule Cost Savings, 3 percent discount rate over ten years	68,754	63,000
Total Government Schedule Cost Savings, 7 percent discount rate over ten years	64,073	54,000
Total Annual Government R/I Review Cost Savings	7,457,000	7,457,000
Total Cost Savings per year, 3 percent discount rate over ten years	8,751,927	16,363,000
Total Cost Savings per year, 7 percent discount rate over ten years	8,763,843	16,376,000
New costs from EIN collection		
Cost		
First Year EIN Cost	2,166,767	2,199,000
Annualized First Year Costs, 3 percent discount rate over ten years	253,896	258,000
Annualized First Year Costs, 7 percent discount rate over ten years	330,364	373,000
Subsequent Annual EIN Costs (from new establishments), starting in second year	219,256	223,000
Subsequent Annual EIN Cost Annualized at a 3 percent discount rate over ten years	213,252	217,000
Subsequent Annual EIN Cost Annualized at a 7 percent discount rate over ten years	254,456	258,000
Annualized Total EIN Cost, 3 percent discount rate over ten years	467,154	476,000
Annualized Total EIN Cost, 7 percent discount rate over ten years	512,820	531,000
Net Cost Savings, 3 percent discount rate over ten years	8,284,733	15,887,000
Net Cost Savings, 7 percent discount rate over ten years	8,250,483	15,862,000

²¹ Not calculated

^f For more in depth analysis of how OSHA calculated the cost, see Electronic Submission of Employer Identification Number (EIN) and Injury and Illness Records to OSHA; Final Rule, 84 FR 380. This can be found at <https://www.govinfo.gov/content/pkg/FR-2019-01-25/pdf/2019-00101.pdf>. The cost analysis can be found at pages 397-402.

H. Technological Feasibility

The revisions to the recordkeeping rules are technologically feasible because they do not require employers to perform any actions that they were not already required to perform under existing recordkeeping requirements.

I. Economic Feasibility

OSHA determined that the final rule is not an “economically significant regulatory action” under Executive Order 12866. OSHA estimates that the rule would have net national cost savings of \$15.9 million per year at a 3 percent discount rate.

Contact Person:

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RECOMMENDED ACTION

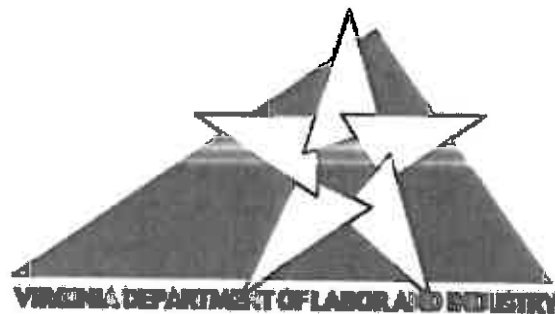
Staff of the Department of Labor and Industry recommends that the Safety and Health Codes Board adopt federal OSHA's Final Rule for Electronic Submission of Employer Identification Number (EIN) and Injury and Illness Records to OSHA, as authorized by Virginia Code §§ 40.1-22(5) and 2.2-4006.A.4(c), with an effective date of May 15, 2019.

The Department also recommends that the Board state in any motion it may make to amend this regulation that it will receive, consider and respond to petitions by any interested person with respect to reconsideration or revision of this or any other regulation which has been adopted in accordance with the above-cited subsection A.4(c) of the Administrative Process Act.

**Electronic Submission of Employer Identification Number (EIN)
and Injury and Illness Records to OSHA; Final Rule**

As Adopted by the
Safety and Health Codes Board

Date: March 19, 2019



VIRGINIA OCCUPATIONAL SAFETY AND HEALTH PROGRAM

VIRGINIA DEPARTMENT OF LABOR AND INDUSTRY

Effective Date: May 15, 2019

16VAC25-85-1904.41, Electronic Submission of Employer Identification Number (EIN) and Injury and Illness Records to OSHA

When the regulations, as set forth in the Final Rule for the Clarification of Employer's Continuing Obligation To Make and Maintain an Accurate Record of Each Recordable Injury and Illness, are applied to the Commissioner of the Department of Labor and Industry and/or to Virginia employers, the following federal terms shall be considered to read as below:

Federal Terms

VOSH Equivalent

29 CFR

VOSH Standard

Assistant Secretary

Commissioner of Labor and Industry

Agency

Department

January 25, 2019

May 15, 2019

PART 1904—[AMENDED]**Subpart E—Reporting Fatality, Injury and Illness Information to the Government**

■ 1. The authority citation for subpart E of 29 CFR part 1904 continues to read as follows:

Authority: 29 U.S.C. 657, 678, 5 U.S.C. 552, and Secretary of Labor's Order No. 1-2012 (77 FR 3612, Jan. 25, 2012).

■ 2. In § 1904.41, revise the section heading and paragraph (a)(1), add paragraph (a)(4), and revise paragraph (b) to read as follows:

§ 1904.41 Electronic submission of Employer Identification Number (EIN) and injury and illness records to OSHA.

(a) * * *

(1) *Annual electronic submission of OSHA Form 300A Summary of Work-Related Injuries and Illnesses by establishments with 250 or more employees.* If your establishment had 250 or more employees at any time during the previous calendar year, and this part requires your establishment to keep records, then you must electronically submit information from OSHA Form 300A Summary of Work-Related Injuries and Illnesses to OSHA or OSHA's designee. You must submit the information once a year, no later than the date listed in paragraph (c) of this section of the year after the calendar year covered by the form (for example, 2016 for the 2016 form).

(4) *Electronic submission of the Employer Identification Number (EIN).* For each establishment that is subject to these reporting requirements, you must provide the EIN used by the establishment.

(b) *Implementation—(1) Does every employer have to routinely submit this information to OSHA?* No, only two categories of employers must routinely submit this information. First, if your establishment had 250 or more employees at any time during the previous calendar year, and this part requires your establishment to keep records, then you must submit the required information to OSHA once a year. Second, if your establishment had 20 or more employees but fewer than 250 employees at any time during the previous calendar year, and your establishment is classified in an industry listed in appendix A to this subpart, then you must submit the required information to OSHA once a year. Employers in these two categories must submit the required information by the date listed in paragraph (c) of this section of the year after the calendar

year covered by the form (for example, 2019 for the 2016 form). If you are not in either of these two categories, then you must submit the information to OSHA only if OSHA notifies you to do so for an individual data collection.

(2) *Do part-time, seasonal, or temporary workers count as employees in the criteria for number of employees in paragraph (a) of this section?* Yes, each individual employed in the establishment at any time during the calendar year counts as one employee, including full-time, part-time, seasonal, and temporary workers.

(3) *How will OSHA notify me that I must submit information as part of an individual data collection under paragraph (a)(3) of this section?* OSHA will notify you by mail if you will have to submit information as part of an individual data collection under paragraph (a)(3). OSHA will also announce individual data collections through publication in the *Federal Register* and the OSHA newsletter, and announcements on the OSHA website. If you are an employer who must routinely submit the information, then OSHA will not notify you about your routine submission.

(4) *When do I have to submit the information?* If you are required to submit information under paragraph (a)(1) or (2) of this section, then you must submit the information once a year, by the date listed in paragraph (c) of this section of the year after the calendar year covered by the form (for example, 2019 for the 2016 form). If you are submitting information because OSHA notified you to submit information as part of an individual data collection under paragraph (a)(3) of this section, then you must submit the information as specified in the notification.

(5) *How do I submit the information?* You must submit the information electronically. OSHA will provide a secure website for the electronic submission of information. For individual data collections under paragraph (a)(3) of this section, OSHA will include the website's location in the notification for the data collection.

(6) *Do I have to submit information if my establishment is partially exempt from keeping OSHA injury and illness records?* If you are partially exempt from keeping injury and illness records under §§ 1904.1 and/or 1904.2, then you do not have to routinely submit information under paragraphs (a)(1) and (2) of this section. You will have to submit information under paragraph (a)(3) of this section if OSHA informs you in writing that it will collect injury and illness information from you. If you

receive such a notification, then you must keep the injury and illness records required by this part and submit information as directed.

17) Do I have to submit information if I am located in a State Plan State? Yes, the requirements apply to employers located in State Plan States.

(b) May an enterprise or corporate office electronically submit information for its establishment(s)? Yes, if your enterprise or corporate office had ownership of or control over one or more establishments required to submit information under paragraph (a) of this

section, then the enterprise or corporate office may collect and electronically submit the information for the establishment(s).

191 Doc. 2019-01101 Filed 1-24-19; Page 45 and
BILLING CODE 4510-26-P



COMMONWEALTH of VIRGINIA
DEPARTMENT OF LABOR AND INDUSTRY

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VIRGINIA SAFETY AND HEALTH CODES BOARD

BRIEFING PACKAGE

For March 19, 2019

Notice of Periodic Review of Certain Existing Regulations

I. Action Requested

The Department of Labor and Industry (the Department) requests authorization by the Board to proceed with the periodic review process of one Board regulation listed below.

II. Background and Basis

The Administrative Process Act (§2.2-4017 of the Code of Virginia) and Executive Order 14 (2018), "Development and Review of State Agency Regulations," governs the periodic review of existing regulations. This Executive Order requires that agencies conduct a periodic review of regulations every four years. The following regulations have been identified for review in 2019:

- 16 VAC 25-35 Regulation Concerning Certified Lead Contractors Notification, Lead Project Permits and Permit Fees
- 16 VAC 25-55 Financial Responsibility of Boiler and Pressure Vessel Contract Fee Inspectors
- 16 VAC 25-73 Regulation Applicable to Tree Trimming Operations
- 16 VAC 25-75 Telecommunications, General, Approach Distances

III. Current Status and Process

Four Safety and Health Codes Board regulations are subject to the periodic review process in calendar year 2019. This process begins with approval to proceed granted by the Board. The Department will then publish a Notice of Periodic Review to the *Virginia Register*, which opens a comment period of at least 21 days but not longer than 90 days.

Subsequently, the Department will review the regulations and related public comments, then prepare a brief with recommendations to be presented for the Board's consideration at the next meeting. Based on the decision of the Board, the Department of Labor and Industry will post a

report on the Virginia Regulatory Town Hall website indicating whether the Board will retain the regulations with no changes, or will begin a regulatory action to amend or repeal one or more regulations.

Contact Person:

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RECOMMENDED ACTION

The Department of Labor and Industry recommends that the Safety and Health Codes Board approve the publication of a Notice of Periodic Review in the Virginia Register for:

16 VAC 25-35 Regulation Concerning Certified Lead Contractors Notification, Lead Project Permits and Permit Fees

16 VAC 25-55 Financial Responsibility of Boiler and Pressure Vessel Contract Fee Inspectors

16 VAC 25-73 Regulation Applicable to Tree Trimming Operations


16 VAC 25-75 Telecommunications, General, Approach Distances

The Department also recommends that the Board state in any motion it may make regarding the periodic review of this regulation that it will receive, consider and respond to petitions by any interested person at any time with respect to the periodic review which will be conducted in accordance with the above-cited § 2.2-4017 of the Administrative Process Act and Executive Order 17 (2014), "Development and Review of State Agency Regulations".

VIRGINIA SAFETY AND HEALTH CODES BOARD

Informational Briefing:
Heat Illness Hazards,
Guidance and Outreach Materials,
State Unique Standards, and
OSHA Enforcement Approach

VIRGINIA DOLI PROGRAMS




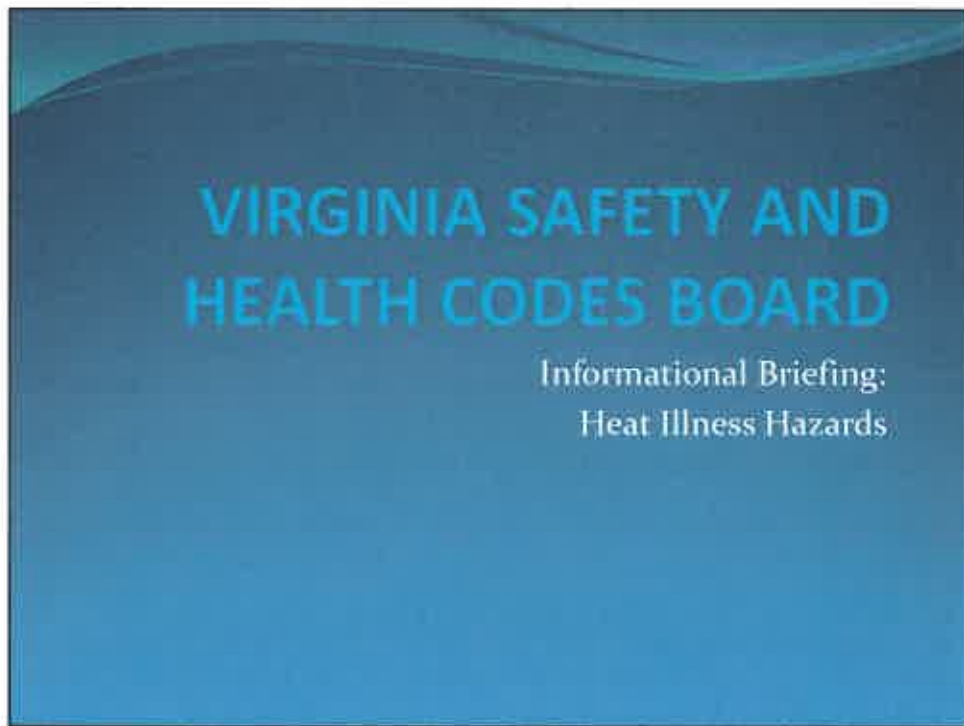
Registered Apprenticeship

Labor and Employment Law

Boiler and Pressure Vessel Safety

Virginia Occupational Safety and Health (VOSH)





Heat-Related Illnesses: External Risk Factors

- High temperature and humidity
- Direct sun exposure/no shade
- Radiant heat from the sun
 - Or other objects
- Limited air movement
- Physical exertion
- PPE
 - Bulky protective clothing,
 - Respirators



Heat-Related Illnesses: Internal Risk Factors

- Personal factors
 - Medical conditions*
 - Physical fitness
 - Age
 - Sleep
- Physical fitness/acclimation
- Medications (prescription/OTC)
- Level of hydration
 - Caffeine and alcohol



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Medical Conditions

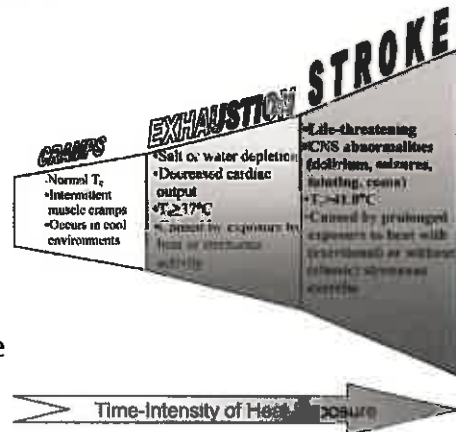
- Diabetes
- Heart disease and high blood pressure
- Obesity
- Thyroid disease
- Infections
- GI disease
- Pregnancy
- Skin problems – sunburns



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Heat Related Illnesses

- Heat Cramps
- Heat Syncope/fainting
- Heat Rash
- Heat Exhaustion
- Heat Stroke



Increased risk for heat related illness when body temperature is greater than 100.4 F

After work, continue to monitor for symptoms, sometimes they can be delayed

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Heat Cramps

- Performing hard physical labor in a hot environment or working 6 to 8 hours in heavy protective equipment
- Attributed to an electrolyte imbalance caused by sweating when sodium is lost in sweat
- Muscle spasms usually affect the arms, legs or stomach
- Blood pressure may be normal or slightly elevated, pulse may be elevated
- Skin may be cool and pale

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Heat Cramps - Treatment

- Move to a cool shaded area
- Loosen clothing
- Drink water every 15 to 20 minutes
- Eat snack (salty)
- Studies have shown that commercially available carbohydrate-electrolyte replacement liquids are effective (low sugar)
- Gentle stretching or massage
- Seek medical care if cramps persist- may indicate muscle injury (destruction)

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Syncope/Fainting

- Brain does not receive adequate oxygen due to blood pooling in extremities
- Onset may be rapid and unpredictable
- Prodromal symptoms may include nausea, yawning, sighing and restlessness
- Skin may appear pale and sweaty but generally moist and cool
- Pulse may be weakened; heart rate rapid

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Heat Syncope/Fainting - Treatment

- Elevate feet
- Move to cool environment
- Encourage fluids
- Recovery is usually immediate
- Loss of consciousness is *brief* and *self-limited*
- Always think about heat stroke and heat exhaustion

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Heat Rash

- Skin irritation caused by excessive sweating during hot weather
- Sweat gland plugged
- Looks like a red cluster of pimples or blisters
- More likely to occur in the neck, upper chest, groin, breasts and in the elbows (areas of restrictive clothing)
- Compromised skin



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Heat Rash - Treatment

- Keep skin cool and dry
- Reduce sweating in affected areas
- Temporary job reassignment for individuals wearing sweat-impermeable protective clothing
- Rash usually disappears when the individual return to a cool environment
- Seek medical care if sign of infection occurs

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Heat Exhaustion

- Milder form of heat related illness
- Can occur after several days of exposure to high temps, inadequate or unbalanced fluids
- Warning signs include heavy sweating, nausea, vomiting, weakness, vertigo, dizziness, fainting, tiredness or headache
- Rapid heart rate, breathing
- Sweating - Skin may be cool and moist
- Body temperature >100.4 degrees F
- Symptoms resolve with treatment within 20-30 minutes
- If untreated and exposure continues, may progress to heat stroke

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Heat Exhaustion - Treatment

Similar to Heat Stroke...

- Move to cool location, shade, air-conditioning
- Rest
- Loosen clothing
- Cool shower, sponge bath, ice packs
- Drink water or electrolyte drinks
- Check by medical personnel recommended
- Avoid strenuous activity for at least a day

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Heat Stroke

This Is a Medical Emergency!

- Abnormally high body temperature (~ 104 F)
- Diagnosis = High body temperature + Central nervous system (CNS) dysfunction
 - Nausea, dizziness, headache, confusion, hallucinations, sudden collapse, seizures, coma and death
- Can be *sweating* (50% of exertional heat stroke victims are still sweating)
- **But if skin is hot and dry, this is always heat stroke**

16

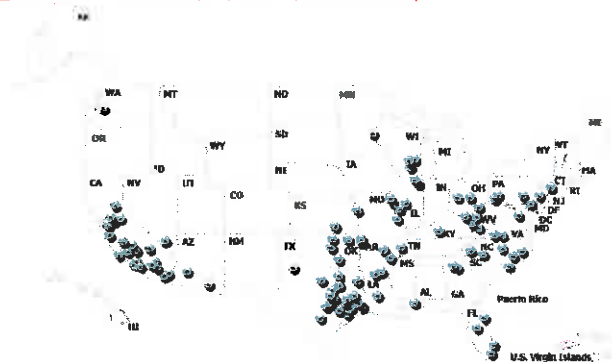
Heat Stroke - Treatment

- 911- Seek medical treatment immediately!
- Move the individual to a cooler area
- Remove outer clothing
- Cool individual as rapidly as possible, ex.
 - Immerse in cool water, place in cool shower, fan individual's body, ice sheets and packs to armpits and groin, cold water immersion arms/hands
- Give fluids to drink only if worker is awake and alert
- If medical treatment is delayed, call hospital emergency room for further instructions

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Scope of the Problem

- From 1999-2010 – 7,415 deaths in U.S., average 618/year (CDC, [MMWR 9/14/2012](https://www.cdc.gov/mmwr/preview/mmwrhtml/mm6136a6.htm)) – work and non-work related
- From 2008-2012 **97 Heat Related-Fatalities** reported to OSHA <http://www.osha.gov/SLTC/heatillness/map.html>
- From 2013-2017 **29 Heat Related-Fatalities** reported to OSHA <https://www.osha.gov/SLTC/heatstress/>



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Virginia Heat Illness Fatalities

- June 2017: Heat stroke on residential construction site
- July 2016, Heat illness during agricultural field work
- July, 2015: Heat stroke on construction site
- July, 2015: Heat stroke on bridge construction site
- June 2010: Heat stroke on construction site (roofing)
- August, 2009: Heat stroke during agricultural field work
- August, 2006: Heat stroke on logging site
- July 2006, Heat stroke in manufacturing plant
- July, 2005: **Non-fatal Catastrophe**, three employees hospitalized during agricultural field work
- August, 2002: Heat stroke on construction site
- July, 2002: Heat illness during agricultural field work
- July 1999: Heat illness at meatpacking plant

VIRGINIA SAFETY AND HEALTH CODES BOARD

Informational Briefing:
Heat Illness
Guidance and Outreach Materials

<https://www.doli.virginia.gov/vosh-programs/heat-stress-illness-and-prevention/>



<http://www.osha.gov/SLTC/heatillness/index.html>


OSHA Heat Campaign

WATER. REST. SHADE.
The work can't get done without them.

- Drink water often
- Rest in the shade
- Report heat symptoms early
- Know what to do in an emergency


Awareness, Education and Outreach to Employers and Workers to Prevent Heat Illness

2012: Over 4.5 million directly reached by OSHA
2011: Over 2.5 million directly reached by OSHA



Prevention of Heat Injuries

- General recommendations
 - Minimize/avoid exertion in heat
 - Rest in cool location
 - Maintain hydration and eat regular meals
 - Acclimatization
 - Get plenty of sleep
 - Cumulative exposure

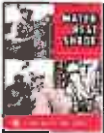







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OSHA Heat Illness Resources

<https://www.osha.gov/SLTC/heatstress/>

- Website
- Illustrated, Low-Literacy Fact Sheets
- Worksite Poster
- Community Poster
- Training Guide
- Using the Heat Index: A Guide for Employers
- Outreach Wallet Card
- OSHA's Heat Smartphone App

All are available in Spanish

****Download from website or Office of Communications****

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OSHA Smartphone App

- Calculates heat index
- Displays risk level
- Provides protective measures (precautions) based on risk

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CDC/NIOSH: <https://www.cdc.gov/niosh/topics/heatstress/>

Workplace Safety and Health Topics

Heat Stress

- Heat Related Illness
- HHE and FACE Reports
- Recommendations
- Additional Resources

Hazards to Outdoor Workers

Related Topics

- Protective Clothing
- Skin Exposure and Effects

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NIOSH Homepage
NIOSH A-Z

HEAT STRESS

Workers who are exposed to extreme heat or work in hot environments may be at risk of heat stress. Exposure to extreme heat can result in occupational illnesses and injuries. Heat stress can result in heat stroke, heat exhaustion, heat cramps or heat rashes. Heat can also increase the risk of injuries in workers as it may result in sweaty palms, fogged-up safety glasses, and dizziness. Burns may also occur as a result of accidental contact with hot surfaces or steam.

Workers at risk of heat stress include outdoor workers and workers in hot environments such as firefighters, dairy workers, farmers, construction workers, miners, boiler room workers, factory workers, and others. Workers at greatest risk of heat stress include those who are 65 years of age or older, are overweight, have heart disease or high blood pressure, or take medications that may be affected by extreme heat.

Prevention of heat stress in workers is important. Employers should provide training to workers so they understand what heat stress is, how it affects their health and safety, and how it can be prevented.

Heat-Related Illnesses

Recommendations

NIOSH

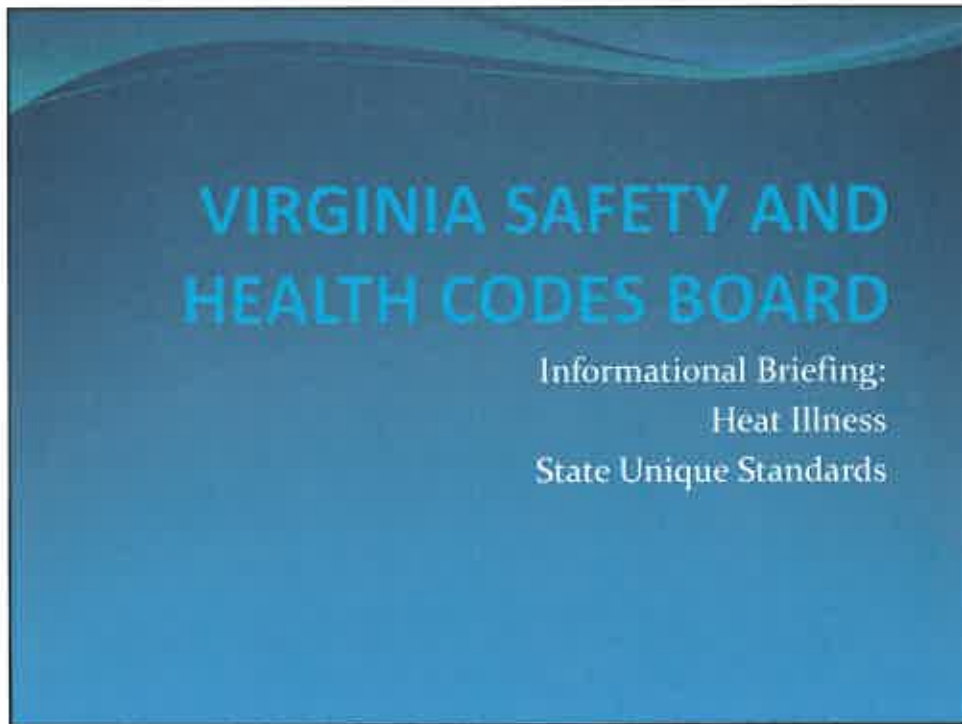
OSHA-NIOSH Heat Safety Tool App
A useful resource for planning outdoor work activities based on how hot it feels throughout the day.

NIOSH Criteria for a Recommended Standard Occupational Exposure to Heat and Hot Environments
Provides safety professionals and employers an evaluation of the scientific data on heat stress and hot environments, and NIOSH recommendations.

NIOSH Personal Heat-Related Risks Poster (PDF - 57 KB)
Basic reminders for workers exposed to heat and hot environments.

HHE and FACE Reports

Additional Resources



§3395. Heat Illness Prevention

(a) Scope and Application.

- Agriculture
- Construction
- Landscaping
- Oil and Gas Extraction
- Transportation and delivery of agricultural products, construction materials or other heavy materials (e.g. furniture, lumber, freight, cargo, cabinets, industrial or commercial materials), except for employment that consists of operating an air-conditioned vehicle and does not include loading or unloading.

§3395. Heat Illness Prevention

- (b) Definitions.**
- (c) Provision of water.**
- (d) Access to shade.**
- (e) High-heat procedures.**
- (f) Emergency Response Procedures.**
- (g) Acclimatization.**
- (h) Training.**
- (i) Heat Illness Prevention Plan.**

California Heat Illness Prevention
<https://www.dir.ca.gov/DOSH/HeatIllnessInfo.html>

Department of Industrial Relations

Heat Illness Prevention

YOUR EMPLOYER MUST PROVIDE WATER SHADE REST

It's the law. 877-94-CALOR

California employers are required to take these four steps to prevent heat illness:

- 1. Training**
Train all employees and supervisors about heat illness prevention.
- 2. Water**
Provide enough fresh water so that each employee can drink at least 1 quart per hour, or four 8 ounce glasses, of water per hour, and encourage them to do so.
- 3. Shade**
Provide access to shade and encourage employees to take a cool-down rest in the shade for at least 10 minutes. They should not work and they should not sleep in cool-down rest.
- 4. Reporting**
Develop and implement written procedures for remedies with the Cal/OSHA Heat Illness.

Quick Links

- File a workplace safety complaint
- Obtain a free consultation
- Important Cal/OSHA updates
- Public records requests

Branches

- Enforcement
- Consultation Services

Units

- Amusement Ride and Tramway
- Asbestos and Carcinogen

Minnesota
Indoor Ventilation and Temperature in Places of Employment Regulation:
§5205.0110

Minnesota
Employee Right-to-Know on Harmful Physical Agents (Heat) and Training Regulation:
§§5206.0500 and 5206.0700

§5205.0110, Indoor Ventilation and Temperature in Places of Employment

Subpart 1. Air flow and circulation.

Subpart 2. Heat conditions.

Subpart 3. Cold conditions.

Subpart 4. Recirculated air.

Subpart 5. Definitions.

§5206.0500, Heat

- Minnesota's Employee Right-to-Know regulation identifies "Heat" as a "Harmful Physical Agent"
- Where there is a reasonably foreseeable potential for exposure to one or more of these physical agents at a level which may be expected to approximate or exceed the permissible exposure limit or the applicable action level the employer must provide training to employees as required in part 5206.0700.

§5206.0700, Training

Subpart 3. Training program for harmful physical agents. The training program for employees who may be routinely exposed to harmful physical agents at a level which may be expected to approximate or exceed the permissible exposure limit or applicable action levels shall be provided in a manner which can be reasonably understood by the employees and shall include the information required by the standard for that physical agent as determined by the commissioner including the following:

- A. the name or names of the physical agent including any commonly used synonym;
- B. the level, if any and if known, at which exposure to the physical agent has been restricted according to standards adopted by the commissioner, or, if no standard has been adopted, according to guidelines established by competent professional groups which have conducted research to determine the hazardous properties of potentially harmful physical agents;
- C. the known acute and chronic effects of exposure at hazardous levels;
- D. the known symptoms of the effects;
- E. appropriate emergency treatment;
- F. the known proper conditions for use of and/or exposure to the physical agent;
- G. the name, phone number, and address, if appropriate, of a manufacturer of the equipment which generates the harmful physical agent; and
- H. a written copy of all of the above information which shall be readily accessible in the area or areas in which the harmful physical agent is present and where the employees may be exposed to the agent through use, handling, or otherwise.

Washington Outdoor Heat Exposure Regulation: WAC 296-62-095

WAC 296-62-095, Outdoor Heat Exposure

Scope and purpose.

- (1) WAC ~~296-62-095~~ through ~~296-62-09560~~ applies to all employers with employees performing work in an outdoor environment.
- (2) The requirements of WAC ~~296-62-095~~ through ~~296-62-09560~~ apply to outdoor work environments from May 1 through September 30, annually, only when employees are exposed to outdoor heat at or above an applicable temperature listed in **Table 1**.
- (3) WAC ~~296-62-095~~ through ~~296-62-09560~~ does not apply to incidental exposure which exists when an employee is not required to perform a work activity outdoors for more than fifteen minutes in any sixty-minute period. This exception may be applied every hour during the work shift.

WAC 296-62-095, Outdoor Heat Exposure

Table 1

To determine which temperature applies to each worksite, select the temperature associated with the general type of clothing or personal protective equipment (PPE) each employee is required to wear.

Outdoor Temperature Action Levels.

All-weather clothing	84°
Double-layer woven clothes including coveralls, jackets and work shirts	77°
Non-breathing clothes including vapor barrier clothing or PPE such as chemical resistant suits	52°

WAC 296-62-095, Outdoor Heat Exposure

WAC 296-62-09520. Definitions.

WAC 296-62-09530. Employer and employee responsibility.

WAC 296-62-09540. Drinking water.

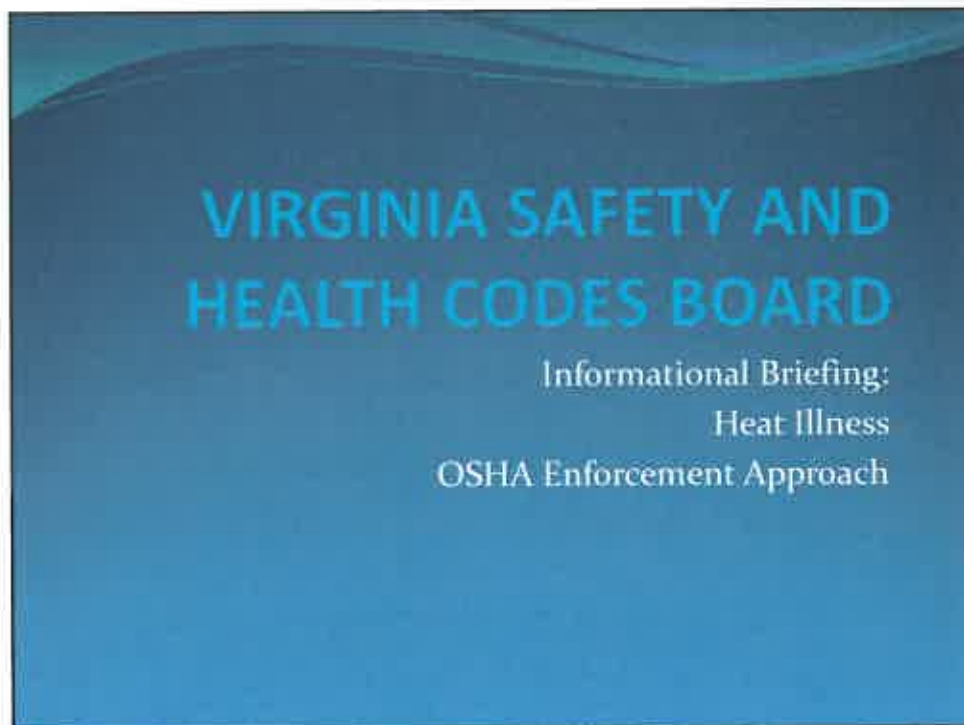
WAC 296-62-09550. Responding to signs and symptoms of heat-related illness.

WAC 296-62-09560. Information and training.

Washington Outdoor Heat Exposure Guidance

<https://www.lni.wa.gov/safety/topics/atoz/heatstress/>

The screenshot shows the Washington Department of Labor & Industries (LNI) website page for "Outdoor Heat Exposure". The page title is "Outdoor Heat Exposure" and the URL is "https://www.lni.wa.gov/safety/topics/atoz/heatstress/". The page content includes a "Be Heat Smart!" section with text about heat-related illness, a "Related Topics" section with links to "Accident Prevention Program", "Summer Safety", "Workplace Injuries and Hospitalizations", "Main Safety Topics", "Getting Started with Safety", and "Compliance Services". There is also a "Workplace Safety Compliance" and "Worker Rights in Safe Workplaces" section. A photo of workers in a hot environment is visible on the right side of the page.



OSHA Enforcement Approach

- OSHA does not have a Heat Illness Standard.
- OSHA was petitioned by the Public Citizen’s Health Research Group on September 1, 2011 to promulgate an emergency temporary standard (ETS) for a heat stress threshold **and** a subsequent permanent heat stress standard.
- The petition for an ETS was denied on June 7, 2012, by Assistant Secretary David Michaels. OSHA also indicated they were “not planning on promulgating a [permanent] standard anytime soon”.

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OSHA Enforcement Approach

- OSHA stated that it agreed that “exposure to extreme heat can lead to death; however, the majority of workers with adverse health effects from heat exposure experience dehydration, cramps, exhaustion, and other effects and are able to recover fairly quickly when the appropriate measures are take.”
- On July 17, 2018, Public Citizen and 131 other organizations 89 individuals petitioned OSHA to adopt a permanent standard applicable to outdoor and indoor exposure to excessive heat.

https://www.citizen.org/sites/default/files/180717_petition_to_oshn_on_heat_stress-signed_final_o.pdf

OSHA Enforcement Approach

- §5(a)(1) of the OSH Act “General Duty Violation”
- PPE violations (1910.132(d); 1915.152; 1917.95; 1926.28)
- Recordkeeping violations (1904.7(b)(5))
- Inadequate drinking water (1910.141; 1915.88; 1917.127; 1918.95; 1926.51; 1928.110)
- Medical Services and First Aid violations (1910.151; 1915.87; 1917.26; 1918.97; 1926.50)
- Failure to train construction employees (1926.21)

5(a)(1) General Duty Clause

The general duty clause requires each employer to “furnish to each of his employees employment and a place of employment which are free from recognized hazards that are causing or likely to cause death or serious physical harm to his employees.”

29 U.S.C. § 654(a)(1). Va. Code §40.1-51.1.A

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General Duty Clause Elements for Heat Stress

1. A heat stress hazard exists in the workplace;
2. The employer or industry recognizes the heat stress hazard;
3. The heat stress hazard is causing or likely to cause death or serious physical harm; and
4. A feasible means exists to eliminate or materially reduce the heat stress hazard.

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Other OSHA Regulations: Drinking Water

- Construction Sanitation: 16VAC25-160-10
- Agriculture, Field Sanitation: 16VAC25-180-10. 16VAC25-180-10 (c)(1) [potable drink water] shall apply to all agricultural establishments regardless of the number of employees.
- General Industry: 1910.141

Medical Services and First Aid

General Industry: 1910.151

Construction: 1926.50

General Industry: 1910.132(d)

1910.132(d) *Hazard assessment and equipment selection.*

1910.132(d)(1) The employer shall assess the workplace to determine if hazards are present, or are likely to be present, which necessitate the use of personal protective equipment (PPE). If such hazards are present, or likely to be present, the employer shall:

1910.132(d)(1)(i) Select, and have each affected employee use, the types of PPE that will protect the affected employee from the hazards identified in the hazard assessment;

1910.132(d)(1)(ii) Communicate selection decisions to each affected employee; and,

1910.132(d)(1)(iii) Select PPE that properly fits each affected employee. **Note:** Non-mandatory appendix B contains an example of procedures that would comply with the requirement for a hazard assessment.

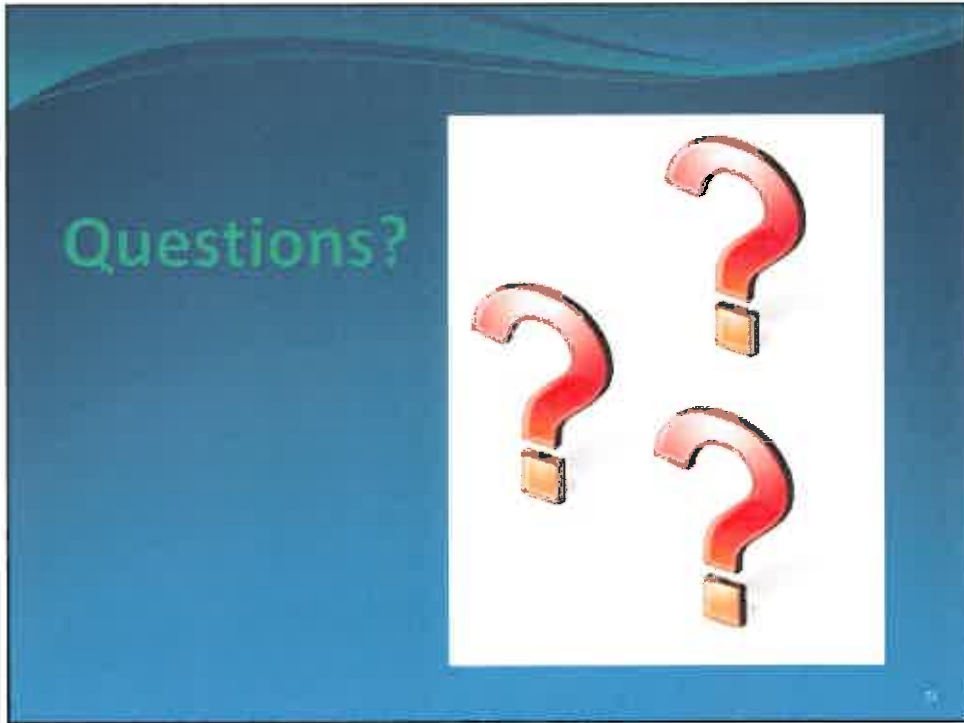
1910.132(d)(2) The employer shall verify that the required workplace hazard assessment has been performed through a written certification that identifies the workplace evaluated; the person certifying that the evaluation has been performed; the date(s) of the hazard assessment; and, which identifies the document as a certification of hazard assessment.

Construction Training: 1926.21

1926.21(b) Employer responsibility.

1926.21(b)(1) The employer should avail himself of the safety and health training programs the Secretary provides.

1926.21(b)(2) The employer shall instruct each employee in the recognition and avoidance of **unsafe conditions** and the regulations applicable to his work environment to control or eliminate any hazards or other exposure to illness or injury.



March 19, 2019

Subchapter 7. General Industry Safety Orders

Group 2. Safe Practices and Personal Protection

Article 10. Personal Safety Devices and Safeguards

[Return to index](#)

[New query](#)

§3395. Heat Illness Prevention

- [Heat Illness Info](#)

(a) Scope and Application.

(1) This standard applies to all outdoor places of employment.

EXCEPTION: If an industry is not listed in subsection (a)(2), employers in that industry are not required to comply with subsection (e), High-heat procedures.

(2) List of industries subject to all provisions of this standard, including subsection (e):

(A) Agriculture

(B) Construction

(C) Landscaping

(D) Oil and gas extraction

(E) Transportation or delivery of agricultural products, construction materials or other heavy materials (e.g. furniture, lumber, freight, cargo, cabinets, industrial or commercial materials), except for employment that consists of operating an air-conditioned vehicle and does not include loading or unloading.

(3) This section applies to the control of risk of occurrence of heat illness. This is not intended to exclude the application of other sections of Title 8, including, but not necessarily limited to, sections 1512, 1524, 3203, 3363, 3400, 3439, 3457, 6251, 6512, 6969, 6975, 8420 and 8602(e).

NOTE NO. 1: The measures required here may be integrated into the employer's written Injury and Illness Program required by section 3203, or maintained in a separate document.

NOTE NO. 2: This standard is enforceable by the Division of Occupational Safety and Health pursuant to Labor Code sections 6308 and 6317 and any other statutes conferring enforcement powers upon the

Division. It is a violation of Labor Code sections 6310, 6311, and 6312 to discharge or discriminate in any other manner against employees for exercising their rights under this or any other provision offering occupational safety and health protection to employees.

(b) Definitions.

“Acclimatization” means temporary adaptation of the body to work in the heat that occurs gradually when a person is exposed to it. Acclimatization peaks in most people within four to fourteen days of regular work for at least two hours per day in the heat.

“Heat Illness” means a serious medical condition resulting from the body's inability to cope with a particular heat load, and includes heat cramps, heat exhaustion, heat syncope and heat stroke.

“Environmental risk factors for heat illness” means working conditions that create the possibility that heat illness could occur, including air temperature, relative humidity, radiant heat from the sun and other sources, conductive heat sources such as the ground, air movement, workload severity and duration, protective clothing and personal protective equipment worn by employees.

“Landscaping” means providing landscape care and maintenance services and/or installing trees, shrubs, plants, lawns, or gardens, or providing these services in conjunction with the design of landscape plans and/or the construction (i.e., installation) of walkways, retaining walls, decks, fences, ponds, and similar structures, except for employment by an employer who operates a fixed establishment where the work is to be performed and where drinking water is plumbed.

“Oil and gas extraction” means operating and/or developing oil and gas field properties, exploring for crude petroleum or natural gas, mining or extracting of oil or gas or recovering liquid hydrocarbons from oil or gas field gases.

“Personal risk factors for heat illness” means factors such as an individual's age, degree of acclimatization, health, water consumption, alcohol consumption, caffeine consumption, and use of prescription medications that affect the body's water retention or other physiological responses to heat.

“Shade” means blockage of direct sunlight. One indicator that blockage is sufficient is when objects do not cast a shadow in the area of blocked sunlight. Shade is not adequate when heat in the area of shade defeats the purpose of shade, which is to allow the body to cool. For example, a car sitting in the sun does not provide acceptable shade to a person inside it, unless the car is running with air conditioning. Shade may be provided by any natural or artificial means that does not expose employees to unsafe or unhealthy conditions and that does not deter or discourage access or use.

“Temperature” means the dry bulb temperature in degrees Fahrenheit obtainable by using a thermometer to measure the outdoor temperature in an area where there is no shade. While the temperature measurement must be taken in an area with full sunlight, the bulb or sensor of the thermometer should be shielded while taking the measurement, e.g., with the hand or some other object, from direct contact by sunlight.

(c) Provision of water.

Employees shall have access to potable drinking water meeting the requirements of Sections 1524, 3363, and 3457, as applicable, including but not limited to the requirements that it be fresh, pure, suitably cool, and provided to employees free of charge. The water shall be located as close as practicable to the areas where employees are working. Where drinking water is not plumbed or otherwise continuously supplied, it shall be provided in sufficient quantity at the beginning of the work shift to provide one quart per employee per hour for drinking for the entire shift. Employers may begin the shift with smaller quantities of water if they have effective procedures for replenishment during the shift as needed to allow employees to drink one quart or more per hour. The frequent drinking of water, as described in subsection (h)(1)(C), shall be encouraged.

(d) Access to shade.

(1) Shade shall be present when the temperature exceeds 80 degrees Fahrenheit. When the outdoor temperature in the work area exceeds 80 degrees Fahrenheit, the employer shall have and maintain one or more areas with shade at all times while employees are present that are either open to the air or provided with ventilation or cooling. The amount of shade present shall be at least enough to accommodate the number of employees on recovery or rest periods, so that they can sit in a normal posture fully in the shade without having to be in physical contact with each other. The shade shall be located as close as practicable to the areas where employees are working. Subject to the same specifications, the amount of shade present during meal periods shall be at least enough to accommodate the number of employees on the meal period who remain onsite.

(2) Shade shall be available when the temperature does not exceed 80 degrees Fahrenheit. When the outdoor temperature in the work area does not exceed 80 degrees Fahrenheit employers shall either provide shade as per subsection (d)(1) or provide timely access to shade upon an employee's request.

(3) Employees shall be allowed and encouraged to take a preventative cool-down rest in the shade when they feel the need to do so to protect themselves from overheating. Such access to shade shall be permitted at all times. An individual employee who takes a preventative cool-down rest (A) shall be monitored and asked if he or she is experiencing symptoms of heat illness; (B) shall be encouraged to remain in the shade; and (C) shall not be ordered back to work until any signs or symptoms of heat illness have abated, but in no event less than 5 minutes in addition to the time needed to access the shade.

(4) If an employee exhibits signs or reports symptoms of heat illness while taking a preventative cool-down rest or during a preventative cool-down rest period, the employer shall provide appropriate first aid or emergency response according to subsection (f) of this section.

Exceptions to subsections (d)(1) and (d)(2):

(1) Where the employer can demonstrate that it is infeasible or unsafe to have a shade structure, or otherwise to have shade present on a continuous basis, the employer may utilize alternative procedures for providing access to shade if the alternative procedures provide equivalent protection.

(2) Except for employers in the agricultural industry, cooling measures other than shade (e.g., use of misting machines) may be provided in lieu of shade if the employer can demonstrate that these measures are at least as effective as shade in allowing employees to cool.

(e) High-heat procedures.

The employer shall implement high-heat procedures when the temperature equals or exceeds 95 degrees Fahrenheit. These procedures shall include the following to the extent practicable:

(1) Ensuring that effective communication by voice, observation, or electronic means is maintained so that employees at the work site can contact a supervisor when necessary. An electronic device, such as a cell phone or text messaging device, may be used for this purpose only if reception in the area is reliable.

(2) Observing employees for alertness and signs or symptoms of heat illness. The employer shall ensure effective employee observation/monitoring by implementing one or more of the following:

(A) Supervisor or designee observation of 20 or fewer employees, or

(B) Mandatory buddy system, or

(C) Regular communication with sole employee such as by radio or cellular phone, or

(D) Other effective means of observation.

(3) Designating one or more employees on each worksite as authorized to call for emergency medical services, and allowing other employees to call for emergency services when no designated employee is available.

(4) Reminding employees throughout the work shift to drink plenty of water.

(5) Pre-shift meetings before the commencement of work to review the high heat procedures, encourage employees to drink plenty of water, and remind employees of their right to take a cool-down rest when necessary.

(6) For employees employed in agriculture, the following shall also apply:

When temperatures reach 95 degrees or above, the employer shall ensure that the employee takes a minimum ten minute net preventative cool-down rest period every two hours. The preventative cool-down rest period required by this paragraph may be provided concurrently with any other meal or rest period required by Industrial Welfare Commission Order No. 14 (8 CCR 11140) if the timing of the preventative cool-down rest period coincides with a required meal or rest period thus resulting in no additional preventative cool-down rest period required in an eight hour workday. If the workday will

extend beyond eight hours, then an additional preventative cool-down rest period will be required at the conclusion of the eighth hour of work; and if the workday extends beyond ten hours, then another preventative cool-down rest period will be required at the conclusion of the tenth hour and so on. For purposes of this section, preventative cool-down rest period has the same meaning as "recovery period" in Labor Code Section 226.7(a).

(f) Emergency Response Procedures.

The Employer shall implement effective emergency response procedures including:

(1) Ensuring that effective communication by voice, observation, or electronic means is maintained so that employees at the work site can contact a supervisor or emergency medical services when necessary. An electronic device, such as a cell phone or text messaging device, may be used for this purpose only if reception in the area is reliable. If an electronic device will not furnish reliable communication in the work area, the employer will ensure a means of summoning emergency medical services.

(2) Responding to signs and symptoms of possible heat illness, including but not limited to first aid measures and how emergency medical services will be provided.

(A) If a supervisor observes, or any employee reports, any signs or symptoms of heat illness in any employee, the supervisor shall take immediate action commensurate with the severity of the illness.

(B) If the signs or symptoms are indicators of severe heat illness (such as, but not limited to, decreased level of consciousness, staggering, vomiting, disorientation, irrational behavior or convulsions), the employer must implement emergency response procedures.

(C) An employee exhibiting signs or symptoms of heat illness shall be monitored and shall not be left alone or sent home without being offered onsite first aid and/or being provided with emergency medical services in accordance with the employer's procedures.

(3) Contacting emergency medical services and, if necessary, transporting employees to a place where they can be reached by an emergency medical provider.

(4) Ensuring that, in the event of an emergency, clear and precise directions to the work site can and will be provided as needed to emergency responders.

(g) Acclimatization.

(1) All employees shall be closely observed by a supervisor or designee during a heat wave. For purposes of this section only, "heat wave" means any day in which the predicted high temperature for the day will be at least 80 degrees Fahrenheit and at least ten degrees Fahrenheit higher than the average high daily temperature in the preceding five days.

(2) An employee who has been newly assigned to a high heat area shall be closely observed by a supervisor or designee for the first 14 days of the employee's employment.

(h) Training.

(1) Employee training. Effective training in the following topics shall be provided to each supervisory and non-supervisory employee before the employee begins work that should reasonably be anticipated to result in exposure to the risk of heat illness:

(A) The environmental and personal risk factors for heat illness, as well as the added burden of heat load on the body caused by exertion, clothing, and personal protective equipment.

(B) The employer's procedures for complying with the requirements of this standard, including, but not limited to, the employer's responsibility to provide water, shade, cool-down rests, and access to first aid as well as the employees' right to exercise their rights under this standard without retaliation.

(C) The importance of frequent consumption of small quantities of water, up to 4 cups per hour, when the work environment is hot and employees are likely to be sweating more than usual in the performance of their duties.

(D) The concept, importance, and methods of acclimatization pursuant to the employer's procedures under subsection (i)(4).

(E) The different types of heat illness, the common signs and symptoms of heat illness, and appropriate first aid and/or emergency responses to the different types of heat illness, and in addition, that heat illness may progress quickly from mild symptoms and signs to serious and life threatening illness.

(F) The importance to employees of immediately reporting to the employer, directly or through the employee's supervisor, symptoms or signs of heat illness in themselves, or in co-workers.

(G) The employer's procedures for responding to signs or symptoms of possible heat illness, including how emergency medical services will be provided should they become necessary.

(H) The employer's procedures for contacting emergency medical services, and if necessary, for transporting employees to a point where they can be reached by an emergency medical service provider.

(I) The employer's procedures for ensuring that, in the event of an emergency, clear and precise directions to the work site can and will be provided as needed to emergency responders. These procedures shall include designating a person to be available to ensure that emergency procedures are invoked when appropriate.

(2) Supervisor training. Prior to supervising employees performing work that should reasonably be anticipated to result in exposure to the risk of heat illness effective training on the following topics shall be provided to the supervisor:

(A) The information required to be provided by section (h)(1) above.

(B) The procedures the supervisor is to follow to implement the applicable provisions in this section.

(C) The procedures the supervisor is to follow when an employee exhibits signs or reports symptoms consistent with possible heat illness, including emergency response procedures.

(D) How to monitor weather reports and how to respond to hot weather advisories.

(i) Heat Illness Prevention Plan.

The employer shall establish, implement, and maintain, an effective heat illness prevention plan. The plan shall be in writing in both English and the language understood by the majority of the employees and shall be made available at the worksite to employees and to representatives of the Division upon request. The Heat Illness Prevention Plan may be included as part of the employer's Illness and Injury Prevention Program required by section 3203, and shall, at a minimum, contain:

(1) Procedures for the provision of water and access to shade.

(2) The high heat procedures referred to in subsection (e).

(3) Emergency Response Procedures in accordance with subsection (f).

(4) Acclimatization methods and procedures in accordance with subsection (g).

Note: Authority cited: Section 142.3, Labor Code. Reference: Section 142.3, Labor Code.

HISTORY

1. New section filed 8-22-2005 as an emergency; operative 8-22-2005 (Register 2005, No. 34). A Certificate of Compliance must be transmitted to OAL by 12-20-2005 or emergency language will be repealed by operation of law on the following day.

2. New section refiled 12-20-2005 as an emergency; operative 12-20-2005 (Register 2005, No. 51). A Certificate of Compliance must be transmitted to OAL by 4-19-2006 or emergency language will be repealed by operation of law on the following day.

3. New section refiled 4-19-2006 as an emergency; operative 4-19-2006 (Register 2006, No. 16). A Certificate of Compliance must be transmitted to OAL by 8-17-2006 or emergency language will be repealed by operation of law on the following day.

4. Certificate of Compliance as to 4-19-2006 order, including amendment of section heading and section, transmitted to OAL 6-16-2006 and filed 7-27-2006 (Register 2006, No. 30).

5. Amendment filed 10-5-2010; operative 11-4-2010 (Register 2010, No. 41).

6. Amendment filed 4-3-2015; operative 5-1-2015 pursuant to Government Code section 11343.4(b)(3) (Register 2015, No. 14).

5205.0110 INDOOR VENTILATION AND TEMPERATURE IN PLACES OF EMPLOYMENT.

Subpart 1. **Air flow and circulation.** Air shall be provided and distributed in all indoor places of employment as required in this part, unless prohibited by process requirements.

Outdoor air shall be provided to all indoor places of employment at the rate of 15 cubic feet per minute per person.

Air circulated in any indoor place of employment shall be supplied through air inlets arranged, located, and equipped so that the workers shall not be subjected to air velocities exceeding 200 feet per minute except under special circumstances specified in this part or where approved by the Department of Labor and Industry.

Subp. 2. [Repealed, 21 SR 1897]

Subp. 2. **Heat conditions.** The requirements of this subpart cover employee exposure to indoor environmental heat conditions.

A. The following definitions apply when assessing and controlling health hazards associated with indoor climate.

(1) "Wet bulb globe temperature index" or "WBGT" means a measure of the combined effect of air temperature, air speed, humidity, and radiation. $WBGT = 0.7 T_{nwb} + 0.3 T_g$.

(2) "Natural wet-bulb temperature" or " T_{nwb} " means temperature measured by a thermometer which has its sensor covered by a wetted cotton wick, exposed to natural air movement.

(3) "Globe temperature" or " T_g " means temperature measured by a thermometer with its sensor inside a matte black globe, exposed to radiant heat, Vernon Globe or equivalent.

(4) "Heavy work" means 350 or higher kcal/hr (kilocalories per hour), for example: heavy lifting and pushing, shovel work.

(5) "Moderate work" means 200 to 350 kcal/hr, for example: walking with moderate lifting and pushing.

(6) "Light work" means up to 200 kcal/hr, for example: sitting or standing performing light hand or arm work.

B. Employees shall not be exposed to indoor environmental heat conditions in excess of the values listed in Table 1. The values in Table 1 apply to fully clothed acclimatized workers.

TABLE 1. Two-hour time-weighted average permissible heat exposure limits.

Work Activity	WBGT, °F
Heavy work	77
Moderate work	80
Light work	86

C. Employees with exposure to heat shall be provided training according to part 5206.0700, subparts 1 and 3.

Subp. 3. **Cold conditions.** The requirements of this subpart cover employee exposure to indoor environmental cold conditions. The definitions in subpart 2 apply to this subpart.

A. Indoor places of employment shall maintain a minimum air temperature of 60 degrees Fahrenheit where heavy work is performed, unless prohibited by process requirements.

B. Indoor places of employment shall maintain a minimum air temperature of 65 degrees Fahrenheit where light to moderate work is performed, unless prohibited by process requirements.

Subp. 4. **Recirculated air.** Air from any exhaust system handling materials listed in Code of Federal Regulations, title 29, part 1910, subpart Z, shall not be recirculated without written permission from the Department of Labor and Industry.

Subp. 5. **Definitions.** For the purposes of this part, the following definitions apply.

A. "Indoor" means any space between a floor and a ceiling that is bound on all sides by walls. A wall includes any door, window, retractable divider, garage door, or other physical barrier that is temporary or permanent, whether open or closed.

B. "Place of employment" has the meaning given in Minnesota Statutes, section 182.651, subdivision 10.

Statutory Authority: *MS s 182.655; 182.657*

History: *12 SR 634; 21 SR 1897; 39 SR 418*

Published Electronically: *October 2, 2014*

5206.0500 HARMFUL PHYSICAL AGENTS.

Subpart 1. **In general.** The commissioner has determined that the list of harmful physical agents in subpart 3 shall be covered by the provisions of this chapter. The harmful physical agents list includes the majority of physical agents that may be encountered in Minnesota. Where there is a reasonably foreseeable potential for exposure to one or more of these physical agents at a level which may be expected to approximate or exceed the permissible exposure limit or the applicable action level the employer must provide training to employees as required in part 5206.0700.

Subp. 2. **Updating list.** The list of harmful physical agents shall be updated by the commissioner at least every two years.

Subp. 3. **Harmful physical agents list.**

A. Heat.

B. Noise.

C. Ionizing radiation. Any employer who possesses or uses by-product material, source material, or special nuclear material, as defined in the Atomic Energy Act of 1954 as amended, under a license issued by the Nuclear Regulatory Commission shall be deemed to be in compliance with the harmful physical agent provisions of the Employee Right-to-Know Act of 1983.

D. Nonionizing radiation.

Statutory Authority: *MS s 182.655*

History: *8 SR 1949*

Published Electronically: *June 11, 2008*

5206.0700 TRAINING.

Subpart 1. **In general.** The requirements in items A to J apply to training programs provided to employees concerning hazardous substances, harmful physical agents, and infectious agents.

A. Training shall be made available by, and at the cost of, the employer.

B. The employer shall develop and implement a written Employee Right-to-Know program which, at a minimum, describes how the training, availability of information, and labeling provisions of this chapter will be met for hazardous substances, harmful physical agents, and infectious agents. The written program shall also include:

(1) A list of the hazardous substances known to be present using an identity that is referenced on the appropriate material safety data sheet. The list may be compiled for the workplace as a whole or for individual work areas.

(2) The methods the employer will use to inform employees of the hazards of infrequent tasks that involve exposure to hazardous substances, harmful physical agents, or infectious agents and the hazards associated with hazardous substances contained in unlabeled pipes in their work areas.

(3) Employers shall make the written Employee Right-to-Know program available, upon request, to employees, their designated representatives, and representatives of the Occupational Safety and Health Division.

(4) For infectious agents, a written exposure control plan that meets the requirements of Code of Federal Regulations, title 29, section 1910.1030, and covers all infectious agents to which employees may be exposed in the workplace meets the requirements of this chapter.

C. In multiemployer workplaces, employers who produce, use, or store hazardous substances in such a way that the employees of other employers may be exposed shall additionally ensure that the Employee Right-to-Know program developed and implemented under item B includes the following:

(1) the methods the employer will use to provide the other employers with a copy of the material safety data sheet, or to make it available at a central location in the workplace, for each hazardous substance the other employers' employees may be exposed to while working;

(2) the methods the employer will use to inform the other employers of any precautionary measures that need to be taken to protect employees during normal operating conditions and in foreseeable emergencies; and

(3) the methods the employer will use to inform the other employers of the labeling system used in the workplace.

D. Records of training provided under the requirements of this chapter must be maintained by the employer, retained for three years, and made available, upon request, for review by employees and representatives of the Occupational Safety and Health Division. At a minimum, training records must include:

- (1) the dates training was conducted;
- (2) the name, title, and qualifications of the person who conducted the training;
- (3) the names and job titles of employees who completed the training; and
- (4) a brief summary or outline of the information that was included in the training session.

E. Information and training programs may relate to specific exposure hazards; the common hazards of a broad class of hazardous substances, harmful physical agents, and infectious agents; or to the hazards of a complete production operation, whichever is more effective. Specific information on individual hazardous substances or mixtures, harmful physical agents, and infectious agents must be available in writing for employees' use.

F. Access to a display device shall constitute compliance with the requirement for a written copy of required information which shall be readily accessible in the area or areas in which the hazardous substance, harmful physical agent, or infectious agent is used or handled, provided that a hard copy printout is available to the employee requesting it within 24 hours excluding nonworkdays.

G. Frequency of training:

- (1) Training must be provided to an employee before initial assignment to a workplace where the employee may be routinely exposed to a hazardous substance, harmful physical agent, or infectious agent.
- (2) Additional training must be provided to an employee before the time the employee may be routinely exposed to any additional hazardous substances, harmful physical agents, or infectious agents.
- (3) All employees who have been routinely exposed to a hazardous substance, harmful physical agent, or infectious agent before January 1, 1984, and who will continue to be routinely exposed to those substances or agents, must be provided with training with respect to those substances and agents by July 1, 1984.
- (4) Training updates must be repeated at intervals of not greater than one year. Training updates may be brief summaries of information included in previous training sessions.

H. The commissioner may, upon request of an employer or an employer's representative, certify an existing training program as complying with this chapter.

I. The employer shall maintain current information for training or information requests by employees.

J. Technically qualified individuals shall be notified of and may elect to participate in any training or update programs required to be provided under this part to employees who are not technically qualified individuals. The employer shall make a reasonable attempt to allow technically qualified individuals to attend training or update programs which may be held during the employee's scheduled work day.

Subp. 2. Training program for hazardous substances. Training for employees who may be routinely exposed to hazardous substances shall be provided in a manner which can be reasonably understood by the employees and must include the following:

A. the name or names of the substance including any generic or chemical name, trade name, and commonly used name;

B. the level, if any and if known, at which exposure to the substance has been restricted according to standards adopted by the commissioner, or, if no standard has been adopted, according to guidelines established by competent professional groups which have conducted research to determine the hazardous properties of potentially hazardous substances;

C. the primary routes of entry and the known acute and chronic effects of exposure at hazardous levels;

D. the known symptoms of the effects;

E. any potential for flammability, explosion, or reactivity of the substance;

F. appropriate emergency treatment;

G. the known proper conditions for use of and exposure to the substance;

H. procedures for cleanup of leaks and spills;

I. the name, phone number, and address of a manufacturer of the hazardous substance; and

J. a written copy of all of the above information which shall be readily accessible in the area or areas in which the hazardous substance is used or handled.

Subp. 3. Training program for harmful physical agents. The training program for employees who may be routinely exposed to harmful physical agents at a level which may be expected to approximate or exceed the permissible exposure limit or applicable action levels shall be provided in a manner which can be reasonably understood by the employees and

shall include the information required by the standard for that physical agent as determined by the commissioner including the following:

A. the name or names of the physical agent including any commonly used synonym;

B. the level, if any and if known, at which exposure to the physical agent has been restricted according to standards adopted by the commissioner, or, if no standard has been adopted, according to guidelines established by competent professional groups which have conducted research to determine the hazardous properties of potentially harmful physical agents;

C. the known acute and chronic effects of exposure at hazardous levels;

D. the known symptoms of the effects;

E. appropriate emergency treatment;

F. the known proper conditions for use of and/or exposure to the physical agent;

G. the name, phone number, and address, if appropriate, of a manufacturer of the equipment which generates the harmful physical agent; and

H. a written copy of all of the above information which shall be readily accessible in the area or areas in which the harmful physical agent is present and where the employees may be exposed to the agent through use, handling, or otherwise.

Subp. 4. **Training program for infectious agents.** Training for employees who are routinely exposed to infectious agents shall be provided in a manner which can be reasonably understood by the employees and must include the following:

A. a general explanation of the epidemiology and symptoms of infectious diseases including hazards to special at-risk employee groups;

B. an explanation of the appropriate methods for recognizing tasks and other activities that may involve exposure to infectious agents including blood and other infectious materials;

C. an explanation of the chain of infection, or infectious disease process, including agents, reservoirs, modes of escape from reservoir, modes of transmission, modes of entry into host, and host susceptibility;

D. an explanation of the employer's exposure control program;

E. an explanation of the use and limitations of methods of control that will prevent or reduce exposure including universal precautions, appropriate engineering controls and work practices, personal protective equipment, and housekeeping;

F. an explanation of the basis for selection of personal protective equipment, including information on the types, proper use, location, removal, handling, decontamination, and disposal of personal protective equipment;

G. an explanation of the proper procedures for cleanup of blood or body fluids;

H. an explanation of the recommended immunization practices, including, but not limited to, the HBV vaccine and the employer's methodology for determining which employees will be offered the HBV vaccine, and the efficacy, safety, and benefits of being vaccinated;

I. procedures to follow if an exposure incident occurs, method of reporting the incident, and information on the postexposure evaluation and medical follow-up that will be available;

J. information on the appropriate actions to take and persons to contact in an emergency involving blood or other potentially infectious materials;

K. an explanation of the signs, labels, tags, or color coding used to denote biohazards;

L. an opportunity for interactive questions and answers with the person conducting the training session;

M. an accessible copy of the regulatory text of this standard and an explanation of its contents; and

N. how to gain access to further information and reference materials that must be made available in the workplace including the location, contents, and availability of pertinent materials that explain symptoms and effects of each infectious agent.

Statutory Authority: *MS s 182.655*

History: *8 SR 1949; 13 SR 2219; 17 SR 1456*

Published Electronically: *June 11, 2008*

March 19, 2019

WAC 296-62-095

Outdoor heat exposure.

[Statutory Authority: RCW [49.17.010](#), [49.17.040](#), [49.17.050](#), [49.17.060](#), WSR 08-12-109, § 296-62-095, filed 6/4/08, effective 7/5/08.]

WAC 296-62-09510

Scope and purpose.

(1) WAC [296-62-095](#) through [296-62-09560](#) applies to all employers with employees performing work in an outdoor environment.

(2) The requirements of WAC [296-62-095](#) through [296-62-09560](#) apply to outdoor work environments from May 1 through September 30, annually, only when employees are exposed to outdoor heat at or above an applicable temperature listed in Table 1.

Table 1

To determine which temperature applies to each worksite, select the temperature associated with the general type of clothing or personal protective equipment (PPE) each employee is required to wear.

Outdoor Temperature Action Levels

All other clothing	89°
Double-layer woven clothes including coveralls, jackets and sweatshirts	77°
Nonbreathing clothes including vapor barrier clothing or PPE such as chemical resistant suits	52°

Note: There is no requirement to maintain temperature records. The temperatures in Table 1 were developed based on Washington state data and are not applicable to other states

(3) WAC [296-62-095](#) through [296-62-09560](#) does not apply to incidental exposure which exists when an employee is not required to perform a work activity outdoors for more than fifteen minutes in any sixty-minute period. This exception may be applied every hour during the work shift.

(4) WAC [296-62-095](#) through [296-62-09560](#) supplement all industry-specific standards with related requirements. Where the requirements under these sections provide more specific or greater protection than the industry-specific standards, the employer must comply with the requirements under these sections. Additional related requirements are found in chapter [296-305](#) WAC, Safety standards for firefighters and chapter [296-307](#) WAC, Safety standards for agriculture.

[Statutory Authority: RCW [49.17.010](#), [49.17.040](#), [49.17.050](#), and [49.17.060](#). WSR 19-01-094, § 296-62-09510, filed 12/18/18, effective 1/18/19; WSR 08-12-109, § 296-62-09510, filed 6/4/08, effective 7/5/08.]

WAC 296-62-09520

Definitions.

Acclimatization. The body's temporary adaptation to work in heat that occurs as a person is exposed to it over time.

Double-layer woven clothing. Clothing worn in two layers allowing air to reach the skin. For example, coveralls worn on top of regular work clothes.

Drinking water. Potable water that is suitable to drink. Drinking water packaged as a consumer product and electrolyte-replenishing beverages (i.e., sports drinks) that do not contain caffeine are acceptable.

Engineering controls. The use of devices to reduce exposure and aid cooling (i.e., air conditioning).

Environmental factors for heat-related illness. Working conditions that increase susceptibility for heat-related illness such as air temperature, relative humidity, radiant heat from the sun and other sources, conductive heat sources such as the ground, air movement, workload (i.e., heavy, medium, or low) and duration, and personal protective equipment worn by employees. Measurement of environmental factors is not required by WAC [296-62-095](#).

Heat-related illness. A medical condition resulting from the body's inability to cope with a particular heat load, and includes, but is not limited to, heat cramps, heat rash, heat exhaustion, fainting, and heat stroke.

Outdoor environment. An environment where work activities are conducted outside. Work environments such as inside vehicle cabs, sheds, and tents or other structures may be considered an outdoor environment if the environmental factors affecting temperature are not managed by engineering controls. Construction activity is considered to be work in an indoor environment when performed inside a structure after the outside walls and roof are erected.

Vapor barrier clothing. Clothing that significantly inhibits or completely prevents sweat produced by the body from evaporating into the outside air. Such clothing includes encapsulating suits, various forms of chemical resistant suits used for PPE, and other forms of nonbreathing clothing.

[Statutory Authority: RCW [49.17.010](#), [49.17.040](#), [49.17.050](#), and [49.17.060](#). WSR 19-01-094, § 296-62-09520, filed 12/18/18, effective 1/18/19; WSR 08-12-109, § 296-62-09520, filed 6/4/08, effective 7/5/08.]

WAC 296-62-09530

Employer and employee responsibility.

(1) Employers of employees exposed at or above temperatures listed in WAC [296-62-09510](#)(2) Table 1 must:

(a) Address their outdoor heat exposure safety program in their written accident prevention program (APP); and

(b) Encourage employees to frequently consume water or other acceptable beverages to ensure hydration.

(2) Employees are responsible for monitoring their own personal factors for heat-related illness including consumption of water or other acceptable beverages to ensure hydration.

[Statutory Authority: RCW [49.17.010](#), [49.17.040](#), [49.17.050](#), [49.17.060](#). WSR 08-12-109, § 296-62-09530, filed 6/4/08, effective 7/5/08.]

WAC 296-62-09540

Drinking water.

(1) Keeping workers hydrated in a hot outdoor environment requires that more water be provided than at other times of the year. Federal OSHA and research indicate that employers should be prepared to supply at least one quart of drinking water per employee per hour. When employee exposure is at or above an applicable temperature listed in WAC [296-62-09510](#)(2) Table 1:

(a) Employers must ensure that a sufficient quantity of drinking water is readily accessible to employees at all times; and

(b) Employers must ensure that all employees have the opportunity to drink at least one quart of drinking water per hour.

(2) Employers are not required to supply the entire quantity of drinking water needed to be supplied for all employees on a full shift at the beginning of the shift. Employers may begin the shift with smaller quantities of drinking water if effective procedures are established for replenishment during the shift.

[Statutory Authority: RCW [49.17.010](#), [49.17.040](#), [49.17.050](#), [49.17.060](#). WSR 08-12-109, § 296-62-09540, filed 6/4/08, effective 7/5/08.]

WAC 296-62-09550

Responding to signs and symptoms of heat-related illness.

(1) Employees showing signs or demonstrating symptoms of heat-related illness must be relieved from duty and provided with a sufficient means to reduce body temperature.

(2) Employees showing signs or demonstrating symptoms of heat-related illness must be monitored to determine whether medical attention is necessary.

[Statutory Authority: RCW [49.17.010](#), [49.17.040](#), [49.17.050](#), [49.17.060](#). WSR 08-12-109, § 296-62-09550, filed 6/4/08, effective 7/5/08.]

WAC 296-62-09560

Information and training.

All training must be provided to employees and supervisors, in a language the employee or supervisor understands, prior to outdoor work which exceeds a temperature listed in WAC [296-62-09510\(2\)](#) Table 1, and at least annually thereafter.

(1) Employee training. Training on the following topics must be provided to all employees who may be exposed to outdoor heat at or above the temperatures listed in WAC [296-62-09510\(2\)](#) Table 1:

(a) The environmental factors that contribute to the risk of heat-related illness;

(b) General awareness of personal factors that may increase susceptibility to heat-related illness including, but not limited to, an individual's age, degree of acclimatization, medical conditions, drinking water consumption, alcohol use, caffeine use, nicotine use, and use of medications that affect the body's responses to heat. This information is for the employee's personal use;

(c) The importance of removing heat-retaining personal protective equipment such as nonbreathable chemical resistant clothing during all breaks;

(d) The importance of frequent consumption of small quantities of drinking water or other acceptable beverages;

(e) The importance of acclimatization;

(f) The different types of heat-related illness, the common signs and symptoms of heat-related illness; and

(g) The importance of immediately reporting signs or symptoms of heat-related illness in either themselves or in co-workers to the person in charge and the procedures the employee must follow including appropriate emergency response procedures.

(2) Supervisor training. Prior to supervising employees working in outdoor environments with heat exposure at or above the temperature levels listed in WAC [296-62-09510\(2\)](#) Table 1, supervisors must have training on the following topics:

- (a) The information required to be provided to employees listed in subsection (1) of this section;
- (b) The procedures the supervisor must follow to implement the applicable provisions of WAC [296-62-095](#) through 296-62-09560;
- (c) The procedures the supervisor must follow if an employee exhibits signs or symptoms consistent with possible heat-related illness, including appropriate emergency response procedures; and
- (d) Procedures for moving or transporting an employee(s) to a place where the employee(s) can be reached by an emergency medical service provider, if necessary.

[Statutory Authority: RCW [49.17.010](#), [49.17.040](#), [49.17.050](#), [49.17.060](#). WSR 08-12-109, § 296-62-09560, filed 6/4/08, effective 7/5/08.]



JUN 07 2012

Sidney Wolfe, Director
Public Citizen's Health Research Group
1600 20th Street, NW
Washington, D.C. 20009

Dear Dr. Wolfe:

This letter is in response to your correspondence dated September 1, 2011, in which Public Citizen's Health Research Group (Public Citizen) petitioned the Occupational Safety and Health Administration (OSHA) to promulgate an emergency temporary standard (ETS) for a heat stress threshold and a subsequent permanent heat stress standard. Other petitioners, in addition to Public Citizen, are Farmworker Justice; United Electrical, Radio and Machine Workers of America; and Dr. Thomas Bernard of the University of South Florida. OSHA provided you with an interim response on January 5, 2012.

After a thorough review of the materials submitted in support of the petition, OSHA is denying your petition for the reasons discussed below. I assure you, however, that OSHA takes your concerns very seriously, is aware of the hazards associated with extreme heat exposure, and is taking action to address them.

Background

Section 6(c) of the Occupational Safety and Health Act of 1970 (OSH Act) authorizes OSHA to issue an ETS when it finds both that employees are exposed to a grave danger from exposure to substances or agents determined to be toxic or physically harmful, and that issuance of an ETS is necessary to protect employees from that danger. As you may know, an ETS becomes effective immediately upon publication in the Federal Register, without the benefit of notice and public comment. The ETS remains in effect until superseded by a standard promulgated under the OSH Act's regular Section 6(b) rulemaking procedures. The OSH Act requires the Secretary to complete these proceedings and issue a permanent standard within six months of issuing the ETS. The test for issuing an ETS under Section 6(c) of the OSH Act has a high threshold to meet and courts have applied it rigorously, resulting in several successful challenges to ETSs promulgated by OSHA in the past. See *Asbestos Information Ass'n v. OSHA*, 727 F.2d 415 (5th Cir. 1984).

The "grave danger" finding required for an ETS includes compelling evidence of a serious health impairment involving incurable, permanent or fatal consequences. See *Fla. Peach Growers Ass'n Inc. v. United States Department of Labor*, 489 F.2d 120, 132 (5th Cir. 1974). "Grave

danger” also involves a degree of risk that is higher than the “significant risk” that is required to statutorily support a permanent standard under Section 6(b) of the OSH Act.

OSHA agrees exposure to extreme heat can lead to death; however, the majority of workers with adverse health effects from heat exposure experience dehydration, cramps, exhaustion, and other effects and are able to recover fairly quickly when the appropriate measures are taken¹. As you mentioned in your petition, the Morbidity and Mortality Weekly Report (MMWR) stated that the annual rate of heat-related deaths among crop workers from 1992 to 2006 was 0.39 per 100,000 workers. While OSHA acknowledges that these deaths are most likely underreported, and therefore the true mortality rate is likely higher, the mortality rate reported in the MMWR does not exceed those of other hazards OSHA has deemed to be “significant” (e.g., benzene) and therefore, would likely not meet the legal requirement of “grave.”

Furthermore, if OSHA were to determine that a grave danger was present, OSHA must have adequate evidence that an ETS is necessary because no existing OSHA requirements can substantially reduce the grave danger. Additionally, OSHA must show that the ETS would be technologically and economically feasible.

Enforcement Activity

Although OSHA has no specific heat hazard standard, the OSH Act’s General Duty Clause, Section 5(a)(1), requires employers to provide their employees with a workplace free of recognized hazards likely to cause death or serious physical harm. OSHA may cite an employer for violating the General Duty Clause if the employer has exposed employees to serious, recognized heat hazards, among other criteria. In the past 25 years, OSHA has enforced Section 5(a)(1) for environmental heat exposures in the following sectors (the number of inspections are in parentheses): landscaping (5); roofing (6); farming (9); construction/paving (20); tree cutting (2); and garbage collection (1).

Other pertinent OSHA regulations and standards may include:

- The Recordkeeping regulation at 29 CFR 1904.7 (b)(5) requires the employer to record injuries and illnesses that meet general recording criteria. One criterion distinguishes between medical treatment and first aid. In the case of a worker who is experiencing adverse effects of heat stress, if the worker is administered intravenous fluids, which is considered medical treatment, then the case is required to be recorded on the OSHA 300 Log. However, if a worker is only instructed to drink fluids for relief of heat stress, then hydration is considered first aid, and the case is not recordable. (See 29 CFR 1904.7(b)(5)(i)).
- The Sanitation standards at 29 CFR 1910.141, 29 CFR 1915.88, 29 CFR 1917.127, 29 CFR 1926.51 and 29 CFR 1928.110 require employers to provide potable water readily accessible to workers.

¹ DHHS (NIOSH) Publication Number 86-112. Working in Hot Environments.

- The Medical Services and First Aid standards at 29 CFR 1910.151, 29 CFR 1915.87, 29 CFR 1917.26 and 29 CFR 1926.50, require that persons be adequately trained to render first aid in the absence of medical facilities within close proximity.
- The Safety Training and Education standard at 29 CFR 1926.21 requires employers in the construction industry to train employees in the recognition, avoidance, and prevention of unsafe conditions in their workplaces.
- The Personal Protective Equipment standard at 29 CFR 1910.132(d) requires every employer in general industry to conduct a hazard assessment to determine the appropriate PPE to be used to protect employees from the hazards identified in the assessment. See also 29 CFR 1915.152 (shipyard), 29 CFR 1917.95 (maritime) and 29 CFR 1926.28 (construction).

Additionally, OSHA has increased enforcement by emphasizing to its Regional Administrators the importance of conducting heat inspections and how to draft and support general duty clause citations when conditions warrant such action or issue a hazard alert letter for circumstances when all of the elements for a general duty clause citation are not present. As a result, OSHA has increased its focus on heat as a hazard during its inspections.

Similarly, North Carolina, an OSHA State Plan state, issued a news release in June 2011 urging employers to protect workers from heat. Dehydration was highlighted as a leading cause of heat illness. The news release further stated that the North Carolina Agricultural Safety and Health Act requires growers to provide water and drinking cups in the field and inspectors conducting field sanitation inspections will be specifically monitoring whether the growers have provided the water.

Education and Outreach Campaign

Although OSHA is not planning on promulgating a standard to address the risks associated with exposure to extreme heat in outdoor workers anytime soon, the Agency has recently taken a number of actions to protect workers from this hazard. On May 7, 2012, OSHA launched a nationwide education and outreach campaign to educate workers and their employers about the hazards of working outdoors in the heat and steps needed to prevent heat related illnesses. The 2012 Heat Illness Prevention Campaign builds on last year's successful campaign to raise awareness about the dangers of working in extreme heat. The Agency created a smart phone application adopting a practical and public index based on the National Weather Service's heat index to help employers know when and how to incrementally implement precautions as the temperature rises. OSHA significantly expanded the number and variety of resources on occupational heat exposure. OSHA worked closely with the California Occupational Safety and Health Administration and adapted materials from that state's successful heat illness prevention campaign. These new materials target hard-to-reach populations at risk, especially workers with limited English proficiency, adapting a pictorial fact sheet and workplace poster. In addition, OSHA is partnering with the National Oceanic and Atmospheric Administration for the second year to incorporate worker safety precautions when heat alerts are issued across the nation.

OSHA is using all of the tools it has available to reach outdoor workers and employers—its website, its field staff, its state and local partners, its consultation programs, as well as

employers, trade associations, unions, community and faith based organizations, consulates, universities, health care and safety professionals. In addition to local partnerships, at the OSHA National Office, we are partnering with over 100 national or regional organizations to get the word out. In 2011, as part of the campaign, OSHA and the Department of Labor incorporated heat awareness into over 500 national and local conferences, training sessions and events, including radio and television interviews, and disseminated over 180,000 new resources nationally, reaching well over 2 million employers and workers directly. In addition, OSHA's heat campaign website received over 101,000 visitors through September and the heat smart phone application was downloaded by close to 10,000 users. We expect to reach even more workers and employers this summer with our simple life saving message: Water- Rest -Shade.

OSHA continues to monitor this issue, with an increased focus on enforcement, while engaging in a robust outreach and education campaign on heat illness prevention.

Thank you for raising this important issue.

Sincerely,

A handwritten signature in black ink, appearing to read "D. Michaels", with a long, sweeping flourish extending to the right.

David Michaels, PhD, MPH

cc: Sammy Almashat, M.D., M.P.H.
✓ Staff Researcher
Public Citizen's Health Research Group
1600 20th Street NW
Washington, DC 20009

Thomas Bernard, Ph.D.
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VIRGINIA SAFETY AND HEALTH CODES BOARD

Informational Briefing:
Safety and Health Management Systems
State and Local Government
Injury and Illness Statistics
VOSH Penalty Regulation
SHMS Elements
State OSH Standards
Further Research Planned

VIRGINIA DOLI PROGRAMS



Registered Apprenticeship

Labor and Employment Law

Boiler and Pressure Vessel Safety

Virginia Occupational Safety and Health (VOSH)

VIRGINIA STATE PLAN FOR OCCUPATIONAL SAFETY AND HEALTH



- The Virginia Department of Labor and Industry (DOLI) operates the Virginia State Plan for Occupational Safety and Health (VOSH) through a grant from the U.S. Department of Labor – Occupational Safety and Health Administration (OSHA)
- VOSH is required by federal OSHA laws and regulations to operate a program that is “at least as effective” as those of federal OSHA.



Virginia Occupational Safety and Health (VOSH)

Virginia is one of 28 States and territories that operates its own OSH program:

- Must cover state and local government employees
- Compliance, Public Sector Consultation and Voluntary Protection Programs (VPP) funded 50% by federal OSHA
- Private Sector Consultation funded 90% by OSHA



Virginia has 6
100% state funded
positions, 3 in
Consultation and
3 in VPP

VIRGINIA SAFETY AND HEALTH CODES BOARD

Informational Briefing: Injury and Illness Statistics

INJURY AND ILLNESS STATISTICS

The most recent 2017 Bureau of Labor Statistics (BLS) data indicate that Virginia State and Local Government (SLG) rates remain below the National SLG rates:

Total Case Incident Rate (TCIR)	National	Virginia	Difference
2017 Overall	3.1	2.6	-16.1%
2017 Private Industry	2.8	2.4	-14.3%
2017 Construction	3.2	3.3	3.1%
2017 Manufacturing	3.6	3.5	-2.8%
2017 State and Local Government	4.6	4.1	-10.9%

INJURY AND ILLNESS STATISTICS

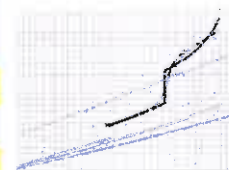
- However, Virginia SLG BLS injury and illness rates are significantly higher than Virginia private sector rates:

Total Case Incident Rate (TCIR)	Virginia	State/Local Government	Difference
2017 Overall	2.6	4.1	57.7%
2017 Private Industry	2.4	4.1	70.8%
2017 Construction	3.3	4.1	24.2%
2017 Manufacturing	3.5	4.1	17.1%

INJURY AND ILLNESS STATISTICS

- Since 2012, the TCIR Rate for State and Local Governments has been higher than the rate for Virginia Private Industry in a range from 60.0% to 79.2%:

Year	Virginia	State/Local Government	Difference
2017	2.4	4.1	70.8%
2016	2.5	4	60.0%
2015	2.4	4.3	79.2%
2014	2.7	4.5	66.7%
2013	2.6	4.2	61.5%
2012	2.7	4.5	66.7%



INJURY AND ILLNESS STATISTICS

- Since 2012, the TCIR Rate for State Government has averaged **9% higher** than Virginia Private Industry; and Local Government has averaged **91% higher** than the rate for Virginia Private Industry:

Year	Virginia	State/Local Government	Difference	State Government	Difference	Local Government	Difference
2017	2.1	4.1	70.8%	2.8	16.7%	1.6	91.7%
2016	2.5	4	60.0%	2.7	8.0%	4.5	80.0%
2015	2.4	4.3	79.2%	2.9	20.8%	5	108.3%
2014	2.7	4.5	66.7%	2.7	0.0%	5.2	92.3%
2013	2.6	4.2	61.5%	2.9	11.5%	4.7	80.8%
2012	2.7	4.5	66.7%	2.6	-3.7%	5.2	92.4%

FATALITIES IN STATE AND LOCAL GOVERNMENT

- By Employment:

• City or Town	25	45%
• County	8	14%
• City or County Schools	4	7%
• Police	3	5%
• Fire	3	5%
• Emergency Medical Services	1	2%
• State Government	4	7%
• Universities/Community Colleges	3	5%
• WMATA	5	9%

TOTAL 56

FATALITIES IN STATE AND LOCAL GOVERNMENT

- From October 1, 1992 to December 31, 2018, fifty-six (56) state and local government workers were killed on the job:
 - contact with overhead high voltage line
 - falls in construction and general industry settings
 - construction work zone accidents
 - electrocution
 - diving
 - caught-in
 - trench collapse
 - struck-by equipment, machinery, or vehicle
 - roll-over and mowing accidents
 - explosion
 - interior structural firefighting
 - confined space, etc.

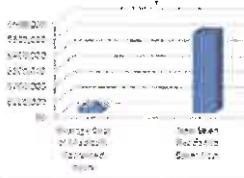
RISKS AND COSTS ASSOCIATED WITH OCCUPATIONAL HAZARDS IN THE WORKPLACE

- Employee injuries, illnesses and fatalities
- Damage to products, materials, machinery, equipment, property and other assets
- Interruption of governmental operations, including accident response by Police, Emergency Medical Services, Fire, VOSH compliance inspections, DEQ Inspections, etc.
- Replacing/retraining employees
- Liabilities to third parties
- The Virginia Tort Claims Act can be found at:
<https://law.lis.virginia.gov/vacode/title8.01/chapter3/section8.01-195.1/>

THE COSTS OF A MEDICALLY CONSULTED INJURY

Calculate the Business Cost (private sector):

- \$42,000 average cost for medically consulted injury (2013, NSC)
- 8.2% average net profit for business in 2013



» Washington Post article:

» \$512,195 in NEW sales would be needed to cover the \$42,000 cost for one medically consulted injury

Insert Name of Session here



VIRGINIA SAFETY AND HEALTH CODES BOARD

Informational Briefing:
Safety and Health Management Systems
State and Local Government
VOSH Penalty Regulation



STATE AND LOCAL GOVERNMENT PENALTY LEGISLATION

- Senate Bill 607 was passed by the Virginia General Assembly and signed into law by Governor Terry McAuliffe to direct the Virginia Safety and Health Codes Board to **adopt regulations for the issuance of proposed penalties to the Commonwealth, its agencies, political subdivisions, or any public body.** The law became effective July 1, 2016. Information can be found at:

- <https://lis.virginia.gov/cgi-bin/legp604.exe?scs=161&typ=bil&val=sb607>

STATE AND LOCAL GOVERNMENT PENALTY REGULATION



- The Virginia Safety and Health Codes Board adopted a proposed regulation on February 16, 2017, amending the VOSH Administrative Regulations Manual (ARM), 16VAC25-60-260.
- The regulation allows issuance of penalties to state and local government employers for **willful, repeat and failure-to-abate violations, as well as serious violations that cause a fatal accident or are classified as “high gravity”.**

PUBLIC EMPLOYER DEFINED

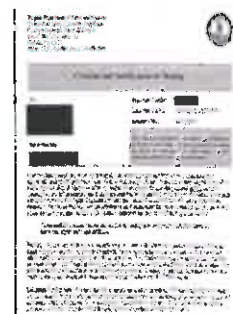
o 16VAC25-60-10

- "Public employer" means the Commonwealth of Virginia, including its agencies, authorities, or instrumentalities or any political subdivision or public body.
- The Department considers authorities and instrumentalities such as the Washington Metropolitan Airports Authority, the Washington Metropolitan Area Transit Authority, and the GRTC Transit System in Richmond to be public employers covered by the state and local government penalty regulation.



VOSH MAXIMUM PENALTIES

- o Serious \$12,726
- o Willful \$127,254
- o Repeat \$127,254
- o Failure to Abate \$12,726 per day
- o NOTE: Other-than-serious violations issued to state and local government employers will not receive penalties





STATE AND LOCAL GOVERNMENT PENALTY REGULATION

- The final regulation was adopted on November 30, 2017.
- The regulation took effect on **VOSH inspections opened on or after November 1, 2018**
- Information on the final regulation can be tracked on the Virginia Regulatory Town Hall at:

<http://townhall.virginia.gov/ViewAction.cfm?actionid=1681>

VIRGINIA SAFETY AND HEALTH CODES BOARD

Informational Briefing:
Safety and Health Management Systems
State and Local Government
SHMS Elements

COMPONENTS OF SAFETY AND HEALTH MANAGEMENT SYSTEMS

- Federal OSHA Safety and Health Program guidelines for General Industry and Construction:



- <https://www.osha.gov/shpguidelines/index.html>

COMPONENTS OF SAFETY AND HEALTH MANAGEMENT SYSTEMS

- Federal OSHA lays out the generally accepted components for SHMS in their guidelines:
 - Management Leadership
 - Worker Participation
 - Hazard Identification and Assessment
 - Hazard Prevention and Control
 - Education and Training
 - Program Evaluation and Improvement
 - Communication and Coordination for Host Employers, Contractors and Staffing Agencies

- <https://www.osha.gov/shpguidelines/index.html>

OSHA REGULATORY LIMITATIONS

- OSHA's Safety and Health Program Guidelines are **voluntary** and not in regulation.
- OSHA has a number of **hazard specific regulations that require written programs**, but no universal Safety and Health Program regulation for General Industry or Construction:
 - Hazard Communication Standard (chemicals)
 - Control of Hazardous Energy Sources (Lockout/Tagout)
 - Permit Required Confined Spaces
 - Health Standards (Noise, Silica, Benzene, Ethylene Oxide, Bloodborne Pathogens, etc.)



COMPONENTS OF SAFETY AND HEALTH MANAGEMENT SYSTEMS

- Worker Participation/Employee Involvement
 - Including worker input at every step of program design and implementation:
 - improves your ability to successfully identify the presence and causes of workplace hazards,
 - creates a sense of program ownership among workers,
 - enhances workers' understanding of how the program works,
 - and helps sustain the program over time



COMPONENTS OF SAFETY AND HEALTH MANAGEMENT SYSTEMS



- Involve Employees by allowing them to participate in all aspects of the SHMS:
 - Developing the program
 - Serving on safety and health committees
 - Reporting hazards and developing solutions
 - Analyzing hazards in each step of routine and non-routine jobs, tasks, and processes
 - Defining/documenting safe and healthy work practices

COMPONENTS OF SAFETY AND HEALTH MANAGEMENT SYSTEMS

- Involve Employees by allowing them to participate in all aspects of the SHMS:
 - Conducting site inspections
 - Developing and revising safety procedures
 - Participating in incident/near miss investigations
 - Serving as trainers for current coworkers and new hires
 - Developing, implementing, and evaluating training programs



COMPONENTS OF SAFETY AND HEALTH MANAGEMENT SYSTEMS

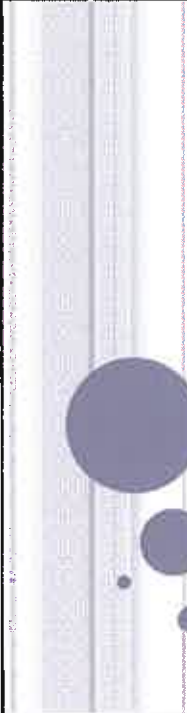
- Other tips on how to implement a successful SHMS, based on VOSH experience:
 - SLG Employers need to reach out to VOSH Consultation, Training, SHARP (Safety and Health Achievement and Recognition Program), and Virginia Voluntary Protection Programs (VPP)
 - Hire good supervisors who care about employee safety and health
 - Develop a comprehensive contractor vetting system
 - Institute a highly accurate injury and illness recordkeeping program; track first aid cases and near misses
 - Have a fair, but firmly enforced disciplinary program



BENEFITS OF IMPLEMENTING SHMS CONCEPTS FOR STATE AND LOCAL GOVERNMENT ENTITIES



- Preventing workplace injuries, illnesses and fatalities and eliminating the associated costs (workers' compensation, damage to government assets, replacing or retraining employees, interruption of government operations)
- Increasing productivity and enhancing the efficiency and effectiveness of overall government operations
- Reducing or eliminating agency exposure to VOSH violations, abatement orders and penalties



VIRGINIA SAFETY AND HEALTH CODES BOARD

Informational Briefing:
Safety and Health Management Systems
State and Local Government
State OSH Standards

OREGON OSHA



- Oregon OSHA allows employers to use a Safety Committee or Safety Meeting Approach:
 - The purpose of **safety committees** and **safety meetings** is to bring workers and management together in a non-adversarial, cooperative effort to promote safety and health. Safety committees and **safety meetings** will assist you in making continuous improvement to your safety and health programs.
 - The regulation applies to all employers unless you are a sole owner and the only employee of a corporation.



OREGON OSHA



- Oregon OSHA allows employers to use a Safety Committee or Safety Meeting Approach:
 - Under the **safety committee option**, it must meet on company time - Quarterly in situations where employees do mostly office work; Monthly for all other situations except the months when quarterly worksite inspections are performed.
 - If a business has **more than one location**, it can have a centralized safety committee that represents all of the locations. **A written Safety and Health Policy is required.** Meetings can be conducted by conference call if necessary.

OREGON OSHA



- Under the Safety Committee option:
 - The employer must **maintain written records of each safety committee meeting for three years** that includes:
 - Name of attendees and Meeting date
 - All safety and health issues discussed, including tools, equipment, work environment, and work practice hazards
 - Recommendations for corrective action and a reasonable date by which management agrees to respond
 - Person responsible for follow up on any recommended corrective actions
 - All reports, evaluations, and recommendations made by the committee

OREGON OSHA



- The **safety committee** must establish procedures for conducting workplace safety and health inspections. Persons trained in hazard identification must conduct inspections as follows:

Where	Who	When
Primary fixed locations	Employer and employee representatives	Quarterly
Office environments	Employer and employee representatives	Quarterly
Auxiliary and satellite locations	Employer and employee representatives	Quarterly
Mobile work locations, infrequently visited sites, and sites that do not lend themselves to quarterly inspections	Employer and employee representatives or a designated person	As often as the safety committee determines is necessary

OREGON OSHA



- The **Safety Committee** must also:
 - Work with management to establish, amend or adopt accident investigation procedures that will identify and correct hazards
 - Have a system that allows employees an opportunity to report hazards and safety and health related suggestions
 - Establish procedures for reviewing inspection reports and for making recommendations to management
 - Evaluate all accident and incident investigations and make recommendations for ways to prevent similar events from occurring
 - Make safety committee meeting minutes available for all employees to review
 - Evaluate management's accountability system for safety and health, and recommend improvements. Examples include the use of incentives, discipline, and evaluating success in controlling safety and health hazards.

OREGON OSHA



o **Safety Meetings must:**

- Include all available employees.
- Include at least one employer representative authorized to ensure
- correction of safety and health issues.
- Be held on company time and attendees paid at their regular rate of pay.
- (11) Safety meetings must be held with the following frequency:

Table 3 - Safety meeting frequency

Nature of the Business	Frequency of Meetings
You employ construction workers	At least monthly and before the start of each job that lasts more than one week.
Your employees do mostly office work	At least quarterly
All other employers	At least monthly

OREGON OSHA



o **Safety Meetings must include discussions of:**

- Safety and health issues
- Accident investigations, causes, and corrective measures.

o **(13) Employers in construction, utility work and manufacturing must document, make available to all employees, and keep for three years a written record of each meeting that includes the following:**

- Hazards related to tools, equipment, work environment and unsafe work practices identified and discussed during the meeting.
- The date of the meeting.
- The names of those attending the meeting.

All other employers do not need to keep these records if all employees attend the safety meeting.

OREGON OSHA



o Safety Meetings:

- If you are a subcontractor on a multi-employer worksite, to meet the intent of (11) through (13), your employees may attend the prime contractor's safety meetings. You may keep the minutes from these meetings as a part of your records to meet the intent of (13). If you choose this option, you must still meet to discuss accidents involving your employees.

HAWAII OSH



State of Hawaii
Occupational Safety and Health

- o Hawaii OSH requires with **25 or more employees** in both general industry and construction to have written comprehensive safety and health programs:
 - Provide for visible top **management leadership** in implementing the program and ensure that all workers at the site, including contract workers, are provided equally high quality safety and health protection, so that all will understand that management's commitment is serious.
 - Provide for and encourage **employee involvement** in the structure and operation of the program and in decisions that affect their safety and health, so that they will commit their insight and energy to achieving the safety and health program's goal and objectives. Involvement shall be accomplished through employee collective bargaining units, where appropriate.

HAWAII OSH



State of Hawaii
Occupational Safety and Health

- Hawaii OSH requires with 25 or more employees in both general industry and construction to have written comprehensive safety and health programs:
 - Assign and **communicate responsibilities** for all aspects of the safety and loss prevention program to managers, supervisors, and employees so that they all know and understand what is expected of them in the implementation of the program.
 - Provide a system to **hold managers, supervisors, and employees accountable** for their responsibilities under the safety and health program.
 - Provide a reliable system for employees to **notify management personnel or safety and health committee members of conditions that appear hazardous** or of non-compliance with the terms of the safety and health program without fear of reprisal and provide a mechanism to ensure timely and appropriate responses to correct these conditions.

HAWAII OSH



State of Hawaii
Occupational Safety and Health

- Hawaii OSH requires with 25 or more employees in both general industry and construction to have written comprehensive safety and health programs:
 - Provide a mechanism to **investigate accidents and "near miss" incidents**, so that the root cause and means for preventing a recurrence are identified. For the purposes of this rule, the term "accident" means any unexpected happening that interrupts the work sequence or process and that may result in injury, illness, or property damage.
 - Provide a means to **review injury and illness trends** over time, so that patterns with common causes can be identified and eliminated.
 - Establish a mechanism for the employer to **conduct ongoing, periodic in-house safety and health inspections** so that new or previously missed hazards or failures in controls are identified. Inspections shall be conducted with a frequency necessary to be effective.

HAWAII OSH



State of Hawaii
Occupational Safety and Health

- Hawaii OSH requires with 25 or more employees in both general industry and construction to have written comprehensive safety and health programs:
 - Address the impact of emergency situations and develop written plans and procedures to **insure employee safety during emergencies**. The term "emergency situation" means an unforeseen single event or combination of events that calls for immediate action to prevent, control or contain injury or illness to person or damage to property.
 - Establish procedures for **transmitting and enforcing safe work practices in the workplace through training, positive reinforcement, as a reward system, public recognition**, etc., correction of unsafe performance, and, if necessary, reinforcement of work practices through a clearly defined and communicated **disciplinary system**.
 - The employer shall develop and institute a safety and health **training program** for all employees so they have an understanding of the hazards to which they may be exposed, and the procedures or practices needed to protect them from these hazards.

NORTH CAROLINA OSH



- North Carolina requires programs which will promote safety and health of North Carolina employers with a workers compensation experience rate modifier of 1.5 or above; and
- Employee Safety and Health Committees for North Carolina employers having 11 or more employees and an experience rate modifier of 1.5 or above.

NORTH CAROLINA OSH



- North Carolina safety and health programs:
- All Safety and Health programs established under G.S. 95-251 for both fixed locations and non-fixed locations shall include:
 - The manner in which managers, supervisors, and employees are responsible for implementing the program and how the continued participation of management will be established, measured, and maintained including specifically what the **leadership role** of the top employer official at the worksite shall be in regard to the program.

NORTH CAROLINA OSH



- Continued:
 - The manner in which the plan will be **communicated to all affected employees** so that they are informed of work-related hazards and controls.
 - The manner in which safe work practices and rules will be **enforced**.
 - The manner in which **workplace accidents will be investigated and corrective action implemented**. The employer shall keep a comprehensive record of accident investigations, findings, and corresponding corrective action taken.

NORTH CAROLINA OSH



- Continued:
- The manner in which **near-miss incidents** will be investigated. Special emphasis will be placed on identifying all contributing factors to any near-miss incident. The employer shall keep a comprehensive record of each such incident and the findings relating to it, and shall keep a record of all corresponding corrective action taken.
- The methods used to **identify, analyze and control new or existing hazards**, conditions and operations, and the manner in which changes will be incorporated into the safety program, safety committee checklist, and communicated to all affected employees.

NORTH CAROLINA OSH



- Continued:
- A written checklist of all potential hazards to be inspected during the **quarterly inspections** required pursuant to G.S. 95-252(c)(4)d, if applicable, including, but not limited to, checking for properly marked doors (including exit doors and doors not leading to an exit); properly working fire extinguishers; unlisted hazardous substances, improperly located hazardous substances, or hazardous substances for which there are no material safety data sheets; doorways or exit pathways that are cluttered; improperly grounded equipment and exposed live wiring and parts; and unguarded machinery.
- The employer shall conduct an **annual self-audit of all required safety and health programs**. Written findings and a statement of remedial actions taken shall be retained for not less than two years. Companies with less than 11 employees that are not required to have safety and health committees shall appoint a company safety officer to conduct the annual self-audit.

NORTH CAROLINA OSH



o Multi-site employer:

- Employers with 11 or more employees who do not report to a regular or fixed location worksite must have a **Safety and Health Committee** to represent those employees. The employer must have a separate Safety and Health Committee for each mobile work crew consisting of more than 11 employees.
- Employers with employees who report to a **fixed worksite must have a separate Safety and Health Committee for each location** with 11 or more employees.

NORTH CAROLINA OSH



Training and Education

- o A. All Safety and Health Committee members shall receive training and education based on the type of business activity in which the employer is involved and the scope of the committee's duties. At a minimum employers should provide training on the following:
 - Hazard identification in the workplace
 - Principles regarding effective accident and incident investigations
 - Employee and employer rights and responsibilities under the Safety and Health Programs and Committees Act and the Mine Safety laws or OSHANC
 - Recordkeeping requirements of the North Carolina Workers Compensation Act and the Mine Safety laws or OSHANC
 - The most common causes of on the job accidents
 - The most frequently cited violations of either the Mine Safety laws or OSHANC

CALIFORNIA OSHA



Department of Industrial Relations
Cal/OSHA

- Cal/OSHA's main injury and illness prevention program requires every employer to establish, implement, and maintain an effective **Injury and Illness Prevention Program**. The Program must be:
 - In writing,
 - Identify the person with authority and responsibility for implementing the program,
 - **Include a system for ensuring that employees comply with safe and healthy work practices.** Substantial compliance with this provision includes recognition of employees who follow safe and healthful work practices, training and retraining programs, disciplinary actions, or any other such means that ensures employee compliance with safe and healthful work practices.

CALIFORNIA OSHA



Department of Industrial Relations
Cal/OSHA

- Continued:
 - **Include a system for communicating with employees in a form readily understandable** by all affected employees on matters relating to occupational safety and health, including provisions designed to encourage employees to inform the employer of hazards at the worksite without fear of reprisal.
 - **Substantial compliance with this provision** includes meetings, training programs, posting, written communications, a system of anonymous notification by employees about hazards, labor/management safety and health committees, or any other means that ensures communication with employees.

CALIFORNIA OSHA

Department of Industrial Relations
Cal/OSHA

o Continued:

- Include procedures for identifying and evaluating work place hazards including **scheduled periodic inspections** to identify unsafe conditions and work practices. Inspections shall be made to identify and evaluate hazards:
 - o When the Program is first established;
 - o Whenever **new substances, processes, procedures, or equipment are introduced** to the workplace that represent a new occupational safety and health hazard; and
 - o Whenever the employer is made aware of a new or previously unrecognized hazard.

CALIFORNIA OSHA

Department of Industrial Relations
Cal/OSHA

o Continued:

- Include a procedure to **investigate** occupational injury or occupational illness.
- Include methods and/or **procedures for correcting unsafe or unhealthy conditions**, work practices and work procedures in a timely manner based on the severity of the hazard.

CALIFORNIA OSHA



Department of Industrial Relations
Cal/OSHA

- Continued:
 - Provide training and instruction:
 - When the program is first established;
 - To all new employees;
 - To all **employees given new job assignments** for which training has not previously been received;
 - Whenever **new substances, processes, procedures or equipment are introduced** to the workplace and represent a new hazard;
 - Whenever the employer is made aware of a new or previously unrecognized hazard; and,
 - For **supervisors to familiarize themselves** with the safety and health hazards to which employees under their immediate direction and control may be exposed.

CALIFORNIA OSHA



Department of Industrial Relations
Cal/OSHA

- Continued:
 - Written documentation of the program is required as follows:
 - the identity of the person or persons with authority and responsibility for implementing the program
 - of scheduled periodic inspections to identify unsafe conditions and work practices
 - of training and instruction
 - Exception: Local governmental entities (any county, city, city and county, or district, or any public or quasi-public corporation or public agency therein, including any public entity, other than a state agency), are not required to keep records concerning the steps taken to implement and maintain the Program.

CALIFORNIA OSHA



Department of Industrial Relations
Cal/OSHA

o Continued:

- Employers who elect to use a labor /management **safety and health committee** to comply with the communication requirements of (a)(3) of this section shall be presumed to be in substantial compliance if the committee:
 - o Meets regularly, but not less than quarterly;
 - o Prepares and makes available to the affected employees, **written records of the safety and health issues discussed** at the committee meetings and, maintained for review by the Division upon request. The committee meeting records shall be maintained for at least one (1) year;

CALIFORNIA OSHA



Department of Industrial Relations
Cal/OSHA

o Continued:

- The labor/management **safety and health committee**:
 - o **Reviews** results of the periodic, scheduled worksite inspections;
 - o **Reviews** investigations of occupational accidents and causes of incidents resulting in occupational injury, occupational illness, or exposure to hazardous substances and, where appropriate, submits suggestions to management for the prevention of future incidents;
 - o **Reviews** investigations of alleged hazardous conditions brought to the attention of any committee member. When determined necessary by the committee, the committee may conduct its own inspection and investigation to assist in remedial solutions;

CALIFORNIA OSHA



Department of Industrial Relations
Cal/OSHA

o Continued:

- **The labor/management safety and health committee:**
 - o **Reviews** results of the periodic, scheduled worksite inspections;
 - o **Reviews** investigations of occupational accidents and causes of incidents resulting in occupational injury, occupational illness, or exposure to hazardous substances and, where appropriate, **submits suggestions to management** for the prevention of future incidents;
 - o **Reviews** investigations of alleged hazardous conditions brought to the attention of any committee member. When determined necessary by the committee, **the committee may conduct its own inspection and investigation** to assist in remedial solutions;

VIRGINIA SAFETY AND HEALTH CODES BOARD

Informational Briefing:
Safety and Health Management Systems
State and Local Government
Further Research Planned

FURTHER RESEARCH PLANNED

- The Department intends to conduct further research into the feasibility, costs and benefits of a comprehensive safety and health management system regulation applicable to Virginia State and Local Government entities, for consideration by the Safety and Health Codes Board.
- There are a number of practical considerations that should be noted.



FURTHER RESEARCH PLANNED



- As part of the regulatory promulgation process, VOSH would have to gather information to be used by the Department of Planning and Budget for an **economic impact analysis** of any regulation in accordance with Va. Code §2.2-4007.04 . The cost and time involved in conducting such an analysis is hard to estimate at this time.
- It is likely that **surveys** would have to be conducted to determine what types of safety and health management systems are currently in use.
- The Department will use a law school intern this summer to assist in the ongoing research.

FURTHER RESEARCH PLANNED



- VOSH intends to hold stakeholder meetings with various organizations and agencies that would be impacted by a SHMS regulation, including but not limited:
 - Virginia Municipal League
 - Virginia Association of Counties
 - Virginia Local Government Management Association
 - Virginia Colleges and Universities
 - Division of Risk Management
 - Authorities and instrumentalities such as the Washington Metropolitan Airports Authority, the Washington Metropolitan Area Transit Authority, and the GRTC Transit System

FURTHER RESEARCH PLANNED



- Stakeholder meeting with Virginia State agencies such as the:
 - Departments of Transportation, Corrections, Juvenile Justice, Fire Programs, Emergency Management, General Services, Health, Medical Assistance Services, Human Resource Management, State Police, Capitol Police, etc.
 - Alcoholic Beverage Control Authority
- The Department would welcome **participation of interested Board members** in the stakeholder meeting process. To avoid Freedom of Information Act issues regarding notice of Board meetings, **only two Board members can attend a particular stakeholder meeting.**

PILOT PROGRAM OPTION

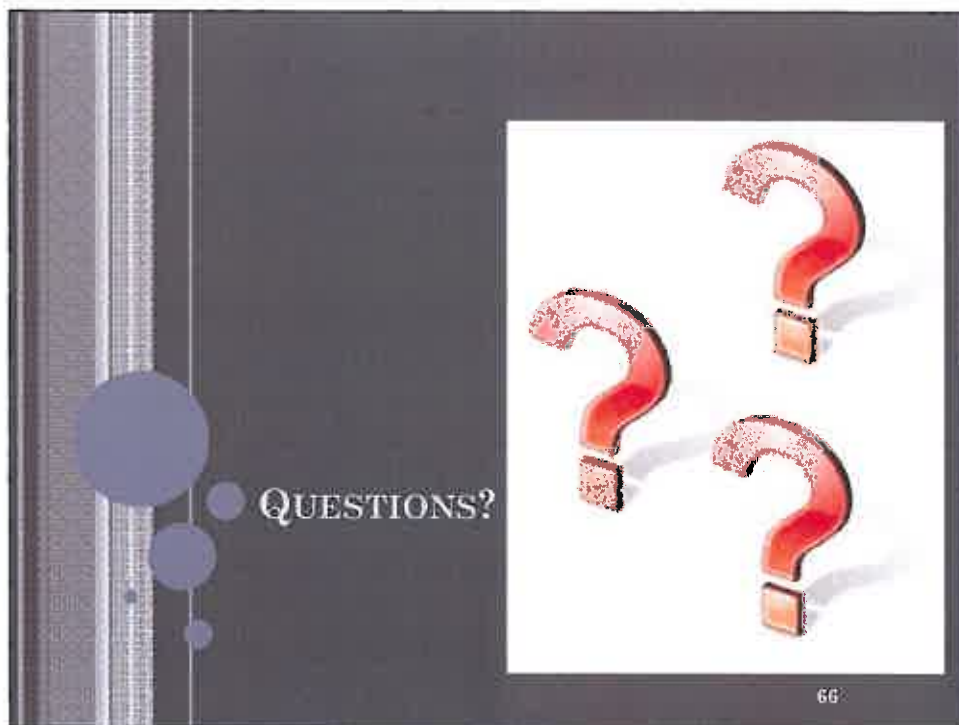


<http://www.state.virginia.gov>

- As part of the regulatory promulgation process, Va. Code §2.2-4010 provides agencies with the option of instituting pilot programs for regulations imposing local government mandates:

§ 2.2-4010. Pilot programs for regulations imposing local government mandates.

Where an agency proposes to consider the exercise of authority to promulgate a regulation that will impose a statewide mandate on the Commonwealth's localities, the agency shall consider, where appropriate, implementing the regulation on a limited basis with a representative number of localities. An agency may use such a pilot program to determine the effectiveness or impact of proposed regulations prior to statewide adoption.



437-001-0765 Safety Committees and Safety Meetings

This rule requires employers to establish and administer a safety committee, or hold safety meetings, to communicate and evaluate safety and health issues.

Purpose: The purpose of safety committees and safety meetings is to bring workers and management together in a non-adversarial, cooperative effort to promote safety and health. Safety committees and safety meetings will assist you in making continuous improvement to your safety and health programs.

Scope: This rule applies to public or private employers in Oregon subject to Oregon OSHA jurisdiction, except as listed below.

You do not have to comply with this rule if you are:

- The sole owner and only employee of a corporation;
 - A member of a board or commission and do not participate in the day-today activities of the company. You are not considered an employee for purposes of this rule.
 - Engaged in agricultural activities covered by Division 4, Subdivision C.
 - Engaged in forest activities covered by Division 7, Subdivisions B and C.
- Division 2, Subdivision L OAR 437-002-0182 (7) requires employers engaged in fire service activities to establish a separate fire service safety committee or opt for safety meetings if they meet the criteria in the following table.

You can choose a committee or meetings.

(1) You must establish and administer an effective safety committee or hold effective safety meetings as defined by these rules:

Table 1 - Safety committees or safety meeting

If	You can have a Safety Committee	You can have Safety Meetings
You have 10 or fewer employees more than half of the year (including seasonal and temporary)	Yes	Yes
More than half of your employees report to construction sites	Yes	Yes
More than half of your employees are mobile or move frequently between sites	Yes	Yes
Most employees do not regularly work outside an office environment	Yes	Yes
You have more than 10 employees at a location, and none of the above applies	Yes	No
You have satellite or auxiliary offices with 10 or fewer employees at each location	Yes	Yes

Safety Committees

(2) If you have 20 or fewer employees you must have at least 2 members. If you have more than 20 employees you must have at least 4 members.

(3) You must have an equal number of employer-selected members and employee-elected or volunteer members. If both parties agree, the committee may have more employee-elected or volunteer members.

Note: Management can select a supervisor to represent them. Employees can elect a supervisor to represent them.

(4) Your safety committee members must:

- Have a majority agree on a chairperson.
- Serve a minimum of one year, when possible.
- Be compensated at their regular rate of pay.
- Have training in the principles of accident and incident investigations for use in evaluating those events.
- Have training in hazard identification.
- Be provided with meeting minutes.
- Represent major activities of your business.

(5) Your safety committee must meet on company time as follows:

- Quarterly in situations where employees do mostly office work.
- Monthly for all other situations (except the months when quarterly worksite inspections are performed).

(6) You must keep written records of each safety committee meeting for three years that include:

- Names of attendees.
- Meeting date.
- All safety and health issues discussed, including tools, equipment, work environment, and work practice hazards.
- Recommendations for corrective action and a reasonable date by which management agrees to respond.
- Person responsible for follow up on any recommended corrective actions.
- All reports, evaluations and recommendations made by the committee.

(7) Your safety committee must establish procedures for conducting workplace safety and health inspections. Persons trained in hazard identification must conduct inspections as follows:

Table 2 - Safety committee procedures for inspections

Where	Who	When
Primary fixed locations	Employer and employee representatives	Quarterly
Office environments	Employer and employee representatives	Quarterly
Auxiliary and satellite locations	Employer and employee representatives	Quarterly
Mobile work locations, infrequently visited sites, and sites that do not lend themselves to quarterly inspections	Employer and employee representatives or a designated person	As often as the safety committee determines is necessary

- (8) In addition to the above requirements, your safety committee must:
- Work with management to establish, amend or adopt accident investigation procedures that will identify and correct hazards.
 - Have a system that allows employees an opportunity to report hazards and safety and health related suggestions.
 - Establish procedures for reviewing inspection reports and for making recommendations to management.
 - Evaluate all accident and incident investigations and make recommendations for ways to prevent similar events from occurring.
 - Make safety committee meeting minutes available for all employees to review.
 - Evaluate management's accountability system for safety and health, and recommend improvements. Examples include use of incentives, discipline, and evaluating success in controlling safety and health hazards.

(9) If you have multiple locations, you may choose to have a centralized safety committee. A centralized safety committee must represent the safety and health concerns of all locations and meet the requirements for safety committees. If you rely on a centralized committee, you must also have a

written safety and health policy that:

- Represents management commitment to the committee.
- Requires and describes effective employee involvement.
- Describes how the company will hold employees and managers accountable for safety and health.
- Explains specific methods for identifying and correcting safety and health hazards at each location.
- Includes an annual written comprehensive review of the committees' activities to determine effectiveness.

Note: Two or more employers at a single location may combine resources to meet the intent of these rules.

Safety Meetings

(10) Safety meetings must:

- Include all available employees.
- Include at least one employer representative authorized to ensure correction of safety and health issues.
- Be held on company time and attendees paid at their regular rate of pay.

(11) Hold safety meetings with the following frequency if:

Table 3 - Safety meeting frequency

Nature of the Business	Frequency of Meetings
You employ construction workers	At least monthly and before the start of each job that lasts more than one week.
Your employees do mostly office work	At least quarterly
All other employers	At least monthly

(12) Safety meetings must include discussions of:

Safety and health issues

Accident investigations, causes, and the suggested corrective measures.

(13) Employers in construction, utility work and manufacturing must document,

make available to all employees, and keep for three years a written record of each meeting that includes the following:

- Hazards related to tools, equipment, work environment and unsafe work practices identified and discussed during the meeting.
- The date of the meeting.
- The names of those attending the meeting.

All other employers do not need to keep these records if all employees attend the safety meeting.

(14) If you are a subcontractor on a multi-employer worksite, to meet the intent of (11) through (13), your employees may attend the prime contractor's safety meetings. You may keep the minutes from these meetings as a part of your records to meet the intent of (13). If you choose this option, you must still meet to discuss accidents involving your employees.

(15) Innovation. After you apply, OR-OSHA may grant approval for safety committees or safety meetings that differ from the rule requirements yet meet the intent of these rules.

(16) Effective Dates. The effective date for compliance with this rule is January 1, 2009. For employers with 10 or fewer employees, other than those in construction, the effective date is September 19, 2009.

Stat. Auth.: ORS 654.025(2) and 656.726(4).

Stats. Implemented: ORS 654.176.

Hist: WCD Admin. Order, Safety 10-1982, f. 7/30/82, ef. 11/1/82.

OR OSHA Admin. Order 12-1990, f. 6/18/90, ef. 6/18/90 (temp).

OR OSHA Admin. Order 28-1990, f. 12/18/90, ef. 3/1/91 (perm).

OR OSHA Admin. Order 6-1994, f. 9/30/94, ef. 9/30/94.

OR OSHA Admin. Order 9-1995, f. 11/29/95, ef. 11/29/95.

OR-OSHA Admin. Order 8-2001, f. 7/13/01, ef. 7/13/01.

OR-OSHA Admin. Order 6-2003, f. 11/26/03, ef. 11/26/03.

OR-OSHA Admin. Order 7-2006, f. 9/6/06, ef. 9/6/06

OR-OSHA Admin. Order 9-2008, f. 9/19/08, ef. 1/1/09.

§12-60 HAWAII ADMINISTRATIVE RULES, TITLE 12
DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS
SUBTITLE 8
HAWAII OCCUPATIONAL SAFETY AND HEALTH DIVISION
PART 2
GENERAL INDUSTRY STANDARDS
CHAPTER 60
GENERAL SAFETY AND HEALTH REQUIREMENTS

§12-60-1 Application
§12-60-2 Safety and health programs
§12-60-3 Employee responsibilities
§12-60-4 Removal of safety devices
§12-60-5 Use of intoxicants or drugs
§12-60-6 Requirements of competence
§12-60-7 Requirement of quality
§12-60-8 thru
§12-60-49 Reserved
§12-60-50 Standards

Historical note: Chapter 60 of title 12 is based upon chapter 201 of the Hawaii Occupational Safety and Health Standards, Rules and Regulations. [Eff 7/11/74; am 6/7/76; am 12/30/76; am 8/22/77; R 12/6/82]

§12-60-1 Application. The general provisions of these standards shall not be used when there are more specific provisions in other sections of the standards. [Eff 12/6/82; am 8/16/84] (Auth: HRS §396-4) (Imp: HRS §396-4)

§12-60-2 Safety and health programs. (a) Scope and application. This standard shall apply to all employers with employees doing business in the State.

(1) Every employer shall comply with the state laws, standards, and rules regarding a safe place of employment and safe practices, and shall do everything reasonable and necessary to protect the life, safety, and health of the employees.

(2) Employers involved with construction or related activities shall provide safe and healthful work places and practices that protect the employees and the affected general public as well.

(3) Every employer shall provide safe work places and practices by elimination or reduction of existing or potential hazards. Elimination of existing or potential hazards by design, process substitution, or other appropriate methods is preferred because it eliminates the need for further employee protection. When elimination is not feasible, reduction of existing or potential hazards to acceptable levels, using methods such as engineering or administrative controls, isolation, or guarding, shall be promptly used. When these methods are inadequate to reach acceptable levels, personal protective equipment shall be provided and used.

Exception: Employers with less than 25 employees need not comply with (b) (1) below.

(b) Employer duties and responsibilities. An employer subject to this standard shall meet the following requirements:

(1) Written safety and health program.

(A) The employer shall institute and maintain an effective safety and health program to identify, evaluate and control workplace hazards. Employer safety and health programs which were developed prior to the promulgation of this standard may be used to satisfy this requirement so long as they meet the criteria for an acceptable program set forth in (B) below.

(B) The program should

(i) Set forth policies, procedures, and practices that recognize and protect employees from occupational safety and health hazards.

(ii) Establish and communicate a clear goal for the safety and health program and the mechanisms which will be utilized in meeting this goal.

(iii) Provide for visible top management leadership in implementing the program and ensure that all workers at the site, including contract workers, are provided equally high quality safety and health protection, so that all will understand that management's commitment is serious.

(iv) Provide for and encourage employee involvement in the structure and operation of the program and in decisions that affect their safety and health, so that they will commit their insight and energy to achieving the safety and health program's goal and objectives. Involvement shall be accomplished through employee collective bargaining units, where appropriate.

(v) Assign and communicate responsibilities for all aspects of the safety and loss prevention program to managers, supervisors, and employees so that they all know and understand what is expected of them in the implementation of the program.

(vi) Provide a system to hold managers, supervisors, and employees accountable for their responsibilities under the safety and health program.

(vii) Provide a reliable system for employees to notify management personnel or safety and health committee members of conditions that appear hazardous or of non-compliance with the terms of the safety and health program without fear of reprisal and provide a mechanism to ensure timely and appropriate responses to correct these conditions.

(viii) Provide a mechanism to investigate accidents and "near miss" incidents, so that the root cause and means for preventing a recurrence are identified. For the purposes of this rule, the term "accident" means any unexpected happening that interrupts the work sequence or process and that may result in injury, illness, or property damage.

(ix) Provide a means to review injury and illness trends over time, so that patterns with common causes can be identified and eliminated.

(x) Establish a mechanism for the employer to conduct ongoing, periodic in-house safety and health inspections so that new or previously missed hazards or failures in controls are identified. Inspections shall be conducted with a frequency necessary to be effective.

(xi) Address the impact of emergency situations and develop written plans and procedures to insure

employee safety during emergencies. For the purpose of this standard, the term "emergency situation" means an unforeseen single event or combination of events that calls for immediate action to prevent, control or contain injury or illness to person or damage to property.

(xii) Establish procedures for transmitting and enforcing safe work practices in the workplace through training, positive reinforcement, as a reward system, public recognition, etc., correction of unsafe performance, and, if necessary, reinforcement of work practices through a clearly defined and communicated disciplinary system.

(C) The program shall be made available to the employees or their collective bargaining agent or both, upon request.

(2) Safe work practices.

(A) The employer shall eliminate or control all existing and potential hazards within the workplace in a timely manner, using one or more of the following:

(i) Engineering and work practice controls designed to control employee exposures to safety and health hazards by modifying the source to reduce exposure.

(ii) Administrative controls designed to control employee exposure to safety and health hazards.

(iii) Requirements for the distribution and proper use of personal protective equipment.

(iv) A program of medical examinations or evaluations conducted by a qualified physician or health practitioner when required by a standard.

(B) The employer shall ensure that practices are understood by all employees and are underscored through training, positive reinforcement, correction of unsafe performance, and, if necessary, through a clearly defined and communicated disciplinary system.

(3) Periodic inspections. The employer shall conduct periodic in-house safety and health inspections so that new or previously missed hazards or failures in engineering, work practice, and administrative controls are identified. The in-house inspections will be conducted by individuals who are trained to recognize hazardous conditions, as members of the safety and health committee or a person designated and trained by the employer for the facility's safety and health program.

(4) Safety and health training.

(A) The employer shall develop and institute a safety and health training program for all employees so they have an understanding of the hazards to which they may be exposed, and the procedures or practices needed to protect them from these hazards.

(B) In addition, supervisors and managers shall be trained in the elements of the employer's safety and health program and in the specific responsibilities assigned to them under the program.

(C) The employer shall ensure that the supervisors and managers understand their responsibilities under the safety and health program and their importance to the safety and health of the workplace. In particular, the training for managers and supervisors shall enable them to:

(i) Recognize potential hazards;

(ii) Maintain safety and health protection in the work area; and

(iii) Reinforce employee training on the nature of the potential hazards and required protective measures.

(c) The use of any machinery, tool, material, or equipment which is not in compliance with any applicable requirement of these standards is prohibited. The machine, tool, material, or equipment shall either be identified as unsafe by tagging or locking the controls to render them inoperable or shall be physically removed from its place of operation.

(d) The employer shall permit only those employees qualified by training or experience to operate equipment and machinery.

(e) For procedures in reporting accidents, consult section 12-52-8.

(f) All safety devices and safeguards in use shall be kept sound and operable.

(g) Any employee having knowledge of the existence of any unsafe device, practice, operation, safeguard, equipment, or condition shall promptly inform the supervisor or person in charge. A supervisor or person in charge to whose attention the existence of any unsafe device, practice, operation, safeguard, equipment, or condition is called shall take immediate steps to correct the unsafe condition or practice. [Eff 12/6/82; am 8/16/84; am 9/21/96] (Auth: HRS §396-4) (Imp: HRS §396-4)

§12-60-3 Employee responsibilities. The employee shall not knowingly perform work in an unsafe manner or in an unsafe environment without the safeguards provided for in these standards. The employee shall not tamper with or render ineffective any safety device or safeguard and shall use the safety devices provided for personal protection. [Eff. 12/6/82] (Auth: HRS §396-4) (Imp: HRS §396-4)

§12-60-4 Removal of safety devices. No person shall remove, displace, damage, destroy, or carry off any safety device, safeguard, notice, or warning furnished for use in any employment or place of employment. [Eff. 12/6/82] (Auth: HRS §396-4) (Imp: HRS §396-4)

§12-60-5 Use of intoxicants or drugs. The use of intoxicants or harmful drugs while on duty is prohibited. No person shall be permitted to work under the influence of liquor or drugs and shall be removed from the work premises if found under the influence of liquor or drugs. [Eff. 12/6/82] (Auth: HRS §396-4) (Imp: HRS §396-4)

§12-60-6 Requirements of competence. When work is to be performed by or under the supervision of a designated person, that person shall have the degree of competence necessary to perform or direct the work in a safe manner. [Eff. 12/6/82] (Auth: HRS §396-4) (Imp: HRS §396-4)

§12-60-7 Requirement of quality. Materials, devices, structures and methods and procedures of operation which are required by these standards, and which are described by general descriptive terms such as adequate, proper, sufficient and the like, shall be of such kind and quality as a reasonable and prudent person experienced in the work would require in order to effect a safe operation. [Eff. 12/6/82] (Auth: HRS §396-4) (Imp: HRS §396-4)

SECTION .0600 - SAFETY AND HEALTH PROGRAMS AND COMMITTEES

13 NCAC 07A .0601 PURPOSE AND SCOPE

(a) This Section sets forth rules of procedure for implementation of G.S. 95, Article 22 which is entitled "Safety and Health Programs and Committees."

(b) The purpose of this Section is to establish programs which will promote safety and health for all North Carolina employers with a workers' compensation experience rate modifier of 1.5 or above. Employee Safety and Health Committees will be established by all North Carolina employers having 11 or more employees and an experience rate modifier of 1.5 or above.

(c) For the purposes of Rules .0603 and .0606 of this Section, compliance with the safety and health program and the safety and health training requirements of the Mine Safety and Health Administration of the United States Department of Labor shall be deemed sufficient for compliance with Rules .0603 and .0606 of this Section for those operations subject to the federal Mine Safety and Health Act (Public Law 91-173 as amended by Public Law 95-164).

*History Note: Authority G.S. 95-251; 95-252; 95-254;
Eff. August 2, 1993;
Pursuant to G.S. 150B-21.3A rule is necessary without substantive public interest Eff. March 1, 2016.*

13 NCAC 07A .0602 DEFINITIONS

- (a) "Fixed location worksite" means any worksite to which an employee regularly reports for at least a consecutive three month period.
- (b) "Near-miss" means any accident or incident at a worksite that does not result in injury, but the potential for serious physical harm exists.
- (c) "FMSHA" means the Federal Mine Safety and Health Act of 1977 [Public Law 95-164].
- (d) "MSHANC" means the Mine Safety and Health Act of North Carolina as contained in North Carolina General Statute 74-24.1 et seq.
- (e) "Mine Safety Laws" means MSHANC and FMSHA and the rules and standards adopted pursuant thereof.
- (f) "OSHANC" means the Occupational Safety and Health Act of North Carolina as contained in North Carolina General Statute 95-126 et seq.
- (g) "Regular location worksite" means a single region or geographic area where employees perform work for one employer.
- (h) "Mobile work crews" means a group of employees of one specific trade (i.e. carpenters, electricians, roofers) who report to various, non-fixed worksites within one geographic area.
- (i) "Multi-employer worksite" means any worksite at which more than one employer has employees reporting to work.

*History Note: Authority G.S. 95-251;
 Eff. August 2, 1993;
 Amended Eff. June 1, 1995;
 Pursuant to G.S. 150B-21.3A rule is necessary without substantive public interest Eff. March 1, 2016.*

13 NCAC 07A .0603 SAFETY AND HEALTH PROGRAMS

(a) All Safety and Health programs established under G.S. 95-251 for both fixed locations and non-fixed locations shall meet or exceed the requirements of G.S. 95-251(b)(1)-(9).

(b) The written program shall also include:

- (1) The manner in which managers, supervisors, and employees are responsible for implementing the program and how the continued participation of management will be established, measured, and maintained including specifically what the leadership role of the top employer official at the worksite shall be in regard to the program.
- (2) The manner in which the plan will be communicated to all affected employees so that they are informed of work-related hazards and controls.
- (3) The manner in which safe work practices and rules will be enforced.
- (4) The manner in which workplace accidents will be investigated and corrective action implemented. The employer shall keep a comprehensive record of accident investigations, findings, and corresponding corrective action taken.
- (5) The manner in which near-miss incidents will be investigated. Special emphasis will be placed on identifying all contributing factors to any near-miss incident. The employer shall keep a comprehensive record of each such incident and the findings relating to it, and shall keep a record of all corresponding corrective action taken.
- (6) The methods used to identify, analyze and control new or existing hazards, conditions and operations, and the manner in which changes will be incorporated into the safety program, safety committee checklist, and communicated to all affected employees.
- (7) Written compliance plans as required by either the Mine Safety laws or OSHA standards, whichever is applicable to the employer. Written compliance plans shall include, the following OSHA standards, when applicable: Excavations, Hazard Communication, Occupational Noise Exposure, Control of Hazardous Energy Sources (Lockout/Tagout), Respiratory Protection, Process Safety Management of Highly Hazardous Chemicals, Bloodborne Pathogens, Life Safety Code, Cotton Dust, and Confined Spaces.
- (8) A written checklist of all potential hazards to be inspected during the quarterly inspections required pursuant to G.S. 95-252(c)(4)d, if applicable, including, but not limited to, checking for properly marked doors (including exit doors and doors not leading to an exit); properly working fire extinguishers; unlisted hazardous substances, improperly located hazardous substances, or hazardous substances for which there are no material safety data sheets; doorways or exit pathways that are cluttered; improperly grounded equipment and exposed live wiring and parts; and unguarded machinery. Each item on the aforementioned written checklist shall be checked during the quarterly inspections and a copy of the list shall be retained by the employer for not less than two years. All conditions or items deemed to be out of compliance shall be immediately abated, unless circumstances beyond the control of the employer requires a longer period of time.
- (9) The employer shall conduct an annual self-audit of all required safety and health programs. Written findings and a statement of remedial actions taken shall be retained for not less than two years. Companies with less than 11 employees that are not required to have safety and health committees shall appoint a company safety officer to conduct the annual self-audit.
- (10) The purpose and operation of the Safety and Health Committee where such committee exists.
- (11) The methods used to communicate requirements of the program to other employers or subcontractors and their employees who may be present at the same site.

*History Note: Authority G.S. 95-251;
Eff. August 2, 1993;
Amended Eff. June 1, 1995;
Pursuant to G.S. 150B-21.3A rule is necessary without substantive public interest Eff. March 1, 2016.*

13 NCAC 07A .0604 SELECTION OF SAFETY COMMITTEES

(a) An employer may elect to implement any one of the following selection processes as a means of meeting the requirements for selection of representatives to employee Safety and Health committees pursuant to G.S. 95-252(d). The employer shall retain written documentation outlining any utilized selection process. An employer whose employees are represented by a collective bargaining representative must utilize either subsection 8, 9, or 10 for committee selection purposes. Any non-management employees who choose not to participate in the collective bargaining process are still considered to be represented by the collective bargaining representative for purposes of this Rule for committee selection purposes.

- (1) The employer may devise and implement any means of employee selection so long as:
 - (A) the employee representatives are selected "by and from among the employer's non-management employees" as specified in the statute,
 - (B) minimum numbers are met, and
 - (C) the intent of the statute is satisfied.
- (2) The employer may require that all non-management employees serve on a Safety and Health Committee. In the instance of a small employer, there may be one committee comprised of all non-management employees which serves the entire organization. In a larger organization, there may be several committees, each addressing one or more of the responsibilities of the safety committee as outlined in G.S. 95-252, with employees divided among the committees.
- (3) The employer may conduct an election at either a meeting or through the distribution of ballots. The election process shall provide for the nomination by non-management employees (including self-nominations) of non-management employees in the numbers specified by the employer, but shall not be less than one nor more than the number of non-management members specified by statute. The number of non-management employees specified by statute receiving the most nominations shall serve on the Safety and Health Committee.
- (4) The employer may conduct an employee meeting at which open nominations are held and secret ballots are used to elect employee representatives. The meeting may be for all non-management employees or by working unit.
- (5) The employer may conduct an employee meeting at which non-management employees nominate one peer by listing that employee's name on a ballot. The ballots shall be tallied and the appropriate number of representatives, in the numbers required by statute, shall be determined by those employees named on the most ballots.
- (6) The employer may solicit nominations from all non-management employees for employee representatives to serve on the committee, then select representatives by lottery from among those nominated to obtain the statutorily appropriate number of employee representatives for the safety and health committee.
- (7) The employer may solicit volunteers and nominations from among the non-management employees for a pool of applicants to serve as employee representatives on the safety committee. (If no volunteers or nominations are received, the employer shall require that nominations be submitted from a cross section of employee work units within the establishment.) The members of the applicant pool shall select from among its ranks the initial employee representatives necessary to meet minimum numbers as specified in the statute.
- (8) Employees shall be selected to serve on a safety and health committee(s) in accordance with any contract that exists between a collective bargaining unit and the employer. Should the contract not otherwise specify selection of a safety and health committee, non-management members shall be selected in a manner approved by the certified collective bargaining agent.
- (9) Employers having more than one collective bargaining unit shall devise and implement a means of employee selection utilizing the provisions of the existing contracts or methods approved by the certified collective bargaining agents. Safety committee members shall be selected in proportionate numbers to the number of employees represented by the certified collective bargaining agents.
- (10) Employers having some non-management employees represented by a collective bargaining agent or agents and some not represented shall devise a means that utilizes language in the contract or methods approved by the certified collective bargaining agent(s) for selection of bargaining unit representatives, and one or more of the above means for selecting non-management employee members not represented by the bargaining agent(s). Safety committee members shall be selected in proportion to the number of employees represented by the certified collective bargaining agent(s) and the number of employees not represented.

- (b) However initial members of the committee are selected, replacement members may be chosen in accordance with one of the procedures in this Rule, or the committee may continue with the same members.
- (c) Non-management employee representatives shall serve a term of at least one year, and shall not be allowed to succeed themselves in the same position more than once. Terms may be staggered. However, employers with less than 25 employees may allow non-management employee representatives to serve two successive terms.
- (d) It shall not be a violation of any part of the statute if an employer has a safety and health program utilizing some other form of employee involvement which has been in operation for more than one year prior to July 15, 1993, and which is submitted for approval and subsequently approved by the Commissioner or his authorized representative, for that program to be used to satisfy the requirements of Section .0600.

*History Note: Authority G.S. 95-252;
Eff. August 2, 1993;
Amended Eff. June 1, 1995;
Pursuant to G.S. 150B-21.3A rule is necessary without substantive public interest Eff. March 1, 2016.*

13 NCAC 07A .0605 SAFETY & HEALTH COMMITTEE REQUIREMENTS

(a) Multi-Site Employers:

- (1) Employers with 11 or more employees who do not report to a fixed or regular location worksite are required to have a Safety and Health Committee to represent those employees. The employer must have a separate Safety and Health Committee for each mobile work crew consisting of 11 or more employees.
- (2) Employers with employees who report to a fixed or regular location worksite must have a separate safety and health committee for each location with 11 or more employees.

(b) Multi-Employer Worksites:

- (1) At multi-employer fixed or regular location worksites, any employer required to establish a Safety and Health Committee pursuant to G.S. 95-252 shall notify the general contractor or equivalent of the requirements of this legislation and of the chairpersons of their committee.
- (2) The general contractor or equivalent shall designate a representative to attend the Safety and Health Committee meetings of the notifying employer(s).
- (3) The notifying employer shall work with the general contractor or equivalent to distribute information as required by G.S. 95-251(b)(9).

*History Note: Authority G.S. 95-252;
Eff. August 2, 1993;
Amended Eff. June 1, 1995;
Pursuant to G.S. 150B-21.3A rule is necessary without substantive public interest Eff. March 1, 2016.*

13 NCAC 07A .0606 TRAINING AND EDUCATION

(a) All safety and health committee members shall receive training and education based on the type of business activity in which the employer is involved and the scope of the committee's duties. At a minimum, employers shall provide training regarding the following:

- (1) Hazard identification in the workplace.
- (2) Principles regarding effective accident and incident investigations.
- (3) Employee and employer rights and responsibilities under the Safety and Health Programs and Committees Act (G.S. 95-250 et al.) and the Mine Safety laws or OSHANC.
- (4) Recordkeeping requirements of the North Carolina Workers' Compensation Act (G.S. 97-1 et seq.) and the Mine Safety laws or OSHANC.
- (5) The most common causes of on-the-job accidents.
- (6) The most frequently cited violations of either the Mine Safety laws or OSHANC.

(b) There shall also be established for employees whether or not a safety and health committee is required:

- (1) A system for training and education of all employees in occupational safety and health hazards at the worksite. The system shall contain specific requirements that new employees not be allowed to begin work, except when participating in carefully supervised on-the-job training, until thoroughly trained in the safe use of all applicable equipment and substances, and procedures relating to their workplace environment.
- (2) A system of training and education for any existing employee given a new work assignment.
- (3) A system of training and education for all affected employees when a new substance, process, procedure or piece of equipment is introduced into the workplace and presents a new hazard to safety or health.
- (4) A system of training and education for all affected employees when any new personal protective equipment or different work practice is used on existing hazards.
- (5) Training to comply with all applicable OSHA employee training requirements, including, but not limited within General Industry to Means of Egress; Powered Platforms, Manlifts, and Vehicle-Mounted Work Platforms; Occupational Health and Environmental Control; Hazardous Materials; Personal Protective Equipment; General Environmental Controls; Medical and First Aid; Fire Protection; Materials Handling and Storage; Machinery and Machine Guarding; Welding, Cutting and Brazing; Special Industries; Electrical; Commercial Diving Operations; Toxic and Hazardous Substances, and Occupational Exposure to Hazardous Chemicals in Laboratories; including, but not limited within the Construction Industry to General Safety and Health Provisions; Occupational Health and Environmental Controls; Personal Protective and Life Saving Equipment; Fire Protection and Prevention; Signs, Signals, and Barricades; Tools - Hand and Power; Welding and Cutting; Electrical; Ladders and Scaffolding; Cranes, Derricks, Hoists, Elevators and Conveyors; Motor Vehicles, Mechanized Equipment, and Marine Operations; Excavations; Concrete and Masonry Construction; Underground Construction, Caissons, Cofferdams and Compressed Air; Demolitions; Blasting and Use of Explosives; Power Transmission Distribution; Stairways and Ladders; including, but not limited within Agriculture to Roll-Over Protective Structures, and Safety for Agricultural Equipment; and including, but not limited to the Process Safety Management Standard, the Confined Spaces Standard, Hazard Communication Standard, and the Bloodborne Pathogens Standard.

(c) The required safety and health training shall be provided by someone trained to recognize, evaluate and control safety and health hazards. The training may be provided on-site or off-site.

*History Note: Authority G.S. 95-254;
Eff. August 2, 1993;*

Pursuant to G.S. 150B-21.3A rule is necessary without substantive public interest Eff. March 1, 2016.

13 NCAC 07A .0607 REPORTS

The report forms required from employers within 60 days of notification by the Commissioner of Labor of inclusion in the program shall include the following information:

- (1) Name of the employer.
- (2) Address of employer.
- (3) Telephone number of employer.
- (4) Number of employees.
- (5) SIC Code.
- (6) Unemployment Insurance ID number of the employer.
- (7) Description of the manufacturing or work processes at this location.
- (8) Name and address of any authorized collective bargaining agent.
- (9) Date and Certification of compliance with G.S. 95-251 and, if applicable, G.S. 95-252.
- (10) A timetable for delivery of training to employees and committee members. In no case shall the timetable for delivery of training exceed an additional 90 days beyond notification to the Commissioner of Labor of compliance with these Rules.

*History Note: Authority G.S. 95-255;
Eff. August 2, 1993;
Pursuant to G.S. 150B-21.3A rule is necessary without substantive public interest Eff. March 1, 2016.*

GENERAL INDUSTRY

Subchapter 7. General Industry Safety Orders

Group 1. General Physical Conditions and Structures Orders

Introduction

<https://www.dir.ca.gov/title8/3203.html>

§3203. Injury and Illness Prevention Program. ETOOL

Cal/OSHA Workplace Injury and Illness Prevention Program, with checklists for self-inspection || (printable version)

Prevention Model Program for High Hazard Employers

Prevention Model Program for Non-High Hazard Employers

Prevention Model Program for Employers with Intermittent Workers

Prevention Model Program for Workplace Security || (printable version)

(a) Effective July 1, 1991, every employer shall establish, implement and maintain an effective Injury and Illness Prevention Program (Program). The Program shall be in writing and, shall, at a minimum:

(1) Identify the person or persons with authority and responsibility for implementing the Program.

(2) Include a system for ensuring that employees comply with safe and healthy work practices. Substantial compliance with this provision includes recognition of employees who follow safe and healthful work practices, training and retraining programs, disciplinary actions, or any other such means that ensures employee compliance with safe and healthful work practices.

(3) Include a system for communicating with employees in a form readily understandable by all affected employees on matters relating to occupational safety and health, including provisions designed to encourage employees to inform the employer of hazards at the worksite without fear of reprisal. Substantial compliance with this provision includes meetings, training programs, posting, written communications, a system of anonymous notification by employees about hazards, labor/management safety and health committees, or any other means that ensures communication with employees.

Exception: Employers having fewer than 10 employees shall be permitted to communicate to and instruct employees orally in general safe work practices with specific instructions with respect to hazards unique to the employees' job assignments as compliance with subsection (a)(3).

(4) Include procedures for identifying and evaluating work place hazards including scheduled periodic inspections to identify unsafe conditions and work practices. Inspections shall be made to identify and evaluate hazards:

(A) When the Program is first established;

Exception: Those employers having in place on July 1, 1991, a written Injury and Illness Prevention Program complying with previously existing section 3203.

(B) Whenever new substances, processes, procedures, or equipment are introduced to the workplace that represent a new occupational safety and health hazard; and

(C) Whenever the employer is made aware of a new or previously unrecognized hazard.

(5) Include a procedure to investigate occupational injury or occupational illness.

(6) Include methods and/or procedures for correcting unsafe or unhealthy conditions, work practices and work procedures in a timely manner based on the severity of the hazard:

(A) When observed or discovered; and,

(B) When an imminent hazard exists which cannot be immediately abated without endangering employee(s) and/or property, remove all exposed personnel from the area except those necessary to correct the existing condition. Employees necessary to correct the hazardous condition shall be provided the necessary safeguards.

(7) Provide training and instruction:

(A) When the program is first established;

Exception: Employers having in place on July 1, 1991, a written Injury and Illness Prevention Program complying with the previously existing Accident Prevention Program in Section 3203.

(B) To all new employees;

(C) To all employees given new job assignments for which training has not previously been received;

(D) Whenever new substances, processes, procedures or equipment are introduced to the workplace and represent a new hazard;

(E) Whenever the employer is made aware of a new or previously unrecognized hazard; and,

(F) For supervisors to familiarize themselves with the safety and health hazards to which employees under their immediate direction and control may be exposed.

(b) Records of the steps taken to implement and maintain the Program shall include:

(1) Records of scheduled and periodic inspections required by subsection (a)(4) to identify unsafe conditions and work practices, including person(s) conducting the inspection, the unsafe conditions and work practices that have been identified and action taken to correct the identified unsafe conditions and work practices. These records shall be maintained for at least one (1) year; and

Exception: Employers with fewer than 10 employees may elect to maintain the inspection records only until the hazard is corrected.

(2) Documentation of safety and health training required by subsection (a)(7) for each employee, including employee name or other identifier, training dates, type(s) of training, and training providers. This documentation shall be maintained for at least one (1) year.

EXCEPTION NO. 1: Employers with fewer than 10 employees can substantially comply with the documentation provision by maintaining a log of instructions provided to the employee with respect to the hazards unique to the employees' job assignment when first hired or assigned new duties.

EXCEPTION NO. 2: Training records of employees who have worked for less than one (1) year for the employer need not be retained beyond the term of employment if they are provided to the employee upon termination of employment.

EXCEPTION NO. 3: For Employers with fewer than 20 employees who are in industries that are not on a designated list of high-hazard industries established by the Department of Industrial Relations (Department) and who have a Workers' Compensation Experience Modification Rate of 1.1 or less, and for any employers with fewer than 20 employees who are in industries on a designated list of low-hazard industries established by the Department, written documentation of the Program may be limited to the following requirements:

A. Written documentation of the identity of the person or persons with authority and responsibility for implementing the program as required by subsection (a)(1).

B. Written documentation of scheduled periodic inspections to identify unsafe conditions and work practices as required by subsection (a)(4).

C. Written documentation of training and instruction as required by subsection (a)(7).

ExceptionNo. 4: Local governmental entities (any county, city, city and county, or district, or any public or quasi-public corporation or public agency therein, including any public entity, other than a state agency, that is a member of, or created by, a joint powers agreement) are not required to keep records concerning the steps taken to implement and maintain the Program.

Note1: Employers determined by the Division to have historically utilized seasonal or intermittent employees shall be deemed in compliance with respect to the requirements for a written Program if the

employer adopts the Model Program prepared by the Division and complies with the requirements set forth therein.

Note2: Employers in the construction industry who are required to be licensed under Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code may use records relating to employee training provided to the employer in connection with an occupational safety and health training program approved by the Division, and shall only be required to keep records of those steps taken to implement and maintain the program with respect to hazards specific to the employee's job duties.

(c) Employers who elect to use a labor/management safety and health committee to comply with the communication requirements of subsection (a)(3) of this section shall be presumed to be in substantial compliance with subsection (a)(3) if the committee:

(1) Meets regularly, but not less than quarterly;

(2) Prepares and makes available to the affected employees, written records of the safety and health issues discussed at the committee meetings and, maintained for review by the Division upon request. The committee meeting records shall be maintained for at least one (1) year;

(3) Reviews results of the periodic, scheduled worksite inspections;

(4) Reviews investigations of occupational accidents and causes of incidents resulting in occupational injury, occupational illness, or exposure to hazardous substances and, where appropriate, submits suggestions to management for the prevention of future incidents;

(5) Reviews investigations of alleged hazardous conditions brought to the attention of any committee member. When determined necessary by the committee, the committee may conduct its own inspection and investigation to assist in remedial solutions;

(6) Submits recommendations to assist in the evaluation of employee safety suggestions; and

(7) Upon request from the Division, verifies abatement action taken by the employer to abate citations issued by the Division.

Note: Authority cited: Sections 142.3 and 6401.7, Labor Code. Reference: Sections 142.3 and 6401.7, Labor Code.

CONSTRUCTION INDUSTRY

Subchapter 4. Construction Safety Orders

Article 3. General

<https://www.dir.ca.gov/title8/1509.html>

§1509. Injury and Illness Prevention Program.

Pocket Guide for the Construction Industry

Cal/OSHA Workplace Injury and Illness Prevention Program, with checklists for self-inspection

Prevention Model Program for High Hazard Employers

Prevention Model Program for Non-High Hazard Employers

Prevention Model Program for Employers with Intermittent Workers

Prevention Model Program for Employers with Intermittent Workers in Agriculture

Workplace postings

Tailgate/Toolbox Topics: Setting up a Tailgate/Toolbox Safety Meeting

(a) Every employer shall establish, implement and maintain an effective Injury and Illness Prevention Program in accordance with section 3203 of the General Industry Safety Orders.

(b) Every employer shall adopt a written Code of Safe Practices which relates to the employer's operations. The Code shall contain language equivalent to the relevant parts of Plate A-3 of the Appendix.

(c) The Code of Safe Practices shall be posted at a conspicuous location at each job site office or be provided to each supervisory employee who shall have it readily available.

(d) Periodic meetings of supervisory employees shall be held under the direction of management for the discussion of safety problems and accidents that have occurred.

(e) Supervisory employees shall conduct "toolbox" or "tailgate" safety meetings, or equivalent, with their crews at least every 10 working days to emphasize safety.

NOTE: Authority cited: Sections 142.3 and 6401.7, Labor Code. Reference: Sections 142.3 and 6401.7, Labor Code.

PETROLEUM INDUSTRY

Subchapter 14. Petroleum Safety Orders--Drilling and Production

Article 3. Injury and Illness Prevention Program

<https://www.dir.ca.gov/title8/6507.html>

§6507. Injury and Illness Prevention Program.

Cal/OSHA Workplace Injury and Illness Prevention Program, with checklists for self-inspection

Prevention Model Program for High Hazard Employers

Prevention Model Program for Non-High Hazard Employers

Prevention Model Program for Employers with Intermittent Workers

The employer shall establish, implement and maintain an Injury and Illness Prevention Program in accordance with the requirements of Section 3203 of the General Industry Safety Orders.

NOTE: Authority cited: Section 142.3, Labor Code. Reference: Section 142.3, Labor Code.

SHIPPING INDUSTRY

Subchapter 18. Ship Building, Ship Repairing and Ship Breaking Safety Orders

Article 1. Introduction

<https://www.dir.ca.gov/title8/8350.html>

§8350. Injury and Illness Prevention Program.

Cal/OSHA Workplace Injury and Illness Prevention Program, with checklists for self-inspection

Prevention Model Program for High Hazard Employers

Prevention Model Program for Non-High Hazard Employers

Prevention Model Program for Employers with Intermittent Workers

All employers shall establish, implement and maintain an effective Injury and Illness Prevention Program in accordance with section 3203 of the General Industry Safety Orders.

(a) A written Code of Safe Practices similar or equal to those contained in Appendix A shall be developed, implemented and posed in a conspicuous location, and issued to each employee.

NOTE: Authority cited: Sections 142.3 and 6401.7, Labor Code. Reference: Sections 142.3 and 6401.7, Labor Code.

Subchapter 18. Ship Building, Ship Repairing and Ship Breaking Safety Orders

Article 8. Miscellaneous Safe Practices

https://www.dir.ca.gov/title8/8397_13.html

§8397.13. Training.

(a) The employer shall train employees in the applicable requirements of this section:

- (1) Within 90 days of March 17, 2005, for employees currently working;
- (2) Upon initial assignment for new employees; and
- (3) When necessary to maintain proficiency for employees previously trained.

(b) Employee training. The employer shall ensure that all employees are trained on:

(1) The emergency alarm signals, including system discharge alarms and employee evacuation alarms; and

(2) The primary and secondary evacuation routes that employees shall use in the event of a fire in the workplace. While all vessels and vessel sections shall have a primary evacuation route, a secondary evacuation route is not required when impracticable.

(c) Additional training requirements for employees expected to fight incipient stage fires. The employer shall ensure that employees expected to fight incipient stage fires are trained on the following:

(1) The general principles of using fire extinguishers or hose lines, the hazards involved with incipient firefighting, and the procedures used to reduce these hazards;

(2) The hazards associated with fixed and portable fire protection systems that employees may use or to which they may be exposed during discharge of those systems; and

(3) The activation and operation of fixed and portable fire protection systems that the employer expects employees to use in the workplace.

(d) Additional training requirements for shipyard employees designated for fire response. The employer shall:

(1) Have a written training policy stating that fire response employees shall be trained and capable of carrying out their duties and responsibilities at all times;

(2) Keep written standard operating procedures that address anticipated emergency operations and update these procedures as necessary;

(3) Review fire response employee training programs and hands-on sessions before they are used in fire response training to make sure that fire response employees are protected from hazards associated with fire response training;

(4) Provide training for fire response employees that ensures they are capable of carrying out their duties and responsibilities under the employer's standard operating procedures;

(5) Train new fire response employees before they engage in emergency operations;

(6) At least quarterly, provide training on the written operating procedures to fire response employees who are expected to fight fires;

(7) Use qualified instructors to conduct the training;

(8) Conduct any training that involves live fire response exercises in accordance with NFPA 1403, Standard on Live Fire Training Evolutions, 2002 Edition, which is hereby incorporated by reference;

(9) Conduct semi-annual drills according to the employer's written procedures for fire response employees that cover site-specific operations, occupancies, buildings, vessels and vessel sections, and fire-related hazards; and

(10) Prohibit the use of smoke generating devices that create a dangerous atmosphere in training exercises.

(e) Additional training requirements for fire watch duty.

(1) The employer shall ensure that each fire watch is trained by an instructor with adequate fire watch knowledge and experience to cover the items as follows:

(A) Before being assigned to fire watch duty;

(B) Whenever there is a change in operations that presents a new or different hazard;

(C) Whenever the employer has reason to believe that the fire watch's knowledge, skills, or understanding of the training previously provided is inadequate; and

(D) Annually.

(2) The employer shall ensure that each employee who stands fire watch duty is trained in:

(A) The basics of fire behavior, the different classes of fire and of extinguishing agents, the stages of fire, and methods for extinguishing fires;

(B) Extinguishing live fire scenarios whenever allowed by local and federal law;

(C) The recognition of the adverse health effects that may be caused by exposure to fire;

(D) The physical characteristics of the hot work area;

(E) The hazards associated with fire watch duties;

(F) The personal protective equipment (PPE) needed to perform fire watch duties safely;

(G) The use of PPE;

(H) The selection and use of any fire extinguishers and fire hoses likely to be used by a fire watch in the work area;

(I) The location and use of barriers;

(J) The means of communication designated by the employer for fire watches;

(K) When and how to start fire alarm procedures; and

(L) The employer's evacuation plan.

(3) The employer shall ensure that each fire watch is trained to alert others to exit the space whenever:

(A) The fire watch perceives an unsafe condition;

(B) The fire watch perceives that a worker performing hot work is in danger;

(C) The employer or a representative of the employer orders an evacuation; or

(D) An evacuation signal, such as an alarm, is activated.

(f) Records. The employer shall keep records that demonstrate that employees have been trained as required by subsections (a) through (e) of this section.

(1) The employer shall ensure that the records include the employee's name; the trainer's name; the type of training; and the date(s) on which the training took place.

(2) The employer shall keep each training record for one year from the time it was made or until it is replaced with a new training record, whichever is shorter, and make it available for inspection and copying by the Division upon request.

Note: Authority cited: Section 142.3 Labor Code. Reference: Section 142.3, Labor Code.

TUNNELING

Subchapter 20. Tunnel Safety Orders

Article 3. Injury and Illness Prevention Program

<https://www.dir.ca.gov/title8/sb20a3.html>

- §8406. Injury and Illness Prevention Program.
- §8407. Safety Training and Instruction.
- §8408. Pre-Job Safety Conference.
- §8409. Safety Bulletin Boards.

Subchapter 20. Tunnel Safety Orders

Article 3. Injury and Illness Prevention Program

<https://www.dir.ca.gov/title8/8406.html>

§8406. Injury and Illness Prevention Program.

Cal/OSHA Workplace Injury and Illness Prevention Program, with checklists for self-inspection || (printable version)

Prevention Model Program for High Hazard Employers || (printable version)

Prevention Model Program for Non-High Hazard Employers || (printable version)

Prevention Model Program for Employers with Intermittent Workers || (printable version)

Prevention Model Program for Employers with Intermittent Workers in Agriculture || (printable version)

Prevention Model Program for Workplace Security || (printable version)

Tailgate/Toolbox Topics: Setting up a Tailgate/Toolbox Safety Meeting

Every employer shall establish, implement and maintain an effective Injury and Illness Prevention Program in accordance with Section 3203 of the General Industry Safety Orders and the following:

(a) All safety suggestions shall be given prompt consideration by the employer and a written record shall be maintained for the duration of the underground work and made available to the Division upon request.

(b) The adoption and use of a code of safe practices and procedures for underground operations similar to the Safe Practices Code in Appendix A of these orders.

(c) Copies of such code shall be posted in accordance with Section 8409 and available at the job site for inspection by the Division.

(d) The employer shall hold meetings at least once each month with supervisory personnel and foremen for a discussion of safety problems and accidents that have occurred. A record of such meetings shall be kept, stating the meeting date, time, place, supervisory personnel present, subjects discussed and corrective action taken, if any, and maintained for inspection by the Division.

(e) Supervisory personnel shall conduct "toolbox" or "tailgate" safety meetings with their crews at least weekly on the job to emphasize safety. Records of all meetings shall be kept, stating the meeting date, time, personnel present, subjects discussed, and corrective actions taken if any, and maintained for inspection by the Division.

(f) In all places of employment where these safety orders apply, the employer shall designate an on-site Safety Representative who is qualified to recognize hazardous conditions and is certified by the Division. This person shall have the authority to correct unsafe conditions and practices, or stop the work if an imminent hazard exists. This person shall be responsible for directing the required safety and health program.

(g) All applicants for certification as a Safety Representative shall meet the following minimum requirements:

(1) Two years experience performing safety related work in tunnels and/or underground mines.

(2) In lieu of one year of the above experience, applicants may substitute equivalent education or work experience as follows:

(A) Work experience in the capacity of managing or directing tunnel safety programs, or

(B) Formal safety related education degree in safety or certification as a Certified Safety Professional (CSP), Certified Industrial Hygienist (CIH), Professional Safety Engineer (PSE), or similar.

(3) Be able to communicate with affected employees.

(4) Be of such physical condition that it would not interfere with the proper performance of their duties.

(5) Be thoroughly familiar and conversant with all Tunnel Safety Orders and other applicable safety orders.

(6) Knowledge of the means and methods of underground construction operations.

(7) The ability to identify and evaluate unsafe conditions; and knowledge of the safeguards required to protect employees from the effect of these hazards.

(8) Pass a written and oral examination administered by the Division.

(h) All applicants for certification as a Gas Tester as required by these safety orders shall have the following minimum requirements:

- (1) One year experience in performing underground work in mines or tunnels.
- (2) Be of such physical condition that it would not interfere with the proper performance of their duties.
- (3) Be able to communicate with all affected employees.
- (4) Knowledge of the gases that may be encountered underground, the hazards they pose, and the safeguards required to protect employees from their effect.
- (5) Demonstrate proficiency in the operation, use and calibration of ventilation and gas detection instruments; and the interpretation and documentation of the reading obtained.
- (6) Be familiar with and knowledgeable of the Tunnel Safety Orders and other applicable safety orders of Title 8.
- (7) Pass a written and oral examination administered by the Division.

Free Consultation Service (Labor Code, Sections 6354 and 6355).

In order to encourage voluntary compliance with occupational safety and health regulations, free on-site consultation service is provided by Cal/OSHA. Employers may request this free on-site consultation. Employees and employee groups may also participate at the invitation of the employer, or may request consultation away from the job site.

Consultation services include:

- (1) Information, advice, and recommendations on specific safety and health problems in the workplace;
- (2) providing help to employers in instituting an effective accident and illness prevention program or improving an existing program; and
- (3) training in good safety and health practices, and in recognition and correction of hazards through on-site surveys.

NOTE: Authority cited: Sections 142.3 and 7997, Labor Code. Reference: Sections 142.3 and 7997, Labor Code.

§8407. Safety Training and Instruction.

<https://www.dir.ca.gov/title8/8407.html>

(a) When an employee is first hired, or assigned to a new task, the person in charge shall determine the extent of the employee's experience and instruct him/her in recognition of any hazardous conditions present and the protective measures to be taken to eliminate the hazards associated with underground construction activities including, where appropriate, the following subjects.

(1) Air Monitoring;

(2) Ventilation;

(3) Illumination;

(4) Communications;

(5) Ground Control;

(6) Flood Control;

(7) Mechanical Equipment;

(8) Personal Protective Equipment;

(9) Explosives;

(10) Fire Prevention and Protection; and

(11) Emergency Procedures, including evacuation plans and a check-in/check-out system.

(b) Each employee, when first engaged, shall have his/her attention directed to the provisions of a "Safe Practices and Operations Code" and he/she shall be given a copy. Employee safety instruction shall be in accordance with Section 3203 of the General Industry Safety Orders.

NOTE: Authority cited: Sections 142.3 and 7997, Labor Code. Reference: Sections 142.3 and 7997, Labor Code.

§8408. Pre-Job Safety Conference.

<https://www.dir.ca.gov/title8/8408.html>

At any place of employment where the Tunnel Safety Orders are applicable, a pre-job safety conference with representatives of the Division, owner, employer and employees shall be held before work begins as required by Labor Code, Section 7955. Such a conference shall include the employer's review of the construction plan and any special equipment, practices and potential safety and health problems. The Division will review all pertinent health and safety concerns relevant to the project as described in Appendix E of these orders and other related topics.

NOTE: Authority cited: Sections 142.3 and 7997, Labor Code. Reference: Sections 142.3 and 7997, Labor Code.

§8409. Safety Bulletin Boards.

<https://www.dir.ca.gov/title8/8409.html>

A safety bulletin board shall be provided at all tunnels, where employees congregate before going underground. The Code of Safe Practices, all required positions, and other pertinent safety notices shall be posted on this bulletin board and maintained in legible condition.

NOTE: Authority cited: Sections 142.3 and 7997, Labor Code. Reference: Sections 142.3 and 7997, Labor Code.

TREE TRIMMING

Subchapter 7. General Industry Safety Orders

Group 3. General Plant Equipment and Special Operations

Article 12. Tree Work, Maintenance or Removal

<https://www.dir.ca.gov/title8/3421.html>

§3421. General.

(a) An Injury and Illness Prevention Program shall be implemented and maintained in accordance with Section 3203 of these Orders.

(b) Each work location where tree trimming, tree repairing or removal is to be done, shall be under the direction of a qualified tree worker.

(c) Employees shall be trained and instructed in areas that include, but are not limited to the following:

(1) The hazards involved in their job assignments.

(2) The proper and safe use of all equipment, including, but not limited to, safety equipment and personal protective equipment.

(3) The identification of, and preventive measures relating to, common poisonous plants and harmful animals.

(4) Operations that include pesticide and fertilizer applications for employers whose employees are exposed to, or engage in, such operations.

(5) The recognition and avoidance of electrical hazards applicable to employee job assignments including the instructions and training outlined in Section 3423 for tree work performed in proximity to energized power lines and conductors.

(d) Training shall be documented by the employer to certify that the employee has satisfactorily completed the training program prior to performing the job assignment without the oversight and observation of a qualified person.

(e) The employer shall provide refresher or additional training on applicable provisions of this standard for any employee who has:

(1) Been observed to violate the requirements of this Article;

(2) Been involved in an accident or near miss incident; or

(3) Receives a new job assignment that includes the use of equipment, machinery, tools or safety-related work practices that the employee is unfamiliar with.

(f) A job briefing shall be conducted by a qualified tree worker before each work assignment is begun. Such job briefing shall include the description of the hazards unique to the work assignment, the appropriate work procedures to be followed, the appropriate personal protective equipment needed, and any other items necessary to ensure that the work can be accomplished safely. Additional job briefings shall be held if significant changes which might affect the safety of the employees occur during the course of the work.

(g) All equipment shall be operated by qualified persons, and where required, qualified tree workers.

(h) Except for the inspections required by Sections 3422(j) and 3424(a)(2), all other equipment and safety devices shall be inspected prior to daily use by a qualified tree worker and any found to be defective shall be immediately repaired or removed from service.

(i) An adequate supply of potable water shall be provided in accordance with the requirements of Section 3363 of these Orders.

(j) Where vehicular or pedestrian traffic may endanger employees, traffic control shall be provided that conforms to the requirements of Sections 1598 and 1599 of the Construction Safety Orders.

(k) Internal combustion engine fuel tanks shall be refilled in accordance with Section 3319 of these Orders.

(l) The employer shall establish rescue procedures and provide training in emergency response. Training in aerial rescue procedures shall be provided for employees whose job assignments may require them to perform aerial rescues.

(m) The employer shall provide training in first aid and cardiopulmonary resuscitation (CPR). For field work involving two or more employees at a work location at least two trained persons in first aid and CPR shall be available. All new employees shall be trained in first aid and CPR within 90 days of their hiring dates. First aid and CPR training shall be performed by a certified instructor and shall be equal to that of the American Red Cross or the Mine Safety and Health Administration.

(n) When employees are required to work in areas in which the noise levels exceed the allowable standards for occupational noise, the employer shall provide hearing protection and training as required in Article 105 of these Orders.

Note: Authority cited: Section 142.3, Labor Code. Reference: Section 142.3, Labor Code.