



COMMONWEALTH of VIRGINIA

DEPARTMENT OF LABOR AND INDUSTRY

C. Ray Davenport
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AGENDA

SAFETY AND HEALTH CODES BOARD

State Corporation Commission
1300 East Main Street, Court Room B
Second Floor
Richmond, Virginia

Thursday, December 11, 2014

10:00 a.m.

1. Call to Order
2. Approval of Agenda
3. Election of Officers
4. Approval of Minutes for Board Meeting of June 5, 2014
5. Opportunity for the Public to Address the Board on this issues pending before the Board today or on any other topic that may be of concern to the Board or within the scope of authority of the Board.

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.

6. **Old Business**

None

7. **New Business**

a) **Federal-Identical Standards:**

- 1) Vehicle-Mounted Elevating and Rotating Work Platforms, §1910.67, and Logging Operations, §1910.266; Corrections

Presenter – Paul Schilinski

- 2) Electric Power Generation, Transmission, and Distribution, §1910.269, and Electrical Protective Equipment; Correcting Amendments

Presenter – Paul Schilinski

- 3) Cranes and Derricks in Construction: Operator Qualification and Certification, §1926.1427 (k); Amendment

Presenter – Paul Schilinski

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

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

10. **Meeting Adjournment**

DRAFT

**SAFETY AND HEALTH CODES BOARD
MEETING MINUTES
THURSDAY, JUNE 5, 2014**

BOARD MEMBERS PRESENT:

Mr. Charles Bird
Mr. Gregory Hart
Ms. Anna Jolly
Ms. Rebecca LePrell
Mr. Courtney Malveaux
Mr. Kenneth Richardson, II
Ms. Milagro Rodriguez
Mr. Chuck Stiff, Presiding Member

BOARD MEMBERS ABSENT:

Mr. Jerome Brooks
Mr. Marc Olmsted
Mr. Danny Sutton
Mr. Tommy Thurston

STAFF PRESENT:

Mr. C. Ray Davenport, Commissioner of Dept. of Labor & Industry
Mr. Bill Burge, Assistant Commissioner
Mr. Ron Graham, Director, Occupational Health Compliance
Ms. Reba O'Connor, Regulatory Coordinator
Mr. Paul Schilinski, Director, Occupational Safety Compliance
Mr. John Crisanti, Manager, Office of Policy and Planning
Mr. Jay Withrow, Director, Legal Support, BLS, and VPP
Mr. Warren Rice, Director, Consultation Services
Mr. Ed Hilton, Director, Boiler Safety
Ms. Regina Cobb, Senior Management Analyst
Mr. Jack Morgan, DOLI Intern
Ms. Sarah Schmidt, DOLI Intern

OTHERS PRESENT:

Ms. Sandra Loonam, Court Reporter, Halasz Reporting & Videoconference
Mr. Don Head, Balfour Beatty Construction

ORDERING OF AGENDA

In the absence of a Chairman, Vice Chairman and Secretary, Board members selected Mr. Chuck Stiff to preside over today's meeting which was called to order at 10:03 a.m. A quorum was present.

Mr. Stiff requested a motion to approve the Agenda. Mr. Courtney Malveaux moved to accept the Agenda, and Ms. Anna Jolly properly seconded the motion. The Agenda was approved, as submitted, and the motion was carried by unanimous voice vote.

APPROVAL OF MINUTES

Mr. Stiff asked the Board for a motion to approve the Minutes from the July 18, 2013, Board meeting and the Minutes from the December 5, 2013 Public Hearing. On proper motion by Ms. Jolly and seconded by Mr. Greg Hart, the Minutes were approved by unanimous voice vote.

PUBLIC COMMENTS

Mr. Stiff opened the floor for comments from the public, however, there were no comments.

OLD BUSINESS

Final Regulation to Amend the Standard for Certified Lead Contractors Notification, Lead Project Permits and Permit Fees, 16VAC25-35

Mr. Ron Graham, Director of Occupational Health Compliance for the Department of Labor and Industry, summarized the final adoption of this State Unique regulation by stating that the Department seeks to eliminate the \$2,000 contractor fee requirement that would trigger a lead project notification with the Department, as provided in Paragraph A. of 16VAC25-35-30 of the regulation. He explained that this change would require that licensed lead contractors submit written notification for all lead projects, as defined in 16VAC25-35-10, regardless of the contract price for the lead project.

He added that the basis or rationale for this amended regulation is so that the Department would be in compliance with the actual Environmental Protection Agency (EPA) notification requirements for lead abatement projects. He stated that, as with federal OSHA, whenever the Department is delegated authority to enforce a federal regulation, the Department needs to make sure that its regulation is just as effective as federal OSHA's. He informed the Board that there was no \$2,000 trigger for lead abatement projects in regard to the cost of the project, so the purpose of this amendment is to eliminate the provision requiring a \$2,000 trigger.

He stated that the Department does not anticipate that the adoption of this amendment would have a major impact on employers. He added that there could be an increase in the number of lead abatement notifications that the Department receives, however, current Department staff is capable of handling any increases in the amount of paperwork required. He also stated that there would be no impact on Virginia employees, and the Department would incur no added costs nor would staffing levels need to be increased as a result of the change.

Mr. Graham reviewed the history of this amended regulation – the Board approved a Notice of Intended Regulatory Action (NOIRA) in May of 2012, and it was published in the *Virginia Register* in August of 2012 for the 30-day comment period; the Board adopted the proposed regulation in March 2013; approval by the Office of the Attorney General in March 2013; approval by the Department of Planning and Budget in April 2013; publication of the proposed text in the *Virginia Register* in November 2013 for the 60-day public comment period; and a public hearing in December 2013.

Mr. Graham stated that no comments were received during the public comment periods nor during the public hearing.

When asked if there had been any general telephone calls or general conversations regarding this amendment, Mr. Graham responded that the Department has not been receiving a very significant number of lead abatement notifications. He continued by stating that typically abatement projects involve the permanent removal of the lead-based paint source, and that there are different means that can be used to reduce or mitigate the lead-based paint hazard. He stated that the narrow definition of a "lead abatement project," which is consistent with the Department of Professional and Occupational Regulations (DPOR) definition, primarily involves child-occupied housing or a daycare center.

In closing, Mr. Graham recommended, on behalf of the Department of Labor and Industry, that the Board consider for adoption as a final regulation of the Board the amendment to the Regulation Concerning Certified Lead Contractors Notification, Lead Project Permits and Permit Fees, 16VAC25-35, pursuant to the Virginia Administrative Process Act, §2.2-4007.01.

On proper motion by Ms. Milagro Rodriguez and seconded by Mr. Hart, Mr. Graham's recommendation was approved by unanimous voice vote.

NEW BUSINESS

Notice of Periodic Review of Certain Existing Regulations

Ms. Reba O'Connor, Regulatory Coordinator for the Department of Labor and Industry, requested the Board's permission to proceed with the periodic review of one of the Board's regulations, 16VAC25-145, Safety Standards for Fall Protection and Steel Erection, Construction Industry, which was last reviewed in 2010.

She informed the Board that the Administrative Process Act of the Code of Virginia and Executive Order 14 requires that state agencies conduct a periodic review of regulations every four years. She stated that if approval is granted by the Board, the process of periodic review will begin with the publication of a notice of periodic review in the *Virginia Register*, and with the publication of the notice of periodic review, a public comment period of at least 21 days, but not longer than 90 days, begins.

She stated that the Department will review the regulation and any public comments and then prepare recommendations for the Board's consideration at the next meeting. Based on the Board's decision, the Department will post a report on the Virginia Regulatory Town Hall's website to indicate that either the Board will retain the regulation as is or begin a regulatory action to amend or repeal the regulation.

On proper motion by Mr. Charlie Bird and seconded by Ms. Jolly, the Board unanimously voted to approve the Department's request to proceed with the periodic review process for 16VAC25-145, Safety Standards for Fall Protection and Steel Erection, Construction Industry.

Electric Power Generation, Transmission, and Distribution and Electrical Protective Equipment, Parts 1910 and 1926; Final Rule

Mr. Paul Schilinski, Director of Occupational Safety Compliance for the Department of Labor and Industry, requested the Board to consider for adoption federal OSHA's Final Rule for the Electric Power Generation, Transmission, and Distribution and Electrical Protective Equipment, Part 1910, General Industry, and Part 1926, Construction Industry, as published on April 11, 2014 in 79 FR 20316, with a proposed effective date of September 1, 2014, and to consider for repeal 16VAC25-155, General

Requirements for Clearances, Construction of Electric Transmission and Distribution Lines and Equipment, Construction Industry – Subpart V (§1926.950 (c)(1)(i)). He added that some provisions carry later effective dates which are outlined in the briefing package.

Mr. Schilinski summarized the regulation by stating that federal OSHA adopted the new final rule and revised the corresponding general industry standards, §§1910.137 and 1910.269, and revised the general industry standard for foot protection at §1910.136 to make the Construction Industry standard more consistent with the General Industry Standard. He added that the final rules for Construction and General Industry include new or revised provisions on training, job briefings, fall protection, insulation and working position on or near live parts, minimum approach distances, electric arc protection, deenergizing of equipment, protective grounding, operating mechanical equipment near overhead power lines and working in manholes and vaults. He continued by stating that the new provisions also include requirements for host employers and contract employers to exchange information on hazards and on the conditions, characteristics, design, and operation of the host employer's installation. Additionally, he informed the Board that the new standard also revises the General Industry and Construction Industry standards for electrical protective equipment, which applies to all Construction Industry work and replaces the incorporation of out-of-date consensus standards with a set of performance-oriented requirements that is consistent with the latest revisions of the relevant consensus standards. He stated that the new final rule for Electric Power Generation, Transmission, and Distribution and Electrical Protective Equipment now provides comprehensive and uniform levels of worker protections across industries that previously were lacking in this standard and were addressed by the board in 2004 through the adoption of the Virginia Unique regulation, 16VAC25-155, General Requirements for Clearances, Construction of Electric Transmission and Distribution Lines and Equipment, Construction Industry – Subpart V (1926.950 (c)(1)(i)). He informed the Board that since this Virginia Unique regulation is no longer necessary, it should be repealed should the Board choose to adopt the new federal final rule.

With respect to impact on employers, Mr. Schilinski informed the Board that the final rule is technologically feasible for all affected industries, that employers can achieve compliance with all of the final requirements by using readily and widely available technologies. He added that most companies are probably doing both construction and general industry work, so this would just be a carryover of procedures already in use. With respect to Virginia employees, he stated that there would be an increased degree of safety for affected employees and a reduction in the number of accidents and fatalities. Lastly, beyond expenses incurred for training staff on the final rule, there is no anticipated impact on the Department.

In conclusion, Mr. Schilinski recommended, on behalf of the Department, that the Safety and Health Codes Board adopt the Final Rule for Electric Power Generation, Transmission, and Distribution and Electrical Protective Equipment, Parts 1910 and 1926, as authorized by Virginia Code §§ 40.1-22(5) and 2.2-4006.A.4(c), with an effective date of September 1, 2014; and repeal the Virginia Unique regulation which would no longer be necessary: 16VAC25-155, General Requirements for Clearances, Construction of Electric Transmission and Distribution Lines and Equipment, Construction Industry – Subpart V (1926.950 (c)(1)(i)).

A motion was properly made by Mr. Hart and seconded by Mr. Richardson. The Department's recommendation was approved unanimously by voice vote.

Record Requirements in the Mechanical Power Presses Standard, §1910.217 (e)(1); Amendment

Mr. Schilinski requested the Safety and Health Codes Board to consider for adoption as an amendment federal OSHA's Direct Final Rule for Record Requirements in the Mechanical Power Presses Standard, §1910.217 (e)(1), as published on November 20, 2013 in 78 FR 69543. The proposed effective date for this amendment is September 1, 2014.

He summarized this regulation by stating that federal OSHA issued a Direct Final Rule (DFR) on November 20, 2013, to make two main revisions to its Mechanical Power Presses Standard, §1910.217. He informed the Board that the standard has a new subparagraph, (e)(1), which instructs employers to establish and follow a program with both a general and a directive component which requires weekly inspections. Under the general component, the employer is to conduct periodic regular inspections to ensure that all parts - auxiliary equipment, safeguards, including clutch brake, antirepeat, signal-stroke mechanisms, are in safe operating condition. A new instruction requires employers to perform necessary maintenance or repair before operating the press. The employer is also required to maintain a certification record of each maintenance and repair task performed under the general component of the inspection. He added that former subparagraph §1910.217(e)(1)(i) required that employers develop and maintain certification records of periodic inspections performed on the power presses. In this amendment, federal OSHA added a requirement that employers must develop and maintain certification records of any maintenance or repairs they perform on the presses during the periodic inspections. As a result of the revision to subparagraph (e)(1)(i), federal OSHA removed the requirement from subparagraph (e)(1)(ii) of the same standard, §1910.217, that employers develop and maintain certification records of weekly inspections and tests performed on the presses. These requirements in former subparagraph (e)(1)(ii) will no longer be necessary as any repairs to the mechanical power press will be recorded as they occur. Subparagraph (e)(1)(ii) now specifies that employers perform the inspections and tests "on a regular basis at least once a week" to emphasize the importance of establishing a consistent, systematic schedule for completing the tasks.

Mr. Schilinski informed the Board that there was no significant impact on employers, other than a reduction in paperwork. There is no significant impact anticipated on employees or the Department with the adoption of the amended standard.

In conclusion, Mr. Schilinski recommended, on behalf of the Department of Labor and Industry, that the Board adopt the amendments to the Record Requirements in the Mechanical Power Presses Standard, §1910.217 (e)(1), as authorized by Virginia Code §§ 40.1-22(5) and 2.2-4006.A.4(c), with an effective date of September 1, 2014.

A motion was properly made by Ms. Rodriguez and seconded by Mr. Malveaux, and the Department's recommendation was approved unanimously by voice vote.

Terminals Handling Intermodal Containers or Roll-On Roll-Off Operations; Vertical Tandem Lifts, §1917.71(i), Public Sector Only; Final Rule; Remand

Mr. Schilinski requested, on behalf of the Department, that the Board adopt federal OSHA's implementation of a court-ordered remand of certain portions of the standard for Terminals Handling Intermodal Containers or Roll-on Roll-Off Operations; Vertical Tandem Lifts (VTLs), §1917.71(i), Public Sector Only, as published in 79 FR 22018 on April 21, 2014.

Mr. Schilinski explained that vertical tandem lifts (VTLs) are lifts by cargo cranes of containers two at a time, one stacked on top of each other. He explained that a 2009 final rule permitted VTLs of no more than two such empty containers provided certain safeguards were followed. The National Maritime Safety Association petitioned the U.S. Court of Appeals for the District of Columbia Circuit for review of the VTL standard, arguing that two of the standard's requirements were not technologically feasible, and the Court agreed with respect to: 1) the interbox connector inspection requirement in §1917.71(i)(9); and 2) the ban on VTLs of platform containers in §1917.71(i)(10). OSHA believed that the only reasonable way to implement the Court's decision, vacating the provision banning VTL of platform containers, was to exempt VTLs of such containers from the scope of §1917.71(i), in addition to removing existing §1917.71(i)(10). Federal OSHA also added paragraph (vii) in §1917.71(i)(9) to make the inspection requirements in §1917.71(i)(9) inapplicable to ship-to-shore VTLs.

Mr. Schilinski stated that there is no expected impact on Virginia employers, employees or the Department.

He concluded by recommending, on behalf of the Department, that the Safety and Health Codes Board adopt the federal OSHA's Final Rule and Remand for Terminals Handling Intermodal Containers or Roll-on Roll-off Operations; Vertical Tandem Lifts, Public Sector Only, §1917.71(i), as authorized by Virginia Code §§ 40.1-22(5) and 2.2-4006.A.4(c), with an effective date of September 1, 2014.

Ms. Jolly asked if this regulation actually covers anybody in Virginia since it involves the maritime industry. Mr. Schilinski responded that he did not anticipate anyone being affected by the regulation. Mr. John Crisanti added that the Department has a public sector impact as it has existed for the last 20 or 30 years. He stated Virginia does not really have any public sector freight, as outlined in this standard. He added that the Department is asking the Board to adopt this maritime regulation because OSHA wants the Department to keep up with maritime public sector requirements by adopting maritime regulations. Mr. Crisanti added that adopting this regulation in a sense is a housekeeping function.

A motion was properly made by Ms. Jolly and seconded by Mr. Malveaux, and the Department's recommendation was approved unanimously by voice vote.

Items of Interest from the Department of Labor and Industry

Mr. C. Ray Davenport began by introducing himself to the Board as the new Commissioner of the Department of Labor and Industry, appointed by Gov. McAuliffe, as of April 21, 2014. He then congratulated the newly appointed Board members: Kenny Richardson and former Department of Labor and Industry Commissioner, Courtney Malveaux, and reappointed Board member, Anna Jolly. Commissioner Davenport stated that he looks forward to working with the Board and hopefully will continue to move the ball on worker safety and health down the field.

Items of Interest from the Board

There were no items of interest from the Board.

Adjournment

There being no further business, Mr. Malveaux made the motion to adjourn the meeting. Ms. Rodriguez properly seconded the motion which was carried unanimously by voice vote. The meeting adjourned at 10:35 a.m.



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DEPARTMENT OF LABOR AND INDUSTRY

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VIRGINIA SAFETY AND HEALTH CODES BOARD

BRIEFING PACKAGE

For December 11, 2014

Vehicle-Mounted Elevating and Rotating Work Platforms, §1910.67, and Logging Operations; §1910.266; Corrections

I. Action Requested.

The Virginia Occupational Safety and Health (VOSH) Program requests the Safety and Health Codes Board to consider for adoption federal OSHA's Corrections to the Standards for Vehicle-Mounted Elevating and Rotating Work Platforms, §1910.67, and Logging Operations, §1910.266, as published in 79 FR 37189 on July 1, 2014.

The proposed effective date is February 15, 2015.

II. Summary of the Amendments.

Federal OSHA has corrected non-substantive typographical errors in its standards for Vehicle-Mounted Elevating and Rotating Work Platforms, §1910.67, and Logging Operations, §1910.266. The first typographical error corrected was in the title of a national consensus standards organization referenced in §1910.67(c)(5), which states that all welding done on vehicle-mounted elevating and rotating work platforms must conform to Automotive Welding Society Standards incorporated by reference in §1910.6. However, as §1910.6(i) specifies, the correct

title of the organization is the American Welding Society Standards. In §1910.67(c)(5), federal OSHA replaced "Automotive" with "American".

The second typographical error was in a reference in the Logging Operations Standard to another federal OSHA standard. Specifically, §1910.266(d)(1)(iv), which was adopted by the Safety and Health Codes Board on December 19, 1994. This subparagraph, which establishes personal-protective-equipment requirements when logging employees operate chain saws, states that the requirement does not apply to employees who operate chain saws from a vehicle-mounted elevating and rotating work platform that meets the requirements of §1910.68. However, §1910.67, not §1910.68 (Manlifts), addresses vehicle-mounted elevating and rotating work platforms. Therefore, in §1910.266(d)(1)(iv), federal OSHA inserted "§1910.67" and removed "§1910.68".

III. Basis, Purpose and Impact of the Amendment.

A. Basis and Purpose.

Federal OSHA has corrected two typographical errors, one each in its standards on Vehicle-Mounted Elevating and Rotating Work Platforms in §1910.67, and Logging Operations, §1910.266, because the standards, as published, contain a title error and references a wrong standard.

B. Impact on Employers.

No impact on employers is anticipated from the adoption of these non-substantive corrections.

C. Impact on Employees.

No impact on employees is anticipated from the adoption of these non-substantive corrections.

D. Impact on the Department of Labor and Industry.

No impact on the Department is anticipated from the adoption of these non-substantive corrections.

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 non-substantive corrections will allow Virginia to conform to the federal program change.

Contact Person:

Mr. Paul Schilinski
Director, Occupational Safety Compliance
(703) 393-0900
Schilinski.paul@dol.gov

RECOMMENDED ACTION

Staff of the Department of Labor and Industry recommends that the Safety and Health Codes Board adopt federal OSHA's Corrections to the Standards for Vehicle-Mounted Elevating and Rotating Work Platforms, §1910.67, and Logging Operations, §1910.266, as authorized by Virginia Code §§ 40.1-22(5) and 2.2-4006.A.4(c), with an effective date of February 15, 2015.

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.

**Vehicle-Mounted Elevating and Rotating Work Platforms, §1910.67, and
Logging Operations; §1910.266; Corrections**

As Adopted by the
Safety and Health Codes Board

Date: _____



VIRGINIA OCCUPATIONAL SAFETY AND HEALTH PROGRAM

VIRGINIA DEPARTMENT OF LABOR AND INDUSTRY

Effective Date: _____

16VAC25-90-1910.67, Vehicle-Mounted Elevating and Rotating Work Platforms, §1910.67; and
16VAC25-90-1910.266, Logging Operations, §1910.266

When the regulations, as set forth in the Correcting Amendments to standards for Vehicle-Mounted Elevating and Rotating Work Platforms, §1910.67, and Logging Operations, §1910.266, 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

July 1, 2014

February 15, 2015

- 2. In § 1910.67, revise paragraph (c)(5) to read as follows:

§ 1910.67 Vehicle-mounted elevating and rotating work platforms.

* * * * *

(c) * * *

(5) "*Welding standards.*" All welding shall conform to the following American Welding Society (AWS) Standards which are incorporated by reference as specified in § 1910.6, as applicable:

* * * * *

Subpart R—[Amended]

- 3. Revise the authority citation for subpart R to read as follows:

Authority: 29 U.S.C. 653, 655, 657; Secretary of Labor's Order Nos. 12-71 (36 FR 8754), 8-76 (41 FR 25059), 9-83 (48 FR 35736), 1-90 (55 FR 9033), 6-96 (62 FR 111), 3-2000 (65 FR 50017), 5-2007 (72 FR 31160), 4-2010 (75 FR 55355), or 1-2012 (77 FR 3912), as applicable; and 29 CFR part 1911.

- 4. In § 1910.266, revise paragraph (d)(1)(iv) to read as follows:

§ 1910.266 Logging Operations.

* * * * *

(d) * * *

(1) * * *

(iv) The employer shall provide, at no cost to the employee, and assure that each employee who operates a chain saw wears leg protection constructed with cut-resistant material, such as ballistic nylon. The leg protection shall cover the full length of the thigh to the top of the boot on each leg to protect against contact with a moving chain saw. *Exception:* This requirement does not apply when an employee is working as a climber if the employer demonstrates that a greater hazard is posed by wearing leg protection in the particular situation, or when an employee is working from a vehicular mounted elevating and rotating work platform meeting the requirements of 29 CFR 1910.67.

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VIRGINIA SAFETY AND HEALTH CODES BOARD

BRIEFING PACKAGE

For December 11, 2014

Electric Power Generation, Transmission, and Distribution, §1910.269; Electrical Protective Equipment; Correcting Amendments

I. Action Requested.

The Virginia Occupational Safety and Health (VOSH) Program requests the Safety and Health Codes Board to consider for adoption federal OSHA's Corrections to the Final Rule for Electric Power Generation, Transmission, and Distribution, §1910.269; Electrical Protective Equipment, as published in 79 FR 56955 on September 24, 2014.

The proposed effective date is February 15, 2015.

II. Summary of the Proposed Amendments.

Federal OSHA has corrected numerous errors found in its Final Rule for Electric Power Generation, Transmission, and Distribution, §1910.269; and Electrical Protective Equipment. Corrections to §1910.269 of Subpart R, Special Industries, and to §§ 1926.960 and 1926.968 of Subpart V, Electric Power Transmission and Distribution, are summarized below:

A. §1910.269 of Subpart R, Special Industries:

- Revised paragraph (h)(2)(i) to include the strength requirement for portable ladders that had been inadvertently dropped during the adoption of the provision in the final §1910.269. Paragraph now reads: “In the configurations in which they are used, portable ladders and platforms shall be capable of supporting without failure at least 2.5 times the maximum intended load”;
- Revised the equation in Table R-3, AC Live-Line Work Minimum Approach Distance, under the entry “For phase-to-phase system voltages of more than 72.5 kV, nominal”, in the thirteenth row;
- In footnote 2, revised “Table 6 through Table 13” to read “Table 14 through Table 21”;
- In Tables R-6 and R-7, removed the bracketed expression “[In meters or feet and inches]”;
- Revised Appendix A-2, Application of §1910.269 and Subpart S of this Part to Electrical Safety-Related Work Practices to correct the first question in the flow chart so that it refers to the definition of “qualified” in §1910.399, instead of the definition of that term in §1910.269(x);
- In Appendix B, Working on Exposed Energized Parts, § IV.D, removed the words “Table 7 through Table 14” wherever they appeared and added in their place the words “Table 14 through Table 21”;
- In Appendix B, Working on Exposed Energized Parts, revised Table 6, Minimum Approach Distances until March 31, 2015;
- In Appendix C, Protection From Hazardous Differences in Electric Potential, redesignated footnotes 14, 15, 16, 17, and 18 as footnotes 1, 2, 3, 4, and 5, respectively.
- In Appendix D, Methods of Inspecting and Testing Wood Poles, redesignated footnotes 19 and 20 and footnotes 1 and 2, respectively;
- In Appendix E, Protection From Flames and Electric Arcs, redesignated footnotes 21, 22, 23, 24, 25, 26, 27, 28, and 29 as footnotes 1, 2, 3, 4, 5, 6, 7, 8, and 9, respectively;
- In Appendix E, redesignated footnotes 21, 22, 23, 24, 25, 26, 27, 28, and 29 as footnotes 1, 2, 3, 4, 5, 6, 7, 8, and 9, respectively.

B. Subpart V of Part 1926, Electric Power Transmission and Distribution:

- In Tables V-5 and V-6 of §1926.950 of Subpart V, removed the parenthetical

expression “(In Meters or Feet and Inches) in the table headings;

- In §1926.968, Definitions, removed “§1926.1200” and added “§1926.59” in its place in the note to the definition of “Hazardous atmosphere” (5);
- In paragraph 2 of §1926.968, Definitions, removed the word “section” and added the word “subpart” in its place; and
- In Table 2 of Appendix B to Subpart V of Part 1926, removed the words “2. Multiply by $\sqrt{3}$ ” and add “2. Multiply by $\sqrt{2}$ ” in their place.

III. Basis, Purpose and Impact of the Amendments.

A. Basis.

On April 11, 2014, federal OSHA published the Final Rule for Electric Power Generation, Transmission, and Distribution; and Electrical Protective Equipment (79 FR 20316). The Final Rule: (1) revised its general industry and construction standards at §1910.269 and in Part 1926, Subpart V, respectively; (2) revised its general industry standard for electrical protective equipment at §1910.137, and added a corresponding standard for construction at §1926.97; and (3) revised several other related provisions in federal OSHA’s standards for general industry and construction. By updating those standards, federal OSHA made the general industry and construction standards consistent.

Following publication of the final rule, federal OSHA identified errors in both the preamble discussion and the related regulatory text. One of those errors was in federal OSHA’s explanation of training requirements for unqualified employees. The preamble stated that unqualified employees who operate, but do not maintain, circuit breakers must receive training in accordance with §1910.269(a)(2)(i) or §1926.950(b)(1) of Subpart V. However, neither §1910.269 nor Subpart V govern the electrical safety-related work practices used by unqualified employees. Federal OSHA corrected the preamble to indicate that such unqualified employees generally must receive training under §1910.332 or §1926.21(b), as applicable. [79 FR 56955]

Appendix A-2 to final §1910.269 inaccurately described how to determine whether §1910.269 or Subpart S of Part 1910 contained the applicable requirements for electrical safety-related work practices. The flow chart in that appendix asked whether the employee is qualified “as defined in §1910.269 (x).” In Subpart V, final §1926.950(a)(1)(ii) states explicitly that Subpart V does not apply to electrical safety-related work practices for unqualified employees. Thus, for the purposes of Subpart V, if a worker is not a qualified employee, as defined in §1926.968, Subpart V does not address the electrical safety-related work practices that employee must use.

The electrical safety-related work practices for employees who are not qualified persons (employees), as that term is defined in Subpart S (§1910.399), are in Subpart S, not §1910.269. However, §1910.269 *does* apply to electrical safety-related work practices for

employees who are qualified under Subpart S, but not qualified under §1910.269. This class of employee includes, in particular, line-clearance tree trimmers, as explained in the preamble to the 1994 final rule adopting the previous version of §1910.269. For this reason, federal OSHA corrected the first question in the flow chart in Appendix A-2 to §1910.269(x). [79 FR 56956]

In Table 1 to Appendix A-2, federal OSHA corrected references to match the corresponding provisions in the final rule. It also added references to new provisions that have no counterpart in Subpart S to the list of provisions requiring compliance regardless of compliance with Subpart S (specifically, the information-transfer requirements in §1910.269(a)(3) and the requirements on protections from flames and electric arcs in §1910.269(l)(8)). Additionally, federal OSHA moved §1910.269(i)(3) on portable and vehicle-mounted generators from the list of provisions that apply regardless of compliance with Subpart S to the list of provisions for which compliance with Subpart S is deemed to be compliance with §1910.269. When OSHA adopted the previous version of §1910.269 in 1994, Subpart S did not contain requirements for portable or vehicle-mounted generators.

OSHA also found an error in the regulatory text of final §1910.269(h), which contains requirements for portable ladders and platforms. This rulemaking restored to the general industry provision, §1910.269(h)(2)(i), language that had been inadvertently dropped from the previous version of the standard with respect to the strength requirement for portable ladders.

B. Purpose.

These amendments correct more than 70 errors found in the recent final rule on Electric Power Generation, Transmission and Distribution. Some of the corrections were non-substantive, such as fixing typographical errors, while other changes corrected mistakes such as references to the wrong OSHA standard.

C. Impact on Employers.

It is not anticipated that the adoption of these correcting amendments to the final rule will impose any burden on employers. The correcting amendments should increase the clarity of the final rule and, therefore, increase compliance with the final rule.

D. Impact on Employees.

The correcting amendments should increase the clarity of the final rule and, therefore, help increase compliance with the final rule. It is not anticipated that the adoption of these correcting amendments to the final rule will impose any burden on employees.

E. Impact on the Department of Labor and Industry.

No significant impact is anticipated on the Department with the adoption of these correcting amendments to the Final Rule.

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.

Contact Person:

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(703) 393-0900
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RECOMMENDED ACTION

Staff of the Department of Labor and Industry recommends that the Safety and Health Codes Board adopt the Correcting Amendments to the Final Rule for Electric Power Generation, Transmission and Distribution, as authorized by Virginia Code §§ 40.1-22(5) and 2.2-4006.A.4(c), with an effective date of February 15, 2015.

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.

**Electric Power Generation, Transmission, and Distribution; Electrical Protective Equipment;
Correcting Amendments**

As Adopted by the

Safety and Health Codes Board

Date: _____



VIRGINIA OCCUPATIONAL SAFETY AND HEALTH PROGRAM

VIRGINIA DEPARTMENT OF LABOR AND INDUSTRY

Effective Date: _____

Subpart R – Special Industries

16VAC25-90-1910.269, Electric Power Generation, Transmission, and Distribution, §1910.269

Subpart V – Electric Power Transmission and Distribution,
16VAC25-175-1926.960, Working On or Near Exposed Energized Parts
16VAC25-175-1926.968, Definitions

When the regulations, as set forth in the Correcting Amendments to the Final Rule for Electric Power Generation, Transmission, and Distribution; Electrical Protective Equipment, 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

September 24, 2014

February 15, 2015

PART 1910—[AMENDED]

Subpart R—Special Industries

■ 2. Amend § 1910.269 as follows:

- a. Revise paragraph (h)(2)(i);
- b. In Table R-3:
- i. Under the entry “For phase-to-phase system voltages of more than 72.5 kV, nominal”, in the thirteenth row, revise the equation;
- ii. In footnote 2, revise “Table 6 through Table 13” to read “Table 14 through Table 21”;
- c. In Tables R-6 and R-7, remove the bracketed expression “[In meters or feet and inches]”;
- d. Revise Appendix A-2 to § 1910.269;
- e. In Appendix B to § 1910.269, section IV.D, remove the words “Table 7 through Table 14” wherever they appear and add in their place the words “Table 14 through Table 21”;
- f. Revise Table 6 in Appendix B to § 1910.269;

- g. In Appendix C to § 1910.269, redesignate footnotes 14, 15, 16, 17, and 18 as footnotes 1, 2, 3, 4, and 5, respectively;
- h. In Appendix D to § 1910.269, redesignate footnotes 19 and 20 as footnotes 1 and 2, respectively; and
- i. In Appendix E to § 1910.269, redesignate footnotes 21, 22, 23, 24, 25, 26, 27, 28, and 29 as footnotes 1, 2, 3, 4, 5, 6, 7, 8, and 9, respectively.

The revisions read as follows:

§ 1910.269 Electric power generation, transmission, and distribution.

* * * * *

(h) * * *

(2) * * *

(i) In the configurations in which they are used, portable ladders and platforms shall be capable of supporting without failure at least 2.5 times the maximum intended load.

* * * * *

Table R-3—AC Live-Line Work Minimum Approach Distance

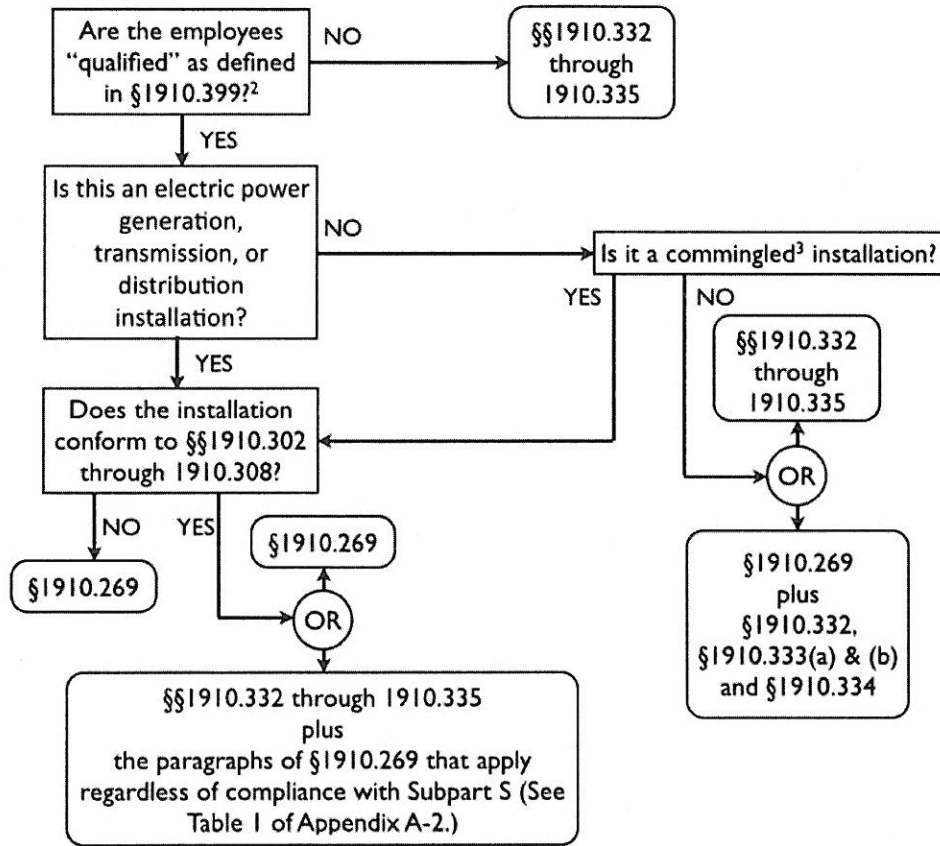
* * * * *

$$MAD = 0.3048(C + a)V_{L-G}TA + M$$

* * * * *

Appendix A-2 to § 1910.269—Application of § 1910.269 and Subpart S of this Part to Electrical Safety-Related Work Practices¹

BILLING CODE 4510-26-P



¹ This flowchart applies only to the electrical safety-related work practice and training requirements in §1910.269 and §§1910.332 through 1910.335.

² See §§1910.269(a)(1)(ii)(B) and 1910.331(b) and (c)(1).

³ This means commingled to the extent that the electric power generation, transmission, or distribution installation poses the greater hazard.

BILLING CODE 4510-26-C

TABLE 1—ELECTRICAL SAFETY REQUIREMENTS IN § 1910.269

Compliance with Subpart S will comply with these paragraphs of § 1910.269 ¹	Paragraphs that apply regardless of compliance with Subpart S ²
(d), electric-shock hazards only	(a)(2), (a)(3) and (a)(4).
(h)(3)	(b)
(i)(2) and (i)(3)	(c)
(k)	(d), for other than electric-shock hazards.
(l)(1) through (l)(5), (l)(7), and (l)(10) through (l)(12)	(e)
(m)	(f)
(p)(4)	(g)
(s)(2)	(h)(1) and (h)(2).
(u)(1) and (u)(3) through (u)(5)	(i)(4)
(v)(3) through (v)(5)	(j)

TABLE 1—ELECTRICAL SAFETY REQUIREMENTS IN § 1910.269—Continued

Compliance with Subpart S will comply with these paragraphs of § 1910.269 ¹	Paragraphs that apply regardless of compliance with Subpart S ²
(w)(1) and (w)(7)	(l)(6), (l)(8) and (l)(9). (n) (o) (p)(1) through (p)(3). (q) (r) (s)(1) (t) (u)(2) and (u)(6) (v)(1), (v)(2), and (v)(6) through (v)(12). (w)(2) through (w)(6), (w)(8), and (w)(9).

¹ If the electrical installation meets the requirements of §§ 1910.302 through 1910.308 of this part, then the electrical installation and any associated electrical safety-related work practices conforming to §§ 1910.332 through 1910.335 of this part are considered to comply with these provisions of § 1910.269 of this part.

² These provisions include electrical safety and other requirements that must be met regardless of compliance with subpart S of this part.

* * * * *

TABLE 6—MINIMUM APPROACH DISTANCES UNTIL DECEMBER 31, 2014

Voltage range phase to phase (kV)	Phase-to-ground exposure		Phase-to-phase exposure	
	m	ft	m	ft
0.05 to 1.0	Avoid Contact		Avoid Contact	
1.1 to 15.0	0.64	2.10	0.66	2.20
15.1 to 36.0	0.72	2.30	0.77	2.60
36.1 to 46.0	0.77	2.60	0.85	2.80
46.1 to 72.5	0.90	3.00	1.05	3.50
72.6 to 121	0.95	3.20	1.29	4.30
138 to 145	1.09	3.60	1.50	4.90
161 to 169	1.22	4.00	1.71	5.70
230 to 242	1.59	5.30	2.27	7.50
345 to 362	2.59	8.50	3.80	12.50
500 to 550	3.42	11.30	5.50	18.10
765 to 800	4.53	14.90	7.91	26.00

Note: The clear live-line tool distance must equal or exceed the values for the indicated voltage ranges.

* * * * *

PART 1926—[AMENDED]

Subpart V—Electric Power Transmission and Distribution

■ 3. The authority citation for subpart V of part 1926 continues to read as follows:

Authority: 40 U.S.C. 3701 *et seq.*; 29 U.S.C. 653, 655, 657; Secretary of Labor's Order No. 1-2012 (77 FR 3912); and 29 CFR Part 1911.

§ 1926.960 [Amended]

■ 4. In § 1926.960, in Tables V-5 and V-6, remove the parenthetical expression "(In Meters or Feet and Inches)" in the table headings.

§ 1926.968 [Amended]

■ 5. Amend § 1926.968 as follows:

■ a. In the note to the definition of "Hazardous atmosphere" (5), remove "§ 1926.1200" and add "§ 1926.59" in its place; and

■ b. In paragraph 2 of the definition of "Lines", remove the word "section" and add the word "subpart" in its place.

Appendix B to Subpart V of Part 1926 [Amended]

■ 6. In Appendix B to Subpart V, in Table 2, remove the words "2. Multiply by $\sqrt{3}$ " and add "2. Multiply by $\sqrt{2}$ " in their place.

[FR Doc. 2014-22146 Filed 9-23-14; 6:45 am]

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 DECEMBER 11, 2014

**Cranes and Derricks in Construction:
Operator Certification, 1926.1427(k); Amendment**

I. Action Requested

The Virginia Occupational Safety and Health (VOSH) Program requests the Safety and Health Codes Board to consider for adoption federal OSHA's amendment to the Final Rule for Cranes and Derricks in Construction: Operator Certification, as published in *FR 79 57785* on September 26, 2014.

The proposed effective date is February 15, 2015.

II. Summary of the Revised Standard

a. Summary and Overview

OSHA published this final rule amendment to extend for an additional three years the employer duty to ensure crane operator competency for construction work, from November 10, 2014, to November 10, 2017 as well as the enforcement date for crane operator certification for three years from November 10, 2014, to November 10, 2017 for a total federal extension of seven years.

VOSH also seeks to extend this deadline to November 10, 2017. The Board originally adopted its own unique initial delayed enactment dates for these competency and certification requirements at its meeting on January 20, 2011 for OSHA's original August 9, 2010 overall revision of the standard in order to account for the time interval between OSHA's adoption and VOSH's subsequent adoption.

With this second federal delay, now a total of seven (7) years from the 2010 federal adoption, VOSH believes that the benefit to employers who may operate in multiple states or jurisdictions to having federal identical enforcement dates for this competency and certification outweighs any loss by the shortfall of approximately three months by not continuing with a VOSH unique

effective date for the full additional three years. Adoption of the federal deadline this time results in 2.75 years of additional extension in Virginia for a total of 6.75 years.

b. **Regulatory Background**

When OSHA finalized its revision of the final rule for Cranes and Derricks in Construction (*29 CFR Subpart CC, referred to as “the crane standard” hereafter*) in 2010, it had developed the crane standard through a negotiated rulemaking process. OSHA established a Federal advisory committee, the Cranes and Derricks Negotiated Rulemaking Advisory Committee (C–DAC), to develop a draft proposed rule. C–DAC met in 2003 and 2004 and developed a draft proposed rule that it provided to OSHA. The rule that OSHA subsequently proposed closely followed C–DAC’s draft proposal (*73 FR 59718*). OSHA also had initiated a Small Business Advocacy Review Panel in 2006. OSHA published the proposed rule for cranes in construction in 2008, received public comment on the proposal, and conducted a public hearing. The 2010 federal final rule adopted the four-option scheme C–DAC recommended with minor changes. This was subsequently adopted by the Board in 2011.

After OSHA’s enactment of this initial final rule in 2010, several entities informed OSHA that crane operator certification was insufficient for determining whether an operator could operate their equipment safely on a construction site. After hosting several public meetings addressing this issue, OSHA determined that this extension is necessary in order to allow it to examine and determine how to address this issue systematically. OSHA amended the 2010 final rule to extend for three years the employer duty to ensure crane operator competency for construction work, from November 10, 2014, to November 10, 2017. OSHA also extended the enforcement date for crane operator certification for three years from November 10, 2014, to November 10, 2017.

c. **Operator Certification Options**

Accordingly, in §1926.1427, OSHA requires employers to ensure that their crane operators are certified under at least one of four options by November 10, 2014. The four options are:

- Option 1:** Certification by an independent testing organization accredited by a nationally recognized accrediting organization;
- Option 2:** Qualification by an employer’s independently audited program;
- Option 3:** Qualification by the U.S. military; or
- Option 4:** Compliance with qualifying state or local licensing requirements.

Option 1, which is the third-party certification option in §1926.1427(b), is the only certification option that is “portable,” meaning that any employer who employs an operator may rely on that operator’s certification as evidence of compliance with the cranes standard’s operator certification requirement. This certification option also is the only one that is available to all employers; it is the option that OSHA, and the parties who participated in the rulemaking, believed would be the one most widely used. With **Option 2**, OSHA is not aware of an audited employer qualification program among construction industry employers. Under **Option 3**, the standard limits the U.S. military crane operator certification programs to federal employees of the Department of Defense or the armed services. In **Option 4**, while some crane operators are indeed certified by state and local governments, the vast majority of operators who become certified do so through Option 1, i.e., by third-party testing organizations accredited by a nationally recognized accrediting organization.

Under Option 1, a third party performs testing. However, before a testing organization can issue operator certifications, paragraph 1926.1427(b)(1) of the cranes standard provides that a nationally recognized accrediting organization must accredit the testing organizations. To accredit a testing organization, the accrediting agency must determine that the testing organization meets industry-recognized criteria for written testing materials, practical examinations, test administration, grading, facilities and equipment, and personnel. The testing organization must administer written and practical tests that:

- (1) Assess the operator's knowledge and skills regarding subjects specified in the cranes standard;
- (2) Provide different levels of certification based on equipment capacity and type;
- (3) Have procedures to retest applicants who fail; and
- (4) Have testing procedures for recertification.

Section 1926.1427(b)(2) of the standard also specifies that, for the purposes of compliance with the standard, an operator is deemed qualified to operate a particular piece of equipment only if the operator is certified for that type and capacity of equipment or for higher-capacity equipment of that type. It further provides that, if no testing organization offers certification examinations for a particular equipment type and/or capacity, the operator is deemed qualified to operate that equipment if the operator is certified for the type/capacity of equipment that is most similar to that equipment, and for which a certification examination is available.

III. Number of Assessments and Number of Affected Operators

As OSHA noted, the number of assessments is difficult to estimate due to the heterogeneity of the crane industry. Many operators work continuously for the same employer, already have their assessment, and do not need reassessment, so the number of new assessments required by the cranes standard for these operators will be zero. Some crane companies will rent both a crane and an operator employed by the rental company to perform crane work, in which case the rental crane company is the operator's employer and responsible for operator assessment to conduct an additional operator assessment not the contractor who is renting the crane service. Assuming that employers already comply with the assessment and training requirements of the existing Part 1926.1427(k)(2), employers only need to assess a subset of operators: New hires; employees who will operate equipment that differs by type and/or capacity from the equipment on which they received their current assessment; and operators who indicate that they no longer possess the required knowledge or skill necessary to operate the equipment.

A. Initial Assessment

To calculate the number of assessments to be performed, OSHA first estimated the current number of crane operators affected by the cranes standard. The federal Final Economic Assessment (FEA) in the final cranes standard identified a total of 142,630 affected crane operators nationally (75 FR 48108). This figure translates to approximately 3,830 such operators in Virginia.

However, after publishing the final cranes standard, OSHA made revisions to the cranes standard that reduced the total number of affected operators. In this regard, OSHA excluded a significant percentage of digger-derrick use from the scope of the cranes standard (*see Cranes*

and Derricks in Construction: Revising the Exemption for Digger Derricks [78 FR 32110], May 29, 2013). Accordingly, for electric power generation and transmission work covered by the digger-derrick exemption, OSHA found that the two industries using digger derricks have a nationwide total of 25,500 operators of digger derricks; these industries are: Electric Power Generation, NAICS: 221110; and Electric Power Transmission, NAICS: 221120 (78 FR 32114). Subtracting these digger-derrick operators from the original total leaves the total number of operators affected by this proposal nationally at 117,130 (i.e., 142,630 - 25,500). The exclusion of digger derricks yields a total for Virginia of approximately 3,145 affected crane operators.

B. Subsequent Annual Assessments

To determine the number of assessments required annually thereafter, OSHA relied on the original 23% turnover rate for operators identified in the 2008 federal Preliminary Economic Assessment (PEA) for the crane rule (73 FR 59895), which includes all types of operators who would require assessment:

- Operators moving between employers;
- Operators moving between different types and/or capacities of equipment; and
- Operators entering the occupation.

OSHA estimated that nationally, 26,940 assessments occur each year based on turnover (i.e., 117,130 operators × 0.23 turnover rates). This number includes assessments performed by an employer on current employees assigned to a new type and/or capacity crane. In addition, in its 2008 PEA, OSHA assumed that 15% of operators involved in assessments related to turnover would fail the first test administration and need reassessment (73 FR 59895).

OSHA did not receive comment on this estimate used in the preliminary rulemaking, so it is unchanged in this FEA and is used for this current rulemaking. OSHA added 4,041 reassessments (i.e., 26,940 operators × 0.15) to the number of reassessments resulting from turnover, for a total of 30,981 yearly assessments resulting from turnover and test failure (i.e., 26,940 + 4,041) (79 FR 7615). Based on OSHA's assumptions, it is estimated that a total of approximately 830 operators will require annual reassessment in Virginia.

IV. Impact on Employers

In the 2010 standard subsequently adopted by the Board, OSHA extended the current employer duties in §1926.1427(k)(2)(i) and (ii) to ensure that there is no reduction in worker protection during this three-year period. OSHA noted that when it included these employer duties in the final cranes standard in 2010, these duties were to be a “phase in” to certification (75 FR 48027). By extending the date to November 10, 2017, the requirements will continue to serve that purpose and preserve the status quo.

OSHA determined that the stakeholder concerns surrounding operator certification and employer assessment and training warrant a more thorough examination, and OSHA will consider whether to commence a new rulemaking proceeding to make changes to the operator qualification requirements in §1926.1427. By this final rule amendment, OSHA extended the operator certification deadline to allow itself time to make this decision and complete a subsequent rulemaking, if necessary.

Without an extension of the employer duty, the standard would have no requirement to ensure that crane operators knew how to operate the crane safely during the operator certification extension.¹ Therefore, it is important that the employer duty be extended while OSHA considers rulemaking options. OSHA concludes that it would be inappropriate to disturb the status quo until it completes that examination and has the necessary information to determine whether changes are needed.

V. Impact on Employees

Many commenters during the federal comment period supported OSHA's proposed extension of the date for crane operators to have certification in their written comments [ID 0448, 0458–61, 0462, 0464, 0466, 0469, 0471, 0476–9, 0481–3, 0485–8, 0490–4, and 0497], in oral testimony [Tr. pp. 22, 100, 119, 212, 222], and in post-hearing written comments [ID–0531, 0533].² Their reasons for supporting the three year extension were several. The most frequently mentioned reason was that while operator certification offered safety benefits, most current certifications lack the required capacity factor and would therefore not comply with the final cranes standard.

These commenters concluded that the industry's confusion about the validity of current certifications and the difficulty, or even impossibility, of most construction crane operators getting a valid certification by the current federal November 2014 deadline, warrants an extension of the operator certification deadline so that OSHA has additional time to remove the capacity requirement from the rule. The Associated Builders and Contractors, Inc. stated: "Without an extension . . . the construction industry will face a crane operator shortage in the coming years, as there will not be enough time for . . . employers to certify their operators in time." For the industry to continue performing work without disruption, it is crucial for an extension to be granted. [Tr. pp. 174–175].

VI. Impact on the Department of Labor and Industry

No impact is anticipated on the Department with the adoption of this amendment to the Final Rule.

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.

¹ A commenter suggested in its pre-hearing federal comment that OSHA could simply remove the employer's existing duty to assess operators and retrain them as necessary, and instead rely on the "general duty clause" in section 5(a)(1) of the OSH Act to enforce those responsibilities [ID–0495]. OSHA decided against this approach because it would give employers less certainty about the specifics of its duty to ensure their crane operators know how to operate cranes safely, and because it would make it more difficult for OSHA to enforce such a duty due to the nature of the Agency's burden of proof. Moreover, a court might find the cranes standard precludes such a general duty case even if OSHA removed the employee training requirement.

² Exhibits are posted on <http://regulations.gov> and are accessible at OSHA's Docket Office, U.S. Department of Labor, 200 Constitution Avenue NW, Room N2625, Washington, DC 20210; telephone (202) 693–2350. (OSHA's TTY number is (877) 889–5627.) OSHA Docket Office hours of operation are 8:15 a.m. to 4:45 p.m., E.T.

VII. Benefit/Cost

A. Final Economic Analysis and Regulatory Flexibility Analysis

OSHA estimates that this rule change will have a cost savings for employers nationally of \$21.4 million per year for the three years of the extension. This translates to a cost savings of approximately \$575,000 per year for each of the three years for Virginia employers. Delaying the operator certification requirement defers a regulatory requirement and should impose no new costs on employers. There will, however, be continuing employer costs for extending the requirement to assess operators under existing §1926.1427(k)(2); if the Board does not extend the deadline for these requirements, they will expire on April 15, 2015. With adoption of the federal identical extension by the Board, these continuing costs for Virginia employers will be offset by a reduction in expenses that employers would otherwise incur to ensure that their operators are certified before the existing April 15, 2015 Virginia deadline.

B. Unit Assessment Costs

OSHA's unit cost estimates for assessments take into account the time needed for the assessment, along with the wages of both the operator and the specialized operator assessor who will perform the assessment. OSHA based the time requirements on crane operator certification exams currently offered by nationally accredited testing organizations. OSHA determined the time needed for various certification tests from informal conversations with industry sources who participated in the public stakeholder meetings. OSHA estimates separate assessment costs for the three types of affected operators, which together include all affected operators:

- Those who have a certificate that is in compliance with the existing cranes standard;
- Those who have a certificate from a nationally accredited testing organization that is not in compliance with the existing cranes standard; and
- Those who have no certificate.³

OSHA uses certification status as a proxy of competence in estimating the amount of assessment time needed for different operators. It is expected that an operator who is already certified to operate equipment of a particular type and capacity will require less assessment time than an operator certified by type but not capacity, who in turn will require less time than an operator who is not certified. In deriving these estimates, OSHA determined that operators who have a certificate that is compliant with the cranes standard would have to complete a test that is the equivalent of the practical part of the standard crane operator test.⁴

³ OSHA is not making any determination about whether a specific certification complies with the requirements of the cranes standard. For the purposes of this analysis only, OSHA will treat certificates that do not include a multi-capacity component as not complying with the cranes standard, and certificates that include both a type and multi-capacity component as complying with the cranes standard. For example, during the hearing, a participant indicated that some certifying organizations offer a single "unlimited capacity" certification (Tr. p. 246). In this analysis, OSHA treats such certifications as not complying with the cranes standard.

⁴ One commenter to the PEA objected that: "Costs associated with 1 hour of additional practical testing for operators who are compliant are not necessary" (OSHA-20007-0066-0495). But this comment overlooks that this cost is for an employer to assess an operator with compliant certification under the employer duty clause. The hour taken is an estimate based on the time for a practical test as being a reasonable proxy for this assessment.

It is estimated that it would take an operator one hour to complete this test. Operators who have a certificate that is not in compliance with the cranes standard would have to complete a test that is equivalent to both a written general test and a practical test of the standard crane operator test. OSHA estimated that the written general test would take 1.5 hours to complete, for a total test time of 2.5 hours of testing for each operator, i.e., 1.5 hours for the written general test and 1.0 hour for the practical test.

Finally, operators with no certificate would have to complete a test that is equivalent to the written test on a specific crane type of the standard crane operator test, also lasting 1.5 hours, as well as the written general test and the practical test, for a total test time of 4.0 hours: 1.5 hours for the test on a specific crane type, 1.5 hours for the written general test, and 1.0 hour for the practical test.

The wages used for the crane operator and assessor come from the 2010 final cranes rule (75 FR 48102). Accordingly, the operator wage is estimated at \$35.62, while the wage of the assessor is estimated to be the same as the wage of a crane inspector, \$41.25. For assessments performed by an employer of a prospective employee, i.e., a candidate, OSHA has used these same operator and assessor wages and the above testing times to estimate the cost of assessing prospective employees.

Multiplying the wages of operators, assessors, and candidates by the time taken for each type of assessment provides the cost for each type of assessment. Hence, the cost of assessing an operator already holding a certificate that complies with the standard, for both type and capacity, is one hour of both the operator's and assessor's time: \$76.87 ($\$35.62 + \41.25). For an operator with a certificate for crane type only (not crane capacity), the assessment time is 2.5 hours for a cost of \$192.18 ($2.5 \times (\$35.62 + \$41.25)$). Finally, for an operator with no certificate, the assessment time is 4.0 hours for a cost of \$307.48 ($4.0 \times (\$35.62 + \$41.25)$). These estimates are identical to those in the PEA, and federal commenters did not object to them except for the one comment questioning the inclusion of the assessment costs for operators with compliant certifications, discussed in the previous footnote.

Besides these assessment costs, OSHA noted that §1926.1427(k)(2)(ii) requires employers to provide training to employees if they are not already competent to operate their assigned equipment. To determine whether an operator is competent, the employer must first perform an assessment. Only if an operator fails the assessment will the operator require training. However, in determining this cost, OSHA made a distinction between a nonemployee candidate for an operator position and an operator who is currently an employee. For an employer assessing a nonemployee candidate, OSHA assumed, based on common industry practice, that the employer will not hire a nonemployee candidate who fails the assessment.

In the second situation, an employee qualified to operate a crane fails a type and/or capacity assessment for a crane that differs from the crane the employee currently operates. In this situation, the cost-minimizing action for the employer is not to assign the employee to that type and/or capacity crane, thereby avoiding training costs. While OSHA acknowledges that there will be cases in which the employer will provide this training, it believes these costs to be minimal and is therefore not taking such costs for the training into the equation. OSHA made the same determinations in the PEA and did not receive public comment on them.

VIII. Technological Feasibility

OSHA has determined that compliance with the requirements of this amendment to the standard is technologically feasible for all affected industries and that compliance with all of these requirements can be achieved with readily and widely available technologies. OSHA believes that some businesses in the affected industries already implement the requirements of the standard to varying degrees and that there are no technological constraints in complying with any of the requirements [75 FR 48095, 48079].

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 the amendments to federal OSHA's standard for Cranes and Derricks in Construction: Operator Certification, as authorized by Virginia Code §§ 40.1-22(5) and 2.2-4006.A.4(c), with an effective date of February 15, 2015.

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: Operator Certification, §1926.1427(k); Amendment

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, Cranes and Derricks in Construction: Operator Certification, §1926.1427(k)

When the regulations, as set forth in the Final Rule for Cranes and Derricks in Construction, Operator Certification, §1926.1427 (k), 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 10, 2014

February 15, 2015

PART 1926—[AMENDED]

Subpart CC—Cranes and Derricks in Construction

■ 2. Amend § 1926.1427 by revising paragraph (k) to read as follows:

§ 1926.1427 Operator qualification and certification.

* * * * *

(k) *Phase-in.* (1) The provisions of this section became applicable on November 8, 2010, except for paragraphs (a)(2) and (f), which are applicable November 10, 2017.

(2) When § 1926.1427(a)(1) is not applicable, all of the requirements in paragraphs (k)(2)(i) and (ii) of this section apply until November 10, 2017.

(i) The employer must ensure that operators of equipment covered by this standard are competent to operate the equipment safely.

(ii) When an employee assigned to operate machinery does not have the required knowledge or ability to operate the equipment safely, the employer must train that employee prior to operating the equipment. The employer must ensure that each operator is evaluated to confirm that he/she understands the information provided in the training.

[FR Doc. 2014-22816 Filed 9-25-14; 8:45 am]

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