



Virginia  
Regulatory  
Town Hall

Notice of Intended Regulatory Action  
Agency Background Document

<b>Agency Name:</b>	Department of Labor and Industry/Safety and Health Codes Board
<b>VAC Chapter Number:</b>	16 VAC 25-145 (1926.760 (a), (b) and (c))
<b>Regulation Title:</b>	Safety Standards for Fall Protection in Steel Erection, Construction Industry
<b>Action Title:</b>	Safety Standards for Fall Protection in Steel Erection
<b>Date:</b>	March 6, 2002

This information is required prior to the submission to the Registrar of Regulations of a Notice of Intended Regulatory Action (NOIRA) pursuant to the Administrative Process Act § 9-6.14:7.1 (B). Please refer to Executive Order Twenty-Five (98) and Executive Order Fifty-Eight (99) for more information.

Purpose

*Please describe the subject matter and intent of the planned regulation. This description should include a brief explanation of the need for and the goals of the new or amended regulation.*

The purpose of this rulemaking is to establish in regulation the current VOSH administrative policy whereby VOSH regulations 16 VAC 25-175-1926.28(a) and 16 VAC 25-175-1926.105(a), are used to require steel erection employers to provide protection for steel erection workers from falls at or above 10 feet. A singular exception to the use of 16 VAC 25-175-1926.28(a) and 16 VAC 25-175-1926.105(a) in steel erection is for employees working as “connectors”. A “connector” is defined in 16 VAC 25-175-1926.751 as “...an employee who, working with hoisting equipment, is placing and connecting structural members and/or components.” This exception is based on VOSH’s determination that during the interval when structural steel beams are in the air being hoisted into position for assembly and joining, a greater hazard exists if connectors are tied off than to give them freedom of movement to avoid swinging steel. The intended rulemaking would not impact the Board’s decision not to allow controlled decking zones.

## Basis

*Please identify the state and/or federal source of legal authority to promulgate the contemplated regulation. The discussion of this authority should include a description of its scope and the extent to which the authority is mandatory or discretionary. The correlation between the proposed regulatory action and the legal authority identified above should be explained. Full citations of legal authority and, if available, web site addresses for locating the text of the cited authority must be provided.*

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The Safety and Health Codes Board is authorized by Title 40.1-22(5) "...to adopt, alter, amend, or repeal rules and regulations to further, protect and promote the safety and health of employees in places of employment over which it has jurisdiction and to effect compliance with the Federal Occupational Safety and Health Act of 1970...as may be necessary to carry out its functions established under this title. In making such rules and regulations to protect the occupational safety and health of employees, the Board shall adopt the standard which most adequately assures, to the extent feasible, on the basis of the best available evidence that no employee will suffer material impairment of health or functional capacity. However, such standards shall be at least as stringent as the standards promulgated by the Federal Occupational Safety and Health Act of 1970 (P.L. 91-596). In addition to the attainment of the highest degree of health and safety protection for the employee, other considerations shall be the latest available scientific data in the field, the feasibility of the standards, and experience gained under this and other health and safety laws."

At its October 18, 2001 meeting, the Safety and Health Codes Board adopted the new federal OSHA Safety Standards for Steel Erection (66 FR 5195 and 66 FR 37137) as 16 VAC 25-175-1926.750 through 16 VAC 25-175-1926.761 and the amended 16 VAC 25-175-1926.700 covering Fall Protection. However, upon the recommendation of the Department, paragraphs (a), (b) and (c) of §1926.760 of the federal rule were not adopted. The Safety and Health Codes Board is proposing regulatory action to require protection for steel erection workers from falls from heights starting at 10 feet above a lower level, instead of the federal requirement for fall protection starting at 15 feet above a lower level. In the interim, VOSH will continue to use its current administrative policy of enforcing 16 VAC 25-175-1926.28(a) and 16 VAC 25-1926.105(a) to provide 10-foot fall protection for steel workers, except for employees working as "connectors". In addition, controlled decking zones (CDZ) are still prohibited.

## Substance

*Please detail any changes that would be implemented: this discussion should include a summary of the proposed regulatory action where a new regulation is being promulgated; where existing provisions of a regulation are being amended, the statement should explain how the existing regulation will be changed. The statement should set forth the specific reasons the agency has determined that the proposed regulatory action would be essential to protect the health, safety or welfare of citizens. In addition, a statement delineating any potential issues that may need to be addressed as the regulation is developed shall be supplied.*

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This proposed regulatory action would result in no change to the existing requirements for steel erection. The adoption will place in regulatory form the existing VOSH administrative policy to insure worker protection at or above 10 feet. The Board had determined that the proposed regulatory action is essential to protect worker health and safety from falls in construction from 10 foot to 25 foot heights. The existing federal OSHA regulation would not provide any protection for workers operating at such heights. As the proposed amendment reflects current agency policy, no potential issues are anticipated that may need to be addressed as the regulation is developed.

**Alternatives**

*Please describe, to the extent known, the specific alternatives to the proposal that have been considered or will be considered to meet the essential purpose of the action.*

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As an alternative to promulgating a regulation for Safety Standards for Fall Protection in Steel Erection, Construction Industry, the VOSH enforcement administrative policy of using 16 VAC 25-175-1926.28(a) and 16 VAC 25-175-1926.105(a) could be continued to implement the 10-foot fall protection limit in steel erection.

**Family Impact Statement**

*Please provide a preliminary analysis of the potential impact of the proposed regulatory action on the institution of the family and family stability including to what extent the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.*

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This regulatory action has no impact on the institution of the family or family stability.