



COMMONWEALTH of VIRGINIA

DEPARTMENT OF LABOR AND INDUSTRY

C. RAY DAVENPORT  
COMMISSIONER

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AGENDA

SAFETY AND HEALTH CODES BOARD

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

Thursday, February 28, 2008

1. Call to Order
2. Approval of Agenda
3. Approval of Public Hearing and Regular Board Minutes of October 18, 2007
4. Opportunity for the Public to Address the Board on the 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.*

5. Old Business

Request for additional comment period for Reverse Signal Operation Safety Procedures:

For General Industry, Part 1910:

16 VAC 25-96, Proposed Regulation to Amend Reverse Signal Operation Safety

Procedures dealing with Vehicular Equipment, Motor Vehicles, Material Handling Equipment

and Motor Vehicle Equipment in General Industry, and the related repeal of 16 VAC 25-90-1910.269 (p)(1)(ii)

For the Construction Industry, Part 1926:

16 VAC 25-96, Proposed Regulation to Amend Reverse Signal Operation Safety Procedures for Vehicles, Machinery and Equipment for the Construction Industry; and the related repeal of 16 VAC 25-175-1926.601 (b)(4), 16 VAC 25-175-602 (a)(9)(ii), and 16 VAC 25-175-1926.952 (a)(3)

6. New Business
  - a) Employer Payment for Personal Protective Equipment; Final Rule;
  - b) Updating OSHA Standards Based on National Consensus Standards; Direct Final Rule; and
  - c) Request to Initiate Notice of Intended Regulatory Action (NOIRA) to amend 16 VAC 25-50, Boiler and Pressure Vessel Rules and Regulations
7. Items of Interest from the Department of Labor and Industry
8. Items of Interest from Members of the Board
9. Meeting Adjournment



*COMMONWEALTH of VIRGINIA*

**DEPARTMENT OF LABOR AND INDUSTRY**

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**VIRGINIA SAFETY AND HEALTH CODES BOARD**

**BRIEFING PACKAGE**

**FOR FEBRUARY 28, 2008**

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Proposed Regulation to Amend Reverse Signal Operation Safety Procedures for Existing General Industry, Standard 16 VAC 25-90-1910.269, and Construction Industry Standards, 16 VAC 25-175-1926.601, 602 and 952, Governing Off-road Vehicles and Equipment;

and

Proposed Regulation to Establish Reverse Signal Operation Safety Requirements for Vehicles, Machinery and Equipment for General Industry and the Construction Industry, 16 VAC 25-97.

**I. Action Requested.**

The Virginia Occupational Safety and Health (VOSH) Program requests the Safety and Health Codes Board to consider an additional 30-day public comment period for the proposed amendments pursuant to Va. Code §40.1-22(5):

- A. Amend the following Part 1910 General Industry and Part 1926 Construction Industry standards governing the reverse signal operation safety procedures for off-road motor vehicles and vehicular or mechanical equipment, 16 VAC 25-:
- 1910.269(p)(1)(ii) - Vehicular Equipment for Electric Power Generation, Transmission and Distribution
  - 1926.601(b) - Motor Vehicles
  - 1926.602(a)(9)(ii) - Material Handling Equipment
  - 1926.952(a)(3) - Mechanical Equipment, Power Transmission and Distribution;
- B. Establish new reverse signal operation safety procedures for all vehicles, machinery and equipment with an obstructed view to the rear in General Industry and the Construction Industry, 16 VAC 25-97.

## II. Summary of Rulemaking Process.

- A. Notice of Intended Regulatory Action (NOIRA) was adopted by Board on March 7, 2006. The NOIRA was published on September 4, 2006, with 30-day comment period ending October 4, 2006. No comments were received.

Next, the Board adopted proposed regulatory language on December 6, 2006. The proposed regulation was published on August 20, 2007, with a 60-day comment period ending on October 19, 2007. No comments were received. A public hearing was held by the Board on October 18, 2007. No comments were received.

After the close of the 60-day comment period, the Department received requests from the following individuals for an additional opportunity to comment (*see requests and Department responses attached in Appendix*):

Listed in alphabetical order:

P. Dale Bennett, Virginia Trucking Association  
 J. R. (Randy) Bush, Virginia Forest Products Association  
 Terry Pruitt, Precon Construction Company, Precon Marine, Inc., Precon Development Corporation  
 Mark Singer, Virginia Utility & Heavy Contractors Council (two letters and Department responses)  
 Steve Vermillion, Associated General Contractors of Virginia

- B. Board Authorization and Mandate

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

“... adopt, alter, amend, or repeal rules and regulations to further, protect and promote the safety and health of employees in places of employment over which it has jurisdiction and to effect compliance with the federal VOSH Act of 1970...as may be



necessary to carry out its functions established under this title.”

“In making such rules and regulations to protect the occupational safety and health of employees, the Board shall adopt the standard which most adequately assures, to the extent feasible, on the basis of the best available evidence that no employee will suffer material impairment of health or functional capacity.”

“However, such standards shall be at least as stringent as the standards promulgated by the federal OSH Act of 1970 (P.L.91-596). In addition to the attainment of the highest degree of health and safety protection for the employee, other considerations shall be the latest available scientific data in the field, the feasibility of the standards, and experiences gained under this and other health and safety laws.”

Contact Person:

Mr. Jay Withrow  
Director, Office of Legal Support  
804.786.9873  
[Jay.Withrow@doli.virginia.gov](mailto:Jay.Withrow@doli.virginia.gov)

## **RECOMMENDED ACTION**

Staff of the Department of Labor and Industry recommends that the Safety and Health Codes Board approve an additional 30-day public comment period for the proposed amendments to Amend Reverse Signal Operation Safety Procedures for General Industry and the Construction Industry pursuant to Va. Code §40.1-22(5).

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.

## **APPENDIX: REQUESTS FOR EXTENSION OF COMMENT PERIOD**

P. Dale Bennett, Virginia Trucking Association

J. R. (Randy) Bush, Virginia Forest Products Association

Terry Pruitt, Precon Construction Company, Precon Marine, Inc., Precon Development Corporation

Mark Singer, Virginia Utility & Heavy Contractors Council (two letters and Department responses)

Steve Vermillion, Associated General Contractors of Virginia

# APPENDIX



# COMMONWEALTH of VIRGINIA

## DEPARTMENT OF LABOR AND INDUSTRY

C. RAY DAVENPORT  
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December 18, 2007

P. Dale Bennett  
Executive Vice President  
Virginia Trucking Association  
1701 Summit Avenue  
Suite 110  
Richmond, VA 23230

Subject: Proposed Changes to Reverse Signal Operation Safety Requirements  
16 VAC 25-97

Concerns About Proposed Regulation In Regards to Uniformity, Costs of  
Compliance and Training

Dear Mr. Bennett:

As a follow-up to my e-mail of December 7, 2007, I have enclosed a copy of the briefing package that was provided to the Virginia Safety and Health Codes Board during the public hearing for the proposed regulation. I have also enclosed a copy of a spreadsheet which provides a breakdown of reverse operation fatal accidents from 1992 through September 30, 2007. In addition, the Agency Background Document that was submitted to the Virginia Regulatory Town Hall can be viewed at:

[http://www.townhall.state.va.us/L/GetFile.cfm?File=E:\townhall\docroot\92\2040\4053\Agency Statement\\_DOLI\\_4053\\_v2.pdf](http://www.townhall.state.va.us/L/GetFile.cfm?File=E:\townhall\docroot\92\2040\4053\Agency Statement_DOLI_4053_v2.pdf)

I also wanted to pass along that if the regulation is finalized, the Department plans to prepare and make available to employers a training program that could be used to meet the training requirements contained in the proposed regulation.



## Concerns About Proposed Regulation In Regards to Uniformity, Costs of Compliance and Training

You raised the following concerns about the proposal. I will list your concern and then provide the Department's response.

### 1. The proposed regulation goes beyond what is required by federal OSHA, eroding the compliance benefits of regulatory uniformity.

As you may know, Virginia operates one of 26 state plans for occupational safety and health through the Virginia Occupational Safety and Health (VOSH) program. The VOSH Program's regulations are adopted by the Virginia Safety and Health Codes Board. The Safety and Health Codes Board is authorized by Title 40.1-22(5) to:

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

"In making such rules and regulations to protect the occupational safety and health of employees, the Board shall adopt the standard which most adequately assures, to the extent feasible, on the basis of the best available evidence that no employee will suffer material impairment of health or functional capacity."

"However, such standards shall be at least as stringent as the standards promulgated by the federal OSH Act of 1970 (P.L.91-596). In addition to the attainment of the highest degree of health and safety protection for the employee, other considerations shall be the latest available scientific data in the field, the feasibility of the standards, and experiences gained under this and other health and safety laws."

The overwhelming majority of VOSH regulations are identical to that of federal OSHA - Virginia currently enforces 11 unique regulations or statutes out of some 500 federal/state regulations. However, over the years the Department and the Board have identified a small number of specific regulations or hazards that, upon close review, were found to result in unnecessary and preventable fatal and non-fatal but serious accidents. Based on the attached fatal accident statistics, the Department and Board are of the opinion that current reverse signal operation regulations are not working and are looking at ways to improve them so that future deaths and serious accidents can be prevented.

While we agree that there are some benefits to regulatory uniformity across state lines, when we find an instance such as this in which the regulatory framework is not working, we will make an attempt to adopt changes that in the end benefit both employees and employers through the reduction of workplace fatalities and hazards.



2. The proposed regulatory language is somewhat ambiguous.

You expressed a concern that the proposal does not delineate what a covered vehicle is for enforcement purposes. The proposed regulation applies to all vehicles in general industry and the construction industry with an **"obstructed view to the rear."** This phrase is identical to the wording used in current regulations and the definition below is directly derived from a federal OSHA interpretation on the subject (found at [http://www.osha.gov/pls/oshaweb/owadisp.show\\_document?p\\_table=INTERPRETATIONS&p\\_id=19522](http://www.osha.gov/pls/oshaweb/owadisp.show_document?p_table=INTERPRETATIONS&p_id=19522)):

The phrase "obstructed view to the rear" means anything that interferes with the overall view of the operator of the vehicle to the rear of the vehicle at ground level, and includes, but is not limited to, such obstacles as any part of the vehicle (e.g., structural members); its load (e.g., gravel, dirt, machinery parts); its height relative to ground level viewing; damage to windows or side mirrors, etc., used for rearview movement of the vehicle; restricted visibility due to weather conditions (e.g., heavy fog, heavy snow); or work being done after dark without proper lighting."

You asked whether forklifts, pick-up trucks, cars, vans, tractor-trailers and powered industrial trucks are covered by the proposed regulation. Generally, any truck where the driver can see directly behind the vehicle at ground level by looking through a rear view mirror, or by turning around and looking out the rear window/opening would not be considered to have an obstructed view to the rear. Of the examples you posed, the proposed regulation would not generally apply to fork lifts, pick-up trucks, cars, certain vans, etc., as long as they did not have an "obstructed view to the rear" as defined in the regulation and currently by OSHA. As noted in the regulation, there are certain exceptions to this general rule (e.g. damage to windows/mirrors, restricted visibility due to weather conditions or work being done after dark without proper lighting).

On the other hand, certain tractor trailers pulling a large enclosed trailer, and vans with no or blocked/obstructed back windows, would be covered because they would be considered to have an obstructed view to the rear.

In addition, the proposed regulation also provides exemptions from certain specific requirements:

- \* Covered vehicles with video or similar technological capability to provide the driver with a full view behind the vehicle are exempt from subdivision 2 of 16 VAC 25-97-30 [which is the designated observer or ground guide requirement].
- \* Covered vehicles are exempt from subdivision 2 of 16 VAC 25-97-30 [which is the designated observer or ground guide requirement] if the driver visually determines from outside the vehicle that no employees are in the backing zone and that it is reasonable to expect that no employees will enter the backing zone during reverse operation of the vehicle.
- \* Covered vehicles that were not equipped with a reverse-signal alarm upon manufacture or were not later retrofitted with an alarm are exempt from



subdivision 1 of 16 VAC 25-97-30 [which is the requirement for a reverse signal alarm audible above the surrounding noise level].

- \* To the extent that any federal Department of Transportation (DOT) regulation applies to covered vehicles conflicts with this section, the DOT regulation shall take precedence.

### 3. The cost of compliance may be underestimated.

As noted above, if the powered industrial trucks (PIT) you are referencing do not have an obstructed view to the rear, they are not covered by the proposed regulation and no training would have to be provided to drivers. For drivers of vehicles that are covered by the proposed regulation, the Department plans to prepare and make available to employers a training program that could be used to meet the training requirements contained in the proposed regulation.

The availability of a free training program for your members should help to alleviate some of your cost concerns. As currently proposed the regulation requires employers to train drivers of covered vehicles and designated observers/ground guides in the requirements of the regulation.

The main training requirement for drivers is simple and straightforward:

“No driver of a covered vehicle shall travel in reverse unless they maintain constant visual contact with the designated observer/ground guide. If visual contact is lost, the driver shall immediately stop the vehicle until visual contact is regained and a positive indication is received from the designated observer/ground guide to restart back-up operations.”

Drivers would also have to be trained on what constitutes an “obstructed view to the rear,” which is identical to current federal OSHA definitions, and on the exemptions, which are simple and straightforward as well (see above language from the proposed regulation):

- if the vehicle has a back-up camera, no designated observer/ground guide is needed
- if the driver visually determines from outside the vehicle there is no one in the back-up zone, no designated observer/ground guide is needed
- if the vehicle did not come from the manufacturer with a back-up alarm, the vehicle can still be operated in reverse without a back-up alarm, but will either need a designated observer/ground guide or the driver will have to get out of the vehicle to check that no one is in the back-up zone

The requirements for designated observers/ground guides are spelled out specifically in the proposed regulation and provide a simple, commonsense approach to protecting both the ground guide and other workers in the area. The requirements are actually modeled in part after current provisions in the construction standards for individuals working as “monitors” in the Fall



Protection Standards, 1926.501 to 503. In addition, the personal protective equipment requirements for designated observers/ground guides are taken directly from current OSHA regulation 1926.201(a), which incorporates by reference Part VI of the Manual on Uniform Traffic Control Devices (1988 Edition, Revision 3 or the Millennium Edition):

- A. While engaged in signaling activities, the designated observer/ground guide shall:
  - 1. have no other assigned duties;
  - 2. shall not engage in any other activities unrelated to back-up operations other than those related to the covered vehicle being signaled;
  - 3. shall not use personal cellular phones, personal head phones or similar items that could pose a distraction for the designated observer/ground guide; and
  - 4. shall be provided with and wear:
    - a. during daytime operations a safety vest or jacket in orange, yellow strong yellow green or fluorescent versions of these colors, reflective warning garments; and
    - b. during nighttime operations a safety vest or jacket with retroreflective material in orange, yellow, white, silver, strong yellow green or a fluorescent version of these colors and shall be visible at a minimum distance of 1,000 feet.

4. There is insufficient guidance on employee training.

As noted above, the Department plans to prepare and make available to employers a free training program that could be used to meet the training requirements contained in the proposed regulation. You asked how the Department would ensure that training was provided since there is no requirement in the proposal to document training. We did not include a documentation requirement so as not to impose a significant "paperwork" requirement on employers. Many federal OSHA regulations contain training requirements with no corresponding documentation requirement. Part of the training program the Department develops will be a non-mandatory method for documenting training through employee certification, similar to what OSHA does several of its regulations. If an employer does not want to keep such records, and VOSH conducts an inspection, it will follow normal procedures for documenting compliance with training requirements through discussions/interviews with employer representatives and employees.

In closing, I hope you find the above information helpful in reviewing the proposed regulation. Without exception, in every reverse operation fatal accident the driver either never sees the victim to begin with, or sees the victim at one point but then loses sight of him/her as the vehicle is backing up and either thinks or assumes that the victim has moved out of the way. The proposed regulation has been drafted to eliminate as many of the causes of reverse operation fatalities as possible. That does not mean that the current proposal is perfect and cannot be improved or adjusted to deal with real world issues. To that end as previously communicated to you, the Department will forward your request for the opportunity to provide official comments to the Safety and Health Codes Board at their next meeting.

If you have any questions, please feel free to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "Jay Withrow". The signature is fluid and cursive, written over the printed name.

Jay Withrow, Director  
Office of Legal Support  
[jay.withrow@doli.virginia.gov](mailto:jay.withrow@doli.virginia.gov)  
804.786.9873



**From:** Jay Withrow  
**To:** dbennett@vatrucking.org  
**Date:** 12/7/2007 9:57 AM  
**Subject:** Safety and Health Codes Board, Reverse Signal Operation Safety Requirements, Proposed Regulation  
**Attachments:** Reverse Signal Regs - Crisanti Letter.doc

Mr. P. Dale Bennett:

Thank you for your letter of November 16, 2007 (copy attached), addressed to Policy and Planning Manager John Crisanti on the above referenced proposed regulation. In future you can address correspondence or contacts concerning the proposal to me.

As you know, your comment letter came after the close of the Safety and Health Codes Board's official 60 day comment period and public hearing on the proposed regulation. Although we plan to provide you with a more detailed response to your letter in the near future, this is to confirm that your request for the opportunity to provide official comment on the proposed regulation will be forwarded to the Safety and Health Codes Board at their next meeting - likely sometime during the first quarter of 2008. It is the Department's plan at this point to request the Board to approve an additional 30 day written comment period for sometime next spring. As with the previous comment period, the extended comment period would be published in the Virginia Register and posted on the Virginia Regulatory Town Hall website. We will send you an e-mail notification of the comment period as well.

If you have any further questions, please feel free to contact me.

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Virginia Department of Labor and Industry  
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November 16, 2007

*VIA E-MAIL*

Mr. John Crisanti  
Policy and Planning Manager  
Department of Labor and Industry  
Powers Taylor Building  
13 South 13<sup>th</sup> Street  
Richmond, VA 23219

RE: 16VAC25-97. Reverse Signal Operation Safety Requirements for Motor Vehicles, Machinery and Equipment in General Industry and the Construction Industry

Dear Mr. Crisanti:

We recently learned of the Safety and Health Codes Board's intent to adopt changes to its regulations regarding reverse signal operations for vehicular equipment that would exceed current federal OSHA regulations.

On behalf of the members of the Virginia Trucking Association, I write to express our serious concerns over the proposed changes. Although we did not become aware of the proposed change until after the deadline for public comment and in the absence of any outreach to our organization as a representative of an industry that would be impacted by this proposal, we respectfully request that further action on the proposed changes be deferred until affected industry groups can engage in a dialogue with your agency to address the following concerns:

***1. The proposed regulation goes beyond what is required by federal OSHA, eroding the compliance benefits of regulatory uniformity.***

Current federal OSHA regulations [1910.269(p)(1)(ii); 910.269(p)(1)(ii)(A); and 1910.269(p)(1)(ii)(B)] provide that "No vehicular equipment having an obstructed view to the rear may be operated on off-highway jobsites where any employee is exposed to the hazards created by the moving vehicle, unless: The vehicle has a reverse signal alarm audible above the surrounding noise level, or The vehicle is backed up only when a designated employee signals that it is safe to do so."

The proposed regulation requires that a reverse single alarm AND a designated employee signaler be used with vehicular equipment having obstructed views to the rear, with some exceptions. Due to the interstate nature of the trucking industry, differing requirements among the states makes compliance difficult, confusing and frustrating. Virginia has recognized the importance and benefits of uniformity in laws and regulations governing trucking operations in its regulation and enforcement of motor carrier safety and hazardous materials transportation. We believe that compliance will be improved and its cost and burden for the trucking industry can be reduced if Virginia maintains conformity with the current



federal OSHA regulation by not adopting these proposed changes.

**2. *The proposed regulatory language is somewhat ambiguous.***

The proposed regulation does not delineate what a "covered vehicle" is for compliance/enforcement purposes other than to infer that a "covered vehicle" means "construction and general industry vehicles". This ambiguity raises the question of whether the term "covered vehicle" includes pick-up trucks, cars, vans, tractor-trailers, and/or powered industrial trucks (PIT)/forklifts; or all of the above? If the term "covered vehicle" includes powered industrial trucks (PIT)/forklifts, it would create a significant burden for a trucking company terminal to have a "trained designated observer" assigned to each PIT operator who backs up his PIT numerous times a day; or, as proposed in the regulation have the PIT operator "visually determine from outside the vehicle that no employees are in the backing zone and that it is reasonable to expect that no employees will enter the backing zone during the reverse operation of the vehicle." Literally interpreted, this could require that a PIT operator unfasten his seatbelt, get off of the forklift to ensure that there is no one behind him each time he needs to back up the PIT.

If the proposed regulation applies to PIT operators, it would go above and beyond the required federal OSHA training that PIT operators must receive in order to be certified to drive a PIT. Currently, under OSHA's PIT regulations, operators are required to "look in the direction of, and keep a clear view of the path of travel while driving forward or backwards." Clearly, for those PITs (or any other truck, tractor-trailer etc) that do not have backup alarms, compliance with this regulation, as proposed, could prove onerous.

**3. *The cost of compliance may be underestimated.***

The Virginia Dept. of Labor and Industry reports that "only" 136,222 businesses will be impacted by the proposed regulation. However, the agency does not take into account the number of individuals that would need to be trained on the proposed regulation. If a motor carrier's PITs do not have backup alarms, each certified PIT operator and potentially, his "designated observer" would need to be trained – greatly increasing the number of trainees. This is over and above the training required of any number of truck drivers in a given fleet, plus their "observers." Training costs could be substantial, particularly given the fact that companies could be required to train any potential operators of PIT's who may not necessarily be called on to operate a PIT. To illustrate, one large trucking company has estimated that it would cost about \$100 to provide the PIT training and documentation (based on the thirty-minute maximum amount of time estimated for training under this regulation) to its employees who are qualified and may be called upon to operate PITs. Although VOSH cites the number of businesses likely to be impacted by the rule, an actual estimate of the cost associated with compliance is not cited in the Economic Impact Analysis.

**4. *There is insufficient guidance on employee training.***

Other than stating that employee training can be done "informally on site at the beginning of the workday or shift," there is little else in the way of guidance on employee training. Is there an implicit understanding by VOSH that every employer will formally/informally conduct such training? How does VOSH intend to ensure that the employer has conducted training on this proposed rule? Nowhere in the proposed rule is there a requirement for training documentation, nor is there any type of standardized employee training program/format information. Thus, a carrier could potentially be exposed to a citation



Mr. John Crisanti  
November 29, 2007  
Page Three

by VOSH without having been provided any real guidance on what would constitute a violation of the training requirements.

Because of these and other concerns, we request that the Board not move forward on adoption of these proposed changes until the affected industries have had an opportunity to work with you and the Department to fully evaluate the impact of the proposed changes and determine what action would be in the best interest for the Commonwealth and its employers and employees.

Sincerely yours,

A handwritten signature in cursive script that reads "P. Dale Bennett".

P. Dale Bennett  
Executive Vice President



# COMMONWEALTH of VIRGINIA

## DEPARTMENT OF LABOR AND INDUSTRY

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December 18, 2007

J. R. (Randy) Bush, CAE  
President  
Virginia Forest Products Association  
220 East Williamsburg Road  
P.O. Box 160  
Sandston, VA 23150

Subject: Proposed Changes to Reverse Signal Operation Safety Requirements  
16 VAC 25-97

Impact of Proposed Regulation on Timber Harvesting and Wood Processing  
Operations

Dear Mr. Bush:

As a follow-up to my e-mail of December 7, 2007, I have enclosed a copy of the briefing package that was provided to the Virginia Safety and Health Codes Board during the public hearing for the proposed regulation. I have also enclosed a copy of a spreadsheet which provides a breakdown of reverse operation fatal accidents from 1992 through September 30, 2007. In addition, the Agency Background Document that was submitted to the Virginia Regulatory Town Hall can be viewed at:

[http://www.townhall.state.va.us/L/GetFile.cfm?File=E:\townhall\docroot\92\2040\4053\Agency Statement\\_DOLI\\_4053\\_v2.pdf](http://www.townhall.state.va.us/L/GetFile.cfm?File=E:\townhall\docroot\92\2040\4053\Agency Statement_DOLI_4053_v2.pdf)

I also wanted to pass along that if the regulation is finalized, the Department plans to prepare and make available to employers a training program that could be used to meet the training requirements contained in the proposed regulation.

### **Impact of Proposed Regulation on Timber Harvesting and Wood Processing Operations**

It is difficult for the Department to say what kind of impact the proposed regulation would have on your industry without some further information from you on what type of vehicles you use



and how they are used out in the field. In general, the regulation applies to all vehicles in general industry (which includes timber harvesting and wood processing operations) and the construction industry with an **“obstructed view to the rear.”**

This phrase is identical to the wording used in current regulations and the below definition is directly derived from a federal OSHA interpretation on the subject (found at [http://www.osha.gov/pls/oshaweb/owadisp.show\\_document?p\\_table=INTERPRETATIONS&p\\_id=19522](http://www.osha.gov/pls/oshaweb/owadisp.show_document?p_table=INTERPRETATIONS&p_id=19522)):

The phrase “obstructed view to the rear” means anything that interferes with the overall view of the operator of the vehicle to the rear of the vehicle at ground level, and includes, but is not limited to, such obstacles as any part of the vehicle (e.g., structural members); its load (e.g., gravel, dirt, machinery parts); its height relative to ground level viewing; damage to windows or side mirrors, etc., used for rearview movement of the vehicle; restricted visibility due to weather conditions (e.g., heavy fog, heavy snow); or work being done after dark without proper lighting.”

Generally, any truck where the driver can see directly behind the vehicle at ground level by looking through a rear view mirror, or by turning around and looking out the rear window/opening would not be considered to have an obstructed view to the rear. Examples of this would generally include pick-up trucks, fork lifts, etc. As noted in the regulation, there are certain exceptions to this general rule (e.g. damage to windows/mirrors, restricted visibility due to weather conditions or work being done after dark without proper lighting).

In addition, the proposed regulation also provides exemptions from certain specific requirements:


- \* Covered vehicles with video or similar technological capability to provide the driver with a full view behind the vehicle are exempt from subdivision 2 of 16 VAC 25-97-30 [which is the designated observer or ground guide requirement].
- \* Covered vehicles are exempt from subdivision 2 of 16 VAC 25-97-30 [which is the designated observer or ground guide requirement] if the driver visually determines from outside the vehicle that no employees are in the backing zone and that it is reasonable to expect that no employees will enter the backing zone during reverse operation of the vehicle.
- \* Covered vehicles that were not equipped with a reverse-signal alarm upon manufacture or were not later retrofitted with an alarm are exempt from subdivision 1 of 16 VAC 25-97-30 [which is the requirement for a reverse signal alarm audible above the surrounding noise level].
- \* To the extent that any federal Department of Transportation (DOT) regulation applies to covered vehicles conflicts with this section, the DOT regulation shall take precedence.



In closing, I hope you find the above information helpful in reviewing the proposed regulation. Without exception, in every reverse operation fatal accident, the driver either never sees the victim to begin with, or sees the victim at one point but then loses site of him/her as the vehicle is backing up and either thinks or assumes that the victim has moved out of the way. The regulation has been drafted to eliminate as many of the causes of reverse operation fatalities as possible. That does not mean that the current proposal is perfect and cannot be improved or adjusted to deal with real world issues. To that end and as previously communicated to you, the Department will forward your request for the opportunity to provide official comment to the Safety and Health Codes Board at their next meeting.

If you have any questions, please feel free to contact me.

Sincerely,

  
Jay Withrow, Director  
Office of Legal Support  
[jay.withrow@doli.virginia.gov](mailto:jay.withrow@doli.virginia.gov)  
804.786.9873



**From:** Jay Withrow  
**To:** vfpa.randy@att.net  
**Date:** 12/7/2007 10:12 AM  
**Subject:** Safety and Health Codes Board, Reverse Signal Operation Safety Requirements, Proposed Regulation

Mr. Randy Bush:

Thank you for your e-mail of November 16, 2007 (copy below), addressed to Policy and Planning Manager John Crisanti on the above referenced proposed regulation. In future you can address correspondence or contacts concerning the proposal to me.

As you know, your e-mail came after the close of the Safety and Health Codes Board's official 60 day comment period and public hearing on the proposed regulation. Although we plan to provide you with a more detailed response to your e-mail in the near future, this is to confirm that your request for the opportunity to provide official comment on the proposed regulation will be forwarded to the Safety and Health Codes Board at their next meeting - likely sometime during the first quarter of 2008. It is the Department's plan at this point to request the Board to approve an additional 30 day written comment period for sometime next spring. As with the previous comment period, the extended comment period would be published in the Virginia Register and posted on the Virginia Regulatory Town Hall website. We will send you an e-mail notification of the comment period as well.

If you have any further questions, please feel free to contact me.

Jay Withrow, Director  
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Virginia Department of Labor and Industry  
13 South 13th Street  
Richmond, VA 23219  
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>>> "J. R. (Randy) Bush, CAE" <[vfpa.randy@att.net](mailto:vfpa.randy@att.net)> 11/16/2007 8:42 PM >>>  
To:

Mr. John Crisanti  
Policy and Planning Manager  
Virginia Department of Labor and Industry  
Powers Taylor Building, 13 South 13th Street  
Richmond, VA 23219

Dear Mr. Crisanti:

It has been brought to my attention that VOSHA is proposing altering the current regulations regarding Reverse Signal Operations for Vehicular Equipment. Upon reviewing the proposed regulation, we have concerns regarding how they will impact my industry's operations, including both mobile equipment in the woods and equipment on the processing mill site, as well as support vehicles (such as trucks designed to haul product from the woods to the mill, from the mill yard to the customer, and maintenance and management vehicles servicing these operations).

We have also noticed that the comment period for this proposal has expired. With the tremendous number of issues that we must follow covering a plethora of laws and regulations, this is one that has slipped by our radar. We would like to ask clarification regarding how VOSHA has determined it will impact timber harvesting and wood processing operations specifically, as our initial reading of the proposal leads us to have concerns regarding its fiscal impact and difficulty in effective implementation.

Since we feel that others in industry as well as additional groups were not aware of this proposal, we would like to respectfully request that the implementation of this regulation be postponed until all potentially affected groups can review and provide input.

We appreciate your assistance and understanding in this matter, and if we can provide any additional information, please don't hesitate to contact us.



Sincerely yours,

J. R. (Randy) Bush, CAE  
President  
Virginia Forest Products Association  
220 East Williamsburg Road  
P.O. Box 160  
Sandston, VA 23150  
(804)737-5625 - Office  
(804)737-9437 - FAX  
[vfpa.randy@att.net](mailto:vfpa.randy@att.net)



# COMMONWEALTH of VIRGINIA

## DEPARTMENT OF LABOR AND INDUSTRY

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December 18, 2007

Terry Pruitt  
Precon Construction Company  
Precon Marine, Inc.  
Precon Development Corporation  
1401 Precon Drive  
Chesapeake, VA 23320

Subject: Proposed Changes to Reverse Signal Operation Safety Requirements  
16 VAC 25-97

Dear Mr. Pruitt:

As a follow-up to my e-mail of December 7, 2007, I have enclosed a copy of the briefing package that was provided to the Virginia Safety and Health Codes Board during the public hearing for the proposed regulation. I have also enclosed a copy of a spreadsheet which provides a breakdown of reverse operation fatal accidents from 1992 through September 30, 2007. In addition, the Agency Background Document that was submitted to the Virginia Regulatory Town Hall can be viewed at:

[http://www.townhall.state.va.us/L/GetFile.cfm?File=E:\townhall\docroot\92\2040\4053\Agency Statement\\_DOLI\\_4053\\_v2.pdf](http://www.townhall.state.va.us/L/GetFile.cfm?File=E:\townhall\docroot\92\2040\4053\Agency Statement_DOLI_4053_v2.pdf)

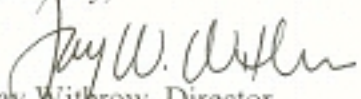
I also wanted to pass along that if the regulation is finalized, the Department plans to prepare and make available to employers a training program that could be used to meet the training requirements contained in the proposed regulation.

I hope you find the above information helpful in reviewing the proposed regulation. Without exception, in every reverse operation fatal accident the driver either never sees the victim initially, or sees the victim at one point but then loses sight of him/her as the vehicle is backing up and either thinks or assumes that the victim has moved out of the way. The regulation has been drafted to eliminate as many of the causes of reverse operation fatalities as possible. That does not mean that the current proposal is perfect and cannot be improved or adjusted to deal with real world issues. To that end and as previously communicated to you, the Department will

forward your request for the opportunity to provide official comment to the Safety and Health Codes Board at their next meeting.

If you have any questions, please feel free to contact me.

Sincerely,

  
Jay Withrow, Director  
Office of Legal Support  
[jay.withrow@doli.virginia.gov](mailto:jay.withrow@doli.virginia.gov)  
804.786.9873



**From:** Jay Withrow  
**To:** tpruitt@precononline.com  
**Date:** 12/7/2007 10:15 AM  
**Subject:** Safety and Health Codes Board, Reverse Signal Operation Safety Requirements, Proposed Regulation

Mr. Terry Pruitt:

Thank you for your e-mail of November 19, 2007 (copy below), addressed to Policy and Planning Manager John Crisanti on the above referenced proposed regulation. In future you can address correspondence or contacts concerning the proposal to me.

As you know, your e-mail came after the close of the Safety and Health Codes Board's official 60 day comment period and public hearing on the proposed regulation. Although we plan to provide you with a more detailed response to your e-mail in the near future, this is to confirm that your request for the opportunity to provide official comment on the proposed regulation will be forwarded to the Safety and Health Codes Board at their next meeting - likely sometime during the first quarter of 2008. It is the Department's plan at this point to request the Board to approve an additional 30 day written comment period for sometime next spring. As with the previous comment period, the extended comment period would be published in the Virginia Register and posted on the Virginia Regulatory Town Hall website. We will send you an e-mail notification of the comment period as well.

If you have any further questions, please feel free to contact me.

Jay Withrow, Director  
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Virginia Department of Labor and Industry  
13 South 13th Street  
Richmond, VA 23219  
804.786.9873  
[jay.withrow@doli.virginia.gov](mailto:jay.withrow@doli.virginia.gov)

>>> "Terry Pruitt" <[tpruitt@precononline.com](mailto:tpruitt@precononline.com)> 11/19/2007 5:34 PM >>>

Mr. Crisanti,

I recently learned the Virginia Safety and Health Codes Board has proposed changes to the back-up alarm requirements to covered vehicles; unfortunately, the proposal was not widely circulated and as you know the comment period has expired.

As a contractor, safety is vital to our operations and we respect the Department's intent to address workplace accidents and injuries involving backing equipment; however, this is a matter that should include the construction community by allowing us to be part of the solution. Accordingly, I urge the Department to defer any rule changes pending input from our industry.

Terry Pruitt  
Precon Construction Company  
Precon Marine, Inc.  
Precon Development Corporation  
1401 Precon Drive  
Chesapeake, VA 23320  
Tel (757) 545-5500  
Fax (757) 545-2217





# COMMONWEALTH of VIRGINIA

## DEPARTMENT OF LABOR AND INDUSTRY

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January 11, 2008

Mark Singer  
Legislative Representative  
Virginia Utility & Heavy Contractors Council  
1108 E. Main Street  
Suite 1200  
Richmond, VA 23219

Subject: Proposed Changes to Reverse Signal Operation Safety Requirements  
16 VAC 25-97

Mr. Singer:

Thank you for your letter of December 20, 2007. You revisited a few points from our correspondence which I would like to address:

1. "As I understand the proposal however, it potentially requires the hiring/utilization of hundreds, perhaps thousands, of new "designated observer/ground guides" that do not presently exist. That is the potential cost that has not been addressed, and it is substantial."

**Response:** We do not believe that hundreds or thousands of new "designated observer/ground guides" would have to be hired to comply with the regulation. We believe that most employers who currently do not use "designated observer/ground guides" will take advantage of the exemption that enables the driver to operate in reverse without a "designated observer/ground guide":

"if the driver visually determines from outside the vehicle that no employees are in the backing zone and that it is reasonable to expect that no employees will enter the backing zone during reverse operation of the vehicle."

In looking at the structure of the regulation, it may be more helpful to the regulated community to put the "Exemptions" section up at the beginning of the regulation instead of at the end, so that employers and employees realize that there is flexibility built into



the regulation to limit compliance costs. We would also certainly address this issue in our training materials.

The Department believes that most employers who currently use a "designated observer/ground guide" will continue to do so and will train and outfit them according to the regulation and understand that some additional cost may be associated with that. As previously noted, we will try to reduce training costs by providing free training materials on-line for employers and employees to access. In our experience "designated observer/ground guides" are used primarily on construction sites and with mobile work crews where more than one employee is already present because of the nature of the work, so we do not believe those employers will be forced by the proposed regulation to hire new employees to act as "designated observer/ground guides", they will merely train existing employees.

For those employers that send delivery/trade trucks out with only one person, as noted above, those employers/drivers can take advantage of the exemption. If the single employee drives onto a worksite with other employers working in the area and chooses to request, as many do currently, assistance from an employee of another contractor on site to act as the "designated observer/ground guide," there is nothing in the proposed regulation to prohibit that practice. The employer of the driver would not be required to hire or train a "designated observer/ground guide" just to accompany their single driver, nor would it be that employer's responsibility to train the other contractor's "designated observer/ground guide."

What we want to accomplish with the proposed regulation is to change current behaviors that cause these deaths and debilitating accidents. As I mentioned in my previous letter to you, without exception, every reverse signal operation fatality involves the driver either not knowing anyone is in the back-up zone or losing site of someone he knows is in the back-up zone and proceeding anyway. Under the current regulations, as long as a covered vehicle has a functioning back-up alarm, the burden of avoiding an accident is placed squarely on the shoulders of the pedestrians in the traffic area. No real safety responsibility is placed on the driver while operating the vehicle other than to make sure the back-up alarm is working. A driver can back-up without even checking his side mirrors under the current regulations.

If a driver with a covered vehicle (properly trained under the proposed regulation) approaches an area where he needs to operate in reverse, gets out of his vehicle and determines that the backing zone is clear, and then backs-up safely, we have changed the driver's behavior. If the driver sees that there is pedestrian traffic in the area he needs to back up in, uses a "designated observer/ground guide", and keeps that individual in site at all times during reverse operation, we have changed the driver's behavior.



2. "...will a Lowe's truck delivering a refrigerator to a model home under construction be covered?"

**Response:** Although I have seen different types and sizes of Lowes' trucks, any delivery truck operated on behalf of an employer will be covered under the proposal if there is no access to look out a rear window of the vehicle, as the dangers present are the same. If the vehicle is essentially a pick-up truck or flatbed with a refrigerator sitting in the back, and the cargo is completely blocking the rear window of the truck thereby creating a blind spot, then that would constitute an obstructed view to the rear and the truck would be covered by the proposed regulation. However, as noted above, the delivery driver can take advantage of the exemption that enables the driver to operate in reverse without a "designated observer/ground guide":

"if the driver visually determines from outside the vehicle that no employees are in the backing zone and that it is reasonable to expect that no employees will enter the backing zone during reverse operation of the vehicle."

3. "What about pick-up trucks with shells?"

**Response:** With the exceptions noted in the definition for "obstructed view to the rear" such as "damaged windows", as long as the shell has a front and rear window that are not obstructed and they allow the driver to look directly out the rear window of the truck, then the truck would not have an obstructed view to the rear and would not be covered by the proposed regulation.

4. "And your position that forklifts would 'generally not be considered to have an obstructed view to the rear' seems to only address small forklifts carrying no loads or small loads. Larger forklifts carrying capacity loads, it seems to me, brings into question the 'obstructed view' position."

**Response:** I don't know if I am missing something here or not, but most if not all forklifts carry the load on forks mounted on the front of the vehicle. If the driver is traveling in reverse with a full load on the front of the vehicle the load does not impact the determination of whether there is an obstructed view to the rear of the forklift.

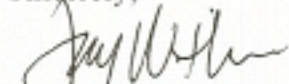
5. "My point is that by greatly increasing the placement of workers behind vehicles as envisioned by the proposal, it might be reasonable to conclude that fatalities involving designated observers will increase."

**Response:** As mentioned in the response to question 1 above, we do not believe that hundreds or thousands of new "designated observer/ground guides" would have to be hired to comply with the regulation. We believe that most employers who currently do not use "designated observer/ground guides" will take advantage of the exemption that

enables the driver to operate in reverse without a "designated observer/ground guide." If there is no significant increase in the use of "designated observer/ground guides", then there would be no significant increase in people being exposed to the hazard of vehicles operating in reverse. However, as noted above, it may be more helpful to the regulated community to reorder the regulatory text and put the "Exemptions" section up at the beginning of the regulation instead of at the end, so that employers and employees realize that there is flexibility built into the regulation to limit compliance costs. We would also certainly address this issue in our training materials.

If you have any questions, please feel free to contact me.

Sincerely,



Jay Withrow, Director  
Office of Legal Support  
[jay.withrow@doli.virginia.gov](mailto:jay.withrow@doli.virginia.gov)  
804.786.9873



# VIRGINIA UTILITY & HEAVY CONTRACTORS COUNCIL

1108 East Main Street, Suite 1200, Richmond, VA 23219  
Telephone 804-346-1020 Fax 804-346-8287

rec'd  
12.27.07  
ju

December 20, 2007

Mr. Jay Withrow  
Director  
Office of Legal Support  
Department of Labor and Industry  
13 S. Thirteenth St.  
Richmond, VA 23219

Dear Mr. Withrow:

Thank you for your comprehensive response to my concerns regarding the proposed changes to the Reverse Signal Operation safety requirements. While your explanation of the various components of the proposal was very informative, it does not substantially alleviate many of the concerns of construction companies throughout Virginia.

For example, your review of the cost concerns focused on the cost of training existing workers on the new requirements. As I understand the proposal however, it potentially requires the hiring/utilization of hundreds, perhaps thousands, of new "designated observer/ground guides" that do not presently exist. That is the potential cost that has not been addressed, and it is substantial.

With regard to the definition issues, I appreciate the cite from the federal OSHA requirement. That language, however, still does remove the ambiguities that are created by this proposal. For example, will a Lowe's truck delivering a refrigerator to a model home under construction be covered? What about pickup trucks with shells? And your position that forklifts would "generally not be considered to have an obstructed view to the rear" seems to only address small forklifts carrying no loads or small loads. Larger forklifts carrying capacity loads, it seems to me, brings into question the "obstructed view" provision.

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#### PARTICIPATING ASSOCIATIONS

The Hampton Roads Utility and Heavy Contractors Association  
The Richmond Area Municipal Contractors Association  
The Heavy Construction Contractors Association

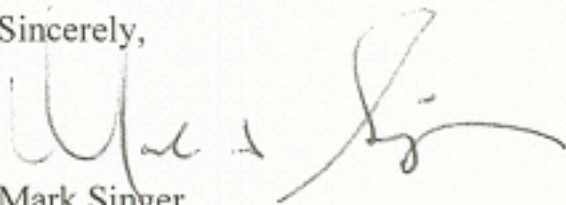


Page Two  
Mr. Jay Withrow  
12/20/07

Finally, with regard to the potential for this issue to be a safety step backward, you have misunderstood my position by considering only what percentage of deaths, under the current scenario, involved the designated observer. My point is that by greatly increasing the placement of workers behind vehicles as envisioned by the proposal, it might be reasonable to conclude that fatalities involving designated observers will increase.

I believe one thing is clear to all parties, and that is that many affected industries were not aware of this proposal, and now that they are, most have expressed concerns about the safety benefits adoption of the proposal will bring. Given that fact, I want to again thank you for helping me to better understand the background issues associated with this proposal, and for affording me and others a future opportunity to provide comment to the Safety and Health Codes Board. I look forward to hearing from you regarding their next meeting.

Sincerely,

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

Mark Singer  
Executive Director

MIS/jh  
cc VUHCC Board of Directors



# COMMONWEALTH of VIRGINIA

## DEPARTMENT OF LABOR AND INDUSTRY

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December 18, 2007

Mark Singer  
Legislative Representative  
Virginia Utility & Heavy Contractors Council  
1108 E. Main Street  
Suite 1200  
Richmond, VA 23219

Subject: Proposed Changes to Reverse Signal Operation Safety Requirements  
16 VAC 25-97

Concerns About the Proposed Regulation In Regards to Cost of Training,  
Definitions, Covered Vehicles, Statistics, and the Designated Observer/Ground  
Guide Requirement

Dear Mr. Singer:

As a follow-up to my e-mail of December 7, 2007, I have enclosed a copy of the briefing package that was provided to the Virginia Safety and Health Codes Board during the public hearing for the proposed regulation. I have also enclosed a copy of a spreadsheet which provides a breakdown of reverse operation fatal accidents from 1992 through September 30, 2007. In addition, the Agency Background Document that was submitted to the Virginia Regulatory Town Hall can be viewed at:

[http://www.townhall.state.va.us/L/GetFile.cfm?File=E:\townhall\docroot\92\2040\4053\Agency Statement\\_DOLI\\_4053\\_v2.pdf](http://www.townhall.state.va.us/L/GetFile.cfm?File=E:\townhall\docroot\92\2040\4053\Agency Statement_DOLI_4053_v2.pdf)

I also wanted to pass along that if the regulation is finalized, the Department plans to prepare and make available to employers a training program that could be used to meet the training requirements contained in the proposed regulation.



**Concerns About Proposed Regulation In Regards to Costs of Training, Definitions, Covered Vehicles, Statistics, and the Designated Observer/Ground Guide Requirement**

Cost of Training Concerns

As related above, it is the Department's intention to prepare and make available to employers a training program that could be used to meet the training requirements contained in the proposed regulation. The availability of a free training program for your members should help to alleviate some of your cost concerns. In addition, I would note that your industry is currently required to provide training programs on construction standards and hazards to its employees (see 1926.20(b)(1) and (b)(2) and 1926.21(b)(1) and (b)(2)). We feel that the Department's proposed training program could be substituted for current training that your members are required to provide on reverse signal operation standards and hazards.

As for your concern that the training costs are grossly understated, without further information from your industry on how much time you think would be involved in training above and beyond what current regulations require, it is difficult for the Department to comment at this time.

As currently proposed the regulation requires employers to train drivers of covered vehicles and designated observers/ground guides in the requirements of the regulation. The requirements for designated observers/ground guides are spelled out specifically in the proposed regulation and provide a simple, commonsense approach to protecting both the ground guide and other workers in the area. The requirements are actually modeled in part after current provisions in the construction standards for individuals working as "monitors" in the Fall Protection Standards, 1926.501 to 503. In addition, the personal protective equipment requirements for designated observers/ground guides are taken directly from current OSHA regulation 1926.201(a), which incorporates by reference Part VI of the Manual on Uniform Traffic Control Devices (1988 Edition, Revision 3 or the Millennium Edition):

- A. While engaged in signaling activities, the designated observer/ground guide shall:
1. have no other assigned duties;
  2. shall not engage in any other activities unrelated to back-up operations other than those related to the covered vehicle being signaled;
  3. shall not use personal cellular phones, personal head phones or similar items that could pose a distraction for the designated observer/ground guide; and
  4. shall be provided with and wear:
    - a. during daytime operations a safety vest or jacket in orange, yellow strong yellow green or fluorescent versions of these colors, reflective warning garments; and
    - b. during nighttime operations a safety vest or jacket with retroreflective material in orange, yellow, white, silver, strong yellow green or a fluorescent version of these colors and shall be visible at a minimum distance of 1,000 feet.



## Definitions and Covered Vehicles

You expressed a concern that the proposal would create uncertainty and vagueness leading to potential citations in the areas of definitions and scope (i.e., "Does it apply to trucks with shells, vans, forklifts, etc."). We do not agree with your assessment. The proposed regulation applies to all vehicles in general industry and the construction industry with an **"obstructed view to the rear."** This phrase is identical to the wording used in current regulations and the definition below is derived directly from a federal OSHA interpretation on the subject (found at [http://www.osha.gov/pls/oshaweb/owadisp.show\\_document?p\\_table=INTERPRETATIONS&p\\_id=19522](http://www.osha.gov/pls/oshaweb/owadisp.show_document?p_table=INTERPRETATIONS&p_id=19522)):

The phrase "obstructed view to the rear" means anything that interferes with the overall view of the operator of the vehicle to the rear of the vehicle at ground level, and includes, but is not limited to, such obstacles as any part of the vehicle (e.g., structural members); its load (e.g., gravel, dirt, machinery parts); its height relative to ground level viewing; damage to windows or side mirrors, etc., used for rearview movement of the vehicle; restricted visibility due to weather conditions (e.g., heavy fog, heavy snow); or work being done after dark without proper lighting."

Generally, any truck where the driver can see directly behind the vehicle at ground level by looking through a rear view mirror, or by turning around and looking out the rear window would not be considered to have an obstructed view to the rear. Examples of this would generally include pick-up trucks, fork lifts, etc. As noted in the regulation, there are certain exceptions to this general rule (e.g. damage to windows/mirrors, restricted visibility due to weather conditions or work being done after dark without proper lighting).

In addition, the proposed regulation also provides exemptions from certain specific requirements:

- \* Covered vehicles with video or similar technological capability to provide the driver with a full view behind the vehicle are exempt from subdivision 2 of 16 VAC 25-97-30 [which is the designated observer or ground guide requirement].
- \* Covered vehicles are exempt from subdivision 2 of 16 VAC 25-97-30 [which is the designated observer or ground guide requirement] if the driver visually determines from outside the vehicle that no employees are in the backing zone and that it is reasonable to expect that no employees will enter the backing zone during reverse operation of the vehicle.
- \* Covered vehicles that were not equipped with a reverse-signal alarm upon manufacture or were not later retrofitted with an alarm are exempt from subdivision 1 of 16 VAC 25-97-30 [which is the requirement for a reverse signal alarm audible above the surrounding noise level].



- \* To the extent that any federal Department of Transportation (DOT) regulation applies to covered vehicles conflicts with this section, the DOT regulation shall take precedence.

### Statistics and Designated Observer/Ground Guide Concerns

As mentioned above, attached is a spreadsheet which provides a breakdown of reverse operation fatal accidents from 1992 through September 30, 2007, involving general industry and construction. Although I will not go into the specifics of each fatality, without exception, in every reverse operation fatal accident the driver either never sees the victim to begin with, or sees the victim at one point but then loses sight of him/her as the vehicle is backing up and either thinks or assumes that the victim has moved out of the way.


You asked what percentage the fatal accidents represented in the universe of vehicle back-up operations that were conducted on construction sites during the period. The Department is not aware of any reliable government or industry source that could be used to gather such information. If you are aware of such a source we would be interested in access to the information.

With regard to the issue of designated observers/ground guides, you suggested that such a requirement could be a safety step backward. We disagree. Although there are a couple of instances in which the designated observer/ground guide was the person killed, the overwhelming majority of fatalities involved other employees working in the area. In each of the fatalities involving designated observers/ground guides, our investigations revealed that the drivers lost sight of the designated observer/ground guide and continued to back the vehicle up anyway. The training requirements for drivers in the proposed regulation would address this issue and help to prevent future accidents. In addition, as noted above, there are two exemptions that would allow an employer to not provide a designated observer/ground guide.

In closing, I hope you find the above information helpful in reviewing the proposed regulation. The regulation has been drafted to eliminate as many of the causes of reverse operation fatalities as possible. That does not mean that the current proposal is perfect and cannot be improved or adjusted to deal with real world issues. To that end and as previously communicated to you, the Department will forward your request for the opportunity to provide official comment to the Safety and Health Codes Board at their next meeting.

If you have any questions, please feel free to contact me.

Sincerely,



Jay Withrow, Director  
Office of Legal Support  
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804.786.9873



**From:** Jay Withrow  
**To:** mark.singer@vuhcc.org  
**Date:** 12/7/2007 10:37 AM  
**Subject:** Safety and Health Codes Board, Reverse Signal Operation Safety Requirements, Proposed Regulation

Mr. Mark Singer:

Thank you for your letter of November 19, 2007, addressed to Policy and Planning Manager John Crisanti on the above referenced proposed regulation. In future you can address correspondence or contacts concerning the proposal to me.

As you know, your comment letter came after the close of the Safety and Health Codes Board's official 60 day comment period and public hearing on the proposed regulation. Although we plan to provide you with a more detailed response to your letter in the near future, this is to confirm that your request for the opportunity to provide official comment on the proposed regulation will be forwarded to the Safety and Health Codes Board at their next meeting - likely sometime during the first quarter of 2008. It is the Department's plan at this point to request the Board to approve an additional 30 day written comment period for sometime next spring. As with the previous comment period, the extended comment period would be published in the Virginia Register and posted on the Virginia Regulatory Town Hall website. We will send you an e-mail notification of the comment period as well.

If you have any further questions, please feel free to contact me.

Jay Withrow, Director  
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**Mark Singer**

---

**From:** "Mark Singer" <mark.singer@vuhcc.org>  
**To:** <john.crisanti@dol.virginia.gov>  
**Sent:** Monday, November 19, 2007 1:51 PM  
**Subject:** Proposed change to Reverse Signal Operations for Vehicular Equipment

November 19, 2007

Mr. John Crisanti  
Policy and Planning Manager  
Virginia Department of Labor and Industry  
Powers Taylor Building, 13 South 13th St.  
Richmond, VA 23219

Dear Mr. Crisanti:

I recently learned of VOSHA's intent to exceed current federal OSHA guidelines regarding Reverse Signal Operations for Vehicular Equipment. Current OSHA regulations require either an audible backup alarm or a trained, designated observer. The VOSHA proposal, as you know, would require both.

On behalf of the three construction organizations represented by the Virginia Utility and Heavy Contractors Council (see website for more info • [www.vuhcc.org](http://www.vuhcc.org)) please note our serious concerns regarding this change, along with our specific request for additional time for you to receive additional industry input before proceeding with the APA and final adoption of this proposed regulation.

I apologize for not responding within the window of time allotted for public comments. I simply did not become aware of this issue until Friday of last week. In addition, I have spoken to a substantial number of other industry representatives who were unaware of this proposal, and who also have serious concerns about the need, cost, and implications of proceeding without further industry participation.

The VUHCC respectfully requests that further action on this item be, therefore, deferred until affected industry groups can review the proposal and have an opportunity for comment and dialogue with your agency. Specifically, the VUHCC would like to have the opportunity to address the following concerns:

- 1) The VUHCC believes the cost estimates provided in the proposed regulation are grossly understated;
- 2) The VUHCC believes that the cost/benefit analysis requires further examination in order to reach a fair and accurate conclusion regarding this proposed change.
- 3) The VUHCC believes that the proposal could create uncertainty and vagueness leading to potential VOSHA citations. (Examples include uncertainty regarding the definitions and scope of the proposal - i.e. - Does it apply to pickup trucks with shells, vans, forklifts etc.? What are the training standards to be used and how can they be verified to VOSHA personnel?)
- 4) The VUHCC believes that further information is required regarding the referenced statistics

11/19/2007

dealing with construction employee fatalities (15 in the 1992-95 period cited). For example -  
Were there extenuating circumstances such as the backup observer not paying  
attention, tripping, falling, etc.? What percentage do these fatalities represent in the  
universe of vehicle back-up operations that were conducted on construction sites during  
the three-year period 1992-95?

5) The VUHCC believes that requiring an observer to be stationed behind the vehicles covered by  
this proposal may, in fact, be a safety step backward that could lead to substantially more  
injuries and fatalities.

As result of these and other concerns, I would request that the DOLI not proceed with the process  
to amend the current regulations pending greater industry input. Receiving broader industry input  
will certainly provide for a much more evaluative consideration of the proposed change, which I  
think all parties would agree would be in the best interest of both the Commonwealth and its  
employers and employees.

I look forward to your positive consideration of my request.

My best to you over the Thanksgiving holiday.

Mark Singer  
Legislative Representative  
Virginia Utility & Heavy Contractors Council  
1108 E. Main St., Suite 1200  
Richmond, VA 23219  
ph - 804.346.1020  
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# COMMONWEALTH of VIRGINIA

## DEPARTMENT OF LABOR AND INDUSTRY

C. RAY DAVENPORT  
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December 18, 2007

Steve Vermillion  
Chief Executive Office  
Associated General Contractors of Virginia  
11950 Nuckols Road  
P.O. Box 5700 (23058)  
Glen Allen, VA 23059

Subject: Proposed Changes to Reverse Signal Operation Safety Requirements  
16 VAC 25-97

Dear Mr. Vermillion:

As a follow-up to my e-mail of December 7, 2007, I have enclosed a copy of the briefing package that was provided to the Virginia Safety and Health Codes Board during the public hearing for the proposed regulation. I have also enclosed a copy of a spreadsheet which provides a breakdown of reverse operation fatal accidents from 1992 through September 30, 2007. In addition, the Agency Background Document that was submitted to the Virginia Regulatory Town Hall can be viewed at:

[http://www.townhall.state.va.us/L/GetFile.cfm?File=E:\townhall\docroot\92\2040\4053\AgencyStatement\\_DOLI\\_4053\\_v2.pdf](http://www.townhall.state.va.us/L/GetFile.cfm?File=E:\townhall\docroot\92\2040\4053\AgencyStatement_DOLI_4053_v2.pdf)

I also wanted to pass along that if the regulation is finalized, the Department plans to prepare and make available to employers a training program that could be used to meet the training requirements contained in the proposed regulation.

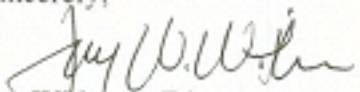
I hope you find the above information helpful in reviewing the proposed regulation. Without exception, in every reverse operation fatal accident the driver either never sees the victim initially, or sees the victim at one point but then loses sight of him/her as the vehicle is backing up and either thinks or assumes that the victim has moved out of the way. The regulation has been drafted to eliminate as many of the causes of reverse operation fatalities as possible. That does not mean that the current proposal is perfect and cannot be improved or adjusted to deal with real world issues. To that end and as previously communicated to you, the Department will



forward your request for the opportunity to provide official comment to the Safety and Health Codes Board at their next meeting.

If you have any questions, please feel free to contact me.

Sincerely,



Jay Withrow, Director  
Office of Legal Support  
[jay.withrow@doli.virginia.gov](mailto:jay.withrow@doli.virginia.gov)  
804.786.9873

**From:** Jay Withrow  
**To:** [steve@agcva.org](mailto:steve@agcva.org)  
**Date:** 12/7/2007 10:05 AM  
**Subject:** Safety and Health Codes Board, Reverse Signal Operation Safety Requirements, Proposed Regulation

Steve,

John Crisanti said you had contacted him about the above referenced proposed regulation. In future you can address correspondence or contacts concerning the proposal to me.

As you know, the Safety and Health Codes Board's official 60 day comment period and public hearing on the proposed regulation has ended. However, because of contacts from several different people, this is to confirm that we will be asking the Board at their next meeting (likely sometime during the first quarter of 2008) for an additional comment period on the proposed regulation. It is the Department's plan at this point to request the Board to approve an additional 30 day written comment period for sometime next spring. As with the previous comment period, the extended comment period would be published in the Virginia Register and posted on the Virginia Regulatory Town Hall website. We will send you an e-mail notification of the comment period as well.

If you have any further questions, please feel free to contact me.

Jay Withrow, Director  
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Virginia Department of Labor and Industry  
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*COMMONWEALTH of VIRGINIA*

**DEPARTMENT OF LABOR AND INDUSTRY**

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**VIRGINIA SAFETY AND HEALTH CODES BOARD**

**BRIEFING PACKAGE**

**FOR FEBRUARY 28, 2008**

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**EMPLOYER PAYMENT FOR PERSONAL PROTECTIVE EQUIPMENT (PPE);  
FINAL RULE**

**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 final rule for Employer Payment for Personal Protective Equipment, as published in 72 FR 64341 on November 15, 2007.

The proposed effective date is June 1, 2008, with a proposed implementation date of September 1, 2008.

**II. Summary of the Standard.**

Many federal OSHA health, safety, maritime, and construction standards require employers to provide their employees with protective equipment, including personal protective equipment (PPE), when such equipment is necessary to protect employees from job-related injuries, illnesses, and fatalities.

The provisions in federal OSHA standards that require PPE generally state that the employer is to provide such PPE. However, some of these provisions do not specify that the employer is to provide such PPE at no cost to the employee (See list of items covered in Appendix A). This standard does not require employers to pay for items that are not PPE, nor provide PPE where none has before been required. Instead, the standard merely stipulates that the employer must pay for required PPE, except in the limited cases specified in the standard. (See Appendix B for examples of items exempted from employer payment requirements)

This final rule also clarifies federal OSHA's intent regarding employee-owned PPE and replacement PPE. Employers must also pay for any replacement PPE, except in cases where the employee loses or intentionally damages his or her equipment.

The final rule also states that an employer is only required to pay for the PPE of its own employees, not independent contractors working in their [the employer's] facilities. "Host employers" and general contractors are not responsible for the payment of PPE for subcontractors employees. However, employers utilizing and controlling the work of workers from temporary help services are responsible for providing PPE at no cost to the worker, but are free to negotiate arrangements with the temporary worker agency.

### **III. Basis, Purpose and Impact of the Standard.**

#### **A. Basis.**

Some OSHA standards specifically require the employer to pay for PPE, while most are silent with regard to whether the employer is obligated to pay. OSHA's health standards issued after 1978 have made it clear both in the regulatory text and in the preamble that the employer is responsible for providing necessary PPE at no cost to the employee (e.g., 29 C.F.R. 1910.1018(j)(1), inorganic arsenic). The regulatory text and preamble discussion for some safety standards have also been clear that the employer must both provide and pay for PPE [e.g., 29 CFR 1910.266(d)(1)(iii) and (iv), the logging standard].

For most PPE provisions in OSHA's standards, however, the regulatory text does not explicitly address the issue of payment for personal protective equipment. The provisions that are silent on whether the employer must pay have been subject to varying interpretation and application by employers, federal OSHA, the federal Occupational Safety and Health Review Commission (Review Commission), and the courts.

On October 18, 1994, in a memorandum to its field staff, federal OSHA established a nationwide policy on the issue of payment for required PPE, "Employer Obligation to Pay for Personal Protective Equipment." OSHA stated that for all PPE standards the employer must both provide, and pay for, the required PPE, except in limited situations. The memorandum stated that where PPE is very personal in nature and used by the employee off the job, such as is often the case with steel-toe safety shoes (but not metatarsal foot



protection), the issue of payment may be left to labor-management negotiations. The Review Commission, however, declined to accept the interpretation embodied in the 1994 memorandum as it applied to 29 CFR 1910.132(a), Application of the General Requirements for PPE.

In 1997, the Review Commission vacated a citation issued to an employer for failing to pay for metatarsal foot protection and welding gloves. The Review Commission reasoned that the Secretary had failed to adequately explain the policy outlined in the 1994 memorandum in light of several earlier letters of interpretation from OSHA that it read as inconsistent with that policy.

On March 31, 1999, federal OSHA issued a proposed rule for employer payment of PPE. It adopted this final rule on November 15, 2007.

## **B. Purpose.**

Federal OSHA promulgated this standard for three reasons:

- 1) the standard clarifies a requirement legally implicit in the Occupational Safety and Health Act of 1970 (“the Act”) which makes employers solely responsible for the means necessary to achieve safe and healthful workplaces. Employers are therefore responsible for providing at no cost to their employees the PPE that is required because of workplace hazards;
- 2) the standard will reduce work-related injuries and illnesses; and
- 3) the standard will create a clear policy across OSHA’s standards, thus reducing confusion among employers and employees concerning the PPE that employers must provide at no cost to employees.

## **C. Impact on Employers.**

The final rule does not change any PPE requirements, but affects only the issue of who pays for PPE required by federal OSHA standards.

Federal OSHA has determined that requiring employer payment for most types of PPE increases the effectiveness of existing PPE standards in several ways, including:

- 1) the requirement encourages a greater degree of usage of PPE by eliminating a financial disincentive to such use;
- 2) it increases the degree of employer control over what kinds of PPE their employees are using, how it is used and requires standardized procedures for cleaning, storing, and maintaining the PPE. This control by employers thereby increases the

effectiveness of the employer's safety program; and

- 3) the requirement indirectly fosters a greater degree of employee cooperation in employer safety programs by demonstrating the employer's financial commitment to safety.

Federal OSHA holds that Congress did not intend for employers to pay for the types of PPE exempted in the standard. The PPE exempted in the final rule is the type of PPE that has been historically exempted from employer payment by OSHA. Requiring employers to pay for all PPE without exception would not be a cost effective means of protecting employees.

Generally, Congress has viewed the costs of compliance with the OSH Act as a type of ordinary business expense that employers would be expected to bear in order to reduce employee exposure to safety and health hazards. If employers are in full compliance with requirements that PPE be provided, then PPE is already being paid for by either the employer or the employee, and the sole impact of the final rule is to shift any cost of allowable portion of the PPE currently being paid for by the employee to the employer. Such a shift in who pays the cost simply represents a transfer of payment liability within the economy for an existing expenditure and results in a zero net cost to the economy. However, to the extent that such a shift results in the use of more or better PPE, as stated above, then this rule will lead to costs and benefits to the economy.

Working from data supplied by federal OSHA for the states under its direct jurisdiction, estimates for the entire U.S. and extrapolated impacts for Virginia are as follows:

<b>CATEGORY</b>	<b>UNITED STATES</b>	<b>VIRGINIA</b>
Total affected establishments	2.9 million	78,000
Affected enterprises with fewer than 500 employees	2.9 Million	78,000
Affected enterprises with fewer than 20 employees	2.37 Million	64,000
Total number of employees using PPE	42.2 Million	1.14 Million
Annual costs to all affected employers	\$145.3 Million	\$3.9 Million
Annual compliance costs to employer for affected enterprises with fewer than 500 employees	\$80.5 Million	\$2.18 Million
Annual compliance costs to employers for	\$39.3 Million	\$1.06 Million



affected enterprises with fewer than 20 employees		
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Despite the cost of the regulation, Federal OSHA estimated that employers currently pay for more than 95 percent of the PPE for their employees.

**D. Impact on Employees.**

The primary benefits for employees from this final rule derive from an anticipated decrease in fatal and non-fatal injuries as well as associated cost savings that will accrue by requiring employers to assume the full costs of the covered types of PPE. The final rule makes it clear that employers shall not require employees to provide or pay for their own PPE, unless specifically excepted by the other provisions of the rule. The final rule also ensures that all PPE used by employees has been evaluated and is adequate to protect the employees from workplace hazards.

The final rule does not require employers to reimburse employees for PPE they already own. Federal OSHA also recognizes that in some cases and in certain trades employees may wish to own their tools and bring that equipment to the worksite.

Federal OSHA concluded in this final rule that when employers do not provide and pay for PPE, it is often not worn by the employee, is worn improperly, or is not cared for and replaced when necessary. When employees are required to pay for their own PPE, they are likely to minimize their out-of-pocket PPE costs and thus are likely to fail to purchase sufficient or proper PPE. As the wage rate decreases, OSHA believes that employees will be less and less likely to purchase adequate PPE and replace it when necessary, and are more likely to make cosmetic repairs, hide defects, or purchase used PPE aged beyond its service life.

Employee-owned PPE is particularly prevalent in the construction, marine terminal and shipyard industries, as well as workplaces employing individuals from temporary help services. However, employees are under no obligation to provide their own PPE, and the employer is not required to reimburse the employee for equipment that temporary employees voluntarily bring to the worksite and wish to use.

OSHA also believes that the final rule will achieve substantial benefits in the area of fall protection, particularly in construction. The final rule will prevent a number of fatalities and severe injuries that are now occurring either because employee-provided PPE offers inadequate protection or because the employee arrives on site without the necessary PPE. Federal OSHA estimated that 75 percent of fatal “struck by” and “struck against” injuries would otherwise be prevented by proper use of head protection (i.e., hardhats).

**E. Impact on the Department of Labor and Industry.**

The Department will benefit from the clear and consistent PPE enforcement policy across all Occupational Safety and Health standards and reducing confusion about the items for which employers are required to pay. No additional costs are anticipated for the Department with the adoption of this 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.

**F. Technology Feasibility**

There are no technological feasibility issues presented by this standard. PPE is widely manufactured, distributed, and used in workplaces in all of the industries covered by OSHA standards. This standard is solely concerned with a change in the expenditure responsibility for a certain portion of the PPE already in use.

The PPE requirements have already been found to be technologically feasible in other rulemakings which require the employer to pay for PPE.

**V. Implementation Schedule**

**Federal:**

**Virginia:**

Federal Publication date: 11/15/07

Board meeting: 2/28/08

Effective date: 02/13/08

06/01/08

\*Implementation date: 05/15/08

09/01/08

\* Federal OSHA gave employers six months from the federal publication date to change their policies to accommodate the final rule. In Virginia, employers will be given six months from February 28, 2008 (proposed final rule adoption date by the Safety and Health Codes Board) to change their policies to accommodate the final rule.

**Contact Person:**

Mr. Glenn Cox  
Director, Occupational Safety Compliance  
(804) 786-2377  
[Glenn.Cox@doli.virginia.gov](mailto:Glenn.Cox@doli.virginia.gov)

## **APPENDIX A**

### **Examples of PPE for which Employer Payment is Required**

- Metatarsal protection;
- Special boots for longshoremen working logs;
- Rubber boots with steel toes;
- Shoe covers – toe caps and metatarsal guards;
- Non-prescription eye protection;
- Prescription eyewear inserts/lenses for welding and diving helmets;
- Goggles;
- Face shields;
- Laser safety goggles;
- Fire fighting PPE (helmet, gloves, boots, proximity suits, full gear);
- Hard hat;
- Hearing protection;
- Welding PPE;
- Items used in medical/laboratory settings to protect from exposure to infectious agents (Aprons, lab coats, goggles, disposable gloves, shoe covers, etc).
- Non-specialty gloves: payment is required if they are PPE; payment is not required if they are only for keeping clean or for cold weather (with no safety or health consideration);
- Rubber sleeves;
- Aluminized gloves;
- Chemical resistant gloves/aprons/clothing;
- Barrier creams (unless used solely for weather-related protection);
- Rubber insulating gloves;
- Mesh cut proof gloves, mesh or leather aprons;
- SCBA, atmosphere-supplying respirators (escape only);
- Respiratory protection;
- Fall protection;
- Ladder safety device belts;
- Climbing ensembles used by linemen (e.g., belts and climbing hooks);
- Window cleaners safety straps;
- Personal flotation devices (life jacket);
- Encapsulating chemical protective suits;
- Reflective work vests; and
- Bump caps.



## **APPENDIX B**

### **Examples of PPE and other Items Excepted from Employer Payment Requirements**

- non-specialty safety-toe protective footwear (including steel-toe shoes or steel-toe boots);
- non-specialty prescription safety eye wear that is allowed by the employer to be worn off the job-site;
- Shoes or boots with built-in metatarsal protection that the employee has requested to use instead of the employer-provided detachable metatarsal guards;
- Logging boots required by §1910.266(d)(1)(v);
- Everyday work clothing, such as, long sleeve shirts, long pants, street shoes, and normal work boots;
- Ordinary rain gear;
- Back belts;
- Dust masks/respirators used under the voluntary use provisions in §1910.134; and
- Ordinary cold weather gear (winter coats, parkas, cold weather gloves, winter boots; ordinary rain gear), sunglasses/skin creams or other items used solely for protection from the weather.

## **RECOMMENDED ACTION**

Staff of the Department of Labor and Industry recommends that the Safety and Health Codes Board adopt the final rule for Employer Payment for Personal Protective Equipment, as authorized by Virginia Code §§ 40.1-22(5) and 2.2-4006.A.4(c), with an effective date of June 1, 2008, and an implementation date of September 1, 2008.

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.



**EMPLOYER PAYMENT FOR PERSONAL PROTECTIVE EQUIPMENT;  
FINAL RULE**

As Adopted by the  
Safety and Health Codes Board

Date: \_\_\_\_\_



VIRGINIA OCCUPATIONAL SAFETY AND HEALTH PROGRAM

VIRGINIA DEPARTMENT OF LABOR AND INDUSTRY

Effective Date: \_\_\_\_\_

- 16 VAC 25-90-1910, General Industry
- 16 VAC 25-100-1915, Shipyards Employment
- 16 VAC 25-120-1917, Longshoring
- 16 VAC 25-130-1918, Marine Terminals
- 16 VAC 25-175-1926, Construction Industry

When the regulations, as set forth in the final rule for Employer Payment for Personal Protective Equipment (PPE), 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

Effective date: February 13, 2008

June 1, 2008

Implementation date: May 15, 2008

September 1, 2008



## General Industry

## PART 1910—[AMENDED]

■ 1. The authority citation for subpart I of 29 CFR part 1910 is revised to read as follows:

**Authority:** Sections 4, 6, and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, and 657); Secretary of Labor's Order No. 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), 5-2002 (67 FR 65008), or 5-2007 (72 FR 31160), as applicable, and 29 CFR Part 1911.

■ 2. A new paragraph (h) is added to § 1910.132, to read as follows:

**§ 1910.132 General requirements.**

\* \* \* \* \*

(h) *Payment for protective equipment.*

(1) Except as provided by paragraphs (h)(2) through (h)(6) of this section, the protective equipment, including personal protective equipment (PPE), used to comply with this part, shall be provided by the employer at no cost to employees.

(2) The employer is not required to pay for non-specialty safety-toe protective footwear (including steel-toe shoes or steel-toe boots) and non-specialty prescription safety eyewear, provided that the employer permits such items to be worn off the job-site.

(3) When the employer provides metatarsal guards and allows the employee, at his or her request, to use shoes or boots with built-in metatarsal protection, the employer is not required to reimburse the employee for the shoes or boots.

(4) The employer is not required to pay for:

(i) The logging boots required by 29 CFR 1910.256(d)(1)(v);

(ii) Everyday clothing, such as long-sleeve shirts, long pants, street shoes, and normal work boots; or

(iii) Ordinary clothing, skin creams, or other items, used solely for protection from weather, such as winter coats, jackets, gloves, parkas, rubber boots, hats, raincoats, ordinary sunglasses, and sunscreen.

(5) The employer must pay for replacement PPE, except when the employee has lost or intentionally damaged the PPE.

(6) Where an employee provides adequate protective equipment he or she owns pursuant to paragraph (b) of this section, the employer may allow the employee to use it and is not required to reimburse the employee for that

equipment. The employer shall not require an employee to provide or pay for his or her own PPE, unless the PPE is excepted by paragraphs (h)(2) through (h)(5) of this section.

(7) This paragraph (h) shall become effective on February 13, 2008. Employers must implement the PPE payment requirements no later than May 15, 2008.

**Note to § 1910.132(h):** When the provisions of another OSHA standard specify whether or not the employer must pay for specific equipment, the payment provisions of that standard shall prevail.

## PART 1915—[AMENDED]

■ 1. The authority citation for 29 CFR part 1915 is revised to read as follows:

**Authority:** Section 41, Longshore and Harbor Workers' Compensation Act (33 U.S.C. 941); Sections 4, 6, and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order No. 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), 5-2002 (67 FR 65008), or 5-2007 (72 FR 31160) as applicable; 29 CFR Part 1911.

■ 2. A new paragraph (f) is added to § 1915.152, to read as follows:

**§ 1915.152 General requirements.**

\* \* \* \* \*

(f) *Payment for protective equipment.*

(1) Except as provided by paragraphs (f)(2) through (f)(6) of this section, the protective equipment, including personal protective equipment (PPE), used to comply with this part, shall be provided by the employer at no cost to employees.

(2) The employer is not required to pay for non-specialty safety-toe protective footwear (including steel-toe shoes or steel-toe boots) and non-specialty prescription safety eyewear, provided that the employer permits such items to be worn off the job-site.

(3) When the employer provides metatarsal guards and allows the employee, at his or her request, to use shoes or boots with built-in metatarsal protection, the employer is not required to reimburse the employee for the shoes or boots.

(4) The employer is not required to pay for:

(i) Everyday clothing, such as long-sleeve shirts, long pants, street shoes, and normal work boots; or

(ii) Ordinary clothing, skin creams, or other items, used solely for protection from weather, such as winter coats, jackets, gloves, parkas, rubber boots, hats, raincoats, ordinary sunglasses, and sunscreen.

(5) The employer must pay for replacement PPE, except when the

employee has lost or intentionally damaged the PPE.

(6) Where an employee provides appropriate protective equipment he or she owns, the employer may allow the employee to use it and is not required to reimburse the employee for that equipment. The employer shall not require an employee to provide or pay for his or her own PPE, unless the PPE is excepted by paragraphs (f)(2) through (f)(5) of this section.

(7) This paragraph (f) shall become effective on February 13, 2008. Employers must implement the PPE payment requirements no later than May 15, 2008.

Note to § 1915.152(f): When the provisions of another OSHA standard specify whether or not the employer must pay for specific equipment, the payment provisions of that standard shall prevail.

#### Longshoring

#### PART 1917—[AMENDED]

■ 1. The authority citation for 29 CFR part 1917 is revised to read as follows:

Authority: Section 41, Longshore and Harbor Workers' Compensation Act (33 U.S.C. 941); Sections 4, 6, and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order No. 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), 5-2002 (67 FR 65008), or 5-2007 (72 FR 31160) as applicable; 29 CFR Part 1911.

■ 2. A new § 1917.96 is added, to read as follows:

#### § 1917.96 Payment for protective equipment.

(a) Except as provided by paragraphs (b) through (f) of this section, the protective equipment, including personal protective equipment (PPE), used to comply with this part, shall be provided by the employer at no cost to employees.

(b) The employer is not required to pay for non-specialty safety-toe protective footwear (including steel-toe shoes or steel-toe boots) and non-specialty prescription safety eyewear, provided that the employer permits such items to be worn off the job-site.

(c) When the employer provides metatarsal guards and allows the employee, at his or her request, to use shoes or boots with built-in metatarsal protection, the employer is not required to reimburse the employee for the shoes or boots.

(d) The employer is not required to pay for:

(1) Everyday clothing, such as long-sleeve shirts, long pants, street shoes, and normal work boots; or

(2) Ordinary clothing, skin creams, or other items, used solely for protection from weather, such as winter coats, jackets, gloves, parkas, rubber boots, hats, raincoats, ordinary sunglasses, and sunscreen.

(e) The employer must pay for replacement PPE, except when the employee has lost or intentionally damaged the PPE.

(f) Where an employee provides adequate protective equipment he or she owns, the employer may allow the employee to use it and is not required to reimburse the employee for that equipment. The employer shall not require an employee to provide or pay for his or her own PPE, unless the PPE is excepted by paragraphs (b) through (e) of this section.

(g) This section shall become effective on February 13, 2008. Employers must implement the PPE payment requirements no later than May 15, 2008.

Note to § 1917.96: When the provisions of another OSHA standard specify whether or not the employer must pay for specific equipment, the payment provisions of that standard shall prevail.

#### Marine Terminals

#### PART 1918—[AMENDED]

■ 1. The authority citation for 29 CFR part 1918 is revised to read as follows:

Authority: Section 41, Longshore and Harbor Workers' Compensation Act (33 U.S.C. 941); Sections 4, 6, and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order No. 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), 5-2002 (67 FR 65008), or 5-2007 (72 FR 31160) as applicable; 29 CFR Part 1911.

■ 2. A new § 1918.106 is added, to read as follows:

#### § 1918.106 Payment for protective equipment.

(a) Except as provided by paragraphs (b) through (f) of this section, the protective equipment, including personal protective equipment (PPE), used to comply with this part, shall be provided by the employer at no cost to employees.

(b) The employer is not required to pay for non-specialty safety-toe protective footwear (including steel-toe shoes or steel-toe boots) and non-specialty prescription safety eyewear, provided that the employer permits such items to be worn off the job-site.

(c) When the employer provides metatarsal guards and allows the employee, at his or her request, to use shoes or boots with built-in metatarsal

protection, the employer is not required to reimburse the employee for the shoes or boots.

(d) The employer is not required to pay for:

(1) Everyday clothing, such as long-sleeve shirts, long pants, street shoes, and normal work boots; or

(2) Ordinary clothing, skin creams, or other items, used solely for protection from weather, such as winter coats, jackets, gloves, parkas, rubber boots, hats, raincoats, ordinary sunglasses, and sunscreen.

(e) The employer must pay for replacement PPE, except when the employee has lost or intentionally damaged the PPE.

(f) Where an employee provides adequate protective equipment he or she owns, the employer may allow the employee to use it and is not required to reimburse the employee for that equipment. The employer shall not require an employee to provide or pay for his or her own PPE, unless the PPE is excepted by paragraphs (b) through (e).

(g) This section shall become effective on February 13, 2008. Employers must implement the PPE payment requirements no later than May 15, 2008.

Note to § 1918.106: When the provisions of another OSHA standard specify whether or not the employer must pay for specific equipment, the payment provisions of that standard shall prevail.

#### Construction

#### PART 1926—[AMENDED]

■ 1. The authority citation for subpart E of 29 CFR part 1926 is revised to read as follows:

Authority: Section 107, Contract Work Hours and Safety Standards Act (Construction Safety Act) (40 U.S.C. 333); Sections 4, 6, and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order No. 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), 5-2002 (67 FR 65008), or 5-2007 (72 FR 31160) as applicable; and 29 CFR Part 1911.

■ 2. A new paragraph (d) is added to § 1926.95, to read as follows:

#### § 1926.95 Criteria for personal protective equipment.

\* \* \* \* \*

(d) *Payment for protective equipment.*

(1) Except as provided by paragraphs (d)(2) through (d)(6) of this section, the protective equipment, including personal protective equipment (PPE), used to comply with this part, shall be



provided by the employer at no cost to employees.

(2) The employer is not required to pay for non-specialty safety-toe protective footwear (including steel-toe shoes or steel-toe boots) and non-specialty prescription safety eyewear, provided that the employer permits such items to be worn off the job-site.

(3) When the employer provides metatarsal guards and allows the employee, at his or her request, to use shoes or boots with built-in metatarsal protection, the employer is not required to reimburse the employee for the shoes or boots.

(4) The employer is not required to pay for:

(i) Everyday clothing, such as long-sleeve shirts, long pants, street shoes, and normal work boots; or

(ii) Ordinary clothing, skin creams, or other items, used solely for protection from weather, such as winter coats, jackets, gloves, parkas, rubber boots, hats, raincoats, ordinary sunglasses, and sunscreen.

(5) The employer must pay for replacement PPE, except when the employee has lost or intentionally damaged the PPE.

(6) Where an employee provides adequate protective equipment he or she owns pursuant to paragraph (b) of this section, the employer may allow the employee to use it and is not required

to reimburse the employee for that equipment. The employer shall not require an employee to provide or pay for his or her own PPE, unless the PPE is excepted by paragraphs (d)(2) through (d)(5) of this section.

(7) This section shall become effective on February 13, 2008. Employers must implement the PPE payment requirements no later than May 15, 2008.

Note to § 1926.95(d): When the provisions of another OSHA standard specify whether or not the employer must pay for specific equipment, the payment provisions of that standard shall prevail.

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*COMMONWEALTH of VIRGINIA*

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**VIRGINIA SAFETY AND HEALTH CODES BOARD**

**BRIEFING PACKAGE**

**FOR FEBRUARY 28, 2008**

-----

**Updating OSHA Standards Based on National Consensus Standards;  
Direct Final Rule**

**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 direct final rule for Updating OSHA Standards Based on National Consensus Standards, as published in 72 FR 71061 on December 14, 2007.

The proposed effective date is June 1, 2008.

**II. Summary of the Direct Final Rule.**

This direct final rule is a continuation of federal OSHA's ongoing effort to update references to consensus and industry standards used throughout its rules. The direct final rule and the accompanying Notice of Proposed Rule Making (NPRM) (72 FR 71091) address welding definitions; abrasive wheel specification; floor and wall openings, railings, and toeboards; marking of portable compressed gas cylinders; and spray finishing.



Specifically, in this direct final rule, federal OSHA amended subparagraph (c)(1)(iv) of its spray-finishing standard at 29 CFR 1910.107, which incorrectly refers to the requirements for powder-coating equipment in “paragraph (c)(1) of this section.” The amendment at 29 CFR 1910.107(c)(1)(iv) will identify the correct provision for regulating powder-coating equipment.

Additionally, federal OSHA removed the reference to American Welding Society (“AWS”) standard A3.0-1969 (“Terms and Definitions”) in paragraph (c) of 29 CFR 1910.251 (“Definitions”). Federal OSHA determined that after over 35 years of experience with these terms, employers and employees performing welding, cutting, and brazing operations understand their meaning when applying the substantive requirements in 29 CFR 1910.252-1910.255.

Federal OSHA removed the reference to the ANSI standards in the following standards:

1910.68(b)(4) and (b)(8)(ii);

1910.94(b)(5)(i)(a) and replaced it with a cite to 1910.215, Tables O-1 and O-9;

1910.94(c)(5)(iii)(e);

1910.103(b)(1)(i)(c), 1910.110(b)(5)(iii) and 1910.111(e)(1) and replaced them with a cite to paragraph (b)(1)(ii) of 1910.253;

1910.144(a)(1)(ii);

1910.243(d)(1)(i) and replace it with a cite to the design requirements specified by 1910.243(d)(2); and

1910.261(c)(15)(ii), (e)(4), (g)(13)(i), (h)(1), (j)(4)(iii), (j)(5)(i), (k)(6), (k)(13)(i), and (k)(15) and replaced them with a cite to 1910.23.

In the following standards, federal OSHA removed the reference to the NFPA standard:

1910.94(c)(1)(ii);

1910.94(c)(3)(i);

1910.94(c)(3)(i)(a);

1910.94(c)(3)(iii);

1910.94(c)(3)(iii)(a); and

1910.94(c)(3)(5)(i)

### **III. Basis, Purpose and Impact of the Standard/Amendment.**

#### **A. Basis.**

Federal OSHA is undertaking a long-term project to update the standards to reflect the latest versions of consensus and industry standards. This project includes updating or revoking

consensus standards incorporated by reference, and updating regulatory text of current rules that OSHA adopted directly from the language of outdated consensus and industry standards.



**B. Purpose.**

This final direct rule is a continuation of federal OSHA’s long-term project to update its standards to reflect the latest versions of consensus and industry standards. Federal OSHA is removing references to the duplicative consensus standards altogether, or replacing them with cross-references to the existing OSHA standards that have requirements that are essentially identical to the consensus standards.

**C. Impact on Employers.**

Federal OSHA has determined that the direct final rule will not impose additional costs on any private- or public-sector entity.

Federal OSHA believes that removing consensus standards, or replacing them with cross-references to other OSHA standards, will not alter existing compliance obligations or reduce employee protection. Employers need not alter their current practices as a result of this direct final rule.

With respect to the removal of the reference to American Welding Society (“AWS”) standard A3.0-1969 (“Terms and Definitions”) in paragraph (c) of 29 CFR 1910.251 (“Definitions”), federal OSHA determined that removing the reference to AWS standard A.3.0-1969 would not affect employers’ substantive obligations under 29 CFR part 1910, subpart Q, and would bring the general industry standard in line with the standards regulating welding, cutting, and heating operations for the shipyard employment industry (29 CFR part 1915, subpart D) and welding and cutting operations for the construction industry (29 CFR part 1926, subpart J). These standards do not define the technical welding terms used.

**D. Impact on Employees.**

Federal OSHA determined that this direct final rule will not reduce the employee protections put into place by the standards being amended. Conversely, OSHA determined that the direct final rule will enhance employee safety by eliminating confusing requirements and clarifying employer obligations.

**E. Impact on the Department of Labor and Industry.**

No impact is anticipated on the Department with the adoption of the direct 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.

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## RECOMMENDED ACTION

Staff of the Department of Labor and Industry recommends that the direct final rule for Updating OSHA Standards Based on National Consensus Standards, as authorized by Virginia Code §§ 40.1-22(5) and 2.2-4006.A.4(c), with an effective date of June 1, 2008.

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.



**Updating OSHA Standards Based on National Consensus Standards; Direct Final Rule**

As Adopted by the  
Safety and Health Codes Board

Date: \_\_\_\_\_



VIRGINIA OCCUPATIONAL SAFETY AND HEALTH PROGRAM

VIRGINIA DEPARTMENT OF LABOR AND INDUSTRY

Effective Date: \_\_\_\_\_

- 16 VAC 25-90-1910.6, Incorporation by reference
- 16 VAC 25-90-1910.68, Manlifts
- 16 VAC 25-90-1910.94, Ventilation
- 16 VAC 25-90-1910.103, Hydrogen
- 16 VAC 25-90-1910.107, Spray finishing using flammable and combustible materials
- 16 VAC 25-90-1910.110, Storage and handling of liquid petroleum gases
- 16 VAC 25-90-1910.111, Storage and handling of anhydrous ammonia
- 16 VAC 25-90-1910.144, Safety color code for marking physical hazards
- 16 VAC 25-90-1910.243, Guarding of portable powered tools
- 16 VAC 25-90-1910.251, Definitions
- 16 VAC 25-90-1910.253, Oxygen-fuel gas welding and cutting
- 16 VAC 25-90-1910.261, Pulp, paper, and paperboard mills

When the regulations, as set forth in the direct final rule for Updating OSHA Standards Based on National Consensus Standards, 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

OSH Standard

Assistant Secretary

Commissioner of Labor and  
Industry

Agency

Department

March 13, 2008

June 1, 2008

Order No. 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), or 5-2007 (72 FR 31159), as applicable.

Section 1910.6 also issued under 5 U.S.C. 553. Sections 1910.6, 1910.7, and 1910.8 also issued under 29 CFR Part 1911. Section 1910.7(f) also issued under 31 U.S.C. 9701, 29 U.S.C. 9a, 5 U.S.C. 553; Pub. L. 106-113 (113 Stat. 1501A-222); and OMB Circular A-25 (dated July 8, 1993) (58 FR 38142, July 15, 1993).

■ 2. In § 1910.6:

■ a. Remove and reserve paragraphs (e)(1), (e)(2), (e)(5), (e)(62), and (e)(63), and (j)(1).; and

■ b. Revise paragraphs (e)(15), (e)(49), and (q)(3) to read as follows:

§ 1910.6 Incorporation by reference.

\* \* \* \* \*

(e) \* \* \*

(15) ANSI B7.1-70 Safety Code for the Use, Care and Protection of Abrasive Wheels, IBR approved for §§ 1910.215(b)(12) and 1910.218(j).

\* \* \* \* \*

(49) ANSI Z9.1-51 Safety Code for Ventilation and Operation of Open Surface Tanks, IBR approved for 1910.261(a)(3)(xix), (g)(18)(v), and (h)(2)(i).

\* \* \* \* \*

(q) \* \* \*

(3) NFPA 33-1969 Standard for Spray Finishing Using Flammable and Combustible Material, IBR approved for § 1910.94(c)(2).

\* \* \* \* \*

Subpart F—[Amended]

■ 3-4. Revise the authority citation for subpart F of part 1910 to read as follows:

Authority: Sections 4, 6, and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order No. 12-71 (36 FR 8754), 8-76 (41 FR 25059), 9-83 (48 FR 35736), 1-90 (55 FR 9033), or 5-2007 (72 FR 31159), as applicable; and 29 CFR Part 1911.

■ 5. Revise paragraphs (b)(4) and (b)(8)(ii) of § 1910.68 to read as follows:

§ 1910.68 Manlifts.

\* \* \* \* \*

(b) \* \* \*

(4) *Reference to other codes and subparts.* The following codes and subparts of this part are applicable to this section: Safety Code for Mechanical Power Transmission Apparatus, ANSI B15.1-1953 (R 1958); Safety Code for Fixed Ladders, ANSI A14.3-1956; and subparts D, O, and S. The preceding ANSI standards are incorporated by reference as specified in § 1910.6.

\* \* \* \* \*

V. Amendments to Standards

■ For the reasons stated in the preamble, OSHA is amending 29 CFR part 1910 to read as follows:

PART 1910—[AMENDED]

Subpart A—[Amended]

■ 1. Revise the authority citation for subpart A of part 1910 to read as follows:

Authority: Sections 4, 6, and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's



(8) \* \* \*  
(ii) *Construction.* The rails shall be standard guardrails with toeboards meeting the provisions of § 1910.23.

**Subpart G—[Amended]**

■ 6. Revise the authority citation for subpart G of part 1910 to read as follows:

Authority: Sections 4, 6, and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order No. 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), or 5-2007 (72 FR 31159), as applicable; and 29 CFR Part 1911. Section 1910.94 also issued under 5 U.S.C. 553.

■ 7. Revise paragraphs (b)(5)(1)(a), (c)(1)(ii), (c)(3)(i) introductory text, (c)(3)(i)(a), (c)(3)(iii) introductory text, (c)(3)(iii)(a), (c)(5)(i) introductory text, and (c)(5)(ii)(e) of § 1910.94 to read as follows:

**§ 1910.94 Ventilation.**

(b) \* \* \*  
(5) \* \* \*  
(i)(a) It is the dual function of grinding and abrasive cutting-off wheel hoods to protect the operator from the hazards of bursting wheels, as well as to provide a means for the removal of dust and dirt generated. All hoods shall be not less in structural strength than specified in Tables O-1 and O-9 of § 1910.215.

(c) \* \* \*  
(1) \* \* \*  
(ii) *Spray booth.* Spray booths are defined and described in § 1910.107(a).

(3) \* \* \*  
(i) Spray booths shall be designed and constructed in accordance with § 1910.107(b)(1) through (b)(4) and (b)(6) through (b)(10). For a more detailed discussion of fundamentals relating to this subject, see ANSI Z9.2-1960, which is incorporated by reference as specified in § 1910.6.

(a) Lights, motors, electrical equipment, and other sources of ignition shall conform to the requirements of § 1910.107(b)(10) and (c).

(iii) Baffles, distribution plates, and dry-type overspray collectors shall conform to the requirements of § 1910.107(b)(4) and (b)(5).

(a) Overspray filters shall be installed and maintained in accordance with the requirements of § 1910.107(b)(5), and shall only be in a location easily

accessible for inspection, cleaning, or replacement.

(5) \* \* \*  
(i) Ventilation shall be provided in accordance with provisions of § 1910.107(d), and in accordance with the following:

(iii) \* \* \*  
(e) Inspection or clean-out doors shall be provided for every 9 to 12 feet of running length for ducts up to 12 inches in diameter, but the distance between cleanout doors may be greater for larger pipes. A clean-out door or doors shall be provided for servicing the fan, and where necessary, a drain shall be provided.

**Subpart H—[Amended]**

■ 8. Revise the authority citation for subpart H of part 1910 to read as follows:

Authority: Sections 4, 6, and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order No. 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), or 5-2007 (72 FR 31159), as applicable; and 29 CFR part 1911.

Sections 1910.103, 1910.106 through 1910.111, and 1910.119, 1910.120, and 1910.122 through 1910.126 also issued under 29 CFR part 1911.

Section 1910.119 also issued under Section 304, Clean Air Act Amendments of 1990 (Pub. L. 101-549), reprinted at 29 U.S.C. 655 Note.

Section 1910.120 also issued under Section 126, Superfund Amendments and Reauthorization Act of 1986 as amended (29 U.S.C. 655 Note), and 5 U.S.C. 553.

■ 9. Revise paragraph (b)(1)(i)(C) of § 1910.103 to read as follows:

**§ 1910.103 Hydrogen.**

(b) \* \* \*  
(1) \* \* \*  
(i) \* \* \*  
(c) Each portable container shall be legibly marked with the name "Hydrogen" in accordance with the marking requirements set forth in § 1910.253(b)(1)(ii). Each manifolded hydrogen supply unit shall be legibly marked with the name "Hydrogen" or a legend such as "This unit contains hydrogen."

■ 10. Revise paragraph (c)(1)(iv) of § 1910.107 to read as follows:

**§ 1910.107 Spray finishing using flammable and combustible materials.**

(c) \* \* \*  
(1) \* \* \*

(vi) Powder-coating equipment shall conform to the requirements of paragraph (l)(1) of this section.

■ 11. Amend paragraph (b)(5)(iii) of § 1910.110 to read as follows:

**§ 1910.110 Storage and handling of liquid petroleum gases.**

(b) \* \* \*  
(5) \* \* \*  
(iii) When LP-Gas and one or more other gases are stored or used in the same area, the containers shall be marked to identify their content. Marking shall conform to the marking requirements set forth in § 1910.253(b)(1)(ii).

■ 12. Revise paragraph (e)(1) of § 1910.111 to read as follows:

**§ 1910.111 Storage and handling of anhydrous ammonia.**

(e) \* \* \*  
(1) *Conformance.* Cylinders shall comply with DOT specifications and shall be maintained, filled, packaged, marked, labeled, and shipped to comply with 49 CFR chapter I and the marking requirements set forth in § 1910.253(b)(1)(ii).

**Subpart J—[Amended]**

■ 13. Revise the authority citation for subpart J of part 1910 to read as follows:

Authority: Sections 4, 6, and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order No. 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), or 5-2007 (72 FR 31159), as applicable.

Sections 1910.141, 1910.142, 1910.145, 1910.146, and 1910.147 also issued under 29 CFR part 1911.

■ 14. Revise paragraph (a)(1)(ii) of § 1910.144 to read as follows:

**§ 1910.144 Safety color code for marking physical hazards.**

(a) \* \* \*  
(1) \* \* \*  
(ii) *Danger.* Safety cans or other portable containers of flammable liquids having a flash point at or below 80° F, table containers of flammable liquids (open cup tester), excluding shipping containers, shall be painted red with some additional clearly visible identification either in the form of a

yellow band around the can or the name of the contents conspicuously stenciled or painted on the can in yellow. Red lights shall be provided at barricades and at temporary obstructions. Danger signs shall be painted red.

Subpart P—[Amended]

■ 15. Revise the authority citation for subpart P of part 1910 to read as follows:

Authority: Sections 4, 6, and 8 of the Occupational Safety and Health Act of 1970 (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), or 5-2007 (72 FR 31159), as applicable; 29 CFR part 1911.

Section 1910.243 also issued under 29 CFR part 1910.

■ 16. Revise paragraph (d)(1)(i) of § 1910.243 to read as follows:

§ 1910.243 Guarding of portable powered tools.

- (d) \* \* \*
(1) \* \* \*

(i) Explosive-actuated fastening tools that are actuated by explosives or any similar means, and propel a stud, pin, fastener, or other object for the purpose of affixing it by penetration to any other object shall meet the design requirements specified by paragraph (d)(2) of this section. This requirement does not apply to devices designed for attaching objects to soft construction materials, such as wood, plaster, tar, dry wallboard, and the like, or to stud-welding equipment.

Subpart Q—[Amended]

■ 17. Revise the authority citation for subpart Q of part 1910 to read as follows:

Authority: Sections 4, 6, and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, and 657); Secretary of Labor's Orders 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), or 5-2007 (72 FR 31159), as applicable; and 29 CFR part 1911.

§ 1910.251 [Amended]

■ 18. Remove paragraph (c) of § 1910.251.

■ 19. Revise paragraph (b)(1)(ii) of § 1910.253 to read as follows:

§ 1910.253 Oxygen-fuel gas welding and cutting.

- (b) \* \* \*
(1) \* \* \*

(ii) Compressed gas cylinders shall be legibly marked, for the purpose of identifying the gas content, with either the chemical or the trade name of the gas. Such marking shall be by means of stenciling, stamping, or labeling, and shall not be readily removable. Whenever practical, the marking shall be located on the shoulder of the cylinder.

Subpart R—[Amended]

■ 20. Revise the authority citation for subpart R of part 1910 to read as follows:

Authority: Sections 4, 6, and 8 of the Occupational Safety and Health Act of 1970 (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), or 5-2007 (72 FR 31159), as applicable; and 29 CFR part 1911.

■ 21. Revise paragraphs (c)(15)(ii), (e)(4), (g)(13)(i), (h)(1), (j)(4)(iii), (j)(5)(i), (k)(6), (k)(13)(i), and (k)(15) of § 1910.261 to read as follows:

§ 1910.261 Pulp, paper, and paperboard mills.

- (c) \* \* \*
(15) \* \* \*

(ii) Where conveyors cross passageways or roadways, a horizontal platform shall be provided under the conveyor extending out from the sides of the conveyor a distance equal to 1.5 times the length of the wood handled. The platform shall extend the width of the road plus 2 feet on each side, and shall be kept free of wood and rubbish. The edges of the platform shall be provided with toeboards or other protection to prevent wood from falling, in accordance with § 1910.23.

- (e) \* \* \*

(4) Runway to the jack ladder. The runway from the pond or unloading dock to the table shall be protected with standard handrails and toeboards. Inclined portions shall have cleats or equivalent nonslip surfacing in accordance with § 1910.23. Protective equipment shall be provided for persons working over water.

- (g) \* \* \*
(13) \* \* \*

(i) Blowpit openings shall be preferably on the side of the pit instead of on top. When located on top, openings shall be as small as possible and shall be provided with railings in accordance with § 1910.23.

- (h) \* \* \*

(1) Bleaching engines. Bleaching engines, except the Bellmer type, shall be completely covered on the top, with the exception of one small opening large enough to allow filling, but too small to admit a person. Platforms leading from one engine to another shall have standard guardrails in accordance with § 1910.23.

- (j) \* \* \*
(4) \* \* \*

(iii) When beaters are fed from a floor above, the chute opening, if less than 42 inches from the floor, shall be provided with a complete rail or other enclosure. Openings for manual feeding shall be sufficient only for entry of stock, and shall be provided with at least two permanently secured crossrails in accordance with § 1910.23.

- (5) \* \* \*

(i) All pulpers having the top or any other opening of a vessel less than 42 inches from the floor or work platform shall have such openings guarded by railed or other enclosures. For manual charging, openings shall be sufficient to permit the entry of stock, and shall be provided with at least two permanently secured crossrails in accordance with § 1910.23.

- (k) \* \* \*

(6) Steps. Steps of uniform rise and tread with nonslip surfaces shall be provided at each press in accordance with § 1910.23.

- (13) \* \* \*

(i) A guardrail shall be provided at broke holes in accordance with § 1910.23.

(15) Steps. Steps or ladders of uniform rise and tread with nonslip surfaces shall be provided at each calendar stack. Handrails and hand grips shall be provided at each calendar stack in accordance with § 1910.23.



*COMMONWEALTH of VIRGINIA*

**DEPARTMENT OF LABOR AND INDUSTRY**

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**VIRGINIA SAFETY AND HEALTH CODES BOARD**

**BRIEFING PACKAGE**

**FOR FEBRUARY 28, 2008**

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**Notice of Intended Regulatory Action for Amendments to  
16 VAC 25-50, Boiler and Pressure Vessel Rules and Regulations**

**I. Action Requested.**

The Virginia Occupational Safety and Health (VOSH) Program requests the Safety and Health Codes Board to authorize the Department to initiate the regulatory process to amend 16 VAC 25-50, Boiler and Pressure Vessel Rules and Regulations, by filing a Notice of Intended Regulatory Action (NOIRA), pursuant to the Virginia Administrative Process Act, §2.2-4007.01.

**II. Summary of Intended Regulatory Action.**

The Department is considering the following suggested changes to the Boiler and Pressure Vessel Rules and Regulations:

1. Delete "welded" from Form R-1, Report of Repairs to conform with current forms;
2. Delete last two sentences of paragraph D of 16 VAC 25-50-480, which reads as follows: "A seal weld is a tub-to-tubesheet weld used to supplement an expanded tube joint to ensure leak tightness. Seal welds on carbon steel (P-1) tube joints made by



qualified welders will not require an inspection nor a Form R-1.”

3. In paragraph A of 16 VAC 25-50-430, change “1 ½” to “1 ¼” for the maximum allowable working pressure for a hydrostatic pressure test, when applied to boilers or pressure vessels. The revision is necessary to conform to current International Boiler and Pressure Vessel Code;
4. Adopt the 2007 Edition of the International Boiler and Pressure Vessel Code, including sections XII and VIII, Div 2 for compliance with the most recent edition of documents incorporated by reference;
5. Adopt the 2007 Edition of the National Board Inspection Code (NBIC) to comply with the most recent edition of documents incorporated by reference;
6. Adopt the 2006 Edition of B31.1, ASME Code for Pressure Piping, American National Standards Institute to comply with the most recent edition of documents incorporated by reference;
7. Adopt the 2006 Edition of API 510 as listed in the National Board Inspection Code to comply with the most recent edition of documents incorporated by reference;
8. In paragraph D of 16 VAC 25-50-150, Inspection Certificate and inspection fees, revise fees from “\$800” to “\$1000” to reflect cost of living adjustment;
9. In paragraph A of 16 VAC 25-50-150, add a reprint of certificate fee of \$10.00 to cover direct administrative costs, i.e, printing, mailing and employee’s work-related time.
10. In paragraph B.3., Factors of safety, of 16 VAC 25-50-380, Pressure Vessels, insert “for vessels built prior to 1999. After 1999 the factor of safety may be 3.5” following “The minimum factor of safety shall in no case be less than four for existing installations”. The first two sentences of 16 VAC 25-50-380 B.3, Factors of safety, would then read as follows:  
“The minimum factor of safety shall in no case be less than four for existing installations for vessels built prior to 1999. After 1999, the factor of safety may be 3.5”. The revision is necessary to conform to current International Boiler and Pressure Vessel Code.
11. In paragraph C.5.a., Factors of safety, of 16 VAC 25-50-360, Power and high-pressure, high-temperature water boilers, insert “for vessels built prior to 1999. After 1999 the factor of safety may be 4.0” following “The lowest factor of safety permissible on existing installations shall be 4.5”. The first two sentences of 16 VAC 25-50-360. C.5.a., Factors of safety, would then read as follows: “The lowest factor of safety permissible on existing installations shall be 4.5 for boilers built prior to 1999. After 1999 the factor of safety may be 4.0”. The revision is necessary to conform to current International Boiler and Pressure Vessel Code.
12. Adopt latest edition of CSD-1 and section on maintenance that includes revised inspector’s

checklist. This change is needed to comply with the most recent edition of documents incorporated by reference; and

13. Possibly add paragraphs from ANSI 21.10 addressing rules for gas trains of hot water heaters and/or international building codes/UL standards covering the installation and testing of carbon monoxide alarms. Allow inspectors to check these only at renewal certificate inspections.

### **III. Basis and Purpose of Intended Regulatory Action.**

#### **A. Basis.**

The bases for the intended regulatory action are to conform to the most current editions of NFPA, ASME and National Board safety and inspection codes, as well as in-house administrative revisions to cover costs.

#### **B. Purpose.**

The purpose of this intended regulatory action is to provide both increased protection of human life and property from the unsafe or dangerous construction, installation, inspection, operation, and repair of boilers and pressure vessels in the Commonwealth of Virginia and to address the costs of doing business.

#### **C. Impact on Employers.**

Most of the suggested changes are necessary to comply with current editions of NFPA, ASME and National Board safety and inspection codes which have been incorporated by reference.

The increase in fees will affect the approximately 50 “R” Stamp holders in the Commonwealth that have their reviews performed by the Department. The review is performed at three-year intervals and certifies the employer as being qualified to make welded repairs to boilers and pressure vessels. The \$200 increase from \$800 to \$1000 per review is thus spread over a three-year period and covers all the repair company activities over the three-year span. By having the Department perform the reviews, the employer does not have to use the National Board which charges \$3000 per review.

#### **D. Impact on Employees.**

The rule changes will enhance the Department’s focus on public safety which will benefit employees and the citizens of the Commonwealth.

**E. Impact on the Department of Labor and Industry.**

The Department will incur no added costs nor will staffing levels need to be increased as a result of the rule changes. The additional revenue received is deposited in the General Fund.

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## RECOMMENDED ACTION

Staff of the Department of Labor and Industry requests that the Safety and Health Codes Board authorize the Department to initiate the regulatory process for 16 VAC 25-50, Boiler and Pressure Vessel Rules and Regulations by filing a Notice of Intended Regulatory Action (NOIRA), pursuant to the Virginia Administrative Process Act (§2.2-4007.01).

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.