



Virginia
Regulatory
Town Hall

Proposed Regulation Agency Background Document

Agency Name:	Department of Labor and Industry
VAC Chapter Number:	16 VAC 25-145
Regulation Title:	Safety Standards for Fall Protection in Steel Erection, Construction Industry
Action Title:	Promulgate Safety Standards for Fall Protection in Steel Erection to codify current VOSH administrative policy
Date:	January 7, 2003

This information is required pursuant to the Administrative Process Act (§ 9-6.14:9.1 *et seq.* of the *Code of Virginia*), Executive Order Twenty-Five (98), Executive Order Fifty-Eight (99), and the *Virginia Register Form, Style and Procedure Manual*. Please refer to these sources for more information and other materials required to be submitted in the regulatory review package.

Summary

Please provide a brief summary of the proposed new regulation, proposed amendments to an existing regulation, or the regulation proposed to be repealed. There is no need to state each provision or amendment or restate the purpose and intent of the regulation; instead give a summary of the regulatory action and alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation.

This rulemaking will codify the current VOSH administrative policy whereby VOSH regulations 16 VAC 25-175-1926.28(a) and 16 VAC 25-175-1926.105(a), are used to require steel erection employers to provide protection for steel erection workers from falls at or above 10 feet.

A singular exception to the use of 16 VAC 25-175-1926.28(a) and 16 VAC 25-175-1926.105(a) in steel erection is for employees working as “connectors”. A “connector” is defined in 16 VAC 25-175-1926.751 as “...an employee who, working with hoisting equipment,

is placing and connecting structural members and/or components.” This exception is based on VOSH’s determination that during the interval when structural members and/or components are in the air being hoisted into position for assembly and joining, a greater hazard exists if connectors are tied off than to give them freedom of movement to avoid swinging steel.

Further, the intended rulemaking specifically prohibits the use of controlled decking zones (CDZs).

Basis

Please identify the state and/or federal source of legal authority to promulgate the regulation. The discussion of this statutory authority should: 1) describe its scope and the extent to which it is mandatory or discretionary; and 2) include a brief statement relating the content of the statutory authority to the specific regulation. In addition, where applicable, please describe the extent to which proposed changes exceed federal minimum requirements. Full citations of legal authority and, if available, web site addresses for locating the text of the cited authority must be provided. Please state that the Office of the Attorney General has certified that the agency has the statutory authority to promulgate the proposed regulation and that it comports with applicable state and/or federal law.

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

At its October 18, 2001 meeting, the Safety and Health Codes Board adopted the new federal OSHA Safety Standards for Steel Erection (published in the Federal Register at 66 FR 5195 and 66 FR 37137) as 16 VAC 25-175-1926.750 through 16 VAC 25-175-1926.761 and the amended 16 VAC 25-175-1926.700 covering Fall Protection. However, upon the recommendation of the Department, paragraphs (a), (b) and (c) of §1926.760 of the federal rule were not adopted. After considering the Department’s request to continue its administrative policy of enforcement, the Board voted to direct the Department to begin a rule making to administratively codify VOSH’s enforcement policy.

The Office of the Attorney General has certified that the Board has the statutory authority to promulgate the proposed regulation and that it comports with applicable state and/or federal law.

The Safety and Health Codes Board is proposing regulatory action to require protection for steel erection workers from falls from heights starting at 10 feet above a lower level, instead of the federal requirement for fall protection starting at 15 feet above a lower level. In the interim, VOSH will continue to use its current administrative policy of enforcing 16 VAC 25-175-1926.28(a) and 16 VAC 25-1926.105(a) to provide 10-foot fall protection for steel workers, except for employees working as “connectors”. In addition, controlled decking zones (CDZ) would still be prohibited.

Purpose

Please provide a statement explaining the need for the new or amended regulation. This statement must include the rationale or justification of the proposed regulatory action and detail the specific reasons it is essential to protect the health, safety or welfare of citizens. A statement of a general nature is not acceptable, particular rationales must be explicitly discussed. Please include a discussion of the goals of the proposal and the problems the proposal is intended to solve.

Federal OSHA recently revised its Subpart R of the Construction Industry Standards dealing with fall protection during steel erection. Within Subpart R, paragraph (a) of 29 CFR 1926.760 of the federal OSHA standard requires conventional fall protection at more than 15 feet, except for connectors and leading edge decking workers. Paragraph (b) of 29 CFR 1926.760 requires each connector be protected from fall hazards of two stories or 30 feet, be trained and be provided personal fall arrest system at heights more than 15 feet and up to 30 feet. Paragraph (c) of 29 CFR 1926.760 allows for controlled decking zones (CDZ), over 15 feet and up to 30 feet for initial decking installers and protection from fall hazards for employees on leading edge of more than 30 feet. The above federal requirements of paragraphs (a), (b) and (c) of 29 CFR 1926.760 were not adopted by the Virginia Safety and Health Codes Board.

Since October 1994, VOSH has investigated at least 18 fatal construction accidents involving falls of less than 15 feet. Although none of these accidents involved any steel erectors, they tragically demonstrate the existence of a fatal hazard with falls less than 15 feet. The large majority of the accidents involved fatal head injuries, where the use of personal fall arrest systems, guard rails, safety nets, or working from an elevated work platform would have prevented the victim’s head from hitting the ground. The Board had determined that the proposed regulatory action is essential to protect worker health and safety from falls in construction at these lower heights. The existing federal OSHA regulation would not provide any protection for workers operating at such heights.

The proposed lower fall heights for requiring fall protection will also bring Virginia into closer compliance with the non-federal height requirements for fall protection in steel erection enforced by neighboring states of North Carolina (6 feet) and Maryland (10 feet).

Substance

Please identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. Please note that a more detailed discussion is required under the statement providing detail of the regulatory action's changes.

This proposed regulatory action would result in no change to the existing requirements for steel erection. The adoption will place in regulatory form the existing VOSH administrative policy to insure worker protection at or above 10 feet. The Board had determined that the proposed regulatory action is essential to protect worker health and safety from falls in construction at lower heights. The existing federal OSHA regulation would not provide any protection for workers operating at such heights.

This rulemaking will place in regulatory form the current VOSH administrative policy whereby VOSH regulations 16 VAC 25-175-1926.28(a) and 16 VAC 25-175-1926.105(a), are used to require steel erection employers to provide protection for steel erection workers from falls at or above 10 feet.

A singular exception to the use of 16 VAC 25-175-1926.28(a) and 16 VAC 25-175-1926.105(a) in steel erection is for employees working as “connectors”. A “connector” is defined in 16 VAC 25-175-1926.751 as “...an employee who, working with hoisting equipment, is placing and connecting structural members and/or components.”

Controlled decking zones would be prohibited.

Issues

Please provide a statement identifying the issues associated with the proposed regulatory action. The term “issues” means: 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions; 2) the primary advantages and disadvantages to the Agency or the Commonwealth; and 3) other pertinent matters of interest to the regulated community, government officials, and the public. If there are no disadvantages to the public or the Commonwealth, please include a sentence to that effect.

There are no advantages and/or disadvantages to the regulated community, the public or the Department. The requirements of the proposed regulation have been enforced by the Department as an administrative policy for more than 15 years. As the proposed amendment reflects current agency policy, no potential issues are anticipated that may need to be addressed during the process.

Fiscal Impact

Please identify the anticipated fiscal impacts and at a minimum include: (a) the projected cost to the state to implement and enforce the proposed regulation, including (i) fund source / fund detail, (ii) budget activity with a cross-reference to program and subprogram, and (iii) a delineation of one-time versus on-going expenditures; (b) the projected cost of the regulation on localities; (c) a description of the individuals, businesses or other entities that are likely to be affected by the regulation; (d) the agency's

best estimate of the number of such entities that will be affected; and e) the projected cost of the regulation for affected individuals, businesses, or other entities.

The proposed regulation would have no fiscal impact on employers, employees, or the agency as it does not modify current employee safeguards or impose additional costs on employers. The proposed fall protection requirements in the proposal are currently enforced by VOSH administratively.

Detail of Changes

Please detail any changes, other than strictly editorial changes, that are being proposed. Please detail new substantive provisions, all substantive changes to existing sections, or both where appropriate. This statement should provide a section-by-section description - or cross-walk - of changes implemented by the proposed regulatory action. Where applicable, include citations to the specific sections of an existing regulation being amended and explain the consequences of the proposed changes.

There are no substantive changes. The proposed regulation would codify longstanding Department administrative policy. No existing regulation is being amended.

This rulemaking will codify the current VOSH administrative policy whereby VOSH regulations 16 VAC 25-175-1926.28(a) and 16 VAC 25-175-1926.105(a), are used to require steel erection employers to provide protection for steel erection workers from falls at or above 10 feet.

A singular exception to the use of 16 VAC 25-175-1926.28(a) and 16 VAC 25-175-1926.105(a) in steel erection is for employees working as “connectors”. A “connector” is defined in 16 VAC 25-175-1926.751 as “...an employee who, working with hoisting equipment, is placing and connecting structural members and/or components.”

Controlled decking zones would be prohibited.

Alternatives

Please describe the specific alternatives to the proposal considered and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the action.

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

No other alternatives exist to the proposed action that will require fall protection above 10 feet, with an exception for connectors, and excludes the use of controlled decking zones.

Public Comment

Please summarize all public comment received during the NOIRA comment period and provide the agency response.

No public comments were received during the NOIRA comment period.

Clarity of the Regulation

Please provide a statement indicating that the agency, through examination of the regulation and relevant public comments, has determined that the regulation is clearly written and easily understandable by the individuals and entities affected.

The Department of Labor and Industry, through examination of the regulation has determined that the regulation is clearly written and easily understandable by the individuals and entities affected.

Periodic Review

Please supply a schedule setting forth when the agency will initiate a review and re-evaluation to determine if the regulation should be continued, amended, or terminated. The specific and measurable regulatory goals should be outlined with this schedule. The review shall take place no later than three years after the proposed regulation is expected to be effective.

Periodic Review will be initiated on a three-year cycle upon the effective date of the final regulation.

Family Impact Statement

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

This proposed regulation has no potential impact on the institution of the family or family stability.