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Proposed Regulation Agency Background Document

Agency name	Department of Labor and Industry
Virginia Administrative Code (VAC) citation	16 VAC 25-155
Regulation title	General Requirements for Clearances, Construction of Electric Transmission and Distribution Lines and Equipment, Construction Industry – Subpart V (1926.950 (c)(1)(i))
Action title	Promulgate a unique VOSH regulation to provide construction electrical workers with safety protection identical to general industry electrical transmission workers.
Document preparation date	July 3, 2003

This information is required for executive review (www.townhall.state.va.us/dpbpages/apaintro.htm#execreview) and the Virginia Registrar of Regulations (legis.state.va.us/codecomm/register/regindex.htm), pursuant to the Virginia Administrative Process Act (www.townhall.state.va.us/dpbpages/dpb_apa.htm), Executive Orders 21 (2002) and 58 (1999) (www.governor.state.va.us/Press_Policy/Executive_Orders/EOHome.html), and the *Virginia Register Form, Style and Procedure Manual* (http://legis.state.va.us/codecomm/register/download/styl8_95.rtf).

Brief summary

*Please provide a brief summary of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed. Alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation. Do **not** state each provision or amendment or restate the purpose and intent of the regulation.*

This unique regulation for the Construction Industry, 16 VAC 25-155 will provide safeguards identical to those of its General Industry regulation counterpart, 16 VAC 25-90-1910.269(l)(2)(i) for construction employees working with live electrical transmission lines. Making these standards identical will provide safety protections for construction electrical transmission workers equivalent to those already afforded general industry electrical transmission workers.

The current General Industry and Construction Industry requirements are very similar. The General Industry standard requires that all live or “hot” electrical parts and power lines in the work area must also be insulated so an employee could not accidentally contact an energized part or power line with some other uninsulated part of his body, or other conductive object(s). The similar but less stringent language in the current Construction Standard specifies that the wearing of protective gloves and sleeves alone will qualify as insulation for any live electrical part in the general area where the employee is working.

The effect of the current less stringent Construction language is that the employee can be exposed to many uninsulated live electrical parts in his work area, but only actually be required to be protected from contact with them through the use of gloves with sleeves. There is no protection to prevent contact with other body parts or conductive objects.

Basis

Please identify the state and/or federal source of legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly bill and chapter numbers, if applicable, and (2) promulgating entity, i.e., the agency, board, or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.

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 OSH 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.”

Purpose

Please explain the need for the new or amended regulation. Describe the rationale or justification of the proposed regulatory action. Detail the specific reasons the regulation is essential to protect the health, safety or welfare of citizens. Discuss the goals of the proposal and the problems the proposal is intended to solve.

The need for this proposed regulation was made evident to the Department of Labor and Industry during the investigation of a fatal accident in the Commonwealth. A construction electrical transmission employee, who was wearing properly rated insulating gloves and sleeves was fatally electrocuted when he apparently touched an uninsulated 7,600 volt power line with

his neck/shoulder. The victim was working on one energized electrical part, and was effectively insulated from it through the use of gloves with sleeves. However, he was not protected from accidental contact with other live electrical parts in the immediate work area.

The Department conducted a legal review of federal Occupational Safety and Health Review Commission cases involving facts very similar to the above-cited fatality. Those federal decisions concluded that no OSHA violation occurred as long as employees were wearing the appropriate gloves and sleeves, even though the employees were killed due to contact with other live parts of the power lines. (*J & L Utilities Service Company* (6 OSHC 1225 (1977)); *Sawnee Electric Membership Corporation* (5 OSHC 1059 (1977); *Utilities Line Construction Company*, 4 OSHC 1681 (1976))

In the case of the Virginia fatality, the Department initially issued a serious violation and the maximum \$7,000.00 penalty. However, because of the court’s interpretation of federal OSHA’s §1926.950(c)(1)(i) standard, the violation and penalty had to be vacated.

Given the similarity of situational exposure, VOSH believes that equivalent safety precautions are both appropriate and necessary to eliminate greater construction employee exposure to the equivalent hazards.

The purpose of the proposed change is to promulgate a unique regulation for the construction industry that will provide the same degree of protection to construction employees doing similar job tasks on power lines as their counterparts in general industry.

Substance

Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. (Provide more detail about these changes in the “Detail of changes” section.)

16 VAC 25-175-1926.950(c)(1), Clearances, will be repealed and replaced with the new Virginia unique regulation, 16 VAC 25-155, General Requirements for Clearances, Construction of Electric Transmission and Distribution Lines and Equipment, Construction Industry – Subpart V (1926.950 (c)(1)(i)). This new unique regulation will include subsection A, which specifies that the wearing of protective gloves and sleeves only qualifies as insulation for the live electrical part upon which the employee is actually working. The new subsection B, Alternating Current – Minimum Distance, includes Table V-1, which covers the voltage range and the corresponding minimum working and clear hot stick distance.

Issues

Please identify the issues associated with the proposed regulatory action, including:

- 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 indicate.

1) This proposed action would require employers to further assure the safety of their employees during work on power lines. The regulation would necessitate construction employers to implement protective measures for its electrical transmission workers equivalent to those afforded general industry transmission workers.

Since construction electrical transmission workers are already required to be trained on methods for de-energizing or isolating or insulating themselves from live electrical parts through the use of blankets and other protective measures, no significant additional cost or implementation impact for employers is anticipated.

[Note: The proposed action would not affect the minimum approach distances in the Construction Standard referenced in 16 VAC 25-175-1926.950(c)(1) and contained in Table V-1; or the minimum distance requirements referenced in 16 VAC 25-175-1926.955(e), Live-line Bare-Hand Work on Overhead Lines, and contained in Table V-2.]

Construction employees while engaged in work on power lines would benefit from increased protection equivalent to that of workers in General Industry engaged in the same activity.

The existing regulation allows the employee to be exposed to many uninsulated live electrical parts in his work area, but only actually be protected from touching them with his hands and arms through the use of gloves with sleeves. The effect of the proposed regulation is that, except for the live electrical part the employee is working on, all other live or “hot” electrical parts and power lines would have to be insulated so an employee could not accidentally contact an energized part or power line with some other uninsulated part of his body, or other conductive object(s).

2) The primary advantage to the agency is the uniformity of the regulations for General Industry and Construction industry workers performing the same type of electrical transmission work. There are no disadvantages to the agency.

3) There are no anticipated disadvantages to the public or the Commonwealth.

Financial impact

Please identify the anticipated financial impact of the proposed regulation and at a minimum provide the following information:

Projected cost to the state to implement and enforce the proposed regulation, including (a) fund source / fund detail, and (b) a delineation of one-time versus on-going expenditures	No additional cost to the state is anticipated.
Projected cost of the regulation on localities	No additional cost is anticipated.
Description of the individuals, businesses or other entities likely to be affected by the regulation	Construction electrical transmission companies and their employees.

Agency’s best estimate of the number of such entities that will be affected	Approximately 195
Projected cost of the regulation for affected individuals, businesses, or other entities	No additional financial impact is anticipated since construction electrical transmission workers are already required to be trained on methods for de-energizing or isolating or insulating themselves from live electrical parts through the use of blankets and other protective measures.

Alternatives

Please describe any viable 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 unique regulation for Clearances, Construction of Electric Transmission and Distribution Lines and Equipment, Construction Industry, the VOSH enforcement policy could remain identical to the federal OSHA standard but construction employees would not have the same level of protection as their general industry counterparts.

Public comment

Please summarize all comments received during the public comment period following the publication of the NOIRA, and provide the agency response.

No comments were received from the public during the NOIRA comment period from May 5, 2003 to June 5, 2003.

Impact on family

Please assess the impact of the proposed regulatory action on the institution of the family and family stability.

This proposed regulation would have a positive impact on the institution of the family and family stability. If wage earners are less likely to be injured or killed while engaged in work on power lines, there will be less disruptions to the family income and family life from work related accidents or deaths.

Detail of changes

Please detail all changes that are being proposed and the consequences of the proposed changes. Detail all new provisions and/or all changes to existing sections.

If the proposed regulation is intended to replace an emergency regulation, please list separately (1) all changes between the pre-emergency regulation and the proposed regulation, and (2) only changes made since the publication of the emergency regulation.

The proposed regulation will require all live or “hot” electrical parts and power lines in the work area to be insulated so an employee can not accidentally contact an energized part of a power line with some other uninsulated part of his body or other conductive objects. The wearing of protective gloves and sleeves will only qualify as insulation for the live electrical part upon which the employee is actually working. The proposed change will strengthen the protection for construction workers who are working on live electrical parts and power lines.

The current federal identical regulation, 16 VAC 25-175-1926.950 (c) (1) (i) will be repealed. This current regulation only requires the wearing of protective gloves and sleeves to qualify as insulation for any live electrical part in the general area where the employee is working. It does not provide as much protection for the worker as the proposed regulation will provide.

The current Table V-1 – Alternating Current – Minimum Distance will be included in the proposed unique regulation to provide guidance for construction employers and employees working in the areas covered by this proposed regulation.