

COMMONWEALTH of VIRGINIA

DEPARTMENT OF LABOR AND INDUSTRY

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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, January 20, 2011

10:00 a.m.

1. Call to Order
2. Approval of Agenda
3. Approval of Minutes for Public Hearing and for Board Meeting of August 18, 2010
4. Chair Appoints Secretary
5. Opportunity for the Public to Address the Board on this issues pending before the Board today or on any other topic that may be of concern to the Board or within the scope of authority of the Board.

This will be the only opportunity for public comment at this meeting. Please limit remarks to 5 minutes in consideration of others wishing to address the Board.

6. **Old Business**
 - a) 16 VAC 25-73, Tree Trimming Operations Update; and
 - b) Request to Withdraw: 16 VAC 25-95, Regulation to Amend the Medical Services and First Aid Standards for General Industry, §1910.151(b); and 16 VAC 25-177, Regulation to Amend the Medical Services and First Aid Standards for the Construction Industry, §1926.50(c)

Presenter – John Crisanti

7. **New Business**

a) Notice of Periodic Review of Certain Regulations:

- 1) 16 VAC 25-55, Financial Responsibility of Boiler and Pressure Vessel Contract Fee Inspectors; and
- 2) 16 VAC 25-75, Telecommunications, General, Approach Distances

Presenter – Reba O’Connor

b) Federal-Identical Regulation:

- 1) Cranes and Derricks in Construction, §§1926.1400 through 1926.1442; Final Rule, and Other Related Standards

Presenter – Glenn Cox

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

9. Items of Interest from Members of the Board

10. Meeting Adjournment

DRAFT

**SAFETY AND HEALTH CODES BOARD
MEETING MINUTES
WEDNESDAY, AUGUST 18, 2010**

BOARD MEMBERS PRESENT: Mr. M. Frank Hartsoe, Chair
Mr. Jerome Brooks, DEQ representative
Ms. Anna Jolly
Mr. Satish Korpe
Ms. Rebecca Le Prell, VDH representative
Dr. James Mundy
Ms. Eloisa Rea
Ms. Milly Rodriguez, Secretary

BOARD MEMBERS ABSENT: Mr. Louis Cernak
Mr. Chuck Stiff
Mr. Danny Sutton

STAFF PRESENT: Mr. Courtney M. Malveaux, Commissioner, Dept. of Labor and Industry
Mr. Glenn Cox, Director of VOSH Programs
Mr. Jay Withrow, Director, Division of Legal Support
Mr. Ron Graham, Director, Occupational Health Compliance
Mr. John Crisanti, Manager, Office of Planning and Evaluation
Ms. Reba O'Connor, Regulatory Coordinator
Ms. Jennifer Wester, Director, Cooperative Programs Division
Ms. Beverly Donati, Director, Apprenticeship
Ms. Ashley Mitchell, Staff Attorney
Ms. Regina Cobb, Agency Management Analyst Senior
Mr. Thomas Dash, DOLI/Norfolk
Mr. George Dillon, DOLI/Norfolk
Ms. Fredda Jernigan, DOLI/Norfolk
Mr. Jay Hufton, DOLI/Norfolk

OTHERS PRESENT: Ms. Valerie L. S. May, RPR, Chandler & Halasz, Inc.

ORDERING OF AGENDA

Chairman Frank Hartsoe called the meeting to order at 10:00 a.m. There was a quorum. Mr. Hartsoe then asked for a motion from the Board to approve the Agenda. On proper motion by Dr. Mundy and seconded by Ms. Rea, the Agenda was approved, as submitted. The motion was carried by unanimous voice vote.

APPROVAL OF MINUTES

Mr. Hartsoe asked the Board for a motion to approve the Minutes for the January 14, 2010, Board Meeting. On proper motion by Dr. Mundy and seconded by Ms. Rodriguez, the Minutes were approved, as submitted, by unanimous voice vote.

ELECTION OF OFFICERS

Mr. Hartsoe explained that the traditional flow of the election is for the Vice Chair to become the Chair and for the Secretary to become the Vice Chair. Mr. Crisanti then explained that the outgoing Vice Chair, Mr.

Roger Burkhart, no longer desired to continue his tenure on the Board. He continued by explaining that, if the Board wanted to continue its normal rotation between labor and management, the Board does not have that management person in the Vice Chair position to move to the Chair. He stated that, if the Board chose to continue the usual rotation, the Board members representing the management side are (and you can nominate them in absentia): Chuck Stiff, Danny Sutton, Anna Jolly and Satish Korpe.

Mr. Hartsoe requested nominations for Chair. Mr. Hartsoe nominated Chuck Stiff for Board Chair. There were no other nominations. Ms. Jolly seconded the motion and Mr. Stiff was unanimously elected as Chair. Next, Mr. Hartsoe requested nominations for Vice Chair. Ms. Jolly reaffirmed that ideally this person should be from the labor side, and that typically Ms. Rodriguez would move up from Secretary to the Vice Chair position. Mr. Crisanti added, however, that the Board could do as it pleases on this matter. Dr. Mundy nominated Ms. Rodriguez and Ms. Jolly seconded the nomination. Ms. Rodriguez was unanimously elected to be Vice Chair.

PUBLIC COMMENTS

Mr. Hartsoe opened the floor to comments from the public, however, there were no comments.

OLD BUSINESS

16 VAC 25-60, Revised Proposed Regulation to Amend 16 VAC 25-60, Administrative Regulation for the Virginia Occupational Safety and Health (VOSH) Program, 16 VAC 25-60-240 and 16 VAC 25-60-245, Take and Preserve Testimony, Examine Witnesses and Administer Oaths

Mr. Jay Withrow, Director of the Division of Legal Support for the Department of Labor and Industry, began by stating that this regulation already has been before the Board so he does not plan to go into detail about all of the substantive issues involved with this regulation at this time. He explained that the Department has only one relatively minor change that it is recommending in the language of the regulation.

Mr. Withrow then requested the Board to consider for adoption as a revised final regulation of the Board the following two actions to modify the Administrative Regulation for the VOSH Program, including amending 16 VAC 25-60-10, -20, -90, -100, -130 and -240, and adding a new section 16 VAC 25-60-245 to establish procedures for the Commissioner or his appointed representatives under Va. Code §40.1-6(5) to take and preserve testimony, examine witnesses, and administer oaths under Va. Code §§40.1-6(4) and 40.1-10, pursuant to Va. Code §40.1-22(5).

Mr. Withrow stated that the purpose of the regulation is to provide VOSH personnel with procedures on how to exercise the Commissioner's statutory authority to take and preserve testimony, examine witnesses and administer oaths, in instances where such witnesses/employees/supervisors refuse requests for interviews or refuse to answer specific questions posed by a VOSH inspector.

In summarizing the regulatory process, he informed the Board that this rulemaking process began in 2007, and that after the initial rulemaking process, the Registrar of Regulations notified the Department of some changes that needed to be made that were mostly procedural in nature. He stated that an additional issue developed with the Department of Planning and Budget (DPB) concerning 16 VAC 25-90.B., which deals with the ability of a witness to obtain a copy of his interview statement, and was based on the following factors:

- It is a significant change with the potential to impact numerous employees;
- This change is being added at the final stage without the opportunity for extensive analysis and public comment; and
- It is unclear whether a change to a substantive right exceeds the scope of the NOIRA.

Mr. Withrow added that DPB suggested to Department staff that the Board either: (1) consider withdrawing the

package and submitting the regulation as a revised proposed regulation, or (2) removing the change to §90.B. and submitting it later as a separate action.

He then referred the Board to page 3 of the briefing package for the new language being considered and added that the Department has gone back and forth with DPB to determine what the language should be. He stated that the Department and DPB finally reached an agreement, and that DPB wanted the Department to publish the final change to solicit public comments again. He informed the Board that no public comments had been received.

At the January 14, 2010 Board meeting, Department staff recommended changing the language in the interview statement section in 16 VAC 25-90.B. Mr. Withrow stated that Department staff recommends the following language:

B. Interview statements of employers, owners, operators, agents, or employees given to the commissioner pursuant to § 40.1-49.8 of the Code of Virginia are confidential. Pursuant to the requirements set forth in §40.1-11 of the Code of Virginia, individuals shall have the right to request a copy of their own interview statements.

Mr. Withrow made no changes to the Summary of Final Regulation, Basis, Purpose and Impact of the Rulemaking. He then recommended, on behalf of the staff of the Department of Labor and Industry, that the Board consider for adoption as a final regulation of the Board, amendments to 16 VAC 25-60, the Administrative Regulation for the VOSH Program, which include the revision of 16 VAC 25-60-240 and the addition of 16 VAC 25-60-245, to establish procedures for the Commissioner or his appointed representatives under §40.1-6(5) to take and preserve testimony, examine witnesses and administer oaths under Va. Code §§40.1-6(4) and 40.1-10.

The motion to adopt the revised final amendments to 16 VAC 25-60, Administrative Regulation for the VOSH Program was properly made by Ms. Rodriguez, seconded by Dr. Mundy, and unanimously carried by voice vote.

NEW BUSINESS

Revising the Notification Requirements in the Exposure Determination Provisions of the Hexavalent Chromium Standards, Direct Final Rule for General Industry, 16 VAC 25-90-1910.1026, Shipyard Employment, 16 VAC 25-100-1915.1026, and Construction, 16 VAC 25-175-1926.1126

Mr. Ron Graham, Director of Occupational Health Compliance, requested, on behalf of the VOSH Program, that the Board consider for adoption federal OSHA's direct final rule for Revising the Notification Requirements in the Exposure Determination Provisions of the Hexavalent Chromium Standards, paragraph (d)(4)(i) of 29 CFR 1910.1026, 29 CFR 1915.1026 and 29 CFR 1926.1126, as published in 75 FR 12681 on March 17, 2010.

Mr. Graham explained that this federal Direct Final Rule (DFR) amends paragraph (d)(4)(i) of the Chromium (VI) standards (29 CFR 1910.1026 – General Industry, 29 CFR 1915.1026 – shipyard employment, and 29 CFR 1926.1126 – Construction). He added that the final rule established an 8-hour time-weighted average (TWA) exposure limit of 5 micrograms of Cr(VI) per cubic meter of air ($5 \mu\text{g}/\text{m}^3$) for all sectors. He explained that in subparagraph (i) of paragraph (d)(4) of the current final rule -- Exposure notification of determination results -- employers are required to notify workers only of exposures that *exceed* the permissible exposure limit (PEL).

He informed the Board that this revision to paragraph (d)(4)(i) would now require employers to notify workers of *all* hexavalent chromium exposure level monitoring results, not just exposures that exceed the PEL. This change mirrors similar provisions in federal OSHA's other substance-specific health standards including, but

not limited to:

- lead (29 CFR 1910.1025(d)(8)(i));
- arsenic, 29 CFR 1910.1018(e)(5)(i);
- methylenedianiline (29 CFR 1910.1050(e)(7)(i));
- butadiene, 29 CFR 1910.1051(d)(7)(i); and
- methylene chloride (29 CFR 1910.1052(d)(5)(i)). [75 FR 12682]

With respect to impact, Mr. Graham informed the Board that this change only amends the notification requirement in the Cr(VI) rule. He added that its requirements will not alter any other substantive requirements of the exposure determination provisions. He noted that federal OSHA determined that the burden on the regulated community as a result this change would not be significant in that it only requires notifying additional employees of exposure. With respect to employees, Mr. Graham stated that federal OSHA anticipates that employee protection will be enhanced by the amended standard which also encourages employees to be more proactive in working safely to control their own exposures through better work practices.

In addressing costs, Mr. Graham noted that federal OSHA did not change any of the monitoring or exposure characterization requirements in the final standard, and the amended notification provision will simply require employers to post more names or send more individual notices after exposure determinations are made.

On behalf of the Department of Labor and Industry, Mr. Graham concluded by recommending that the Board adopt federal OSHA's Direct Final Rule on Revising the Notification Requirements in the Exposure Determination Provisions of the Hexavalent Chromium Standards, paragraph (d)(4)(i) of §§1910.1026, 1915.1026 and 1926.1126, as authorized by Virginia Code §§ 40.1-22(5) and 2.2-4006.A.4(c), with an effective date of November 15, 2010.

Dr. Mundy moved to accept Mr. Graham's recommendation. Ms. Jolly properly seconded the motion which was unanimously approved by voice vote.

Safety Standards for Steel Erection; Final Rule; Technical Amendment to Structural Steel Assembly, §1926.754(a)

Mr. Glenn Cox, Director of VOSH Programs, requested, on behalf of the VOSH Program, that the Board consider for adoption federal OSHA's technical amendment to Structural Steel Assembly, §1926.754 (a), of the final rule for Safety Standards for Steel Erection, as published in 75 FR 27428 on May 17, 2010.

Mr. Cox explained that federal OSHA has added a technical amendment in the form of a nonmandatory note to the final rule for the Safety Standards for Steel Erection in 29 CFR 1926.754 (a), Structural Steel Assembly. He stated that this technical amendment provides information on existing Federal Highway Administration (FHWA) regulations that may apply to employers engaged in activities covered by federal OSHA's steel erection standards.

He continued by explaining that the basis of this amendment was a fatal highway accident in Colorado. He stated that in the accident, a passenger vehicle passed under an overpass that was being widened, and the bracing used to temporarily support a partially installed steel girder collapsed. The girder fell to the highway below, shearing off the top of the vehicle, and killing the three occupants of the car.

He added that since this accident could have killed construction employees, federal OSHA added this note and the federal highway regulations incorporate by reference the American Association of State Highway and Transportation Officials ("AASHTO") for bridge construction projects. He noted that a 1992 specification requires a registered engineer to prepare and to seal working drawings for "falsework," or temporary framing to

support truss structures, in many cases.

Mr. Cox stated that the purposed of federal OSHA added the note to 29 CFR 1926.754 (a) was to inform construction employers of the requirements of the Federal Highway Administration regulations and the standard specifications published by AASHTO to enhance the safety of employees operating on or near structural steel elements used in highway construction, including bridges and other structures.

With respect to impact, Mr. Cox explained there is no impact on employers, employees or the Department in that this technical amendment merely notifies the regulated community of existing federal regulations. He added that it is nonmandatory and disseminated for informational purposes only, does not affect or change any existing rights or obligations, and does not increase regulatory burden.

In closing, Mr. Cox recommended, on behalf of the Department staff, that the Board adopt the Technical Amendment to the Structural Steel Assembly, §1926.754 (a), of the Final Rule for the Safety Standards for Steel Erection, as authorized by Virginia Code §§40.1-22(5) and 2.2-4006.A.4(c), with an effective date of November 15, 2010.

Dr. Mundy moved to accept Mr. Cox's recommendation. Ms. Jolly properly seconded the motion which was unanimously approved by voice vote.

Periodic Review of Existing Regulations

Ms. Reba O'Connor, Regulatory Coordinator for the Department, informed the Board in January 2010 it was notified of two regulations that were being reviewed: 1) 16VAC25-145, Safety Standards for Fall Protection in Steel Erection, Construction Industry; and 2) 16VAC25-155, General Requirements for Clearances, Construction of Electric Transmission and Distribution Lines and Equipment, Construction Industry – Subpart V (§1926.950 (c)(1)(i)).

She explained that the Notice of Period Review was published in the Virginia Register on June 7, 2010 and the public comment period ended on June 29, 2010. She added that no public comments had been received.

She added that the Department's recommendation to the Board is that these two regulations be "retained as is" with no changes.

Ms. Jolly moved to accept Ms. O'Connor's report. Dr. Mundy properly seconded the motion which was unanimously approved by voice vote.

Items of Interest from Members from the Department of Labor and Industry

Commissioner Malveaux thanked the Board members for their time and effort in serving on the Board and his staff for their due diligence. He invited Board members to call on him if he can be of assistance to them. Mr. Withrow issued handouts concerning regulatory updates and updates about federal OSHA. Although it was not part of the handouts, Mr. Withrow updated the Board about the Tree Trimming regulations which the Board adopted as final and which is currently in Executive branch review. He explained that at the time of the change of state administrations, this regulation was in the Governor's office for review, however, the new administration asked that all regulations under review be returned to the Secretary's office level so the new administration could review the regulations. He stated the Department was just recently notified that the Tree Trimming regulation has been approved by the Secretary's office and forwarded to the Governor's office for review.

With respect to federal OSHA regulatory issues, he stated that a change to the Recordkeeping regulations is expected – a change in the Form 300 and add a column. Federal OSHA will ask State Plan states like Virginia

to adopt an identical regulation, therefore, there will probably be a Board meeting this fall to address this issue. He informed the Board that OSHA also just recently adopted the Crane Standard which the Board will have to adopt within six months of publication by OSHA in the Federal Register. He then mentioned a state regulation, First Aid, which was also adopted as final by the board and was at the Governor's office earlier this year and which was returned to the Secretary's office. He added that the Department was recently notified that, at this point, the Secretary's office has disapproved the regulation and the Department has not had a chance to look into the regulation. He stated that the Department plans to brief the Board about options at the next meeting.

He added that the next handout concerns OSHA's Penalty Calculation procedures, with a federal effective date of August 23, 2010. This will have a significant impact if adopted by Virginia. He noted that the next handout was a letter from the Assistant Secretary for OSHA, David Michaels, to grain storage facility operators. Mr. Withrow informed the Board that Virginia would be distributing a similar letter in the next week or so. He stated the last of the handouts is another memo from the Assistant Secretary for OSHA entitled: "OSHA at Forty: New Challenges and New Directions" which lays out the Assistant Secretary's agenda for his term.

Items of Interest from Members from the Board

Dr. Mundy asked why certain Board members are ineligible to hold elected office on the Board and if there is a valid reason for this. Mr. Crisanti responded that it is nothing more than tradition – how the Board has always operated. He stated that he knew of no legal or regulatory requirements prohibiting any Board member from holding an office on the Board. Mr. Withrow agreed that there is no restraint. He added that historically the reason for alternating between labor – management was probably personality-driven at the time. He stated that Board members would try to meet together to get votes. He also mentioned the statutory prohibition about more than two Board members meeting in a non-public forum. He added that after going through a few years of arguments among Board members a compromise was agreed upon to alternate between management and labor.

Mr. Crisanti explained that there are currently two Board positions which fall outside of the plan to alternate elections between management and labor: representative for the general public and the representative of the insurance industry. Mr. Crisanti explained that this issue is for the Board to exam and address, the Department has no say. He explained that the Board could revise its bylaws to address the issue.

Mr. Crisanti informed the Board that any changes it desires to make to its Bylaws would have to be done within the confines of a public meeting. Mr. Korpe moved to modify election procedures and to have such discussion placed on the Agenda at the next Board meeting. Dr. Mundy seconded the motion which was unanimously approved by voice vote.

Adjournment

There being no further business, Mr. Hartsoe requested a motion for adjournment. Dr. Mundy made the motion to adjourn the meeting. Ms. Jolly seconded the motion which was carried unanimously by voice vote. The meeting adjourned at 10:53 a.m.

_____, 2011

TREE TRIMMING OPERATIONS REGULATION TO TAKE EFFECT

_____, 2011

The Department of Labor and Industry's Virginia Occupational Safety and Health (VOSH) Program and the Virginia Safety and Health Codes Board have adopted a final regulation for:

Tree Trimming Operations, 16 VAC 25-73

The final regulation will take effect _____, 2011, and the text of the final regulation, **along with free downloadable training and information materials** can be found on the Department's Web site (see: <http://www.doli.virginia.gov>). The final regulation is also being published in the Virginia Register of Regulations on _____, 2011 (see: <http://legis.state.va.us/codecomm/register/issfiles.htm>).

Since 1993 Virginia has had 59 non-logging, tree trimming/cutting/felling fatalities (7% of all fatalities since 1993), with 47 of those occurring since 2000 (9% of all fatalities since 2000). On average over the last 10 years there are four (4) fatal tree trimming accidents that occur per year which could be prevented if the final regulation is fully complied with. For an industry of the relatively small size of the tree care industry, this is a very high number of fatal accidents.

The purpose of the new regulation is to provide comprehensive protection to private and public sector employees and employers exposed to tree trimming hazards. The final regulation is based on the American National Standard's Institute (ANSI) Z133.1-2006, Safety Requirements for Arboricultural Operations (With Modifications), for Application to Tree Trimming Operations. The regulation addresses non-logging, tree-trimming and cutting operations on residential and commercial work sites.

The Tree Trimming Industry approached the Department about the possibility of adopting a comprehensive regulation addressing tree trimming in 2001. They requested a regulation based on the then ANSI Z133.1-2000. Discussions with the Department resulted in a commitment from the industry to make significant changes to the ANSI standard, which culminated in the adoption of the revised ANSI Z133.1-2006, referenced above. The Department initiated this rulemaking in 2007. The following individuals participated in the Department's regulatory work group:

Peter Gerstenberger, Senior Advisor for Safety, Compliance & Standards
Tree Care Industry Association (TCIA)
Bryan Giere, CTSP, Northern Virginia Tree Experts, Inc.
Andrew T. Ross, CTSP, President, RTEC Treecare
Sten Compe, Big "O" Tree & Lawn Service Inc.
M. Scott Turner, CTSP, President, TrueTimber Tree Service, Inc.
David G. Marren, Vice President of Regulatory Affairs, F. A. Bartlett Tree Expert Co.
Peter Girardi, TrueTimber Tree Service, Inc.

Virginia Department of Labor and Industry Commissioner Courtney Malveaux expressed the hope that the new regulation will help to eliminate deaths associated with tree trimming operations by instituting safer work procedures than currently exist and raising awareness among employers and employees of the hazards associated with tree trimming activities.

[QUOTE BELOW IS EXAMPLE FROM COMMISSIONER DAVENPORT – NEED SOMETHING FROM COURTNEY]

“Our goal is to have every employee return home at night in the same condition they started the day,” said Davenport. “We feel that this measure gets us one step closer to achieving that goal.”

Provisions include: General safety requirements (traffic control around the jobsite, emergency procedures and readiness, personal protective equipment, fire protection); Electrical hazards (working in proximity to electrical hazards, storm work and emergency conditions, line-clearance); Safe use of vehicles and mobile equipment used in arboriculture (aerial devices, brush chippers, sprayers and related equipment, stump cutters, vehicles, log loaders, knucklebooms, cranes and related hoists, specialized units, equipment-mounted winches); Portable power hand tools (portable electric power tools, chain saws, powered pole tools and backpack power units); Hand tools and ladders (cant hooks, cant dogs, peaveys and tongs, wedges, chisels, gouges, chopping tools, ladders); Work procedures (ropes and arborist climbing equipment, pruning and trimming, cabling, rigging, tree removal, bush removal and chipping, limbing and bucking, pesticide application); and Training for employees.

Outreach and Phased Enforcement Approach

To provide employers and employees with sufficient time to familiarize themselves with the requirements of the comprehensive new Tree Trimming Operations regulation, the VOSH Program will use a phased enforcement approach:

1. VOSH Inspectors/Consultants will be provided with handouts on the new regulation that can be distributed to employers and employees in the weeks leading up to the effective date of _____, 2011. A training program will be posted on the Department's Web site. Articles on the new regulation will be sent out for publication to organizations with newsletters. "Quick cards" will be available for download from the Department's Web site to briefly explain requirements of the regulation, and will be translated into Spanish as well. A VOSH Directive with enforcement procedures and interpretations will be posted on the Department's Web site.

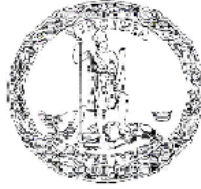
2. For the first month after the effective date of the regulation (_____, 2011 to _____, 2011), VOSH will primarily operate in a non-enforcement mode, performing outreach activities with employers and employees. If during an onsite inspection, violations of the new regulation are noted, VOSH inspectors will give one "warning" to the employer for any noted violations at the specific worksite, but not cite the violation. The VOSH inspector will verify that the violation is corrected, and note the violation and corrective action taken in field notes. The warning and handout materials need to be provided to an on-site supervisor, foreman, or lead person. If the VOSH inspector returns the next day and finds the same violation recurring, or if the employer refuses to correct the violation, the employer can be cited.

3. During the first month after the effective date of the regulation, employers shall protect employees' safety and health by continuing to comply with existing federal identical VOSH regulations and 16VAC25-60-120 of the VOSH Administrative Regulations Manual.

4. For the second month after the effective date of the regulation (_____, 2011 to _____, 2011), VOSH will discontinue enforcement of existing federal identical regulations that are superseded by the new regulation and fully enforce the following sections of the Tree Trimming Operations regulation:

- §10, Scope;
- §20, Definitions;
- §40, General Safety Requirements;
- §50, Electrical Hazards;
- §60, Safe Use of Equipment and Vehicles in Arboriculture;

- The original ANSI text contained “should” or “may” language in some provisions, which are unenforceable from a compliance standpoint. Prescriptive language such as “shall” or “will” was added, as appropriate.
- Although the Manual of Uniform Traffic Control Devices (MUTCD) has been adopted by OSHA and VOSH, it has been found to contain a great deal of “should” or “may” language, which means those provisions are not enforceable. In its stead, the Virginia Department of Transportation (VDOT) Manual on Uniform Traffic Control Devices has been substituted as it contains fewer “shoulds” and “mays”.
- The original ANSI text addresses the issue of exposure to noise hazards. Reference is made in the final regulation to requirements contained in the VOSH Noise Standard.
- VOSH currently enforces §16VAC25-60-120 requiring that employers comply with manufacturer’s specifications and limitations applicable to the operation, training, use, installation, inspection, testing, repair and maintenance of machinery, vehicles, tools, materials and equipment. ANSI Z133.1-2006 contains provisions that address the use and operation of machinery, vehicles, tools, etc., so any conflicts with §16VAC25-60-120 have been corrected (e.g., ANSI Z133.1-2006 contains provisions allowing the use of a crane to lift an individual in an arborist’s saddle, but the ability to make such a lift would be contingent on the crane manufacturer’s operating instructions).
- The original ANSI text addresses the use of personal protective equipment (PPE). Reference is made in the final regulation to requirements contained in the VOSH PPE Standards, §§1910.132 through 138.
- The original ANSI text contains provisions addressing reverse signal operation of vehicles. Reference is made in the final regulation to requirements in the VOSH Reverse Signal Operation Safety Requirements for Vehicles, Machinery and Equipment for General Industry and the Construction Industry, §16 VAC 25-97 and is incorporated by reference.
- The original ANSI text contains provisions addressing proper use of personal fall arrest systems while working from an aerial lift (permits use of either a full body harness and lanyard or a body belt and lanyard). In light of advances in PPE and current manufacturer’s requirements for use of PPE in aerial lifts (full body harness and energy absorbing lanyard are normally required while working from aerial lifts), the option to allow an employee to use a body belt and lanyard in an aerial lift has been removed.
- The original ANSI text addresses the use of cranes. In light of certain requirements contained in VOSH regulations §1910.180, Crawler, Locomotive and Truck Cranes, and §1910.184, Slings, certain additions have been made (e.g. the prohibition against employees working under a suspended load of a crane).
- Certain arborist-related terms used in the original text were not defined in (e.g., “split-tail system” and “split tails”). Definitions have been added.



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**VIRGINIA SAFETY AND HEALTH CODES BOARD
BRIEFING PACKAGE
FOR JANUARY 20, 2011**

NOTICE OF PERIODIC REVIEW OF CERTAIN EXISTING REGULATIONS

I. Action Requested

None at this time. Approvals on periodic review reports will be requested at future Board meetings.

II. Background and Basis

Governor McDonnell's Executive Order 14 (2010), "Development and Review of Regulations Proposed by State Agencies," governs the periodic review or re-evaluation of existing regulations and the regulatory process to promulgate new regulations or amend current regulations.

III. Process

The process of periodic review begins with publication of a Notice of Periodic Review in the Virginia Register. When the Notice of Periodic Review is published, a public comment period of 21 days begins. Following the public comment period (no more than 90 days), the agency will post a report on the Town Hall website indicating either that (1) the Board will retain the regulation as is, or (2) the Board will begin a regulatory action to amend the regulation.

IV. Current Status

Two regulations of the Safety and Health Codes Board have been identified for review in 2010. A notice of periodic review will be published in the Virginia Register. The notice will request public comment for a period of 21 days for the following regulations:

1. 16 VAC 25-55, Financial Responsibility of Boiler and Pressure Vessel Contract Fee Inspectors; and

2. 16 VAC 25-75, Telecommunications, General, Approach Distances.

V. Next Stage of Review

Over the next several months, the Staff of the Department of Labor and Industry will be reviewing these regulations and will prepare the reports with recommendations to be presented for the Board's consideration at the next meeting.

Contact Person:

Ms. Reba O'Connor
Regulatory Coordinator

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DEPARTMENT OF LABOR AND INDUSTRY

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VIRGINIA SAFETY AND HEALTH CODES BOARD

BRIEFING PACKAGE

FOR JANUARY 20, 2011

CRANES AND DERRICKS IN CONSTRUCTION, §§ 1926.1400 through 1926.1442; Final Rule, and Other Related Standards

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 Cranes and Derricks in Construction, and other related standards, as published in 75 FR 47906 on August 9, 2010.

The proposed effective date is April 15, 2011.

II. Summary of the Revised Standard.

A. Overview.

The revised standard will require employers to perform crane inspections, utilize qualified or certified crane operators, address ground conditions, maintain safe distances from power lines using the encroachment prevention precautions, and to fulfill other obligations under the standards.

Federal OSHA has revised the Cranes and Derricks Standard and other related sections of the Construction Standards to update and specify industry work practices necessary to protect employees during the use of cranes and derricks in construction. This revision also addresses

advances in the designs of cranes and derricks, related hazards, and the qualifications of employees needed to operate them safely.

Changes under this final rule include that employers must now determine whether the ground is sufficient to support the anticipated weight of hoisting equipment and associated loads. The employer is then required to assess hazards within the work zone that would affect the safe operation of hoisting equipment, such as those of power lines and objects or personnel that would be within the work zone or swing radius of the hoisting equipment. Finally, the employer is required to ensure that the equipment is in safe operating condition through required inspections, and that employees in the work zone are trained to recognize hazards associated with the use of the equipment and any related duties that they are assigned to perform.

OSHA states that the new rule is designed to prevent the leading causes of fatalities, including electrocution, crushed-by/struck-by hazards during assembly/disassembly, collapse and overturn. The revised standard also sets requirements for ground conditions and crane operator assessment. In addition, the rule addresses tower crane hazards, addresses the use of synthetic slings for assembly/disassembly work, and clarifies the scope of the regulation by providing both a functional description and a list of examples for the equipment that is covered.

Another example where the revised standard will be more protective than the current standards is in assembly/disassembly operations, which along with power line contact, are a leading cause of fatalities in crane work. [75 FR 48094]

The final rule addresses both the work practices used as well as other requirements for performing construction work involving cranes and derricks. Employers are required to keep specified records associated with inspections and operator certification/qualification. [75 FR 48127]

Other sections in Part 1926 amended as a result of the final standard on Cranes and Derricks include the following:

[Subpart A], added §1926.6, Incorporation by reference;

[Subpart C – General Safety and Health Provisions] – §1926.31, [Reserved], was removed and reserved;

[Subpart L – Scaffolds] – §1926.450, Scope, application, and definitions applicable to this subpart, was amended by revising paragraph (a) to reference application to all scaffolds used in workplaces covered by this part, and that it does not apply to crane or derrick suspended personnel platforms;

[Subpart M – Fall Protection] – **§1926.500, Scope, application, and definitions applicable to this subpart**, was amended by revising paragraph (a)(2)(ii), adding paragraph (a)(3)(v), and revising paragraph (a)(4) to reference subpart CC;

[Subpart DD – Cranes and Derricks Used in Demolition and Underground Construction] – added §1926.1500, Scope;

[Subpart N – Helicopters, Hoists, Elevators, and Conveyors] – amended the heading to **subpart N to read:** “Subpart N – Cranes, Derricks, Hoists, Elevators, and Conveyors;”

§1926.550 [Reserved and former §1926.550 redesignated as §1926.1501];

§1926.553, Base-mounted drum hoists, was amended by adding paragraph (c), which states that this section does not apply to base-mount drum hoists used in conjunction with derricks, and which requires conformity with §1926.1436.

[Subpart O – Motorized Vehicles, Mechanical Equipment, and Marine Operations] – §1926.600, Equipment, was amended by revising paragraph (a)(6);

[Subpart R – Steel Erection] – §1926.753, Hoisting and rigging, was amended by revising paragraphs (a) and (c)(4) to reference §1926.1431;

[Subpart S – Underground Construction, Caissons, Cofferdams, and Compressed Air] – §1926.800, Underground Construction, was amended by revising paragraph (t) to reference §1926.1501(g) of 1926 subpart DD;

[Subpart T– Demolition] – §§1926.856 and 1926.858, Removal of walls, floors, and material with equipment, were amended by revising paragraph (b) to reference §1926.1501 of 1926.subpart DD;

[Subpart V – Power Transmission and Distribution] – §1926.952, Mechanical equipment, was amended by adding a new paragraph (c), which is now entitled “Cranes and other lifting equipment” to conform with language in §1926.1400 (c)(4), and to ensure that comparable safety requirements exist for digger derricks performing electrical pole work;

[Subpart X – Stairways and Ladders] – §1926.1050, Scope, application, and definitions applicable to this subpart, was amended by revising paragraph (a) to explain that subpart X does not apply to integral components of equipment covered by subpart CC, and to further explain that only subpart CC establishes the circumstances when ladders and stairways must be provided on equipment covered by subpart CC;

Appendix A to Part 1926 – Designations for General Industry Standards Incorporated into Body of Construction Standards – was amended by removing the row containing “1926.550(a)(19)” and “1910.184(c)(9)” from the table “1926 DESIGNATIONS FOR APPLICABLE 1910 STANDARDS;” and

Subparts AA and BB – were reserved and **subpart CC – Cranes and Derricks in Construction** – was added.

B. **Types of Cranes Included Under the Revised Standard:**

The new federal standard applies to virtually all power-operated equipment, when used in construction, that can hoist, lower and horizontally move a suspended load, including, but not limited to the following (see 1926.1400 (a)):

- Articulating cranes (i.e., knuckle-boom cranes);
- crawler cranes;
- floating cranes;
- cranes on barges;
- locomotive cranes;

- mobile cranes (i.e., wheel-mounted, rough-terrain, all-terrain, commercial truck-mounted, and boom truck cranes);
- multi-purpose machines when configured to hoist and lower (by means of a winch or hook) and horizontally move a suspended load;
- industrial cranes (i.e., carry-deck cranes);
- dedicated pile drivers;
- service/mechanic trucks with a hoisting device;
- a crane on a monorail;
- tower cranes (i.e., fixed jib, i.e., “hammerhead boom”), luffing boom and self-erecting);
- pedestal cranes;
- portal cranes;
- overhead and gantry cranes;
- straddle cranes;
- sideboom cranes;
- derricks; and
- variations of such equipment.

C. **Exclusions from Subpart CC – Cranes and Derricks in Construction:**

Under §1926.1400 (c) of the revised standard, OSHA has excluded many lifting devices, including machinery that has been converted to a non-hoisting/lifting use, as well as aerial lifts, forklifts, except when they are configured to hoist and lower by means of a winch or hook and horizontally move a suspended load. Other exclusions from Subpart CC include:

- Excavators (track hoe/backhoe);
- concrete pump trucks w/boom;
- digger derricks;
- power shovels;
- wheel loaders;
- automotive wreckers and tow trucks;
- vehicle mounted work platforms;
- self-propelled elevating work platforms;
- stacker cranes;
- telescopic/hydraulic gantry systems;
- mechanics’ trucks with hoisting devices;
- come-a-longs and chain falls;
- gin poles for communication tower work;
- tree trimming and tree removal work;
- anchor handling with a vessel or barge using an affixed A-frame; and
- roustabout lifts;
- helicopter cranes; and
- material delivery

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

A. Basis.

The legal basis for the federal revisions to the rule is the Occupational Safety and Health (OSH) Act of 1970 which authorizes and obligates the Secretary of Labor to promulgate mandatory occupational safety and health standards as necessary “to assure so far as possible every working man and woman in the Nation safe and healthful working conditions and to preserve our human resources.” 29 U.S.C. 651(b) 48121. [75 FR 47906]

In 1998, OSHA’s expert Advisory Committee for Construction Safety and Health (ACCSH) established a workgroup to develop recommended changes to the current standard for cranes and derricks. In December 1999, ACCSH recommended that OSHA consider using a negotiated rulemaking process as the mechanism to update subpart N. On July 16, 2002, OSHA published a Notice of Intent to Establish a Cranes and Derricks Negotiated Rulemaking Advisory Committee (“C-DAC”) (see 67 FR 46612). [75 FR 47907]

The C-DAC, consisting of 23 experienced Cranes and Derricks Advisory Committee members representing manufacturers trade associations, was convened in July 2003 and reached consensus on its draft document in July 2004. In 2006, ACCSH recommended that OSHA use the C-DAC consensus document as a basis for OSHA’s proposed rule, which was published on October 9, 2008 (73 FR 59713). Public hearings were held in March 2009, and the public comment period on those proceedings closed in June 2009. [75 FR 47907]

B. Purpose.

OSHA’s federal crane and derrick standard for construction has been virtually unchanged since 1971. In recent years, a number of industry stakeholders asked federal OSHA to update subpart N’s cranes and derrick requirements. They were concerned that accidents involving cranes and derricks continued to be a significant cause of fatal and other serious injuries on construction sites and believed that an updated standard was needed to address the causes of these accidents and to reduce the number of accidents. Additionally, the stakeholders emphasized that the considerable changes in both work processes and technology since 1971 made much of former § 1926.550 obsolete. [75 FR 47907]

The revision of the original standard was needed to update the safety requirements, methods and practices for cranes and derricks, and to incorporate technological advances in order to provide improved protection for those who work on and around cranes and derricks. The new final rule addresses critically important provisions for crane operator certification, and crane inspection, set-up and disassembly. Compliance with the new rule will prevent needless worker injuries and death, and provide protection for the public and property owners.

C. Impact on Employers.

The revision to the final standard will affect employers across most construction industry sectors as well as some in some general industry sectors where cranes and derricks are used as part of the performance of work duties. With regard to assembly/disassembly of cranes and derricks, generally employers are allowed to choose between the manufacturer’s procedures or their own.

Nationally, OSHA estimates that there are approximately 267,000 establishments, employing 4.8 million employees, affected by the final standard. [75 FR 48082] Of these 267,000 establishments, there are more than 232,000 small entity establishments, employing more than 3.4 million employees. [75 FR 48090]

In Virginia, it is estimated that there are approximately 7,250 establishments, employing approximately 130,225 employees that are affected by the final standard. Of these approximately 7,250 Virginia establishments affected by this revised standard, there are an estimated 6,300 small entity establishments, employing an estimated 92,250 employees.

Employers have a duty to train each employee covered by Subpart CC and to provide the training and operator certification or qualification at no cost to employees who are already employed by the employer on the effective date of the final standard. Although employers incur additional cost to provide certification and qualification, OSHA believes that affected companies may consider this cost an investment in the safety of its employees. Without the federal regulatory requirement for certification, federal OSHA believes that the level of operator certification would be uncertain. [75 FR 48127]

Employers impacted by the final standard include:

1. Crane rental firms involved in construction projects (*e.g., multi-family housing; industrial buildings and warehouses; other nonresidential buildings; highway and street construction; and water, sewer, power and communication line construction*);
2. Crane Rental with Operators;
3. Crane Rental without Operators;
4. Own and Rent Cranes with Operators;
5. Own but Do Not Rent; and
6. Crane Lessees in the Construction Industry [75 FR 48080]

General industry sectors that perform construction work involving cranes include the following:

Industry Sector

1.	Electric Power Generation	221110
2.	Electric Power Transmission, Control, and Distribution	221120
3.	Natural Gas Distribution	221210
4.	Engineered Wood Member Mfg	321213
5.	Truss Mfg	321214
6.	Ship Building and Repairing	336611
7.	Sign Manufacturing	339950
8.	Lumber, Plywood, Millwork, and Wood Panel Merchant	423310
9.	Roofing, siding, and Insulation Material Merchant Wholesalers;	423330
10.	Other Construction Material Merchant Wholesalers	423390
11.	Warm Air Heating and Air-Cond. Equip. & Supplies	423730
12.	Liquefied Petroleum Gas (Bottled Gas) Dealers	454312
13.	Railroads	482110
14.	Pipeline Transportation of Natural Gas; and	486210
15.	Wired Telecommunications Carriers	517110

NAICS

[75 FR 48083]

The revised federal standard, if adopted, provides employers with four options for certification and qualification of operators. Section 1926.1427 (k)(1), Phase-in, provides for a four-year phase in period of compliance after the effective date for paragraphs (a)(2) and (f). This phase-in

period will provide a reasonable amount of time for employers to ensure that the supply of certification services will be sufficient to meet demand. It will also provide time for those operators who need additional training to pass qualification/certification tests to complete training and for accredited testing organizations to develop tests in languages other than English to accommodate crane operators for when English is not their first language.

Employers will also be required to evaluate employee's understanding of required training.

NOTE: *In order to eliminate a conflict with the existing Virginia Overhead High Voltage Line Safety Act, which VOSH enforces directly, the Department will be developing a statutory amendment package for the 2012 General Assembly Session that will amend §59.1-413 of the Code of Virginia to exempt the Act from applicability to cranes and derricks covered by the new standard where the voltages in question are in excess of 50 KV. This statutory change will allow for the greater safety distances incorporated in this new standard to be applicable without being in conflict with the Act.*

D. Impact on Employees.

Affected employees will have an increased degree of occupational safety for performing construction work involving cranes and derricks. Also, such employees will be provided with updated and more complete safety standards for construction work involving cranes and derricks.

Provisions in the final standard ensure that employees impacted by the revisions have necessary knowledge and skill to work safely with and around cranes. Adoption of the revised federal standard will provide greater specificity which highlights the particular tasks (and the hazards associated with them) for which certain types of training are necessary.

E. Impact on the Department of Labor and Industry.

Apart from expenses incurred for training staff on the revised final standard, there is no significant impact anticipated for the Department as a result of adopting this final standard.

Federal regulations 29 CFR 1953.23(a) and (b) require that Virginia, within six months of the occurrence of a federal program change, to adopt identical changes or promulgate equivalent changes which are at least as effective as the federal change. The *Code of Virginia* reiterates this requirement in § 40.1-22(5). Adopting these revisions will allow Virginia to conform to the federal program change.

NOTE: *In order to eliminate a conflict with the existing Virginia Overhead High Voltage Line Safety Act, which VOSH enforces directly, the Department will be developing a statutory amendment package for the 2012 General Assembly Session that will amend §59.1-413 of the Code of Virginia to exempt the Act from applicability to cranes and derricks covered by the new standard where the voltages in question are in excess of 50 KV. This statutory change will allow for the greater safety distances incorporated in this new standard to be applicable without being in conflict with the Act.*

F. Technology Feasibility

OSHA has determined that compliance with the requirements of the final standard is technologically feasible for all affected industries and that compliance with all of these requirements can be achieved with readily and widely available technologies. OSHA believes that some businesses in the affected industries already implement the requirements of the standard to varying degrees and that there are no technological constraints in complying with

any of the requirements. [75 FR 48095, 48079]

G. Benefit/Cost

OSHA has concluded that its final standard will result in fewer fatalities and injuries due to the additional requirements of the revised standard, although there are some existing construction crane provisions that address the same risk. This reduction is attributed to more specific precautions in particular sections of the rule as well as the requirement for certifying crane operators, which potentially affects safety in all aspects of crane operations.

OSHA estimated that compliance with the final standard will prevent 22 fatalities and 175 non-fatal injuries per year nationally. In Virginia, compliance with the final standard will prevent approximately 1 fatality and approximately 4.7 new non-fatal injuries per year.

OSHA also estimates that compliance will result in considerable net cost saving by preventing many more accidents that do not result in injury. It has estimated that annual savings from avoiding project delay, damage to cranes and structures, and lost productivity is at least \$7 million nationwide (approximately \$190,000 in Virginia) annually just from one type of crane accident – tipovers. OSHA noted that a significant portion of these benefits will be passed back immediately to employers in the form of \$51 million nationwide [75 FR 48079]; in Virginia, these benefits passed back to employers is estimated to be approximately \$1.4 million annual savings in liability insurance costs for the affected industries.

OSHA estimated that the total cost of the final standard to employers is approximately \$154.1 million annually. [75 FR 48095] In Virginia, the total cost of the final standard is estimated to be approximately \$4.2 million annually to employers. Additionally, OSHA estimated that the total annual cost of compliance with the final standard for small entities is estimated to be \$101 million. [75 FR 48113] In Virginia, the total annual cost of compliance for small entities is estimated to be approximately \$2.7 million.

IV. Highlights of the Final Standard

Significant requirements in this final standard include:

- qualified rigger required;
- a pre-erection inspection of tower crane parts
- use of synthetic slings in accordance with the manufacturer’s instructions during assembly/disassembly work;
- assessment of ground conditions;
- qualification or certification of crane operators – employers have 4 years from final rule’s effective date to fulfill this requirement;
- employers must bear the costs associated with operator certification.
- procedures for working in the vicinity of power lines;
- employer must provide training for the following:
 - overhead power lines;
 - signal persons;
 - operators and operators-in-training;
 - competent persons and qualified persons;
 - crush/pinch points;

- tag out; and
- training administration
- authority to stop operations; and
- operational aids

V. Implementation Schedule

All provisions are effective on April 15, 2011, except for:

§1926.1427 (k), Phase-in, there is a four-year compliance period for the crane operator certification/qualification requirement, i.e., Virginia employers must be in compliance by April 15, 2015.

RECOMMENDED ACTION

Staff of the Department of Labor and Industry recommends that the Safety and Health Codes Board adopt federal OSHA's Final Rule for Cranes and Derricks in Construction, §§ 1926.1400 through 1926.1442, and other related standards, as authorized by Virginia Code §§ 40.1-22(5) and 2.2-4006.A.4(c), with an effective date of April 15, 2011.

The Department also recommends that the Board state in any motion it may make to amend this regulation that it will receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision of this or any other regulation which has been adopted in accordance with the above-cited subsection A.4(c) of the Administrative Process Act.

Cranes and Derricks in Construction, §§ 1926.1400 through 1926.1442, and Other Related Standards; 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 25-175-1926.6	16 VAC 25-175-1926.800
16 VAC 25-175-1926.31	16 VAC 25-175-1926.856
16 VAC 25-175-1926.450	16 VAC 25-175-1926.858
16 VAC 25-175-1926.500	16 VAC 25-175-1926.952
16 VAC 25-175-1926.1500	16 VAC 25-175-1926.1050
16 VAC 25-175-1926.550	16 VAC 25-175-1926.1400 through
16 VAC 25-175-1926.553	16 VAC 175-1926.1442
16 VAC 25-175-1926.600	Subparts AA and BB
16 VAC 25-175-1926.753	

When the regulations, as set forth in the federal OSHA's Final Rule to Cranes and Derricks in

Construction, §§ 1926.1400 through 1926.1442, and other related 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

29 CFR

Assistant Secretary

Agency

November 8, 2010

VOSH Equivalent

VOSH Standard

Commissioner of Labor and Industry

Department

April 15, 2011