



COMMONWEALTH of VIRGINIA

DEPARTMENT OF LABOR AND INDUSTRY

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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, June 5, 2014

10:00 a.m.

1. Call to Order
2. Approval of Agenda
3. Approval of Minutes for Board Meetings of July 18, 2013 and December 5, 2013
4. 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.

5. **Old Business**

- a) Final Regulation to Amend the Standard for Certified Lead Contractors Notification, Lead Project Permits and Permit Fees, 16VAC25-35

Presenter – Ron Graham

6. **New Business**

- a) Notice of Periodic Review of Certain Existing Regulations

Presenter – Reba O'Connor

- b) Federal-Identical Standards:

- 1) Electric Power Generation, Transmission, and Distribution and Electrical Protective Equipment, Parts 1910 and 1926; Final Rule

Presenter – Paul Schilinski

- 2) Record Requirements in the Mechanical Power Presses Standard, §1910.217 (e)(1); Amendment

Presenter – Paul Schilinski

- 3) Terminals Handling Intermodal Containers or Roll-On Roll-Off Operations; Vertical Tandem Lifts, §1917.71(i), Public Sector Only; Final Rule; Remand

Presenter – Paul Schilinski

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

8. Items of Interest from Members of the Board

9. Meeting Adjournment

DRAFT

**SAFETY AND HEALTH CODES BOARD
MEETING MINUTES
THURSDAY, JULY 18, 2013**

BOARD MEMBERS PRESENT:

Mr. Charles Bird
Mr. Jerome Brooks
Dr. Laurie Forlano, Alternate Rep. for VDH
Ms. Anna Jolly
Mr. Satish Korpe, Outgoing Vice Chair, new Board Chair
Dr. James Mundy, New Vice Chair
Mr. Marc Olmsted, Secretary
Mr. Danny Sutton
Mr. Chuck Stiff

BOARD MEMBERS ABSENT:

Mr. Gregory Hart
Ms. Rebecca LePrell
Ms. Milly Rodriguez
Mr. Tommy Thurston, Outgoing Chair

STAFF PRESENT:

Courtney M. Malveaux, Esq., Commissioner
Mr. Jim Garrett, Director of VOSH Programs
Mr. Ron Graham, Director, Health Compliance
Mr. John Crisanti, Manager, Planning and Policy
Mr. Jay Withrow, Director, Legal Support
Ms. Reba O'Connor, Regulatory Coordinator
Ms. Regina Cobb, Senior Management Analyst
Mr. Harvey Trice, Safety/Health Compliance Officer
Ms. Stephanie Sacco, Intern
Ms. Mary Horner, Intern
Ms. Mayme Donohue, Intern

OTHERS PRESENT:

Mr. Bala Chandran, Image-in-Asian TV
Ms. Terry L. Simmer, Court Reporter, Halasz Reporting & Videoconference
Elizabeth B. Meyers, Esq., Assistant Attorney General
Mr. Robert Miller, OAG, Intern
Mr. Jerry Conner, IUOE #147
Mr. S. Brumberg, Association of Electric Co-ops

ORDERING OF AGENDA

In Chairman Thurston's absence, Vice Chairman, Satish Korpe, called the meeting to order at 10:00 a.m. Mr. Korpe introduced Dr. Laurie Forlano, alternate for Ms. Rebecca LePrell of the Virginia Department of Health, who was unable to attend the meeting. A quorum was present.

Mr. Korpe requested a motion to approve the Agenda. Mr. Stiff moved to accept the Agenda, and Mr. Sutton properly seconded the motion. The Agenda was approved, as submitted, and the motion was carried by unanimous voice vote.

APPROVAL OF MINUTES

Mr. Korpe asked the Board for a motion to approve the Minutes from the March 14, 2013, Board meeting. On proper motion by Ms. Jolly and seconded by Mr. Sutton, the Minutes were approved by unanimous voice vote.

ELECTION OF OFFICERS

Mr. Korpe asked for nominations for the office of Chair. Dr. Mundy nominated Mr. Korpe and Mr. Olmsted seconded the nomination. Mr. Stiff nominated Ms. Jolly and Mr. Sutton seconded the nomination. Both nominees described their qualifications for the position of Chair. By a show of hands, the Board elected Mr. Korpe as Chair with a vote of 6 to 3. Next, Mr. Korpe asked for nominations for Vice Chair. Mr. Korpe nominated Dr. Mundy and Mr. Stiff seconded the nomination. Mr. Bird nominated Ms. Jolly, who declined the nomination. There were no other nominees. Dr. Mundy was unanimously elected as Vice Chair.

PUBLIC COMMENTS

Chairman Korpe opened the floor to comments from the public, however, there were no comments.

OLD BUSINESS

Notice of Periodic Review of Certain Existing Regulations – Departmental Review and Findings

Ms. Reba O'Connor, Regulatory Coordinator for the Department of Labor and Industry, explained that in accordance with the Administrative Process Act §2.2-4017 of the Code of Virginia, Governor McDonnell's Executive Order 14 (2010), "Development and Review of Regulations Proposed by State Agencies," governs the periodic review of existing regulations. She continued by stating that the Executive Order requires that state agencies conduct a periodic review of regulations every four years. She listed the six regulations of the Board that have been identified for review in 2013 as follows:

- 1) 16VAC25-30, Regulations for Asbestos Emissions Standards for Demolition and Renovation Construction Activities and the Disposal of asbestos-Containing Construction wastes - Incorporation By reference, 40 CFR 61.140 through 61.156;
- 2) 16VAC25-70, Virginia Confined Space standard for the telecommunications Industry;
- 3) 16VAC25-97, Reverse Signal Procedures – General Industry-Vehicles/Equipment Not Covered by Existing Standards;
- 4) 16VAC25-140, Virginia Confined Space Standard for the Construction Industry;
- 5) 16VAC25-150, Underground Construction, Construction Industry; and

6) 16 VAC25-270, Virginia Excavation Standard, Construction Industry

After explaining the current status and process of the regulatory review, Ms. O'Connor explained the factors that the Department was obligated to consider while evaluating the economic impact of these regulations on small business. On behalf of the Department, Ms. O'Connor concluded by recommending that all of the above –referenced regulations be retained with no changes, and she requested that the Board vote to retain the regulations

On proper motion by Mr. Stiff and seconded by Dr. Mundy, Ms. O'Connor's recommendation was approved by unanimous voice vote.

NEW BUSINESS

Revising the Exemption for Digger Derricks in the Cranes and Derricks in Construction Standard, §§1926.952 and 1926.1400

Mr. Garrett, Director of the Department of Labor and Industry's VOSH Programs, explained that federal OSHA expanded the digger-derrick exemption in the Cranes and Derricks in Construction Standard to include all digger derricks used in construction work subject to Part 1926 Subpart V. He informed the Board that a digger derrick is a specialized type of equipment designed to install utility poles, and it typically comes equipped with augers to drill holes for the poles, and with a hydraulic boom to lift the poles and set them in the holes. He added that employers also use the booms to lift objects other than poles, for example, electric utilities, telecommunication companies, and their contractors use booms both to place objects on utility poles and for general lifting purposes at worksites.

Mr. Garrett explained that on January 20, 2011, the Board adopted the revised Final Rule for Cranes and Derricks in Construction, §§1926.1400 through 1926.1442, and Other Related Standards, with an effective date of April 15, 2011. He continued by stating that subsequently on November 9, 2012, federal OSHA published both a Direct Final rule (DFR) and a companion proposed rule to broaden the exemption for digger derricks in Subpart CC of its standard for Cranes and Derricks to exempt the placement of padmount transformers. He added that OSHA received a significant adverse comment on the DFR causing OSHA to withdraw the DFR on February 7, 2013 before the Board had a chance to act upon this DFR. After considering the significant adverse comment, OSHA eventually issued this current final rule on May 29, 2013.

With respect to impact of this final rule, Mr. Garrett informed the Board that OSHA streamlined the final rule by exempting its application to all digger derricks used in the electric-utility industry; thereby, removing duties and costs for the electric-utility industry. He noted that the final standard does not impose any new duties on any employer and would not impose significant economic costs on a substantial number of small entities. Employee protections are not reduced by this final rule, and there will be no significant impact on the Department. Additionally, Mr. Garrett stated that the final rule is technologically feasible because it reduces or removes current requirements on employers, and it is economically feasible because it does not require any costs associated with additional protective measures and it reduces or removes current expenditures for employers.

In conclusion, Mr. Garrett recommended that the Board adopt the Final Rule for Revising the Exemption for Digger Derricks in the Cranes and Derricks in Construction Standard, §§1926.952 and 1926.1400, as

authorized by Virginia Code §§ 40.1-22(5) and 2.2-4006.A.4(c), with an effective date of November 1, 2013.

A motion was properly made by Mr. Bird and seconded by Dr. Mundy to accept the Department's recommendation which was approved unanimously by voice vote.

Cranes and Derricks in Construction: Underground Construction and Demolition, §1926.850, 1926.856 and 1926.858; Final Rule

Mr. Garrett summarized this federal-identical regulation by stating that this new federal OSHA final rule replaces the attempted 2012 federal Direct Final Rule (DFR) which did not become effective and which applies the same crane rules to underground construction and demolition that are already being used by other construction sectors to streamline OSHA's standards by eliminating the separate cranes and derricks standards currently used for underground and demolition work. He also mentioned that this final rule corrects errors made to underground and demolition standard in 2010. He stated that the amendments in this final rule will result in more stringent requirements for cranes and derricks used in underground construction or demolition work.

Mr. Garrett explained that on September 12, 2012, the Board adopted OSHA's Direct Final Rule (DFR) on Cranes and Derricks in Construction; Demolition and Underground Construction, with an effective date of January 1, 2013. He added that this action was based on the assumption that the DFR would become effective for federal OSHA. OSHA, however, received a significant adverse comment to the DFR and its companion proposed rule, and therefore, the federal DFR did not become effective and OSHA proceeded with the current final rule. He noted that this action is the continuation of that companion rulemaking.

Mr. Garrett explained that the significant adverse comment raised a concern about potential ambiguity in the introductory language of federal OSHA's proposed demolition standard, §1926.800(t) of Subpart S. He stated that OSHA intends for Subpart CC to apply as a comprehensive regulatory scheme to ensure that the significant benefits of Subpart CC extend to demolition and underground construction, and that construction workers in those sectors receive the same safety protections from new Subpart CC as other construction workers.

With respect to impact on employers, Mr. Garrett informed the Board that construction contractors engaged in underground construction and demolition work will benefit by being subjected to a single standard which will clarify employer obligations in all construction work involving demolition and underground construction. He stated that workers will be protected from hazards associated with hoisting equipment used during construction activities, and no employee protections put in place by the 2010 Cranes and Derricks Final Rule will be reduced. He also stated that there was no significant impact anticipated for the Department apart from expenses incurred for training the staff.

Mr. Garrett stated that the final rule affects two construction sectors: NAICS 237990, Other Heavy and Civil Engineering Construction, which includes all establishments engaged in underground construction, and NAICS 238910, Site Preparation Contractors, which includes all establishments and demolition. He informed the Board that the total annualized compliance costs for both sectors in Virginia was estimated to be approximately \$174,000.

In conclusion, Mr. Garrett recommended, on behalf of the Department, that the Board adopt the Final Rule for Cranes and Derricks in Construction: Underground Construction and Demolition, §§1926.850, 1926.856 and 1926.858, as authorized by Virginia Code §§ 40.1-22(5) and 2.2-4006.A.4(c), with an effective date of November 1, 2013.

A motion was properly made by Dr. Mundy and seconded by Mr. Sutton. The Department's recommendation was approved unanimously by voice vote.

Updating OSHA Standards Based on National Consensus Standards; Signage

Mr. Garrett summarized this regulation by stating that OSHA issued a Direct Final Rule (DFR) on June 13, 2013, to update its general industry and construction signage standards by adding references to the latest versions of the American National Standards Institute ("ANSI") standards on specifications for accident prevention signs and tags, ANSI Z535.1-2006 (R2011), Z535.2-2011 and Z535.5-2011, along with an identical proposed rule. He added that OSHA also retained the existing references to the earlier ANSI standards, ANSI Z53.1-1967, Z35.1-1968 and Z35.2-1968, in its signage standards, thereby providing employers an option to comply with the updated or earlier standards. Additionally, OSHA incorporated by reference Part VI of the Manual of Uniform Traffic Control Devices ("MUTCD"), 1988 Edition, Revision 3, into the incorporation-by-reference section of the construction standards, which was inadvertently omitted from §§1926.201, Signaling, and 1926.202, Barricades, during an earlier rulemaking.

Mr. Garrett explained that this DFR provides employers with additional options for meeting the design-criteria requirements for signage protection by not requiring an employer to update or replace its signage solely as a result of this rule if the employer's current signage protection meets the revised standards. This DFR has no significant impact on employees or the Department.

In conclusion, Mr. Garrett recommended, on behalf of the Department of Labor and Industry, that the Board adopt the Direct Final Rule Updating OSHA Standards Based on National Consensus Standards for Signage, as authorized by Virginia Code §§ 40.1-22(5) and 2.2-4006.A.4(c), with an effective date of November 1, 2013.

A motion was properly made by Ms. Jolly and seconded by Mr. Stiff, and the Department's recommendation was approved unanimously by voice vote.

Items of Interest from the Department of Labor and Industry

Commissioner Malveaux began by commending Board members for their service in attending these meetings and Department staff for diligence with respect to regulatory actions.

Commissioner Malveaux updated the Board on the near completion of the Department's expansion of the Volunteer Protection Program (VPP) for larger employers. He stated that the Department recently hired new employees to go out and push voluntary compliance. He informed the Board that the Department went from a staff of one to five, with someone to be hired in the Hampton Roads area soon. These individuals will be working with employers to improve workplace safety. Commissioner Malveaux commended Jay Withrow for his leadership role with the Voluntary Protection Program.

He added that the Department is adapting VPP and utilizing our resources to Building Excellence in Safety and Training (BEST), an agreement that the Department will work with the Associated General

Contractors and adapt criteria that will work for the construction industry. He stated that the Department wants to expand and have more partnerships with other associations as well for their members and for those who are in construction, and industry which has 40 percent of the workplace hazards and incidents. He continued by stating that Jim Garrett, along with Bill Burge, has taken a leadership role in determining how the Department does its targeting and trying to take the general inspection lists we receive from the federal Department of Labor and augment that with information that we receive from the Workers' Compensation Commission, for example to learn where workers are getting hurt.

Commissioner Malveaux discussed that the Department's next horizon is working more with small businesses through our consultation staff and with the Safety and Health Achievement Recognition Program (SHARP).

He discussed increasing the Department's outreach with media, trying to reach as many people as we can, by using the Department's quarterly newsletter, Facebook, and 60-second public service announcements on YouTube, and on the Department's website.

Commissioner Malveaux encouraged the Board to join the Department for its 18th Annual VOSH Conference which will be held on October 8 - 10, 2013, at the Embassy Suites Hampton Roads Hotel, Spa and Convention Center in Hampton, VA.

Items of Interest from Members from the Board

Ms. Jolly informed the Board that she had received an interesting question related to heat. She stated that one of her clients employs a Muslim man who is fasting during Ramadan and, therefore, is not allowed to eat or drink anything. She asked how employers should deal with this situation particularly during the summer months. Chairman Korpe stated that fasting has a time frame, like sunrise to sunset, and it is not mandatory, but more of a voluntary compliance. He added that exceptions can be made on an individual basis. Mr. Stiff suggested that employers could limit the employee's exposure to the heat. Mr. Crisanti suggested that Ms. Jolly check the federal guides of interpretation on this issue. Commissioner Malveaux offered to have department staff look into this matter.

Mr. Bird followed up his concern expressed at the March 14th meeting about parapet wall heights and working on flat sloping roofs. He explained that his concern was for during construction and then maintenance workers after construction is completed for such buildings. He added that, although he has been unable to get a breakdown of the fall fatalities from flat or low-sloped roofs, he thinks that more than 50 percent of those fall fatalities are from sloped or steep-sloped roofs. Mr. Korpe asked if department staff could provide more information on this issue and he asked if this issue could be placed on the agenda to be discussed at the next meeting.

Chairman Korpe then recognized Assistant Attorney General, Elizabeth Meyers, and her intern, Robert Miller. He also recognized Ms. O'Connor's intern, Stephanie Sacco.

Adjournment

There being no further business, Ms. Jolly made the motion to adjourn the meeting. Mr. Sutton properly seconded the motion which was carried unanimously by voice vote. The meeting adjourned at 11:00 a.m.

DRAFT
DEPARTMENT OF LABOR AND INDUSTRY
ON BEHALF OF
THE SAFETY AND HEALTH CODES BOARD
PUBLIC HEARING MINUTES
THURSDAY, DECEMBER 5, 2013

BOARD MEMBERS PRESENT: Not Required

STAFF PRESENT: Ms. Regina Cobb, Senior Management Analyst
Mr. John Crisanti, Manager, Office of Planning and
Evaluation
Mr. Ron Graham, Director, Occupational Health
Compliance

OTHERS PRESENT: Ms. Terri L. Simmer, Court Reporter, Halasz Reporting &
Videoconference

On behalf of the Department of Labor and Industry, Ms. Regina Cobb, Senior Management Analyst, called the Public Hearing to order at 10:00 a.m. to receive public comments on the Safety and Health Codes Board's Amendment to the Proposed Regulation Concerning Certified Lead Contractors Notification, Lead Project Permits and Permit Fees, 16 VAC25-35.

Ms. Cobb then explained that the sole purpose of the hearing was for the Department, on behalf of the Board, to take comments from the public regarding the Board's Amendment to the Proposed Regulation Concerning Certified Lead Contractors Notification, Lead Project Permits and Permit Fees, 16 VAC25-35.

Since no speakers came forth to offer comments, Ms. Cobb adjourned the hearing at 10:30 a.m.



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COMMISSIONER

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VIRGINIA SAFETY AND HEALTH CODES BOARD

BRIEFING PACKAGE FOR

June 05, 2014

Final Regulation to Amend the Standard for Certified Lead Contractors Notification, Lead Project Permits, and Permit Fees, 16VAC25-35

I. Action Requested

The Virginia Occupational Safety and Health (VOSH) Program requests the Safety and Health Codes Board to consider for adoption as a final regulation of the Board an amendment to the standard for Certified Lead Contractors Notification, Lead Project Permits and Permit Fees, 16VAC25-35, pursuant to the Virginia Administrative Process Act (§2.2-4007.01).

II. Summary of the Requested Amendment to the Regulation

The Department seeks to finalize the removal of the \$2,000 minimum contract price provision for lead contractors to be required to file a lead project notification with the Department, as provided in Paragraph A. of 16VAC25-35-30 of the Regulation. This change would require that licensed lead contractors submit written notification for all lead projects, as defined in 16VAC25-35-10, regardless of the contract price for the lead project.

III. Basis, Purpose and Impact

A. Basis and Purpose of the Rulemaking

This rationale for this requested final regulatory action is to conform the regulatory language of the Department's Regulation Concerning Certified Lead Contractors Notification, Lead Project Permits and Permit Fees, 16VAC25-35, with that of the

Environmental Protection Agency's (EPA) Notification Requirements for Lead-Based Paint Abatement Activities and Training, 40 CFR 745.227(e)(4)(i)-(ix) [See attachments].

B. Impact on Employers

Licensed lead contractors will have to submit written notification for all lead projects, as defined under 16VAC25-35-10, regardless of the contract price for the lead project. Since there will no longer be a contractor price threshold of \$2,000, lead abatement contractors will be required to submit more notification permit applications. Otherwise, the permit fee under Subsection C.1. will not change. More notification permit applications will increase the overall costs of lead permit fees that contractors need to pay in order to get their lead abatement permit.

C. Impact on Employees

No impact is anticipated on Virginia employees.

D. 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 change. Any additional revenue collected due to the regulatory change will be treated as all other Lead Program revenues and deposited in the Lead Program Special Revenue Fund.

IV. Chronology of the Rulemaking Activity to Date

The Department's request to the Board to submit a Notice of Intended Regulatory Action (NOIRA) was approved by the Board May 24, 2012. The NOIRA was subsequently published in the *Virginia Register of Regulations* on August 27, 2012, initiating a 30-day comment period that concluded September 26, 2012.

The Board next adopted proposed regulatory language and approved a Proposed Stage Regulatory Action on March 26, 2013. The regulatory action was approved by the Office of the Attorney General March 29, 2013 and approved by the Department of Planning and Budget April 20, 2013. The text of the Proposed Stage amendment was published in the *Virginia Register of Regulations* on November 18, 2013, initiating a 60-day public comment period. A Public Hearing for the Proposed Stage was held December 5, 2013. Public comment concluded January 17, 2014.

This request for regulatory amendment is being submitted to the Safety and Health Codes Board for approval as a Final Stage Regulatory adoption.

V. Public Comment Received During the Rulemaking Process

The Department did not receive any comments during the initial 30-day comment period for the NOIRA; during the 60-day comment period for the proposed regulation stage; nor at the Public Hearing on the proposed amendment.

Contact Person:

Mr. Ron Graham
Director, Occupational Health Compliance
804.786.0574
Graham.Ron@dol.gov

Attachments:

EPA Letter to Nancy K. Van Voorhis, VDOH

64 FR 1884 (March 10, 1999) <http://www.gpo.gov/fdsys/pkg/FR-1999-03-10/pdf/99-5821.pdf>

69 FR 18489-18496 (April 8, 2004) <http://www.gpo.gov/fdsys/pkg/FR-2004-04-08/pdf/04-7980.pdf>

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

JAN 26 2012

Nancy K. Van Voorhis, MPH
Program Director
Childhood Lead Poisoning Prevention
Lead-Safe Virginia Program
Virginia Department of Health
James Madison Building
109 Governor Street, 8th Floor
Richmond, Virginia 23219

RE: EPA Grant Number PB-99318913-2

Dear Ms. Van Voorhis:

Enclosed is the annual performance report summarizing the U.S. Environmental Protection Agency's (EPA) evaluation of the Commonwealth of Virginia's performance under the State Lead 404(g) and Enforcement Grant. Our evaluation is based on the information reported in the semi-annual report from October 1, 2010 to March 31, 2011 and the review meeting that occurred on June 1, 2011.

The EPA is pleased by the progress made by the Virginia Departments' of Health (VADH) and Professional and Occupational Regulation (VADPOR) under the 404(g) portion of the grant. Significant progress has been made to ensure that the lead professionals in the Commonwealth are trained, accredited, and licensed to accomplish their work in Virginia.

EPA is also encouraged that the Commonwealth is continuing its efforts to adopt regulations on the state level to implement a Renovation, Repair and Painting program. We understand that the regulations are still undergoing review by the Governor's Office and if they are approved by the governor, will be subject to a sixty (60) day public comment period. Upon completion of the comment period, Virginia will address any comments received and publish the final regulations in the Virginia Register.

Although Virginia is making acceptable progress implementing the programmatic elements of the lead program, we continue to be concerned about the lack of emphasis on inspections and enforcement activity related to lead abatement requirements.

During the last several program reviews, EPA has expressed concern about the lack of compliance inspections and resulting enforcement actions. The Virginia representatives at these meetings have consistently identified structural reasons why minimal, if any inspections are being conducted and little if any enforcement actions are taken to address lead-based paint abatement issues. The explanations offered range from there are no inspection targets to be

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found, lead-based paint inspections are not the primary focus of VADoLI, VADPOR's work is so great that these cases are not a high enough priority to Virginia to warrant formal enforcement action and Virginia prefers to address these violations through compliance assistance rather than formal enforcement. Additionally, EPA has been informed that VADPOR's enforcement action would only impact the contractor's license to do work in the state and not necessarily address the underlying lead-based paint violation(s).

Last year, in a letter dated March 22, 2011 to Ms. Nancy Van Voorhis, EPA stated that "EPA believes that the lack of inspection activity demonstrates inadequate oversight of the regulated [universe of] lead-based paint professionals." Virginia's continued failure to take actions to address the lack of inspections and enforcement actions raises concerns about Virginia's commitment to administering all aspects of a successful lead-based paint regulatory program.

EPA recognizes that some difficulties may arise as a result of the way the program is organized in the Commonwealth, however, because Virginia accepted program authorization, Virginia agreed to effectively implement all aspects of the lead abatement program, including full implementation of a compliance and enforcement program designed to detect violations and seek appropriate enforcement responses. Continued failure to effectively implement a compliance and enforcement program could result in the withholding of grant funds, increased inspection activity by EPA in the Commonwealth and impact EPA's decision whether to grant authorization to the Commonwealth for the RRP should Virginia seek program authorization. We stand ready to work with the Commonwealth to resolve these issues to ensure that lead-based paint professionals receive the proper amount of compliance oversight for the purpose of protecting the health and welfare of the citizens of Virginia.


I have directed Harry Daw, Associate Director for Toxics and Pesticides and Mrs. Aquanetta Dickens, Chief, Toxics Programs Branch to work with your staff to develop a strategy to increase inspections and enforcement actions. Please feel free to call me at 215-814-3143 if you would like to discuss this further.

Sincerely,


Abraham Ferdas, Director
Land and Chemicals Division

Enclosure

cc: David Dick, DPOR
Mark Courtney, DPOR
Ron Graham, DOLI
Bill Burge, DOLI

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Virginia Department of Health
Office of Lead Poisoning Prevention Program

BACKGROUND:

On June 1, 2011, EPA Region III, the Virginia Department of Health (VDH), Virginia Department of Professional and Occupation Regulation (DPOR), and the Virginia Department of Labor and Industry (DOLI) met to discuss the grant cycle for October 1, 2010 to September 30, 2011. The purpose of the grant is to assist Virginia in the development and implementation of its lead compliance and enforcement program.

PARTICIPATES:

Participant	Organization
Nancy Van Voorhis, Program Director	Lead-Safe Virginia Program Virginia Department of Health
David Dick, Executive Director	Board for Asbestos, Lead and Home Inspectors Department of Professional and Occupation Regulation
Michele Atkinson, Board Administrator	Board for Asbestos, Land and Home Inspectors Department of Professional and Occupation Regulation
Jill Hrynciw, Board Administrator	Board for Asbestos, Lead and Home Inspectors Department of Professional and Occupation Regulation
Ron Graham, Director	Occupational Health Compliance Virginia Department of Labor and Industry
Emory Rodgers, Deputy Director of Building and Fire Regulation	Virginia Department of Community Housing Development
Aquanetta Dickens, Chief	Toxics Programs Branch EPA Region III
Artencia Johnson, Environmental Protection Specialist	Toxics Programs Branch EPA Region III

PURPOSE:

The purposes of the mid-year program and enforcement review were to:

- Review the status of grant commitments
- Identify areas of concern (including resource related issues)
- Provide a forum in which Virginia could ask questions to better understand grant requirements and responsibilities.

Enclosure 1 provides an explanation of the status of schedule of deliverables under the grant, as reported during Virginia's Mid-Year Review Meeting. Virginia and Region III may

use the meeting to identify and make corrective actions necessary to ensure completion of the grant project and task before the grant is closed out.

PERFORMANCE STRENGTHS:

Grant Administration

The Assistance Agreement is administered by VDH and is in its third year as a multi-year grant. VDH is on target with expending its funding levels.

VDH has consistently submitted the required Semi-Annual reports summarizing the progress and performance of its Lead Safe Virginia Project. The first semi-annual report was submitted on April 29, 2011.

On March 31, 2011, representatives from VDH and DPOR attended EPA's Spring Regional Meeting in Philadelphia, PA.

State Authorization

Lead-Based Paint Activities

On March 10, 1999, Virginia Department of Professional and Occupational Regulation achieved program approval to run its Lead-Based Paint Training and Certification Program under Section 402(a) of the Toxics Substances Control Act. Since that time of achieving full program approval, DPOR has consistently submitted the required annual report summarizing the progress and performance of its Lead-Based Paint Activities Regulatory Compliance and Enforcement Program. The report for this reporting cycle is due by December 31, 2011.

Renovation, Repair, and Painting Regulations

DPOR reported that the proposed regulations are currently in the Governor's office for review and have been, at the time of the meeting, for 116 days. It was explained that prior to reaching the Governor's office, the agency submitted proposed regulations for an Executive Branch review which consist of the Office of the Attorney General, the Planning and Budget Office, and the Cabinet Secretary. After receiving Executive Branch approval, the agency submits the Notice of Intended Regulatory Action (NOIRA) for publication in the *Virginia Register of Regulations*. Once published in the *Virginia Register*, a 60-day comment period begins during which time the agency may receive comments from the general public. DPOR reviews and responds to comments and prepares final regulations for the Executive Branch review. Upon the Executive Branch's approval, the agency submits the final text of the regulations, with an explanation of any changes from the proposed, for publication in the *Virginia Register*. The regulation will become effective 30 days after publication in the *Virginia Register*. The day it becomes effective, the regulations appear online. EPA asked what was the mood for passage of the RRP regulations, what was the reason for the delay in the review of the

regulations, and asked if EPA could be any assistance to the Commonwealth to obtain the status of the regulations from EPA's Congressional liaison officer. DPOR expressed the disposition of the Governor signing the regulations were favorable and the director of the agency would be the Governor's point of contact during the process and EPA's assistance is not needed. EPA asked DPOR to find out from the Director the status of the regulations and they agreed to EPA's request. DPOR will apply for authorization upon the passage of its regulations. DPOR noted the regulatory action takes approximately 12-15 months from start to finish and they anticipate the process should be completed by spring 2012.

Since the time of the meeting, Wojceich Jankowski from EPA's Office of Regional Counsel was assigned to review the proposed regulations and was provided a link to the Commonwealth's regulatory website.

During the Year 13 grant cycle, Virginia was awarded \$75,000 to support its RRP efforts. Since that time, DPOR reported that they will not need funding to establish its program; however, management's point of view may change. Currently, DPOR's program is supported by application and renewal fees from its accreditation and certification program. EPA will confirm if funds can be redirected to support another activity.

Virginia's Quality Assurance Project Plan/Quality Management Plan was approved April 23, 2010. Virginia will not be required to update its plan until February 23, 2015.

Certification/Accreditation/Notification

DPOR continues to operate its certification and accreditation program. During this reporting period, a total of 944 individual certifications were issued in the five disciplines and 135 firms received certification. The breakdown of individuals certified during this period is as follows: 99 inspectors, 213 risk assessors, 398 abatement workers, 188 supervisors, and 46 project designers. There are 20 training providers accredited, which included the course accreditation of 86.

Compliance Assistance

Virginia has demonstrated the following accomplishments under compliance assistance:

- 7,224 brochures distributed through direct orders;
- 25,810 documents were downloaded through web site;
- 14,799 visits through State web site;
- 21 Lead Dustbuster Trainings;
- 606 visits to realtors; building code officials and through Hampton Roads Home & Garden Show;
- 228 Lead Safe hotline calls;
- 2 Media Outreach Campaigns; and

- 1 coalition formed.

VDH reported that during the Lead Poisoning Prevention Week, ten health departments throughout the state promoted lead poisoning prevention awareness by hosting displays in its lobby and clinic areas by distributing educational materials. Some districts partnered with other organizations to provide outreach education during special informational sessions or hosted booths at local health and safety fairs.

Enforcement

DPOR received three complaints of contractors using unlicensed personnel to remove paint from bridges at various locations. The complaints involved K and K Painting and Blastach Enterprise, Inc., located in Baltimore, Maryland. Since the work was performed on commercial structures, the activity is not regulated in Virginia.

Concerns

EPA is continuing concerned about the lack of inspections and enforcement the Commonwealth's lead abatement program. As stated in EPA's March 22, 2011 letter to the Virginia Department of Health for period October 2009-March 2010, "EPA believes the lack of inspection activity demonstrates inadequate oversight of the regulated lead-based paint professionals." During other previous mid-year evaluations, Virginia's performance under the enforcement grant, EPA has expressed ongoing and continuing concern about the lack of inspections and subsequent enforcement in this area. During this reporting period of October 2010-March 2011, there were six (6) lead abatement notifications received, two (2) lead abatement project inspections, and tips and complaints were received, but the number wasn't reported during the meeting, but DPOR will send to EPA a list of them.

When the Governor accepted program authorization, Virginia agreed to implement all aspects of the lead abatement program including full implementation of all compliance and enforcement elements. Continue failure to implement an effective compliance and enforcement program could result in actions that include withholding grant funds, increase inspection and enforcement activity by EPA in the Commonwealth of Virginia until such time as Virginia takes positive steps to increase its compliance and enforcement presence among the regulated universe.

Mr. Emory Rodgers, Deputy Director of Building and Fire Regulation was invited to attend the mid-year meeting on behalf of the Department of Housing and Community Development (DHCD) to explain his offices' function with the intent to build a collaborative effort among state agencies to address lead-based paint activities. The DHCD promulgates the Virginia Uniform Statewide Building Code (USBC) that regulates the construction and alteration of all new and existing building construction. Local building departments enforce the USBC with technical assistance and mandated certification training by DHCD. Integrated in the USBC

are measures to ensure the safe abatement of lead from homes built before 1978 along with ensuring that contractors are properly licensed through DPOR.

During the discussion, Mr. Rodgers provided clarification on how DHCD relates to the State. His contribution was a link to the responsibilities of the statewide local building code officials that inspect a building or structure and enforce the Virginia Codes. It was reported on March 1, 2011, based on legislation passed by the 2010 General Assembly, the 2009 USBC, Virginia Construction Code, Section 104, Part 1 and the Virginia Maintenance Code Section 104.1, Part 111 of USBC which requires the local building officials to investigate unsafe dwellings when a complaint is made and it also extends to localities that have not adopted the Virginia Maintenance Code. The provision covers interior/exterior of peeling and flaking paint surfaces. For example, based on a complaint by a tenant, the local building department would inspect the dwelling. If the structure or unit is deemed unsafe, the structure would be in violation of the Virginia Maintenance Code and the local building code official would be responsible for enforcing the code. The USBC Virginia Maintenance Code Section 103.4 allows localities to conduct rental inspections in districts of blighted areas where often lead is a problem. The enforcement penalty for criminal is \$2,500 per violation and imprisonment. In addition, civil penalties can reach up to \$5,000.

The following number of training courses offered for this reporting period is as follows:

- 15 inspector initial
- 11 inspector refresher
- 14 risk assessor initial
- 17 risk assessor refresher
- 23 supervisor initial
- 32 supervisor refresher
- 1 project designer initial
- 2 project designer refresher
- 42 worker initial
- 60 worker refresher
- 0 training provider audits

Miscellaneous

VDH reported a total of 40,983 children under the age of 6 were tested for lead exposure. The total number of children confirmed with an elevated blood lead levels $\geq 10\mu\text{g/dL}$ was 154. The total number of children confirmed with elevated blood levels $\geq 15\mu\text{g/dL}$ was 56.

Challenges

There were no program meetings held during this reporting period. Due to the Commonwealth's budget crisis, travel and meetings have been restricted. VDH would like to redirect funds to support contractual services to support two positions. VDH explained that CDC funding will end on June 30, 2011. VDH will be applying for CDC's Healthy Homes Grant. The purpose of the initiative is to address unsafe housing through surveillance and research for prevention programs such as lead. VDH would like to use CDC funding to develop a venous module in order to pass on risk assessment referrals to the building code officials and also create a surveillance database.

Action Items

Virginia will provide a print out of all tips/complaints received, where the violations occurred and the tips/complaints that an action was initiated by Criminal Investigation Division.

DPOR will inform EPA the status of Virginia's RRP Regulations.

FY2011 VIRGINIA LEAD PROGRAM 404(G) AND ENFORCEMENT WORK PLAN
YEAR 13: AMENDMENT #2
 This work plan includes information from the Virginia Department of Health (VDH) and its subgrantees: the Virginia Department of Professional and Occupational Regulation (DPOR), and the Virginia Department of Labor and Industry (DOLI).

CATEGORY 1: GRANT ADMINISTRATION

Commitments/Deliverables		Status/Comment/Accomplishments	
Submit Semi-Annual Progress Reports within 30 days of end of previous reporting period	October 1 – March 31 <i>Submitted April 29, 2011</i>	April 1 – September 30	
Submit Final Technical Report within 90 days of end of budget period (Cumulative) VDH	N/A this reporting period	DPOR will submit within 90 days to EPA with copy to VDH	
Submit Financial Status Report within 90 days of end of budget period VDH	Interim FSR submitted December 2010	Interim FSR will be submitted before December 30, 2010	
Attend Regional and National Meetings as scheduled VDH, DPOR, DOLI	David Dick and Michelle Atkinson from DPOR and Nancy Van Voorhis from VDH attended EPA Spring Regional Meeting in Philadelphia 3/31/2011 Nancy Van Voorhis attended Healthy Homes Essentials training 10/18-22/2010	Nancy Van Voorhis attended the Lead and Healthy Homes National Conference in Denver 6/20-23/2011	
Attend professional training sessions VDH, DPOR, DOLI			
CATEGORY 2: STATE ADMINISTRATION			
Commitments/Deliverables		Status/Comment/Accomplishments	
Activities			
Submit State Authorization Reports DPOR	October 1 – March 31 DPOR submitted 12/29/10 Rec'd: 1/7/11	April 1 – September DPOR will submit by 12/30/11	
Submit Quality Assurance Project Plan (QAPP)/Quality Management Plan (QMP)	Approved: 4/23/10 QAPP valid for 5 years	Approved: 4/23/10 Expiration date: 4/23/15	
Develop authority to seek authorization to run Renovation, Repair, and Painting Rule DPOR	Completed: Copy of legislation provided in 2010 progress report effective 2009.	Completed: Copy of legislation provided in 2010 progress report effective 2009.	
Continue work on obtaining full authorization from EPA DPOR	Proposed regulations currently undergoing Executive Branch review	Proposed regulations currently undergoing Executive Branch review	

State Level Results Reported	Activities	October 1 – March 31	April 1 – September 30
ACS Measure 13B – Annual percentage of viable lead-based paint certification applications that require less than grantee State-established timeframes (semi-annual) Virginia – 14 days	Engage in discussions with Region III states to develop agreement to accept training offered in other states.	100% Certification applications meet timeframe Reciprocity discussions ongoing	100% Certification applications meet timeframe Reciprocity discussions ongoing
ACS Measure 11B Number of active individual certifications for LBP abatement activities	Outputs Report Semi-annually on: DPOR		
	# of inspectors certified	99	90
	# of risk assessors certified	213	214
	# of abatement workers certified	398	437
	# of supervisors certified	188	183
	# of project designers certified	46	42
	# of firms certified (please specify in comment field)	135	134
	# of training providers accredited*	20	20
	# of training courses accredited	86	85
	# of inspector initial training courses accredited	11	11
	# of inspector refresher training courses accredited	4	4
	# of risk assessor initial training courses accredited	10	10
	# of risk assessor refresher training courses accredited	8	8
	# of supervisor initial training courses accredited	10	10
	# of supervisor refresher training courses accredited	10	10
	# of project designer initial training courses accredited	8	8

	# of project designer refresher training courses accredited	4	
	# of abatement worker initial training courses accredited	14	3
	# of abatement worker refresher training courses accredited	7	14
	Number of lead abatement notifications received for child occupied building (child care center, kindergarten classroom) and residential dwelling. DOLI	6-DOLI	7
	Number of training provider course notifications received.	217	0-DOLI 250
MISCELLANEOUS			
	Commitments/Deliverables	Status/Comments/Accomplishments	
	Report on: Blood lead screening data (Copies of blood lead screening data will be provided). Data will provide the number of children screened in categories of children with lead level) and the number of children with less than 10 ug/dl.	<p>October 1 – March 31 Completed: 40,983 children under 72 months tested for lead exposure. 154 confirmed EBLs ≥ 10 $\mu\text{g}/\text{dl}$ 56 confirmed EBLs ≥ 15 $\mu\text{g}/\text{dl}$</p>	<p>April 1 – September 30 Completed: 55,076 children under 72 months tested for lead exposure. 162 confirmed EBLs ≥ 10 $\mu\text{g}/\text{dl}$ 69 confirmed EBLs ≥ 15 $\mu\text{g}/\text{dl}$ See Attachment F for this period data and 2010 Annual Surveillance Report</p>
CATEGORY: COMPLIANCE/ASSISTANCE			
	Commitments/Deliverables	Status/Comments/Accomplishments	
	VDH Submit semi-annual report on compliance assistance activities by April 30 th and October 31 st every year on: Number of compliance assistance activities conducted (an attachment that identifies the activities conducted during the reporting period including the target audience and outreach goals. In addition, copies of materials developed through compliance assistance activities will be attached.) Number of individuals reached through compliance assistance (A description of what the State is doing to pro-actively inform the regulated and higher risk communities about rights/responsibilities/dangers with respect to lead-based paint will be included). Through dissemination of information at conference, expos, presentations, demonstrations, etc. Through contact on State Web site	<p>October 1 – March 31 Completed 7,224 Brochures distributed through direct orders; 25,810 documents downloaded through Web site</p>	<p>April 1 – September 30 Completed 5,031 Brochures distributed through direct orders; 39,816 documents downloaded through Web site</p>
		<p>21 Lead Dustbuster Trainings; 606 through visits to realtors; building code officials and through Hampton Roads Home & Garden Show 14,799 visitors</p>	<p>14 Lead Dustbuster Trainings; 486 through visits to realtors; building code officials 16,672 visitors</p>

	Through operation of 1-800 hotline.		
	Through media outreach campaigns	59 hotline calls 866-SOS-LEAD, and 228 to Lead Safe VA toll free Completed: 2	41 hotline calls 866-SOS-LEAD, and 305 to Lead Safe VA toll free No media campaigns this period
	Number of coalitions formed	1) 120,000 Richmond Magazine 2) 60,000 Richmond Guide circulated Completed: 2 United Way of Greater Richmond-Bright Beginnings; VDH nurses with Lead-Safe Virginia established a coalition with Virginia Home School Association	Completed I: Dept. of Behavioral Health and Development Services-Part C (children under 3 years) to include lead poisoning as qualifying criteria for services.
	National/State Lead Awareness Week Activities (A sheet indicating activities planned for lead awareness week will be provided).	Completed: October 24-30, 2010	Completed: October 24-30, 2010
CATEGORIES: ENFORCEMENT			
	Commitments Deliverable	Status/Comment/Accomplishments	
	DPOR Report Semi-annually on: Number of training courses offered	October 1 - March 31	April 1 - September 30
	Inspector Initial	15	13
	Inspector Refresher	11	13
	Risk Assessor Initial	14	13
	Risk Assessor Refresher	17	19
	Supervisor Initial	23	21
	Supervisor Refresher	32	33
	Project Designer Initial	1	2
	Project Designer Refresher	2	6
	Worker Initial	42	50
	Worker Refresher	60	80
	Neutral Training Provider Audits (if no courses were conducted during reporting period)	0	2
	# of Lead abatement project inspections	6	3
	DOLI		
	# of other 402 inspections	0	1
	Number of tips/complaints received (A sheet(s) which describes the location and nature of complaint will be provided. VDH, DOLI, DPOR	0	0
	Number of 406(b) and/or 1018 complaints referred to EPA	Many may be referred through EPA 0-direct	Many may be referred through EPA 0-direct

RECOMMENDED ACTION

Staff of the Department of Labor and Industry recommends that the Safety and Health Codes Board consider for adoption the attached amendment as a final regulation of the Board amending the Regulation Concerning Certified Lead Contractors Notification, Lead Project Permits and Permit Fees, 16VAC23-35, pursuant to the Virginia APA 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.

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**FINAL REGULATION TO AMEND THE REGULATION
CONCERNING CERTIFIED LEAD CONTRACTORS NOTIFICATION,
LEAD PROJECT PERMITS AND PERMIT FEES; 16VAC25-35**

**As Adopted by the
Safety and Health Codes Board**

Date: _____



**Certified Lead Contractors Notification, Lead Project Permits
and Permit Fees; 16VAC25-35**

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16VAC25-35-30. Notification and permit fee.

A. Written notification of any lead project, ~~the contract price of which is \$2,000 or more,~~ shall be made to the department on a department form. Such notification shall be sent by facsimile transmission as set out in subsection J of this section, by certified mail, or hand-delivered to the department. Notification shall be postmarked or made at least 20 days before the beginning of any lead project.

B. The department form shall include the following information:

1. Name, address, telephone number, and the certification number of each person intending to engage in a lead project.
2. Name, address, and telephone number of the owner or operator of the facility in which the lead project is to take place.
3. Type of notification: amended, emergency, renovation or demolition.
4. Description of facility in which the lead project is to take place, including address, size, and number of floors.
5. Estimate of amount of lead and method of estimation.
6. Amount of the lead project fee submitted.
7. Scheduled setup date, removal date or dates, and completion date and times during which lead-related activity will take place.
8. Name and license number of the supervisor on site.
9. Name, address, telephone number, contact person, and landfill permit number of the waste disposal site or sites where the lead-containing material will be disposed.
10. Detailed description of the methods to be used in performing the lead project.

11. Procedures and equipment used to control the emission of lead-contaminated dust, to contain or encapsulate lead-based paint, and to replace lead-painted surfaces or fixtures in order to protect public health during performance of the lead project.

12. If a facsimile transmission is to be made pursuant to subsection J of this section, the credit card number, expiration date, and signature of cardholder.

13. Any other information requested on the department form.

C. A lead project permit fee shall be submitted with the completed project notification form. The fee shall be in accordance with the following schedule:

1. The greater of \$100 or 1.0% of the contract price, with a maximum of \$500.

2. If, at any time, the Commissioner of Labor and Industry determines that projected revenues from lead project permit fees may exceed projected administrative expenses related to the lead program by at least 10%, the commissioner may reduce the minimum and maximum fees and contract price percentage set forth in subdivision 1 of this subsection.

D. A blanket notification, valid for a period of one year, may be granted to a contractor who enters into a contract for a lead project on a specific site which is expected to last for one year or longer.

1. The contractor shall submit the notification required in subsection A of this section to the department at least 20 days prior to the start of the requested blanket notification period. The notification submitted shall contain the following additional information:

a. The dates of work required by subdivision B 7 of this section shall be every work day during the blanket notification period, excluding weekends and state holidays.

b. The estimate of lead to be removed required under subdivision B 5 of this section shall be signed by the owner and the owner's signature authenticated by a notary.

c. A copy of the contract shall be submitted with the notification.

2. The lead project permit fee for blanket notifications shall be as set forth in subsection C of this section.

3. The contractor shall submit an amended notification at least one day prior to each time the contractor will not be present at the site. The fee for each amended notification will be \$15.

4. Cancellation of a blanket notification may be made at any time by submitting a notarized notice of cancellation signed by the owner. The notice of cancellation must include the actual amount of lead removed and the actual amount of payments made under the contract. The refund shall be the difference between the original lead permit fee paid and 1.0% of the actual amount of payments made under the contract.

E. Notification of fewer than 20 days may be allowed in case of an emergency involving protection of life, health or property. In such cases, notification and the lead permit fee shall be submitted within five working days after the start of the emergency lead project. A description of the emergency situation shall be included when filing an emergency notification.

F. A notification shall not be effective unless a complete form is submitted and the proper permit fee is enclosed with the completed form. A notification made by facsimile transmission pursuant to subsection J of this section shall not be effective if the accompanying credit card payment is not approved.

G. On the basis of the information submitted in the lead notification, the department shall issue a permit to the contractor within seven working days of the receipt of a completed notification form and permit fee.

1. The permit shall be effective for the dates entered on the notification.

2. The permit or a copy of the permit shall be kept on site during work on the project.

H. Amended notifications may be submitted for modifications of subdivisions B 3 through B 11 of this section. No amendments to subdivision B 1 or B 2 of this section shall be allowed. A copy of the original notification form with the amended items circled and the permit number entered shall be submitted at any time prior to the removal date on the original notification.

1. No amended notification shall be effective if an incomplete form is submitted or if the proper permit amendment fee is not enclosed with the completed notification.

2. A permit amendment fee shall be submitted with the amended notification form. The fee shall be in accordance with the following schedule:

a. For modifications to subdivisions B 3, B 4, and B 6 through B 10 of this section, \$15.

b. For modifications to subdivision B 5 of this section, the difference between the permit fee in subsection C of this section for the amended amount of lead and the original permit fee submitted, plus \$15.

3. Modifications to the completion date may be made at any time up to the completion date on the original notification.

4. If the amended notification is complete and the required fee is included, the department will issue an amended permit if necessary.

I. The department must be notified prior to any cancellation. A copy of the original notification form marked "canceled" must be received no later than the scheduled removal date. Cancellation of a project may also be done by facsimile transmission. Refunds of the lead project permit fee will be made for timely cancellations when a notarized notice of cancellation signed by the owner is submitted.

The following amounts will be deducted from the refund payment: \$15 for processing of the original notification, \$15 for each amendment filed, and \$15 for processing the refund payment.

J. Notification for any lead project, emergency notification, or amendment to notification may be done by facsimile transmission if the required fees are paid by credit card.



COMMONWEALTH of VIRGINIA

DEPARTMENT OF LABOR AND INDUSTRY

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VIRGINIA SAFETY AND HEALTH CODES BOARD BRIEFING PACKAGE FOR JUNE 5, 2014

NOTICE OF PERIODIC REVIEW OF CERTAIN EXISTING REGULATIONS

I. Action Requested

The Department requests the permission of the Board to proceed with the periodic review process of the Board's regulation listed in Section II, below.

II. Background and Basis

The Administrative Process Act (§2.2-4017 of the Code of Virginia), and Executive Order 14 (2010), "Development and Review of Regulations Proposed by State Agencies," governs the periodic review of existing regulations. This Executive Order requires that state agencies conduct a periodic review of regulations every four years. One regulation of the Safety and Health Codes Board has been identified for review in 2014. It is as follows:

1. 16 VAC 25-145, Safety Standards for Fall Protection in Steel Erection, Construction Industry

III. Current Status and Process

This regulation of the Safety and Health Codes Board has been identified for review in 2014. If approval to proceed is granted by the Board, the process of periodic review begins with publication of a Notice of Periodic Review in the Virginia Register. With publication of this Notice of Periodic Review, a public comment period of at least 21 days, but not longer than 90 days, begins. Subsequently, the Department will review this regulation and related public comments, then prepare a brief with recommendations to be presented for the Board's consideration at the next meeting. Based on the decision of the Board, the Department of Labor and Industry will post a report on the Virginia Regulatory Town Hall website indicating for this regulation that the Board will either retain the regulation as is, or will begin a regulatory action to amend or repeal the regulation.

Contact Person:

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COMMONWEALTH of VIRGINIA

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VIRGINIA SAFETY AND HEALTH CODES BOARD

BRIEFING PACKAGE

FOR JUNE 5, 2014

Electric Power Generation, Transmission, and Distribution and Electrical Protective Equipment, Parts 1910 and 1926; 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 the Electric Power Generation, Transmission, and Distribution and Electrical Protective Equipment, Part 1910, General Industry, and Part 1926, Construction Industry, as published on April 11, 2014 in 79 FR 20316, and to consider for repeal 16VAC25-75, Telecommunications, General, Approach Distances and 16VAC25-155, General Requirements for Clearances, Construction of Electric Transmission and Distribution Lines and Equipment, Construction Industry – Subpart V (§1926.950 (c)(1)(i)).

The proposed effective date is September 1, 2014. Since certain provisions have delayed compliance deadlines, please refer to Section V. of this briefing package to review the particular provisions.

II. Summary of the Rule.

Federal OSHA adopted a new Construction Industry standard on electrical protective equipment, §1926.97, and revised the standard on the construction of electric power transmission and distribution lines and equipment, Part 1926, Subpart V. Federal OSHA also revised the General Industry counterparts to these two Construction Industry standards, §§ 1910.137 and 1910.269, respectively. Finally, federal OSHA revised its General Industry standard on foot protection, §1910.136, to require employers to ensure that each affected employee uses protective footwear when the use of protective footwear will protect the affected employee from an electrical hazard, such as a static-discharge or electric-shock hazard, that remains after the employer takes other necessary protective measures.

These revisions make the Construction Industry standard more consistent with the General Industry standard. The final rules for General Industry and the Construction Industry include new or revised provisions on host employers and contractors, training, job briefings, fall protection, insulation and working position of employees working on or near live parts, minimum approach distances, protection from electric arcs, deenergizing transmission and distribution lines and equipment, protective grounding, operating mechanical equipment near overhead power lines, and working in manholes and vaults.

The new provisions on host employers and contractors include requirements for host employers and contract employers to exchange information on hazards and on the conditions, characteristics, design, and operation of the host employer's installation. These new provisions also include a requirement for host employers and contract employers to coordinate their work rules and procedures to protect all employees. [79 FR 20317]

The new standard also revises the General Industry and Construction Industry standards for electrical protective equipment. The new standard for electrical protective equipment, which matches the corresponding General Industry standard, applies to all Construction Industry work and replaces the incorporation of out-of-date consensus standards with a set of performance-oriented requirements that is consistent with the latest revisions of the relevant consensus standards. The final Construction Industry rule also includes new requirements for the safe use and care of electrical protective equipment to complement the equipment design provisions. Both the General Industry and Construction Industry standards for electrical protective equipment will include new requirements for equipment made of materials other than rubber.

Like federal OSHA, VOSH seeks to use the same delayed compliance deadlines as the federal date schedule for the phased-in period for this final rule. The additional time granted to employers will serve to reduce the transitional costs associated with the final rule.

Federal OSHA has also included numerous comparable appendices in §1910.269 and in Subpart V of Part 1926 of the final rule. Among other things, these comparable appendices provide the following:

- Information relating to the determination of appropriate minimum approach distances;
- Information on the inspection and testing of wood poles;

- Guidance on the selection of protective clothing and other protective equipment for employees exposed to flames or electric arcs;
- Tables for estimating incident-energy levels based on voltage, fault current, and clearing times; and
- References to additional sources of information that supplement the requirements of Subpart V.

The new federal final rule for Electric Power Generation, Transmission, and Distribution and Electrical Protective Equipment now provides comprehensive and uniform levels of worker protections across industries that previously were lacking in this standard and were addressed by the Board in 2004 and 2006 through the adoption of the following two Virginia Unique regulations: 16VAC25-75, Telecommunications, General, Approach Distances and 16VAC25-155, General Requirements for Clearances, Construction of Electric Transmission and Distribution Lines and Equipment, Construction Industry – Subpart V (1926.950 (c)(1)(i)). Since these Virginia Unique regulations are no longer necessary, they should be repealed should the Board choose to adopt the new federal final rule.

III. Basis, Purpose and Impact of the Final Rule.

A. Basis.

Federal OSHA first adopted standards for the construction of power transmission and distribution lines and equipment in 1972 (Subpart V of Part 1926). Federal OSHA defines the term “construction work” in 1910.12(b) as “work for construction alteration, and/or repair, including painting and decorating.” The term “construction” is broadly defined in §1910.12(d) and existing §1926.950(a)(1) to include the original installation of , as well as the alteration, conversion, and improvement of electric power transmission and distribution lines and equipment. [79 FR 20323]

The General Industry standard at §1910.269 applies to the operation and maintenance of electric power generation, transmission, and distribution installations. Federal OSHA adopted §1910.269 on January 31, 1994. That standard is a companion standard to Subpart V of the Construction Industry standards and addresses work to which Subpart V did not apply. When promulgated, §1910.269 was also based on the latest technology and national consensus standards.

Federal OSHA revised its Electrical Protective Equipment Standard in §1910.137 at the same time §1910.269 was promulgated. Federal OSHA published a proposed rule (the Subpart V proposal) on June 15, 2005, to revise the Construction Industry standard for Electric Power Transmission and Distribution work (Part 1926, Subpart V) and the General Industry standards for Electric Power Generation, Transmission, and Distribution (§1910.269). Federal OSHA held a public hearing on the proposed rule from March 6 to March 14, 2006, and held an additional public hearing on a limited reopening of the proposed rule on October 28, 2009. [79 FR 20323]

B. Purpose.

Federal OSHA revised the standards addressing the work practices employers will use, and other requirements they will follow, for the operation and maintenance of, and for construction work involving, electric power generation, transmission, and distribution installations.

The revised standards will ensure that employers, when appropriate, must meet consistent requirements for work performed under the Construction Industry and General Industry standards. Employees doing work covered by the final rule are exposed to a variety of significant hazards that can and do cause serious injury and death. Under the existing standards, different requirements apply depending upon whether the work is Construction Industry or General Industry work. Federal OSHA believes that, in most cases, it is important to have the same requirements apply regardless of the type of work performed. Inconsistencies between the Construction Industry and General Industry standards can create difficulties for employers attempting to develop appropriate work practices for their employees. If the corresponding Part 1910 and Part 1926 standards are the same, employers can adopt one set of work rules covering both types of work. Employers and employees will generally not have to decide whether a particular job is construction or maintenance. Under the new final rule, the requirements are the same. *[79 FR 20317]*

C. Impact on Employers.

Federal OSHA does not expect the transfer to the Construction Industry standard of the existing General Industry standards in §1910.137 and §1910.269 to impose a significant burden on employers. Generally, OSHA believes that many employers doing Construction Industry work also do General Industry work. Thus, OSHA believes that they are already following the existing General Industry standards in their construction work. The final provisions in Subpart V also are generally consistent with the latest national consensus standards. The numerous revisions to the General Industry standards, because they also apply to construction, will ensure that consistent requirements, when appropriate, apply to employers engaged in work performed under the Construction Industry and General Industry standards. This consistency will further protect employee performing electrical work covered under the General Industry standards. *[79 FR 20615]*

The final rule affects establishments in a variety of different industries involving electric power generation, transmission, and distribution. The rule primarily affects firms that construct, operate, maintain, or repair electric power generation, transmission, or distribution installations. These firms include electric utilities, as well as contractors hired by utilities and primarily classified in the Construction Industry. In addition, potentially affected firms are found in a variety of manufacturing and other industries that own or operate their own electric power generation, transmission, or distribution installations as a secondary part of their business operations. The rule also affects establishments performing line-clearance tree-trimming operations. *[79 FR 20563]*

Across all affected industries, an estimated 24,407 establishments and 211,452 employees will be affected by this final rule nationally. In Virginia, there are approximately 662 establishments and 5,700 employees who will be affected by this final rule. The construction industries with the largest numbers of affected employees are the Power and Communication Transmission Line Construction Industry and Electrical Contractors industries, which together account for 56,426 employees of the affected workforce. Those industries in Virginia account for approximately 1530 employees of the affected workforce. [79 FR 20564-65]

Federal OSHA estimated that the final rule would affect approximately 14, 263 small firms and 11,004 very small entities, defined as entities with fewer than 20 employees. [79 FR 20614-15]

D. Impact on Employees.

Employees performing work involving electric power generation, transmission, and distribution are exposed to a variety of significant hazards, such as fall, electric-shock, and burn hazards, that can and do cause serious injury and death. Nationally, federal OSHA estimated that, on average, 444 serious injuries and 74 fatalities occur annually among these workers. Of that total, in Virginia, it is estimated that there are 12 serious injuries and 2 fatalities occurring annually among electric power generation, transmission, and distribution workers. Although better compliance with existing safety standards may prevent some of these accidents, research and analyses conducted by federal OSHA found that many preventable injuries and fatalities could continue to occur even if employers fully complied with the existing standards. [79 FR 20560]

Federal OSHA expects the final rule to result in an increased degree of safety for affected employees and to reduce the number of accidents, fatalities, and injuries associated with the relevant tasks, including falls, some burns, and many electric-shock incidents. OSHA also expects the final rule to reduce the severity of certain injuries that the final rule will not prevent, but that could still occur during the performance of some of the affected work procedures. [79 FR 20565]

E. Impact on the Department of Labor and Industry.

Beyond expenses incurred for training staff in the final rule, there is no anticipated impact on the Department.

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. Technological Feasibility.

Federal OSHA reviewed each of the requirements imposed by the final rule and determined that compliance with the requirements of the final rule is technologically feasible for all affected industries, that employers can achieve compliance with all of the final requirements using readily and widely available technologies, and that there are no technological constraints with any of the final requirements.

- First, federal OSHA concluded that compliance with existing §1910.137 and §1910.269 was technologically feasible when it promulgated those standards in 1994. Federal OSHA estimated that 95 percent of firms that perform work for the construction of electric power transmission and distribution lines and equipment are currently following these standards because the firms also perform repair and maintenance work subject to §1910.269. [79 FR 20582-3]
- Second, the provisions in the standard not based on existing standards are also technologically feasible. Any software that employers might have to use to comply with the final arc-hazard assessment provision is readily and widely available. The arc-flash protective equipment required by the final rule is readily and widely available, and the harnesses and work-positioning equipment required by the final rule are also readily and widely available. [79 FR 20583]
- Third, federal OSHA based many of the provisions in the final rule on national consensus standards, or indicated in the regulatory text of the final rule that it would deem employers that comply with specific provisions of certain national consensus standards to be in compliance with specified provisions of the final rule. Reliance on a national consensus standard provides assurance that a broad consensus of industry representatives recognize that a means of compliance is an appropriate way to comply and is, therefore, technologically feasible. [79 FR 20583]

G. Summary of Benefits and Costs of Final Rule.

1. Benefits

- a) OSHA expects the final rule to result in increased safety for affected employees and to reduce the numbers of accidents, fatalities, and injuries associated with the relevant tasks.
- The accidents, fatalities, and injuries that the final rule will prevent include falls, some burns, and many electric-shock incidents.
 - Federal OSHA also expects the final rule to reduce the severity of certain injuries that the final rule will not prevent, but that

could still occur during the performance of some of the affected work procedures. These injuries include, among others, injuries that could occur as a result of an arrested fall and some burns resulting from employee exposure to incident energy from an electric arc, for example.

- Estimated number of annual injuries prevented nationally: 120
- Estimated number of annual injuries prevented in Virginia: 3.3
- Estimated number of annual fatalities prevented nationally: 20
- Estimated number of annual fatalities prevented in Virginia: .54

- b) Additional benefits associated with this rule involve providing updated, clear, and consistent safety standards regarding electric power generation, transmission, and distribution work to relevant employers, employees, and interested members of the public. OSHA/VOSH currently has different standards covering Construction Industry and General Industry work on electric power transmission and distribution systems.
- c) In most instances, the work practices used by employees are the same whether they are performing Construction Industry or General Industry work. Which standard applies to a particular job depends upon whether the employer is altering the system (construction work) or maintaining the system (General Industry work). Since the work practices used by the employees would most likely be identical, the applicable OSHA standards should be as similar as possible. [79 FR 20320]
- d) The existing OSHA/VOSH standards for the construction of electric power transmission and distribution systems (Subpart V) are over 30 years old and inconsistent with the more recently promulgated standard addressing repair and maintenance work in §1910.269. Federal OSHA believes that the updated standards are easier to understand and to apply than the existing standards and will improve employee safety by facilitating compliance. [79 FR 20570]
- e) OSHA believes that it is important to have the same requirements apply regardless of the type of work performed. If the corresponding Part 1910 and Part 1926 standards are the same, employers can adopt one set of work rules covering both types of work. Employers and

employees will generally not have to decide whether a particular job is construction or maintenance. Therefore, OSHA has adopted revisions to §§1910.137 and 1910.269 so that the construction and maintenance standards will be substantially the same. [79 FR 20546]

2. **Costs**

Employees and supervisors affected by this rule are frequently trained in, and knowledgeable about, the relevant hazards. Many are also knowledgeable about existing OSHA/VOSH standards. The most costly provisions of this standard address the issue that contractors, employees, and supervisors frequently lack the information about the specific electrical system and worksite conditions needed to determine what protective measures to take. Federal OSHA estimated compliance costs for each provision of the rule that involves non-negligible costs and for each industry sector. The estimated costs of compliance represent the additional costs necessary for employers to achieve full compliance. They do not include costs for employers that are already complying with new requirements nor do they include costs associated with achieving full compliance with existing applicable requirements. [79 FR 20318]

- a. Approximate costs of major elements associated with the revised standard:

Issue	National	Virginia
Provision for arc-flash protective equipment	\$17.3 M	\$469,000
Arc-Hazard Assessment	\$ 2.2 M	\$597,000
Fall Protection	\$ 0.6 M	\$ 16,300
Host-Contractor Communications	\$ 1.7 M	\$483,000
Expanded Job Briefings	\$ 6.7 M	\$181,700
Additional Training	\$ 3.0 M	\$ 80,000
Other costs for employees not already covered by §1910.269	\$ 0.2 M	\$ 54,300
Minimum Approach Distance (MAD)	\$ 1.8 M	\$ 49,000

b. For all businesses nationally, these final rule changes result in:

- Estimated total annualized monetized benefits: \$179.2 M
- Estimated total annualized cost of compliance: \$ -49.5 M
Anticipated savings: \$129.7 M

c. For all Virginia businesses, these final rule changes result in:

- Estimated Total annualized monetized benefits: \$ 4.86 M
- Estimated Total annualized cost of compliance: \$ -1.34 M
Anticipated Net Savings \$ 3.52 M

d. Total annualized cost of compliance with the final rule for small entities per firm (cost as a percent of revenues & profits):

Nationally:	\$3,159
Virginia:	\$ 86

e. Total annualized cost of compliance with the final rule for very small entities per firm (cost as a percent of revenues & profits):

Nationally:	\$1,169
Virginia:	\$ 32

IV. Significant Changes to the Standards.

The updated standards harmonize Construction Industry (Subpart V of Part 1926) and General Industry (§1910.269) requirements so that the same rules apply generally to the same types of work. In addition, OSHA based its revisions on the latest consensus standards and improvement in electrical safety technology. The following are among the significant changes to the Construction Industry and General Industry Standards:

1) **General Training**

- The degree of training must be determined by risk to the worker for the hazard involved.
- Qualified workers must have training to recognize and control or avoid electrical hazards present at the worksite.
- Line-clearance tree trimmers must have training to distinguish exposed live parts and to determine the voltage on those parts, and they must have training in minimum approach distances and how to maintain them.
- It is no longer necessary for employers to certify that workers are proficient in safe work practices

2) Host Employers and Contractors

- Host and contract employers must share information on safety matters and coordinate their work rules and procedures.

3) Fall Protection

- On and after April 1, 2015, qualified workers must use fall protection when climbing or changing location on poles, towers, or similar structures unless climbing or changing location with fall protection is infeasible or creates a greater hazard than climbing or changing location without it.
- Fall arrest equipment must be capable of passing a drop test after exposure to an electric arc with a heat energy of 40 ± 5 cal/cm² if the workers using the fall protection are exposed to flames or electric arc hazards.

4) Minimum Approach Distances and Insulation

- Revised minimum approach distances become effective on April 1, 2015.
- Information to help employers establish minimum approach distances appears in appendices to the standards.

5) Protection from Flames and Electric Arc Hazards

- The employer must assess the workplace to identify workers exposed to flame or electric-arc hazards;
- No later than January 1, 2015, employers must estimate the incident heat energy of any electric-arc hazard to which a worker would be exposed;
- Employers must provide protective equipment to workers exposed to electrical hazards from electrical arcs no later than April 15, 2015;
- Information on protecting workers from flames and electric arcs appears in appendices to the standards.

6) Deenergizing Transmission and Distribution Lines and Equipment

- Multiple crews working together on the same line must either coordinate their activities under a single worker or independently comply with the standards for deenergizing transmission and distribution lines.

7) Protective Grounding

- Employers may use insulating equipment other than a live-line tool for placing grounds on or removing grounds from circuits of 600 volts or less under certain conditions.
- Information on protective grounding for deenergized lines appears in appendices to the standard.

8) Underground Electrical Installations

- Special precautions apply when employees perform work that could cause a cable to fail.

9) Electrical Protective Equipment

- The Electrical Protective Equipment for Construction Industry standard applies to all construction work, not just electrical power generation, and distribution work. That standard also replaces the existing Construction Industry standard's incorporation of outdated consensus standards with a set of performance-oriented requirements that is consistent with the latest revisions of the relevant consensus standards.
- The final rule recognizes a new class of electrical protective equipment, Class 00 rubber insulating gloves.
- The standards adopt new requirements for electrical protective equipment made of materials other than rubber. *[OSHA FactSheet]*

V. Implementation Schedule.

Requirement	Subpart V	§1910.269	VOSH Compliance Date
Fall protection must be used by a qualified employee climbing or changing location on poles, towers, or similar structures unless the employer can demonstrate that the climbing with fall protection is infeasible or creates a greater hazard than climbing or changing location without it.	§1926.954(b)(3)(iii)(C)	(g)(2)(iv)(C)(3)	April 1, 2015
Work-positioning systems must be rigged so that an employee can free fall no more than 0.6 m (2 ft).	§1926.954(b)(3)(iv)	(g)92)(iv)(D)	April 1, 2015
Until the compliance deadline, employers may continue to use the minimum approach distances in existing Subpart V and 1926.269 for voltages of 5.1 kilovolts and more. After the compliance deadline, employers must determine the maximum anticipated per-unit transient overvoltage, phase-to-ground in accordance with 1926.960(c)(1)(ii) and 1910.269(l)(3)(ii) and must establish minimum approach distances in accordance with 1926.960(c)(1)(i) and 1910.269(l)(3)(i).	§1926.960(c)(1) and Table V-2	(l)(3) and Table R-3	April 1, 2015
The employer must make a reasonable estimate of the incident heat energy to which the employee would be exposed.	§1926.960(g)(2)	(l)(8)(ii)	Jan. 1, 2015
The employer must ensure that the outer layer of clothing, except for clothing not required to be arc rated, is flame resistant when the estimated incident heat energy exceeds 2.0 cal/cm ² .	§1926.960(g)(4)(iv)	(l)(8)(iv)(D)	April 1, 2015
The employer must ensure that employees with exposure to electric-arc hazards wear protective clothing and other protective equipment with an arc rating greater than or equal to the estimated heat energy whenever that estimate exceeds 2.0 cal/cm ² .	§1926.960(g)(5)	(l)(8)(v)	April 1, 2015

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RECOMMENDED ACTION

Staff of the Department of Labor and Industry recommends that the Safety and Health Codes Board adopt the Final Rule for Electric Power Generation, Transmission, and Distribution and Electrical Protective Equipment, Parts 1910 and 1926, as authorized by Virginia Code §§ 40.1-22(5) and 2.2-4006.A.4(c), with an effective date of September 1, 2014; and repeal the two Virginia Unique regulations which would no longer be necessary: 16VAC25-75, Telecommunications, General, Approach Distances and 16VAC25-155, General Requirements for Clearances, Construction of Electric Transmission and Distribution Lines and Equipment, Construction Industry – Subpart V (1926.950 (c)(1)(i)).

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.

**Electric Power Generation, Transmission, and Distribution, and
Electrical Protective Equipment, Parts 1910 and 1926; 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: _____

**Electric Power Generation, Transmission, and Distribution, and
Electrical Protective Equipment, Parts 1910 and 1926; Final Rule**

**Electric Power Generation, Transmission, and Distribution; and Electrical Protective Equipment
Part 1910 - General Industry and Part 1926 – Construction Industry**

Part 1910 – General Industry	Part 1926 Construction Industry
Subpart I – Personal Protective Equipment	Subpart E-Personal Protective and Life Saving Equipment
1910.136, Foot Protection	1926.97, Electrical Protective Equipment
1910.137, Electrical Protective Equipment	1926.500, Scope, Application, and Definitions Applicable to this Subpart
<i>Appendix B to Subpart I of Part 1910 –Nonmandatory Compliance Guidelines for Hazard Assessment and Personal Protective Equipment Selection</i>	Subpart V –Electric Power Transmission and Distribution
Subpart R – Special Industries	1926.950, General
1910.269, Electric Power Generation, Transmission, and Distribution	1926.951, Medical Services and First Aid
<i>Appendices to §1910.269</i>	1926.952, Job Briefing
<i>Appendix A - Flow Charts</i>	1926.953, Enclosed Spaces
<i>Appendix A-1 - Application of §1910.269 and Subpart S of this Part to the Design of Electrical Installations</i>	1926.954, Personal Protective Equipment
<i>Appendix A-2 - Application of §1910.269 and Subpart S of this Part to Electrical Safety-Related Work Practices</i>	1926.955, Portable Ladders and Platforms
<i>Appendix A-3 - Application of §1910.269 and Subpart S of this Part to Tree-Trimming Operations</i>	1926.956, Hand and Portable Power Equipment
<i>Appendix A-4 to §1910.269 – Application of §§1910.147, 1910.269 and 1910.333</i>	1926.957, Live-line tools
<i>Appendix A-5 to §1910.269 – Application of §§1910.146 and 1910.269 to Permit-Required Confined Spaces</i>	1926.958, Materials Handling and Storage
<i>Appendix B –Working on Exposed Energized Parts</i>	1926.959, Mechanical Equipment
<i>Appendix C –Protection From Hazardous Differences in Electric Potential</i>	1926.960, Working on or near Exposed Energized Parts
<i>Appendix D –Methods of Inspecting and Testing Wood Poles</i>	1926.961, Deenergizing lines and Equipment for Employee Protection
<i>Appendix E – Protection From Flames and Electric Arcs</i>	1926.962, Grounding for the Protection of Employees
<i>Appendix F –Work-Positioning Equipment Inspection Guidelines</i>	1926.963, Testing and Test Facilities
<i>Appendix G – Reference Documents</i>	1926.964, Overhead Lines and Live-line Barehand Work
Subpart S – Electrical	1926.965, Underground Electrical Installations
1910.331, Scope	1926.966, Substations
1910.339, Definitions Applicable to this Subpart	1926.967, Special Conditions
	1926.968, Definitions
	<i>Appendices to Subpart V of Part 1926</i>
	<i>Appendix A -Reserved</i>
	<i>Appendix B -Working on Exposed Energized Parts</i>
	<i>Appendix C -Protection From Hazardous Differences in Electric Potential</i>
	<i>Appendix D -Methods of Inspecting and Testing Wood Poles</i>
	<i>Appendix E - Protection From Flames and Electric Arcs</i>
	<i>Appendix F –Work-Positioning Equipment Inspection Guidelines</i>
	<i>Appendix G – Reference Documents</i>
	Subpart X – Stairways and Ladders

	1926.1053, Ladders
	Subpart CC – Cranes and Derricks in Construction
	1926.1400, Scope
	1926.1410, Power Line Safety (All Voltages) –Equipment Operations Closer than the Table A Zone

When the regulations, as set forth in the Final Rule for Electric Power Generation, Transmission, and Distribution; Electrical Protective Equipment, Parts 1910 and 1926, 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:

<u>Federal Terms</u>	<u>VOSH Equivalent</u>
29 CFR	VOSH Standard
Assistant Secretary	Commissioner of Labor and Industry
Agency	Department
July 10, 2014	September 1, 2014

(Please refer to Section V for implementation schedule of various provisions)

To access the Final Rule for Electric Power Generation, Transmission, and Distribution, Parts 1910 and 1926; Electrical Protective Equipment, §1926.97, please click on the link below. Once the link has been opened, the regulatory text begins on page 20629:

http://www.osha.gov/FedReg_oshapdf/FED20140411.pdf



COMMONWEALTH of VIRGINIA

DEPARTMENT OF LABOR AND INDUSTRY

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VIRGINIA SAFETY AND HEALTH CODES BOARD

BRIEFING PACKAGE

FOR JUNE 5, 2014

**Record Requirements in the Mechanical Power Presses Standard,
§1910.217 (e)(1); Amendment**

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 Record Requirements in the Mechanical Power Presses Standard, §1910.217 (e)(1), as published on November 20, 2013 in 78 FR 69543.

The proposed effective date for this amendment is September 1, 2014.

II. Summary of the Direct Final Rule.

Mechanical power presses are machines that punch, form, or assemble metal or other materials by cutting or shaping using dies. If a power press is damaged or operating incorrectly, workers can be exposed to hand, arm, and finger injuries, including possible amputations.

On November 20, 2013, federal OSHA issued a Direct Final Rule (DFR) to make two main revisions to its Mechanical Power Presses Standard, §1910.217. Former subparagraph §1910.217(e)(1)(i) required employers develop and maintain certification records of periodic

inspections performed on the power presses. In this amendment, federal OSHA added a requirement that employers must develop and maintain certification records of any maintenance or repairs they perform on the presses during these periodic inspections. As a result of the revision to subparagraph (e)(1)(i), federal OSHA removed the requirement from subparagraph (e)(1)(ii) of the same standard, §1910.217, that employers develop and maintain certification records of weekly inspections and tests performed on the presses. These requirements in former subparagraph (e)(1)(ii) will no longer be necessary as any repairs to the mechanical power press will be recorded as they occur. Subparagraph (e)(1)(ii) now specifies that employers perform the inspections and tests “on a regular basis at least once a week” to emphasize the importance of establishing a consistent, systematic schedule for completing the tasks.

Revisions to subparagraph §1910.217(e)(1)(i), expressly requiring employers to complete necessary maintenance and repair on presses before operating the presses and certify maintenance and repair for the entire machine, rather than for certain parts of a power press, bring §1910.217 in line with the American National Standards Institute consensus standard for power presses (ANSI B11.1-2009).

Federal OSHA believes that these revisions, combined with the available means that employers, employees and federal OSHA can use to ensure that employers perform these tasks at the specified frequency, will fulfill the functions for certification records required by existing paragraph (e)(1)(ii).

III. Use of Direct Final Rulemaking.

Direct final rulemaking is typically used where federal OSHA anticipates that a rule will not be controversial. It will provide employees with protection that is at least equivalent to the protection afforded to them by the previous standard; and it imposes no significant new compliance costs on employers. Federal OSHA has previously used direct final rules to update and revise other OSHA rules.

Generally, in using direct final rulemaking, federal OSHA, like other federal agencies, will publish a notice of proposed rulemaking (see 78 FR 69606) in the *Federal Register*, concurrently with a companion direct final rule (DFR). The Direct Final Rule will contain a statement that the rule will become effective unless significant adverse comment is received within a specified period of time.

For purposes of this DFR, a significant adverse comment would be one that “explains why the rule would be inappropriate, including challenges to the rule’s underlying premise or approach, or why it would be ineffective or unacceptable without a change. In determining whether a comment necessitates withdrawal of the DFR, federal OSHA will consider the comment is one that explains why the rule would be inappropriate, including challenges to the rule’s underlying premise or approach, or why it would be ineffective or unacceptable without a change. In determining whether a comment necessitates withdrawal of the direct final rule, federal OSHA will consider whether the comment raises an issue serious enough to warrant a substantive

response in a notice-and-comment process. Federal OSHA will not consider a comment recommending additional revisions to a rule to be a significant adverse comment unless the comment provides a reasonable explanation of why the DFR would be ineffective without the revisions.

If federal OSHA receives no significant adverse comment, it will publish a *Federal Register* notice confirming the effective date of the final rule and withdrawing the companion proposed rule. If federal OSHA receives significant adverse comment on the DFR or proposal, it will publish a timely withdrawal of the DFR and proceed with the proposed rule, which addresses the same revisions as the DFR. Federal OSHA considers the date that the federal OSHA confirms the effective date of the final rule to be the date of issuance.

In response to this published DFR, federal OSHA received only two comments on the revisions and neither raised issues warranting a delay in implementation of the revisions or to make revisions through the normal rulemaking process. Since federal OSHA received no significant adverse comments to this DFR by the December 20, 2013, deadline, this DFR became effective on February 18, 2014, in federal OSHA jurisdictions.

IV. Basis, Purpose and Impact of the Amendment.

A. Basis.

This rulemaking is part of the U.S. Department of Labor's initiative to reduce paperwork burden hours and cost consistent with the federal Paperwork Reduction Act of 1995 (PRA-95) at 44 U.S.C. 3501 *et seq.*, which seeks to minimize the federal paperwork burden and to maximize the efficiency and usefulness of federal information-gathering activities. Federal OSHA determined that the revisions made by this DFR are consistent with and promote the objectives of PRA-95.

B. Purpose.

This amendment revised subparagraph (e)(1)(i) of §1910.217, Mechanical Power Presses, to expressly require employers to perform and complete necessary maintenance and repair on the presses before operating them, and develop and maintain certification records of any maintenance and repairs employers perform. Revisions to subparagraph (e)(1)(ii) of §1910.217 include the removal of now redundant requirements to develop and maintain certification records for weekly inspections and tests performed on mechanical power presses.

C. Impact on Employers.

The revision to paragraph (e)(1)(i) of §1910.217 to certify maintenance and repairs performed on mechanical power presses not only represents the usual and customary practice in general industry, but federal OSHA believes that adding an explicit requirement to perform necessary maintenance and repair will ensure that employers

perform such maintenance and repair on all of the parts, auxiliary equipment, and safeguards of each press, and not just the clutch/brake mechanism, antirepeat feature, and single-stroke mechanism.

While the revisions to this standard taken as a whole, do not impose any more stringent requirements on employers than the existing standard, federal OSHA believes that these revisions will provide employers with critical, updated information that will reduce unnecessary burden while maintaining employee protections.

For employers covered by the Mechanical Power Presses standard, removing the requirement to develop and maintain weekly certification records for inspections and tests will not affect an employer's obligation to inspect and ensure that mechanical power presses used in the workplace are in a safe operating condition.

The revisions to subparagraph (e)(1) of §1910.217 will impose minimal paperwork burden on employers. OSHA estimates that nationwide the revisions will result in a paperwork burden reduction of 613,600 hours. In Virginia, the revisions will result in a paperwork burden reduction of approximately 16,631 hours.

D. Impact on Employees.

Federal OSHA believes that this amendment will not reduce the employee protections put in place by the Mechanical Power Presses Standard, and that these revisions will maintain the safety afforded employees by the existing provisions. Revisions to §1910.217 (e)(1)(i) to complete necessary maintenance and repair before operating a press after periodic inspection, and certifying this action, will ensure the safety of workers. Employees will still have the certification records for maintenance to obtain information that the employer completed this task and that the equipment is in safe operating condition.

E. Impact on the Department of Labor and Industry.

There is no significant impact anticipated on the Department with the adoption of the amendment to this standard. The certification records for the weekly inspections and tests required by subparagraph (e)(1)(ii) of §1910.217 serve to provide a record of compliance which VOSH compliance officers can use to verify that the employer meets the inspection and testing requirements set forth in the 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 Virginia Code reiterates this requirement in § 40.1-22(5). Adopting these revisions will allow Virginia to conform to the federal program change.

F. Costs.

This amendment does not impose any additional costs on any private or public sector entity beyond what was previously required.

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RECOMMENDED ACTION

Staff of the Department of Labor and Industry recommends that the Safety and Health Codes Board adopt the amendments to the Record Requirements in the Mechanical Power Presses Standard, §1910.217 (e)(1), as authorized by Virginia Code §§ 40.1-22(5) and 2.2-4006.A.4(c), with an effective date of September 1, 2014.

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.

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**Record Requirements in the Mechanical Power Presses Standard, §1910.217 (e)(1);
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: _____

16VAC25-90-1910.217, Mechanical Power Presses

When the regulations, as set forth in the Direct Final Rule for Record Requirements in the Mechanical Power Presses, §1910.217 (e)(1) , 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

February 18, 2014

September 1, 2014

■ 2. Amend § 1910.217 by revising paragraph (e)(1) to read as follows:

§ 1910.217 Mechanical power presses.

* * * * *
(e) * * *
(1) *Inspection and maintenance records.* The employer shall establish and follow an inspection program having a general component and a directed component.

(i) Under the general component of the inspection program, the employer shall:

(A) Conduct periodic and regular inspections of each power press to ensure that all of its parts, auxiliary equipment, and safeguards, including the clutch/brake mechanism, antirepeat feature, and single-stroke mechanism, are in a safe operating condition and adjustment;

(B) Perform and complete necessary maintenance or repair, or both, before operating the press; and

(C) Maintain a certification record of each inspection, and each maintenance and repair task performed, under the general component of the inspection program that includes the date of the inspection, maintenance, or repair work, the signature of the person who performed the inspection, maintenance, or repair work, and the serial number, or other identifier, of the power press inspected, maintained, and repaired.

(ii) Under the directed component of the inspection program, the employer shall:

(A) Inspect and test each press on a regular basis at least once a week to determine the condition of the clutch/brake mechanism, antirepeat feature, and single-stroke mechanism;

(B) Perform and complete necessary maintenance or repair, or both, on the clutch/brake mechanism, antirepeat feature, and single-stroke mechanism before operating the press; and

(C) Maintain a certification record of each maintenance task performed under the directed component of the inspection program that includes the date of the maintenance task, the signature of the person who performed the maintenance task, and the serial number, or other identifier, of the power press maintained.

Note to paragraph (e)(1)(ii): Inspections of the clutch/brake mechanism, antirepeat feature, and single-stroke mechanism conducted under the directed component of the inspection program are exempt from the requirement to maintain certification records specified by paragraph (e)(1)(i)(C) of this section, but inspections of the clutch/brake mechanism, antirepeat feature, and single-stroke mechanism conducted under the general component of the inspection program are not exempt from this requirement.

(iii) Paragraph (e)(1)(ii) of this section does not apply to presses that comply with paragraphs (b)(13) and (14) of this section.

* * * * *
[FR Doc. 2013-27695 Filed 11-19-13; 8:45 am]
BILLING CODE 4510-26-P



COMMONWEALTH of VIRGINIA

DEPARTMENT OF LABOR AND INDUSTRY

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VIRGINIA SAFETY AND HEALTH CODES BOARD

BRIEFING PACKAGE

FOR June 5, 2014

Terminals Handling Intermodal Containers or Roll-On Roll-Off Operations; Vertical Tandem Lifts, §1917.71(i), Public Sector Only; Final Rule; Remand

I. **Action Requested.**

The Virginia Occupational Safety and Health (VOSH) Program requests that the Safety and Health Codes Board adopt federal OSHA's implementation of a court-ordered remand of certain portions of the standard for Terminals Handling Intermodal Containers or Roll-on Roll-Off Operations; Vertical Tandem Lifts (VTLs), §1917.71(i), Public Sector Only, as published in 79 FR 22018 on April 21, 2014.

The proposed effective date is September 1, 2014.

II. **Summary of the Standard and Remand.**

In 2009, federal OSHA issued new provisions in the Marine Terminals Standard (Part 1917) to regulate the use of Vertical Tandem Lifts ("VTLs"). Those new requirements were related to the practice of a container crane lifting two empty intermodal containers together, one on top of the other, connected by semiautomatic twistlocks (SATLs) (See photo 1). This practice is known as a vertical tandem lift. The 2009 final rule permitted VTLs of no more than two such empty containers provided certain safeguards were followed. [79 FR 22018]

Currently, federal OSHA has implemented a court-ordered remand of §1917.71(i)(9), as applied to ship-to-shore Vertical Tandem Lifts (VTLs), and has removed paragraph (i)(10) of §1917 which

prohibited the lifting of platform containers also called “flat racks” as part of a VTL. Platform containers are without sides, ends and roof, and are used for odd-sized cargo which does not fit on or in any other type of container. (See photo 2)

Additionally, federal OSHA has revised the scope of the VTL standard in the introductory text to paragraph (i) of §1917.71 to make clear that vertical tandem lifts of platform containers are not covered. Consequently, federal OSHA believes that the only reasonable way to implement the decision of the U.S. Court of Appeals for the District of Columbia Circuit, which vacated the provision banning VTLs of platform containers, is to: 1) exempt VTLs of platform containers from the scope of §1917.71(i) in addition to removing existing §1917.71(i)(10), which prohibited the lifting of platform containers as part of a VTL; and 2) add a new paragraph in §1917.71(i)(9) to make the inspection requirements in §1917.71(i)(9) inapplicable to ship-to-shore VTLs. The final rule codifies the Court’s action. [79 FR 22019]

III. **Basis, Purpose and Impact of the Final Rule and Remand.**

A. **Basis.**

On December 10, 2008, federal OSHA published a final rule adopting new requirements relating to VTLs. The final standard permitted VTLs of no more than two empty containers provided that certain safeguards were followed. The final rule required, among other safeguards, inspections of each container, interbox connector, and corner casting immediately before use in a VTL. The final rule also prohibited lifting platform containers as part of a VTL unit. [73 FR 75245-6]

On April 16, 2009, the Safety and Health Codes Board adopted federal OSHA’s final rule on Longshoring and Marine Terminals; Vertical Tandem Lifts, Parts 1917 and 1918, Public Sector Only, with an effective date of July 15, 2009. [79 FR 22018]

The National Maritime Safety Association (NMSA), a trade association representing marine terminal operators, petitioned the U.S. Court of Appeals for the District of Columbia Circuit for review of the VTL standard, arguing, in part, that two of the Standard’s requirements – the interbox connector inspection requirement in §1917.71(i)(9) and the ban on VTLs of platform containers in §1917.71(i)(10) – were not technologically feasible. The Court found that there was insufficient evidence supporting OSHA’s determination of technological feasibility with respect to those two provisions. Accordingly, the Court vacated and remanded the inspection requirement at §1917.71(i)(9), as applied to ship-to-shore VTL, and the total ban on platform container VTL at §1917.71(i)(10). [79 FR 22019]

Neither the proposed nor the final rule contemplated that platform containers would be covered under the requirements included in paragraph (i) of §1917.71.

B. **Purpose.**

Federal OSHA believes that the only reasonable way to implement the Court’s decision, vacating the provision banning VTL of platform containers, is to exempt VTLs of such containers from the scope of §1917.71(i), in addition to removing existing

§1917.71(i)(10). Federal OSHA also added paragraph (vii) in §1917.71(i)(9) to make the inspection requirements in §1917.71(i)(9) inapplicable to ship-to-shore VTLs. [79 FR 22019]

C. Impact on Employers.

Federal OSHA concluded that the revisions will not impose any additional costs on employers as they merely implement the order of the Court remanding two provisions of the VTL standard at §1917.71(i). As a result of the Court's action, employers have not needed to comply with the inspection requirements in §1917.71(i)(9), with respect to ship-to-shore VTLs, or with the ban on VTLs, or with the ban on VTLs of platform containers in §1917.71(i)(10). Federal OSHA believes that by removing workplace requirements, the Court's decision reduces rather than increases compliance costs. Since federal OSHA determined that the final rule does not impose significant additional costs on any private-sector or public-sector entity, federal OSHA certified that it will not have a significant economic impact on a substantial number of small entities. [79 FR 22019]

D. Impact on Employees.

No significant impact is anticipated on employees.

E. Impact on the Department of Labor and Industry.

No significant impact is anticipated on the Department.

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. Hazards.

For hazards addressed by the portions of the VTL standard vacated by the DC Circuit Court, federal OSHA has reverted to its prior interpretative positions. For inspections of ship-to-shore VTLs, OSHA's position was set forth in a September 2, 1993 letter from Roy Gurnham to Michael Bohlman. In the letter Mr. Gurnham stated that:

The containers must be inspected for visible defects prior to hoisting and damaged containers shall not be hoisted in tandem. Ref.-29C.F.R. 1918.85(d).

Although the Gurnham letter does not specifically mention VTL lifts of flatrack containers, federal OSHA concluded that the provisions listed in the letter also apply to VTL lifts of two empty flatrack containers with their end frames folded and connected by semi-automatic twistlocks. [79 FR 22019]

For the hazards arising from lifts of multiple platform (flatrack) containers, federal OSHA applies the January 16, 2004 letter from Richard E. Fairfax to Larry Hansen. It states:

When connected by semi-automatic twistlocks (i.e., liftlocks that are not built-in), only two empty flatrack containers with their end frames folded may be lifted as a vertical tandem lift (VTL). When connected with internal mechanisms (i.e., built-in connectors that are designed for lifting), the number of empty flatrack containers with their end frames folded that may be lifted cannot exceed the manufacturers' recommendations. Empty flatrack containers with their end frames in the upright position are not allowed to be lifted as a VTL because of strength and stability considerations. [79 FR 22019]

Photo 1 – Semiautomatic twistlocks (SATLs)

Semiautomatic twistlocks (SATLs) are used to secure containers during transport. They are also used during hoisting operations while loading and unloading a container ship.

Drawings of a semi-automatic twistlock and the connection between twistlocks and corner castings are shown in Figure 1 and Figure 2. It should be noted that the load-bearing surface area is limited to the overlap between the flat surface of the cone of the twistlock and the inside surface of the corner casting at the top or bottom of the opening. The load-bearing surface area is shown in Figure 3.

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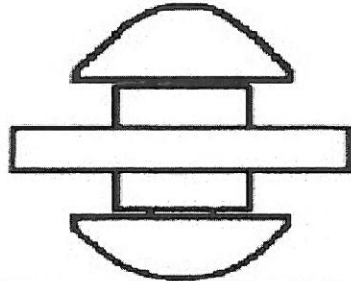


Figure 1—Semi-automatic Twistlock (Source: Ex. 11-6H)

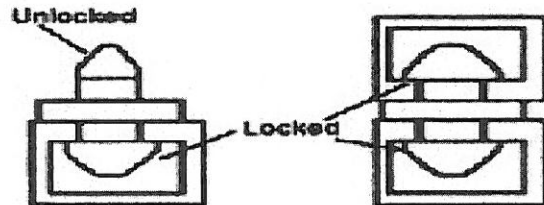


Figure 2—Interbox Connections (Source: Ex. 11-6H)

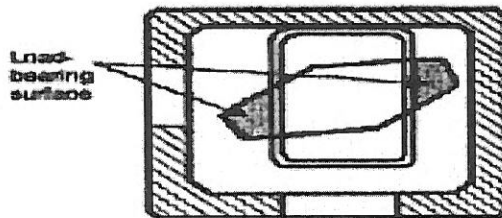
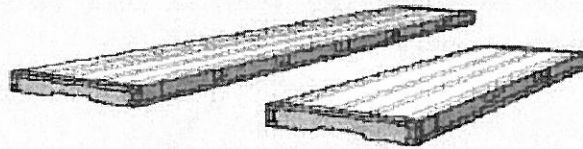


Photo 2 – Platform Containers also called “Flat racks”

Platform containers



Platform containers are without sides, ends and roof. They are used for odd-sized cargo which does not fit on or in any other type of container.

Platform container dimensions

Specific dimensions and capacity of platform containers may vary depending on the container manufacturer, the age of the container and the container owner. The specifications listed below are, however, representative.

20' platform container

Tare weight	Payload capacity	Internal length	Internal width
2,740 kg	31,260 kg	6.06 m	2.44 m
6,041.7 lbs	68,928.3 lbs	19.9 ft	8 ft

40' platform container

Tare weight	Payload capacity	Internal length	Internal width
5,700 kg	39,300 kg	12.19 m	2.44 m
12,568.5 lbs	86,656.5 lbs	40 ft	8 ft

RECOMMENDED ACTION

Staff of the Department of Labor and Industry recommends that the Safety and Health Codes Board adopt the federal OSHA's Final Rule and Remand for Terminals Handling Intermodal Containers or Roll-on Roll-off Operations; Vertical Tandem Lifts, Public Sector Only, §1917.71(i), as authorized by Virginia Code §§ 40.1-22(5) and 2.2-4006.A.4(c), with an effective date of September 1, 2014.

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.

**16VAC 120-1917.71(i), Terminals Handling Intermodal Containers or Roll-on Roll-Off Operations;
Vertical Tandem Lifts, Public Sector Only, § 1917.71 (i); Final Rule; Remand**

As Adopted by the
Safety and Health Codes Board

Date: _____



VIRGINIA OCCUPATIONAL SAFETY AND HEALTH PROGRAM

VIRGINIA DEPARTMENT OF LABOR AND INDUSTRY

Effective Date: _____

**16VAC 120-1917.71(i), Terminals Handling Intermodal Containers or Roll-on Roll-Off Operations;
Vertical Tandem Lifts, Public Sector Only, §1917.71(i)**

When the regulations, as set forth in the Final Rule and Remand for Terminals Handling Intermodal Containers or Roll-on Roll-Off Operations; Vertical Tandem Lifts, Public Sector Only, §1917.71(i), 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

July 21, 2014

September 1, 2014

§ 1917.71 Terminals handling intermodal containers or roll-on roll-off operations.

(i) *Vertical tandem lifts.* The following requirements apply to operations involving the lifting of two or more intermodal containers by the top container (vertical tandem lifts or VTLs). These requirements do not apply to operations involving the lifting of two or more interconnected platform containers.

(9)

(vii) The requirements of paragraph (i)(9) of this section do not apply to ship-to-shore VTLs.

[FR Doc. 2014-06725 Filed 4-18-14; 8:45 am]

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PART 1917—MARINE TERMINALS

■ 2. Section 1917.71 is amended by revising paragraph (i) introductory text, adding paragraph (i)(9)(vii), and removing paragraph (i)(10) to read as follows:

