



Exempt Action Final Regulation Agency Background Document

Agency name	Virginia Department of Labor and Industry
Virginia Administrative Code (VAC) citation	16 VAC 25-90-1910.68; 16 VAC 25-90-1910.94; 16 VAC 25-90-1910.103; 16 VAC 25-90-1910.107; 16 VAC 25-90-1910.110; 16 VAC 25-90-1910.111; 16 VAC 25-90-1910.144; 16 VAC 25-1910.243; 16 VAC 25-90-1910.251; 16 VAC 25-90-1910.253; and 16 VAC 25-90-1910.261
Regulation title	16 VAC 25-90-1910.68, Manlifts; 16 VAC 25-90-1910.94 Ventilation; 16 VAC 25-90-1910.103, Hydrogen, §1910.103; 16 VAC 25-90-1910.107, Spray finishing using flammable and combustible materials; 16 VAC 25-90-1910.110, Storage and handling of liquid petroleum gases; 16 VAC 25-90-1910.111, Storage and handling of anhydrous ammonia; 16 VAC 25-90-1910.144, Safety color code for marking physical hazards; 16 VAC 25-90-1910.243, Guarding of portable powered tools; 16 VAC 25-90-1910.251, Definitions; 16 VAC 25-90-1910.253, Oxygen-fuel gas welding and cutting; and 16 VAC 25-90-1910.261, Pulp, paper, and paperboard mills
Action title	Updating OSHA Standards Based on National Consensus Standards
Final agency action date	February 28, 2008
Document preparation date	February 28, 2008

When a regulatory action is exempt from executive branch review pursuant to § 2.2-4002 or § 2.2-4006 of the Virginia Administrative Process Act (APA), the agency is encouraged to provide information to the public on the Regulatory Town Hall using this form.

Note: While posting this form on the Town Hall is optional, the agency must comply with requirements of the Virginia Register Act, the *Virginia Register Form, Style, and Procedure Manual*, and Executive Orders 21 (02) and 58 (99).

Summary

Please provide a brief summary of all regulatory changes, including the rationale behind such changes. Alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation.

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

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

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

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

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

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

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

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

1910.144(a)(1)(ii);

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

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

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

- 1910.94(c)(1)(ii);
- 1910.94(c)(3)(i);
- 1910.94(c)(3)(i)(a);
- 1910.94(c)(3)(iii);
- 1910.94(c)(3)(iii)(a); and
- 1910.94(c)(3)(5)(i)

Statement of final agency action

Please provide a statement of the final action taken by the agency including (1) the date the action was taken, (2) the name of the agency taking the action, and (3) the title of the regulation.

On February 28, 2008, the Safety and Health Codes Board adopted federal OSHA's revised final rule for Updating OSHA Standards Based on National Consensus Standards, as published in 72 FR 71061 on December 14, 2007, with an effective date of June 1, 2008.

Family impact

Assess the impact of this regulatory action on the institution of the family and family stability.

These amendments will have no impact on the institution of the family or family stability.

To access the direct final rule for Updating OSHA Standards Based on National Consensus Standards, please see attachment or go to:

www.osha.gov/FedReg_osha_pdf/FED20071214.pdf

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

As Adopted by the
Safety and Health Codes Board

Date: February 28, 2008



VIRGINIA OCCUPATIONAL SAFETY AND HEALTH PROGRAM

VIRGINIA DEPARTMENT OF LABOR AND INDUSTRY

Effective Date: June 1, 2008

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

When the regulations, as set forth in the direct final rule for Updating OSHA Standards Based on National Consensus Standards, are applied to the Commissioner of the Department of Labor and Industry and/or to Virginia employers, the following federal terms shall be considered to read as below:

Federal Terms

VOSH Equivalent

29 CFR

OSH Standard

Assistant Secretary

Commissioner of Labor and Industry

Agency

Department

March 13, 2008

June 1, 2008

Order No. 12-71 (36 FR 8754), 8-76 (41 FR 25059), 9-83 (48 FR 35736), 1-90 (55 FR 9033), 6-96 (62 FR 111), 3-2000 (65 FR 50017), or 5-2007 (72 FR 31159), as applicable.

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

- 2. In § 1910.6:
 - a. Remove and reserve paragraphs (e)(1), (e)(2), (e)(5), (e)(62), and (e)(63), and (i)(1).; and
 - b. Revise paragraphs (e)(15), (e)(49), and (q)(3) to read as follows:

§ 1910.6 Incorporation by reference.

* * * * *

(e) * * *

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

* * * * *

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

* * * * *

(q) * * *

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

* * * * *

Subpart F—[Amended]

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

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

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

§ 1910.68 Manlifts.

* * * * *

(b) * * *

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

* * * * *

V. Amendments to Standards

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

PART 1910—[AMENDED]

Subpart A—[Amended]

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

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

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

Subpart G—[Amended]

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

Authority: Sections 4, 6, and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order No. 12-71 (36 FR 8754), 8-76 (41 FR 25059), 9-83 (48 FR 35736), 1-90 (55 FR 9033), 6-96 (62 FR 111), or 5-2007 (72 FR 31159), as applicable; and 29 CFR Part 1911. Section 1910.94 also issued under 5 U.S.C. 553.

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

§ 1910.94 Ventilation.

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

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

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

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

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

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

accessible for inspection, cleaning, or replacement.

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

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

Subpart H—[Amended]

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

Authority: Sections 4, 6, and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order No. 12-71 (36 FR 8754), 8-76 (41 FR 25059), 9-83 (48 FR 35736), 1-90 (55 FR 9033), 6-96 (62 FR 111), 3-2000 (65 FR 50017), or 5-2007 (72 FR 31159), as applicable; and 29 CFR part 1911.

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

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

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

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

§ 1910.103 Hydrogen.

(b) * * *
(1) * * *
(i) * * *

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

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

§ 1910.107 Spray finishing using flammable and combustible materials.

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

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

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

§ 1910.110 Storage and handling of liquid petroleum gases.

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

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

§ 1910.111 Storage and handling of anhydrous ammonia.

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

Subpart J—[Amended]

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

Authority: Sections 4, 6, and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order No. 12-71 (36 FR 8754), 8-76 (41 FR 25059), 9-83 (48 FR 35736), 1-90 (55 FR 9033), 6-96 (62 FR 111), 3-2000 (65 FR 50017), or 5-2007 (72 FR 31159), as applicable.

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

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

§ 1910.144 Safety color code for marking physical hazards.

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

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

Subpart P—[Amended]

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

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

Section 1910.243 also issued under 29 CFR part 1910.

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

§ 1910.243 Guarding of portable powered tools.

- (d) * * *
(1) * * *
(i) Explosive-actuated fastening tools that are actuated by explosives or any similar means, and propel a stud, pin, fastener, or other object for the purpose of affixing it by penetration to any other object shall meet the design requirements specified by paragraph (d)(2) of this section. This requirement does not apply to devices designed for attaching objects to soft construction materials, such as wood, plaster, tar, dry wallboard, and the like, or to stud-welding equipment.

Subpart Q—[Amended]

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

Authority: Sections 4, 6, and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, and 657); Secretary of Labor's Orders Nos. 12-71 (36 FR 8754), 8-76 (41 FR 25059), 9-83 (48 FR 35736), 1-90 (55 FR 9033), 6-96 (62 FR 111), 3-2000 (65 FR 50017), or 5-2007 (72 FR 31159), as applicable; and 29 CFR part 1911.

§ 1910.251 [Amended]

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

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

§ 1910.253 Oxygen-fuel gas welding and cutting.

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

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

Subpart R—[Amended]

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

Authority: Sections 4, 6, and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order Nos. 12-71 (36 FR 8754), 8-76 (41 FR 25059), 9-83 (48 FR 35736), 1-90 (55 FR 9033), 6-96 (62 FR 111), or 5-2007 (72 FR 31159), as applicable; and 29 CFR part 1911.

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

§ 1910.261 Pulp, paper, and paperboard mills.

- (c) * * *
(15) * * *
(ii) Where conveyors cross passageways or roadways, a horizontal platform shall be provided under the conveyor extending out from the sides of the conveyor a distance equal to 1.5 times the length of the wood handled. The platform shall extend the width of the road plus 2 feet on each side, and shall be kept free of wood and rubbish. The edges of the platform shall be provided with toeboards or other protection to prevent wood from falling, in accordance with § 1910.23.

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

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

(h) * * *

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

(j) * * *
(4) * * *

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

(5) * * *

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

(k) * * *

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

(13) * * *

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

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

[FR Doc. E7-24181 Filed 12-13-07; 8:45 am] BILLING CODE 4510-26-P