



Virginia
Regulatory
Town Hall

Notice of Intended Regulatory Action Agency Background Document

Agency Name:	Department of Labor and Industry/Safety and Health Codes Board
VAC Chapter Number:	16 VAC 25-155
Regulation Title:	General Requirements for Clearances, Construction of Electric Transmission and Distribution Lines and Equipment, Construction Industry – Subpart V (1926.950(c)(1)(i))
Action Title:	Amendment of Federal Identical Regulation “General Requirements for Clearances, Construction of Electric Transmission and Distribution Lines and Equipment, Construction Industry” to provide construction electrical transmission workers with safety protection identical to general industry electrical transmission workers
Date:	December 30, 2002

This information is required prior to the submission to the Registrar of Regulations of a Notice of Intended Regulatory Action (NOIRA) pursuant to the Administrative Process Act § 9-6.14:7.1 (B). Please refer to Executive Order Twenty-Five (98) and Executive Order Fifty-Eight (99) for more information.

Purpose

Please describe the subject matter and intent of the planned regulation. This description should include a brief explanation of the need for and the goals of the new or amended regulation.

The purpose of this rulemaking is to develop a regulation unique to the Virginia Occupational Safety and Health program (VOSH) that will make the Construction Industry safety requirements for electrical transmission workers identical to the current federal identical General Industry regulation counterpart, 16 VAC 25-90-1910.269(1)(2)(i). Making the two provisions identical will provide safety protections for construction electrical transmission workers equivalent to those already afforded general industry electrical transmission workers.

The current General Industry and Construction Industry regulations are essentially identical except for qualifying language in 16 VAC 25-90-1910.269(1)(2)(i) of the General Industry standard that specifies that the wearing of protective gloves and sleeves only qualifies as insulation for the live electrical part upon which the employee is working. The effect of this language is that all other live or “hot” electrical parts and power lines would have to be insulated so an employee could not accidentally contact an energized part or power line with some other uninsulated part of his body, or other conductive object(s). The similar but less stringent language in the current federal identical regulation 16 VAC 25-175-1926.950(c)(1)(i) specifies that the wearing of protective gloves and sleeves will qualify as insulation for any live electrical part in the area where the employee is working. The effect of this language is that the employee can be exposed to many uninsulated live electrical parts in his work area, but only actually be protected from touching them with his hands and arms through the use of gloves with sleeves.

Basis

Please identify the state and/or federal source of legal authority to promulgate the contemplated regulation. The discussion of this authority should include a description of its scope and the extent to which the authority is mandatory or discretionary. The correlation between the proposed regulatory action and the legal authority identified above should be explained. Full citations of legal authority and, if available, web site addresses for locating the text of the cited authority must be provided.

The Safety and Health Codes Board is authorized by Title 40.1-22(5) of the Code of Virginia “...to adopt, alter, amend, or repeal rules and regulations to further, protect and promote the safety and health of employees in places of employment over which it has jurisdiction and to effect compliance with the Federal Occupational Safety and Health Act of 1970...as may be necessary to carry out its functions established under this title”.

“In making such rules and regulations to protect the occupational safety and health of employees, the Board shall adopt the standard which most adequately assures, to the extent feasible, on the basis of the best available evidence that no employee will suffer material impairment of health or functional capacity”.

“However, such standards shall be at least as stringent as the standards promulgated by the Federal Occupational Safety and Health Act of 1970 (P.L. 91-596). In addition to the attainment of the highest degree of health and safety protection for the employee, other considerations shall be the latest available scientific data in the field, the feasibility of the standards, and experience gained under this and other health and safety laws.”

The rulemaking would develop a regulation unique to the Virginia Occupational Safety and Health program (VOSH) that will make the Construction Industry safety requirements for electrical transmission workers identical to the current federal identical General Industry regulation counterpart, 16 VAC 25-90-1910.269(1)(2)(i). Making the two provisions identical will provide safety protections for construction electrical transmission workers equivalent to those already afforded general industry electrical transmission workers.

Substance

Please detail any changes that would be implemented: this discussion should include a summary of the proposed regulatory action where a new regulation is being promulgated; where existing provisions of a regulation are being amended, the statement should explain how the existing regulation will be changed. The statement should set forth the specific reasons the agency has determined that the proposed regulatory action would be essential to protect the health, safety or welfare of citizens. In addition, a statement delineating any potential issues that may need to be addressed as the regulation is developed shall be supplied.

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The need for this request for proposed rulemaking was made evident to the Department during the investigation of a fatal accident in the Commonwealth. A construction electrical transmission employee, who was wearing properly rated insulating gloves and sleeves was fatally electrocuted when he apparently touched an uninsulated 7600 volt power line with his neck/shoulder. The victim was working on one energized electrical part, and was effectively insulated from it through the use of gloves with sleeves. However, he was not protected from accidental contact with other live electrical parts in the immediate work area.

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

issued a serious violation and the maximum \$7,000.00 penalty in the case, because of the courts interpretation of federal OSHA’s §1926.950(c)(1)(i), the violation and penalty had to be vacated.

Given the similarity of situational exposure, despite the differing industry sectors, equivalent safety precautions are appropriate to eliminate employee exposure to the equivalent hazards.

The Department may need to address the following issues as the regulation is developed: (1) working with employers to assure appropriate re-training of construction electrical transmission workers in the new regulation; (2) developing ways to notify out-of-state construction contractors who come into the state to repair electrical transmission lines (e.g. in the aftermath of snow and ice storms, etc.)

Alternatives

Please describe, to the extent known, the specific alternatives to the proposal that have been considered or will be considered to meet the essential purpose of the action.

The only alternative considered would be to leave the current regulatory language for 16 VAC 25-175-1926.950(c)(1)(i) in effect. This would result in the continued current disparity in protection from overhead high voltage electrical hazards between Construction Industry and General Industry electrical transmission workers.

Family Impact Statement

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

This regulatory action should have a positive impact on families through the avoidance of serious injuries or death to construction electrical transmission workers and the avoidance of the associated loss of disposable family income through the loss of salary or increased medical costs, etc., for the family.