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## Exempt Action Final Regulation Agency Background Document

<b>Agency name</b>	Virginia Department of Labor and Industry/Safety and Health Codes Board
<b>Virginia Administrative Code (VAC) citation(s)</b>	16 VAC175-1926.1427; 16 VAC175-1926.1430
<b>Regulation title(s)</b>	Operator Training, Certification and Evaluation
<b>Action title</b>	Cranes and Derricks in Construction: Operator Qualification; Final Rule
<b>Final agency action date</b>	March 19, 2019
<b>Date this document prepared</b>	March 20, 2019

While a regulatory action may be exempt from executive branch review pursuant to § 2.2-4002 or § 2.2-4006 of the *Code of Virginia*, the agency is still encouraged to provide information to the public on the Regulatory Town Hall using this form. However, the agency may still be required to comply with the Virginia Register Act, Executive Order 14 (as amended, July 16, 2018), the Regulations for Filing and Publishing Agency Regulations (1 VAC7-10), and the *Virginia Register Form, Style, and Procedure Manual for Publication of Virginia Regulations*.

### Brief Summary

*Please provide a brief summary (preferably no more than 2 or 3 paragraphs) of this regulatory change (i.e., new regulation, amendments to an existing regulation, or repeal of an existing regulation). Alert the reader to all substantive matters. If applicable, generally describe the existing regulation.*

OSHA has updated the agency's standard for crane and derricks in construction by clarifying each employer's duty to ensure the competency of crane operators through training, certification or licensing, and evaluation. OSHA also altered a provision that required different levels of certification based on the rated lifting capacity of equipment.

While testing organizations are not required to issue certifications distinguished by rated capacities, they are permitted to do so, and employers may accept them or continue to rely on certifications based on crane type alone. Finally, this rule establishes minimum requirements for determining operator competency. This final rule will maintain safety and healthy protections for workers while reducing compliance burdens.

The purpose of these amendments is to:

- alter the requirement that crane-operator certification be based on equipment “type and capacity,” instead permitting certification based on equipment “type” or “type and capacity”;
- continue requiring training of operators;
- clarify and continue the employer duty to evaluate operators for their ability to safely operate equipment covered by subpart CC; and
- require documentation of that evaluation.

### 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 March 19, 2019, the Safety and Health Codes Board adopted federal OSHA’s Code of Federal Regulations (CFR) Amendments to Operator training, certification, and evaluation, §1926.1427 and Training, §1926.1430 of the Final Rule for Cranes and Derricks in Construction, with an effective date of May 15, 2019.

To access the Code of Federal Regulations (CFR) Amendments to Operator training, certification, and evaluation, §1926.1427 and Training, §1926.1430, please click on the link below:

<https://www.osha.gov/sites/default/files/laws-regs/federalregister/2018-11-09.pdf>

**Cranes and Derricks in Construction:  
Amendments to §1926.1427 and §1926.1430**

As Adopted by the  
Safety and Health Codes Board

Date: March 19, 2019



VIRGINIA OCCUPATIONAL SAFETY AND HEALTH PROGRAM

VIRGINIA DEPARTMENT OF LABOR AND INDUSTRY

Effective Date: May 15, 2019

16VAC25-175-1926.1427, Operator Training, Certification and Evaluation  
16 VAC-175-1926.1430, Training

When the regulations, as set forth in the Operator Training, Certification and Evaluation, §1926.1427 and §1926.1430, of the Final Rule for Cranes and Derricks in Construction, 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

November 9, 2018

May 15, 2019

impose additional or more stringent requirements than an existing standard, State Plans do not have to amend their standards, although OSHA may encourage them to do so. The 28 OSHA-approved State Plans are: Alaska, Arizona, California, Connecticut, Hawaii, Illinois, Indiana, Iowa, Kentucky, Maine, Maryland, Michigan, Minnesota, Nevada, New Mexico, New Jersey, New York, North Carolina, Oregon, Puerto Rico, South Carolina, Tennessee, Utah, Vermont, Virginia, Virgin Islands, Washington, and Wyoming. Connecticut, Illinois, New Jersey, New York, Maine, and the Virgin Islands have OSHA-approved State Plans that apply to State and local government employees only.

The amendments to OSHA's cranes standard in this final rule require employers to permanently implement evaluations of crane operators, whereas the previous evaluation duty had been temporary with a fixed end date. These evaluations must be documented and include more specificity than the previous temporary employer duty to assess and train operators under § 1926.1427(k)(2). Accordingly, State Plans are required to adopt an "at least as effective" change to their standard.

OSHA is also removing the previous requirement for crane operators to be certified by crane capacity as well as crane type. Because this change removes a requirement rather than imposing one, State Plans are not required to make this change, but may do so if they so choose.

#### F. Unfunded Mandates Reform Act

When OSHA issued the final Cranes and Derricks in Construction rule in 2010 (75 FR 47906), it reviewed the rule according to the Unfunded Mandates Reform Act of 1995 (UMRA; 2 U.S.C. 1501 *et seq.*) and Executive Order 12875 (56 FR 58093). OSHA concluded that the final rule did not meet the definition of a "Federal intergovernmental mandate" under the UMRA because OSHA standards do not apply to State or local governments except in States that voluntarily adopt State Plans. OSHA further noted that the 2010 rule imposed costs of over \$100 million per year on the private sector and, therefore, required review under the UMRA for those costs, but concluded that its 2010 final economic analysis met that requirement.

As discussed above in Section III.A (Final Economic Analysis and Regulatory Flexibility Analysis) of this preamble, this final rule has cost savings of approximately \$1.8 million per year. Therefore, for the purposes of the UMRA, OSHA certifies that this final

rule would not mandate that State, local, or tribal governments adopt new, unfunded regulatory obligations, or increase expenditures by the private sector of more than \$100 million in any year.

#### G. Consultation and Coordination With Indian Tribal Governments

OSHA reviewed this final rule in accordance with Executive Order 13175 (65 FR 67249) and determined that it will not have "tribal implications" as defined in that order. The final rule will not have substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

#### H. Executive Order 13771: Reducing Regulation and Controlling Regulatory Costs

Consistent with E.O. 13771 (82 FR 9339, January 30, 2017), OSHA has estimated at a 3 percent discount rate, there are net annual cost savings of \$1,752,000, and at a discount rate of 7 percent there is an annual cost savings of \$2,388,000. This rule is an E.O. 13771 deregulatory action. Details on the estimated costs and cost savings estimates for this rule can be found in the final rule's economic analysis.

#### List of Subjects in 29 CFR Part 1926

Certification, Construction industry, Cranes, Derricks, Occupational safety and health, Qualification, Safety, Training.

Signed at Washington, DC, on November 5, 2018.

**Loren Sweatt,**

*Deputy Assistant Secretary of Labor for Occupational Safety and Health.*

For the reasons stated in the preamble of this final rule, OSHA is amending 29 CFR part 1926 as follows:

### PART 1926—SAFETY AND HEALTH REGULATIONS FOR CONSTRUCTION

#### Subpart CC—Cranes and Derricks in Construction

■ 1. The authority citation for subpart CC continues to read as follows:

**Authority:** 40 U.S.C. 3701 *et seq.*; 29 U.S.C. 653, 655, 657; Secretary of Labor's Order No. 5–2007 (72 FR 31159) or 1–2012 (77 FR 3912), as applicable; and 29 CFR part 1911.

■ 2. Revise § 1926.1427 to read as follows:

#### § 1926.1427 Operator training, certification, and evaluation.

(a) *General requirements for operators.* The employer must ensure that each operator is trained, certified/licensed, and evaluated in accordance with this section before operating any equipment covered under subpart CC, except for the equipment listed in paragraph (a)(2) of this section.

(1) *Operation during training.* An employee who has not been certified/licensed and evaluated to operate assigned equipment in accordance with this section may only operate the equipment as an operator-in-training under supervision in accordance with the requirements of paragraph (b) of this section.

(2) *Exceptions.* Operators of derricks (see § 1926.1436), sideboom cranes (see § 1926.1440), or equipment with a maximum manufacturer-rated hoisting/lifting capacity of 2,000 pounds or less (see § 1926.1441) are not required to comply with § 1926.1427. Note: The training requirements in those other sections continue to apply (for the training requirement for operators of sideboom cranes, follow section 1926.1430(c)).

(3) *Qualification by the U.S. military.* (i) For purposes of this section, an operator who is an employee of the U.S. military meets the requirements of this section if he/she has a current operator qualification issued by the U.S. military for operation of the equipment. An employee of the U.S. military is a Federal employee of the Department of Defense or Armed Forces and does not include employees of private contractors.

(ii) A qualification under this paragraph is:

(A) Not portable: Such a qualification meets the requirements of paragraph (a) of this section only where the operator is employed by (and operating the equipment for) the employer that issued the qualification.

(B) Valid for the period of time stipulated by the issuing entity.

(b) *Operator training.* The employer must provide each operator-in-training with sufficient training, through a combination of formal and practical instruction, to ensure that the operator-in-training develops the skills, knowledge, and ability to recognize and avert risk necessary to operate the equipment safely for assigned work.

(1) The employer must provide instruction on the knowledge and skills listed in paragraphs (j)(1) and (2) of this section to the operator-in-training.

(2) The operator-in-training must be continuously monitored on site by a trainer while operating equipment.

(3) The employer may only assign tasks within the operator-in-training's ability. However, except as provided in paragraph (b)(3)(v) of this section, the operator-in-training shall not operate the equipment in any of the following circumstances unless certified in accordance with paragraph (c) of this section:

(i) If any part of the equipment, load line, or load (including rigging and lifting accessories), if operated up to the equipment's maximum working radius in the work zone (see § 1926.1408(a)(1)), could get within 20 feet of a power line that is up to 350 kV, or within 50 feet of a power line that is over 350 kV.

(ii) If the equipment is used to hoist personnel.

(iii) In multiple-equipment lifts.

(iv) If the equipment is used over a shaft, cofferdam, or in a tank farm.

(v) In multiple-lift rigging operations, except where the operator's trainer determines that the operator-in-training's skills are sufficient for this high-skill work.

(4) The employer must ensure that an operator-in-training is monitored as follows when operating equipment covered by this subpart:

(i) While operating the equipment, the operator-in-training must be continuously monitored by an individual ("operator's trainer") who meets all of the following requirements:

(A) The operator's trainer is an employee or agent of the operator-in-training's employer.

(B) The operator's trainer has the knowledge, training, and experience necessary to direct the operator-in-training on the equipment in use.

(ii) While monitoring the operator-in-training, the operator's trainer performs no tasks that detract from the trainer's ability to monitor the operator-in-training.

(iii) For equipment other than tower cranes: The operator's trainer and the operator-in-training must be in direct line of sight of each other. In addition, they must communicate verbally or by hand signals. For tower cranes: The operator's trainer and the operator-in-training must be in direct communication with each other.

(iv) The operator-in-training must be monitored by the operator's trainer at all times, except for short breaks where all of the following are met:

(A) The break lasts no longer than 15 minutes and there is no more than one break per hour.

(B) Immediately prior to the break the operator's trainer informs the operator-in-training of the specific tasks that the operator-in-training is to perform and

limitations to which he/she must adhere during the operator trainer's break.

(C) The specific tasks that the operator-in-training will perform during the operator trainer's break are within the operator-in-training's abilities.

(5) *Retraining.* The employer must provide retraining in relevant topics for each operator when, based on the performance of the operator or an evaluation of the operator's knowledge, there is an indication that retraining is necessary.

(c) *Operator certification and licensing.* The employer must ensure that each operator is certified or licensed to operate the equipment as follows:

(1) *Licensing.* When a state or local government issues operator licenses for equipment covered under subpart CC, the equipment operator must be licensed by that government entity for operation of equipment within that entity's jurisdiction if that government licensing program meets the following requirements:

(i) The requirements for obtaining the license include an assessment, by written and practical tests, of the operator applicant regarding, at a minimum, the knowledge and skills listed in paragraphs (j)(1) and (2) of this section.

(ii) The testing meets industry-recognized criteria for written testing materials, practical examinations, test administration, grading, facilities/equipment, and personnel.

(iii) The government authority that oversees the licensing department/office has determined that the requirements in paragraphs (c)(1)(i) and (ii) of this section have been met.

(iv) The licensing department/office has testing procedures for re-licensing designed to ensure that the operator continues to meet the technical knowledge and skills requirements in paragraphs (j)(1) and (2) of this section.

(v) For the purposes of compliance with this section, a license is valid for the period of time stipulated by the licensing department/office, but no longer than 5 years.

(2) *Certification.* When an operator is not required to be licensed under paragraph (c)(1) of this section, the operator must be certified in accordance with paragraph (d) or (e) of this section.

(3) *No cost to employees.* Whenever operator certification/licensure is required under this section, the employer must provide the certification/licensure at no cost to employees.

(4) *Provision of testing and training.* A testing entity is permitted to provide training as well as testing services as long as the criteria of the applicable

governmental or accrediting agency (in the option selected) for an organization providing both services are met.

(d) *Certification by an accredited crane operator testing organization.* (1) For a certification to satisfy the requirements of this section, the crane operator testing organization providing the certification must:

(i) Be accredited by a nationally recognized accrediting agency based on that agency's determination that industry-recognized criteria for written testing materials, practical examinations, test administration, grading, facilities/equipment, and personnel have been met.

(ii) Administer written and practical tests that:

(A) Assess the operator applicant regarding, at a minimum, the knowledge and skills listed in paragraphs (j)(1) and (2) of this section.

(B) Provide certification based on equipment type, or type and capacity.

(iii) Have procedures for operators to re-apply and be re-tested in the event an operator applicant fails a test or is decertified.

(iv) Have testing procedures for re-certification designed to ensure that the operator continues to meet the technical knowledge and skills requirements in paragraphs (j)(1) and (2) of this section.

(v) Have its accreditation reviewed by the nationally recognized accrediting agency at least every 3 years.

(2) If no accredited testing agency offers certification examinations for a particular type of equipment, an operator will be deemed to have complied with the certification requirements of this section for that equipment if the operator has been certified for the type that is most similar to that equipment and for which a certification examination is available. The operator's certificate must state the type of equipment for which the operator is certified.

(3) A certification issued under this option is portable among employers who are required to have operators certified under this option.

(4) A certification issued under this paragraph is valid for 5 years.

(e) *Audited employer program.* The employer's certification of its employee must meet the following requirements:

(1) *Testing.* The written and practical tests must be either:

(i) Developed by an accredited crane operator testing organization (see paragraph (d) of this section); or

(ii) Approved by an auditor in accordance with the following requirements:

(A) The auditor is certified to evaluate such tests by an accredited crane

operator testing organization (see paragraph (d) of this section).

(B) The auditor is not an employee of the employer.

(C) The approval must be based on the auditor's determination that the written and practical tests meet nationally recognized test development criteria and are valid and reliable in assessing the operator applicants regarding, at a minimum, the knowledge and skills listed in paragraphs (j)(1) and (2) of this section.

(D) The audit must be conducted in accordance with nationally recognized auditing standards.

(2) *Administration of tests.* (i) The written and practical tests must be administered under circumstances approved by the auditor as meeting nationally recognized test administration standards.

(ii) The auditor must be certified to evaluate the administration of the written and practical tests by an accredited crane operator testing organization (see paragraph (d) of this section).

(iii) The auditor must not be an employee of the employer.

(iv) The audit must be conducted in accordance with nationally recognized auditing standards.

(3) *Timing of audit.* The employer program must be audited within 3 months of the beginning of the program and at least every 3 years thereafter.

(4) *Requalification.* The employer program must have testing procedures for re-qualification designed to ensure that the operator continues to meet the technical knowledge and skills requirements in paragraphs (j)(1) and (2) of this section. The re-qualification procedures must be audited in accordance with paragraphs (e)(1) and (2) of this section.

(5) *Deficiencies.* If the auditor determines that there is a significant deficiency ("deficiency") in the program, the employer must ensure that:

(i) No operator is qualified until the auditor confirms that the deficiency has been corrected.

(ii) The program is audited again within 180 days of the confirmation that the deficiency was corrected.

(iii) The auditor files a documented report of the deficiency to the appropriate Regional Office of the Occupational Safety and Health Administration within 15 days of the auditor's determination that there is a deficiency.

(iv) Records of the audits of the employer's program are maintained by the auditor for 3 years and are made available by the auditor to the Secretary

of Labor or the Secretary's designated representative upon request.

(6) *Audited-program certificates.* A certification under this paragraph is:

(i) Not portable: Such a certification meets the requirements of paragraph (c) of this section only where the operator is employed by (and operating the equipment for) the employer that issued the certification.

(ii) Valid for 5 years.

(f) *Evaluation.* (1) Through an evaluation, the employer must ensure that each operator is qualified by a demonstration of:

(i) The skills and knowledge, as well as the ability to recognize and avert risk, necessary to operate the equipment safely, including those specific to the safety devices, operational aids, software, and the size and configuration of the equipment. Size and configuration includes, but is not limited to, lifting capacity, boom length, attachments, luffing jib, and counterweight set-up.

(ii) The ability to perform the hoisting activities required for assigned work, including, if applicable, blind lifts, personnel hoisting, and multi-crane lifts.

(2) For operators employed prior to December 10, 2018, the employer may rely on its previous assessments of the operator in lieu of conducting a new evaluation of that operator's existing knowledge and skills.

(3) The definition of "qualified" in § 1926.32 does not apply to paragraph (f)(1) of this section: Possession of a certificate or degree cannot, by itself, cause a person to be qualified for purposes of paragraph (f)(1).

(4) The evaluation required under paragraph (f)(1) of this section must be conducted by an individual who has the knowledge, training, and experience necessary to assess equipment operators.

(5) The evaluator must be an employee or agent of the employer. Employers that assign evaluations to an agent retain the duty to ensure that the requirements in paragraph (f) are satisfied. Once the evaluation is completed successfully, the employer may allow the operator to operate other equipment that the employer can demonstrate does not require substantially different skills, knowledge, or ability to recognize and avert risk to operate.

(6) The employer must document the completion of the evaluation. This document must provide: The operator's name; the evaluator's name and signature; the date; and the make, model, and configuration of equipment used in the evaluation. The employer

must make the document available at the worksite while the operator is employed by the employer. For operators assessed per paragraph (f)(2) of this section, the documentation must reflect the date of the employer's determination of the operator's abilities and the make, model and configuration of equipment on which the operator has previously demonstrated competency.

(7) When an employer is required to provide an operator with retraining under paragraph (b)(5) of this section, the employer must re-evaluate the operator with respect to the subject of the retraining.

(g) [Reserved].

(h) *Language and literacy requirements.* (1) Tests under this section may be administered verbally, with answers given verbally, where the operator candidate:

(i) Passes a written demonstration of literacy relevant to the work.

(ii) Demonstrates the ability to use the type of written manufacturer procedures applicable to the class/type of equipment for which the candidate is seeking certification.

(2) Tests under this section may be administered in any language the operator candidate understands, and the operator's certification documentation must note the language in which the test was given. The operator is only permitted to operate equipment that is furnished with materials required by this subpart, such as operations manuals and load charts, that are written in the language of the certification.

(i) [Reserved].

(j) *Certification criteria.* Certifications must be based on the following:

(1) A determination through a written test that:

(i) The individual knows the information necessary for safe operation of the specific type of equipment the individual will operate, including all of the following:

(A) The controls and operational/performance characteristics.

(B) Use of, and the ability to calculate (manually or with a calculator), load/capacity information on a variety of configurations of the equipment.

(C) Procedures for preventing and responding to power line contact.

(D) Technical knowledge of the subject matter criteria listed in appendix C of this subpart applicable to the specific type of equipment the individual will operate. Use of the appendix C criteria meets the requirements of this provision.

(E) Technical knowledge applicable to the suitability of the supporting ground and surface to handle expected loads, site hazards, and site access.

(F) This subpart, including applicable incorporated materials.

(ii) The individual is able to read and locate relevant information in the equipment manual and other materials containing information referred to in paragraph (j)(1)(i) of this section.

(2) A determination through a practical test that the individual has the skills necessary for safe operation of the equipment, including the following:

(i) Ability to recognize, from visual and auditory observation, the items listed in § 1926.1412(d) (shift inspection).

(ii) Operational and maneuvering skills.

(iii) Application of load chart information.

(iv) Application of safe shut-down and securing procedures.

(k) *Effective dates.* (1) Apart from the evaluation and documentation requirements in paragraphs (a) and (f), this section is effective on December 10, 2018.

(2) The evaluation and documentation requirements in paragraphs (a) and (f) are effective on February 7, 2019.

■ 3. Amend § 1926.1430 by:

■ a. Revising paragraphs (c)(1) and (2);

■ b. Removing paragraph (c)(3); and

■ c. Redesignating paragraph (c)(4) as paragraph (c)(3).

The revisions read as follows:

**§ 1926.1430 Training.**

\* \* \* \* \*

(c) \* \* \*

(1) The employer must train each operator in accordance with § 1926.1427(a) and (b), on the safe operation of the equipment the operator will be using.

(2) The employer must train each operator covered under the exception of § 1926.1427(a)(2) on the safe operation of the equipment the operator will be using.

\* \* \* \* \*

[FR Doc. 2018-24481 Filed 11-7-18; 4:15 pm]

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