



## 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</b>	16VAC25-175-1926.952, Mechanical Equipment, §1926.952 16VAC25-175-1926.1400, Scope, §1926.1400
<b>Regulation title</b>	Cranes and Derricks in Construction: Revising the Exemption for Digger Derricks, §§1026.952 and 1926.1400; Final Rule
<b>Action title</b>	Revising the Exemption for Digger Derricks in the Cranes and Derricks Standard in Construction
<b>Final agency action date</b>	July 18, 2013
<b>Document preparation date</b>	August 19, 2013

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, Executive Orders 14 (2010) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

### 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.*

Federal OSHA has 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.

A digger derrick is a specialized type of equipment designed to install utility poles. 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. Employers also use the booms to lift objects other than poles; accordingly, electric utilities, telecommunication companies, and their contractors use booms both to place objects on utility poles and for general lifting purposes at worksites.

### Highlights of Final Rule

- **§1926.1400**

Exemption in existing §1926.1400 (c)(4) was revised to include within the exemption the phrase “any other work subject to Subpart V of “29 CFR part 1926” as proposed. This revision expands the exemption to remove from coverage under Subpart CC of Part 1926 the types of non-pole, digger-derrick work described by Edison Electrical Institute (EEI). OSHA has also made several minor clarifications to the text of the exemption.

- First, OSHA has replaced “and” with “or” in the phrase “poles carrying electric *or* telecommunication lines” (emphasis added). This revision will ensure that the regulated community does not misconstrue the exemption as limited to poles that carry both electric and telecommunications lines.
- Second, OSHA has added the phrase “to be eligible for this exclusion” at the beginning of the sentence requiring compliance with Subpart V of 29 CFR Part 1926 and §1910.268. This revision limits the exemption to the use of digger derricks that comply with the requirements in Subpart V or §1910.268, then the work is not exempt and the employer must comply with all of the requirements of Subpart CC of 29 CFR Part 1926.
- Third, in §1926.1400 (c)(4) of this final rule, OSHA has replaced the reference to §1910.269 with a reference to Subpart V. By replacing the reference to §1910.269 in the §1926.1400 (c)(4) exemption with a reference to Subpart V, OSHA has removed any implication that these electric-utility employers having activities that fall within the digger-derrick exemption need only comply with §1910.269 and not with all Subpart V requirements, including Subpart O requirements for motorized vehicles.

- **§1926.952**

OSHA revised §1926.952 (c)(2) to require digger derricks to comply with §1926.269. This revision continues to mirror the updated terminology in the digger-derrick exemption at §1926.1400 (c)(4). As part of the revision to §1926.952(c)(2), OSHA clarified that the requirement to comply with §1910.269 is in addition to, not in place of, the general requirement in §1926.952 (c) that all equipment (including digger derricks) must comply with Subpart O of Part 1926.

### **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.*

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On July 18, 2013, the Safety and Health Codes Board adopted federal OSHA’s Final Rule for Cranes and Derricks in Construction: Revising the Exemption for Digger Derricks, §§1926.952 and 1926.1400, with an effective date of November 1, 2013.

## Family impact

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

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This regulatory action will have no impact on the institution of the family and family stability.

**Cranes and Derricks in Construction: Revising the Exemption for Digger Derricks,  
§§1926.952 and 1926.1400; Final Rule**

As Adopted by the

Safety and Health Codes Board

Date: July 18, 2013



VIRGINIA OCCUPATIONAL SAFETY AND HEALTH PROGRAM

VIRGINIA DEPARTMENT OF LABOR AND INDUSTRY

Effective Date: November 1, 2013

16VAC25-175-1926.952, Mechanical Equipment, §1926.952  
16VAC25-175-1926.1400, Scope, §1926.1400

When the regulations, s set forth in the Final Rule for Cranes and Derricks in Construction: Revising the Exemption for Digger Derricks, §§1926.950 and 1926.1400, respectively, 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

June 28, 2013

November 1, 2013

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

■ 4. Amend § 1926.1400 by revising paragraph (c)(4) to read as follows:

**§ 1926.1400 Scope.**

\* \* \* \* \*

(c) \* \* \*

(4) Digger derricks when used for augering holes for poles carrying electric or telecommunication lines, placing and removing the poles, and for handling associated materials for installation on, or removal from, the poles, or when used for any other work subject to subpart V of this part. To be eligible for this exclusion, digger-derrick use in work subject to subpart V of this part must comply with all of the provisions of that subpart, and digger-derrick use in construction work for telecommunication service (as defined at § 1910.268(s)(40)) must comply with all of the provisions of § 1910.268.

\* \* \* \* \*

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**Amendments to Standards**

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

**PART 1926—[AMENDED]**

**Subpart V—Power Transmission and Distribution**

■ 2. Amend § 1926.952 by revising paragraph (c)(2) to read as follows:

**§ 1926.952 Mechanical equipment.**

\* \* \* \* \*

(c) \* \* \*

(2) Use of digger derricks must comply with § 1910.269 (in addition to 29 CFR part 1926, subpart O) whenever 29 CFR part 1926, subpart CC, excludes such use in accordance with § 1926.1400(c)(4).

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