



# COMMONWEALTH of VIRGINIA

## DEPARTMENT OF LABOR AND INDUSTRY

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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, July 18, 2013

10:00 a.m.

1. Call to Order
2. Approval of Agenda
3. Approval of Minutes for Board Meeting of March 14, 2013
4. Election of Officers
5. 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.*

6. **Old Business**

- a) Report on Periodic Review of Certain Regulations

*Presenter – Reba O’Connor*

7. **New Business**

- a) Federal-Identical Standards:

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

*Presenter – Jim Garrett*

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

*Presenter – Jim Garrett*

- 3) Updating OSHA Standards Based on National Consensus Standards; Signage

*Presenter – Jim Garrett*

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

9. Items of Interest from Members of the Board

10. Meeting Adjournment

**DRAFT**

**SAFETY AND HEALTH CODES BOARD  
MEETING MINUTES  
THURSDAY, MARCH 14, 2013**

**BOARD MEMBERS PRESENT:** Mr. Tommy Thurston, Chair  
Mr. Charles Bird  
Mr. Jerome Brooks  
Mr. Gregory Hart  
Ms. Anna Jolly  
Mr. Satish Korpe, Vice Chair  
Ms. Rebecca LePrell  
Mr. Marc Olmsted, Secretary  
Ms. Milly Rodriguez  
Mr. Danny Sutton  
Mr. Chuck Stiff

**BOARD MEMBERS ABSENT:** Dr. James Mundy

**STAFF PRESENT:** Mr. Bill Burge, Assistant Commissioner  
Mr. Ron Graham, Director, Health Compliance  
Mr. Ed Hilton, Director, Boiler Safety Compliance  
Mr. John Crisanti, Manager, Policy and Procedure  
Ms. Reba O'Connor, Regulatory Coordinator  
Ms. Regina Cobb, Senior Management Analyst  
Ms. Sharon Sykes, Policy and Planning Specialist  
Ms. Cathy Brown  
Ms. Ashlee Babb

**OTHERS PRESENT:** Ms. Sandy J. Loonam, Court Reporter, Halasz Reporting & Videoconference  
Elizabeth Meyers, Esq., Assistant Attorney General  
Mr. Michael Iacobellis, Tidewater Electrical Industry JATC  
Mr. J. McRoy, MER General Contractors

**ORDERING OF AGENDA**

Chairman Tommy Thurston called the meeting to order at 10:00 a.m., and noted that there was a quorum. Chairman Thurston then called the Board's attention to that fact that Mr. Korpe was video recording the meeting and that there were questions concerning the purpose of the video recording, and who should be the custodian of the video recording. Mr. Korpe responded that he was video recording for informational purposes only so the public would know how the Board functions. Mr. Korpe added that the court reporter is recording everything anyway; therefore, the meeting is a matter of public record. A lengthy discussion continued on this issue by Messrs. Korpe, Crisanti, Thurston, Bird, Ms. Jolly and Ms. Myers.

Mr. Stiff motioned that the Board accept the recommendation of the Attorney General's Office to research the issue to make sure that we know all of the implications before we permit the meeting to be recorded by video, and that there be some advanced notice that the session would be video recorded. It was established that neither the Board nor the Department had advanced notice of the taping prior to the meeting. Mr. Sutton seconded the motion. The motion was approved with eleven yeas and one nay. More discussion on this topic followed. Mr. Bird suggested that matters like this be presented under Section 9 – Items of Interest for Members of the Board – during a meeting prior to the action, to give the Board a chance to consider the proposal and have some advanced information on it.

Next, Chairman Thurston requested a motion to approve the Agenda. Ms. Rodriguez moved to accept the Agenda, and Mr. Bird properly seconded the motion. The Agenda was approved, as submitted, and the motion was carried by unanimous voice vote.

#### **APPROVAL OF MINUTES**

Mr. Thurston asked the Board for a motion to approve the Minutes from the September 12, 2012, Board meeting. Ms. Jolly noted that there was an error in the Minutes in which Mr. Sutton's name appeared on the list as both present and absent. Mr. Sutton stated that he was, indeed, absent. On proper motion by Mr. Stiff and seconded by Ms. Jolly, the Minutes were approved, as corrected, by unanimous voice vote.

#### **APPOINTMENT OF SECRETARY**

Mr. Thurston appointed Mr. Marc Olmsted, who agreed to serve as Secretary.

#### **PUBLIC COMMENTS**

Mr. Thurston opened the floor to comments from the public, however, there were no comments.

#### **OLD BUSINESS**

##### ***Proposed Regulation: Amendments to Certified Lead Contractors Notification, Lead Project Permits and Permit Fees, 16VAC25-35***

Mr. Ron Graham, Director of Occupational Health Compliance for the Department of Labor and Industry, summarized the proposed regulation by stating that the Department seeks to remove the \$2,000 minimum contract price provision required for lead contractors to file a lead project notification with the Department, as provided in Paragraph A. of 16VAC25-35-30 of the regulation. He explained that 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.

He explained that 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, but otherwise, the permit fee under Subsection C.1. will not change. He added that notification permit applications will increase the overall costs of lead permit fees that contractors would need to pay to get their lead abatement permit. He stated that there would be no impact on Virginia employees and that the Department would incur no added costs nor would staffing levels need to be increased as a result of the change.



In closing, Mr. Graham recommended that the Board consider for adoption as a proposed regulation of the Board an amendment to the Regulation Concerning Certified Lead Contractors Notification, Lead Project Permits and Permit Fees, 16VAC25-35, pursuant to the Virginia Administrative Process Act, §2.2-4007.01.

On proper motion by Mr. Korpe and seconded by Ms. Jolly, the Minutes were approved, as corrected, by unanimous voice vote.

## **NEW BUSINESS**

### ***Corrections and Technical Amendment to the Hazard Communication Standard, §1910.1200 and Related Standards***

Mr. Graham summarized this federal-identical regulation by stating that federal OSHA had made corrections and technical amendments to its regulations that were amended by the Hazard communication Standard which was published in the Federal Register on March 28, 2012 (77 FR 17574). He explained that most of the corrections involve changing references in federal OSHA standards from “material safety data sheet” (MSDS) to “safety data sheet” (SDS). These changes were inadvertently missed by federal OSHA in its 2012 revisions to the Hazard Communication standard. Other corrections include correcting values or notations in tables and updating references to terms defined in the Final Rule to Hazard Communication Standard.

Mr. Graham added that no impact on Virginia employers, employees or the Department is anticipated from the adoption of these corrections and technical amendments.

In conclusion, Mr. Graham recommended that the Board adopt the Corrections and Technical Amendment to the Hazard Communication Standard, § 1910.1200, and related standards, as authorized by Virginia Code §§ 40.1-22(5) and 2.2-4006.A.4(c), with an effective date of June 15, 2013.

A motion was properly made by Mr. Stiff and seconded by Ms. Rodriguez. The Department’s recommendation was approved unanimously by voice vote.

### ***Occupational Exposure to Hazardous Chemicals in Laboratories, §1910.1450; (Non-Mandatory) Appendix A—National Research Council Recommendations Concerning Chemical Hygiene in Laboratories; Technical Amendment***

Mr. Graham explained that federal OSHA updated a non-mandatory appendix in its Occupational Exposure to Hazardous Chemicals in Laboratories Standard to include the contents of the latest National Academy of Sciences publication entitled, “Prudent Practices in the Laboratory: Handling and Management of Chemical Hazards,” 2011 edition. This new revision addresses current laboratory practices, security, and emergency response, as well as promoting safe handling of highly toxic and explosive chemicals and their waste products. The 2011 edition is also widely distributed and accepted by recognized authorities in the laboratory community. All revisions made were minor and non-substantive.

He added that the adoption of this technical amendment to the non-mandatory appendix is not expected to have any impact on Virginia employers, employees or the Department.

In conclusion, Mr. Graham recommended, on behalf of the Department of Labor and Industry, that the Board adopt the Technical Amendment to the National Research Council Recommendations Concerning Chemical Hygiene in Laboratories, (Non-Mandatory) Appendix A, of the Occupational Exposure to Hazardous Chemicals in Laboratories Standard, §1910.1450, as authorized by Virginia Code §§ 40.1-22(5) and 2.2-4006.A.4(c), with an effective date of June 15, 2013.

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

***Regulation Concerning Licensed Asbestos Contractor Notification, Asbestos Project Permits, and Permit Fees, 16VAC25-20***

Mr. Graham explained that pursuant to the Executive Regulatory Initiative, this regulation was identified for amendment after an in-depth review by the Department. He stated that, as currently enacted, this regulation provides the procedure for notifying the Department of asbestos projects to be undertaken and sets permit fees for those projects. He informed the Board that licensed asbestos contractors who undertake affected projects must notify the Department of Labor and Industry, obtain a permit and pay a fee as required by Va. Code §40.1-51.20.A. and B.

Mr. Graham continued by stating that the VOSH Program of the Department seeks to discontinue the requirement for notification of residential asbestos projects and delete the regulatory language of 16VAC25-20-40, Exemption, because eliminating the notification requirements for residential buildings will minimize the paperwork burden for asbestos contractors and also for homeowners. In addition, he informed the Board that the Code of Virginia does not require a permit fee for asbestos projects in residential buildings. (See Va. Code §40.1-51.20.B)

He explained that eliminating the notification requirements for residential buildings will reduce the paperwork burden for asbestos contractors and homeowners, but it would have no impact on Virginia employees. With respect to impact on the Department, Mr. Graham stated that eliminating the notification requirements for residential buildings will reduce the number of applications the Department will have to process. In response to Ms. LePrel's question concerning the number of notifications currently received for residential buildings, Mr. Graham replied that the Department receives approximately 250 to 300 a year. He informed the Board that the Department would not have to record asbestos-related contractor work in residential buildings or private homes.

Mr. Crisanti made the Board aware that the Department would be utilizing the Fast-Track procedure in adopting this regulation because the regulation is non-controversial, and no individual or entity will be adversely affected by this regulatory change.

In conclusion, Mr. Graham recommended, on behalf of the Department of Labor and Industry, that the Board amend the Regulation Concerning Licensed Asbestos Contractor Notification, Asbestos Project Permits, and Permit Fees, 16VAC25-20, pursuant to Va. Code §2.2-4012.1.

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

***Standard for Boiler and Pressure Vessel Operator Certification, 16VAC25-40-10, et seq.; Amendments***

Mr. Ed Hilton, Chief Boiler Inspector, explained that, pursuant to the Executive Regulatory Reform Initiative, the Department identified for amendment the Standard for Boiler and Pressure Vessel Operator Certification, 16VAC25-40. As currently enacted, this regulation requires the chief boiler inspector of the Commonwealth, or his designee, to provide and evaluate the written examination for boiler operator certification.

He stated that the Boiler Safety Compliance Program of the Department seeks the repeal of the requirement that it provide and evaluate written examinations of Subsection C. of 16VAC25-40-30 because it has never been requested to do so, nor has the section ever been implemented by any locality. The Department has never been asked to provide and evaluate the written examination for boiler operator certification for a boiler operator who operates/maintains boilers in any county, city or town in the Commonwealth. Therefore, it has been determined by the Department to be of no value in protecting the public health, safety or welfare.

Mr. Hilton also discussed the amendments to the following sections: 16VAC25-40-30.I.; 16VAC25-40-30.L.; 16VAC25-40-30.N.; 16VAC25-40-30.O.; 16VAC25-40-10; and 16VAC25-40-20.D.

Mr. Hilton informed the Board that the Department does not anticipate any impact on Virginia employers, employees or the Department as a result of these changes to the regulation. Also, he informed the Board that the Department would be utilizing the Fast-Track procedure in adopting this regulation because the regulation is non-controversial, and no individual or entity will be adversely affected by this regulatory change. In conclusion, Mr. Hilton recommended that the Board amend the Standard for Boiler and Pressure Vessel Operator Certification, 16VAC25-40-10, *et seq.*, pursuant to Va. Code §2-2.4012.1.

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

***Regulations for Periodic Review***

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 concluded by requesting that the Board vote to give the Department permission to proceed with the periodic review process for the six regulations mentioned.

Mr. Korpe moved to extend the 21-day public comment period for the periodic review process to 45 days to give the general public more time to respond. Ms. Jolly seconded the motion, which was approved unanimously by voice vote.

A motion to accept the Department's recommendation concerning going forward with the periodic review process was properly made by Ms. Rodriguez and seconded by Mr. Korpe. The Department's recommendation was approved unanimously by voice vote.

#### **Items of Interest from the Department of Labor and Industry**

Mr. Bill Burge, Assistant Commissioner of the Department of Labor and Industry, began by stating that he was here today on behalf of Commissioner Malveaux, who sends his regrets that he could attend the meeting. Commissioner Malveaux was called away because of a family illness. Mr. Burge announced that the Department had received permission to recruit and hire four additional Voluntary Protection Program (VPP) coordinators. Previously, that division had one full-time employee and one part-time employee. He expressed the Department's excitement for this opportunity to partner with outstanding employers who have outstanding employees and outstanding safety records. He informed the Board that this will help companies achieve the full star status with the VPP Program and it will also help the Department develop projects that have been put on hold. He added that it will allow the Department to form alliances with other programs in addition to VPP in the state and it will advance or expand the VPP effort into construction.

Mr. Burge stated that the new hires will more than likely telecommute from home so they can travel statewide. In response to Mr. Korpe's inquiry about the Department's jurisdiction in construction, Mr. Burge stated that the Department has enforcement jurisdiction in construction and it does voluntary compliance work in construction. He stated that the Department has not ventured into the VPP arena in construction because two of the requirements of the VPP Program are that the program must be site-specific and that safety data must be run from three years from that same location. He explained that today it's a rarity to have projects lasting several years in construction. Mr. Burge informed the Board of a program similar to VPP, which is in the draft phase, called the Virginia Best Program. This program, which is being developed as a result of meetings with the Association of General Contractor, would be very VPP-like without the VPP qualifying restrictions.

#### **Items of Interest from Members from the Board**

Mr. Stiff then requested an overview or an orientation of boiler and pressure vessel safety primarily to determine the reasons for rules and regulations that no one uses or that haven't been enforced in years. Discussion continued on this issue by Messrs. Olmsted, Korpe, Bird, Stiff, Crisanti and Ms. Jolly.

Mr. Crisanti agreed to strive to have an overview of the boiler and pressure vessel safety program at the next meeting.

Mr. Bird stated that he would like to see the Board take up the issue of roof perimeter fall protection for commercial-type buildings during construction and even after the building is completed. He continued by stating that for maintenance workers, there is nothing there for protection but a "gravel stop" which is to prevent the ballast from moving where stone has been placed to hold down the roofing material from migrating off the edge of the building. He complained that there is nothing, however, to protect either the construction worker or the maintenance worker from falling off the roof. Additional discussion continued on this issue by Messrs. Bird, Korpe, Stiff, Hart and Ms. LePrell and Ms. Jolly.

Mr. Thurston asked Mr. Crisanti to have the Department look into this issue of fall protection for people working on roofs and any helpful fall-related statistics associated with the construction and general industry.

Since some of the meeting had been taped and the Board agreed that the Department would be the custodian of the video recording, Chairman Thurston then asked that Mr. Korpe give the video recording to the Department until the Board receives a determination as to how to proceed.

Mr. Korpe then asked about provisions for pins issued for Board members. Ms. Cobb responded that the Secretary of the Commonwealth's office issues pins for Board members. She agreed to check into that. Ms. Jolly stated that she received a Commonwealth of Virginia pin when she was appointed to the Board.

#### **Adjournment**

There being no further business, Mr. Stiff made the motion to adjourn the meeting. Mr. Korpe properly seconded the motion which was carried unanimously by voice vote. The meeting adjourned at 11:40 a.m.





# COMMONWEALTH of VIRGINIA

## DEPARTMENT OF LABOR AND INDUSTRY

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### VIRGINIA SAFETY AND HEALTH CODES BOARD

#### BRIEFING PACKAGE

FOR JULY 18, 2013

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

##### I. Background and Basis

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. This Executive Order requires that state agencies conduct a periodic review of regulations every four years. Six regulations of the Safety and Health Codes Board were identified for review in 2013.

1. 16 VAC 25-30 – 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. 16 VAC 25-70 – Virginia Confined Space Standard for the Telecommunications Industry
3. 16 VAC 25-97 – Reverse Signal Procedures-General Industry-Vehicles/Equipment Not Covered by Existing Standards
4. 16 VAC 25-140 – Virginia Confined Space Standard for the Construction Industry
5. 16 VAC 25-150 – Underground Construction, Construction Industry

6. 16 VAC 25-170 – Virginia Excavation Standard, Construction Industry

**II. Current Status and Process**

As enumerated above, six regulations of the Safety and Health Codes Board were identified for periodic review in 2013. Upon the approval of the Board to proceed, at the March 14, 2013 meeting, the process of periodic review by the Department of Labor and Industry (Department) began with publication of a Notice of Periodic Review in the Virginia Register. At the March meeting, the Board voted to extend the public comment period from the required 21 days to 45 days. The public comment period began on April 3, 2013, when the Notice of Periodic Review was published, and closed on May 23, 2013. No comments were received for any of the regulations during the public comment period. Following the public comment period, Department staff reviewed the regulations and prepared recommendations for the Board's consideration at this meeting. Based on the decision of the Board, the Department will post a report on the Town Hall website indicating for each regulation either that (1) the Board will retain the regulation as is, or (2) the Board will begin a regulatory action to amend the regulation.

**III. Review and Analysis**

Pursuant to § 2.2-4007.1 E and F of the *Code of Virginia*, the Department is obligated to evaluate the economic impact of this regulation on small business. The following factors must be considered:

- the continued need for the regulation;
- the complexity of the regulation;
- the extent to the which the regulation overlaps, duplicates, or conflicts with federal or state law or regulation; and
- the length of time since the regulation has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the regulation.

As required, the discussion below includes the Department's determination as to whether the regulation should be amended, repealed, or retained consistent with the stated objectives of applicable law, to minimize the economic impact of regulations on small businesses.

**A. 16 VAC 25-30 – 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**

There is a continued need for this regulation because §§ 40.1-51.23 through 40.1-51.39 of the *Code of Virginia* mandate that the Department of Labor and Industry enforce the



National Emissions Standards for Hazardous Air Pollution (NESHAP) regulations of the federal Environmental Protection Agency (EPA), at 40 CFR 61.140 through 61.156. The Department was also mandated to adopt regulations that were at least as stringent as the asbestos regulations passed pursuant to Section 112 of the Clean Air Act. Because these federal regulations, at 40 CFR 61-140 through 61.156, were incorporated by reference, the regulation does not exceed the state mandate.

**Determination:** This regulation is not overly complex. It has no negative impact on the regulated community and does not overlap, duplicate, or conflict with federal or state law or regulation. The Department last completed a Periodic Review of this regulation in 2009. As a result of the current periodic review, the Department has determined that this regulation remains consistent with the stated objectives of applicable law, and minimizes the economic impact of regulations on small businesses.

**Recommendation:** The Department recommends that this regulation be retained with no changes.

**B. 16 VAC 25-70 - Virginia Confined Space Standard for the Telecommunications Industry**

Section 40.1-22(5) of the *Code of Virginia* mandates that the Safety and Health Codes Board adopt standards that most adequately assure that no employee will suffer material impairment of health or functional capacity and the standards be at least as stringent as the standards promulgated by the federal Occupational Safety and Health Administration (OSHA).

The *Virginia Administrative Code*, 16 VAC 25-70-10 *et seq.*, provides minimum protection for workers against exposure to hazardous chemicals and hazardous atmospheres when working in the telecommunications areas defined as confined spaces. Among other things, the standard requires atmospheric testing of confined spaces prior to entry, the use of personal protective equipment, where necessary, and requires ventilation of the space to prevent accumulation of toxic atmospheres.

**Determination:** It is the determination of the Department that the current regulation is the least burdensome alternative for the protection of employees entering confined spaces in the Telecommunications Industry. The regulation is not overly complex. It has no negative impact on the regulated community and does not overlap, duplicate, or conflict with federal or state law or regulation. The Department last completed a Periodic Review of this regulation in 2009. As a result of the current periodic review, the Department has determined that this regulation remains consistent with the stated objectives of applicable law and minimizes the economic impact of regulations on small businesses.

**Recommendation:** The Department recommends that this regulation be retained with no changes.

**C. 16 VAC 25-97 – Reverse Signal Procedures-General Industry-Vehicles/Equipment Not Covered by Existing Standards**

There is a continuing need for this regulation because it offers protections for workers and others in areas where trucks are operating in reverse with an obstructed view. It provides a comprehensive regulation to govern reverse signal operation procedures for all construction and general industry vehicles, machinery, and equipment with an obstructed view to the rear, whether for operation in off-road work zones or over the road transportation or hauling. The regulation provides that covered vehicles, machinery and equipment shall not be operated in reverse unless the vehicle has a reverse signal alarm audible above the surrounding noise level and either the vehicle is backed up only when a designated observer or ground guide signals that it is safe to do so, or before operating the covered vehicle in reverse, the driver has visually determined that no employee is in the path of the covered vehicle. Work procedures and training requirements are provided for designated observers/ground guides and drivers/operators of covered equipment.

**Determination:** This regulation is not overly complex. It has no negative impact on the regulated community and does not overlap, duplicate, or conflict with federal or state law or regulation. The present Periodic Review is the first time that this regulation has undergone a review since it became effective on September 9, 2009. As a result of the current periodic review, the Department has determined that this regulation remains consistent with the stated objectives of applicable law and minimizes the economic impact of regulations on small businesses.

**Recommendation:** The Department recommends that this regulation be retained with no changes.

**D. 16 VAC 25-140 - Virginia Confined Space Standard for the Construction Industry**

There is a continuing need for this regulation because § 40.1-22(5) of the Code of Virginia mandates that the Safety and Health Codes Board adopt standards that most adequately assure that no employee will suffer material impairment of health or functional capacity and that the standards be at least as stringent as the standards promulgated by federal OSHA. OSHA does not have a comparable standard for construction, but does enforce confined space entry procedures through the use of the General Duty Clause Section 5(a)(1) of the federal Occupational Safety and Health (OSH) Act and other construction standards that are considered vague and provide very little guidance to employers. While this standard exceeds current federal standards for the construction industry, it does provide substantially similar safety and health protection as the required, mandated standards in general industry. The standard also provides construction employers with clearer guidelines for providing a safe workplace in the area of confined space entry.

Alternatives considered were to eliminate the regulation and revert to the federal system of enforcement which utilizes the General Duty Clause or retain the current regulation unchanged. The standard was originally subjected to the full Administrative Process Act (APA) notice and comment procedures when considered by the Safety and Health Codes Board, an independent entity composed of employers and employees of the regulated industries. As part of a prior regulatory review process, the Department convened a group of independent employer and employee representatives from the

regulated community to review the confined space regulations. This review panel considered all alternatives and recommended retention of the standard as originally adopted by the Safety and Health Codes Board. The Department is not aware of any alterations in the regulatory environment that would alter that assessment.

OSHA has begun the promulgation process for a construction Confined Space Entry Standard, but continues to enforce confined space entry through the General Duty Clause and other related construction standards. Elimination of the Virginia Confined Space Entry Standard for Construction would therefore not eliminate compliance requirements for employers, but would instead provide a regulatory system which is vague and provides very little guidance. Thus, this regulation is the least burdensome alternative for the protection of employees working in confined spaces in the construction industry. For this reason, this regulation is not overly complex. It has no negative impact on the regulated community and does not overlap, duplicate, or conflict with federal or state law or regulation.

**Determination:** The Department last completed a Periodic Review of this regulation in 2009. As a result of the current periodic review, the Department has determined that this regulation remains consistent with the stated objectives of applicable law, and minimizes the economic impact of regulations on small businesses.

**Recommendation:** The Department recommends that this regulation be retained with no changes.

**E. 16 VAC 25-150 - Underground Construction, Construction Industry**

This regulation is identical to current federal OSHA standards for Underground Construction except the section which provides for application of any requirements under the Virginia Confined Space Standard for the Construction Industry, 16 VAC 25-140-10 *et seq.*, where the standard is more stringent. Furthermore, there is a continuing need for this regulation because the *Code of Virginia*, § 40.1-22(5), states that "... 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)". Also, federal OSHA mandates that State Plan states be at least as effective as federal OSHA.

The alternatives considered for this regulation were whether to retain the existing regulation as promulgated or repeal the regulation and adopt the federal identical underground construction regulation for the construction industry. During a previous regulatory review, the Department established an independent review panel to consider the need for the standard or whether it should be eliminated. The panel recommended retention of the regulation in its present form. At this time, the Department is not aware of any alterations in the regulatory environment that would alter that assessment.



The regulation is essential to protect the health and safety of employees and reduce the incidence of construction fatalities because it provides minimum protections against exposure to hazardous chemicals and hazardous atmospheres and engulfment by physical hazards in underground construction areas. It also provides protections against exposure to improperly energized equipment which might pose a crushing hazard, and exposure to electrical or explosive hazards in underground construction areas defined as confined spaces. Since promulgation of this standard in 1979, there have not been any confined space-related fatalities in underground construction projects. The regulation provides substantially similar safety and health protections to employees and employers in the Construction Industry as that required by mandated regulations in General Industry.

The repeal of this regulation would result in the implementation of the federal identical regulation for underground construction. This Virginia regulation provides employees with more adequate protections when they are engaged in confined space work in underground construction. Based on previous reviews and this latest analysis, the Department continues to believe that the current regulation is the least burdensome alternative for the necessary protection of employees in this area. For this reason, this regulation is not overly complex. It has no negative impact on the regulated community and does not overlap, duplicate, or conflict with federal or state law or regulation.

**Determination:** The Department last completed a Periodic Review of this regulation in 2009. As a result of the current periodic review, the Department has determined that this regulation remains consistent with the stated objectives of applicable law, and minimizes the economic impact of regulations on small businesses.

**Recommendation:** The Department recommends that this regulation be retained with no changes.

**F. 16 VAC 25-170 - Virginia Excavation Standard, Construction Industry**

There is a continuing need for this regulation because the *Code of Virginia*, § 40.1-22(5) states that "...the Board shall adopt the standard which most adequately assures, 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)". Also, federal OSHA mandates that State Plan states be at least as effective as federal OSHA. This regulation is identical to current federal OSHA standards for Excavation except for the section that provides for application of any requirements under the Virginia Confined Space Standard for the Construction Industry, 16 VAC 25-140-10 *et seq.*, where that standard is more stringent.

The alternatives considered for this regulation were whether to retain the existing regulation as promulgated or repeal the regulation and adopt the federal identical excavation regulation for the construction industry. During a previous regulatory review, the Department established an independent review panel to consider the need for the standard or whether it should be eliminated. The panel recommended retention

of the regulation in its present form. At this time, the Department is not aware of any alterations in the regulatory environment that would alter that assessment.

The repeal of this regulation would result in the implementation of the federal identical regulation for excavation work in the construction industry. Retaining the current regulation will ensure that employees are more adequately protected when they are in confined work spaces while engaged in construction excavation. Based on a previous review and the current reexamination, the Department continues to believe that the current regulation is the least burdensome alternative for the protection of employees in this area.

**Determination:** This regulation is not overly complex. It has no negative impact on the regulated community and does not overlap, duplicate, or conflict with federal or state law or regulation. It has no negative impact on the regulated community and does not overlap, duplicate, or conflict with federal or state law or regulation.

The Department last completed a Periodic Review of this regulation in 2009. As a result of the current periodic review, the Department has determined that this regulation remains consistent with the stated objectives of applicable law, and minimizes the economic impact of regulations on small businesses.

**Recommendation:** The Department recommends that this regulation be retained with no changes.

#### IV. **Recommended Action**

At this time, the Department of Labor and Industry recommends that all of these regulations be retained with no changes. The Department requests that the Safety and Health Codes Board vote to retain these six regulations with no changes.

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# COMMONWEALTH of VIRGINIA

## DEPARTMENT OF LABOR AND INDUSTRY

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### VIRGINIA SAFETY AND HEALTH CODES BOARD

#### BRIEFING PACKAGE

FOR JULY 18, 2013

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

#### **I. Action Requested**

The Virginia Occupational Safety and Health (VOSH) Program requests that the Safety and Health Codes Board consider for adoption federal OSHA's Final Rule for Underground Construction and Demolition in the Cranes and Derricks in Construction Standard, §§1926.800, 1926.856 and 1926.858, as published in 78 FR 23837 on April 23, 2013.

The proposed effective date is November 1, 2013.

#### **II. Summary of the Final Rule**

This new federal final rule replaces the attempted 2012 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 and to streamline OSHA's standards by eliminating the separate cranes and derricks standards currently used for underground and demolition work. The rule also corrects errors made to the underground construction and demolition standards in the 2010 rulemaking. The amendments in this final rule will result in more stringent requirements for cranes and derricks used in underground construction or demolition work.



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

A. **Basis and Purpose**

On August 17, 2012, OSHA published both a DFR and a companion notice of proposed rulemaking to amend OSHA's construction standards in Subpart S (Underground Construction, Caissons, Cofferdams, and Compressed Air) and Subpart T (Demolition) of OSHA's construction standards at 29 CFR Part 1926 (77 FR 49722; 77 FR 49741). The identical amendments apply Subpart CC (Cranes and Derricks in Construction) of Part 1926, which contains requirements for cranes and derricks used in construction, to underground construction work, and demolition work, involving equipment covered by Subpart CC. Additionally, the dual rulemaking corrected inadvertent errors made to the underground construction and demolition standards in the 2010 rulemaking.

On September 12, 2012, the Safety and Health Codes Board adopted OSHA's Direct Final Rule on Cranes and Derricks in Construction; Demolition and Underground Construction, with an effective date of January 1, 2013. This action was based on the assumption that the DFR would become effective for federal OSHA. The federal DFR was scheduled to become effective on November 15, 2012, however, OSHA received a significant adverse comment to the DFR and its companion proposed rule within the specified comment period which ended on September 17, 2012, therefore, the federal DFR did not become effective and OSHA proceeded with this final rule. This action is the continuation of that companion rulemaking.

The one 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. OSHA intends for Subpart CC to apply as a comprehensive regulatory scheme. It emphasized the importance of applying *all* of Subpart CC to demolition work (emphasis added). Federal OSHA also explained that this was its intent all along and that by doing so would 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.

B. **Impact on Employers**

These revisions will benefit construction contractors that engage in underground construction or demolition work because these contractors will now be subject to a single standard, rather than having some of their construction work under Subpart CC, and other work covered by former Subpart DD. These revisions, therefore, will clarify employer obligations by applying a single Cranes and Derricks standard to all construction work, including demolition and underground construction projects.



C. **Impact on Employees**

Application of this final rule will protect workers from hazards associated with hoisting equipment used during construction activities. It will not reduce the employee protections put in place by 2010 Cranes and Derricks final rule. Instead, it will likely enhance employee safety by ensuring that construction workers involved in underground construction or demolition receive the same safety protections from recently published Subpart CC as other construction workers.

D. **Impact on the Department of Labor and Industry.**

Apart from expenses incurred for training staff on the revised final standard, there is no significant impact anticipated for the Department as a result of adopting this final 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.

E. **Technological Feasibility**

OSHA reviewed the requirements that would be imposed by the final regulation, and determined that compliance with the requirements of the final standard is technologically feasible for all affected industries. The standard would require employers to perform crane inspections, utilize qualified or certified crane operators, address ground conditions, maintain safe distances from power lines using the encroachment prevention precautions, and to fulfill other obligations under the standard. Compliance with all of these requirements can be achieved with readily and widely available technologies.

F. **Economic Feasibility**

When OSHA issued the final rule for Cranes and Derricks in 2010, it was required to prepare a Final Economic Analysis (FEA). OSHA's FEA for the final cranes standard, which included all cranes, crane operations, and industry sectors subject to this final rule, found that the requirements of the final rule were economically feasible. [78 FR 23838] Because OSHA reviewed the total costs of this final rule when it issued the 2010 final rule for Cranes and Derricks in Construction, it decided that no further review of those costs was deemed necessary.

This 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 engaged in demolition. OSHA estimated that the total annualized

compliance costs for both sectors is \$6,412,898 nationally, which is greater than the actual costs of this final rule because these two NAICS sectors include operations not involved in underground construction or demolition. [78 FR 23839] The total annualized compliance cost for both sectors in Virginia is estimated to be approximately \$174,000.

**IV. Highlights of the Final Rule**

- Amended the demolition standard by adding subparagraph headings and replacing the “equipment used must” language in both subsection (c) of §1926.856, Removal of Walls, Floors, and Material with Equipment, and subsection (b) of §1926.858, Removal of Steel Construction, with a reference to the employer’s duty to comply with *all* Subpart CC requirements (emphasis added) to avoid the ambiguity;
- Reinserted into §1926.858 the requirement to comply with Subpart N, in addition to Subpart CC of Part 1926 to clarify application of the provisions;
- Corrected §1926.800 (t) by restoring the clause “Except as modified by this paragraph (t)” to the beginning of the introductory paragraph; and
- Restored §1926.800 (t)(1) through (t)(4) the provision allowing employers to use cranes to hoist personnel for routine access to the underground worksites via a shaft without requiring them to demonstrate that conventional means of access are more hazardous or impossible for this purpose

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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 Cranes and Derricks in Construction: Underground Construction and Demolition, §§ 1926.800, 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.

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.

**Cranes and Derricks in Construction: Underground Construction and Demolition,  
§§1926.800, 1926.856, and 1926.858;  
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: \_\_\_\_\_

16VAC 25-175-1926.800, Underground Construction, §1926.800  
16VAC25-175-1926.856, Removal of Walls, Floors, and Material with Equipment, §1926.856  
16VAC25-175-1926.858, Removal of Steel Construction, §1926.858

When the regulations, as set forth in the Final Rule for Cranes and Derricks in Construction: Underground Construction and Demolition, §§ 1926.800, 1926.856, and 1926.858, 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
May 23, 2013	November 1, 2013

**Amendments to Standards**

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

**PART 1926—SAFETY AND HEALTH REGULATIONS FOR CONSTRUCTION****Subpart S—Underground Construction, Caissons, Cofferdams, and Compressed Air**

- 1. The authority citation for subpart S of 29 CFR part 1926 continues to read as follows:

**Authority:** 40 U.S.C. 3701; 29 U.S.C. 653, 655, 657; and Secretary of Labor's Orders 12-71 (36 FR 8754), 8-76 (41 FR 25059), 9-83 (48 FR 45736), 1-90 (55 FR 9033), 6-96 (62 FR 111), 5-2007 (72 FR 31159), or 1-2012 (77 FR 3912), as applicable.

- 2. Amend § 1926.800 by revising paragraph (t) to read as follows:

**§ 1926.800 Underground construction.**

\* \* \* \* \*

(t) *Hoisting unique to underground construction.* Except as modified by this paragraph (t), employers must: Comply with the requirements of subpart CC of this part, except that the limitation in § 1926.1431(a) does not apply to the routine access of employees to an underground worksite via a shaft; ensure that material hoists comply with § 1926.552(a) and (b) of this part; and ensure that personnel hoists comply with the personnel-hoists requirements of § 1926.552(a) and (c) of this part and the elevator requirements of § 1926.552(a) and (d) of this part.

(1) *General requirements for cranes and hoists.* (i) Materials, tools, and supplies being raised or lowered, whether within a cage or otherwise, shall be secured or stacked in a manner to prevent the load from shifting, snagging or falling into the shaft.

(ii) A warning light suitably located to warn employees at the shaft bottom and subsurface shaft entrances shall flash whenever a load is above the shaft bottom or subsurface entrances, or the load is being moved in the shaft. This paragraph does not apply to fully enclosed hoistways.

(iii) Whenever a hoistway is not fully enclosed and employees are at the shaft bottom, conveyances or equipment shall be stopped at least 15 feet (4.57 m) above the bottom of the shaft and held

there until the signalman at the bottom of the shaft directs the operator to continue lowering the load, except that the load may be lowered without stopping if the load or conveyance is within full view of a bottom signalman who is in constant voice communication with the operator.

(iv)(A) Before maintenance, repairs, or other work is commenced in the shaft served by a cage, skip, or bucket, the operator and other employees in the area shall be informed and given suitable instructions.

(B) A sign warning that work is being done in the shaft shall be installed at the shaft collar, at the operator's station, and at each underground landing.

(v) Any connection between the hoisting rope and the cage or skip shall be compatible with the type of wire rope used for hoisting.

(vi) Spin-type connections, where used, shall be maintained in a clean condition and protected from foreign matter that could affect their operation.

(vii) Cage, skip, and load connections to the hoist rope shall be made so that the force of the hoist pull, vibration, misalignment, release of lift force, or impact will not disengage the connection. Moused or latched openthrust hooks do not meet this requirement.

(viii) When using wire rope wedge sockets, means shall be provided to prevent wedge escapement and to ensure that the wedge is properly seated.

(2) *Additional requirements for cranes.* Cranes shall be equipped with a limit switch to prevent overtravel at the boom tip. Limit switches are to be used only to limit travel of loads when operational controls malfunction and shall not be used as a substitute for other operational controls.

(3) *Additional requirements for hoists.*

(i) Hoists shall be designed so that the load hoist drum is powered in both directions of rotation, and so that brakes are automatically applied upon power release or failure.

(ii) Control levers shall be of the "deadman type" which return automatically to their center (neutral) position upon release.

(iii) When a hoist is used for both personnel hoisting and material hoisting, load and speed ratings for personnel and for materials shall be assigned to the equipment.

(iv) Material hoisting may be performed at speeds higher than the rated speed for personnel hoisting if the hoist and components have been designed for such higher speeds and if shaft conditions permit.

(v) Employees shall not ride on top of any cage, skip or bucket except when necessary to perform inspection or maintenance of the hoisting system, in which case they shall be protected by a body belt/harness system to prevent falling.

(vi) Personnel and materials (other than small tools and supplies secured in a manner that will not create a hazard to employees) shall not be hoisted together in the same conveyance.

However, if the operator is protected from the shifting of materials, then the operator may ride with materials in cages or skips which are designed to be controlled by an operator within the cage or skip.

(vii) Line speed shall not exceed the design limitations of the systems.

(viii) Hoists shall be equipped with landing level indicators at the operator's station. Marking the hoist rope does not satisfy this requirement.

(ix) Whenever glazing is used in the hoist house, it shall be safety glass, or its equivalent, and be free of distortions and obstructions.

(x) A fire extinguisher that is rated at least 2A:10BC (multi-purpose, dry chemical) shall be mounted in each hoist house.

(xi) Hoist controls shall be arranged so that the operator can perform all operating cycle functions and reach the emergency power cutoff without having to reach beyond the operator's normal operating position.

(xii) Hoists shall be equipped with limit switches to prevent overtravel at the top and bottom of the hoistway.

(xiii) Limit switches are to be used only to limit travel of loads when operational controls malfunction and shall not be used as a substitute for other operational controls.

(xiv) Hoist operators shall be provided with a closed-circuit voice communication system to each landing station, with speaker microphones so located that the operator can communicate with individual landing stations during hoist use.

(xv) When sinking shafts 75 feet (22.86 m) or less in depth, cages, skips, and buckets that may swing, bump, or snag against shaft sides or other structural protrusions shall be guided by fenders, rails, ropes, or a combination of those means.

(xvi) When sinking shafts more than 75 feet (22.86 m) in depth, all cages, skips, and buckets shall be rope or rail guided to within a rail length from the sinking operation.

(xvii) Cages, skips, and buckets in all completed shafts, or in all shafts being used as completed shafts, shall be rope

or rail-guided for the full length of their travel.

(xviii) Wire rope used in load lines of material hoists shall be capable of supporting, without failure, at least five times the maximum intended load or the factor recommended by the rope manufacturer, whichever is greater. Refer to § 1926.552(c)(14)(iii) of this part for design factors for wire rope used in personnel hoists. The design factor shall be calculated by dividing the breaking strength of wire rope, as reported in the manufacturer's rating tables, by the total static load, including the weight of the wire rope in the shaft when fully extended.

(xix) A competent person shall visually check all hoisting machinery, equipment, anchorages, and hoisting rope at the beginning of each shift and during hoist use, as necessary.

(xx) Each safety device shall be checked by a competent person at least weekly during hoist use to ensure suitable operation and safe condition.

(xxi) In order to ensure suitable operation and safe condition of all functions and safety devices, each hoist assembly shall be inspected and load-tested to 100 percent of its rated capacity: at the time of installation; after any repairs or alterations affecting its structural integrity; after the operation of any safety device; and annually when in use. The employer shall prepare a certification record which includes the date each inspection and load-test was performed; the signature of the person who performed the inspection and test; and a serial number or other identifier for the hoist that was inspected and tested. The most recent certification record shall be maintained on file until completion of the project.

(xxii) Before hoisting personnel or material, the operator shall perform a test run of any cage or skip whenever it has been out of service for one complete shift, and whenever the assembly or components have been repaired or adjusted.

(xxiii) Unsafe conditions shall be corrected before using the equipment.

(4) *Additional requirements for personnel hoists.* (i) Hoist drum systems shall be equipped with at least two means of stopping the load, each of which shall be capable of stopping and holding 150 percent of the hoist's rated line pull. A broken-rope safety, safety catch, or arrestment device is not a permissible means of stopping under this paragraph (i).

(ii) The operator shall remain within sight and sound of the signals at the operator's station.

(iii) All sides of personnel cages shall be enclosed by one-half inch (12.70 mm)



wire mesh (not less than No. 14 gauge or equivalent) to a height of not less than 6 feet (1.83 m). However, when the cage or skip is being used as a work platform, its sides may be reduced in height to 42 inches (1.07 m) when the conveyance is not in motion.

(iv) All personnel cages shall be provided with a positive locking door that does not open outward.

(v) All personnel cages shall be provided with a protective canopy. The canopy shall be made of steel plate, at least 3/16-inch (4.763 mm) in thickness, or material of equivalent strength and impact resistance. The canopy shall be sloped to the outside, and so designed that a section may be readily pushed upward to afford emergency egress. The canopy shall cover the top in such a manner as to protect those inside from objects falling in the shaft.

(vi) Personnel platforms operating on guide rails or guide ropes shall be equipped with broken-rope safety devices, safety catches or arrestment devices that will stop and hold 150 percent of the weight of the personnel platform and its maximum rated load.

(vii) During sinking operations in shafts where guides and safeties are not yet used, the travel speed of the personnel platform shall not exceed 200 feet (60.96 m) per minute. Governor controls set for 200 feet (60.96 m) per minute shall be installed in the control system and shall be used during personnel hoisting.

(viii) The personnel platform may travel over the controlled length of the hoistway at rated speeds up to 600 feet (182.88 m) per minute during sinking operations in shafts where guides and safeties are used.

(ix) The personnel platform may travel at rated speeds greater than 600 feet (182.88 m) per minute in completed shafts.

\* \* \* \* \*

#### Subpart T—Demolition

■ 3. The authority citation for subpart T of 29 CFR part 1926 continues to read as follows:

**Authority:** 40 U.S.C. 3701; 29 U.S.C. 653, 655, 657; and Secretary of Labor's Orders 12-71 (36 FR 8754), 8-76 (41 FR 25059), 9-83 (48 FR 95736), 1-90 (55 FR 9033), 6-96 (62 FR 111), 5-2007 (72 FR 31159), or 1-2012 (77 FR 3912), as applicable.

■ 4. Amend § 1926.856 by revising paragraph (c) to read as follows:

#### § 1926.856 Removal of walls, floors, and material with equipment.

\* \* \* \* \*

(c) *Cranes, derricks, and other mechanical equipment.* Employers must

meet the requirements specified in subparts N, O, and CC of this part.

■ 5. Amend § 1926.858 by revising paragraph (b) to read as follows:

#### § 1926.858 Removal of steel construction.

\* \* \* \* \*

(b) *Cranes, derricks, and other hoisting equipment.* Employers must meet the requirements specified in subparts N and CC of this part.

\* \* \* \* \*

[FR Doc. 2013-09153 Filed 4-22-13; 8:45 am]

BILLING CODE 4510-26-P



# *COMMONWEALTH of VIRGINIA*

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### VIRGINIA SAFETY AND HEALTH CODES BOARD

#### BRIEFING PACKAGE

For July 18, 2013

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

#### I. Action Requested

The Virginia Occupational Safety and Health (VOSH) Program requests that the Safety and Health Codes Board consider for adoption federal OSHA's Final Rule for Revising the Exemption for Digger Derricks in the Cranes and Derricks in Construction Standard, as published in 78 FR32116 on May 29, 2013.

The proposed effective date is November 1, 2013.

#### II. Summary of the Final Rule

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.

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

#### A. Basis and Purpose

On August 9, 2010, federal OSHA published its Cranes and Derricks in Construction final standard (75 FR 47906). This standard covers digger derricks, but includes a limited exemption for all pole work in the electric-utility and telecommunications industries, including placing utility poles in the ground and attaching transformers and other equipment to the poles.

This final standard was developed through a negotiated rulemaking involving stakeholders from many affected sectors. In its proposed rule based on the draft standard from the stakeholders, OSHA included only a narrow exemption for digger derricks used to dig holes. OSHA later expanded the exemption in the 2010 final rule in response to commenters who complained that the proposed narrow exemption did not include customary uses of the digger derrick that involve placing a pole in the hole and attaching transformers and other items to the pole.

On October 6, 2010, Edison Electrical Institute (EEI) petitioned the U.S. Court of Appeals for review of the Cranes and Derricks in Construction Standard. In subsequent discussions with OSHA, EEI provided new information regarding the use of digger derricks in the electric-utility industry, and the impact on utilities' operations of the current digger-derrick exemption in Subpart CC. According to EEI, the exemption from Subpart CC covers roughly 95 percent of work conducted by digger derricks in the electric-utility industry. The majority of the work under the remaining 5 percent is work closely related to the exempted work.

At its meeting on January 20, 2011, the Safety and Health Codes 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.

Subsequently, on November 9, 2012, federal OSHA published both a Direct Final Rule (DFR) [77 FR 67270] and a companion proposed rule [77 FR 67313] in case the DFR received an adverse comment and did not go into effect. This amendment broadens the exemption for digger derricks in Subpart CC of its standard for Cranes and Derricks to exempt the placement of padmount transformers. OSHA, however, did receive a significant adverse comment on the Direct Final Rule during its comment period, and OSHA withdrew the Direct Final Rule on February 7, 2013 [78 FR 8985]. OSHA withdrew its DFR before the Board had a chance to act upon this DFR.

After considering the significant adverse comment, OSHA eventually issued this current final rule based on the November 9, 2012 companion notice of proposed rulemaking.

**B. Impact on Employers**

OSHA has 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. The final rule does not impose any new duties on any employer. Because this final rule will reduce costs for small entities, OSHA has therefore certified that the final standard will not impose significant economic costs on a substantial number of small entities. [78 FR 32114]

When OSHA promulgated the final Cranes and Derricks in Construction standard, its primary concern about extending the digger-derrick exemption beyond pole work was that such action would provide employers with an incentive to use digger derricks on construction sites to perform construction tasks normally handled by cranes – tasks that are beyond the original design capabilities of a digger derrick.

OSHA acknowledged that revising the exemption would extend the digger-derrick exemption to include some work at substations; however, Edison Electrical Institute (EEI), the petitioner for review of the Cranes and Derricks in Construction standard, indicated that employers in the electric-utility industry limit such uses to assembly or arrangement of substation components, and that these employers use other types of cranes instead of digger derricks to perform lifting and installation work at substations. If OSHA finds that employers are using digger derricks increasingly for other tasks, OSHA may revisit this issue and adjust the exemption accordingly.

**C. Impact on Employees.**

OSHA determined that there is no indication that the additional five percent (5%) of digger-derrick activity exempted through this rulemaking poses any hazard greater than the hazard posed by the digger-derrick activities already exempted in the 2010 final rule. Since this final rule does not reduce the employee protections, adoption of this final rule will not negatively impact employees because employers engaged in exempted digger-derrick activities must still comply with the applicable worker protections in the standards governing electric utility and telecommunications work at §1910.268, Telecommunications, and §1910.269, Electric Power Generation, Transmission, and Distribution.

**D. Impact on the Department of Labor and Industry**

OSHA has streamlined this rule by dropping its application to all digger derricks used in the electric-utility industry. Adoption of this final rule, will not significantly impact 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.

E. **Technological Feasibility**

OSHA concludes that the final rule is technologically feasible because it reduces or removes current requirements on employers. [78 FR 32115]

F. **Economic Feasibility**

Federal OSAH determined this amendment to be economically feasible because it does not require any costs associated with additional protective measures and it reduces or removes current expenditures for employers. [78 FR 32114-15]

Based on submissions to the record going back to the 2010 Final Economic Analysis, the annual total costs were broken out for NAICS 221110, Electric Power Transmission, and for NAICS 221120, Electric Power Generation, Control, and Distribution for this change. However, fully exempting digger derricks from the scope of the standard also eliminates costs for other activities besides operator certification, such as inspections and power-line safety. Therefore, employers now will be able to avoid the annual compliance costs for a total net decrease of this expenditure by approximately \$21.6 million per year; thereby, establishing the economic feasibility of this final rule under OSHA's analysis.

Similarly for Virginia, the net expenditures for compliance for employers in these two NAICS will be reduced by a total net decrease of approximately \$586,000 as a result of this final rule.

G. **Benefits**

The digger-derrick exemption has been expanded to include telecommunications work in addition to electric-utility work. This final rule provides a complete exemption from having to follow the requirements of Subpart CC of the Cranes and Derricks final standard that was issued on August 9, 2010.

IV. **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.

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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 Cranes and Derricks in Construction: Revising the Exemption for Digger Derricks, §§1926.952 and 1926.1400, respectively, as authorized by Virginia Code §§ 40.1-22(5) and 2.2-4006.A.4(c), with an effective date of November 1, 2013.

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.



**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: \_\_\_\_\_



VIRGINIA OCCUPATIONAL SAFETY AND HEALTH PROGRAM

VIRGINIA DEPARTMENT OF LABOR AND INDUSTRY

Effective Date: \_\_\_\_\_

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

**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.

\* \* \* \* \*  
[FR Doc. 2013-12665 Filed 5-28-13; 8:45 am]  
BILLING CODE 4510-26-P

**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).

\* \* \* \* \*



# COMMONWEALTH of VIRGINIA

## DEPARTMENT OF LABOR AND INDUSTRY

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### VIRGINIA SAFETY AND HEALTH CODES BOARD

#### BRIEFING PACKAGE

FOR JULY 18, 2013

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#### Updating OSHA Standards Based on National Consensus Standards; Signage

#### I. Action Requested.

The Virginia Occupational Safety and Health (VOSH) Program requests that the Safety and Health Codes Board consider for adoption federal OSHA's Updating OSHA Standards Based on the National Consensus Standards for Signage, as published in 78 FR 35559 on June 13, 2013. The following standards on signage are affected by this Direct Final Rule:

- §1910.97, Nonionizing radiation;
- §1910.145, Specifications for accident prevention signs and tags;
- §1910.261, Pulp, paper, and paper board mills;
- §1926.200, Accident prevention signs and tags;
- §1926.201, Signaling; and
- §1926.202, Barricades

The proposed effective date is November 1, 2013.

## II. Summary of the Direct Final Rule.

On June 13, 2013, Federal OSHA has issued a Direct Final Rule 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 [78 FR 35585]. OSHA also has 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. OSHA has also 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, having inadvertently omitted this edition of the MUTCD from §§1926.201, Signaling, and 1926.202, Barricades, during an earlier rulemaking, and has amended citations in two provisions of the construction standards to show the correct incorporation-by-reference section.

## III. Use of Direct Final Rulemaking.

In using direct final rulemaking, OSHA, like other federal agencies, will publish a direct final rule (DFR) in the Federal Register along with a statement that the rule will become effective unless a significant adverse comment is received by the agency within a specified period of time. The agency also publishes concurrently with the direct final rule an identical proposed rule.

If the agency receives no significant adverse comment, the direct final rule will become effective. However, if a significant adverse comment is received, the agency will withdraw the direct final rule and treat such comment as a response to the proposed rule.

OSHA typically uses direct final rulemaking where it anticipates that a rule will not be controversial, e.g., minor substantive changes to regulations, direct incorporations of mandates from new legislation, and in this case, minor changes to regulations resulting from a judicial remand. OSHA has used direct final rules previously to update or, when appropriate, revoke references to previous national consensus standards in OSHA rules.

For the purposes of this direct final rule, a significant adverse 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”. [78 FR 35561]

If federal OSHA receives no significant adverse comments to the Direct Final Rule or the companion proposal by the July 15, 2013 deadline, this revision becomes effective in federal OSHA jurisdictions on September 11, 2013.

## IV. Basis, Purpose and Impact.

### A. Basis.

Over the last several years, federal OSHA has undertaken a series of projects to update its standards to incorporate the latest versions of national consensus and industry

standards. These projects include updating or removing national consensus and industry standards referenced in existing federal OSHA standards, updating regulatory text of standards adopted directly by OSHA from the language of outdated consensus standards and, when appropriate, replacing specific references to outdated national consensus and industry standards with performance-oriented requirements.

In June 2009, the National Electrical Manufacturers' Association ("NEMA") contacted federal OSHA and, based on a letter from ANSI, requested that OSHA add references to the latest versions of ANSI's Z535 series of standards to OSHA's signage standards. NEMA specifically advocated incorporating by reference ANSI Z535.2, "Environmental and Facility Safety Signs," in OSHA standards that refer to old versions of this ANSI standard. Besides urging OSHA to incorporate ANSI Z535.2 by reference, NEMA also asked OSHA to update its standards' references to ANSI Z53.1-67, "Safety Color Code for Marking Physical Hazards and the Identification of Certain Equipment," by citing the current version of this standard, ANSI Z535.1, "Safety Colors."

As a result of several meetings over the next few years between OSHA staff and NEMA to discuss the association's request that OSHA adopt ANSI's Z535 series of standards, NEMA provided OSHA with side-by-side comparisons of ANSI Z35.1-68, Z535.2-2007, and Z535.2-2011, and ANSI Z53.1-67, Z535.1-2006, and Z535.1-2006 (R 2011), and other relevant materials such as signs, which OSHA evaluated. Since most employers currently use signs that comply with the older 1967-1968 standards, and because OSHA aimed to avoid creating an economic burden to employers, the older 1967-1968 standards will continue to be referenced in OSHA's regulations. The change is that the corresponding ANSI Z535-2011 reference will be placed next to the older reference; wherever the OSHA standards reference the 1968 USASI Z35.1 Standard for Accident Prevention Signs, the 2011 ANSI Z535.2 Standard for Environmental and Facility Safety Signs will also be referenced. [78 FR 35562]

**B. Purpose**

Through this DFR, OSHA is incorporating by reference three recent editions of the applicable national consensus standards in its existing signage protection standards.

**C. Impact of Employers**

Prior to this rule change, employers using the newer ANSI Z535 standards for their signage would run the risk of being cited for a *de minimis* violation for failure to comply with the old ANSI standards. The outcome of this violation would not result in a fine because the ANSI Z535 standards are the current version of the document that was used as the basis for OSHA's safety sign regulations.

This DFR provides employers with additional options for meeting the design-criteria requirements for signage protection. It allows employers increased flexibility in choosing signage for the protection of their employees 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. Therefore, under the DFR, employers

will be able to continue to use the same signs and tags they are using currently to meet their compliance obligations under the existing standards' design-criteria requirements.

Since employers will not have to update or replace their existing signage as a result of this amendment if their current signage meets the requirements of this amendment, there is no additional compliance cost or burden resulting from this rulemaking on any private-sector or public-sector entity. [78 FR 35564]

**D. Impact on Employees**

OSHA believes that these revisions will not compromise the safety of employees, but will instead enhance employee protection. This amendment does not alter the substantive protection that employers must provide to employees.

**E. Impact on the Department of Labor and Industry.**

No significant impact is anticipated on the Department if the DFR is adopted.

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.

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## RECOMMENDED ACTION

Staff of the Department of Labor and Industry recommends that the Safety and Health Codes 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.

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.

**Updating OSHA Standards Based on National Consensus Standards for Signage;  
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: \_\_\_\_\_

16VAC25-90-1910.97, Nonionizing Radiation, §1910.97;  
16VAC25-90-1910.145, Specifications for Accident Prevention Signs and Tags, §1910.145;  
16VAC25-90-1910.261, Pulp, Paper, and Paper Board Mills, §1910.261; and  
16VAC25-175-1926.200, Accident Prevention Signs and Tags, §1926.200

When the regulations, as set forth in the Direct Final Rule Updating OSHA Standards Based on the National Consensus Standards for Signage, 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

September 11, 2013

November 1, 2013

PART 1926—[AMENDED]

Subpart A—[Amended]

(2) *Danger signs.* The colors red, black, and white shall be those of opaque glossy samples as specified in Table 1, "Fundamental Specification of Safety Colors for CIE Standard Source 'C,'" of ANSI Z53.1-1967 or in Table 1, "Specification of the Safety Colors for CIE Illuminate C and the CIE 1931, 2° Standard Observer," of ANSI Z535.1-2006(R2011), incorporated by reference in § 1910.6.

\* \* \* \* \*

(4) *Caution signs.* The standard color of the background shall be yellow; and the panel, black with yellow letters. Any letters used against the yellow background shall be black. The colors shall be those of opaque glossy samples as specified in Table 1 of ANSI Z53.1-1967 or Table 1 of ANSI Z535.1-2006(R2011), incorporated by reference in § 1910.6.

\* \* \* \* \*

(6) *Safety instruction signs.* The standard color of the background shall be white; and the panel, green with white letters. Any letters used against the white background shall be black. The colors shall be those of opaque glossy samples as specified in Table 1 of ANSI Z53.1-1967 or in Table 1 of ANSI Z535.1-2006(R2011), incorporated by reference in § 1910.6.

\* \* \* \* \*

Subpart R—[Amended]

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

**Authority:** 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), 5-2007 (72 FR 31159), 4-2010 (75 FR 55355), or 1-2012 (77 FR 3912), as applicable; and 29 CFR part 1911.

■ 8. Amend § 1910.261 by revising paragraph (c)(16) to read as follows:

§ 1910.261 Pulp, paper, and paperboard mills.

\* \* \* \* \*

(c) \* \* \*

(16) *Signs.* When conveyors cross walkways or roadways in the yards, the employer must erect signs reading "Danger—Overhead Conveyor" or an equivalent warning, in accordance with ANSI Z35.1-1968 or ANSI Z535.2-2011, incorporated by reference in § 1910.6.

\* \* \* \* \*

Subpart G—[Amended]

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

**Authority:** 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), 5-2002 (67 FR 50017), 5-2007 (72 FR 31159), 4-2010 (75 FR 55355), or 1-2012 (77 FR 3912), as applicable; and 29 CFR part 1911.

■ 4. Amend § 1910.97 by revising paragraph (a)(3)(ii) to read as follows:

§ 1910.97 Nonionizing radiation.

\* \* \* \* \*

(a) \* \* \*

(3) \* \* \*

(ii) ANSI Z53.1-1967 or ANSI Z535.1-2006(R2011), incorporated by reference in § 1910.6, is for use for color specification. All lettering and the border shall be of aluminum color.

\* \* \* \* \*

Subpart J—[Amended]

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

**Authority:** 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), 5-2007 (72 FR 31159), 4-2010 (75 FR 55355), or 1-2012 (77 FR 3912), as applicable.

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

■ 6. Amend § 1910.145 by revising paragraphs (d)(2), (d)(4), and (d)(6) to read as follows:

§ 1910.145 Specifications for accident prevention signs and tags.

\* \* \* \* \*

(d) \* \* \*

and (i). Copies available for purchase from the International Safety Equipment Association, 1901 North Moore Street, Arlington, VA 22209-1762; telephone: 703-525-1695; fax: 703-526-2148; Web site: [www.safetysigns.com](http://www.safetysigns.com).

(u) \* \* \*

(1) Manual on Uniform Traffic Control Devices (MUTCD), Part VI, Standards and Guides for Traffic Controls for Street and Highway Construction, Maintenance, Utility, and Incident Management Operation, 1988 Edition, Revision 3, September 3, 1993; IBR approved for §§ 1926.200(g), 1926.201(a), and 1926.202. Electronic copies of the MUTCD, 1988 Edition, Revision 3, are available for downloading at [http://www.osha.gov/doc/highway\\_workzones/mutcd/index.html](http://www.osha.gov/doc/highway_workzones/mutcd/index.html).

(2) Manual on Uniform Traffic Control Devices (MUTCD), Millennium Edition, Dec. 2000; IBR approved for §§ 1926.200(g), 1926.201(a), and 1926.202. Electronic copies of the MUTCD 2000 are available for downloading at [http://mutcd.fhwa.dot.gov/kno-millennium\\_12.18.00.htm](http://mutcd.fhwa.dot.gov/kno-millennium_12.18.00.htm).

#### Subpart G—[Amended]

■ 11. Revise the authority citation for subpart G of part 1926 to read as follows:

**Authority:** 40 U.S.C. 333; 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), 3-2000 (65 FR 50017), 5-2002 (67 FR 65008), 5-2007 (72 FR 31159), 4-2010 (75 FR 55355), or 1-2012 (77 FR 39121), as applicable; and 29 CFR part 1911.

■ 12. Amend § 1926.200 by revising paragraphs (b)(1), (c)(1), (c)(3), (g)(2), (h)(2), and (i) to read as follows:

#### § 1926.200 Accident prevention signs and tags.

(b) *Danger signs.* (1) Danger signs shall be used only where an immediate hazard exists, and shall follow the specifications provided in Figure 1 of ANSI Z35.1-1968 or in Figure 2 of ANSI Z535.2-2011, incorporated by reference in § 1926.6.

(c) *Caution signs.* (1) Caution signs shall be used only to warn against potential hazards or to caution against unsafe practices, and shall follow the specifications provided in Figure 4 of ANSI Z35.1-1968 or in Figure 2 of ANSI Z535.2-2011, incorporated by reference for the sections specified in § 1926.6.

(3) The standard color of the background shall be yellow; and the panel, black with yellow letters. Any letters used against the yellow background shall be black. The colors shall be those of opaque glossy samples as specified in Table 1 of ANSI Z53.1-1967 or in Table 1 of ANSI Z535.1-2006(R2011), incorporated by reference in § 1926.6.

(g) \* \* \*

(2) All traffic control signs or devices used for protection of construction workers shall conform to Part VI of the MUTCD, 1988 Edition, Revision 3, or Part VI of the MUTCD, Millennium Edition, incorporated by reference in § 1926.6.

(h) \* \* \*

(2) For accident prevention tags, employers shall follow specifications that are similar to those in Figures 1 to 4 of ANSI Z35.2-1968 or Figures 1 to 8 of ANSI Z535.5-2011, incorporated by reference in § 1926.6.

(i) *Additional rules.* ANSI Z35.1-1968, ANSI Z535.2-2011, ANSI Z35.2-1968, and ANSI Z535.5-2011, incorporated by reference in § 1926.6, contain rules in addition to those specifically prescribed in this subpart. The employer shall comply with ANSI Z35.1-1968 or ANSI Z535.2-2011, and ANSI Z35.2-1968 or Z535.5-2011, with respect to such additional rules.

■ 13. Amend § 1926.201 by revising paragraph (a) to read as follows:

#### § 1926.201 Signaling.

(a) *Flaggers.* Signaling by flaggers and the use of flaggers, including warning garments worn by flaggers, shall conform to Part VI of the Manual on Uniform Traffic Control Devices (1988 Edition, Revision 3, or the Millennium Edition), incorporated by reference in § 1926.6.

■ 14. Revise § 1926.202 to read as follows:

#### § 1926.202 Barricades.

Barricades for protection of employees shall conform to Part VI of the Manual on Uniform Traffic Control Devices (1988 Edition, Revision 3, or the Millennium Edition), incorporated by reference in § 1926.6.

[FR Doc. 2013-13009 Filed 6-12-13; 8:45 am]

BILLING CODE 4510-26-P