

SAFETY REGULATORY UPDATE

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I. Occupational Safety and Health Administration

- A. Integration of General Industry and Construction standards.
 - 1. June 15, 2005 *Federal Register* has OSHA's proposed changes to the electrical standards for general industry and for construction.
 - 2. The proposal seeks to make changes to both the general industry electrical standards (29 CFR 1910.269) and the construction electrical standards (29 CFR 1926 Subpart V), resulting in updated rules that are as much like each other as possible.
 - 3. Major concerns.
 - a. Relationship of host employer to independent contractor as relates to liability for safety practices of the contractor.
 - b. Clothing required to protect against second degree burns from arcs.
 - c. Prohibition of cotton and other 100% natural fibers when working on parts energized over 600 volts.
 - 4. NRECA and its members have submitted comments and have testified during the SBREFA process and at a week-long informal OSHA hearing.
 - 5. OSHA briefly re-opened the rulemaking in October of 2008, and again on September 14, 2009, to consider re-calculating Minimum Approach Distances incorrectly calculated long ago. Comments in the 2009 re-opening due October 15. Public hearing will be October 28. Meanwhile, current, incorrectly-calculated MAD tables remain in effect.
 - 6. Most observers do not expect a final rule before 2010.
- B. Flame resistant clothing and arc rated clothing.
 - 1. In its June 15, 2005 proposed rule, OSHA moves toward a *protection* standard and away from the current *contribution* standard. Stated another way, this is a proposed move from flame resistant clothing to arc rated clothing.
 - 2. Current OSHA 1910.269 rule requires clothing not to ignite or melt under flame or electric arc. Most common way to comply is by wearing clothing that meets ASTM 1506 FR requirements (very thick natural fiber clothing also will comply).

3. Meeting ASTM 1506 means the clothing may ignite, but will self-extinguish when the heat source is removed. Although ASTM 1506 technically is based on a vertical flame test, the self-extinguishment should also occur if the heat source is an arc. ***Natural fiber clothing, because it continues to burn after a heat source is removed, can never be FR according to ASTM 1506.***
4. ASTM 1959 provides a test for arc rating of clothing. The arc rating is given only to clothing that first passes a flame self-extinguishment test very similar to ASTM 1506. ***Because natural fiber clothing does not pass a flame self-extinguishment test, it can never receive an arc rating under ASTM 1959.***
5. OSHA's June 15, 2005 proposed rule requires wearing clothing that is rated to protect against second degree burns from the arc likely on a particular system. Clothing with the proper ASTM 1959 arc rating may be used in computing the total arc rating required. ***Because natural fiber clothing cannot be arc rated, it cannot be used in computing the required total arc rating.***
6. Unclear at this point exactly how to determine the arc rating of a layered system. Annex M to 2009 NFPA 70E notes that "the total system arc rating cannot be determined by adding the arc ratings of the individual layers."

C. Fall protection in bucket trucks.

1. For general industry (that is, not construction) work, current rule is that a body belt and a lanyard of any length are all that is required. Reg at 29 CFR 1910.67 stated in letter to Glazier from OSHA of 3/30/01. This letter explains edit to letter to Glazier from OSHA April 1998 on OSHA's web page.
2. For construction work, "a body belt shall be worn and a lanyard attached to the boom or basket when working from an aerial lift." 29 CFR 1926.453(b)(2)(v). But a personal fall arrest system is also required. 29 CFR 1926.501(b)(15). After January 1, 1998, a body belt cannot be used as a personal fall arrest system. 29 CFR 1926.500 and 1926.502(d). A properly used body harness does qualify as a personal fall arrest system. 29 CFR 1926.500.
3. June 15, 2005 proposed rule would allow a 2 foot lanyard and a body belt, or body harness and lanyard allowing no more than 6 foot fall.

D. Personal protective equipment.

1. November 15, 2007 *Federal Register* has OSHA's new PPE rule.
2. Effective date February 13, 2008; enforcement date May 15, 2008. Gist of new final rule: employer pays for required PPE, with a few narrowly-drawn exceptions. No more employer judgment calls on whether the equipment is personalized and able to be used off the job, and therefore to be paid for by the employee. The employer pays unless the PPE is on the exception list.

3. OSHA says it is not intending to create new categories of PPE, but is merely clarifying who pays for PPE that is already required. Preamble to rule, however, appears to classify climbing gear, FR clothing and leather work gloves as PPE for the first time. Note that current 1910.269 does not *require* FR clothing, so that even if OSHA now considers FR to be PPE, there is no requirement *now* that employer pay for it.
4. Exceptions to “employer pays.”
 - a. Ordinary safety-toe boots and ordinary safety prescription eyewear if employer allows to be worn off the job. Employer pays for specialty boots and eyewear and nonprescription eye protection.
 - b. Metatarsal protection. Employer not required to pay for shoes or boots with built-in metatarsal protection. Employer must pay for metatarsal guards.
 - c. Everyday clothing, even if used as protection, like long-sleeve shirts as protection against brush.
 - d. Ordinary clothing – including winter coats and rain gear -- and other items used for weather protection.
 - e. Employee owned PPE.
5. Employer pays for replacement PPE.
6. Employer pays for upgrades if employer requires upgrades. If employer provides minimum PPE and employee desires upgrade, employer not required to pay any amount towards upgraded PPE.
7. OSHA’s position, expressed in the Preamble and in a March 16, 2009 letter to Henkels & McCoy, is that “body belts, positioning straps, and pole and tree climbers (gaffs or hooks)” are required PPE. The employer therefore must pay for them.
8. OSHA notes that FR clothing not currently required but if it becomes required, employer will have to pay for. In effect, OSHA says FR is PPE.
9. Leather work gloves are PPE, if used for protection, and employer must pay for. If used to keep hands clean only, employer not required to pay.
10. In a Direct Final Rule effective October 9, 2009, OSHA updates some PPE rules so that they refer to current ANSI or ASTM standards. Particularly helpful with footwear standard at 1910.136(b). September 9 *Federal Register*.

E. Cranes and derricks construction standard rulemaking.

1. October 9, 2008 *Federal Register* has OSHA’s proposed revision to its cranes and derricks rule for construction. Has been largely untouched since 1971.
2. A negotiated rulemaking committee with members from a wide cross section of industries, including electric utilities, reached consensus July 2004.
3. OSHA has this as top priority. We may see final rule in 2010.
4. In comments filed January 22, 2009, NRECA said
 - a. The Final Rule should exclude electric utility work entirely. A total exclusion is a far simpler, more understandable, and easier-to-comply-with alternative than the haphazard treatment of electric utility work in the Proposed Rule.

- b. Excluding electric utility work entirely comports with other exclusions in the Proposed Rule.
- c. If the Final Rule does not exclude utility work entirely, the exclusion for digger derricks should apply to trucks designed for use in *or used in* the power line and electric service industries.
- d. If the Final Rule does not exclude utility work entirely, the exclusion for digger derricks should include electric utility work not involving poles.
- e. The Final Rule should allow utility owners two full working days in which to respond to voltage requests.
- f. The Final Rule should contain a grandfather clause for long-time safe operators.

F. Confined spaces in construction rulemaking.

- 1. Existing construction standard at 1926.956 is old and with minimal provisions.
- 2. There are two existing general industry standards that cover electric utilities: 1910.146 and 1910.269(e). Most utilities have been following these rules for general industry and construction.
- 3. New construction standard proposed in *Federal Register* November 28, 2007.
- 4. Comment period ended February 28, 2008. Public hearing held July 22, 2008. Utility industry has commented that it not necessary, as current standards work fine. Unions also opposed, as is non-utility industry.

G. Combustible dust.

- 1. OSHA's General Industry housekeeping rule requires that all places of employment "be kept clean and orderly." 49 CFR 1910.22(a)(1).
- 2. OSHA's General Industry Electrical Standard provides: "where coal-handling operations may produce a combustible atmosphere from ... dust, sources of ignition shall be eliminated or safely controlled to prevent ignition of the combustible atmosphere." 49 CFR 1910.269(v)(11)(xii).
- 3. In its Combustible Dust National Emphasis Program, CPL 03-00-006 (October 18, 2007) http://www.osha.gov/pls/oshaweb/owadisp.show_document?p_table=DIRECTIVES&p_id=3729, OSHA has said that "surface dust accumulations over 1/32 inch deep [covering] an area of at least 5% of the total area of the room" will result in a citation of 1910.22.
- 4. NRECA understands that, in coal fired power plant inspections, OSHA intends to evaluate the particular conditions, and issue citations only if there is a danger of explosion. That is, a citation will not automatically issue if there is a 1/32 inch dust layer. Citations have been issued, however.
- 5. Expect OSHA to announce a rulemaking in Fall 2009 and hold stakeholder meetings in December 2009. In the meantime, electric utilities should pay particular attention to dust build-up in power plants.
- 6. On July 30, 2009, OSHA issued a 21 page Hazard Communication Guidance for Combustible Dusts. Download it at <http://www.osha.gov/Publications/3371combustible-dust.pdf>

H. Tree trimming and tree care.

1. OSHA's new Compliance Directive CPL 02-01-045 makes clear that OSHA's logging operations standard applies only to tree care and tree removal operations primarily involving the hazards addressed by that standard.
It does not apply to employers solely engaged in tree trimming or removing trees piece-by-piece. Occasional tree removal also will not trigger the logging standard.
2. In a September 18, 2008 *Federal Register* notice, OSHA asked for information, by December 17, 2008, on tree care operations the agency can use in formulating a standard.

I. Ergonomics standard

1. Ergonomics is the science of suiting the workplace to the worker.
2. Much ergonomic standard writing activity centered around repetitive motions, focusing on manufacturing, material handling, computer workstations.
3. OSHA issued final rule in November 2000.
4. Congress used Congressional Review Act to invalidate the rule in March of 2001.
5. OSHA announced 4-part "comprehensive plan" on April 5, 2002.
 - a. Industry- and task-specific guidelines.
 - i. Nursing home guidelines issued March 13, 2003.
 - ii. Retail grocery guidelines issued May 28, 2004.
 - iii. Poultry processing guidelines issued September 2, 2004.
 - iv. Shipyard guidelines issued March 7, 2008.
 - b. Ergonomics enforcement plan designed for successful prosecution.
 - c. Outreach and assistance, with emphasis on small business.
 - d. Research, with National Institute for Occupational Safety and Health.
6. In May 2009, Acting OSHA Administrator said agency will use General Duty Clause for ergo citations.

J. Pandemic flu preparation.

1. In February 2007 OSHA issues Guidance on Preparing Workplaces for an Influenza Pandemic.
<http://www.osha.gov/Publications/OSHA3327pandemic.pdf>
2. OSHA proposing to supplement the Guidance with information on stockpiling respirators and facemasks. Comments were due July 8, 2008.
<http://www.osha.gov/dsg/guidance/stockpiling-facemasks-respirators.html>
3. No specific legal requirement for pandemic flu plan, but may be covered by general requirement for business continuity plan applicable to some utilities.

II. Federal Motor Carrier Safety Regulations

A. Hours-of-service regulations

1. Restriction on the number of hours an employee can work – at any task – and then drive a truck over 10,000 pounds.
2. On August 10, 2005, President Bush signed into law an exemption for drivers of utility service vehicles from federal hours-of-service regs. New law also prohibits states from enacting or enforcing HOS rules against utilities.
3. On April 4, 2006, the FMCSA sent a memorandum to federal and state regulators noting that utility service vehicles are exempt from the federal hours-of-service rules and that federal and state enforcement agencies "are prohibited from imposing hours of service requirements upon either interstate or intrastate utility service drivers".
4. April 2006 memo also clearly stated that the exemption is from all of "Part 395". Part 395 contains the logbook requirement.
5. On July 5, 2007, the FMCSA published final regs clearly exempting drivers of utility service vehicles from the hours of service and recordkeeping rules. Regs were updated November 19, 2008, but not changed in this respect.
6. On August 28, 2007, John H. Hill, Administrator of the FMCSA, sent a letter to Jonathan Hemenway Glazier, NRECA Association Counsel, noting that the 2005 law prohibits states from imposing an hours of service requirement on utility service vehicles in *intrastate* commerce.
7. Most states have changed their regs to comport with federal regs. California argues that it may still regulate the hours of service of utility service vehicles in *intrastate* commerce. This issue may go to court.

B. Entry-level driver training.

1. Final rule effective July 20, 2004. See May 21, 2004 *Federal Register*.
2. Employers must train drivers with less than one year experience *before* allowing them to drive a commercial motor vehicle requiring CDL in interstate commerce.
3. Training areas must include
 - a. Driver qualification requirements.
 - b. Hours-of service requirements.
 - c. Driver wellness.
 - d. Whistleblower protection.
4. No prescribed curriculum, but agency estimates training will take 10 hours.
5. Driver must receive a prescribed certificate and employer must retain certificate for length of employment and for one year thereafter.
6. On December 2, 2005 US Court of Appeals for DC Circuit found the rules inadequate and ordered FMCSA to redo them. Rules still in effect during redo.
7. On December 26, 2007 FMCSA responds by proposing new CDL entry level driver training rules.

- a. Proposal requires applicants for new or upgraded interstate CDL to complete specified entry level driver training course at an accredited institution.
 - b. A utility may become an “accredited institution,” but it will not be easy.
 - c. Proposal would require classroom and behind-the-wheel driver training.
 - d. Proposed training would not apply to drivers holding CDL during the 3 year period before the effective date of final rule.
8. In comments filed May 22, 2008, NRECA said
- a. Rather than require a paper certificate, FMCSA should target a level of skill and then test for achievement of that level as part of the CDL application process.
 - b. In addition, FMCSA should test skills relevant to the type of driving that the CDL holder will do.
 - c. But if the final rule requires training, it should allow utilities to train their own drivers without requiring utilities to become accredited training institutions.
9. Unlikely to see a final rule in 2009.

C. Linking CDL with medical certification.

- 1. On December 1, 2008, the FMCSA published final regs clearly linking a driver’s medical certificate with his CDL.
- 2. Interstate CDL holders will have to provide copy of medical certificate to state licensing agency by January 30, 2014.
- 3. State must record the info by January 30, 2012.

D. Drug and alcohol testing.

- 1. Applies to holders of Commercial Drivers License who drive a vehicle in commerce over 26,000 pounds gross weight or who a vehicle in commerce of any weight that requires hazmat placarding.
- 2. For 2009, 10% of an employer’s covered drivers must be randomly tested for alcohol and 50% for drugs.
- 3. For more information, see <http://www.dot.gov/ost/dapc/rates.html?prog>
- 4. Effective August 31, 2009, direct observation will be required for follow-up and return-to-duty urine tests – that is, tests for those who failed their prior tests. Direct observation of urine going from the body to the collection receptacle previously was required only for those suspected of tampering with their specimens. Initial and routine testing still does not require direct observation. A federal appellate court had stayed the direct observation requirement pending review, but eventually decided the requirement was neither arbitrary, capricious, nor an unconstitutional search and seizure.

E. Federal Highway Administration worker visibility rule.

- 1. Effective November 24, 2008, all workers within the right-of-way of a federal highway must wear high visibility safety apparel. 49 CFR 634.3.
- 2. Garments meeting ANSI 107-2004 Class 2 or 3 comply.

F. Unified Carrier Registration.

1. New law effective January 1, 2007. Now being enforced.
2. No regs yet. Law is Subtitle C of Public Law 109-59.
http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=109_cong_public_laws&docid=f:publ059.109.pdf
3. Unified Carrier registration is different from applying for DOT number.
4. You may not have received notification that you are required to register.
5. Federal UCR law covers all Commercial Motor Vehicles in interstate commerce that are
 - a. Over 10,000 gross weight, OR
 - b. Required to have hazmat placarding, OR
 - c. designed to transport 11 or more passengers.
6. Most states adopt identical language requiring registration for *interstate* commerce going through their states. Beware: interstate commerce includes taking vehicle across state lines for service on the vehicle. Note response to Question 6 at <http://www.fmcsa.dot.gov/rules-regulations/administration/fmcsr/fmcsrruletext.aspx?chunkKey=0901633480023260>.
7. States may have similar language requiring registration for *intrastate* commerce. Check your state law.
8. Citations may come from federal DOT for violation of federal law covering *interstate* commerce, from state for violation of state law covering *interstate* commerce, and from state for violation of state law covering *intrastate* commerce.
9. Feds set registration fees for interstate commerce registration, but states set violation fees. Beware!
10. States decide whether to participate in the registration process, but all interstate CMVs are required to register, even if your state does not have a registration procedure. See <http://www.ucr.in.gov/> for how to register.

III. Federal Emergency Management Agency and other Homeland Security Issues

- A. NRECA developed one-page Mutual Aid Agreement to meet old FEMA requirement for a ***pre-existing written*** mutual aid agreement in order for FEMA to reimburse expenses paid by one utility to another for disaster recovery. New FEMA requirement removes the pre-existing component, but written agreement still required. Existing NRECA agreement meets the new requirement.
- B. Over 900 NRECA members and almost 500 munis have signed.

See cooperative.com website for copy of Mutual Aid Agreement, list of all signatories, and downloadable copies of all signed Agreements.
- C. Also on website:
 1. ***An Electric Cooperative's Introduction to FEMA*** explaining some of the basics.

2. Letter to Association Counsel Jonathan Glazier, laying out the parameters of reimbursement for miscellaneous disaster expenses.
 3. Memorandum detailing legal authority for FEMA's flexibility in reimbursing reasonable costs of disaster recovery.
 4. Memorandum detailing legal authority for FEMA allowing replacement projects as Section 406 Mitigation measures. This can be an issue when wind resistant ACSR used to replace copper conductor.
- D. In the August 11, 2009 *Federal Register*, FEMA proposed regs to limit reimbursement for repetitive damage to facilities for which damage could have been prevented through mitigation. Comments due October 13, 2009.
- E. NRECA working with FEMA as it fashions electric utility specific guidance.
1. Numerous meetings with FEMA and workshops for NRECA members beginning July 2007. Hot topics included negotiating profit as separate element of third-party contracts, replacement/repair of conductor, use of time and material contracts, and use of non-competitively-bid contracts.
 2. On February 19, 2009 FEMA circulated a draft Fact Sheet addressing electric utility issues including time and materials contracts, when replacement of conductor is justified, acceptable replacement material for conductor, replacing conductor with wind-motion resistant conductor, treatment of RUS Bulletins, FEMA reimbursement for damage to private property by utilities, including rut repair.
 3. On April 15, 2009, NRECA submitted comments to FEMA on its draft Fact Sheet.
 - a. FEMA should reimburse cost of repairing damage to private property whether or not the property is on an easement.
 - b. FEMA should reimburse replacement of a single-phase of a multi-phase copper line with ACSR.
 - c. FEMA should reimburse replacement of conductor with ACSR of equal ampacity.
 - d. FEMA should not distinguish Emergency Work and Temporary Work based on whether the work is done to code.
 - e. FEMA should define many of the terms it uses in the Fact Sheet.
- F. Transportation security.
1. Transportation Security Administration created within Department of Homeland Security.
 2. TSA has power to issue regulations without notice and comment.
 3. January 25, 2007 Federal Register contains the regs addressing a Transportation Worker Identification Credential (TWIC). Those seeking unescorted access to secure areas of facilities covered by the Maritime Transportation Security Act will have to have a biometric identity card. April 15, 2009 was the deadline for obtaining the TWIC.

4. Some utilities – particularly those with power plants on navigable waterways – may have some workers who must hold a TWIC. More information at http://www.tsa.gov/what_we_do/layers/twic/index.shtm or call TSA TWIC Program Help Desk at (866) 347 8942. Each facility is different, so coordination with TSA and Coast Guard is important.
5. Increased emphasis now on hazardous materials rules. For example, new requirement for fingerprinting and background checks for CDL hazmat drivers.

IV. National Criteria for Job of Electric Power Lineman

- A. Effort underway to come up with a set of skills and knowledge that everyone agrees an electric power lineman should possess.
- B. Thought is that this will lead to training programs that will produce greater number of qualified linemen.
- C. Recognized criteria will also allow greater worker mobility and facilitate management assessment of job applicants.
- D. Industry and labor effort. Department of Labor involved as a consultant.

V. Lineworker Recruitment

- A. NRECA and other industry representatives have established the Center for Energy Workforce Development to develop lineworker recruitment programs in high schools and elsewhere. See <http://www.cewd.org/index.asp> and especially <http://www.getintoenergy.com/>.
- B. Project likely will involve some development of training modules.

VI. ANSI Z-590: Voluntary Standards Addressing Safety Professionals

- A. American National Standards Institute is the validation body for U.S. national consensus standards.
- B. ANSI draft standard Z-590.1, *Criteria for Establishing Levels of Competence and Certification in the Safety Profession*, proposed by the American Society of Safety Engineers.
- C. Under the proposal, only those meeting certain requirements could be called “safety professionals.”
- D. In written comments, NRECA calls the idea unfair, confusing and unnecessary. National Safety Council does not like it either.
- E. Similar problem with collateral standard Z-590.4, *Basic Format for Preparation of Resume (CVs) of Safety Professionals*. Neither Z-590.1 or Z-590.4 has been finalized.

- F. Now a final standard: Z590.2-2003, *Criteria for Establishing the Scope and Functions of the Professional Safety Position*. Available from ASSE: \$9.99. For more info, see the ASSE web site at <http://www.asse.org> or call (847) 699-2929.

VII. National Electrical Safety Code

- A. 2007 National Electrical Safety Code now available from IEEE: <http://standards.ieee.org/nesc/>. \$105 members; \$130 nonmembers.
- B. Requires employers to perform arc assessment and then insure that employees with “potential exposure” to an arc wear clothing rated to protect against that arc. At the request of NRECA and others, on December 19, 2008, IEEE issued an interpretation strongly implying that “potential exposure” means “likely exposure,” not just any exposure that is “theoretically possible”.
- C. Arc rated clothing requirement has effective date of January 1, 2009, if adopted by state, and if state does not change effective date.
- D. Because cotton and other natural fiber clothing cannot be arc-rated, natural fiber clothing cannot be counted in computing the total arc rating required by the NESC.
- E. Unclear at this point exactly how to determine the arc rating of a layered system. Annex M to 2009 NFPA 70E notes that “the total system arc rating cannot be determined by adding the arc ratings of the individual layers.”

VIII. National Electrical Code (NFPA 70)

- A. Covers, in part, “installations of conductors and equipment that connect to the supply of electricity.” But where does the “supply of electricity” start? Undefined.
- B. On June 6, 2007 NEC members voted, over utility objections, to remove exemption of NEC coverage for utilities doing work on private property. Intent was to have NEC apply to installations of lighting systems on private property. But there may be a bigger impact on utilities doing distribution work on, for example, military bases, hospitals, and universities.
- C. NRECA supported an appeal of the vote. Appeal was unsuccessful. As a result, 2008 NEC no longer has broad utility exemption. Unclear exactly what this will mean.
- D. Meanwhile states are adopting differing versions of NEC and there is talk of issuing a Temporary Interim Amendment to reverse the vote until the next permanent change of NEC.

IX. NFPA 70E

- A. For the most part, 70E sets out work rules for inside electrical work. Some 70E rules may be usable if they applied to generation work, but very difficult to adapt them to transmission and distribution work.

- B. Proposal to remove the utility exemption entirely, so that 70E would apply to all utility work. Many of the 70E work rules that suit inside electric work would be major issues for utilities.
- C. NRECA has commented against the removal of the exemption.
- D. Meanwhile, until there is a vote on removing the utility exemption entirely for 70E, the scope of the 2009 70E is set to coincide with the changed scope of 2008 NEC. That is, 2009 70E will have, at best, the diminished utility exclusion of 2008 NEC in those states that adopt the NEC with the changed scope.

X. Loss Control Internship

- A. Intensive four-week-long program.
- B. Classroom lectures, daily testing, group projects, final individual project.
- C. Expert instructors.
- D. Held in cooperation with University of Wisconsin in Madison. Leading to certification as a Loss Control Professional.
- E. Over 200 have become Certified Loss Control Professionals. Contact NRECA's Gary Pfann at (608) 441-7211.

XI. NRECA home page: <http://www.cooperative.com/>.

- A. Sign up as an NRECA Member.
- B. Copies of all comments submitted by NRECA to federal agencies and private standards organizations.
- C. Safety Community has back issues of *Safety Sentinel*, listserv, discussion board, FEMA material, Loss Control Internship info and much else of interest.