

Last Updated: August 3, 2009

The Department of Labor and Industry's Virginia Occupational Safety and Health (VOSH) Program and the Virginia Safety and Health Codes Board have adopted a final regulation for:

Reverse Signal Operation Safety Requirements for Vehicles, Machinery and Equipment for General Industry and the Construction Industry, 16 VAC 25-97

Effective Date and Training Materials:

The final regulation will take effect September 18, 2009, and the text of the final regulation, **along with free downloadable training and information materials** can be found on the Department's Web site (see: <http://www.doli.virginia.gov>). The final regulation is also being published in the Virginia Register of Regulations on August 17, 2009 (see: <http://legis.state.va.us/codecomm/register/issfiles.htm>).

Procedures for Obtaining Agency Interpretations.

All outside requests for interpretations of the regulation shall be referred to the VOSH Director at:

VOSH Safety Director
Virginia Department of Labor and Industry
13 South 13th Street
Richmond, VA 23219

Frequently Asked Questions

- 1. Will a truck delivering a refrigerator to a model home under construction be covered?**

Response: Any delivery truck operated on behalf of an employer will be covered under the regulation if there is no access to look out a rear window of the vehicle, as the dangers present are the same. If the vehicle is essentially a pick-up truck or flatbed with a refrigerator sitting in the back, and the cargo is completely blocking the rear window of the truck thereby creating a blind spot, then that would constitute an obstructed view to the rear and the truck would be covered by the regulation.

- 2. What about pick-up trucks with shells?**

Response: With the exceptions noted in the definition for "obstructed view to the rear" such as damaged windows, as long as the shell has a front and rear window that are not obstructed and they allow the driver to look directly out the rear window of the truck, then the truck would not have an obstructed view to the rear and would not be covered by the regulation.

3. What about forklifts?

Response: Most if not all forklifts carry the load on forks mounted on the front of the vehicle. If the driver is traveling in reverse with a full load on the front of the vehicle the load does not impact the determination of whether there is an obstructed view to the rear of the forklift.

4. What about rollers, including asphalt rollers and rubber tire rollers, including skid steer loaders.

Response: Rollers would typically not be considered to have an obstructed view to the rear because the operator can normally turn his head and look behind his vehicle through an opening in his cab – in fact many rollers don't even have a cab, so there could be no obstruction that could interfere with the driver's ability to look behind the vehicle as he was traveling in reverse. Rubber tire loaders as well normally have a glass enclosed cab that allows the driver to turn his head and look out the rear view window, so such vehicles would not normally be considered to have an obstructed view to the rear. Skid steer loaders, depending on the design, may or may not be considered to have an obstructed view to the rear, depending on the location of the driver's seat and any rear view window that the driver can look out of.

5. What about scrapers?

Response: Without any photos or video to view, the Department would consider many scrapers and many open cab construction vehicles to not have an obstructed view to the rear and not be covered by the standard because the driver can see directly behind the vehicle at ground level by looking through a rear view mirror, or by turning around and looking out the rear window/opening. In addition, according to federal OSHA interpretations, vehicles with rotating cabs are not considered to have an obstructed view to the rear since the operator can rotate the cab in the direction he is traveling.

6. If a back-up alarm is not working on a covered vehicle before it enters a worksite, can the general contractor refuse to allow the vehicle to enter until the alarm is fixed?

Response: The regulation provides in 16 VAC 25-97-30.C:

C. Where immediate correction is not feasible, covered vehicles equipped with a reverse signal alarm that is not operational or is not functioning properly shall be either:

1. operated in reverse only when a designated observer or ground guide signals that it is safe to do so; or
2. removed from service until the reverse signal alarm is repaired.

The above is designed to assure that malfunctioning reverse signal alarms are promptly repaired. A concern was expressed by some commenters to the regulation about what a general contractor is supposed to do if an independent dump truck driver attempts to enter a road construction site with a malfunctioning reverse signal alarm. One option mentioned by a commenter was to not allow the dump truck onto the work site. The Department agrees with that approach.

7. **What if a back-up alarm stops functioning after the covered vehicle is already on the work site and the alarm had been properly functioning when it entered the work site.**

Response: In such a circumstance, and in light of it being impossible for the employer to comply with the reverse signal alarm portion of the regulation on that day, it is permissible to operate the vehicle with only a designated observer/ground guide, but the malfunctioning alarm is then to be fixed immediately, as required by the regulation.

8. **Doesn't the regulation potentially require employers to hire hundreds, perhaps thousands, of new "designated observer/ground guides" that do not presently exist. That is the potential cost that has not been addressed, and it is substantial.**

Response: The Department does not believe that hundreds or thousands of new designated observer/ground guides would have to be hired to comply with the regulation. We believe that most employers who currently do not use designated observer/ground guides will take advantage of the exemption that enables the driver to operate in reverse without a designated observer/ground guide:

“Before operating the covered vehicle in reverse, the driver visually determines that no employee is in the path of the covered vehicle.”

The above language 16 VAC 25-97-30.2.b. is based on 1910.266(f)(2)(v) of the Logging Standard which provides:

“Before starting or moving any machine, the operator shall determine that no employee is in the path of the machine.”

The text was added to address potential cost issues associated with the exemption in the original proposed regulation from use of a designated observer/ground guide that would have allowed drivers to get out of the vehicle to determine that no employees are in the backing zone and that it is reasonable to expect that no employees will enter the backing zone. The change would also provide a level of consistency by providing drivers of covered vehicles in construction and general industry the same reverse operation option as provided drivers in the logging industry.

This change would also help to address situations like a driver pulling into a large shipping terminal and having to back-up to a loading dock – the change would allow the driver as he pulls in to determine that no employees are in the back-up area and then continue with back-up without having to get out of the vehicle. Finally, the Department also considered concerns expressed by construction contractors that significant costs could be incurred by the delays on large road building projects where a constant flow of dump trucks could result in each driver having to stop his vehicle, exit the cab to check for employees in the back-up zone, re-enter the cab and proceed with reverse operations for hundreds of yards.

For those employers that send delivery/trade trucks out with only one person, as noted above, those employers/drivers can take advantage of the exemption. If the single employee drives onto a worksite with other employers working in the area and chooses to request, as many do currently, assistance from an employee of another contractor on site to act as the designated observer/ground guide" there is nothing in the regulation to prohibit that practice. The employer of the driver would not be required to hire or train a designated observer/ground guide just to accompany their single driver, nor would it be that employer's responsibility to train the other contractor's "designated observer/ground guide.

What the Department wants to accomplish with the regulation is to change current behaviors that cause these deaths and debilitating accidents. Without exception, every reverse signal operation fatality involves the driver either not knowing anyone is in the back-up zone or losing site of someone he knows is in the back-up zone and proceeding anyway. Under the current federal OSHA regulations, as long as a covered vehicle has a functioning back-up alarm, the burden of avoiding an accident is placed squarely on the shoulders of the pedestrians in the traffic area. No real safety responsibility is placed on the driver while operating the vehicle other than to make sure the back-up alarm is working. A driver can back-up without even checking his side mirrors under the current regulations.

The regulation will place a positive responsibility on the driver to either keep the designated observer/ground guide in sight at all times during reverse operations, or in the absence of a designated observer/ground guide, to visually determine that no one is in the back-up zone prior to beginning reverse operations of the vehicle.

- 9. We are concerned about vehicle owner-operators making deliveries to jobsites. First, we are not certain if these individuals are even subject to VOSH regulations since they are sole proprietors with no employees. Regardless, you could have an instance where an independent operator who has not been trained makes a delivery to the jobsite and is cited for non-compliance. The controlling contractor would likely be cited, too under the multi-employer policy. Considering how the industry operates for the delivery of crushed stone from a quarry, for instance, this could be a problem. Or, for that matter, a UPS truck making a delivery at the jobsite could be subject to this requirement. The end result could conceivably be to require the addition of employees at all possible entrances to the jobsite to turn away**

any drivers who have not been trained. Again, extra expense for the contractor with very little improvement in jobsite safety.

Response: With regard to the concern that vehicle owner-operators or UPS drivers making deliveries to jobsites, there some jurisdictional issues. If the owner/operator is a sole owner of the company (not incorporated, not a partnership), and has no employees, then VOSH laws, standards and regulations do not apply. While VOSH does have a multi-employer worksite citation policy, it does not use it to enforce against a general contractor training provisions for employees of subcontractors. So, if the sole-ownership vehicle operator/owner was not trained in the regulation, VOSH would not cite the general contractor for that lack of training.

- 10. What about personal liability for operators when they make a determination that no employees are in the path of the covered vehicle. While they may not be subject as an individual to a VOSH citation, will they be assuming some potential liability.”**

Response: Language in 16 VAC 25-97-30.A.2.b. (“Before operating the covered vehicle in reverse, the driver visually determines that no employee is in the path of the covered vehicle.”), is based on a current provision from the federal OSHA Logging Standard, 1910.266. The Department is not aware of any liability issues with regard to the Logging Standard provision that did not already exist in statutory or common law. If an accident occurs “off road” then VOSH regulations will apply as will existing Workers’ Compensation laws and regulations. If an accident occurs on the highway or a street, the same laws and regulations will apply, along with existing traffic regulations that are enforced by police and sheriff’s department around the state.

- 11. Will the Department use the “retrofit” language in 16 VAC 25-97-30.B to mandate that all trucks operating in Virginia that do not currently have a back-up alarm be retrofitted with one?**

Response: The language referred to provides:

“Covered vehicles that were not equipped with a reverse-signal alarm upon manufacture or were not later retrofitted with an alarm are exempt from subdivision A.1 of this section. If the manufacturer of the covered vehicle offered the employer a reverse signal alarm retrofit package at a reasonable and economically feasible cost and the employer did not have the retrofit package installed, this exemption does not apply.”

The Department will not use this provision to mandate retrofitting of all trucks with back-up alarms. The only trucks that would be subject to this provision are where the Department can prove that not only was there a retrofit package available from the specific manufacturer of the vehicle, but that it was specifically offered to the individual employer for the specific vehicle, and that the employer refused it. The above requirements pose a very difficult standard of proof to meet in a courtroom, and any use of

the section would be a very rare occurrence. To the best knowledge of Department staff over the last 23 years there has not been a single instance of this issue of a retrofit package for either a seat belt on a forklift or for a back-up alarm on a vehicle.

Virginia Department of Labor and Industry