

Proposed paragraph (c)(2) excluded power shovels, excavators, wheel loaders, backhoes, loader backhoes, and track loaders. It provided that such machinery is also excluded when used with chains, slings or other rigging to lift suspended loads. These types of material handling machinery were excluded even though, when used to lift suspended loads, they present hazards similar to those associated with equipment covered by the proposed rule. However, C-DAC proposed to exclude them because it determined that the differences between the equipment included in the standard and the material handling machinery that is excluded are such that one standard could not be readily designed to suit both. OSHA agrees. It should be noted that another construction standard, § 1926.602 in subpart O – Motor Vehicles, Mechanized Equipment, and Marine Operations, covers the material handling equipment that is excluded from this standard. No comments were received concerning paragraph (c)(2), and it is promulgated as proposed.

Proposed paragraph (c)(3) excluded automotive wreckers and tow trucks “when used to clear wrecks and haul vehicles” (see explanation at 73 FR 59729, Oct. 9, 2008). No comments were submitted on this paragraph, and it is promulgated as proposed for the reasons provided in the preamble to the proposed rule.

Proposed paragraph (c)(4) would have excluded service trucks with mobile lifting devices that are designed specifically for use in the power line and electric industries when those trucks are used either to auger holes to set power and utility poles or to handle associated materials that will be installed or removed from utility poles. A digger derrick, or radial boom derrick, is an example of such a truck.

This machinery is currently covered by subpart N, with the exception of certain provisions, by virtue of § 1926.952(c). We note that ASME B30.5-2004 excludes digger derricks and “cranes manufactured specifically for, or when used for, energized electrical line service” from the scope of that industry consensus standard.

Digger derricks are a specialized type of equipment designed to install utility poles. They are equipped with augers to drill holes for the poles and with a hydraulic boom to lift the poles and set them in the holes. The booms can also be used to lift objects other than poles, and electric utilities use them both to place objects on utility poles and for general lifting purposes at worksites such as utility substations. (ID -0139.1.) Digger derricks have rated capacities as high as 36,000 pounds. (ID -0369.1.) When electric utilities are finished with them, they sell them to other construction companies. (ID -0341.)

Since its promulgation in 1972, subpart V (“Power Transmission and Distribution”) has excluded digger derricks from certain requirements of subpart N. C-DAC considered whether to continue special treatment of digger derricks used in subpart V work and proposed to exclude digger derricks used in Subpart V work from the standard to the extent they are used to auger holes and to handle associated materials to be installed on or removed from utility poles. C-DAC determined that such an exclusion was appropriate because of the “narrow, specialized range of activities and circumstances in which such trucks are used” (73 FR 59729, Oct. 9, 2008).

Most of the commenters on this issue favored an exclusion for digger derricks but asked that the proposed exclusion be broadened to all uses of digger derricks by electric utilities. (ID -0129.1; -0139.1; -0144.1; -0162.1; -0200.1; -0215.1; -0217.1; -0226.)

Several noted that the proposed exclusion would lead to the incongruous result in that digger derricks would move in and out of coverage depending on the task they are performing. Noting that most of the exclusions developed by C-DAC applied to types of equipment rather than specific tasks, a commenter stated that C-DAC contradicts itself by proposing a task-related exclusion instead of an equipment-related exclusion. (ID -0200.1.) One commenter recommended that the proposed exclusion be extended to the setting and removal of poles. (ID -0209.1.) Another opposed any exclusion for digger derricks because digger derricks work in proximity to power lines. (ID -0092.20.)

Some commenters suggested that any exclusion for digger derricks should also apply to other industries. One stated that a similar exclusion should apply to digger derricks used to auger holes and set poles in the telecommunication industry. (ID -0234.) Another contended that it would be inconsistent to exclude a digger derrick used to set an electric utility pole but not a telecommunications pole. (ID -0129.1.) The same commenter also said that digger derricks are used to set poles for outdoor lighting along roadways and indicated that the exclusion should apply to such use. A commenter in the railroad industry said that the exclusion should apply to digger derricks used in the railroad industry to install utility and communication signal poles. (ID -0176.1.)

Certain commenters criticized the description of the equipment in proposed paragraph (c)(4), which described the equipment subject to the exclusion as “service trucks with mobile-lifting devices designed specifically for use in the power line and electric service industries, such as digger derricks (radial boom derricks).” One objected to the limitation that the equipment be “designed specifically for use in the power line and electric service industries” on the basis that employers should not be required to

show the purpose for which their equipment is designed. (ID -0215.1.) Another, a witness at the public hearing, stated that the term “service truck” used in the proposal has no commonly understood meaning in the industry. (ID -0342.)

OSHA agrees with these commenters that the description of the excluded machinery should be clarified and is using the term “digger derrick” exclusively to describe the equipment that is subject to the exclusion. The term “digger derrick” is well understood in the industry and is the only term used to describe the equipment by the ANSI standard applicable to such equipment, ANSI/ASSE A10.31-2006, Safety Requirements, Definitions, and Specifications for Digger Derricks. Accordingly, OSHA concludes that using “digger derrick” without reference to the purpose for which the equipment is designed or synonyms such as “service truck” is the clearest way to describe the exclusion. The Agency notes that despite its name, a “digger derrick” is not a “derrick” as defined in § 1926.1436(a). Thus, the additional requirements applicable to derricks in § 1926.1436 do not apply to digger derricks, and the exception from operator certification requirements in § 1926.1427(c) for derrick operators does not apply to operators of digger derricks included within the scope of § 1926 subpart CC.

OSHA also agrees with the majority of commenters who argued that the exclusion should be broadened so that it encompasses all digger derrick work on electric utility poles. Digger derricks are specifically intended to be used for augering holes for utility poles, placing the poles in the holes (and removing them when necessary), and handling materials being installed on or removed from the poles. Excluding all of these uses will minimize the incongruous result of having digger derricks move in and out of coverage while they are being used for their intended purposes at the same worksites. OSHA also

agrees with those commenters who argued that the exclusion should encompass similar work on poles carrying telecommunication lines, since the rationale described above is equally applicable.

In addition, OSHA has drafted the exclusion in the final rule so that it is based on the type of work done with the digger derrick, rather than the industry classification of the employer performing the work. For example, digger derricks used by a railroad to install poles for telecommunication lines would be excluded.

When digger derricks are used in the operation and maintenance of existing electric power lines, they are subject to the general industry standard at § 1910.269. OSHA is currently conducting another rulemaking designed to avoid inconsistencies between subpart V of the construction standards, which applies to power line construction work, and § 1910.269 (see 70 FR 34821, Jun. 15, 2005). Pending the completion of that rulemaking, digger derricks excluded from this rule will be subject to the same requirements regardless of whether they are used for work subject to subpart V or work subject to § 1910.269. To ensure that digger derricks excluded from this rule (Subpart CC) are subject to appropriate safety requirements, OSHA is including language in § 1926.1400(c)(4), and is amending subpart V, to explicitly state that the activities from which digger derricks are excluded from subpart CC are subject to applicable provisions of § 1910.269. Those rules include § 1910.269(p) (mechanical equipment), § 1910.269(a)(2) (training), and § 1910.269(l) (work on or near exposed energized parts).

Similarly, digger derricks used in general industry telecommunication work are subject to the general industry standard at § 1910.268. Section 1910.268 includes requirements for working near energized power lines and requirements pertaining to the

operation of the equipment, such as the need to comply with manufacturer load ratings. The requirements applicable to digger derricks under the general industry telecommunications standard (§ 1910.268) are comparable to those in the general industry electric utility standard (§ 1910.269). Accordingly, to ensure that comparable safety requirements apply to digger derricks during pole work, OSHA is including language in final § 1926.1400(c)(4) stating that § 1910.268 applies when digger derricks are used in construction work for telecommunication service. Section 1910.268 includes requirements for working near energized power lines and requirements pertaining to the operation of the equipment, such as the need to comply with manufacturer load ratings.

In addition, § 1926.952(c)(2) is also being amended to conform subpart V to § 1926.1400(c)(4).

While OSHA agrees that the limited exclusion recommended by C-DAC should be broadened in this manner, the Agency does not agree that the exclusion should encompass all uses of digger derricks in electric utility construction work, as some commenters suggested. Digger derricks are specifically designed to be used to install and remove utility poles. However, their lifting ability is not limited to utility poles, and the record shows that they are used by electric utilities for general lifting work, such as setting transformers in substations.

Their use with utility poles falls within the “narrow, specialized range of activities and circumstances” that led C-DAC to develop the proposed exclusion (see 73 FR 59729, Oct. 9, 2008). But when digger derricks are used for general lifting purposes, the hazards are the same as when other equipment of similar capacity is used for general lifting, and the exclusion developed by C-DAC is not appropriate for such work. OSHA determines

that an exclusion limited to augering holes, setting and removing poles from those holes, and handling associated material to be installed on or removed from the poles will provide employees with an appropriate level of protection while accommodating the unique uses for which digger derricks are designed. It will also minimize the practical problems associated with equipment moving in and out of coverage at the same worksite.

OSHA recognizes that excluding digger derricks only when they are used for pole work would mean that the same machinery might be excluded for some work but covered when it is used at different worksites. However, the general lifting work done at those other worksites would be subject to this standard if done by other types of lifting equipment, and the same standards should apply as apply to that equipment. OSHA concludes that excluding digger derricks only for the work for which they are primarily designed and used is a reasonable approach. It accommodates the considerations that led C-DAC to propose a partial exclusion while treating digger derricks used for other construction work the same as other, similar equipment used for such work.

OSHA also declines to extend the exclusion broadly to installation of all poles for outdoor lighting along roadways, as one commenter suggested. OSHA notes that some poles that carry electric and telecommunication lines also have street lights installed on them, and use of digger derricks to install such lights would qualify for the exclusion to the extent that the employer complies with either §§ 1910.268 or 1910.269. It is unclear whether, and to what extent, digger derricks are used to install other types of poles used for lighting alone which do not carry electric power lines or telecommunication lines. Many such poles are installed on aboveground concrete bases rather than set in holes in the ground, and it is unclear whether and to what extent digger derricks are used to install

them. In this regard, OSHA notes that the commenter asking for the exclusion to be extended to light poles represents equipment manufacturers, and no company that installs lighting poles suggested such an exclusion. To the extent that some light pole installation would not be covered by either §§ 1910.268 or 1910.269, extending the exclusion to such work would leave the excluded work without coverage by an appropriate general industry standard and leave workers without the protection they receive when performing electric utility or telecommunication work.

OSHA disagrees with the comment that digger derricks should not be excluded at all because of the danger of power line contact. As discussed above, the digger derrick exclusion is limited to situations in which certain general industry standards apply, and those general industry standards, both §§ 1910.268 and 1910.269, contain requirements for protecting against power line contact.

Proposed paragraph (c)(5) specifically excludes machinery originally designed as vehicle mounted aerial lifts and self-propelled elevating work platforms. The language of this provision reflects C-DAC's intent to differentiate between equipment with an attachment such as a personnel platform pinned to the boom, which is within the scope of the proposed rule, and machinery originally designed to be configured only as an aerial lift, which is excluded. Another standard, § 1926.453, addresses aerial lifts. The only comments to address this exclusion supported retaining it. (ID -0129.1; -0312.1.)

Accordingly, paragraph (c)(5) is promulgated as proposed.

Proposed paragraph (c)(6) excluded telescopic/hydraulic gantry systems. C-DAC excluded this machinery because it presents hazards that differ in many respects from those presented by the equipment covered by this standard. As a result, many provisions