

ICC News

OSHA seeks comments on recognition of IBC/IFC for egress requirements

The Occupational Safety and Health Administration (OSHA) of the U.S. Department of Labor has issued an Advance Notice of Proposed Rulemaking (ANPRM, see below) that includes a request for public comment on an official finding that the International Building Code (IBC) and the International Fire Code (IFC) have provisions at least equal to OSHA's rules for egress. This recognition would allow employers to demonstrate compliance with OSHA's rules for egress as a product of complying with the IBC and the IFC. In November of 2005 ICC requested this recognition in an effort to eliminate redundant regulation in the built environment and to more closely coordinate the work and goals of OSHA with those of local and state building and fire code officials and inspectors. Based on evidence provided by the ICC, OSHA has made a preliminary finding of equivalency.

Though the proposed rulemaking is 8 pages, this provision is specifically addressed in the first two columns of page 76625. On this point, OSHA requests input on 3 specific questions:

- 1) Do the combined egress provisions of the IBC and IFC offer equivalent protection to OSHA's Subpart E?
- 2) Are there other alternative national building codes that OSHA should consider?
- 3) Would allowing the use of the IBC and IFC as an equivalent to Subpart E help employers reduce costs?

The ICC is preparing comments in response to OSHA's request and in support of the finding of equivalency. We ask for your review of this NAPRM and consideration of submission of comments on behalf of yourself and/or your organization. The deadline for public comment is February 20, 2007.

Please [use this link](#) to send the ICC an email requesting an advance copy of ICC's comments (week of February 12th), and to be advised of further developments regarding this rulemaking.

imprisonment, you may be eligible for a reduction in sentence if:

(1) You meet the medical conditions described in § 571.62; or

(2) You are 65 years of age or older, have a chronic infirmity, illness, or disease related to aging, and releasing you under supervision would not endanger public safety.

(b) *Exclusions.* You are *not* eligible for medical or geriatric parole if:

(1) The physical or medical condition was known to the court at the time of sentencing, or

(2) You are serving a term of imprisonment imposed pursuant to the District of Columbia Official Code §§ 22–2803(c) (carjacking), or 22–2104(b) (first degree murder).

§ 571.70 How to request a reduction in sentence under the D.C. Code.

(a) *D.C. Code offenders with indeterminate (parolable) sentences* may request a reduction in sentence either by following the procedures in §§ 571.63 and 571.64, or by sending the request directly to the United States Parole Commission (USPC).

(b) *D.C. Code offenders with determinate (non-parolable) sentences* may request a reduction in sentence only by following the procedures in §§ 571.62 and 571.63.

§ 571.71. Evaluating a request for RIS by a D.C. Code Offender.

Other than applying different eligibility requirements (described in § 571.69), in evaluating a RIS request by a D.C. Code offender who committed a felony before August 5, 2000, the Bureau will follow the same criteria and procedures set forth for federal prisoners in §§ 571.62 through 571.67.

§ 571.72 Ineligibility for reduction in sentence.

You are NOT eligible for a reduction in sentence if you are:

(a) A state prisoner housed in a Bureau facility; or

(b) A federal offender who committed an offense before November 1, 1987, and serving a non-parolable sentence; or

(c) A military prisoner housed in a Bureau facility.

Subpart H—Designation of Offenses for Purposes of 18 U.S.C. 4042(C)

§§ 571.71 and 571.72 [Redesignated]

3. Redesignate §§ 571.71 and 571.72 as §§ 571.81 and 571.82, respectively.

PART 572—PAROLE

4. Revise the authority citation for 28 CFR part 572 to read as follows:

Authority: 5 U.S.C. 301; 18 U.S.C. 4001, 4042, 4081, 4082 (Repealed in part as to

offenses committed on or after November 1, 1987), 4205, 5015 (Repealed October 12, 1984 as to offenses committed after that date), 5039; 28 U.S.C. 509, 510; 28 CFR 1.1–1.10.

5. Revise § 572.40 in Subpart E to read as follows:

§ 572.40 Reduction in Sentence under 18 U.S.C. 4205(g).

18 U.S.C. 4205(g), repealed effective November 1, 1987, remains the controlling law for inmates who committed offenses before that date. 18 U.S.C. 3582(c)(1)(A) is the controlling law for inmates who committed offenses on or after November 1, 1987. Procedures for a RIS under either statute are in 28 CFR part 571, subpart G.

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DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Parts 1910, 1915, 1917, 1918, 1919 and 1926

[Docket No. S–778B]

RIN 1218–AC19

Standards Improvement Project, Phase III

AGENCY: Occupational Safety and Health Administration (OSHA), Department of Labor.

ACTION: Advance Notice of Proposed Rulemaking (ANPRM).

SUMMARY: OSHA routinely conducts reviews of its existing safety and health standards to improve and update them. As part of this ongoing process, OSHA is issuing this ANPRM to initiate Phase III of the Standards Improvement Project (SIPs III). SIPs III is the third in a series of rulemaking actions intended to improve and streamline OSHA standards by removing or revising individual requirements within rules that are confusing, outdated, duplicative, or inconsistent. These revisions maintain or enhance employees' safety and health, while reducing regulatory burdens where possible.

OSHA has already identified a number of provisions that are potential candidates for inclusion in SIPs III. These candidates include recommendations received from the public in other rulemakings. The purpose of this notice is to invite comment on these recommendations, as well as provide an opportunity for commenters to suggest other candidates

that might be appropriate for inclusion in this rulemaking. OSHA will use the information received in response to this notice to help determine the scope of SIPs III.

DATES: Comments must be submitted by the following dates:

Hardcopy: Your comments must be submitted (postmarked or sent) by February 20, 2007.

Facsimile and electronic transmission: Your comments must be sent by February 20, 2007.

ADDRESSES: You may submit comments and additional material, identified by OSHA Docket No. S–778B, by any of the following methods:

Electronically: You may submit comments, and attachments electronically via the Federal eRulemaking Portal at <http://www.regulations.gov>. Follow the instructions online for making electronic submissions.

Facsimile (FAX): If your comments, including any attachments, are 10 pages or fewer, you may fax them to the OSHA Docket Office at (202) 693–1648.

Mail, hand delivery, express mail, and messenger or courier service: You must submit three copies of your comments and attachments to the OSHA Docket Office, Docket No. S–778B, Room N–2625, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–2350 (OSHA's TTY number is (877) 889–5627). OSHA Docket Office and Department of Labor hours of operations are 8:15 a.m. to 4:45 p.m., e.t.

Instructions: All submissions received must include the Agency name and OSHA docket number (S–778B) for this rulemaking. Submissions, including any personal information you provide, are placed in the public docket without change and may be made available online at <http://www.regulations.gov>. For further information on submitting comments plus additional information on the rulemaking process, see the “Public Participation” heading of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: For access to the docket to read or download submissions, comments, or other material, go to <http://www.regulations.gov>, or the OSHA Docket Office at the address above. All documents in the docket are listed in the <http://www.regulations.gov> index, however, some information (e.g., copyrighted material) is not publicly available to read or download through the Web site. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office.

FOR FURTHER INFORMATION CONTACT:
Press inquiries: Kevin Ropp, OSHA Office of Communications, Room N-3647, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; telephone: (202) 693-1999.
General and technical information: Michael Seymour, Office of Physical Hazards, OSHA Directorate of Standards and Guidance, Room N-3718, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; telephone: (202) 693-1950.

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I. Background

OSHA wants to improve confusing, outdated, duplicative, or inconsistent requirements in its standards. Improving OSHA standards will help employers better understand their obligations, which will lead to increased compliance, ensure greater safety and health for employees, and reduce compliance costs. In addition, this action will allow OSHA to recognize newer and more flexible ways of achieving the intent of the standards.

OSHA's effort to improve standards began in the 1970s, not long after the first set of standards was issued. In 1973, OSHA issued proposals to clarify and update rules that had originally been adopted by the Agency as "initial" standards. In 1978, OSHA published the Selected General and Special (Cooperage and Laundry Machinery, and Bakery Equipment) Industry Safety

and Health Standards: Revocation (43 FR 9831). Commonly known as the Standards Deletion Project, this was a comprehensive final rule revoking hundreds of unnecessary and duplicative requirements in the General Industry Standards (part 1910). Another rulemaking in 1984 titled the Revocation of Advisory and Repetitive Standards (49 FR 5318) resulted in the removal of many repetitive and unenforceable requirements. These rulemaking actions were primarily directed at removing standards that were: (1) Not relevant to employee safety; that is, the standards addressed public safety issues; (2) duplicative of other standards found elsewhere in the general industry standards; (3) otherwise considered a "nuisance" standard; that is, one having no merit or employee safety and health benefits; or (4) unenforceable due to legal considerations.

In 1996, in response to a Presidential Memorandum on Improving Government Regulations, OSHA began another series of rulemaking improvement actions. Patterned after the earlier rulemaking actions, the new effort was designed to identify and then revise or eliminate standards that were confusing, outdated, duplicative, or inconsistent. This effort also included standards that could be rewritten in plain language. In the first action, Miscellaneous Changes to General Industry and Construction Standards (61 FR 37849), otherwise known as the Standards Improvement Project (SIPs I), OSHA focused on revising standards that were out of date, duplicative, or inconsistent.

The final rule on SIPs I was published on June 18, 1998 (63 FR 33450). Changes made in SIPs I included reducing the frequency of a medical testing requirement and eliminating an unnecessary or obsolete medical test required in both the coke oven and inorganic arsenic standards; changing the emergency-response provisions of the vinyl chloride standard; eliminating the public safety provisions of the temporary labor camp standard; and eliminating unnecessary cross-references in the textile industry standards. All of these improvements were made without reducing employee safety and health protection.

In 2002, OSHA published a proposed rule for Phase II of the Standards Improvement Project (SIPs II) (67 FR 66494). In that notice, OSHA proposed to revise a number of provisions in health and safety standards that had been identified by commenters during SIPs I or that the Agency had identified as standards in need of improvement.

In the final rule on SIPs II, published on January 5, 2005 (70 FR 1111), the Agency revised a number of health standards to reduce regulatory burden, facilitate compliance, and eliminate unnecessary paperwork without reducing health protections. The improvements made by SIPs II addressed issues such as employee notification of the use of chemicals in the workplace, frequency of exposure monitoring, and medical surveillance.

In addition to the SIPs initiatives, OSHA has a related but separate rulemaking process, the Consensus Update Project initiated on November 24, 2004 (69 FR 68283), to update OSHA standards that are based on, or reference national consensus standards. Many of OSHA's rules were adopted under a two-year statutory authority that allowed the new Agency to incorporate existing national consensus standards into its body of regulations without notice and comment rulemaking. National consensus standards are generally updated on a regular cycle, and thus the rules initially adopted by OSHA are often out-of-date. To update these rules based on the updated consensus standards requires rulemaking. OSHA is using a number of different rulemaking approaches to update as many of these rules as possible.

The rules that are addressed in SIPs rulemakings are not simply consensus standards updates. Some of the suggestions that were received in previous SIPs rulemakings are currently being addressed in either specific rulemaking projects for updating of the rule involved (e.g., a complete revision of the explosives standard is currently on the regulatory agenda), or will be addressed in the consensus standards update process. Therefore, it is likely that any comments or suggestions related exclusively to consensus standards that are submitted in response to this request will be considered under the consensus standards update project rather than the SIPs rulemaking.

OSHA has identified numerous standards as potential candidates for improvement in SIPs III based on the Agency's review of its standards, suggestions and comments from the public, or recommendations from the Office of Management and Budget (OMB). The OMB recommendations were based on comments they received on Regulatory Reform of the U.S. Manufacturing Sector (2005).¹ Many commenters during the SIPs II

¹ To view the full Regulatory Reform report, please visit: http://www.whitehouse.gov/omb/inforeg/reports/manufacturing_initiative.pdf.

rulemaking process applauded the SIPs process and OSHA for its “efforts to streamline and improve its health standards by removing or revising requirements that are outdated, duplicative, or inconsistent” (Ex. 3–5, 3–10, 3–11, and 3–13 to Docket S–778A).

Because the Agency has identified numerous candidate standards for improvement and stakeholders have encouraged the Agency to continue this effort, OSHA has determined to proceed with Phase III of SIPs. As already noted, SIPs III will proceed at the same time that the Agency updates consensus standards in a separate project. In SIPs III, OSHA’s objective is to modify individual provisions of standards by removing or revising requirements of standards that are confusing, outdated, duplicative, or inconsistent without reducing employees’ safety and health or imposing any additional economic burden. As in the earlier rulemakings, the Agency seeks help from the public to identify standards that are in need of improvement based on this objective. While commenters may suggest extensive changes or major reorganization of some standards, suggestions that require a large-scale revision of a standard may not be appropriate for this rulemaking. The Agency will determine whether such large-scale changes are addressed in SIPs III, in the Consensus Update Project, or in a future rulemaking dedicated to the specific issues raised by commenters.

II. Request for Information, Data, and Comments

OSHA requests the public to identify standards that are in need of improvement because they are confusing, outdated, duplicative, or inconsistent. In addition, the agency is considering the following changes in SIPs III. When commenting on the issues below, OSHA requests that you reference the issue number, explain your rationale, and provide, if possible, data and information to support your comments.

A. Compliance with NFPA 101–2000, Life Safety Codes (§ 1910.35)

On May 19, 2004, OSHA received a petition from the International Code Council (ICC) to revise Subpart E—Exit Routes. This standards development organization proposed that OSHA consider allowing employers to demonstrate compliance with the egress provisions of Subpart E by following its International Building Code (IBC) and International Fire Code (IFC), just as OSHA currently permits employers to

demonstrate compliance by following the egress provisions of the National Fire Protection Association (NFPA) 101, Life Safety Code (2000 edition). The IBC and IFC are not currently referenced by OSHA.

The preamble to OSHA’s 2002 plain language update of Subpart E (67 FR 67949–67965) explains that OSHA declined to extend recognition to the building codes² at that time because there were three different model building codes used in the country. That situation has changed significantly. First, the three former building codes have evolved into a single code, the IBC. Secondly, OSHA has made a preliminary determination that the egress provisions of the IBC and IFC, when applied together, offer employee protection equal to the Subpart E provisions.

Some jurisdictions in the country adopt the ICC codes for building construction and fire prevention purposes, while NFPA codes are used in other jurisdictions. OSHA believes employees, employers, the building industry, and code officials may all benefit from OSHA allowing either alternative. Therefore, OSHA is considering the recognition of the combined egress provisions of the IBC and IFC as an alternative equivalent to Subpart E.

1. Do the combined egress provisions of the IBC and IFC offer equivalent protection to OSHA’s Subpart E?

2. Are there other alternative national building codes that OSHA should consider?

3. Would allowing the use of the IBC and IFC as an equivalent to Subpart E help employers reduce cost?

B. Subpart H—Hazardous Materials—Flammable and Combustible Liquids (§ 1910.106) and Spray Finishing Using Flammable or Combustible Materials (§ 1910.107)

On December 1, 2001, the National Marine Manufacturers Association petitioned OSHA to update § 1910.107 to reference portions of the 1995 edition of NFPA 33—Standard for Spray Application Using Flammable or Combustible Materials. This edition of NFPA 33 was the first to include a composites manufacturing chapter. This chapter includes less stringent provisions than previous editions of NFPA 33 that formed the basis for § 1910.107. These less stringent 1995 provisions presumed a lower degree of hazard in the process of composites spraying. Subsequently, OSHA staff witnessed field tests at the request of the

industry to demonstrate the hazard level; these tests were inconclusive.

OSHA received a second petition on August 17, 2004, from the American Composite Manufacturers Association (ACMA). ACMA petitioned OSHA to adopt certain sections of the “current” versions of NFPA 33 as well as NFPA 30—Flammable and Combustible Liquids Code. At that time, the current versions of those NFPA standards were the 2003 editions. NFPA 33 retained the specific provisions for composites spraying through its 2003 edition. ACMA noted in their petition, that the newer NFPA standards “* * * reflect significant advances in understanding the hazards presented by many of the covered operations.” They further noted “* * * NFPA 33 now contains fire protection standards specifically designed for composites manufacturing operations which recognize the inherently lower degree of hazard inherent in these operations.”

On June 17, 2004, ACMA testified on this issue to the Subcommittee on Regulatory Reform and Oversight of the Small Business Committee, U.S. House of Representatives. Additionally, the National Association of Manufacturers and the National Marine Manufacturers Association subsequently submitted a reform nomination³ to OMB. Both the testimony and the reform nomination requested recognition of the more “current” NFPA 33 provisions, but did not request recognition of NFPA 30. The 2003 editions of NFPA 30 and 33 remain the most current, however, NFPA is in the process of revising both these standards, with the next anticipated editions being 2007.

OSHA is considering whether or not NFPA 30 and NFPA 33 are equivalent to the existing provisions in § 1910.106 and § 1910.107. As mentioned above, OSHA had attended a presentation to demonstrate that the new NFPA provisions were equivalent, however the demonstration did not prove to be conclusive. In addition, there is a lack of data that OSHA can rely on to draw conclusions. With this, OSHA cannot conclude at this time that NFPA 30 and NFPA 33 provide protection for employees equivalent to § 1910.106 and § 1910.107. OSHA hopes that commenters can provide data to help

³ In OMB’s draft 2004 Report to Congress on the Costs and Benefits of Federal Regulation, OMB requested public nominations of specific regulations, guidance documents and paperwork requirements that, if reformed, could result in lower costs, greater effectiveness, enhanced competitiveness, more regulatory certainty and increased flexibility. See Reference Number 153 addressing flammable liquids in the Regulatory Reform report at: http://www.whitehouse.gov/omb/inforeg/reports/manufacturing_initiative.pdf.

² Uniform, Southern, and BOCA Building Codes.

the Agency determine what course of action to take.

As mentioned above, OSHA intends to update its standards that reference outdated consensus standards. As part of that process, it is anticipated that § 1910.106 and § 1910.107 will be updated in their entirety sometime in the future. In this ANPRM, however, OSHA is exploring the idea of amending § 1910.106 and § 1910.107, at this time, to allow employers to comply with the 2003 editions of NFPA 30 and 33 until the more extensive revision is completed. Making this change now, as part of the SIPs III effort, would allow employers engaged in composites manufacturing operations to follow the newer provisions of the NFPA 33. However, the Agency is concerned that the new NFPA 33 may not provide employee protection equivalent to the existing standard. OSHA believes additional information regarding the equivalency of the employee protection afforded by the newer requirements for composite spraying is needed. While OSHA's *de minimis* policy would allow employers to comply with the more current versions of consensus standards applicable to their work, employers must be able to demonstrate that complying with the consensus standard is as protective as following the OSHA standard. In the case of composite sprayings, ACMA noted that they were aware of the *de minimis* policy but that, in their experience, they have had problems demonstrating that the newer standard provides equivalent protection. ACMA stated that “* * * some of our member companies have been able to successfully appeal citations to OSHA supervisors, but such appeals are time consuming and expensive, and are often intimidating to small business owners” [ACMA 2004 petition]. Updating the OSHA standard to reference the newer NFPA standards would eliminate any confusion or inconsistency as to the employer's obligation. OSHA is particularly interested in comment on the following:

4. Are the provisions in the 2003 edition of NFPA 30 as protective or more protective of employees' safety and health than the equivalent provisions in § 1910.106? Should OSHA revise § 1910.106 to be consistent with these provisions? Please submit specific available information or data supporting your comments.

5. Are the provisions in the 2003 edition of NFPA 33 as protective or more protective of employees' safety and health than the equivalent provisions in § 1910.107? Should OSHA revise § 1910.107 to be more consistent with these provisions? Please submit

specific available information or data supporting your comments.

C. Subpart I—Personal Protective Equipment—General Requirements (§ 1910.132 and § 1915.152)

In 1994, OSHA revised the general industry safety standards regarding personal protective equipment (PPE) “to be more consistent with the current consensus regarding good industry practices, as reflected by the latest editions of the pertinent American National Standards Institute (ANSI) standards” (59 FR 16334). The revision includes a requirement for employers to perform a hazard assessment that would provide the information necessary for the employer to select the appropriate PPE for employees and to verify compliance by way of a written certification. As part of this revision the Agency added paragraphs § 1910.132(d), (e), and (f) as well as non-mandatory appendices A and B to Subpart I—Personal Protective Equipment. Appendix A contains a list of references and is provided for information purposes. Appendix B—Guidelines for Hazard Assessment and Personal Protective Equipment Selection was added to the subpart to provide specific guidance to employers and employees regarding eye, face, head, foot, and hand hazards.

In the final rule, OSHA determined that it was not necessary for employers to prepare and retain a formal written hazard assessment. However, in order to verify compliance the employer is required to prepare a written certification that would include the following: The person certifying that the evaluation had been performed; the dates of the hazard assessment; and a statement identifying the document as the certification of the hazard assessment required by the standard.

The ship repair, shipbuilding, and shipbreaking (*i.e.* shipyards) standard requires a similar hazard assessment. The final rule for Shipyards § 1915.152, published in 1996 (61 FR 26321), revised the PPE section requiring employers to do a hazard assessment, equipment (PPE) selection, and to verify the required assessment through a “document,” rather than a certification as required for general industry employees in § 1910.132. The document must contain the date of the hazard assessment and the name of the person performing the hazard assessment. The comments from the Shipyard industry argued against a written certification, stating that it would create a burden. OSHA agreed and changed the word from “certification” to “document”,

which OSHA judged to be an equally effective way to verify compliance.

OSHA is concerned that the hazard assessment provisions in § 1910.132(d) and § 1915.152 lack specific documentation of the hazard assessment required to be performed by the employer, and are thus not sufficiently protective of employees' safety and health. Currently, employers in both industries are not required to document or post the results of the hazard assessment. Employers are only required to include the name of the person certifying, the date(s) of the hazard assessment, and in the General Industry standard § 1910.132, a statement that the document is a certification that the hazard assessment has been performed.

The Agency is interested in making the hazard assessment process more effective. One method the Agency is considering is to require employers to include the results of the hazard assessment (the hazards identified and the PPE needed to address those hazards) in a certification and to post the certification for review by employees. Another method being considered to increase effectiveness of the hazard assessment in § 1910.132 and § 1915.152 is to revise the respective Appendices and make them mandatory, adding a requirement to post the results of the assessment.

OSHA believes that all industries could benefit from doing a hazard assessment and in the interest of making rules consistent across all industries, we have included some questions on Construction (part 1926), Marine Terminals (part 1917), and Longshoring (part 1918) standards where there is no explicit requirement for a written PPE hazard assessment. There may be ways to revise these standards, such as a performance-based assessment, that are both feasible and not overly burdensome. OSHA is seeking answers to these questions and suggestions for effective alternatives.

OSHA is seeking comments on other options that the Agency should consider that would assure that employers conduct thorough hazard assessments and select the appropriate equipment to protect employees.

6. OSHA has identified posting requirements in many other standards to ensure employee notification. Are there other methods to inform employees of the hazard assessment results, such as additional training to inform employees of the findings, that are equally as effective or more effective?

7. Would adding a posting requirement to § 1910.132 and § 1915.152 be more or less protective

than the protection currently provided? Please provide any rationale or data to support your answer.

8. Are there other approaches to conducting hazard assessments for PPE that are more effective than Appendix B in § 1910.132 and Appendix A in § 1915.152?

9. Should similar revisions be considered for Construction (Part 1926), Marine Terminals (Part 1917), and Longshoring (Part 1918) standards?

D. Respiratory Protection (§ 1910.134)

Paragraph (o)(2) of this standard states “Appendix D of this section is non-mandatory;” however, paragraph (k)(6) of the standard specifies that the “basic advisory information on respirators, as presented in Appendix D of this section, shall be provided by the employer

* * * to employees who wear respirators when such use is not required by this section or by the employer”. [Emphasis added.] The phrase “shall be provided” in paragraph (k)(6) mandates the employer to provide the “basic advisory information” in the appendix to the designated employees. Appendix D is also marked as “Mandatory” in the standard. Therefore, OSHA is considering removing paragraph (o)(2) from the standard and revising the preceding paragraph (o)(1) to include Appendix D among the list of mandatory appendices, which was OSHA’s original intent.

10. Have employers understood that the requirement to provide Appendix D information to employees who voluntarily use respirators is a mandatory requirement?

11. Is the information contained in Appendix D appropriate for alerting employees to considerations related to voluntary respirator use?

12. To what extent, if any, would deleting paragraph (o)(2) and clarifying that Appendix D is mandatory increase the burden on employers?

E. Subpart J—General Environmental Controls—Sanitation Standard (§ 1910.141)

The definition of potable drinking water in OSHA’s current sanitation standard, § 1910.141, makes reference to U.S. Public Health Service Drinking Water Standards published in 42 CFR part 72. There are other agencies that have provisions relating to safe drinking

water, such as the Food and Drug Administration (FDA) at Title 21 of the CFR, referring to the Environmental Protection Agency (EPA) at Title 40, specifically the Office of Water.

13. What is the appropriate updated reference that would provide an adequate definition for potable water? Are there other references or definitions for drinking water from other agencies or authoritative sources that OSHA should consider?

14. Are there other instances where a citation to another Federal Standard referenced in an OSHA standard is no longer correct?

F. Carcinogens (4-Nitrobiphenyl, etc.) (§ 1910.1003)

In 1996, OSHA consolidated 13 similar standards for regulating carcinogenic chemicals into a single standard, § 1910.1003 (See 61 FR 9228, March 7, 1996). OSHA did not intend to make substantive changes to any of the 13 standards under that action. Where language among the 13 standards differed, the Agency attempted to design the regulatory text of the single rule to maintain the same substantive requirements of each standard. Four of these 13 standards, covering employee exposures to methyl chloromethyl ether, bis-chloromethyl ether, ethyleneimine, and beta-propiolactone, had a provision in former paragraph (c)(4)(iv) of each standard that provided respirator requirements that differed from those provided in the other nine standards. Specifically, this provision required employers to ensure that employees involved in handling any of these four carcinogenic chemicals wear full-facepiece, supplied-air respirators of the continuous-flow or pressure-demand type rather than half-mask respirators permitted under the other nine standards. The Agency inadvertently omitted this provision from the consolidated standard, thereby appearing to change the respirator requirement for those four substances. That was not intended; therefore, OSHA is considering reinstating the former respirator-use requirement in paragraph (c)(4)(iv) of § 1910.1003 for the four substances.

15. What types of respirators are currently being used to protect employees from exposure to these four chemicals?

16. If OSHA reinstates the requirements for full-facepiece air-supplied respirators, does the respirator-use requirement conflict with OSHA’s Respiratory Protection Standard (§ 1910.134)?

17. Would the reinstated respirator use requirement be more or less protective than the protection offered by OSHA’s Respiratory Protection Standard? Please provide any data or rationale to support your answer.

18. How would reinstating the respirator use requirement change the economic or paperwork burden?

G. Lead (§ 1910.1025 and § 1926.62)

The Agency’s substance-specific standards usually require that employers initiate or implement protective actions, including exposure monitoring, medical surveillance, and exposure controls, at specific airborne concentrations of a toxic substance.

In several provisions of the lead standards (§ 1910.1025 and § 1926.62), the airborne concentrations at which protective actions must occur vary slightly. A number of provisions in the lead standards trigger actions at airborne concentrations, which are “above the AL,” and “at or above the PEL.” The terminology in the lead standards for these airborne concentrations is inconsistent and can be confusing. For example, § 1910.1025(d)(6)(iii) currently states that “[t]he employer shall continue monitoring at the required frequency until at least two consecutive measurements, taken at least 7 days apart, are below the PEL but at or above the action level[.]” OSHA is considering revising this to state “[t]he employer shall continue monitoring at the required frequency until at least two consecutive measurements, taken at least 7 days apart, are at or below the PEL but at or above the action level[.]” [Emphasis added.]

Similar issues arise with respect to the blood lead levels that trigger medical removal protection or return to work in the lead standards. OSHA is considering changing these terminologies in the lead standard(s) to make these internally consistent and consistent with each other. Table 1 describes the revisions being considered.

TABLE 1.—RECOMMENDED REVISIONS TO THE AL, PEL, AND NUMERICAL-CRITERIA PROVISIONS OF THE LEAD STANDARDS

Provision	Existing language	Revised language
§ 1910.1025 (Lead in General Industry): (d)(6)(ii)	“at or above the action level but below the permissible exposure limit”.	“at or above the action level but at or below the permissible exposure limit”

TABLE 1.—RECOMMENDED REVISIONS TO THE AL, PEL, AND NUMERICAL-CRITERIA PROVISIONS OF THE LEAD STANDARDS—Continued

Provision	Existing language	Revised language
(d)(6)(iii)	“are below the PEL but at or above the action level”	“are at or below the PEL but at or above the action level”
(d)(8)(ii)	“exceeds the permissible exposure limit”	“is above the permissible exposure limit”
(j)(1)(i)	“above the action level”	“at or above the action level”
(j)(2)(ii)	“exceeds the numerical criterion”	“is at or above the numerical criterion”
(j)(2)(iv)	“exceeds 40 µg/100 g” and “exceeds the numerical criterion”.	“is at or above 40 µg/100 g” and “is at or above the numerical criterion”
(k)(1)(i)(B)	“at or below 40 µg/100 g”	“below 40 µg/100 g”
(k)(1)(iii)(A)(1)	“at or below 40 µg/100 g”	“below 40 µg/100 g”
§ 1926.62 (Lead in Construction):		
(d)(8)(ii)	“at or above the PEL” and “at or above that level”	“above the PEL” and “above that level”
(j)(2)(ii)	“exceeds the numerical criterion”	“is at or above the numerical criterion”
(j)(2)(iv)(B)	“exceeds 40 µg/dl”	“is at or above 40 µg/dl”
(k)(1)(iii)(A)(1)	“at or below 40 µg/dl”	“below 40 µg/dl”

19. Would making the provisions of the lead standards more consistent with each other assist employers in complying with these standards?

20. Are there any increases to the economic or paperwork burden as a result of making the suggested changes? If increases are identified, please explain the impact.

21. Are there similar changes needed in other standards that would increase their consistency? Please explain the rationale for your suggestions.

H. 1,3-Butadiene (§ 1910.1051)

Paragraph (m)(3) of the 1,3-butadiene standard (§ 1910.1051) for general industry requires employers to establish and maintain fit-testing records for employees who use respirators to reduce toxic exposures. However, paragraph (h)(2)(i) states that “employers must implement a respiratory protection program in accordance with OSHA’s respiratory-protection standard § 1910.134 (b) through (d) * * * and (f) through (m).” The requirements to establish and maintain fit-testing records specified in paragraph (m)(2) of the respiratory-protection standard are essentially the same as the applicable recordkeeping requirements in paragraph (m)(3) of the 1,3-butadiene standard.

The Agency inadvertently failed to delete the recordkeeping provision in the 1,3-butadiene standard when it replaced many of the respiratory-protection requirements of health standards with the reference to the respiratory-protection standard in § 1910.134 (see 63 FR 1293–1294). OSHA believes that having two similar recordkeeping provisions is redundant and confusing. Therefore, the Agency is considering removing paragraph (m)(3) from the 1,3-butadiene standard for general industry.

22. To what extent, in any, does removing paragraph (m)(3) from 1,3-butadiene standard reduce protection?

23. Does removing this paragraph reduce employers’ and employees’ understanding of their obligations to keep respirator fit-test records?

24. Are there similar changes that can be made in other standards that would increase their consistency? Please explain the rationale for your suggestions.

I. Asbestos (§ 1915.1001)

The introductory paragraph to OSHA’s respiratory-protection standard (§ 1910.134) specifies that the standard applies to ship repair, shipbuilding, and ship breaking (i.e. shipyards) (Part 1915), general industry (Part 1910), marine terminals (Part 1917), longshoring (Part 1918), and construction (Part 1926). Three of these parts, general industry, shipyards, and construction, contain standards regulating employee exposure to asbestos, with each of these standards having a paragraph entitled “Respirator program.” These paragraphs specify the requirements for an employer’s respirator program with respect to asbestos exposure. In the final rulemaking for the respiratory-protection standard, the Agency updated these paragraphs in the asbestos standards for general industry and construction⁴ so that the program requirements would be consistent with the provisions of the newly revised respiratory-protection standard (see 63 FR 1285 and 1298). However, the Agency inadvertently omitted revising

⁴ Paragraphs (g)(2)(i) and (h)(2)(i) of the asbestos standard for general industry (§ 1910.1001) and the asbestos standard for construction (§ 1926.1101), respectively, specify the provisions of the updated respiratory-protection standard that apply to employers covered by these standards.

the respirator program requirements specified in paragraph (h)(3)(i) of the asbestos standard for shipyards (§ 1915.1001). OSHA is considering correcting this oversight and revising paragraph (h)(3)(i) of the asbestos standard for shipyards to read the same as paragraphs (g)(2)(i) of the asbestos standard for general industry (§ 1910.1001) and (h)(2)(i) of the asbestos standard for construction (§ 1926.1101) which state “[t]he employer must implement a respiratory protection program in accordance with § 1910.134 (b) through (d) (except (d)(1)(iii)), and (f) through (m).”

Similarly, the Agency is considering removing paragraphs (h)(3)(ii), (h)(3)(iii), and the entirety of paragraph (h)(4) from the shipyard standard, which address filter changes, washing faces and facepieces to prevent skin irritation, and fit testing, respectively. OSHA believes this is appropriate because the continuing-use provisions specified in paragraph (g)(2)(ii) duplicate paragraphs (h)(3)(ii) and (h)(3)(iii) of the asbestos standard for shipyards. Also, the fit-testing requirements provided in paragraph (f) of the respiratory-protection standard either meet or exceed the provisions specified in (h)(4) of the shipyard asbestos standard except that the frequency of fit-testing is different. The current Shipyard asbestos standard at § 1915.1001 (4)(i) requires quantitative and qualitative fit-testing be performed initially and at least every six months thereafter. The Respirator standard at § 1910.134 (f)(2) requires employees wearing a tight-fitting respirator be fit-tested prior to initial use, whenever a different facepiece is used and at least annually thereafter.

By adding the reference to § 1910.134 (respirator standard) in § 1915.1001(h)(3)(i) of the shipyard

asbestos standard, OSHA would incorporate the fit testing requirements of § 1910.134(f), which include the requirement to use the OSHA-accepted qualitative fit testing and quantitative fit testing protocols and procedures contained in Appendix A. Accordingly, the fit testing requirements of § 1915.1001, Appendix C would be duplicative. Therefore, OSHA is considering deleting this Appendix.

25. Would revising § 1915.1001(h)(3)(i) to be consistent with similar provisions in the asbestos standard for general industry and construction create additional compliance requirements?

26. Does this change maintain the same level of employee protection? Would making the recommended changes increase the economic or paperwork burden?

27. Besides altering the frequency of fit testing, how would making the recommended change to delete paragraphs (h)(3)(ii) through (h)(4)(ii) affect the requirements of the standard?

J. General Modifications to Medical Examinations and Industrial Hygiene Sampling Provisions

Many of OSHA's health standards are over 20 years old. Since their promulgation, there have been many technological advances, including changes in medical testing and industrial hygiene sampling. The Agency is interested in determining whether any of these new medical tests or industrial hygiene sampling technologies should be permitted for use in its health standards. The Agency is also interested in determining whether these tests or technologies would accomplish the identified task required by the standard as well as or better than the technologies identified in the current medical and sampling requirements.

28. Are there newer medical tests that would provide equivalent or better diagnostic results than the tests contained in OSHA's standards? For example, are there updated medical tests that could replace chest x-rays for diagnosing asbestos related diseases or Beta-2 microglobulin in urine for diagnosing kidney disease related to cadmium exposure?

29. Are there newer methods to determine personal exposures to hazards? For example, are there newer methods using passive sampling for different chemical exposures or an updated method to determine exposure to cotton dust better than the vertical elutriator cotton dust sampler?

K. General Modifications to Training Provisions

Training is an essential part of every employer's safety and health program for protecting employees from injury and illness. Many OSHA standards specifically require that employers train employees in the safety and health aspects of their jobs. Other OSHA standards establish employers' responsibility to limit certain job assignments to employees who are "competent" or "qualified," meaning that they have had specialized training.

In SIPs II, OSHA changed the notification and timing requirements in some health standards to make them more consistent across different health standards (67 FR 66493). OSHA did this to reduce regulatory confusion and facilitate compliance but without diminishing employee protection. Similarly, the Agency believes bringing consistency to its training requirements would achieve the same goals.

30. How could the Agency modify the training requirements in various OSHA safety and health standards to promote compliance with the training requirements?

31. How should training content and frequency of retraining be addressed to improve employees' safety and health? Please identify changes that could be made to improve the training process.

32. Would making training requirements uniform among various standards facilitate employers' compliance with OSHA regulations? Please explain.

33. To what extent, if any, do other agencies' training requirements overlap with OSHA's?

L. Miscellaneous Items Under Consideration

a. Recordkeeping Requirements—Commercial Diving Operations (§ 1910.440)

The original Commercial Diving Operations standard included a requirement in paragraph § 1910.411 that employers provide medical exams to dive team members. This paragraph was removed by a 1979 court decision [Taylor Diving and Salvage vs. U.S. Department of Labor (599 F.2d 622)(5th Cir., 1979)]. However, the current standard still includes a reference to paragraph § 1910.411 in paragraph (b)(3)(i) of § 1910.440, which requires employers to keep dive team medical records for five years. Since there is no longer a requirement for team medical exams, the requirement to keep such records for five years makes no sense. Therefore, OSHA intends to propose

removing paragraph (b)(3)(i) of § 1910.440.

34. Is there any reason why this paragraph should not be deleted? Please explain.

35. Are there references in other standards that need to be updated?

b. Definitions (§§ 1917.2, 1918.2, and 1919.2)

Hazardous Ships' Stores (46 CFR 147) contains the following definition for ships' stores:

Materials which are aboard a vessel for the upkeep, maintenance, safety, operation, or navigation of the vessel, or for the safety or comfort of the vessel's passengers or crew.

A definition of ships' stores is not contained in Marine Terminals (29 CFR 1917.2), Safety and Health Regulations for Longshoring (29 CFR 1918.2), and Gear Certification (29 CFR 1919.2), even though these OSHA standards contain the term. OSHA is considering adding the definition of ships' stores in 47 CFR 147 to these OSHA standards.

36. Is there any reason why this definition should not be added to the OSHA standards listed? If so, please explain your rationale for why this definition should not be added. Is there an alternative definition that OSHA should consider?

37. Are there other definitions that could be added to these or other standards to improve consistency?

M. General Solicitation for Recommendations

In addition to solicitation of comment on the specific recommendations noted above, OSHA invites comment on other standards that are in need of improvement because they are confusing, outdated, duplicative, or inconsistent with similar standards. It would be helpful if you could provide information supporting your recommended changes. Please describe the reasons why you believe these regulations are confusing, outdated, duplicative or inconsistent and provide specific language that you believe will improve the standard.

38. Are there any standards that can be updated to make them more protective of employees' safety or health and at the same time reduce the compliance burden on employers?

39. Are there any standards that can be updated to be more protective of employees' safety or health without imposing any additional compliance burden on the employer?

40. Are there any other standards that need to be changed to reduce or eliminate inconsistencies between standards?

III. Public Participation

Submission of Comments and Access to the Docket

OSHA invites comments on all aspects of this advance notice of proposed rulemaking (ANPRM). Throughout this document, OSHA has invited comment on specific issues and requested information and data about practices at your establishment and in your industry. OSHA will carefully review and evaluate these comments, information and data, as well as all other information in the rulemaking record, to determine how to proceed.

You may submit comments and additional materials (1) electronically at <http://www.regulations.gov>, which is the Federal eRulemaking Portal; (2) by facsimile (FAX); or (3) by hard copy. All submissions must identify the Agency name and the OSHA docket number for this rulemaking (S-778B). You may supplement electronic submissions by uploading document attachments and files electronically. If, instead, you wish to mail additional materials in reference to an electronic or fax submission, you must submit three copies to the OSHA Docket Office (see **ADDRESSES** section). The additional materials must clearly

identify your electronic submissions by name, date, and docket number so OSHA can attach them to your submissions.

Because of security-related procedures, the use of regular mail may cause a significant delay in the receipt of submissions. For information about security procedures concerning the delivery of materials by hand, express delivery, messenger or courier service, please contact the OSHA Docket Office at (202) 693-2350 (TTY (877) 889-5627).

Submissions are posted without change at: <http://www.regulations.gov>. Therefore, OSHA cautions commenters about submitting personal information such as social security numbers and dates of birth. Although all submissions are listed in the <http://www.regulations.gov> index, some information (e.g., copyrighted material) is not publicly available to read or download through <http://www.regulations.gov>. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. Information on using the <http://www.regulations.gov> Web site to submit comments, and attachments, and to access the docket, is

available at the Web site's User Tips link. Contact the OSHA Docket Office for information about materials not available through the Web site and for assistance in using the Internet to locate docket submissions.

Electronic copies of this **Federal Register** document are available at <http://www.regulations.gov>. This document, as well as news releases and other relevant information, also is available at OSHA's Webpage at: <http://www.osha.gov>.

IV. Authority and Signature

This document was prepared under the direction of Edwin G. Foulke, Jr., Assistant Secretary for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. It is issued pursuant to sections 4, 6, and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657), 29 CFR 1911, and Secretary's Order 5-2002 (67 FR 65008).

Edwin G. Foulke, Jr.,

Assistant Secretary of Labor.

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