

DEPARTMENT OF LABOR
Occupational Safety and Health
Administration
29 CFR Parts 1910 and 1926
Mechanical Power—Transmission
Apparatus; Mechanical Power Presses;
Telecommunications; Hydrogen

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

ACTION: Final rule; technical amendments.

SUMMARY: This final rule corrects errors in four OSHA standards. The first correction deletes two references to a nonexisting table in the Mechanical Power-Transmission Apparatus Standard. The second is a correction of typographical errors in the Mechanical Power Presses Standard. The third correction is to a cross-reference in the Telecommunications Standard. The fourth correction is to a reference to a table contained in the Hazardous Materials Standard for Hydrogen.

DATES: This final rule becomes effective on June 8, 2004.

FOR FURTHER INFORMATION CONTACT: For general information and press inquiries, contact George Shaw, Acting Director, Office of Communications, Room N3637, OSHA, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; telephone: (202) 693-1999 or fax: (202) 693-1635. For technical information, contact Kenneth Stevanus, Office of Engineering Safety, Room N3609, OSHA, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; telephone: (202) 693-2260.

SUPPLEMENTARY INFORMATION:
I. Mechanical Power-Transmission Apparatus

OSHA standards 29 CFR 1910.219 and 29 CFR 1926.307 contain requirements for the construction of guards for all types of mechanical power-transmission apparatus. On November 24, 1978, OSHA revoked certain safety and health standards, including Tables O-12 and O-13 in 29 CFR 1910.219 (43 FR 49726, 49741). These tables contained specifications for materials used in guarding mechanical power-transmission apparatus. They were revoked because they were considered overly detailed and too restrictive of the kinds of materials used for guards (43 FR 49740). Further, all references to these two tables were also to be removed. However, OSHA neglected to remove two references to

Table O-12.

The first reference to Table O-12 that still appears is found in paragraph (e)(1)(i) of 29 CFR 1910.219 and paragraph (e)(1)(i) of 29 CFR 1926.307, both of which read as follows:

Where both runs of horizontal belts are seven (7) feet or less from the floor level, the guard shall extend to at least fifteen (15) inches above the belt or to a standard height (see Table O-12), except that where both runs of a horizontal belt are 42 inches or less from the floor, the belt shall be fully enclosed in accordance with paragraphs (m) and (o) of this section. [Emphasis added.]

The second reference to Table O-12 is found in paragraph (o)(5)(ii) of 29 CFR 1910.219 and paragraph (o)(5)(ii) of 29 CFR 1926.307, both of which read as follows:

Posts shall be not more than eight (8) feet apart; they are to be permanent and substantial, smooth, and free from protruding nails, bolts, and splinters. If made of pipe, the post shall be one and one-fourth (1¼) inches inside diameter, or larger. If made of metal shapes or bars, their section shall be equal in strength to that of one and one-half (1½) by one and one-half (1½) by threesixteenths (3/16) inch angle iron. If made of

wood, the posts shall be two by four (2 4) inches or larger. The upper rail shall be two by four (2 4) inches, or two one by four (1 4) strips, one at the top and one at the side of posts. The midrail may be one by four (1 4) inches or more. Where panels are fitted with expanded metal or wire mesh as noted in Table O-12, the middle rails may be omitted. Where guard is exposed to contact with moving equipment, additional strength may be necessary. [Emphasis added.]

OSHA is removing the text referring to Table O-12 from all four of these paragraphs.

II. Mechanical Power Presses

On December 3, 1974, OSHA published in the **Federal Register** (39 FR 41841) a final rule on Mechanical Power Presses based on a petition to revoke 29 CFR 1910.217(d)(1) and (d)(2). As part of the final rule, a new paragraph (c)(5) was added, reading, in part, as follows:

Where the operator feeds or removes parts by placing one or both hands in the point of operation, and a two hand control, presence sensing device of Type B gate or movable barrier (on a part revolution clutch) is used for safeguarding:

The paragraph as printed contains typographical errors that change the meaning of the paragraph and imply that a Type-B gate is a presence-sensing device. This is not the case. A Type-B gate is considered a safety device when used with a failsafe control system and a brake monitor.

In the preamble to the December 3, 1974, **Federal Register** (39 FR 41843), OSHA stated:

In addition, presence sensing devices or two hand controls may be used on part revolution clutch presses. Where either of these devices, or a Type B gate, are used [sic], the employer must also use a failsafe control system and a brake monitor in order to qualify the device as a safety device.

Several paragraphs later, the Agency noted that commenters pointed out that: [Paragraph] (b)(13) should also apply to the Type B gate or movable barrier device, because the effectiveness of this device also depends upon the performance of the brake (TR 423).

OSHA agreed with this (39 FR 41843) and stated:

Therefore, the final standard requires employers to comply with paragraph (b)(13) when using a Type B gate or movable barrier device, two-hand control, or a presence sensing device.

In this notice, OSHA is correcting the typographical error in 1910.217(c)(5) by adding a comma after the word "device" and deleting the word "of" before the word "Type." The introductory text to paragraph (c)(5) will then read:

Where the operator feeds or removes parts by placing one or both hands in the point of operation, and a two hand control, presence sensing device, Type B gate or movable barrier (on a part revolution clutch) is used for safeguarding:

III. Telecommunications

On June 18, 1998, OSHA published a final rule in the **Federal Register** (63 FR 33450), removing and revising certain standards that were out of date, duplicative, unnecessary, or inconsistent. In that final rule, the Telecommunications Standard, 29 CFR 1910.268, was amended to: "Revise paragraph (f)(1), remove paragraphs (f)(2) through (f)(4) and (f)(7) through (f)(9) and re-designate paragraphs (f)(5) and (f)(6) as (f)(2) and (f)(3)" (63 FR 33467). However, redesignated paragraph (f)(3) of 29 CFR 1910.268 (former paragraph (f)(6)) has continued to include a cross-reference to former paragraph (f)(5):

Gloves and blankets shall be marked to indicate compliance with the retest schedule, and shall be marked with the date the next test is due. Gloves found to be defective in the field or by the tests set forth in paragraph (f)(5) of this section shall be destroyed by cutting them open from the finger to the gauntlet.

The 1998 notice should have corrected this cross-reference to refer to redesignated paragraph (f)(2) instead of (f)(5). OSHA is now correcting this cross-reference accordingly.

IV. Hydrogen

OSHA standard 29 CFR 1910.103

contains requirements for the installation of gaseous hydrogen systems on consumer premises where the hydrogen supply to the consumer premises originates outside the consumer premises and is delivered by mobile equipment. On October 24, 1978, OSHA revised certain safety and health standards, including Table H-2 in 29 CFR 1910.103 (43 FR 49732). This table contained specifications for the minimum distances used to determine placement of hydrogen systems of indicated capacity located outdoors, in special buildings or in special rooms to any specified outdoor exposure. The table was amended by removing line 13, "public sidewalks * * *," and line 14, "line of adjoining property * * *," because they dealt with public safety and property protection and were not within OSHA's regulatory jurisdiction (43 FR 49732).

However, a reference to line 14 in Table H-2 (referenced as "Item" 14) found at 29 CFR 1910.103(b)(2)(ii)(c) was not removed at that time. This paragraph still contains a crossreference to the nonexistent Item 14 and states that: "The distances in Table H-2 Items 1, 14, and 3 to 10 inclusive do not apply where protective structures such as adequate fire walls are located between the system and the exposure." OSHA is revising paragraph (c) to read: "The distances in Table H-2 Items 1 and 3 to 10 inclusive do not apply where protective structures such as adequate fire walls are located between the system and the exposure." This change will remove the cross-reference to the nonexistent item 14, and clarify the requirements contained in this paragraph.

V. Exemption From Notice-and-Comment Procedures

In accordance with the rulemaking provisions of the Administrative Procedures Act (5 U.S.C. 553) and 29 CFR 1911.5, OSHA hereby finds good cause to publish these amendments without any further delay or public procedure. They do not change any existing rights or obligations and no stakeholder is likely to object to them. Therefore, the Agency finds that public notice-and-comment procedures are unnecessary within the meaning of 5 U.S.C. 553(b)(3)(b) and 29 CFR 1911.5.

List of Subjects

29 CFR Part 1910

Hazardous substances, Hydrogen, and Occupational safety and health.

29 CFR Part 1926

Construction industry, and Occupational safety and health.

Authority: This document was prepared under the authority of John L. Henshaw, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

✳ Accordingly, pursuant to section 6 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 655), Section 4 of the Administrative Procedure Act (5 U.S.C. 553) and Secretary of Labor's Order No. 5-2002 (67 FR 65008), OSHA is amending 29 CFR parts 1910 and 1926 as set forth below.

Signed at Washington, DC this 28th day of May, 2004.

John L. Henshaw,

Assistant Secretary of Labor.

PART 1910—[AMENDED]

Subpart H—Hazardous Materials—[Amended]

✳ 1. The authority citation for Subpart H

of Part 1910 is revised to read as follows:

Authority: Sections 4, 6, and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order No. 12-71 (36 FR 8754), 8-76 (41 FR 25059), 9-83 (48 FR 35736), 1-90 (55 FR 9033), 6-96 (62 FR 111), 3-2000 (65 FR 50017), or 5-2002 (67 FR 65008), as applicable; and 29 CFR part 1911.

Section 1910.119 also issued under section 304, Clean Air Act Amendments of 1990 (Pub. L. 101-549), reprinted at 29 U.S.C. 655 Note.

Section 1910.120 also issued under section 126, Superfund Amendments and Reauthorization Act of 1986 as amended (29 U.S.C. 655 Note), and 5 U.S.C. 553.

✳ 2. In § 1910.103, paragraph (b)(2)(ii)(c)

introductory text is revised to read as follows:

§ 1910.103 Hydrogen.

* * * * *

(b) * * *

(2) * * *

(ii) * * *

(c) The distances in Table H-2 Items 1 and 3 to 10 inclusive do not apply where protective structures such as adequate fire walls are located between the system and the exposure.

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Subpart O—Machinery and Machine

Guarding—[Amended]

✳ 3. The authority citation for Subpart O

of Part 1910 is revised to read as follows:

Authority: Sections 4, 6, and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's

Order No. 12-71 (36 FR 8754), 8-76 (41 FR

25059), 9–83 (48 FR 35736), 1–90 (55 FR 9033), or 5–2002 (67 FR 65008), as applicable; 29 CFR part 1911. Sections 1910.217 and 1910.219 also issued under 5 U.S.C. 553.

§ 1910.217 [Amended]

* 4. In § 1910.217, the introductory text to paragraph (c)(5) is amended by adding a comma after the word “device” and removing the word “of” before the word “type.”

§ 1910.219 [Amended]

* 5. Paragraph (e)(1)(i) of § 1910.219 is amended by removing the text “(see Table O–12),” and paragraph (o)(5)(ii) is amended by removing the text “as noted in Table O–12.”

**Subpart R—Special Industries—
[Amended]**

* 6. The authority citation for Subpart R

of Part 1910 is revised to read as follows:

Authority: Sections 4, 6, 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor’s Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736), 6–96 (62 FR 111), 3–2000 (65 FR 50017), or 5–2002 (67 FR 65008), as applicable; and 29 CFR part 1911. Section 1910.268 also issued under 5 U.S.C. 553.

§ 1910.268 [Amended]

* 7. Paragraph (f)(3) of § 1910.268 is amended by revising the text “paragraph (f)(5)” to read “paragraph (f)(2).”

PART 1926—[AMENDED]

Subpart I—Tools-Hand and

Power—

[Amended]

* 8. The authority citation for Subpart I of Part 1926 is revised to read as follows:

Authority: Sections 4, 6, and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor’s

Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736), 1–90 (55 FR 9033), or 5–2002 (67 FR 65008), as applicable; and 29 CFR part 1911. Section 1926.307 also issued under 5 U.S.C. 553.

§ 1926.307 [Amended]

* 9. In § 1926.307, paragraph (e)(1)(i) is amended by removing the text “(see Table O–12),” and paragraph (o)(5)(ii) is amended by removing the text “as noted in Table O–12.”

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**DEPARTMENT OF VETERANS
AFFAIRS**

38 CFR Part 3

RIN 2900–AL93

**Change of Effective Date of Rule
Adding a Disease Associated With**

Exposure to Certain Herbicide

Agents:

Type 2 Diabetes

AGENCY: Department of Veterans Affairs.

ACTION: Final rule; change of effective date.

SUMMARY: The Department of Veterans’ Affairs (VA) is changing the effective date of a final rule published on May 8, 2001, titled “Disease Associated With Exposure to Certain Herbicide Agents: Type 2 Diabetes.” This action is necessary to conform to the decision of the United States Court of Appeals for the Federal Circuit in *Liesegang v. Secretary of Veterans Affairs*, which determined that the correct effective date of the amendment was May 8, 2001. The effect of this Notice is to insure that the effective date conforms to the decision of the United States Court of Appeals for the Federal Circuit and current VA practice.

DATES: *Effective Date:* May 8, 2001.

FOR FURTHER INFORMATION

CONTACT:

Randy A. McKeivitt, Regulations Staff, Compensation and Pension Service (211A), Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, telephone (202) 273–7211.

SUPPLEMENTARY INFORMATION: The Department of Veterans’ Affairs (VA) is amending the effective date of a previously published final rule. On May 8, 2001, VA published in the **Federal Register** (66 FR 23166) a final rule titled “Disease Associated With Exposure to Certain Herbicide Agents: Type 2 Diabetes,” which added Diabetes Mellitus Type 2 to the list of diseases in 38 CFR 3.309(e) that are presumed to be due to exposure to herbicides used in the Republic of Vietnam. VA determined that the effective date of the amendment should be July 9, 2001, 60 days after publication in the **Federal Register**, based on 38 U.S.C. 1116(c)(2) and 5 U.S.C. 801 *et. seq.* VA published that date as the effective date in the final rule.

On December 10, 2002, the United States Court of Appeals for the Federal Circuit decided *Robert B. Liesegang, Sr., Roberto Sotelo and Paul L. Fletcher v. Secretary of Veterans Affairs* (312 F.3d 1368 (Fed. Cir. 2002)). Petitioners challenged the effective date assigned to the regulation amendment. The Court found that the Congressional Review Act (section 251 of the Small Business Regulatory Enforcement Fairness Act of

1996, Pub. L. No. 104–121, tit. II. § 251, 110 Stat. 868 (1996) (codified at 5 U.S.C.

801–808), (CRA)), could be read in harmony with the Agent Orange Act of 1991 (Pub. L. No. 102–4, 105 Stat. 11 (1991) (codified in part at 38 U.S.C. 1116)), so that the CRA does not change the date on which the regulation becomes effective; it only affects the date when the rule becomes operative. The CRA provides for a 60-day waiting period before an agency may enforce a major rule to allow Congress the opportunity to review the regulation. The Court found that the CRA delayed the date on which the Type-2 diabetes regulation became operative, and VA had to wait until July 9, 2001, to implement that rule. The Court found that once implemented, the correct effective date of the regulation is the date of publication in the **Federal Register**, May 8, 2001.

Following the Court’s decision, VA instructed the decision makers in the field to apply May 8, 2001, as the effective date for the regulation.

For the reasons discussed above, VA is amending the effective date of the amendment to 38 CFR 3.309(e), which added diabetes mellitus Type-2 to the list of diseases presumed to be due to exposure to herbicides used in the Republic of Vietnam, to May 8, 2001.

Unfunded Mandates

The Unfunded Mandates Reform Act requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before developing any rule that may result in expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any given year. This amendment will have no such effect on state, local, or tribal governments, or private sector.

Paperwork Reduction Act

This final rule contains no provisions constituting a collection of information under the Paperwork Reduction Act (44 U.S.C. 3501–3521).

Regulatory Flexibility Act

The Secretary hereby certifies that this regulatory amendment will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. The reason for this certification is that these amendments would not directly affect any small entities. Only VA beneficiaries could be directly affected.

