



COMMONWEALTH of VIRGINIA

DEPARTMENT OF LABOR AND INDUSTRY

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VIRGINIA SAFETY AND HEALTH CODES BOARD

BRIEFING PACKAGE

FOR MAY 24, 2005

STANDARDS IMPROVEMENT PROJECT, PHASE II; FINAL RULE

I. Action Requested.

The Virginia Occupational Safety and Health (VOSH) Program requests the Safety and Health Codes Board to consider for adoption Phase II of federal OSHA's final rule for the Standards Improvement Project, as published in 70 FR 1111 on January 5, 2005.

The proposed effective date is August 15, 2005.

II. Summary of the Final Rule.

Federal OSHA has continued to remove and revise provisions of its standards that were outdated, duplicative, unnecessary, or inconsistent, or could be clarified or simplified by being written in plain language. This final rule revises or removes 40 health provisions in 23 OSHA standards in general industry, shipyard employment, and construction.

In regard to "inconsistent" standards, federal OSHA specifically revised a number of its older standards (vinyl chloride, acrylonitrile, coke oven emissions, arsenic, and DBCP) to be consistent with the

frequencies of exposure monitoring, medical surveillance, and compliance plan updates established in the majority of more recently promulgated standards. (70 FR1113)

III. Basis, Purpose and Impact of the Final Rule.

A. Basis.

OSHA has made a continuing effort to eliminate confusing, outdated, and duplicative standards and regulations. In 1978, 1984 and again in 1996, OSHA conducted revocation and revision projects that resulted in the elimination of hundreds of unnecessary provisions. (70 FR 1112)

In June 1998, federal OSHA published Phase I of the Standards Improvement Project. Phase I set forth changes to a number of provisions in regulations and standards that were outdated, duplicative, unnecessary, inconsistent, or could be clarified or simplified by being rewritten in plain language. (63 FR 33450)

At its meeting on October 19, 1998, the Safety and Health Codes Board adopted Phase I of the Standards Improvement Project (63 FR 33450), with an effective date of January 1, 1999.

B. Purpose.

OSHA has again revised or removed a number of health provisions in its standards for general industry, shipyard employment, and construction and has rewritten requirements into plain language to simplify and clarify regulatory requirements, facilitate compliance, and lead to improved safety and health. (70 FR 1114)

C. Impact on Employers.

Revisions to the health and safety standards will reduce the regulatory burden on employers (e.g., reduction in increased paperwork caused by unnecessary collection of information) and is expected to increase compliance. (70 FR 1112-1113)

D. Impact on Employees.

No impact on employees is anticipated by this action. Health protections that these standards and regulations currently provide to employees would not be reduced. There is no change in exposure limits or actions levels. There are no reductions in respiratory protection, personal protective equipment or industrial hygiene provisions. There is therefore no change in risk and no need to determine significant risk, or the extent to which the final rule will reduce or increase that risk. (70 FR 1128)

E. Impact on the Department of Labor and Industry.

No impact on the Department is anticipated by this action.

Federal regulations 29 CFR 1953.23(a) and (b) require that Virginia, within six months of the occurrence of a federal program change, to adopt identical changes or promulgate equivalent changes which are at least as effective as the federal change. The Virginia Code reiterates this

requirement in § 40.1-22(5). Adopting these revisions will allow Virginia to conform to the federal program change.

F. Technology Feasibility

The final rule is technologically feasible. OSHA considered alternatives to amending the several ancillary provisions. In most cases, OSHA chose to revise older ancillary provisions to make them consistent with its standards more recently promulgated. In some cases, the final standard provided more flexibility in the way information is communicated to employees or OSHA. All of the final provisions were intended to reduce burden on employers – or provide flexibility – while maintaining necessary protections for employee health. (70 FR 1128)

G. Benefit/Cost

While the final rule does not impose any additional or more stringent requirements, its removal or revision of standards that are outdated, duplicative, unnecessary, or inconsistent, or can be clarified or simplified by being rewritten in plain language may provide potential additional safety and health benefits.

The final rule will not have significant impacts on a substantial number of small entities. All of the changes are expected to reduce employers' costs of compliance. The revised standard eliminates or reduces requirements for many "ancillary" provisions, provides greater flexibility for compliance for others, or reduces paperwork/reporting requirements.

The final standards do not reduce protection for employees. Amending the ancillary provisions of older standards will make them consistent with the industrial hygiene and surveillance practices for more recent standards.

OSHA has determined that the final rule is likely to reduce the regulatory burdens imposed on public and private employers by the existing requirements. The final rule would not expand existing regulatory requirements or increase the number of employers who are covered by the existing rules. Consequently, compliance with the final rule would require no additional expenditures by either public or private employers. (70 FR 1140)

OSHA estimates that the final standard will result in total annual cost savings of \$6.8 million nationally. (70 FR 1128) In Virginia, the total annual cost savings will be approximately \$170,000.

IV. Summary/Highlights of the Final Rule

The Final Rule made a number of amendments to current standards as follows:

Part 1910—General Industry

1. *Temporary Labor Camps (§1910.142)*: Adds additional language that would eliminate the possibility of using a slower means of communication but permit equally fast means of

communication. Any “fast method” of communication is appropriate (e.g., by telegram, telephone, electronic mail, etc.)

2. *Reference to First Aid Supplies in Appendix to the Standard on Medical Services and First Aid (§1910.151)*: Non-mandatory Appendix A was changed to reference the ANSI 308.1-1998 standard. This will assist employers in meeting the requirements for what will be adequate first aid supplies.
3. *First Aid Supplies in the Telecommunications Standard (§1910.268)*: Substituted the guidance of non-mandatory Appendix A to §1910.151 for requirements in §1910.268(b)(3) because Appendix A provides more extensive guidelines for selecting appropriate first aid supplies.
4. *13 Carcinogens (4-Nitrobiphenyl, etc. (§1910.1003))*: OSHA eliminated the reporting requirements by removing and reserving paragraph (f). The reports have not proven to be useful and are an unnecessary burden on employers since OSHA does not use them for identifying workplaces for inspection.
5. *Vinyl Chloride (§1910.1017)*: Amended paragraph (k)(6) by replacing the outdated reference to 42 CFR part 74 (“Clinical laboratories”) with a requirement that employers use accredited laboratories for the medical tests required under paragraph (k)(1) of this standard.
6. *Monthly and Quarterly Exposure Monitoring*: Amended the exposure monitoring requirements specified in the vinyl chloride (1910.1017(d)(2)(i) and (d)(2)(ii)), 1,2-Dibromo-3-Chloropropane (“DBCP”) standard (1910.1044(f)(3)(i) and (f)(3)(ii)), and acrylonitrile standard (1910.1045(e)(3)(ii) and (e)(3)(iii)) because they are inconsistent with the exposure monitoring protocols established by OSHA in its later substance-specific standards. Also, the revisions require that employers update compliance plans at least annually, instead of semiannually. Monitoring quarterly and semiannually will protect employees by allowing time to improve the workplace, while still producing suitably current information to employers and employees. Uniformity of monitoring frequency permits an employer to develop a more efficient and better industrial hygiene program and increase compliance by improving understanding of health standards.
7. *Alternative Control Methods for Class I Asbestos Removal*. Deleted paragraphs 1915.1001(g)(6)(iii) and 1926.1101(g)(6)(iii) which required employers to collect information so that OSHA could develop a database of alternative control methods of asbestos removal. OSHA, however, did not develop such a database nor does it plan a future rulemaking to do so; therefore, these requirements are not useful and are not in keeping with the Paperwork Reduction Act.
8. *Evaluating Chest X-rays Using the ILO U/C Rating*: Amended paragraph 1910.1018(n)(2)(ii)(A) of the Inorganic Arsenic standard and paragraph 1910.1029(j)(2)(ii) of the Coke Oven Emissions standard to eliminate the requirement that employees’ chest x-rays receive an International Labor Office UICC/Cincinnati (ILO U/C) rating which is appropriate only for pneumoconiosis and is not useful for lung cancer which is its intended purpose.
9. *Signed Medical Opinions*. Removal of the word “signed” from the introductory text of paragraphs 1910.1001(l)(7)(i) of the Asbestos standard, 1910.1027(l)(10)(i) of the general

industry Cadmium standard and 1926.1127(l)(10)(i) of the construction industry Cadmium standard which required that the examining physician sign the written medical opinion provided as part of the medical-surveillance requirements of these standards. OSHA determined that the requirement for a physician to sign a medical opinion is unnecessary, precludes electronic transmission of the opinion from the physician to the employer, and provides no additional benefit to employees.

10. *Providing Semiannual Medical Examinations to Employees Experiencing Long-Term Toxic Exposures.* Replaced “semiannual” medical examinations requirement with “annual” medical examinations in paragraphs 1910.1017(k)(2) of the Vinyl Chloride standard, 1910.1018 (n)(3)(i) of the Arsenic standard, and 1910.1029(j)(3)(ii) and (iii) of the Coke Oven Emissions standard. OSHA believes that this amendment is necessary for consistency with other substance-specific standards that require employers to provide annual medical examinations for covered employees regardless of the duration their exposures.
11. *Notifying OSHA Regarding the Use DBCP and the Establishment of Regulated Areas for Certain Substances:* Deleted and reserved paragraph 1910.1044(d) of the 1,2-dibromo-3-chloropropane (DBCP) standard because this requirement has not been used by OSHA and no other OSHA health standards have such provisions. This provision was determined to be an unnecessary burden under the Federal Paper Work Reduction Act and OSHA found it unnecessary for purposes of targeting inspections. A number of other OSHA standards dating from the 1970’s require employers to notify OSHA if they are required to establish regulated areas in their workplaces. The following standards have such a requirement: Paragraph 1910.1003(f)(1) of the 13 Carcinogens standard; paragraph 1910.1017(n)(1) of the Vinyl Chloride standard; paragraph 1910.1018(d)(1) of the Inorganic Arsenic standard; and, paragraph 1910.1045(d)(1) of the Acrylonitrile standard. OSHA indicated at that time the purpose of such notifications was to obtain information on control technology (39 FR 35896, October 4, 1974) and to enable OSHA to be aware of facilities where substantial exposure exists (43 FR 45762). No other substance specific standards required such notification and OSHA did not find these two notification provisions to be useful for enforcement purposes nor did they add to worker protection. OSHA states that their elimination will reduce the collection of information (paperwork) burden and overall improve compliance with OSHA health standards by making them more consistent. Therefore, OSHA decided to eliminate these reporting requirements.
12. *Reporting Emergencies to OSHA:* Removing paragraphs 1910.1017(n)(1) and (n)(2) of the Vinyl Chloride standard and re-designating paragraph (n)(3) as new paragraph (n). Paragraph 1910.1045(d) of the Acrylonitrile standard was also removed and reserved. Each of these provisions was determined by OSHA to be as unnecessary collection of information (paperwork burdens).
13. *Semiannual Updating of Compliance Plans:* Revised the following substance-specific standards to require annual updating of compliance plans rather than semi-annual updating: Vinyl Chloride (§1910.1017(f)(3); Inorganic Arsenic standard (§1910.1018(g)(2)(iv)); Lead (§1910.1025(e)(3)(iv); Coke Oven Emissions (§1910.1029(f)(6)(iv); DBCP (§1910.1044(g)(2)(ii); Acrylonitrile (§1910.1045(g)(2)(v); and, Lead in construction (§1926.62(e)(2)(v)). These revisions would make the compliance plan update requirements consistent across health standards without diminishing employee protection and it would also

reduce unnecessary paperwork.

14. *Notifying employees of their Exposure Monitoring Results.* Revised to allow for a uniform 15-working day notification of employees individually in writing or by posting the results in an appropriate location accessible to affected employees -- in the following substance-specific standards for general industry: Asbestos, 1910.1001(d)(7)(i); Vinyl Chloride, 1910.1017(n); Inorganic Arsenic, 1910.1018(e)(5)(i); Lead, 1910.1025(d)(8)(i); Cadmium, 1910.1027(d)(5)(i); Benzene, 1910.1028(e)(7)(i); Coke Oven Emissions, 1910.1029(e)(3)(i); Cotton Dust, 1910.1043(d)(4)(i); 1,2 –Dibromo-3-Chloropropane, 1910.1044(f)(5)(i); Acrylonitrile, 1910.1045(e)(5)(i); Ethylene Oxide, 1910.1047(d)(7)(i); Formaldehyde, 1910.1048(d)(6); and Butadiene, 1910.1051(d)(7)(i).

In shipyard employment and the construction industry, respectively: Revised the notification of exposure monitoring results to read as follows: "...as soon as possible but not more than 5 working days" after the employer receives the results of exposure monitoring for Asbestos in shipyards, §1915.1001(f)(5)(i) and (f)(5)(ii); in construction, Methylenedianiline, §1926.60(f)(7)(i); Lead, §1926.62(d)(8)(i); Asbestos, §1926.1101(f)(5); and Cadmium, §1926.1127(d)(5)(i).

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RECOMMENDED ACTION

Staff of the Department of Labor and Industry recommends that the Safety and Health Codes Board adopt Phase II of the final rule for the Standards Improvement Project, as authorized by Virginia Code §§ 40.1-22(5) and 2.2-4006.A.4(c), with an effective date of August 15, 2005.

The Department also recommends that the Board state in any motion it may make to amend this regulation that it will receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision of this or any other regulation which has been adopted in accordance with the above-cited subsection A.4(c) of the Administrative Process Act.

Standards Improvement Project—Phase II; Final Rule

As Adopted by the
Safety and Health Codes Board

Date: _____



VIRGINIA OCCUPATIONAL SAFETY AND HEALTH PROGRAM

VIRGINIA DEPARTMENT OF LABOR AND INDUSTRY

Effective Date: _____

Standards Improvement Project—Phase II; Final Rule
Parts 1910, 1915, 1926 and

When the regulations, as set forth in Phase II of the final rule for the Standards Improvement Project, are applied to the Commissioner of the Department of Labor and Industry and/or to Virginia employers, the following federal terms shall be considered to read as below:

Federal Terms

VOSH Equivalent

29 CFR

VOSH Standard

Assistant Secretary

Commissioner of Labor and Industry

Agency

Department

March 7, 2005

August 15, 2005