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Exempt Action Final Regulation Agency Background Document

Agency name	Virginia Department of Labor and Industry/Safety and Health Codes Board
Virginia Administrative Code (VAC) citation	<p>16 VAC 25-90-1910.9, Compliance duties owed to each employee, 1910.9; 16 VAC 25-90-1910.95, Occupational noise exposure, 1910.95; 16 VAC 25-90-1910.134, Respiratory protection, 1910.134; 16 VAC 25-90-1910.156, Fire brigades, 1910.156; 16 VAC 25-90-1910.1001, Asbestos, 1910.1001; 16 VAC 25-90-1910.1003, 13 Carcinogens (4-Nitrobiphenyl, etc.), 1910.1003; 16 VAC 25-90-1910.1017, Vinyl chloride, 1910.1017; 16 VAC 25-90-1910.1018, Inorganic arsenic, 1910.1018; 16 VAC 25-90-1910.1025, Lead, 1910.1025; 16 VAC 25-90-1910.1026, Chromium (VI), 1910.1027; 16 VAC 25-90-1910.1027, Cadmium, 1910.1027; 16 VAC 25-90-1910.1028, Benzene, 1910.1028; 16 VAC 25-90-1910.1029, Coke oven emissions, 1910.1029; 16 VAC 25-90-1910.1030, Bloodborne pathogens, 1910.1030; 16 VAC 25-90-1910.1043, Cotton dust, 1910.1043; 16 VAC 25-90-1910.1044, 1,2-dibromo-3-chloropropane, 1910.1044; 16 VAC 25-90-1910.1045, Acrylonitrile, 1910.1045; 16 VAC 25-90-1910.1047, Ethylene oxide, 1910.1047; 16 VAC 25-90-1910.1048, Formaldehyde, 1910.1048; 16 VAC 25-90-1910.1050, Methylenedianiline, 1910.1050; 16 VAC 25-90-1910.1051, Butadiene, 1910.1051; 16 VAC 25-90-1910.1052, Methylene chloride, 1910.1052; 16 VAC 25-100-1915.9, Compliance duties owed to each employee, 1915.9; 16 VAC 25-100-1915.1001, Asbestos, 1915.1001; 16 VAC 25-100-1915.1026, Chromium (IV)1915.1026; 16 VAC 25-120-1917.5, Compliance duties owed to each employee, 1917.5; 16 VAC 25-130-1918.5, Compliance duties owed to each employee, 1918.5; 16 VAC 25-175-1926.20, General safety and health provisions, 1926.20; 16 VAC 25-175-1926.60, Methylenedianiline, 1926.60 16 VAC 25-175-1926.62, Lead, 1926.62 16 VAC 25-175-1926.761, Training, 1926.76; 16 VAC 25-175-1926.1101, Asbestos, 1926.1101; 16 VAC 25-175-1926.1126, Chromium (IV), 1926.1126; and 16 VAC 25-175-1926.1127, Cadmium, 1926.1127</p>
Regulation title	Personal Protective Equipment (PPE), Parts 1910, 1915, 1917, 1918 and 1926

Action title	Clarification of Employer Duty to Provide Personal Protective Equipment (PPE) and Train Each Employee
Final agency action date	April 16, 2009
Document preparation date	April 16, 2009

When a regulatory action is exempt from executive branch review pursuant to § 2.2-4002 or § 2.2-4006 of the Virginia Administrative Process Act (APA), the agency is encouraged to provide information to the public on the Regulatory Town Hall using this form.

Note: While posting this form on the Town Hall is optional, the agency must comply with requirements of the Virginia Register Act, the *Virginia Register Form, Style, and Procedure Manual*, and Executive Orders 21 (02) and 58 (99).

Summary

Please provide a brief summary of all regulatory changes, including the rationale behind such changes. Alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation.

Federal OSHA revised the language of the initial respirator paragraphs, adopted in the 1998 respiratory protection rule, in its general industry, maritime and construction standards (Parts 1910, 1915, 1917, 1918 and 1926) to add language clarifying that the PPE and training requirements in safety and health standards in these parts impose a compliance duty to each and every employee covered by the standards and that non-compliance may expose the employer to liability on a per-employee basis.

The amendments revised the language of those initial training paragraphs that required the employer to institute or provide a training program to explicitly state that the employer must train each employee. This revision added a new section to the introductory Subparts of each Part to clarify that standards requiring the employer to provide PPE, including respirators, or to provide training to employees, impose a separate compliance duty to each employee covered by the requirement and that each instance of an employee who does not receive the required PPE or training may be considered a separate violation.

Following the December 12, 2009, publication of the final rule for the Clarification of Employer Duty to Provide Personal Protective Equipment and Train Each Employee (73 FR 75568), federal OSHA discovered an error in the amendatory language of that final rule. The correction, located in §1926.1101 on page 75589, in the first column, Subpart Z, item 44, consisted of substituting “(h)(2)(i)” for “(h)(2)”. The corrected language now reads as follows: “In section 1926.1101, paragraphs (h)(1) introductory text, (h)(2)(i), and (k)(9)(i) are revised to read as follows:...”

The amendments added no new compliance obligations.

Statement of final agency action

Please provide a statement of the final action taken by the agency including (1) the date the action was taken, (2) the name of the agency taking the action, and (3) the title of the regulation.

On April 16, 2009, the Safety and Health Codes Board adopted federal OSHA’s final rule on the Clarification of Employer Duty to Provide Personal Protective Equipment (PPE) and Train Each Employee, as published in 73 FR 75568 on December 12, 2008, with an effective date of July 15, 2009.

Family impact

Assess the impact of this regulatory action on the institution of the family and family stability.

These revisions will have no impact on the institution of the family and family stability.

To access the final rule for Clarification of Employer Duty to Provide Personal Protective Equipment (PPE) and Train Each Employee, Parts 1910, 1915, 1917, 1918 and 1926, please see attachment or go to:

http://www.osha.gov/FedReg_osha_pdf/FED20081212.pdf

Clarification of Employer Duty to Provide Personal Protective Equipment (PPE) and Train Each Employee; Final Rule; Parts 1910, 1915; 1917; 1918; and 1926; and Correction

As Adopted by the

Safety and Health Codes Board

Date: April 16, 2009



VIRGINIA OCCUPATIONAL SAFETY AND HEALTH PROGRAM

VIRGINIA DEPARTMENT OF LABOR AND INDUSTRY

Effective Date: July 15, 2009

- 16 VAC 25-90-1910.9, Compliance duties owed to each employee, 1910.9;
- 16 VAC 25-90-1910.95, Occupational noise exposure, 1910.95;
- 16 VAC 25-90-1910.134, Respiratory protection, 1910.134;
- 16 VAC 25-90-1910.156, Fire brigades, 1910.156;
- 16 VAC 25-90-1910.1001, Asbestos, 1910.1001;
- 16 VAC 25-90-1910.1003, 13 Carcinogens (4-Nitrobiphenyl, etc.), 1910.1003;
- 16 VAC 25-90-1910.1017, Vinyl chloride, 1910.1017;
- 16 VAC 25-90-1910.1018, Inorganic arsenic, 1910.1018;
- 16 VAC 25-90-1910.1025, Lead, 1910.1025;
- 16 VAC 25-90-1910.1026, Chromium (VI), 1910.1027;
- 16 VAC 25-90-1910.1027, Cadmium, 1910.1027;
- 16 VAC 25-90-1910.1028, Benzene, 1910.1028;
- 16 VAC 25-90-1910.1029, Coke oven emissions, 1910.1029;
- 16 VAC 25-90-1910.1030, Bloodborne pathogens, 1910.1030;
- 16 VAC 25-90-1910.1043, Cotton dust, 1910.1043;
- 16 VAC 25-90-1910.1044, 1,2-dibromo-3-chloropropane, 1910.1044;
- 16 VAC 25-90-1910.1045, Acrylonitrile, 1910.1045;
- 16 VAC 25-90-1910.1047, Ethylene oxide, 1910.1047;
- 16 VAC 25-90-1910.1048, Formaldehyde, 1910.1048;
- 16 VAC 25-90-1910.1050, Methylenedianiline, 1910.1050;
- 16 VAC 25-90-1910.1051, Butadiene, 1910.1051;
- 16 VAC 25-90-1910.1052, Methylene chloride, 1910.1052;
- 16 VAC 25-100-1915.9, Compliance duties owed to each employee, 1915.9;

16 VAC 25-100-1915.1001, Asbestos, 1915.1001;
16 VAC 25-100-1915.1026, Chromium (IV), 1915.1026;
16 VAC 25-120-1917.5, Compliance duties owed to each employee, 1917.5;
16 VAC 25-130-1918.5, Compliance duties owed to each employee, 1918.5;
16 VAC 25-175-1926.20, General safety and health provisions, 1926.20;
16 VAC 25-175-1926.60, Methylenedianiline, 1926.60
16 VAC 25-175-1926.62, Lead, 1926.62
16 VAC 25-175-1926.761, Training, 1926.76;
16 VAC 25-175-1926.1101, Asbestos, 1926.1101;
16 VAC 25-175-1926.1126, Chromium (IV), 1926.1126; and
16 VAC 25-175-1926.1127, Cadmium, 1926.1127

When the regulations, as set forth in the Clarification to the final rule on Employer Duty to Provide Personal Protective Equipment and Train Each Employee, 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

January 11, 2009

July 15, 2009

The Final Standard

■ Parts 1910, 1915, 1917, 1918 and 1926 of Title 29 of the Code of Federal Regulations are hereby amended as follows:

PART 1910—[AMENDED]**Subpart A—[Amended]**

■ 1. The authority citation for subpart A of 29 CFR 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, and 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), 5-2002 (67 FR 65008), and 5-2007 (72 FR 31159), as applicable.

Sections 1910.7, 1910.8, and 1910.9 also issued under 29 CFR Part 1911. Section 1910.7(f) also issued under 31 U.S.C. 9701, 29 U.S.C. 9a, 5 U.S.C. 553; Pub. L. 106-113 (113 Stat. 1501A-222); and OMB Circular A-25 (dated July 8, 1993) (58 FR 38142, July 15, 1993).

■ 2. A new section 1910.9 is added, to read as follows:

§ 1910.9 Compliance duties owed to each employee.

(a) *Personal protective equipment.* Standards in this part requiring the

employer to provide personal protective equipment (PPE), including respirators and other types of PPE, because of hazards to employees impose a separate compliance duty with respect to each employee covered by the requirement. The employer must provide PPE to each employee required to use the PPE, and each failure to provide PPE to an employee may be considered a separate violation.

(b) *Training.* Standards in this part requiring training on hazards and related matters, such as standards requiring that employees receive training or that the employer train employees, provide training to employees, or institute or implement a training program, impose a separate compliance duty with respect to each employee covered by the requirement. The employer must train each affected employee in the manner required by the standard, and each failure to train an employee may be considered a separate violation.

Subpart G—[Amended]

■ 3. The authority citation for subpart G of 29 CFR part 1910 is revised to read as follows:

Authority: Secs. 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), 5-2002 (67 FR 50017), or 5-2007 (72 FR 31159) as applicable; and 29 CFR part 1911.

■ 4. In section 1910.95, paragraph (k)(1) is revised to read as follows:

§ 1910.95 Occupational noise exposure.

(k) * * *
(1) The employer shall train each employee who is exposed to noise at or above an 8-hour time weighted average of 85 decibels in accordance with the requirements of this section. The employer shall institute a training program and ensure employee participation in the program.

Subpart I—[Amended]

■ 5. The authority citation for subpart I of 29 CFR 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, and 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), 5-2002 (67 FR 65008), or 5-2007 (72

FR 31160), as applicable, and 29 CFR Part 1911.

■ 6. In section 1910.134, paragraph (a)(2) is revised to read as follows:

§ 1910.134 Respiratory protection.

(a) * * *
(2) A respirator shall be provided to each employee when such equipment is necessary to protect the health of such employee. The employer shall provide the respirators which are applicable and suitable for the purpose intended. The employer shall be responsible for the establishment and maintenance of a respiratory protection program, which shall include the requirements outlined in paragraph (c) of this section. The program shall cover each employee required by this section to use a respirator.

Subpart L—[Amended]

■ 7. The authority citation for subpart L of 29 CFR 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, and 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), 5-2002 (67 FR 65008), or 5-2007 (72 FR 31160), as applicable, and 29 CFR Part 1911.

■ 8. In section 1910.156, paragraph (f)(1)(i) is revised to read as follows:

§ 1910.156 Fire brigades.

(f) * * *
(1) * * *
(i) The employer must ensure that respirators are provided to, and used by, each fire brigade member, and that the respirators meet the requirements of 29 CFR 1910.134 for each employee required by this section to use a respirator.

Subpart Z—[Amended]

■ 9. The authority citation for subpart Z of 29 CFR 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, and 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), 5-2002 (67 FR 65008), or 5-2007 (72 FR 31160), as applicable.

All of subpart Z issued under section 6(b) of the Occupational Safety and Health Act,

except those substances that have exposure limits listed in Tables Z-1, Z-2, and Z-3 of 29 CFR 1910.1000. The latter were issued under section 6(a) (29 U.S.C. 655(a)).

Section 1910.1000, Tables Z-1, Z-2, and Z-3 also issued under 5 U.S.C. 553, Section 1910.1000 Tables Z-1, Z-2, and Z-3 but not under 29 CFR part 1911 except for the arsenic (organic compounds), benzene, cotton dust, and chromium (VI) listings.

Section 1910.1001 also issued under section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3704) and 5 U.S.C. 553.

Section 1910.1002 also issued under 5 U.S.C. 553 but not under 29 U.S.C. 655 or 29 CFR part 1911.

Sections 1910.1018, 1910.1029 and 1910.1200 also issued under 29 U.S.C. 653.

Section 1910.1030 also issued under Pub. L. 106-430, 114 Stat. 1901.

■ 10. In section 1910.1001, paragraphs (g)(1) introductory text, (g)(2)(i), and (j)(7)(i) are revised to read as follows:

§ 1910.1001 Asbestos.

(g) * * *
(1) *General.* For employees who use respirators required by this section, the employer must provide each employee an appropriate respirator that complies with the requirements of this paragraph. Respirators must be used during:

(2) * * *
(i) The employer must implement a respiratory protection program in accordance with 29 CFR 134 (b) through (d) (except (d)(1)(iii)), and (f) through (m), which covers each employee required by this section to use a respirator.

(j) * * *
(7) * * *
(i) The employer shall train each employee who is exposed to airborne concentrations of asbestos at or above the PEL and/or excursion limit in accordance with the requirements of this section. The employer shall institute a training program and ensure employee participation in the program.

■ 11. In section 1910.1003, paragraphs (c)(4)(iv) and (d)(1) are revised to read as follows:

§ 1910.1003 13 Carcinogens (4-Nitrophenyl, etc.).

(c) * * *
(4) * * *
(iv) Each employee engaged in handling operations involving the carcinogens addressed by this section must be provided with, and required to wear and use, a half-face filter type respirator for dusts, mists, and fumes. A

respirator affording higher levels of protection than this respirator may be substituted.

(d) * * * (1) Respiratory program. The employer must implement a respiratory protection program in accordance with § 1910.134 (b), (c), (d) (except (d)(1)(iii) and (iv)), and (d)(3), and (e) through (m), which covers each employee required by this section to use a respirator.

■ 12. In section 1910.1017, paragraphs (g)(1) and (g)(2) are revised to read as follows:

§ 1910.1017 Vinyl chloride.

(g) Respiratory protection. (1) General. For employees who use respirators required by this section, the employer must provide each employee an appropriate respirator that complies with the requirements of this paragraph.

(2) Respirator program. The employer must implement a respiratory protection program in accordance with § 1910.134 (b) through (d) (except (d)(1)(iii), and (d)(3)(iii)(B)(1) and (2)), and (f) through (m) which covers each employee required by this section to use a respirator.

■ 13. In section 1910.1018, paragraphs (h)(1) introductory text, and (h)(2)(i), and (o)(1)(i) are revised to read as follows:

§ 1910.1018 Inorganic arsenic.

(h) * * * (1) General. For employees who use respirators required by this section, the employer must provide each employee an appropriate respirator that complies with the requirements of this paragraph. Respirators must be used during:

(2) * * * (i) The employer must implement a respiratory protection program in accordance with § 1910.134(b) through (d) (except (d)(1)(iii)), and (f) through (m), which covers each employee required by this section to use a respirator.

(o) * * * (l) * * * (i) The employer shall train each employee who is subject to exposure to inorganic arsenic above the action level without regard to respirator use, or for whom there is the possibility of skin or eye irritation from inorganic arsenic, in accordance with the requirements of this section. The employer shall

institute a training program and ensure employee participation in the program.

■ 14. In section 1910.1025, paragraphs (f)(1) introductory text, (f)(2)(i), and (l)(1)(ii) are revised to read as follows:

§ 1910.1025 Lead.

(f) * * * (1) General. For employees who use respirators required by this section, the employer must provide each employee an appropriate respirator that complies with the requirements of this paragraph. Respirators must be used during:

(2) * * * (i) The employer must implement a respiratory protection program in accordance with § 1910.134(b) through (d) (except (d)(1)(iii)), and (f) through (m), which covers each employee required by this section to use a respirator.

(l) * * * (1) * * * (ii) The employer shall train each employee who is subject to exposure to lead at or above the action level, or for whom the possibility of skin or eye irritation exists, in accordance with the requirements of this section. The employer shall institute a training program and ensure employee participation in the program.

■ 15. In section 1910.1026, paragraphs (g)(1) introductory text and (g)(2) are revised to read as follows:

§ 1910.1026 Chromium (VI).

(g) * * * (1) General. Where respiratory protection is required by this section, the employer must provide each employee an appropriate respirator that complies with the requirements of this paragraph. Respiratory protection is required during:

(2) Respiratory protection program. Where respirator use is required by this section, the employer shall institute a respiratory protection program in accordance with § 1910.134, which covers each employee required to use a respirator.

■ 16. In section 1910.1027, paragraphs (g)(1) introductory text, (g)(2)(i), and (m)(4)(i) are revised to read as follows:

§ 1910.1027 Cadmium.

(g) * * * (1) General. For employees who use respirators required by this section, the employer must provide each employee an appropriate respirator that complies with the requirements of this paragraph. Respirators must be used during:

(2) * * * (i) The employer must implement a respiratory protection program in accordance with § 1910.134(b) through (d) (except (d)(1)(iii)), and (f) through (m), which covers each employee required by this section to use a respirator.

(m) * * * (4) * * * (i) The employer shall train each employee who is potentially exposed to cadmium in accordance with the requirements of this section. The employer shall institute a training program, ensure employee participation in the program, and maintain a record of the contents of such program.

■ 17. In section 1910.1028, paragraph (g)(1) introductory text and (g)(2)(i) are revised to read as follows:

§ 1910.1028 Benzene.

(g) * * * (1) General. For employees who use respirators required by this section, the employer must provide each employee an appropriate respirator that complies with the requirements of this paragraph. Respirators must be used during:

(2) * * * (i) The employer must implement a respiratory protection program in accordance with § 1910.134(b) through (d) (except (d)(1)(iii), (d)(3)(iii)(b)(1) and (2)), and (f) through (m), which covers each employee required by this section to use a respirator.

■ 18. In section 1910.1029, paragraphs (g)(1) introductory text, (g)(2) and (k)(1)(i) are revised to read as follows:

§ 1910.1029 Coke oven emissions.

(g) * * * (1) General. For employees who use respirators required by this section, the employer must provide each employee an appropriate respirator that complies with the requirements of this paragraph. Respirators must be used during:

(2) Respirator program. The employer must implement a respiratory protection

program in accordance with § 1910.134(b) through (d) (except (d)(1)(iii)), and (f) through (m), which covers each employee required by this section to use a respirator.

(k) * * *
(1) * * *

(i) The employer shall train each employee who is employed in a regulated area in accordance with the requirements of this section. The employer shall institute a training program and ensure employee participation in the program.

■ 19. In section 1910.1030, paragraph (g)(2)(i) is revised to read as follows:

§ 1910.1030 Bloodborne pathogens.

(g) * * *
(2) * * *

(i) The employer shall train each employee with occupational exposure in accordance with the requirements of this section. Such training must be provided at no cost to the employee and during working hours. The employer shall institute a training program and ensure employee participation in the program.

■ 20. In section 1910.1043, paragraphs (f)(1) introductory text, (f)(2)(i), and (i)(1)(i) are revised to read as follows:

§ 1910.1043 Cotton dust.

(f) * * *

(1) General. For employees who are required to use respirators by this section, the employer must provide each employee an appropriate respirator that complies with the requirements of this paragraph. Respirators must be used during:

(2) * * *

(i) The employer must implement a respiratory protection program in accordance with § 1910.134(b) through (d) (except (d)(1)(iii)), and (f) through (m), which covers each employee required by this section to use a respirator.

(i) * * *
(1) * * *

(i) The employer shall train each employee exposed to cotton dust in accordance with the requirements of this section. The employer shall institute a training program and ensure employee participation in the program.

■ 21. In section 1910.1044, paragraphs (h)(1) introductory text, (h)(2), and (n)(1)(i) are revised to read as follows:

§ 1910.1044 1,2-dibromo-3-chloropropane.

(h) * * *

(1) General. For employees who are required to use respirators by this section, the employer must provide each employee an appropriate respirator that complies with the requirements of this paragraph. Respirators must be used during:

(2) Respirator Program. The employer must implement a respiratory protection program in accordance with § 1910.134(b) through (d) (except (d)(1)(iii)), and (f) through (m), which covers each employee required by this section to use a respirator.

(n) * * *
(1) * * *

(i) The employer shall train each employee who may be exposed to DBCP in accordance with the requirements of this section. The employer shall institute a training program and ensure employee participation in the program.

■ 22. In section 1910.1045, paragraphs (h)(1) introductory text, (h)(2)(i), and (o)(1)(i) are revised to read as follows:

§ 1910.1045 Acrylonitrile.

(h) * * *

(1) General. For employees who use respirators required by this section, the employer must provide each employee an appropriate respirator that complies with the requirements of this paragraph. Respirators must be used during:

(2) * * *

(i) The employer must implement a respiratory protection program in accordance with § 1910.134(b) through (d) (except (d)(1)(iii), (d)(3)(iii)(b)(1), and (2)), and (f) through (m), which covers each employee required by this section to use a respirator.

(o) * * *
(1) * * *

(i) The employer shall train each employee exposed to AN above the action level, each employee whose exposures are maintained below the action level by engineering and work practice controls, and each employee subject to potential skin or eye contact with liquid AN in accordance with the requirements of this section. The employer shall institute a training

program and ensure employee participation in the program.

■ 23. In section 1910.1047, paragraph (g)(1) introductory text and (g)(2) are revised to read as follows:

§ 1910.1047 Ethylene oxide.

(g) * * *

(1) General. For employees who use respirators required by this section, the employer must provide each employee an appropriate respirator that complies with the requirements of this paragraph. Respirators must be used during:

(2) Respirator program. The employer must implement a respiratory protection program in accordance with § 1910.134(b) through (d) (except (d)(1)(iii)), and (f) through (m), which covers each employee required by this section to use a respirator.

■ 24. In section 1910.1048, paragraphs (g)(1) introductory text and (g)(2)(i) are revised to read as follows:

§ 1910.1048 Formaldehyde.

(g) * * *

(1) General. For employees who use respirators required by this section, the employer must provide each employee an appropriate respirator that complies with the requirements of this paragraph. Respirators must be used during:

(2) * * *

(i) The employer must implement a respiratory protection program in accordance with § 1910.134(b) through (d) (except (d)(1)(iii), (d)(3)(iii)(b)(1), and (2)), and (f) through (m), which covers each employee required by this section to use a respirator.

■ 25. In section 1910.1050, paragraphs (h)(1) introductory text and (h)(2) are revised to read as follows:

§ 1910.1050 Methylenedianiline.

(h) * * *

(1) General. For employees who use respirators required by this section, the employer must provide each employee an appropriate respirator that complies with the requirements of this paragraph. Respirators must be used during:

(2) Respirator program. The employer must implement a respiratory protection program in accordance with § 1910.134 (b) through (d) (except (d)(1)(iii)), and (f) through (m), which covers each

employee required by this section to use a respirator.

■ 26. In section 1910.1051, paragraphs (h)(1) introductory text, (h)(2)(i), and (l)(2)(ii) are revised to read as follows:

§ 1910.1051 Butadiene.

(h) * * *
(1) General. For employees who use respirators required by this section, the employer must provide each employee an appropriate respirator that complies with the requirements of this paragraph. Respirators must be used during:

(2) * * *
(i) The employer must implement a respiratory protection program in accordance with § 1910.134(b) through (d) (except (d)(1)(iii), (d)(3)(iii)(B)(1), and (2)), and (f) through (m), which covers each employee required by this section to use a respirator.

(l) * * *
(2) * * *
(i) The employer shall train each employee who is potentially exposed to BD at or above the action level or the STEL in accordance with the requirements of this section. The employer shall institute a training program, ensure employee participation in the program, and maintain a record of the contents of such program.

■ 27. In section 1910.1052, paragraphs (g)(1) introductory text and (g)(2)(i) are revised to read as follows:

§ 1910.1052 Methylene chloride.

(g) * * *
(1) General. For employees who use respirators required by this section, the employer must provide each employee an appropriate respirator that complies with the requirements of this paragraph. Respirators must be used during:

(2) * * *
(i) The employer must implement a respiratory protection program in accordance with § 1910.13(b) through (m) (except (d)(1)(iii)), which covers each employee required by this section to use a respirator.

PART 1915—[AMENDED]

■ 28. The authority citation for part 1915 is revised to read as follows:

Authority: Section 41, Longshore and Harbor Workers' Compensation Act (33

U.S.C. 941); 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), 5-2002 (67 FR 65008), or 5-2007 (72 FR 31160) as applicable; 29 CFR Part 1911.

Subpart A—[Amended]

■ 29. A new section 1915.9 is added, to read as follows:

§ 1915.9 Compliance duties owed to each employee.

(a) Personal protective equipment. Standards in this part requiring the employer to provide personal protective equipment (PPE), including respirators and other types of PPE, because of hazards to employees impose a separate compliance duty with respect to each employee covered by the requirement. The employer must provide PPE to each employee required to use the PPE, and each failure to provide PPE to an employee may be considered a separate violation.

(b) Training. Standards in this part requiring training on hazards and related matters, such as standards requiring that employees receive training or that the employer train employees, provide training to employees, or institute or implement a training program, impose a separate compliance duty with respect to each employee covered by the requirement. The employer must train each affected employee in the manner required by the standard, and each failure to train an employee may be considered a separate violation.

Subpart Z—[Amended]

■ 30. In section 1915.1001, paragraphs (h)(1) introductory text, (h)(3)(i), and (k)(9)(i), are revised to read as follows:

§ 1915.1001 Asbestos.

(h) * * *
(1) General. For employees who use respirators required by this section, the employer must provide each employee an appropriate respirator that complies with the requirements of this paragraph. Respirators must be used in the following circumstances:

(3) * * *
(i) Where respirator use is required by this section, the employer shall institute a respiratory protection program in accordance with § 1910.134(b), (d), (e), and (f), which covers each employee required by this section to use a respirator.

(k) * * *
(9) * * *

(i) The employer shall train each employee who is likely to be exposed in excess of a PEL, and each employee who performs Class I through IV asbestos operations in accordance with the requirements of this section. Training shall be provided at no cost to the employee. The employer shall institute a training program and ensure employee participation in the program.

■ 31. In section 1915.1026, paragraphs (f)(1) introductory text and (f)(2) are revised to read as follows:

§ 1915.1026 Chromium (IV).

(f) * * *
(1) General. Where respiratory protection is required by this section, the employer must provide each employee an appropriate respirator that complies with the requirements of this paragraph. Respiratory protection is required during:

(2) Respiratory Protection Program. Where respirator use is required by this section, the employer shall institute a respiratory protection program in accordance with § 1910.134, which covers each employee required to use a respirator.

PART 1917—[AMENDED]

■ 32. The authority citation for part 1917 is revised to read as follows:

Authority: Section 41, Longshore and Harbor Workers' Compensation Act (33 U.S.C. 941); 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), 5-2002 (67 FR 65008), or 5-2007 (72 FR 31160) as applicable; 29 CFR Part 1911.

Subpart A—[Amended]

■ 33. A new section 1917.5 is added, to read as follows:

§ 1917.5 Compliance duties owed to each employee.

(a) Personal protective equipment. Standards in this part requiring the employer to provide personal protective equipment (PPE), including respirators and other types of PPE, because of hazards to employees impose a separate compliance duty with respect to each employee covered by the requirement. The employer must provide PPE to each employee required to use the PPE, and each failure to provide PPE to an

employee may be considered a separate violation.

(b) *Training.* Standards in this part requiring training on hazards and related matters, such as standards requiring that employees receive training or that the employer train employees, provide training to employees, or institute or implement a training program, impose a separate compliance duty with respect to each employee covered by the requirement. The employer must train each affected employee in the manner required by the standard, and each failure to train an employee may be considered a separate violation.

PART 1918—[AMENDED]

■ 34. The authority citation for part 1918 is revised to read as follows:

Authority: Section 41, Longshore and Harbor Workers' Compensation Act (33 U.S.C. 941); 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), 5-2002 (67 FR 65008), or 5-2007 (72 FR 31160) as applicable; 29 CFR Part 1911.

Subpart A—[Amended]

■ 35. A new section 1918.5 is added, to read as follows:

§ 1918.5 Compliance duties owed to each employee.

(a) *Personal protective equipment.* Standards in this part requiring the employer to provide personal protective equipment (PPE), including respirators and other types of PPE, because of hazards to employees impose a separate compliance duty with respect to each employee covered by the requirement. The employer must provide PPE to each employee required to use the PPE, and each failure to provide PPE to an employee may be considered a separate violation.

(b) *Training.* Standards in this part requiring training on hazards and related matters, such as standards requiring that employees receive training or that the employer train employees, provide training to employees, or institute or implement a training program, impose a separate compliance duty with respect to each employee covered by the requirement. The employer must train each affected employee in the manner required by the standard, and each failure to train an employee may be considered a separate violation.

PART 1926—[AMENDED]

Subpart C—[Amended]

■ 36. The authority citation for subpart C of 29 CFR part 1926 is revised to read as follows:

Authority: Sec. 3704, Contract Work Hours and Safety Standards Act (40 U.S.C. 333); secs. 4, 6, and 8, 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), or 5-2007 (72 FR 31160) as applicable; and 29 CFR part 1911.

■ 37. In section 1926.20, a new paragraph (f) is added to read as follows:

§ 1926.20 General safety and health provisions.

(f) *Compliance duties owed to each employee.* (1) *Personal protective equipment.* Standards in this part requiring the employer to provide personal protective equipment (PPE), including respirators and other types of PPE, because of hazards to employees impose a separate compliance duty with respect to each employee covered by the requirement. The employer must provide PPE to each employee required to use the PPE, and each failure to provide PPE to an employee may be considered a separate violation.

(2) *Training.* Standards in this part requiring training on hazards and related matters, such as standards requiring that employees receive training or that the employer train employees, provide training to employees, or institute or implement a training program, impose a separate compliance duty with respect to each employee covered by the requirement. The employer must train each affected employee in the manner required by the standard, and each failure to train an employee may be considered a separate violation.

Subpart D—[Amended]

■ 38. The authority citation for subpart D of 29 CFR part 1926 is revised to read as follows:

Authority: Section 3704 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3701 *et seq.*); Sections 4, 6, and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, and 657); Secretary of Labor's Orders 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 (62 FR 50017), 5-2002 (67 FR 65008); or 5-2007 (72 FR 31160) as applicable; and 29 CFR part 1911.

Sections 1926.58, 1926.59, 1926.60, and 1926.65 also issued under 5 U.S.C. 553 and 29 CFR part 1911.

Section 1926.62 of 29 CFR also issued under section 1031 of the Housing and Community Development Act of 1992 (42 U.S.C. 4853).

Section 1926.65 of 29 CFR also issued under section 126 of the Superfund Amendments and Reauthorization Act of 1986, as amended (29 U.S.C. 655 note), and 5 U.S.C. 553.

■ 39. In section 1926.60, paragraph (i)(1) introductory text, and (i)(2) are revised to read as follows:

§ 1926.60 Methyleneedianiline.

(i) * * *
(1) *General.* For employees who use respirators required by this section, the employer must provide each employee an appropriate respirator that complies with the requirements of this paragraph. Respirators must be used during:

(2) *Respirator program.* The employer must implement a respiratory protection program in accordance with § 1910.134 (b) through (d) (except (d)(1)(iii)), and (f) through (m), which covers each employee required by this section to use a respirator.

■ 40. In section 1926.62, paragraphs (f)(1) introductory text, (f)(2)(i), and (l)(1)(ii) are revised to read as follows:

§ 1926.62 Lead.

(f) * * *
(1) *General.* For employees who use respirators required by this section, the employer must provide each employee an appropriate respirator that complies with the requirements of this paragraph. Respirators must be used during:

(2) * * *
(i) The employer must implement a respiratory protection program in accordance with § 1910.134(b) through (d) (except (d)(1)(iii)), and (f) through (m), which covers each employee required by this section to use a respirator.

(l) * * *
(ii) The employer shall train each employee who is subject to exposure to lead at or above the action level on any day, or who is subject to exposure to lead compounds which may cause skin or eye irritation (e.g., lead arsenate, lead azide), in accordance with the requirements of this section. The employer shall institute a training program and ensure employee participation in the program.

Subpart R—[Amended]

■ 41. The authority citation for subpart R of 29 CFR part 1926 is revised to read as follows:

Authority: Sec. 3704, Contract Work Hours and Safety Standards Act (Construction Safety Act) (40 U.S.C. 333); Sec. 4, 6, and 8, Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order No. 3–2000 (65 FR 50017), No. 5–2002 (67 FR 65006), or No. 5–2007 (72 FR 31160) as applicable; and 29 CFR part 1911.

■ 42. In section 1926.761, paragraph (b) is revised to read as follows:

§ 1926.761 Training.

(b) Fall hazard training. The employer shall train each employee exposed to a fall hazard in accordance with the requirements of this section. The employer shall institute a training program and ensure employee participation in the program.

Subpart Z—[Amended]

■ 43. The authority citation for subpart Z of 29 CFR part 1926 is revised to read as follows:

Authority: Section 3704 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3701 et seq.); 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 Orders 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 (62 FR 50017), 5–2002 (67 FR 65006), or 5–2007 (71 FR 31160), as applicable; and 29 CFR part 11.

Section 1926.1102 of 29 CFR not issued under 29 U.S.C. 655 or 29 CFR part 1911; also issued under 5 U.S.C. 553.

■ 44. In section 1926.1101, paragraphs (h)(1) introductory text, (h)(2), and (k)(9)(i) are revised to read as follows:

§ 1926.1101 Asbestos.

(h) General. For employees who use respirators required by this section, the employer must provide each employee an appropriate respirator that complies with the requirements of this paragraph. Respirators must be used during:

(2) (i) The employer must implement a respiratory protection program in accordance with § 1910.134 (b) through (d) (except (d)(1)(iii)), and (f) through (m), which covers each employee required by this section to use a respirator.

(k) General.

(9) General.

(i) The employer shall train each employee who is likely to be exposed in excess of a PEL, and each employee who performs Class I through IV asbestos operations, in accordance with the requirements of this section. Such training shall be conducted at no cost to the employee. The employer shall institute a training program and ensure employee participation in the program.

■ 45. In section 1926.1126, paragraphs (f)(1) introductory text and (f)(2) are revised to read as follows:

§ 1926.1126 Chromium (IV).

(f) General.

(1) General. Where respiratory protection is required by this section, the employer must provide each employee an appropriate respirator that complies with the requirements of this paragraph. Respiratory protection is required during:

(2) Respiratory protection program. Where respirator use is required by this section, the employer shall institute a respiratory protection program in accordance with § 1910.134, which covers each employee required to use a respirator.

■ 46. In section 1926.1127, paragraphs (g)(1) introductory text, (g)(2)(i), and (m)(4)(i) are revised to read as follows:

§ 1926.1127 Cadmium.

(g) General.

(1) General. For employees who use respirators required by this section, the employer must provide each employee an appropriate respirator that complies with the requirements of this paragraph. Respirators must be used during:

(2) (i) The employer must implement a respiratory protection program in accordance with § 1910.134 (b) through (d) (except (d)(1)(iii)), and (f) through (m), which covers each employee required by this section to use a respirator.

(m) General.

(4) General. (i) The employer shall train each employee who is potentially exposed to cadmium in accordance with the requirements of this section. The employer shall institute a training program, ensure employee participation

in the program, and maintain a record of the contents of the training program.

[FR Doc. E8–29122 Filed 12–9–08; 4:15 pm]

BILLING CODE 4510–26–P

Correction of Publication

In FR Doc. E8-29122 appearing on page 75568 in the Federal Register of Friday, December 12, 2008, the following correction is made:

§ 1926.1101 [Corrected]

■ On page 75589, in the first column, Subpart Z, item 44, the instruction "In section 1926.1101, paragraphs (h)(1) introductory text, (h)(2), and (k)(9)(i) are revised to read as follows:" is corrected to read "In section 1926.1101, paragraphs (h)(1) introductory text, (h)(2)(i), and (k)(9)(i) are revised to read as follows":

Signed at Washington, DC, this 6th day of January 2009.

Thomas M. Stohler,

Acting Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. E9-311 Filed 1-6-09; 8:45 am]

BILLING CODE 4510-26-P

DEPARTMENT OF LABOR**Occupational Safety and Health Administration****29 CFR Parts 1910, 1915, 1917, 1918 and 1926**

[Docket No. OSHA-2008-0031]

RIN 1218-AC42

Clarification of Employer Duty To Provide Personal Protective Equipment and Train Each Employee

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

ACTION: Final rule; correction.

SUMMARY: OSHA is correcting an error in the final rule published in the Federal Register on December 12, 2008, clarifying employers' duty to provide personal protective equipment and to train each employee.

DATES: Effective January 12, 2009.

FOR FURTHER INFORMATION CONTACT: Contact Ms. Jennifer Ashley, Director, Office of Communications, OSHA, U.S. Department of Labor, Room N-3647, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693-1999 or fax (202) 693-1634.

SUPPLEMENTARY INFORMATION: On December 12, 2008 (73 FR 75568), OSHA issued a final rule entitled "Clarification of Employer Duty To Provide Personal Protective Equipment and Train Each Employee." Subsequently, an error was discovered in the amendatory language of that Federal Register notice. This notice is being published to correct that language.