COMMONWEALTH of VIRGINIA

DEPARTMENT OF LABOR AND INDUSTRY

C. RAY DAVENPORT
COMMISSIONER

POWERS-TAYLOR BUILDING
13 SOUTH 13TH STREET
RICHMOND, VA 23219
PHONE 804 . 371 . 2327
FAX 804 . 371 . 6524
TDD 804 . 371 . 2376

VIRGINIA SAFETY AND HEALTH CODES BOARD

BRIEFING PACKAGE

FOR MAY 24th, 2005

Re-Adoption:
Proposed Regulation Governing Financial Responsibility of
Boiler and Pressure Vessel Contract Fee Inspectors

I. Action Requested.

The Boiler Safety Compliance Program of the Department of Labor and Industry requests the Safety and Health Codes Board to consider for adoption as a proposed regulation of the Board the attached revised draft regulation governing the financial responsibility of boiler and pressure vessel contract fee inspectors and to repeal the existing proposed regulation previously adopted by the Board.

II. Summary of the Revised Proposed Regulation.

The revised proposed regulation changes none of the intent of the original proposed regulation adopted by the Board at its meeting on August 3, 2004 which required contract fee inspectors operating in the Commonwealth to demonstrate financial responsibility for bodily injury and property damage resulting from, or directly relating to, an inspector's negligent inspection or recommendation for certification of

a boiler or pressure vessel. As before, financial responsibility in the form of insurance, guaranty, surety, or self-insurance will be required as follows:

Aggregate limits of $500,000 for any contract fee inspector with less than 1% market share; $1 million for those with 1% up to and including 10% market share; and $2 million for those with more than 10% market share or any contract fee inspector that employs or has an arrangement with other contract fee inspectors.

The major changes in this revision include an amended definition of "market share" and the addition of a definition for "contract fee inspection agency." Further clarified is the coverage when a contract fee inspector is working for a contract fee inspection company, as well as to how the aggregate limits apply to contract fee inspection companies. Minor changes correct errors of grammar and punctuation.

III. Basis, Purpose and Impact of the Proposed Rulemaking.

A. Basis.

The Safety and Health Codes Board is authorized by Title 40.1-51.9:2 C of the *Code of Virginia* to, "…promulgate regulations requiring contract fee inspectors, as a condition of their doing business in the Commonwealth, to demonstrate financial responsibility sufficient to comply with the requirements of this chapter. Regulations governing the amount of any financial responsibility required by the contract fee inspector shall take into consideration the type, capacity and number of boilers or pressure vessels inspected or certified." *(§ 40.1-51.9:2. of the Code of Virginia, Financial Responsibility Requirements for Contract Fee Inspectors, is contained in Appendix "A.")*

B. Purpose.

Intent of the Proposed Regulation.

As before, the purpose of the proposed regulation is to set minimum aggregate limits for coverage or other means provided for in the *Code of Virginia* and approved by the Board to ensure the financial responsibility of boiler and pressure vessel contract fee inspectors operating in the Commonwealth. The intent of this financial responsibility is to assure additional protection to the public, including compensation to third parties, in cases where there is bodily injury and property damage resulting from, or directly relating to, a contract fee inspector's negligent inspection or recommendation for certification of a boiler or pressure vessel.

Reason for the Revision

The previously proposed regulation, adopted by the Board at its August 3, 2004 meeting, was not approved by the Department of Planning and Budget. The Department, which is

charged to review and approve all regulations to be promulgated, determined that the proposed regulation as adopted by the Board, failed to take into account the type capacity and number of boilers inspected in the determination of "market share" as well minor grammatical or technical writing deficiencies.

C. Impact on Contract Fee Inspectors.

Unchanged from the August 3, 2004 proposal. Contract fee inspectors would be required to indemnify boiler and pressure vessel owners for any bodily injury and property damage resulting from or directly related to an inspector's negligent inspection or recommendation for certification of a boiler or pressure vessel. Contract fee inspectors would be required to provide documentation of their means of indemnification at the time of their certification or before performing inspections and at renewal of the instrument of insurance, guaranty, surety or self-insurance.

D. Impact on Boiler or Pressure Vessel Owners.

Unchanged from the August 3, 2004 proposal. It is anticipated that any additional costs to the contract fee inspector, as a result of the requirements of this regulation, would be passed on to the boiler or pressure vessel owner, who is the end user of the service.

E. Impact on Employers and Employees.

Unchanged from the August 3, 2004 proposal. Employers, employees, and the general public would be compensated up to the level of the required financial responsibility in cases of bodily injury and property damage resulting from or directly related to a contract fee inspector's negligent inspection or recommendation for certification of a boiler or pressure vessel.

F. Impact on the Department of Labor and Industry.

No significant impact on the Department is anticipated beyond the cost to promulgate the regulation.

G. Technological Feasibility.

There are no technological feasibility issues associated with this regulation.

H. Benefit/Cost.

Unchanged from the August 3, 2004 proposal. The benefit of these changes would be to ensure a minimum level of indemnification in cases involving bodily injury and property damage resulting from, or directly relating to, a contract fee inspector's negligent inspection or recommendation for certification of a boiler or pressure vessel.

The financial responsibility requirements would cost contract fee inspectors approximately $7,500 - $10,000 per year. It is anticipated that the costs would be passed on to the boiler or pressure vessel owner, who is the end user of the service.

Individual property damage costs from boiler or pressure vessel incidents in Virginia during the past three years have ranged from $300,000 to $500,000. The proposed requirements would indemnify contract fee inspectors from potential lawsuits to the level of their coverage. The financial responsibility would also give contract fee inspectors a vested interest in the performance of the inspections they conduct.

IV. Implementation Schedule.

Not applicable. The revised draft is being offered as a proposed regulation of the Board for public comment and is not being considered as final regulatory language at this time.

Contact Person:

Mr. Fred Barton
Director, Boiler Safety Compliance
(804) 786-3262
fpb@doli.state.va.us

APPENDIX "A"

Enabling Statute from the Code of Virginia Authorizing Regulatory Action by the Board.

§ 40.1-51.9:2. Financial responsibility requirements for contract fee inspectors.

A. Contract fee inspectors inspecting or certifying regulated boilers or pressure vessels in the Commonwealth shall maintain evidence of their financial responsibility, including compensation to third parties, for bodily injury and property damage resulting from, or directly relating to, an inspector's negligent inspection or recommendation for

certification of a boiler or pressure vessel.

B. Documentation of financial responsibility, including documentation of insurance or bond, shall be provided to the Chief Inspector within thirty days after certification of the inspector. The Chief Inspector may revoke an inspector's certification for failure to provide documentation of financial responsibility in a timely fashion.

C. The Safety and Health Codes Board is authorized to promulgate regulations requiring contract fee inspectors, as a condition of their doing business in the Commonwealth, to demonstrate financial responsibility sufficient to comply with the requirements of this chapter. Regulations governing the amount of any financial responsibility required by the contract fee inspector shall take into consideration the type, capacity and number of boilers or pressure vessels inspected or certified.

D. Financial responsibility may be demonstrated by self-insurance, insurance, guaranty or surety, or any other method approved by the Board, or any combination thereof, under the terms the Board may prescribe. A contract fee inspector whose financial responsibility is accepted by the Board under this subsection shall notify the Chief Inspector at least thirty days before the effective date of the change, expiration, or cancellation of any instrument of insurance, guaranty or surety.

E. Acceptance of proof of financial responsibility shall expire on the effective date of any change in the inspector's instrument of insurance, guaranty or surety, or the expiration date of the inspector's certification. Application for renewal of acceptance of proof of financial responsibility shall be filed thirty days before the date of expiration.

F. The Chief Inspector, after notice and opportunity for hearing, may revoke his acceptance of evidence of financial responsibility if he determines that acceptance has been procured by fraud or misrepresentation, or a change in circumstances has occurred that would warrant denial of acceptance of evidence of financial responsibility under this section or the requirements established by the Board pursuant to this section.

G. It is not a defense to any action brought for failure to comply with the requirement to provide acceptable evidence of financial responsibility that the person charged believed in good faith that the owner or operator of an inspected boiler or pressure vessel possessed evidence of financial responsibility accepted by the Chief Inspector or the Board. (1996, c. 294.)

RECOMMENDED ACTION

The Boiler Safety Compliance Program recommends that the Safety and Health Codes Board adopt the amended proposed contract fee inspector financial responsibility regulation as a proposed regulation of the Board, as authorized by §§ 40.1-51.9:2 C. and 40.1-51.6., and rescind the previous version adopted at the August 3, 2004 meeting.

The Department also recommends that the Board state in any motion it may make to promulgate this regulation that it will receive, consider and respond to petitions by any interested persons at any time to reconsider or revise the proposed regulation to be adopted in accordance with the Administrative Process Act.

16 VAC 25-55, Financial Requirements for Boiler and Pressure Vessel Contract Fee Inspectors

As Adopted by the

Safety and Health Codes Board

Date:_____

BOILER SAFETY COMPLIANCE PROGRAM

VIRGINIA DEPARTMENT OF LABOR AND INDUSTRY

16 VAC 25-55, Financial Requirements for Boiler and Pressure Vessel Contract Fee Inspectors

Note: **New language is in Bold and underlined** ~~deleted language is struck through~~.

16 VAC - 25- CHAPTER 55
FINANCIAL REQUIREMENTS FOR BOILER AND PRESSURE VESSEL CONTRACT FEE INSPECTORS

16 VAC 25-55-10. Definitions.

The following words and terms, when used in this chapter, "Board" "Boiler", "Chief Inspector" and "Pressure Vessel", shall have the same meanings as defined in 16 VAC-25-50-10 unless the context clearly indicates otherwise.

"Contract fee inspector" means any certified boiler inspector contracted to inspect boilers or pressure vessels on an independent basis by the owner or operator of the boiler or pressure vessel.

"Market share" means **a fraction, (a) the numerator of which is the total fees charged by the inspector or agency under 16 VAC 25-50-150 for conducting power boiler and high temperature water boiler, heating boiler, and pressure vessel inspections in the most recent calendar year and (b) the denominator of which is the total fees charged by all inspectors and agencies under 16 VAC 25-50-150 for conducting power boiler and high temperature water boiler, heating boiler, and pressure vessel inspections in the most recent calendar year.** ~~the percentage of the total number of boilers and pressure vessels in the Commonwealth~~

~~with valid inspections in most recent calendar year for which data is available as reported by the Chief Inspector.~~

"Contract fee inspection agency" means a company that directly employs contract fee inspectors or has contractual arrangements with other contract fee inspectors for the purpose of providing boiler and pressure vessel inspections to the general public.

16 VAC 25-55-20. Financial Requirements.

A. Current certified contract fee inspectors shall provide documentation of financial responsibility to the Chief Inspector for approval within ninety days of the effective date of this regulation, in such form as required by the Chief Inspector.

Contract fee inspectors initially certified following the effective date of this regulation shall provide such documentation to the Chief Inspector within thirty days following the issuance of the certification of the contract fee inspector. The Chief Inspector may revoke a contract fee inspector's inspector identification card, as described in 16 VAC 25-50-70, for failure to provide documentation of financial responsibility within the required timeframe.

B. Financial responsibility of a contract fee inspector shall be demonstrated by maintenance of an instrument of insurance, guaranty, surety or **by** self-insurance, individually or in any combination thereof, for the purpose of compensation to third parties, for bodily

injury and property damage resulting from, or directly relating to, an inspector's negligent inspection or recommendation for certification of a boiler or pressure vessel:

1. An aggregate limit of $500,000 or more for any contract fee inspector **or contract fee inspection agency** with less than 1% market share;
2. An aggregate limit of $1 million or more for any contract fee inspector **or contract fee inspection agency** from 1% up to and including 10% market share; and
3. An aggregate limit of $2 million or more for any contract fee inspector **or contract fee inspection agency** with more than 10% market share. ~~or any contract fee inspector who is not a sole proprietor and sole operator and employs or may have contractual agreements for the provision of such services with other contract fee inspectors.~~
4. Contract fee inspectors may be covered under ~~the~~ **an** instrument **or instruments** of insurance, guaranty, surety or **the** self-insurance of their employer or a company on behalf of which they have a contractual arrangement to provide boiler and pressure vessel inspections. To be acceptable as proof of financial responsibility **for inspections not conducted for the benefit of their employer or company with which the inspector has a contractual arrangement such instrument, instruments or self-insurance must also cover** ~~such coverage must extend to the inspections conducted by~~ the contract fee inspector **for such inspections.** ~~which are not performed for their employer or the company with~~

~~which they have a contractual arrangement.~~ Where contract fee inspectors are not covered for inspections conducted on their own behalf under the instrument of insurance, guaranty, surety or self-insurance of their employer or company with which they have a contractual arrangement, they must provide a separate instrument that covers such inspections.

5. Contract fee inspectors who elect to self-insure for the full amount of their financial responsibility under this regulation shall maintain assets of an amount sufficient to cover the full minimum liability amount in regulation for his level of market share and shall provide audited financial statements showing total assets and liabilities.

6. Contract fee inspectors who elect to partially self-insure shall maintain assets in an amount sufficient to cover ~~that~~ **the stated** partial liability amount and shall provide audited financial statements showing their total assets and liabilities. Such assets shall be held in combination with an instrument or instruments of insurance, guaranty, or surety to provide a total amount sufficient to cover the minimum liability amount in regulation for his level of market share. They shall provide copies of such documents to the Chief Inspector.

7. Aggregate limits approved at such time shall remain in effect until the occurrence of an event described in 16 VAC 25-55-20(E).

C. Within thirty days of receipt of documentation of financial responsibility submitted by a contract fee inspector for the purpose of complying with these regulations, the Chief Inspector shall issue a determination to the contract fee inspector as to whether the documentation provided is acceptable. Documentation approval by the Chief Inspector is a requirement to operate as a contract fee inspector within the Commonwealth of Virginia.

D. A contract fee inspector shall notify the Chief Inspector at least thirty days before the effective date of ~~the~~ **any** change **in coverage**, expiration, or cancellation of an instrument of insurance, guaranty or surety or self-insurance. In the case of self-insurance, the contract fee inspector shall notify the Chief Inspector immediately upon such time as he can no longer maintain self-insurance at the required limit and has not secured insurance, guaranty or a surety to cover his liability to the required limit.

E. Acceptance of proof of financial responsibility shall expire on the effective date of any change in the inspector's instrument of insurance, guaranty or surety, or the expiration date of the inspector's certification **whichever is sooner**. Application for renewal of acceptance of proof of financial responsibility shall be filed at least thirty days before.

COMMONWEALTH of VIRGINIA

DEPARTMENT OF LABOR AND INDUSTRY

C. RAY DAVENPORT

COMMISSIONER

POWERS-TAYLOR BUILDING
13
SOUTH 13TH STREET
RICHMOND, VA 23219
PHONE 804 . 371 . 2327
FAX 804 . 371 . 6524
TDD 804 . 371 . 2376

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).

Contact Person:

Mr. Ronald L. Graham
Director, Occupational Health Compliance
(804) 786-0574
Ronald.Graham@doli.virginia.gov

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: _____

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

VIRGINIA SAFETY AND HEALTH CODES BOARD

BRIEFING PACKAGE

FOR May 24, 2005

Methylenedianiline in Construction, ' 1926.60, Final Rule; Correction

I. Action Requested.

The Virginia Occupational Safety and Health (VOSH) Program requests the Safety and Health Codes Board to consider for adoption federal OSHA's correction to the final rule on Methylenedianiline in Construction, as published in 69 FR 70373 on December 6, 2004.

The proposed effective date is August 15, 2005.

II. Summary of the Amendment.

Federal OSHA revised the regulatory text of the Methylenedianiline (MDA) Standard for Construction to correct a cross reference to OSHA=s standard on Emergency Action Plans and Fire Prevention Plans by inserting the reference for AFire prevention plans, A29 CFR 1910.39@, in ' 1926.60(e)(1)(iii). (69 FR 70373)

Section 1926.60 (e)(1)(iii) will now read as follows:

> The plan shall specifically include provisions for alerting and evacuating affected employees as well as the applicable elements prescribed in 29 CFR 1910.38 and 29 CFR 1910.39, AEmergency action plans@ and AFire prevention plans, A respectively. (69 FR 70373)

III. Basis, Purpose and Impact of the Amendment.

A. Basis.

On November 7, 2002, federal OSHA published a final rule entitled, AExit Routes, Emergency Action Plans, and Fire Prevention Plans.@ 67 FR 67949. The purpose of this action was to clarify and make consistent provisions regarding emergency action plans and fire prevention plans in several general industry standards. In that final rule, federal OSHA separated the requirements for emergency action plans and fire protection plans into two separate sections, 1910.38 and 1910.39, respectively. (69 FR 70373)

OSHA had intended to revise all health standards to reflect the change. Although several general industry health standards were revised at that time to reflect this change, the same provision in the Methylenedianiline (MDA) Standard for Construction ('1926.60) was not similarly revised at that time.

On December 2, 2003, the Safety and Health Codes adopted federal OSHA=s final rule on Exit Routes, Emergency Action Plans and Fire Prevention Plans, with an effective date of March 1, 2003.

B. Purpose.

Federal OSHA is correcting the MDA Construction Standard to make it consistent with the revised language in the other health standards.

C. Impact on Employers.

This correction should have no impact on employers.

D. Impact on Employees.

This correction should have no impact on employees.

E. Impact on the Department of Labor and Industry.

This correction should have no impact on the Department.

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.

RECOMMENDED ACTION

Staff of the Department of Labor and Industry recommends that the Safety and Health Codes Board adopt the correction to the final rule for Methylenedianiline (MDA) in Construction, '1926.60, 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.

Methylenedianiline in Construction, ' 1926.60, Final Rule; Correction

As Adopted by the

Safety and Health Codes Board

Date: _____

VIRGINIA DEPARTMENT OF LABOR AND INDUSTRY

VIRGINIA OCCUPATIONAL SAFETY AND HEALTH PROGRAM

VIRGINIA DEPARTMENT OF LABOR AND INDUSTRY

Effective Date: _____

16 VAC 25-175-1926.60, Methylenedianiline in Construction, ' 1926.60; Final Rule

When the regulations, as set forth in the corrections to 16 VAC 25-175-1926.60, Methylenedianiline in Construction, ' 1926.60, 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 5, 2005	August 15, 2005