



Virginia
Regulatory
Town Hall

Exempt Action Final Regulation Agency Background Document

Agency Name:	16 VAC 25, Virginia Department of Labor and Industry/Safety and Health Codes Board
VAC Chapter Number:	16 VAC 25-90-1910.142; 16 VAC 25-90-1910.151; 16 VAC 25-90-1910.268; 16 VAC 25-90-1910.1001; 16 VAC 25-90-1910.1003; 16 VAC 25-90-1910.1017; 16 VAC 25-90-1910.1018; 16 VAC 25-90-1910.1025; 16 VAC 25-90-1910.1027; 16 VAC 25-90-1910.1028; 16 VAC 25-90-1910.1029; 16 VAC 25-90-1910.1043; 16 VAC 25-90-1910.1044; 16 VAC 25-90-1910.1045; 16 VAC 25-90-1910.1047; 16 VAC 25-90-1910.1048; 16 VAC 25-90-1910.1051; 16 VAC 25-100-1915.1001; 16 VAC 25-175-1926.60; 16 VAC 25-175-1926.62; 16 VAC 25-175-1926.1101; and 16 VAC 25-175-1926.1127.
Regulation Title:	Standards Improvement Project, Phase II; Final Rule
Action Title:	Standards Improvement Project, Phase II; Final Rule
Date:	May 24, 2005

Where a regulation is exempt in part or in whole from the requirements of the Administrative Process Act (§ 9-6.14:1 *et seq.* of the *Code of Virginia*) (APA), the agency may provide information pertaining to the action to be included on the Regulatory Town Hall. The agency must still comply the requirements of the Virginia Register Act (§ 9-6.18 *et seq.* of the *Code of Virginia*) and file the final regulation with the Registrar in a style and format conforming with the *Virginia Register Form, Style and Procedure Manual*. The agency must also comply with Executive Order Fifty-Eight (99) which requires an assessment of the regulation's impact on the institution of the family and family stability.

Note agency actions exempt pursuant to § 9-6.14:4.1(B) do not require filing with the Registrar a Notice of Intended Regulatory Action, or at the proposed stage. When the regulation is promulgated and submitted to the Registrar, the agency need only provide a statement citing the specific Virginia Code section referencing the exemption and an authority certification letter from the Attorney General's Office. No specific format is required.

This form should be used for actions **exempt from the Administrative Process Act pursuant to § 9-6.14:4.1(C)** at the final stage. Note that agency actions exempt pursuant to § 9-6.14:4.1(C) of the APA do not require filing with the Registrar a Notice of Intended Regulatory Action, and at the proposed stage.

Summary

Please provide a brief summary of the proposed new regulation, amendments to an existing regulation, or the regulation being repealed. There is no need to state each provision or amendment or restate the purpose and intent of the regulation, instead give a summary of the regulatory action and alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation.

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.

(See attached summary of individual standards)

Statement of Final Agency Action

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

On May 24, 2005, the Safety and Health Codes Board adopted phase II of federal OSHA’s Standards Improvement Project, with an effective date of August 15, 2005.

Family Impact Statement

Please provide an analysis of the regulatory action that assesses the impact on the institution of the family and family stability including the extent to which the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one’s spouse, and one’s children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.

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

Attachment

Summary/Highlights of the Final Rule

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

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).

To access Standards Improvement Project, Phase II; Final Rule, please refer to: http://www.osha.gov/FedReg_osha_pdf/FED20050105.pdf