



COMMONWEALTH of VIRGINIA

DEPARTMENT OF LABOR AND INDUSTRY

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COMMISSIONER

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AGENDA

SAFETY AND HEALTH CODES BOARD

State Corporation Commission
1300 East Main Street, Court Room A
Second Floor
Richmond, Virginia

Thursday, May 24, 2012

10:00 a.m.

1. Call to Order
2. Approval of Agenda
3. Approval of Minutes for Board Meeting of October 13, 2011
4. Opportunity for the Public to Address the Board on this issues pending before the Board today or on any other topic that may be of concern to the Board or within the scope of authority of the Board.

This will be the only opportunity for public comment at this meeting. Please limit remarks to 5 minutes in consideration of others wishing to address the Board.

5. **Old Business**

None.

6. **New Business**

a) Federal-Identical Regulations:

- 1) Corrections and Technical Amendments to Multiple Standards

Presenter – John Crisanti

- 2) Acetylene Standard, §1910.102, Revising Other Standards Referenced Therein; Direct Final Rule (DFR)

Presenter – Ron Graham

b) Virginia Unique Regulation:

- 1) Correcting Amendments for: Construction Industry Standard for Sanitation, 16VAC25-160, and Field Sanitation Standard, 16VAC25-180

Presenter – Ron Graham

- 2) Regulation Concerning Licensed Lead Contractor Notification, Lead Project Permits, and Permit Fees, 16VAC25-35

Presenter – Ron Graham

- 3) Notice of Intended Regulatory Action (NOIRA): Amendments to Certified Lead Contractors Notification, Lead Project Permits and Permit Fees, 16VAC25-35

Presenter – Ron Graham

- 4) Administrative Regulation for the Virginia Occupational Safety and Health (VOSH) Program, 16VAC25-60, *et seq.*; Correcting Amendment

Presenter – John Crisanti

c) Notice of Periodic Review of Certain Existing Regulations:

- 1) Public Participation Guidelines, 16VAC25-11

Presenter – Reba O'Connor

- 2) Regulation Concerning Licensed Asbestos Contractor Notification, Asbestos Project Permits, and Permit Fees, 16VAC25-20

Presenter – Reba O'Connor

7. Items of Interest from the Department of Labor and Industry
8. Items of Interest from Members of the Board
9. Meeting Adjournment

DRAFT

**SAFETY AND HEALTH CODES BOARD
MEETING MINUTES
THURSDAY, OCTOBER 13, 2011**

BOARD MEMBERS PRESENT: Mr. Chuck Stiff, Outgoing Chair
Ms. Milly Rodriguez, newly-elected Chair
Mr. Jerome Brooks, DEQ representative
Mr. Gregory Hart
Ms. Anna Jolly, Outgoing Secretary
Mr. Satish Korpe
Ms. Rebecca LePrell, VDH representative
Mr. Marc Olmsted
Mr. Mike Pischke
Mr. Danny Sutton
Mr. Tommy Thurston

BOARD MEMBERS ABSENT: Mr. Charles Bird
Dr. James Mundy
Ms. Eloisa Rea

STAFF PRESENT: Courtney M. Malveaux, Esq., Commissioner, Dept. of
Labor and Industry
Mr. Bill Burge, Assistant Commissioner -- VOSH
Mr. Jim Garrett, Director of VOSH Programs
Mr. Ron Graham, Director, Occupational Health
Compliance
Mr. Jay Withrow, Director, Division of Legal Support
Mr. Ed Hilton, Director, Boiler Safety Compliance
Mr. John Crisanti, Manager, Office of Planning and
Evaluation
Ms. Jennifer Wester, Director, Cooperative Programs
Division
Ms. Reba O'Connor, Regulatory Coordinator
Ms. Regina Cobb, Agency Management Analyst Senior
Ms. Deonna Hargrove, Compliance Officer, Richmond
Region
Ms. Kim Hewitt, Compliance Officer, Richmond Region
Ms. Theresa Brookman, Compliance Officer, Richmond
Region
Mr. Dan Wilson, Compliance Officer, Richmond Region
Mr. Art Scott, Boiler Inspector, Verona
Ms. Tamar Jones, Intern

OTHERS PRESENT:

Ms. Terry Griffith, Certified Court Reporter, Chandler & Halasz, Inc.
Ms. Beverly Crandell, Federal OSHA
Joshua N. Lief, Esq., Office of the Attorney General
Mr. J. McRoy, MEB General Contractors

ORDERING OF AGENDA

Chairman Chuck Stiff called the meeting to order at 10:05 a.m., and noted that there was a quorum. Mr. Stiff asked for a motion to approve the Agenda. Mr. Thurston moved to accept the Agenda and Mr. Sutton properly seconded the motion. Mr. Korpe then moved that Agenda item 7B, Review of Board Bylaws, be moved ahead of item 5, Election of Officers so that the Bylaws would be heard before the elections are held. This motion was properly seconded by Mr. Sutton. The Agenda was approved, as amended, and the motion was carried by unanimous voice vote.

APPROVAL OF MINUTES

Mr. Stiff asked the Board for a motion to approve the Minutes for the January 20, 2011, Board meeting. On proper motion by Ms. Rodriguez and seconded by Mr. Thurston, the Minutes were approved, as submitted, by unanimous voice vote.

UPDATE AND INTRODUCTION OF NEW BOARD MEMBERS

Mr. John Crisanti, Manager of the Office of Planning and Evaluation for the Department, introduced three new members: Mr. Marc Olmsted, Labor Representative of the Boiler and Pressure Vessel Industry; Mr. Greg Hart, representative of an insurance company; and Mr. Michael Pischke, Employer Representative of the Boiler and Pressure Vessel Industry. Mr. Crisanti informed the new members that he and Regina Cobb will be glad to assist them. Mr. Crisanti welcomed the new Board members.

REVIEW OF BOARD BYLAWS

As per the Chairman's request at the last meeting, Mr. Crisanti provided a section-by-section overview of the Board Bylaws which the Board adopted on 14 December 2004.

ELECTION OF OFFICERS

Chairman Stiff requested nominations for the position of Board Chair. Mr. Sutton nominated Ms. Rodriguez for Board Chair. There were no other nominations. Ms. Jolly seconded the motion and Ms. Rodriguez was unanimously elected as Chair. Mr. Stiff passed the duties of the Chair to Ms. Rodriguez who requested nominations for Vice Chair. Mr. Satish Korpe nominated himself and Ms. LePrell seconded the nomination. Mr. Stiff nominated Mr. Thurston and Ms. Jolly seconded the motion. There were no other nominations. Mr. Korpe and Mr. Thurston briefly informed the Board about their background. After a majority voice vote, Mr. Thurston was elected Vice Chair.

Ms. Rodriguez informed the Board that she would select a Secretary at the next meeting.

PUBLIC COMMENTS

Ms. Rodriguez opened the floor to comments from the public, however, there were no comments.

OLD BUSINESS

Report on Periodic Review of Certain Existing Regulations

Ms. Reba O'Connor, Regulatory Coordinator for the Department of Labor and Industry, stated that Governor McDonnell's Executive Order 14 (2010), "Development and Review of Regulations Proposed by State Agencies," governs the periodic review or re-evaluation of existing regulations and the regulatory process to promulgate new regulations or amend current regulations.

After explaining the review process, she informed the Board that, at its January 20, 2011 meeting, two regulations of the Board were approved for periodic review: 1) 16 VAC 25-55, Financial Responsibility of Boiler and Pressure Vessel Contract Fee Inspectors; and 2) 16 VAC 25-75, Telecommunications, General, Approaches Distances.

She explained that the review of both regulations had been completed and that the public comment period for these regulations began on March 14, 2011, and ended on April 5, 2011, with one comment posted by Mr. Keith Johnson on April 4, 2011, expressing support for the Boiler Regulation. She added that there were no comments on the Telecommunications regulation.

On behalf of the Department, Ms. O'Connor recommended that, as a result of the review, these regulations be retained in their current form with no changes.

Mr. Korpe asked for an explanation of the Financial Responsibility of Boiler and Pressure Vessel Contract Fee Inspectors Regulation. Mr. Ed Hilton, Chief Boiler Inspector for the Department gave a detailed response to Mr. Korpe's question.

Mr. Stiff moved to accept Ms. O'Connor's recommendation to retain the two reviewed regulations in their current form, and Ms. Jolly seconded the motion which was unanimously approved by voice vote.

NEW BUSINESS

General Working Conditions in Shipyard Employment; Revised Final Rule; and Corrections

Mr. John Crisanti, Manager of the Office of Planning and Evaluation, requested, on behalf of the VOSH Program, that the Board consider for adoption federal OSHA's Revised Final Rule for General Working Conditions in Shipyard Employment, as published in 76 FR 24575 on May 2,

2011, and subsequent corrections to §§1910.145 and 1910.147, as published in 76 FR 44265 on July 25, 2011.

Mr. Crisanti summarized the final rule by explaining that federal OSHA revised and updated standards to the existing Subpart F of 29 CFR part 1915 that addresses hazards in general working conditions in shipyard employment which include activities performed aboard vessels, in confined or enclosed spaces below deck, on scaffold and on busy crowded docks. He stated that these revisions update existing requirements to reflect advances in industry practices and technology, consolidate certain safety and health requirements into a single subpart, and provide protection from hazards not previously addressed, including the control of hazardous energy.

He explained that, if adopted by the Board, the final rule would cover diverse working conditions in shipyard employment, including sanitation, medical services and first aid, motor vehicle and pedestrian safety, lighting, housekeeping, and hazardous energy. He stated that the final rule would apply to all shipyard employment at landside facilities, on vessels and in vessel sections. The revised final rule would not apply to landside fish-processing facilities, which continue to be covered by Part 1910, General Industry, requirements.

Mr. Crisanti provided background on the final rule by stating that in 1972, federal OSHA adopted many of the provisions for the initial Subpart F from existing federal OSHA standards and national consensus standards which have since been updated and revised. He stated that OSHA incorporated those changes in this revised final rule.

Mr. Crisanti addressed the hazards involved in shipyard employment. He stated that employees are exposed to many different hazards due to the nature of their work which includes a variety of industrial operations, such as steel fabrication, welding, abrasive blasting, electrical work, pipefitting, rigging, stripping and coating applications. He explained that shipyard employment workers also operate and service complex machinery and equipment (i.e., powered industrial trucks, cranes and vessel systems). He noted that the hazards associated with these operations and equipment increased because they are often performed outdoors in all types of weather.

Mr. Crisanti informed the Board that all private sector maritime activity in Virginia is directly enforced by federal OSHA and is solely under OSHA's jurisdiction; however, public sector maritime activity is under VOSH's jurisdiction, in accordance with the state plan agreement with federal OSHA (29 CFR 1952.375 (b)(1)). He added that there should be minimal, if any, impact on public sector employers resulting from adoption of these revised standards because there is only very limited public sector maritime-related activity in Virginia. He mentioned that there are two ferries, owned and operated by the Virginia Department of Transportation (VDOT) that could possibly fall under this standard; however, since the final rule does not affect United States Coast Guard-inspected vessels, which include ferries, there may be no impact from this final rule on public sector employers in Virginia.

Mr. Crisanti explained that compliance with these new provisions is expected to decrease the number of employee injuries and fatalities. He added that any impact on Virginia employees would likely be limited to VDOT employees who work on the publicly-owned and operated ferries (mentioned above).

Mr. Crisanti stated that any impact on the Department resulting from adopting these revised standards would be negligible, and that any costs would be related to training VOSH compliance staff on the standard.

Mr. Crisanti then informed the Board that federal OSHA found the revised standard to be technologically feasible in that the revised standards do not require technology that is not already in use in many affected establishments, and that many of the requirements involve implementing work-practice controls that can be communicated to employees through training. Additionally, he stated that federal OSHA believes that compliance with the final rule will yield substantial benefits in terms of lives saved, injuries avoided and their related costs.

In conclusion, Mr. Crisanti recommended that the Board adopt federal OSHA's Final Rule for General Working Conditions in Shipyard Employment, and subsequent corrections to §§1910.145 and 1910.147, as authorized by Virginia Code §40.1-22(5) and 2.2-4006.A.4(c), with an effective date of January 15, 2012, except for §1915.89, which will become effective on April 15, 2012.

Ms. Jolly moved to accept Mr. Crisanti's recommendation. Mr. Korpe properly seconded the motion which was unanimously approved by voice vote.

Standards Improvement Project – Phase III; Final Rule

Mr. Crisanti requested that the Board consider for adoption federal OSHA's final rule for the Standards Improvement Project-Phase III, as published in 76 FR 33590 on June 8, 2011.

He summarized the final rule by stating that federal OSHA proposed a number of actions to amend its standards, including revisions to the Agency's general industry, maritime, construction, and agricultural standards. He added that the ongoing Standards Improvement Project-III (SIP-III) removes or revises individual requirements within rules that are confusing, outdated, duplicative, or inconsistent. He continued by stating that OSHA had identified several requirements for this phase, including rigging, NIOSH records, and training certifications for improvement based on OSHA's review of its standards, suggestions and comments from the public, or recommendations from the Office of Management and Budget (OMB). He detailed the various changes resulting from this final rule.

He explained that SIP-III is the third in a series of rulemaking actions to improve and streamline federal OSHA standards, and that the Board had these changes on October 19, 1998 (eff. January 1, 1999) and on January 5, 2005 (eff. August 15, 2005).

Mr. Crisanti explained that this revised standard will help employers to better understand their regulatory obligations which will increase compliance and reduce compliance costs without imposing any additional new cost burdens on employers. He stated that OSHA believes that removing from the revised standard requirements for employers to transfer records to NIOSH, and to develop and maintain certification records would eliminate an estimated 1.9 million hours per year of redundant reporting burdens for employers, nationally. He added that the revised

standard would eliminate an estimated 51,350 hours per year of reporting burdens for Virginia employers.

He stated that OSHA is not deleting any requirements that employers train workers in the appropriate use of PPE, and that the standard will maintain the same level of protection for employees.

He added that there is no significant impact anticipated for the Department as a result of adopting this revised standard, and that minimal costs may exist for training compliance staff on the requirements of the amended standards.

Mr. Crisanti informed the Board that the final rule is technologically feasible for employers because it reduces requirements or provides flexibility to employers.

With respect to benefits/costs of the final regulation, Mr. Crisanti informed the Board that OSHA estimated that nationally this final rule will result in annual cost savings to employers exceeding \$45 million and will reduce the paperwork burden by 1.85 million hours. He estimated cost savings to Virginia employers to be approximately \$1.2 million, and the paperwork burden reduced by approximately 50,000 hours annually. He stated that this final rule will not impose additional costs on any private-or-public-sector entity, and that no additional expenditures by either public or private employers are required.

Mr. Crisanti called the Board's attention to several crossed out subsections in this final rule. He explained that the Department is not asking the Board to adopt the crossed out subsections as these federal sections are not currently enforced by VOSH because of state code precedence or they are superseded by Virginia's unique regulations, such as, construction sanitation, §1926.51, or field sanitation, §1928.110. He directed the Board to page 7 of the briefing package which listed all of the sections to be adopted.

Mr. Korpe asked whether there would be enough time for the final rule would go through the standard adoption process with public comments, etc. by the January 15, 2012 effective date. Mr. Crisanti explained that this final rule is federal identical and receives an Article II exemption under the APA, and Virginia relies on federal OSHA's time period for public comment.

In conclusion, Mr. Crisanti recommended that the Board adopt federal OSHA's Final Rule for Standards Improvement Project - Phase III, as authorized by Virginia Code §40.1-22(5) and 2.2-4006.A.4(c), with an effective date of January 15, 2012.

Mr. Korpe moved to accept Mr. Crisanti's recommendation. Mr. Stiff properly seconded the motion which was unanimously approved by voice vote.

Ms. Regina Cobb, Agency Management Analyst Sr., and staff support to the Board, informed the Board about the approval of HB 2277 (3/24/11), which amended §2.2-2813, relating to compensation paid to citizen members of state boards, commissions, and other collegial bodies. She explained that, as of July 1, 2011, non-legislative Board members who are appointed at the state level and who receive 3 or more travel reimbursements annually shall be required to

participate in the Electronic Data Interchange (EDI) Program or Direct Deposit as a condition of accepting such appointment. She explained that the purpose of this amendment is to aid the Commonwealth in reducing the number of paper checks issued and to streamline the payment process. She informed the Board that a form had been included in their packet of information and that completed forms could be given or sent to her and she would forward the forms to the Department's Accounting Department for processing.

Mr. Crisanti added that the Department encourages the Board to enroll in the EDI program.

Items of Interest from the Department of Labor and Industry

Mr. Crisanti paid tribute to former Commissioner Carol Amato, who died on June 1, 2011. She served as Commissioner of the Department of Labor and Industry from 1985 to 1994. He informed the Board that, following her tenure with the Department, Ms. Amato served as Chief Operating Officer for the Virginia Museum of Fine Arts, where she served for 16 years before retiring in 2010. He added that she guided the museum during its largest expansion in 75 years. Mr. Korpe requested a moment of silence in Ms. Amato's honor.

Commissioner Malveaux thanked the Board members for their time and effort in serving on the Board and his staff for their due diligence throughout the Department. Additionally, he congratulated the newly-appointed Board members and new officers.

He informed the Board that the Department is faced with many challenges. He stated that state revenues have been sluggish and that he has been asked to make plans for additional budgetary cuts of two, four and six percent. He assured the Board that the Department will not sacrifice its mission of safety and health.

He stated that there have been 24 fatalities this year, same as all of last year.

Commissioner Malveaux informed the Board that over 340 people attended the 16th Annual VOSH Conference, held in Portsmouth, VA from October 4 through October 7, 2011. He commended Jennifer Wester on doing a great job on the Conference. He stated that the Department is now using data from the Workers' Compensation Commission and the Virginia Employment Commission to identify employers and to find out where workers are getting hurt. He stated that the Department has received a grant from the Productivity Investment Fund from the Governor's Office to find a way to utilize these databases for the benefit of each of the agencies.

He stated that the Department has a legislative package. He stated that there are ongoing discussions about the federal budget and the possibility of cutting out the Voluntary Protection Program (VPP). He mentioned that the Department is trying to structure the VPP so that even if it is defunded from Washington, it will still be in Virginia. He stated that the Department wants VPP funding in the Virginia Code. He said that the Department may get more penalty money from our initiative in working with the Workers' Compensation Commission.

Mr. Korpe moved to request a moment of silence in tribute to former Commissioner Amato, and Ms. Jolly and Mr. Stiff seconded the motion, which was unanimously approved by voice vote.

In response to Mr. Korpe inquiry about an official Board notification of catastrophic injuries in the Commonwealth, Mr. Withrow, Director of Legal Support for the Department, responded that there are statutes and regulations about releasing information about open cases. He stated that the Department is only allowed to release citations when they are issued. He continued by stating that the Department could scan citations and email them to Board members, for those members who would like to receive the citations. He also referred the Board to www.OSHA.gov where they can click on a link for fatal accidents. He said that, although the information is usually a couple of weeks behind, one can see the number of fatalities and a brief description of the fatalities.

Mr. Withrow reminded the Board that the unique tree trimming regulation became effective this year. He informed them that he sent out approximately a thousand mailings to all tree trimmers in Virginia and to approximately 330 loggers. He stated that the Department has been receiving requests from tree trimmers for consultation business, which is a good thing.

Mr. Withrow stated that there were 6 logging fatalities this year. He informed the Board that mailings were sent to tree trimming and logging businesses. He stated that Virginia and Washington are the only two states with a regulation on Reverse Signal.

Mr. Withrow updated the Board on the criminal willful case involving a 14-year old who was killed in the Tidewater area while working on a wood chipper. He stated that since the last meeting (1/20/11), the company the boy was working for admitted guilt in the criminal willful conviction.

Ms. Jolly asked about the Severe Violator Enforcement Program (SVEP) for companies with multiple fatalities. She stated that SVEP should be on the Department's website and that it hasn't been publicized. She expressed concern that people don't know about SVEP. Mr. Withrow informed her where she could find information on Virginia's Regulatory Town Hall website about SVEP. He also suggested that John Crisanti or Regina Cobb could email the information to the Board members. Mr. Withrow assured Ms. Jolly that the Department would include a notice about SVEP on its website.

Items of Interest from Members from the Board

There Board members had no items of interest to share.

Adjournment

There being no further business, Chair Rodriguez requested a motion for adjournment. Mr. Stiff made the motion to adjourn the meeting. Ms. Jolly seconded the motion which was carried unanimously by voice vote. The meeting adjourned at 11:28 a.m.



COMMONWEALTH OF VIRGINIA

DEPARTMENT OF LABOR AND INDUSTRY

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VIRGINIA SAFETY AND HEALTH CODES BOARD

BRIEFING PACKAGE

FOR MAY 24, 2012

Corrections and Technical Amendments to Multiple Standards

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 Corrections and Technical Amendments to Multiple Standards, as published in 76 FR 80735 on December 27, 2011.

The proposed effective date is September 15, 2012.

II. **Summary of the Amendments.**

Federal OSHA has made non-substantive technical amendments to and has corrected typographical errors in 16 different General Industry, Construction and Shipyard Employment standards. The technical amendments include updating or revising cross-references and updating OSHA recordkeeping log numbers.

These amendments do not affect the substantive requirements or coverage of those standards, do not modify or revoke existing rights or obligations, and do not establish new rights or obligations (76 FR 80736). The revisions are as follows:

- A. **PROCESS SAFETY MANAGEMENT OF HIGHLY HAZARDOUS CHEMICALS, §1910.119.** In Appendix A, the chemical entry entitled "Oleum" appeared with an incorrect Chemical Abstracts Service (CAS) number of 8014-94-7. OSHA corrected the CAS number for Oleum to read: 8014-95-7.

- B. **HAZARDOUS WASTE OPERATIONS AND EMERGENCY RESPONSE, §1910.120.** In the definition of “hazardous substance” in paragraph (a)(3), OSHA referred to “Section 101(14)” of the Comprehensive Environmental Response Compensation, and Liability Act (CERCLA) (42 U.S.C.9601). After OSHA published the standard, Congress redesignated Section 101(14) of CERCLA as Section 103(14). OSHA has revised the definition to include the new citation.
- C. **PERMIT-REQUIRED CONFINED SPACES, §1910.146.** OSHA corrected a cross-reference in paragraph (d)(4)(vi) from “(d)(3)(iv)” to “(d)(3)(v)”. Paragraph (d)(4)(vi) now reads: “Barriers and shields as required by paragraph (d)(3)(v) of this section”.
- D. **MEDICAL SERVICES AND FIRST AID (§§1910.151 AND 1926.50).** OSHA updated all references to the Recordkeeping forms in other OSHA standards referred to in the Appendices to §§1910.151 and 1926.50.
- E. **SERVICING MULTI-PIECE AND SINGLE-PIECE RIM WHEELS, §1910.177.** Based on discussions with representatives from the tire, rubber, and wheel manufacturing industries, OSHA determined that new charts addressing current hazards in the tire-servicing industry were necessary because the new charts summarize updated information from many sources, including the National Highway Transportation Safety Administration (NHTSA) and OSHA charts, rim manuals, and the OSHA standard.

OSHA also revised the content of its two existing charts: “The Multi-piece Rim Matching Chart” and the Demounting and Mounting Procedures for Truck/Bus Tires” chart and amended the definition of “charts” in paragraph (b) of the standard to refer to the new U.S. Department of Labor charts (i.e., manuals or posters), or to any other information or poster that provides at least the same instructions, safety precautions, and other information contained in OSHA’s charts, and that is applicable to the types of rim wheels the employer is servicing. Additionally, Appendix B was revised to provide current ordering information for the new OSHA manuals.

- F. **MECHANICAL POWER PRESSES, §1910.217.** OSHA has amended the requirement that employers submit to OSHA reports of employees injured while operating such presses. Paragraph (g)(1) and (2) specify that employers must submit the reports to federal OSHA or, for state-plan states, the state agency administering the plan. OSHA has revised this provision to include the new title of the federal OSHA office designated to receive the reports, and provided an electronic address for submitting reports.
- G. **PULP, PAPER, AND PAPERBOARD MILLS, §1910.261.** OSHA corrected three errors involving incorrect cross references in this standard. It removed the references to paragraphs (b)(3), (b)(1), and (b)(4) in existing paragraphs (e)(12)(i), (e)(12)(ii), and (e)(12)(iii), respectively, and replaced these references with the correct references (29 CFR 1910.23, 29 CFR 1910.219, and paragraph (b)(1) of 29 CFR 1910.261, respectively).

- H. **SAWMILLS, §1910.265.** OSHA has corrected a typographical error in a cross reference in paragraph (e)(2)(iv) of this standard. The cross reference was to a standard which establishes safety requirements for twin circular-head saw rigs. The cross reference to paragraph (e)(2)(iv) should have been to paragraph (e)(2)(iii), which specifies requirements for singular circular-head saws.
- I. **GRAIN HANDLING FACILITIES, §1910.272.** OSHA has inserted a note in paragraph (a) of the standard stating that it will enforce the standard, as it applies to the marine terminal industry only, consistent with a 1985 OSHA compliance directive.
- J. **COMMERCIAL DIVING OPERATIONS, §1910.440.** OSHA has revised §1910.440(b)(4) by removing the record-transfer requirement for accuracy and to be consistent with Phase III of the Standards Improvement Project (SIP III). SIP III is the third part of an ongoing OSHA project to remove or revise individual requirements within its rules that are confusing, outdated, duplicative or inconsistent. SIP III was adopted by the Safety and Health Codes Board on October 13, 2011, with an effective date of January 15, 2012.
- K. **13 CARCINOGENS (4-NITROBIPHENYL, ETC.), §1910.1003.** In paragraph (d)(2) of §1910.1003, OSHA has deleted two cross references to paragraph (f), concerning reporting requirements. Paragraph (f) previously had been deleted by OSHA in the second Standards Improvement Project rulemaking (70 FR 1116).
- L. **LEAD, §§1910.1025 AND 1926.62.** For the sake of consistency and accuracy among action levels across all OSHA Lead standards in all industries, and in keeping with the original purpose specified in the Standards Improvement Project (SIP III) rulemaking (*see § J, above*), OSHA has replaced the term “exceeds” in §§1910.1025(j)(2)(iv)(B) and 1926(j)(2)(iv)(B) with the phrase “is at or above” to designate the actionable blood-lead levels (i.e., 40 µg/dl) at which employers must notify their employees that the standard requires temporary medical removal with medical-removal protection benefits when an employee’s blood-lead level is at or above a specified level.
- M. **BLOODBORNE PATHOGENS, §1910.1030.** When OSHA revised the recordkeeping rule, it reordered many sections of the Recordkeeping rule, including §1904.6, which became §1904.33. Therefore, OSHA has updated a cross reference in paragraph (i)(5)(iii) of the §1910.1030 from 29 CFR 1904.6 to 29 CFR 1904.33.
- N. **AIR CONTAMINANTS, §1915.1000.** In four places in paragraph (d)(1)(ii), the Air Contaminants standard for shipyard employment incorrectly refers to the abbreviation for “parts per million” as “p/m”. OSHA has corrected the abbreviation to read “ppm.”

III. Basis, Purpose and Impact of the Amendments.

A. Basis and Purpose.

OSHA has made non-substantive technical amendments in 16 of its existing standards to reflect various updated references, consolidations, correct typographical errors, as well as to address continuity and consistency issues.

B. Impact on Employers.

These revisions do not affect the substantive employer requirements under these standards, do not modify or revoke existing rights or obligations, and do not establish new rights or obligations. No impact on employers is anticipated from the adoption of these technical amendments.

C. Impact on Employees.

No impact on employees is anticipated from the adoption of these technical amendments. These revisions do not affect the substantive coverage of employees under these standards or modify or revoke existing rights or obligations, nor do they establish new rights or obligations.

D. Impact on the Department of Labor and Industry.

No impact on the Department is anticipated from the adoption of these technical amendments.

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.

Contact Person:

Mr. John Crisanti
Manager, Office of Planning and Evaluation
(804) 786-4300
John.Crisanti@doli.virginia.gov

RECOMMENDED ACTION

Staff of the Department of Labor and Industry recommends that the Safety and Health Codes Board adopt federal OSHA's Corrections and Technical Amendments to Multiple Standards, as authorized by Virginia Code §§ 40.1-22(5) and 2.2-4006.A.4(c), with an effective date of September 15, 2012.

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.

**Corrections and Technical Amendments
to Multiple Standards**

As Adopted by the

Safety and Health Codes Board

Date: _____



VIRGINIA OCCUPATIONAL SAFETY AND HEALTH PROGRAM

VIRGINIA DEPARTMENT OF LABOR AND INDUSTRY

Effective Date: _____

- 16VAC25-90-1910.119, Process Safety Management of Highly Hazardous Chemicals, §1910.119
- 16VAC25-90-1910.120, Hazardous Waste Operations and Emergency Response, §1910.120
- 16VAC25-90-1910.146, Permit-Required Confined Spaces, §1910.146
- 16VAC25-90-1910.151, Medical Services and First Aid, §1910.151
- 16VAC25-175-1926.50, Medical Services and First Aid, §1926.50
- 16VAC25-90-1910.177, Servicing Multi-Piece and Single-Piece Rim Wheels, §1910.177
- 16VAC25-90-1910.217, Mechanical Power Presses, §1910.217
- 16VAC25-90-1910.261, Pulp, Paper, and Paperboard Mills, §1910.261
- 16VAC25-90-1910.265, Sawmills, §1910.265
- 16VAC25-90-1910.272, Grain Handling Facilities, §1910.272
- 16VAC25-90-1910.440, Commercial Diving Operations, §1910.440
- 16VAC25-90-1910.1003, 13 Carcinogens (4-Nitrobiphenyl, etc.), §1910.1003
- 16VAC25-90-1910.1025, Lead (General Industry), §1910.1025
- 16VAC25-175-1926.62, Lead (Construction), §1926.62
- 16VAC25-90-1910.1030, Bloodborne Pathogens, §1910.1030
- 16VAC25-100-1915.1000, Air Contaminants, (Shipyard Employment), §1915.1000

When the regulations, as set forth in the Corrections and Technical Amendments to Multiple Standards, 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

December 27, 2011

September 15, 2012

Signed at Washington, DC on December 19, 2011.

David Michaels,
Assistant Secretary of Labor for Occupational
Safety and Health.

**PART 1910—OCCUPATIONAL SAFETY
AND HEALTH STANDARDS**

**Subpart H—Hazardous Materials
[Amended]**

■ 1. The authority citation for subpart H of part 1910 continues to read as follows:

Authority: 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), 5-2007 (72 FR 31159), or 4-2010 (75 FR 55355), as applicable; and 29 CFR part 1911.

Sections 1910.103, 1910.106 through 1910.111, and 1910.119, 1910.120, and 1910.122 through 1910.126 also issued under 29 CFR part 1911.

Section 1910.119 also issued under Pub. L. 101-549, reprinted at 29 U.S.C. 655 Note.

Section 1910.120 also issued under 29 U.S.C. 655 Note, and 5 U.S.C. 553.

■ 2. In Appendix A to § 1910.119, revise the entry entitled "Oleum" to read as follows:

§ 1910.119 Process safety management of highly hazardous chemicals.

* * * * *

Appendix A to § 1910.119—List of Highly Hazardous Chemicals, Toxics and Reactives (Mandatory)

* * * * *

Chemical name	CAS *	TQ **
Oleum (65% to 80% by weight; also called Fuming Sulfuric Acid)	8014-95-7	1,000

■ 3. In paragraph (a)(3) of § 1910.120, revise paragraph (A) of the definition of "Hazardous substance" to read as follows:

§ 1910.120 Hazardous waste operations and emergency response.

* * * * *

(a) * * *

(3) * * *

Hazardous substance * * *

(A) Any substance defined under section 103(14) of the Comprehensive Environmental Response Compensation and Liability Act (CERCLA) (42 U.S.C. 9601).

* * * * *

Subpart J—General Environmental Controls

■ 4. Revise the authority citation for subpart J to read as follows:

Authority: 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), 5-2007 (72 FR 31159), or 4-2010 (75 FR 55355), as applicable.

Sections 1910.141, 1910.142, 1910.145, 1910.146, and 1910.147 also issued under 29 CFR part 1911.

■ 5. In of § 1910.146, revise paragraph (d)(4)(vi) to read as follows:

§ 1910.146 Permit-required confined spaces.

* * * * *

(d) * * *

(4) * * *

(vi) Barriers and shields as required by paragraph (d)(3)(v) of this section.

* * * * *

Subpart K—Medical and First Aid

■ 6. The authority citation for subpart K continues to read as follows:

Authority: 29 U.S.C. 653, 655, 657; Secretary of Labor's Order No. 12-71 (36 FR 8754), 8-76 (41 FR 25059), 9-83 (48 FR 35736), 1-90 (55 FR 9033), 6-96 (62 FR 111), 3-2000 (65 FR 50017), or 4-2010 (75 FR 55355), as applicable, and 29 CFR part 1911.

■ 7. In Appendix A to § 1910.151, revise the second paragraph to read as follows:

§ 1910. 151 Medical services and first aid.

* * * * *

Appendix A to § 1910.151—First Aid Kits (Non-Mandatory)

* * * * *

In a similar fashion, employers who have unique or changing first-aid needs in their workplace may need to enhance their first-aid kits. The employer can use the OSHA 300 log, OSHA 301 log, or other reports to identify these unique problems. Consultation from the local fire/rescue department, appropriate medical professional, or local emergency room may be helpful to employers in these circumstances. By assessing the specific needs of their workplace, employers can ensure that reasonably anticipated supplies are available. Employers should assess the specific needs of their worksite periodically and augment the first aid kit appropriately.

* * * * *

Subpart N—Materials Handling and Storage

■ 8. The authority citation for subpart N of part 1910 continues to read as follows:

Authority: 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), 5-2007 (72 FR 31160), or 4-2010 (75 FR 55355), as applicable; and 29 CFR 1911.

Sections 1910.176, 1910.177, 1910.178, 1910.179, 1910.180, 1910.181, and 1910.184 also issued under 29 CFR part 1911.

■ 9-10. In § 1910.177:

■ a. In paragraph (b), revise the definition of "charts"; and

■ b. Revise Appendix B.

The revisions read as follows:

§ 1910.177 Servicing of multi-piece and single-piece rim wheels.

* * * * *

(b) * * *

Charts means the U.S. Department of Labor, Occupational Safety and Health Administration publications entitled "Demounting and Mounting Procedures for Tube-Type Truck and Bus Tires," "Demounting and Mounting Procedures for Tubeless Truck and Bus Tires," and "Multi-Piece Rim Matching Chart."

These charts may be in manual or poster form. OSHA also will accept any other manual or poster that provides at least the same instructions, safety precautions, and other information contained in these publications, which is applicable to the types of wheels the employer is servicing.

* * * * *

Appendix B—Ordering Information for the OSHA Charts

The information on the OSHA charts is available on three posters, or in a manual containing the three charts, entitled "Demounting and Mounting Procedures for Tubeless Truck and Bus Tires," "Demounting and Mounting Procedures for Tube-Type Truck and Bus Tires," and "Multi-piece Rim Matching Chart." Interested parties can download and print both the manuals and posters from OSHA's Web site at <http://www.osha.gov/publications> (and type "tire chart" in the search field). However, when used by the employer at a worksite to provide information to employees, the printed posters must be, at a minimum, 2 feet wide and 3 feet long. Copies of the manual also are available from the Occupational Safety and Health Administration (OSHA Office of Publications, Room N-3101, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210; telephone: (202) 693-1888; or fax: (202) 693-2498).

Subpart O—Machinery and Machine Guarding

■ 11. The authority section citation for subpart O of part 1910 continues to read as follows:

Authority: 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), 5-2002 (67 FR

65008), or 4-2010 (75 FR 55355), as applicable; 29 CFR part 1911. Sections 1910.217 and 1910.219 also issued under 5 U.S.C. 553.

■ 12. In § 1910.217, revise paragraph (g)(1) and add paragraph (g)(2) to read as follows:

§ 1910.217 Mechanical power presses.

* * * * *

(g) * * *

(1) The employer shall report, within 30 days of the occurrence, all point-of-operation injuries to operators or other employees to either (1) the Director of the Directorate of Standards and Guidance at OSHA, U.S. Department of Labor, Washington, DC 20210 (<http://www.osha.gov/pls/oshaweb/mechanical.html>), or

(2) The State agency administering a plan approved by the Assistant Secretary of Labor for Occupational Safety and Health.

* * * * *

Subpart R—Special Industries

■ 13. The authority citation for subpart R of part 1910 continues to read as follows:

Authority: 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), 5-2007 (72 FR 31159), or 4-2010 (75 FR 55355), as applicable; and 29 CFR part 1911.

■ 14. In 1910.261, revise paragraphs (e)(12)(i), (ii), and (iii) to read as follows:

§ 1910.261 Pulp, paper, and paperboard mills.

* * * * *

(e) * * *

(12) * * *

(i) When platforms or floors allow access to the sides of the drums, a standard railing shall be constructed around the drums. When two or more drums are arranged side by side, proper walkways with standard handrails shall be provided between each set, in accordance with the requirements of 29 CFR 1910.23, Guarding floor and wall openings and holes.

(ii) Sprockets and chains, gears, and trunnions shall have standard guards, in accordance with the requirements of 29 CFR 1910.219, Mechanical power-transmission apparatus.

(iii) Whenever it becomes necessary for a workman to go within a drum, the driving mechanism shall be locked and tagged, at the main disconnect switch, in accordance with paragraph (b)(1) of this section.

* * * * *

■ 15. In § 1910.265 revise paragraph (e)(2)(iv) to read as follows:

§ 1910.265 Sawmills.

- (e) * * *
(2) * * *

(iv) Twin circular head saws. Twin circular head saws rigs such as scrag saws shall meet the specifications for single circular head saws in paragraph (e)(2)(iii) of this section where applicable.

16. In 1910.272, amend paragraph (a) by adding a note at the end of the paragraph to read as follows:

§ 1910.272 Grain handling facilities.

- (a) * * *

Note to paragraph (a): For grain-handling facilities in the marine-terminal industry only, 29 CFR 1910.272 is to be enforced consistent with the interpretations in OSHA Compliance Directive 02-00-066, which is available on OSHA's Web page at www.osha.gov.

Subpart T—Commercial Diving Operations

17. The authority citation for subpart T continues to read as follows:

Authority: 29 U.S.C. 653, 655, 657; 40 U.S.C. 333; 33 U.S.C. 941; Secretary of Labor's Order No. 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), 5-2007 (72 FR 31160), or 4-2010 (75 FR 55355) as applicable, and 29 CFR 1911.

18. In § 1910.440, revise paragraph (b)(4) to read as follows:

§ 1910.440 Recordkeeping requirements.

- (b) * * *

(4) The employer shall comply with any additional requirements set forth at 29 CFR 1910.1020,

Subpart Z—[Amended]

19. The authority citation for subpart Z continues to read as follows:

Authority: 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), 5-2007 (72 FR 31160), or 4-2010 (75 FR 55355), as applicable, and 29 CFR 1911.

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 1911, except for the arsenic (organic compounds), benzene, cotton dust, and chromium (VI) listings.

Section 1910.1001 also issued under 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 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.

Section 1910.1201 also issued under 49 U.S.C. 1801-1819 and 5 U.S.C. 533.

20. Amend § 1910.1003 by:

- a. Revising paragraph (d)(2)(iii); and
b. Removing paragraph (d)(2)(v) and redesignating paragraphs (d)(2)(vi) as paragraph (d)(2)(v).

The revision reads as follows:

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

- (d) * * *
(2) * * *

(iii) Special medical surveillance by a physician shall be instituted within 24 hours for employees present in the potentially affected area at the time of the emergency.

21. In § 1910.1025, revise paragraph (j)(2)(iv)(B) to read as follows:

§ 1910.1025 Lead.

- (j) * * *
(2) * * *
(iv) * * *

(B) That the standard requires temporary medical removal with Medical Removal Protection benefits when an employee's blood lead level is at or above the numerical criterion for medical removal under paragraph (k)(1)(i) of this section.

22. In § 1910.1030, revise paragraph (i)(5)(iii) to read as follows:

§ 1910.1030 Bloodborne pathogens.

- (i) * * *
(5) * * *

(iii) The sharps injury log shall be maintained for the period required by 29 CFR 1904.33.

PART 1915—OCCUPATIONAL SAFETY AND HEALTH STANDARDS FOR SHIPYARD EMPLOYMENT

23. The authority citation for part 1915 continues to read as follows:

Authority: 33 U.S.C. 941; 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), 5-2007 (72 FR 31160), or 4-2010 (75 FR 55355), as applicable.

Section 1915.100 also issued under 49 U.S.C. 1801-1819 and 5 U.S.C. 553.

Sections 1915.120 and 1915.152 of 29 CFR also issued under 29 CFR 1911.

Subpart Z—Toxic and Hazardous Substances

24. In § 1915.1000, revise paragraph (d)(1)(ii) to read as follows:

§ 1915.1000 Air contaminants.

- (d) * * *
(1)(i) * * *

(ii) To illustrate the formula prescribed in paragraph (d)(1)(i) of this section, assume that Substance A has an 8-hour time weighted average limit of 100 ppm noted in Table Z—Shipyards. Assume that an employee is subject to the following exposure:

- Two hours exposure at 150 ppm
Two hours exposure at 75 ppm
Four hours exposure at 50 ppm

Substituting this information in the formula, we have
(2 x 150 + 2 x 75 + 4 x 50) / 8 = 81.25 ppm

Since 81.25 ppm is less than 100 ppm, the 8-hour time weighted average limit, the exposure is acceptable.

PART 1926—SAFETY AND HEALTH REGULATIONS FOR CONSTRUCTION

Subpart D—Occupational Health and Environmental Controls

25. The authority citation for subpart D continues to read as follows:

Authority: 40 U.S.C. 3701 et seq.; 29 U.S.C. 653, 655, 657; and 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), 5-2007 (72 FR 31160), or 4-2010 (75 FR 55355), as applicable; and 29 CFR 1911.

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

Section 1926.61 also issued under 49 U.S.C. 1801-1819 and 5 U.S.C. 553.

Section 1926.62 of 29 CFR also issued under 42 U.S.C. 4853.

Section 1926.65 of 29 CFR also issued under 29 U.S.C. 655 note, and 5 U.S.C.

26. In Appendix A to § 1926.50, revise the second paragraph to read as follows:

§ 1926.50 Medical services and first aid.

- * * * * *

Appendix A to § 1926.50—First Aid Kits (Non-Mandatory)

- * * * * *

In a similar fashion, employers who have unique or changing first-aid needs in their workplace may need to enhance their first-aid kits. The employer can use the OSHA 300 log, OSHA 301 log, or other reports to identify these unique problems. Consultation from the local fire/rescue department, appropriate medical professional, or local emergency room may be helpful to employers in these circumstances. By assessing the specific needs of their workplace, employers can ensure that reasonably anticipated supplies are available. Employers should assess the specific needs of their worksite periodically and augment the first aid kit appropriately.

* * * * *

■ 27. In § 1926.62, revise paragraph (j)(2)(iv)(B) to read as follows:

§ 1926.62 Lead.

* * * * *

(j) * * *

(2) * * *

(B) The employer shall notify each employee whose blood lead level is at or above 40 µg/dl that the standard requires temporary medical removal with Medical Removal Protection benefits when an employee's blood lead level is at or above the numerical criterion for medical removal under paragraph (k)(1)(i) of this section.

* * * * *

[FR Doc. 2011-32853 Filed 12-23-11; 8:45 am]

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COMMONWEALTH of VIRGINIA

DEPARTMENT OF LABOR AND INDUSTRY

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VIRGINIA SAFETY AND HEALTH CODES BOARD

BRIEFING PACKAGE

FOR MAY 24, 2012

Acetylene Standard, §1910.102 Revising Other Standards Referenced Therein; Direct Final Rule

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 Direct Final Rule (DFR) for the Acetylene Standard, §1910.102, Revising Other Standards Referenced Therein, as published in 76 FR 75782 December 5, 2011.

The proposed effective date is September 15, 2012.

II. Summary of the Revised Standard.

This Direct Final Rule (DFR) updates the standards-developing organization ("SDO standards") referenced in paragraph (a) of §1910.102 (Cylinders) by deleting the reference to the 2003 edition of the Compressed Gas Association ("CGA") Pamphlet G-1 ("Acetylene") and replacing it with CGA Pamphlet G-1-2009 ("Acetylene"), which is the most recent edition of that pamphlet.

There were also minor changes found to the titles of CGA reports referenced in paragraph 4 of Section 3.2, Physical and chemical properties, and Section 4.2, Valves. Federal OSHA determined that these changes were not substantive. In Section 4.5 (Marking and labeling), CGA also provided additional guidance clarifying Department of Transportation labeling regulations, and labeling requirements for transporting acetylene in

Canada. Federal OSHA determined that this information provided guidance only, and therefore, imposed no additional burden on employer.

Finally, OSHA identified an addition to the note in Section 5.2 (Rules for storing acetylene) that designates as "in service" single cylinders of acetylene and oxygen located at a work station (e.g., chained to a wall or building column, secured on a cylinder cart). OSHA determined that this change was consistent with current industry practice, and does not increase employers' burden.

III. Use of Direct Final Rulemaking.

In direct final rulemaking, OSHA, like other federal agencies, will publish a direct final rule (DFR) in the Federal Register with a statement that the rule will go into effect unless significant adverse comment is received within a specified period of time. An identical proposed rule is often published at the same time.

If a significant adverse comment is received, the federal agency withdraws the direct final rule and treats such comment as a response to the proposed rule. Direct final rulemaking is typically used where OSHA anticipates that a rule will not be controversial, e.g., minor substantive changes to regulations, direct incorporations of mandates from new legislation, and in this case, minor changes to regulations resulting from a judicial remand.

IV. Basis, Purpose and Impact.

A. Basis.

This action is part of a rulemaking project instituted by OSHA to update its standards that reference or include language from outdated standards published by external standards developing organizations known as "SDO standards". (See 69 FR 68283). These are also referred to as National Consensus Standards. A SDO standard referenced in federal OSHA's Acetylene Standard, 29 CFR 1910.102, is among the SDO standards that OSHA identified for revision.

Federal OSHA adopted the original Acetylene Standard in 1974 pursuant to Section 6(a) of the Occupational Safety and Health Act of 1970 (OSH Act; 29 S.S.C. 651, 655). This section allowed federal OSHA, during the first two years after passage of the OSH Act, to adopt existing federal and national consensus standards as OSHA safety and health standards, including the Acetylene Standard.

B. Purpose.

On August 11, 2009, OSHA published a direct final rule (DFR) and accompanying notice of proposed rulemaking that updated references to recognize the latest edition of the Compressed Gas Association Standard, CGA G-1-2003, in the Acetylene Standard. OSHA received no adverse comments on the DFR, and it became effective on November 9, 2009. The Safety and Health Codes Board adopted OSHA's direct final rule on January 14, 2010, with an effective date of April 15, 2010.

The Compressed Gas Association published a new edition of CGA G-1 in June 2009, but this new edition was not available for OSHA to include it in the DFR. Three of the eight comments received on the DFR, however, recommended that OSHA reference CGA G-1-2009, instead of CGA G-1-2003. This rulemaking removed CGA G-1-2003 from the existing Acetylene Standard and replaced it with CGA G-1-2009.

This direct final rule is the companion document to a notice of proposed rulemaking (76 FR 75840, December 5, 2011). On March 8, 2012, OSHA published its confirmation of the effective date of this

direct final rule (77 FR 13969) and its withdrawal of the companion proposed rule. Since OSHA received no significant adverse comment on this direct final rule (77 FR 13997).

The revision made does not compromise the safety of employees and, instead, enhances employee protection. The revision will make the requirements of the Acetylene Standard consistent with current industry practices, thereby eliminating confusion and clarifying employer obligations which will increase employee safety by encouraging compliance.

Additionally, this rulemaking will bring the Acetylene Standard in line with industry practices without producing additional costs for employers, and may reduce compliance costs. Finally, the revision is non-controversial because it merely updates the SDO standard referenced in the rule to the most current version of that standard.

C. Impact on Employers.

In this Direct Final Rule, OSHA adopted the requirements specified in the most recent edition of the SDO Standard, CGA G-1-2009, to ensure that employers have access to the latest safety requirements for managing acetylene.

OSHA believes that the provisions of CGA G-1-2009 are consistent with the usual and customary practice of employers in the industry, and incorporating CGA G-1-2009 into paragraph (a) of §1910.102 will not impose any additional costs for compliance on employers (76 FR 75784).

D. Impact on Employees.

Federal OSHA determined that the update covered by this rulemaking will not reduce the employee protections put into place by the existing standard. Instead, this rulemaking likely will enhance employee safety by clarifying employer obligations.

E. Impact on the Department of Labor and Industry.

There is no impact anticipated on the Department since the adoption of this change would simply update a reference to an outdated National Consensus Standard in the OSHA Acetylene Standard.

If adopted, this will make the VOSH Acetylene Standard consistent with the language in OSHA's Acetylene standard. Federal OSHA did not change any other requirements in the exposure determination or notification provisions (76 FR 75784).

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. Costs.

The amendment does not impose any additional costs on any private-sector or public-sector entity. It simply updates a reference to an outdated external reference in the Acetylene Standard. Since the proposed amendments impose no costs on employers, federal OSHA certified that this rulemaking will not have a significant economic impact on a substantial number of small entities (76 FR 75784).

Contact Person:

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804.786.0574
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RECOMMENDED ACTION

Staff of the Department of Labor and Industry recommends that the Safety and Health Codes Board adopt federal OSHA's Direct Final Rule for the Acetylene Standard, §1910.102, Revising Other Standards Referenced Therein, as authorized by Virginia Code §§ 40.1-22(5) and 2.2-4006.A.4(c), with an effective date of September 15, 2012.

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 §2.2-4006 of the Administrative Process Act.

**Acetylene Standard, §1910.102
Revising Other Standards Referenced Therein;
Direct 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: _____

16VAC25-90-1910.102, Acetylene

When the regulations, as set forth in the Direct Final Rule for the Acetylene Standard, §1910.102, Revising Other Standards Referenced Therein, 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 5, 2012

September 15, 2012

DEPARTMENT OF LABOR

Occupational Safety and Health
Administration

29 CFR Part 1910

[Docket No. OSHA-2011-0183]

RIN 1218-AC64

Revising Standards Referenced in the
Acetylene Standard

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

ACTION: Direct final rule; request for comments.

SUMMARY: In this direct final rule, the Agency is revising its Acetylene Standard for general industry by updating a reference to a standard published by a standards-developing organization ("SDO standards"). This rulemaking is a continuation of OSHA's ongoing effort to update references to SDO standards used throughout its rules.

DATES: This direct final rule will become effective on March 5, 2012 unless OSHA receives significant adverse comment by January 4, 2012. If OSHA receives adverse comment, it will publish a timely withdrawal of the rule in the **Federal Register**. Submit comments to this direct final rule (including comments to the information-collection (paperwork) determination described under the section titled Procedural Determinations), hearing requests, and other information by January 4, 2012. All submissions must bear a postmark or provide other evidence of the submission date. (The following section

titled **ADDRESSES** describes methods available for making submissions.)

The Director of the Federal Register approved the incorporation by reference of specific publications listed in this direct final rule as of March 5, 2012.

ADDRESSES: Submit comments, hearing requests, and other information as follows:

- **Electronic:** Submit comments electronically to <http://www.regulations.gov>, which is the Federal eRulemaking Portal. Follow the instructions online for submitting comments.

- **Facsimile:** OSHA allows facsimile transmission of comments and hearing requests that are 10 pages or fewer in length (including attachments). Send these documents to the OSHA Docket Office at (202) 693-1648; OSHA does not require hard copies of these documents. Instead of transmitting facsimile copies of attachments that supplement these documents (e.g., studies, journal articles), commenters must submit these attachments to the OSHA Docket Office, Technical Data Center, Room N-2625, OSHA, U.S. Department of Labor, 200 Constitution Ave. NW., Washington, DC 20210. These attachments must clearly identify the sender's name, date, subject, and docket number (OSHA-2011-0183) so that the Agency can attach them to the appropriate document.

- **Regular mail, express delivery, hand (courier) delivery, and messenger service:** Submit comments and any additional material (e.g., studies, journal articles) to the OSHA Docket Office, Docket No. OSHA-2011-0183 or Regulation Identification Number (RIN) 1218-AC08, Technical Data Center, Room N-2625, OSHA, U.S. Department of Labor, 200 Constitution Ave. NW., Washington, DC 20210; telephone: (202) 693-2350. (OSHA's TTY number is (877) 889-5627.) Note that security-related procedures may result in significant delays in receiving comments and other written materials by regular mail. Please contact the OSHA Docket Office for information about security procedures concerning delivery of materials by express delivery, hand delivery, and messenger service. The hours of operation for the OSHA Docket Office are 8:15 a.m. to 4:45 p.m., e.t.

- **Instructions:** All submissions must include the Agency name and the OSHA docket number (OSHA-2011-0183). OSHA will place comments and other material, including any personal information, in the public docket without revision, and these materials will be available online at <http://www.regulations.gov>

www.regulations.gov. Therefore, the Agency cautions commenters about submitting statements they do not want made available to the public, or submitting comments that contain personal information (either about themselves or others) such as Social Security numbers, birth dates, and medical data.

• **Docket:** The electronic docket for this direct final rule established at <http://www.regulations.gov> lists most of the documents in the docket. However, some information (e.g., copyrighted material) is not publicly available to read or download through this Web site. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. Contact the OSHA Docket Office for assistance in locating docket submissions.

FOR FURTHER INFORMATION CONTACT:

Press inquiries: Contact Frank Meilinger, OSHA Office of Communications, Room N-3647, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210; telephone: (202) 693-1999.

General and technical information: Contact Ted Twardowski, Office of Safety Systems, Directorate of Standards and Guidance, Room N-3609, OSHA, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210; telephone: (202) 693-2255; fax: (202) 693-1663.

SUPPLEMENTARY INFORMATION:

Copies of this Federal Register notice: Electronic copies of this Federal Register notice are available at <http://www.regulations.gov>. This notice, as well as news releases and other relevant information, also are available at OSHA's Web page at <http://www.osha.gov>.

Availability of Incorporated Standards: OSHA is incorporating by reference into this section the standard published by the Compressed Gas Association required in § 1910.102(a) with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. To enforce any edition other than the editions specified in § 1910.102(a), OSHA must publish a notice of change in the Federal Register, and the material must be available to the public. All approved material is available for inspection at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, telephone (202) 741-6030, or go to: http://www.archives.gov/federal-register/code_of_federal_regulations/ibr_locations.html. Also, the material is available for inspection at any OSHA

Regional Office or the OSHA Docket Office (U.S. Department of Labor, 200 Constitution Avenue NW., Room N-2625, Washington, DC 20210; telephone (202) 693-2350 (TTY number: (877) 889-5627)).

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I. Background

This action is part of a rulemaking project instituted by the Occupational Safety and Health Administration ("OSHA" or "the Agency") to update OSHA standards that reference or include language from outdated standards published by standards developing organizations ("SDO standards") (69 FR 68283). A SDO standard referenced in OSHA's Acetylene Standard (29 CFR 1910.102) is among the SDO standards that the Agency identified for revision.

OSHA adopted the original Acetylene Standard in 1974 pursuant to Section 6(a) of the Occupational Safety and Health Act of 1970 (OSH Act; 29 U.S.C. 651, 655). This section allowed OSHA, during the first two years after passage of the OSH Act, to adopt existing Federal and national consensus standards as OSHA safety and health standards, including the Acetylene Standard.

On August 11, 2009, OSHA published a direct final rule (DFR) and accompanying notice of proposed rulemaking that updated references to recognize the latest edition of the Compressed Gas Association standard, CGA G-1-2003, in the Acetylene Standard. See 74 FR 40442 and 74 FR 40450, respectively. OSHA received no adverse comments on the DFR, and it became effective on November 9, 2009. See 74 FR 57883.

The Compressed Gas Association published a new edition of CGA G-1 in June 2009. OSHA did not include CGA G-1-2009 in the DFR because that edition was not available to OSHA prior to publication of the DFR. However,

three of the eight comments received on the DFR (Exs. OSHA-2008-0034-0017, -0010, and -0022) recommended that the Agency reference CGA G-1-2009 instead. OSHA did not include the 2009 edition of CGA G-1 in the DFR because that edition was not available to OSHA prior to publication of the DFR. This rulemaking is removing CGA G-1-2003 from the existing Acetylene Standard and replacing it with CGA G-1-2009.

II. Direct Final Rulemaking

A. General

In a direct final rulemaking, an agency publishes a DFR in the Federal Register along with a statement that the rule will become effective unless the agency receives significant adverse comment within a specified period. An agency uses direct final rulemaking when it anticipates the rule will be noncontroversial. The agency concurrently publishes a proposed rule that is essentially identical to the DFR. If, however, the agency receives significant adverse comment within the specified period, the agency withdraws the DFR and treats the comments as submissions on the proposed rule.

OSHA is using a DFR for this rulemaking because it expects the rule to: be noncontroversial; provide protection to employees that is at least equivalent to the protection afforded to them by the outdated standard; and impose no significant new compliance costs on employers (69 FR 68283, 68285). OSHA used DFRs previously to update or, when appropriate, revoke references to outdated national SDO standards in OSHA rules (see, e.g., 69 FR 68283, 70 FR 76979, and 71 FR 80843).

For purposes of this direct final rulemaking, a significant adverse comment is one that explains why the rule would be inappropriate, including challenges to the rule's underlying premise or approach. In determining whether a comment necessitates withdrawal of the DFR, OSHA will consider whether the comment raises an issue serious enough to warrant a substantive response in a notice-and-comment process. OSHA will not consider a comment recommending an addition to the rule to be a significant adverse comment unless the comment states why the DFR would be ineffective without the addition. If OSHA receives a timely significant adverse comment, the Agency will publish a Federal Register notice withdrawing the DFR no later than February 3, 2012.

OSHA determined that updating and replacing the SDO standard in the Acetylene Standard is appropriate for

direct final rulemaking. First, the revision made to the Acetylene Standard by this DFR does not compromise the safety of employees, and instead enhances employee protection. As described below, the revision will make the requirements of OSHA's Acetylene Standard consistent with current industry practices, thereby eliminating confusion and clarifying employer obligations, which will increase employee safety by encouraging compliance. Furthermore, bringing the Acetylene Standard in line with industry practice will not produce additional costs for employers, and may reduce compliance costs. Finally, the revision is non-controversial because it merely updates the SDO standard referenced in the rule to the most current version of that standard.

B. Relationship Between This Direct Final Rule and the Companion Proposed Rule

This direct final rule is the companion document to a notice of proposed rulemaking also published in the "Proposed Rules" section of today's **Federal Register**. If OSHA receives no significant adverse comment on this direct final rule, it will publish a **Federal Register** document confirming the effective date of this direct final rule and withdrawing the companion proposed rule. The confirmation may include minor stylistic or technical corrections to the document. For the purpose of judicial review, OSHA considers the date that it confirms the effective date of the direct final rule to be the date of issuance. However, if OSHA receives significant adverse comment on the direct final rule, it will publish a timely withdrawal of this direct final rule and proceed with the proposed rule, which addresses the same revisions to the Acetylene Standard.

C. Request for Comment

OSHA requests comments on all issues related to this direct final rulemaking, including economic or other regulatory impacts of this action on the regulated community. OSHA will consider all of the comments, and the comments will become part of the record.

III. Summary and Explanation of Revisions to the Acetylene Standard

This DFR updates the SDO standard referenced in paragraph 1910.102(a) of the Acetylene Standard. To ensure that employers have access to the latest safety requirements for managing acetylene, this rulemaking is adopting the requirements specified in the most

recent, 2009, edition of the SDO standard, CGA G-1-2009. The following discussion provides a summary of the revisions OSHA is making to paragraph (a) of the Acetylene Standard.

For paragraph (a) of § 1910.102 (Cylinders), this DFR is replacing the reference to the 2003 edition of CGA Pamphlet G-1 ("Acetylene") (Ex. OSHA-2008-0034-0006) with the most recent (*i.e.*, 2009) edition of that standard, also entitled "Acetylene" (Ex. OSHA-2011-0183-0003). In reviewing CGA G1-2009, the Agency prepared a side-by-side comparison of the 2009 and 2003 editions (Ex. OSHA-2011-0183-0004). OSHA found minor changes to the titles of CGA reports referenced in paragraph 4 of section 3.2 (Physical and chemical properties) and section 4.2 (Valves); these changes are not substantive. In section 4.5 (Marking and labeling), CGA also provides additional guidance clarifying Department of Transportation labeling regulations, and labeling requirements for transporting acetylene in Canada. The Agency determined that this information provides guidance only, and, therefore, imposes no additional burden on employers. Finally, OSHA identified an addition to the note in section 5.2 (Rules for storing acetylene) that designates as "in service" single cylinders of acetylene and oxygen located at a work station (*e.g.*, chained to a wall or building column, secured on a cylinder cart). The Agency determined that this change is consistent with current industry practice, and, consequently, does not increase employers' burden.¹

OSHA believes that the provisions of CGA G-1-2009 are consistent with the usual and customary practice of employers in the industry, and determined that incorporating CGA G-1-2009 into paragraph (a) of § 1910.102 does not add compliance burden for employers. OSHA invites the public to comment on whether the revisions made to the Acetylene Standard represent current industry practice.

IV. Procedural Determinations

A. Legal Considerations

The purpose of the Occupational Safety and Health Act of 1970 (29 U.S.C. 651 *et seq.*), is "to assure so far as possible every working man and woman in the nation safe and healthful working conditions and to preserve our human resources." 29 U.S.C. 651(b). To achieve

¹ In its comments to the 2009 DFR revising OSHA's Acetylene Standard, CGA made the following statement regarding the addition to this note: "CGA does not envision a hardship or economic burden on the industry nor any reduction in industrial safety as a result of this change."

this goal, Congress authorized the Secretary of Labor to promulgate and enforce occupational safety and health standards. 29 U.S.C. 655(b), 654(b). A safety or health standard is a standard "which requires conditions, or the adoption or use of one or more practices, means, methods, operations, or processes, reasonably necessary or appropriate to provide safe or healthful employment or places of employment." 29 U.S.C. 652(8). A standard is reasonably necessary or appropriate within the meaning of Section 652(8) when a significant risk of material harm exists in the workplace and the standard would substantially reduce or eliminate that workplace risk.

This DFR will not reduce the employee protections put into place by the standard OSHA is updating under this rulemaking. Instead, this rulemaking likely will enhance employee safety by clarifying employer obligations. Therefore, it is unnecessary to determine significant risk, or the extent to which this rule would reduce that risk, as typically is required by *Industrial Union Department, AFL-CIO v. American Petroleum Institute* (448 U.S. 607 (1980)).

B. Final Economic Analysis and Regulatory Flexibility Act Certification

This DFR is not "economically significant" as specified by Executive Order 12866, or a "major rule" under Section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996 ("SBREFA"; 5 U.S.C. 804). The DFR does not impose significant additional costs on any private-sector or public-sector entity, and does not meet any of the criteria for an economically significant or major rule specified by Executive Order 12866 and the relevant statutes. OSHA developed the rule with attention to the approaches to rulemaking outlined in Executive Orders 12866 and 13563.

This DFR simply updates a reference to an outdated SDO standard in OSHA's Acetylene Standard. The Agency concludes that the revisions will not impose any additional costs on employers because it believes that the updated SDO standard represents the usual and customary practice of employers in the industry. Consequently, the DFR imposes no costs on employers. Therefore, OSHA certifies that this rulemaking will not have a significant economic impact on a substantial number of small entities. Accordingly, the Agency is not preparing a regulatory flexibility analysis under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

C. OMB Review Under the Paperwork Reduction Act of 1995

Neither the existing nor updated SDO standard addressed by this DFR contain collection of information requirements. Therefore, this DFR does not impose or remove any information-collection requirements for purposes of the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.* and 5 CFR 1320. Accordingly, the Agency does not have to prepare an Information Collection Request in association with this rulemaking.

Members of the public may respond to this paperwork determination by sending their written comments to the Office of Information and Regulatory Affairs, Attn: OSHA Desk Officer (RIN 1218-AC08), Office of Management and Budget, Room 10235, 725 17th Street NW., Washington, DC 20503. The Agency encourages commenters to submit these comments to the rulemaking docket, along with their comments on other parts of the DFR. For instructions on submitting these comments and accessing the docket, see the sections of this **Federal Register** notice titled **DATES** and **ADDRESSES**. However, OSHA will not consider any comment received on this paperwork determination to be a "significant adverse comment" as specified under Section II ("Direct Final Rulemaking") of this notice.

To make inquiries, or to request other information, contact Mr. Todd Owen, Directorate of Standards and Guidance, OSHA, Room N-3609, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210; telephone (202) 693-2222.

D. Federalism

OSHA reviewed this DFR in accordance with the Executive Order on Federalism (Executive Order 13132, 64 FR 43255, August 10, 1999), which requires that Federal agencies, to the extent possible, refrain from limiting State policy options, consult with States prior to taking any actions that would restrict State policy options, and take such actions only when clear constitutional authority exists and the problem is national in scope.

Under Section 18 of the Occupational Safety and Health Act of 1970 ("OSH Act"; U.S.C. 651 *et seq.*), Congress expressly provides that States may adopt, with Federal approval, a plan for the development and enforcement of occupational safety and health standards; OSHA refers to States that obtain Federal approval for such a plan as "State Plan States." 29 U.S.C. 667. Occupational safety and health

standards developed by State Plan States must be at least as effective in providing safe and healthful employment and places of employment as the Federal standards. Subject to these requirements, State Plan States are free to develop and enforce their own requirements for occupational safety and health standards. While OSHA drafted this DFR to protect employees in every State, Section 18(c)(2) of the Act permits State Plan States and Territories to develop and enforce their own standards for acetylene operations provided these requirements are at least as effective in providing safe and healthful employment and places of employment as the requirements specified in this DFR.

In summary, this DFR complies with Executive Order 13132. In States without OSHA-approved State Plans, any standard developed from this DFR would limit State policy options in the same manner as every standard promulgated by OSHA. In States with OSHA-approved State Plans, this rulemaking would not significantly limit State policy options.

E. State Plan States

When Federal OSHA promulgates a new standard or a more stringent amendment to an existing standard, the 27 States or U.S. Territories with their own OSHA-approved occupational safety and health plans ("State Plan States") must amend their standards to reflect the new standard or amendment, or show OSHA why such action is unnecessary (*e.g.*, if an existing State standard covering this area is already "at least as effective" as the new Federal standard or amendment). 29 CFR 1953.5(a). The State standard must be "at least as effective" as the final Federal rule, and must be completed within six months of the publication date of the final Federal rule. 29 CFR 1953.5(a). When OSHA promulgates a new standard or amendment that does not impose additional or more stringent requirements than the existing standard, State Plan States are not required to amend their standards, although OSHA may encourage them to do so.

While this DFR does not impose any additional or more stringent requirements on employers than the existing Acetylene Standard, OSHA believes that the provisions of this DFR will provide employers with critical, updated information and methods that will help protect their employees from the hazards found in workplaces engaged in acetylene operations. Therefore, OSHA encourages the State Plan States to adopt provisions comparable to the provisions in this

DFR within six months after the promulgation date of the rule. The 27 States and territories with OSHA-approved State Plans are: Alaska, Arizona, California, Connecticut, Hawaii, Illinois, Indiana, Iowa, Kentucky, Maryland, Michigan, Minnesota, Nevada, New Mexico, New Jersey, New York, North Carolina, Oregon, Puerto Rico, South Carolina, Tennessee, Utah, Vermont, Virginia, Virgin Islands, Washington, and Wyoming. Connecticut, Illinois, New Jersey, New York, and the Virgin Islands have OSHA-approved State Plans that apply to State and local government employees only.

F. Unfunded Mandates Reform Act of 1995

OSHA reviewed this DFR in accordance with the Unfunded Mandates Reform Act of 1995 ("UMRA"; 2 U.S.C. 1501 *et seq.*) and Executive Order 12875 (56 FR 58093). As discussed above in Section IV.B ("Final Economic Analysis and Regulatory Flexibility Act Certification") of this notice, the Agency determined that this DFR will not impose additional costs on any private-sector or public-sector entity. Accordingly, this DFR requires no additional expenditures by either public or private employers.

As noted above under Section IV.E ("State Plan States") of this notice, the Agency's standards do not apply to State and local governments except in States that have elected voluntarily to adopt a State Plan approved by the Agency. Consequently, this DFR does not meet the definition of a "Federal intergovernmental mandate" (*see* Section 421(5) of the UMRA (2 U.S.C. 658(5))). Therefore, for the purposes of the UMRA, the Agency certifies that this DFR does not mandate that State, local, or tribal governments adopt new, unfunded regulatory obligations, or increase expenditures by the private sector of more than \$100 million in any year.

G. Public Participation

OSHA requests comments on all issues concerning this DFR. The Agency also welcomes comments on its determination that this DFR has no negative economic impacts on employers, and will increase employee protection. If OSHA receives no significant adverse comment, it will publish a **Federal Register** document confirming the effective date of this direct final rule and withdrawing the companion proposed rule. Such confirmation may include minor stylistic or technical corrections to the

Authority: Sections 4, 6, and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order No. 12-71 (36 FR 8754), 8-76 (41 FR 25059), 9-83 (48 FR 35736), 1-90 (55 FR 9033), 6-96 (62 FR 111), 3-2000 (65 FR 50017), 5-2002 (67 FR 65008), 5-2007 (72 FR 31159), and 4-2010 (75 FR 55355), as applicable.

Sections 1910.6, 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); Pub. L. 111-8 and 111-317; and OMB Circular A-25 (dated July 8, 1993) (58 FR 38142, July 15, 1993).

Subpart H—[Amended]

- 4. Amend § 1910.102 by revising paragraph (a) to read as follows:

§ 1910.102 Acetylene.

(a) *Cylinders.* Employers must ensure that the in-plant transfer, handling, storage, and use of acetylene in cylinders comply with the provisions of CGA Pamphlet G-1-2009 ("Acetylene") (incorporated by reference, see § 1910.6).

* * * * *

[FR Doc. 2011-30653 Filed 12-2-11; 8:45 am]

BILLING CODE 4510-26-P

PART 1910—OCCUPATIONAL SAFETY AND HEALTH STANDARDS

Subpart A—[Amended]

- 1. The authority citation for subpart A continues to read as follows:



if the Agency received no significant adverse comments. OSHA did not receive significant adverse comments on the direct final rule. Therefore, OSHA is confirming that the direct final rule will become effective on March 5, 2012.

DATES: The direct final rule published on December 5, 2011 (76 FR 75782), is effective on March 5, 2012. For the purposes of judicial review, OSHA considers March 5, 2012, as the date of issuance.

FOR FURTHER INFORMATION CONTACT:

General information and press inquiries: Contact Frank Meilinger, Director, OSHA Office of Communications, Room N-3647, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210; telephone: (202) 693-1999.

Technical information: Contact Ken Stevanus, Directorate of Standards and Guidance, Room N-3609, OSHA, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210; telephone: (202) 693-2260; fax: (202) 693-1663.

Copies of this Federal Register notice. Electronic copies of this Federal Register notice are available at <http://www.regulations.gov>. This Federal Register notice, as well as news releases and other relevant information, also is available at OSHA's Web page at <http://www.osha.gov>.

ADDRESSES: In compliance with 28 U.S.C. 2112(a), OSHA designates the Associate Solicitor of Labor for Occupational Safety and Health as the recipient of petitions for review of the final standard. Contact Joseph M. Woodward, Associate Solicitor at the Office of the Solicitor, Room S-4004, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210; telephone: (202) 693-5445.

SUPPLEMENTARY INFORMATION: On December 5, 2011, OSHA published a direct final rule (DFR) in the Federal Register that revised the Acetylene Standard for general industry by updating a reference to the Compressed Gas Association (CGA) acetylene standard (see 76 FR 75782). In the DFR, OSHA deleted reference to CGA G-1-2003 and replaced it with CGA G-1-2009. In that Federal Register document, OSHA also stated that it would confirm the effective date of the DFR if the Agency received no significant adverse comments.

OSHA received one comment on the DFR, which it determined was not a significant adverse comment. The commenter observed differences between provisions of the most recent Compressed Gas Association acetylene standard (CGA G-1-2009) and provisions of OSHA's oxygen-fuel gas

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1910

[Docket No. OSHA-2011-0183]

RIN 1218-AC64

Revising Standards Referenced in the Acetylene Standard

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

ACTION: Final rule; confirmation of effective date.

SUMMARY: OSHA is confirming the effective date of its direct final rule that revises the Acetylene Standard for general industry by updating the reference to a standard published by a standards-developing organization, the Compressed Gas Association. In the December 5, 2011, direct final rule, OSHA stated that it would withdraw the companion proposed rule and confirm the effective date of the direct final rule

welding and cutting standard at 29 CFR 1910.253. After describing the differences, the commenter stated that "the rulemaking process should include an assessment of how other existing OSHA Rules may be affected by the new or amended rule." However, the commenter did not object to the revised provisions adopted by the CGA G-1-2009 standard that are the subject of this rulemaking. Therefore, the Agency determined that this comment was neither significant nor adverse.

List of Subjects in 29 CFR Part 1910

Acetylene, General industry,
Occupational safety and health, Safety.

Authority and Signature

David Michaels, Ph.D., MPH,
Assistant Secretary of Labor for
Occupational Safety and Health, U.S.
Department of Labor, 200 Constitution
Avenue NW., Washington, DC 20210,
authorized the preparation of this final
rule. OSHA is issuing this final rule
pursuant to Sections 4, 6, and 8 of the
Occupational Safety and Health Act of
1970 (29 U.S.C. 653, 655, and 657), 5
U.S.C. 553, Secretary of Labor's Order
1-2012 (77 FR 3912), and 29 CFR part
1911.

Signed at Washington, DC on March 2,
2012.

David Michaels,
*Assistant Secretary of Labor for Occupational
Safety and Health.*

[FR Doc. 2012-5589 Filed 3-7-12; 8:45 am]

BILLING CODE 4510-26-P

**DEPARTMENT OF LABOR****Occupational Safety and Health Administration****29 CFR Part 1910**

[Docket No. OSH-2011-0183]

RIN No. 1218-AC64

Revising Standards Referenced in the Acetylene Standard**AGENCY:** Occupational Safety and Health Administration (OSHA), Labor.**ACTION:** Proposed rule; withdrawal.**SUMMARY:** With this document, OSHA is withdrawing the proposed rule that accompanied its direct-final rule revising the Acetylene Standard for general industry.**DATES:** Effective March 8, 2012, the proposed rule published December 5, 2011 (76 FR 75840), is withdrawn.**FOR FURTHER INFORMATION CONTACT:***General information and press inquiries:* Contact Frank Meilinger, Director, OSHA Office of Communications, Room N-3647, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210; telephone: (202) 693-1999.*Technical information:* Contact Ken Stevanus, Directorate of Standards and Guidance, Room N-3609, OSHA, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210; telephone: (202) 693-2260; fax: (202) 693-1663.*Copies of this Federal Register notice:* Electronic copies of this Federal Register notice are available at <http://www.regulations.gov>. This Federal Register notice, as well as news releases and other relevant information, is also available at OSHA's Web page at <http://www.osha.gov>.**SUPPLEMENTARY INFORMATION:** On December 5, 2011, OSHA published a direct-final rule to update the incorporated references in its Acetylene Standard for general industry at 29 CFR 1910.102 (76 FR 75782). OSHA also published a companion proposed rule along with the direct-final rule (76 FR 75840). In the direct-final rule, OSHA stated that it would withdraw the companion proposed rule and confirm the effective date of the direct-final rule if it received no significant adverse comments on the direct-final rule by January 4, 2012. OSHA received one comment on the direct-final rule by that date, which it determined was not a significant adverse comment. OSHA is publishing a notice announcing this determination and confirming the effective date of the direct-final rule as March 5, 2012. Accordingly, OSHA is

not proceeding with the proposed rule, and is withdrawing it from the rulemaking process.

List of Subjects in 29 CFR Part 1910

Acetylene, General industry, Occupational safety and health, Safety.

Authority and Signature

David Michaels, Ph.D., MPH, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210, authorized the preparation of this document. OSHA is issuing this document pursuant to Sections 4, 6, and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, and 657), 5 U.S.C. 553, Secretary of Labor's Order 1-2012 (77 FR 3912), and 29 CFR part 1911.

Signed at Washington, DC, on March 2, 2012.

David Michaels,*Assistant Secretary of Labor for Occupational Safety and Health.*

[FR Doc. 2012-5585 Filed 3-7-12; 8:45 am]

BILLING CODE 4510-26-P



COMMONWEALTH of VIRGINIA

DEPARTMENT OF LABOR AND INDUSTRY

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VIRGINIA SAFETY AND HEALTH CODES BOARD

BRIEFING PACKAGE

FOR MAY 24, 2012

Correcting Amendments:

**Construction Industry Standard for Sanitation; in General,
16VAC25-160-10
and
Field Sanitation Standard,
16VAC25-180-10**

I. Action Requested.

The Virginia Occupational Safety and Health (VOSH) Program requests the Safety and Health Codes Board to authorize the Department's Correcting Amendments to the Construction Industry Standard for Sanitation; in General, 16VAC25-160-10, and the Field Sanitation Standard, 16VAC25-180-10, with an effective date of September 15, 2012.

II. Summary of the Correcting Amendment.

On June 8, 2011, federal OSHA published the Standards Improvement Project – Phase III (SIP III) Final Rule (76 FR 33590). On October 13, 2011, the Safety and Health Codes Board adopted the majority of the revisions to these various standards with an effective date of January 15, 2012. However, the Board did not adopt the two changes related to federal OSHA's standards, §§1926.51, Sanitation, and 1928.110, Field Sanitation, in SIP III because Virginia has its own unique versions of these standards.

As Federal OSHA has done with SIP III, the VOSH Program seeks to correct a reference in the definition of "Potable water" which appears in both of the Virginia unique Construction Industry Standard for Sanitation; in General, 16 VAC25-160-10 (b)(i)(2), and the Field Sanitation Standard, 16 VAC25-180-10 (b). The correction would delete the single word "Interim" from the reference "U.S. Environmental Protection Agency's Interim Primary Drinking Water Regulations, published in 40 CFR Part 141". Also, in 16 VAC25-160-10 (b)(i)(2), VOSH seeks to insert the word "National" before "Primary" to more accurately reflect the title of the referenced regulations.

III. **Basis, Purpose and Impact of the Correcting Amendment.**

A. **Basis.**

The basis for this action is that, in accordance with §2.2-4006.A.3., agency actions subject to the Administrative Process Act (APA) are exempt from the Article 2 promulgation requirements of the APA if the action consists only of changes in style or form or corrections of technical errors.

B. **Purpose.**

The purpose of this amendment is to correct a reference in two VOSH unique regulations, the Construction Industry Standard for Sanitation; in General, 16VAC 25-160-10, and the Field Sanitation Standard, 16VAC25-180-10. These standards contain references to "the U.S. Environmental Protection Agency's *Interim* National Primary Drinking Water Regulations, published in 40 CFR Part 141" (*emphasis added*). This reference has been revised in federal OSHA's Sanitation standard, 29 CFR 1926.51, and in its Field Sanitation standard, 29 CFR 1928.110. Removing the word "interim" in both VOSH regulations and inserting the word "National" in 16VAC25-160-10 (b)(i)(2) would accurately reflect the correct title of the EPA's regulations which appear in both of federal OSHA's standards upon which the VOSH's standards are based.

16VAC25-160-10, Construction Industry Standard for Sanitation; in general

(b) Nonpotable water.

(i) Definitions.

(2) "Potable water" means water that meets the standards for drinking purposes of the state or local authority having jurisdiction or water that meets the quality standards prescribed by the U.S. Environmental Protection Agency's National Interim Primary Drinking Water Regulations, published in 40 CFR Part 141.

16VAC25-180-10, Field Sanitation

(b) Definitions.

"Potable water" means water that meets the standards of drinking purposes of the state or local authority having jurisdiction or water that meets the quality standards prescribed by the U.S. Environmental Protection Agency's National Interim Primary Drinking Water Regulations, published in 40 CFR Part 141.

C. Impact on Employers.

It is anticipated that adoption of these minor correcting amendments would have no impact on Virginia employers. These corrections would provide consistent regulatory language among federal OSHA and VOSH regulations.

D. Impact on Employees.

It is anticipated that adoption of these minor correcting amendments would have no impact on Virginia employees.

E. Impact on the Department of Labor and Industry.

It is anticipated that adoption of these minor correcting amendments would have no impact on the Department. These corrections would provide consistent regulatory language among federal OSHA and VOSH regulations.

Contact Person:

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RECOMMENDED ACTION

Staff of the Department of Labor and Industry recommends that the Safety and Health Codes Board adopt correcting amendments to the final rules for the Construction Industry Standard for Sanitation; in General, 16VAC25-160-10, and for Field Sanitation Standard, 16VAC25-180-10, as authorized by Virginia Code §§ 40.1-22(5) and 2.2-4006.A.3, with an effective date of September 15, 2012.

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 subsection 2.2-4006 A.3 of the Administrative Process Act.

**Correcting Amendments for:
Construction Industry Standard for Sanitation; in General, 16VAC25-160-10, and
Field Sanitation Standard, 16VAC25-180-10**

As Adopted by the
Safety and Health Codes Board

Date: _____



VIRGINIA OCCUPATIONAL SAFETY AND HEALTH PROGRAM

VIRGINIA DEPARTMENT OF LABOR AND INDUSTRY

Effective Date: _____

16VAC25-160-10, Construction Industry Sanitation Standard; in General
16VAC25-180-10, Field Sanitation Standard

Virginia Administrative Code

TITLE 16 – LABOR AND EMPLOYMENT
AGENCY 25 – SAFETY AND HEALTH CODES BOARD

CHAPTER 160

16VAC25-160-10. Construction industry sanitation standard; in general (29 CFR 1926.51).

Note: The following standard is unique for the enforcement of occupational safety and health within the Commonwealth of Virginia under the jurisdiction of the VOSH Program. The existing federal OSHA standard does not apply; it does not carry the force of law and is not printed in this volume.

(a) Water supply.

(1) Potable drinking water.

(i) Potable water shall be provided and placed in locations readily accessible to all employees.

(ii) The water shall be suitably cool and in sufficient amounts, taking into account the air temperature, humidity and the nature of the work performed to meet the needs of all employees.

(iii) The water shall be dispensed in single-use drinking cups or by fountains. The use of the common drinking cup is prohibited.

(2) Portable containers used to dispense drinking water shall be capable of being tightly closed, and equipped with a tap. Water shall not be dipped from containers.

(3) Any container used to distribute drinking water shall be clearly marked as to the nature of its contents and not used for any other purpose. Water shall not be dipped from containers.

(4) Where single service cups (to be used but once) are supplied, both a sanitary container for the unused cups and a receptacle for disposing of the cups shall be provided.

(5) Maintenance. Potable drinking water, toilet and handwashing facilities shall be maintained in accordance with appropriate public health sanitation practices, and shall include the following:

(i) Drinking water containers shall be constructed of materials that maintain water quality;

(ii) Drinking water containers shall be refilled daily and shall be covered; and

(iii) Drinking water containers shall be regularly cleaned.

(b) Nonpotable water.

(1) Outlets for nonpotable water, such as water for industrial or firefighting purposes only, shall be identified by signs meeting the requirements of Subpart G of this part (16VAC25-175-1926.200 et seq.), to indicate clearly that the water is unsafe and is not to be used for drinking, washing, or cooking purposes.

(2) There shall be no cross-connection, open or potential, between a system furnishing potable water and a system furnishing nonpotable water.

(c) Toilet and handwashing facilities.

(1) One toilet and one handwashing facility shall be provided for each 20 employees or fraction thereof.

(2) Toilet facilities shall be adequately ventilated, appropriately screened, have self-closing doors that can be closed and latched from inside and shall be constructed to insure privacy.

(3) Toilet and handwashing facilities shall be readily accessible to all employees, accessibly located and in close proximity to each other.

(4) Toilet facilities shall be operational and maintained in a clean and sanitary condition.

(5) The requirements of this paragraph for sanitation facilities shall not apply to mobile crews having transportation readily available to nearby toilet facilities.

(d) NOTE: Rescinded as being inconsistent with the more stringent Virginia Standard.

(e) NOTE: Rescinded as being inconsistent with the more stringent Virginia Standard.

(f) Washing facilities. Hand washing facilities shall be refilled with potable water as necessary to ensure an adequate supply of potable water, soap and single use towels.

(g) Revoked

(h) Waste disposal. (1) Disposal of wastes from facilities shall not cause unsanitary conditions.

(i) Definitions.

(1) "Handwashing" facility means a facility providing either a basin, container or outlet with an adequate supply of potable water, soap and single use towels.

(2) "Potable water" means water that meets the standards for drinking purposes of the state or local authority having jurisdiction or water that meets the quality standards prescribed by the U. S. Environmental Protection Agency's National Interim Primary Drinking Water Regulations, published in 40 CFR Part 141.

(3) "Toilet facility" means a fixed or portable facility designed for the containment of the products of both defecation and urination which is supplied with toilet paper adequate to meet employee needs. Toilet facilities include biological, chemical, flush and combustion toilets and sanitary privies.

16VAC25-160-20. General industry standards applicable to construction sanitation (29 CFR 1910.141).

The following requirements from 29 CFR Part 1910 (General Industry) have been identified as applicable to construction (29 CFR 1926.51, Sanitation), in accordance with their respective scope and definitions.

§ 1910.141 Sanitation

(a)(1) Scope. This section applies to all permanent places of employment.

(2) NOTE: Virginia does not adopt 29 CFR 1910.141(a)(2)(i)-(xi), which sets out definitions applicable to 29 CFR 1910.141. 29 CFR 1910.141(a)(2)(v) has been rescinded.

(v) NOTE: Rescinded as being inconsistent with the more stringent Virginia Standard for potable water (16VAC25-160-10).

NOTE: Virginia does not adopt 29 CFR 1910.141(a)(3) and (4).

(5). Vermin control. Every enclosed workplace shall be so constructed, equipped, and maintained, so far as reasonably practicable, as to prevent the entrance or harborage of rodents, insects, and other vermin. A continuing and effective extermination program shall be instituted where their presence is detected.

NOTE: Virginia does not adopt 29 CFR 1910.141(b) through (g)(1).

(g)(2) Eating and drinking areas. No employee shall be allowed to consume food or beverages in a toilet room nor in any area exposed to a toxic material.

NOTE: Virginia does not adopt 29 CFR 1910.141(g)(3) and (g)(4).

(h) NOTE: Rescinded as being inconsistent with the more stringent Virginia Standard.

16VAC25-160-30. Medical services and first aid (29 CFR 1910.151).

NOTE: Virginia does not adopt 29 CFR 1910.151(a) and (b).

(c) Where the eyes or body of any person may be exposed to injurious corrosive materials, suitable facilities for quick drenching or flushing of the eyes and body shall be provided within the work area for immediate emergency use.

TITLE 16 – LABOR AND EMPLOYMENT
AGENCY 25 – SAFETY AND HEALTH CODES BOARD

CHAPTER 180

16VAC25-180-10. Field sanitation (29 CFR 1928.110).

Note: The following standard is unique for the enforcement of occupational safety and health within the Commonwealth of Virginia under the jurisdiction of the VOSH Program. The existing federal OSHA standard does not apply; it does not carry the force of law and is not printed in this volume.

(a) Scope. This section shall apply to any agricultural establishment where 11 or more employees are engaged on any given day in hand-labor operations in the field. 16VAC25-180-10 (c)(1) shall apply to all agricultural establishments regardless of the number of employees.

(b) Definitions.

"Agricultural employer" means any person, corporation, association, or other legal entity that:

(i) Owns or operates an agricultural establishment;

(ii) Contracts with the owner or operator of an agricultural establishment in advance of production of the purchase of a crop and exercises substantial control over production; or

(iii) Recruits and supervises employees or is responsible for the management and condition of an agricultural establishment.

"Agricultural establishment" is a business operation that uses paid employees in the production of food, fiber, or other materials such as seed, seedlings, plants, or parts of plants.

"Hand-labor operations" means agricultural activities or agricultural operations performed by hand or with hand tools. Except for purposes of paragraph (c)(2)(iii) of this chapter, "hand-labor operations" also include other activities or operations performed in conjunction with hand labor in the field. Some examples of "hand-labor operations" are the hand-cultivation, hand-weeding, hand-planting and hand-harvesting of vegetables, nuts, fruits, seedlings or other crops, including mushrooms, and the hand packing of produce into containers, whether done on the ground, on a moving machine or in a temporary packing shed located in the field. "Hand-labor" does not include such activities as logging operations, the care or feeding of livestock, or hand-labor operations in permanent structures (e.g., canning facilities or packing houses).

"Handwashing facility" means a facility providing either a basin, container, or outlet with an adequate supply of potable water, soap and single-use towels.

"Potable water" means water that meets the standards of drinking purposes of the state or local authority having jurisdiction or water that meets the quality standards prescribed by the U.S. Environmental Protection Agency's National ~~Interim~~ Primary Drinking Water Regulations, published in 40 CFR Part 141.

"Toilet facility" means a fixed or portable facility designed for the purpose of adequate collection and containment of the products of both defecation and urination which is supplied with toilet paper adequate to employee needs. Toilet facility includes biological, chemical, flush and combustion toilets and sanitary privies.

(c) Requirements. Agricultural employers shall provide the following for employees engaged in hand-labor operations in the field, without cost to the employee:

(1) Potable drinking water.

(i) Potable water shall be provided and placed in locations readily accessible to all employees.

(ii) The water shall be suitably cool and in sufficient amounts, taking into account the air temperature, humidity and the nature of the work performed, to meet the needs of all employees.

(iii) The water shall be dispensed in single-use drinking cups or by fountains. The use of common drinking cups or dippers is prohibited.

(2) Toilet and handwashing facilities.

(i) One toilet facility and one handwashing facility shall be provided for each twenty (20) employees or fraction thereof, except as stated in paragraph (c)(2)(v) of this chapter.

(ii) Toilet facilities shall be adequately ventilated, appropriately screened, have self-closing doors that can be closed and latched from the inside and shall be constructed to insure privacy.

(iii) Toilet and handwashing facilities shall be accessibly located and in close proximity to each other. The facilities shall be located within a one-quarter-mile walk of each hand laborer's place of work in the field.

(iv) Where due to terrain it is not feasible to locate facilities as required above, the facilities shall be located at the point of closest vehicular access.

(v) Toilet and handwashing facilities are not required for employees who perform field work for a period of three hours or less (including transportation time to and from the field) during the day.

(3) Maintenance. Potable drinking water and toilet and handwashing facilities shall be maintained in accordance with appropriate public health sanitation practices, including the following:

(i) Drinking water containers shall be constructed of materials that maintain water quality, shall be refilled daily or more often as necessary, shall be kept covered and shall be regularly cleaned.

(ii) Toilet facilities shall be operational and maintained in clean and sanitary condition.

(iii) Handwashing facilities shall be refilled with potable water as necessary to ensure an adequate supply and shall be maintained in a clean and sanitary condition; and

(iv) Disposal of wastes from facilities shall not cause unsanitary conditions.

(4) Reasonable Use. The employer shall notify each employee of the location of the sanitation facilities and water and shall allow each employee reasonable opportunities during the workday to use them. The employer also shall inform each employee of the importance of each of the following good hygiene practices to minimize exposure to the hazards in the field of heat, communicable diseases, retention of urine and agricultural residues:

(i) Use the water and facilities provided for drinking, handwashing and elimination;

(ii) Drink water frequently and especially on hot days;

(iii) Urinate as frequently as necessary;

(iv) Wash hands both before and after using the toilet; and

(v) Wash hands before eating and smoking.

(d) Dates

(1) Effective Date. This chapter shall take effect on May 30, 1987.

(2) Startup Dates. Employers must comply with the requirements of paragraphs:

(i) Paragraph (c)(1), to provide potable drinking water, by May 30, 1987;

(ii) Paragraph (c)(2), to provide handwashing and toilet facilities, by July 30, 1987;

(iii) Paragraph (c)(3), to provide maintenance for toilet and handwashing facilities, by July 30, 1987; and

(iv) Paragraph (c)(4), to assure reasonable use, by July 30, 1987.



COMMONWEALTH OF VIRGINIA

DEPARTMENT OF LABOR AND INDUSTRY

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VIRGINIA SAFETY AND HEALTH CODES BOARD

BRIEFING PACKAGE FOR

May 24, 2012

**Regulation Concerning Certified Lead Contractor Notification,
Lead Project Permits, and Permit Fees, 16VAC25-35**

I. Action Requested

The Virginia Department of Labor and Industry (DOLI) requests the Safety and Health Codes Board to amend the Regulation Concerning Certified Lead Contractors Notification, Lead Project Permits, and Permit Fees, 16 VAC25-35, with an effective date of September 15, 2012.

II. Summary of Proposed Action

The proposed changes include the following:

- Updating the term "certified" to "licensed" in both the title and text of the regulation to match the referenced regulation of the Department of Professional and Occupational Regulation's (DPOR) Lead-based Paint Activities Regulations;
- Updating the definition of "certified contractor" to "licensed lead abatement or lead contractor" and related reference to the individual contractor's identification and authorization from "certification number" to "license number";
- Updating the term "residential building" to "residential dwelling" to match the referenced regulation of the Department of Professional and Occupational Regulation's (DPOR) Lead-based Paint Activities Regulations
- Changing the referenced licensor of such contractors from DPOR to the specific policy board affiliated with DPOR which is mandated under the *Code of Virginia* to regulate such lead contractors;

- Updating outdated or incorrect regulatory cites relating to DPOR regulations at 18VAC15-30; and,
- Grammatical corrections, including typographical errors and certain instances of plurality or capitalization.

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

A. **Basis**

The basis for this action is two-fold:

1. In accordance with §40.1-22(5), "The Board, with the advice of the Commissioner, is hereby authorized to adopt, alter, amend, or repeal rules and regulations to further, protect and promote the safety and health of employees in places of employment over which it has jurisdiction ...All such rules and regulations shall be designed to protect and promote the safety and health of such employees. This correction supports that statutory mandate.
2. In accordance with § 2.2-4006.A.3., agency actions subject to the Administrative Process Act (APA) are exempted from the Article 2 promulgation requirements of the APA if the action consists only of changes in style or form or corrections of technical errors.

B. **Purpose**

The purpose of this amendment is to correct regulatory oversight errors, and to address and conform to a series of changes to the related DPOR regulations, as well as, to eliminate confusion on the part of lead contractors who must be licensed by DPOR and who also must file lead project permits with Department of Labor and Industry (DOLI). This change clarifies terminology and provides consistency in the lead contractor regulations enforced by DPOR and DOLI. The Department of Professional and Occupational Regulation does not use the designation "certified" for lead contractors performing lead-based paint activities. Contractors who have met the DPOR's qualifications to engage in lead-based paint activities are "licensed" to perform such activities.

The DPOR does not use the designation "certified" for lead contractors performing lead-based paint activities. Contractors who have met the DPOR's qualifications to engage in lead-based paint activities are "licensed" to perform such activities.

The Board for Asbestos and Lead was modified to become the Board for Asbestos, Lead, and Home Inspectors when the additional home inspection mandate was added in 2001. This was further modified to become the Board for Asbestos, Lead, Mold and Home Inspectors when DPOR's mold regulations became effective in July 2011. However, it will revert to the Board for Asbestos, Lead, and Home Inspectors when DPOR deregulates its mold program effective July 1, 2012. This Board is the designated policy board affiliated with DPOR with the authority to license lead contractors.

C. Proposed Changes

Current Regulation

Proposed Changes

Title:
Regulation Concerning Certified Lead Contractors Notification, Lead Project Permits and Permit Fees.

Title:
Regulation Concerning ~~Certified~~ Licensed Lead Contractors Notification, Lead Project Permits and Permit Fees.

16VAC25-35-10.
Definitions.

16VAC25-35-10.
Definitions.

"Certified contractor" is defined in the Virginia Board for Asbestos and Lead's Virginia Lead-Based Paint Activities Regulation, [18VAC15-30-10](#).

"~~Certified~~ Licensed lead abatement contractor" or "lead contractor" is defined in the Virginia Board for Asbestos, ~~and Lead's Virginia~~ Lead, and Home Inspector's Lead-Based Paint Activities Regulation, [18VAC15-30-~~10~~ 20](#).

"Lead project" means any lead-related activity which requires the contractor performing such activity to be licensed or certified by the Department of Professional and Occupational Regulation.

"Lead project" means any lead-related activity which requires the contractor performing such activity to be licensed ~~or certified~~ by the ~~Department of Professional and Occupational Regulation~~ Virginia Board for Asbestos, Lead, and Home Inspectors.

"Residential building" is defined in the Virginia Board for Asbestos and Lead's Lead-Based Paint Activities Regulation, [18VAC15-30-10](#).

"Residential ~~building~~ dwelling" is defined in the Virginia Board for Asbestos, ~~and Lead's~~ Lead, and Home Inspectors' Lead-Based Paint Activities Regulation, [18VAC15-30-~~10~~ 20](#).

16VAC25-35-20.
Authority and Applications.

16VAC25-35-20.
Authority and Applications.

B. This regulation shall apply to all contractors in the performance of lead-related activities which require such contractors to be licensed or certified by

B. This regulation shall apply to all contractors in the performance of lead-related activities which require such contractors to be licensed ~~or certified~~ by

the Department of Professional and Occupational Regulation.

the ~~Department of Professional and Occupational Regulation~~ Virginia Board for Asbestos, Lead, and Home Inspectors.

16VAC25-35-30.
Notification and permit fee.

16VAC25-35-30.
Notification and permit fee.

B.8. Name and certificate number of the supervisor on site.

B.8. Name and ~~certificate~~ license number of the supervisor on site.

16VAC25-35-30.
Notification and permit fee.

16VAC25-35-30.
Notification and permit fee.

C.2. If, at any time, the Commissioner of Labor and Industry determines that projected revenues from lead project permit fees may exceed projected administrative expenses related to the lead program by at least 10%, the commissioner may reduce the minimum and maximum fees and contract price percentage set forth in subdivision 1 of this subsection.

C.2. If, at any time, the Commissioner of Labor and Industry determines that projected revenues from lead project permit fees may exceed projected administrative expenses related to the lead program by at least 10%, the ~~commissioner~~ Commissioner may reduce the minimum and maximum fees and contract price percentage set forth in subdivision 1 of this subsection.

16VAC25-35-40.
Exemptions.

16VAC25-35-40.
Exemptions.

No lead project fees will be required for residential buildings.

No lead project fees will be required for residential ~~buildings~~ dwellings.

D. Impact on Employers.

Lead contractors who are required to be licensed by DPOR would be provided functionally consistent regulatory language between DPOR's and DOLI's lead contractor regulations. This change will reduce confusion as to which projects require notification filing with DOLI for Lead project permits.

E. Impact on Employees.

There would be no impact on employees.

F. **Impact on the Department of Labor and Industry.**

As the Department has previously incorporated these changes through interpretation, there would be no impact on the Department.

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RECOMMENDED ACTION

Staff of the Department of Labor and Industry recommends that the Safety and Health Codes Board adopt the correcting amendments to the final rule for Regulation Concerning Licensed Asbestos Contractor Notification, Asbestos Project Permits, and Permit Fees, 16VAC25-20, as authorized by Virginia Code §§ 40.1-22(5) and 2.2-4006.A.3., with an effective date of September 15, 2012.

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 section 2.2-4006 A.3 of the Administrative Process Act.

Regulation Concerning ~~Certified~~ **Licensed** Lead Contractors Notification,
Lead Project Permits, and Permit Fees;
(16VAC25-35-10 et seq.)
As Adopted by the
Safety and Health Codes Board

Date: _____



VIRGINIA OCCUPATIONAL SAFETY AND HEALTH PROGRAM
VIRGINIA DEPARTMENT OF LABOR AND INDUSTRY

Effective Date: _____

Regulation Concerning ~~Certified~~ **Licensed** Lead Contractors Notification,
Lead Project Permits, and Permit Fees, 16 VAC25-35-10 et seq.

16 VAC25-35-10. Definitions.

The following words and terms when used in this chapter shall have the following meaning unless the context clearly indicates otherwise:

~~"Certified~~ *Licensed lead abatement contractor" or "lead contractor"* is defined in the Virginia Board for Asbestos, and Lead's Virginia *Lead, and Home Inspectors'* Lead-Based Paint Activities Regulation, [18VAC15-30-10 20](#).

"Department" means the Department of Labor and Industry.

~~"Lead project"~~ means any lead-related activity which requires the contractor performing such activity to be licensed ~~or certified~~ by the Department of Professional and Occupational Regulation *Virginia Board for Asbestos, Lead, and Home Inspectors*.

~~"Residential building dwelling"~~ is defined in the Virginia Board for Asbestos, and Lead's *Lead, and Home Inspectors'* Lead-Based Paint Activities Regulation, [18VAC15-30-10 20](#).

16 VAC25-35-20. Authority and application.

- A. This regulation is established in accordance with § [40.1-51.20](#) of the Code of Virginia.
- B. This regulation shall apply to all contractors in the performance of lead-related activities which require such contractors to be licensed ~~or certified~~ by the Department of Professional and Occupational Regulation *Virginia Board for Asbestos, Lead, and Home Inspectors*.
- C. This regulation shall not affect the reporting requirements under § [40.1-51.20](#) C of the Code of Virginia or any other notices or inspection requirements under any other provision of the Code of Virginia.

16 VAC25-35-30. Notification and permit fee.

- A. Written notification of any lead project, the contract price of which is \$2,000 or more, shall be made to the department on a department form. Such notification shall be sent by facsimile transmission as set out in subsection J of this section, by certified mail, or hand-delivered to the department. Notification shall be postmarked or made at least 20 days before the beginning of any lead project.
- B. The department form shall include the following information:

1. Name, address, telephone number, and the certification number of each person intending to engage in a lead project.
2. Name, address, and telephone number of the owner or operator of the facility in which the lead project is to take place.
3. Type of notification: amended, emergency, renovation or demolition.
4. Description of facility in which the lead project is to take place, including address, size, and number of floors.
5. Estimate of amount of lead and method of estimation.
6. Amount of the lead project fee submitted.
7. Scheduled setup date, removal date or dates, and completion date and times during which lead-related activity will take place.
8. Name and ~~certificate~~ license number of the supervisor on site.
9. Name, address, telephone number, contact person, and landfill permit number of the waste disposal site or sites where the lead-containing material will be disposed.
10. Detailed description of the methods to be used in performing the lead project.
11. Procedures and equipment used to control the emission of lead-contaminated dust, to contain or encapsulate lead-based paint, and to replace lead-painted surfaces or fixtures in order to protect public health during performance of the lead project.
12. If a facsimile transmission is to be made pursuant to subsection J of this section, the credit card number, expiration date, and signature of cardholder.
13. Any other information requested on the department form.

C. A lead project permit fee shall be submitted with the completed project notification form. The fee shall be in accordance with the following schedule:

1. The greater of \$100 or 1.0% of the contract price, with a maximum of \$500.
2. If, at any time, the Commissioner of Labor and Industry determines that projected revenues from lead project permit fees may exceed projected administrative expenses related to the lead program

by at least 10%, the ~~commissioner~~ Commissioner may reduce the minimum and maximum fees and contract price percentage set forth in subdivision 1 of this subsection.

- D. A blanket notification, valid for a period of one year, may be granted to a contractor who enters into a contract for a lead project on a specific site which is expected to last for one year or longer.
1. The contractor shall submit the notification required in subsection A of this section to the department at least 20 days prior to the start of the requested blanket notification period. The notification submitted shall contain the following additional information:
 - a. The dates of work required by subdivision B 7 of this section shall be every work day during the blanket notification period, excluding weekends and state holidays.
 - b. The estimate of lead to be removed required under subdivision B 5 of this section shall be signed by the owner and the owner's signature authenticated by a notary.
 - c. A copy of the contract shall be submitted with the notification.
 2. The lead project permit fee for blanket notifications shall be as set forth in subsection C of this section.
 3. The contractor shall submit an amended notification at least one day prior to each time the contractor will not be present at the site. The fee for each amended notification will be \$15.
 4. Cancellation of a blanket notification may be made at any time by submitting a notarized notice of cancellation signed by the owner. The notice of cancellation must include the actual amount of lead removed and the actual amount of payments made under the contract. The refund shall be the difference between the original lead permit fee paid and 1.0% of the actual amount of payments made under the contract.
- E. Notification of fewer than 20 days may be allowed in case of an emergency involving protection of life, health or property. In such cases, notification and the lead permit fee shall be submitted within five working days after the start of the emergency lead project. A description of the emergency situation shall be included when filing an emergency notification.
- F. A notification shall not be effective unless a complete form is submitted and the proper permit fee is enclosed with the completed form. A notification made by facsimile transmission pursuant to subsection J of this section shall not be effective if the accompanying credit card payment is not approved.
- G. On the basis of the information submitted in the lead notification, the department shall issue a permit to the contractor within seven working days of the receipt of a completed notification form and permit fee.
1. The permit shall be effective for the dates entered on the notification.

2. The permit or a copy of the permit shall be kept on site during work on the project.
- H. Amended notifications may be submitted for modifications of subdivisions B 3 through B 11 of this section. No amendments to subdivision B 1 or B 2 of this section shall be allowed. A copy of the original notification form with the amended items circled and the permit number entered shall be submitted at any time prior to the removal date on the original notification.
1. No amended notification shall be effective if an incomplete form is submitted or if the proper permit amendment fee is not enclosed with the completed notification.
 2. A permit amendment fee shall be submitted with the amended notification form. The fee shall be in accordance with the following schedule:
 - a. For modifications to subdivisions B 3, B 4, and B 6 through B 10 of this section, \$15.
 - b. For modifications to subdivision B 5 of this section, the difference between the permit fee in subsection C of this section for the amended amount of lead and the original permit fee submitted, plus \$15.
 3. Modifications to the completion date may be made at any time up to the completion date on the original notification.
 4. If the amended notification is complete and the required fee is included, the department will issue an amended permit if necessary.
- I. The department must be notified prior to any cancellation. A copy of the original notification form marked "canceled" must be received no later than the scheduled removal date. Cancellation of a project may also be done by facsimile transmission. Refunds of the lead project permit fee will be made for timely cancellations when a notarized notice of cancellation signed by the owner is submitted.
- The following amounts will be deducted from the refund payment: \$15 for processing of the original notification, \$15 for each amendment filed, and \$15 for processing the refund payment.
- J. Notification for any lead project, emergency notification, or amendment to notification may be done by facsimile transmission if the required fees are paid by credit card.

16VAC25-35-40. Exemption.

No lead project fees will be required for residential buildings **dwelling**s. Notification for lead projects shall otherwise be in accordance with applicable portions of this chapter.

FORMS ([16VAC25-35](#))



COMMONWEALTH of VIRGINIA

DEPARTMENT OF LABOR AND INDUSTRY

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VIRGINIA SAFETY AND HEALTH CODES BOARD

BRIEFING PACKAGE FOR

May 24, 2012

Notice of Intended Regulatory Action (NOIRA): Amendments to Certified Lead Contractors Notification, Lead Project Permits and Permit Fees, 16VAC25-35

I. Action Requested.

The Virginia Occupational Safety and Health (VOSH) Program requests the Safety and Health Codes Board to authorize the Department to initiate the full Virginia Administrative Process Act (APA) regulatory process to amend the Regulation Concerning Certified Lead Contractors Notification, Lead Project Permits and Permit Fees, 16VAC25-35. Authority is requested to file a Notice of Intended Regulatory Action (NOIRA), pursuant to the Virginia Administrative Process Act (§2.2-4007.01).

II. Summary of Intended Regulatory Action.

The Department seeks to remove the \$2,000 minimum contract price provision for Lead Contractors to be required to file a lead project notification with the Department, as provided in Paragraph A. of 16VAC25-35-30 of the Regulation. This change would require that licensed lead contractors submit written notification for all lead projects, as defined in 16VAC25-35-10, regardless of the contract price for the lead project.

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

A. Basis and purpose.

The basis for the intended regulatory action is to conform the Program's regulatory language with that of the Environmental Protection Agency's (EPA) Notification Requirements for Lead-Based Paint Abatement Activities and Training, 40 CFR 745.227(e)(4)(i)-(ix).

B. Purpose.

The purpose of this intended regulatory action is to provide both increased protection to employees and employers performing lead-based paint abatement projects.

C. Impact on Employers.

Licensed lead contractors would have to submit written notification for all lead projects, as defined under 16VAC25-35-10, regardless of the contract price for the lead project. This revision will provide increased protection to employers performing lead-based paint abatement projects.

D. Impact on Employees.

This change will enhance the Department's focus on employee safety which will benefit lead workers conducting lead-based paint abatement projects in the Commonwealth by providing increased protection to employees.

E. Impact on the Department of Labor and Industry.

Although the Department's focus on safety for employers and employees performing lead-based paint abatement projects will be enhanced, the Department will incur no added costs nor will staffing levels need to be increased as a result of the rule change. Any additional revenue received is deposited in the Lead Program Special Fund.

Contact Person:

Mr. Ron Graham
Director, Occupational Health Compliance
804.786.0574
Ron.Graham@doli.virginia.gov

Attachments: EPA Letter to Nancy K. Van Voorhis, VDOH
64 FR 1884 (March 10, 1999)
69 FR 18489 – 18496 (April 8, 2004)



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

JAN 26 2012

Nancy K. Van Voorhis, MPH
Program Director
Childhood Lead Poisoning Prevention
Lead-Safe Virginia Program
Virginia Department of Health
James Madison Building
109 Governor Street, 8th Floor
Richmond, Virginia 23219

RE: EPA Grant Number PB-99318913-2

Dear Ms. Van Voorhis:

Enclosed is the annual performance report summarizing the U.S. Environmental Protection Agency's (EPA) evaluation of the Commonwealth of Virginia's performance under the State Lead 404(g) and Enforcement Grant. Our evaluation is based on the information reported in the semi-annual report from October 1, 2010 to March 31, 2011 and the review meeting that occurred on June 1, 2011.

The EPA is pleased by the progress made by the Virginia Departments' of Health (VADH) and Professional and Occupational Regulation (VADPOR) under the 404(g) portion of the grant. Significant progress has been made to ensure that the lead professionals in the Commonwealth are trained, accredited, and licensed to accomplish their work in Virginia.

EPA is also encouraged that the Commonwealth is continuing its efforts to adopt regulations on the state level to implement a Renovation, Repair and Painting program. We understand that the regulations are still undergoing review by the Governor's Office and if they are approved by the governor, will be subject to a sixty (60) day public comment period. Upon completion of the comment period, Virginia will address any comments received and publish the final regulations in the Virginia Register.

Although Virginia is making acceptable progress implementing the programmatic elements of the lead program, we continue to be concerned about the lack of emphasis on inspections and enforcement activity related to lead abatement requirements.

During the last several program reviews, EPA has expressed concern about the lack of compliance inspections and resulting enforcement actions. The Virginia representatives at these meetings have consistently identified structural reasons why minimal, if any inspections are being conducted and little if any enforcement actions are taken to address lead-based paint abatement issues. The explanations offered range from there are no inspection targets to be


found, lead-based paint inspections are not the primary focus of VADoLI, VADPOR's work is so great that these cases are not a high enough priority to Virginia to warrant formal enforcement action and Virginia prefers to address these violations through compliance assistance rather than formal enforcement. Additionally, EPA has been informed that VADPOR's enforcement action would only impact the contractor's license to do work in the state and not necessarily address the underlying lead-based paint violation(s).

Last year, in a letter dated March 22, 2011 to Ms. Nancy Van Voorhis, EPA stated that "EPA believes that the lack of inspection activity demonstrates inadequate oversight of the regulated [universe of] lead-based paint professionals." Virginia's continued failure to take actions to address the lack of inspections and enforcement actions raises concerns about Virginia's commitment to administering all aspects of a successful lead-based paint regulatory program.

EPA recognizes that some difficulties may arise as a result of the way the program is organized in the Commonwealth, however, because Virginia accepted program authorization, Virginia agreed to effectively implement all aspects of the lead abatement program, including full implementation of a compliance and enforcement program designed to detect violations and seek appropriate enforcement responses. Continued failure to effectively implement a compliance and enforcement program could result in the withholding of grant funds, increased inspection activity by EPA in the Commonwealth and impact EPA's decision whether to grant authorization to the Commonwealth for the RRP should Virginia seek program authorization. We stand ready to work with the Commonwealth to resolve these issues to ensure that lead-based paint professionals receive the proper amount of compliance oversight for the purpose of protecting the health and welfare of the citizens of Virginia.

I have directed Harry Daw, Associate Director for Toxics and Pesticides and Mrs. Aquanetta Dickens, Chief, Toxics Programs Branch to work with your staff to develop a strategy to increase inspections and enforcement actions. Please feel free to call me at 215-814-3143 if you would like to discuss this further.

Sincerely,


Abraham Ferdas, Director
Land and Chemicals Division

Enclosure

cc: David Dick, DPOR
Mark Courtney, DPOR
Ron Graham, DOLI
Bill Burge, DOLI



Virginia Department of Health
Office of Lead Poisoning Prevention Program

BACKGROUND:

On June 1, 2011, EPA Region III, the Virginia Department of Health (VDH), Virginia Department of Professional and Occupation Regulation (DPOR), and the Virginia Department of Labor and Industry (DOLI) met to discuss the grant cycle for October 1, 2010 to September 30, 2011. The purpose of the grant is to assist Virginia in the development and implementation of its lead compliance and enforcement program.

PARTICIPATES:

Participant	Organization
Nancy Van Voorhis, Program Director	Lead-Safe Virginia Program Virginia Department of Health
David Dick, Executive Director	Board for Asbestos, Lead and Home Inspectors Department of Professional and Occupation Regulation
Michele Atkinson, Board Administrator	Board for Asbestos, Land and Home Inspectors Department of Professional and Occupation Regulation
Jill Hrynciw, Board Administrator	Board for Asbestos, Lead and Home Inspectors Department of Professional and Occupation Regulation
Ron Graham, Director	Occupational Health Compliance Virginia Department of Labor and Industry
Emory Rodgers, Deputy Director of Building and Fire Regulation	Virginia Department of Community Housing Development
Aquanetta Dickens, Chief	Toxics Programs Branch EPA Region III
Artencia Johnson, Environmental Protection Specialist	Toxics Programs Branch EPA Region III

PURPOSE:

The purposes of the mid-year program and enforcement review were to:

- Review the status of grant commitments
- Identify areas of concern (including resource related issues)
- Provide a forum in which Virginia could ask questions to better understand grant requirements and responsibilities.

Enclosure 1 provides an explanation of the status of schedule of deliverables under the grant, as reported during Virginia's Mid-Year Review Meeting. Virginia and Region III may

use the meeting to identify and make corrective actions necessary to ensure completion of the grant project and task before the grant is closed out.

PERFORMANCE STRENGTHS:

Grant Administration

The Assistance Agreement is administered by VDH and is in its third year as a multi-year grant. VDH is on target with expending its funding levels.

VDH has consistently submitted the required Semi-Annual reports summarizing the progress and performance of its Lead Safe Virginia Project. The first semi-annual report was submitted on April 29, 2011.

On March 31, 2011, representatives from VDH and DPOR attended EPA's Spring Regional Meeting in Philadelphia, PA.

State Authorization

Lead-Based Paint Activities

On March 10, 1999, Virginia Department of Professional and Occupational Regulation achieved program approval to run its Lead-Based Paint Training and Certification Program under Section 402(a) of the Toxics Substances Control Act. Since that time of achieving full program approval, DPOR has consistently submitted the required annual report summarizing the progress and performance of its Lead-Based Paint Activities Regulatory Compliance and Enforcement Program. The report for this reporting cycle is due by December 31, 2011.

Renovation, Repair, and Painting Regulations

DPOR reported that the proposed regulations are currently in the Governor's office for review and have been, at the time of the meeting, for 116 days. It was explained that prior to reaching the Governor's office, the agency submitted proposed regulations for an Executive Branch review which consist of the Office of the Attorney General, the Planning and Budget Office, and the Cabinet Secretary. After receiving Executive Branch approval, the agency submits the Notice of Intended Regulatory Action (NOIRA) for publication in the *Virginia Register of Regulations*. Once published in the *Virginia Register*, a 60-day comment period begins during which time the agency may receive comments from the general public. DPOR reviews and responds to comments and prepares final regulations for the Executive Branch review. Upon the Executive Branch's approval, the agency submits the final text of the regulations, with an explanation of any changes from the proposed, for publication in the *Virginia Register*. The regulation will become effective 30 days after publication in the *Virginia Register*. The day it becomes effective, the regulations appear online. EPA asked what was the mood for passage of the RRP regulations, what was the reason for the delay in the review of the

regulations, and asked if EPA could be any assistance to the Commonwealth to obtain the status of the regulations from EPA's Congressional liaison officer. DPOR expressed the disposition of the Governor signing the regulations were favorable and the director of the agency would be the Governor's point of contact during the process and EPA's assistance is not needed. EPA asked DPOR to find out from the Director the status of the regulations and they agreed to EPA's request. DPOR will apply for authorization upon the passage of its regulations. DPOR noted the regulatory action takes approximately 12-15 months from start to finish and they anticipate the process should be completed by spring 2012.

Since the time of the meeting, Wojceich Jankowski from EPA's Office of Regional Counsel was assigned to review the proposed regulations and was provided a link to the Commonwealth's regulatory website.

During the Year 13 grant cycle, Virginia was awarded \$75,000 to support its RRP efforts. Since that time, DPOR reported that they will not need funding to establish its program; however, management's point of view may change. Currently, DPOR's program is supported by application and renewal fees from its accreditation and certification program. EPA will confirm if funds can be redirected to support another activity.

Virginia's Quality Assurance Project Plan/Quality Management Plan was approved April 23, 2010. Virginia will not be required to update its plan until February 23, 2015.

Certification/Accreditation/Notification

DPOR continues to operate its certification and accreditation program. During this reporting period, a total of 944 individual certifications were issued in the five disciplines and 135 firms received certification. The breakdown of individuals certified during this period is as follows: 99 inspectors, 213 risk assessors, 398 abatement workers, 188 supervisors, and 46 project designers. There are 20 training providers accredited, which included the course accreditation of 86.

Compliance Assistance

Virginia has demonstrated the following accomplishments under compliance assistance:

- 7,224 brochures distributed through direct orders;
- 25,810 documents were downloaded through web site;
- 14,799 visits through State web site;
- 21 Lead Dustbuster Trainings;
- 606 visits to realtors; building code officials and through Hampton Roads Home & Garden Show;
- 228 Lead Safe hotline calls;
- 2 Media Outreach Campaigns; and

- 1 coalition formed.

VDH reported that during the Lead Poisoning Prevention Week, ten health departments throughout the state promoted lead poisoning prevention awareness by hosting displays in its lobby and clinic areas by distributing educational materials. Some districts partnered with other organizations to provide outreach education during special informational sessions or hosted booths at local health and safety fairs.

Enforcement

DPOR received three complaints of contractors using unlicensed personnel to remove paint from bridges at various locations. The complaints involved K and K Painting and Blastach Enterprise, Inc., located in Baltimore, Maryland. Since the work was performed on commercial structures, the activity is not regulated in Virginia.

Concerns

EPA is continuing concerned about the lack of inspections and enforcement the Commonwealth's lead abatement program. As stated in EPA's March 22, 2011 letter to the Virginia Department of Health for period October 2009-March 2010, "EPA believes the lack of inspection activity demonstrates inadequate oversight of the regulated lead-based paint professionals." During other previous mid-year evaluations, Virginia's performance under the enforcement grant, EPA has expressed ongoing and continuing concern about the lack of inspections and subsequent enforcement in this area. During this reporting period of October 2010-March 2011, there were six (6) lead abatement notifications received, two (2) lead abatement project inspections, and tips and complaints were received, but the number wasn't reported during the meeting, but DPOR will send to EPA a list of them.

When the Governor accepted program authorization, Virginia agreed to implement all aspects of the lead abatement program including full implementation of all compliance and enforcement elements. Continue failure to implement an effective compliance and enforcement program could result in actions that include withholding grant funds, increase inspection and enforcement activity by EPA in the Commonwealth of Virginia until such time as Virginia takes positive steps to increase its compliance and enforcement presence among the regulated universe.

Mr. Emory Rodgers, Deputy Director of Building and Fire Regulation was invited to attend the mid-year meeting on behalf of the Department of Housing and Community Development (DHCD) to explain his offices' function with the intent to build a collaborative effort among state agencies to address lead-based paint activities. The DHCD promulgates the Virginia Uniform Statewide Building Code (USBC) that regulates the construction and alteration of all new and existing building construction. Local building departments enforce the USBC with technical assistance and mandated certification training by DHCD. Integrated in the USBC

are measures to ensure the safe abatement of lead from homes built before 1978 along with ensuring that contractors are properly licensed through DPOR.

During the discussion, Mr. Rodgers provided clarification on how DHCD relates to the State. His contribution was a link to the responsibilities of the statewide local building code officials that inspect a building or structure and enforce the Virginia Codes. It was reported on March 1, 2011, based on legislation passed by the 2010 General Assembly, the 2009 USBC, Virginia Construction Code, Section 104, Part 1 and the Virginia Maintenance Code Section 104.1, Part 111 of USBC which requires the local building officials to investigate unsafe dwellings when a complaint is made and it also extends to localities that have not adopted the Virginia Maintenance Code. The provision covers interior/exterior of peeling and flaking paint surfaces. For example, based on a complaint by a tenant, the local building department would inspect the dwelling. If the structure or unit is deemed unsafe, the structure would be in violation of the Virginia Maintenance Code and the local building code official would be responsible for enforcing the code. The USBC Virginia Maintenance Code Section 103.4 allows localities to conduct rental inspections in districts of blighted areas where often lead is a problem. The enforcement penalty for criminal is \$2,500 per violation and imprisonment. In addition, civil penalties can reach up to \$5,000.

The following number of training courses offered for this reporting period is as follows:

- 15 inspector initial
- 11 inspector refresher
- 14 risk assessor initial
- 17 risk assessor refresher
- 23 supervisor initial
- 32 supervisor refresher
- 1 project designer initial
- 2 project designer refresher
- 42 worker initial
- 60 worker refresher
- 0 training provider audits

Miscellaneous

VDH reported a total of 40,983 children under the age of 6 were tested for lead exposure. The total number of children confirmed with an elevated blood lead levels $\geq 10\mu\text{g/dL}$ was 154. The total number of children confirmed with elevated blood levels $\geq 15\mu\text{g/dL}$ was 56.

Challenges

There were no program meetings held during this reporting period. Due to the Commonwealth's budget crisis, travel and meetings have been restricted. VDH would like to redirect funds to support contractual services to support two positions. VDH explained that CDC funding will end on June 30, 2011. VDH will be applying for CDC's Healthy Homes Grant. The purpose of the initiative is to address unsafe housing through surveillance and research for prevention programs such as lead. VDH would like to use CDC funding to develop a venous module in order to pass on risk assessment referrals to the building code officials and also create a surveillance database.

Action Items

Virginia will provide a print out of all tips/complaints received, where the violations occurred and the tips/complaints that an action was initiated by Criminal Investigation Division.

DPOR will inform EPA the status of Virginia's RRP Regulations.

FY2011 VIRGINIA LEAD PROGRAM 404(G) AND ENFORCEMENT WORK PLAN
YEAR 13: AMENDMENT #2
 This work plan includes information from the Virginia Department of Health (VDH) and its subgrantees: the Virginia Department of Professional and Occupational Regulation (DPOR), and the Virginia Department of Labor and Industry (DOLI).

CATEGORY 1: GRANT ADMINISTRATION

Commitments/Deliverables	Status/Comment/Accomplishments	Accomplishments
Submit Semi-Annual Progress Reports within 30 days of end of previous reporting period	October 1 - March 31 Submitted April 29, 2011	April 1 - September 30
Submit Final Technical Report within 90 days of end of budget period. (Cumulative) VDH	N/A this reporting period	DPOR will submit within 90 days to EPA with copy to VDH
Submit Financial Status Report within 90 days of end of budget period. VDH	Interim FSR submitted December 2010	Interim FSR will be submitted before December 30, 2010
Attend Regional and National Meetings as scheduled VDH, DPOR, DOLI	David Dick and Michelle Atkinson from DPOR and Nancy Van Voorhis from VDH attended EPA Spring Regional Meeting in Philadelphia 3/31/2011	Nancy Van Voorhis attended the Lead and Healthy Homes National Conference in Denver 6/20-23/2011
Attend professional training sessions VDH, DPOR, DOLI	Nancy Van Voorhis attended Healthy Homes Essentials training 10/18-22/2010	
CATEGORY 2: STATE ADMINISTRATION		
Commitments/Deliverables		
Activities	Status/Comment/Accomplishments	
Submit State Authorization Reports DPOR	October 1 - March 31 DPOR submitted 12/29/10 Rec'd: 1/7/11	April 1 - September DPOR will submit by 12/30/11
Submit Quality Assurance Project Plan (QAPP)/Quality Management Plan (QMP)	Approved: 4/23/10 QAPP valid for 5 years	Approved: 4/23/10 Expiration date: 4/23/15
Develop authority to seek authorization to run Renovation, Repair, and Painting Rule DPOR	Completed: Copy of legislation provided in 2010 progress report effective 2009.	Completed: Copy of legislation provided in 2010 progress report effective 2009.
Continue work on obtaining full authorization from EPA DPOR	Proposed regulations currently undergoing Executive Branch review	Proposed regulations currently undergoing Executive Branch review

	Submit schedule of activities for re-submittal of State Authorization. DPOR	Completed: A letter of commitment outlining schedule sent January 12, 2009. DPOR expects to submit application for program authorization on or about 10/30/11.	Completed: A letter of commitment outlining schedule sent January 12, 2009. DPOR expects to submit application for program authorization on or about 10/30/11.
CATEGORY 3 - CERTIFICATION/ACCORDION/ACCREDITATION/NONRECIPROCALITY			
Commitments/Deliverables			
State Level Results Reported ACS Measure 13B - Annual percentage of viable lead-based paint certification applications that require less than grantee State-established timeframes (semi-annual) Virginia - 14 days	Activities Engage in discussions with Region III states to develop agreement to accept training offered in other states.	Status/Commitment/Accomplishments October 1 - March 31 100% Certification applications meet timeframe Reciprocity discussions ongoing	April 1 - September 30 100% Certification applications meet timeframe Reciprocity discussions ongoing
ACS Measure 11B Number of active individual certifications for LBP abatement activities	Outputs Report Semi-annually on: DPOR		
	# of inspectors certified	99	90
	# of risk assessors certified	213	214
	# of abatement workers certified	398	437
	# of supervisors certified	188	183
	# of project designers certified	46	42
	# of firms certified (please specify in comment field)	135	134
	# of training providers accredited*	20	20
	# of training courses accredited*	86	85
	# of inspector initial training courses accredited	11	11
	# of inspector refresher training courses accredited	4	4
	# of risk assessor initial training courses accredited	10	10
	# of risk assessor refresher training courses accredited	8	8
	# of supervisor initial training courses accredited	10	10
	# of supervisor refresher training courses accredited	10	10
	# of project designer initial training courses accredited	8	8

	# of project designer refresher training courses accredited.	4		
	# of abatement worker initial training courses accredited	14	3	
	# of abatement worker refresher training courses accredited	7	14	
	Number of lead abatement notifications received for child occupied building (child care center, kindergarten classroom) and residential dwelling. DOLI	6-DOLI	7	0-DOLI
	Number of training provider course notifications received.	217		250
MISCELLANEOUS				
	Commitments/Deliverables		Status/Commitments/Accomplishments	
	Report on: Blood lead screening data (Copies of blood lead screening data will be provided). Data will provide the number of children screened in categories of children with numbers equal to or exceeding 10 µg/dl (elevated blood-lead level) and the number of children with less than 10 µg/dl.	October 1 – March 31 Completed: 40,983 children under 72 months tested for lead exposure. 154 confirmed EBLs ≥ 10 µg/dl 56 confirmed EBLs ≥ 15 µg/dl	April 1 – September 30 Completed: 55,076 children under 72 months tested for lead exposure. 162 confirmed EBLs ≥ 10 µg/dl 69 confirmed EBLs ≥ 15 µg/dl See Attachment F for this period data and 2010 Annual Surveillance Report.	
CATEGORY 4 COMPLIANCE ASSISTANCE				
	Commitments/Deliverables		Status/Commitment/Accomplishments	
VDH	Submit semi-annual report on compliance assistance activities by April 30 th and October 31 st every year on: Number of compliance assistance activities conducted (an attachment that identifies the activities conducted during the reporting period including the target audience and outreach goals. In addition, copies of materials developed through compliance assistance activities will be attached.) Number of individuals reached through compliance assistance (A description of what the State is doing to pro-actively inform the regulated and higher risk communities about rights/responsibilities/dangers with respect to lead-based paint will be included).	October 1 – March 31 Completed	April 1 – September 30 Completed	
	Through dissemination of information at conference, expos, presentations, demonstrations, etc.	7,224 Brochures distributed through direct orders; 25,810 documents downloaded through Web site	5,031 Brochures distributed through direct orders; 39,816 documents downloaded through Web site	
	Through contact on State Web site	21 Lead Dustbuster Trainings; 606 through visits to realtors; building code officials and through Hampton Roads Home & Garden Show 14,799 visitors	14 Lead Dustbuster Trainings; 486 through visits to realtors; building code officials 16,672 visitors	

		CATEGORIES: ENFORCEMENT	
Commitments/Deliverables	Status/Comment/Accomplishments	October 1 - March 31	April 1 - September 30
Through operation of 1-800 hotline.			
Through media outreach campaigns	59 hotline calls 866-SOS-LEAD; and 228 to Lead Safe VA toll free		41 hotline calls 866-SOS-LEAD; and 305 to Lead Safe VA toll free
Number of coalitions formed	Completed: 2 1) 120,000 Richmond Magazine 2) 60,000 Richmond Guide circulated Completed: 2 United Way of Greater Richmond-Bright Beginnings; VDH nurses with Lead-Safe Virginia established a coalition with Virginia Home School Association		Completed 1: Dept. of Behavioral Health and Development Services-Part C (children under 3 years) to include lead poisoning as qualifying criteria for services.
National/State Lead Awareness Week Activities (A sheet indicating activities planned for lead awareness week will be provided).	Completed: October 24-30, 2010		Completed: October 24-30, 2010
CATEGORIES: ENFORCEMENT			
DPOR Report Semi-annually on: Number of training courses offered		October 1 - March 31	April 1 - September 30
Inspector Initial		15	13
Inspector Refresher		11	13
Risk Assessor Initial		14	13
Risk Assessor Refresher		17	19
Supervisor Initial		23	21
Supervisor Refresher		32	33
Project Designer Initial		1	2
Project Designer Refresher		2	6
Worker Initial		42	50
Worker Refresher		60	80
Neutral Training Provider Audits (if no courses were conducted during reporting period)		0	2
# of Lead abatement project inspections		6	3
DOLI			
# of other 402 inspections			
Number of tips/complaints received (A sheet(s) which describes the location and nature of complaint will be provided. VDH, DOLI, DPOR		0	1
Number of 406(b) and/or 1018 complaints referred to EPA		0	0
		Many may be referred through EPA 0-direct	Many may be referred through EPA 0-direct

	Region III DPOR, VDH, EPA		
	Number of enforcement actions taken. (copy of case file provided) DPOR, DOLI	compliance line, localities report directly	compliance line, localities report directly
	Other types of investigations (including but not limited to environmental lead assessments)	0	0
	VDH	28 risk assessments	30 risk assessments

Dated: February 27, 1999.

Sylvia Lowrance,

Acting Assistant Administrator for
Enforcement and Compliance Assurance.

[FR Doc. 99-5958 Filed 3-9-99; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[PB-402404-VA; FRL-6063-5]

Lead-Based Paint Activities in Target Housing and Child-Occupied Facilities; Authorization of the Commonwealth of Virginia's Lead-Based Paint Activities Program

AGENCY: Environmental Protection
Agency (EPA).

ACTION: Notice; final approval.

SUMMARY: On December 19, 1997, the Commonwealth of Virginia submitted an application for EPA approval to administer and enforce training and certification requirements, training program accreditation requirements, and work practice standards for lead-based paint activities in target housing and child-occupied facilities under section 404 of the Toxic Substances Control Act (TSCA). Today's notice announces the approval of the Commonwealth of Virginia's application, and the authorization of the Department of Professional and Occupation Regulation's lead-based paint program to apply in the Commonwealth of Virginia effective March 10, 1999, in lieu of the corresponding Federal program under section 402 of TSCA.

DATES: Lead-based paint activities program authorization was granted to the Commonwealth of Virginia effective on March 10, 1999.

FOR FURTHER INFORMATION CONTACT: Enid A. Gerena (3WC33), Waste and Chemicals Management Division, Environmental Protection Agency, Region III, 1650 Arch St., Philadelphia, PA 19103-2029, telephone: (215) 814-2067, e-mail address: gerena.enid@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

Pursuant to Title IV of TSCA, Lead Exposure Reduction, 15 U.S.C. 2681-2692, and regulations promulgated thereunder, States and Tribes that choose to apply for lead-based paint activities program authorization must submit a complete application to the appropriate Regional EPA office for review. Complete, final applications are subject to a public comment period, and

must be approved or disapproved by EPA within 180 days of receipt. To receive EPA approval, a State or Tribe must demonstrate that its program is at least as protective of human health and the environment as the Federal program and provides adequate enforcement (section 404(b) of TSCA). Included in Virginia's application is a program certification signed by Governor James S. Gilmore, III certifying that the Commonwealth of Virginia lead-based paint activities program: (1) Is at least as protective of human health and the environment as the corresponding Federal program; and (2) provides adequate enforcement. The inclusion of this certification requires that the program be authorized by EPA until such a time as the Administrator disapproves the program application or withdraws the program authorization.

Notice of Virginia's application, a solicitation for public comment regarding the application, and background information supporting the application was published in the **Federal Register** of April 29, 1998 (63 FR 23464) (FRL-5781-6).

As determined by EPA's review and assessment, Virginia's application successfully demonstrated that the State's lead-based paint activities program achieves the protectiveness and enforcement criteria, as required for Federal authorization. Furthermore, no public comments were received regarding any aspect of Virginia's application.

II. Federal Overfiling

TSCA section 404(b), makes it unlawful for any person to violate, or fail or refuse to comply with, any requirement of an approved State or Tribal program. Therefore, EPA reserves the right to exercise its enforcement authority under TSCA against a violation of, or a failure or refusal to comply with, any requirement of an authorized State or Tribal program.

III. Withdrawal of Authorization

Pursuant to TSCA section 404(c), the Administrator may withdraw a State or Tribal lead-based paint activities program authorization, after notice and opportunity for corrective action, if the program is not being administered or enforced in compliance with standards, regulations, and other requirements established under the authorization. The procedures EPA will follow for the withdrawal of an authorization are found at 40 CFR 745.324(i).

IV. Regulatory Assessment Requirements

A. Certain Acts and Executive Orders

EPA's actions on State or Tribal lead-based paint activities program applications are informal adjudications, not rules. Therefore, the requirements of the Regulatory Flexibility Act (RFA, 5 U.S.C. 601 *et seq.*), the Congressional Review Act (5 U.S.C. 801 *et seq.*), Executive Order 12866 ("Regulatory Planning and Review," 58 FR 51735, October 4, 1993), and Executive Order 13045 ("Protection of Children from Environmental Health Risks and Safety Risks," 62 FR 1985, April 23, 1997), do not apply to this action. This action does not contain any Federal mandates, and therefore is not subject to the requirements of the Unfunded Mandates Reform Act (2 U.S.C. 1531-1538). In addition, this action does not contain any information collection requirements and therefore does not require review or approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

B. Executive Order 12875

Under Executive Order 12875, entitled "Enhancing Intergovernmental Partnerships" (58 FR 58093, October 28, 1993), EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local, or Tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If the mandate is unfunded, EPA must provide to OMB a description of the extent of EPA's prior consultation with representatives of affected State, local, and Tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local, and Tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates." Today's action does not create an unfunded Federal mandate on State, local, or Tribal governments. This action does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this action.

C. Executive Order 13084

Under Executive Order 13084, entitled "Consultation and Coordination

with Indian Tribal Governments" (63 FR 27655, May 19, 1998), EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the Tribal governments. If the mandate is unfunded, EPA must provide OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected Tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities." Today's action does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this action.

Authority: 15 U.S.C. 2682, 2684.

List of Subjects

Environmental protection, Hazardous substances, Lead, Reporting and recordkeeping requirements.

Dated: February 19, 1999.

W. Michael McCabe

Regional Administrator, Region III.

[FR Doc. 99-5821 Filed 3-9-99; 8:45 am]

BILLING CODE 6560-50-F

ENVIRONMENTAL PROTECTION AGENCY

[FRL-6307-4]

Final NPDES General Permit for Oil and Gas Exploration, Development and Production Facilities in Cook Inlet, AL (AKG285000)

AGENCY: Environmental Protection Agency (EPA), Region 10.

ACTION: Notice of final NPDES general permit.

SUMMARY: The Director, Office of Water, EPA Region 10, is issuing the National Pollutant Discharge Elimination System

(NPDES) General Permit for Cook Inlet, Alaska, pursuant to the provisions of the Clean Water Act, 33 U.S.C. 1251 *et seq.* The permit authorizes discharges from existing oil and gas exploration, development and production platforms and shore-based facilities in Upper Cook Inlet (north of the Forelands). The permit also authorizes future exploratory operations in Cook Inlet north of the line between Cape Douglas on the west, and Port Chatham on the east. All dischargers covered by this permit fall within the Coastal and Offshore Subcategory of the Oil and Gas Extraction Point Source Category (40 CFR part 435, subparts A and D).

Discharges authorized by this permit include drilling muds and cuttings; produced water; deck drainage; sanitary and domestic wastes; completion, workover, well treatment and test fluids; and miscellaneous discharges. Discharges from facilities in the Onshore Subcategory (40 CFR Part 435, Subpart C), or to wetlands adjacent to the territorial seas and inland coastal waters of Alaska are not authorized by this permit. The permit does not authorize discharges from "new sources," as defined in 40 CFR 122.2.

The existing permit was published in the **Federal Register** at 51 FR 35460 on October 3, 1986, and authorized discharges from oil and gas facilities in Upper Cook Inlet, and from oil and gas exploration wells in federal waters offered for lease by the U.S. Department of the Interior's Minerals Management Service (MMS) in Federal Lease Sales 55 (Gulf of Alaska) and 60 (Cook Inlet) in state waters offered for lease by the State of Alaska in Lease Sales 32, 33, 35, 40, 46A, and 49. The permit issued in 1986 also covered areas offered under state lease sales held during the effective period of the permit. The area of coverage for the permit issued today is not linked to lease sale areas, and covers all state and federal waters in Cook Inlet north of the line between Cape Douglas on the west and Port Chatham on the east.

A total of 23 facilities were covered under the 1986 general permit. Of those 23 facilities, 18 are currently active. All of those permittees have complied with the reissuance application procedures and indicated preference to be covered under this general permit.

FOR FURTHER INFORMATION CONTACT: Ms. Laurie Mann, EPA Region 10, 1200 Sixth Avenue, Seattle, Washington 98101, Telephone: (206) 553-1583, or via e-mail to the following address: mann.laurie@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

Public Comment

Pursuant to section 402 of the Clean Water Act (CWA), 33 U.S.C. 1342, EPA proposed and solicited comments on NPDES general permit AKG285000 at 60 FR 48796 (September 20, 1995). The public comment period was scheduled to close November 30, 1995, but was extended to January 29, 1996 at 60 FR 6155 (November 30, 1995). Public hearings were held in Anchorage on November 28, 1995, Soldotna on November 29, 1995, and Homer on January 25, 1996.

EPA Region 10 received over 350 letters, petitions and verbal comments from tribal, federal and state governments, companies, non-profit organizations, and individuals. All comments specifically addressing the draft Cook Inlet permit which were submitted during the public comment period were considered during finalization of the permit. Changes have been made from draft permit to the final permit in response to public and governmental comment. All comments, along with the EPA's responses, are summarized in the Response to Comments, which may be obtained from Laurie Mann at the above address, or may be obtained from the EPA Region 10 web site at www.epa.gov/r10earth/offices/water/ow.htm.

Other Legal Requirements

Ocean Discharge Criteria Evaluation

EPA Region 10 has determined that discharges occurring under the proposed permit are in compliance with section 403 of the Clean Water Act. These discharges will not cause unreasonable degradation as long as the depth-related conditions, discharge restrictions, and environmental monitoring requirements in the permit are met. For example, all discharges are prohibited within the boundaries, or within 1,000 meters of a coastal marsh, river delta, river mouth, and designated Critical Habitat Areas, Areas of Special Attention, National Park, State Game Refuges, and State Game Sanctuaries. The permit also prohibits discharges in Kamishak Bay, Chinitna Bay, and Tuxedni Bay.

Coastal Zone Management Act

The State of Alaska, Office of Management and Budget, Division of Governmental Coordination found this action to be consistent with the approved Alaska Coastal Zone Management Program.

Endangered Species Act

EPA has determined that issuance of the Cook Inlet General Permit will not



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[FR Doc. 04-7979 Filed 4-7-04; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY**40 CFR Part 745****[OPPT-2003-0061; FRL-7341-5]****RIN 2070-AD31****Lead Notification Requirements for Lead-Based Paint Abatement Activities and Training****AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Final rule.

SUMMARY: Under the authority of section 407 of the Toxic Substances Control Act (TSCA), as amended by the Residential Lead-Based Paint Hazard Reduction Act of 1992, also known as "Title X (ten)," EPA is issuing this final rule to establish notification procedures for certified lead abatement professionals conducting lead-based paint abatement activities, and accredited training programs providing lead-based paint activities courses. Specifically, this rule establishes the procedures that must be used to provide notification to EPA prior to the commencement of lead-based paint abatement activities. This rule also establishes provisions that require accredited training programs to notify EPA under the following conditions: Prior to providing initial or refresher lead-based paint activities training courses; and following completion of lead-based paint activities training courses. These notification requirements are necessary to provide EPA compliance monitoring and enforcement personnel with information necessary to track lead-based paint abatement and training activities, and to prioritize compliance inspections. This rule will help to prevent lead poisoning in children under the age of 6 by supporting EPA's implementation of the mandate in Title X to ensure that lead professionals involved in inspecting, assessing or removing lead-based paint, dust or soil are trained and certified to conduct these activities. This rule applies only in States and Tribal areas that do not have authorized programs pursuant to 40 CFR 745.324.

DATES: This final rule is effective on May 10, 2004.

FOR FURTHER INFORMATION CONTACT: For general information contact: Barbara Cunningham, Director, Environmental Assistance Division (7408M), Office of Pollution Prevention and Toxics,

Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 554-1404; e-mail address: TSCA-Hotline@epa.gov.

For technical information contact:

Mike Wilson, National Program Chemicals Division (7404T), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 566-0521; e-mail address: wilson.mike@epa.gov.

SUPPLEMENTARY INFORMATION:**I. General Information****A. Does this Action Apply to Me?**

You may be potentially affected by this action if you operate a training program required to be accredited under 40 CFR 745.225, or if you are a firm which must be certified to conduct lead-based paint abatement activities in accordance with 40 CFR 745.226.

Specifically, the procedure for notification of the commencement of lead-based paint abatement activities applies to the certified firm conducting lead-based paint abatement activities. The procedure for notification of lead-based paint activities training courses applies to the training manager of an accredited training program. This rule applies only in States and Indian Tribes that do not have authorized programs pursuant to 40 CFR 745.324. For further information regarding the authorization status of States and Indian Tribes contact the National Lead Information Center (NLIC) at 1-800-424-LEAD(5323). Potentially affected categories and entities may include, but are not limited to:

- Lead abatement professionals (NAICS 562910); firms and supervisors engaged in lead-based paint activities
- Training programs (NAICS 611519); training programs providing training services in lead-based paint activities

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action applies to certain entities. To determine whether you or your business is affected by this action, you should carefully examine the applicability provisions in 40 CFR part 745. If you have any questions regarding the applicability of this action to a particular entity, consult the

technical person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Additional Information, Including Copies of this Document or Other Related Documents?

1. **Docket.** EPA has established an official public docket for this action under docket identification (ID) number OPPT-2003-0061 (legacy number OPPT-62165). The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the EPA Docket Center, Rm. B102-Reading Room, EPA West, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The EPA Docket Center Reading Room telephone number is (202) 566-1744 and the telephone number for the OPPT Docket, which is located in EPA Docket Center, is (202) 566-0280.

2. **Electronic access.** You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at <http://www.epa.gov/>. To access this document, on the Home Page select "Laws and Regulations," "Regulations and Proposed Rules," and then look up the entry for this document under the "Federal Register-Environmental Documents." You can also go directly to the Federal Register listings at <http://www.epa.gov/fedrgstr/>. A frequently updated electronic version of 40 CFR part 745 is available at http://www.access.gpo.gov/nara/cfr/cfrhtml_00/Title_40/40cfr745_00.html, a beta site currently under development. To access information about lead-based paint and the Lead Program, go directly to the Home Page at <http://www.epa.gov/lead>.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at <http://www.epa.gov/edocket/> to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available

docket materials through the docket facility identified in Unit I.B.1. Once in the system, select "search," then key in the appropriate docket ID number.

II. Introduction

A. What is the Agency's Authority for Taking this Action?

EPA is issuing this final rule under the authority of TSCA section 407, 15 U.S.C. 2687. Section 407 states that regulations of the Administrator under Subchapter IV of TSCA shall include such recordkeeping and reporting requirements as may be necessary to ensure effective implementation. EPA regulations under Subchapter IV of TSCA include lead-based paint activities regulations, which this final rule amends, codified at 40 CFR part 745, subpart L.

B. Why is the Agency Taking this Action?

The requirements in this final rule provide EPA compliance monitoring and enforcement personnel with information necessary to track lead-based paint abatement and training activities, and to prioritize compliance inspections. The objective of the rule is to ensure that a workforce of qualified and properly trained firms and individuals can assist in the elimination of hazards associated with lead-based paint. Providing a quality workforce of this type will ensure that individuals and firms will conduct lead-based paint activities in a way that safeguards the environment and protects human health, specifically, the health of building occupants (especially children under 6 years of age) and the workers themselves.

C. How Does this Action Fit into EPA's Overall Lead Program?

The Residential Lead-Based Paint Hazard Reduction Act of 1992 (Title X) amended TSCA by adding a new Title IV. Several sections of Title X directed EPA to promulgate regulations aimed at fulfilling the purposes of Title X. These include TSCA section 402, Lead-Based Paint Activities Training and Certification, which directs EPA to promulgate regulations to govern the training and certification of individuals engaged in lead-based paint activities, the accreditation of training programs, and the establishment of standards for conducting lead-based paint activities. TSCA section 404 requires that EPA establish procedures for States seeking to establish their own programs for lead-based paint activities. On August 29, 1996, EPA promulgated a final rule under TSCA sections 402 and 404 titled

Lead; Requirements for Lead-Based Paint Activities in Target Housing and Child-Occupied Facilities (61 FR 45778). The rule is codified at 40 CFR part 745, subparts L and Q.

One of the standards EPA developed for performing lead-based paint activities, codified at 40 CFR 745.227(e)(4), requires notification to EPA prior to the commencement of lead-based paint abatement activities in a residential dwelling, or child-occupied facility, or as a result of a Federal, State, Tribal, or local order. However, 40 CFR 745.227(e)(4) did not detail specific notification procedures. This final rule includes such procedures.

This final rule also requires training programs accredited under 40 CFR 745.225 to notify EPA prior to providing initial and refresher lead-based paint activities courses and to provide certain information after the completion of a training course. Currently, accredited training programs are asked to voluntarily notify EPA prior to offering a lead-based paint activities course. To provide consistency in this reporting, this final rule clearly defines the information needed by the Agency and when it must be provided.

The notification requirements for lead-based paint abatement activities and training courses in this final rule will assist significantly in the implementation and enforcement of lead-based paint activities regulations codified at 40 CFR part 745, subpart L. The notification provisions will help to assure compliance by facilitating observation of abatement activities and training by EPA compliance monitoring and enforcement personnel.

D. Summary of Proposed Rule and Public Comments.

On January 22, 2001, EPA issued a proposed rule (66 FR 7208) (FRL-6764-7) seeking to establish notification procedures, in those States and Federally recognized Tribal jurisdictions without authorized programs, for certified lead abatement professionals conducting lead-based paint abatement activities, and accredited training programs providing lead-based paint activities courses. Specifically, the proposal introduced procedures for providing notification to EPA prior to the commencement of lead-based paint abatement activities. The proposal also introduced provisions which would require accredited training programs to notify EPA under the following conditions: (1) Prior to providing lead-based paint activities training courses; and (2) following

completion of lead-based paint activities training courses.

In response to the proposal, EPA received 11 comments. The largest number of responses was received from trainers and public educators (5 of the responses). Other commenters included government agencies (2 of the responses), a representative of a municipality, and a national organization representing demolition contractors. A summary of all comments received, and EPA's responses, may be found in the Response to Comments document which is available for public review in the TSCA Docket for this rulemaking (see Unit I.B.).

The majority of the comments raised concerns regarding the time periods allotted for notification of both lead-based paint abatement activities and associated training. Specific areas of concern included: (1) Time period for initial notification; (2) time period for notification of delayed start date; (3) time period for notification of cancellation or other significant changes; (4) emergency notification requirements; (5) which businesses must provide notification and who must sign the notification; and (6) purpose and use of information collected. Major comments are discussed in Unit III., and remaining comments are discussed in the Response to Comments document.

III. Final Rule Provisions

A. What are the Requirements for Notification of Lead-based Paint Abatement Activities?

This final rule requires firms certified under 40 CFR 745.226 to provide notification to the Agency prior to conducting lead-based paint abatement activities. The original notice must be received by the Agency at least 5 business days prior to the start of lead-based paint abatement activities. An abbreviated notification period is provided for lead-based paint abatement activities conducted in response to an elevated blood lead level (EBL) determination and/or a Federal, State, Tribal, or local emergency abatement order, where the firm is unable to comply with the standard notification period due to the necessity for an expeditious response to such event. If lead-based paint abatement activities are expected to begin on a date other than that specified in the original notice or if the other reported information changes, an updated notice is required. The notice must include the following:

1. Notification type (original, updated, cancellation).
2. Date when lead-based paint abatement activities will start.

3. Date when lead-based paint abatement activities will end (approximation using best professional judgement).

4. Firm's name, EPA certification number, address, telephone number.

5. Type of building (e.g., single family dwelling, multi-family dwelling, child-occupied facilities) on/in which abatement work will be performed.

6. Property name (if applicable).

7. Property address including apartment or unit number(s) (if applicable) for abatement work.

8. Documentation showing evidence of an EBL determination or a copy of the Federal/State/Tribal/local emergency abatement order, if using the abbreviated time period.

9. Name and EPA certification number of the project supervisor.

10. Approximate square footage/ acreage to be abated.

11. Brief description of abatement activities to be performed.

12. Name, title, and signature of the representative of the certified firm who prepared the notification.

Notification must be accomplished using any of the following methods: written notification, or electronically using the Agency's Central Data Exchange (CDX). Written notification can be accomplished using either the sample form titled *Notification of Lead-Based Paint Abatement Activities* or similar form containing the required information. All written notifications must be delivered by U.S. Postal Service, fax, commercial delivery service, or hand delivery.

B. What are the Requirements for Notification of Lead-based Paint Activities Training?

This final rule requires training programs accredited under 40 CFR 745.225 to provide notification to the Agency prior to conducting lead-based paint activities courses. The original notice must be received by the Agency at least 7 business days prior to the start of a lead-based paint activities course. An updated notice is required if the starting date for a lead-based paint activities course is changed to a date other than that specified in the original notice or if the other reported information changes. The notice must include the following:

1. Notification type (original, update, cancellation).

2. Training program name, EPA accreditation number, address, and telephone number.

3. Course discipline, type (initial/ refresher), and the language in which instruction will be given.

4. Date(s) and time(s) of training.

5. Training location(s) telephone number, and address.

6. Principal instructor's name.

7. Training manager's name and signature.

Training programs must also provide notice to the Agency following completion of a lead-based paint activities course. This notice must be provided to the Agency within 10 business days of course completion. This notice must include the following:

1. Training program name, EPA accreditation number, address, and telephone number.

2. Course discipline and type (initial/ refresher).

3. Date(s) of training.

4. The following information for each student who took the course:

a. Name.

b. Address.

c. Date of birth.

d. Course completion certificate number.

e. Course test score.

f. Training manager's name and signature.

Notification must be accomplished using any of the following methods: Written notification, or electronically using the Agency's Central Data Exchange (CDX). Written notification of lead-based paint activities course schedules can be accomplished by using either the appropriate sample form provided by EPA or a similar form containing the required information. All written notifications must be delivered by U.S. Postal Service, fax, commercial delivery service, or hand delivery.

C. What Changes Were Made in the Final Rule?

In light of the public's comments, EPA has carefully reviewed the proposed rulemaking and has made certain modifications in the final rule. The following is a brief description of the most significant changes adopted in response to public comment on the proposal. Further information regarding comments received or EPA's response can be reviewed in the Response to Comments document available for public review in the public docket described in Unit I.B.1. With the exception of these and additional minor editorial changes, the final rule is as proposed on January 22, 2001. The following discussion describes the changes.

1. *Time period for initial abatement notification.* EPA received comments expressing concern that the proposed 10 business day initial notification may hamper some abatement processes, including the ability of lead abatement firms to respond quickly to work demands.

Upon review, EPA has modified the initial notification period. The final rule includes a 5 business day initial notification period for lead-based paint abatement activities. EPA believes that the 5 business day notification period adequately addresses the concerns of the commenters while providing EPA with enough time to enable enforcement and compliance assistance personnel to adequately oversee abatement activities. Specifically, a 5-day notification period provides EPA sufficient time to perform activities such as processing the notification, making a determination of whether a compliance inspection is needed, preparing a travel authorization, providing a pre-inspection notification, performing a preliminary compliance review, and completing travel arrangements.

2. *Time period for notification of delayed start date.* EPA received comments regarding the proposed requirement that, if the project start date was to be delayed, notification would be provided to EPA 2 business days prior to the original start date. A commenter pointed out that it would be impossible to provide notification to EPA 2 business days prior to the original start date if issues regarding commencement of work arose on the day that work begins (e.g., lack of access to the work site).

EPA agrees that circumstances can arise on the project start date which delay work. Therefore, the final rule requires that notification of delayed lead-based paint abatement start dates be received by EPA on or before the original start date.

3. *Time period for notification of cancellation or other significant changes.* EPA received comments regarding the proposed requirement that, where abatement activities are canceled or other significant changes occur, EPA be notified 2 business days prior to the original start date. The commenters pointed out that it is impossible to update EPA regarding significant changes to the abatement project 2 days before the start date when the changes occur during the project.

Upon further review EPA agrees that providing cancellation or updated information 2 business days prior to the original start date in some cases could prove impossible. Therefore, the final regulation requires that notification of cancellation of lead-based paint activities be received by EPA on or before the original start date. In addition, any other required information updates must be received by EPA on or before the original start date, and where work has begun, within 24 hours of the change.

4. *Certified supervisor's signature on the notification.* A commenter asked why a certified supervisor must sign an abatement notification.

EPA has an interest in verifying that the project will be overseen by a certified supervisor as required by the regulation; however, on re-examination in light of the commenter's question, EPA believes that the notification itself need not be signed by a certified supervisor. EPA has modified the requirement in the final rule to indicate that a representative of the firm may sign the notification document. EPA also added a requirement that the name and certification number of the supervisor overseeing the project be included in the notification.

5. *Time period for initial training notification.* EPA received a comment regarding the time period for initial training notification. The commenter expressed concern that a 10 business day notification could hamper the ability of firms and individuals in the lead-based paint abatement field to obtain training quickly.

EPA is concerned that the proposed 10 business day notification period could prevent individuals from obtaining timely lead-based paint activities training. The final rule is modified to include a 7 business day initial notification period for lead-based paint activities training. This notification period provides EPA time to perform activities such as: Processing the notification, making a determination of whether a compliance inspection is needed, preparing a travel authorization, providing a pre-inspection notification, performing a preliminary compliance review, and completing travel arrangements. This notification period differs from abatement because compliance personnel often observe training in its entirety which necessitates an early arrival, whereas they will routinely monitor only a portion of an abatement project.

6. *Student information.* EPA received a comment that a student's date of birth should be provided to EPA following training rather than their social security number. The commenter stated that trainees are often reluctant to provide valid social security numbers, and believes that a date of birth would be as reliable an indicator of the student's identity as their social security number.

EPA agrees that a student's date of birth in conjunction with other required information is a reliable indicator of the student's identity. Therefore, the final regulation eliminates the requirement that training programs provide student's social security numbers and instead

requires that a student's date of birth be reported.

7. *Requirement to follow e-mail notification with written notification.* EPA received comments regarding the requirement to follow e-mail notification with written notification. The commenters indicated that e-mail notification should be sufficient, and that a follow-up written notification would be redundant and increase the paperwork burden of both government and industry.

EPA plans to use its Central Data Exchange (CDX) to receive electronic notification submitted to satisfy the requirements of this regulation. One of the basic purposes of the CDX system is to provide a method of electronic signature verification, which eliminates the need for a follow-up written notification after an e-mail notification is provided. Therefore, where a submission is provided electronically via the Agency's CDX system, follow-up written notice is not required.

8. *Ability to use other forms if information is the same.* EPA received comments regarding the use of forms, other than the sample forms developed by EPA, containing the information specified in the proposal. Both commenters suggest EPA minimize respondent burden by allowing the use of other forms as long as they provide the same information required under the EPA rule.

EPA agrees that allowing alternative forms can reduce respondent burden and agrees that other forms should be allowed to be used if they contain the information required by EPA. The final rule allows the use of alternative forms that contain the information required by EPA.

9. *Terminology.* EPA received a comment that the use of the terms "project start date" and "original start date" were confusing.

EPA agreed and introduced new terms and definitions for "start date" and "start date provided to EPA" which clarify these requirements. In addition, EPA removed the definition of "lead abatement professional" because the term was not introduced in the regulatory text.

D. How Do I Obtain Notification Instructions and Sample Forms?

Instructions and sample forms can be obtained from the National Lead Information Center at 1-800-424-LEAD(5323), or on the Internet at <http://www.epa.gov/lead>.

IV. Statutory and Executive Order Reviews

A. Executive Order 12866

Under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993), it has been determined that this final rule is not a "significant regulatory action" subject to review by the Office of Management and Budget (OMB) under Executive Order 12866, because this action does not meet any of the criteria for a "significant regulatory action" under section 3(f) of Executive Order 12866.

The costs for the first year of implementation are estimated to be approximately \$440,000, decreasing to an average annual estimated cost of approximately \$395,000 in subsequent years. For additional information about these estimated costs, please refer to the document titled *Information Collection Request (ICR) Supporting Statement for a Proposed Addendum to EPA ICR No. 1715 titled TSCA §402/404 Training and Certification, Accreditation, and Standards for Lead-Based Paint Activities* (hereinafter the ICR Addendum (EPA ICR No. 1715.03)). This document, identified as EPA ICR No. 1715.03, is an addendum to the existing ICR. A copy is available in the public docket described in Unit I.B.1.

B. Paperwork Reduction Act

The information collection requirements contained in this final rule have been approved by OMB under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, and assigned OMB control number 2070-0155. A copy of the Information Collection Request (ICR) document (EPA ICR No. 1715.05) has been placed in the public docket described in Unit I.B.1.

The information requirements contained in this rule are not effective until promulgation and OMB approval, which is represented by a currently valid OMB control number. An Agency may not conduct or sponsor and a person is not required to respond to a collection of information subject to OMB approval under the PRA unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in Title 40 of the CFR, after initial publication in the *Federal Register* and inclusion on the collection instruments, are maintained in a list at 40 CFR part 9.

The final rule contains the following information collection requirements subject to the PRA that impose paperwork burdens: (1) Reading and interpreting the final rule; (2) the notification of lead-based paint

abatement activities; (3) the notification of lead-based paint activities training courses; and (4) the notification following completion of lead-based paint activities training courses. The total paperwork burdens are estimated to be 21,254 total hours for the first year of implementation, and 19,048 hours annually in subsequent years.

Under the PRA, "burden" means the total time, effort, or financial resources expended by persons to generate, maintain, retain, disclose or provide information to or for a Federal Agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

C. Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), EPA hereby certifies that this action will not have a significant economic impact on a substantial number of small entities. The factual basis for EPA's determination, which is summarized here, is based on the small entity impact analysis prepared as part of the Regulatory Impact Analysis (RIA) for the 1996 Lead Abatement Training and Certification Final Rule (61 FR 45778). EPA assessed the potential small entity impacts of the notification requirement that was contained in the 1996 final rule as part of the economic analysis that was prepared for that rulemaking, a copy of which is available in the public docket described in Unit I.B.1. In addition, EPA has estimated the impacts of the procedural requirements contained in this rule, which are presented in the ICR Addendum (EPA ICR No. 1715.03).

In considering the potential small entity impacts of this final rule, EPA believes that its previous determination regarding the Lead Abatement Training and Certification Final Rule is not affected by the notification procedures contained in this final rule. Based on the estimated total costs of this final rule as presented in the ICR Addendum (EPA ICR No. 1715.03), EPA has determined that this rulemaking is not likely to result in a significant economic impact on a substantial number of small

entities. In general, EPA strives to minimize potential adverse impacts on small entities when developing regulations to achieve the environmental and human health protection goals of the statute and EPA.

For the purpose of analyzing the potential impacts of this final rule on small entities, EPA used the definition for small entities that is found in section 601 of the RFA. Under section 601, "small entity" is defined as: (1) A small business that meets Small Business Administration (SBA) size standards codified at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field. The SBA size standards for the small businesses potentially affected by this final rule is 500 employees or less for lead abatement firms whose primary activity is classified as environmental remediation (NAICS code 562910), and revenues of \$5 million or less for firms that are accredited to provide lead-based paint training (NAICS code 611519).

This rule only applies in those States and Tribes that do not have authorized programs pursuant to 40 CFR 745.324, and then only applies if that State or Tribe chooses to seek certification to perform lead abatement activities or accreditation to provide lead training. As such, small governmental jurisdictions are only impacted if there is not a State or Tribe authorized program and then only if the small governmental entity chooses to seek certification to perform lead abatement activities or accreditation to provide lead training on their own. To estimate potential impacts on small governments, EPA estimated that in the first year of implementation there could be approximately 15.36 abatement notifications per firm and 17.93 training provider notifications per provider. In subsequent years, the number of training provider notifications are expected to decrease to four each year per provider.

Small businesses are only impacted if there is not a State or Tribe authorized program in their State, and then only if they seek certification to perform lead abatement activities or accreditation to provide lead training. EPA estimates that there could be approximately 15.36 notifications per firm each year, and approximately 4,000 firms.

The estimated average cost per notification for abatement firms is approximately \$5, with an estimated

total cost per entity of approximately \$75 annually. The estimated average cost per notification for training providers is approximately \$32, with an estimated total cost per entity of approximately \$298 in the first year and approximately \$67 in subsequent years. EPA believes that the impact of these costs would be proportional for both small and large firms, and that the impacts may be slightly lower for small governmental jurisdictions that seek EPA certification as an abatement firm or EPA accreditation as a training provider due to lower wage rates and overhead expenses. Overall, EPA believes that these costs would not result in a significant economic impact on affected small entities.

Small non-profit organizations are only impacted if they seek certification to perform lead abatement activities or accreditation to provide lead training on their own. Although EPA believes that non-profit organizations may seek certification, EPA does not have sufficient information about these organizations or their intentions regarding certification or accreditation. Nevertheless, given the low costs for notification and the relatively small number of non-profit organizations, EPA does not believe that this affects EPA's determination that this rule is not expected to have a significant economic impact on a substantial number of small entities.

D. Unfunded Mandates Reform Act

Pursuant to Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law No. 104-4), EPA has determined that this regulatory action does not contain a Federal mandate that may result in expenditures of \$100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any 1 year. This final rule applies only in States and Indian Tribes that do not have authorized programs pursuant to 40 CFR 745.324, and then only applies to those States and Indian Tribes who choose to seek certification to perform lead abatement activities or accreditation to provide lead training. As such, the rule will not impose an enforceable duty on any State, local or Tribal governments. Since, this final rule is estimated to cost approximately \$439,573 in the first year of implementation, and \$395,157 annually in subsequent years, it is not expected to result in expenditures by the private sector of \$100 million or more in any given year. As a result, the UMRA requirements in sections 202, 204, and 205 do not apply to this final rule.

This rule contains no regulatory requirements that might significantly or uniquely affect small governments. Therefore, no action is needed under section 203 of the UMRA.

E. Executive Order 13132

Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

This final rule does not have federalism implications, because it will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This final rule applies only in States that do not have authorized programs pursuant to 40 CFR 745.324, and then only applies to those States who choose to seek certification to perform lead abatement activities or accreditation to provide lead training.

Although section 6 of Executive Order 13132 does not apply to this rule, EPA consulted with the States at meetings of the Forum on State and Tribal Toxics Action and the annual EPA meeting with State Lead Program representatives.

F. Executive Order 13175

This rule does not significantly or uniquely affect the communities of Indian tribal governments, because this final rule applies only in Indian Tribes that do not have authorized programs pursuant to 40 CFR 745.324, and then only applies to those Indian Tribes who choose to seek certification to perform lead abatement activities or accreditation to provide lead training. Accordingly, the requirements of section 3(b) of Executive Order 13084, entitled *Consultation and Coordination with Indian Tribal Governments* (63 FR 27675, May 19, 1998), do not apply to this rule. Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000), which took effect on January 6, 2001, revokes Executive Order 13084 as of that date. EPA developed this rulemaking,

however, during the period when Executive Order 13084 was in effect; thus, EPA addressed tribal considerations under Executive Order 13084. For the same reasons stated for Executive Order 13084, the requirements of Executive Order 13175 do not apply to this rule either.

G. Executive Order 13045

Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997), applies to any rule that (1) is economically significant as defined under OMB's guidance related to section 3(f)(1) of Executive Order 12866, and (2) addresses an environmental health or safety risk that EPA has reason to believe has a disproportionate effect on children. If the regulatory action meets both criteria, EPA must evaluate the environmental health or safety effects of the planned rule on children; and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by EPA.

This rule is not subject to Executive Order 13045 because it is not an "economically significant regulatory action" as defined by Executive Order 12866 (see Unit IV.A.). Although this final rule is associated with EPA's overall lead-based paint management program which is designed to reduce health risks to children, this rule itself simply establishes an Agency notification procedure and does not directly address environmental health or safety risk. This final rule does, however, help to further EPA's efforts to prevent lead poisoning in children under the age of 6 by supporting EPA's implementation of the mandate in Title X, which requires that lead professionals involved in inspecting, assessing or removing lead-based paint, dust or soil be trained and certified to conduct these activities.

H. Executive Order 13211

This rule is not subject to Executive Order 13211, entitled *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001), because this action is not expected to affect energy supply, distribution, or use.

I. National Technology Transfer and Advancement Act

This regulatory action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National

Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law No. 104-113, 12(d) (15 U.S.C. 272 note). Section 12(d) of NTTAA directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA requires EPA to provide Congress, through OMB, explanations when EPA decides not to use available and applicable voluntary consensus standards. EPA invites comment on the potential use of voluntary consensus standards in this rulemaking, and, specifically, invites the public to identify potentially applicable consensus standard(s) and to explain why such standard(s) should be used here.

J. Executive Order 12898

Pursuant to Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994), EPA has considered environmental justice related issues with regard to the potential impacts of this action on the environmental and health conditions in low-income and minority communities. EPA's analysis has determined that this final action has no disproportionate impact on minority or low-income populations.

K. Executive Order 12630

EPA has complied with Executive Order 12630, entitled *Governmental Actions and Interference with Constitutionally Protected Property Rights* (53 FR 8859, March 15, 1988), by examining the takings implications of this rule in accordance with the Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings issued under the Executive Order.

L. Executive Order 12988

In issuing this final rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct, as required by section 3 of Executive Order 12988, entitled *Civil Justice Reform* (61 FR 4729, February 7, 1996).

V. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, generally provides

that before a rule may take effect, the Agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 745

Environmental protection, Fees, Hazardous substances, Lead poisoning, Reporting and recordkeeping requirements.

Dated: March 31, 2004.

Michael O. Leavitt,
Administrator.

Therefore, 40 CFR chapter I is amended as follows:

PART 745—[AMENDED]

■ 1. The authority citation for part 745 continues to read as follows:

Authority: 15 U.S.C. 2605, 2607, 2615, 2681–2692, and 42 U.S.C. 4852d.

■ 2. Section 745.223 is amended by alphabetically adding the following definitions to read as follows:

§ 745.223 Definitions.

* * * * *

Business day means Monday through Friday with the exception of Federal holidays.

* * * * *

Lead-based paint activities courses means initial and refresher training courses (worker, supervisor, inspector, risk assessor, project designer) provided by accredited training programs.

* * * * *

Start date means the first day of any lead-based paint activities training course or lead-based paint abatement activity.

Start date provided to EPA means the start date included in the original notification or the most recent start date provided to EPA in an updated notification.

* * * * *

Training provider means any organization or entity accredited under § 745.225 to offer lead-based paint activities courses.

* * * * *

■ 3. Section 745.225 is amended by adding paragraphs (c)(13) and (c)(14) and revising paragraph (e)(5)(vi) to read as follows:

§ 745.225 Accreditation of training programs: target housing and child-occupied facilities.

* * * * *

(c) * * *

(13) The training manager must provide notification of lead-based paint activities courses offered.

(i) The training manager must provide EPA with notification of all lead-based paint activities courses offered. The original notification must be received by EPA at least 7 business days prior to the start date of any lead-based paint activities course.

(ii) The training manager must provide EPA updated notification when lead-based paint activities courses will begin on a date other than the start date specified in the original notification, as follows:

(A) For lead-based paint activities courses beginning prior to the start date provided to EPA, an updated notification must be received by EPA at least 7 business days before the new start date.

(B) For lead-based paint activities courses beginning after the start date provided to EPA, an updated notification must be received by EPA at least 2 business days before the start date provided to EPA.

(iii) The training manager must update EPA of any change in location of lead-based paint activities courses at least 7 business days prior to the start date provided to EPA.

(iv) The training manager must update EPA regarding any course cancellations, or any other change to the original notification. Updated notifications must be received by EPA at least 2 business days prior to the start date provided to EPA.

(v) Each notification, including updates, must include the following:

(A) Notification type (original, update, cancellation).

(B) Training program name, EPA accreditation number, address, and telephone number.

(C) Course discipline, type (initial/refresher), and the language in which instruction will be given.

(D) Date(s) and time(s) of training.

(E) Training location(s) telephone number, and address.

(F) Principal instructor's name.

(G) Training manager's name and signature.

(vi) Notification must be accomplished using any of the following methods: Written notification, or electronically using the Agency's Central Data Exchange (CDX). Written notification of lead-based paint activities course schedules can be accomplished by using either the

sample form titled "Lead-Based Paint Activities Training Course Schedule" or a similar form containing the information required in paragraph (c)(13)(v) of this section. All written notifications must be delivered by U.S. Postal Service, fax, commercial delivery service, or hand delivery (persons submitting notification by U.S. Postal Service are reminded that they should allow 3 additional business days for delivery in order to ensure that EPA receives the notification by the required date). Instructions and sample forms can be obtained from the NLIC at 1-800-424-LEAD(5323), or on the Internet at <http://www.epa.gov/lead>.

(vii) Lead-based paint activities courses must not begin on a date, or at a location other than that specified in the original notification unless an updated notification identifying a new start date or location is submitted, in which case the course must begin on the new start date and/or location specified in the updated notification.

(viii) No training program shall provide lead-based paint activities courses without first notifying EPA of such activities in accordance with the requirements of this paragraph.

(14) The training manager must provide notification following completion of lead-based paint activities courses.

(i) The training manager must provide EPA notification after the completion of any lead-based paint activities course. This notice must be received by EPA no later than 10 business days following course completion.

(ii) The notification must include the following:

(A) Training program name, EPA accreditation number, address, and telephone number.

(B) Course discipline and type (initial/refresher).

(C) Date(s) of training.

(D) The following information for each student who took the course:

- (1) Name.
- (2) Address.
- (3) Date of birth.
- (4) Course completion certificate number.

- (5) Course test score.
- (E) Training manager's name and signature.

(iii) Notification must be accomplished using any of the following methods: Written notification, or electronically using the Agency's Central Data Exchange (CDX). Written notification following lead-based paint activities training courses can be accomplished by using either the sample form titled "Lead-Based Paint Activities Training Course Follow-up"

or a similar form containing the information required in paragraph (c)(14)(ii) of this section. All written notifications must be delivered by U.S. Postal Service, fax, commercial delivery service, or hand delivery (persons submitting notification by U.S. Postal Service are reminded that they should allow 3 additional business days for delivery in order to ensure that EPA receives the notification by the required date). Instructions and sample forms can be obtained from the NLIC at 1-800-424-LEAD(5323), or on the Internet at <http://www.epa.gov/lead>.

* * * * *

- (e) * * *
(5) * * *

(vi) The requirements in paragraphs (c)(1) through (c)(5), and (c)(7) through (c)(14) of this section apply to refresher training providers.

* * * * *

■ 4. Section 745.227 is amended by revising paragraph (e)(4) to read as follows:

§ 745.227 Work practice standards for conducting lead-based paint activities: target housing and child-occupied facilities.

* * * * *

- (e) * * *

(4) A certified firm must notify EPA of lead-based paint abatement activities as follows:

(i) Except as provided in paragraph (e)(4)(ii) of this section, EPA must be notified prior to conducting lead-based paint abatement activities. The original notification must be received by EPA at least 5 business days before the start date of any lead-based paint abatement activities.

(ii) Notification for lead-based paint abatement activities required in response to an elevated blood lead level (EBL) determination, or Federal, State, Tribal, or local emergency abatement order should be received by EPA as early as possible before, but must be received no later than the start date of the lead-based paint abatement activities. Should the start date and/or location provided to EPA change, an updated notification must be received by EPA on or before the start date provided to EPA. Documentation showing evidence of an EBL determination or a copy of the Federal/State/Tribal/local emergency abatement order must be included in the written notification to take advantage of this abbreviated notification period.

(iii) Except as provided in paragraph (e)(4)(ii) of this section, updated notification must be provided to EPA for lead-based paint abatement activities that will begin on a date other than the

start date specified in the original notification, as follows:

(A) For lead-based paint abatement activities beginning prior to the start date provided to EPA an updated notification must be received by EPA at least 5 business days before the new start date included in the notification.

(B) For lead-based paint abatement activities beginning after the start date provided to EPA an updated notification must be received by EPA on or before the start date provided to EPA.

(iv) Except as provided in paragraph (e)(4)(ii) of this section, updated notification must be provided to EPA for any change in location of lead-based paint abatement activities at least 5 business days prior to the start date provided to EPA.

(v) Updated notification must be provided to EPA when lead-based paint abatement activities are canceled, or when there are other significant changes including, but not limited to, when the square footage or acreage to be abated changes by more than 20%. This updated notification must be received by EPA on or before the start date provided to EPA, or if work has already begun, within 24 hours of the change.

(vi) The following must be included in each notification:

(A) Notification type (original, updated, cancellation).

(B) Date when lead-based paint abatement activities will start.

(C) Date when lead-based paint abatement activities will end (approximation using best professional judgement).

(D) Firm's name, EPA certification number, address, telephone number.

(E) Type of building (e.g., single family dwelling, multi-family dwelling, child-occupied facilities) on/in which abatement work will be performed.

(F) Property name (if applicable).

(G) Property address including apartment or unit number(s) (if applicable) for abatement work.

(H) Documentation showing evidence of an EBL determination or a copy of the Federal/State/Tribal/local emergency abatement order, if using the abbreviated time period as described in paragraph (e)(4)(ii) of this section.

(I) Name and EPA certification number of the project supervisor.

(J) Approximate square footage/acreage to be abated.

(K) Brief description of abatement activities to be performed.

(L) Name, title, and signature of the representative of the certified firm who prepared the notification.

(vii) Notification must be accomplished using any of the following methods: Written notification, or

electronically using the Agency's Central Data Exchange (CDX). Written notification can be accomplished using either the sample form titled "Notification of Lead-Based Paint Abatement Activities" or similar form containing the information required in paragraph (e)(4)(vi) of this section. All written notifications must be delivered by U.S. Postal Service, fax, commercial delivery service, or hand delivery (persons submitting notification by U.S. Postal Service are reminded that they should allow 3 additional business days for delivery in order to ensure that EPA receives the notification by the required date). Instructions and sample forms can be obtained from the NLIC at 1-800-424-LEAD(5323), or on the Internet at <http://www.epa.gov/lead>.

(viii) Lead-based paint abatement activities shall not begin on a date, or at a location other than that specified in either an original or updated notification, in the event of changes to the original notification.

(ix) No firm or individual shall engage in lead-based paint abatement activities, as defined in § 745.223, prior to notifying EPA of such activities according to the requirements of this paragraph.

* * * * *

[FR Doc. 04-7980 Filed 4-7-04; 8:45 am] BILLING CODE 6560-50-S

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. NHTSA 2004-17471]

Federal Motor Vehicle Safety Standards; Rearview Mirrors Correction

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Correcting amendment.

SUMMARY: On March 27, 1995, the National Highway Traffic Safety Administration (NHTSA) published a final rule amending the field of view requirements for System A mirrors on school buses, such that those mirrors will no longer be required to provide a view of the ground forward of the rear wheels (60 FR 15690). Previously, System A mirrors were required to provide a view of the area beneath those mirrors, a view that overlapped with the vehicle's System B mirrors, which are also required. The effective date of the amendment was April 26, 1995.



COMMONWEALTH of VIRGINIA

DEPARTMENT OF LABOR AND INDUSTRY

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VIRGINIA SAFETY AND HEALTH CODES BOARD

BRIEFING PACKAGE FOR

May 24, 2012

Administrative Regulation for the Virginia Occupational Safety and Health (VOSH) Program, 16VAC25-60, *et seq.*; Correcting Amendment

I. Action Requested.

The Virginia Occupational Safety and Health (VOSH) Program requests the Safety and Health Codes Board to authorize the Department to amend Paragraph B.2. of §190, General Provisions, of the Administrative Regulation for the VOSH Program, 16VAC25-60, *et seq.*, to delete the old address of the Virginia Department of Labor and Industry and to insert the new address.

II. Summary of the Correcting Amendment.

In Paragraph B.2. of §190, General Provisions, of the Administrative Regulation for the Virginia Occupational Safety and Health (VOSH) Program, reference is made for petitions for a variance hearing or written comments to be sent to "the Commissioner of Labor and Industry, Powers-Taylor Building, 13 South Thirteenth Street, Richmond, VA 23219-4101".

On April 2, 2012, the Virginia Department of Labor and Industry moved its headquarters from 13 South Thirteenth Street, Richmond, Virginia to Main Street Centre, 600 East Main Street, Suite 207, Richmond, Virginia 23219-2430. The reference to the old address is being replaced with the new address.

Provisions, of the Administrative Regulation for the VOSH Program and replacing that reference with the new address for the Department Headquarters.

C. Impact on Employers.

Employers desiring a variance from a standard or regulation, pertaining to occupational safety and health, from the Department of Labor and Industry will be able to file a written application with the Commissioner at the Department's new address.

D. Impact on Employees.

When petitioning the Commissioner of Labor and Industry for a hearing or written comments, affected employees or their representatives will have the correct address for the Department.

E. Impact on the Department Labor and Industry.

This correction involving the Department's new address is essential to permit the Department to conduct business with Virginia employers and employees.

Contact Person:

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Recommended Action

Staff of the Department of Labor and Industry recommends that the Safety and Health Codes Board adopt this correcting amendment to Paragraph B.2. of §190, General Provisions, of the Administrative Regulation for the Virginia Occupational Safety and Health (VOSH) Program, 16VAC25-60, *et seq.*, as authorized by §§40.1-22(5) and 2.2-4006.A.3., with an effective date of September 15, 2012.

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 subsection 2.2-4006 A.3. of the Administrative Process Act.

**Administrative Regulation for the
Virginia Occupational Safety and Health (VOSH) Program, 16VAC25-60, et seq,**

As Adopted by the
Safety and Health Codes Board

Date: _____



VIRGINIA OCCUPATIONAL SAFETY AND HEALTH PROGRAM

VIRGINIA DEPARTMENT OF LABOR AND INDUSTRY

Effective Date: _____

**Administrative Regulation for the
Virginia Occupational Safety and Health (VOSH) Program, 16VAC25-60,**

**Part IV
Variances**

16VAC25-60-190. General provisions.

A. Any employer or group of employers desiring a permanent or temporary variance from a standard or regulation pertaining to occupational safety and health may file with the commissioner a written application which shall be subject to the following policies:

1. A request for a variance shall not preclude or stay a citation or bill of complaint for violation of a safety or health standard;
2. No variances on record keeping requirements required by the U.S. Department of Labor shall be granted by the commissioner;
3. An employer, or group of employers, who has applied for a variance from the U.S. Department of Labor, and whose application has been denied on its merits, shall not be granted a variance by the commissioner unless there is a showing of changed circumstances significantly affecting the basis upon which the variance was originally denied;
4. An employer to whom the U.S. Secretary of Labor has granted a variance under OSHA provisions shall document this variance to the commissioner. In such cases, unless compelling local circumstances dictate otherwise, the variance shall be honored by the commissioner without the necessity of following the formal requirements which would otherwise be applicable. In addition, the commissioner will not withdraw a citation for violation of a standard for which the Secretary of Labor has granted a variance unless the commissioner previously received notice of and decided to honor the variance; and
5. Incomplete applications will be returned within 30 days to the applicant with a statement indicating the reason or reasons that the application was found to be incomplete.

B. In addition to the information specified in 16VAC25-60-200 A and 16VAC25-60-210 A, every variance application shall contain the following:

1. A statement that the applicant has informed affected employees of the application by delivering a copy of the application to their authorized representative, if there is one, as well as having posted, in accordance with 16VAC25-60-40, a summary of the application which indicates where a full copy of the application may be examined;
2. A statement indicating that the applicant has posted, with the summary of the application described above, the following notice: "Affected employees or their representatives have the right to petition the Commissioner of Labor

and Industry for an opportunity to present their views, data, or arguments on the requested variance, or they may submit their comments to the commissioner in writing. Petitions for a hearing or written comments should be addressed to the Commissioner of Labor and Industry, ~~Powers-Taylor Building, 13 South Thirteenth Street~~ Main Street Centre, 600 East Main Street, Richmond, VA 23219-41012430. Such petitions will be accepted if they are received within 30 days from the posting of this notice or within 30 days from the date of publication of the commissioner's notice that public comments concerning this matter will be accepted, whichever is later."

3. A statement indicating whether an application for a variance from the same standard or rule has been made to any federal agency or to an agency of another state. If such an application has been made, the name and address of each agency contacted shall be included.

C. Upon receipt of a complete application for a variance, the commissioner shall publish a notice of the request in a newspaper of statewide circulation within 30 days after receipt, advising that public comments will be accepted for 30 days and that an informal hearing may be requested in conformance with subsection D of this section. Further, the commissioner may initiate an inspection of the establishment in regard to the variance request.

D. If within 30 days of the publication of notice the commissioner receives a request to be heard on the variance from the employer, affected employees, the employee representative, or other employers affected by the same standard or regulation, the commissioner will schedule a hearing with the party or parties wishing to be heard and the employer requesting the variance. The commissioner may also schedule a hearing upon his own motion. The hearing will be held within a reasonable time and will be conducted informally in accordance with §§ 2.2-4019 and 2.2-4021 of the Code of Virginia unless the commissioner finds that there is a substantial reason to proceed under the formal provisions of § 2.2-4020 of the Code of Virginia.

E. If the commissioner has not been petitioned for a hearing on the variance application, a decision on the application may be made promptly after the close of the period for public comments. This decision will be based upon the information contained in the application, the report of any variance inspection made concerning the application, any other pertinent staff reports, federal OSHA comments or public records, and any written data and views submitted by employees, employee representatives, other employers, or the public.

F. The commissioner will grant a variance request only if it is found that the employer has met by a preponderance of the evidence, the requirements of either 16VAC25-60-200 B 4 or 16VAC25-60-210 B 4.

1. The commissioner shall advise the employer in writing of the decision and shall send a copy to the employee representative if applicable. If the variance is granted, a notice of the decision will be published in a newspaper of statewide circulation.
 2. The employer shall post a copy of the commissioner's decision in accordance with 16VAC25-60-40.
- G. Any party may within 15 days of the commissioner's decision file a notice of appeal to the board. Such appeal shall be in writing, addressed to the board, and include a statement of how other affected parties have been notified of the appeal. Upon notice of a proper appeal, the commissioner shall advise the board of the appeal and arrange a date for the board to consider the appeal. The commissioner shall advise the employer and employee representative of the time and place that the board will consider the appeal. Any party that submitted written or oral views or participated in the hearing concerning the original application for the variance shall be invited to attend the appeal hearing. If there is no employee representative, a copy of the commissioner's letter to the employer shall be posted by the employer in accordance with the requirements of 16VAC25-60-40.
- H. The board shall sustain, reverse, or modify the commissioner's decision based upon consideration of the evidence in the record upon which the commissioner's decision was made and the views and arguments presented as provided above. The burden shall be on the party filing the appeal to designate and demonstrate any error by the commissioner which would justify reversal or modification of the decision. The issues to be considered by the board shall be those issues that could be considered by a court reviewing agency action in accordance with § 2.2-4027 of the Code of Virginia. All parties involved shall be advised of the board's decision within 10 working days after the hearing of the appeal.



COMMONWEALTH of VIRGINIA

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VIRGINIA SAFETY AND HEALTH CODES BOARD

BRIEFING PACKAGE

FOR MAY 24, 2012

NOTICE OF PERIODIC REVIEW OF CERTAIN EXISTING REGULATIONS

I. **Action Requested**

The Department requests the Board's permission to proceed with the periodic review process of two of the Board's regulations: Public Participation Guidelines, 16VAC25-11, and the Regulation Concerning Licensed Asbestos Contractor Notification, Asbestos Project Permits, and Permit Fees, 16VAC25-20.

II. **Background and Basis**

Governor McDonnell's Executive Order 14 (2010), "Development and Review of Regulations Proposed by State Agencies," governs the periodic review or re-evaluation of existing regulations and the regulatory process to promulgate new regulations or amend current regulations.

III. **Process**

The process of periodic review begins with publication of a Notice of Periodic Review in the Virginia Register. When the Notice of Periodic Review is published, a public comment period of 21 days begins. Following the public comment period (no more than 90 days), the agency will post a

report on the Town Hall website indicating either that (1) the Board will retain the regulation as is, or (2) the Board will begin a regulatory action to amend the regulation.

IV. Current Status

Two regulations of the Safety and Health Codes Board have been identified for review in 2012. A notice of periodic review will be published in the Virginia Register. The notice will request public comment for a period of 21 days for the following regulations:

1. 16 VAC 25-11 Public Participation Guidelines; and
2. 16 VAC 25-20 Regulation Concerning Licensed Asbestos Contractor Notification, Asbestos Project Permits, and Permit Fees.

V. Next Stage of Review

Over the next several months, the Staff of the Department of Labor and Industry will be reviewing these regulations and will prepare the reports with recommendations to be presented for the Board's consideration at the next meeting.

Contact Person:

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RECOMMENDED ACTION

Staff of the Department of Labor and Industry request that the Safety and Health Codes Board vote to give the Department permission to proceed with the periodic review process of the Public Participation Guidelines, 16VAC25-11, and the Regulation Concerning Licensed Asbestos Contractor Notification, Asbestos Project Permits, and Permit Fees, 16VAC25-20, as authorized by Executive Order 14 (2010).