COMMONWEALTH of VIRGINIA

DEPARTMENT OF LABOR AND INDUSTRY

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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, March 14, 2013

10:00 a.m.

1. Call to Order
2. Approval of Agenda
3. Approval of Minutes for Board Meeting of September 12, 2012
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. Chair Appoints Secretary

6. Old Business

Virginia Regulation:

1) Proposed Regulation: Amendments to Regulation Concerning Certified Lead Contractors Notification, Lead Project Permits and Permit Fees, 16VAC25-35

Presenter – Ron Graham

7. New Business

a) Federal-Identical Standards:

1) Corrections and Technical Amendment to the Hazard Communication Standard, §1910.1200

Presenter – Ron Graham

2) Occupational Exposure to Hazardous Chemicals in Laboratories, §1910.1450: (Non-Mandatory) Appendix A-National Research Council Recommendations Concerning Chemical Hygiene in Laboratories; Technical Amendment

Presenter –Ron Graham

b) Virginia Regulations:

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

Presenter –Ron Graham

2) Standard for Boiler and Pressure Vessel Operator Certification, 16VAC25-40-10, *et seq.*; Amendments

Presenter – Ed Hilton

c) Regulations for Periodic Review:

1) 16VAC25-30, Regulation for Asbestos Emissions Standards for Demolition and Renovation Construction Activities and the Disposal of Asbestos-Containing Construction Wastes-Incorporation By Reference, 40 CFR 61.140 through 61.156;

2) 16VAC25-70, Virginia Confined Space Standard for the Telecommunications Industry;

3) 16VAC25-97, Reverse Signal Procedures-General Industry-Vehicles/Equipment Not Covered by Existing Standards;

4) 16VAC25-140, Virginia Confined Space Standard for the Construction Industry;

6. Old Business

Virginia Regulation:

1) Proposed Regulation: Amendments to Regulation Concerning Certified Lead Contractors Notification, Lead Project Permits and Permit Fees, 16VAC25-35

DRAFT

SAFETY AND HEALTH CODES BOARD
MEETING MINUTES
WEDNESDAY, SEPTEMBER 12, 2012

BOARD MEMBERS PRESENT:
Mr. Tommy Thurston, Newly Elected Chair, Presiding Officer
Mr. Charles Bird
Mr. Jerome Brooks
Mr. Gregory Hart
Ms. Anna Jolly
Mr. Satish Korpe, Newly Elected Vice Chair
Ms. Rebecca LePrell
Dr. James Mundy
Mr. Marc Olmsted
Mr. Danny Sutton
Mr. Chuck Stiff

BOARD MEMBERS ABSENT:
Ms. Milly Rodriguez, Outgoing Chair
Mr. Mike Pischke
Mr. Danny Sutton

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, Health Compliance
Mr. John Crisanti, Manager, Planning and Evaluation
Ms. Reba O'Connor, Regulatory Coordinator
Mr. Ed Hilton, Director, Boiler Safety Compliance
Ms. Jennifer Wester, Director, Cooperative Programs
Ms. Regina Cobb, Senior Management Analyst
Ms. Sharon Sykes, Policy and Planning Specialist
Mr. Thomas Dash, DOLI, Norfolk
Mr. George Dillon, DOLI, Norfolk
Mr. Jay Hufton, DOLI, Norfolk
Mr. Bobby Myers, DOLI, Roanoke
Mr. Chris Stoltz, DOLI, Verona
Ms. Zelma Wilkins, DOLI, Richmond
Mr. Jeff Napier, DOLI, Richmond
Mr. Stan Dykstra, DOLI, Richmond

OTHERS PRESENT:
Ms. Heather Gunn, Court Reporter, Halasz Reporting & Videoconference
Ms. Beverly Crandell, Federal OSHA
Steven P. Jacks, Esq., Office of the Attorney General

Mr. Ed Boulanger, Safety Resource Associates, LLC

ORDERING OF AGENDA

Mr. Tommy Thurston, Vice Chair/Presiding Officer, called the meeting to order at 10:00 a.m., and noted that there was a quorum. Mr. Thurston asked for a motion to approve the Agenda. Dr. Jim Mundy moved to accept the Agenda, and Mr. Satish Korpe properly seconded the motion. The Agenda was approved, as submitted, and the motion was carried by unanimous voice vote.

APPROVAL OF MINUTES

Mr. Thurston asked the Board for a motion to approve the Minutes from the May 24, 2012 Board meeting. On proper motion by Mr. Korpe and seconded by Dr. Mundy, the Minutes were approved, as submitted, by unanimous voice vote.

ELECTION OF OFFICERS

Mr. Thurston requested nominations for the office of Board Chair. Mr. Chuck Stiff nominated the current Vice Chair, Mr. Thurston, for Chair. There were no other nominations. Mr. Thurston was elected as Chair.

Next, Chairman Thurston requested nominations for the office of Vice Chair. Mr. Korpe nominated himself. There were no other nominations. Mr. Korpe was elected as Vice Chair. With respect to appointing a Secretary, Mr. John Crisanti informed Mr. Thurston that he did not have to appoint a Secretary today; instead, prior to the next meeting, Mr. Thurston can select someone who agrees to hold the position and announce his selection at the next meeting.

PUBLIC COMMENTS

Mr. Thurston opened the floor to comments from the public, however, there were no comments.

OLD BUSINESS

Report on Periodic Review of Certain Regulations: Public Participation Guidelines, 16VAC25-11, and Regulation Concerning Licensed Asbestos Contractor Notification, Asbestos Project Permits, and Permit Fees, 16VAC25-20

Ms. Reba O'Connor, Regulatory Coordinator for the Department of Labor and Industry, informed the Board 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.

She continued by stating that, at its meeting on May 24, 2012, the Department notified the Board that these two regulations had been identified for Periodic Review. Since that meeting, these regulations were reviewed by the Department. The Public Comment period for these regulations

was from August 13, 2012 through September 3, 2012. No comments were received for either regulation.
Ms. O'Connor explained that, pursuant to § 2.2-4007.1E and F of the *Code of Virginia*, the Department is obligated to evaluate the economic impact of these regulations on small businesses. Such evaluation is to include the following factors: (1) the continued need for the regulation; (2) the complexity of the regulation; (3) the extent to which the regulation overlaps, duplicates, or conflicts with federal or state law or regulation; and (4) the length of time since the regulation has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the regulation. She added that the discussion must also include the agency's determination as to whether the regulation should be amended, repealed, or retained consistent with the stated objectives of applicable law, to minimize economic impact of regulations on small businesses.

As a result of this Periodic Review, Ms. O'Connor recommended, on behalf of the Department, retention of these existing regulations in their current forms.

Ms. O'Connor's recommendation, on behalf of the Department, was properly moved and seconded and the motion was approved unanimously by voice vote.

NEW BUSINESS

Bloodborne Pathogens Standards, §1910.1030; and Corrections and Technical Amendment

Mr. Ron Graham, Director of Occupational Health Compliance, explained that federal OSHA made a technical amendment to its Bloodborne Pathogens Standard by moving the paragraph on sharps injury log requirements from paragraph (i), entitled "Dates," to paragraph (h), entitled "Recordkeeping."

He explained that on January 18, 2001, when federal OSHA revised the Bloodborne Pathogens Standard to include requirements of the Needlestick Safety and Prevention Act, these revisions included adding a fifth subparagraph entitled "Sharps injury log," to paragraph (h) of 1910.1030. However, in the July 1, 2001, publication of the Code of Federal Regulations (CFR), subparagraph (5) was placed under paragraph (i) ("Date"). The corrections and technical amendment made in this action removed subparagraph (5) from paragraph (i) and relocated it to paragraph (h) ("Recordkeeping").

In conclusion, Mr. Graham requested on behalf of the Department of Labor and Industry, that the Board adopt the Corrections and Technical Amendment to the Bloodborne Pathogens Standard, §1910.1030, as authorized by Virginia Code §§40.1-22(5) and 2.2-4006.A.4(c), with an effective date of January 1, 2013.

A motion was properly made and seconded and the Department's recommendation was approved unanimously by voice vote.

Rigging Equipment for Material Handling Construction Standard, §1926.251; Correction and Technical Amendment

Mr. Jim Garrett, Director of VOSH Programs, explained that federal OSHA has removed several outdated tables that specify safe working loads, and revised other provisions that referenced the outdated tables. He stated that OSHA added requirements that prohibit employers from loading slings in excess of the recommended safe working load prescribed on identification markings located on or attached to each sling. He stated that these requirements also prohibit the use of slings that do not have such markings. He informed the Board that the purpose of this revision is to remove the outdated tables that specify safe working loads and to revise other provisions that referenced the outdated tables.

Mr. Garrett informed the Board that no impact on employers, employees or the Department is anticipated as a result of adopting these revisions.

In conclusion, Mr. Garrett recommended that the Board adopt the Correction and Technical Amendment to the Final Rule for Rigging Equipment for Material Handling Construction Standard, §1926.251, as authorized by Virginia Code §§40.1-22(5) and 2.2-4006.A.4(c), with an effective date of January 1, 2013.

A motion was properly made and seconded, and the Department's recommendation was approved unanimously by voice vote.

Corrections and Technical Amendments to Multiple Standards

Mr. Garrett explained that federal OSHA has corrected the medical evaluation questionnaire in Appendix C of its Respiratory Protection Standard, §1910.134, by removing the term "fits" and leaving the word "seizures" in a Question 7.d. He stated that OSHA has corrected its Mechanical Power Presses Standard for General Industry, §1910.217, by restoring requirements that were removed inadvertently from the regulatory text. He added that the third revision was to Subpart L of its Scaffold Standards for Construction, Part 1926, to correct a cross reference made in two paragraphs in Appendix A.

Mr. Garrett informed the Board that no impact on employers, employees or the Department is anticipated as a result of adopting these revisions.

In conclusion, Mr. Garrett recommended, on behalf of the Department of Labor and Industry, that the Board adopt the Corrections and Technical Amendments to the following final rules: Respiratory Protection, §1910.134; Mechanical Power Presses, §1926.251, and (Non-Mandatory) Appendix A to Subpart L of Part 1926, Scaffold Specifications, as authorized by Virginia Code §§40.1-22(5) and 2.2-4006.A.4(c), with an effective date of January 1, 2013.

A motion was properly made and seconded, and the Department's recommendation was approved unanimously by voice vote.

Updating OSHA Standards Based on National Consensus Standards for Head protection; Direct Final Rule for Multiple Standards; and Correction to Direct Final Rule

Mr. Garrett began by explaining that on January 22, 2012, federal OSHA issued this Direct Final Rule to revise the personal protective equipment sections of its general industry, shipyard employment, longshoring, and marine terminal standards regarding requirements for head protection, along with an identical proposed rule at 77 FR 37617. He stated that OSHA updated the references in §§1910.135 (b)(1), 1915.155 (b)(1), 1917.93(b)(1), 1918.103(b)(1), to recognize the 2009 Edition of the American National Standard for Industrial Head Protection, ANSI Z89.1.

He continued by explaining that the provisions in the 2009 Edition of ANSI Z89.1 permit optional testing for helmets worn in the backwards position, reverse wearing; optional testing for helmets in colder temperatures than provided in the previous editions; and optional testing for the high-visibility coloring of helmets.

Mr. Garrett informed the Board that changes in the 2009 Edition of ANSI Z89.1 include the following: 1) removing the definition of "cap" and "hat" and inserting the definitions of "manufacturer" and "test plaque" in the 2009 Edition; 2) permitting the testing facility to determine an appropriate size of the headform if the manufacturer did not specify the size; 3) requiring orientation of test samples in the normal wearing position when conducting various test procedures; and 4) removing vertical guard rails from the lists of necessary components for specified test equipment.

He added that the 2009 revision to the General Industry and Maritime Industry personal protective equipment standards, however, did not address the construction standards requiring personal protective equipment. Therefore, the construction standards at §1926.100 (b) and (c) still required compliance with the older ANSI Z89.1-1969 and ANSI Z89.2-1971, respectively. To bring the construction standard up-to-date and to ensure consistency across all of its standards, federal OSHA amended §1926.100 and replaced the outdated head protection references with the same three most recent editions of ANSI Z89.1-2003, or ANSI Z89.1-2009.

Mr. Garrett explained that the 2009 Edition of ANSI Z89.1 defines Types I and II helmets by the area of the head to which the helmets afford protection, rather than by whether the helmets have a brim. It also renames the classes of helmets tested for protection against electrical hazards (i.e., classes G, E, and C instead of A, B, and C), although it still bases helmet classification on the capacity of the helmet to protect employees from electrical hazards. The 2009 edition of ANSI Z89.1 eliminates a fourth class of helmets used in fire fighting. More importantly, ANSI revised the performance requirements and test methods. The 2009 Edition of ANSI Z89.1 includes fundamental updates such as more and different types of test methods, and use of different equipment for performing these test methods.

He explained that the purpose of this Direct Final Rule is to update the references in OSHA's standards to recognize the 2009 Edition of the American National Standard for Industrial (ANSI) Z89.1, Head Protection, and to delete the outdated 1986 Edition of that national consensus standard.

Mr. Garrett continued by stating that adopting this Direct Final Rule will enable employers to continue to use the same equipment they are using currently to meet their compliance obligation under the existing standards' design-criteria requirements. The Direct Final Rule will eliminate confusion and clarify employer obligations, while providing up-to-date protection for workers exposed to falling objects. It also provides employers with additional options for meeting the design-criteria requirements for head protection – options most employers are already using. These revisions will enhance employee protection by making the requirements of its Head Protection Standards consistent with current industry practices. He added that no impact on the Department is anticipated by adopting these revisions.

In conclusion, Mr. Garrett recommended that the Board adopt federal OSHA's Direct Final Rule Updating OSHA Standards Based on National Consensus Standards for Head Protection affecting Multiple Standards; and the Correction to the Direct Final Rule, as authorized by Virginia Code §§40.1-22(5) and 2.2-4006.A.4(c), with an effective date of January 1, 2013.

A motion was properly made and seconded, and the Department's recommendation was approved unanimously by voice vote.

Cranes and Derricks in Construction; Demolition and Underground Construction; Direct Final Rule

Mr. Garrett informed the Board that this Direct Final Rule has applied the same crane rules to underground construction and demolition that were already being used by other construction sectors, and has streamlined federal OSHA's standards by eliminating the separate cranes and derricks standard currently used for underground demolition work. He also informed the Board that the Direct Final Rule corrected several errors introduced in the 2010 rulemaking.

Next, he explained Direct Final Rulemaking and that it 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.

By way of background, Mr. Garrett explained that on August 9, 2010, federal OSHA issued new requirements for Cranes and Derricks in Construction under Subpart CC. For most construction work, the new Cranes and Derricks in Construction Standard replaced the prior Cranes and Derricks Standard, §1926.550, which had been in place for more than 40 years. For demolition and underground construction work, however, the protective requirements of §1926.550 were no longer covered in federal OSHA's construction regulations. As a result, federal OSHA had to reestablish the substance of the demolition and underground construction provisions in a new subpart DD, which was in the updated Cranes and Derricks in Construction Standard. A second error was made, however. In the rulemaking process for the final rule for Cranes and Derricks in Construction, federal OSHA inadvertently deleted the requirements addressing material, personnel, overhead hoists, and elevators in demolition and underground construction work by requiring employers to follow the requirements of Subpart DD for demolition and underground construction work.

With respect to impact, Mr. Garrett informed the Board that these revisions clarify employer obligations by avoiding the confusion that would result if Subpart CC covers part of a project and existing Subpart DD covers another part of the project. Employer compliance is anticipated to increase because all construction operations involving cranes and derricks are subject to a single rule rather than by having a few operations subject to a different rule. Also, demolition and underground construction contractors will no longer be subject to the outdated requirements in prior §1926.550. Employee safety is enhanced by the assurance that the construction workers involved in demolition and underground construction receive the same safety protections from recently published Subpart CC s other construction workers. He stated that no additional impact on the Department is anticipated as a result of the adoption of the Direct Final Rule.

In conclusion, Mr. Garrett recommended that the Board adopt the Direct Final Rule for Cranes and Derricks in Construction: Demolition and Underground Construction, §§1926.856 and 1926.858, and 1926.800, respectively, as authorized by Virginia Code §§40.1-22(5) and 2.2-4006.A.4(c), with an effective date of January 1, 2013.

A motion was properly made and seconded, and the Department's recommendation was approved unanimously by voice vote.

Hazard Communication Standard, §1910.1200; Final Rule; and Other Related Standards in Parts 1910, 1915 and 1926

Mr. Graham began by requesting that the Board consider for adoption federal OSHA's revised final rule for the Hazard Communication Standard as well as other related standards found in parts 1910, 1915, and 1926.

He explained that hazard communication is currently addressed in many different international, national, and local authorities, and that these existing requirements are not always consistent, and often they contain different definitions of hazards and varying provisions for what information is required on labels and safety data sheets.

During his power point presentation about the Hazard Communication Standard, Mr. Graham discussed in detail what the Global Harmonization System is; why OSHA aligned the Hazard Communication Standard with the Global Harmonization System; principles and assumptions; notable Changes; organization of the final rule; appendices; purpose, scope and definitions; hazard classification; hazards not otherwise classified; written hazard communication program; labels and other forms of warning; HCS pictograms and hazards; safety data sheets and format; employee information and training; trade secrets; effective dates; and other affected standards.

After responding to numerous questions about the Hazard Communication Standard from Board members, Mr. Graham concluded by recommending that the Board adopt the final rule for the Hazard Communication Standard, §1910.1200 and other related standards in Parts 1910, 1925 and 1926, as authorized by Virginia Code §40.1-22(5) and 2.2-4006A.4(c), with an effective date of January 1, 2013.

A motion was properly made and seconded, and the Department's recommendation was approved unanimously by voice vote.

Items of Interest from the Department of Labor and Industry

Mr. John Crisanti, Manager, Office of Planning and Evaluation, informed the Board that he had two issues to discuss with them: 1) he reminded the Board that the terms of five members expired at the end of June of this year, and that Board members continue to serve on the Board until they are reappointed or replaced. Also, he informed the Board that two members have left the Board: Eloisa Rea has moved away from Virginia, and, therefore, is no longer on the Board and more recently Mike Pischke, Boiler and Pressure Vessel Employee Representative, is taking a new job with another company and has also resigned his commission on the Board. 2) Two regulations that the Board approved previously on January 14, 2010 now have been approved by the Governor: Boiler and Pressure Vessel Rules and Regulations, 16VAC25-50, and the Amendment to the Administrative Regulation for the Virginia Occupational Safety and Health (VOSH) Program, 16VAC25-60-240 and 16VAC25-60-245, Take and Preserve Testimony, Examine Witnesses and Administer Oaths. These regulations will next be filed with *The Virginia Register of Regulations* to become effective after a 30-day publication period.

Courtney M. Malveaux, Esq., Commissioner of the Department of Labor and Industry, thanked the Board for their time and diligence and also John Crisanti, Regina Cobb, Jim Garrett and Ron Graham, who ensure that Virginia is compliant with federal OSHA. He praised the solid leadership of Jim Garrett, Bill Burge, and Chris Childress for working with the Workers' Compensation Commission (WCC) to utilize some of WCC's data to identify where workers are getting injured and trying to boost the Department's general inspection list.

Commissioner Malveaux then mentioned finding new ways for the Department to be responsive to where industry is going, and that the Department has submitted a request for additional positions with our Voluntary Protection Program (VPP). He stated that we do not have voluntary protection for construction, but added that the Department is "doing some very creative work and partnering with others and stakeholders" to expand VPP resources to assist in construction areas.

Commissioner Malveaux noted that Warren Rice has been the Department's point person for the Safety and Health Achievement Recognition Program (SHARP), VPP for small business. Again, partnering opportunities with the Workers' Compensation Commission to leverage funds to create new consultation positions are being looked into by Warren Rice and Nancy Sanders. He stated that the Department is "beefing up" voluntary compliance and working with industry to increase safety.

Commissioner Malveaux reminded the Board of the upcoming 17th Virginia Occupational Safety and Health (VOSH) Conference to be held at the Hotel Roanoke in Roanoke from October 2 - 5, 2012.

He mentioned that the Department is doing public service announcements and getting word out through electronic media, such as Facebook and Twitter. He informed the Board that Sharon

Sykes of the Department has been working on disseminating information. A vendor will produce PSAs for the Department.

He stated that there has been a very significant drop in fatalities over the past five-year span.

Items of Interest from Members from the Board

There Board members had no items of interest to share.

Adjournment

There being no further business, Mr. Stiff made the motion to adjourn the meeting. Ms. Jolly properly seconded the motion which was carried unanimously by voice vote. The meeting adjourned at 11:45 a.m.

COMMONWEALTH of VIRGINIA

DEPARTMENT OF LABOR AND INDUSTRY

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COMMISSIONER

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VIRGINIA SAFETY AND HEALTH CODES BOARD

BRIEFING PACKAGE FOR

March 14, 2013

Proposed Regulation:
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 consider for adoption as a proposed regulation of the Board an amendment to the Regulation Concerning Certified Lead Contractors Notification, Lead Project Permits and Permit Fees, 16VAC25-35, pursuant to the Virginia Administrative Process Act (§2.2-4007.01).

II. Summary of Proposed Regulation.

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.

This proposed 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) [See attachments].

B. Impact on Employers.

Licensed lead contractors will have to submit written notification for all lead projects, as defined under 16VAC25-35-10, regardless of the contract price for the lead project. Since there will no longer be a contractor price threshold of $2,000, lead abatement contractors will be required to submit more notification permit applications. Otherwise, the permit fee under Subsection C.1. does not change. More notification permit applications will increase the overall costs of lead permit fees that contractors need to pay in order to get their lead abatement permit.

C. Impact on Employees.

No impact is anticipated on Virginia employees.

D. Impact on the Department of Labor and Industry.

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 11884 (March 10, 1999) http://www.gpo.gov/fdsys/pkg/FR-1999-03-10/pdf/99-5821.pdf
69 FR 18489 – 18496 (April 8, 2004) http://www.gpo.gov/fdsys/pkg/FR-2004-04-08/pdf/04-7980.pdf

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 276755, 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.

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 $\geq$ 10µg/dL was 154. The total number of children confirmed with elevated blood levels $\geq$ 15µg/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**	
	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 AUTHORIZATION			
	Commitments/Deliverables	**Status/Comment/Accomplishments**	
	Activities 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/ACCREDITATION/NOTIFICATION			
	Commitments/Deliverables	**Status/Comment/ Accomplishments**	
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.	**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

	Through operation of 1-800 hotline.	**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
	Through media outreach campaigns	**Completed: 2** 1) **120,000** Richmond Magazine 2) **60,000** Richmond Guide circulated	No media campaigns this period
	Number of coalitions formed	**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
CATEGORY 5: ENFORCEMENT			
	Commitments/Deliverables	**Status/Comment/ Accomplishments**	
	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 DOLI	6	3
	# of other 402 inspections	0	1
	Number of tips/complaints **received** (A sheet(s) which describes the location and nature of complaint will be provided. VDH, DOLI, DPOR	0	0
	Number of 406(b) and/or 1018 complaints referred to EPA	0-direct Many may be referred through EPA	0-direct Many may be referred through EPA

	# of project designer refresher training courses accredited.	4	3
	# of abatement worker initial training courses accredited	14	14
	# of abatement worker refresher training courses accredited.	7	7
	Number of lead abatement notifications received for child occupied building (child care center, kindergarten classroom) and residential dwelling. DOLI	6-DOLI	0-DOLI
	Number of training provider course notifications received.	217	250
MISCELLANEOUS			
	Commitments/Deliverables	**Status/Comments/ 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 ug/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/Comment/ Accomplishments**	
	VDH Submit semi-annual report on compliance assistance activities by April 30th and October 31st 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.)	**October 1 – March 31** Completed	**April 1 – September 30** Completed
	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).	**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 dissemination of information at conference, expos, presentations, demonstrations, etc.	**21** Lead Dustbuster Trainings; **606** through visits to realtors; building code officials and through Hampton Roads Home &Garden Show	**14** Lead Dustbuster Trainings; **486** through visits to realtors; building code officials
	Through contact on State Web site	**14,799 visitors**	**16,672 visitors**

Work Plan Budget

Category Budget	Task/ Deliverables	Comments
Personnel: $337,000	*1.0 FTE Program Director	*Program Director position filled: Nancy Van Voorhis; Administrative Assistant position filled as a Contractual Health Promotion Specialist*
Travel: $61,035	*Out-of-State travel for quarterly, annual and interstate EPA meetings (VDH/DPOR/DOLI) *Out-of-Sate travel for Lead Conference (VDH & DPOR) *In-State travel of LBP Risk Assessor Training	*Lead-based paint trainings are on track; 3 attended EPA regional meeting 3/31/2011 in Philadelphia, PA. Program Director attended National Lead and Healthy Homes Conference in Denver, June 20-23, 2011 and two attended EPA RRP Rule Meeting at Washington, D.C.8/2/2011.*
Supplies: $133,315	*Compliance assistance/educational brochures *Packets for materials for environmental health educator to distribute *Lead Dustbuster kit supplies *Subscriptions and periodicals *Office supplies	*Due to the state budget crisis, there was a restriction placed on printing educational materials at VDH first semester. Waiting on Virginia to promulgate RRP before compliance assistance educational brochures are developed/distributed. Educational brochures for outreach to high-risk populations were re-stocked second semester. Packets for families of lead-poisoned children and others that call into the toll-free line were compiled second semester. Educational materials were distributed statewide through Website order form.*
Contractual: $256,625	*Contractual Compliance Educators *Information Technology Support *Risk Assessor Training/Licensure (17 students/year)	*Positions filled: Kris Meek and Elizabeth Tuck* *Web page updated continuously; environmental data are tracked* *10-students attended Inspector/Risk Assessor training first semester and 4 second semester for a total of 14.*
Other: $193,895	*Working lunches 2 Virginia Lead Elimination Plan Committee *Schneider Labs *Legal fess *Capacity building for VA's promulgation of EPA's RRP *Postage *Management /other training for director *Outbound freight distribution of educational materials *Storage/Building Rental *Lodging	*DPOR is building a database capacity to be able to handle the influx of applications and record keeping for the RRP when promulgated. The Lead Elimination Work Group ended, so meetings are no longer required and these funds are being used to support environmental tracking of investigations. Other fees and charges are predictable.*

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

RECOMMENDED ACTION

Staff of the Department of Labor and Industry recommends that the Safety and Health Codes Board consider for adoption the proposed regulation amending the Regulation Concerning Certified Lead Contractors Notification, Lead Project Permits and Permit Fees, 16VAC23-35, pursuant to the Virginia APA Act (§2.2-4007.01).

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.

16VAC25-35, Proposed Regulation to Amend the Regulation Concerning Certified Lead Contractors Notification, Lead Project Permits and Permit Fees

As Adopted by the

Safety and Health Codes Board

Date: _____

VIRGINIA DEPARTMENT OF LABOR AND INDUSTRY

16VAC25-35-30. 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 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 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.

COMMONWEALTH of VIRGINIA

DEPARTMENT OF LABOR AND INDUSTRY

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VIRGINIA SAFETY AND HEALTH CODES BOARD

BRIEFING PACKAGE

FOR March 14, 2013

Corrections and Technical Amendment to the Hazard Communication Standard, §1910.1200; and Related Standards

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 Amendment to Final Rule for the Hazard Communication Standard, §1910.1200, and related Standards, as published in 78 FR 9311 on February 8, 2013.

The proposed effective date is for June 15, 2013.

II. Summary of the Corrections and Technical Amendment.

Federal OSHA has made corrections and technical amendments to its regulations that were amended by the Hazard Communication Standard which was published in the *Federal Register* on March 28, 2012 (77 FR 17574). Most of the corrections change references in other OSHA standards from "material safety data sheet" (MSDS) to "safety data sheet"(SDS), which OSHA inadvertently missed in its 2012 revisions to the standard. Other corrections include correcting values or notations in tables and updating references to terms defined in the Hazard Communication Standard Final Rule. For the complete list of changes, see Appendix A of this briefing package.

III. **Basis, Purpose and Impact of the Corrections and Technical Amendment.**

A. **Basis and Purpose.**

In this revision, federal OSHA has only corrected certain errors of a minor and mainly typographical nature.

B. **Impact on Employers.**

No impact on employers is anticipated as a result of the adoption of these corrections and technical amendment.

C. **Impact on Employees.**

No impact on employees is anticipated as a result of the adoption of these corrections and technical amendment.

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

No impact on the Department is anticipated as a result of the adoption of these corrections and technical amendment.

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

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RECOMMENDED ACTION

Staff of the Department of Labor and Industry recommends that the Safety and Health Codes Board adopt the Corrections and Technical Amendment to the Hazard Communication Standard, § 1910.1200, and related standards, as authorized by Virginia Code §§ 40.1-22(5) and 2.2-4006.A.4(c), with an effective date of June 15, 2013.

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.

The following table contains a summary of the codified changes made to the Hazard Communication Final Rule. The changes are listed by the standard being corrected and a summary of the correction being made.

Standard	Correction
§1910.119 (d)(1) and Appendix C.	"material safety data sheet" and the acronym "MSDS" are corrected to "safety data sheet" and "SDS", respectively.
§1910.120(g), Appendices A & E.	"material safety data sheet" and the acronym "MSDS" are corrected to "safety data sheet" and "SDS", respectively.
§1910.1001, Appendix J	"material safety data sheet" and the acronym "MSDS" are corrected to "safety data sheet" and "SDS", respectively.
§1910.1044, Appendix B ...	Reference to "Class IIIA combustible liquid" is corrected to "Category 4 flammable liquid".
§1910.1048, Appendix A ...	The flammability class reference in Appendix A is updated to align with the 1910.1200.
§1910.1051 (l)(1)(ii)	"center nervous system effects" is corrected to "central nervous system effects".
§1910.1052, Appendix A ...	The example label language in Appendix A is removed and the Appendix is corrected to reference classification and label requirements provided in 1910.1200. "material safety data sheet" and the acronym "MSDS" are corrected to "safety data sheet" and "SDS".
§1910.1200, Appendix E ...	Remove the entire Appendix E entitled, "Appendix E to §1910.1200-(Advisory)-Guidelines for Employer Compliance".
§1910.1200 (d)(4), (d)(5), and (d)(6)	Remove paragraphs (d)(4), (d)(5), and (d)(6).
§1910.1200, Appendix A, Table A.1.1 Note (a).	Remove the word "Steward".
§1910.1200, Appendix A, Paragraph A.1.2, Table A.1.1.	Dermal Category 1 value of "≤5" is corrected to read "≤50".
§1910.1200, Appendix A, Paragraph A.2.4.3.1.	The concentration of "relevant ingredients" of a mixture is corrected from ">1%" to "≥1%".

§1910.1200, Appendix A, Paragraph A.3.4.3.1.	The concentration of "relevant ingredients" of a mixture is corrected from ">1%" to "≥1%".
§1910.1200, Appendix B, Paragraph B.3.2, Table B.3.1.	Reformat table to clarify application of hazard categories.
§1910.1200, Appendix F, Part A.	Correct the paragraph numbering in the first column. The second subsection under the heading *Carcinogenicity in experimental animals* is corrected to read "(b)".
§1910.1200, Appendix F, Part D.	The NTP RoC column of the Table is corrected to indicate that the text "Reasonably Anticipated (See Note 1)" is intended to refer to both lines (IARC Group 2A and 2B, and GHS Category 1B and 2), and the subparagraphs in paragraph 3 of Note 1 are corrected to "a" and "b" rather than "c" and "d".
§1915.1001, Appendix K ...	"material safety data sheet" and the acronym "MSDS" are corrected to "safety data sheet" and "SDS", respectively.
§1926.64, Appendix C	"material safety data sheet" and the acronym "MSDS" are corrected to "safety data sheet" and "SDS", respectively.
§1926.65, Appendix E	"material safety data sheet" is corrected to "safety data sheet".
§1926.1101, paragraph (k)(8)(v).	Paragraphs (k)(8)(iv)(B) and (k)(8)(v) are repetitive; paragraph (k)(8)(v) is designated as "Reserved."

Hazard Communication Standard, §1910.1200; Corrections and Technical Amendment

As Adopted by the

Safety and Health Codes Board

Date: _____

VIRGINIA DEPARTMENT OF LABOR AND INDUSTRY

VIRGINIA OCCUPATIONAL SAFETY AND HEALTH PROGRAM

VIRGINIA DEPARTMENT OF LABOR AND INDUSTRY

Effective Date: _____

16 VAC25-90-1910.119
16VAC25-90-1910.120
16VAC25-90-1910.1001
16VAC25-90-1910.1044
16VAC25-90-1910.1048
16VAC25-90-1910.1051
16VAC25-90-1910.1052, Appendix A
16VAC25-90-1910.1200, Appendix A
16VAC25-90-1910.1200, Appendix B
16VAC25-90-1910.1200, Appendix F
16VAC25-100-1915.1001
16VAC25-175-1926.64
16VAC25-175-1926.65
16VAC25-175-1926.1101

When the regulations, as set forth in the Corrections and Technical Amendment to the Hazard Communication Standard Final Rule, 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
February 8, 2013	June 15, 2013

Accordingly, OSHA is amending 29 CFR parts 1910, 1915, and 1926 by making the following corrections and technical amendments:

PART 1910—OCCUPATIONAL SAFETY AND HEALTH STANDARDS

Subpart H—[Amended]

■ 1. The authority citation for Part 1910 Subpart H continues to read as follows:

Authority: Sections 4, 6, and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 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 5–2007 (72 FR 31159), 4–2010 (75 FR 55355) or 1–2012 (77 FR 3912), 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 Section 304, Clean Air Act Amendments of 1990 (Pub. L. 101–549), reprinted at 29 U.S.C.A. 655 Note.

Section 1910.120 also issued under Section 126, Superfund Amendments and Reauthorization Act of 1986 as amended (29 U.S.C.A. 655 Note), and 5 U.S.C. 553.

§ 1910.119 [Amended]

■ 2. Amend § 1910.119 as follows:
■ a. Remove the words "Material Safety Data Sheets" and add in their place "safety data sheets" in the note following paragraph (d)(1).
■ b. In Appendix C to § 1910.119, remove "material safety data sheet (MSDS)" in the second paragraph in section 3 and add in its place "safety data sheet (SDS)" and remove "MSDS" in the first paragraph in section 6 and add in its place "SDSs".
■ c. In Appendix C to § 1910.119, remove the words "material safety data sheets" and add in their place "safety data sheets" in the seventh paragraph in section 13.

§ 1910.120 [Amended]

■ 3. Amend § 1910.120:
■ a. By removing the acronym "MSDS" and adding in its place "SDS" wherever it appears; and
■ b. In Appendix E to § 1910.120, by removing the words "material safety data sheets" and adding in their place "safety data sheets" wherever they appear.

Subpart Z—[Amended]

■ 4. The authority citation for Part 1910 Subpart Z continues to read as follows:

Authority: Sections 4, 6, 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), 4–2010 (75 FR 55355), or 1–2012 (77 FR 3912), as applicable; and 29 CFR part 1911.

All of subpart Z issued under section 6(b) of the Occupational Safety and Health Act of 1970, 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, but not under 29 CFR part 1911 except for the arsenic (organic compounds), benzene, cotton dust, and chromium (VI) listings.

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

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

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

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

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

§ 1910.1001 [Amended]

■ 5. Amend § 1910.1001 as follows:
■ a. Remove the words "material safety data sheet" and add in their place "safety data sheet" wherever they appear in Appendix J;
■ b. Remove the acronym "MSDS" and add in its place "SDS" wherever it appears in Appendix J.

§ 1910.1044 [Amended]

■ 6. Amend § 1910.1044 as follows:
■ a. Remove the phrase "Class IIIA combustible liquid" and add in its place "Category 4 flammable liquid" wherever it appears in Appendix B.

§ 1910.1048 [Amended]

■ 7. Amend § 1910.1048 by removing the phrase "Flammability Class (OSHA): III A" and adding in its place "Flammability (OSHA): Category 4 flammable liquid" wherever it appears in Appendix A.

■ 8. Amend § 1910.1051 by revising paragraph (l)(1)(ii) to read as follows:

§ 1910.1051 1,3-Butadiene.

* * * * *

(l) * * *

(1) * * *

(ii) In classifying the hazards of BD at least the following hazards are to be addressed: Cancer; eye and respiratory tract irritation; central nervous system effects; and flammability.

* * * * *

■ 9. Amend § 1910.1052, in Appendix A, by revising paragraph E in section X to read as follows:

§ 1910.1052 Methylene Chloride.

* * * * *

Appendix A to § 1910.1052—Substance Safety Data Sheet and Technical Guidelines for Methylene Chloride

* * * * *

X. Access to Information

* * * * *

E. Your employer is required to provide labels and safety data sheets (SDSs) for all materials, mixtures or solutions composed of greater than 0.1 percent MC. These materials, mixtures or solutions would be classified and labeled in accordance with § 1910.1200.

* * * * *

■ 10. Amend § 1910.1200 as follows:
■ a. Remove paragraphs (d)(4) through (6).
■ b. Remove the word "Steward" in Appendix A, Table A.1.1 Note (a).
■ c. Remove the value of "≤5" and add in its place "≤50" for Dermal Category 1 in Appendix A, paragraph A.1.2, Table A.1.1.
■ d. In Appendix A, revise paragraphs A.2.4.3.1 and A.3.4.3.1.
■ e. In Appendix B, in paragraph B.3.2, revise Table B.3.1.
■ f. Remove the second occurrence of Appendix E (entitled "(Advisory)—Guidelines for Employer Compliance").
■ g. In Appendix F, in Part A, redesignate the second paragraph (a) under "carcinogenicity in experimental animals" as paragraph (b) and revise Part D.

The revisions read as follows:

§ 1910.1200 Hazard Communication.

* * * * *

Appendix A to § 1910.1200—Health Hazard Criteria (Mandatory)

* * * * *

A.1 ACUTE TOXICITY

* * * * *

TABLE A.1.1—ACUTE TOXICITY HAZARD CATEGORIES AND ACUTE TOXICITY ESTIMATE (ATE) VALUES DEFINING THE RESPECTIVE CATEGORIES

Exposure route	Category 1	Category 2	Category 3	Category 4
Oral (mg/kg bodyweight) see: Note (a) Note (b)	≤ 5	>5 and ≤ 50	>50 and ≤ 300	>300 and ≤ 2000.
Dermal (mg/kg bodyweight) see: Note (a) Note (b)	≤ 50	>50 and ≤ 200	>200 and ≤ 1000	>1000 and ≤ 2000.
Inhalation—Gases (ppmV) see: Note (a) Note (b) Note (c)	≤ 100	>100 and ≤ 500	>500 and ≤ 2500	>2500 and ≤ 20000.
Inhalation—Vapors (mg/l) see: Note (a) Note (b) Note (c) Note (d)	≤ 0.5	>0.5 and ≤ 2.0	>2.0 and ≤ 10.0	>10.0 and ≤ 20.0.
Inhalation—Dusts and Mists (mg/l) see: Note (a) Note (b) Note (c)	≤ 0.05	>0.05 and ≤ 0.5	>0.5 and ≤ 1.0	>1.0 and ≤ 5.0.

* * * * *

A.2 SKIN CORROSION/IRRITATION

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A.2.4

* * *

A.2.4.3

* * *

A.2.4.3.1. For purposes of classifying the skin corrosion/irritation hazards of mixtures in the tiered approach:

The "relevant ingredients" of a mixture are those which are present in concentrations ≥1% (weight/weight for solids, liquids, dusts, mists and vapors and volume/volume for gases.) If the classifier has reason to suspect that an ingredient present at a concentration <1% will affect classification of the mixture for skin corrosion/irritation, that ingredient shall also be considered relevant.

* * * * *

A.3 SERIOUS EYE DAMAGE/EYE IRRITATION

* * * * *

A.3.4 * * *

A.3.4.3 * * *

A.3.4.3.1 For purposes of classifying the eye corrosion/irritation hazards of mixtures in the tiered approach:

The "relevant ingredients" of a mixture are those which are present in concentrations ≥1% (weight/weight for solids, liquids, dusts, mists and vapors and volume/volume for gases.) If the classifier has reason to suspect that an ingredient present at a concentration <1% will affect classification of the mixture for eye corrosion/irritation, that ingredient shall also be considered relevant.

* * * * *

Appendix B to § 1910.1200—Physical Hazard Criteria (Mandatory)

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B.3 FLAMMABLE AEROSOLS

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B.3.2 Classification Criteria

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TABLE B.3.1—CRITERIA FOR FLAMMABLE AEROSOLS

Category	Criteria
1	Contains ≥ 85% flammable components and the chemical heat of combustion is ≥ 30 kJ/g; or (a) For spray aerosols, in the ignition distance test, ignition occurs at a distance ≥ 75 cm (29.5 in), or (b) For foam aerosols, in the aerosol foam flammability test (i) The flame height is ≥ 20 cm (7.87 in) and the flame duration ≥ 2 s; or (ii) The flame height is ≥ 4 cm (1.57 in) and the flame duration ≥ 7 s
2	Contains > 1% flammable components, or the heat of combustion is ≥ 20 kJ/g; and (a) for spray aerosols, in the ignition distance test, ignition occurs at a distance ≥ 15 cm (5.9 in), or in the enclosed space ignition test, the (i) Time equivalent is ≤ 300 s/m^3; or (ii) Deflagration density is ≤ 300 g/m^3 (b) For foam aerosols, in the aerosol foam flammability test, the flame height is ≥ 4 cm and the flame duration is ≥ 2 s and it does not meet the criteria for Category 1

* * * * *

Appendix F to § 1910.1200—Guidance for Hazard Classifications Re: Carcinogenicity (Non-Mandatory)

* * * * *

Part D: Table Relating Approximate Equivalences Among IARC, NTP RoC, and GHS Carcinogenicity Classifications

The following table may be used to perform hazard classifications for carcinogenicity under the HCS (§ 1910.1200). It relates the approximated GHS hazard categories for carcinogenicity to the classifications provided by IARC and NTP, as described in Parts B and C of this Appendix.

APPROXIMATE EQUIVALENCES AMONG CARCINOGEN CLASSIFICATION SCHEMES

IARC	GHS	NTP RoC
Group 1	Category 1A	Known.
Group 2A	Category 1B	Reasonably Anticipated (See Note 1).
Group 2B	Category 2	Reasonably Anticipated (See Note 1).

Note 1:

1. *Limited evidence of carcinogenicity from studies in humans (corresponding to IARC 2A/GHS 1B);*

2. *Sufficient evidence of carcinogenicity from studies in experimental animals (again, essentially corresponding to IARC 2A/GHS 1B);*

3. *Less than sufficient evidence of carcinogenicity in humans or laboratory animals; however:*

a. *The agent, substance, or mixture belongs to a well-defined, structurally-related class of substances whose members are listed in a previous RoC as either "Known" or "Reasonably Anticipated" to be a human carcinogen, or*

b. *There is convincing relevant information that the agent acts through mechanisms indicating it would likely cause cancer in humans.*

* * * * *

PART 1915—OCCUPATIONAL SAFETY AND HEALTH STANDARDS FOR SHIPYARD EMPLOYMENT

Subpart Z—[Amended]

■ 11. The authority citation for Part 1915 continues to read as follows:

Authority: Section 41, Longshore and Harbor Workers' Compensation Act (33 U.S.C. 941); Sections, 4, 6, and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736), 1–90 (55 FR 9033), 6–96 (62 FR 111), 3–2000 (65 FR 50017), 5–2002 (67 FR 65008), 5–2007 (72 FR 31160), 4–2010 (75 FR 55355), or 1–2012 (77 FR 3912), as applicable; and 29 CFR Part 1911.

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 part 1911.

§ 1915.1001 [Amended]

■ 12. Amend § 1915.1001 by removing the words "Material Safety Data Sheet" and adding in their place "safety data sheet" and removing the acronym "MSDS" and adding in its place "SDS" in Appendix K, section 3.1.(e).

PART 1926—OCCUPATIONAL SAFETY AND HEALTH STANDARDS FOR CONSTRUCTION

Subpart D—[Amended]

■ 13. The authority citation for Part 1926 Subpart D continues to read as follows:

Authority: Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3704); Sections 4, 6, and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, and 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 31159), 4–2010 (75 FR 55355), or 1–2012 (77 FR 3912) as applicable; and 29 CFR part 1911.

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

Section 1926.61 also issued under 49 U.S.C. 1801–1819 and 6 U.S.C. 553.

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

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

§ 1926.64 [Amended]

■ 14. Amend § 1926.64 as follows:

■ a. Remove the words "material safety data sheet" and add in their place "safety data sheet" wherever they appear in Appendix C;

■ b. Remove the words "material safety data sheets" and add in their place "safety data sheets" wherever they appear in Appendix C;

■ c. Remove the acronym "MSDS" and add in its place "SDS" wherever it appears in Appendix C.

§ 1926.65 [Amended]

■ 15. Amend § 1926.65 by removing the words "material safety data sheets" and adding in their place "safety data sheets" wherever they appear in Appendix E.

Subpart Z—[Amended]

■ 16. The authority citation for Part 1926 Subpart Z continues to read as follows:

Authority: Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3704); Sections 4, 6, and 8 of the Occupational Safety and Health Act of 1970 (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 31159), 4–2010 (75 FR 55355), or 1–2012 (77 FR 3912) as applicable; and 29 CFR part 1911.

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

§ 1926.1101 [Amended]

■ 17. Amend § 1926.1101 remove and reserve paragraph (k)(8)(v).

[FR Doc. 2013–01416 Filed 2–7–13; 8:45 am]

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COMMONWEALTH of VIRGINIA

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VIRGINIA SAFETY AND HEALTH CODES BOARD

BRIEFING PACKAGE

FOR March 14, 2013

Occupational Exposure to Hazardous Chemicals in Laboratories, §1910.1450: (Non-Mandatory) Appendix A -- National Research Council Recommendations Concerning Chemical Hygiene in Laboratories; Technical Amendment

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 Technical Amendment to the National Research Council Recommendations Concerning Chemical Hygiene in Laboratories in (Non-Mandatory) Appendix A of the Occupational Exposure to Hazardous Chemicals in Laboratories Standard, §1910.1450, as published in 78 FR 4324 on January 22, 2013.

The proposed effective date is for June 15, 2013.

II. Summary of the Amendment.

Federal OSHA has updated a non-mandatory appendix in its Occupational Exposure to Hazardous Chemicals in Laboratories standard to include the contents of the latest National Academy of Sciences publication entitled, "Prudent Practices in the Laboratory: Handling and Management of Chemical Hazards," 2011 edition. This new revision addresses current laboratory practices, security, and emergency response, as well as promoting safe handling of

highly toxic and explosive chemicals and their waste products. All revisions made were minor and non-substantive.

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

A. **Basis.**

In 1990, the Occupational Exposure to Hazardous Chemicals in Laboratories standard was published. At that time, the non-mandatory Appendix A was based on the 1981 edition of "Prudent Practices for Handling Hazardous Chemicals in Laboratories" and the 1983 edition of "Prudent Practices for Disposal of Chemicals from Laboratories", which were both published by the National Academy Press. There have been many subsequent changes in the culture of safety in laboratories since 1983. The National Academies of Science (NAS) recognized these changes and revised and updated earlier "Prudent Practices," reflected in the 2011 edition of "Prudent Practices in the Laboratory: Handling and Management of Chemical Hazards" (National Academies Press). OSHA reviewed the 2011 edition and collaborated with the NAS to revise non-mandatory Appendix A.

B. **Purpose.**

This update to use the 2011 edition of "Prudent Practices" is being done by OSHA as the basis for non-mandatory Appendix A because of its wide distribution and acceptance as well as its preparation by recognized authorities in the laboratory community.

C. **Impact on Employers.**

Adoption of this technical amendment to the non-mandatory Appendix is not expected to have any impact on employers.

D. **Impact on Employees.**

Adoption of this technical amendment to the non-mandatory Appendix is not expected to have any impact on employees.

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

Adoption of this technical amendment to the non-mandatory Appendix is not expected to have any impact on employees.

Federal regulations 29 CFR 1953.23(a) and (b) require that Virginia, within six months of the occurrence of a federal program change, to adopt identical changes or promulgate equivalent changes which are at least as effective as the federal change. The Virginia Code reiterates this requirement in § 40.1-22(5). Adopting these revisions will allow Virginia to conform to the federal program change.

RECOMMENDED ACTION

Staff of the Department of Labor and Industry recommends that the Safety and Health Codes Board adopt the Technical Amendment to the National Research Council Recommendations Concerning Chemical Hygiene in Laboratories, (Non-Mandatory) Appendix A, of the Occupational Exposure to Hazardous Chemicals in Laboratories Standard, §1910.1450, as authorized by Virginia Code §§ 40.1-22(5) and 2.2-4006.A.4(c), with an effective date of June 15, 2013.

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.

Occupational Exposure to Hazardous Chemicals in Laboratories Standard, §1910.1450; Technical Amendment to Appendix A, National Research Council Recommendations Concerning Chemical Hygiene in Laboratories (Non-Mandatory)

As Adopted by the

Safety and Health Codes Board

Date: _____

VIRGINIA DEPARTMENT OF LABOR AND INDUSTRY

VIRGINIA OCCUPATIONAL SAFETY AND HEALTH PROGRAM

VIRGINIA DEPARTMENT OF LABOR AND INDUSTRY

Effective Date: _____

16VAC25-90-1910.1450, Occupational Exposure to Hazardous Chemicals in Laboratories, §1910.1450

When the regulations, as set forth in the Technical Amendment to the National Research Council Recommendations Concerning Chemical Hygiene in Laboratories, (Non-Mandatory) Appendix A, of the Occupational Exposure to Hazardous Chemicals in Laboratories Standard, §1910.1450, are applied to the Commissioner of the Department of Labor and Industry and/or to Virginia employers, the following federal terms shall be considered to read as below:

Federal Terms	VOSH Equivalent
29 CFR	VOSH Standard
Assistant Secretary	Commissioner of Labor and Industry
Agency	Department
January 22, 2013	June 15, 2013

Accordingly, OSHA is amending 29 CFR part 1910 by making the following technical amendment:

PART 1910—OCCUPATIONAL SAFETY AND HEALTH STANDARDS

Subpart Z—[Amended]

■ 2. Amend § 1910.1450 by revising Appendix A to read as follows:

§ 1910.1450 Occupational exposure to hazardous chemicals in laboratories.

* * * * *

APPENDIX A TO § 1910.1450—NATIONAL RESEARCH COUNCIL RECOMMENDATIONS CONCERNING CHEMICAL HYGIENE IN LABORATORIES (NON-MANDATORY)

To assist employers in developing an appropriate laboratory Chemical Hygiene Plan (CHP), the following non-mandatory recommendations were based on the National Research Council's (NRC) 2011 edition of "Prudent Practices in the Laboratory: Handling and Management of Chemical Hazards." This reference, henceforth referred to as "Prudent Practices," is available from the National Academies Press, 500 Fifth Street NW., Washington DC 20001 (*www.nap.edu*). "Prudent Practices" is cited because of its wide distribution and acceptance and because of its preparation by recognized authorities in the laboratory community through the sponsorship of the NRC. However, these recommendations do not modify any requirements of the OSHA Laboratory standard. This appendix presents pertinent recommendations from "Prudent Practices," organized into a form convenient for quick reference during operation of a laboratory and during development and application of a CHP. For a detailed explanation and justification for each recommendation, consult "Prudent Practices."

"Prudent Practices" deals with both general laboratory safety and many types of chemical hazards, while the Laboratory standard is concerned primarily with chemical health hazards as a result of chemical exposures. The recommendations from "Prudent Practices" have been paraphrased, combined, or otherwise reorganized in order to adapt them for this purpose. However, their sense has not been changed.

Section F contains information from the U.S. Chemical Safety Board's (CSB) Fiscal Year 2011 Annual Performance and Accountability report and Section F contains recommendations extracted from the CSB's 2011 case study, "Texas Tech University Laboratory Explosion," available from: *http://www.csb.gov/.*

Culture of Safety

With the promulgation of the Occupational Safety and Health Administration (OSHA) Laboratory standard (29 CFR 1910.1450), a culture of safety consciousness, accountability, organization, and education has developed in industrial, governmental, and academic laboratories. Safety and training programs have been implemented to promote the safe handling of chemicals from ordering to disposal, and to train laboratory personnel in safe practices. Laboratory personnel must realize that the welfare and safety of each individual depends on clearly defined attitudes of teamwork and personal responsibility. Learning to participate in this culture of habitual risk assessment, experiment planning, and consideration of worst-case possibilities—for oneself and one's fellow workers—is as much part of a scientific education as learning the theoretical background of experiments or the step-by-step protocols for doing them in a professional manner. A crucial component of chemical education for all personnel is to nurture basic attitudes and habits of prudent behavior so that safety is a valued and inseparable part of all laboratory activities throughout their career.

Over the years, special techniques have been developed for handling chemicals safely. Local, state, and federal regulations hold institutions that sponsor chemical laboratories accountable for providing safe working environments. Beyond regulation, employers and scientists also hold themselves personally responsible for their own safety, the safety of their colleagues and the safety of the general public. A sound safety organization that is respected by all requires the participation and support of laboratory administrators, workers, and students. A successful health and safety program requires a daily commitment from everyone in the organization. To be most effective, safety and health must be balanced with, and incorporated into, laboratory processes. A strong safety and health culture is the result of positive workplace attitudes—from the chief executive officer to the newest hire; involvement and buy-in of all members of the workforce; mutual, meaningful, and measurable safety and health improvement goals; and policies and procedures that serve as reference tools, rather than obscure rules.

In order to perform their work in a prudent manner, laboratory personnel must consider the health, physical, and environmental hazards of the chemicals they plan to use in an experiment. However, the ability to accurately identify and assess laboratory hazards must be taught and encouraged through training and ongoing organizational support. This training must be at the core of every good health and safety program. For management to lead, personnel to assess worksite hazards, and hazards to be eliminated or controlled, everyone involved must be trained.

A. General Principles

1. Minimize All Chemical Exposures and Risks

Because few laboratory chemicals are without hazards, general precautions for handling all laboratory chemicals should be adopted. In addition to these general guidelines, specific guidelines for chemicals that are used frequently or are particularly hazardous should be adopted.

Laboratory personnel should conduct their work under conditions that minimize the risks from both known and unknown hazardous substances. Before beginning any laboratory work, the hazards and risks associated with an experiment or activity should be determined and the necessary safety precautions implemented. Every laboratory should develop facility-specific policies and procedures for the highest-risk materials and procedures used in their laboratory. To identify these, consideration should be given to past accidents, process conditions, chemicals used in large volumes, and particularly hazardous chemicals.

Perform Risk Assessments for Hazardous Chemicals and Procedures Prior to Laboratory Work:

(a) Identify chemicals to be used, amounts required, and circumstances of use in the experiment. Consider any special employee or laboratory conditions that could create or increase a hazard. Consult sources of safety and health information and experienced scientists to ensure that those conducting the risk assessment have sufficient expertise.

(b) Evaluate the hazards posed by the chemicals and the experimental conditions.

The evaluation should cover toxic, physical, reactive, flammable, explosive, radiation, and biological hazards, as well as any other potential hazards posed by the chemicals.

(c) For a variety of physical and chemical reasons, reaction scale-ups pose special risks, which merit additional prior review and precautions.

(d) Select appropriate controls to minimize risk, including use of engineering controls, administrative controls, and personal protective equipment (PPE) to protect workers from hazards. The controls must ensure that OSHA's Permissible Exposure Limits (PELs) are not exceeded. Prepare for contingencies and be aware of the institutional procedures in the event of emergencies and accidents.

One sample approach to risk assessment is to answer these five questions:

(a) What are the hazards?

(b) What is the worst thing that could happen?

(c) What can be done to prevent this from happening?

(d) What can be done to protect from these hazards?

(e) What should be done if something goes wrong?

2. Avoid Underestimation of Risk

Even for substances of no known significant hazard, exposure should be minimized; when working with substances that present special hazards, special precautions should be taken. Reference should be made to the safety data sheet (SDS) that is provided for each chemical. Unless otherwise known, one should assume that any mixture will be more toxic than its most toxic component and that all substances of unknown toxicity are toxic.

Determine the physical and health hazards associated with chemicals before working with them. This determination may involve consulting literature references, laboratory chemical safety summaries (LCSSs), SDSs, or other reference materials. Consider how the chemicals will be processed and determine whether the changing states or forms will change the nature of the hazard. Review your plan, operating limits, chemical evaluations and detailed risk assessment with other chemists, especially those with experience with similar materials and protocols.

Before working with chemicals, know your facility's policies and procedures for how to handle an accidental spill or fire. Emergency telephone numbers should be posted in a prominent area. Know the location of all safety equipment and the nearest fire alarm and telephone.

3. Adhere to the Hierarchy of Controls

The hierarchy of controls prioritizes intervention strategies based on the premise that the best way to control a hazard is to systematically remove it from the workplace, rather than relying on employees to reduce their exposure. The types of measures that may be used to protect employees (listed from most effective to least effective) are: engineering controls, administrative controls, work practices, and PPE. Engineering controls, such as chemical hoods, physically separate the employee from the hazard. Administrative controls, such as employee scheduling, are established by management to help minimize the employees' exposure time to hazardous chemicals. Work practice controls are tasks that are performed in a designated way to minimize or eliminate hazards. Personal protective equipment and apparel are additional protection provided under special circumstances and when exposure is unavoidable.

Face and eye protection is necessary to prevent ingestion and skin absorption of hazardous chemicals. At a minimum, safety glasses, with side shields, should be used for all laboratory work. Chemical splash goggles are more appropriate than regular safety glasses to protect against hazards such as projectiles, as well as when working with glassware under reduced or elevated pressures (e.g., sealed tube reactions), when handling potentially explosive compounds (particularly during distillations), and when using glassware in high-temperature operations. Do not allow laboratory chemicals to come in contact with skin. Select gloves carefully to ensure that they are impervious to the chemicals being used and are of correct thickness to allow reasonable dexterity while also ensuring adequate barrier protection.

Lab coats and gloves should be worn when working with hazardous materials in a laboratory. Wear closed-toe shoes and long pants or other clothing that covers the legs when in a laboratory where hazardous chemicals are used. Additional protective clothing should be used when there is significant potential for skin-contact exposure to chemicals. The protective characteristics of this clothing must be matched to the hazard. Never wear gloves or laboratory coats outside the laboratory or into areas where food is stored and consumed.

4. Provide Laboratory Ventilation

The best way to prevent exposure to airborne substances is to prevent their escape into the working atmosphere by the use of hoods and other ventilation devices. To determine the best choice for laboratory ventilation using engineering controls for personal protection, employers are referred to Table 9.3 of the 2011 edition of "Prudent Practices." Laboratory chemical hoods are the most important components used to protect laboratory personnel from exposure to hazardous chemicals.

(a) Toxic or corrosive chemicals that require vented storage should be stored in vented cabinets instead of in a chemical hood.

(b) Chemical waste should not be disposed of by evaporation in a chemical hood.

(c) Keep chemical hood areas clean and free of debris at all times.

(d) Solid objects and materials, such as paper, should be prevented from entering the exhaust ducts as they can reduce the air flow.

(e) Chemical hoods should be maintained, monitored and routinely tested for proper performance.

A laboratory ventilation system should include the following characteristics and practices:

(a) Heating and cooling should be adequate for the comfort of workers and operation of equipment. Before modification of any building HVAC, the impact on laboratory or hood ventilation should be considered, as well as how laboratory ventilation changes may affect the building HVAC.

(b) A negative pressure differential should exist between the amount of air exhausted from the laboratory and the amount supplied to the laboratory to prevent uncontrolled chemical vapors from leaving the laboratory.

(c) Local exhaust ventilation devices should be appropriate to the materials and operations in the laboratory.

(d) The air in chemical laboratories should be continuously replaced so that concentrations of odoriferous or toxic substances do not increase during the workday.

(e) Laboratory air should not be recirculated but exhausted directly outdoors.

(f) Air pressure should be negative with respect to the rest of the building. Local capture equipment and systems should be designed only by an experienced engineer or industrial hygienist.

(g) Ventilation systems should be inspected and maintained on a regular basis. There should be no areas where air remains static or areas that have unusually high airflow velocities.

Before work begins, laboratory workers should be provided with proper training that includes how to use the ventilation equipment, how to ensure that it is functioning properly, the consequences of improper use, what to do in the event of a system failure or power outage, special considerations, and the importance of signage and postings.

5. Institute a Chemical Hygiene Program

A comprehensive chemical hygiene program is required. It should be designed to minimize exposures, injuries, illnesses and incidents. There should be a regular, continuing effort that includes program oversight, safe facilities, chemical hygiene planning, training, emergency preparedness and chemical security. The chemical hygiene program must be reviewed annually and updated as necessary whenever new processes, chemicals, or equipment is implemented. Its recommendations should be followed in all laboratories.

6. Observe the PELs and TLVs

OSHA's Permissible Exposure Limits (PELs) must not be exceeded. The American Conference of Governmental Industrial Hygienists' Threshold Limit Values (TLVs) should also not be exceeded.

B. Responsibilities

Persons responsible for chemical hygiene include, but are not limited to, the following:

1. Chemical Hygiene Officer

(a) Establishes, maintains, and revises the chemical hygiene plan (CHP).

(b) Creates and revises safety rules and regulations.

(c) Monitors procurement, use, storage, and disposal of chemicals.

(d) Conducts regular inspections of the laboratories, preparations rooms, and chemical storage rooms, and submits detailed laboratory inspection reports to administration.

(e) Maintains inspection, personnel training, and inventory records.

(f) Assists laboratory supervisors in developing and maintaining adequate facilities.

(g) Seeks ways to improve the chemical hygiene program.

2. Department Chairperson or Director

(a) Assumes responsibility for personnel engaged in the laboratory use of hazardous chemicals.

(b) Provides the chemical hygiene officer (CHO) with the support necessary to implement and maintain the CHP.

(c) After receipt of laboratory inspection report from the CHO, meets with laboratory supervisors to discuss cited violations and to ensure timely actions to protect trained laboratory personnel and facilities and to ensure that the department remains in compliance with all applicable federal, state, university, local and departmental codes and regulations.

(d) Provides budgetary arrangements to ensure the health and safety of the departmental personnel, visitors, and students.

3. Departmental Safety Committee reviews accident reports and makes appropriate recommendations to the department chairperson regarding proposed changes in the laboratory procedures.

4. Laboratory Supervisor or Principal Investigator has overall responsibility for chemical hygiene in the laboratory, including responsibility to:

(a) Ensure that laboratory personnel comply with the departmental CHP and do not operate equipment or handle hazardous chemicals without proper training and authorization.

(b) Always wear personal protective equipment (PPE) that is compatible to the degree of hazard of the chemical.

(c) Follow all pertinent safety rules when working in the laboratory to set an example.

(d) Review laboratory procedures for potential safety problems before assigning to other laboratory personnel.

(e) Ensure that visitors follow the laboratory rules and assumes responsibility for laboratory visitors.

(f) Ensure that PPE is available and properly used by each laboratory employee and visitor.

(g) Maintain and implement safe laboratory practices.

(h) Provide regular, formal chemical hygiene and housekeeping inspections, including routine inspections of emergency equipment;

(i) Monitor the facilities and the chemical fume hoods to ensure that they are maintained and function properly. Contact the appropriate person, as designated by the department chairperson, to report problems with the facilities or the chemical fume hoods.

5. Laboratory Personnel

(a) Read, understand, and follow all safety rules and regulations that apply to the work area;

(b) Plan and conduct each operation in accordance with the institutional chemical hygiene procedures;

(c) Promote good housekeeping practices in the laboratory or work area.

(d) Notify the supervisor of any hazardous conditions or unsafe work practices in the work area.

(e) Use PPE as appropriate for each procedure that involves hazardous chemicals.

C. The Laboratory Facility

General Laboratory Design Considerations

Wet chemical spaces and those with a higher degree of hazard should be separated from other spaces by a wall or protective barrier wherever possible. If the areas cannot be separated, then workers in lower hazard spaces may require additional protection from the hazards in connected spaces.

1. Laboratory Layout and Furnishing

(a) Work surfaces should be chemically resistant, smooth, and easy to clean.

(b) Hand washing sinks for hazardous materials may require elbow, foot, or electronic controls for safe operation.

(c) Wet laboratory areas should have chemically resistant, impermeable, slip-resistant flooring.

(d) Walls should be finished with a material that is easy to clean and maintain.

(e) Doors should have view panels to prevent accidents and should open in the direction of egress.

(f) Operable windows should not be present in laboratories, particularly if there are chemical hoods or other local ventilation systems present.

2. Safety Equipment and Utilities

(a) An adequate number and placement of safety showers, eyewash units, and fire extinguishers should be provided for the laboratory.

(b) Use of water sprinkler systems is resisted by some laboratories because of the presence of electrical equipment or water-reactive materials, but it is still generally safer to have sprinkler systems installed. A fire large enough to trigger the sprinkler system would have the potential to cause far more destruction than the local water damage.

D. Chemical Hygiene Plan (CHP)

The OSHA Laboratory standard defines a CHP as "a written program developed and implemented by the employer which sets forth procedures, equipment, personal protective equipment and work practices that are capable of protecting employees from the health hazards presented by hazardous chemicals used in that particular workplace." (29 CFR 1910.1450(b)). The Laboratory Standard requires a CHP: "Where hazardous chemicals as defined by this standard are used in the workplace, the employer shall develop and carry out the provisions of a written Chemical Hygiene Plan." (29 CFR 1910.1450(e)(1)). The CHP is the foundation of the laboratory safety program and must be reviewed and updated, as needed, and at least on an annual basis to reflect changes in policies and personnel. A CHP should be facility specific and can assist in promoting a culture of safety to protect workers from exposure to hazardous materials.

1. The Laboratory's CHP must be readily available to workers and capable of protecting workers from health hazards and minimizing exposure. Include the following topics in the CHP:

(a) Individual chemical hygiene responsibilities;

(b) Standard operating procedures;

(c) Personal protective equipment, engineering controls and apparel;

(d) Laboratory equipment;

(e) Safety equipment;

(f) Chemical management;

(g) Housekeeping;

(h) Emergency procedures for accidents and spills;

(i) Chemical waste;

(j) Training;

(k) Safety rules and regulations;

(l) Laboratory design and ventilation;

(m) Exposure monitoring;

(n) Compressed gas safety;

(o) Medical consultation and examination.

It should be noted that the nature of laboratory work may necessitate addressing biological safety, radiation safety and security issues.

2. Chemical Procurement, Distribution, and Storage

Prudent chemical management includes the following processes:

Chemical Procurement:

(a) Information on proper handling, storage, and disposal should be known to those who will be involved before a substance is received.

(b) Only containers with adequate identifying labels should be accepted.

(c) Ideally, a central location should be used for receiving all chemical shipments.

(d) Shipments with breakage or leakage should be refused or opened in a chemical hood.

(e) Only the minimum amount of the chemical needed to perform the planned work should be ordered.

(f) Purchases of high risk chemicals should be reviewed and approved by the CHO.

(g) Proper protective equipment and handling and storage procedures should be in place before receiving a shipment.

Chemical Storage:

(a) Chemicals should be separated and stored according to hazard category and compatibility.

(b) SDS and label information should be followed for storage requirements.

(c) Maintain existing labels on incoming containers of chemicals and other materials.

(d) Labels on containers used for storing hazardous chemicals must include the chemical identification and appropriate hazard warnings.

(e) The contents of all other chemical containers and transfer vessels, including, but not limited to, beakers, flasks, reaction vessels, and process equipment, should be properly identified.

(f) Chemical shipments should be dated upon receipt and stock rotated.

(g) Peroxide formers should be dated upon receipt, again dated upon opening, and stored away from heat and light with tight-fitting, nonmetal lids.

(h) Open shelves used for chemical storage should be secured to the wall and contain ¾-inch lips. Secondary containment devices should be used as necessary.

(i) Consult the SDS and keep incompatibles separate during transport, storage, use, and disposal.

(j) Oxidizers, reducing agents, and fuels should be stored separately to prevent contact in the event of an accident.

(k) Chemicals should not be stored in the chemical hood, on the floor, in areas of egress, on the benchtop, or in areas near heat or in direct sunlight.

(l) Laboratory-grade, flammable-rated refrigerators and freezers should be used to store sealed chemical containers of flammable liquids that require cool storage. Do not store food or beverages in the laboratory refrigerator.

(m) Highly hazardous chemicals should be stored in a well-ventilated and secure area designated for that purpose.

(n) Flammable chemicals should be stored in a spark-free environment and in approved flammable-liquid containers and storage cabinets. Grounding and bonding should be used to prevent static charge buildups when dispensing solvents.

(o) Chemical storage and handling rooms should be controlled-access areas. They should have proper ventilation, appropriate signage, diked floors, and fire suppression systems.

Chemical Handling:

(a) As described above, a risk assessment should be conducted prior to beginning work with any hazardous chemical for the first time.

(b) All SDS and label information should be read before using a chemical for the first time.

(c) Trained laboratory workers should ensure that proper engineering controls (ventilation) and PPE are in place.

Chemical Inventory:

(a) Prudent management of chemicals in any laboratory is greatly facilitated by keeping an accurate inventory of the chemicals stored.

(b) Unneeded items should be discarded or returned to the storeroom.

Transporting Chemicals:

(a) Secondary containment devices should be used when transporting chemicals.

(b) When transporting chemicals outside of the laboratory or between stockrooms and laboratories, the transport container should be break-resistant.

(c) High-traffic areas should be avoided.

Transferring Chemicals:

(a) Use adequate ventilation (such as a fume hood) when transferring even a small amount of a particularly hazardous substance (PHS).

(b) While drum storage is not appropriate for laboratories, chemical stockrooms may purchase drum quantities of solvents used in high volumes. Ground and bond the drum and receiving vessel when transferring flammable liquids from a drum to prevent static charge buildup.

(c) If chemicals from commercial sources are repackaged into transfer vessels, the new containers should be labeled with all essential information on the original container.

Shipping Chemicals: Outgoing chemical shipments must meet all applicable Department of Transportation (DOT) regulations and should be authorized and handled by the institutional shipper.

3. Waste Management

A waste management plan should be in place before work begins on any laboratory activity. The plan should utilize the following hierarchy of practices:

(a) Reduce waste sources. The best approach to minimize waste generation is by reducing the scale of operations, reducing its formation during operations, and, if possible, substituting less hazardous chemicals for a particular operation.

(b) Reuse surplus materials. Only the amount of material necessary for an experiment should be purchased, and, if possible, materials should be reused.

(c) Recycle waste. If waste cannot be prevented or minimized, the organization should consider recycling chemicals that can be safely recovered or used as fuel.

(d) Dispose of waste properly. Sink disposal may not be appropriate. Proper waste disposal methods include incineration, treatment, and land disposal. The organization's environmental health and safety (EHS) office should be consulted in determining which methods are appropriate for different types of waste.

Collection and Storage of Waste:

(a) Chemical waste should be accumulated at or near the point of generation, under the control of laboratory workers.

(b) Each waste type should be stored in a compatible container pending transfer or disposal. Waste containers should be clearly labeled and kept sealed when not in use.

(c) Incompatible waste types should be kept separate to ensure that heat generation, gas evolution, or another reaction does not occur.

(d) Waste containers should be segregated by how they will be managed. Waste containers should be stored in a designated location that does not interfere with normal laboratory operations. Ventilated storage and secondary containment may be appropriate for certain waste types.

(e) Waste containers should be clearly labeled and kept sealed when not in use. Labels should include the accumulation start date and hazard warnings as appropriate.

(f) Non-explosive electrical systems, grounding and bonding between floors and containers, and non-sparking conductive floors and containers should be used in the central waste accumulation area to minimize fire and explosion hazards. Fire suppression systems, specialized ventilation systems, and dikes should be installed in the central waste accumulation area. Waste management workers should be trained in proper waste handling procedures as well as contingency planning and emergency response. Trained laboratory workers most familiar with the waste should be actively involved in waste management decisions to ensure that the waste is managed safely and efficiently. Engineering controls should be implemented as necessary, and personal protective equipment should be worn by workers involved in waste management.

4. Inspection Program

Maintenance and regular inspection of laboratory equipment are essential parts of the laboratory safety program. Management should participate in the design of a laboratory inspection program to ensure that the facility is safe and healthy, workers are adequately trained, and proper procedures are being followed.

Types of inspections: The program should include an appropriate combination of routine inspections, self-audits, program audits, peer inspections, EHS inspections, and inspections by external entities.

Elements of an inspection:

(a) Inspectors should bring a checklist to ensure that all issues are covered and a camera to document issues that require correction.

(b) Conversations with workers should occur during the inspection, as they can provide valuable information and allow inspectors an opportunity to show workers how to fix problems.

(c) Issues resolved during the inspection should be noted.

(d) An inspection report containing all findings and recommendations should be prepared for management and other appropriate workers.

(e) Management should follow-up on the inspection to ensure that all corrections are implemented.

5. Medical Consultation and Examination

The employer must provide all employees who work with hazardous chemicals an opportunity to receive medical attention, including any follow-up examinations that the examining physician determines to be necessary, whenever an employee develops signs or symptoms associated with a hazardous chemical to which the employee may have been exposed in the laboratory. If an employee encounters a spill, leak, explosion or other occurrence resulting in the likelihood of a hazardous exposure, the affected employee must be provided an opportunity for a medical consultation by a licensed physician. All medical examinations and consultations must be performed by or under the direct supervision of a licensed physician and must be provided without cost to the employee, without loss of pay and at a reasonable time and place. The identity of the hazardous chemical, a description of the incident, and any signs and symptoms that the employee may experience must be relayed to the physician.

6. Records

All accident, fatality, illness, injury, and medical records and exposure monitoring records must be retained by the institution in accordance with the requirements of state and federal regulations (see 29 CFR part 1904 and § 1910.1450(j)). Any exposure monitoring results must be provided to affected laboratory staff within 15 working days after receipt of the results (29 CFR 1910.1450(d)(4)).

7. Signs

Prominent signs of the following types should be posted:

(a) Emergency telephone numbers of emergency personnel/facilities, supervisors, and laboratory workers;

(b) Location signs for safety showers, eyewash stations, other safety and first aid equipment, and exits; and

(c) Warnings at areas or equipment where special or unusual hazards exist.

8. Spills and Accidents

Before beginning an experiment, know your facility's policies and procedures for how to handle an accidental release of a hazardous substance, a spill or a fire. Emergency response planning and training are especially important when working with highly toxic compounds. Emergency telephone numbers should be posted in a prominent area. Know the location of all safety equipment and the nearest fire alarm and telephone. Know who to notify in the event of an emergency. Be prepared to provide basic emergency treatment. Keep your co-workers informed of your activities so they can respond appropriately. Safety equipment, including spill control kits, safety shields, fire safety equipment, PPE, safety showers and eyewash units, and emergency equipment should be available in well-marked highly visible locations in all chemical laboratories. The laboratory supervisor or CHO is responsible for ensuring that all personnel are aware of the locations of fire extinguishers and are trained in their use. After an extinguisher has been used, designated personnel must promptly recharge or replace it (29 CFR 1910.157(c)(4)). The laboratory supervisor or CHO is also responsible for ensuring proper training and providing supplementary equipment as needed.

Special care must be used when handling solutions of chemicals in syringes with needles. Do not recap needles, especially when they have been in contact with chemicals. Remove the needle and discard it immediately after use in the appropriate sharps containers. Blunt-tip needles are available from a number of commercial sources and should be used unless a sharp needle is required to puncture rubber septa or for subcutaneous injection.

For unattended operations, laboratory lights should be left on, and signs should be posted to identify the nature of the experiment and the hazardous substances in use. Arrangements should be made, if possible, for other workers to periodically inspect the operation. Information should be clearly posted indicating who to contact in the event of an emergency. Depending on the nature of the hazard, special rules, precautions, and alert systems may be necessary.

9. Training and Information

Personnel training at all levels within the organization, is essential. Responsibility and accountability throughout the organization are key elements in a strong safety and health program. The employer is required to provide employees with information and training to ensure that they are apprised of the hazards of chemicals present in their work area (29 CFR 1910.1450(f)). This information must be provided at the time of an employee's initial assignment to a work area where hazardous chemicals are present and prior to assignments involving new exposure situations. The frequency of refresher information and training should be determined by the employer. At a minimum, laboratory personnel should be trained on their facility's specific CHP, methods and observations that may be used to detect the presence or release of a hazardous chemical (such as monitoring conducted by the employer, continuous monitoring devices, visual appearance or odor of hazardous chemicals when being released), the physical and health hazards of chemicals in the work area and means to protect themselves from these hazards. Trained laboratory personnel must know shut-off procedures in case of an emergency. All SDSs must be made available to the employees.

E. General Procedures for Working With Chemicals

The risk of laboratory injuries can be reduced through adequate training, improved engineering, good housekeeping, safe work practice and personal behavior.

1. General Rules for Laboratory Work With Chemicals

(a) Assigned work schedules should be followed unless a deviation is authorized by the laboratory supervisor.

(b) Unauthorized experiments should not be performed.

(c) Plan safety procedures before beginning any operation.

(d) Follow standard operating procedures at all times.

(e) Always read the SDS and label before using a chemical.

(f) Wear appropriate PPE at all times.

(g) To protect your skin from splashes, spills and drips, always wear long pants and closed-toe shoes.

(h) Use appropriate ventilation when working with hazardous chemicals.

(i) Pipetting should never be done by mouth.

(j) Hands should be washed with soap and water immediately after working with any laboratory chemicals, even if gloves have been worn.

(k) Eating, drinking, smoking, gum chewing, applying cosmetics, and taking medicine in laboratories where hazardous chemicals are used or stored should be strictly prohibited.

(l) Food, beverages, cups, and other drinking and eating utensils should not be stored in areas where hazardous chemicals are handled or stored.

(m) Laboratory refrigerators, ice chests, cold rooms, and ovens should not be used for food storage or preparation.

(n) Contact the laboratory supervisor, Principal Investigator, CHO or EHS office with all safety questions or concerns.

(o) Know the location and proper use of safety equipment.

(p) Maintain situational awareness.

(q) Make others aware of special hazards associated with your work.

(r) Notify supervisors of chemical sensitivities or allergies.

(s) Report all injuries, accidents, incidents, and near misses.

(t) Unauthorized persons should not be allowed in the laboratory.

(u) Report unsafe conditions to the laboratory supervisor or CHO.

(v) Properly dispose of chemical wastes.

Working Alone in the Laboratory

Working alone in a laboratory is dangerous and should be strictly avoided. There have been many tragic accidents that illustrate this danger. Accidents are unexpected by definition, which is why coworkers should always be present. Workers should coordinate schedules to avoid working alone.

Housekeeping

Housekeeping can help reduce or eliminate a number of laboratory hazards. Proper housekeeping includes appropriate labeling and storage of chemicals, safe and regular cleaning of the facility, and proper arrangement of laboratory equipment.

2. Nanoparticles and Nanomaterials

Nanoparticles and nanomaterials have different reactivities and interactions with biological systems than bulk materials, and understanding and exploiting these differences is an active area of research. However, these differences also mean that the risks and hazards associated with exposure to engineered nanomaterials are not well known. Because this is an area of ongoing research, consult trusted sources for the most up to date information available. Note that the higher reactivity of many nanoscale materials suggests that they should be treated as potential sources of ignition, accelerants, and fuel that could result in fire or explosion. Easily dispersed dry nanomaterials may pose the greatest health hazard because of the risk of inhalation. Operations involving these nanomaterials deserve more attention and more stringent controls than those where the nanomaterials are embedded in solid or suspended in liquid matrixes.

Consideration should be given to all possible routes of exposure to nanomaterials including inhalation, ingestion, injection, and dermal contact (including eye and mucous membranes). Avoid handling nanomaterials in the open air in a free-particle state. Whenever possible, handle and store dispersible nanomaterials, whether suspended in liquids or in a dry particle form, in closed (tightly-sealed) containers. Unless cutting or grinding occurs, nanomaterials that are not in a free form (encapsulated in a solid or a nanocomposite) typically will not require engineering controls. If a synthesis is being performed to create nanomaterials, it is not enough to only consider the final material in the risk assessment, but consider the hazardous properties of the precursor materials as well.

To minimize laboratory personnel exposure, conduct any work that could generate engineered nanoparticles in an enclosure that operates at a negative pressure differential compared to the laboratory personnel breathing zone. Limited data exist regarding the efficacy of PPE and ventilation systems against exposure to nanoparticles. However, until further information is available, it is prudent to follow standard chemical hygiene practices. Conduct a hazard evaluation to determine PPE appropriate for the level of hazard according to the requirements set forth in OSHA's Personal Protective Equipment standard (29 CFR 1910.132).

3. Highly Toxic and Explosive/Reactive Chemicals/Materials

The use of highly toxic and explosive/reactive chemicals and materials has been an area of growing concern. The frequency of academic laboratory incidents in the U.S. is an area of significant concern for the Chemical Safety Board (CSB). The CSB issued a case study on an explosion at Texas Tech University in Lubbock, Texas, which severely injured a graduate student handling a high-energy metal compound. Since 2001, the CSB has gathered preliminary information on 120 different university laboratory incidents that resulted in 87 evacuations, 96 injuries, and three deaths.

It is recommended that each facility keep a detailed inventory of highly toxic chemicals and explosive/reactive materials. There should be a record of the date of receipt, amount, location, and responsible individual for all acquisitions, syntheses, and disposal of these chemicals. A physical inventory should be performed annually to verify active inventory records. There should be a procedure in place to report security breaches, inventory discrepancies, losses, diversions, or suspected thefts.

Procedures for disposal of highly toxic materials should be established before any experiments begin, possibly even before the chemicals are ordered. The procedures should address methods for decontamination of any laboratory equipment that comes into contact with highly toxic chemicals. All waste should be accumulated in clearly labeled impervious containers that are stored in unbreakable secondary containment.

Highly reactive and explosive materials that may be used in the laboratory require appropriate procedures and training. An explosion can occur when a material undergoes a rapid reaction that results in a violent release of energy. Such reactions can happen spontaneously and can produce pressures, gases, and fumes that are hazardous. Some reagents pose a risk on contact with the atmosphere. It is prudent laboratory practice to use a safer alternative whenever possible.

If at all possible, substitutes for highly acute, chronic, explosive, or reactive chemicals should be considered prior to beginning work and used whenever possible.

4. Compressed Gas

Compressed gases expose laboratory personnel to both chemical and physical hazards. It is essential that these are monitored for leaks and have the proper labeling. By monitoring compressed gas inventories and disposing of or returning gases for which there is no immediate need, the laboratory can substantially reduce these risks. Leaking gas cylinders can cause serious hazards that may require an immediate evacuation of the area and activation of the emergency response system. Only appropriately trained hazmat responders may respond to stop a leaking gas cylinder under this situation.

F. Safety Recommendations—Physical Hazards

Physical hazards in the laboratory include combustible liquids, compressed gases, reactives, explosives and flammable chemicals, as well as high pressure/energy procedures, sharp objects and moving equipment. Injuries can result from bodily contact with rotating or moving objects, including mechanical equipment, parts, and devices. Personnel should not wear loose-fitting clothing, jewelry, or unrestrained long hair around machinery with moving parts.

The Chemical Safety Board has identified the following key lessons for laboratories that address both physical and other hazards:

(1) Ensure that research-specific hazards are evaluated and then controlled by developing specific written protocols and training.

(2) Expand existing laboratory safety plans to ensure that all safety hazards, including physical hazards of chemicals, are addressed.

(3) Ensure that the organization's EHS office reports directly to an identified individual/office with organizational authority to implement safety improvements.

(4) Develop a verification program that ensures that the safety provisions of the CHP are communicated, followed, and enforced at all levels within the organization.

(5) Document and communicate all laboratory near-misses and previous incidents to track safety, provide opportunities for education and improvement to drive safety changes at the university.

(6) Manage the hazards unique to laboratory chemical research in the academic environment. Utilize available practice guidance that identifies and describes methodologies to assess and control hazards.

(7) Written safety protocols and training are necessary to manage laboratory risk.

G. Emergency Planning

In addition to laboratory safety issues, laboratory personnel should be familiar with established facility policies and procedures regarding emergency situations. Topics may include, but are not limited to:

(1) Evacuation procedures—when it is appropriate and alternate routes;

(2) Emergency shutdown procedures—equipment shutdown and materials that should be stored safely;

(3) Communications during an emergency—what to expect, how to report, where to call or look for information;

(4) How and when to use a fire extinguisher;

(5) Security issues—preventing tailgating and unauthorized access;

(6) Protocol for absences due to travel restrictions or illness;

(7) Safe practices for power outage;

(8) Shelter in place—when it is appropriate;

(9) Handling suspicious mail or phone calls;

(10) Laboratory-specific protocols relating to emergency planning and response;

(11) Handling violent behavior in the workplace; and

(12) First-aid and CPR training, including automated external defibrillator training if available.

It is prudent that laboratory personnel are also trained in how to respond to short-term, long-term and large-scale emergencies. Laboratory security can play a role in reducing the likelihood of some emergencies and assisting in preparation and response for others. Every institution, department, and individual laboratory should consider having an emergency preparedness plan. The level of detail of the plan will vary depending on the function of the group and institutional planning efforts already in place.

Emergency planning is a dynamic process. As personnel, operations, and events change, plans will need to be updated and modified. To determine the type and level of emergency planning needed, laboratory personnel need to perform a vulnerability assessment. Periodic drills to assist in training and evaluation of the emergency plan are recommended as part of the training program.

H. Emergency Procedures

(1) Fire alarm policy. Most organizations use fire alarms whenever a building needs to be evacuated—for any reason. When a fire alarm sounds in the facility, evacuate immediately after extinguishing all equipment flames. Check on and assist others who may require help evacuating.

(2) Emergency safety equipment. The following safety elements should be met:

a. A written emergency action plan has been provided to workers;

b. Fire extinguishers, eyewash units, and safety showers are available and tested on a regular basis; and

c. Fire blankets, first-aid equipment, fire alarms, and telephones are available and accessible.

(3) Chemical spills. Workers should contact the CHO or EHS office for instructions before cleaning up a chemical spill. All SDS and label instructions should be followed, and appropriate PPE should be worn during spill cleanup.

(4) Accident procedures. In the event of an accident, immediately notify appropriate personnel and local emergency responders. Provide an SDS of any chemical involved to the attending physician. Complete an accident report and submit it to the appropriate office or individual within 24 hours.

(5) Employee safety training program. New workers should attend safety training before they begin any activities. Additional training should be provided when they advance in their duties or are required to perform a task for the first time. Training documents should be recorded and maintained. Training should include hands-on instruction of how to use safety equipment appropriately.

(6) Conduct drills. Practice building evacuations, including the use of alternate routes. Practice shelter-in-place, including plans for extended stays. Walk the fastest route from your work area to the nearest fire alarm, emergency eye wash and emergency shower. Learn how each is activated. In the excitement of an actual emergency, people rely on what they learned from drills, practice and training.

(7) Contingency plans. All laboratories should have long-term contingency plans in place (e.g., for pandemics). Scheduling, workload, utilities and alternate work sites may need to be considered.

I. Laboratory Security

Laboratory security has evolved in the past decade, reducing the likelihood of some emergencies and assisting in preparation and response for others. Most security measures are based on the laboratory's vulnerability. Risks to laboratory security include, but are not limited to:

(1) Theft or diversion of chemicals, biologicals, and radioactive or proprietary materials, mission-critical or high-value equipment;

(2) Threats from activist groups;

(3) Intentional release of, or exposure to, hazardous materials;

(4) Sabotage or vandalism of chemicals or high-value equipment;

(5) Loss or release of sensitive information; and

(6) Rogue work or unauthorized laboratory experimentation. Security systems in the laboratory are used to detect and respond to a security breach, or a potential security breach, as well as to delay criminal activity by imposing multiple layered barriers of increasing stringency. A good laboratory security system will increase overall safety for laboratory personnel and the public, improve emergency preparedness by assisting with preplanning, and lower the organization's liability by incorporating more rigorous planning, staffing, training, and command systems and implementing emergency communications protocols, drills, background checks, card access systems, video surveillance, and other measures. The security plan should clearly delineate response to security issues, including the coordination of institution and laboratory personnel with both internal and external responders.

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VIRGINIA SAFETY AND HEALTH CODES BOARD

BRIEFING PACKAGE

FOR MARCH 14, 2013

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

I. **Action Requested.**

The Virginia Occupational Safety and Health (VOSH) Program requests the Safety and Health Codes Board to amend the Regulation Concerning Licensed Asbestos Contractor Notification, Asbestos Project Permits, and Permit Fees, 16VAC25-20, pursuant to the Virginia Code §2.2-4012.1.

II. **Summary of Regulatory Action.**

Pursuant to the Executive Regulatory Reform Initiative, the Regulation Concerning Licensed Asbestos Contractor Notification, Asbestos Project Permits, and Permit Fees, 16VAC25-20, was identified for amendment after an in-depth review by the Department. As currently enacted, this regulation provides the procedure for notifying the Department of Labor and Industry of asbestos projects to be undertaken and sets permit fees for those projects. Licensed asbestos contractors who undertake affected projects must notify the Department of Labor and Industry, obtain a permit and pay a fee as required by Va. Code §40.1-51.20. A. and B. The notification and permit requirements enable the Department to conduct onsite inspection of asbestos projects to monitor asbestos contractors' compliance with state and federal requirements for safe removal and disposal of asbestos.

The Department uses the funds generated by these fees to provide the necessary oversight and enforcement required by this regulation. The fees cover the costs of the asbestos inspection program which protects the public.

While "residential buildings" are covered under this program, the procedure required for such structures does not include payment of a fee. "Residential buildings" means site-built homes, modular homes, condominium units, mobile homes, manufactured housing, and duplexes, or other multi-unit dwellings consisting of four units or less which are currently in use or intended for use only for residential purposes. However, demolition of any of the above structures which are to be replaced by other than a residential building shall not fall within this definition and would be subject to payment of a fee.

The VOSH Program of the Department seeks to discontinue the requirement for notification of residential asbestos projects and delete the regulatory language of 16VAC25-20-40, Exemption, because eliminating the notification requirements for residential buildings will minimize the paperwork burden for asbestos contractors and also for homeowners. In addition, the Code of Virginia does not require a permit fee for asbestos projects in residential buildings. (See Va. Code §40.1-51.20.B.)

Amending the regulation is non-controversial, and no individual or entity will be adversely affected by this regulatory change.

III. Basis, Purpose and Impact of the Amendment.

A. Basis.

Pursuant to §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 amendment supports that statutory mandate.

B. Purpose.

The purpose of this action is to delete regulatory language in 16VAC25-20-40, requiring notification of residential asbestos projects and insert new regulatory language stating that "no notification to the Department or payment of asbestos project fees are required for asbestos projects in residential buildings as defined under 16VAC25-20-10." Most residential asbestos projects fall within the minimum reporting amount (10 square or 10 linear feet up to 260 linear feet or 160 square feet). Jobs of this size present a small risk to the public, require fewer inspections, and are of short duration; therefore, eliminating the notification requirements for residential buildings will minimize the paperwork burden for asbestos contractors and also for homeowners. The Virginia Code does not require a permit fee for asbestos projects in residential buildings.

C. **Impact on Employers.**

Eliminating the notification requirements for residential buildings will reduce the paperwork burden for asbestos contractors and homeowners.

D. **Impact on Employees.**

The Department anticipates that there will be no impact on Virginia employees.

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

Eliminating the notification requirements for residential buildings will reduce the number of applications the Department will have to process.

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RECOMMENDED ACTION

Staff of the Department of Labor and Industry recommends that the Safety and Health Codes Board amend the Regulation Concerning Licensed Asbestos Contractor Notification, Asbestos Project Permits, and Permit Fees, 16VAC25-20, pursuant to Va. Code §2.2-4012.1, as indicated in the attachment.

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.

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

As Adopted by the

Safety and Health Codes Board

Date: _____

VIRGINIA OCCUPATIONAL SAFETY AND HEALTH PROGRAM

VIRGINIA DEPARTMENT OF LABOR AND INDUSTRY

Effective Date: _____

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

CHAPTER 20
REGULATION CONCERNING LICENSED ASBESTOS CONTRACTOR NOTIFICATION, ASBESTOS PROJECT PERMITS, AND PERMIT FEES

16VAC25-20-10. Definitions.

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

"Activity" means from the set-up of negative air containment through the breakdown of that containment. Work within a single structure or building shall be considered as one "activity" so long as such work is not interrupted except for weekends, holidays, or delays due to inclement weather. Where containment is not required, all work within single structure or building shall be considered as one "activity."

"Asbestos" means any material containing more than 1.0% asbestos by area as determined by microscopy.

"Asbestos contractor's license" means an authorization issued by the Department of Professional and Occupational Regulation permitting a person to enter into contracts to perform an asbestos abatement project.

"Asbestos project" means an activity involving job set-up for containment, removal, encapsulation, enclosure, encasement, renovation, repair, construction or alteration of an asbestos-containing material. An asbestos project or asbestos abatement project shall not include nonfriable asbestos-containing roofing, flooring and siding material that when installed, encapsulated or removed does not become friable.

"Asbestos supervisor" means any person so designated by an asbestos contractor who provides on-site supervision and direction to the workers engaged in asbestos projects.

"Building" means a combination of any materials, whether portable or fixed including part or parts and fixed equipment of them, that forms a structure for use or occupancy by persons or property.

"Construction" means all the on-site work done in building or altering structures from land clearance through completion, including excavation, erection, and the assembly and installation of components and equipment.

"Department" means the Department of Labor and Industry.

"Friable" means that the material when dry, may be crumbled, pulverized, or reduced to powder by hand pressure and includes previously nonfriable material after such previously nonfriable material becomes damaged to the extent that when dry it may be crumbled, pulverized, or reduced to powder by hand pressure.

"Person" means a corporation, partnership, sole proprietorship, firm, enterprise, franchise, association, or any other individual or entity.

"Residential buildings" means site-built homes, modular homes, condominium units, mobile homes, manufactured housing, and duplexes, or other multi-unit dwelling consisting of four units or less which are currently in use or intended for use only for residential purposes. Demolitions of any of the above structures that are to be replaced by other than a residential building shall not fall within this definition.

"RFS contractor's license" means an authorization issued by the Department of Professional and Occupational Regulation permitting a person to enter into contracts to install, remove or encapsulate nonfriable asbestos-containing roofing, flooring, and siding materials.

"Site" means a specific geographically contiguous area with defined limits owned by a single entity on which asbestos removal will occur.

"Structure" means an assembly of materials, or part or parts of them, forming a construction.

16VAC25-20-20. Authority and application.

A. This chapter is established in accordance with § 40.1-51.20 of the Code of Virginia.

B. This chapter shall apply to all licensed asbestos contractors or RFS contractors who engage in asbestos projects.

C. The application of this chapter to contractors who work on federal property will be decided by the department based on a review of the facts in each case. The contractor shall contact the department to determine the applicability of the regulations to a specific project.

D. This chapter shall not affect the reporting requirements under § 40.1-51.20 C or any other notices or inspection requirements under any other provision of the Code of Virginia.

16VAC25-20-30. Notification and permit fee.

A. Written notification of any asbestos project of 10 linear feet or more or 10 square feet or more shall be made to the department on a department form. Such notification shall be sent by facsimile transmission as set out in 16VAC25-20-30 J, certified mail, or hand-delivered to the department. Notification shall be postmarked or made 20 days before the beginning of any asbestos project.

B. The department form shall include the following information:

1. Name, address, telephone number, and Virginia asbestos contractor's license number of persons intending to engage in an asbestos project;

2. Name, address, and telephone number of facility owner or operator;

3. Type of notification; amended, emergency, renovation, or demolition;

4. Description of building, structure, facility, installation, vehicle, or vessel to be demolished or renovated including present use, prior use or uses, age, and address;

5. Estimate of amount of friable asbestos and method of estimation;

6. Amount of the asbestos project fee submitted;

7. Schedule set-up date, removal date, and completion date of asbestos abatement work and times of removal;

8. Name and Virginia asbestos supervisor's license number of the project supervisor on site;

9. Name, address, telephone number, contact person, and landfill permit number of the waste disposal site where the asbestos containing material will be disposed;

10. Detailed description of the demolition or removal methods to be used;

11. Procedures and equipment to control emissions and protect public health during removal, transit, loading, and unloading. Including the monitoring plan;

12. Credit card number, expiration date, and signature of cardholder if a facsimile transmission is to be made pursuant to 16VAC25-20-30 J; and

13. Any other information requested on the department form.

C. An asbestos project permit fee shall be submitted with the completed project notification. The fee shall be in accordance with the following schedule unless a blanket notification is granted under subsection D of this section:

1. $50 for each project equal to or greater than 10 linear feet or 10 square feet up to and including 260 linear feet or 160 square feet;

2. $160 for each project of more than 260 linear feet or 160 square feet up to and including 2600 linear feet or 1600 square feet;

3. $470 for each project of more than 2600 linear feet or 1600 square feet; and

4. If the amount of asbestos is reported in both linear feet and square feet the amounts will be added and treated as if the total were all in square feet for the purposes 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 asbestos removal or encapsulation on a specific site which is expected to last for one year or longer.

1. The contractor shall submit the notification required in 16VAC25-20-30 A to the department 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 workday during the blanket notification period excluding weekends or state holidays;

b. The estimate of asbestos 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; and

c. A copy of the contract shall be submitted with the notification.

2. The asbestos project permit fee shall be 0.5% of the contract price or $470 whichever is greater. For contracts which require payments per square or linear foot of asbestos removed or encapsulated the contract price shall be the amount of asbestos estimated pursuant to subdivision B 5 of this section times the per foot charge in the contract;

3. The contractor shall submit an amended notification at least one day prior to each time the contractor will not be on site. The fee for each amended notification shall be $15;

4. A contractor shall submit an amended notification whenever the actual amount of asbestos removed or encapsulated exceeds the original estimate. If the contract was for a fixed cost regardless of the amount of asbestos the amendment fee shall be $15. If the contract was based on a price per square or linear foot the amendment fee shall be the difference between the actual amount removed and the estimated amount times the contract price per foot times 0.5% plus $15; and

5. 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 asbestos removed and the actual amount of payments made under the contract. The refund shall be the difference between the original asbestos permit fee paid and either the actual amount of payments made under the contract times 0.5% or $470 whichever is greater.

E. Notification of less than 20 days may be allowed in case of an emergency involving protection of life, health, or property, including but not limited to: leaking or ruptured pipes; accidentally damaged or fallen asbestos that could expose nonasbestos workers or the public; unplanned mechanical outages or repairs essential to a work process that require asbestos removal and could only be removed safely during the mechanical outage. Notification and asbestos permit fee shall be submitted within five working days after the start of the emergency abatement. A description of the emergency situation shall be included when filing an emergency notification.

F. No notification shall be effective if an incomplete form is submitted, or if the proper permit fee is not enclosed with the completed form or if the credit card payment required for facsimile transmission in 16VAC25-20-30 J is not approved.

G. On the basis of the information submitted in the asbestos 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 modification of 16VAC25-20-30 B 3 through 11. No amendments to 16VAC25-20-30 B 1 or 2 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 any 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 modification to 16VAC25-20-30 B 3, 16VAC25-20-30 B 4, and 16VAC25-20-30 B 6 through 16VAC25-20-30 B 10 - $15;

b. For modifications to 16VAC25-20-30 B 5:

(1) the difference between the permit fee in 16VAC25-20-30 C for the amended amount of asbestos and the original permit fee submitted; plus

(2) $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 cancelled must be received no later than the scheduled removal date. Cancellation of a project may also be done by facsimile transmission. Refunds of the asbestos project permit fee will be made for timely cancellations when a notarized notice of cancellation signed by the owner is submitted. Fifteen dollars for processing for the original notification, $15 for each amendment filed and $15 for processing the refund payment will be deducted from the refund payment.

J. Notification for any project, emergency notification, or amendment to notification may be done by facsimile transmission if the required fees are paid by credit card.

16VAC25-20-40. Exemption.

~~No asbestos project fees will be required for residential buildings. Notification for asbestos projects in residential buildings shall otherwise be in accordance with applicable portions of this chapter.~~ No notification to the Department or payment of asbestos project fees is required for asbestos projects in residential buildings as defined under 16VAC25-20-10.

FORMS (16VAC25-20)

Asbestos Permit Application and Notification for Demolition/Renovation (eff. 7/94).

COMMONWEALTH of VIRGINIA

DEPARTMENT OF LABOR AND INDUSTRY

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VIRGINIA SAFETY AND HEALTH CODES BOARD

BRIEFING PACKAGE

FOR MARCH 14, 2013

Standard for Boiler and Pressure Vessel Operator Certification, 16VAC25-40-10, *et seq.*; Amendments

I. **Action Requested.**

The Boiler Safety Compliance Program of the Department requests the Safety and Health Codes Board to amend the Standard for Boiler and Pressure Vessel Operator Certification, 16VAC25-40-10, *et seq.*, pursuant to the Virginia Code §2.2-4012.1.

II. **Summary of Regulatory Action.**

Pursuant to the Executive Regulatory Reform Initiative, the Department identified for amendment the Standard for Boiler and Pressure Vessel Operator Certification, 16VAC25-40. As currently enacted, this regulation requires the chief boiler inspector of the Commonwealth, or his designee, to provide and evaluate the written examination for boiler operator certification.

The Boiler Safety Compliance Program of the Department seeks the repeal of the requirement that it provide and evaluate written examinations of Subsection C. of 16VAC25-40-30 because it has never been requested to do so, nor has the section ever been implemented by any locality. The Department has never been asked to provide and evaluate the written examination for boiler operator certification for a boiler operator who operates/maintains boilers in any county, city or town in the Commonwealth. Therefore, it has been determined by the Department to be of no value in protecting the public health, safety or welfare. Amending the regulation is non-controversial and no individual or entity will be adversely affected.

In 16VAC25-40-30.I., delete "receive and" preceding "evaluate" to be consistent with the changes made in Subsection C. Subsection I. now will read: "The agent or board shall evaluate the applications and examinations and issue certificates of competency to applicants successfully completing the examination process."

In 16VAC25-40-30.L., also for continuity with the revisions proposed for Subsection C, the following revisions are being made: delete "receipt" preceding "examination"; insert "date" following "following the"; insert "the" preceding "examination"; and delete "results from the chief boiler inspector of the Commonwealth or his designee" following "the examination". Subsection L. now will read: "Applicants shall be notified in writing by the agent or board of the results of their application within 30 days following the date of the examination."

In 16VAC25-40-30. N., substitute "Competency" for "competency" following Certificates of" to more accurately reflect the reference; and remove "the department and issued by" also for continuity with Subsection C. Subsection N. now will read: "Certificates of Competency shall be provided by the adopting jurisdiction at a frequency established by the adopting jurisdiction."

In 16VAC25-40-30. O., substitute "Certificate of Competency" for "certificate of competency" to more accurately reflect the reference.

Also, for reasons of continuity:

- Delete the unnecessary terms "Commissioner" and "Department" defined in 16VAC25-40-10, Definitions, for continuity with revisions to Subsection C of 16VAC25-40-30.

- Substitute "Board" for " Office of Boiler and Pressure Vessel Safety in the Virginia Department of Labor and Industry" following "amendment to the" in 16VAC25-40-20.D.

Amending the regulation is non-controversial, and no individual or entity will be adversely affected by this regulatory change.

III. Basis, Purpose and Impact of the Amendment.

A. Basis.

The Safety and Health Codes Board is authorized by Title 40.1-51.6.A. of the Code of Virginia to: "...formulate definitions, rules, regulations and standards which shall be designed for the protection of human life and property from the unsafe or dangerous construction, installation, inspection, operation, maintenance and repair of boilers and pressure vessels in this Commonwealth."

The Safety and Health Codes Board is authorized by Title 15.2-910.C. of the Code of Virginia to: "...establish standards to be used in determining an applicant's ability, proficiency and qualifications."

B. **Purpose.**

The purpose of this regulatory action is to delete requirements in the standard requiring actions by the Department of Labor an Industry which have never been requested by any county, city or town.

C. **Impact on Employers.**

The Department anticipates that there will be no impact on Virginia employers.

D. **Impact on Employees.**

The Department anticipates that there will be no impact on Virginia employees.

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

No impact on the Department is expected.

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RECOMMENDED ACTION

Staff of the Department of Labor and Industry recommends that the Safety and Health Codes Board amend the Standard for Boiler and Pressure Vessel Operator Certification, 16VAC25-40-10, *et seq.*, pursuant to Va. Code §2.2-4012.1, as indicated in the attachment.

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.

Boiler and Pressure Vessel Operator Certification, 16VAC25-40-10, *et seq.*; Amendment

As Adopted by the

Safety and Health Codes Board

Date: _____

VIRGINIA OCCUPATIONAL SAFETY AND HEALTH PROGRAM

VIRGINIA DEPARTMENT OF LABOR AND INDUSTRY

Effective Date: _____

16VAC25-40, Boiler and Pressure Vessel Operator Certification

CHAPTER 40

STANDARD FOR BOILER AND PRESSURE VESSEL OPERATOR CERTIFICATION

16VAC25-40-10. Definitions.

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

"Accredited" means accredited by an accrediting body recognized by the U.S. Department of Education.

"Act" refers to § 15.2-910 of the Code of Virginia.

"Agent" means the agent established by a county, city or town, under local ordinance to examine and determine an applicant's qualifications for certification under the Act.

"Approved" means acceptable to the Commissioner of Labor and Industry.

"Board" means the board established by a county, city or town, under local ordinance to examine and determine an applicant's qualifications for certification under the Act.

"Boiler" means a closed vessel in which water is heated, steam is generated, steam is superheated, or any combination of them, under pressure or vacuum for use externally to itself by the direct application of heat. The term "boiler" shall include fired units for heating or vaporizing liquids other than water where these units are separate from processing systems and are complete within themselves.

"Boiler operator" means an individual who would normally be the senior operational and maintenance person at the site of the boiler who would be expected to react to changing operational and maintenance situations.

"Certificate of Competency" means a certificate issued to a person who has passed the prescribed examination as provided in subsection C of 16VAC25-40-30.

~~"Commissioner" means the Commissioner of the Department of Labor and Industry.~~

~~"Department" means the Department of Labor and Industry.~~

"Heating plant" means a heating system containing a low pressure steam or hot water boiler used to generate energy for use in heating buildings, potable water or processing.

"High pressure boiler" means a steam boiler where the safety valves are set to relieve at a pressure of more than 15 pounds per square inch.

"Horsepower rating of a boiler" for the purpose of this chapter shall be the largest rating determined in accordance with each of the following (i) by dividing the square feet of boiler heating surface by 10; or (ii) the manufacturer's rated output in horsepower; or (iii) where the manufacturer's rated output is expressed in terms other than horsepower, such rating converted into horsepower by the use of one of the factors as defined in this chapter.

"Hot water heating boiler" means any hot water boiler operated at pressures not exceeding 160 psi or temperatures not exceeding 250°F.

"Jurisdiction" as referred to in this standard shall mean counties, cities and towns in the Commonwealth.

"Low pressure boiler" means a steam boiler where the safety valves are set to relieve at a pressure of 15 pounds per square inch or less and hot water heating boilers.

"Pressure vessel" as referred to in this chapter shall be any vessel in which (i) the pressure is obtained from an external source, or by an internal or external application of heat; and (ii) is an auxiliary to a boiler plant.

"One boiler horsepower" shall be defined as (i) the evaporation of 34.5 pounds of water per hour from and at 212°F; or (ii) 33475 British Thermal Units (B.T.U.) per hour; or (iii) 140 square feet of steam radiation; or (iv) 224 square feet of water radiation at 150°F; or (v) 10 kilowatt per hour electrical input to boiler.

"Steam plant" means a system containing a high pressure boiler to generate energy for use in heating, power generation or processing operations.

16VAC25-40-20. Authority and application.

A. This chapter is established in accordance with § 15.2-910 of the Code of Virginia for use by counties, cities and towns for the certification of boiler and pressure vessel operators.

B. This chapter shall apply to any person who engages in, or offers to engage in, for the general public for compensation, the operation or maintenance of a boiler or pressure vessel. All jurisdictions who choose to regulate the certification of boiler and pressure vessel operators shall utilize this standard for control of certification within the Commonwealth.

C. This chapter shall not affect licensing or inspection under any other provision of the Code of Virginia.

D. Localities shall forward a copy of their certification ordinance upon adoption or amendment to the ~~Office of Boiler and Pressure Vessel Safety in the Virginia Department of Labor and Industry~~ Board.

E. The Department of Labor and Industry will provide advisory opinions concerning interpretation and application of this chapter upon request.

F. This chapter shall not apply to any person who, in his capacity as an employee, is engaged in the operation or maintenance of a boiler or pressure vessel owned by his employer.

16VAC25-40-30. Certification.

A. Boiler operators and pressure vessel operators covered under this chapter shall be duly certified in the proper class by the examining agent or board of the jurisdiction adopting a boiler certification ordinance.

B. The agent or board shall be appointed by the adopting jurisdiction. Any such agent or board shall provide for the examination of applicants for boiler and pressure vessel operator certification no less than 12 times per year.

C. The written examination for boiler operator certification shall be ~~provided and evaluated by the chief boiler inspector of the Commonwealth, or his designee, and be~~ administered by the agent or board.

Such examination shall include questions, diagrams and practical tests of sufficient scope to demonstrate that the applicant has the necessary qualifications, experience and knowledge of the basic principles involved in operation, care and maintenance to operate safely the boiler and auxiliary pressure vessels of the class for which an application for certification has been made.

Specific competencies shall include, but not be limited to the following:

1. Principles of boiler design;

2. General operation practices;

3. Effects of water treatment;

4. Inspection requirements; and

5. Emergency shutdown procedures.

D. The class of certification and the training and experience requirements are as follows:

1. Class-1 Boiler Operator - To take charge of and operate or maintain any steam plant.

Requirements:

Two years experience as an operator of high pressure boiler beyond that experience which is required for a Class-2 operator.

Substitution of a degree in mechanical engineering from an accredited college, university or school of technology or successful completion of an approved boiler operator apprenticeship program or a U.S. military training course may be permitted for one year of the required experience.

2. Class-2 Boiler Operator - To take charge of and operate any of the following:

a. A high pressure steam plant where the total horsepower rating of the boiler is not in excess of 500 boiler horsepower, or a combination of high pressure boilers and heating boilers and auxiliary pressure vessels; or

b. A heating plant having low pressure boilers with a pump return with no limitation on total capacity; or

c. A heating plant having hot water heating boilers, with no limitation on total capacity.

Requirements:

At least two years experience as a boiler operator or an assistant boiler operator, fireman or oiler, in a high pressure steam plant of more than 75 boiler horsepower; or

Four years of such experience in a plant of not less than 50 boiler horsepower.

Substitution of a degree in mechanical engineering from an accredited college, university or school of technology or successful completion of any approved boiler operator apprenticeship program or a U.S. military training course may be permitted for one year of the required experience.

E. In cases where a boiler operator has been operating a plant for a period of at least one year prior to the effective date of implementation of this chapter by the adopting jurisdiction, or where the classification of such a boiler operator has been changed by this chapter, such an operator may be conditionally certified for a three-year period by the agent or board in order that the operator may continue operation of that plant and no other. A suitable endorsement should be noted on his certification documents.

F. Application for examination in the class of certification shall be made on an approved form provided by the agent or board of the adopting jurisdiction. A notarized statement of education, training and experience in operating steam boilers or low pressure boiler plants and auxiliary pressure vessels shall be provided with the application.

G. No certification shall be required of an individual holding a valid license or certificate, under Chapter 3.1 (§ 40.1-51.5 et. seq.) of Title 40.1 of the Code of Virginia, or certified under this chapter by another

jurisdiction. An applicant who holds a valid certificate or license from any state or local government outside the Commonwealth may be certified without examination upon the presentation of the following to the agent or board (i) a valid certificate or license from that authority and (ii) the certification or licensure requirements of that authority; provided that the authority's requirements for certification or licensure are equal to or greater than those established under this chapter.

H. Applicants must successfully complete an examination and the other requirements to be deemed certified, except as indicated in subsection G above.

I. The agent or board shall ~~receive and~~ evaluate the applications and examinations and issue certificates of competency to applicants successfully completing the examination process.

J. The agent or board of the adopting jurisdiction may permit an applicant to sit for a written examination at a lower class than that for which the applicant has applied, if it is determined that an applicant lacks either experience or requisite knowledge of the class applied for.

K. Applicants who fail to pass the required examination may not be reexamined until 90 days after the date of the last examination.

L. Applicants shall be notified in writing by the agent or board of the results of their application within 30 days following the ~~receipt~~ date of the examination ~~results from the chief boiler inspector of the Commonwealth or his designee~~.

M. The certification fee shall be established by the adopting jurisdiction.

N. Certificates of ~~competency~~ Competency shall be provided by ~~the department and issued by~~ the adopting jurisdiction at a frequency established by the adopting jurisdiction.

O. When a ~~certificate of competency~~ Certificate of Competency has been lost or destroyed, the owner shall present a notarized statement to that effect and pay a processing charge established by that jurisdiction for issuance of a duplicate certificate.

16VAC25-40-40. Exemptions from certification.

A. Exempt from certification are operators of:

1. Boilers and pressure vessels on boats or vessels operated under the regulations of the Marine Inspections, U.S. Coast Guard;

2. Steam driven vehicles used solely for traction or show purposes;

3. Hot water heating boilers having total boiler horsepower not exceeding 100 boiler horsepower;

4. Low pressure steam boilers having gravity or trap returns; and

5. Nuclear plant facilities under the control of the Nuclear Regulatory Commission.

B. Notwithstanding exemptions listed above, no provision here shall be construed as authorizing or permitting operation of a boiler without a valid and unexpired certificate, where an ordinance requiring such a certification has been adopted.

16VAC25-40-50. Penalties.

Section 15.2-910 of the Code of Virginia provides that penalties for noncompliance with this chapter shall be set and levied by the governing body of a jurisdiction and may not exceed those penalties for a Class 3 misdemeanor.

16VAC25-40-60. Revocation or lapse of certification.

The agent or board of the adopting jurisdiction may revoke a Certificate of Competency for either of the following:

1. Any misrepresentation in obtaining or renewing the certification; or

2. Negligence or incompetence in the practice of the profession.

A Certificate of Competency shall lapse if an individual has not been employed in the trade during the last five years. In the event of revocation or lapse of certification, examination is necessary to obtain future certification.

16VAC25-40-70. Appeals.

A. An individual may appeal a determination of the agent or board of the adopting jurisdiction in regard to:

1. The application of this chapter.

2. A decision of the agent or board.

B. Each local governing body shall establish a method of appeals.

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VIRGINIA SAFETY AND HEALTH CODES BOARD

BRIEFING PACKAGE

FOR MARCH 14, 2013

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 six of the Board's regulations listed in Section II, below.

II. **Background and Basis**

In accordance with the Administrative Process Act, §2.2-4017 of the Code of Virginia, Governor McDonnell's Executive Order 14 (2010), "Development and Review of Regulations Proposed by State Agencies," governs the periodic review of existing regulations. This Executive Order requires that state agencies conduct a periodic review of regulations every four years. Six regulations of the Safety and Health Codes Board have been identified for review in 2013. They are as follows:

1. 16 VAC 25-30, Regulations for Asbestos Emissions Standards for Demolition and Renovation Construction Activities and the Disposal of Asbestos-Containing Construction Wastes--Incorporation By Reference, 40 CFR 61.140 Through 61.156

2. 16 VAC 25-70, Virginia Confined Space Standard for the Telecommunications Industry

3. 16 VAC 25-97, Reverse Signal Procedures-General Industry-Vehicles/Equipment Not Covered by Existing Standards

4. 16 VAC 25-140, Virginia Confined Space Standard for the Construction Industry

5. 16 VAC 25-150, Underground Construction, Construction Industry

6. 16 VAC 25-170, Virginia Excavation Standard, Construction Industry

III. Current Status and Process

As enumerated above, six regulations of the Safety and Health Codes Board have been identified for review in 2013. If approved by the Board, 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 at least 21 days begins. Following the public comment period, which cannot be longer than 90 days, the agency staff will review these regulations and prepare reports with recommendations to be presented for the Board's consideration at the next meeting. Based on the decision of the Board, the Department of Labor and Industry will post a report on the Town Hall website indicating for each regulation either that (i) the Board will retain the regulation as is, or (ii) the Board will begin a regulatory action to amend the regulation.

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Recommended Action

Staff of the Department of Labor and Industry requests that the Safety and Health Codes Board vote to give the Department permission to proceed with the periodic review process for the six regulations listed herein, as authorized by Executive Order 14 (2010).