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Department of Labor

Occupational Safety and Health Administration

29 CFR Part 1910

Updating OSHA Standards Based on National Consensus Standards; General, Incorporation by Reference; Hazardous Materials, Flammable and Combustible Liquids; General Environmental Controls, Temporary Labor Camps; Hand and Portable Powered Tools and Other Hand Held Equipment, Guarding of Portable Powered Tools; Welding, Cutting, and Brazing, Arc Welding and Cutting; Special Industries, Sawmills; Proposed Rule and Direct Final Rule

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1910

[Docket No. S–023A]

RIN 1218–AC08

Updating OSHA Standards Based on National Consensus Standards; General, Incorporation by Reference; Hazardous Materials, Flammable and Combustible Liquids; General Environmental Controls, Temporary Labor Camps; Hand and Portable Powered Tools and Other Hand Held Equipment, Guarding of Portable Powered Tools; Welding, Cutting, and Brazing, Arc Welding and Cutting; Special Industries, Sawmills

AGENCY: Occupational Safety and Health Administration (OSHA); Labor.

ACTION: Notice of proposed rulemaking.

SUMMARY: OSHA is issuing this notice of proposed rulemaking to delete three references to national consensus standards and two references to industry standards that are outdated. Deleting these references will not reduce employee protections. By eliminating the outdated references, however, OSHA will clarify employer obligations under the applicable OSHA standards and reduce administrative burdens on employers and OSHA. These revisions are part of an overall effort—also explained in today's **Federal Register**—to update OSHA standards that reference, or that include language taken directly from, outdated consensus standards.

DATES: Comments and requests for an informal public hearing must be submitted by the following dates:

- Hard copy: Your comments or hearing requests must be submitted (postmarked or sent) by December 27, 2004.
- Electronic transmission and facsimile: Your comments or hearing requests must be sent by December 27, 2004.

ADDRESSES: You may submit written comments or hearing requests to this proposed rule—identified by docket number S–023A or RIN number 1218–AC08—by any of the following methods:

- Federal eRulemaking Portal: *http://www. regulations. gov.* Follow the instructions for submitting comments.
- OSHA Web site: *http://ecomments.osha.gov.* Follow the instructions for submitting comments on OSHA's web page.
- Fax: If your written comments are 10 pages or fewer, you may fax them to the OSHA Docket Office at (202) 693–1648.
- Regular mail, express delivery, hand delivery and courier service: Submit three copies to the OSHA Docket Office, Docket No. S–023A, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N–2625, Washington, DC 20210; telephone (202) 693–2350. (OSHA's TTY number is (877) 889–5627). OSHA Docket Office hours of operation are 8:15 a.m. to 4:45 p.m., EST.

Instructions: All comments received will be posted without change to *http://dockets.osha.gov*, including any personal information provided. OSHA cautions you about submitting personal information such as social security numbers and birth dates.

OSHA requests comments on all issues related to this action. OSHA also welcomes comments on the Agency's findings that there are not negative economic or other regulatory impacts of this action on the regulated community. If OSHA receives no significant adverse comment on the direct final rule, OSHA will publish a **Federal Register** document confirming its effective date and withdrawing this proposal. Such confirmation may include minor stylistic or technical changes to the revisions. For the purpose of judicial review, OSHA views the date of confirmation of the effective date of the direct final rule as the date of issuance. If OSHA receives significant adverse comment on the direct final rule, it will withdraw that rule and proceed with this proposed rule.

Docket: For access to the docket to read background documents or comments received, go to *http://dockets.osha.gov.* Contact the OSHA Docket Office for information about materials not available through the OSHA webpage and for assistance in using the webpage to locate docket submissions.

FOR FURTHER INFORMATION CONTACT: For general information and press inquiries contact George Shaw, Acting Director, OSHA Office of Communications, Room N–3647, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; telephone: (202) 693–1999. For technical inquiries, contact Ted Twardowski, Directorate of Standards and Guidance, Room N–3609, OSHA, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; telephone: (202) 693–2070 or fax (202) 693–1663. Copies of this **Federal Register** notice are available from the OSHA Office of Publications, Room N–3101, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, DC 20210; telephone: (202) 693–1888. Electronic copies of this **Federal Register** notice, as well as news releases and other relevant documents, are available at OSHA's webpage at *http://www.osha.gov.*

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Direct Final Rulemaking
II. Discussion of Revocations
III.Legal Considerations
IV. Preliminary Economic Analysis and Regulatory Flexibility Act Certification
V. Paperwork Reduction Act
VI. Federalism
VII. State Plan States
VIII. Unfunded Mandates Reform Act
IX. Authority and Signature

I. Direct Final Rulemaking

This notice of proposed rulemaking is being published on the same day as a companion direct final rule, which is essentially identical to this proposal. In direct final rulemaking, an agency publishes a final rule in the **Federal Register** with a statement that, unless a significant adverse comment is received within a specified period of time, the rule will go into effect. An identical proposed rule is often published at the same time. If any significant adverse comments are received, the agency withdraws the direct final rule and treats the comments as responses to the proposed rule. Direct final rulemaking is used where an agency anticipates that a rule will be non-controversial. Examples include minor substantive changes to regulations and direct incorporations of mandates from new legislation.

For purposes of this direct final rulemaking, a significant adverse comment is one that explains why the revocations would be inappropriate, including challenges to OSHA's underlying premise or approach. In determining whether a comment necessitates withdrawal of the direct final rule, OSHA will consider whether the comment raises an issue serious enough to warrant a substantive response in a notice-and-comment process. A comment recommending additional changes will not be considered a significant adverse comment unless the comment states why the direct final rule would be ineffective without the addition. If timely significant adverse comments are received, the Agency will publish a notice of significant adverse comment in the **Federal Register** withdrawing the direct final rule no later than February 22, 2005.

In the event the direct final rule is withdrawn because of significant adverse comment, OSHA intends to proceed with the rulemaking by

addressing the comment and publishing a new final rule. If a significant adverse comment is received regarding certain revocations included in the direct final rule, but not others, OSHA may (1) finalize those revocations that did not receive significant adverse comment, and (2) conduct further rulemaking under the proposed rule for the proposed revocations that did receive significant adverse comment. The comment period for the proposed rule runs concurrently with that of the direct final rule. Any significant adverse comment received under the companion direct final rule will be treated as comments regarding the proposed rule.

OSHA has determined that the subject of this rulemaking is suitable for direct final rulemaking. First, OSHA's changes do not compromise the safety of employees. As described below, OSHA's changes will eliminate confusion and clarify employer obligations; as such, they will enhance employee safety. Second, OSHA's changes will result in no additional costs to employers, and may even produce cost savings. Third, OSHA's changes are non-controversial. By revoking the references to the outdated consensus/industry standards, OSHA is updating its requirements in a manner that is consistent with current safety practices and does not reduce the safety of employees.

II. Discussion of Revocations

As explained elsewhere in today's **Federal Register**, OSHA is undertaking a series of regulatory projects to update its standards to reflect the current versions of consensus standards. These regulatory projects will include updating or revoking consensus standards incorporated by reference, and updating regulatory text of current OSHA rules that were adopted directly from the language of outdated consensus standards. This direct final rulemaking is just the first step in OSHA's long-term effort to update or revoke references to outdated consensus standards.

In this document OSHA is proposing to revoke references to three national consensus standards and two industry standards.[1] All of the references are to standards issued over 35 years ago, and in one case over 60 years ago. Some are no longer available to the public through the issuing Standards Development Organization (SDO). Three of the references have been withdrawn by their issuing SDOs and not replaced. The reasons for OSHA's decision to revoke each of these references are set forth below.

The Agency has determined that revoking these references will not reduce employee protection. OSHA has made sure that employee protections are maintained with respect to each OSHA standard affected.

1. 29 CFR 1910.106(b)(1)(iii)(a)(2)

OSHA's standard for Flammable and Combustible Liquids, 29 CFR 1910.106, incorporates by reference an industry standard that has been withdrawn by the issuing SDO and is no longer available to the public through the issuing SDO. Existing 1910.106(b)(1)(iii)(a) reads in pertinent part as follows:

> (iii) *Atmospheric tanks.* (a) Atmospheric tanks shall be built in accordance with acceptable good standards of design. Atmospheric tanks may be built in accordance with the following consensus standards that are incorporated by reference as specified in § 1910.6:
>
> * * * * *
>
> (2) American Petroleum Institute Standards No. 12A, Specification for Oil Storage Tanks with Riveted Shells, Seventh Edition, September 1951, or No. 650, Welded Steel Tanks for Oil Storage, Third Edition, 1966.

OSHA is proposing to delete the reference to American Petroleum Institute Standard No. 12A, Specification for Oil Storage Tanks with Riveted Shells, Seventh Edition, September 1951 (API 12A) in 1910.106(b)(1)(iii)(a)(2).

API 12A includes design specifications for tanks with riveted shells used for oil storage. OSHA incorporated API 12A into 29 CFR 1910.106 because it was referenced in NFPA 30–1969, which served as one of the sources for the standard. API 12A was withdrawn in 1974. The issuing SDO has not replaced it and has not incorporated its provisions into another consensus standard. Further, API 12A is no longer publicly available through the American Petroleum Institute.

API 12A was included in 1910.106(b)(1)(iii)(a) to provide employers with one means of complying with the general requirement for atmospheric tanks to be ''built in accordance with acceptable good standards of design.'' The use of API 12A was not required by the standard. OSHA's revocation of the 1951 standard does not change an employer's responsibility for constructing properly designed atmospheric tanks under 1910.106(b)(1)(iii)(a).

The other standards referenced in § 1910.106 have been updated by their respective organizations in recent years. OSHA intends to review these standards and update its references to them, as appropriate, in the future. In this limited rulemaking, however, OSHA is proposing to revise 1910.106(b)(1)(iii)(a)(2) to read as follows:

> American Petroleum Institute Standard No. 650, Welded Steel Tanks for Oil Storage, Third Edition, 1966.

2. 29 CFR 1910.142(c)(4)

The OSHA standard for Temporary Labor Camps, 29 CFR 1910.142, incorporates by reference a national consensus standard that was issued 60 years ago. This referenced standard was withdrawn by the issuing SDO in 1972 and has not been replaced. Existing 1910.142(c)(4) reads:

> Where water under pressure is available, one or more drinking fountains shall be provided for each 100 occupants or fraction thereof. The construction of drinking fountains shall comply with ANSI Standard Specifications for Drinking Fountains, Z4.2–1942, which is incorporated by reference as specified in § 1910.6. Common drinking cups are prohibited.

OSHA is proposing to delete from this provision the requirement that drinking fountains comply with ANSI Z4.2–1942.

ANSI Z4.2–1942 was issued in 1942. It provides guidance concerning the construction of drinking fountains based on the technology and construction practices that existed in 1942. ANSI Z4.2–1942 contains ten specific recommendations regarding the construction of drinking fountains. All of these recommendations use advisory ''should'' language. Because the provisions are advisory only, they are unenforceable. *See* 49 FR 5318, February 10, 1984; *cf. Marshall* v. *Pittsburgh-Des Moines Steel Company,* 584 F.2d 638, 643–44 (3d. Cir. 1978).

OSHA has concluded that the reference to ANSI Z4.2–1942 should be removed for two primary reasons. First, as stated above, because the specific recommendations in ANSI Z4.2–1942 use advisory language, they are unenforceable.

Second, referencing recommendations issued over 60 years ago for the construction of drinking fountains does not enhance the safety and health of employees. The technology for constructing drinking fountains has changed significantly since the 1940's. Since 1942, a number of drinking

[1] The two industry standards OSHA is proposing to revoke—American Petroleum Institute Standards No. 12A, Specification for Oil Storage Tanks with Riveted Shells, Seventh Edition, September 1951 and Recommended Safe Practices for Gas-Shielded Arc Welding, A6.1–1966, American Welding Society—are incorporated by reference in OSHA standards on Flammable and Combustible Liquids and Welding, Cutting, and Brazing, respectively. These two industry standards were adopted by the Agency because they were cited in two national consensus standards (NFPA 30–1969 and ANSI Z–49.1–1967) that served as sources for the OSHA standards.

fountain units have become available to employers that, while not strictly manufactured in accordance with ANSI Z4.2–1942, are constructed pursuant to good engineering practices and are safe to use at temporary labor camps. It does not serve employers or employees to reference construction specifications that do not consider this new technology.

For these reasons, OSHA is proposing to revise paragraph 1910.142(c)(4) to read:

> Where water under pressure is available, one or more drinking fountains shall be provided for each 100 occupants or fraction thereof. Common drinking cups are prohibited.

3. 29 CFR 1910.243(e)(1)(i)

Paragraph (e)(1)(i) of the OSHA standard for the Guarding of Portable Power Tools, 29 CFR 1910.243, incorporates a 1968 national consensus standard for power lawnmowers:

> Power lawnmowers of the walk-behind, riding-rotary, and reel power lawnmowers designed for sale to the general public shall meet the design specifications in ''American National Standard Safety Specifications for Power Lawnmowers'' ANSI B71.1-X1968, which is incorporated by reference as specified in § 1910.6. These specifications do not apply to a walk-behind mower which has been converted to a riding mower by the addition of a sulky. Also, these specifications do not apply to flail mowers, sicklebar mowers, or mowers designed for commercial use.

OSHA is proposing to revoke the reference to American National Standard Safety Specifications for Power Lawnmowers ANSI B71.1-X1968 (ANSI B71.1–1968) in this provision and replace it with a reference to the general machine guarding requirements contained in 29 CFR 1910.212. OSHA is also proposing to remove the sentences that describe the types of mowers for which the specifications in ANSI B71.1–1968 do not apply.

ANSI B71.1–1968 provides safety specifications for walk-behind and riding rotary motors, and walk-behind and rotary reel mowers ''designed for sale to the general public.'' ANSI B71.1–1968 states that it is not intended to cover sulky-type mowers, flail mowers, sicklebar mowers, or mowers designed for commercial use. ANSI B71.1–1968, p. 7.

ANSI has updated and expanded the scope of B71.1 significantly several times since 1968. Whereas the 1968 version was approximately 10 pages long, the 1998 edition is approximately 60 pages long. The 1998 edition contains specifications for a number of different walk-behind and ride-on mowers, including: (1) Reel and rotary walk-behind power lawn mowers, (2) reel and rotary ride-on power lawn mowers, (3) ride-on power lawn tractors with mower attachments, (4) ride-on power lawn and garden tractors with mower attachments, and (5) lever steer ride-on mowers. In addition, while the 1968 version was not intended to apply to sulky-type, flail, and sicklebar mowers, as well as mowers designed for commercial use, the 1998 version is ''intended to apply to products specifically intended as consumer products for the personal use of a consumer around a house.'' Its requirements ''are not intended to apply to commercial products customarily used by hired operators. * * *'' ANSI B71.1–1998, p. 1.

When OSHA promulgated 1910.243(e), it incorporated many of the specifications contained in ANSI B71.1–1968 directly into the regulatory text. In fact, the vast majority of the requirements for walk-behind and riding rotary mowers found in ANSI B71.1–1968 are included in 1910.243(e). The only requirements not included directly in 1910.243(e) are those dealing with the testing of certain mowers and a handful of provisions concerning reel mowers. OSHA also incorporated the scope section of ANSI B71.1–1968 into paragraph 1910.243(e)(1)(i). Paragraph 1910.243(e)(1)(i) thus requires power lawnmowers designed for sale ''to the general public'' to follow ANSI B71.1–1968, but not power lawnmowers designed ''for commercial use''; power lawnmowers designed for commercial use must follow the guarding requirements of 29 CFR 1910.212(a)(1) and (a)(3)(ii). *See* Memorandum from John Miles to Regional Administrators, ''Misapplication of Power Lawnmower Standard 29 CFR 1910.243(e),'' 1986 (Ex. 2–1).

In order to simplify and clarify the scope and coverage of § 1910.243, OSHA is proposing to delete the reference to ANSI B71.1–1968 and the final two sentences of paragraph 1910.243(e)(1). The reference to ANSI B71.1–1968 in paragraph 1910.243(e)(1) is particularly confusing, given the limitations of the scope of the consensus standard. It is difficult for employers to determine which lawnmowers are designed for sale to ''the general public'' (covered by ANSI B71.1–1968) and which are designed ''for commercial use'' (not covered by ANSI B71.1–1968). This distinction is also not particularly relevant to protecting employees from the hazards associated with operating power lawnmowers.

OSHA is proposing to replace the reference to ANSI B71.1–1968 with a requirement for employers to ensure that all power lawnmowers meet the minimum guarding requirements of 29 CFR 1910.212. This change does not significantly alter the existing requirements for power lawnmowers ''designed for commercial use,'' which, as stated above, are already required to comply with paragraphs 1910.212(a)(1) and (a)(3)(ii). In addition, it does not markedly alter any existing requirements for power lawnmowers ''designed for sale to the general public.'' Employers must still ensure that power lawnmowers comply with the requirements contained in 1910.243(e), which as stated above, includes the vast majority of the provisions from ANSI B71.1–1968. Ensuring that power lawnmowers are in compliance with 1910.243(e) and the guarding provisions of 29 CFR 1910.212, will adequately protect employees from the hazards associated with operating this machinery. In addition, we are aware that under Consumer Products Safety Commission standards issued in 1979, manufacturers of certain power lawnmowers that are ''consumer products'' must meet specific design requirements for such lawnmowers, including guarding requirements. These standards provide an additional set of protections for employees who use such products on the job.

Finally, OSHA considered updating the 1968 ANSI reference to the 1998 version of ANSI B71.1, but determined that doing so would not clarify the standard. As stated above, the 1998 version applies ''to products specifically intended as consumer products for the personal use of a consumer around a house,'' and not to products ''customarily used by hired operators.'' For OSHA purposes, this scope would raise additional issues for compliance that are not encountered under the existing OSHA standard. OSHA believes that deleting the reference and replacing it with a reference to 29 CFR 1910.212 will both retain the existing degree of employee protection, and remove a continuing source of confusion as to the scope of the referenced standard.

Accordingly, OSHA is proposing to revise 1910.243(e)(1)(i) to read as follows:

> Power lawnmowers of the walk-behind, riding rotary, and reel power lawnmowers shall be guarded in accordance with the machine guarding requirements in 29 CFR 1910.212, General requirements for all machines.

4. 29 CFR 1910.254(d)(1)

The existing OSHA standard for Arc Welding and Cutting, 29 CFR 1910.254, incorporates by reference a 38-year old

industry standard that has been merged with a more recent national consensus standard. Existing 1910.254(d)(1) reads as follows:

General. Workmen assigned to operate or maintain arc welding equipment shall be acquainted with the requirements of this section and with 1910.252 (a), (b), and (c) of this part; if doing gas-shielded arc welding, also Recommended Safe Practices for Gas-Shielded Arc Welding, A6.1–1966, American Welding Society, which is incorporated by reference as specified in § 1910.6.

For reasons discussed below, OSHA is proposing to delete the reference to Recommended Safe Practices for Gas-Shielded Arc Welding, A6.1–1966, American Welding Society (AWS A6.1–1966).

AWS A6.1–1966 discusses the potential hazards associated with gas-shielded arc welding and gives recommendations (non-mandatory) on personal protective equipment (PPE) and engineering controls to protect employees against such hazards. Compliance with AWS A6.1–1966 was required by ANSI Z49.1–1967, which OSHA used as a source for its welding standards in 29 CFR 1910.254. In 1973, AWS A6.1–1966 was formally merged into ANSI Z49.1 by the consensus standard developers.

OSHA is proposing to revoke the reference to AWS A6.1–1966 because that industry standard is outdated and because virtually all of its coverage is provided elsewhere in OSHA's welding standards. For example, many of the safety-related practices discussed in AWS A6.1–1966 are specifically addressed in 1910.252(a), (b), and (c). While AWS A6.1–1966 gives recommendations for eye protection and protective clothing for employees performing gas-shielded arc welding, 1910.252(b) mandates the specific types of personal protective equipment (PPE) that welders must use. Similarly, AWS A6.1–1966 includes a general recommendation that metal fumes ''can'' be controlled by general ventilation and local exhaust ventilation. Section 1910.252(c), by contrast, provides detailed requirements on ventilation and other means of protecting welders from inhalation hazards. Further, while AWS A6.1–1966 discusses briefly the danger associated with trichloroethylene and perchloroethylene decomposition, 1910.252(c) also discusses the need to keep trichloroethylene and perchloroethylene out of atmospheres ''penetrated by the ultraviolet radiation of gas-shielded welding operations.'' 29 CFR 1910.252(c)(11)(ii).

Paragraph 1910.254(d)(1) requires employees performing arc welding to be ''acquainted with'' 1910.252(a), (b), and (c). These three paragraphs cover virtually all of the recommendations that are found in AWS A6.1–1966 and actually go beyond most of them. In light of this, OSHA does not believe it is necessary to continue to reference the AWS standard in § 1910.254(d)(1).

OSHA also notes that employees performing gas-shielded arc welding are protected from many of the underlying hazards discussed in AWS A6.1–1966 through other applicable OSHA standards. For example, exposures to virtually all of the toxic or hazardous substances that are discussed in AWS A6.1–1966 are regulated by Subpart Z (Toxic and Hazardous Substances) of Part 1910.

Finally, the hazard information included in AWS A6.1–1966 is outdated, particularly compared to the information that employers are already required to provide to employees under OSHA's hazard communication standard, 29 CFR 1910.1200.

For these reasons, OSHA is proposing to revise paragraph 1910.254(d)(1) to read:

General. Workmen assigned to operate or maintain arc welding equipment shall be acquainted with the requirements of this section and with 1910.252 (a), (b), and (c) of this part.

5. 29 CFR 1910.265(c)(31)(i)

The existing OSHA standard for Sawmills, 29 CFR 1910.265, incorporated by reference a consensus standard that is over 35 years old, has been withdrawn by the issuing SDO, and is included in an unenforceable provision. Existing 1910.265(c)(31)(i) reads:

Hazardous crossings. Railroad tracks and other hazardous crossings shall be plainly posted and appropriate traffic control devices (American National Standard D8.1–1967 for Railroad-Highway Grade Crossing Protection, which is incorporated by reference as specified in § 1910.6) should be utilized.

OSHA is proposing to delete the provision that employers ''should'' use ''appropriate traffic control devices,'' as set forth in ANSI D8.1–1967.

ANSI D8.1–1967 provides recommendations for signaling, marking, and controlling access to railroad-highway crossings. It does not address hazards specifically associated with crossings in sawmills or other special industries. Rather, the recommendations ''are in the interest of establishing uniformity in traffic control and safety devices at railroad-highway grade crossings.'' ANSI D8.1–1967, p. 4. ANSI withdrew the standard on January 20, 1981 and did not replace it.

OSHA references ANSI D8.1–1967 in an advisory provision; as stated earlier, advisory provisions in mandatory standards are unenforceable. As OSHA found during an earlier rulemaking to delete ''should'' provisions (47 FR 23477, May 28, 1982; 49 FR 5321, February 10, 1984), removing such provisions clarifies employer obligations and enhances OSHA enforcement capabilities. In addition, in the present situation, referencing a 37-year old consensus standard that was intended to address railroad and highway grade crossings—not crossings specifically in sawmills—adds little value to employers and employees in the sawmill industry. At the same time, because OSHA is retaining the mandatory provision in paragraph 1910.265(c)(3)(i) that employers plainly post railroad tracks and other hazardous crossings, employees will continue to be alerted to potential hazards at these dangerous areas.

OSHA is thus proposing to revise the provision to read:

Hazardous crossings. Railroad tracks and other hazardous crossings shall be plainly posted.

III. Legal Considerations

The purpose of the Occupational Safety and Health Act of 1970, 29 U.S.C. 651 *et seq.*, is ''to assure so far as possible every working man and woman in the nation safe and healthful working conditions and to preserve our human resources.'' 29 U.S.C. 651(b). To achieve this goal Congress authorized the Secretary of Labor to promulgate and enforce occupational safety and health standards. 29 U.S.C. 655(b), 654(b). A safety or health standard is a standard ''which requires conditions, or the adoption or use of one or more practices, means, methods, operations, or processes, reasonably necessary or appropriate to provide safe or healthful employment or places of employment.'' 29 U.S.C. 652(8). A standard is reasonably necessary or appropriate within the meaning of Section 652(8) if, among other things, a significant risk of material harm exists in the workplace and the proposed standard would substantially reduce or eliminate that workplace risk.

This proposed rule will not reduce the employee protections put into place by the standards being revised; the intent of this proposed rule is to revoke references to consensus standards that are outdated, no longer represent the state-of-the-art in workplace safety, and are confusing to employers and employees. It is therefore unnecessary to determine significant risk, or the extent to which the proposed rule would

reduce that risk, as would typically be required by *Industrial Union Department, AFL–CIO* v. *American Petroleum Institute,* 448 U.S. 607 (1980).

IV. Preliminary Economic Analysis and Regulatory Flexibility Act Certification

This action is not economically significant within the context of Executive Order 12866, or a ''major rule'' under the Unfunded Mandates Reform Act or Section 801 of the Small Business Regulatory Enforcement Fairness Act. The rulemaking would impose no additional costs on any private or public sector entity, and does not meet any of the criteria for an economically significant or major rule specified by the Executive Order or relevant statutes.

This action simply deletes or revises a number of provisions in OSHA standards that are outdated. Therefore, the Agency concludes that the proposed rule would not impose any additional costs on these employers; consequently, the proposal requires no preliminary economic analysis. Furthermore, because the proposed rule imposes no costs on employers, OSHA certifies that it would not have a significant impact on a substantial number of small entities; accordingly, the Agency need not prepare an initial regulatory flexibility analysis under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

V. Paperwork Reduction Act

This action does not impose new information collection requirements for purposes of the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–30.

VI. Federalism

OSHA has reviewed this proposed rule in accordance with the Executive Order on Federalism (Executive Order 13132, 64 FR 43255, August 10, 1999), which requires that agencies, to the extent possible, refrain from limiting State policy options, consult with States prior to taking any actions that would restrict State policy options, and take such actions only when there is clear constitutional authority and the presence of a problem of national scope. Executive Order 13132 provides for preemption of State law only if there is a clear congressional intent for the Agency to do so. Any such preemption is to be limited to the extent possible.

Section 18 of the OSH Act (29 U.S.C. 651 *et seq.*) expresses Congress' intent to preempt State laws where OSHA has promulgated occupational safety and health standards. Under the OSH Act, a State can avoid preemption on issues covered by Federal standards only if it submits, and obtains Federal approval of, a plan for the development of such standards and their enforcement (State-Plan State). 29 U.S.C. 667. Occupational safety and health standards developed by such State-Plan States must, among other things, be at least as effective in providing safe and healthful employment and places of employment as the Federal standards. Subject to these requirements, State-Plan States are free to develop and enforce under State law their own requirements for safety and health standards.

This proposed rule complies with Executive Order 13132. As Congress has expressed a clear intent for OSHA standards to preempt State job safety and health rules in areas addressed by OSHA standards in States without OSHA-approved State Plans, this action limits State policy options in the same manner as all OSHA standards. In State with OSHA-approved State Plans, this action does not significantly limit State policy options.

VII. State Plan States

When Federal OSHA promulgates a new standard or more stringent amendment to an existing standard, the 26 States or U.S. Territories with their own OSHA-approved occupational safety and health plans must revise their standards to reflect the new standard or amendment, or show OSHA why there is no need for action, *e.g.*, because an existing State standard covering this area is already ''at least as effective'' as the new Federal standard or amendment. 29 CFR 1953.5(a). The State standard must be at least as effective as the final Federal rule, must be applicable to both the private and public (State and local government employees) sectors, and must be completed within six months of the publication date of the final Federal rule. These 26 States and territories are: Alaska, Arizona, California, Connecticut (plan covers only State and local government employees), Hawaii, Indiana, Iowa, Kentucky, Maryland, Michigan, Minnesota, Nevada, New Mexico, New Jersey (plan covers only State and local government employees), New York (plan covers only State and local government employees), North Carolina, Oregon, Puerto Rico, South Carolina, Tennessee, Utah, Vermont, Virginia, Virgin Islands (plan covers only territorial and local government employees), Washington, and Wyoming.

VIII. Unfunded Mandates Reform Act

This proposed rule, which amends subpart A—General (29 CFR 1910.6), subpart H—Hazardous Materials (29 CFR 1910.106), subpart J—General Environmental Controls (29 CFR 1910.142), subpart P—Hand and Portable Powered Tools and Other Hand-Held Equipment (29 CFR 1910.243), subpart Q—Welding, Cutting and Brazing (29 CFR 1910.254), and subpart R—Special Industries (29 CFR 1910.265), has been reviewed in accordance with the Unfunded Mandates Reform Act of 1995 (UMRA). 2 U.S.C. 1501 *et seq.*

For the purposes of the UMRA, the Agency certifies that this proposed rule does not impose any Federal mandate that may result in increased expenditures by State, local, or tribal governments, or increased expenditures by the private sector, of more than $100 million in any year.

List of Subjects in Part 1910

Flammable materials, Hazardous substances, Occupational safety and health, Signs and symbols.

IX. Authority and Signature

This document was prepared under the direction of John L. Henshaw, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. It is issued pursuant to 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 5–2002 (67 FR 65008), and 29 CFR Part 1911.

Signed at Washington, DC, this 17th day of November, 2004.

John L. Henshaw,

Assistant Secretary of Labor.

Proposed Amendments to Standards

The Occupational Safety and Health Administration is proposing to amend part 1910 of title 29 of the Code of Federal Regulations as set forth below:

PART 1910—OCCUPATIONAL SAFETY AND HEALTH STANDARDS

Subpart A—General

1. The authority citation for subpart A of part 1910 is revised to read as follows:

Authority: Secs. 4, 6, 8, Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order Numbers 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), or 5–2002 (67 FR 65008), as applicable.

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

§ 1910.6 [Amended]

2. Section 1910.6 is amended by removing and reserving paragraphs (e)(31); (e)(35); (e)(48); (f)(1); and (i)(2).

Subpart H—Hazardous Materials

3. The authority citation for subpart H of part 1910 is revised to read as follows:

Authority: Sections 4, 6, and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Orders Nos. 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 5–2002 (67 FR 65008), as applicable; and 29 CFR part 1911.

Sections 1910.103, 1910.106 through 1910.111, and 1910.119, 1910.120, and 1910.122 through 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. 655 Note.

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

4. Paragraph (b)(1)(iii)(*a*)(*2*) of § 1910.106 is revised to read as follows:

§ 1910.106 Flammable and combustible liquids.

* * * * *

(b) * * *

(1) * * *

(iii) * * *

(*a*) * * *

(*2*) American Petroleum Institute Standards No. 650, Welded Steel Tanks for Oil Storage, Third Edition, 1966.

* * * * *

Subpart J—General Environmental Controls

5. The authority citation for subpart J of part 1910 is revised to read as follows:

Authority: Secs. 4, 6, and 8, Occupational Safety and Health Act of 1970, 29 U.S.C. 653, 655, 657; Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736), 1–90 (55 FR 9033), 6–96 (62 FR 111), or 5–2002 (67 FR 65008), as applicable.

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

6. Paragraph (c)(4) of § 1910.142 is revised to read as follows:

§ 1910.142 Temporary labor camps.

* * * * *

(c) * * *

(4) Where water under pressure is available, one or more drinking fountains shall be provided for each 100 occupants or fraction thereof. Common drinking cups are prohibited.

* * * * *

Subpart P—Hand and Portable Powered Tools and Other Hand Held Equipment

7. The authority citation for Subpart P of Part 1910 is revised to read as follows:

Authority: Sections 4, 6, and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 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), or 5–2002 (67 FR 65008), as applicable; 29 CFR part 1911.

Section 1910.243 also issued under 29 CFR part 1910.

8. Paragraph (e)(1)(i) of § 1910.243 is revised to read as follows:

§ 1910.243 Guarding of portable power tools.

* * * * *

(e) * * *

(1) * * *

(i) Power lawnmowers of the walk-behind, riding-rotary, and reel power lawnmowers shall be guarded in accordance with the machine guarding requirements in 29 CFR 1910.212, General requirements for all machines.

* * * * *

Subpart Q—Welding, Cutting, and Brazing

9. The authority citation for Subpart Q of Part 1910 is revised to read as follows:

Authority: Secs. 4, 6, and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Orders 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736), 1–90 (55 FR 9033), 6–96 (62 FR 111), or 5–2002 (67 FR 65008), as applicable; and 29 CFR part 1911.

10. Paragraph (d)(1) of § 1910.254 is revised to read as follows:

§ 1910.254 Arc welding and cutting.

* * * * *

(d) * * *

(1) *General.* Workmen assigned to operate or maintain arc welding equipment shall be acquainted with the requirements of this section and with 1910.252(a), (b), and (c) of this part.

* * * * *

Subpart R—Special Industries

11. The authority citation for Subpart R of Part 1910 is revised to read as follows:

Authority: Sections 4, 6, and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736), 6–96 (62 FR 111), 3–2000 (65 FR 50017), or 5–2002 (67 FR 65008), as applicable; and 29 CFR part 1911.

12. Paragraph (c)(31)(i) of § 1910.265 is revised to read as follows:

§ 1910.265 Sawmills.

* * * * *

(c) * * *

(31) * * *

(i) *Hazardous crossings.* Railroad tracks and other hazardous crossings shall be plainly posted.

* * * * *

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