DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Parts 1910, 1915, 1917, 1918, 1919, 1926, and 1928

[Docket No. OSHA–2006–0049]

RIN 1218–AC19

Standards Improvement Project—Phase III

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

ACTION: Proposed rule; request for comments.

SUMMARY: The Occupational Safety and Health Administration (OSHA) is continuing its efforts to remove or revise outdated, duplicative, unnecessary, and inconsistent requirements in its safety and health standards. This effort builds on the success of Standards Improvement Project (SIP)—Phase I published on June 18, 1998, and SIP—Phase II published on January 5, 2005. The Agency believes that the proposed revisions will reduce compliance costs, eliminate paperwork burdens, and clarify requirements without diminishing worker protections.

DATES: Submit comments and hearing requests on or before September 30, 2010. All submissions must bear a postmark or provide other evidence of the submission date.

ADDRESSES: Submit comments, identified by Docket No. OSHA–2006–0049, by any of the following methods:

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

Facsimile. OSHA allows facsimile transmission of comments and hearing requests that are 10 pages or fewer in length (including attachments). Send these documents to the OSHA Docket Office at (202) 693–1648; OSHA does not require hard copies of these documents. Instead of transmitting facsimile copies of attachments that supplement these documents (*e.g.,* studies, journal articles), commenters must submit these attachments, in hard copy, to the OSHA Docket Office, Technical Data Center, Room N–2625, OSHA, U.S. Department of Labor, 200 Constitution Ave., NW., Washington, DC 20210. These attachments must clearly identify the sender's name, date, subject, and docket number (*i.e.,* OSHA–2006–0049) so the Agency can attach them to the appropriate document.

Regular mail, express delivery, hand (courier) delivery, and messenger service. Submit comments and any additional material (*e.g.,* studies, journal articles) to the OSHA Docket Office, Docket No. OSHA–2006–0049 or RIN No. 1218–AC19, Technical Data Center, Room N–2625, OSHA, U.S. Department of Labor, 200 Constitution Ave., NW., Washington, DC 20210; telephone: (202) 693–2350. (OSHA's TTY number is (877) 889–5627.) Note that security-related procedures may result in significant delays in receiving comments and other written materials by regular mail. Please contact the OSHA Docket Office for information about security procedures concerning delivery of materials by express delivery, hand delivery, and messenger service. The hours of operation for the OSHA Docket Office are 8:15 a.m. to 4:45 p.m., e.t.

Instructions. All submissions must include the Agency name and the OSHA docket number (*i.e.,* OSHA Docket No. OSHA–2006–0049). Comments and other material, including any personal information, are placed in the public docket without revision, and will be available online at *http://www.regulations.gov*. Therefore, the Agency cautions commenters about submitting statements they do not want made available to the public, or submitting comments that contain personal information (either about themselves or others) such as Social Security numbers, birth dates, and medical data.

OSHA requests comments on all issues related to this proposed rule. It also welcomes comments on its findings that this proposed rule would have no negative economic, paperwork, or other regulatory impacts on the regulated community.

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

References and Exhibits

In this **Federal Register** notice, OSHA references a number of supporting materials. References to these materials are specified as "ID," followed by the number of the document. OSHA posts these referenced materials in Docket No. OSHA–2006–0049 at *http://www.regulations.osha.gov*. The documents also are available at the OSHA Docket Office (*see* **ADDRESSES** section of this notice). For further information about accessing exhibits referenced in this **Federal Register** notice, see the "Public Participation" heading in the **SUPPLEMENTARY INFORMATION** section of this notice.

FOR FURTHER INFORMATION CONTACT: For general information and press inquiries, contact Ms. Jennifer Ashley, Office of Communications, Room N–3647, OSHA, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–1999. For technical inquiries, contact Mr. Ryan Tremain, Health Scientist, Directorate of Standards and Guidance, N–3718, OSHA, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–2056 or fax (202) 693–1678.

SUPPLEMENTARY INFORMATION:

Copies of this Federal Register notice. Electronic copies are available at *http://www.regulations.gov*. This **Federal Register** notice, as well as news releases and other relevant information, also are available at OSHA's Web site at *http://www.osha.gov*. In addition, the docket material is available for inspection at the OSHA Docket Office, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N–2625, Washington, DC 20210; telephone 202–693–2350 (TTY number: 877–889–5627).

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I. Background

OSHA wants to improve its standards by removing or revising confusing, outdated, duplicative, or inconsistent requirements. Improving OSHA standards will help employers better understand their obligations, which will lead to increased compliance, ensure greater safety and health for workers,

and reduce compliance costs. In addition, this action will allow employers to comply with many standards using newer and more flexible means than specified in the existing standards. OSHA's effort to improve standards began in the 1970s, not long after it issued the first set of standards. In 1973, OSHA issued proposals to clarify and update rules that it adopted originally on May 29, 1971 (36 FR 10466). In 1978, OSHA published a rulemaking titled, "Selected General and Special (Cooperage and Laundry Machinery, and Bakery Equipment) Industry Safety and Health Standards: Revocation" (43 FR 49726, October 24, 1978). Commonly known as the "Standards Deletion Project," this comprehensive final rule revoked hundreds of unnecessary and duplicative requirements in the general industry standards at 29 CFR 1910. Another rulemaking in 1984 titled, "Revocation of Advisory and Repetitive Standards" (49 FR 5318, February 10, 1984) resulted in the removal of many repetitive and unenforceable requirements. These rulemaking actions primarily removed standards that were: (1) Not relevant to worker safety (*i.e.,* the standards addressed public-safety issues); (2) duplicative of other standards found elsewhere in the general industry standards; (3) considered "nuisance" standards (*i.e.,* one having no merit or worker safety or health benefits); or (4) legally unenforceable.

In 1996, in response to the *Presidential Memorandum on Improving Government Regulations,* OSHA began another series of rulemaking improvement actions. Patterned after the earlier rulemaking actions, the new effort identified and then revised or removed, standards that were confusing, outdated, duplicative, or inconsistent. This effort also included standards that could be rewritten in plain language. In the first action, titled, "Miscellaneous Changes to General Industry and Construction Standards" (61 FR 37849, July 22, 1996), also known as the "Standards Improvement Project" or "SIP–I," OSHA focused on revising standards that were out of date, duplicative, or inconsistent.

OSHA published the final rule on SIP–I on June 18, 1998 (63 FR 33450). Changes made in SIP–I included reducing the frequency of a medical-testing requirement and eliminating an unnecessary and obsolete medical test required in both the Coke Oven and Inorganic Arsenic standards; revising the emergency-response provisions of the Vinyl Chloride standard; eliminating the public-safety provisions of the Temporary Labor Camps standard; and eliminating unnecessary cross references in the textile industry standards. OSHA made these improvements without reducing worker safety and health protection.

In 2002, OSHA published a proposed rule for phase II of the Standards Improvement Project (SIP–II) (67 FR 66494, October 31, 2002). In that notice, OSHA proposed to revise a number of provisions in health and safety standards that commenters identified during SIP–I, or that the Agency identified as standards in need of improvement.

In the final rule on SIP–II, published on January 5, 2005 (70 FR 1111), the Agency revised a number of health standards to reduce regulatory burden, facilitate compliance, and eliminate unnecessary paperwork without reducing health protections. The improvements made by SIP–II addressed issues such as worker notification of the use of chemicals in the workplace, frequency of exposure monitoring, and medical surveillance.

As stated in the 2006 Advance Notice of Proposed Rulemaking (ANPRM) for the SIP–III project (71 FR 76623, December 21, 2006), OSHA identified a number of standards as potential candidates for improvement in SIP–III based on the Agency's review of its standards, suggestions and comments from the public, and recommendations from the Office of Management and Budget (OMB). The OMB based its recommendations on comments it received on Regulatory Reform of the U.S. Manufacturing Sector (2005).[1] Many commenters during the SIP–II rulemaking process applauded the SIP process and OSHA for its efforts to streamline and improve its health standards by removing or revising outdated, duplicative, or inconsistent requirements (IDs 3–5, 3–10, 3–11, and 3–13 to Docket S–778A). These commenters encouraged the Agency to continue the SIP project, hence today's publication of a proposed SIP–III rule.

In SIP–III, OSHA's objective is to modify individual provisions of standards by removing or revising requirements that are confusing, outdated, duplicative, or inconsistent without reducing workers' safety and health or imposing any additional economic burden on employers. The ANPRM for SIP–III invited comments on a number of such requirements identified by OSHA, and also solicited recommendations from commenters for additional requirements for inclusion in the proposal. Commenters submitted 134 comments to the docket; OSHA discusses these comments below, along with the proposed changes.

[1] To view the full Regulatory Reform report, please visit: *http://www.whitehouse.gov/omb/inforeg/reports/manufacturing_initiative.pdf.*

II. Legal Considerations

The purpose of the Occupational Safety and Health Act of 1970 (OSH Act; 29 U.S.C. 651 *et al.*) 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, authorizing summary adoption of existing national consensus and established Federal standards within two years of the effective date of the OSH Act (29 U.S.C. 655(a)); authorizing promulgation of standards pursuant to notice and comment (29 U.S.C. 655(b)); and requiring employers to comply with OSHA standards (29 U.S.C. 654(b)).

An occupational 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 and places of employment." (29 U.S.C. 652(8).) A standard is reasonably necessary or appropriate within the meaning of Section 652(8) if it substantially reduces or eliminates significant risk. In addition, it must be technologically and economically feasible, cost effective, and consistent with prior Agency action, or a justified departure. A standard must be supported by substantial evidence, and be better able to effectuate the OSH Act's purposes than any national consensus standard it supersedes. (*See* 58 FR 16612–16616, March 30, 1993.)

A standard is technologically feasible if the protective measures it requires already exist, can be brought into existence with available technology, or can be created with technology that can reasonably be expected to be developed. (*See American Textile Mfrs. Institute* v. *OSHA,* 452 U.S. 490, 513 (1981) (*ATMI*); *American Iron and Steel Institute* v. *OSHA,* 939 F.2d 975, 980 (D.C. Cir. 1991) (*AISI*).)

A standard is economically feasible if industry can absorb or pass on the costs of compliance without threatening its long-term profitability or competitive structure. See *ATMI,* 452 U.S. at 530 n. 55; *AISI,* 939 F.2d at 980. A standard is cost effective if the protective measures it requires are the least costly of the available alternatives that achieve the

same level of protection. *ATMI,* 452 U.S. at 514 n. 32; *International Union, UAW* v. *OSHA,* 37 F.3d 665, 668 (D.C. Cir. 1994) (*LOTO II*).

Section 6(b)(7) of the OSH Act authorizes OSHA to include among a standard's requirements labeling, monitoring, medical testing, and other information-gathering and transmittal provisions. (29 U.S.C. 655(b)(7).) OSHA standards also must be highly protective. (See 58 FR at 16614–16615; *LOTO II,* 37 F.3d at 668–669.) Finally, whenever practical, standards shall "be expressed in terms of objective criteria and of the performance desired." (29 U.S.C. 655(b)(5).)

III. Summary and Explanation of the Proposed Rule

OSHA is proposing a number of actions amending its standards, including revisions to its general industry, maritime, construction, and agricultural standards. A detailed discussion of each of the proposed revisions follows, including a discussion of comments the Agency received in response to the ANPRM. Some of the revisions proposed affect more than one industry. For example, the proposed revisions to the general industry Slings standard also would affect shipyard employment and the construction industry. When proposed revisions in a general industry standard would affect additional industries, OSHA will discuss the revisions fully in the general industry section, and then reference the provisions affected in the sections covering the other industries.

A. Proposed Revisions in General Industry Standards (29 CFR Part 1910)

1. Subpart E

OSHA is proposing several revisions to subpart E. First, OSHA proposes to revise the title of subpart E from "Means of Egress" to "Exit Routes and Emergency Planning." The Agency originally proposed to revise the title of subpart E to "Exit Routes, Emergency Action Plans, and Fire Prevention Plans"(61 FR 47712, September 10, 1996) ; however, this title is missing from the final standard because of a printing error (see 67 FR 67949, November 7, 2002). OSHA now proposes to revise the title to the more concise "Exit Routes and Emergency Planning." As OSHA explained in the preamble to the 2002 final rule, the revised title is part of the Agency's use of plain language that readily conveys the contents of the subpart (67 FR 67949 at 67950).

OSHA also is proposing to revise § 1910.35 to update the edition of the National Fire Protection Association (NFPA) 101, *Life Safety Code,* that OSHA references therein as a compliance alternative. Currently, § 1910.35 accepts employer compliance with the 2000 edition of NFPA 101 instead of complying with corresponding requirements in §§ 1910.34, 1910.36, and 1910.37. The Agency analyzed the provisions of the 2006 edition of NFPA 101 (ID 0137), and preliminarily concluded that the corresponding provisions provide an equal or higher level of worker safety than §§ 1910.34, 1910.36, and 1910.37. Therefore, the Agency is proposing to update § 1910.35 by stating that employers who demonstrate compliance with the 2006 version of the *Life Safety Code* will be deemed to be in compliance with these requirements.

Finally, OSHA is proposing to revise § 1910.35 to add a second compliance alternative that will allow employers demonstrating compliance with the exit-route provisions of the International Code Council (ICC), 2006 International Fire Code (IFC), to be in compliance with the corresponding requirements in §§ 1910.34, 1910.36, and 1910.37. Also, OSHA is proposing to revise the title of § 1910.35, listed in the Table of Contents in § 1910.33, a definition in § 1910.34, and two notes in § 1910.36, to correspond to the proposed new language to § 1910.35.

The proposed revision to add the IFC compliance alternative receives support from comments made in response to the 2006 ANPRM. In the ANPRM, OSHA explained the reasons for the recommended revision, and requested information on the suitability of allowing both the IFC, as well as ICC's International Building Code (IBC), to serve as an equivalent compliance option. The ANPRM recommendation was in response to a petition by the ICC, which submitted a comparison of the 2003 IBC and IFC provisions and the OSHA requirements. Subsequently, OSHA analyzed the provisions of the newer (2006) editions of the IFC and IBC, and compared them with requirements in §§ 1910.34, 1910.36, and 1910.37 (ID 0138). In this analysis, OSHA found that the IFC contains provisions for existing buildings and exit-route maintenance, while the IBC does not. These provisions are necessary to achieve equivalency with § 1910.37. Therefore, OSHA determined that the IFC corresponded to the OSHA requirements, and that the IBC did not. This analysis concluded that the corresponding provisions of the IFC provide an equivalent or higher level of worker safety than §§ 1910.34, 1910.36, and 1910.37. Therefore, the Agency is proposing to recognize the IFC as a compliance alternative, in addition to the NFPA 101 compliance alternative, thereby providing additional flexibility to employers.

In the ANPRM, OSHA asked if the egress provisions of the ICC codes offer protection equivalent to that required by subpart E. Many commenters responded affirmatively. For example, the Building Owners and Managers Association International (BOMA), which represents thousands of owners and managers of existing commercial properties in North America, stated that it strongly supports this proposed additional compliance option (ID 0121). Further, BOMA stated that the IBC and IFC are "responsive to not only the health safety and welfare needs of those who lease real estate, but for those who are employers in the industry as well."

The U.S. General Services Administration (GSA), Public Buildings Service, the landlord of the civilian Federal government, with a total inventory of over 345 million square feet of workspace for a million Federal workers, commented:

> [T]he requirements for egress in the IBC and IFC will satisfy the OSHA rules and clearly demonstrate that a building designed and constructed to the requirements of the IBC and IFC provides equivalent protection to the federal egress requirements. (ID 0130.)

A comment from the New York Department of State (ID 0023) included a detailed discussion of the IBC, IFC, and subpart E. This commenter concluded that the combined requirements of these two national model codes provide an equivalent level of protection to all occupants.

Many of the subpart E provisions are general, performance-oriented requirements, and do not cover conditions in every building. Employers may use a compliance alternative as guidance on specific situations. OSHA believes allowing employers two compliance options—compliance with either the NFPA 101 (2006) or the IFC (2006)—will give employers additional flexibility to use whichever compliance option best serves their needs, while meeting the level of worker protection provided by OSHA's subpart E rules.

OSHA notes that a number of commenters supporting the proposed revision stated that such a revision would involve a potential cost savings for them because it "can reduce design and construction delays. * * *" (See, for example, ID 0117.) Other commenters (IDs 0019, 0020) supported the flexibility the revision would provide to employers by allowing them to comply with either NFPA 101 or with

the ICC Codes, explaining that health-care facilities participating in Medicare and Medicaid used NFPA 101, even in those jurisdictions that use the ICC codes.

The ANPRM also included a question about whether other, alternative national building codes were available that OSHA should consider. Commenters (IDs 0018, 0021, 0023, 0119, 0121) responded that no other building codes are available for OSHA to consider. One commenter (ID 0121) noted, "Currently, 47 states and the District of Columbia use the IBC, and 42 states and the District of Columbia use the IFC." GSA stated (ID 0130) that they have "adopted the technical requirements of the IBC and the IFC. * * *"

Opposition to the revision came from the NFPA (IDs 0022, 0134). However, much of NFPA's comment centered on whether the ICC codes provide a level of safety equivalent to NFPA 101, rather than whether compliance with the ICC codes would provide a level of safety equivalent to that required by OSHA in subpart E. As noted previously, OSHA plans to retain and update existing § 1910.35. Thus, the comparison provided by NFPA (ID 0022) of the provisions of NFPA 101 and the ICC codes does not address the issue regarding the ability of the ICC codes to serve as an additional compliance option to OSHA's subpart E.

Another concern raised by the NFPA comments (IDs 0022, 0134) was that the ICC developed the ICC Codes using consensus principles that differed from the consensus principles used to develop NFPA codes. Again, this comment does not address the issue of whether the ICC Codes provide a level of protection equal to that provided by subpart E, regardless of the method of development. While it is true that OSHA, in conformance with section 6(b)(8) of the OSH Act, the National Technology Transfer and Advancement Act of 1995 (NTTAA), and OMB Circular A–119, must consider consensus standards in developing its mandatory standards, the Agency is not restricted to the use of consensus standards. OSHA does not plan to promulgate a government-unique standard instead of a consensus standard, but to allow compliance alternatives that provide workers with a level of safety that is at least equivalent to the level of safety provided by OSHA's existing subpart E requirements.

The Denver Fire Department (ID 0013) also objected to the proposed revision because the IBC and IFC do not specify minimum exit access widths for every type of occupancy. The Denver Fire Department did not explain how the lack of such specificity would impact worker safety; as noted earlier, OSHA does not believe worker safety would be compromised by including IFC 2006 as a compliance alternative. OSHA notes that both NFPA 101 and the ICC Codes allow exit access widths narrower than the 28-inch minimum specified in § 1910.36, but only in limited situations in which the occupancy type and occupant load ensure an equal level of safety.

OSHA believes that most of the information received in response to the ANPRM supports the proposal to allow the 2006 NFPA 101 or the 2006 IFC provisions as independent compliance alternatives to the corresponding requirements in §§ 1910.34, 1910.36, and 1910.37. The Agency believes the proposed revisions will increase compliance flexibility, and achieve greater compatibility with many State and local jurisdictions, while maintaining worker protection.

2. Subpart I

a. Training Certification Records

OSHA is proposing to remove paragraph (f)(4) of the general industry Personal Protective Equipment (PPE) standard (§ 1910.132), paragraph (e)(4) of the shipyard employment PPE standard (§ 1915.152), and paragraph (n)(4) of the general industry and construction Cadmium standards (§§ 1910.1027 and 1926.1127), which require employers to prepare and maintain a written record certifying compliance with the training requirements of these sections. Specifically, employers must currently verify that affected workers received training as required by the standards through a written certification record that includes, at a minimum, the name(s) of the workers trained, the date(s) of training, and the types of training the workers received. The Cadmium standards for general industry and construction are the only substance-specific standards that require written certification to document training. The Agency estimates that it takes over 1.8 million hours for employers to develop and maintain the training-certification records mandated by the PPE standards in §§ 1910.132 and 1915.152, and over 3,000 hours for the training-certification records required by the Cadmium standards for general industry (§ 1910.1027) and construction (§ 1926.1127).[2]

OSHA does not believe that the training certification records required by the four standards listed previously provide a safety or health benefit sufficient to justify the time and cost to employers. OSHA believes that employers observe employees as they work to ensure that work practices and personal-protective equipment are consistent with the training received. In addition, OSHA generally conducts enforcement of training requirements by observation and worker interviews; thus, the lack of a written record would not interfere with OSHA's enforcement of training requirements. Therefore, OSHA believes that removing these training-certification requirements would not compromise worker safety or health. For these reasons, the Agency is proposing to remove the requirements to prepare and maintain training-certification records from the above-referenced standards.

In addition to the four training-certification records proposed for revocation, OSHA notes that 12 other standards in the general industry, construction, and shipyard employment require employers to prepare written records or documents to certify that they complied with training requirements. OSHA requests comment, including rationale, on whether it should revoke all or some of these 12 records. (*See* section VI.C ("Proposed Revisions to Information-Collection Requirements") below in this notice for a detailed description of the paperwork-burden hours associated with these training-certification requirements.)

b. Respiratory Protection

OSHA is proposing seven revisions related to the Respiratory Protection standard in § 1910.134. The following paragraphs discuss each of these revisions.

(1) Updating DOT regulations referenced in § 1910.134(i)(4)(i)

An industrial hygienist with the Michigan OSHA On-Site Consultation Program raised a question regarding the general OSHA requirements for requalifying cylinders for self-contained breathing apparatus (SCBA) specified by § 1910.134(i)(4)(i). This provision of the Respiratory Protection standard references the Department of Transportation (DOT) regulations in 49 CFR parts 173 and 178 for retesting air cylinders such as those used with SCBAs. In August 2002, the DOT revised its standard, which resulted in the reorganizing and renumbering its

[2] *See* 74 FR 61175, 74 FR 45883, 73 FR 74199, and 73 FR 74197, respectively, for information on accessing the information-collection requests (ICRs) for these training-certification records. The ICRs describe the procedures and data used to determine the hours required to develop and maintain the training-certification records.

regulations for testing air cylinders. New subpart C of 49 CFR part 180 now specifies the general DOT requirements for requalifying air cylinders; these requirements replicate the requirements in former 49 CFR parts 173 and 178 for requalifying air cylinders. OSHA, therefore, is proposing to revise the language in § 1910.134(i)(4)(i) by referencing the new DOT standard for cylinder testing at 49 CFR part 180. OSHA believes that the proposed revision will clarify the requirements of the Respiratory Protection standard by accurately identifying the location of the appropriate DOT reference standard. By expediting this process, the proposed revision will ease the regulatory burden on employers without reducing employee protection.

(2) Updating the NIOSH Respirator-Certification Requirement in § 1910.134(i)(9)

Existing paragraph (i)(9) of OSHA's Respiratory Protection standard (§ 1910.134) requires the employer to use breathing-gas containers marked in accordance with the NIOSH respirator-certification standard at 42 CFR part 84. In its presentation at the December 10, 2009, ACCSH meeting (*see* section X of this preamble below), NIOSH stated that it has seen some confusion in the regulated community as to how this provision applies to after-market cylinders. NIOSH recommended that OSHA revise the provision to clarify that after-market cylinders not manufactured under the quality-assurance program incorporated as part of the NIOSH approval process for self-contained breathing apparatus (SCBA) are not acceptable for use. Accordingly, OSHA is proposing to revise this provision to read: "The employer shall use only the respirator manufacturer's NIOSH-approved breathing gas containers, marked and maintained in accordance with the Quality Assurance provisions of the NIOSH approval for the SCBA as issued in accordance with the NIOSH respirator-certification standard at 42 CFR part 84." OSHA requests public comment on this NIOSH-recommended revision.

(3) Appendix C to § 1910.134

In response to the ANPRM, OSHA received a request from the Mexican Consulate in Omaha Nebraska. The request was to revise question 2a in the OSHA Medical Evaluation Questionnaire, Appendix C, Part A, Section 2, of its Respiratory Protection standard (§ 1910.134) by deleting the word "fits," leaving only the word "seizures" to describe the medical condition. The request described the use of the term "fits" as outdated, unnecessary, and offensive. OSHA agrees, and is proposing to remove it from the questionnaire. OSHA believes this revision to the questionnaire would have no effect on administration of, or responses to, the questionnaire.

(4) Appendix D to § 1910.134

OSHA is proposing to clarify that Appendix D of the Respiratory Protection standard (§ 1910.134) is mandatory by removing paragraph (o)(2) from the standard, and by revising paragraph (o)(1) of the standard to include Appendix D among the designated mandatory appendices. As stated in the ANPRM, the proposed revision to paragraph (o)(1) would reduce public confusion by clarifying the Agency's purpose regarding Appendix D when it published the Respiratory Protection standard on January 8, 1998, (63 FR 1152); namely, that Appendix D is mandatory. Evidence of this purpose is provided in paragraph (c)(2)(i), the introductory text to paragraph (k), and paragraph (k)(6) of the Respiratory Protection standard; these provisions mandate that employers provide voluntary respirator users with the information contained in Appendix D. Additionally, the title of Appendix D states that it is mandatory. In the ANPRM, OSHA posed the following three questions about this proposed revision for public consideration:

- Have employers understood that the requirement to provide Appendix D information to employees, who voluntarily use respirators, is a mandatory requirement?
- Is the information contained in Appendix D appropriate for alerting employees to considerations related to voluntary respirator use?
- To what extent, if any, would deleting paragraph (o)(2) and clarifying that Appendix D is mandatory, increase burden on employers?

The Building and Construction Trades Department of the AFL–CIO (BCTD; ID 0118) stated that the basic information in Appendix D is worthwhile, but construction workers find the language in the appendix difficult to understand. They suggested that OSHA better explain "why respirators should not be shared with other workers." The BCTD also stated that deleting paragraph (o)(2) would not increase burden to employers since the obligation to use Appendix D already exists under paragraphs (k)(6) and (c)(2), and that "deleting (o)(2) would definitely clarify an apparent contradiction about the mandatory requirements already in the standard."

The AFL–CIO (ID 0024) stated that, since paragraph (k)(6) states that, since employers must provide a copy of Appendix D to workers, it would be helpful to clarify that Appendix D is mandatory by including it among the list of mandatory appendices in paragraph (o)(1) as OSHA proposed, and that this action would clarify the mandatory requirement in (k)(6). The AFL–CIO further stated that "any additional burden from this action, if there is any, will be more than offset by the worker protection information conveyed in Appendix D during voluntary use situations."

The American Society of Safety Engineers (ASSE; ID 0021) also stated that employers already must provide the information in Appendix D to workers, and that failure to do so may result in OSHA citations. ASSE supported revising the language to make Appendix D mandatory because it "may foster compliance and actually reduce the potential for citations by clarifying the employer's responsibilities."

The 3M Company (ID 0028) also supported revising paragraph (o)(2). 3M stated that deleting paragraph (o)(2) would reduce confusion as to whether it is mandatory to provide Appendix D to workers when respiratory use is voluntary. 3M also stated that the information in Appendix D is appropriate.

The Associated General Contractors of America (AGCA; ID 0120) opposed deleting paragraph (o)(2) and revising paragraph (o)(1). In its response, AGCA urged, "OSHA to follow the complete rulemaking process to gauge the impact of this revision," and that any revisions should preserve employers' flexibility in informing their employees of the various uses of different respirators.

OSHA reviewed the comments received on revising the language in paragraph (o)(1) of § 1910.134 to indicate that Appendix D as mandatory, and on deleting paragraph (o)(2), which describes Appendix D as non-mandatory. Based on the current record, OSHA preliminarily concludes that the language in paragraph (o)(2) is confusing for employers since it contradicts the requirement in paragraphs (c)(2) and (k) that employers must provide employees with the information in Appendix D in voluntary respirator-use situations. Accordingly, OSHA agrees with commenters who stated that revising the language in paragraph (o) of § 1910.134 would clarify the employer's responsibilities and reduce confusion about whether information specified in Appendix D is mandatory. Regarding the comment by AGCA, OSHA notes that the SIP–III

proposal is a notice-and-comment rulemaking that provides the regulated public with an appropriate opportunity for determining the impact, if any, of the proposed revision on the public. In addition, OSHA does not believe that the proposed revisions would have any impact on the employers' flexibility in informing their employees of the various uses of respirators. Therefore, OSHA decided to propose revising the language in paragraph (o) of § 1910.134 to state that Appendix D is mandatory, and to delete the confusing and inconsistent language in paragraph (o)(2).

(5) Asbestos (§ 1915.1001)

The introductory paragraph to OSHA's Respiratory Protection standard (§ 1910.134) specifies that the standard applies to general industry (29 CFR 1910), shipyards (29 CFR 1915), marine terminals (29 CFR 1917), longshoring (29 CFR 1918), and construction (29 CFR 1926). Three of these parts, general industry, shipyards, and construction, contain standards regulating employee exposure to asbestos, with each of these standards having a provision entitled, "Respirator program." These paragraphs specify the requirements for an employer's respirator program with respect to asbestos exposure. In the final rulemaking for the Respiratory Protection standard, the Agency updated these paragraphs in the Asbestos standards for general industry and construction so that the program requirements would be consistent with the provisions of the newly revised Respiratory Protection standard (see 63 FR 1285 and 1298). However, the Agency inadvertently omitted revising the respirator-program requirements specified in paragraph (h)(3)(i) of the Asbestos standard for shipyards (§ 1915.1001). OSHA is proposing to correct this oversight by revising paragraph (h)(3)(i) of the Asbestos standard for shipyards to read the same as paragraphs (g)(2)(i) of the Asbestos standard for general industry (§ 1910.1001) and (h)(2)(i) of the Asbestos standard for construction (§ 1926.1101), which state, "[t]he employer must implement a respiratory protection program in accordance with § 1910.134 (b) through (d) (except (d)(1)(iii)), and (f) through (m)."

Similarly, the Agency is considering removing paragraphs (h)(3)(ii), (h)(3)(iii), and (h)(4) from the shipyard Asbestos standard, which address filter changes, washing faces and facepieces to prevent skin irritation, and fit testing, respectively. OSHA believes this action is appropriate because the continuing-use provisions specified in paragraph § 1910.1001(g)(2)(ii) duplicate paragraphs (h)(3)(ii) and (h)(3)(iii) of the Asbestos standard for shipyards. Also, the fit-testing requirements provided in paragraph (f) of the Respiratory Protection standard either meet or exceed the provisions specified in (h)(4) of the shipyard Asbestos standard, except that the frequency of fit-testing is different. The current shipyard-employment Asbestos standard at § 1915.1001(h)(4)(ii) requires employers to perform quantitative and qualitative fit testing "at the time of initial fitting and at least every 6 months thereafter for each employee wearing a negative-pressure respirator." The Respiratory Protection standard at § 1910.134(f)(2) requires employers to fit test employees using a tight-fitting respirator "prior to initial use of the respirator, whenever a different facepiece * * * is used, and at least annually thereafter."

By adding the reference to the § 1910.134 Respiratory Protection standard to § 1915.1001(h)(3)(i) of the shipyard Asbestos standard, OSHA would incorporate the fit-testing requirements of § 1910.134(f), which include the requirement to use the OSHA-accepted qualitative fit-testing and quantitative fit-testing protocols and procedures contained in Appendix A of § 1910.134. Accordingly, the-fit testing requirements specified in Appendix C of § 1915.1001 would be redundant; therefore, OSHA is considering deleting this Appendix C from § 1915.1001.

In the ANPRM, OSHA asked the following questions regarding the § 1915.1001 respirator provisions:

- Would revising § 1915.1001(h)(3)(i) to be consistent with similar provisions in the asbestos standard for general industry and construction create additional compliance requirements?
- Does this change maintain the same level of employee protection? Would making the recommended changes increase the economic or paperwork burden?
- Besides altering the frequency of fit testing, how would making the recommended change to delete paragraphs (h)(3)(ii) through (h)(4)(ii) affect the requirements of the standard?

OSHA received several comments in response to these questions. The 3M Company (ID 0028) addressed this issue by stating:

> [M]aking § 1915.1001(h)(3)(i) consistent with similar provisions in other asbestos standards will [not] create additional compliance requirements. 3M believes it will result in less confusion among employers who work with asbestos in many different industries. * * * This change would maintain the same level of protection as provided by the other asbestos standards.

The American Society of Safety Engineers (ID 0021) supported revising the shipyard-employment respirator provisions to comply with the requirements in the Asbestos standards for general industry and construction, and deleting the Asbestos standard's specific fit-testing requirements while adopting the § 1910.134 requirements. OSHA believes, after reviewing of the comments received in response to the ANPRM, that it is appropriate to propose to remove paragraphs (h)(3)(ii), (h)(3)(iii), and paragraph (h)(4) from the shipyard-employment asbestos standard, and to add a reference to § 1910.134 in paragraph (h)(3)(i) of that standard. It also is appropriate to propose to delete the fit-testing requirements of Appendix C of § 1915.1001, and to replace Appendix C with a reference to Appendix A of § 1910.134 and the fit-testing requirements of § 1910.134(f). The Agency believes these proposed revisions would not increase employers' compliance burden, but instead would reduce this burden by providing consistency between the shipyard-employment Asbestos standard and the requirements of the Asbestos standards for general industry and construction.

(6) 13 Carcinogens (4–Nitrobiphenyl, etc.) (§ 1910.1003)

In the SIP–III ANPRM, OSHA discussed correcting an inadvertent omission from the respiratory-protection requirements for four of the 13 carcinogen standards. Each of the 13 original standards included respiratory-protection requirements appropriate to the hazards associated with the individual carcinogen. When OSHA combined these standards into a single standard (61 FR 9242, March 7, 1996), it treated the 13 carcinogens as particulates. However, four of the 13 carcinogens are liquids and not particulates (*i.e.,* methyl chloromethyl ether, bis-chloromethyl ether, ethyleneimine, and beta-propiolactone). In the 1996 regulatory action, the Agency inadvertently omitted the full-facepiece, supplied-air respirators in the continuous-flow or pressure-demand mode for employees involved in handling any of the four liquid carcinogenic chemicals. Instead, OSHA required half-mask particulate-filter respirators for the 13 carcinogens, which are inappropriate respirators for use with the four liquid carcinogens.

In the SIP–III ANPRM, OSHA discussed the reasons for reinstating the original respirator-use requirement in paragraph (c)(4)(iv) of § 1910.1003 for these four liquid carcinogens. OSHA also asked the following four questions

in the ANPRM regarding this revision (71 FR 76627):

- What types of respirators are currently being used to protect employees from exposure to these four chemicals?
- If OSHA reinstates the requirements for full facepiece air-supplied respirators, does the respirator-use requirement conflict with OSHA's Respiratory Protection Standard (Sec. 1910.134)?
- Would the reinstated respirator use requirement be more or less protective than the protection offered by OSHA's Respiratory Protection Standard?
- How would reinstating the respirator use requirement change the economic or paperwork burden?

The American Society of Safety Engineers (ID 0021) supported reinstating the former respirator-use requirements in § 1910.1003(c)(4)(iv), and did not know of any conflict this section would have with the requirements contained in § 1910.134. The AFL–CIO (ID 0024) stated that the inadvertent action OSHA took with these four carcinogens resulted in workers receiving substantially less respiratory protection than previously required, and that OSHA should correct this error immediately. The AFL–CIO strongly recommended that OSHA issue a technical correction to § 1910.1003 within 30 days to reinstate the original respiratory-protection requirements for these four carcinogens. The AFL–CIO also recommended that "the remaining 9 chemicals require the same, more protective respirators that are applicable to the 4 substances." AFL–CIO added, "With that approach, you would now have real and consistently applied worker protection measures that achieve desirable improvement in the standards."

The 3M Company (ID 0028) stated that, since these four carcinogens are liquids with significant vapor pressure, the current requirements for using half masks with dust, mist, and fume filters are inappropriate, and conflict with the § 1910.134 respirator-selection requirements. Further, 3M believed that reinstating the requirement for a full-facepiece, supplied-air respirator would provide the appropriate minimum assigned protection factor (APF) required for the four liquid carcinogens, and would be consistent with the respirator-selection requirements of § 1910.134. Therefore, the protection afforded to workers would be different for liquid-carcinogen vapors than that for the particulate carcinogens (an APF of 10 for particulates versus an APF of 1,000 for liquids using supplied-air respirators).

In its comments, 3M also maintained that requiring supplied-air respirators would result in the use of a more protective class of respirator than the § 1910.134 respirator-selection requirements. However, 3M also stated that, by requiring full-facepiece, supplied-air respirators, OSHA would introduce additional hazards for employees caused by trailing air-supply hoses. The commenter suggested a preference for half-facepiece respirators with chemical cartridges for the four liquid carcinogens, which could meet the respirator-selection requirements in § 1910.134 if the cartridges used to absorb the liquid carcinogens' vapors have an adequate service life. (*Id.*)

At the Advisory Committee on Construction Safety and Health (ACCSH) meeting on December 12, 2009, the National Institute for Occupational Safety and Health (NIOSH) representative provided specific comment on the revisions proposed to the respirator requirements of the 13 Carcinogens (4-Nitrobiphenyl, etc.) standard. The full committee then recommended "that OSHA and NIOSH work together to address * * * technical issues relating to the respiratory protection provisions in the proposed rule." (ACCSH, Ex.12.2.) The specific NIOSH comment was:

> [T]he lack of either a NIOSH REL or an OSHA PEL results in a NIOSH respirator recommendation of any self-contained breathing apparatus that has a full facepiece and is operated in a pressure-demand or other positive-pressure mode, or any supplied-air respirator that has a full facepiece and is operated in a pressure-demand or other positive-pressure mode in combination with an auxiliary self-contained positive-pressure breathing apparatus. Neither a supplied-air respirator with a full facepiece operated in a continuous flow mode nor a supplied-air respirator with a full facepiece operated in a pressure-demand mode would provide the [NIOSH] recommended level and type of protection unless used in combination with an auxiliary self-contained positive-pressure breathing apparatus. (ACCSH Ex. 12.2; comments on the proposed rule on Standards Improvement Project III by the National Personal Protective Technology Laboratory, NIOSH.)

Based on the NIOSH comments, OSHA is considering revising the 13 Carcinogens standard to ensure that employers provide respiratory protection meeting the NIOSH recommendation. Therefore, OSHA requests comment on whether it should include in the final SIP–III standard a revision to the respirator provisions of the 13 Carcinogens standard that explicitly requires employers to use self-contained breathing apparatus with a full facepiece and operated in a pressure-demand or other positive-pressure mode, or any supplied-air respirator that has a full facepiece and operated in a pressure-demand or other positive-pressure mode in combination with an auxiliary self-contained positive-pressure breathing apparatus. Alternatively, OSHA could modify the proposed language to require respirator selection pursuant to § 1910.134, which would require employers to evaluate the specific hazard to determine and select the appropriate NIOSH-approved respirator for use by employees exposed to these carcinogens. OSHA also requests comment on these alternative approaches, as well as any other regulatory approaches that would address the issue raised by NIOSH.

In this rulemaking, OSHA is proposing to reinstate the requirement that employers provide full-facepiece, supplied-air respirators to workers exposed to methyl chloromethyl ether, bis-chloromethyl ether, ethyleneimine, and beta-propiolactone. OSHA notes that reinstatement of the requirement to use supplied-air respirators with the four liquid carcinogens will provide needed safety for employees working with these chemicals. Deleting this requirement was an inadvertent omission that needs correction. Whether OSHA should allow the use of chemical cartridges with NIOSH-certified air-purifying half-mask respirators for these four liquid carcinogens depends on employers proving that the cartridges used to absorb the vapors emitted from these chemicals would have an adequate service life. OSHA requests comment on, and data describing, the availability of such chemical cartridges for use with these four carcinogens.

(7) 1,3-Butadiene (§ 1910.1051)

OSHA is proposing to remove paragraph (m)(3) from the 1,3-Butadiene standard (§ 1910.1051), which requires that employers keep fit-test records for employees who use respirators to reduce toxic exposures. In the ANPRM, OSHA raised the possibility of deleting this recordkeeping provision from the 1,3-Butadiene standard for general industry, relying instead on the fit-testing recordkeeping requirement in § 1910.134.

The American Society of Safety Engineers (ID 0021) agreed with OSHA that deleting the fit-testing records requirement in the 1,3-Butadiene standard was appropriate since the requirement duplicates the recordkeeping requirement in § 1910.134. The 3M Company (ID 0028) also supported deleting the 1,3-Butadiene fit-testing record requirement, noting that removing this

requirement would not reduce protection because the requirement in § 1910.134 is at least as protective as the 1,3-Butadiene requirement.

Based on its review of the comments received in response to the ANPRM, OSHA believes that deleting the fit-testing recordkeeping requirement in paragraph (m)(3) of the 1,3-Butadiene Standard and relying instead on the fit-testing recordkeeping requirements in § 1910.134 would not reduce employee protection. Therefore, OSHA is proposing this revision in this rulemaking.

3. Subpart J

a. Definition of "Potable Water" (§ 1910.141(a)(2))

OSHA is proposing to revise and update the definition of the term "potable water" in the Sanitation standards for general industry (§ 1910.141(a)(2)) and construction (§ 1926.51(a)(6)), and the Field Sanitation standard for agriculture (§ 1928.110(b)). The proposed definition would bring consistency to OSHA regulations.

OSHA currently defines potable water as "water which meets the quality standards prescribed in the U.S. Public Health Service Drinking Water Standards, published in 42 CFR part 72, or water which is approved for drinking purposes by the State or local authority having jurisdiction." OSHA adopted the existing definition from a Public Health Service Code that is no longer in existence.

OSHA proposes to define potable water as "water that meets the standards for drinking purposes of the state or local authority having jurisdiction, or water that meets the quality standards prescribed by the U.S. Environmental Protection Agency's National Primary Water Regulations (40 CFR part 141)." OSHA earlier proposed the same revision to the shipyard-employment standards (72 FR 72451–72520).

b. Washing Facilities (§ 1910.141(d))

OSHA is proposing to revise the Bloodborne Pathogens standard by removing from the definition of "handwashing facilities" at § 1910.1030(b) the term "hot" in the phrase "hot air drying machines." The definition currently reads as follows:

"*Handwashing Facilities* means a facility providing an adequate supply of running potable water, soap, and single use towels or hot air drying machines." OSHA is proposing this revision in response to an inquiry from Dyson B2B Inc. (Dyson; ID 0015.1), which describes a new air blower that uses high-velocity (non-heated) air, rather than hot or warm air, to dry hands. On July 13, 2007, OSHA issued a letter of interpretation to Dyson in which it recognized that some air-blower techniques provide the appropriate level of employee protection, and agreeing to include this proposed revision in the SIP–III rulemaking (ID 0144). In this letter, OSHA also acknowledged that current technology allows for the use of hand-drying products that do not involve hot air, and noted that, when it published the Bloodborne Pathogens standard, adequate non-heated, high-velocity air blowers were not available.

OSHA also is proposing to apply this revision to four Sanitation standards, including the Sanitation standard for general industry (§ 1910.141(d)(2)(iv)), marine terminals (§ 1917.127(a)(1)(iii)), longshoring (§ 1918.95(a)(1)(iii)), and construction (1926.51(f)(3)(iv)). The general industry and construction Sanitation standards at §§ 1910.141(d)(2)(iv) and 1926.51(f)(3)(iv), respectively, use identical language as follows:

> Individual hand towels or sections thereof, of cloth or paper, *warm* air blowers or clean individual sections of continuous cloth toweling, convenient to the lavatories, shall be provided. [Emphasis added.]

While the definitions for Marine Terminals at §§ 1917.127(a)(1)(iii) and Longshoring at 1918.95(a)(1)(iii) differ slightly from this definition, the term "warm air blowers" is used in both definitions. OSHA notes that, whether the definitions include the term "hot" or "warm," the definitions do not include high-velocity air blowers. In this rulemaking, OSHA is proposing to remove the term "hot" or "warm" from these definitions, which then would permit employers to use high-velocity air blowers in the workplace. OSHA believes the proposal does not revise these definitions substantively in that employers still could use hot-/warm-air drying machines, as well as air blowers or other air-drying machines that may become available.

4. Slings (§ 1910.184)

OSHA is proposing to amend its standards regulating slings at § 1910.184 (general industry), §§ 1915.112, 1915.113, and 1915.118 (shipyard employment), and § 1926.251 (construction) by removing outdated tables that specify safe working loads, and revising other provisions (*e.g.,* §§ 1910.184(e)(6) and 1915.112) that reference the outdated tables. The proposal would replace the outdated tables with a requirement that would prohibit employers from loading slings in excess of the recommended safe working load as prescribed on permanently affixed identification markings. The proposed revisions also would expressly prohibit the use of slings that do not have such markings.

Manufacturers produce slings with markings that indicate the sling's rated capacity (*i.e.,* safe working load), the name or trademark of the manufacturer, and other specifications (*e.g.,* size, material used in manufacturing the sling); this information prevents misuse of slings, thereby increasing employee safety. OSHA currently requires these markings for three of the five types of slings regulated by its standards (*i.e.,* alloy-steel-chain, metal-mesh, and synthetic-web slings).

Many slings are sufficiently large for manufacturers to emboss or stitch identification markings onto the sling's surface. Other slings have identification markings on tags attached to the sling by other means, such as a separate wire or cable. However, such tags may detach from the sling during use, in which case, the employer must remove the sling from service until the tag is replaced.

OSHA published the existing Slings standard (§ 1910.184) on June 27, 1975 (see 40 FR 27368), based on the then-current 1971 consensus standard, ANSI B30.9–1971, Slings. OSHA made § 1910.184 applicable to the construction industry on February 9, 1979 (44 FR 8577). After 1975, OSHA made no revisions to these standards except for minor corrections. The load-capacity tables in these standards are now obsolete, and no longer conform to the load-capacity tables of the updated ANSI B30.9 standard. For example, the current ANSI B30.9 standard includes tables for slings made of alloy-steel chain (grades 80 and 100) not included in the existing OSHA standards.

In 1996, the National Association of Chain Manufactures (NACM) petitioned OSHA to adopt requirements of the recently updated ANSI B30.9 standard. NACM believed that the existing OSHA standard was not as safe as the updated ANSI standard. The NACM petition recommended that, at a minimum, OSHA remove Table N–1–184–1 in § 1910.184, which lists outdated load-capacity requirements for alloy-steel-chain slings.

Therefore, OSHA is proposing to remove the existing load-capacity tables for slings from the following standards: § 1910.184 (general industry; tables N–184–1, and N–184–3 through N–184–22); § 1915.118 (shipyard employment; tables G–1 through G–5, G–7 through G–8, and G–10), including references to these tables in § 1915.112 and

§ 1915.113; and § 1926.251 (construction; tables H–1 and H–3 through H–19). Also, OSHA is proposing to add the requirement for identification markings on wire-, natural-, and synthetic-fiber rope slings in §§ 1910.184 and 1926.251, as well as manila rope and manila rope slings, wire rope and wire-rope slings, and chain and chain slings in § 1915.112. The proposal would provide similar protection for shackles in § 1915.113 and § 1926.251. In addition, OSHA is proposing that employers follow the safe working-load capacity information on the identification markings affixed to slings by the sling manufacturer. Further, if the sling is missing its identification marking, OSHA is proposing, consistent with the latest ASME/ANSI B30.9 standard, that employers remove these slings from service until they reaffix the identification markings.

OSHA believes the proposed revisions will eliminate duplicative, inconsistent, and outdated information, thus minimizing confusion over the rated capacity of any type of sling used by employers. Further, reliance on the information marked on the sling simplifies compliance for employers by eliminating the need to check tables or other sources of information. Finally, the proposed revisions will maintain or increase employee safety by ensuring that employers use slings with readily available, up-to-date load ratings.

OSHA requests comment from the public on the following questions regarding the use of slings in this country: (1) Are all slings manufactured in accordance with the specifications prescribed by the ASME/ANSI B30.9 slings standard; (2) are all slings equipped with markings or tags; (3) what other information do manufacturers mark on slings; and (4) do the markings and tags remain affixed to the sling, or are the markings and tags easily removed or damaged?

5. Subpart T

OSHA is proposing to remove two unnecessary requirements from paragraphs (b)(3)(i) and (b)(5) of its Commercial Diving Operations standard at § 1910.440. Paragraph (b)(3)(i) requires employers to retain dive-team member medical records for five years, even though the standard contains no requirement for diver medical examinations. In this regard, a 1979 court decision (*Taylor Diving and Salvage* v. *U.S. Department of Labor* (599 F.2d 622) (5th Cir., 1979)) resulted in the removal of the requirement (formerly located at § 1910.411) to provide medical examinations, and OSHA never removed the corresponding medical recordkeeping requirement from the standard. Also, OSHA is proposing to correct a typographical error in paragraph (b)(4) that refers to § 1910.20 instead of § 1910.1020.

6. Subpart Z

OSHA is proposing to remove the requirements to transfer records to the National Institute for Occupational Safety and Health (NIOSH) for 15 substance-specific standards in subpart Z, as well as from the standard regulating access to employee exposure and medical records (§ 1910.1020). In addition, the following paragraphs describe miscellaneous proposed revisions to several other health standards.

a. Transfer of Exposure and Medical Records to NIOSH

OSHA is proposing to remove provisions in its substance-specific standards that require employers to transfer exposure and medical records to NIOSH. Most of OSHA's existing substance-specific standards, as well as the Access to Employee Exposure and Medical Records standard (§ 1910.1020), require employers to transfer to NIOSH specified medical and exposure records when: An employer ceases to do business and leaves no successor; the period for retaining the records expires; or an employee terminates employment (including retirement or death). OSHA proposes to remove the record-transfer requirement from the following standards:

- Asbestos—§§ 1910.1001(m)(6)(ii), 1915.1001(n)(8)(ii), and § 1926.1101(n)(8)(ii);
- 13 Carcinogens (4-Nitrobiphenyl, etc.)—§ 1910.1003(g)(2)(i) and (ii);
- Vinyl Chloride—§ 1910.1017 (m)(3);
- Inorganic Arsenic—§ 1910.1018 (q)(4)(ii) and (iii);
- Access to Employee Exposure and Medical Records—§ 1910.1020(h)(3)(i), (ii) and (h)(4);
- Lead—§§ 1910.1025(n)(5)(ii) and (iii) and 1926.62(n)(6)(ii) and (iii);
- Benzene—§ 1910.1028(k)(4)(ii);
- Coke Oven Emissions—§ 1910.1029(m)(4)(ii) and (iii);
- Bloodborne Pathogens—§ 1910.1030(h)(4)(ii);
- Cotton Dust—§ 1910.1043(k)(4)(ii) and (iii);
- 1,2 Dibromo-3-Chloropropane—§ 1910.1044(p)(4)(ii) and (iii);
- Acrylonitrile—§ 1910.1045(q)(5)(ii) and (iii);
- Ethylene Oxide—§ 1910.1047(k)(5)(ii);
- Methylenedianiline—§ 1910.1050(n)(7)(ii);
- 1,3-Butadiene—§ 1910.1051(m)(6)(i).

In addition, OSHA is proposing as part of this rulemaking to remove paragraph (b)(5)(ii) from § 1910.440 ("Recordkeeping requirements") of its standards for Commercial Diving Operations; this provision requires employers to transfer diving medical records to NIOSH in the event no successor employer is available.

These proposed revisions are in response to a comment from NIOSH (ID 0135) recommending that OSHA reexamine the need for this requirement, and consider removing it from these standards because "the records unfortunately have not proved suitable for research purposes." NIOSH stated further (ID 0142) that "[g]iven that these records have proven to have no research utility, the costs associated with the processing and maintaining these records are not justified."

In its comments, NIOSH noted that, in addition to the 2,900 records for the 13 Carcinogens standards mentioned in their January 2006 response to OSHA's Information Collection Request for OMB–1218–0085 (ID 0142), it catalogued another 170,000 records over a 30-year period, and used none of these records for research purposes. NIOSH further stated (ID 0135) that "boxes [of records] are currently in temporary storage at a NIOSH facility awaiting resources to become available to process them. There is also another shipment of 2,300 boxes from a defunct manufacturing company in temporary storage waiting NIOSH processing."

NIOSH also noted that contractors hired by companies that are ceasing business operations often are responsible for sending records to NIOSH. However, many of these contractors have no knowledge of what records to send, and may send inappropriate documents. In this regard, NIOSH stated:

> [I]n fact, some companies have used the opportunity to simply empty their files and send NIOSH everything. As a result, we often receive extraneous information unrelated to the requirements of the standards (*e.g.,* contract reports, drug test clearances, records for hazards that are not required to be submitted to NIOSH, environmental/pollution records, company operating manuals). On some occasions, even when valid medical records are sent, the records do not identify the particular hazard(s) that the workers were exposed to.

NIOSH stated that, once records are in its possession, it must "expend increasingly scarce research resources in processing them in accordance with the NIOSH Records Schedule." Lastly, NIOSH presented data on the cost it

incurs with processing, shipping, and long-term storage, noting:

NIOSH has previously estimated the in-house cost of processing to be about $1.35/record for records received under the OSHA carcinogen standards. It should be noted that these carcinogen records are the best organized of any we receive. They require the least amount of processing effort and are therefore the least costly. Other more poorly organized records and those containing extraneous materials that NIOSH has processed using contractor staff have cost about $3.50–$4.00/record. In addition there are other minimal costs associated with preparing the paperwork for shipment to the FRC [Federal Records Center] as well as the actual shipping costs. Finally, there are the long-term FRC storage costs (currently $0.30/record/year). For the 170,000 records currently at the FRC, that represents a total lifetime storage cost of more than $2,000,000. (ID 0135.)

In conclusion, NIOSH stated, "Based on our experience over the last 30 years, NIOSH believes that the significant costs associated with the records transfer requirements cannot be justified in light of the complete lack of scientific utility of the records."

Because the data generated by the records-transfer requirements appears to be of little or no value to NIOSH, OSHA is proposing to remove the record-transfer requirements from its substance-specific health standards and from paragraphs (h)(3) and (h)(4) of § 1910.1020 (Access to Employee Exposure and Medical Records). However, before making a final determination on this proposal, the Agency is requesting workers, researchers, and other interested parties to provide comment on the possible usefulness of these records. For example, the Agency is interested in determining whether workers who become ill after exposure to a hazardous substance would have a need to retrieve their records to verify their exposure after the employer responsible for exposing them to the substance is no longer in business (and the records cannot be obtained from a bankruptcy trustee or legal receiver), or whether the data would be useful for medical, industrial-hygiene, or economic research purposes. OSHA also is asking for examples of instances in which individuals or organizations previously used the data. Additionally, the Agency requests comment on the availability of this type of data from sources other than NIOSH (such as attorneys who hold medical and exposure records when companies cease business operations). The Agency welcomes any ideas or suggestions on how the data could be made more useful for these purposes.

b. Miscellaneous Revisions

(1) Substance-Specific PPE and Respirator Training Requirements

OSHA proposes to remove specific training requirements from several of its substance-specific standards because standards regulating personal-protective equipment (PPE) and respirators in 29 CFR 1910, subpart I, already require the training. Specifically, § 1910.132 requires employers to train employees on: when PPE (*i.e.,* protective equipment for the eyes, face, head, hands, and feet) is necessary; what PPE is necessary; how to properly don, doff, adjust, and wear the PPE; the limitations of the PPE; and the proper care, maintenance, useful life, and disposal of the PPE. Additionally, § 1910.134 requires employers to train employees on why respirators are necessary; how improper fit, use, or maintenance can compromise the effectiveness of respirators; the capabilities and limitations of respirators; how to use respirators effectively in emergency conditions; how to inspect, don, and doff respirators; how to use and check the seals of respirators; and how to recognize medical signs and symptoms that may limit or prevent the effective use of respirators.

The standards regulating PPE and respirator training apply to every operation in which an employer uses PPE and respirators. Therefore, the training requirements in substance-specific standards mandating training on such equipment duplicate the requirements for PPE and respirator training in §§ 1910.132 and 1910.134. OSHA believes that these revisions will reduce confusion regarding the training requirements, thereby improving employer compliance and worker protection.

(2) Lead (§ 1910.1025) (Trigger Levels in the Lead Standards (§§ 1910.1025 and 1926.62))

In the Lead standards for general industry and construction, at §§ 1910.25 and 1926.62, respectively, OSHA is proposing to amend the trigger levels at which employers must initiate specific actions to protect workers exposed to lead because the airborne concentrations at which these actions must occur vary slightly. In this regard, a number of provisions in the Lead standards trigger actions at airborne concentrations that are "above the AL," and "at or above the PEL." The terminology in the Lead standards for these airborne concentrations is inconsistent and can be confusing. For example, § 1910.1025(d)(6)(iii) currently states that "[t]he employer shall continue monitoring at the required frequency until at least two consecutive measurements, taken at least 7 days apart, are below the PEL but at or above the action level[.]" OSHA is proposing to revise this provision to state that "[t]he employer shall continue monitoring at the required frequency until at least two consecutive measurements, taken at least 7 days apart, are below the PEL but at or above the action level[.]" Similar issues arise with respect to the blood-lead levels that trigger medical-removal protection or return to work in the Lead standards. OSHA is proposing to revise these terminologies in the Lead standards to make these provisions internally consistent and consistent with each other.

Tables 1 and 2 below describe the existing and proposed revisions in the general industry and the construction industry standards (with the proposed revisions in bold font).

TABLE 1—§ 1910.1025 GENERAL INDUSTRY

Existing language	Proposed language
§ 1910.1025(d)(6)(iii) If the initial monitoring reveals that employee exposure is above the permissible exposure limit the employer shall repeat monitoring quarterly. The employer shall continue monitoring at the required frequency until at least two consecutive measurements, taken at least 7 days apart, are below the PEL but at or above the action level at which time the employer shall repeat monitoring for that employee at the frequency specified in paragraph (d)(6)(ii), except as otherwise provided in paragraph (d)(7) of this section.	If the initial monitoring reveals that employee exposure is **at or** above the permissible exposure limit the employer shall repeat monitoring quarterly. The employer shall continue monitoring at the required frequency until at least two consecutive measurements, taken at least 7 days apart, are below the PEL but at or above the action level at which time the employer shall repeat monitoring for that employee at the frequency specified in paragraph (d)(6)(ii), except as otherwise provided in paragraph (d)(7) of this section.
§ 1910.1025(j)(1)(i)	

TABLE 1—§ 1910.1025 GENERAL INDUSTRY—Continued

Existing language	Proposed language
The employer shall institute a medical surveillance program for all employees who are or may be exposed **above** the action level for more than 30 days per year.	The employer shall institute a medical surveillance program for all employees who are or may be exposed **at or** above the action level for more than 30 days per year.
§ 1910.1025(j)(2)(ii)	
Follow-up blood sampling tests. Whenever the results of a blood lead level test indicate that an employee's blood lead level exceeds the numerical criterion for medical removal under paragraph (k)(1)(i)(A), of this section, the employer shall provide a second (follow-up) blood sampling test within two weeks after the employer receives the results of the first blood sampling test.	*Follow-up blood sampling tests.* Whenever the results of a blood lead level test indicate that an employee's blood lead level **is at or above** the numerical criterion for medical removal under paragraph (k)(1)(i)(A), of this section, the employer shall provide a second (follow-up) blood sampling test within two weeks after the employer receives the results of the first blood sampling test.
§ 1910.1025(k)(1)(i)(B)	
The employer shall remove an employee from work having an exposure to lead at or above the action level on each occasion that the average of the last three blood sampling tests conducted pursuant to this section (or the average of all blood sampling tests conducted over the previous six (6) months, whichever is longer) indicates that the employee's blood lead level is at or above 50 μg/100 g of whole blood; provided, however, that an employee need not be removed if the last blood sampling test indicates a blood lead level at or below 40 μg/100 g of whole blood.	The employer shall remove an employee from work having an exposure to lead at or above the action level on each occasion that the average of the last three blood sampling tests conducted pursuant to this section (or the average of all blood sampling tests conducted over the previous six (6) months, whichever is longer) indicates that the employee's blood lead level is at or above 50 μg/100 g of whole blood; provided, however, that an employee need not be removed if the last blood sampling test indicates a blood lead level **below** 40 μg/100 g of whole blood.
§ 1910.1025(k)(1)(iii)(A)(1)	
For an employee removed due to a blood lead level at or above 60 μg/100 g, or due to an average blood lead level at or above 50 μg/100 g, when two consecutive blood sampling tests indicate that the employee's blood lead level is at or below 40 μg/100 g of whole blood.	For an employee removed due to a blood lead level at or above 60 μg/100 g, or due to an average blood lead level at or above 50 μg/100 g, when two consecutive blood sampling tests indicate that the employee's blood lead level is below 40 ug/100 g of whole blood.

TABLE 2—§ 1926.62 LEAD

Existing language	Proposed language
§ 1926.62(j)(2)(ii)	
Follow-up blood sampling tests. Whenever the results of a blood lead level test indicate that an employee's blood lead level exceeds the numerical criterion for medical removal under paragraph (k)(1)(i) of this section, the employer shall provide a second (follow-up) blood sampling test within two weeks after the employer receives the results of the first blood sampling test.	*Follow-up blood sampling tests.* Whenever the results of a blood lead level test indicate that an employee's blood lead level **is at or above** the numerical criterion for medical removal under paragraph (k)(1)(i) of this section, the employer shall provide a second (follow-up) blood sampling test within two weeks after the employer receives the results of the first blood sampling test.
§ 1926.62(j)(2)(iv)(B)	
The employer shall notify each employee whose blood lead level exceeds 40 μg/dl that the standard requires temporary medical removal with Medical Removal Protection benefits when an employee's blood lead level exceeds the numerical criterion for medical removal under paragraph (k)(1)(i) of this section.	The employer shall notify each employee whose blood lead level **is at or above** 40 μg/dl that the standard requires temporary medical removal with Medical Removal Protection benefits when an employee's blood lead level exceeds the numerical criterion for medical removal under paragraph (k)(1)(i) of this section.
§ 1926.62(k)(1)(iii)(A)(1)	
For an employee removed due to a blood lead level at or above 50 μg/dl when two consecutive blood sampling tests indicate that the employee's blood lead level is at or **below** 40 μg/dl.	For an employee removed due to a blood lead level at or above 50 μg/dl when two consecutive blood sampling tests indicate that the employee's blood lead level is **below** 40 μg/dl.

(3) Occupational Exposure to Hazardous Chemicals in Laboratories (§ 1910.1450)

OSHA is proposing to revise a statement in non-mandatory Appendix A of the standard that regulates occupational exposure to hazardous chemicals in laboratories (the lab standard) at § 1910.1450. Specifically, OSHA is proposing to revise the statement on ingestion. OSHA included the statement in Appendix A of the lab standard when it published the standard on January 31, 1990 [55 FR 3327–3335]. The purpose of the statement was to provide guidance to employers developing a chemical-hygiene plan. OSHA based the statement on *Prudent Practices for Handling Hazardous Chemicals in Laboratories,* a committee report by the National Research Council. The statement addressed by this proposal appears in Section E of Appendix A in § 1910.1450, entitled, *Basic Rules and General Procedures for Working with Chemicals.* In paragraph 1(a), *Accidents and spills,* the existing text recommends that, when an employee ingests a hazardous chemical, "[e]ncourage the victim to drink large amounts of water."

OSHA is proposing to revise this recommendation in response to a commenter from Rexall Sundown (ID 0141), who noted, "I have a strong concern for the blanket statement concerning ingestion. I realize that it may have been taken from Prudent Practices; however, a strong word of caution may need to be added." The commenter indicated the containers for some hazardous chemicals warn, "Do not give anything by mouth. Contact medical advice immediately." The commenter recommended that OSHA adopt the approach found in the *Cornell University Laboratory Safety Manual and Chemical Hygiene Plan,* where treatment depends on the type and amount of chemical involved. Based on these considerations and the suggestion

that drinking large amounts of water may do more harm than good, OSHA is revising the language to read, "This is the one route of entry for which treatment depends on the type and amount of chemical involved. Seek medical attention immediately." OSHA believes the language proposed would enhance employee protection by providing appropriate advice in situations in which an employee may ingest a hazardous chemical.

B. Proposed Revisions to the Standards for Shipyard Employment (29 CFR Part 1915)

1. Appendix A of Subpart B

OSHA is proposing to amend Appendix A ("Compliance Assistance Guidelines for Confined and Enclosed Spaces and Other Dangerous Atmospheres") to subpart B of 29 CFR 1915 by revising the sentence in example number 1 under the section titled, "Section 1915.11(b) Definition of 'Hot work,'" to read, "Abrasive blasting of the external hull for paint preparation does not necessitate pumping and cleaning the tanks of a vessel." The proposed revision adds the word "external" to the existing sentence to indicate that the information provided by the section applies only to work performed on the outside of a ship. OSHA believes the proposed revision will clarify the compliance obligation under these conditions.

In 1994, OSHA published the final rule regulating confined and enclosed spaces and other dangerous atmospheres in shipyard employment (59 FR 37816, July 25, 1994). In that rulemaking, OSHA defined "hot work" in 29 CFR 1915.11 as:

> [A]ny activity involving riveting, welding, burning, and the use of powder-actuated tools or similar fire-producing operations. Grinding, drilling, abrasive blasting, or similar spark-producing operations are also considered hot work except when such operations are isolated physically from any atmosphere containing more than 10 percent of the lower explosive limit of a flammable or combustible substance.

OSHA's purpose in developing Appendix A to subpart B was to assist employers in complying with the requirements of that subpart. The section of Appendix A that OSHA is proposing to revise provides several examples of situations that do not involve hot work, including the example of abrasive blasting on the hull for paint preparation. However, in the final rule, OSHA did not explain that this example only applies to work performed on the external hull, not inside the hull, of a ship. To correct this oversight, OSHA is proposing to add the word "external" to this example.

2. §§ 1915.112, 1915.113, and 1915.118

OSHA proposes to revise and update the slings provisions of § 1915.112 (Ropes, chains and slings), paragraph (a) of § 1915.113 (Shackles and hooks), and § 1915.118 (Tables). See previous section A.4 for a detailed discussion of these proposed revisions.

3. § 1915.154—Respiratory Protection

The revisions OSHA is proposing to Appendix C of the Respiratory Protection standard at § 1910.134, described in previous section A.2.b(2), also would affect shipyard employment through the Respiratory Protection standard at § 1915.154.

4. § 1915.1001—Asbestos

OSHA proposes to revise § 1915.1001, Asbestos, to require employers to institute a respiratory-protection program in accordance with § 1910.134. See previous section A.2.b(6) for a detailed discussion of these proposed revisions.

C. Proposed Revisions to the Standards for Marine Terminals (29 CFR Part 1917)

1. §§ 1917.2—Definitions

OSHA is proposing to add a definition for the term "ship's stores" in § 1917.2. Currently, five provisions in Title 29 of the Code of Federal Regulations use the term "ship's stores"; however, OSHA provides no definition of the term in this title. OSHA uses the term in the definition of "longshoring operation" in §§ 1910.16(c)(1) and 1918.2; in the definition of "vessel cargo handling gear" in § 1918.2; in the scope and application section of 29 CFR 1917 at § 1917.1(a); and in § 1917.50(j)(3) (exceptions to the gear-certification requirements).

After publishing the final rule for marine terminals on June 30, 2000 (65 FR 40935), OSHA received a number of requests asking the Agency to define the term "ship's stores" as used in § 1917.50(j)(3). In a directive published on May 23, 2006 (CPL 02–00–139), OSHA defined the term to mean materials that are on board a vessel for the upkeep, maintenance, safety, operation, or navigation of the vessel, or for the safety or comfort of the vessel's passengers or crew. The definition in the directive is similar to the U.S. Coast Guard definition at 46 CFR 147. OSHA believes that the definition used in the directive is appropriate, and, therefore, is proposing to revise the definitions section of § 1917.2 to include this definition.

2. § 1917.127—Sanitation

OSHA proposes to revise and update the sanitation provisions in paragraph (a)(1)(iii) of § 1917.127 by removing the word "warm" from the phrase "warm air blowers." See previous section A.3.b for a detailed discussion of this proposed revision.

D. Proposed Revisions to the Standards for Longshoring (29 CFR 1918)

1. § 1918.2—Definitions

OSHA proposes to add a definition in § 1918.2 for the term "ship's stores." See previous section C.1 for a detailed discussion of this proposed revision.

2. § 1918.95—Sanitation

OSHA proposes to revise and update the sanitation provisions in paragraph (a)(1)(iii) of § 1918.95 by removing the word "warm" from the phrase "warm air blowers." See previous section A.3.b for a detailed discussion of this proposed revision.

E. Proposed Revisions to the Standards for Gear Certification (29 CFR 1919)

1. §§ 1919.6, 1919.11, 1919.12, 1919.15, and 1919.18

OSHA is proposing to update §§ 1919.6(a)(1), 1919.11(d), 1919.12(f), 1919.15(a), and 1919.18(b) to require employers to inspect a vessel's cargo-handling gear as recommended by International Labor Organization (ILO) Convention 152. This revision would require employers to test and thoroughly examine gear before initial use; thoroughly examine it every 12 months thereafter; and retest and thoroughly examine the gear every five years. The proposed revision is consistent with the current ILO Convention 152. The existing standards, based on outdated ILO Convention 32, require testing and examination every four years. OSHA believes these proposed revisions represent the usual and customary practice of the maritime industry, and, therefore, will increase employee protection while not adding to employers' compliance burden.

The proposed revisions would make the 29 CFR 1919 standards consistent with the existing requirement of the Longshoring standard at § 1918.11(a). Section 1918.11(a) requires an employer using a vessel's cargo-handling gear to ensure that the vessel has a current and valid cargo-gear register and certificates that comply with the recommendations of ILO Convention 152 for testing and examination of cargo gear. Paragraph (b) of § 1918.11 specifies that OSHA will consider vessels holding a valid certificate of inspection from the U.S. Coast Guard (USCG), as well as public

vessels, to meet the requirements of paragraph (a) of § 1918.11. Paragraphs (c) and (d) of § 1918.11 specify the competencies that persons or organizations making entries and issuing the certificates required by paragraph (a) of this section must have, both with regard to U.S. vessels not holding a valid USCG Certificate of Inspection, and vessels under foreign registry.

In 1997, when OSHA updated the Marine Terminals and Longshoring standards (62 FR 40141, July 25, 1997), it updated § 1918.11 requiring inspections of vessels' cargo-handling gear as recommended by ILO Convention No. 152, which replaced ILO 32 (upon which OSHA's current rule is based). Accordingly, this revision requires employers to test and thoroughly examine gear before initial use; thoroughly examine it every 12 months thereafter; and retest and thoroughly examine the gear every five years. The original standards, similar to existing requirements in 29 CFR 1919, required retesting and thorough examination every four years. OSHA is proposing to update the inspection and testing requirements in §§ 1919.6(a)(1), 1919.11(d), 1919.12(f), 1919.15(a), and 1919.18(b) to be consistent with the inspection and testing requirements in existing 29 CFR 1917 (Marine Terminals) and 1918 (Longshoring).

F. Proposed Revisions to the Construction Standards (29 CFR 1926)

1. Subpart D

a. § 1926.51(a)(6)

OSHA proposes to revise § 1926.51, Sanitation, by updating the definition of the term "potable water." See previous section A.3.a for a detailed discussion of this proposed revision.

b. § 1926.51(f)(3)

OSHA proposes to revise and update the sanitation provisions in paragraph (f)(3)(iv) of § 1926.51 by removing the word "warm" from the term "warm air blowers." See previous section A.3.b for a detailed discussion of this proposed revision.

c. § 1926.60

OSHA is proposing to revise paragraph (o)(8) of the Methylenedianiline standard, which requires employers to comply with the requirements in § 1926.33 regarding the transfer of records to NIOSH. See previous section A.6.a for a detailed discussion of this proposed revision.

d. § 1926.62

The following paragraphs describe several revisions OSHA is proposing to the Lead standard for construction at § 1926.62.

(1) OSHA is proposing to revise the trigger levels at which employers must initiate specific actions to protect workers exposed to lead. See previous section A.6.b for a detailed discussion of this proposed revision.

(2) OSHA proposes to remove paragraphs (n)(6)(ii) and (iii) of § 1926.62, which require employers to comply with the requirements in § 1926.33 regarding the transfer records to NIOSH. See previous section A.6.a for a detailed discussion of this proposed revision.

2. Subpart H

OSHA proposes to revise and update the slings requirements at § 1926.251 (Rigging equipment for material handling). See previous section A.4 for a detailed discussion of this proposed revision.

3. Subpart Z

a. Asbestos (§ 1926.1101)

(1) OSHA is proposing to correct the references in paragraphs (n)(7) and (n)(8) of the Asbestos standard for construction to refer to § 1926.33 rather than § 1910.20, because § 1910.20 does not exist.

(2) Section 1926.33 requires compliance with § 1910.1020, from which OSHA is proposing to remove the requirement to transfer employee exposure and medical records to NIOSH. See previous section A.6.a for a detailed discussion of this proposed revision.

(3) OSHA proposes to remove the requirement in existing (n)(8)(ii) specifying that employers must transfer employee medical and exposure records to NIOSH. See previous section A.6.a for a detailed discussion of this proposed revision.

b. Cadmium (§ 1926.1127)

(1) OSHA is proposing to revoke the training-certification record requirement at paragraph (n)(4) of § 1926.1127. See previous section A.2.a for a detailed discussion of this proposed revision.

(2) OSHA is proposing to correct the reference in paragraph (n)(6) of the Cadmium standard for construction to refer to § 1926.33, rather than paragraph (h) of § 1926.33, because § 1926.33 has no paragraph (h).

(3) Section 1926.33 requires compliance with § 1910.1020, from which OSHA is proposing to remove the requirement to transfer employee exposure and medical records to NIOSH. See previous section A.6.a for a detailed discussion of this proposed revision.

G. Proposed Revisions to the Agriculture Standards (29 CFR Part 1928)

1. Subpart I (General Environmental Controls)

OSHA proposes to revise § 1928.110(b) by updating the definition of the term "potable water." See section A.3.a for a detailed discussion of this proposed revision.

H. Miscellaneous Issues

OSHA asked in question #40 of the ANPRM whether any other standards needed revision consistent with the purpose of the SIP process (71 FR 76629). The American Society of Safety Engineers (ASSE; ID 0021) responded that the OSHA Permissible Exposure Limits for air contaminants need revision. However, such an extensive rulemaking is beyond the limited scope of the SIP process.

The 3M Company (3M; ID 0028) recommended that OSHA remove from § 1910.134(d)(3)(iv)(B) the reference to filters certified under 30 CFR part 11, and instead require that air-purifying respirators use filters certified for particulates by NIOSH under 42 CFR part 84. The 3M Company also recommended that OSHA remove separate provisions regulating filter selection from its substance-specific standards, and replace these provisions with a reference to § 1910.134(d)(3)(iv)(B). In response to 3M's first recommendation, OSHA may consider such a revision when it receives sufficient evidence that employers are no longer purchasing or using dust-mist and dust-fume-mist filters. Regarding 3M's second recommendation, OSHA removed many of these separate filter-selection provisions from its substance-specific standards in the recent final rulemaking for assigned protection factors (APFs) (see 71 FR 50122). OSHA believes that to propose additional revisions to these provisions is inappropriate because, as it explained in the final APF rulemaking, "[T]he Agency decided to retain former respirator selection provisions in the existing substance-specific standards that it found supplemented or supplanted the proposed APFs and MUCs [maximum use concentrations] * * *. OSHA did so because these provisions enhance the respirator protection afforded to employees." (*Id.* at 50177.)

3M also addressed the 1,3-Butadiene standard's provisions that limit the use

of organic-vapor cartridges and canisters to specific levels of butadiene. The § 1910.134 standard allows employers to make service-life calculations in developing replacement schedules for vapor cartridges and canisters. 3M presented calculations in its ANPRM comments that resulted in service-life durations ranging from 16.5 hours at a 5 parts per million (ppm) butadiene concentration, to 4.75 hours at 50 ppm butadiene. 3M stated that permitting service-life calculations for butadiene exposure concentrations would allow employers to use powered air-purifying respirators for some butadiene exposures, thereby eliminating the problems that occur with trailing air hoses associated with the use of supplied-air respirators. OSHA disagrees with this recommended revision because butadiene is a compound with a high vapor pressure and, as a result, droplets captured in the filter may vaporize and penetrate through the filter, and expose the employee to excess levels of butadiene.

The National Marine Manufacturers Association (NMMA) and the American Composites Manufacturers Association (ACMA) petitioned OSHA to revise its standards at 29 CFR 1910, subpart H (*see* §§ 1910.106 and 1910.107) by adopting the provisions of National Fire Protection Association (NFPA) 30, *Flammable and Combustible Liquids Code,* and NFPA 33, *Standard for Spray Application using Flammable and Combustible Materials,* which apply to the manufacturing of styrene cross-linked composites (*i.e.,* glass-fiber reinforced plastics). In response to the petition, OSHA sought comment through the ANPRM for SIP–III. In the ANPRM, the Agency noted that it lacked data from which to draw conclusions on the relative level of protection provided by the NFPA and OSHA standards. OSHA requested data and information on the level of employee protection provided by these standards using the following questions:

- Are the provisions in the 2003 edition of NFPA 30 as protective or more protective of employee's safety and health than the equivalent provisions in § 1910.106? Should OSHA revise § 1910.106 to be consistent with these provisions? Please submit specific available information or data supporting your comments.
- Are the provisions in the 2003 edition of NFPA 33 as protective or more protective of employee's safety and health than the equivalent provisions in § 1910.107? Should OSHA revise § 1910.107 to be consistent with these provisions? Please submit specific available information or data supporting your comments.

In response to these questions, OSHA received a number of comments (IDs 0017, 0018, 0020, 0021, 0025, 0122, and 0128) supporting the composites provisions in these NFPA standards. However, none of the commenters provided persuasive data or information regarding the protection afforded to employees by the NFPA standards.

In addition to the comments, OSHA received a document from the ACMA entitled, "Fire Hazard Analysis of Composite Resin Manufacturing Spray Application Areas" (ID 0139). This document describes a study that identified issues regarding electrical classification, sprinkler protection, ventilation, and the use of flammable liquids in clean-up operations. The study, based on preliminary research, was part of an ACMA-sponsored effort to analyze the hazards in this industry, and to conduct testing to compare the level of safety provided by the OSHA standards and the NFPA standards. However, this document, like the comments described previously, does not provide the Agency with sufficient information to support proposing a revision to the 29 CFR 1910, subpart H standards. Therefore, OSHA decided not to include any specific revisions to §§ 1910.106 or 1910.107 of subpart H in the SIP–III proposal. Rather, it will continue to seek additional information and data for use in determining the need for revisions. Accordingly, OSHA again seeks information that may help determine if NFPA 33 provides protection for employees equivalent to that provided in § 1910.107, and requests comments and supporting data on the previous questions.

In the ANPRM, OSHA expressed its position on the need for training, noting, "Training is an essential part of every employer's safety and health program for protecting employees from injury and illness" (71 FR 76629). OSHA asked for comment on four questions concerning training requirements, and noted that, in SIP–II, it revised the notification and timing requirements in several health standards to make them consistent with each other (67 FR 66493). OSHA explained that it made these revisions to reduce confusion and to facilitate compliance, without diminishing employee protection. In the ANPRM, OSHA asked the following questions:

- How could the Agency modify the training requirements in various OSHA safety and health standards to promote compliance with training requirements?
- How should training content and frequency of retraining be addressed to improve employees' safety and health? Please identify changes that could be made to improve the training process.
- Would making training requirements uniform among various standards facilitate employers' compliance with OSHA regulations?
- To what extent, if any, do other agencies' training requirements overlap with OSHA's?

OSHA received several comments in response to these four questions. With regard to retraining, the Building and Construction Trades Department of the AFL–CIO (BCTD; ID 0118) said:

> OSHA should specify the frequency of retraining. The retraining should not be based on subjective criteria such as "when needed" or "if worker shows lack of understanding." Too often criteria like [these[are ignored or retraining is only implemented after an accident. All safety and health retraining should be required on an annual basis.

The BCTD (ID 0118) also recommended that OSHA require employers to prepare a written certification record for all training requirements, noting that some OSHA standards require certification records and others do not. It further recommended that OSHA add a new training requirement to the construction industry standards, one that would mandate that all construction workers receive the 10-hour OSHA safety-and-health course for construction. Additional training revisions recommended by the BCTD are beyond the scope of the SIP–III rulemaking, but OSHA will consider them for further action. (For a discussion of OSHA proposals regarding training-certification-record requirements, see item 2.a ("Training certification records") under previous section A ("Subpart I").

The Associated General Contractors of America (ID 0120) also addressed the frequency of training, noting, "[T]he amount of training should match the severity of the hazard and the prevalence of the hazard to particular occupations." Duke Energy (ID 0018) agreed with standardizing the language of the health standards, and suggested that, rather than specifying detailed training requirements in its health standards, OSHA should revise these standards to allow employers to comply with performance-based requirements, such as the requirements in OSHA's Hazard Communication standard at 1910.1200.

Both the American Society of Safety Engineers (ASSE; ID 0021) and Northrop Grumman Newport News (ID 0027) argued against the "one-size-fits-all" approach. Northrop Grumman stated:

A toolbox meeting may be appropriate for some employers while formal classroom, computer-based training, or on-the-job training may be effective for other employers. We also note that different audiences within the same employer may learn best using different methods or frequencies. For instance, employees retain information better on tasks they perform frequently versus tasks they perform infrequently. For an infrequent task, "just in time" training or a job briefing on the day of the job may be the best method to ensure an employee understands how to perform the work safely versus "annual" training that may have been conducted 11 months before the employee performs the work. Furthermore, information technology, such as virtual reality and computer-based training, is opening up tremendous new opportunities to enhance training beyond the traditional means.

ASSE recommended that OSHA consider the ANSI Z490.1 consensus standard when addressing training requirements. OSHA believes that the Z490.1 standard is useful for employers in developing and providing a framework for training programs, but that standard prescribes measures beyond the scope of this rulemaking. For example, the standard prescribes detailed criteria for developing and evaluating training programs, including needs assessment, learning objectives, course content, and a written training program plan, as well as detailed records documenting the successful completion of training.

After reviewing the commenters' submissions, OSHA is not convinced currently that employees or employers would benefit from any revisions to the frequency or content of the training requirements contained in its existing substance-specific standards. Additionally, as part of a separate rulemaking on the Global Harmonization System (74 FR 50279, September 30, 2009), OSHA is addressing the training provisions in several of its substance-specific standards. Furthermore, as discussed earlier, OSHA is proposing revisions to the training-certification requirements in several standards.

IV. Preliminary Economic Analysis and Regulatory Flexibility Act Certification

A. Overview

OSHA determined that the proposed standard is not an economically significant regulatory action under Executive Order (E.O.) 12866. E.O. 12866 requires regulatory agencies to conduct an economic analysis of rules that meet specific criteria. The most frequently used criterion under E.O. 12866 is that the rule will impose on the economy an annual cost in excess of $100 million. Neither the benefits nor the costs of this rule exceed $100 million. OSHA provided OMB's Office of Information and Regulatory Affairs with this assessment of the costs, benefits, and alternatives, as required by section 6(a)(3)(C) of E.O. 12866.

OSHA also determined that the proposal is not a major rule under the Congressional Review provisions of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 601 *et seq.*) requires OSHA to determine whether the Agency's regulatory actions will have a significant impact on a substantial number of small entities. OSHA's conclusion, based on the analysis described in this section of the preamble, indicates that the proposed rule will not have significant impacts on a substantial number of small entities.

The proposal deletes and revises a number of provisions in existing OSHA standards. OSHA believes that the proposal is technologically feasible because it reduces or removes current requirements on employers.

The Agency considered both regulatory and non-regulatory alternatives to the proposed revisions. Non-regulatory alternatives are not an appropriate remedy to effect these revisions because the proposed provisions reduce requirements or provide flexibility to employers by revising existing standards. As discussed in the previous Summary and Explanation section, the Agency considered alternatives for amending several provisions. In most instances, the Agency chose to revise outdated provisions to improve clarity, as well as consistency, with standards more recently promulgated by the Agency. In some instances, the proposal provides more flexibility in the way information is communicated to employees or the Agency. The purpose of the proposed provisions was to reduce burden on employers, or provide employers with compliance flexibility, while maintaining the level of protection for employees.

B. Costs and Cost Savings

1. Removing Requirements To Transfer Records to NIOSH

The Agency is deleting provisions from § 1910.1020(h)(3) and (h)(4) of its standard regulating access to employee medical and exposure records that will end employers' responsibility to send exposure and medical records to NIOSH. Under existing § 1910.1020(h)(3), if an employer ceases business operations without a successor, the employer must send employee exposure and medical records to NIOSH if required to do so by a substance-specific standard. For records associated with other substances, the employer must notify the Director of NIOSH in writing three months before disposing of them. Under § 1910.1020(h)(4), an employer who regularly disposes of employee records more than 30 years old must notify the Director of NIOSH, at least three months prior to disposal, of the records planned for disposal in the coming year.

Deleting these requirements from OSHA standards provides several sources of savings to NIOSH. In a comment to the rulemaking record (ID 135), NIOSH reported that it catalogued about 170,000 employee medical and exposure records during the past 30 years. NIOSH noted that the records were of no use for research purposes, and estimated that removing the duty to collect the records would result in a savings of $2 million for long-term storage of the catalogued records. In this regard, NIOSH stated that long-term storage costs are currently $0.30/record/year, which "represents a total lifetime storage cost of more than $2,000,000." In addition, NIOSH periodically receives records from employers who are terminating business operations. These employers often fail to contact NIOSH in advance regarding the appropriateness of the records they are sending to NIOSH. NIOSH protocol requires it to keep records, even inappropriate records, until it reviews the records; NIOSH keeps unreviewed records in temporary storage. Removal of the records-transfer requirement, as proposed, would relieve NIOSH of receiving and temporarily storing these records.

The proposal also would save NIOSH the resources it expends on processing received data on an on-going basis. NIOSH noted that the cost of processing records ranges from $1.35 to $4.00 per record, but the agency did not provide comment on how many records it typically processes annually. In its analyses of the paperwork burden associated with this records-transfer requirement, OSHA estimated that employers expend 3,611 hours at a cost of $157,459 annually (see section VI below, "OMB Review Under the Paperwork Reduction Act of 1995"). This savings also constitutes a benefit of the proposed rule.

2. Removing Training-Certification and Other Requirements

A second source of cost savings from the proposed rule is removing the certification requirements for employee training under the PPE and Cadmium standards. The Agency estimates that this action will save employers, across

a wide range of industries, about 1.86 million hours annually, with an estimated value of about $42.9 million (*see* OSHA's estimate of paperwork costs below in section VI).

The proposal's provisions on slings require employers to mark equipment (*i.e.,* slings and shackles) with safe working loads (SWL) and other rigging information. OSHA's current standards require this information for three of the five types of slings, and the Agency believes that it is industry practice for manufacturers to permanently mark all slings with this information. Thus, the Agency preliminarily concludes that these provisions will not impose any new cost burden on affected employers. OSHA believes that having the SWL information marked on slings instead of located in tables would provide employers with readily available and up-to-date sling information, thereby reducing employer cost. The Agency seeks comment on any economic effects that may result from replacing the tables with marks.

The proposal also relaxes the frequency of rigging inspections required under 29 CFR 1919 from every four years to every five years. The Agency seeks comment on whether this revision will result in any cost savings for employers.

C. Summary

OSHA preliminarily concludes that the provisions of the proposal do not impose any new costs on employers. Since the proposal does not impose costs of any significance on any employer, the Agency concludes that the proposed standard is economically feasible. The table below provides a summary of the cost savings OSHA estimates will result from this proposed rulemaking.

Item	Cost savings
NIOSH record storage (one-time savings)	$2.00 million.
Removing requirements that employers transfer records to NIOSH (annual savings)	$0.16 million.
Removing requirements for written certification of training (annual savings)	$42.90 million.
Total	$45.06 million.

V. Regulatory Flexibility Analysis

In accordance with the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* (as amended), OSHA examined the regulatory requirements of the proposal to determine whether these proposed requirements would have a significant economic impact on a substantial number of small entities. Since no employer of any size will have new costs, the Agency preliminarily concludes that the proposed rule would not have a significant economic impact on a substantial number of small entities.

VI. OMB Review Under the Paperwork Reduction Act of 1995

A. Overview

The Standards Improvement Project-Phase III (SIP–III) proposal would revoke existing collection-of-information (paperwork) requirements contained in 41 existing Information-Collection Requests (ICRs) currently approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (PRA–95), 44 U.S.C. 3501 *et seq.,* and OMB's regulations at 5 CFR part 1320. PRA–95 defines "collection of information" as "the obtaining, causing to be obtained, soliciting, or requiring the disclosure to third parties or the public of facts or opinions by or for an agency regardless of form or format" (44 U.S.C. 3502(3)(A)). Under PRA–95, a Federal agency cannot conduct or sponsor a collection of information unless it is approved by OMB, and displays a currently valid OMB control number.

B. Solicitation of Comments

OSHA prepared and submitted one ICR for the SIP–III proposal to the OMB for review in accordance with 44 U.S.C. 3507(d). The Agency solicits comments on the proposed new and modified collection-of-information requirements and the estimated burden hours associated with these requirements, including comments on the following items:

- Whether the proposed collection-of-information requirements are necessary for the proper performance of the Agency's functions, including whether the information is useful;
- The accuracy of OSHA's estimate of the burden (time and cost) of the information-collection requirements, including the validity of the methodology and assumptions used;
- The quality, utility, and clarity of the information collected; and
- Ways to minimize the compliance burden on employers, for example, by using automated or other technological techniques for collecting and transmitting information.

C. Proposed Revisions to Information-Collection Requirements

As required by 5 CFR 1320.5(a)(1)(iv) and 1320.8(d)(2), the following paragraphs provide information about this ICR, including the reductions in reporting burden associated with the proposed revisions to information-collection requirements.

1. Title: Standards Improvement Project-Phase III (SIP–III)

2. Description of revisions to the ICRs: The proposal would remove the requirements for employers to transfer employee exposure-monitoring and medical records to the National Institute for Occupational Safety and Health (NIOSH) under the standard regulating access to employee exposure and medical records at § 1910.1020, as well as an additional 18 standards in the general, construction, and shipyard-employment industries. (*See* the earlier detailed discussion of this proposed revision under section IV.B.1.) In addition, the Agency is proposing to remove, from four of its standards, training-certification records that require employers to develop and maintain written records certifying that they complied with training requirements. In addition to the four training-certification records proposed for removal, OSHA is considering removing the training-certification requirements from 12 other general industry, construction, and shipyard-employment standards. (See the detailed discussion of this proposed revision located in previous section III.A.2.)

3. Changes in reporting burden and responses resulting from removing requirements to transfer records to NIOSH: The following table describes the estimated changes in burden hours and cost resulting from removing provisions from OSHA standards (identified by the current OMB control numbers) requiring employers to transfer employee exposure and medical records to NIOSH.

Standard and Provision	OMB Control No.	Change (burden hours)	Change (cost)
Commercial Diving Operations—29 CFR 1910.440(b)(5)(ii)	1218–0069	−301	−$5,764
Asbestos—29 CFR 1910.1001(m)(6)(ii)	1218–0133	−1	−$20
Asbestos—29 CFR 1915.1001(n)(8)(ii)	1218–0195	−1	−$22
Asbestos—29 CFR 1926.1101(n)(8)(ii)	1218–0134	−4	−$101
13 Carcinogens (4–Nitrobiphenyl, etc.)—29 CFR 1910.1003(g)(2)(i) and (ii)	1218–0085	−6	−$139
Vinyl Chloride—29 CFR 1910.1017 (m)(3)	1218–0010	−1	−$20
Inorganic Arsenic—29 CFR 1910.1018 (q)(4)(ii) and (iii)	1218–0104	−1	−$23
Access to Employee Exposure and Medical Records—29 CFR 1910.1020(h)(3)(i),(ii) and (h)(4)	1218–0065	−2,939	−$145,216
Lead—29 CFR 1910.1025(n)(5)(ii) and (iii)	1218–0092	−2	−$42
Lead—29 CFR 1926.62(n)(6)(ii) and (iii)	1218–0189	−1	−$22
Cadmium—29 CFR 1910.27(n)(6)	1218–0185	0	0
Cadmium—29 CFR 1926.1127(n)(6)	1218–0186	0	0
Benzene—29 CFR 1910.1028(k)(4)(ii)	1218–0129	−1	−$23
Coke Oven Emissions—29 CFR 1910.1029(m)(4)(ii) and (iii)	1218–0128	−3	−$60
Bloodborne Pathogens—29 CFR 1910.1030(h)(4)(ii)	1218–0180	0	0
Cotton Dust—29 CFR 1910.1043(k)(4)(ii) and (iii)	1218–0061	−3	−$69
1,2 Dibromo-3-Chloropropane—29 CFR 1910.1044(p)(4)(ii) and (iii)	1218–0101	0	0
Acrylonitrile—29 CFR 1910.1045(q)(5)(ii) and (iii)	1218–0126	−3	−$74
Ethylene Oxide—29 CFR 1910.1047(k)(5)(ii)	1218–0108	−3	−$55
Formaldehyde—29 CFR 1910.1048(o)(6)(ii) and (iii)	1218–0145	−2	−$41
Methylenedianiline—29 CFR 1910.1050(n)(7)(ii)	1218–0184	−1	−$18
Methylenedianiline—29 CFR 1926.60(n)(7)(ii)	1218–0183	−1	−$21
1,3-Butadiene—29 CFR 1910.1051(m)(6)(i)	1218–0170	−3	−$65
Methlyene Chloride—29 CFR 1910.1052(m)(5)	1218–0179	−1	−$21
Occupational Exposure to Hazardous Chemicals in Laboratories—29 CFR 1910.1450(j)(2)	1218–0131	−333	−$5,644
Totals	.....	−3,611	−$157,460

The following table describes the estimated changes in burden hours and cost resulting from removing provisions of the four OSHA standards that specify that employers must develop and maintain written records certifying their compliance with training requirements.

Standard and Provision	OMB Control No.	Change (burden hours)	Change (cost)
Personal Protective Equipment—29 CFR 1910.132(f)(4)	1218–0205	−1,855,180	−$42,743,347
Cadmium—29 CFR 1910.1027(n)(4)	1218–0185	−1,226	−$26,371
Personal Protective Equipment (PPE)—29 CFR 1915.152(e)(4)	1218–0215	−2,776	−$48,664
Cadmium—29 CFR 1926.1127(n)(4)	1218–0186	−2,100	−$43,218
Totals	.....	−1,861,282	−$42,861,600

The following table describes the estimated changes in burden hours and cost to the training-certification provisions that OSHA is considering removing from 12 of its standards; these training-certification provisions specify that employers must develop and maintain written records certifying their compliance with training requirements.

Standard and Provision	OMB Control No.	Change (burden hours)	Change (cost)
Powered Platforms for Building Maintenance—29 CFR 1910.66(i)(1)(v)	1218–0121	−469	−$11,247
Process Safety Management of Highly Hazardous Chemicals (PSM)—29 CFR 1910.119(g)(3)	1218–0200	−30,767	−$627,954
Hazardous Waste Operations and Emergency Response (HAZWOPER)—29 CFR 1910.120(e)(6), (p)(7)(i), (q)(6)(ii)-(v)	1218–0202	−3,352	−$113,231
Permit-Required Confined Spaces— § 1910.146(g)(4)	1218–0203	−39,185	−$805,251
The Control of Hazardous Energy (Lockout/Tagout)—29 CFR 1910.147(c)(7)(iv)	1218–0150	−180,768	−$3,947,973
Powered Industrial Trucks—29 CFR 1910.178(l)(1)-(3), (l)(6)	1218–0242	−29,785	−$638,591
Logging Operations—29 CFR 1910.266(i)(10)(i)-(ii)	1218–0198	−3,329	−$56,105
Telecommunications—29 CFR 1910.268(c)	1218–0225	−1,087	−$38,958
Electrical Power Generation, Transmission, and Distribution—29 CFR 1910.269(a)(2)(vii)	1218–0190	−4,554	−$65,851
Confined and Enclosed Spaces and Other Dangerous Atmospheres in Shipyard Employment—29 CFR 1915.12(d)(5)(i) and (ii)	1218–0011	−1,601	−$35,996
Fire Protection in Shipyard Employment—29 CFR 1915.508(f)	1218–0248	−625	−$22,408
Training Requirements for Fall Protection—29 CFR 1926.503(b)	1218–0197	−481,885	−$18,759,783
Totals	.....	−777,407	−$25,123,348

4. Number of respondents: 20,559,996.

5. Frequency of responses: On occasion.

6. Number of responses: 80,383,596.

7. Average time per response: Three minutes for a secretary to develop and maintain certification records to one hour for employers to send records to NIOSH.

8. Estimated total burden hours (reduction): −2,642,300 hours.

9. Estimated cost (capital—operation and maintenance): OSHA estimates that a capital-cost decrease of $2,929/year will result from the proposed revisions to the record-transfer provisions because employers would no longer have to mail worker exposure and medical records to NIOSH.

D. Submitting Comments

OSHA requests members of the public to comment on the paperwork requirements in this proposal by submitting their written comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503; Attn: OSHA Desk Officer (RIN–1218–AC19). The Agency encourages commenters also to submit their comments on these paperwork requirements to the rulemaking docket, along with their comments on other parts of the proposed rule. Commenters may submit their comments by using the Federal eRulemaking portal at *http://www.regulations.gov*. OSHA posts comments and submissions without change; therefore, OSHA cautions commenters about submitting personal information such as Social Security numbers and date of birth. Information on using the h*ttp://regulations.gov* Web site to submit comments, and to access the docket, is available at the Web site's "User Tips" link. For instructions on submitting comments to the rulemaking docket, see the sections of this **Federal Register** notice titled **DATES** and **ADDRESSES.**

E. Docket and Inquiries

To access the docket to read or download comments and other materials related to these paperwork determinations, including the complete Information Collection Request (ICR) (containing the Supporting Statement describing the paperwork determinations in detail), use the procedures described under the section of this notice titled **ADDRESSES**. Obtain an electronic copy of the complete ICR by visiting the Web site at *http://www.reginfo.gov/public/do/PRAMain,* scroll under "Currently Under Review" to "Department of Labor (DOL)" to view all of the DOL's ICRs, including those ICRs submitted for proposed rulemakings. To make inquiries, or to request other information, contact Ms. Jamaa N. Hill, Directorate of Standards and Guidance, OSHA, Room N–3609, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–2222.

VII. Federalism

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

Under Section 18 of the Occupational Safety and Health Act of 1970 (OSH Act; U.S.C. 651 *et seq.*), Congress expressly provides that States may adopt, with Federal approval, a plan for the development and enforcement of occupational safety and health standards; States that obtain Federal approval for such a plan are referred to as "State-Plan States." (29 U.S.C. 667.) Occupational safety and health standards developed by State-Plan States must be at least as effective in providing safe and healthful employment and places of employment as the Federal standards. Subject to these requirements, State-Plan States are free to develop and enforce their own requirements for occupational safety and health standards.

While OSHA drafted this proposed rule to protect employees in every State, Section 18(c)(2) of the OSH Act permits State-Plan States and Territories to develop and enforce their own standards, provided the requirements in these standards are at least as safe and healthful as the requirements specified in this proposed rule.

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

VIII. State Plans

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

OSHA determined that the State-Plan States must adopt provisions comparable to the provisions in this proposed rule within six months after the effective date of the rule. OSHA believes that the provisions of this proposed rule provide employers in State-Plan States and Territories with new and critical information and methods necessary to protect their employees from the hazards found in and around workplaces. The 27 States and territories with OSHA-approved State Plans are: Alaska, Arizona, California, Connecticut, Hawaii, Illinois, Indiana, Iowa, Kentucky, Maryland, Michigan, Minnesota, Nevada, New Mexico, New Jersey, New York, North Carolina, Oregon, Puerto Rico, South Carolina, Tennessee, Utah, Vermont, Virginia, Virgin Islands, Washington, and Wyoming. Connecticut, Illinois, New Jersey, New York, and the Virgin Islands have OSHA-approved State Plans that apply to State and local government employees only. Until a State-Plan State or Territory promulgates its own comparable provisions based on the final rule developed from this proposed rule, Federal OSHA will provide the State or Territory with interim enforcement assistance, as appropriate.

IX. Unfunded Mandates Reform Act of 1995

OSHA reviewed this proposed rule in accordance with the Unfunded Mandates Reform Act of 1995 (UMRA;

2 U.S.C. 1501 *et seq.*) and Executive Order 12875 (56 FR 58093). As discussed in section IV ("Preliminary Economic Analysis and Regulatory Flexibility Act Certification") of this notice, the Agency determined that this proposed rule will not impose additional costs on any private- or public-sector entity. Accordingly, this proposed rule requires no additional expenditures by either public or private employers.

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

X. Review by the Advisory Committee for Construction Safety and Health

The proposed provisions would improve OSHA's standards, including construction standards, by clarifying, updating, or removing standards that are confusing, outdated, duplicative, or inconsistent with other OSHA requirements. OSHA does not expect these proposed revisions to reduce worker protection or increase employer burden.

OSHA's regulation governing the Advisory Committee on Construction Safety and Health (ACCSH) at 29 CFR 1912.3 requires OSHA to consult with the ACCSH whenever the Agency proposes a rulemaking that involves the occupational safety and health of construction employees. Accordingly, in early November, 2009, OSHA distributed to the ACCSH members for their review, before their regular meeting, a copy of the proposed revisions that applied to construction, as well as a brief summary and explanation of these revisions. At the regular meeting on December 10, 2009, OSHA staff made a presentation to the ACCSH members that summarized the material provided to them earlier, and then responded to their questions. The ACCSH subsequently recommended that OSHA publish the proposal.

In addition to two general recommendations regarding respiratory-protection requirements for the 13 Carcinogens standard (see previous discussion in section A.2.b.(4)) and the retention of medical records, ACCSH recommended that OSHA revise the language in § 1926.95(a) to include the requirement in § 1910.132(d)(1) that employers must "select * * * the types of PPE that will protect the affected employee from the hazards identified in the hazard assessment."

The ANPRM addressed revising the construction standards to include hazard-assessment and-certification requirements. However, OSHA decided that the personal-protective equipment provisions of the construction standards needed substantially more revision than this rulemaking could provide. For example, the PPE requirements in the construction standards for eyes, face, head, and extremities refer to consensus standards that are over 30 years old. These revisions would be extensive and complex, and would require a detailed analysis of risk, costs, and benefits. Therefore, OSHA will defer these revisions, including any revisions requiring employers to select the "types of PPE that will protect the affected employee from the hazards identified in the hazard assessment," to a future rulemaking.

XI. Public Participation

A. Submission of Comments and Access to the Docket

OSHA invites comments on the proposed revisions described, and the specific issues raised, in this notice. These comments should include supporting information and data. OSHA will carefully review and evaluate these comments, information, and data, as well as any other information in the rulemaking record, to determine how to proceed.

When submitting comments, parties must follow the procedures specified in the previous sections titled **DATES** and **ADDRESSES**. The comments must provide the name of the commenter and docket number. The comments also should identify clearly the provision of the proposal each comment is addressing, the position taken with respect to the proposed provision or issue, and the basis for that position. Comments, along with supporting data and references, submitted on or before the end of the specified comment period will become part of the proceedings record, and will be available for public inspection and copying at *http://www.regulations.gov.*

B. Requests for an Informal Public Hearing

Under section 6(b)(3) of the Occupational Safety and Health Act of 1970 and 29 CFR 1911.11, members of the public may request an informal public hearing by following the instructions under the section of this **Federal Register** notice titled **ADDRESSES**. Hearing requests must include the name and address of the party requesting the hearing, and submitted (*e.g.,* postmarked, transmitted, sent) on or before September 30, 2010. All submissions must bear a postmark or provide other evidence of the submission date.

XII. List of Subjects

29 CFR Part 1910

Abrasive blasting, Carcinogens, Commercial diving, Egress, Hazard assessment, Hazardous substances, Medical records, Occupational safety and health, Personal protective equipment, Sanitation, Slings, Training, Training certification records, and Respiratory protection.

29 CFR Parts 1915, 1917, 1918, and 1919

Confined spaces, Dangerous atmospheres, Gear certification, Hazard assessment, Hazardous substances, Hot work, Occupational safety and health, Personal protective equipment, Sanitation, Shackles, Slings.

29 CFR Part 1926

Construction, Hazardous substances, Medical records, Occupational safety and health, Potable water, Shackles, Slings.

29 CFR Part 1928

Agriculture, Sanitation, Potable water.

XIII. Authority and Signature

David Michaels, PhD MPH, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210, authorized the preparation of this proposed rule. OSHA is issuing this proposed rule pursuant to Sections 4, 6, and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, and 657), Section 41 of the Longshore and Harbor Workers' Compensation Act (33 U.S.C. 941), Section 3704 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3701 *et seq.*), Secretary of Labor's Order No. 5–2007 (72 FR 31160), and 29 CFR part 1911.

Signed at Washington, DC, on June 17, 2010.

David Michaels,

Assistant Secretary of Labor for Occupational Safety and Health.

XIV. Proposed Amendments to Standards

For the reasons discussed in the preamble, the Occupational Safety and Health Administration proposes to amend 29 CFR parts 1910, 1915, 1917, 1918, 1919, 1926, and 1928 as set forth below:

PART 1910—OCCUPATIONAL SAFETY AND HEALTH STANDARDS

Subpart A—General [Amended]

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

Authority: Sections 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), 3–2000 (65 FR 50017), 5–2002 (67 FR 65008), and 5–2007 (72 FR 31159), 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; Public Law 106–113 (113 Stat. 1501A–222); and OMB Circular A–25 (dated July 8, 1993) (58 FR 38142, July 15, 1993).

2. Amend § 1910.6 as follows:

a. Redesignate existing paragraphs (q)(25) through (q)(33) as paragraphs (q)(26) through (q)(34).

b. Add new paragraph (q)(25) and

c. Add a new paragraph (x).

The additions read as follows:

§ 1910.6 Incorporation by reference.

* * * * *

(q) * * *

(25) NFPA 101–2009, Life Safety Code, IBR approved for § 1910.35. Copies of NFPA 101–2009 are available for purchase from the: National Fire Protection Association, 1 Batterymarch Park, Quincy, MA 02169–7471; telephone: 1–800–344–35557; e-mail: *custserv@nfpa.org.*

* * * * *

(x) The following material is available for purchase from the: International Code Council, Chicago District Office, 4051 W. Flossmoor Rd., Country Club Hills, IL 60478; telephone: 708–799–2300, x3–3801; facsimile: 001–708–799–4981; e-mail: *order@iccsafe.org.*

(1) IFC–2009, International Fire Code, IBR approved for § 1910.35.

(2) [Reserved]

Subpart E—Means of Egress [Amended]

3. Revise the authority citation for subpart E 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 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), or 5–2007 (72 FR 31160), as applicable; and 29 CFR part 1911.

4. Revise the title of subpart E from "Means of Egress" to "Exit Routes and Emergency Planning."

5. In § 1910.33, revise the title listed for § 1910.35 in the undesignated center heading, from "*Compliance with NFPA 101, Life Safety Code,*" to "*Compliance with Alternate Exit Route Codes.*"

6. Revise the definition of the term "Occupant load" in paragraph (c) of § 1910.34 to read as follows:

§ 1910.34 Coverage and definitions.

* * * * *

(c) * * *

* * * * *

Occupant load means the total number of persons that may occupy a workplace or portion of a workplace at any one time. The occupant load of a workplace is calculated by dividing the gross floor area of the workplace or portion of the workplace by the occupant load factor for that particular type of workplace occupancy. Information regarding the "Occupant load" is located in Chapter 7 ("Means of Egress") of NFPA 101–2009, Life Safety Code, and in Chapter 10 ("Means of Egress") of IFC–2009, International Fire Code.

* * * * *

7. In § 1910.35, revise the heading of the section and revise the introductory text to read as follows:

§ 1910.35 Compliance with alternate exit-route codes.

OSHA will deem an employer demonstrating compliance with the exit-route provisions of Chapter 7 ("Means of Egress") of NFPA 101, Life Safety Code, 2009 edition, or the exit-route provisions of Chapter 10 ("Means of Egress") of the International Fire Code, 2009 edition, to be in compliance with the corresponding requirements in §§ 1910.34, 1910.36, and 1910.37.

* * * * *

8. In § 1910.36, revise the notes to paragraphs §§ 1910.36(b) and 1910.36(f) to read as follows:

§ 1910.36 Design and construction requirements for exit routes.

* * * * *

(b) * * *

(3) * * *

Note to paragraph § 1910.36(b) of this section: For assistance in determining the number of exit routes necessary for your workplace, consult Chapter 7 ("Means of Egress") of NFPA 101–2009, Life Safety Code, or Chapter 10 ("Means of Egress") of IFC–2009, International Fire Code.

* * * * *

(f) * * *

(2) * * *

Note to paragraph § 1910.36(f) of this section: Information regarding the "Occupant load" is located in Chapter 7 ("Means of Egress") of NFPA 101–2009, Life Safety Code, and in Chapter 10 ("Means of Egress") of IFC–2009, International Fire Code.

* * * * *

Subpart I—Personal Protective Equipment [Amended]

9. The authority citation for subpart I continues 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 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), or 5–2007 (72 FR 31160), as applicable; and 29 CFR part 1911.

10. Remove paragraph (f)(4) from § 1910.132.

11. In § 1910.134, revise paragraphs (i)(4)(i), (i)(9), and (o), and question 2a in Part A, Section 2 (Mandatory) of Appendix C, to read as follows:

§ 1910.134 Respiratory protection.

* * * * *

(i) * * *

(4) * * *

(i) Cylinders are tested and maintained as prescribed in the Shipping Container Specification Regulations of the Department of Transportation (49 CFR part 180);

* * * * *

(9) The employer shall use only the respirator manufacturer's NIOSH-approved breathing gas containers, marked and maintained in accordance with the Quality Assurance provisions of the NIOSH approval for the SCBA as issued in accordance with the NIOSH respirator-certification standard at 42 CFR part 84.

* * * * *

(o) Appendices. Compliance with Appendix A, Appendix B–1, Appendix B–2, Appendix C, and Appendix D to this section are mandatory.

* * * * *

Appendix C to § 1910.134: * * *

* * * * *

Part A. Section 2. * * *

* * * * *

1. * * *

2. * * *

a. Seizures: Yes/No

* * * * *

Subpart J—General Environmental Controls [Amended]

12. The authority citation for subpart J continues 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 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), or 5–2007 (72 FR 31160), as applicable; and 29 CFR part 1911.

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

13. Amend paragraph (a)(2) by revising the definition of "Potable water" and revise paragraph (d)(2)(iv) of § 1910.141 to read as follow:

§ 1910.141 Sanitation.

* * * * *

(a) * * *

(2) * * *

* * * * *

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

* * * * *

(d) * * *

(2) * * *

(iv) Individual hand towels or sections thereof, of cloth or paper, air blowers or clean individual sections of continuous cloth toweling, convenient to the lavatories, shall be provided.

* * * * *

Subpart N—Materials Handling and Storage [Amended]

14. Revise the authority citation for subpart N 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 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), or 5–2007 (72 FR 31160), as applicable; and 29 CFR part 1911.

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

15. Amend § 1910.184 as follows:

a. Add new paragraphs (c)(13) and (c)(14).

b. Revise paragraphs (e)(6), (e)(8), (f)(1), and (h)(1).

c. Remove and reserve paragraphs (e)(5), (g)(6), and (i)(5).

d. Remove Tables N–184–1 and N–184–3 through N–184–22.

e. Redesignate Table N–184–2 as N–184–1.

The addition and revisions read as follows:

§ 1910.184 Slings.

* * * * *

(c) * * *

(13) Employers must not load a sling in excess of its recommended safe working load as prescribed by the sling manufacturer on the identification markings permanently affixed to the sling.

(14) Employers must not use slings without affixed and legible identification markings.

* * * * *

(e) *Alloy steel-chain slings*— * * *

* * * * *

(5) [Removed and Reserved]

(6) *Safe operating temperatures.* Employers must permanently remove an alloy steel-chain slings from service if it is heated above 1000 degrees F. When exposed to service temperatures in excess of 600 degrees F, employers must reduce the maximum working-load limits permitted by the chain manufacturer in accordance with the chain or sling manufacturer's recommendations.

* * * * *

(8) Effect of wear. If the chain size at any point of the link is less than that stated in Table N–184–1, the employer must remove the chain from service.

* * * * *

(f) *Wire-rope slings*—(1) *Sling use.* Employers must use only wire-rope slings that have permanently affixed and legible identification markings as prescribed by the manufacturer, and that indicate the recommended safe working load for the type(s) of hitch(es) used, the angle upon which it is based, and the number of legs if more than one.

* * * * *

(g) * * *

* * * * *

(6) [Removed and Reserved]

* * * * *

(h) *Natural and synthetic fiber-rope slings*—(1) *Sling use.* Employers must use natural and synthetic fiber-rope slings that have permanently affixed and legible identification markings stating the rated capacity for the type(s) of hitch(es) used and the angle upon which it is based, type of fiber material, and the number of legs if more than one.

* * * * *

(i) * * *

* * * * *

(5) [Removed and Reserved]

* * * * *

Subpart T—Commercial Diving Operations [Amended]

16. Revise the authority citation for subpart T to read as follows:

Authority: Secs. 4, 6, 8, Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Section 107, Contract and Work Hours Safety Standards Act (the Construction Safety Act) (40 U.S.C. 333); Sec. 41, Longshore and Harbor Workers' Compensation Act (33 U.S.C. 941); Secretary of Labor's Order No. 8–76 (41 FR 25059), 9–83 (48 FR 35736), 1–90 (55 FR 9033), 6–96 (62 FR 111), 3–2000 (65 FR 50017), 5–2002 (67 FR 65008), or 5–2007 (72 FR 31160), as applicable, and 29 CFR part 1911.

§ 1910.440 [Amended]

17. Remove and reserve paragraphs (b)(3)(i), (b)(4), and (b)(5) of § 1910.440.

Subpart Z—Toxic and Hazardous Substances [Amended]

18. Revise the authority citation for subpart Z 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, and 657); Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736), 1–90 (55 FR 9033), 6–96 (62 FR 111), 3–2000 (65 FR 50017), 5–2002 (67 FR 65008), or 5–2007 (72 FR 31160), as applicable, and 29 CFR part 1911.

All of subpart Z issued under section 6(b) of the Occupational Safety and Health Act, except those substances that have exposure limits listed in Tables Z–1, Z–2, and Z–3 of 29 CFR 1910.1000. The latter were issued under section 6(a) (29 U.S.C. 655(a)).

Section 1910.1000, Tables Z–1, Z–2, and Z–3 also issued under 5 U.S.C. 553, Section 1910.1000 Tables Z–1, Z–2, and Z–3, but not under 29 CFR 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.

19. Amend § 1910.1001 by removing paragraph (m)(6)(ii), and redesignating paragraph (m)(6)(i) as (m)(6).

20. Amend § 1910.1003 as follows:

a. Revise paragraph (c)(4)(iv).

b. Remove paragraph (g)(2)(i), and redesignate paragraphs (g)(2)(ii) and (g)(2)(iii) as (g)(2)(i) and (g)(2)(ii).

The revision reads as follows:

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

* * * * *

(c) * * *

(4) * * *

(iv) Employers must provide each employee engaged in handling operations involving the carcinogens 4-Nitrobiphenyl, alpha-Naphthylamine, 3,3′-Dichlorobenzidine (and its salts), beta-Naphthylamine, Benzidine, 4-Aminodiphenyl, 2-Acetylaminofluorene, 4-Dimethylaminoazo-benzene, and N-Nitrosodimethylamine, addressed by this section, with, and ensure that each of these employees wears and uses, a NIOSH-certified air-purifying, half-mask respirator with particulate filters. Employers also must provide each employee engaged in handling operations involving the carcinogens methyl chloromethyl ether, bis-Chloromethyl ether, Ethyleneimine, and beta-Propiolactone, addressed by this section, with, and ensure that each of these employees wears and uses, a full-facepiece, supplied-air respirator operated in the continuous-flow or pressure-demand mode. Employers may substitute a respirator affording employees higher levels of protection than these respirators.

* * * * *

§ 1910.1017 [Amended]

21. Remove paragraph (m)(3) from § 1910.1017.

§ 1910.1018 [Amended]

22. Amend § 1910.1018 by removing paragraphs (q)(4)(ii) and (q)(4)(iii), and redesignating paragraph (q)(4)(iv) as (q)(4)(ii).

§ 1910.1020 [Amended]

23. Remove paragraphs (h)(3) and (h)(4) from § 1910.1020.

24. Amend § 1910.1025 as follows:

a. Revise paragraphs (d)(6)(iii), (j)(1)(i), (j)(2)(ii), (j)(2)(iv), (k)(1)(i)(B), and (k)(1)(iii)(A)(*1*).

b. Remove paragraphs (n)(5)(ii) and (n)(5)(iii), and redesignate paragraph (n)(5)(iv) as (n)(5)(ii).

The revisions read as follows:

§ 1910.1025 Lead.

* * * * *

(d) * * *

(iii) If the initial monitoring reveals that employee exposure is at or above the permissible exposure limit, the employer shall repeat monitoring quarterly. The employer shall continue monitoring at the required frequency until at least two consecutive measurements, taken at least 7 days apart, are below the PEL but at or above the action level, at which time the employer shall repeat monitoring for that employee at the frequency specified in paragraph (d)(6)(ii), except as otherwise provided in paragraph (d)(7) of this section.

* * * * *

(j) * * *

(1) * * *

(i) The employer shall institute a medical surveillance program for all employees who are or may be exposed at or above the action level for more than 30 days per year.

* * * * *

(2) * * *

(ii) *Follow-up blood sampling tests.* Whenever the results of a blood lead level test indicate that an employee's blood lead level is at or above the numerical criterion for medical removal under paragraph (k)(1)(i)(A), of this section, the employer shall provide a second (follow-up) blood sampling test within two weeks after the employer receives the results of the first blood sampling test.

* * * * *

(iv) *Employee notification.* Within five working days after the receipt of biological monitoring results, the employer shall notify in writing each employee whose blood lead level is at or above 40 ug/100 g: * * *

* * * * *

(k) * * *

(1) * * *

(i) * * *

(B) The employer shall remove an employee from work having an exposure to lead at or above the action level on each occasion that the average of the last three blood sampling tests conducted pursuant to this section (or the average of all blood sampling tests conducted over the previous six (6) months, whichever is longer) indicates that the employee's blood lead level is at or above 50 ug/100 g of whole blood; provided, however, that an employee need not be removed if the last blood sampling test indicates a blood lead level below 40 ug/100 g of whole blood.

(ii) * * *

(A) * * *

(*1*) For an employee removed due to a blood lead level at or above 60 ug/100 g, or due to an average blood lead level at or above 50 ug/100 g, when two consecutive blood sampling tests indicate that the employee's blood lead level is below 40 ug/100 g of whole blood;

* * * * *

25. Amend § 1910.1027 by removing paragraph (n)(4), redesignating paragraphs (n)(5) and (n)(6) as paragraphs (n)(4) and (n)(5), and revising new paragraph (n)(4)(i) to read as follows:

§ 1910.1027 Cadmium.

* * * * *

(n) * * *

(4) * * *

(i) Except as otherwise provided for in this section, access to all records required to be maintained by paragraphs (n)(1) through (4) of this section shall be in accordance with the provisions of 29 CFR 1910.1020.

* * * * *

26. Revise paragraph (k)(4) of § 1910.1028 to read as follows:

§ 1910.1028 Benzene.

* * * * *

(k) * * *

(4) *Transfer of records.* The employer shall comply with the requirements involving transfer of records as set forth in 29 CFR 1910.1020(h).

* * * * *

§ 1910.1029 [Amended]

27. Amend § 1910.1029 by removing paragraphs (m)(4)(ii) and (m)(4)(iii), and redesignating paragraph (m)(4)(iv) as (m)(4)(ii).

28. Amend § 1910.1030 as follows:

a. Amend paragraph (b) by revising the definition of "*Handwashing facilities*"*; and*

b. Remove paragraph (h)(4)(ii) and redesignate paragraph (h)(4)(i) as (h)(4).

The revision reads as follows:

§ 1910.1030 Bloodborne pathogens.

* * * * *

(b) * * *

* * * * *

Handwashing facilities means a facility providing an adequate supply of running potable water, soap, and single-use towels or air-drying machines.

* * * * *

§ 1910.1043 [Amended]

29. Amend § 1910.1043 by removing paragraphs (k)(4)(ii) and (k)(4)(iii), and redesignating paragraph (k)(4)(iv) as (k)(4)(ii).

§ 1910.1044 [Amended]

30. Amend § 1910.1044 by removing paragraphs (p)(4)(ii) and (p)(4)(iii), and redesignating paragraph (p)(4)(iv) as (p)(4)(ii).

§ 1910.1045 [Amended]

31. Amend § 1910.1045 by removing paragraphs (q)(5)(ii) and (q)(5)(iii), and redesignating paragraph (q)(5)(iv) as (q)(5)(ii).

§ 1910.1047 [Amended]

32. Amend § 1910.1047 by removing paragraph (k)(5)(ii), and redesignating paragraph (k)(5)(i) as (k)(5).

§ 1910.1050 [Amended]

33. Amend § 1910.1050 by removing paragraph (n)(7)(ii), and redesignating paragraph (n)(7)(i) as paragraph (n)(7).

34. Amend § 1910.1051 as follows:

a. Remove and reserve paragraph (m)(3).

b. Revise paragraph (m)(6).

The revisions read as follows:

§ 1910.1051 1,3-Butadiene.

* * * * *

(m) * * *

(6) *Transfer of records.* The employer shall transfer medical and exposure records as set forth in 29 CFR 1910.1020(h).

* * * * *

35. In Appendix A to § 1910.1450, revise item (a) under Section E, subsection 1, to read as follows:

§ 1910.1450 Occupational exposure to hazardous chemicals in laboratories.

* * * * *

Appendix A to § 1910.1450—* * *

* * * * *

E. Basic Rules and Procedures for Working with Chemicals

* * * * *

1. General Rules

* * * * *

(a) *Accidents and spills*—* * *

Ingestion: This is one route of entry for which treatment depends on the type and amount of chemical involved. Seek medical attention immediately.

* * * * *

PART 1915—OCCUPATIONAL SAFETY AND HEALTH STANDARDS FOR SHIPYARD EMPLOYMENT

36. Revise the authority citation for part 1915 to read as follows:

Authority: Sec. 41, Longshore and Harbor Workers' Compensation Act (33 U.S.C. 941); 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 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), or 5–2007 (72 FR 31160), as applicable.

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

Subpart B—Confined and Enclosed Spaces and Other Dangerous Atmospheres in Shipyard Employment [Amended]

37. In Appendix A to subpart B, revise item number 1 under the heading "Section 1915.11(b) Definition of 'Hot work'," to read as follows:

Appendix A to Subpart B of Part 1915—Compliance Assistance Guidelines for Confined and Enclosed Spaces and Other Dangerous Atmospheres

* * * * *

Section 1915.11(b) Definition of "*Hot* work."

* * * * *

1. Abrasive blasting of the external hull for paint preparation does not necessitate pumping and cleaning the tanks of a vessel.

* * * * *

Subpart G—Gear and Equipment for Rigging and Materials Handling

38. Revise paragraphs (a), (b)(1), (b)(3), (c)(1), and (c)(3) of § 1915.112 to read as follows:

§ 1915.112 Ropes, chains, and slings.

* * * * *

(a) *Manila rope and manila-rope slings.* Employers must ensure that manila rope and manila-rope slings:

(1) Have permanently affixed and legible identification markings as prescribed by the manufacturer that indicate the recommended safe working load for the type(s) of hitch(es) used, the angle upon which it is based, and the number of legs if more than one;

(2) Not be loaded in excess of its recommended safe working load as prescribed on the identification markings by the manufacturer; and

(3) Not be used without affixed and legible identification markings as required by paragraph (a)(1) of this section.

(b) *Wire rope and wire-rope slings.*

(1) Employers must ensure that wire rope and wire-rope slings:

(i) Have permanently affixed and legible identification markings as prescribed by the manufacturer that indicate the recommended safe working load for the type(s) of hitch(es) used, the angle upon which it is based, and the number of legs if more than one;

(ii) Not be loaded in excess of its recommended safe working load as prescribed on the identification markings by the manufacturer; and

(iii) Not be used without affixed and legible identification markings as required by paragraph (b)(1)(i) of this section.

* * * * *

(3) When U-bolt wire rope clips are used to form eyes, employers must use Table G–1 in § 1915.118 to determine the number and spacing of clips. Employers must apply the U-bolt so that the "U" section is in contact with the dead end of the rope.

* * * * *

(c) * * *

(1) Employers must ensure that chain and chain slings:

(i) Have permanently affixed and legible identification markings as prescribed by the manufacturer that indicate the recommended safe working load for the type(s) of hitch(es) used, the angle upon which it is based, and the number of legs if more than one;

(ii) Not be loaded in excess of its recommended safe working load as prescribed on the identification markings by the manufacturer; and

(iii) Not be used without affixed and legible identification markings as required by paragraph (c)(1)(i) of this section.

* * * * *

(3) Employers must note interlink wear, not accompanied by stretch in excess of 5 percent, and remove the chain from service when maximum allowable wear at any point of link, as indicated in Table G–2 in § 1915.118, has been reached.

* * * * *

39. In § 1915.113, revise paragraph (a) to read as follows:

§ 1915.113 Shackles and hooks.

* * * * *

(a) *Shackles.* Employers must ensure that shackles:

(1) Have permanently affixed and legible identification markings as prescribed by the manufacturer that indicate the recommended safe working load;

(2) Not be loaded in excess of its recommended safe working load as prescribed on the identification markings by the manufacturer; and

(3) Not be used without affixed and legible identification markings as required by paragraph (a)(1) of this section.

* * * * *

§ 1915.118 [Amended]

40. In § 1915.118, remove Tables G–1, G–2, G–3, G–4, G–5, G–7, G–8, and G–10, and redesignate Table G–6 as Table G–1, and Table G–9 as Table G–2.

Subpart I—Personal Protective Equipment (PPE) [Amended]

§ 1915.152 [Amended]

41. Remove paragraph (e)(4) from § 1915.152.

Subpart Z—Toxic and Hazardous Substances [Amended]

42. Amend § 1915.1001 as follows:

a. Revise paragraph (h)(3)(i).

b. Remove paragraphs (h)(3)(ii), (h)(3)(iii), (h)(4), and (n)(8)(ii).

c. Redesignate paragraph (h)(3)(iv) as (h)(3)(ii), and paragraph (n)(8)(i) as (n)(8).

d. Revise Appendix C.

The revisions read as follows:

§ 1915.1001 Asbestos.

* * * * *

(h) * * *

(3) * * *

(i) When respiratory protection is used, the employer shall institute a respiratory protection program in accordance with 29 CFR 1910.134(b) through (d) (except (d)(1)(iii)), and (f) through (m) which covers each employee required by this section to use a respirator.

* * * * *

Appendix C to § 1915.1001—Qualitative and Quantitative Fit Testing Procedures. Mandatory

Employers must perform fit testing in accordance with the fit-testing requirements of 29 CFR 1910.134(f) and the qualitative and quantitative fit-testing protocols and procedures specified in Appendix A of 29 CFR 1910.134.

* * * * *

PART 1917—MARINE TERMINALS

43. Revise the authority citation for part 1917 to read as follows:

Authority: Sec. 41, Longshore and Harbor Workers' Compensation Act (33 U.S.C. 941); 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 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) or 5–2007 (72 FR 31160), as applicable; and 29 CFR part 1911.

Section 1917.28 also issued under 5 U.S.C. 553.

Section 1917.29 also issued under Sec. 29, Hazardous Materials Transportation Uniform Safety Act of 1990 (49 U.S.C. 1801–1819), and 5 U.S.C. 553.

Subpart A—General Provisions [Amended]

44. Amend § 1917.2 by adding a definition for the term "Ship's stores" in alphabetical order to read as follows:

§ 1917.2 Definitions.

* * * * *

Ship's stores means materials that are aboard a vessel for the upkeep, maintenance, safety, operation, or navigation of the vessel, or for the safety or comfort of the vessel's passengers or crew.

Subpart F—Terminal Facilities [Amended]

45. Revise paragraph (a)(1)(iii) of § 1917.127 to read as follows:

§ 1917.127 Sanitation.

* * * * *

(a) * * *

(1) * * *

(iii) Individual hand towels, clean individual sections of continuous toweling, or air blowers; and

* * * * *

PART 1918—SAFETY AND HEALTH REGULATIONS FOR LONGSHORING

46. Revise the authority citation for part 1918 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), or 5–2007 (72 FR 31160), as applicable; and 29 CFR part 1911.

Section 1918.90 also issued under 5 U.S.C. 553.

Section 1918.100 also issued under Sec. 29, Hazardous Materials Transportation Uniform Safety Act of 1990 (49 U.S.C. 1801–1819), and 5 U.S.C. 553.

Subpart A—General Provisions [Amended]

47. Amend § 1918.2, by adding the definition for the term "Ship's stores" in alphabetical order to read as follows:

§ 1918.2 Definitions.

* * * * *

Ship's stores means materials that are aboard a vessel for the upkeep, maintenance, safety, operation, or navigation of the vessel, or for the safety or comfort of the vessel's passengers or crew.

* * * * *

Subpart I—General Working Conditions [Amended]

48. Revise paragraph (a)(1)(iii) of § 1918.95 to read as follows:

§ 1918.95 Sanitation.

* * * * *

(a) * * *

(1) * * *

(iii) Individual hand towels, clean individual sections of continuous toweling, or air blowers; and

* * * * *

PART 1919—GEAR CERTIFICATION

49. Revise the authority citation for part 1919 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), or 5–2007 (72 FR 31160), as applicable; and 29 CFR part 1911.

Subpart B—Procedures Governing Accreditation [Amended]

50. Revise paragraph (a)(1) introductory text of § 1919.6 to read as follows:

§ 1919.6 Criteria governing accreditation to certificate vessels' cargo gear.

(a)(1) A person applying for accreditation to issue registers and pertinent certificates, to maintain registers and appropriate records, and to conduct initial, annual and quinquennial surveys, shall not be accredited unless that person is engaged in one or more of the following activities:

* * * * *

Subpart C—Duties of Persons Accredited to Certificate Vessels' Cargo Gear [Amended]

51. Revise paragraph (d) of § 1919.11 to read as follows:

§ 1919.11 Recordkeeping and related procedures concerning records in custody of accredited persons.

* * * * *

(d) When annual or quinquennial tests, inspections, examinations, or heat treatments are performed by an accredited person, other than the person who originally issued the vessel's register, such accredited person shall furnish copies of any certificates issued and information as to register entries to the person originally issuing the register.

* * * * *

52. Revise paragraph (f) of § 1919.12 to read as follows:

§ 1919.12 Recordkeeping and related procedures concerning records in custody of the vessel.

* * * * *

(f) An accredited person shall instruct the vessel's officers, or the vessel's

operator if the vessel is unmanned, that the vessel's register and certificates shall be preserved for at least 5 years after the date of the latest entry except in the case of nonrecurring test certificates concerning gear which is kept in use for a longer period, in which event the pertinent certificates shall be retained so long as that gear is continued in use.

* * * * *

Subpart D—Certification of Vessels' Cargo Gear [Amended]

53. Revise paragraph (a) of § 1919.15 to read as follows:

§ 1919.15 Periodic tests, examinations and inspections.

* * * * *

(a) Derricks with their winches and accessory gear, including the attachments, as a unit; and cranes and other hoisting machines with their accessory gear, as a unit, shall be tested and thoroughly examined every 5 years in the manner set forth in subpart E of this part.

* * * * *

54. Revise paragraph (b) of § 1919.18 to read as follows:

§ 1919.18 Grace periods.

* * * * *

(b) Quinquennial requirements—within six months after the date when due;

* * * * *

PART 1926—SAFETY AND HEALTH REGULATIONS FOR CONSTRUCTION

Subpart D—Occupational Health and Environmental Controls [Amended]

55. Revise the authority citation for subpart D to read as follows:

Authority: Section 3704 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3701); 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), or 5–2007 (72 FR 31160), as applicable; and 29 CFR part 11.

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

Section 1926.62 of 29 CFR also issued under section 1031 of the Housing and Community Development Act of 1992 (42 U.S.C. 4853).

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

56. Revise paragraphs (a)(6) and (f)(3)(iv) of § 1926.51 to read as follows:

§ 1926.51 Sanitation.

* * * * *

(a) * * *

(6) *Potable water* means water that meets the standards for drinking purposes of the State or local authority having jurisdiction, or water that meets the quality standards prescribed by the U.S. Environmental Protection Agency's National Primary Drinking Water Regulations (40 CFR part 141).

* * * * *

(f) * * *

(3) * * *

(iv) Individual hand towels or sections thereof, of cloth or paper, air blowers or clean individual sections of continuous cloth toweling, convenient to the lavatories, shall be provided.

* * * * *

57. Revise paragraph (o)(8) of § 1926.60, to read as follows:

§ 1926.60 Methylenedianiline.

* * * * *

(o) * * *

(8) *Transfer of records.* The employer shall comply with the requirements concerning transfer of records set forth in 29 CFR 1926.33.

* * * * *

58. Amend § 1926.62 as follows:

a. Revise paragraphs (j)(2)(ii), (j)(2)(iv)(B), and (k)(1)(iii)(A)(*1*).

b. Remove paragraphs (l)(2)(iii), (n)(6)(ii), and (n)(6)(iii).

c. Redesignate paragraphs (l)(2)(iv) through (l)(2)(viii) as (l)(2)(iii) through (l)(2)(vii).

d. Redesignate paragraph (n)(6)(iv) as (n)(6)(ii), and revise (n)(6)(ii).

The revisions read as follows:

§ 1926.62 Lead.

* * * * *

(j) * * *

(2) * * *

(ii) *Follow-up blood sampling tests.* Whenever the results of a blood lead level test indicate that an employee's blood lead level is at or above the numerical criterion for medical removal under paragraph (k)(1)(i) of this section, the employer shall provide a second (follow-up) blood sampling test within two weeks after the employer receives the results of the first blood sampling test.

* * * * *

(iv) * * *

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

* * * * *

(k) * * *

(l) * * *

(iii) * * *

(A) * * *

(*1*) For an employee removed due to a blood lead level at or above 50 ug/dl when two consecutive blood sampling tests indicate that the employee's blood lead level is below 40 ug/dl;

* * * * *

Subpart—H Materials Handling, Storage, Use, and Disposal [Amended]

59. Revise the authority citation for subpart H to read as follows:

Authority: Section 3704 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3701); 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), or 5–2007 (72 FR 31160), as applicable. Section 1926.250 also issued under 29 CFR part 1911.

60. Amend § 1926.251 as follows:

a. Revise paragraphs (a)(2), (b)(4), (c)(1), (d)(1) and (f)(1).

b. Add new paragraphs (c)(16) and (d)(7).

The revisions and additions read as follows:

§ 1926.251 Rigging equipment for material handling.

(a) * * *.

(2) Employers must ensure that rigging equipment:

(i) Has permanently affixed and legible identification markings as prescribed by the manufacturer that indicate the recommended safe working load;

(ii) Not be loaded in excess of its recommended safe working load as prescribed on the identification markings by the manufacturer; and

(iii) Not be used without affixed, legible identification markings, required by paragraph (a)(2)(i) of this section.

* * * * *

(b) * * *

(4) Employers must not use alloy steel-chain slings with loads in excess of the rated capacities (*i.e.,* working load limits) indicated on the sling by permanently affixed and legible identification markings prescribed by the manufacturer.

* * * * *

(c) * * *.

(1) Employers must not use improved plow-steel wire rope and wire-rope slings with loads in excess of the rated

capacities (*i.e.,* working load limits) indicated on the sling by permanently affixed and legible identification markings prescribed by the manufacturer.

* * * * *

(16) Wire rope slings shall have permanently affixed, legible identification markings stating size, rated capacity for the type(s) of hitch(es) used and the angle upon which it is based, and the number of legs if more than one.

* * * * *

(d) * * *

(1) Employers must not use natural- and synthetic-fiber rope slings with loads in excess of the rated capacities (*i.e.,* working load limits) indicated on the sling by permanently affixed and legible identification markings prescribed by the manufacturer.

* * * * *

(7) Employers must use natural- and synthetic-fiber rope slings that have permanently affixed and legible identification markings that state the rated capacity for the type(s) of hitch(es) used and the angle upon which it is based, type of fiber material, and the number of legs if more than one.

* * * * *

(f) * * *.

(1) Employers must not use shackles with loads in excess of the rated capacities (*i.e.,* working load limits) indicated on the shackle by permanently affixed and legible identification markings prescribed by the manufacturer.

* * * * *

Subpart Z—Toxic and Hazardous Substances [Amended]

61. Revise the authority citation for subpart Z to read as follows:

Authority: Section 3704 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3701 *et seq.*); 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), or 5–2007 (72 FR 31160), as applicable; and 29 CFR part 1911.

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

62. Revise paragraphs (n)(7)(ii) and (iii) and (n)(8) of § 1926.1101 to read as follows:

§ 1926.1101 Asbestos.

* * * * *

(n) * * *

(7) * * *

(ii) *Availability of records.* The employer must comply with the requirements concerning availability of records set forth in 29 CFR part 1926.33.

(8) *Transfer of records.* The employer must comply with the requirements concerning transfer of records set forth in 29 CFR part 1926.33.

* * * * *

63. Amend § 1926.1127 as follows:

a. Remove and reserve paragraph (n)(4).

b. Revise paragraph (n)(6).

The revisions read as follows:

§ 1926.1127 Cadmium.

* * * * *

(n) * * *

(6) *Transfer of records.* The employer must comply with the requirements concerning transfer of records set forth in 29 CFR part 1926.33.

* * * * *

PART 1928—OCCUPATIONAL SAFETY AND HEALTH STANDARDS FOR AGRICULTURE

64. Revise the authority citation for part 1928 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); 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), or 5–2007 (72 FR 31160), as applicable; and 29 CFR part 1911.

Section 1928.21 also issued under section 29, Hazardous Materials Transportation Uniform Safety Act of 1990 (Pub. L. 101–615, 104 Stat. 3244 (49 U.S.C. 1801–1819 and 5 U.S.C. 533)).

Subpart I—General Environmental Controls [Amended]

65. Revise the definition of the term "potable water" in paragraph (b) of § 1928.110 to read as follows:

§ 1928.110 Field sanitation.

* * * * *

(b) * * *

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

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