



DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Parts 1910 and 1926

[Docket No. OSHA-2012-0007]

RIN 1218-AC67

Standards Improvement Project-Phase IV

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

ACTION: Request for information.

SUMMARY: OSHA is initiating a regulatory review of its existing safety and health standards in response to the President's Executive Order 13563, "Improving Regulations and Regulatory Review" (76 FR 38210). The Agency conducted similar regulatory reviews of its existing standards previously as "standards improvement projects." OSHA is issuing this request for information to initiate another of these regulatory reviews, and naming this review the Standards Improvement Project-Phase IV (SIP-IV). The purpose of SIP-IV is to improve and streamline OSHA standards by removing or revising requirements that are confusing or outdated, or that duplicate, or are inconsistent with, other standards. The purpose of the regulatory review is to reduce regulatory burden while maintaining or enhancing employees' safety and health. SIP-IV will focus primarily on OSHA's construction standards. The purpose of this notice is to invite the public, including employers, employees, and employee representatives involved in the construction industry, to submit recommendations for revisions to existing construction standards, including the rationale for these recommendations. OSHA will review this

information to determine the need for, and the content of, any subsequent SIP-IV rulemaking.

DATES: Submit comments and additional material by [INSERT DATE 60 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER]. All submissions must bear a postmark or provide other evidence of the submission date.

ADDRESSES: Submit comments and additional material using any of the following methods:

Electronically: Submit comments and attachments electronically via the Federal eRulemaking Portal at <http://www.regulations.gov>. Follow the instructions online for making electronic submissions.

Facsimile (FAX): Commenters may fax submissions, including any attachments, that are no longer than 10 pages in length to the OSHA Docket Office at (202) 693-1648; OSHA does not require hard copies of these documents. Commenters must submit lengthy attachments that supplement these documents (e.g., studies, journal articles) to the OSHA Docket Office, Technical Data Center, Room N-2625, U.S. Department of Labor, 200 Constitution Ave., NW., Washington, DC 20210. These attachments must clearly identify the commenter's name, date, subject, and docket number (i.e., OSHA-2012-0007) so the Agency can attach them to the appropriate comments.

Regular mail, express mail, hand (courier) delivery, or messenger service.

Submit a copy of comments and any additional material (e.g., studies, journal articles) to the OSHA Docket Office, Docket No. OSHA-2012-0007, Technical Data Center, Room N-2625, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; telephone: (202) 693-2350 (TDY number: (877) 889-5627). Note that security

procedures may result in significant delays in receiving comments and other written materials by regular mail. Contact the OSHA Docket Office for information about security procedures concerning delivery of materials by express mail, hand delivery, or messenger service. The hours of operation for the OSHA Docket Office are 8:15 a.m. - 4:45 p.m., e.t.

Instructions: All submissions received must include the Agency name and the docket number for this rulemaking (i.e., OSHA-2012-0007). OSHA places all submissions, including any personal information provided, in the public docket without change; this information will be available online at <http://www.regulations.gov>. Therefore, the Agency cautions commenters about submitting information they do not want made available to the public, or submitting comments that contain personal information (either about themselves or others) such as Social Security numbers, birth dates, and medical data.

Docket: To read or download submissions or other material in the docket, go to <http://www.regulations.gov>, or contact the OSHA Docket Office at the address listed above. While the Agency lists all documents in the docket in the <http://www.regulations.gov> index, some information (e.g., copyrighted material) is not publicly available to read or download through this Web site. All submissions, including copyrighted material, are accessible at the OSHA Docket Office. Contact the OSHA Docket Office for assistance in locating docket submissions.

FOR FURTHER INFORMATION CONTACT:

Press inquiries: Contact Frank Meilinger, Director, OSHA Office of Communications, Room N-3647, U.S. Department of Labor, 200 Constitution Avenue,

NW., Washington, DC 20210; telephone: (202)-693-1999; email:

meilinger.francis2@dol.gov.

General and technical information: Contact Dayton Eckerson, Office of Construction Standards and Guidance, OSHA Directorate of Construction, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N-3468, Washington, DC 20210; telephone: (202) 693-1731; fax: (202) 693-1689; email: eckerson.dayton@dol.gov.

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 page at <http://www.osha.gov>.

SUPPLEMENTARY INFORMATION:

Table of Contents

- I. Background
- II. Request for Information, Data, and Comments
 - A. Eliminate Unnecessary Paperwork
 - B. Clarify Employer Duties and Eliminate Unnecessary Employer Duties
 - C. Update Standards and Eliminate Inconsistencies or Duplication Between Standards
 - D. Miscellaneous Revisions
 - E. Submitting Recommendations
- III. Authority and Signature

I. BACKGROUND

The purpose of this Request for Information (RFI) is to identify provisions in OSHA standards that are confusing or outdated, or that duplicate, or are inconsistent with, the provisions of other standards, either OSHA standards or the standards of other agencies. Improving OSHA standards will increase employers' understanding of their

obligations, which will lead to increased compliance, improve employee safety and health, and reduce compliance costs.

In 1995, in response to a Presidential memorandum to improve government regulation,¹ OSHA began a series of rulemakings designed to revise or remove standards that were confusing, outdated, duplicative, or inconsistent. In the first rulemaking, known as “Standards Improvement Project, Phase I” (SIP-I), OSHA focused on revising standards that were out of date, duplicative, or inconsistent. OSHA published the final SIP-I rule on June 18, 1998 (63 FR 33450).² Two additional rounds of SIP rulemaking followed, with final SIP rules published in 2005 (SIP-II) and 2011 (SIP-III).³

As stated above, the President’s Executive Order 13563, “Improving Regulations and Regulatory Review,” sets out the goals and criteria for regulatory review, and requires agencies to review existing standards and regulations to ensure that these standards and regulations continue to protect public health, welfare, and safety effectively, while promoting economic growth and job creation. The EO encourages agencies to use the best, least burdensome means to achieve regulatory objectives, to perform periodic reviews of existing standards to identify outmoded, ineffective, or

¹Clinton, W.J. Memorandum for Heads of Departments and Agencies. Subject: Regulatory Reinvention Initiative. March 4, 1995.

²Revisions made by the SIP-I rulemaking included adjustments to the medical-surveillance and emergency-response provisions of the Coke Oven Emissions, Inorganic Arsenic, and Vinyl Chloride standards, and removal of unnecessary provisions from the Temporary Labor Camps standard and the textile industry standards.

³In the final SIP-II rulemaking published in 2005 (70 FR 1111), OSHA revised a number of provisions in its health and safety standards identified as needing improvement either by the Agency or by commenters during the SIP-I rulemaking. The final SIP-III rule, published in 2011 (76 FR 33590), updated consensus standards incorporated by reference in several OSHA rules, deleted provisions in a number of OSHA standards that required employers to prepare and maintain written training-certification records for personal protective equipment, revised several sanitation standards to permit hand drying by high-velocity dryers, and modified OSHA’s sling standards to require that employers use only appropriately marked or tagged slings for lifting capacities.

burdensome standards, and to modify, streamline, or repeal such standards when appropriate.

The Agency believes that the SIP rulemaking process is an effective means to improve its standards. In addition, the Advisory Committee for Construction Safety and Health (ACCSH) recommended that the Agency review its construction standards as part of the SIP rulemaking process at a public meeting held on December 16, 2011. (A transcription of these proceedings is available at Docket No. OSHA-2011-0124-0025 (“ACCSH Transcript”). At this meeting, OSHA discussed examples of existing regulations currently under review for possible inclusion in the SIP-IV rulemaking (see Section II, “Request for Information, Data, and Comments,” of this notice for a discussion of these examples) (ACCSH Transcript, pp. 133-154). The ACCSH recommended that OSHA also consider revising the standards related to fit testing personal protective equipment, notably §§1926.103 and 1910.134, with emphasis on fit testing for female workers (ACCSH Transcript, pp. 142-144). In addition, the ACCSH recommended that OSHA consider revisions to the fall-protection requirements applicable to chimney construction under §1926.552 to obviate the need for variances to address the specialized fall hazards common to chimney construction (ACCSH Transcript, pp. 142-149).

Recognizing the importance of public participation in the SIP process, the Agency in this RFI is asking the public to identify standards that are in need of revision or removal, and to explain how such action will reduce regulatory burden while maintaining or increasing the protection afforded to employees. While commenters may recommend extensive revisions to, or major reorganizations of, OSHA standards,

recommendations that require large-scale revisions to standards are not appropriate for this rulemaking. The Agency will determine whether such large-scale revisions are appropriate for a separate, future rulemaking. In addition, while SIP-IV will focus primarily on construction standards, the Agency will consider recommendations for improvements to non-construction standards.

II. Request for Information, Data, and Comments

OSHA requests assistance from the public in identifying standards that are potential candidates for SIP-IV rulemaking. As stated above, the Agency is targeting primarily construction standards that are confusing or outdated, or that duplicate, or are inconsistent with, other OSHA standards or the standards issued by other agencies. The Agency is seeking recommendations on how to revise or remove those standards while maintaining or enhancing employee protection. To assist in the identification process, listed below under different objectives of the SIP-IV rulemaking (e.g., “Eliminate Unnecessary Paperwork”) are specific examples from prior rulemakings, along with candidate standards currently under consideration for this rulemaking.

A. Eliminate Unnecessary Paperwork

1. Examples from prior SIP rulemakings. SIP-III removed the duty of employers to transfer employee exposure and medical records to the National Institute for Occupational Safety and Health (NIOSH) when an employer ceased doing business and left no successor, when the required period for retaining the records expired, or when the employer terminated a worker's employment. While the original purpose of this requirement was to provide NIOSH with useful research information, NIOSH determined that it could not use these records for that purpose. SIP-III also removed the requirement

to certify personal protective equipment (PPE) training. OSHA concluded that it could obtain the PPE training information using other means, thereby making this requirement unnecessary; removing the requirement reduced substantially the paperwork burden on employers.

2. Example of an existing standard currently under review for possible inclusion in the SIP-IV rulemaking. To eliminate unnecessary paperwork among construction employers, OSHA is considering eliminating the requirement for a written certification of employee training in §1926.503(b) of the construction Fall Protection standard (29 CFR 1926, subpart M). The underlying training requirement would still apply, but employers would no longer have to prepare written certifications of the training.

B. Clarify Employer Duties and Eliminate Unnecessary Employer Duties

1. Examples from prior SIP rulemakings. In SIP-III, OSHA clarified employer duties by redefining the meaning of the term “potable water,” and revised the title of 29 CFR 1910, subpart E, from “Means of Egress” to “Exit Routes and Emergency Planning” for greater clarity and ease of comprehension by affected employers and employees. To eliminate unnecessary employer duties, SIP-I reduced the frequency of medical examinations and tests required in OSHA’s Inorganic Arsenic and Coke Oven Emissions standards at 29 CFR 1910.1018 and .1029, respectively.

2. Example of an existing standard currently under review for possible inclusion in the SIP IV rulemaking. To clarify employer duties, OSHA is considering a revision to the Motor Vehicle, Mechanized Equipment, and Marine Operations standard for construction (29 CFR 1926, subpart O) that would explain that §1926.601 (and not §1926.602) covers vehicles that operate within an off-highway jobsite, while §1926.602 (and not §

1926.601) covers “off-highway trucks.”⁴ A number of construction employers have complained to OSHA that the existing language of these standards is confusing.

C. Update Standards and Eliminate Inconsistencies or Duplication Between Standards

1. *Examples from prior SIP rulemakings.* The SIP-II rulemaking updated and harmonized a number of OSHA's early substance-specific standards (e.g., Vinyl Chloride, Acrylonitrile, Coke Oven Emissions, Inorganic Arsenic, and DBCP) by revising the exposure-monitoring, medical-surveillance, and compliance-plan-update provisions of these early standards consistent with recently promulgated OSHA substance-specific standards. In the SIP-III rulemaking, OSHA revised inconsistent provisions of the Respiratory Protection standard to clarify which appendices contain mandatory provisions.

2. *Example of existing standards currently under review for possible inclusion in the SIP IV rulemaking.* OSHA is considering revising the construction Signals, Signs, and Barricades standards (29 CFR 1926, subpart G), notably §§1926.201 and 1926.202, to reference the most current version of the Manual on Uniform Traffic Control Devices (MUTCD-2009) from the Department of Transportation's Federal Highway Administration. The current standard references the 1988 and 2000 versions of the MUTCD, which are no longer used in many jurisdictions.

D. Miscellaneous Revisions⁵

⁴The term “off-highway trucks” refers to trucks designed for moving materials in areas other than public roads, e.g., very large dump trucks that are too large to operate on most roads.

⁵These revisions include eliminating obsolete, unclear, or inconsistent standards; permitting the use of new technologies or new and effective employee-protection measures that provide equivalent or superior performance to existing OSHA standards; and correcting grammatical or typographical errors.

1. Examples from prior SIP rulemakings. SIP-III removed the word “hot” modifying “air hand dryers” in its Bloodborne Pathogens standard to allow the use of new high-velocity-air hand-drying machines. OSHA acknowledged in the SIP-III rulemaking that the new hand-drying technology was as effective as the requirements in the existing standard, but the existing standard limited hand drying to a decades-old technology that delivered only hot air.

2. Examples of existing standards currently under review for possible inclusion in the SIP IV rulemaking. With regard to the Underground Construction, Caissons, Cofferdams and Compressed Air standards (29 CFR 1926, subpart S), OSHA is considering updating the decompression tables in Appendix A.⁵ This action would permit employers to use decompression procedures that take advantage of new hyperbaric technologies used widely by private-sector and public-sector employers in the U.S. engaged in extreme hyperbaric exposures. Currently, to use updated decompression procedures, employers engaged in tunneling projects, for example, must apply for a variance from the decompression tables currently specified by Appendix A. However, the variance process is not an efficient means of addressing health and safety issues that may affect multiple employers.

Another possible miscellaneous revision would involve revising the definitions of “stable rock” in §1926.650(b) and “layered system” in paragraph (b) of Appendix A of OSHA’s Excavation standard by clarifying the meaning of those terms so that employers will classify soil correctly at excavation sites. Incorrect classifications of soil types can

⁵Updated decompression procedures typically use oxygen-enriched breathing mixtures during decompression, as well as decompression schedules that differ substantially from the schedules specified by the existing Appendix A tables.

endanger employees because, based on faulty soil classification, employers may use inappropriate safeguards to prevent cave-ins.

E. Submitting Recommendations

When submitting a recommended revision to an existing OSHA standard in response to this RFI, OSHA requests that members of the public explain their rationale and provide, if possible, data and information to support their comments. Specifically, OSHA is requesting commenters to provide: (1) the reasons why they believe a candidate standard is confusing or outdated, or duplicates, or is inconsistent with, other OSHA standards or the standards issued by other agencies, and mention specifically what the other standard is, and (2) the action, including revised language when appropriate, that they believe will improve the standard.

III. Authority and Signature

David Michaels, Ph.D., MPH, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, authorized the preparation of this notice pursuant to Sections 4, 6, and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657), 29 CFR part 1911, and Secretary's Order 1-2012 (77 FR 3912).

Signed at Washington, DC, on November 29, 2012.

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

BILLING CODE 4510-26-P

[FR Doc. 2012-29514 Filed 12/05/2012 at 8:45 am; Publication Date: 12/06/2012]