

Standards Improvement Project candidates for ACCSH August 22-23, 2013.

New regulatory text is highlighted.

Current Regulatory Text	Proposed Regulatory Text	Explanation
<p>#1</p> <p>§1926.32(k) “Employer” means contractor or subcontractor within the meaning of the Act and of this part.</p> <p>§1926.32(j) “Employee” means every laborer or mechanic under the Act regardless of the contractual relationship which may be alleged to exist between the laborer and mechanic and the contractor or subcontractor who engaged him. "Laborer and mechanic" are not defined in the Act, but the identical terms are used in the Davis-Bacon Act (40 U.S.C. 276a), which provides for minimum wage protection on Federal and federally assisted construction contracts. The use of the same term in a statute which often applies concurrently with section 107 of the Act has considerable presidential (sic) value in ascertaining the meaning of "laborer and mechanic" as used in the Act. "Laborer" generally means one who performs manual labor or who labors at an occupation requiring physical strength; "mechanic" generally means a worker skilled with tools. See 18 Comp. Gen. 341.</p>	<p>§1926.32(k) "Employer" means a person engaged in a business affecting commerce who has employees, but does not include the United States or any State or political subdivision of a State.</p> <p>"Employee" means an employee of an employer who is employed in a business of his employer which affects commerce.</p>	<p>OSHA adopted the existing definitions of “employer” and “employee” from the Construction Safety Act. The proposed definitions for these terms use the more recent definitions contained in the general industry regulations at §1910.2. Adoption of the proposed definitions would promote simplification and clarity, as well as providing consistency between general industry and construction standards and regulations. These definitions are also consistent with those found in the Occupational Safety and Health Act (“OSH Act”), the sole difference being an explicit inclusion of the United States Postal Service in the definition of “employer” in the OSH Act.</p>

<p>#2</p> <p>§1904.10(b)(6) If a physician or other licensed health care professional determines the hearing loss is not work-related, do I still need to record the case? If a physician or other licensed health care professional determines that the hearing loss is not work-related or has not been significantly aggravated by occupational noise exposure, you are not required to consider the case work-related or to record the case on the OSHA 300 Log.</p>	<p>§1904.10(b)(6) If a physician or other licensed health care professional determines the hearing loss is not work-related, do I still need to record the case? If a physician or other licensed health care professional (PLHCP) determines, <i>following the rules set out in §1904.5</i>, that the hearing loss is not work-related or has not been significantly aggravated by occupational noise exposure, you are not required to consider the case work-related or to record the case on the OSHA 300 Log. <i>If an event or exposure in the work environment either caused or contributed to the hearing loss, or significantly aggravated a pre-existing hearing loss, the PLHCP must consider the case to be work-related. It is not necessary for work to be the sole cause, or the predominant cause, or even a substantial cause of the hearing loss; any contribution from work makes the case work-related. The employer is responsible for ensuring that the PLHCP applies the analysis in §1904.5 when evaluating work-related hearing loss, if the employer chooses to rely on the PLHCP's opinion in determining recordability.</i></p>	<p>The added text clarifies paragraph §1904.10(b)(6). It specifies that employers must comply with the provisions of §1904.5 when making a determination of whether a worker's hearing loss is work-related. As currently written, §1904.10(b)(6) provides that if a physician or PLHCP “determines that a hearing loss is not work-related or has not been significantly aggravated by occupational noise exposure, you are not required to consider the case work-related or to record the case on the OSHA 300 log.” In practice, whether to follow the requirements of §1904.5 when interpreting this provision confuses some employers. This proposed amendment removes any ambiguity. The added text comes directly from language which OSHA incorporated into the recordkeeping compliance directive on January 12, 2012.</p>
<p>The recent Federal Register notice announcing the ACCSH meeting listed the issue of defining “potable water” in the agenda, but OSHA resolved the definition of potable water in §1926 in the last SIP rulemaking and does not need to bring this before the committee.</p>		

<p>#3</p> <p>§1926.104(c) Lifelines used on rock-scaling operations, or in areas where the lifeline may be subjected to cutting or abrasion, shall be a minimum of 7/8-inch wire core manila rope. For all other lifeline applications, a minimum of 3/4-inch manila or equivalent, with a minimum breaking strength of 5,400 pounds, shall be used.</p> <hr/> <p>Secondary issue: Should OSHA also change the strength requirement for anchorages in §1926.(b) from 5,400 lbs to 5,000 lbs?</p> <ul style="list-style-type: none"> • Keeping the strength requirement for the anchorage point above the break strength requirement of the lanyard or lifeline provides no added safety. • Consistency with ANSI/ASSE. 	<p>§1926.104(c) Lifelines used on rock-scaling operations, or in areas where the lifeline may be subjected to cutting or abrasion, shall be a minimum of 7/8-inch wire core manila rope. For all other lifeline applications, a minimum of 3/4-inch manila or equivalent, with a minimum breaking strength of 5,400 5,000 pounds, shall be used.</p>	<p>OSHA is proposing to change the break-strength requirement for lifelines in §1926.104(c) to 5,000 pounds to conform to the parallel requirements in the Fall Protection standard at §§1926.502(d)(9) (lifelines and lanyards) and 1926.502(d)(15) (anchorages). This revision is also consistent with the most recent ANSI/ASSE standard (ANSI/ASSE Z359.1 2007) and A10.32.</p>
<p>#4</p> <p>§1926.55(a) Exposure of employees to inhalation, ingestion, skin absorption, or contact with any material or substance at a concentration above those specified in the “Threshold Limit Values of Airborne Contaminants for 1970” of the American Conference of Governmental Industrial Hygienists, shall be avoided. See Appendix A to this section.</p> <p>[Appendix A, to which §1926.55(a) refers, similarly refers to the 1970 threshold limit values of the American Conference of Governmental Industrial Hygienists (ACGIH).]</p>	<p>§1926.55(a) Permissible Exposure Limits. Employers must limit an employee’s exposure to any substance listed in Table A of this section in accordance with the following:</p> <p><i>Substances with limits preceded by (C) – Ceiling Values.</i> An employee’s exposure, as determined from breathing-zone air samples, to any substance in Table A with a permissible exposure limit preceded by (C) must at no time exceed the exposure limit given for that substance. If instantaneous</p>	<p>29 CFR 1926.55 establishes permissible exposure limits for numerous toxic chemicals. It is the construction counterpart to the general industry standard at 29 CFR 1910.1000. In certain respects, however, current §1926.55 is not as clear as §1910.1000.</p> <p>Section 1926.55(a) and Appendix A present the following problems:</p>

	<p>monitoring is not feasible, then the employer must assess ceiling as a 15-minute time-weighted average exposure that the employer cannot exceed at any time during the working day.</p> <p><i>Other substances – 8-hour Time Weighted Averages.</i> An employee’s exposure, as determined from breathing-zone air samples, to any substance in Table A with a permissible exposure limit not preceded by (C) must not exceed the limit given for that substance measured as an 8-hour time-weighted average in any work shift.</p> <p>[Appendix A would become Table A and its title changed to “Permissible Exposure Limits for Airborne Contaminants.” OSHA would delete the footnotes designated “*” and “**” and provide an explanation that an “X” in the “Skin Designation” column means that the substance presents a skin hazard.]</p>	<ol style="list-style-type: none"> 1. Use of the phrase “threshold limit values” and the reference to the ACGIH are confusing. OSHA intends these limits to be, in current OSHA terminology, “permissible exposure limits.” Moreover, they are limits established by OSHA, not ACGIH, although they were once derived from ACGIH recommendations. 2. The words “shall be avoided” carry an advisory, rather than a mandatory, connotation. 3. The words “inhalation, ingestion, skin absorption, or contact” are redundant and confusing. The concentrations listed are airborne values, and OSHA does not need to prove whether they present an inhalation or other type of hazard. 4. Appendix A has a column for “Skin Designation,” under which an “X” identifies certain substances, but the appendix provides no definition of “X.” One must refer to the 1970 ACGIH publication to determine that it identifies substances that present a skin hazard. 5. Appendix A has two footnotes designated “*” and “**”. However, there are no asterisks in the body of the Appendix referencing these
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		<p>footnotes. Footnote * says, “The PELs are 8-hour TWAs unless otherwise noted; a (C) designation denotes a ceiling limit.” (The standard does not define the acronyms “PEL” and “TWA.” However, it is clear that PEL means “permissible exposure limit” and TWA means “time-weighted average.”) Appendix ** says, “As determined from breathing-zone air samples.”</p> <p>(6) Appendix A is not an appendix but is an integral part of the standard.</p> <p>The proposed revisions to §1926.55(a) parallel the provisions of the corresponding general industry regulations. As detailed in the adjacent text box, the revisions will:</p> <ol style="list-style-type: none"> (1) Change the phrase “Threshold Limit Values” to “Permissible Exposure Limits”; (2) Eliminate language that sounds advisory; (3) Eliminate confusing language regarding the route of exposure; and (4) Correct several noted errors in Appendix A.
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<p>#5</p> <p>§1926.651(j)(1) Adequate protection shall be provided to protect employees from loose rock or soil that could pose a hazard by falling or rolling from an excavation face. Such protection shall consist of scaling to remove loose material; installation of protective barricades at intervals as necessary on the face to stop and contain falling material; or other means that provide equivalent protection.</p> <p>§1926.651(j)(2) Employees shall be protected from excavated or other materials or equipment that could pose a hazard by falling or rolling into excavations. Protection shall be provided by placing and keeping such materials or equipment at least 2 feet (.61 m) from the edge of excavations, or by the use of retaining devices that are sufficient to prevent materials or equipment from falling or rolling into excavations, or by a combination of both if necessary.</p>	<p>§1926.651(j)(1) Adequate protection shall be provided to protect employees from loose rock or soil, that could pose a hazard by falling or rolling from an excavation face. Such protection shall consist of employers must use scaling to remove loose material; installation of protective barricades at intervals as necessary on the face to stop and contain falling material; or use other means that provide equivalent protection.</p> <p>§1926.651(j)(2) Protection shall be provided by placing and keeping excavated or other materials or equipment at least 2 feet (.61 m) from the edge of excavations, or by the use of retaining devices that are sufficient to prevent materials or equipment from falling or rolling into excavations, or by a combination of both if necessary.</p>	<p>This proposed amendment clarifies the employer’s duties under the excavation standard. The original excavation standard, in 1971, placed the burden on employers to ensure employee safety from loose soil and materials, etc. OSHA’s 1989 revision tried to clarify the employer’s duties, but the revision resulted in uncertainty and confusion in those duties as it refers to soil and material that “could pose a hazard.” The proposed amendment will make it clear that employers must protect employees from all loose rock, loose soil, and equipment.</p>
<p>#6</p> <p>§1926.64 Process safety management of highly hazardous chemicals [text omitted]</p>	<p>§1926.64 Process safety management of highly hazardous chemicals [Delete existing text and replace with the following note: NOTE: The requirements applicable to construction work under this section are identical to those set forth at 29 CFR</p>	<p>To avoid unnecessary duplication, OSHA is proposing to replace the entire 31 pages of text in this section with a cross reference to the corresponding general industry regulations. The construction standards have a similar reference for</p>

	<p>1910.119.]</p>	<p>other standards, such as for Respiratory Protection, where 1926.103 refers to the general industry PPE standard at 1910.134.</p> <p>Construction employers are rarely employers who must have a PSM program for their own worksites and are mainly affected by paragraph (h) <i>Contractors</i> in the PSM standard when performing construction work at refineries or chemical manufacturing plants.</p>
<p>#7</p> <p>Subpart W—Rollover Protective Structures; Overhead Protection [Subpart W addresses performance measures that manufacturers of construction equipment must follow to test the strength of rollover protective structures (ROPS).]</p>	<p>Because this section is long (25 pages in the CFR) and does not address any construction activity directly, the Agency is proposing to condense its content by referencing the following national consensus standards:</p> <p>For equipment manufactured before the effective date of the revised standard:</p> <p>(1) Society of Automotive Engineers Standard J334a–1970, Protective Frame Test Procedures and Performance Requirements; or</p> <p>(2) Society of Automotive Engineers Standard J167–1970, Protective Frame with Overhead Protection-Test Procedures and Performance requirements.</p> <p>Paragraphs (d) <i>Remounting</i> and (e) <i>Labeling</i> would be retained.</p>	<p>The Agency is proposing to condense existing standards §§1926.1002 and 1926.1003 by referencing the two consensus standards that are the source standards for these OSHA standards (i.e., to incorporate these consensus standards by reference into the OSHA standards to replace most of the existing regulatory text). The Agency also would remove irrelevant text from §1926.1000, but retain existing §1926.1001.</p> <p>The two source standards date to 1970. ANSI and SAE subsequently cancelled these standards and now refer to the most recent ISO standards. Therefore, OSHA is proposing that, for new equipment</p>

	<p>For equipment manufactured on or after the effective date of the revised standard:</p> <p>(1) ISO 3471–2008, Earth-moving machinery – Roll-over protective structures – Laboratory tests and performance requirements; and</p> <p>(2) ISO 3449–2005, Earth-moving machinery - Falling-object protective structures - Laboratory tests and performance requirements</p>	<p>manufactured after the effective date of the revised standard, the performance measures for testing rollover protection structures meet the current relevant international standard ISO 3471–2008 and ISO 3449–2005.</p> <p>1926.1000(a)(2) anticipates expanding the scope of equipment covered to include compactors and skid-steer loaders. In 2009 ACCSH recommended to OSHA that the Agency expand coverage for tipover protection. Compactors are included within the scope of ISO 3471 and skid-steer loaders may be. Should the Agency consider expanding the scope of equipment covered in subpart W to include them?</p>
<p>#8</p> <p>§1926.50(f) In areas where 911 service is not available, the telephone numbers of the physicians, hospitals, or ambulances shall be conspicuously posted.</p>	<p>§1926.50(f) In areas where 911 service is not available, the telephone numbers of the physicians, hospitals, or ambulances shall be conspicuously posted. When an employer uses a communication system for contacting necessary ambulance service, the employer must:</p> <p>(1) Ensure that the communication system is effective in contacting the ambulance service; and</p> <p>(2) When using a wireless telephone in counties, or portions of counties, where the U.S. Federal Communications Commission</p>	<p>The proposed revision updates this requirement for emergency information posting to reflect the widespread availability of wireless telephone service. In some remote areas of the country, however, wireless telephone carriers are unable to provide accurate information to 911 answering centers regarding the location of the 911 caller. In such areas, it is critical that a 911 caller have the latitude and longitude of the work place readily available to relay</p>

	<p>exempts wireless telephone carriers from requirements to provide the latitude and longitude of a 911 caller to a public-safety answering point, conspicuously post the latitude and longitude of the workplace.</p> <p>Note to paragraph (f)(2): The requirement specified in paragraph (f)(2) of this section does not apply to work places with readily available telephone land lines that have 911 service.</p>	to the 911 dispatcher.
<p>#9</p> <p>[Amend the requirement in §1926.250(a)(2) to post maximum safe load limits for buildings under construction to exempt single-family dwellings.]</p>	<p>§1926.250(a)(2) Maximum safe load limits of floors within buildings and structures, in pounds per square foot, shall be conspicuously posted in all storage areas, except for floor or slab on grade. Maximum safe loads shall not be exceeded. Employers need not post load limits in single-family residences under construction.</p>	Requiring employers to post safe load limits is an unnecessary burden when applied to single-family home construction because employers do not use these structures for storing heavy materials that could endanger employees working at lower levels.

<p>#10</p> <p>[<u>CXR for lung-cancer screening</u>: §§1910.1027 Cadmium; 1926.1127 Cadmium (construction); 1910.1029 Coke oven emissions; 1910.1045 Acrylonitrile; and 1910.1018 Inorganic arsenic.</p> <p><u>CXR to screen for other conditions (asbestosis)</u>: §§1910.1001 Asbestos; 1926.1101 Asbestos (construction); and 1915.1001 Asbestos (shipyards).]</p>	<p>[OSHA would update requirements to include x-rays in physical exams, and requirements regarding the interpretation and classification of those x-rays, to allow the use of digital CXR (and use of International Labour Organisation digital reference images).]</p>	<p>Chest x-ray requirement—at the last ACCSH meeting, ACCSH asked DSG staff to consult with NIOSH regarding removal of chest x-ray requirements in several existing standards, and the revision to the chest x-ray requirement in the asbestos standard, but did not make a recommendation.</p>
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<p>CXR (chest x-ray)</p>		<p>Since then, OSHA has held discussions with NIOSH staff. These discussions indicate that OSHA and NIOSH agree that allowing digital CXR (and use of International Labour Organisation digital reference images) where OSHA retains the CXR requirements would help modernize the Agency's standards, improve their congruency with generally accepted practices in occupational medicine, and reduce employer burden associated with storage of film records.</p> <p>OSHA plans to incorporate NIOSH recommendations for handling potentially outdated initial and periodic CXR requirements in its health standards as the Agency develops the SIP IV proposal.</p> <p>OSHA evaluated evidence for and against retention of the initial requirements for CXR as a lung cancer-screening tool, as well as the evidence for and against retention of the periodic CXR requirements when lung cancer is the primary health outcome of interest.</p> <p>OSHA, with input from NIOSH and considering the best available scientific evidence, is also evaluating the benefits and risks of other diagnostic radiography tools, such as</p>
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