DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Parts 1910 and 1926

[Docket No. S–778]

Miscellaneous Changes to General Industry and Construction Standards; Proposed Paperwork Collection, Comment Request for Coke Oven Emissions and Inorganic Arsenic

AGENCY: Occupational Safety and Health Administration, Labor.

ACTION: Proposed rule.

SUMMARY: With this document, the Occupational Safety and Health Administration (OSHA) is continuing the process of removing or revising standards that are out of date, duplicative, unnecessary, or inconsistent in response to a March 4, 1995 memorandum from the President. This document proposes substantive changes to both health and safety standards to reduce regulatory requirements while maintaining employee protection. Changes proposed include reducing chest x-ray frequency and eliminating sputum cytology examinations for the coke oven and inorganic arsenic standards, changing the emergency-response provisions of the vinyl chloride standard, eliminating public safety provisions of the temporary labor camp standard, eliminating unnecessary OSHA standard references in the textile industry standards and others.

DATES: Written comments and requests for a hearing on this proposal must be postmarked by September 20, 1996.

ADDRESSES: Comments should be submitted in quadruplicate or 1 original (hardcopy) and 1 diskette (5¼ or 3½ inch) in WordPerfect 5.0, 5.1, 6.0 or 6.1, or ASCII to: Docket Office, Docket No. S–778, U.S. Department of Labor, Occupational Safety and Health Administration, Room N–2634, 200 Constitution Avenue, NW., Washington, DC 20210 (telephone (202) 219–7894). Any information not contained on disk (e.g., studies, articles) must be submitted in quadruplicate. Written comments limited to 10 pages in length also may be transmitted by facsimile to (202) 219–5046, provided an original and 3 copies are sent to the Docket Office thereafter.

Requests for a hearing should be sent to: Mr. Tom Hall, U.S. Department of Labor, Occupational Safety and Health Administration, Room N–3647, 200 Constitution Avenue NW., Washington, DC 20210 (telephone (202) 219–8615).

Comments on the reduction of paperwork burden and renewal of paperwork authorization for inorganic arsenic and coke oven emissions should be sent to the OSHA docket and to the Office of Information and Regulatory Affairs, OMB, New Executive Office Bldg., Rm. 10235, 725 17th St. NW., Washington, DC 20503, Attn. OSHA Desk Officer.

For an electronic copy of this Federal Register notice, contact the Labor News Bulletin Board at (202) 219–4748; or OSHA's WebPage on the Internet at http://www.OSHAgov. For news releases, fact sheets and other short documents, contact OSHA FAX at (900) 555–3400 at $1.50 per minute.

FOR FURTHER INFORMATION CONTACT: Technical inquiries should be directed to Mr. Pat Cattafesta, Office of Electrical/Electronic and Mechanical Safety Standards, U.S. Department of Labor, Occupational Safety and Health Administration, Room N3609, 200 Constitution Ave., NW., Washington, DC 20210 [telephone (202)-219–7202; FAX (202)–219–7477].

Requests for interviews and other press inquiries should be directed to Ms. Ann Cyr, U.S. Department of Labor, Occupational Safety and Health Administration, Office of Information and Consumer Affairs, Room N–3647, 200 Constitution Avenue NW., Washington, DC 20210 [telephone (202) 219–8148].

SUPPLEMENTARY INFORMATION:

I. Background

In March 1995, the President directed Federal agencies to undertake a line-by-line review of their regulations to determine where they could be simplified or clarified. OSHA initiated such a review, and as a result completed a document on May 31, 1995, entitled ''OSHA's Regulatory Reform Initiatives.'' That document detailed the Agency's findings as to which regulations could be deleted or revised without reducing employee health and safety, and which by clarifying requirements might improve compliance by employers and, consequently, provide enhanced occupational safety and health protection to employees. This regulatory improvement process involves revocation of outdated and obsolete provisions, elimination of substantive requirements which do not appear to be effective, consolidation of repetitious provisions, and clarification of confusing language. The Agency began this process with an administrative notice which made minor clarifications and technical amendments (61 FR 9228, March 7,1996). This document proposes substantive changes to standards which the agency believes are unnecessary or ineffective in protecting worker health or safety. As these changes are substantive, notice and comment is required. Final decisions on carrying out the proposed revisions will depend on the record after considering public comment.

II. Summary and Explanation

Amendments to Part 1910

A. Explosives and Blasting Agents (§ 1910.109)

When § 1910.109 was first promulgated, Table H–21 (American Table of Distances for Storage of Explosives) specified the distances that must be maintained between stored explosives and inhabited buildings, passenger railways, and public highways. It also specified required distances between stored explosive magazines. Table H–21 also applied to the manufacture of explosives to the extent that it specified distances between an explosive manufacturing building and inhabited buildings, passenger railways, public highways, and magazines.

In 1978, OSHA published a final rule (43 FR 49726) which revoked certain requirements that were called ''nuisance standards'' because they did not deal directly with workplace safety and health or were the jurisdiction of some other regulatory agency. Among the requirements revoked were the three columns of Table H–21 that specified distances to inhabited buildings, passenger railways, and public highways because they dealt with public and property protection-not employee protection. As a result, the current Table H–21 specifies only the distances between magazines.

Because Paragraph (c)(1)(vi) of § 1910.109 was inadvertently overlooked during the 1978 rulemaking, this paragraph still makes reference to ''inhabited buildings, passenger railways, and public highways.'' Consequently, OSHA is proposing to remove this phrase. Also, the first sentence of footnote number 5 of Table H–21 reads: ''This table applies only to the manufacture and permanent storage of commercial explosives.'' OSHA is proposing to remove the words ''manufacture and'' from the first sentence of footnote number 5 of Table H–21.

Paragraph (d)(1)(iv) of § 1910.109 states that blasting caps or electric blasting caps shall not be transported over the highways on the same vehicles with other explosives. However, DOT

regulations at 49 CFR 177.835(g)((3)(i) provide an approved method for the transport of detonators (blasting caps) on the same vehicle with other explosives.

OSHA believes that blasting caps can be safely transported on the same vehicle with other explosives if such transport is done in accordance with the method specified in the Department Of Transportation (DOT) regulations.

Therefore, OSHA is proposing to amend paragraph (d)(1)(iv) to permit the transportation of blasting caps or electric blasting caps on the same vehicle with other explosives if they are transported in accordance with the method specified in DOT regulations at 49 CFR 177.835(g)(3)(i).

Paragraph (e)(2)(i) of § 1910.109 states:

> Empty boxes and paper and fiber packing materials which have previously contained high explosives shall not be used again for any purpose, but shall be destroyed by burning at an approved isolated location out of doors, and no person shall be nearer than 100 feet after the burning has started.

The purpose of this requirement is to ensure that any boxes or packing material that may have been contaminated by leaking explosives do not present a hazard to employees. Consequently, all boxes and packing material, contaminated or not, may not be reused and must be disposed of by burning at an approved outdoor location.

However, environmental agencies often will not permit the burning of such materials. In addition, DOT permits the reuse of packaging materials if such reuse is accomplished in accordance with the requirements of 49 CFR 173.28. Thus, employers are confronted by a conflict between the standards of two Federal agencies. OSHA believes that such containers and packing materials should be permitted to be reused if uncontaminated, and if accomplished in accordance with DOT regulations.

Therefore, OSHA is proposing that paragraph (e)(2)(i) of § 1910.109 be amended to read as follows:

> Empty containers and paper and fiber packing materials which have previously contained explosive materials shall be disposed of in a safe manner, or reused in accordance with Department of Transportation requirements at 49 CFR 173.28.

B. Storage and Handling of Liquefied Petroleum Gases (1910.110)

Paragraphs (b)(15)(v)-(vii) of § 1910.110 contain requirements for the location of backflow check valves, excess-flow valves, and shutoff valves on tank cars and transport trucks. Paragraph (b)(15)(viii) of § 1910.110 contains requirements for locating tank cars and transport trucks during loading and unloading operations.

The design of transportation vehicles and the safe location of such vehicles during loading and unloading operations are under the jurisdiction of DOT and not OSHA. Therefore, OSHA is proposing to delete paragraphs (b)(15)(v)-(viii) of § 1910.110. OSHA is also proposing to redesignate paragraph (b)(15)(ix) as new paragraph (b)(15)(v) of § 1910.110.

Paragraphs (c)(2)(ii)-(iv) of § 1910.110 contain specifications for the marking of LPG cylinders. These marking specifications are duplicative of DOT requirements. Accordingly, OSHA is proposing to delete them.

Paragraph (e)(10) of § 1910.110 contains limitation requirements on the capacity of LPG containers that are used to fuel passenger carrying vehicles. As requirements pertaining to passenger carrying vehicles are under the jurisdiction of DOT, OSHA is proposing to delete the text of paragraph (e)(10) of § 1910.110.

Paragraph (g) of § 1910.110 contains requirements for the installation of LP-gas systems on commercial vehicles. The installation of LP-gas systems on commercial vehicles is under the jurisdiction of DOT. OSHA, therefore, is proposing to delete the text from paragraph (g) of § 1910.110 and to reserve the paragraph designation.

C. Storage and Handling of Anhydrous Ammonia (§ 1910.111)

Paragraph (f)(7) of § 1910.111 contains safety requirements for full trailers and semitrailers that transport ammonia. Paragraph (f)(8) of § 1910.111 contains requirements pertaining to the protection of such vehicles against collision. As full trailers and semitrailers that transport ammonia are under the jurisdiction of DOT, OSHA is proposing to delete the text of paragraphs (f)(7) and (f)(8) of § 1910.111.

D. Sanitation (§ 1910.141)

OSHA proposes to delete the definition for ''lavatory,'' given in paragraph (a)(2)(i) of § 1910.141. This definition states that ''*lavatory* means a basin or similar vessel used exclusively for washing of hands, arms, faces, and head.'' OSHA believes that the meaning of the term is self-explanatory in the context of the section. OSHA specifically seeks comment as to whether, in fact, deletion of this definition may diminish the health of employees in affected workplaces.

E. Temporary Labor Camps (§ 1910.142)

Section 1910.142 (a)(4) provides regulations for the closing of temporary labor camps. Upon the closing of a camp site, the regulations require the employer to collect all refuse, garbage, and manure, to fill all privy pits, to lock and secure any remaining privy buildings, and to have all buildings in a clean and sanitary condition.

Because this paragraph deals with closing the site, which occurs after the employees have left, this paragraph essentially provides not for worker safety, but for public safety, which is outside the Agency's mission. For these reasons, OSHA proposes to remove § 1910.142(a)(4). OSHA does note, however, that employers may be responsible for adhering to other standards regarding public health and safety in the locality or State in which the camp site is located.

F. Safety Color Code for Marking Physical Hazards (§ 1910.144)

Section 1910.144 provides guidance on the colors to use to mark physical hazards. These colors were required so that emergency devices and physical hazards could be identified quickly by employees. Because removal of these requirements from 29 CFR part 1910 would have minimal effect on employee safety and health, the Agency has decided not to provide this standard. For employers desiring guidance in this area, the American National Standards Institute, ANSI Z535.1–91, Safety Color Code is available. OSHA, therefore, proposes to remove § 1910.144.

G. Medical Services and First Aid (§ 1910.151)

Section 1910.151 states the obligation of employers to have medical services available to provide advice on workplace health matters, and for use by employees if needed.

Paragraph (b), in particular, requires the availability of first aid services for workplaces that do not have medical providers nearby. This paragraph also requires that first aid supplies approved by the consulting physician be on hand.

OSHA proposes to amend § 1910.151(b) so that the approval of first aid supplies by the consulting physician is no longer required, although the standard would continue to require that adequate supplies be available. Commercial first aid kits are readily available and will meet the needs of most employers and most worksites. If the workplace has unusual hazards or poses special problems that would require modification of a commercial first aid kit, or the

development of a specialized kit, the Agency expects that the employer will provide those special items. If the employer is unsure whether a commercially available kit is sufficient, professional advice should be obtained. Such advice, however, would not be required by OSHA as a matter of course. These changes will allow the employer more flexibility in meeting the Agency's first aid requirements, without affecting employee health and safety.

H. Fire Brigades (§ 1910.156)

Section 1910.156 contains requirements for the organization, training, and provision of personal protective equipment for fire brigades. Requirements for negative-pressure self-contained breathing apparatus are listed in § 1910.156(f)(2)(iii). These requirements were intended to remain mandatory for 18 months after the National Institute for Occupational Safety and Health (NIOSH) certified a positive-pressure breathing apparatus with the same or longer service life as the currently required negative-pressure breathing apparatus. The 18-month period was to allow employers to phase in the new apparatus.

NIOSH has since certified a positive-pressure breathing apparatus, and the 18 month phase-in period has ended. This paragraph is therefore unnecessary, and OSHA proposes to remove it.

I. Helicopters (§ 1910.183)

Section 1910.183(a) states that helicopter cranes are expected to comply with any applicable regulations of the Federal Aviation Administration (FAA). Since OSHA does not have the statutory authority to enforce FAA regulations for helicopters, (found at 14 CFR part 133), it is proposed that § 1910.183(a) be revoked.

J. Pulp, Paper, Paperboard Mills (§ 1910.261)

Section 1910.261 contains requirements that apply to establishments where pulp, paper, and paperboard are manufactured and converted. Certain standards in paragraphs (a), (b), (c), (d), (e), (g), (h), (j), (k), and (m) of § 1910.261 require these establishments to comply with a number of standards of the American National Standards Institute (ANSI). The inclusion of these standards in § 1910.261 duplicates other standards in part 1910 which apply to general industry as a whole. Many of the other general industry standards cover the same hazards, and in many cases, they share the same source materials as the provisions in § 1910.261.

All but one of the ANSI standards referenced in § 1910.261 were source documents for OSHA standards that have general application without regard to any specific industry. For example, ANSI Standard A12.1–1967, Safety Requirements for Floor and Wall Openings, Railings, and Toeboards is referenced in § 1910.261(a)(3)(ii) and is also the source standard for § 1910.23, Guarding Floor and Wall Openings and Holes.

OSHA believes that the OSHA standard, codified in Section 1910.23, provides equivalent or better protection for workers in this industry than the ANSI standard, A12.1–1967, which is referenced in § 1910.261. OSHA proposes, therefore, to revoke § 1910.261(a)(3)(ii).

Similarly, there are a number of other OSHA standards that OSHA believes can provide equivalent or better protection for pulp and paper workers than the ANSI standards referenced in paragraphs (a), (b), (c), (d), (e), (g), (h), (j), (k) and (m) in § 1910.261. For this reason, OSHA proposes to revoke many provisions of § 1910.261 and to apply the corresponding provisions found elsewhere in part 1910. The following table lists the OSHA standards proposed for revocation, the referenced ANSI standards and the OSHA standards that will provide equivalent or better protection.

Standard proposed for revocation	Referenced ANSI standard	Equivalent OSHA standard
1910.261(a)(3)(ii)	A12.1–1967	§ 1910.23
1910.261(a)(3)(iv)	A14.1–1968	§ 1910.25
1910.261(a)(3)(v)	A14.2–1956	§ 1910.26
1910.261(a)(3)(vi)	A14.3–1956	§ 1910.27
1910.261(a)(3)(ix)	B15.1–1953	§ 1910.219
1910.261(a)(3)(xi)	B30.2–1967	§ 1910.179
	B30.5–1968	§ 1910.180
1910.261(a)(3)(xii)	B30.2–1967	§ 1910.179
1910.261(a)(3)(xiii)	B30.2–1943	§ 1910.179
	B30.5–1968	§ 1910.180
1910.261(a)(3)(xv)	B56.1–1969	§ 1910.178
1910.261(a)(3)(xvii)	01.1–1954	§ 1910.213
		§ 1910.214
1910.261(a)(3)(xviii)	Z4.1–1968	§ 1910.141
1910.261(a)(3)(xix)	Z9.1–1951	§ 1910.94
1910.261(a)(3)(xx)	Z9.2–1960	§ 1910.94
1910.261(a)(3)(xxiv)	Z35.1–1968	§ 1910.145
1910.261(a)(3)(xxv)	Z87.1–1968	§ 1910.133
1910.261(a)(3)(xxvi)	Z88.2–1969	§ 1910.134
1910.261(a)(3)(xxvii)	Z89.1–1969	§ 1910.135
1910.261(b)(1)	B15.1–1953	§ 1910.219
1910.261(b)(2)	Z24.22–1957	§ 1910.132
	Z87.1–1968	§ 1910.133
	Z88.2–1968	§ 1910.134
	Z89.1–1969	§ 1910.135
1910.261(b)(3)	A12.1–1967	§ 1910.23
1910.261(b)(6)	B56.1–1969	§ 1910.178
1910.261(c)(2)(vi)	B30.2–1967	§ 1910.179
1910.261(c)(3)(i)	A12.1–1967	§ 1910.23
	A14.1–1968	§ 1910.25
	A14.2–1956	§ 1910.26
	A14.3–1956	§ 1910.27
1910.261(c)(8)(i)	B30.2–1967	§ 1910.179

Standard proposed for revocation	Referenced ANSI standard	Equivalent OSHA standard
1910.261(c)(11)	B56.1–1969	§ 1910.30
1910.261(d)(1)(ii)	Z87.1–1968	§ 1910.133
1910.261(e)(3)	B15.1–1955	§ 1910.219
1910.261(e)(7)	O1.1–1961	§ 1910.213
1910.261(e)(9)	B15.1–1953	§ 1910.219
1910.261(g)(15)(vi)	Z4.1–1968	§ 1910.141
1910.261(h)(2)(iii)	K13.1–1967 Z88.2–1967.	§ 1910.134
1910.261(j)(1)(iv)	B15.1–1958	§ 1910.219
1910.261(j)(3)	A12.1–1967	§ 1910.23
1910.261(j)(4)(ii)	A12.1–1967	§ 1910.23
1910.261(j)(5)(iv)	B15.1–1953	§ 1910.219
1910.261(j)(6)(ii)	B15.1–1953	§ 1910.219
1910.261(k)(2)(i)	B15.1–1953	§ 1910.219
1910.261(k)(4)	A12.1–1967	§ 1910.23
1910.261(m)(2)	B56.1–1969	§ 1910.178
1910.261(m)(4)	Z87.1–1968	§ 1910.133
1910.261(m)(5)(i)	Z87.1–1968	§ 1910.132
1910.261(m)(5)(ii)	B56.1–1969	§ 1910.178

Similarly, OSHA believes that the OSHA standard, § 1910.95, Occupational Noise Exposure, provides worker protection that is at least equivalent to that provided by the ANSI standard, Z24.22–1957, Method of Measurement of Real-Ear Attenuation of Ear Protectors, that is referenced in § 1910.261(a)(3)(xxii). OSHA, therefore, proposes to revoke § 1910.261(a)(3)(xxii) to eliminate this duplicative coverage.

Paragraph (b)(5) of § 1910.261 requires specific procedures to be followed and personal protective equipment to be worn by workers in the pulp, paper and paperboard industry who enter closed vessels, tanks, chip bins, and similar equipment. This standard, however, does not provide the necessary requirements for monitoring, testing, and communication that are critical when working in a confined space.

OSHA proposes to revoke paragraph (b)(5) of § 1910.261 for two reasons. First, § 1910.146, Permit-Required Confined Spaces, provides better protection for workers who are required to work in a confined space. Section 1910.146 provides a comprehensive regulatory program within which employers can effectively protect employees who work in confined spaces. This program addresses the ongoing need for monitoring, testing and communication at these workplaces. Second, employers are required to comply with § 1910.146 when a specific industry standard does not completely address the known hazards of working in a confined space, a principle noted in paragraph (c)(2) of § 1910.5, which means that employers must already comply with § 1910.146 rather than paragraph (b)(5) of § 1910.261.

Paragraph (c)(2)(vii) of § 1910.261 requires employers to provide personal protective equipment to workers on a job basis. Since employers are required to comply with the general requirements for personal protective equipment in § 1910.132, OSHA proposes to revoke paragraph (c)(2)(vii) to eliminate this duplication of requirements in a way that will not decrease worker protection.

Paragraphs (c)(6)(ii) and (c)(7)(ii) of § 1910.261 require employers to provide workers with personal protective equipment and ear protection when the noise level may be harmful. Since employers are required to comply with the general requirements for personal protective equipment in § 1910.132 and the general requirements for occupational noise exposure in § 1910.95, OSHA proposes to revoke paragraphs (c)(6)(ii) and (c)(7)(ii) to eliminate this duplication of requirements.

Paragraphs (g)(1)(iv) and (k)(16) of § 1910.261 are specific electrical standards prescribed for the pulp, paper and paperboard industry that require compliance with subpart S, Electrical, in OSHA's standards. Since all of general industry is required to comply with all of subpart S for electrical standards, OSHA proposes to revoke paragraphs (g)(1)(iv) and (k)(16) of § 1910.261 to eliminate this duplication.

Paragraph (g)(2)(i) of § 1910.261 requires employers to provide employees working in the acid department with gas masks. Since employers are required to comply with the general requirements for respiratory protection in § 1910.134, OSHA proposes to revoke paragraph (g)(2)(i) to eliminate this regulatory duplication.

Paragraph (g)(15)(iv) of § 1910.261 is a standard prescribed for the pulp, paper and paperboard industry that addresses lead dust exposure, and requires compliance with § 1910.1000, Air Contaminants, in OSHA's standards. Since employers are required to comply with all of § 1910.1000, including paragraph 1910.1025 which addresses lead exposure, OSHA proposes to revoke paragraph (g)(15)(iv) to eliminate this duplication.

K. Textiles (§ 1910.262)

Paragraphs (c)(3) and (gg) of § 1910.262 require employers in textile establishments to provide guards for equipment that conform to the requirements of § 1910.219. Since all of general industry is required to comply with all of the general requirements of § 1910.219, OSHA proposes to revoke paragraphs (c)(3) and (gg) of § 1910.262 to eliminate this regulatory duplication.

Similarly, for the purpose of eliminating duplicate standards coverage, OSHA proposes to revoke a number of other standards in § 1910.262 that reference occupational safety and health standards of general application. The following table lists the OSHA standards proposed for revocation and the referenced general OSHA standards which will continue to apply to the Textile industry.

Standard Proposed for Revocation	Referenced OSHA Standard
1910.262(c)(3)	1910.219.
1910.262(c)(4)	1910.141.
1910.262(gg)	1910.219.
1910.262(ll)(1)	1910.23.
1910.262(qq)(1)	1910.132. 1910.133. 1910.134.
1910.262(qq)(2)	1910.134.
1910.262(rr)	1910.1000. 1910.94(d).

Paragraph (c)(8) of § 1910.262 requires employers to identify physical hazards in accordance with the requirements of § 1910.144. Section 1910.144 provides guidance on the colors to use to mark physical hazards. As noted earlier in Section F of this preamble, OSHA is proposing to revoke § 1910.144, since the Agency believes that sufficient guidance on this matter is given by the American National Standards Institute standard ANSI Z535.1–1991, Safety Color Code, and that removal of these requirements from 29 CFR part 1910 would have no discernible effect on employee safety and health. Since OSHA is proposing to revoke § 1910.144, which is referenced in § 1910.262(c)(8), OSHA also proposes to revoke § 1910.262(c)(8).

L. Sawmills (1910.265)

Section 1910.265 contains safety requirements for sawmill operations including, but not limited to, log and lumber handling, sawing, trimming, and planing; waste disposal; operation of dry kilns; finishing; shipping; storage; yard and yard equipment; and for power tools and related equipment used in connection with such operations. Certain paragraphs of this section incorporate and apply occupational safety and health standards of general application which apply to all employment covered by part 1910. As required in paragraph (a)(2) of this section, such standards apply to sawmill operations in accordance with the rules of construction set forth in § 1910.5. For example, the general standard regarding mechanical power-transmission apparatus in § 1910.219 is applicable to employment in sawmill operations covered in § 1910.265, and yet it is also incorporated by reference in paragraph (c)(22) of § 1910.265. OSHA believes that worker safety is not enhanced by repeating the application of § 1910.219 in § 1910.265, and proposes to revoke paragraph (c)(22) of § 1910.265. Also, since § 1910.5 applies to all industries, including the sawmill industry, OSHA proposes to revoke paragraph (a)(2) of § 1910.265 which merely references § 1910.5.

Similarly, for the purpose of eliminating duplicate standards coverage, OSHA proposes to revoke various provisions currently found in § 1910.265 which reference occupational safety and health standards of general application. The following table lists the OSHA standards proposed for revocation and the referenced general OSHA standards which will continue to apply to sawmills.

Standard Proposed for Revocation	Referenced OSHA Standard
1910.265(c)(3)(i)	1910.23.
1910.265(c)(10)	1910.25–27.
1910.265(c)(14)	1910.110.
1910.265(c)(16)	1910.106.
1910.265(c)(17)(i)	1910.1000.
1910.265(c)(17)(ii)	Subpart I.
1910.265(c)(17)(iii)	1910.94(d).
1910.265(c)(22)	1910.219.
1910.265(c)(26)(i)	1910.219.
1910.265(c)(30)(vi)	1910.219.
1910.265(c)(30)(x)	1910.178.
1910.265(e)(3)(ii)(d)	1910.219.
1910.265(f)(9)	1910.219.
1910.265(g)	Subpart I.
1910.265(h)	1910.141.
1910.265(i)	Subpart L.

Paragraph (c)(11) of § 1910.265 requires employers to mark physical hazards as specified in § 1910.144. Section 1910.144 provides guidance on the colors to use to mark physical hazards. As noted earlier in Section F of this preamble, OSHA is proposing to revoke § 1910.144 since the Agency believes that sufficient guidance on this matter is given by the American National Standards Institute standard ANSI Z535.1–1991, Safety Color Code, and that removal of these requirements from 29 CFR Part 1910 would have no discernible effect on employee safety and health. Since OSHA is proposing to revoke § 1910.144, which is referenced in § 1910.265(c)11), OSHA also proposes to revoke § 1910.265(c)(11).

Paragraph (c)(24)(iv)(a) of § 1910.265 requires employers to inspect slings daily when in use, and to remove a sling from service if it is found to be defective. In addition, paragraph (c)(24)(iv)(c) of § 1910.265 requires employers to provide suitable protection between the sling and the sharp unyielding surfaces of the load to be lifted. These provisions duplicate some of the general requirements for the use of slings in § 1910.184 which also include provisions for sling inspection, removal and protection. OSHA proposes to revoke paragraphs (c)(24)(iv)(a) and (c), to eliminate the duplication of requirements for slings in § 1910.265.

M. Agricultural Operations (§ 1910.267)

Section 1910.267 previously contained part 1910 requirements applicable to agricultural operations. These requirements were moved to § 1928.21 in 1975 (40 FR 18268). Since that time, § 1910.267 has been used simply to refer employers to § 1928.21 to locate these requirements. OSHA believes that § 1910.267 is now unnecessary and proposes to revoke it.

N. Telecommunications (§ 1910.268)

Paragraph (f) of 1910.268 contains requirements for rubber insulating equipment (gloves and blankets) used at telecommunications centers and field installations. As discussed below, OSHA has determined that these requirements are now outdated, and that they should be deleted.

OSHA believes that the provisions of paragraph (f) are unnecessary for several reasons. First, the general industry standard found at 29 CFR 1910.137, Electrical Protective Equipment, addresses all rubber insulating equipment, and revocation of paragraph (f) of § 1910.268 would eliminate this duplication of standards and related compliance problems. Second, § 1910.137 provides more comprehensive employee protection, since it covers requirements for manufacture and marking, electrical proof tests, voltages, test intervals, workmanship and in-service care and use. Third, § 1910.137, is written in performance-oriented language that provides employers with flexibility in meeting the standard. Thus, OSHA believes that paragraph (f) of § 1910.268 can be revoked without diminishing employee safety and health.

O. Vinyl Chloride (§ 1910.1017)

OSHA is proposing to delete paragraphs (g)(5)(i) and (ii) of § 1910.1017, vinyl chloride, which was promulgated in 1974. These paragraphs address entry into unknown and hazardous vinyl-chloride atmospheres. Paragraph (g)(5)(i) allows entry into unknown concentrations of vinyl chloride or concentrations greater than 36,000 ppm (lower explosive limit) only for purposes of life rescue. Paragraph (g)(5)(ii) allows entry into concentrations of vinyl chloride of less than 36,000 ppm, but greater than 3,600 ppm only for purposes of life rescue, firefighting, or securing equipment which will prevent a greater release of vinyl chloride.

In 1989, OSHA promulgated industry-wide provisions addressing emergency response with respect to entry into unknown or hazardous atmospheres under § 1910.120, the Hazardous Waste Operations and Emergency Response (HAZWOPER) standard (54 FR 9317, Mar. 6, 1989). Included in the scope of the HAZWOPER standard are requirements for ''Emergency response operations for releases of, or substantial threats of releases of, hazardous substances without regard to the location of the hazard.'' Thus, vinyl chloride, which is a ''hazardous substance'' as defined under the

HAZWOPER standard, is covered by the emergency response provisions in both the vinyl chloride and HAZWOPER rules. In regard to overlapping provisions in two applicable standards, the HAZWOPER standard specifically states in paragraph (a)(2)(i) that ''If there is a conflict or overlap [between emergency-response provisions in § 1910.120 and provisions in substance-specific standards], the provision more protective of employee safety and health shall apply * * *.''

OSHA believes that the emergency-response provisions in § 1910.120 are more protective overall than the relevant provisions in the vinyl chloride standard. Further, the provisions of § 1910.120, which require development of a broad program to appropriately respond to any potential emergency situation, may be viewed as giving more flexibility to employers to tailor and implement effective comprehensive emergency-response programs to suit their needs. Key provisions in § 1910.120(q) that would apply where there is a potential emergency associated with the release of vinyl chloride address the following: Development and implementation of an emergency response plan, paragraph (q)(1); elements required to be included in the emergency response plan, paragraph (q)(2); procedures for handling emergency response, paragraph (q)(3); use of skilled support personnel, paragraph (q)(4); use of specialist employees, paragraph (q)(5); training of emergency personnel, paragraph (q)(6), (7), and (8); medical surveillance and consultation for emergency-response personnel, paragraph (q)(9); use of chemical protective clothing, paragraph (q)(10); and procedures for post-emergency-response operations, paragraph (q)(11).

OSHA believes, therefore, that deletion of § 1910.1017(g)(5) (i) and (ii), in favor of § 1910.120, will not result in an increased risk to the safety or health of employees engaged in vinyl chloride emergency response operations. The Agency solicits comment on the question of the sufficiency of § 1910.120 to address the protection of vinyl chloride emergency response employees if, as proposed here, the emergency response provisions currently in the vinyl chloride standard are deleted.

P. Inorganic Arsenic (§ 1910.1018)

OSHA is proposing to revise the existing medical surveillance requirements in paragraph (n) of 29 CFR 1910.1018, that address inorganic arsenic, with respect to sputum-cytology examinations and chest x-rays. The requirement in paragraph (n)(2)(ii)(C) of § 1910.1018 that provides for a semi-annual sputum-cytology examination for employees 45 years of age or older or with 10 or more years of exposure over the action level is proposed to be deleted. Sputum-cytology examination was included originally under medical surveillance programs for arsenic workers based on OSHA's belief that such examinations were useful in screening for lung cancer.

In reevaluating this provision, the Agency has found no studies that address the efficacy of sputum-cytology examinations as a screening tool for lung cancer for workers specifically exposed to inorganic arsenic. Two randomized controlled studies [Exs. 1–1, 1–2], however, were evaluated with respect to the benefit of sputum-cytology examinations as a screening tool for lung cancer in another high-risk group, namely male smokers 45 years of age and older. The two studies included the Johns Hopkins Lung Project [Ex. 1–3] and the Memorial Sloan-Kettering Lung Project [Ex. 1–4], both part of the National Cancer Institute Cooperative Early Lung Cancer Detection Program. Together, the studies included 20,427 male smokers. These men were assigned at random to a dual-screen group (in which subjects underwent an annual chest radiograph, and sputum-cytologic study every 4 months) or to a single-screen group (in which annual chest radiographic screening was performed).

For both studies, there were no significant differences between the dual-screen and single-screen groups in the total number of lung-cancer cases, the number of late-stage lung-cancer cases, the number of resectable lung cancers, 5 year (Sloan Kettering) and 8 year (Johns Hopkins) survival rates and the number of lung-cancer deaths. Therefore, sputum cytology did not add any benefit to a lung cancer screening program that already included annual chest x-rays.

False-positive sputum-cytology results can be as high as 10 percent in patients with pulmonary infections and bronchial asthma [Ex. 1–5]. False positive results can lead to extensive testing, costs, and anxiety. A positive sputum-cytology examination, with a negative chest x-ray, is usually followed by an examination of the oral cavity, the pharynx, and the larynx by both direct visualization and flexible, fiber-optic laryngoscopy. If this examination is negative, then the lower respiratory tract is visualized by flexible fiber-optic bronchoscopy; bronchial washings and biopsy are often included. In addition, imaging studies may be done, including computed tomography (CT scan) and magnetic-resonance imaging (MRI). The more invasive of these procedures have inherent risks, including death [Ex. 1–6].

The American Cancer Society's recommendations for early detection of cancer in asymptomatic persons do not include the use of sputum-cytology examinations [Ex. 1–7]. The Society's decision in this regard was based on the lack of epidemiological evidence that would support the use of sputum-cytology screening, and the risks and costs associated with false positive exams [Ex. 1–8]. Therefore, since available data do not indicate that sputum-cytology examination adds any benefit to a lung-cancer screening program that already includes annual chest x-rays, and since false-positive results can lead to unnecessary and harmful medical follow-up procedures, OSHA is proposing that sputum-cytology examinations be deleted from the medical-surveillance requirements of the inorganic arsenic standard.

OSHA solicits comments on these conclusions with respect to the value of sputum-cytology exams, and requests submission of other data and views that may support or dispute the Agency's findings and conclusions.

Exhibits

1–1. Strauss GM, et al. Chest x-ray screening improves outcome in lung cancer: A reappraisal of randomized trials on lung cancer screening. Chest 107:270S–279S, June 1995.

1–2. Berlin NI, et al. The National Cancer Institute cooperative early lung cancer detection program. American Review of Respiratory Disease 130:545–49, 1984.

1–3. Tockman M. Survival and mortality from lung cancer in a screened population: The Johns Hopkins study. Chest 89(suppl):324S–25S, 1986.

1–4. Melamed MR, et al. Screening for early lung cancer: Results of the Memorial Sloan-Kettering Study in New York. Chest 86:44–53, 1984.

1–5. Benpassat J, et al. Predictive value of sputum cytology. Thorax 42:165–169, 1987.

1–6. Credle WF, et al. Complications of fiber optic bronchoscopy. American Review of Respiratory Disease 109:67–72, 1974.

1–7. Holleb AI, et al. American Cancer Society Textbook of Clinical Oncology, p. 155, American Cancer Society, 1991.

1–8. Holleb AI, et al. American Cancer Society Textbook of Clinical Oncology, p. 168–170, American Cancer Society, 1991.

OSHA is also proposing to revise the requirement in paragraph (n)(3)(ii) of § 1910.1018 of the inorganic arsenic standard, that provides for a semiannual chest x-ray for employees who are 45 years of age or older or who have 10 or more years of arsenic exposure over the action level. OSHA is proposing that the required frequency of chest x-ray for these employees be changed from

semiannual to annual. OSHA originally adopted the provision for semiannual x-rays based on the belief that such semiannual examinations were valid for screening for lung cancer.

OSHA maintains that it is necessary and appropriate to provide employees exposed to inorganic arsenic with a medical surveillance program, including chest x-rays, for the early detection of lung cancer. However, the Agency recognizes that the efficacy of providing chest x-rays semiannually for this purpose has never been determined by a large, randomized, and controlled scientific study.

Two recent randomized controlled studies [Exs. 1–1,1–2], were conducted on a group at high risk for developing lung cancer (namely, male smokers 45 years of age and older), and were evaluated with respect to the utility of periodic x-rays. These studies, which included the Mayo Lung Project [Ex. 1–9] and the Czechoslovak Study [Ex.1–10], were designed specifically to assess the efficacy of chest x-rays in detecting early-stage lung cancer among the members of this group. The studies compared several outcomes between experimental groups that were assessed using chest x-rays administered at periodic intervals (4 months in the Mayo Lung Project and 6 months in the Czechoslovak Study) and control groups receiving infrequent, sporadic, or (in some cases) no chest x-rays. (Participants in both the experimental and control groups were administered chest x-rays at the beginning of each study to ensure that they had no detectable lung tumors that would bias the research outcomes.)

These studies found that periodic chest x-rays led to enhanced detection of early-stage lung cancer and, as a consequence, higher rates of respectability for this cancer. As demonstrated by a subsequent analysis of these studies [Ex. 1–11], lung-cancer-specific survival based on fatality rate (i.e., number of deaths per diagnosed cases) improved significantly. This analysis also showed that the lower fatality rate among the experimental groups was not the result of overdiagnosis for lung cancer or lead-time bias. For the Mayo Lung Project and the Czechoslovak Study, respectively, fatality rates were found to be 59% and 78% in the experimental groups, and 72% and 95% in the control groups of persons diagnosed with lung cancer.

The efficacy of chest x-rays was also demonstrated by analyzing the outcomes for the few experimental group participants who did not undergo surgery when diagnosed with early-stage lung cancer, either because they refused surgery or surgery was contraindicated. This analysis was part of the research described in Exhibit 1–11, which combined the outcomes for experimental group participants in the Mayo Lung Project with similar experimental group participants from two other groups (the Memorial Sloan-Kettering Project and the Johns Hopkins Lung Project). The 5 year fatality rate for the nonsurgery participants was about 90 percent, compared with a 30-percent fatality rate for those participants who underwent cancer surgery. This comparison provides strong support for the efficacy of chest x-rays in detecting early-stage lung cancer and enhancing the survival of those participants who undergo subsequent surgery for removal of a detected tumor. Additionally, this comparison indicates that overdiagnosis and lead-time biases did not contribute significantly to the fatality-rate differences obtained between the experimental and control groups in the Mayo Lung Project and Czechoslovak Study.

Based on this discussion, OSHA believes that employees exposed to inorganic arsenic continue to need medical surveillance to detect lung cancer, and that chest x-rays are a valid method of detecting lung cancer. The proposed revision to the standard would reduce the frequency of chest x-rays from semiannual to annually.

This proposed frequency is based on an analysis described in Exhibit 1–11 showing that the 5-year fatality rate (about 30–35 percent) for persons diagnosed with lung cancer was the same for the experimental-group participants in the Mayo Lung Project, which administered chest x-rays every 4 months, and the experimental-group participants in the Memorial Sloan-Kettering Project and the Johns Hopkins Lung Project, which performed chest x-rays once a year. [See also Exs. 1–12 and 1–13] This analysis demonstrates that fatality rates did not differ in any practical or statistically significant fashion across these three major studies. OSHA, therefore, finds that an annual chest x-ray satisfies the purpose of the medical surveillance program required under the standard.

In summary, large randomized controlled studies indicate that semiannual chest radiography screenings show no benefit over annual screenings. OSHA believes that annual chest radiography screening of high-risk individuals, including workers exposed to inorganic arsenic, should continue since epidemiological data support the use of chest x-rays for detecting early-stage lung cancer; this decision results in lowering lung cancer fatality rates.

Further, although it is possible that intervals between x-rays for high-risk workers could be longer than 1 year, the Agency has no data to demonstrate precisely what other interval would be more appropriate. OSHA, therefore, believes that an annual x-ray provision is reasonable. Moreover, if the Agency has erred in this instance, it has done so on the side of over-protection rather than under-protection, as sanctioned by the U.S. Supreme Court in Industrial Union Department v. American Petroleum Institute, 448 U.S. 607 (1980).

OSHA solicits comment on these conclusions with respect to the value of performing annual x-rays, and requests submission of data and views that may support or dispute the Agency's findings and conclusions.

Exhibits

1–1. Strauss GM, et. al. Chest x-ray screening improves outcome in lung cancer: A reappraisal of randomized trials on lung cancer screening. Chest 107:270S–279S, June 1995.

1–2. Berlin NI, et. al. The National Cancer Institute cooperative early lung cancer detection program. American Review of Respiratory Diseases 130:545–49, 1984.

1–9. Fontana R, et. al. Lung cancer screening: The Mayo Program. Journal of Occupational Medicine 28:746–50, 1986.

1–10. Fontana R, et. al. Screening for lung cancer, a critique of the Mayo Lung Project. *Cancer 67:1155–64, 1991.*

1–11. Kubik A, Polak J. Lung cancer detection: Results of a randomized prospective study in Czechoslovakia. Cancer 57:2428–37, 1986.

1–12. Kubik A, et. al. Lack of benefit from semi-annual screening for cancer of the lung: Follow-up report of a randomized controlled trial on population of high risk males in Czechoslovakia. International Journal of Cancer 45:26–33, 1990.

1–13. U.S. Preventive Medicine Task Force. Guide to Clinical Preventive Services: An Assessment of the Effectiveness of 169 Interventions, p. 67–70. Williams & Wilkins, Baltimore, MD, 1989.

Q. Coke Oven Emissions (§ 1910.1029)

OSHA is proposing to revise the existing medical surveillance requirements in 29 CFR 1910.1029, coke oven emissions, with respect to sputum-cytology examinations and chest x-rays. The requirement in paragraph (j)(2)(vii) of § 1910.1029 that provides for a semiannual sputum-cytology examination for employees 45 years of age or older or with 5 or more years employment in the regulated area is proposed to be deleted. Sputum-cytology examination was included originally in the medical surveillance programs for coke oven workers based on OSHA's belief that such

examinations were useful in screening for lung cancer. (Note: Much of the following discussion of sputum-cytology examinations duplicates the discussion on that topic provided under ''P. Inorganic Arsenic'' above.)

In reevaluating this provision, the Agency found no available studies that address the efficacy of sputum-cytology examinations as a screening tool for lung cancer for workers specifically exposed to coke oven emissions. Two randomized controlled studies [Exs. 1–1, 1–2] however, were evaluated with respect to the benefit of sputum-cytology examinations as a screening tool for lung cancer in a high-risk group, namely male smokers 45 years of age and older. Two of these studies were the Johns Hopkins Lung Project [Ex. 1–3] and the Memorial Sloan-Kettering Lung Project [Ex. 1–4], both part of the National Cancer Institute Cooperative Early Lung Cancer Detection Program. Together, the studies included 20,427 male smokers. These men were assigned randomly to a dual-screen group (in which subjects underwent annual chest radiograph and sputum-cytologic study every four months) or to a single-screen group (in which annual chest radiographic screening was performed).

For both studies, there were no significant differences between the dual-screen and single-screen groups in the total number of lung cancer cases, the number of late-stage lung cancer cases, the number of resectable lung cancers, 5 year (Sloan Kettering) and 8 year (Johns Hopkins) survival rates, and the number of lung cancer deaths. Therefore, sputum-cytology did not add any benefit to a lung cancer screening program that already included annual chest x-rays.

False-positive sputum-cytology results can be as high as 10 percent in patients with pulmonary infections and bronchial asthma [Ex. 1–5]. False positive results can lead to extensive testing, costs, and anxiety. A positive sputum-cytology examination, with a negative chest x-ray, is usually followed by an examination of the oral cavity, the pharynx, and the larynx by both direct visualization and flexible fiber-optic laryngoscopy. If this is negative, then the lower respiratory tract is visualized by flexible fiber-optic bronchoscopy; bronchial washings and biopsy are often included. In addition, imaging studies may be done, including computed tomography (CT scan) and magnetic resonance imaging (MRI). The more invasive of these procedures have inherent risks including death [Ex. 1–6].

The American Cancer Society's recommendations for early detection of cancer in asymptomatic persons do not include the use of sputum-cytology examinations [Ex. 1–7]. This decision was based on the lack of epidemiological evidence that would support the use of sputum-cytology screening, and the risks and costs associated with false positive exams [Ex. 1–8].

Therefore, since available data do not indicate that sputum-cytology examination adds any benefit to a lung cancer screening program that already includes annual chest x-rays, and since false-positive results can lead to unnecessary and harmful medical follow-up procedures, OSHA is proposing that sputum-cytology examinations be deleted from the medical surveillance requirements of the coke oven emission standard.

OSHA solicits comment on these conclusions with respect to the value of sputum-cytology exams, and requests submission of other data and views that may support or dispute the Agency's findings and conclusions.

Exhibits

1–1. Strauss GM, et al. Chest x-ray screening improves outcomein lung cancer: A reappraisal of randomized trials on lung cancer screening. Chest 107:270S–279S, June 1995.

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1–8. Holleb AI, et al. American Cancer Society Textbook of Clinical Oncology, p. 168–170, American Cancer Society, 1991.

The requirement in § 1910.1029, paragraph (j)(3)(ii) of the coke oven emissions standard, which provides for a semiannual chest x-ray for employees 45 years of age or older or with 5 or more years employment in a regulated area, is proposed for revison. OSHA is proposing that this requirement be revised to require an annual chest x-ray in the medical surveillance program for the group of employees noted above. OSHA adopted the provision for semiannual x-rays originally in the belief that semiannual examinations were valid for screening for lung cancer.

OSHA maintains that it is necessary and appropriate to provide coke-oven employees with a medical surveillance program, including chest x-rays, for the early detection of lung cancer. However, the Agency recognizes that the efficacy of providing chest x-rays semiannually for this purpose has never been determined by a large, randomized, and controlled scientific study.

Two recent randomized controlled studies [Exs. 1–1, 1–2], were conducted on a group at high risk for developing lung cancer (namely, male smokers 45 years of age and older), and were evaluated with respect to the utility of periodic x-rays. Two of these studies, referred to as the Mayo Lung Project [Ex. 1–9] and the Czechoslovak Study [Ex. 1–10], were designed specifically to assess the efficacy of chest x-rays in detecting early-stage lung cancer among the members of this group. The studies compared several outcomes between experimental groups that were assessed using chest x-rays administered at periodic intervals (four months in the Mayo Lung Project and six months in the Czechoslovak Study) and control groups receiving infrequent, sporadic, or (in some cases) no chest x-rays. (Participants in both the experimental and control groups were administered chest x-rays at the beginning of each study to ensure that they had no detectable lung tumors that would bias the research outcomes.)

The results of these studies found that periodic chest x-rays led to enhanced detection of early-stage lung cancer and, as a consequence, higher rates of resectability for this cancer. As demonstrated by a subsequent analysis of these studies [Ex. 1–11], lung-cancer-specific survival based on fatality rate (i.e., number of deaths per diagnosed cases) improved significantly. This analysis also showed that the lower fatality rate among the experimental groups was not the result of overdiagnosis for lung cancer or lead-time bias. For the Mayo Lung Project and the Czechoslovak Study, respectively, fatality rates were found to be 59% and 78% in the experimental groups, and 72% and 95% in the control groups of persons diagnosed with lung cancer.

The efficacy of chest x-rays was also demonstrated by analyzing the outcomes for the few experimental-group participants who did not undergo surgery when diagnosed with early-stage lung cancer, either because they refused surgery or surgery was contraindicated. This analysis was part of the research described in Exhibit 1–11, which combined the outcomes for experimental-group participants in the

Mayo Lung Project with similar experimental-group participants from two other studies (the Memorial Sloan-Kettering and Johns Hopkins Lung Projects). The 5-year fatality rate for the nonsurgery participants was about 90-percent, compared to a 30-percent fatality rate for those participants who underwent cancer surgery. This comparison provides strong support for the efficacy of chest x-rays in detecting early-stage lung cancer and enhancing the survival of those participants who undergo subsequent surgery for removal of a detected tumor. Additionally, this comparison indicates that overdiagnosis and lead-time biases did not contribute significantly to the fatality-rate differences obtained between the experimental and control groups in the Mayo Lung Project and Czechoslovak Study.

Based on this discussion, OSHA believes that employees exposed to coke-oven emissions continue to need medical surveillance to detect lung cancer, and that chest x-rays are a valid method of detecting lung cancer. The proposed revision to the standard would reduce the frequency of chest x-rays from semi-annually to annually.

This proposed frequency is based on an analysis described in Exhibit 1–11 showing that the 5-year fatality rate (about 30–35 percent) for persons diagnosed with lung cancer was the same for the experimental-group participants in the Mayo Lung Project, which administered chest x-rays every four months, and the experimental-group participants in the Memorial Sloan-Kettering and Johns Hopkins Lung Projects, which performed chest x-rays once a year. [see, also, Exs. 1–12, 1–13]. This analysis demonstrates that fatality rate did not differ in any practical or statistically-significant fashion across these three major studies. OSHA, therefore, finds that an annual chest x-ray satisfies the purpose of the medical surveillance program required under the standard.

In summary, Large randomized controlled studies indicate that semi-annual chest radiography screenings show no benefit over annual screenings. OSHA believes that annual chest radiography screening of high-risk individuals, including coke oven workers, should continue since epidemiological data support the use of chest x-rays for detecting early-stage lung cancer; this decision results in lower lung cancer fatality rates.

Further, although it is possible that intervals between x-rays for high risk workers could be longer than 1 year, the Agency has no data to demonstrate precisely what other interval would be more appropriate. OSHA believes an annual x-ray provision is reasonable. Moreover, if the Agency has erred in this instance, it has done so on the side of over-protection rather than under-protection, as sanctioned by the U.S. Supreme Court in Industrial Union Department v. American Petroleum Institute, 448 U.S. 607 (1980).

OSHA solicits comment on these conclusions with respect to the value of performing annual x-rays, and requests submission of data and views that may support or dispute the Agency's findings and conclusions.

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1–10. Fontana R, et al. Screening for lung cancer, a critique of the Mayo Lung Project. Cancer 67:1155–64, 1991.

1–11. Kubik A, Polak J. Lung cancer detection: Results of a randomized prospective study in Czechoslovakia. Cancer 57:2428–37, 1986.

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1–13. U.S. Preventive Medicine Task Force. Guide to Clinical Preventive Services: An Assessment of the Effectiveness of 169 Interventions, p. 67–70. Williams & Wilkins, Baltimore, MD, 1989.

Amendments to Part 1926

A. Incorporation by Reference (§ 1926.31)

Based on its ongoing review of compliance and enforcement activities and recommendations from its Advisory Committee on Construction Safety and Health (ACCSH), OSHA is aware that difficulties have arisen regarding certain provisions of part 1926 that were adopted under sections 6(a) of the Act. Many of the standards adopted under section 6(a) were American National Standards Institute (ANSI) or National Fire Protection Association (NFPA) consensus standards which were incorporated by reference and contained advisory provisions (e.g. use the word ''should'' rather than ''shall'').

In the past, OSHA maintained that all standards, regardless of whether the term ''should'' or ''shall'' is used, created mandatory compliance responsibilities. Employers consistently challenged this position on the basis that section 6(a) of the Act only gave OSHA the authority to adopt ANSI standards verbatim. In ANSI standards, use of the term ''should'' means that the provision is only advisory. Therefore, employers maintained that ANSI ''should'' standards could only be advisory when adopted or incorporated by reference by OSHA under section 6(a).

Enforcement of ''should'' standards has been denied by the Occupational Safety and Health Review Commission, and by most of the appellate courts in which contested cases have been heard. For example, in *Marshall* v. *Pittsburgh-Des Moines Steel Company,* 584 F.2d 638, 643–44 (1978), the Third Circuit Court of Appeals determined that ''should'' standards were merely advisory because the consensus organization had reached ''substantial agreement'' that these provisions be viewed only as *recommendations,* and not as mandatory standards.

The courts have also ruled that failure to adopt an ANSI provision verbatim renders the resulting OSHA Section 6(a) provision invalid and unenforceable (see *Usery* v. *Kennecott Copper Corporation,* 577 F.2d 1113, 1117 (10th Cir. 1977)).

Although the ''should'' standards have not been enforceable in and of themselves, OSHA has employed them to demonstrate the existence of ''recognized hazards'' under the general duty clause (section 5(a)(1)) of the Act. However, the Review Commission has ruled that, as long as the ''should'' provision remains in effect as a OSHA standard, OSHA may not issue a general duty clause citation for the hazard it addresses (see *A. Prokosch & Sons Sheet Metal and Mid Hudson Automatic Sprinkler,* 1980 CCH OSHD ¶24,840). Based on the fact that OSHA cannot enforce these provisions either directly or indirectly, the Agency proposes to revise § 1926.31(a) to clarify that only the mandatory requirements of incorporated consensus standards are adopted as OSHA standards. The removal of the advisory provisions will also serve to simplify and streamline existing part 1926 standards.

In 1984, OSHA conducted a rulemaking for 29 CFR part 1910 (General Industry Standards) that was similar to the one described above for the construction standards in part 1926. That is, paragraph (a) of § 1910.6 was revised to clarify that only the mandatory provisions of standards incorporated by reference are adopted as OSHA general industry standards (49 FR 5318).

Paragraph (a) of § 1926.31 currently provides that ''the specifications, standards and codes * * * to the extent they are legally incorporated by reference in this part, have the same force and effect as other standards in this part.'' OSHA is proposing to add a sentence at the end of § 1926.31(a) to read as follows: ''Only the mandatory provisions (that is, provisions containing the word ''shall'' or other mandatory language) of standards incorporated by reference are adopted as standards under the Occupational Safety and Health Act.'' This amendment will effectively eliminate ''should'' standards incorporated by reference into part 1926.

B. Medical Services and First Aid (§ 1926.50)

Paragraph (d)(1) of § 1926.50 states that ''First-aid supplies approved by the consulting physician shall be easily accessible when required.'' Since first-aid kits that are commercially available will meet the needs of most employers, it is unnecessary for most employers to have a physician approve the contents of a first-aid kit. However, if the workplace has unusual hazards or special situations that would require modification of a commercial first-aid kit, or the development of a specialized kit, the Agency expects that the employer will provide these special items. If the employer is unsure whether a commercially available kit is sufficient, professional advice should be obtained. Such advice, however, would not be required as a matter of course. Accordingly, OSHA proposes to revise paragraph (d)(1) of § 1926.50 to eliminate the requirement for physician approval of first-aid supplies. The Agency believes that this change will allow the employer more flexibility in meeting the first-aid requirements without affecting employee safety.

Paragraph (f) of § 1926.50 states that the ''telephone numbers of the physicians, hospitals, or ambulances shall be conspicuously posted.'' This outdated requirement places an unnecessary burden on the employer. Since the 911 emergency number is nearly universal, OSHA proposes to revise this paragraph to limit the requirement for posting these numbers to those areas where the 911 emergency number is not available.

C. Flammable and Combustible Liquids (§ 1926.152)

Paragraph (a)(1) of § 1926.152 states that ''only approved containers and portable tanks shall be used for storage and handling of flammable and combustible liquids. Approved metal safety cans shall be used for the handling and use of flammable liquids in quantities greater than one gallon * * *.'' While approved metal safety cans are still acceptable, OSHA notes that various nationally recognized testing laboratories have also approved the use of plastic safety cans for flammable liquids. OSHA proposes to revise this paragraph to allow the use of approved plastic safety cans in addition to approved metal safety cans.

A ''safety can'', by definition, is a container with a capacity of 5 gallons or less that is equipped with a spring-closing lid and spout cover, a means to relieve internal pressure, and a flash-arresting screen. The Agency has determined that Department of Transportation (DOT)-approved containers of 5-gallon capacity or less, that are not equipped with a spring-closing lid, spout cover and flash-arresting screen can be used to transport relatively small quantities of flammable liquids safely. OSHA thus proposes to make DOT-approved containers of 5-gallon capacity or less also acceptable for the storage, use, and handling of flammable and combustible liquids.

OSHA is also proposing to revise § 1926.152(a)(1) to allow the use of the original container for quantities of flammable liquids that are one gallon or less. Where the original container is available, the employer may choose to use it, instead of an approved safety can for quantities of one gallon or less. If the original container is not available, an approved safety can must be used.

D. Initiation of Explosive Charges—Electric Blasting (§ 1926.906)

Paragraph (q) of § 1926.906 states that ''Blasters, when testing circuits to charged holes, shall use only blasting galvanometers equipped with a silver chloride cell especially designed for this purpose.'' This provision specifically requires the use of silver chloride dry cells as a power source for testing electric blast caps. By contrast, paragraph (e)(4)(vii) of § 1910.109, Explosives and blasting agents, states that ''Blasters, when testing circuits to charged holes, shall use only blasting galvanometers designed for this purpose'' and does not specifically require the use of silver chloride cells. In addition, the Mine Safety and Health Administration currently allows for the use of a blasting galvanometer or other instruments that are specifically designed for testing blasting circuits (30 CFR CH.1 § 56.6407). Therefore, OSHA proposes to correct this inconsistency by revising paragraph (q) of § 1926.906 to allow the use of other types of instruments, in addition to those equipped with silver-chloride cells, when testing circuits to charged holes.

III. Summary of the Preliminary Economic, Feasibility and Regulatory Flexibility Analyses

Preliminary Economic Analysis

The Agency is proposing to eliminate a number of provisions in its standards that are duplicative, unnecessary, or potentially in conflict with the rules of other Federal agencies. All of the changes OSHA is proposing to make are expected to benefit the regulated community by reducing confusion, enhancing utility, and increasing readability. Only four of the proposed changes, however, have quantifiable economic benefits. Although the extent to which employers currently comply with these provisions is not known, economists generally assume full compliance when assessing the costs of regulations. The same compliance baseline is also used to evaluate benefits. By eliminating these ''problem'' provisions for its standards, OSHA will lessen the burdens employers currently experience to comply with them, which will, in turn, generate cost savings. First Aid Kits

The proposed rule would eliminate the requirements in § 1910.151(b) and § 1926.50(d)(1) that employers must have first aid supplies approved by a consulting physician. This requirement does not apply to all facilities; instead it depends on whether an infirmary, clinic, or hospital is nearby and would be used by the employer to treat all injured employees, i.e., the requirement applies only in cases where no such facilities are in close proximity and the employer intends to treat first aid injuries on site. Although the number of establishments meeting these criteria is uncertain, the Agency believes it is reasonable to assume that 10 percent of establishments would do so. How the physician is to provide this consultation is not specified in OSHA's provisions. OSHA assumes that, at most, five minutes of a physician's time, valued at $100/hr,[1] would be required to approve the contents of the first aid kit at these establishments. For purposes of this analysis, OSHA also assumes that the physician provides 5 minutes of his or her time at an hourly wage rate, i.e., at a cost of $8.33.

This analysis further assumes that the physician needs to approve the first aid supplies once every 10 years, after which time the development of new

[1] Opportunity cost as measured by the market price for occupational physical exams. Agency estimates for the cost of exams suggest a rate of about $100 an hour.

kinds of medical supplies and the possibility of new hazards in the workplace would require a new consultation. The cost of 5 minutes of a physician's time annualized over 10 years is $1.19.

The Agency estimates that approximately 6.4 million employers fall under OSHA jurisdiction and would be affected by this change (*County Business Patterns,* 1993). Therefore, the annualized cost of satisfying these provisions is currently estimated to be $761,600 ((6.4 million × 10%) × $1.19). By eliminating this requirement, OSHA will reduce this burden, as well as the paperwork burden associated with obtaining and recording the physician's approval.

Coke Oven Emissions

The proposed revision to § 1910.1029(j) would eliminate the requirement for semiannual sputum cytology tests and reduce the required frequency of chest x-rays from semiannual to annual for workers who are 45 years of age or older or who have 5 or more years of employment in regulated areas. Regulated areas encompass the coke oven battery, including topside and its machinery, pushside and its machinery, coke side and its machinery, and battery ends; the wharf; the screening station; and the beehive oven and its machinery.

The Inflationary Impact Statement developed for OSHA in support of § 1910.1029 (*Inflationary Impact Statement: Coke Oven Emissions, 1976*) estimated total employment in coke ovens at 29,600. The same analysis estimated that 75 percent of these employees worked in regulated areas. The *1992 Census of Manufacturers* (Industry Series) indicated total employment in SIC 33121 (Coke Oven and Blast Furnace Products) at 8,600 and total production manhours at 15.7 million. A separate Census Industry Series count specific to coke ovens indicates a total of 11.2 million production manhours, which constitutes approximately 71 percent of SIC 33121's productive manhours, suggesting a total employment count in coke ovens of 6,135.

Assuming that the proportion of coke oven employees in regulated areas has remained constant, approximately 4,600 employees work in regulated areas at the present time. Approximately 30 percent of the workforce in 1994 was over 45 years of age (BLS data presented in *Statistical Abstract of the United States, 1995,* p. 402). Turnover rates in SIC 33, which includes coke ovens, are estimated at 5 percent annually (*National Occupational Exposure Survey: Analysis of Management Interview Responses, 1988*). A simple probability calculation suggests that approximately 77 percent of the regulated area workforce will have been exposed to coke oven emissions for 5 years or more.[2] Adjusting this percentage to reflect the assumption that 30 percent of employees are over 45 years of age results in an estimate of 84 percent[3] of coke oven employees (3,864 workers) potentially affected by the proposed revocation of this requirement.

1994 data obtained from the Physician Payment Review Commission (e-mail from Christopher Hogan, PPRC, to Tom Mockler, OSHA) indicate a national average x-ray charge of $54.40 and an average lab charge for cytology examination of bodily fluids of $51.90. There is also the potential for an additional charge averaging $19.00 for sputum specimen collection, but this is assumed to be contained within the fee for a medical exam. Therefore the savings for eliminating one chest x-ray and two sputum cytologies annually would be $158.20 per worker ($54.40 for one x-ray, plus $103.80 for two sputum cytology tests). For the group of 3,864 employees, the annual savings would be $611,285.

Inorganic Arsenic

As in the case of the coke oven standard, OSHA is proposing to eliminate the requirement for sputum cytology and reduce the frequency of chest x-ray exams from semiannual to annual for workers exposed above the inorganic arsenic action level of 5 μg/m^3 (29 CFR 1910.1018). Paragraph (n) of § 1910.1018 currently requires employees exposed above the action level for 30 days per year to receive these medical surveillance elements semi-annually if they are 45 years of age or older, or if they have had more than 10 years of exposure above the action level.

The Federal Register notice for the inorganic arsenic rulemaking [(May 5, 1978), p. 19585] indicated that of 660,000 workers exposed, 7,400 were exposed above 4 μg/m^3, i.e., close to or above the action level. Although arsenic uses and related exposures have shifted over time, the level of inorganic arsenic use in the U.S. appears to be approximately the same as it was at the time of the original rulemaking[4]. Therefore, for the purposes of this analysis, the Agency assumes that the exposed population size is also unchanged.

At the time of the original rulemaking, the Inflationary Impact Statement (*Inflationary Impact Statement: Inorganic Arsenic,* 1976) estimated that 50% of employees above the action level would need the semi-annual exams, based on OSHA's analysis of age, job tenure and turnover. Applying the same assumptions, the Agency estimates that approximately 3,700 workers would be affected by the proposed revisoin to this provision. This change will eliminate the need for testing valued at $158.20 (see the explanation above for coke ovens for cost details) for 3,700 employees, for an annual savings of $584,340.

Pulp and Paper

The existing pulp and paper standard, § 1910.261, contains paragraph (b)(5), ''vessel entering'', which states:

> Lifelines and safety harness shall be worn by anyone entering closed vessels, tanks, chip bins, and similar equipment, and a person shall be stationed outside in a position to handle the line and to summon assistance in the case of emergency.

Paragraph (b)(5) also prescribes other safety precautions applying to similar confined spaces in pulp and paper mills.

OSHA proposes to eliminate these specific separate requirements for confined space entry in pulp and paper mills, and instead reference § 1910.146, OSHA's generic confined spaces standard. In other words, employers in the pulp and paper industry will no longer have to comply with § 1910.261(b)(5), but with § 1910.146. Section 1910.146 requires that employers assess the hazards of their confined spaces and employ the appropriate safety precautions to deal with the relevant existing or potential hazard. Although § 1910.146 may require employers to complete additional checklists, conduct training, and plan for rescue, depending on the hazard present, employers will in many cases no longer need to require employees to wear lifelines or provide for outside ''attendants''[5].

[2] $(1-.05)^5=.77$ This calculation assumes equal probability of turnover in each year thereafter.

[3] $((.77)\times(1-.30))+(.30)=.84$ All other things equal, at least 30 percent of those with 5 or more years of exposure would be over 45.

[4] Based on the estimated level of raw arsenic trioxide consumed in U.S. (*Arsenic: Industrial, Biomedical, Environmental Perspectives,* 1983, p. 7; *Bureau of Mines, Mineral Commodity Summary, 1995*).

[5] For example, § 1910.146(c)(5) indicates that if an employer can certify that ventilation alone can reliably control atmospheric hazards in a space, and that is the only hazard posed by the space, they are exempt from many requirements of the standard, including the need for an outside attendant. Similarly, in § 1910.146(k)(3), employers are expressly exempt from using a lifeline if such usage

Continued

The costs of complying with § 1910.146 in the pulp and paper industry were included in OSHA's supporting Regulatory Impact Analysis (*Final Regulatory Impact Analysis and Regulatory Flexibility Analysis of the Final Permit-Required Confined Spaces Standard*, December 1992]. They were estimated to be approximately $4 million. No economic or technological feasibility problems were indicated.

By deleting the more rigid confined space requirements of the pulp and paper industry-specific standard and requiring employers to comply with a more performance-oriented requirement for attendants and lifelines, OSHA is simultaneously relieving a burden and enhancing safety. Based on the underlying analysis used by OSHA in producing the RIA for § 1910.146, a comparison of the costs associated with the requirement that an attendant be present (§ 1910.261(b)(5)) with the more flexible requirements in § 1910.146 indicates a savings to employers of approximately 450,000 manhours annually. Given the hourly compensation rate of $17 used in the RIA, this represents an annual savings of $7.7 million.

In summary, by revoking these four unnecessary or duplicative requirements, the Agency is reducing annual employer burdens related to first aid kits ($761,600), medical surveillance for coke oven emissions ($611,285) and inorganic arsenic workers ($584,340), and confined space entry in pulp and paper mills ($7.7 million), for a total annualized employer savings of $9,656,625.

Technological Feasibility

OSHA could not identify any requirement in the proposed revision and modification of OSHA standards that raises technological feasibility problems for employers. OSHA, therefore, has preliminarily concluded that technological feasibility is not an issue for the proposed changes in the standards.

IV. Regulatory Flexibility Certification

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 et seq.), as amended, requires that the Agency examine regulatory actions to determine if they would have a significant economic impact on a substantial number of small entities. As indicated elsewhere in this analysis, these modifications to existing regulations are expected to reduce the regulatory burden on all affected employers, large and small. For that reason, the Agency hereby certifies that these changes will not have a significant economic impact on a substantial number of small entities.

V. Environmental Assessment

The proposed rules have been reviewed in accordance with the requirements of the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 et seq.), the regulations of the Council of Environmental Quality (CEQ) (40 CFR part 1500), and DOL NEPA procedures (29 CFR part 11). As a result of this review, OSHA has concluded that the rules will have no significant environmental impact.

VI. International Trade

This proposed revision and revocation of OSHA standards is not likely to have a significant effect on international trade, since the changes involve the revocation of obsolete provisions, consolidation of repetitious provisions, and clarification of confusing language.

VII. Paperwork Reduction Act

Information Collection Requirements

As required by the Paperwork Reduction Act of 1995, this notice serves two purposes: (1) Solicit public comment on the changes that are proposed in this rule pertaining to the Inorganic Arsenic and the Coke Oven Emissions standards and (2) solicit public comment on the existing Inorganic Arsenic and Coke Oven Emissions information collection requests for their extension.

The Paperwork Reduction Act of 1995, 44 U.S.C. 3507(d) and 5 CFR 1320.11 require Federal agencies to submit collections of information contained in proposed rules for public comment in the Federal Register to the Office of Management and Budget (OMB) for review. The proposed rule impacts two active Information Collection Requests: Inorganic Arsenic (OMB Number 1218–0104) and Coke Oven Emissions (OMB Number 1218–0128).

The title, description, and respondent description of the information collection are described below with an estimate of the annual reporting burden. Included in the estimate is the time for reviewing instructions, gathering and maintaining the data needed, and completing and reviewing the collection of information. OSHA invites comments on whether the proposed collection of information:

1. Ensures that the collection of information is necessary for the proper performance of the functions of OSHA, including whether the information will have practical utility;

2. Estimates the projected burden including the validity of methodology and assumptions used accurately;

3. Enhances the quality, utility, and clarity of the information to be collected; and

4. Minimizes the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques, or other forms ofinformation technology, e.g., permitting electronic submission of responses.

Title: Miscellaneous Changes to General Industry andConstruction.

Description: The purpose of these standards and their information collection requirements is to provide protection for employees against the health effects associated with occupational exposure to coke oven emissions and inorganic arsenic. These standards require employers to monitor employee exposure, to provide medical surveillance and to maintain employee exposure monitoring and medical records. If exposure levels are above the standards' Permissible Exposure Levels (PEL), then employers must establish and implement a written control plan to reduce exposures below the PELs. Employers are also required to notify OSHA area offices of regulated areas and changes to regulated areas. The proposed rule would delete the requirement for employee sputum cytology exams contained in the medical surveillance provisions of the Coke Oven Emissions and Inorganic Arsenic Standards. The proposed rule would also change the frequency of x-rays from semi-annual to annual in these standards. Description of Respondents: Employers whose employees may be exposed to coke oven emissions and inorganic arsenic. Estimate of Burden Hours and Cost: OSHA estimates that the total burden for Coke Oven Emissions will be 95,060 burden hours, a reduction of 2,945 hours (from employee medical examinations), at a cost savings of $611,285. For Inorganic Arsenic, the agency estimates the total burden to be 24,615 burden hours, a reduction of 3,663 hours (from employee medical examinations), at a cost savings of $584,340. Employee exposure monitoring and medical records required by both standards must be maintained for at least 40 years, or for the duration of employment plus 20 years whichever is longer. The agency has submitted a copy of the proposed rule to OMB for its review and approval

is either valueless or counterproductive from a safety standpoint.

of the information collections. Interested persons are requested to submit comments on the paperwork reduction regarding the proposed deletion of sputum cytology and frequency of x-rays to the Office of Information and Regulatory Affairs, Attn: OSHA Desk Officer, OMB, New Executive Office Building, 725 17th Street NW., Room 10235, Washington, DC 20503. Comments should also be submitted to the OSHA Docket Office for this proposal at OSHA Docket Office, Docket Number S–778, U.S. Department of Labor, Room N2625, 200 Constitution Avenue, NW., Washington, DC 20210.

In accordance with 44 U.S.C. 3506(c)(2)(a), this notice also solicits public comment on the existing Inorganic Arsenic and Coke Oven Emissions information collection requests for their extension. Persons interested in commenting on the existing information collection requirements contained in the Inorganic Arsenic and Coke Oven Emissions standards are requested to submit comment including suggestions for reducing burden to the OSHA Docket Office, Docket Number (ICR 96–7 Inorganic Arsenic orICR 96–8 Coke Oven Emissions), U.S. Department of Labor, Room N2625, 200 Constitution Avenue, NW., Washington, DC 20210. (Note that this is a different docket number than the Docket for proposal which poses to remove the sputum cytology and decrease the frequency of the chest x-rays) Comments submitted in response to this comment request will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Cite reference	Total respond-ents	Frequency	Total re-sponses	Avgerage time per response (hours)	Total cost	Burden (hours)
Coke Oven Emissions	22	On occasion	101,977	1.01	$1,363,900	95,060
Inorganic Arsenic	42	On occasion	58,763	1.06	2,017,684	24,615
Total			160,740		3,381,584	119,675

Copies of the referenced information collection requests are available for inspection and copying in the OSHA Docket Office and will be mailed immediately to persons who request copies by telephoning Vivian Allen at (202) 219–8076. For electronic copies of the Coke Oven Emissions and the Inorganic Arsenic requests, contact the Labor News Bulletin Board (202) 219–4784, or OSHA WebPage on the internet at http://www.osha.gov/. Copies of these information collection requests are also available at the OMB Docket Office.

VIII. Federalism

This proposed revision and revocation of OSHA standards has been reviewed in accordance with Executive Order 12612 (52 FR 41685, October 30, 1987), regarding Federalism. This Order requires that agencies, to the extent possible, refrain from limiting State policy options, consult with States prior to taking any actions which would restrict State policy actions, and take such actions only when there is clear constitutional authority and the presence of a problem of national scope. The Order provides for preemption of State law only if there is a clear Congressional intent for the Agency to do so. Any such preemption is to be limited to the extent possible.

Section 18 of the Occupational Safety and Health Act (OSH Act) expresses Congress' intent to preempt state laws relating to issues on which Federal OSHA has promulgated occupational safety and health standards. Under the OSH Act, a State can avoid preemption in issues covered by Federal standards only if it submits, and obtains Federal approval of, a plan for the development of such standards and their enforcement. Occupational safety and health standards developed by such Plan states must, among other things, be at least as effective in providing safe and healthful employment and places of employment as the Federal standards.

The proposed revision and revocation of standards is meant to reduce the volume and complexity of OSHA standards, and to improve compliance by employers, without diminishing worker safety and health. Those States which have elected to participate under Section 18 of the OSH Act are not preempted by this proposal, and will be able to address any special conditions within the framework of the Federal Act while ensuring that the State standards are at least as effective as the Federal standard. State comments are invited on this proposal and will be duly considered prior to promulgation of a final rule.

IX. Public Participation

Interested persons are requested to submit written data, views, and arguments concerning this proposal. These comments must be postmarked by September 20, 1996, and submitted in quadruplicate to the Docket Office, Docket No. S–778, Room N2624, U.S. Department of Labor, Occupational Safety and Health Administration, 200 Constitution Ave., NW., Washington, DC 20210.

All written comments received within the specified comment period will be made a part of the record and will be available for public inspection and copying at the above Docket Office address.

The proposed changes to the Inorganic Arsenic and Coke Oven Emission standards are issued pursuant to section 6(b)(7) of the Occupational Safety and Health (OSH) Act. That section does not require the Agency to hold a public hearing for changes in medical surveillance requirements.

Under section 6(b)(3) of the OSH Act and 29 CFR 1911.11, interested persons may request an informal hearing by filing a request for such a hearing including objections to the proposal which warrant a hearing. Persons who have objections to the proposal but do not wish to request an oral hearing, may submit their objections in their comments where they will be fully considered. The objections and hearing requests should be submitted in quadruplicate to Mr. Tom Hall, OSHA, U.S. Dept. of Labor, Rm. N–3647, 200 Constitution Ave. NW., Washington, DC 20210 (tel. 202–219–8619) and must comply with the following conditions:

1. The objection must include the name and address of the objector;

2. The objections must be postmarked by September 20, 1996;

3. The objections must specify with particularity grounds upon which the objection is based;

4. Each objection must be separately numbered; and

5. The objections must be accompanied by a detailed summary of the evidence proposed to be adduced at the requested hearing.

The proposed changes to the Inorganic Arsenic and Coke Oven

Emission standards are issued pursuant to section 6(b)(7) of the Occupational Safety and Health (OSH) Act. That section does not require the Agency to hold a public hearing for changes in medical surveillance requirements.

OSHA recognizes that there may be interested persons who, through their knowledge of safety or health or their experience, would wish to endorse or support the proposed actions set forth in this notice. OSHA welcomes such supportive comments, including any related information which may be available, so that the record of this rulemaking will present a balanced picture of the public response on the issues involved.

X. State Plan Standards

The States with their own approved occupational safety and health plans must adopt comparable standards within 6 months of the publication date of the final standard. These States are: Alaska, Arizona, California, Connecticut (for State and local government employees only), Hawaii, Indiana, Iowa, Kentucky, Maryland, Michigan, Minnesota, Nevada, New Mexico, New York (for State and local government employees only), North Carolina, Oregon, Puerto Rico, South Carolina, Tennessee, Utah, Vermont, Virgina, Virgin Islands, Washington and Wyoming. Until such time as State standards are promulgated, Federal OSHA will provide interim enforcement assistance, as appropriate, in those States.

List of Subjects:

29 CFR Part 1910:

Business and industry, Occupational safety and health, Hazardous materials, Fire protection.

29 CFR Part 1926:

Construction industry, Occupational safety and health, Fire protection, Explosives

XI. Authority

This document was prepared under the direction of Joseph A. Dear, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC. 20210.

Accordingly, pursuant to sections 4, 6, and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657), section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 333) and Secretary of Labor's Order No. 1–90 (55 FR 9033), 29 CFR parts 1910 and 1926 are proposed to be amended as set forth below.

Signed at Washington, DC, this 15 day of July 1996.

Joseph A. Dear,

Assistant Secretary of Labor.

A. It is proposed to amend Part 1910 of 29 CFR as follows:

PART 1910—OCCUPATIONAL SAFETY AND HEALTH STANDARDS [AMENDED]

Subpart H—Hazardous Materials

1. The authority citation for subpart H is revised to read as follows:

Authority: Secs. 4, 6, and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736), or 1–90 (55 FR 9033), as applicable; and 29 CFR part 1911.

§ 1910.109 Explosives and blasting agents [Amended]

2. Remove the phrase, ''from inhabited buildings, passenger railways, and public highways and'' from paragraph (c)(1)(vi) of § 1910.109.

3. Remove the words, ''manufacture and'' from the first sentence in footnote number 5, of Table H–21, of § 1910.109.

4. In § 1910.109, revise paragraph (d)(1)(iv) to read as follows:

* * * * *

(d) * * *

(1) * * *

(iv) Blasting caps or electric blasting caps shall not be transported over the highways on the same vehicles with other explosives, unless packaged, segregated and transported in accordance with the Department of Transportation's Hazardous Materials Regulations (49 CFR parts 177–180).

5. In § 1910.109, revise paragraph (e)(2)(i) to read as follows:

* * * * *

(e) * * *

(2) * * *

(i) Empty containers and paper and fiber packing materials which have previously contained explosive materials shall be disposed of in a safe manner, or reused in accordance with the Department of Transportation's Hazardous Materials Regulations (49 CFR parts 177–180).

* * * * *

§ 1910.110 Storage and handling of liquefied petroleum gases [Amended]

1. Remove paragraphs (b)(15)(v)–(b)(15)(viii) of § 1910.110, and redesignate paragraph (b)(15)(ix) as (b)(15)(v).

2. Remove paragraphs (c)(2)(ii)–(c)(2)(iv) of § 1910.110, and redesignate paragraph (c)(2)(i) as (c)(2).

3. Remove and reserve paragraph (e)(10) of § 1910.110.

4. Remove and reserve paragraph (g) of § 1910.110.

§ 1910.111 Storage and handling of anhydrous ammonia [Amended]

Remove and reserve paragraphs (f)(7) and (f)(8) of § 1910.111.

Subpart J—General Environmental Controls

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

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

§ 1910.141 Sanitation [Amended]

2. Remove paragraph (a)(2)(i) of § 1910.141 and all paragraph designations for the definitions within paragraph (a)(2) of § 1910.141.

§ 1910.142 Temporary labor camps [Amended]

3. Remove paragraph (a)(4) of § 1910.142.

§ 1910.144 Safety color code for marking physical hazards [Removed]

4. Remove and reserve § 1910.144.

Subpart K—Medical and First Aid

1. The authority citation for subpart K is revised to read as follows:

Authority: Secs. 4, 6, and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736), or 1–90 (55 FR 9033), as applicable, and 29 CFR part 1911.

§ 1910.151 Medical Services and first aid [Amended]

2. Revise the final sentence in paragraph (b) of § 1910.151 to read as follows:

* * * * *

(b) * * * Adequate first aid supplies shall be readily available.

* * * * *

Subpart L—Fire Protection

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

Authority: Secs. 4, 6, and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736), or 1–90 (55 FR 9033), as applicable, and 29 CFR part 1911.

§ 1910.156 Fire brigades [Amended]

2. Remove paragraph (f)(2)(iii) of § 1910.156.

Subpart N—Materials Handling and Storage

1. The authority citation for subpart N is revised to read as follows:

Authority: Secs. 4, 6, and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736), or 1–90 (55 FR 9033), as applicable, and 29 CFR part 1911.

§ 1910.183 Helicopters [Amended]

2. Remove and reserve paragraph (a) of § 1910.183.

Subpart R—Special Industries

1. The authority citation for subpart R is revised to read as follows:

Authority: Secs. 4, 6, and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736), or 1–90 (55 FR 9033), as applicable; and 29 CFR part 1911.

§ 1910.261 Pulp, Paper, Paperboard Mills [Amended]

2. Remove the following paragraphs in § 1910.261(a)(3): (ii), (iv) through (vi), (xi) through (xiii), (xv), (xvii) through (xix), (xx), (xxii), (xxiv) through (xxvii).

3. Remove and reserve paragraph (a)(3)(ix) of § 1910.261.

4. The following paragraphs in § 1910.261 are redesignated as follows:

a. Paragraph (a)(3)(iii) as paragraph (a)(3)(ii),

b. Paragraph (a)(3)(vii) as paragraph (a)(3)(iii),

c. Paragraph (a)(3)(viii) as paragraph (a)(3)(iv),

d. Paragraph (a)(3)(x) as paragraph (a)(3)(v),

e. Paragraph (a)(3)(xiv) as paragraph (a)(3)(vi),

f. Paragraph (a)(3)(xvi) as paragraph (a)(3)(vii),

g. Paragraph (a)(3)(xxi) as paragraph (a)(3)(viii),

h. Paragraph (a)(3)(xxiii) as paragraph (a)(3)(ix).

5. Remove paragraphs (b)(1) through (b)(3), (b)(5), and (b)(6) of § 1910.261.

6. Redesignate paragraph (b)(4) as paragraph (b)(1) and paragraph (b)(7) as paragraph (b)(2) of § 1910.261.

7. Remove the following paragraphs in § 1910.261(c): (2)(vi), (2)(vii), (6)(ii), and (7)(ii).

8. Remove and reserve the following paragraphs of § 1910.261(c): (3)(i), (8)(i), and (11).

9. The following paragraphs in § 1910.261 are redesignated as follows:

a. Paragraph (c)(2)(viii) as paragraph (c)(2)(vi),

b. Paragraph (c)(6)(i) as paragraph (c)(6),

c. Paragraph (c)7)(i) as paragraph (c)(7).

10. Remove and reserve paragraph (d)(1)(ii) of § 1910.261.

11. Remove and reserve paragraphs (e)(3), (e)(7), and (e)(9) of § 1910.261.

12. Remove paragraphs (g)(1)(iv) and (g)(2)(i) of § 1910.261.

13. Remove and reserve paragraphs (g)(15)(iv) and (g)(15)(vi) of § 1910.261.

14. The following paragraphs in § 1910.261 are redesignated as follows:

a. paragraph (g)(1)(v) to paragraph (g)(1)(iv),

b. paragraph (g)(2)(ii) to paragraph (g)(2)(i),

c. paragraph (g)(2)(iii) to paragraph (g)(2)(ii).

15. Remove and reserve paragraph (h)(2)(iii) of § 1910.261.

16. Remove paragraphs (j)(4)(ii), (j)(5)(iv) and (j)(6)(ii) of § 1910.261.

17. Remove and reserve paragraphs (j)(1)(iv) and (j)(3) of § 1910.261.

18. The following paragraphs in § 1910.261 are redesignated as follows:

a. Paragraph (j)(4)(iii) through paragraph (j)(4)(vi) as paragraph (j)(4)(ii) through paragraph (j)(4)(v),

b. Paragraph (j)(6)(iii) as paragraph (j)(6)(ii).

19. Remove paragraph (k)(2)(i) of § 1910.261, and redesignate paragraphs (k)(2)(ii) through (k)(2)(vi) as paragraphs (k)(2)(i) through (k)(2)(v), respectively.

20. Remove and reserve paragraphs (k)(4) and (k)(16) of § 1910.261.

21. Remove and reserve paragraphs (m)(2) and (m)(4) of § 1910.261.

22. Remove paragraphs (m)(5)(i) and (m)(5)(ii) of § 1910.261.

23. Redesignate paragraph (m)(5)(iii) of § 1910.261 as paragraph (m)(5), and add a heading to paragraph (m)(5) to read as follows: ''Unloading Cars''.

§ 1910.262 Textiles [Amended]

24. Remove and reserve paragraphs (c)(3), (c)(4), and (gg) of § 1910.262.

25. Remove paragraph (c)(8) of § 1910.262 and redesignate paragraph (c)(9) as paragraph (c)(8).

26. Remove and reserve paragraph (gg) of § 1910.262.

27. Remove paragraphs (ll)(1), (qq)(1), (qq)(2), and (rr) of § 1910.262.

28. Redesignate paragraph (ll)(2) of § 1910.262 as paragraph (ll).

§ 1910.265 Sawmills [Amended]

29. Remove paragraph (a)(2) of § 1910.265.

30. Redesignate paragraph (a)(1) of § 1910.265 as paragraph (a).

31. Remove and reserve paragraphs (c)(3)(i), (c)(10), (c)(11), (c)(14), and (c)(16) of § 1910.265.

32. Remove and reserve paragraph (c)(17) of § 1910.265.

33.–34. Remove and reserve paragraph (c)(22) of § 1910.265.

35. Remove paragraph (c)(24)(iv)(*a*) of § 1910.265 and redesignate paragraph (c)(24)(iv)(*b*) as paragraph (c)(24)(iv)(*a*).

36. Remove paragraph (c)(24)(iv)(*c*) of § 1910.265.

37. Remove and reserve paragraphs (c)(26)(i), (c)(30)(vi), (c)(30)(x), and (e)(3)(ii)(*d*) of § 1910.265.

38. Remove paragraphs (f)(9), (g), (h), and (i) of § 1910.265.

§ 1910.267 Agricultural operations [Removed]

39. Remove and reserve § 1910.267.

§ 1910.268 Telecommunications [Amended]

40. Remove and reserve paragraph (f) of § 1910.268.

Subpart Z—Toxic and Hazardous Substances

1. The authority citation for subpart Z is revised to read as follows:

Authority: Sections 4, 6, and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736), or 1–90 (55 FR 9033), as applicable; and 29 CFR part 1911.

All of subpart Z issued under sec. 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 sec. 6(a) (29 U.S.C. 655(a)).

Section 1910.1018 is also issued under 29 U.S.C. 653.

§ 1910.1017 Vinyl chloride. [Amended]

2. In § 1910.1017, remove paragraphs (g)(5)(i) and (g)(5)(ii).

3. Redesignate paragraphs (g)(6) and (g)(7) of § 1910.1017 as paragraphs (g)(5) and (g)(6), respectively.

§ 1910.1018 Inorganic arsenic. [Amended]

4. In § 1910.1018, remove paragraph (n)(2)(ii)(C); redesignate paragraph (n)(2)(ii)(D) as (n)(2)(ii)(C); revise the reference in paragraph (n)(3)(i) that reads ''(n)(2)(ii)(A)(B) and (D)'' to read ''(n)(2)(ii)''; and revise paragraph (n)(3)(ii) to read as follows:

* * * * *

(n) * * *

(3) * * *

(ii) ''The employer shall provide the examinations specified in paragraphs (n)(2)(i) and (n)(2)(ii)(B) and (C) of this section at least semi-annually, and the x-ray requirement specified in paragraph (n)(2)(ii)(A) at least annually, for other covered employees.

* * * * *

5. In § 1910.1018, remove paragraphs (q)(2)(iii)(F), (q)(2)(iii)(G), and (q)(2)(iii)(H); and insert the word ''and'' after paragraph (q)(2)(iii)(D).

6. In § 1910.1018 Appendix A, in the middle of paragraph VI, revise the sentence beginning ''The medical examination must include * * *.'' to read as follows: ''The medical examination must include a medical history, a chest x-ray, a skin examination, and a nasal examination.'' Remove the sentence which begins ''The cytology exams are only included * * *.'' from paragraph VI.

7. In § 1910.1018 Appendix C, Section I, General, remove the words ''(4) A Sputum Cytology examination;'' redesignate paragraph (5) as paragraph (4); and remove the entire section entitled ''III. Sputum Cytology.''

§ 1910.1029 Coke oven emissions. [Amended]

8. In § 1910.1029, remove paragraph (j)(2)(vii) and redesignate paragraph (j)(2)(viii) as paragraph (j)(2)(vii).

9. In paragraph (j)(3)(i) 0f § 1910.1029, the reference ''(j)(2)(i)–(vi)'' is revised to read ''(j)(2)(i) and (j)(2)(iii)–(vii).''

10. In paragraph (j)(3)(ii) of § 1910.1029, the reference ''(j)(2)(i)–(viii)'' is revised to read ''(j)(2)(i) and (j)(2)(iii)–(vii).''

11. In paragraph (j)(3)(iii) of § 1910.1029, the reference ''(j)(2)(i)–(viii)'' is revised to read ''(j)(2)(i) and (j)(2)(iii)–(vii).''

12. In § 1910.1029, redesignate paragraph (j)(3)(iv) as paragraph (j)(3)(v), and add a new paragraph (j)(3)(iv) to read as follows:

* * * * *

(j) * * *

(3) * * *

(iv) The employer shall provide the x-ray specified in paragraph (j)(2)(ii) of this section at least annually for employees covered under paragraph (j)(3).

13. In § 1910.1029 Appendix A, paragraph VI is revised to read as follows:

* * * * *

VI. If you work in a regulated area at least 30 days per year, your employer is required to provide you with a medical examination every year. The medical examination must include a medical history, a chest x-ray, pulmonary function test, weight comparison, skin examination, a urinalysis and a urine cytology exam for early detection of urinary cancer. The urine cytology exam is only included in the initial exam until you are either 45 years or older or have 5 or more years employment in the regulated areas when the medical exams including this test, but excepting the x-ray exam, are to be given every six months; under these conditions, you are to be given an x-ray exam at least once a year. The examining physician will provide a written opinion to your employer containing the results of the medical exams. You should also receive a copy of this opinion.

14. In § 1910.1029 Appendix B, Section II, paragraph A is revised to read as follows:

A. General

The minimum requirements for the medical examination for coke oven workers are given in paragraph (j) of the standard. The initial examination is to be provided to all coke oven workers who work at least 30 days in the regulated area. The examination includes a 14″×17″ posterior-anterior chest x-ray reading and a ILO/UC rating to assure some standardization of x-ray reading, pulmonary function tests (FVC and FEV 1.0), weight, urinalysis, skin examination, and a urinary cytologic examination. These tests are needed to serve as the baseline for comparing the employee's future test results. Periodic exams include all the elements of the initial exams, except that the urine cytologic test is to be performed only on those employees who are 45 years or older or who have worked for 5 or more years in the regulated area; periodic exams, with the exception of x-rays, are to be performed semi-annually for this group instead of annually; for this group, x-rays will continue to be given at least annually. The examination contents are minimum requirements; additional tests such as lateral and oblique x-rays or additional pulmonary function tests may be performed if deemed necessary.

15. In § 1910.1029 Appendix B, Section II, the paragraphs entitled ''C. Sputum Cytology,'' are removed. B. It is proposed to amend part 1926 of 29 CFR as follows:

PART 1926—SAFETY AND HEALTH REGULATIONS FOR CONSTRUCTION

Subpart C—General Safety and Health Standards

1. The authority citation for subpart C is revised to read as follows:

Authority: Sec. 107, Contract Work Hours and Safety Standards Act (40 U.S.C. 333); secs. 4, 6, and 8, Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736), or 1–90 (55 FR 9033), as applicable; 29 CFR part 1911.

§ 1926.31 Incorporation by Reference. [Amended]

2. In § 1926.31, revise paragraph (a) to read as follows:

(a) The standards of agencies of the U.S. Government and organizations which are not agencies of the U.S. Government which are incorporated by reference in this part, have the same force and effect as other standards in this part. Only the mandatory provisions (i.e., provisions containing the word ''shall'' or other mandatory language) of standards incorporated by reference are adopted as standards under the Occupational Safety and Health Act.

Subpart D—Occupational Health and Environmental Controls

1. The authority citation for subpart D is revised to read as follows:

Authority: Sec. 107, Contract Work Hours and Safety Standards Act (40 U.S.C. 333); secs. 4, 6, and 8, Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736), or 1–90 (55 FR 9033), as applicable; 29 CFR part 1911.

§ 1926.50 Medical services and first aid [Amended]

2. In § 1926.50, revise paragraph (d)(1) to read as follows:

* * * * *

(d) First-aid supplies shall be easily accessible when required.

* * * * *

3. In § 1926.50, revise paragraph (f) to read as follows:

* * * * *

(f) In areas where 911 is not available, the telephone numbers of the physicians, hospitals, or ambulances shall be conspicuously posted.

* * * * *

Subpart F—Fire Protection and Prevention

1. The authority citation for subpart F is revised to read as follows:

Authority: Sec. 107, Contract Work Hours and Safety Standards Act (40 U.S.C. 333); secs. 4, 6, and 8, Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736), or 1–90 (55 FR 9033), as applicable; 29 CFR part 1911.

§ 1926.152 Flammable and combustible liquids [Amended]

2. In § 1926.152, revise paragraph (a)(1) to read as follows:

(a) * * * (1) Only approved containers and portable tanks shall be used for storage and handling of flammable and combustible liquids. Approved safety cans or Department of Transportation approved containers shall be used for the handling and use of flammable liquids in quantities of 5 gallons or less, except that this shall not apply to those flammable liquid materials which are highly viscid (extremely hard to pour), which may be used and handled in original shipping containers. For quantities of one gallon or less, the original container may be used for storage, use, and handling of flammable liquids.

* * * * *

Subpart U—Blasting and Use of Explosives

1. The authority citation for subpart U is revised to read as follows:

Authority: Sec. 107, Contract Work Hours and Safety Standards Act (40 U.S.C. 333); secs. 4, 6, and 8, Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736), or 1–90 (55 FR 9033), as applicable; 29 CFR part 1911.

§ 1926.906 Initiation of explosive charges—electric blasting [Amended]

2. In § 1926.906, revise paragraph (q) to read as follows:

* * * * *

(q) Blasters, when testing circuits to charged holes, shall use only blasting galvanometers or other instruments that are specifically designed for this purpose.

* * * * *

[FR Doc. 96–18268 Filed 7–19–96; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Part 206

RIN 1010–AC02

Amendments to Gas Valuation Regulations for Federal Leases

AGENCY: Minerals Management Service, Interior.

ACTION: Proposed rule; notice of extension of public comment period.

SUMMARY: The Minerals Management Service (MMS) hereby gives notice that it is extending the public comment period on a Notice of reopening of public comment period, which was published in the Federal Register on May 21, 1996 (61 FR 25421). The proposed rule would amend the regulations governing the valuation for royalty purposes of natural gas produced from Federal leases. In response to requests for additional time, MMS will extend the comment period from July 22, 1996, to August 19, 1996.

DATES: Comments must be received by 4 p.m. Mountain daylight time on August 19, 1996.

ADDRESSES: Written comments should be sent to the Minerals Management Service, P.O. Box 25165, Mail Stop 3101, Denver, Colorado 80225–0165; courier address: Building 85, Denver Federal Center, Denver, Colorado 80225–0165, Attention: David S. Guzy.

FOR FURTHER INFORMATION CONTACT: David S. Guzy, Chief, Rules and Procedures Staff, telephone (303) 231–3432 or (FTS) 231–3432.

Dated: July 15, 1996.

James W. Shaw,

Associate Director for Royalty Management.

[FR Doc. 96–18473 Filed 7–18–96; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF DEFENSE

Department of the Army

32 CFR Part 651

Environmental Analysis of Army Actions

AGENCY: Department of the Army; Defense.

ACTION: Proposed rule.

SUMMARY: This proposed rule would revise Army Regulation 200–2, which is the Army's implementing regulation for the National Environmental Policy Act of 1969 (NEPA). Major changes are an expanded list of categorical exclusions, clear separation of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) and NEPA, and delegation of authority to approve environmental impact statements (EIS).

DATES: To be given full consideration, comments must be received no later than August 21, 1996.

ADDRESSES: Written comments should be sent to: Headquarters, Department of the Army, ATTN: DAIM-ED (Mr. Timothy Julius), 600 Army Pentagon, Washington, DC 20310–0600.

FOR FURTHER INFORMATION CONTACT: Timothy P. Julius, (703) 693–0543.

SUPPLEMENTARY INFORMATION: This proposed regulation establishes policies and responsibilities for assessing the effects of Army actions. It supplements Council on Environmental Quality (CEQ) regulations for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508). The last major revision to this regulation was in December 1988. Since that time, initiatives such as the National Performance Review have tended to streamline the Federal Government through decentralization, reduction and simplification of regulations, and management of risk. This revision strives to meet the spirit of the National Performance Review, and Executive Order (EO) 12861, Elimination of One-Half of Executive Branch Internal Regulations, dated September 11, 1993. This proposed regulation incorporates emerging issues such as Environmental Justice (EO 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, dated February 11, 1994) and Community Right-to-Know (EO 12856, Federal Compliance with Right-to-Know Laws and Pollution Prevention Requirements, dated August 3, 1993). The list of categorical exclusions has been expanded to include a more comprehensive array of actions routinely performed by the Army which have minimal or no individual or cumulative effect on environmental quality. This is intended to better focus on actions that warrant the expenditure of time and resources for analysis and formal documentation. The authority to approve environmental impact statements has been delegated to Commanders of Major Commands (primarily for Installations), and Program Executive Officers and Commanders of Major Subordinate Commands with Milestone Decision Authority (for acquisition and development programs). The purpose of delegation of approval authority for EISs is to empower the officials who are responsible for accomplishing the work. This empowerment will compel the decision makers to take more complete ownership of their actions, and makes the NEPA process an integral, rational part of Army decision making processes. CERCLA and NEPA are clearly separated in recognition of the Department of Justice's opinion with regard to the application of NEPA to CERCLA cleanups, and to eliminate potential duplication of effort. Procedural Requirements: This regulation does not involve the collection of information and is therefore not subject to the provisions of the Paperwork Reduction Act. This rule contains no policies that have Federalism implications under EO 12612, Federalism, dated October 26, 1987. This proposed rule is not a major rule pursuant to EO 12291, Federal Regulation, dated February 17, 1981, therefore a Regulatory Flexibility Analysis is not require(d) This is not a significant regulatory action pursuant to EO 12866, Regulatory Planning and Review, dated September 30, 1993. This regulation meets the standards of Sec. 2(b)(2) of EO 12778, Civil Justice Reform, dated October 23, 1991.

List of Subjects in 32 CFR Part 651

Environmental impact statement, Environmental protection, Natural resources.