Legislative Regulation Review Committee

2010-042

Department of Labor

ADOPTION BY REFERENCE-REVISIONS SAFETY & HEALTH STANDARDS (ACETYLENE)

REGULATIONS OF CONNECTICUT STATE AGENCIES
TITLE 31. LABOR
DEPARTMENT OF LABOR
OCCUPATIONAL SAFETY AND HEALTH STANDARDS

Section 1. Sec. 31-372-101-1910 of the Regulations of Connecticut State Agencies is amended by adding the following:

Section 31-372-101-1910. Safety and health standards for general industry

Standard Affected	Subject	Fed. Reg. Date	Action
Subpart A	Authority	11/10/09	Amended
1910.6	Incorporation by reference	11/10/09	Amended
Subpart H	Authority	11/10/09	Amended
1910.102	Acetylene	11/10/09	Amended

Statement of Purpose: The adoption by reference of these revisions to the Federal Occupational Safety and Health Standards will serve to update Connecticut Occupational Safety and Health Standards in accordance with Section 31-372 of the Connecticut General Statutes. On November 10, 2009 the federal Occupational Safety and Health Administration published notification of its adoption by Direct Final Rule of revisions to the Acetylene standard, which were effective in private sector general industry employment on November 9, 2009.

Conn. Gen. Stat. 31-372 requires, as an element of Connecticut's approved Public Sector-Only State Plan, that the Department of Labor's Occupational Safety and Health Division (CONN-OSHA) adopt all occupational health and safety standards, amendments or changes adopted or recognized by the United States Secretary of Labor under the authority of the Occupational Safety and Health Act of 1970.

These revisions modify the Acetylene Standard by updating references to standards published by standards-developing organizations. For example, 1910.102 (a) replaces the reference to the 1966 edition of CGA Pamphlet G-1 with the 2003 edition of that standard (CGA-1-2003). This edition prohibits storing acetylene cylinders in confined spaces such as drawers, closets, unventilated cabinets, automobile trunks, or toolboxes and further recommends that acetylene cylinders not be stored or transported in automobiles or any enclosed vehicles. Section 1910.102(b) deletes reference to CGA Pamphlet G-1.3-1959 (which is no longer published) and incorporates by reference the requirements for acetylene piping systems specified in Chapter 9 of NFPA 51A-2006 or Chapter 7 of NFPA 51A-2001. Section 1910.102(c) deletes reference to paragraph (c) of CGA G-1.4-1966 (which is no longer published) and incorporates by reference NFPA 51A-2001 or NFPA 51A-2006 depending on whether installations, facilities, equipment, or structures were approved for construction or installation prior to or after February 16, 2006.

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2010-042

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CERTIFICATION

R-39 REV. 1/77

Be it known that the foregoing:
__√__Regulations _____ Emergency Regulations
Are:
_____Adopted __√__Amended as hereinabove stated _____ Repealed

By the aforesaid agency pursuant to:
__√__Section 31-372 of the General Statutes.
_____Section of the General Statutes, as amended by Public Act No. of the Public Acts.
___Public Act No.
After publication in the Connecticut Law Journal on May 25, 2010 of the notice of the proposal to:
_____Adopt __√__Amend _____Repeal such regulations

(If applicable): __√__And the holding of an advertised public hearing on June 23, 2010.

WHEREFORE, the foregoing regulations are hereby:
_____Adopted __√__ Amended as hereinabove stated _____Repealed

Effective:
__√__When filed with the Secretary of the State.
(OR)
_____ the _____ day of _____ 2008.

In Witness Whereof: | Date 6/24/10 | Signed (Head of Board, Agency or Commissioner) | Official Title, Duly Authorized

Approved by the Attorney General as to legal sufficiency | Signed | Official Title, Duly in accordance with Sec. 4-169, as amended, C.G.S. | Authorized

7/12/10 ASSOC. ATT'Y. GENERAL

_____ Approved
_____ Disapproved
_____ Disapproved in part, (Indicate Section Numbers disapproved only)
_____ Rejected without prejudice

By the Legislative Regulation Review Committee in accordance with Sec. 4-170, as amended, of the General Statutes | Date | Signed (Clerk of the Legislative Regulation Review Committee)

Two certified copies received and filed, and one such copy forwarded to the Commission on Official Legal Publications in accordance with Section 4-172, as amended, of the General Statutes.

Date | Signed (Secretary of the State) | By

Instructions

1. One copy of all regulations for adoption, amendment or repeal, except emergency regulations, must be presented to the Attorney General for his determination of legal sufficiency. Section 4-169 of the General Statutes.
2. Seventeen copies of all regulations for adoption, amendment or repeal, except emergency regulations, must be presented to the standing Legislative Regulation Review Committee for its approval. Section 4-170 of the General Statutes.
3. Each regulation must be in the form intended for publication and must include the appropriate regulation section number and section heading. Section 4-172 of the General Statutes.
4. Indicate by "(NEW)" in heading if new regulation. Amended regulation must contain new language in capital letters and deleted language in brackets. Section 4-170 of the General Statutes.

Rules and Regulations

Federal Register
Vol. 74, No. 216
Tuesday, November 10, 2009

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

20 CFR Part 1910

[Docket No. OSHA–2008–0034]

RIN 1218–AC08

Revising Standards Referenced in the Acetylene Standard

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

ACTION: Final rule; confirmation of effective date.

SUMMARY: OSHA is confirming the effective date of its direct final rule that revises the Acetylene Standard for general industry by updating references to standards published by standards-developing organizations. The direct final rule stated that it would become effective on November 9, 2009, unless OSHA received no significant adverse comments on the direct final rule by September 10, 2009. OSHA received eight comments on the direct final rule by that date, which it determined were not significant adverse comments. Therefore, OSHA is confirming that the direct final rule became effective on November 9, 2009.

DATES: The direct final rule published on August 11, 2009, is effective on November 9, 2009. For the purposes of judicial review, OSHA considers November 9, 2009 as the date of issuance.

FOR FURTHER INFORMATION CONTACT:

General information and press inquiries: Contact Jennifer Ashley, Director, OSHA Office of Communications, Room N–3647, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; telephone: (202) 693–1999.

Technical information: Contact Ted Twardowski, Directorate of Standards and Guidance, Room N–3609, OSHA, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; telephone: (202) 693–2070; fax: (202) 693–1663.

*Copies of this **Federal Register** notice.* Electronic copies of this **Federal Register** notice are available at *http://www.regulations.gov*. This **Federal Register** notice, as well as news releases and other relevant information, are also available at OSHA's Web page at *http://www.osha.gov*.

ADDRESSES: In compliance with 28 U.S.C. 2112(a), OSHA designates the Associate Solicitor of Labor for Occupational Safety and Health as the recipient of petitions for review of the final standard. Contact the Associate Solicitor at the Office of the Solicitor, Room S–4004, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; telephone: (202) 693–5445.

SUPPLEMENTARY INFORMATION: On August 11, 2009, OSHA published the direct final rule in the **Federal Register** that revised the Acetylene Standard for general industry by updating references to standards published by standards-developing organizations (see 74 FR 40442). In that **Federal Register** document OSHA also stated that it would confirm the effective date of the direct final rule, if it received no significant adverse comments on the direct final rule.

OSHA received eight comments on the direct final rule, which it determined were not significant adverse comments. Several of these commenters observed that the Compressed Gas Association updated the CGA G–1 standard this year, and recommended that OSHA adopt this new edition (Exs. OSHA–2008–0034–0017, –0010, and –0022). OSHA did not include the 2009 edition of CGA G–1 in the direct final rule because that edition was not made available to OSHA prior to publication of the direct final rule, and, therefore, was beyond the scope of this rulemaking. In its comments, the Compressed Gas Association noted that the only difference between the 2003 edition referenced in the direct final rule and the recently issued 2009 edition is the addition of one sentence to a note in section 5.2 of the 2009 edition, which reads, "Additionally, single cylinders of acetylene and oxygen located at a work station (e.g., chained to a wall or building column or secured to a cart) shall be considered 'in service'" (*see* Ex. OSHA–2008–0034–0020). Nevertheless, OSHA plans to update the reference to CGA G–1 in a future rulemaking as resources and priorities permit.

Another commenter complained of the economic burden imposed by the flow-rate provision of the 2003 edition of CGA G–1 (Ex. OSHA–2008–0034–0021). In this regard, the 1966 edition of the standard (the edition cited previously in 29 CFR 1910.102(a)) specified a flow rate of one-seventh of the capacity of the cylinder per hour regardless of the duration of use, while the 2003 edition reduced this flow rate to one-tenth of the cylinder capacity per hour during intermittent use, and one-fifteenth of the cylinder capacity per hour during continuous use. This commenter stated, "As long as this flow rate [in the 2003 edition] remains advisory * * * this is not a problem." In the first footnote in the preamble of the direct final rule, OSHA noted that "both of these flow-rate provisions [in either the 1966 or 2003 editions] are advisory, not mandatory." Therefore, employers may use any flow rate that provides employees with an appropriate level of safety.

Two commenters appeared to confuse the Acetylene Standard at 29 CFR 1910.102, which was the subject of this rulemaking, with OSHA's standard regulating oxygen-fuel gas welding and cutting at 29 CFR 1910.253 (Exs. OSHA–2008–0034–0002 and –0018). The first commenter asked, "[W]hat are the dimension[s] of a wall that would separate oxygen and acetylene tanks for storage in a[n industrial] shop." The second commenter noted that a provision in the 2003 edition of CGA G–1 requires that a regulator and flow restrictor be attached to an acetylene cylinder before opening the cylinder valve, and asserted that this provision contradicted other OSHA standards requiring that a cylinder valve be "cracked" before attaching a regulator to it. These comments address requirements for the use of acetylene in welding operations, which is regulated for general industry under 29 CFR 1910.253, and not the requirements for the generation and distribution of acetylene, which is regulated for general

industry under 29 CFR 1910.102. Accordingly, practices and conditions that apply to acetylene stored in cylinders and used in welding operations may differ from the practices and conditions appropriate to bulk storage of acetylene in generation and distribution facilities.

One commenter expressed concern that OSHA would apply retroactively to existing acetylene-generating facilities that were compliant with the appropriate standards when originally constructed, those sections of the NFPA 51A–2001 standard that address site location, design, and materials (Ex. OSHA–2008–0034–0019). The commenter noted that applying the updated NFPA standard in this fashion would require moving or demolishing the facilities, or discontinuing operations. In response to this commenter, OSHA notes that section 1.2.2 of NFPA 51A–2001 states, "An existing plant that is not in strict compliance with the provisions of this standard shall be permitted to continue operations where such use does not constitute a distinct hazard to life or adjoining property." This provision indicates clearly that NFPA 51A–2001 does not apply to acetylene plants in existence prior to publication of the standard when the operations in these plants do not endanger employees. Therefore, OSHA considers acetylene plants in existence prior to the effective date of NFPA 51A–2001 (i.e., February 9, 2001) to be in compliance with that standard when the acetylene operations in these plants do not "constitute a distinct hazard" to employees.

List of Subjects in 29 CFR Part 1910

Acetylene, General industry, Occupational safety and health, Safety.

Authority and Signature

Jordan Barab, Acting Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210, directed the preparation of this final rule. OSHA is issuing this final rule pursuant to Sections 4, 6, and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, and 657), 5 U.S.C. 553, Secretary of Labor's Order 5–2007 (72 FR 31160), and 29 CFR part 1911.

Signed at Washington, DC, on November 5, 2009.

Jordan Barab,

Acting Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. E9–27004 Filed 11–9–09; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket Number USCG–2009–0963]

Drawbridge Operating Regulations; Victoria Barge Canal, Bloomington, TX

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, Eighth Coast Guard District, has issued a temporary deviation from the regulation governing the operation of the Union Pacific Railroad (UPRR) Vertical Lift Span Bridge across the Victoria Barge Canal, mile 29.4 at Bloomington, Victoria County, Texas. The deviation is necessary to allow for one phase of an on-going maintenance project to replace the lift span motors and brakes.

DATES: This deviation is effective from 7 a.m. on Tuesday, December 1, 2009 until 7 p.m. on Wednesday, December 2, 2009.

ADDRESSES: Documents mentioned in this preamble as being available in the docket are part of docket USCG–2009–0963 and are available online by going to *http://www.regulations.gov*, inserting USCG–2009–0960 in the "Keyword" box and then clicking "Search." They are also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590 between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or e-mail Phil Johnson, Bridge Administration Branch, Eighth Coast Guard District; telephone 504–671–2128, e-mail *Philip.R.Johnson@uscg.mil*. If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

The Victoria County Navigation District has requested a temporary deviation from the operating schedule of the UPRR Vertical Lift Span Bridge across the Victoria Barge Canal, mile 29.4 at Bloomington, Texas. The vertical lift bridge has a vertical clearance of 22 feet above high water in the closed-to-navigation position and 50 feet above high water in the open-to-navigation position.

Presently, the bridge opens on signal for the passage of vessels. This deviation allows the draw span of the bridge to remain closed to navigation for 12 consecutive hours between 7 a.m. and 7 p.m. each day on December 1 and 2, 2009. Navigation on the waterway consists mainly of tugs with tows. Due to prior experience and coordination with waterway users, it has been determined that this closure will not have a significant effect on these vessels.

No alternate routes are available. The closures are necessary for one phase of an on-going maintenance project to replace the lift span motors and brakes on the bridge. The Coast Guard has coordinated the closures with the commercial users of the waterway.

In accordance with 33 CFR 117.35(e), the drawbridge must return to its regular operating schedule immediately at the end of the designated time period. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: October 28, 2009.

David M. Frank,

Bridge Administrator.

[FR Doc. E9–26984 Filed 11–9–09; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2009–0686]

Drawbridge Operation Regulations; Lower Grand River, Iberville Parish, LA

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations; request for comments.

SUMMARY: The Commander, Eighth Coast Guard District, has issued a temporary deviation from the regulations governing the operation of the LA 75 pontoon bridge and the LA 77 swing bridge across the Lower Grand River, mile 38.4 and 47.0 respectively, in Iberville Parish, Louisiana. This deviation will test a change to both drawbridge's operating schedules to determine whether permanent changes to the schedules are needed. The deviation will allow an additional 30 minutes to the end of each scheduled closure period to provide more time for school buses to transit across the bridges.

DATES: This deviation is effective from November 25, 2009 through December 28, 2009.

Comments, requests for public meetings, and related material must be

Federal Register

Tuesday,
August 11, 2009

Part IV

Department of Labor

Occupational Safety and Health Administration

29 CFR Part 1910

Revising Standards Referenced in the Acetylene Standard; Final Rule

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1910

[Docket No. OSHA–2008–0034]

RIN 1218–AC08

Revising Standards Referenced in the Acetylene Standard

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

ACTION: Direct final rule; request for comments.

SUMMARY: In this direct final rule, the Agency is revising its Acetylene Standard for general industry by updating references to standards published by standards developing organizations (*i.e.*, "SDO standards"). This rulemaking is a continuation of OSHA's ongoing effort to update references to SDO standards used throughout its rules.

DATES: This direct final rule will become effective on November 9, 2009 unless significant adverse comment is received by September 10, 2009. If adverse comment is received, OSHA will publish a timely withdrawal of the rule in the **Federal Register**. Comments to this direct final rule (including comments to the information-collection (paperwork) determination described under the section titled Procedural Determinations), hearing requests, and other information must be submitted by September 10, 2009. All submissions must bear a postmark or provide other evidence of the submission date. (The following section titled **ADDRESSES** describes methods available for making submissions.)

The incorporation by reference of specific publications listed in this direct final rule is approved by the Director of the Federal Register as of November 9, 2009.

ADDRESSES: Submit comments and hearing requests as follows:

- *Electronic.* Submit comments electronically to *http://www.regulations.gov*, which is the Federal eRulemaking Portal. Follow the instructions online for submitting comments.
- *Facsimile.* OSHA allows facsimile transmission of comments and hearing requests that are 10 pages or fewer in length (including attachments). Send these documents to the OSHA Docket Office at (202) 693–1648; OSHA does not require hard copies of these documents. Instead of transmitting facsimile copies of attachments that supplement these documents (*e.g.*, studies, journal articles), commenters must submit these attachments, in triplicate hard copy, to the OSHA Docket Office, Technical Data Center, Room N–2625, OSHA, U.S. Department of Labor, 200 Constitution Ave., NW., Washington, DC 20210. These attachments must clearly identify the sender's name, date, subject, and docket number (*i.e.*, OSHA–2008–0034) so that the Agency can attach them to the appropriate document.
- *Regular mail, express delivery, hand (courier) delivery, and messenger service.* Submit three copies of comments and any additional material (*e.g.*, studies, journal articles) to the OSHA Docket Office, Docket No. OSHA–2008–0034 or RIN No. 1218–AC08, Technical Data Center, Room N–2625, OSHA, U.S. Department of Labor, 200 Constitution Ave., NW., Washington, DC 20210; telephone: (202) 693–2350. (OSHA's TTY number is (877) 889–5627.) Note that security-related procedures may result in significant delays in receiving comments and other written materials by regular mail. Please contact the OSHA Docket Office for information about security procedures concerning delivery of materials by express delivery, hand delivery, and messenger service. The hours of operation for the OSHA Docket Office are 8:15 a.m. to 4:45 p.m., e.t.
- *Instructions.* All submissions must include the Agency name and the OSHA docket number (*i.e.*, OSHA Docket No. OSHA–2008–0034). Comments and other material, including any personal information, are placed in the public docket without revision, and will be available online at *http://www.regulations.gov*. Therefore, the Agency cautions commenters about submitting statements they do not want made available to the public, or submitting comments that contain personal information (either about themselves or others) such as Social Security numbers, birth dates, and medical data.

OSHA requests comments on all issues related to this direct final rule. It also welcomes comments on its findings that this direct final rule would have no negative economic, paperwork, or other regulatory impacts on the regulated community. This direct final rule is the companion document to a notice of proposed rulemaking also published in the "Proposed Rules" section of today's **Federal Register**. If OSHA receives no significant adverse comment on this direct final rule, it will publish a **Federal Register** document confirming the effective date of this direct final rule and withdrawing the companion proposed rule. The confirmation may include minor stylistic or technical corrections to the document. For the purpose of judicial review, OSHA considers the date that it confirms the effective date of the direct final rule to be the date of issuance. However, if OSHA receives significant adverse comment on the direct final rule, it will publish a timely withdrawal of this direct final rule and proceed with the proposed rule, which addresses the same revisions to the Acetylene Standard.

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

FOR FURTHER INFORMATION CONTACT: *Press inquiries.* Contact Jennifer Ashley, OSHA Office of Communications, Room N–3647, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; telephone: (202) 693–1999.

General and technical information. Contact Ted Twardowski, Office of Safety Systems, Directorate of Standards and Guidance, Room N–3609, OSHA, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; telephone: (202) 693–2255; fax: (202) 693–1663.

SUPPLEMENTARY INFORMATION:

Copies of this **Federal Register** *notice.* Electronic copies are available at *http://www.regulations.gov*. This **Federal Register** notice, as well as news releases and other relevant information, also are available at OSHA's Webpage at *http://www.osha.gov*.

Availability of Incorporated Standards. The standards published by the Compressed Gas Association and the National Fire Protection Association required in § 1910.102 are incorporated by reference into this section with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. To enforce any edition other than the editions specified in § 1910.102, the Occupational Safety and Health Administration (OSHA) must publish a notice of change in the **Federal Register** and the material must be available to the public. All approved material is available for inspection at the National Archives and Records

Administration (NARA). For information on the availability of this material at NARA, telephone 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html*. Also, the material is available for inspection at any OSHA Regional Office or the OSHA Docket Office (U.S. Department of Labor, 200 Constitution Avenue, NW., Room N–2625, Washington, DC 20210; telephone 202–693–2350 (TTY number: 877–889–5627)).

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I. Background

This action is part of a rulemaking project instituted by the Occupational Safety and Health Administration ("OSHA" or "the Agency") to update OSHA standards that reference or include language from outdated standards published by standards developing organizations ("SDO standards") (69 FR 68283). The SDO standards referenced in OSHA's Acetylene Standard (29 CFR 1910.102) are among the SDO standards that the Agency identified for revision.

OSHA adopted the Acetylene Standard in 1974 pursuant to Section 6(a) of the Occupational Safety and Health Act of 1970 (OSH Act; 29 U.S.C. 651, 655). This section allowed OSHA, during the first two years after passage of the OSH Act, to adopt existing Federal and national consensus standards as OSHA safety and health standards, including the current Acetylene Standard.

After OSHA announced the SDO rulemaking project, the Agency met with the Compressed Gas Association ("CGA") about the rulemaking project. CGA, a private standards organization, provided detailed recommendations on updating SDO standards referenced in OSHA standards, including the Acetylene Standard (Ex. OSHA–2008–0034–0003). Thereafter, the U.S. Chemical Safety and Hazard Investigation Board ("Chemical Safety Board") also recommended that OSHA update the SDO standards referenced in the Acetylene Standard (Ex. OSHA–2008–0034–0004).

II. Direct Final Rulemaking

In a direct final rulemaking, an agency publishes a direct final rule in the **Federal Register** along with a statement that the rule will become effective unless the agency receives significant adverse comment within a specified period. The agency also publishes concurrently an identical proposed rule. If the agency receives no significant adverse comment, the direct final rule goes into effect. If, however, the agency receives significant adverse comment, the agency withdraws the direct final rule and treats the comments as submissions on the proposed rule.

OSHA uses direct final rules in the SDO rulemaking project because it expects the rules to: Be noncontroversial; provide protection to employees that is at least equivalent to the protection afforded to them by the outdated SDO standard; and impose no significant new compliance costs on employers (69 FR 68283, 68285). OSHA is using direct final rules to update or, when appropriate, revoke references to outdated national SDO standards in OSHA rules (*see, e.g.*, 69 FR 68283, 70 FR 76979, and 71 FR 80843).

For purposes of the direct final rule, a significant adverse comment is one that explains why the rule would be inappropriate, including challenges to the rule's underlying premise or approach. In determining whether a comment necessitates withdrawal of the direct final rule, OSHA will consider whether the comment raises an issue serious enough to warrant a substantive response in a notice-and-comment process. OSHA will not consider a comment recommending additional revisions to a rule to be a significant adverse comment unless the comment states why the direct final rule would be ineffective without the revisions. If OSHA receives a timely significant adverse comment, the Agency will publish a **Federal Register** notice withdrawing the direct final rule no later than 90 days after the publication date of the notice.

OSHA believes that the revisions made to the Acetylene Standard by this direct final rule do not compromise the safety of employees, and instead enhance employee protection. For example, the updated Acetylene Standard includes mandatory requirements for acetylene piping systems, has special requirements for high-pressure piping systems, and prohibits storage of acetylene cylinders in confined spaces—requirements that are not included in the current SDO standards. The updated SDO standards also provide employers with new and more extensive information than the current standards, which should facilitate compliance. OSHA believes that replacing the unenforceable SDO standard in § 1910.102(b) (*i.e.*, Compressed Gas Association Pamphlet G–1.3–1959; *see* discussion below under Section III.A ("§ 1910.102(c)—Generators and filling cylinders")) clarifies employers' compliance obligations and prevents inappropriate enforcement action, while also increasing employee protection.

The Agency determined that updating and replacing the SDO standards in the Acetylene Standard is appropriate for direct final rulemaking. As described below, the revisions will make the requirements of OSHA's Acetylene Standard consistent with current industry practices, thereby eliminating confusion and clarifying employer obligations. Eliminating confusion and clarifying employer obligations should increase employee safety while reducing compliance costs.

III. Summary and Explanation of Revisions to the Acetylene Standard

This direct final rule updates the SDO standards referenced in the three paragraphs that comprise the Acetylene Standard. The Compressed Gas Association (CGA) published several editions of these SDO standards after OSHA adopted them in 1974, and one of these standards (*i.e.*, Compressed Gas Association Pamphlet G–1.4–1966), is no longer available for purchase from CGA. Therefore, to ensure that employers have access to the latest safety requirements for managing acetylene, this rulemaking is adopting the requirements specified in the most recent versions of the SDO standards.

The following discussion provides a summary of the revisions OSHA is making to paragraphs (a), (b), and (c) of the Acetylene Standard.

A. Section 1910.102(a)—Cylinders

For paragraph (a) of § 1910.102, the direct final rule is replacing the reference to the 1966 edition of CGA Pamphlet G–1 ("Acetylene") (Ex. OSHA–2008–0034–0005) with the most recent (*i.e.*, 2003) edition of that standard (also entitled "Acetylene") ((Ex. OSHA–2008–0034–0006). According to CGA, the 2003 edition is the fifth revision of the standard since OSHA adopted the 1966 edition in 1974 (Ex. OSHA–2008–0034–0003).

In reviewing CGA–1–2003, OSHA identified two provisions in that standard that appear to be substantive

revisions from the 1966 edition. First, the last provision of paragraph 5.2 in the 2003 edition prohibits storing acetylene cylinders in confined spaces such as drawers, closets, unventilated cabinets, automobile trunks, or toolboxes. In addition, the document recommends that acetylene cylinders should not be stored or transported in automobiles or any enclosed vehicles. The 1966 edition contains neither the above prohibition nor recommendation. Second, both editions recommend flow rates that will minimize withdrawal of liquid solvent when releasing acetylene from a cylinder; however, the recommended flow rates differ between the two editions. Paragraph 5.3.3.13 of the 1966 edition specifies that the flow rate should be one-seventh of the capacity of the cylinder per hour regardless of the duration of use, while paragraph 6.2 of the 2003 edition recommends a flow rate of one-tenth of the cylinder capacity per hour during intermittent use, and one-fifteenth of the cylinder capacity per hour during continuous use.[1]

Other differences between the 1966 and 2003 editions of CGA G–1 include adding the following sentence to the provision warning employers to avoid abnormal mechanical shocks that could damage cylinders, valves, and pressure-relief devices:[2] "This [avoiding abnormal mechanical shocks] is especially important on those small cylinders not equipped with protection caps." This sentence notifies employers that the valves of small cylinders are especially susceptible to damage (and possible release of acetylene) because protective caps or guards do not cover the valves. Similarly, in the 2003 edition, CGA added a provision to section 6.2 ("Withdrawing acetylene from cylinders")[3] requiring employers to "[v]isually examine the CGA connection on the cylinder and remove any visible contamination before connecting the regulator. Clean out the contaminant using nitrogen, air, or a clean rag. Avoid opening an acetylene cylinder valve without a suitable regulator and flow restrictor such as a torch attached." This provision prevents the following two hazards: (1) Acetylene-related explosions (by removing contaminants that could serve as an ignition source), and (2) massive releases of acetylene into the workplace (by notifying employers to use suitable regulators and restrictors to control the rate at which acetylene flows from a cylinder).

The remaining differences between the 1966 and 2003 editions include: Making plain-language revisions to the text; providing measurements using the International System of Units; listing current Department of Transportation specifications; presenting guidance in the 2003 edition on how to handle leaking cylinders; and noting in the 2003 edition that commercial acetylene generally is considered nontoxic. CGA also added text to the 2003 edition that prohibits tightening leaking fuseplugs or valves while the cylinder is under pressure, as well as enhanced illustrations (Figure 1) of acetylene cylinder-shell constructions.

OSHA believes that the provisions of CGA G–1–2003 are consistent with the usual and customary practice of employers in the industry, and has determined that incorporating CGA G–1–2003 into paragraph (a) of § 1910.102 does not add compliance burden for employers. OSHA invites the public to comment on whether the revisions made to CGA G–1–1966 in the 2003 edition of the standard represent current industry practice.

B. Section 1910.102(b)—Piped Systems

CGA no longer publishes CGA Pamphlet G–1.3–1959 ("Acetylene Transmission for Chemical Synthesis") (Ex. OSHA–2008–0034–0007). In addition, both this standard and its recent replacement (*i.e.*, Part 3 of CGA G–1.2–2006 ("Acetylene piping"), (Ex. OSHA–2008–0034–0008)) consist entirely of advisory provisions. Under existing law (*see, e.g., Usery* v. *Kennecott Copper Corporation* (577 F.2d 1113 (10th Cir. 1977)), OSHA cannot enforce advisory provisions. Therefore, this direct final rule revises paragraph (b) of § 1910.102 to refer instead to the requirements for acetylene piping systems specified in Chapter 9 ("Acetylene Piping") of NFPA 51A–2006 ("Standard for Acetylene Charging Plants") (Ex. OSHA–2008–0034–0009) or Chapter 7 ("Acetylene Piping") of NFPA 51A–2001 ("Standard for Acetylene Charging Plants") (Ex. OSHA–2008–0034–0010). Whether employers use NFPA 51A–2006 or NFPA 51A–2001 depends on when the facilities, equipment, structures, or installations used to generate acetylene or to charge (fill) acetylene cylinders were approved for construction or installation. (*See* discussion of which NFPA standard applies in Section III.C below ("§ 1910.102(c)—Generators and filling cylinders").)

The piping-system requirements specified in NFPA 51A–2006 or NFPA 51A–2001 are not as extensive as the requirements contained in either CGA Pamphlet G–1.3–1959 or Part 3 of CGA G–1.2–2006. However, OSHA believes that the piping-system requirements in the two NFPA standards will provide employers with important information for installing and maintaining piping systems used to transfer acetylene until a more detailed (and enforceable) standard becomes available. In addition, unlike CGA Pamphlet G–1.3–1959, the two NFPA standards have special requirements for high-pressure acetylene piping systems, which OSHA believes will likely increase employee protection. Meanwhile, paragraph (b)(iv) of § 1910.102 refers employers to Part 3 of CGA G–1.2–2006 for additional information on acetylene piping systems.

OSHA believes that the revisions to § 1910.102(b) represent the usual and customary practice of the industry today. Therefore, OSHA concludes that making these revisions will not impose an additional compliance burden on employers. Accordingly, OSHA requests public comment on the extent to which the revisions made in § 1910.102(b) represent current industry practice.

C. Section 1910.102(c)—Generators and Filling Cylinders

CGA no longer publishes the consensus standard referenced in paragraph (c) of CGA G–1.4–1966 ("Standard for Acetylene Charging Plants") (Ex. OSHA–2008–0034–0011). In 1970, the National Fire Protection Association (NFPA) adopted this CGA standard as NFPA 51A ("Standard for Acetylene Charging Plants") (Ex. OSHA–2008–0034–0012). NFPA manages revisions to this standard, the latest versions of which it published in 2001 and 2006.

Section 1.4.1 of the 2006 standard excepts from the standard any "facilities, equipment, structures, or installations that existed or were approved for construction or installation prior to the effective date of the standard."[4] This section also states, "Where specified, the provisions of this standard shall be retroactive."[5] Therefore, this provision requires compliance with the entire standard only when facilities, equipment, structures, or installations were approved for construction or installation on or after February 16, 2006, the

[1] Note that both of these flow-rate provisions are advisory, not mandatory.

[2] See paragraph 5.2.1 of the 1966 edition, and the first paragraph of section 6.1 of the 2003 edition.

[3] Section 5.3 of the 1966 version regulates the withdrawal of acetylene from cylinders.

[4] OSHA interprets the phrase "were approved for construction or installation prior to the effective date of the standard" to mean that construction and installation occurred on or after the effective date of the standard.

[5] OSHA found no such provisions in the standard.

effective date of the 2006 standard. However, the 2001 edition of NFPA 51A (Ex. OSHA–2008–0034–0013) has no effective-date provision, and applies retroactively to all facilities, equipment, structures, or installations that existed (or were approved for construction and installation) prior to February 16, 2006.

OSHA is requiring in this direct final rule that employers comply with NFPA 51A–2001, provided they demonstrate that the installations, facilities, equipment, or structures used to generate acetylene or to charge (fill) acetylene cylinders existed, or were approved for construction or installation, prior to February 16, 2006. Employers having installations, facilities, equipment, or structures approved for construction or installation on or after February 16, 2006, must comply with NFPR 51A–2006.[6] By removing the reference to an outdated, unavailable standard from § 1910.102(c), and updating the referenced standards to be consistent with current industry practices, OSHA believes that the revisions to § 1910.102(c) will reduce regulatory confusion and ensure up-to-date employee protection.

While many of the differences between CGA G–1.4–1966 and NFPA 51A–2001 and –2006 involve minor revisions to the text, usually to update the terminology or to improve the comprehensibility of the text, a number of the differences are substantive. OSHA compiled lists of these substantive differences, and is making these lists available in the docket at *http://www.regulations.gov* (*see* Exs. OSHA–2008–0034–0014 and –0015).

OSHA presumes that employers in the industry currently apply the requirements of NFPA 51A–2001 to installations, facilities, equipment, or structures constructed or installed prior to February 16, 2006, and that they apply NFPA 51A–2006 to installations, facilities, equipment, or structures approved for construction or installation on or after February 16, 2006. Consequently, OSHA has determined that this direct final rule will impose no additional compliance burden on these employers. OSHA invites the public to comment on the extent to which employers involved in charging acetylene cylinders already comply with NFPA 51A–2001 and –2006, as well as any additional burden this direct final rule imposes on these employers.

[6] While not mandated, OSHA encourages employers covered by NFPA 51A–2001 to comply with the requirements of NFPA 51A–2006.

IV. Procedural Determinations

A. Legal Considerations

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

This direct final rule will not reduce the employee protections put into place by the standards OSHA is updating under this rulemaking. In fact, this rulemaking likely will enhance employee safety by adding requirements, eliminating confusing requirements, and clarifying employer obligations. Therefore, it is unnecessary to determine significant risk, or the extent to which this rule would reduce that risk, as typically is required by *Industrial Union Department, AFL–CIO* v. *American Petroleum Institute* (448 U.S. 607 (1980)).

B. Preliminary Economic Analysis and Regulatory Flexibility Act Certification

The direct final rule is not "economically significant" as specified by Executive Order 12866, or a "major rule" under Section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996 ("SBREFA"; 5 U.S.C. 804). The direct final rule does not impose significant additional costs on any private- or public-sector entity, and does not meet any of the criteria for an economically significant or major rule specified by Executive Order 12866 and the relevant statutes. (While not economically significant, as part of OSHA's regulatory agenda, the direct final rule is a "significant regulatory action" under Executive Order 12866.)

The direct final rule simply updates references to outdated SDO standards in OSHA's Acetylene Standard. The Agency concludes that the revisions will not impose any additional costs on employers because it believes that the updated SDO standards represent the usual and customary practice of employers in the industry. Consequently, the direct final rule imposes no costs on employers. Therefore, OSHA certifies that it will not have a significant impact on a substantial number of small entities. Accordingly, the Agency is not preparing a regulatory flexibility analysis under the SBREFA (5 U.S.C. 601 *et seq.*).

C. OMB Review Under the Paperwork Reduction Act of 1995

Neither the existing nor updated SDO standards addressed by this direct final rule contain collection of information requirements. Therefore, this direct final rule does not impose or remove any information collection requirements for purposes of the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.* and 5 CFR part 1320. Accordingly, the Agency does not have to prepare an Information Collection Request in association with this rulemaking.

Members of the public may respond to this paperwork determination by sending their written comments to the Office of Information and Regulatory Affairs, Attn: OSHA Desk Officer (RIN 1218–AC08), Office of Management and Budget, Room 10235, 725 17th Street, NW., Washington, DC 20503. The Agency encourages commenters to submit these comments to the rulemaking docket, along with their comments on other parts of the direct final rule. For instructions on submitting these comments and accessing the docket, *see* the sections of this **Federal Register** notice titled **DATES** and **ADDRESSES.** However, OSHA will not consider any comment received on this paperwork determination to be a "significant adverse comment" as specified under Section II ("Direct Final Rulemaking") of this notice.

To make inquiries, or to request other information, contact Mr. Todd Owen, Directorate of Standards and Guidance, OSHA, Room N–3609, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–2222.

D. Federalism

OSHA reviewed this direct final rule in accordance with the Executive Order on Federalism (Executive Order 13132, 64 FR 43255, August 10, 1999), which requires that Federal agencies, to the extent possible, refrain from limiting State policy options, consult with States prior to taking any actions that would restrict State policy options, and take such actions only when clear constitutional authority exists and the

problem is national in scope. Executive Order 13132 provides for preemption of State law only with the expressed consent of Congress. Any such preemption must be limited to the extent possible.

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

While OSHA drafted this direct final rule to protect employees in every State, Section 18(c)(2) of the Act permits State-Plan States and Territories to develop and enforce their own standards for acetylene operations provided these requirements are at least as effective in providing safe and healthful employment and places of employment as the requirements specified in this direct final rule.

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

E. State-Plan States

When Federal OSHA promulgates a new standard or a more stringent amendment to an existing standard, the 26 States or U.S. Territories with their own OSHA-approved occupational safety and health plans ("State-Plan States") must amend their standards to reflect the new standard or amendment, or show OSHA why such action is unnecessary (*e.g.*, because an existing State standard covering this area is already "at least as effective" as the new Federal standard or amendment. (29 CFR 1953.5(a).) The State standard must be at least as effective as the final Federal rule, must be applicable to both the private and public (State and local government employees) sectors, and must be completed within six months of the publication date of the final Federal rule. When OSHA promulgates a new standard or amendment that does not impose additional or more stringent requirements than the existing standard, State-Plan States are not required to amend their standards, although OSHA may encourage them to do so.

OSHA has determined that the State-Plan States must adopt provisions comparable to the provisions in this direct final rule within six months after the effective date of the rule. OSHA believes that the provisions of this direct final rule provide employers in State-Plan States and Territories with new and critical information and methods necessary to protect their employees from the hazards found in and around workplaces engaged in acetylene operations. The 26 States and territories with OSHA-approved State Plans are: Alaska, Arizona, California, Connecticut, Hawaii, Indiana, Iowa, Kentucky, Maryland, Michigan, Minnesota, Nevada, New Mexico, New Jersey, New York, North Carolina, Oregon, Puerto Rico, South Carolina, Tennessee, Utah, Vermont, Virginia, Virgin Islands, Washington, and Wyoming. Connecticut, New Jersey, New York, and the Virgin Islands have OSHA-approved State Plans that apply to State and local government employees only. Until a State-Plan State/Territory promulgates its own comparable provisions based on this direct final rule, Federal OSHA will provide the State/Territory with interim enforcement assistance, as appropriate.

F. Unfunded Mandates Reform Act of 1995

OSHA reviewed this direct final rule in accordance with the Unfunded Mandates Reform Act of 1995 ("UMRA"; 2 U.S.C. 1501 *et seq.*) and Executive Order 12875 (56 FR 58093). As discussed above in Section IV.B ("Preliminary Economic Analysis and Regulatory Flexibility Act Certification") of this notice, the Agency determined that this direct final rule will not impose additional costs on any private- or public-sector entity. Accordingly, this direct final rule requires no additional expenditures by either public or private employers.

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

G. Public Participation

OSHA requests comments on all issues concerning this direct final rule. The Agency also welcomes comments on its determination that this direct final rule has no negative economic or other regulatory impacts on employers, and will increase employee protection. If OSHA receives no significant adverse comment, it will publish a **Federal Register** document confirming the effective date of this direct final rule and withdrawing the companion proposed rule. Such confirmation may include minor stylistic or technical corrections to the document. A full discussion of what constitutes a significant adverse comment is discussed above in Section II ("Direct Final Rulemaking").

The Agency will withdraw this direct final rule if it receives significant adverse comment on the amendments contained in it, and proceed with the companion proposed rule by addressing the comment(s) and publishing a new final rule. Should the Agency receive a significant adverse comment regarding some actions taken in the direct final rule, but not others, it may (1) finalize those actions that did not receive significant adverse comment, and (2) conduct further rulemaking under the companion proposed rule for the actions that received significant adverse comment. The comment period for this direct final rule runs concurrently with that of the companion proposed rule. Therefore, any comments received under this direct final rule will be treated as comments regarding the companion proposed rule. Similarly, OSHA will consider a significant adverse comment submitted to this direct final rule as a comment to the companion proposed rule; the Agency will consider such a comment in developing a subsequent final rule.

Comments received will be posted without revision to *http://www.regulations.gov*, including any personal information provided. Accordingly OSHA cautions commenters about submitting personal information such as Social Security numbers and birth dates.

List of Subjects in 29 CFR Part 1910

Acetylene, General industry, Incorporation by reference, Occupational safety and health, Safety.

V. Authority and Signature

Jordan Barab, Acting Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210, directed the preparation of this notice. The Agency is issuing this notice under Sections 4, 6, and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657), Secretary of Labor's Order 5–2007 (72 FR 31159), and 29 CFR part 1911.

Signed at Washington, DC on July 30, 2009.

Jordan Barab,

Acting Assistant Secretary of Labor for Occupational Safety and Health.

■ For the reasons stated above in the preamble, OSHA is amending 29 CFR part 1910 as follows:

PART 1910—[AMENDED]

Subpart A—[Amended]

■ 1. Revise the authority citation for subpart A of part 1910 to read as follows:

Authority: Sections 4, 6, 8, Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order Numbers 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736), 1–90 (55 FR 9033), 6–96 (62 FR 111), 3–2000 (65 FR 50017), 5–2002 (67 FR 65008), and 5–2007 (72 FR 31159), as applicable.

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

■ 2. Amend § 1910.6 as follows:

■ A. Revise paragraph (k)(3).

■ B. Remove paragraphs (k)(4) and (k)(5), and redesignate paragraphs (k)(6) through (k)(15) as paragraphs (k)(4) through (k)(13).

■ C. Add new paragraphs (q)(34) and (q)(35).

The additions and revisions read as follows:

§ 1910.6 Incorporation by reference.

* * * * *

(k) * * *

(3) CGA G–1–2003 Acetylene, IBR approved for § 1910.102(a). Copies of CGA Pamphlet G–1–2003 are available for purchase from the: Compressed Gas Association, Inc., 4221 Walney Road, 5th Floor, Chantilly, VA 20151; telephone: 703–788–2700; fax: 703–961–1831; e-mail: *cga@cganet.com.*

* * * * *

(q) * * *

(34) NFPA 51A (2001) Standard for Acetylene Cylinder Charging Plants, IBR approved for § 1910.102(b) and (c). Copies of NFPA 51A–2001 are available for purchase from the: National Fire Protection Association, 1 Batterymarch Park, Quincy, MA 02169–7471; telephone: 1–800–344–35557; e-mail: *custserv@nfpa.org.*

(35) NFPA 51A (2006) Standard for Acetylene Cylinder Charging Plants, IBR approved for § 1910.102(b) and (c). Copies of NFPA 51A–2006 are available for purchase from the: National Fire Protection Association, 1 Batterymarch Park, Quincy, MA 02169–7471; telephone: 1–800–344–35557; e-mail: *custserv@nfpa.org.*

* * * * *

Subpart H—[Amended]

■ 3. Revise the authority citation for subpart H of part 1910 to read as follows:

Authority: Sections 4, 6, and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Orders Nos. 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736), 1–90 (55 FR 9033), 6–96 (62 FR 111), 3–2000 (65 FR 50017), 5–2002 (67 FR 65008), or 5–2007 (72 FR 31159), as applicable; and 29 CFR part 11.

Sections 1910.103, 1910.106 through 1910.111, and 1910.119, 1910.120, and 1910.122 through 1910.126 also issued under 29 CFR part 1911.

Section 1910.119 also issued under Section 304, Clean Air Act Amendments of 1990 (Pub. L. 101–549), reprinted at 29 U.S.C. 655 Note.

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

■ 4. Revise § 1910.102 to read as follows:

§ 1910.102 Acetylene.

(a) *Cylinders.* Employers must ensure that the in-plant transfer, handling, storage, and use of acetylene in cylinders comply with the provisions of CGA Pamphlet G–1–2003 ("Acetylene") (Compressed Gas Association, Inc., 11th ed., 2003).

(b) *Piped systems.* (1) Employers must comply with Chapter 9 ("Acetylene Piping") of NFPA 51A–2006 ("Standard for Acetylene Charging Plants") (National Fire Protection Association, 2006 ed., 2006).

(2) When employers can demonstrate that the facilities, equipment, structures, or installations used to generate acetylene or to charge (fill) acetylene cylinders were installed prior to February 16, 2006, these employers may comply with the provisions of Chapter 7 ("Acetylene Piping") of NFPA 51A–2001 ("Standard for Acetylene Charging Plants") (National Fire Protection Association, 2001 ed., 2001).

(3) The provisions of § 1910.102(b)(2) also apply when the facilities, equipment, structures, or installations used to generate acetylene or to charge (fill) acetylene cylinders were approved for construction or installation prior to February 16, 2006, but constructed and installed on or after that date.

(4) For additional information on acetylene piping systems, *see* CGA G–1.2–2006, Part 3 ("Acetylene piping") (Compressed Gas Association, Inc., 3rd ed., 2006).

(c) *Generators and filling cylinders.* (1) Employers must ensure that facilities, equipment, structures, or installations used to generate acetylene or to charge (fill) acetylene cylinders comply with the provisions of NFPA 51A–2006 ("Standard for Acetylene Charging Plants") (National Fire Protection Association, 2006 ed., 2006).

(2) When employers can demonstrate that the facilities, equipment, structures, or installations used to generate acetylene or to charge (fill) of acetylene cylinders were constructed or installed prior to February 16, 2006, these employers may comply with the provisions of NFPA 51A–2001 ("Standard for Acetylene Charging Plants") (National Fire Protection Association, 2001 ed., 2001).

(3) The provisions of § 1910.102(c)(2) also apply when the facilities, equipment, structures, or installations were approved for construction or installation prior to February 16, 2006, but constructed and installed on or after that date.

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