

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:** Notice of proposed rulemaking.

SUMMARY: In this Notice of Proposed Rulemaking (NPRM), the Agency is proposing to revise its Acetylene Standard for general industry by updating references to standards published by standards developing organizations (*i.e.*, “SDO standards”). OSHA also is publishing a direct final rule in today’s **Federal Register** taking these same actions. This NPRM is the companion document to the direct final rule. This rulemaking is a continuation of OSHA’s ongoing effort to update references to SDO standards used throughout its rules.

DATES: Submit comments to this NPRM (including comments to the information-collection (paperwork) determination described under the section titled Procedural Determinations), hearing requests, and other information 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.)

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 NPRM. It also welcomes comments on its findings that this NPRM would have no negative economic, paperwork, or other regulatory impacts on the regulated community. This NPRM is the companion document to a direct final rule also published in today’s **Federal Register**. If OSHA receives no significant adverse comment on the companion direct final rule, it will publish a **Federal Register** document confirming the effective date of the direct final rule and withdrawing this NPRM. 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 the direct final rule and proceed with this proposal, which addresses the same revisions to the Acetylene Standard.

- *Docket.* The electronic docket for this proposal 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 Web page at <http://www.osha.gov>.

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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 standard 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 ("DFR"), an agency publishes a DFR 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 DFR goes into effect. If, however, the agency receives significant adverse comment, the agency withdraws the DFR and treats the comments as submissions on the proposed rule.

OSHA uses DFRs 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 DFRs 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 DFR, 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 DFR,

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 DFR would be ineffective without the revisions. If OSHA receives a timely significant adverse comment, the Agency will publish a **Federal Register** notice withdrawing the DFR no later than 90 days after the publication date of the notice.

OSHA believes that the proposed revisions to the Acetylene Standard would not compromise the safety of employees, and instead would enhance employee protection. For example, the updated Acetylene Standard would include mandatory requirements for acetylene piping systems, have special requirements for high-pressure piping systems, and prohibit 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. 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")) will clarify employers' compliance obligations and prevent inappropriate enforcement action, while also increasing employee protection.

The Agency preliminarily determined that updating and replacing the SDO standards in the Acetylene Standard is appropriate for direct final rulemaking. As described below, the proposed 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 NPRM would update 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, OSHA is proposing in this rulemaking to adopt the requirements specified in the most recent versions of the SDO standards. The following discussion provides a summary of the revisions OSHA is proposing for paragraphs (a), (b), and (c) of the Acetylene Standard.

A. § 1910.102(a)—Cylinders.

For paragraph (a) of § 1910.102, the NPRM proposes to replace 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

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.

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 preliminarily determines that incorporating CGA G–1–2003 into paragraph (a) of § 1910.102 would 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. § 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 NPRM proposes to revise 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 would depend 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 the 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 likely would 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 it is proposing to § 1910.102(b) represent the usual and customary practice of the industry today. Therefore, OSHA preliminarily concludes that making the proposed revisions would not impose an additional compliance burden on employers. Accordingly, OSHA requests public comment on the extent to which the revisions proposed for § 1910.102(b) represent current industry practice.

C. § 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 exempts 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 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 proposing in this NPRM 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, would have to comply with NFPA 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 proposed revisions to § 1910.102(c) would 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

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.

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

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

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 believes 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 preliminarily determines that this NPRM would 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 these employers would have if OSHA adopted the proposed standard.

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 proposed rule will not reduce the employee protections put into place by the standards OSHA is updating under this rulemaking. In fact, this rulemaking likely would 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 proposed standard would not be “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 proposed standard is a “significant regulatory action” under Executive Order 12866.)

The NPRM simply proposes to update references to outdated SDO standards in OSHA’s Acetylene Standard. The Agency preliminarily concludes that the proposed revisions would 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 proposal imposes no costs on employers. Therefore, OSHA certifies that it would 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 NPRM contain collection-of-information requirements. Therefore, this NPRM 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 above under Section II (“Direct Final Rulemaking”).

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 NPRM 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 NPRM 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 final requirements that result from this proposal.

In summary, this NPRM complies with Executive Order 13132. In States without OSHA-approved State Plans,

any standard developed from this proposal 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 preliminarily determined that the State-Plan States would have to adopt provisions comparable to the provisions in this NPRM within six months after the Agency publishes the final rule that results from this proposal. OSHA believes that the provisions of this NPRM would 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 the final rule developed from this NPRM, Federal OSHA will provide the State/

Territory with interim enforcement assistance, as appropriate.

F. Unfunded Mandates Reform Act of 1995

OSHA reviewed this NPRM 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 preliminarily that this NRPM would not impose additional costs on any private- or public-sector entity. Accordingly, this NRPM would require 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 NPRM would not meet the definition of a "Federal intergovernmental mandate" (*see* Section 421(5) of the UMRA (2 U.S.C. 658(5))). Therefore, for the purposes of the UMRA, the Agency certifies that this proposed rule does not mandate that State, local, or tribal governments adopt new, unfunded regulatory obligations, or increase expenditures by the private sector of more than \$100 million in any year.

G. Public Participation

OSHA requests comments on all issues concerning this NPRM. The Agency also welcomes comments on its determination that this NPRM would have 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 contained in the companion direct final rule (DFR) and withdrawing this NPRM. 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 the DFR if it receives significant adverse comment on the amendments contained in the DFR, and proceed with this NPRM 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 DFRs, but not others, it may (1) finalize those actions that did not

receive significant adverse comment, and (2) conduct further rulemaking under this NPRM for the actions that received significant adverse comment. The comment period for this NPRM runs concurrently with that of the DFR. Therefore, any comments received under this NPRM will be treated as comments regarding the DFR. Similarly, OSHA will consider a significant adverse comment submitted to the DFR as a comment to this NPRM; 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, 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 proposed standard. The Agency is issuing this proposed standard 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 proposing to amend 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; Pub. L. 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: 1-800-344-3555; 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: 1-800-344-3555; e-mail: custserv@nfpa.org.

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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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