

## 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](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.<sup>1</sup>

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:<sup>2</sup> “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”)<sup>3</sup> 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. Kennebec 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.”<sup>4</sup> This section also states, “Where specified, the provisions of this standard shall be retroactive.”<sup>5</sup> 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

<sup>1</sup> Note that both of these flow-rate provisions are advisory, not mandatory.

<sup>2</sup> See paragraph 5.2.1 of the 1966 edition, and the first paragraph of section 6.1 of the 2003 edition.

<sup>3</sup> Section 5.3 of the 1966 version regulates the withdrawal of acetylene from cylinders.

<sup>4</sup> 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.

<sup>5</sup> 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 NFPA 51A–2006.<sup>6</sup> 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.

#### 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

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

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](mailto: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](mailto: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](mailto: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.

[FR Doc. E9-18644 Filed 8-10-09; 8:45 am]

BILLING CODE 4510-26-P