

**North Carolina Department of Labor  
Division of Occupational Safety and Health**

**Raleigh, NC**

Chapter 7  
Subchapter 7F

CFR Revision 174B

Field Information System  
**Occupational Exposure to Hexavalent Chromium**  
**29 CFR 1910.1026**  
**29 CFR 1915.1026**  
**29 CFR 1926.1126**

Direct Final Rule; Revising Notification Requirements  
in Employee Exposure Determination

A. **Discussion.**

On February 28, 2006, OSHA published a final rule for Occupational Exposure to Hexavalent Chromium (Cr(VI)). Public Citizen Health Research Group (Public Citizen) and other parties petitioned for review of the standard in the United States Court of Appeals for the Third Circuit. The court denied the petitions for all but one issue. The Third Circuit court directed OSHA to either provide an explanation for its decision to limit employee notification requirements to circumstances in which Cr(VI) exposures exceed the permissible exposure limit (PEL) or take other appropriate action with respect to that paragraph of the standard.

Following a review of the rulemaking record on this issue and the provision in question, OSHA has decided to revise the notification requirements, by means of a direct final rule (DFR), to require employers to notify employees of the results of all exposure determinations. Confirmation of the effective date of the DFR was published on May 14, 2010.

B. **Action.**

The N.C. Commissioner of Labor adopted this direct final rule verbatim with an effective date of July 1, 2010. Refer to the 03/17/2010 *Federal Register* (Vol. 75, No. 51) and 05/14/2010 *Federal Register* (Vol. 75, No. 93) for the details related to these requirements.

Signed on Original  
Allen McNeely

7/15/2010  
Date of Signature

NC Effective Date: July 1, 2010

NCAC Number: 13 NCAC 7F.0100, 13 NCAC 7F.0200, and 13 NCAC 7F.0500

## DEPARTMENT OF LABOR

## Occupational Safety and Health Administration

## 29 CFR Parts 1910, 1915, and 1926

[Docket No. OSHA-H054a-2006-0064]

RIN 1218-AC43

## Revising the Notification Requirements in the Exposure Determination Provisions of the Hexavalent Chromium Standards

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

**ACTION:** Direct final rule.

**SUMMARY:** On February 28, 2006, OSHA published a final rule for Occupational Exposure to Hexavalent Chromium (Cr(VI)). Public Citizen Health Research Group (Public Citizen) and other parties petitioned for review of the standard in the United States Court of Appeals for the Third Circuit. The court denied the petitions for review on all but one issue. The Third Circuit remanded the employee notification requirements in the standard's exposure determination provisions for further consideration. More specifically, the court directed the Agency to either provide an explanation for its decision to limit employee notification requirements to circumstances in which Cr(VI) exposures exceed the permissible exposure limit (PEL) or take other appropriate action with respect to that paragraph of the standard. After reviewing the rulemaking record on this issue, and reconsidering the provision in question, OSHA has decided to revise the notification requirements, by means of this direct final rule, to require employers to notify employees of the results of all exposure determinations.

**DATES:** This direct final rule will become effective on June 15, 2010 unless significant adverse comment is submitted (transmitted, postmarked, or delivered) by April 16, 2010. Comments to this direct final rule, hearing requests, and other information must be submitted (transmitted, postmarked, or delivered) by April 16, 2010. All submissions must bear a postmark or provide other evidence of the submission date.

**ADDRESSES:** You may submit comments, hearing requests, and other materials, identified by Docket No. OSHA-H054a-2006-0064, by any of the following methods:

*Electronically:* You may submit comments and attachments electronically at <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). You can fax these documents to the OSHA Docket Office at (202) 693-1648; hard copies of these documents are not required. Instead of transmitting facsimile copies of attachments that supplement these documents (e.g., studies, journal articles), commenters must submit these attachments 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, the date, and the Docket No. (OSHA-H054a-2006-0064) so that the Agency can attach them to the appropriate document.

*Regular mail, express delivery, hand (courier) delivery, and messenger service:* Submit comments and any additional material to the OSHA Docket Office, Docket No. OSHA-H054a-2006-0064 or RIN No. 1218-AC43, 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 procedures may delay OSHA's receipt of comments and other written materials submitted 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. Deliveries (hand, express mail, messenger service) are accepted during the Docket Office's normal business hours, 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-H054a-2006-0064). Comments and other material, including any personal information, will be 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.

*Docket:* To read or download comments or other material in the docket, go to <http://www.regulations.gov> or to the OSHA Docket Office at the address above. Documents in the docket are listed in the <http://www.regulations.gov> index; 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:** For general information and press inquiries contact Ms. 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. For technical inquiries, contact Maureen Ruskin, Office of Chemical Hazards-Metals, Directorate of Standards and Guidance, Room N-3718, OSHA, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; telephone: (202) 693-1950; fax: (202) 693-1678. Copies of this **Federal Register** notice are available from the OSHA Office of Publications, Room N-3101, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693-1888. Electronic copies of this **Federal Register** notice, as well as news releases and other relevant documents, are available at OSHA's Web page at <http://www.osha.gov>.

**SUPPLEMENTARY INFORMATION:**

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**I. Request for Comment**

OSHA requests comments on all issues related to this action including economic or other regulatory impacts of this action on the regulated community. If OSHA receives no significant adverse comment, OSHA will publish a **Federal Register** document confirming the effective date of this direct final rule and withdrawing the companion proposed rule published in the Proposed Rules section of today's **Federal Register**. Such confirmation may include minor stylistic or technical changes to the document. For the

purpose of judicial review, OSHA views the date of confirmation of the effective date of this direct final rule as the date of promulgation.

## II. Direct Final Rulemaking

In direct final rulemaking, an agency publishes a direct final rule in the **Federal Register** with a statement that the rule will go into effect unless significant adverse comment is received within a specified period of time. An identical proposed rule is often published at the same time. If a significant adverse comment is not submitted in response to the direct final rule, the rule goes into effect. If a significant adverse comment is received, the agency withdraws the direct final rule and treats such comment as a response to the proposed rule. Direct final rulemaking is typically used where an agency anticipates that a rule will not be controversial. Examples include minor substantive changes to regulations, direct incorporations of mandates from new legislation, and in this case, minor changes to regulations resulting from a judicial remand.

For purposes of this direct final rule, a significant adverse comment is one that explains why the amendments being made to OSHA's standards would be inappropriate. In determining whether a comment necessitates withdrawal of the direct final rule, the Agency 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 an additional amendment to be a significant adverse comment unless the comment states why the direct final rule would be ineffective without the addition. If timely significant adverse comment is received, OSHA will publish a notice of significant adverse comment in the **Federal Register** withdrawing this direct final rule no later than May 17, 2010.

OSHA is publishing a companion proposed rule along with this direct final rule. The comment period for the proposed rule runs concurrently with that of the direct final rule. Comments received on the companion proposed rule will also be treated as comments regarding the direct final rule. Likewise, significant adverse comment submitted to the direct final rule will also be considered as comment to the companion proposed rule.

If OSHA receives a significant adverse comment on this direct final rule, the Agency will publish a timely withdrawal of this direct final rule and proceed with the companion proposed

rule that was published in the Proposed Rule's section of today's **Federal Register**. In the event OSHA withdraws the direct final rule because of significant adverse comment, the Agency will consider all comments received when it continues with the proposed rule. OSHA will then decide whether to publish a new final rule.

OSHA determined that the subject of this rulemaking is suitable for direct final rulemaking. This amendment to the standard does not compromise the safety or health of employees. Indeed, OSHA anticipates that employee protection will be enhanced by the amended standard, which will require employers to notify affected employees of all exposure determination results. This amendment to the standard will not alter any other substantive requirements of the exposure determination provisions, *i.e.*, the amendment does not change any of the requirements for when or how employers must determine their employees' Cr(VI) exposures. The amendment made herein simply expands the circumstances in which employers must notify affected employees, either through posting or direct written notice, of the results of required exposure determinations. The burden on the regulated community as a result of this change will not be significant. For these reasons, OSHA does not expect objections from the public.

## III. Discussion of Changes

Paragraph (d) of the chromium (VI) standard (29 CFR 1910.1026, 29 CFR 1915.1026, 29 CFR 1926.1126) (71 FR 10100) is titled "Exposure Determination" and requires employers to determine the 8-hour time-weighted-average exposure for each employee exposed to Cr(VI). This can be done through scheduled air monitoring (paragraph (d)(2)) or on the basis of any combination of air monitoring data, historical monitoring data, and/or objective data (paragraph (d)(3)). As originally promulgated, paragraph (d)(4) required the employer to notify affected employees of any exposure determinations indicating exposures in excess of the PEL. The employer could satisfy this requirement either by posting the exposure determination results in an appropriate location accessible to all affected employees or by notifying each affected employee in writing of the results of the exposure determination. Under the general industry standard, notice has to be provided within 15 work days, and in construction and maritime employers

have 5 work days to provide the required notice.

The requirement to notify employees of exposures above the exposure limit was consistent with Section 8(c)(3) of the Occupational Safety and Health Act of 1970 (OSH Act), which requires employers "to promptly notify any employee who has been or is being exposed to toxic materials or harmful physical agents \* \* \* at levels which exceed those prescribed by an applicable occupational safety and health standard," 29 U.S.C. 657(c)(3). The promulgated notice requirement was more limited than the proposed chromium standard (69 FR 59306, Oct. 4, 2004), however. The proposed standard would have required employers to notify affected employees of all exposure determinations, irrespective of the results. The broader, proposed notice requirement mirrored similar provisions in OSHA's other substance-specific health standards including, but not limited to, lead (29 CFR 1910.1025(d)(8)(i)); arsenic (29 CFR 1910.1018(e)(5)(i)); methylenedianiline (29 CFR 1910.1050(e)(7)(i)); butadiene (29 CFR 1910.1051(d)(7)(i)); and methylene chloride (29 CFR 1910.1052(d)(5)(i)). All of those other standards require employers to notify employees of all exposure monitoring results.

Public Citizen and other parties petitioned for review of the final chromium standard. (*See Public Citizen Health Research Group v. Dept. of Labor*, 557 F.3d 165 (3d Cir. 2009)). Part of Public Citizen's petition involved a challenge to paragraph (d)(4). Public Citizen argued that OSHA's decision to depart from the proposed rule and limit the employee notification requirement to exposures above the PEL was arbitrary and unexplained. Although OSHA defended the final notification provision on many grounds, including that it was consistent with Section 8(c)(3) of the OSH Act, the Third Circuit granted Public Citizen's petition for review with regard to the employee notification requirement (while denying all other challenges to the standard). *See* Public Citizen, 557 F.3d at 185–86. The court found that "OSHA failed to provide a statement of reasons for departing from the proposed standard and past practice in other standards," *id.* at 186, and remanded paragraph (d)(4) to the agency "for further consideration and explanation." *Id.* at 191. The court "expect[ed] . . . OSHA [to] \* \* \* act expeditiously in either providing an explanation for its chosen notification requirements or taking such further action as may be appropriate." *Id.* at 192.

In response to the Third Circuit's decision, OSHA re-examined the record. The Agency did not find any comments or testimony in the record on the narrow issue of whether employees should be notified of all exposure determinations. OSHA also confirmed that all of its other substance-specific health standards have broader notification requirements than the 2006 Cr(VI) standard, *i.e.*, they require employers to notify employees of exposures even below the relevant exposure limits. *See, e.g.*, lead (29 CFR 1910.1025(d)(8)(i)); arsenic (29 CFR 1910.1018(e)(5)(i)); methylenedianiline (29 CFR 1910.1050(e)(7)(i)); butadiene (29 CFR 1910.1051(d)(7)(i)); and methylene chloride (29 CFR 1910.1052(d)(5)(i)).

Upon reconsidering this issue, OSHA has decided to take action, by means of this notice, to amend the notification requirements in the Cr(VI) standards. Consistent with the language in the proposed chromium standard, as well as past practice in OSHA's other substance-specific health standards, the amended provision requires employers to notify affected employees of all exposure determinations, whether above or below the PEL. OSHA is not changing any other requirements in the exposure determination or notification provisions. For example, the number of work days employers have to provide notice to employees will remain unchanged.

In the preamble to the final Cr(VI) standard, OSHA concluded that employees were exposed to significant risk at the previous PEL for Cr(VI) of 52  $\mu\text{g}/\text{m}^3$  and that lowering the PEL to 5  $\mu\text{g}/\text{m}^3$  substantially reduced that risk. 71 FR at 10223–25. Feasibility considerations led OSHA to set the PEL at 5  $\mu\text{g}/\text{m}^3$ , even though the Agency recognized that significant risk remained at lower levels. *See id.* at 10333–39. For example, OSHA still expected 2.1–9.1 excess lung cancer deaths per 1000 workers with a lifetime of regular exposure to Cr(VI) at 1  $\mu\text{g}/\text{m}^3$ . *See id.* at 10224 (Table VII–1). OSHA explained in the preamble to the final rule that the ancillary provisions of the standard, *e.g.*, monitoring and medical surveillance requirements, were expected to reduce the residual risk remaining at the final PEL. *Id.* at 10334. OSHA believes that this amendment to the notification requirement will, in addition to the other ancillary requirements, further reduce the risk of health impairment associated with Cr(VI) exposures below 5  $\mu\text{g}/\text{m}^3$ .

Notifying employees of their exposures arms them with knowledge that can permit and encourage them to be more proactive in working safely to

control their own exposures through better work practices and by more actively participating in safety programs. As OSHA noted with respect to its Hazard Communication Standard: “Workers provided the necessary hazard information will more fully participate in, and support, the protective measures instituted in their workplaces.” 59 FR 6126, 6127 (Feb. 9, 1994). Exposures to Cr(VI) below the PEL may still be hazardous, and making employees aware of such exposures may encourage them to take whatever steps they can, as individuals, to reduce their exposures as much as possible.

This may be of particular significance for welders, who make up almost half of the employees affected by the chromium standard. *See* 71 FR at 10257–59 (Table VIII–3). Welders have a unique ability to control their own Cr(VI) exposures by making simple changes in their work practices, *e.g.*, changes in technique, posture or in the proper positioning of portable local exhaust ventilation (LEV). *See, e.g.*, Shaw Environmental, Inc., *Cost and Economic Impact Analysis of a Final OSHA Standard for Hexavalent Chromium*, Chapter 2–Welding, Docket No. OSHA–H054a–2006–0064, Document No. 2541, page 2–156 (“Another environmental variable is the variation in welding technique and posture used by different welders. Small differences in the welder's body position in relation to the welding task, the welder's body position in relation to the weld, and any LEV may create large differences in an individual's fume exposure. Welder information and training should reduce the occurrence of this poor work practice.”)

#### IV. Legal Considerations

The purpose of the OSH Act 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), 658. A safety or health standard is a standard that “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 and places of employment.” 29 U.S.C. 652(8). A standard is reasonably necessary or appropriate when a significant risk of material harm exists in the workplace and the standard would substantially reduce or eliminate that workplace risk. *See* Industrial Union Department, *AFL–*

*CIO v. American Petroleum Inst.*, 448 U.S. 607 (1980) (plurality opinion).

This direct final rule will not diminish the employee protections put into place by the standard being amended. In fact, the amendment is expected to enhance the health benefits of the Cr(VI) standard by providing employees with more information about their exposure levels. Because OSHA previously determined that the Cr(VI) standard substantially reduces a significant risk, 71 FR at 10223–25, it is unnecessary for the Agency to make additional findings on risk for purposes of the minor amendment being made to the exposure determination provisions. *See, e.g.*, *Public Citizen Health Research Group v. Tyson*, 796 F.2d 1479, 1502 n.16 (DC Cir. 1986) (rejecting the argument that OSHA must “find that each and every aspect of its standard eliminates a significant risk.”)

#### V. Final Economic Analysis and Regulatory Flexibility Act Certification

This direct final rule is not economically significant within the context of Executive Order (“E.O.”) 12866 (58 FR 51735 (Oct. 4, 1993)), nor is it a “major rule” under Section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996 (“SBREFA”; 5 U.S.C. 804).

As described previously, this action simply amends the notification requirement in the Cr(VI) rule. As originally promulgated, the standard required employers to notify employees of overexposures. This amendment requires employers to notify employees of all exposure determinations, irrespective of exposure levels.

In OSHA's Final Economic and Regulatory Flexibility Analysis (FEA) for the final standard (Docket No. OSHA–H054a–2006–0064, Document No. 2524), the Agency carried forward the methodology that it used to derive cost estimates for the broader notification requirement in the proposed Cr(VI) standard. That cost methodology is described in detail in the final contractor report supporting OSHA's FEA. *See* (Docket No. OSHA–H054a–2006–0064, Document No. 2577, pages III–5–III–16). There, OSHA's contractor, Shaw Environmental, Inc. (Shaw), conservatively assigned costs assuming that employers would be notifying all affected employees of all exposure determinations, irrespective of exposure level. OSHA included those notification costs in the costs for Exposure Monitoring that were presented in tables in the executive summary and cost chapters of the FEA. *See, for example*, Docket No. OSHA–H054a–2006–0064, Document Nos. 2524

(page ES-48, Table ES-4) and 2528 (page IV-11, Table IV-4).

Among the notification costs included in the FEA are information collection expenditures subject to the Paperwork Reduction Act of 1995 (PRA-95). OSHA's analysis of the paperwork burden of the amended notification provision is presented in the next section and details the incremental expense, in terms of time and labor costs, that employers will likely incur as a result of this revision to the standard. As described in that section, notification costs will increase by \$1.5 million and therefore will total approximately \$2.1 million, up from \$0.5 million as reported in the 2006 Paperwork statement accompanying the final rule.

Because OSHA assigned costs for employers notifying workers whose exposure levels were below the PEL, and who therefore were not actually subject to the notification requirement in the final standard, that methodology originally had the effect of overestimating costs and impacts relative to the actual burden facing employers. With the amendment to the notification requirement, however, the FEA's cost estimates will more accurately represent the costs employers are expected to incur. Because in the original FEA those costs were judged to be economically feasible, OSHA has concluded that this revision, which imposes no additional burden from the standpoint of the economic analysis, is also feasible.

OSHA is not changing any of the monitoring or exposure characterization requirements in the final standard. The amended notification provision, when compared to the standard as originally promulgated, will simply require employers to post more names or send more individual notices after exposure determinations are made. In OSHA's view, these costs are not significant and, as indicated above, are economically feasible. Therefore, OSHA certifies that this action will not have a significant impact on a substantial number of small entities and the Agency will not have to prepare a regulatory flexibility analysis for this rulemaking under SBREFA (5 U.S.C. 601 *et seq.*).

#### VI. OMB Review Under the Paperwork Reduction Act of 1995

The direct final rule amends a notification requirement that is subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (PRA-95), 44 U.S.C. 3501 *et seq.*, and OMB's regulations at 5 CFR part 1320. The information collection requirements ("paperwork") currently contained in

the Chromium VI (Cr(VI)) standard are approved by OMB (Information Collection Request (ICR), *Chromium (VI) Standards for General Industry* (29 CFR 1910.1026), *Shipyard Employment* (29 CFR 1915.1026), and *Construction* (29 CFR 1926.1126)), under OMB Control Number 1218-0252. The Department notes that a Federal agency cannot conduct or sponsor a collection of information unless it is approved by OMB under the PRA and displays a currently valid OMB control number, and the public is not required to respond to a collection of information requirement unless it displays a currently valid OMB control number. Also, notwithstanding any other provisions of law, no person shall be subject to penalty for failing to comply with a collection of information requirement if the requirement does not display a currently valid OMB control number.

On June 22, 2009, OSHA published a preclearance **Federal Register** Notice, Docket No. OSHA-2009-0015, as specified in PRA-95 (44 U.S.C. 3506(c)(2)(A)), allowing the public 60 days to comment on a proposal to extend OMB's approval of the information collection requirements in the Cr(VI) standard (74 FR 29517). This Notice also served to inform the public that OSHA was considering revising the notification requirements in the exposure determination provision in response to the court-ordered remand. At that point OSHA estimated the new burden hours and costs that would result from this potential amendment to the standard, and the public had sixty days to comment on those estimates in accordance with the PRA, 44 U.S.C. 3506(c)(2). OSHA estimated that a requirement to notify employees of all exposure determination results would result in an increase of 62,575 burden hours and would increase employer cost, in annualized terms, by \$1,526,731.

The pre-clearance **Federal Register** comment period closed on August 22, 2009. OSHA did not receive public comments on that notice. On October 30, 2009, DOL published a **Federal Register** notice announcing that the Cr(VI) ICR had been submitted to OMB (74 FR 56216) for review and approval, and that interested parties had until November 30, 2009, to submit comments to OMB on that submission. No comments were received in response to that Notice either.

Now that OSHA is amending the Cr(VI) standard via this direct final rule, the Agency will provide an additional thirty days for the public to comment on

the estimated paperwork implications of the revised notification requirements.

**Inquiries:** You may obtain an electronic copy of the complete Cr(VI) ICR at <http://www.reginfo.gov/public/do/PRAMain>, scroll under "Inventory of Approved Collections, Collections Under Review, Recently Approved/Expired" to "Department of Labor (DOL)" to view all of the DOL's ICRs, including those ICRs submitted for rulemakings. The Department's ICRs are listed by OMB control number. The Cr(VI) OMB Control Number is 1218-0252. To make inquiries, or to request other information, contact 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.

**Submitting comments:** Members of the public who wish to comment on the estimated burden hours and costs attributable to the amendment to the notification provision, as described in the Cr(VI) ICR, may send their written comments to the Office of Information and Regulatory Affairs, Attn: OSHA Desk Officer (RIN 1218-AC43), Office of Management and Budget, Room 10235, 725 17th Street, NW., Washington, DC 20503. The Agency encourages commenters to also submit their comments on these paperwork requirements to the rulemaking docket (Docket No. OSHA-H054a-2006-0064). For instructions on submitting these comments to the rulemaking docket, see the sections of this **Federal Register** notice titled **DATES** and **ADDRESSES**.

#### VII. 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 is to be limited to the extent possible.

Under Section 18 of the Occupational Safety and Health Act of 1970 ("OSH Act"; 29 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 under State law their own requirements for safety and health standards.

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 does not significantly limit State policy options.

#### VIII. State Plan States

When Federal OSHA promulgates a new standard or more stringent amendment to an existing standard, the 27 States and 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 “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 promulgation date of the final Federal rule. When OSHA promulgates a new standard or amendment that does not impose additional or more stringent requirements than an existing standard, State Plan States are not required to amend their standards, although the Agency may encourage them to do so. The 27 States and U.S. Territories with OSHA approved occupational safety and health plans are: Alaska, Arizona, California, Hawaii, Indiana, Iowa, Kentucky, Maryland, Michigan, Minnesota, Nevada, New Mexico, North Carolina, Oregon, Puerto Rico, South Carolina, Tennessee, Utah, Vermont, Virginia, Washington, and Wyoming; Connecticut, Illinois, New Jersey, New York, and the Virgin Islands have OSHA approved State Plans that apply to State and local government employees only.

With regard to this direct final rule, the amended requirement would result in a somewhat more stringent requirement in regulations for Cr(VI) exposure. Therefore, States and Territories with approved State Plans

must adopt comparable amendments to their standards for hexavalent chromium within six months of the promulgation date of this amendment unless they demonstrate that such a change is not necessary because their existing standards are already the same as or at least as effective as the amended Cr(VI) standard.

#### IX. Unfunded Mandates Reform Act

OSHA reviewed this direct final rule according to the Unfunded Mandates Reform Act of 1995 (“UMRA”; 2 U.S.C. 1501 *et seq.*) and Executive Order 12875 (58 FR 58093). As discussed above in Section V (“Economic Analysis and Regulatory Flexibility Certification”) of this preamble, the Agency determined that this direct final rule does not impose significant additional costs on any private-or public-sector entity. Accordingly, this direct final rule does not require significant additional expenditures to either public or private employers.

As noted above under Section VIII (“State-Plan States”), 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.

#### List of Subjects

##### 29 CFR Part 1910

Exposure determination, General industry, Health, Hexavalent chromium Cr(VI), Notification of determination results to employees, Occupational safety and health.

##### 29 CFR Part 1915

Exposure determination, Health, Hexavalent chromium (Cr(VI)), Notification of determination results to employees, Occupational safety and health, Shipyard employment.

##### 29 CFR Part 1926

Construction, Exposure determination, Health, Hexavalent chromium (Cr(VI)), Notification of determination results to employees, Occupational safety and health.

#### Authority and Signature

David Michaels, PhD MPH, 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 direct final rule. The Agency is issuing this rule 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 March 11, 2010.

**David Michaels,**

*Assistant Secretary of Labor for Occupational Safety and Health.*

#### Amendments to Standards

■ For the reasons stated in the preamble, OSHA is amending 29 CFR parts 1910, 1915, and 1926 to read as follows:

#### PART 1910—OCCUPATIONAL SAFETY AND HEALTH STANDARDS [AMENDED]

##### Subpart A—General

■ 1. The authority citation for subpart A of part 1910 is revised to read as follows:

**Authority:** Sections 4, 6, and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, and 657); Secretary of Labor’s Order No. 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 31160), as applicable.

Sections 1910.7, 1910.8, and 1910.9 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).

##### Subpart Z—Toxic and Hazardous Substances

■ 2. The authority citation for subpart Z of Part 1910 is revised to read as follows:

**Authority:** Secs. 4, 6, 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, and 657); Secretary of Labor’s Order No. 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 31160), as applicable; and 29 CFR part 1911.

All of subpart Z issued under section 6(b) of the Occupational Safety and Health Act of 1970, except those substances that have exposure limits listed in Tables Z–1, Z–2, and Z–3 of 29 CFR 1910.1000. The latter were issued under section 6(a) (29 U.S.C. 655(a)).

Section 1910.1000, Tables Z–1, Z–2, and Z–3 also issued under 5 U.S.C. 553, but not

under 29 CFR part 1911 except for the arsenic (organic compounds), benzene, cotton dust, and chromium (VI) listings.

Section 1910.1001 also issued under section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3704) and 5 U.S.C. 553.

Section 1910.1002 also issued under 5 U.S.C. 553, but not under 29 U.S.C. 655 or 29 CFR part 1911.

Sections 1910.1018, 1910.1029, and 1910.1200 also issued under 29 U.S.C. 653.

Section 1910.1030 also issued under Public Law 106–430, 114 Stat. 1901.

■ 3. Section 1910.1026 is amended by revising paragraph (d)(4)(i), to read as follows:

#### § 1910.1026 Chromium (VI)

\* \* \* \* \*

(d) \* \* \*

(4) \* \* \*

(i) Within 15 work days after making an exposure determination in accordance with paragraph (d)(2) or paragraph (d)(3) of this section, the employer shall individually notify each affected employee in writing of the results of that determination or post the results in an appropriate location accessible to all affected employees.

\* \* \* \* \*

### PART 1915—OCCUPATIONAL SAFETY AND HEALTH STANDARDS FOR SHIPYARD EMPLOYMENT [AMENDED]

#### Subpart A—General Provisions

■ 4. The authority citation for part 1915 will continue to read as follows:

**Authority:** Section 41, Longshore and Harbor Workers' Compensation Act (33 U.S.C. 941); Sections 4, 6, and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736), 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 31160) as applicable; 29 CFR Part 1911.

#### Subpart Z—Toxic and Hazardous Substances

■ 5. Section 1915.1026, is amended by revising paragraph (d)(4)(i), to read as follows:

#### § 1915.1026 Chromium (VI)

\* \* \* \* \*

(d) \* \* \*

(4) \* \* \*

(i) Within 5 work days after making an exposure determination in accordance with paragraph (d)(2) or paragraph (d)(3) of this section, the employer shall individually notify each affected employee in writing of the results of that determination or post the

results in an appropriate location accessible to all affected employees.

\* \* \* \* \*

### PART 1926—SAFETY AND HEALTH REGULATIONS FOR CONSTRUCTION [AMENDED]

#### Subpart A—General

■ 6. The authority citation for subpart A of part 1926 is revised to read as follows:

**Authority:** Section 3704 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3701 *et seq.*); sections 4, 6, and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, and 657); Secretary of Labor's Order No. 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 31160) as applicable; and 29 CFR part 1911.

#### Subpart Z—Toxic and Hazardous Substances

■ 7. The authority citation for subpart Z of part 1926 is revised to read as follows:

**Authority:** Section 3704 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3701 *et seq.*); 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 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 (62 FR 50017), 5–2002 (67 FR 65008), or 5–2007 (72 FR 31160) as applicable; and 29 CFR part 11.

#### Section 1926.1102 of 29 CFR Not Issued Under 29 U.S.C. 655 or 29 CFR Part 1911; Also Issued Under 5 U.S.C. 553

■ 8. Section 1926.1126, is amended by revising paragraph (d)(4)(i), to read as follows:

#### § 1926.1126 Chromium (VI)

\* \* \* \* \*

(d) \* \* \*

(4) \* \* \*

(i) Within 5 work days after making an exposure determination in accordance with paragraph (d)(2) or paragraph (d)(3) of this section, the employer shall individually notify each affected employee in writing of the results of that determination or post the results in an appropriate location accessible to all affected employees.

\* \* \* \* \*

[FR Doc. 2010–5734 Filed 3–16–10; 8:45 am]

BILLING CODE 4510–26–P

### DEPARTMENT OF HOMELAND SECURITY

#### Coast Guard

#### 33 CFR Part 117

[Docket No. USCG–2009–0839]

RIN 1625–AA09

#### Drawbridge Operation Regulation; Bullards Ferry Bridge, Coquille River, Bandon, OR

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary rule.

**SUMMARY:** The Coast Guard is temporarily changing the drawbridge operation regulation for the U.S. Highway 101 Bullards Ferry Bridge that crosses over the Coquille River at mile 3.5 near Bandon, Oregon so that the vertical lift span will not need to open for ten months while the bridge is being painted. The rule is necessary to ensure that the painting operation will not be disrupted by bridge openings. The bridge has not had to be opened for a vessel in seven years.

**DATES:** This temporary final rule is effective from May 1, 2010 until on March 1, 2011.

**ADDRESSES:** Comments and related materials received from the public, as well as documents mentioned in this preamble as being available in the docket, are part of docket USCG–2009–0839 and are available online by going to <http://www.regulations.gov>, inserting USCG–2009–0839 in the “Keyword” box, and then clicking “Search.” This material is 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 temporary rule, call or email Austin Pratt, Chief, Bridge Section, Waterways Management Branch, Thirteenth Coast Guard District; telephone 206–220–7282, e-mail [william.a.pratt@uscg.mil](mailto:william.a.pratt@uscg.mil). If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

#### SUPPLEMENTARY INFORMATION:

##### Regulatory Information

On December 10, 2009, we published a notice of proposed rulemaking (NPRM) entitled Drawbridge Operation Regulation; Bullards Ferry Bridge, Bandon, OR, in the **Federal Register** (74