

North Carolina Department of Labor
Division of Occupational Safety and Health

Raleigh, NC

Chapter 7
Subchapter 7F

CFR Revision 179

Field Information System

Correction and Technical Amendments to 16 OSHA Standards

29 CFR Part 1910

29 CFR Part 1915

29 CFR Part 1926

Final Rule

A. **Discussion.**

On December 27, 2011, OSHA issued this notice of corrections and technical amendments. This rule corrects typographical errors in, and makes non-substantive technical amendments to, 16 OSHA standards. The technical amendments include updating or revising cross-references and updating OSHA recordkeeping log numbers.

B. **Action.**

The N.C. Commissioner of Labor adopted this final rule verbatim with an effective date of June 11, 2012. Refer to the 12/27/2011 *Federal Register* (Vol. 76, No. 248) for the details related to these requirements.

Signed on Original
Allen McNeely
Director

6/18/2012
Date of Signature

NC Effective Date: June 11, 2012

NCAC Number: 13 NCAC 7F.0101, 7F.0201, and 7F.0502

advisors must be registered with the Commission under a permanent registration regime.

Since the Commission is only extending the expiration date for Rule 15Ba2-6T and is not substantively changing Rule 15Ba2-6T and Form MA-T, the Commission's estimated burden for each municipal advisor to complete and amend Form MA-T remains unchanged.¹⁸ However, the Commission estimates that as a result of the amendment, approximately 162¹⁹ new municipal advisors will register between January 1, 2012 and September 30, 2012 at a total labor cost of approximately \$168,000.²⁰ With regard to the 162 new municipal advisors and the municipal advisors already registered pursuant to Rule 15Ba2-6T, the Commission estimates that, between January 1, 2012 and September 30, 2012, there will be approximately 160²¹ amendments and withdrawals at a total labor cost of approximately \$22,000.²²

¹⁸ The Commission notes that in the Interim Release, it had estimated that approximately 1,000 municipal advisors would be required to complete Form MA-T. See Interim Release, *supra* note 6 at 54473. It further conservatively estimated that all 1,000 municipal advisors would have to amend their forms once between September 1, 2010 and December 31, 2011, recognizing that the actual number would likely be lower than 1,000. See *id.* As of November 31, 2011, the Commission has received 967 initial registrations, 102 amendments and 33 withdrawals.

¹⁹ The Commission estimates that, between January 1, 2012 and September 30, 2012, there will be approximately 18 initial registrations per month, which is the average number of initial registrations the Commission has received per month during the first eleven months of 2011.

²⁰ 162 (estimated number of initial registrations) × 2.5 hours (estimated time to complete Form MA-T) = 405 hours; 405 hours × \$273 (hourly rate for a Compliance Manager) = \$110,565. 162 (estimated number of new municipal advisors that will hire outside counsel) × 1 hour (estimated time spent by outside counsel to help a new municipal advisor to comply with the rule) × \$354 (hourly rate for an Attorney) = \$57,348. \$110,565 + \$57,348 = \$167,913. See Interim Release, *supra* note 6 at 54473-74. The estimated burden for each municipal advisor to complete Form MA-T and the estimated use of outside counsel by each municipal advisor remains unchanged from the Interim Release. The \$273 per hour figure for a Compliance Manager and the \$354 per hour figure for an Attorney are from SIFMA's *Management & Professional Earnings in the Securities Industry 2010*, modified by Commission staff to account for an 1,800-hour work year and multiplied by 5.35 to account for bonuses, firm size, employee benefits and overhead.

²¹ The Commission estimated the number of amendments and withdrawals based on the number of amendments to, and withdrawals from, registration on Form MA-T that the Commission has received as of November 31, 2011.

²² 160 (estimated number of amendments and withdrawals) × 0.5 hours (estimated time to amend Form MA-T) = 80 hours; 80 hours × \$273 (hourly rate for a Compliance Manager) = \$21,840. See Interim Release, *supra* note 6 at 54473-74. The \$273 per hour figure for a Compliance Manager is from SIFMA's *Management & Professional Earnings in the Securities Industry 2010*, modified by Commission staff to account for an 1,800-hour work

Section 3(f) of the Exchange Act requires the Commission, whenever it engages in rulemaking and is required to consider or determine whether an action is necessary or appropriate in the public interest, to consider, in addition to the protection of investors, whether the action would promote efficiency, competition and capital formation.²³ In addition, Section 23(a)(2) of the Exchange Act requires the Commission, when making rules under the Exchange Act, to consider the impact such rules would have on competition.²⁴ Section 23(a)(2) of the Exchange Act prohibits the Commission from adopting any rule that would impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act.²⁵ In the Interim Release, the Commission considered the effects of Rule 15Ba2-6T on efficiency, competition, and capital formation.²⁶ Since the Commission is not amending Rule 15Ba2-6T and Form MA-T other than extending the expiration date for Rule 15Ba2-6T, the Commission believes that the same analysis applies, and continues to believe that Rule 15Ba2-6T, as extended, will not result in a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act.

II. Statutory Authority and Text of Rule and Amendments

Pursuant to the Exchange Act, and particularly Section 15B (15 U.S.C. 78o-4), the Commission is amending § 240.15Ba2-6T of Title 17 of the Code of Federal Regulations in the manner set forth below.

List of Subjects in 17 CFR Part 240

Reporting and recordkeeping requirements, Municipal advisors, Temporary registration requirements.

Text of Rule and Amendments

For the reasons set out in the preamble, Title 17, Chapter II, of the Code of Federal Regulations is amended as follows.

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

■ 1. The general authority citation for Part 240 continues to read as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z-2, 77z-3, 77eee, 77ggg, 77nnn,

year and multiplied by 5.35 to account for bonuses, firm size, employee benefits and overhead.

²³ See 15 U.S.C. 78c(f).

²⁴ See 15 U.S.C. 78w(a)(2).

²⁵ See *id.*

²⁶ See Interim Release, *supra* note 6 at 54475.

77sss, 77ttt, 78c, 78d, 78e, 78f, 78g, 78i, 78j, 78j-1, 78k, 78k-1, 78l, 78m, 78n, 78o, 78o-4, 78p, 78q, 78s, 78u-5, 78w, 78x, 78ll, 78mm, 80a-20, 80a-23, 80a-29, 80a-37, 80b-3, 80b-4, 80b-11, and 7201 *et seq.*; 18 U.S.C. 1350; and 12 U.S.C. 5221(e)(3), unless otherwise noted.

* * * * *

§ 240.15Ba2-6T [Amended]

■ 2. In § 240.15Ba2-6T, remove the words "December 31, 2011" wherever they appear and add, in their place, the words "September 30, 2012".

By the Commission.

Dated: December 21, 2011.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2011-33146 Filed 12-23-11; 8:45 am]

BILLING CODE 8011-01-P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Parts 1910, 1915, and 1926

Corrections and Technical Amendments to 16 OSHA Standards

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

ACTION: Notice of corrections and technical amendments to standards.

SUMMARY: OSHA is correcting typographical errors in, and making non-substantive technical amendments to, 16 OSHA standards. The technical amendments include updating or revising cross-references and updating OSHA recordkeeping log numbers.

DATES: The effective date for the corrections and technical amendments to the standards is December 27, 2011.

FOR FURTHER INFORMATION CONTACT: *General information and press inquiries:*

Contact Frank Meilinger, Director, OSHA Office of Communications, Room N3647, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210; telephone: (202) 693-1999 or fax: (202) 693-1635.

Technical information: Contact Lisa Long, OSHA Directorate of Standards and Guidance, Room N3609, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210; telephone: (202) 693-2222.

SUPPLEMENTARY INFORMATION:

I. Summary and Explanation

OSHA is publishing technical amendments to 16 OSHA standards. These revisions do not affect the substantive requirements or coverage of

those standards, do not modify or revoke existing rights or obligations, and do not establish new rights or obligations.

A. Process Safety Management of Highly Hazardous Chemicals (§ 1910.119)

OSHA is correcting a typographical error in the reference to a chemical covered by the Process safety management of highly hazardous chemicals standard (29 CFR 1910.119; 57 FR 6403). Appendix A of the standard lists the covered chemicals. The chemical Oleum appears in Appendix A with an incorrect Chemical Abstracts Service (CAS) number of 8014-94-7. The correct CAS number for Oleum is 8014-95-7 (see The Merck Index, 13th Edition (2001)), and OSHA is correcting this error.

B. Hazardous Waste Operations and Emergency Response (§ 1910.120)

OSHA is updating a citation in the Hazardous waste operations and emergency response (HAZWOPER) Standard (29 CFR 1910.120; 54 FR 9294). In paragraph (a)(3) of the standard, OSHA defines the term "hazardous substance." In that definition, OSHA refers to "Section 101(14)" of the Comprehensive Environmental Response Compensation, and Liability Act (CERCLA) (42 U.S.C. 9601). After OSHA published the standard, Congress redesignated Section 101(14) of CERCLA as Section 103(14). OSHA is revising the definition to include the new citation.

C. Permit-Required Confined Spaces (§ 1910.146)

OSHA is correcting a cross-reference in the Permit-required confined spaces standard (29 CFR 1910.146; 58 FR 4549). Paragraph (d)(4) of the standard lists equipment that the employer must provide and maintain for permit-space entry. Specifically, paragraph (d)(4)(vi) requires that the employer provide barriers and shields "as required by paragraph (d)(3)(iv) of this section." Paragraph (d)(3) lists various means, procedures, and practices the employer must develop and implement for safe permit-space entry operations. When OSHA issued § 1910.146, paragraph (d)(3)(iv) listed as one of those practices "providing pedestrian, vehicle, or other barriers as necessary to protect entrants from external hazards." When OSHA revised § 1910.146 in 1998, it inserted a new practice as paragraph (d)(3)(ii) and renumbered the remaining practices (63 FR 230). Consequently, OSHA redesignated paragraph (d)(3)(iv) as paragraph (d)(3)(v). However, during that rulemaking, OSHA did not revise

the cross-reference to this provision. This notice corrects that oversight.

D. Medical Services and First Aid (§§ 1910.151 and 1926.50)

OSHA is updating cross-references in §§ 1910.151 and 1926.50, which establish requirements for medical services and first aid in general industry and construction, respectively. In 1998, OSHA added non-mandatory Appendix A to both standards to provide information about basic first-aid supplies and to instruct employers to use OSHA 200 logs and OSHA 101 forms to identify unique or changing first-aid needs.

After OSHA adopted Appendix A, it revised the rule on Recordkeeping and reporting occupational injuries and illnesses rule (29 CFR part 1904). As part of that rulemaking, OSHA revised the forms that employers must keep for recording and reporting workplace injuries and illnesses (§ 1904.29). OSHA replaced the 200 Log and Summary of Occupational Injuries and Illnesses with two separate forms—the OSHA 300 (Log of Work-Related Injuries and Illnesses) and the OSHA 300A (Summary of Work-Related Injuries and Illnesses). In addition, OSHA replaced Form 101 (Supplementary Record of Occupational Injuries and Illnesses) with OSHA Form 301 (Injury and Illness Incident Report). During this rulemaking, OSHA planned to revise all references to the recordkeeping forms in other OSHA standards. However, OSHA overlooked the appendices in both §§ 1910.151 and 1926.50. This notice is updating those references.

E. Servicing Multi-Piece and Single-Piece Rim Wheels (§ 1910.177)

OSHA originally published the standard for servicing multi-piece rim wheels, § 1910.177, on January 29, 1980 (45 FR 6706). OSHA amended the standard on February 3, 1984, to incorporate servicing requirements for single-piece rim wheels, and to make minor revisions to the multi-piece rim wheel servicing provisions (49 FR 4338). Having developed its own charts in the interim by revising the National Highway Traffic Safety Administration (NHTSA) charts, OSHA amended the standard to include these revisions and indicate the availability of the new charts from OSHA (53 FR 34736).

Appendix B of the standard states that the regulated community can obtain copies of the OSHA charts entitled "Demounting and Mounting Procedures for Truck/Bus Tires" and "Multi-piece Rim Matching Chart" directly from OSHA. However, OSHA has not had copies of these charts available for

distribution for several years. Similarly, the NHTSA publications entitled "Demounting and Mounting Procedures Truck/Bus Tires" and "Multi-piece Rim Matching Chart" appear to be no longer available. Therefore, based on discussions with representatives from the tire, rubber, and wheel manufacturing industries, OSHA determined that new charts addressing current hazards in the tire-servicing industry are necessary.

Given the information technologies available in the 1980s, large posters containing the tire-servicing information appeared to OSHA to be the most effective means of providing workers with the information at the worksite necessary to perform tire-servicing operations safely. This approach involved printing and distributing large numbers of these posters. In updating this information, OSHA decided not to print large posters with the updated information, but to provide an 8½ inch by 11-inch printed manual containing this information that employers could use in the shop as an alternative to displaying the large posters. The manual would be more portable and accessible than a large poster, which employers typically mounted on a wall.

To reduce the distribution burden, OSHA will print and mail the manuals, but not the posters. The posters, as well as the manuals, will be available in electronic files (PDF) on the OSHA Web site at <http://www.osha.gov/publications> (and type "tire chart" in the search field). Since the file for the large poster will be available in various sizes (including 8½ inches by 11 inches), OSHA determined that, to be legible, posters located in the service area as specified by 29 CFR 1910.177(d)(5) must be at least 2 feet by 3 feet in size (*i.e.*, the size of the former posters supplied by OSHA).

OSHA also is revising the content of its two existing charts. The "Multi-piece Rim Matching Chart" will provide an updated list of multi-piece rim wheel components, both current and obsolete, while the "Demounting and Mounting Procedures for Truck/Bus Tires" chart will consist of two separate charts entitled "Demounting and Mounting Procedures for Tubeless Truck and Bus Tires" and "Demounting and Mounting Procedures for Tube-Type Truck and Bus Tires."

OSHA believes that the new charts will reduce tire-servicing accidents among employees and simplify compliance with the standard because the new charts summarize updated information from many sources, including the NHTSA and OSHA charts, rim manuals, and the OSHA standard,

and are more accessible and useable than the posters these charts are replacing. In addition, the updated manuals and posters will not increase the substantive obligation on employers under the standard to provide employees with tire-servicing information. Consistent with these revisions, OSHA is amending the definitions of “charts” in paragraph (b) of the standard to refer to the new Department of Labor charts (*i.e.*, manuals or posters), or to any other information or poster that provides at least the same instructions, safety precautions, and other information contained in OSHA’s charts, and that is applicable to the types of rim wheels the employer is servicing. In addition, OSHA is revising Appendix B to provide current ordering information for the new OSHA manuals.

F. Mechanical Power Presses (§ 1910.217)

The Mechanical power presses standard (29 CFR 1910.217) requires that employers submit to OSHA reports of employees injured while operating such presses. Paragraph (g)(1) specifies that employers must submit the reports to federal OSHA or, for state-plan states, the state agency administering the plan. OSHA is revising this provision to include the new title of the federal OSHA office designated to receive the reports, and to provide an electronic address for submitting reports, which the Paperwork Reduction Act and associated regulations (44 U.S.C. chapter 35; 5 CFR 1320.8(a)(5)) encourages.

G. Pulp, Paper, and Paperboard Mills (§ 1910.261)

OSHA is correcting three errors involving incorrect cross references in this standard. On June 18, 1998 (63 FR 33450), OSHA removed or revised provisions in its standards that were outdated, duplicative, unnecessary, or inconsistent. Among other revisions, this action deleted paragraphs (b)(1) and (b)(3) from this standard, which referenced outdated American National Standards Institute national consensus standards B15.1–1953, Safety Code for Mechanical Power-Transmission Apparatus, and A12.1–1967, Safety Requirements for Floor and Wall Openings, Railings, and Toeboards, respectively. However, in doing so, OSHA did not amend paragraphs (e)(12)(i), which references deleted paragraph (b)(3), or paragraph (e)(12)(ii), which references deleted paragraph (b)(1). In addition, with the deletion of paragraphs (b)(1), (b)(2), and (b)(3), OSHA redesignated paragraph (b)(4) as

paragraph (b)(1). However, OSHA did not revise the cross reference to redesignated paragraph (b)(1) in paragraph (e)(12)(iii). Therefore, with this notice, OSHA is removing the references to paragraphs (b)(3), (b)(1), and (b)(4) in existing paragraphs (e)(12)(i), (e)(12)(ii), and (e)(12)(iii), respectively, and replacing these references with the correct references (29 CFR 1910.23, 29 CFR 1910.219, and paragraph (b)(1) of 29 CFR 1910.261, respectively).

H. Sawmills (§ 1910.265)

OSHA is correcting a typographical error in a cross reference in this standard. Paragraph (e)(2)(iv) of the standard, which establishes safety requirements for twin circular-head saw rigs, provides: “Twin circular head saw rigs such as scrag saws shall meet the specifications for single circular head saws in paragraph (e)(1)(iii) of this section where applicable.” The cross reference to paragraph (e)(1)(iii) of the standard is incorrect. The provision should cross reference paragraph (e)(2)(iii), which specifies requirements for singular circular-head saws; OSHA is correcting the error.

I. Grain Handling Facilities (§ 1910.272)

The Grain handling facilities standard (29 CFR 1910.272) applies to general industry and, through incorporation by reference, to marine terminals that handle grain (29 CFR 1917.1(a)(2)(v)). In 1985, OSHA issued a compliance directive interpreting requirements of the standard as it applied to marine terminals (see CPL 02–00–066). The directive was the result of a settlement agreement with the National Grain and Feed Association, Inc.

In 2002, OSHA conducted a regulatory review of the standard pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) and Executive Order 12866. During the review, stakeholders recommended that OSHA include in the standard a cross reference to the compliance directive. OSHA agreed and, accordingly, is inserting a note in paragraph (a) of the standard stating that OSHA will enforce the standard, as it applies to marine terminals, consistent with the 1985 compliance directive.

J. Commercial Diving Operations (§ 1910.440)

Phase III of the Standards Improvement Project (SIP III) revised requirements within OSHA standards that were confusing, outdated, duplicative, or inconsistent. One such revision to the Commercial Diving Operations standard at § 1910.440(b)(5)

removed the requirement that employers transfer dive and employee medical records to the National Institute for Occupational Safety and Health (NIOSH) in the absence of a successor employer. However, subsequent review of the regulatory text at § 1910.440(b)(4) identified a provision requiring employers to transfer hospitalization and decompression-related records to NIOSH after the five-year retention period for these records expires. This record-transfer requirement involves records that are similar to the records specified in the record-transfer requirement in § 1910.440(b)(5), which OSHA removed from the standard under SIP III. Therefore, for the sake of consistency and accuracy, OSHA is revising § 1910.440(b)(4) by removing the record-transfer requirement in § 1910.440(b)(4).¹ The rationale for removing this record-transfer requirement is the same as the rationale expressed earlier by OSHA when it removed § 1910.440(b)(5) from the standard (see 76 FR 33590, 33598).

K. 13 Carcinogens (4-Nitrophenyl, etc.) (§ 1910.1003)

In the 13 Carcinogens standard (29 CFR 1910.1003), OSHA is deleting two cross references to a section of the standard that it removed in the second Standards Improvement Project rulemaking (70 FR 1116). In that rulemaking, OSHA deleted paragraph (f) of the standard, which required that employers submit to OSHA reports of operations involving any of the 13 carcinogens and incidents resulting in the release of any of them. However, during the rulemaking OSHA did not delete two cross references to paragraph (f) contained in paragraph (d)(2) of the standard (see paragraphs (d)(2)(v) and (d)(2)(iii)). OSHA is correcting this oversight.

L. Lead (§ 1910.1025 and § 1926.62)

The SIP III final rule also made revisions regarding medical surveillance in the Lead standards at § 1910.1025 (General Industry) and § 1926.62 (Construction). The purpose of these revisions was to achieve consistency among the action levels for employee notification across all OSHA Lead standards (see 76 FR 33590, 33598). Accordingly, the SIP III final rule revised the language in §§ 1910.1025(j) and 1926.62(j) regarding actionable

¹ OSHA received no comments on the proposal to remove § 1910.440(b)(5) from the standard. Accordingly, OSHA considers the action to remove the record-transfer requirement from § 1910.440(b)(4) described in this notice to be non-controversial, and unlikely to elicit an objection from any stakeholder.

blood-lead levels for employee notification from “exceeds” 40 µg/dl to “is at or above” 40 µg/dl.² Subsequent review of the regulatory text in §§ 1910.1025 (j)(2)(iv)(B) and 1926.62(j)(2)(iv)(B) found that these paragraphs used the term “exceeds” to describe the actionable blood-lead level for notifying employees of requirements for temporary medical removal and employee medical-removal protection benefits. For the sake of consistency and accuracy among action levels across all OSHA Lead standards, and in keeping with the original purpose specified in the SIP III rulemaking, OSHA is replacing the term “exceeds” in §§ 1910.1025 (j)(2)(iv)(B) and 1926.62(j)(2)(iv)(B) with the phrase “is at or above” to designate the actionable blood-lead levels (*i.e.*, 40 µg/dl) at which employers must notify their employees that the standard requires temporary medical removal with medical-removal protection benefits when an employee’s blood-lead level is at or above a specified level.

M. Bloodborne Pathogens (§ 1910.1030)

OSHA is updating a cross reference to 29 CFR 1904.6 in the Bloodborne pathogens standard (29 CFR 1910.1030). On January 18, 2001, in conformance with the Needlestick Safety and Prevention Act (P.L. 106–430), OSHA revised the Bloodborne pathogens standard to require that employers maintain logs of percutaneous injuries from contaminated sharps (see § 1910.1030(i)(5)). The revised standard at § 1910.1030(i)(5)(iii) required that employers maintain the sharps injury log for the period required by 29 CFR 1904.6. OSHA subsequently revised the Recordkeeping rule (29 CFR 1904; 66 FR 6122). As part of that rulemaking, OSHA reordered many sections of the Recordkeeping rule, including § 1904.6, which became § 1904.33. Therefore, OSHA now is updating the cross reference in paragraph (i)(5)(iii) of the Bloodborne pathogens rule from 29 CFR 1904.6 to 29 CFR 1904.33.

N. Air Contaminants (§ 1915.1000)

OSHA is correcting a typographical error in the Air contaminants standard for shipyard employment (29 CFR 1915.1000). The standard contains requirements for limiting employee exposure to the hazardous substances listed in Table Z of the rule. Paragraph

² OSHA received several comments in support of the proposal to revise this language, and no comments against it. Therefore, OSHA considers the revisions to §§ 1910.1025 (j)(2)(iv)(B) and 1926.62(j)(2)(iv)(B) described in this notice to be non-controversial, and unlikely to elicit an objection from any stakeholder.

(d) of the standard contains a computation formula for determining exposure levels for employees exposed to more than one substance for which subpart Z of part 1915 lists an 8-hour time weighted average. Paragraph (d)(1)(ii) of the standard contains an example to illustrate the computation formula. In four places in this paragraph, the example incorrectly refers to the abbreviation for “parts per million” as “p/m.” In this notice, OSHA is correcting the abbreviation to read “ppm.”

II. Exemption From Notice-and-Comment Procedures

OSHA determined that this rulemaking is not subject to the procedures for public notice and comment specified in Section 4 of the Administrative Procedures Act (5 U.S.C. 553), Section 6(b) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 655(b)), and 29 CFR 1911.5. This rulemaking does not affect or change any existing rights or obligations, and no stakeholder is likely to object to them. Therefore, the Agency finds good cause that public notice and comment are unnecessary within the meaning of 5 U.S.C. 553(b)(3)(B), 29 U.S.C. 655(b), and 29 CFR 1911.5.

List of Subjects

29 CFR Part 1910

Hazardous substances, Occupational safety and health, Reporting and recordkeeping requirements.

29 CFR Part 1915

Hazardous substances, Occupational safety and health, Reporting and recordkeeping requirements, Vessels.

29 CFR Part 1926

Construction industry, Hazardous substances, Occupational safety and health, Reporting and recordkeeping requirements.

III. Authority and Signature

David Michaels, MPH, Ph.D., Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210, authorized the preparation of this document. Accordingly, pursuant to Section 6 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 655), Section 107 of the Contract Work Hours and Safety Standards Act (Construction Safety Act) (40 U.S.C. 3704), Section 4 of the Administrative Procedures Act (5 U.S.C. 553), Secretary of Labor’s Order No. 4–2010 (75 FR 55355), and 29 CFR 1911.5, 29 CFR parts 1910, 1915 and 1926 are amended as set forth below.

Signed at Washington, DC on December 19, 2011.

David Michaels,
Assistant Secretary of Labor for Occupational Safety and Health.

PART 1910—OCCUPATIONAL SAFETY AND HEALTH STANDARDS

Subpart H—Hazardous Materials [Amended]

■ 1. The authority citation for subpart H of part 1910 continues to read as follows:

Authority: 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), 5–2007 (72 FR 31159), or 4–2010 (75 FR 55355), as applicable; and 29 CFR part 1911.

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 Pub. L. 101–549, reprinted at 29 U.S.C. 655 Note.

Section 1910.120 also issued under 29 U.S.C. 655 Note, and 5 U.S.C. 553.

■ 2. In Appendix A to § 1910.119, revise the entry entitled “Oleum” to read as follows:

§ 1910.119 Process safety management of highly hazardous chemicals.

* * * * *

Appendix A to § 1910.119—List of Highly Hazardous Chemicals, Toxics and Reactives (Mandatory)

* * * * *

Chemical name	CAS*	TQ**
* * * * *		
Oleum (65% to 80% by weight; also called Fuming Sulfuric Acid)	8014–95–7	1,000
* * * * *		

■ 3. In paragraph (a)(3) of § 1910.120, revise paragraph (A) of the definition of “Hazardous substance” to read as follows:

§ 1910.120 Hazardous waste operations and emergency response.

* * * * *

(a) * * *
(3) * * *

Hazardous substance * * *
(A) Any substance defined under section 103(14) of the Comprehensive Environmental Response Compensation and Liability Act (CERCLA) (42 U.S.C. 9601).

* * * * *

Subpart J—General Environmental Controls

- 4. Revise the authority citation for subpart J to read as follows:

Authority: 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), 5-2007 (72 FR 31159), or 4-2010 (75 FR 55355), as applicable.

Sections 1910.141, 1910.142, 1910.145, 1910.146, and 1910.147 also issued under 29 CFR part 1911.

- 5. In of § 1910.146, revise paragraph (d)(4)(vi) to read as follows:

§ 1910.146 Permit-required confined spaces.

* * * * *

(d) * * *

(4) * * *

(vi) Barriers and shields as required by paragraph (d)(3)(v) of this section.

* * * * *

Subpart K—Medical and First Aid

- 6. The authority citation for subpart K continues to read as follows:

Authority: 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), or 4-2010 (75 FR 55355), as applicable, and 29 CFR part 1911.

- 7. In Appendix A to § 1910.151, revise the second paragraph to read as follows:

§ 1910. 151 Medical services and first aid.

* * * * *

Appendix A to § 1910.151—First Aid Kits (Non-Mandatory)

* * * * *

In a similar fashion, employers who have unique or changing first-aid needs in their workplace may need to enhance their first-aid kits. The employer can use the OSHA 300 log, OSHA 301 log, or other reports to identify these unique problems. Consultation from the local fire/rescue department, appropriate medical professional, or local emergency room may be helpful to employers in these circumstances. By assessing the specific needs of their workplace, employers can ensure that reasonably anticipated supplies are available. Employers should assess the specific needs of their worksite periodically and augment the first aid kit appropriately.

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Subpart N—Materials Handling and Storage

- 8. The authority citation for subpart N of part 1910 continues to read as follows:

Authority: 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), 5-2007 (72 FR 31160), or 4-2010 (75 FR 55355), as applicable; and 29 CFR 1911.

Sections 1910.176, 1910.177, 1910.178, 1910.179, 1910.180, 1910.181, and 1910.184 also issued under 29 CFR part 1911.

- 9-10. In § 1910.177:

■ a. In paragraph (b), revise the definition of “charts”; and

■ b. Revise Appendix B.

The revisions read as follows:

§ 1910.177 Servicing of multi-piece and single-piece rim wheels.

* * * * *

(b) * * *

Charts means the U.S. Department of Labor, Occupational Safety and Health Administration publications entitled “Demounting and Mounting Procedures for Tube-Type Truck and Bus Tires,” “Demounting and Mounting Procedures for Tubeless Truck and Bus Tires,” and “Multi-Piece Rim Matching Chart.” These charts may be in manual or poster form. OSHA also will accept any other manual or poster that provides at least the same instructions, safety precautions, and other information contained in these publications, which is applicable to the types of wheels the employer is servicing.

* * * * *

Appendix B—Ordering Information for the OSHA Charts

The information on the OSHA charts is available on three posters, or in a manual containing the three charts, entitled “Demounting and Mounting Procedures for Tubeless Truck and Bus Tires,” “Demounting and Mounting Procedures for Tube-Type Truck and Bus Tires,” and “Multi-piece Rim Matching Chart.” Interested parties can download and print both the manuals and posters from OSHA's Web site at <http://www.osha.gov/publications> (and type “tire chart” in the search field). However, when used by the employer at a worksite to provide information to employees, the printed posters must be, at a minimum, 2 feet wide and 3 feet long. Copies of the manual also are available from the Occupational Safety and Health Administration (OSHA Office of Publications, Room N-3101, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210; telephone: (202) 693-1888; or fax: (202) 693-2498).

Subpart O—Machinery and Machine Guarding

- 11. The authority section citation for subpart O of part 1910 continues to read as follows:

Authority: 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), 5-2002 (67 FR

65008), or 4-2010 (75 FR 55355), as applicable; 29 CFR part 1911. Sections 1910.217 and 1910.219 also issued under 5 U.S.C. 553.

- 12. In § 1910.217, revise paragraph (g)(1) and add paragraph (g)(2) to read as follows:

§ 1910.217 Mechanical power presses.

* * * * *

(g) * * *

(1) The employer shall report, within 30 days of the occurrence, all point-of-operation injuries to operators or other employees to either (1) the Director of the Directorate of Standards and Guidance at OSHA, U.S. Department of Labor, Washington, DC 20210 (<http://www.osha.gov/pls/oshaweb/mechanical.html>), or

(2) The State agency administering a plan approved by the Assistant Secretary of Labor for Occupational Safety and Health.

* * * * *

Subpart R—Special Industries

- 13. The authority citation for subpart R of part 1910 continues to read as follows:

Authority: 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), 6-96 (62 FR 111), 5-2007 (72 FR 31159), or 4-2010 (75 FR 55355), as applicable; and 29 CFR part 1911.

- 14. In 1910.261, revise paragraphs (e)(12)(i), (ii), and (iii) to read as follows:

§ 1910.261 Pulp, paper, and paperboard mills.

* * * * *

(e) * * *

(12) * * *

(i) When platforms or floors allow access to the sides of the drums, a standard railing shall be constructed around the drums. When two or more drums are arranged side by side, proper walkways with standard handrails shall be provided between each set, in accordance with the requirements of 29 CFR 1910.23, Guarding floor and wall openings and holes.

(ii) Sprockets and chains, gears, and trunnions shall have standard guards, in accordance with the requirements of 29 CFR 1910.219, Mechanical power-transmission apparatus.

(iii) Whenever it becomes necessary for a workman to go within a drum, the driving mechanism shall be locked and tagged, at the main disconnect switch, in accordance with paragraph (b)(1) of this section.

* * * * *

- 15. In § 1910.265 revise paragraph (e)(2)(iv) to read as follows:

§ 1910.265 Sawmills.

* * * * *
 (e) * * *
 (2) * * *

(iv) *Twin circular head saws.* Twin circular head saws rigs such as scrag saws shall meet the specifications for single circular head saws in paragraph (e)(2)(iii) of this section where applicable.

* * * * *

■ 16. In 1910.272, amend paragraph (a) by adding a note at the end of the paragraph to read as follows:

§ 1910.272 Grain handling facilities.

(a) * * *

Note to paragraph (a): For grain-handling facilities in the marine-terminal industry only, 29 CFR 1910.272 is to be enforced consistent with the interpretations in OSHA Compliance Directive 02-00-066, which is available on OSHA's Web page at www.osha.gov.

* * * * *

Subpart T—Commercial Diving Operations

■ 17. The authority citation for subpart T continues to read as follows:

Authority: 29 U.S.C. 653, 655, 657; 40 U.S.C. 333; 33 U.S.C. 941; Secretary of Labor's Order No. 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), 5-2007 (72 FR 31160), or 4-2010 (75 FR 55355) as applicable, and 29 CFR 1911.

■ 18. In § 1910.440, revise paragraph (b)(4) to read as follows:

§ 1910.440 Recordkeeping requirements.

* * * * *
 (b) * * *

(4) The employer shall comply with any additional requirements set forth at 29 CFR 1910.1020,

* * * * *

Subpart Z—[Amended]

■ 19. The authority citation for subpart Z continues to read as follows:

Authority: 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), 5-2007 (72 FR 31160), or 4-2010 (75 FR 55355), as applicable, and 29 CFR 1911.

All of subpart Z issued under section 6(b) of the Occupational Safety and Health Act, except those substances that have exposure limits listed in Tables Z-1, Z-2, and Z-3 of 29 CFR 1910.1000. The latter were issued under 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, Section 1910.1000 Tables Z-1, Z-2, and Z-3, but not

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

Section 1910.1001 also issued under 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 1911.

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

Section 1910.1030 also issued under Pub. L. 106-430, 114 Stat. 1901.

Section 1910.1201 also issued under 49 U.S.C. 1801-1819 and 5 U.S.C. 533.

■ 20. Amend § 1910.1003 by:

- a. Revising paragraph (d)(2)(iii); and
- b. Removing paragraph (d)(2)(v) and redesignating paragraphs (d)(2)(vi) as paragraph (d)(2)(v).

The revision reads as follows:

§ 1910.1003 13 Carcinogens (4-Nitrobiphenyl, etc.).

* * * * *
 (d) * * *
 (2) * * *

(iii) Special medical surveillance by a physician shall be instituted within 24 hours for employees present in the potentially affected area at the time of the emergency.

* * * * *

■ 21. In § 1910.1025, revise paragraph (j)(2)(iv)(B) to read as follows:

§ 1910.1025 Lead.

* * * * *
 (j) * * *
 (2) * * *
 (iv) * * *

(B) That the standard requires temporary medical removal with Medical Removal Protection benefits when an employee's blood lead level is at or above the numerical criterion for medical removal under paragraph (k)(1)(i) of this section.

* * * * *

■ 22. In § 1910.1030, revise paragraph (i)(5)(iii) to read as follows:

§ 1910.1030 Bloodborne pathogens.

* * * * *
 (i) * * *
 (5) * * *

(iii) The sharps injury log shall be maintained for the period required by 29 CFR 1904.33.

* * * * *

PART 1915—OCCUPATIONAL SAFETY AND HEALTH STANDARDS FOR SHIPYARD EMPLOYMENT

■ 23. The authority citation for part 1915 continues to read as follows:

Authority: 33 U.S.C. 941; 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), 5-2007 (72 FR 31160), or 4-2010 (75 FR 55355), as applicable.

Section 1915.100 also issued under 49 U.S.C. 1801-1819 and 5 U.S.C. 553.

Sections 1915.120 and 1915.152 of 29 CFR also issued under 29 CFR 1911.

Subpart Z—Toxic and Hazardous Substances

■ 24. In § 1915.1000, revise paragraph (d)(1)(ii) to read as follows:

§ 1915.1000 Air contaminants.

* * * * *
 (d) * * *
 (1)(i) * * *

(ii) To illustrate the formula prescribed in paragraph (d)(1)(i) of this section, assume that Substance A has an 8-hour time weighted average limit of 100 ppm noted in Table Z—Shipyards. Assume that an employee is subject to the following exposure:

Two hours exposure at 150 ppm
 Two hours exposure at 75 ppm
 Four hours exposure at 50 ppm

Substituting this information in the formula, we have
 $(2 \times 150 + 2 \times 75 + 4 \times 50) \div 8 = 81.25$ ppm

Since 81.25 ppm is less than 100 ppm, the 8-hour time weighted average limit, the exposure is acceptable.

* * * * *

PART 1926—SAFETY AND HEALTH REGULATIONS FOR CONSTRUCTION

Subpart D—Occupational Health and Environmental Controls

■ 25. The authority citation for subpart D continues to read as follows:

Authority: 40 U.S.C. 3701 *et seq.*; 29 U.S.C. 653, 655, 657; and 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), 5-2007 (72 FR 31160), or 4-2010 (75 FR 55355), as applicable; and 29 CFR 1911.

Sections 1926.58, 1926.59, 1926.60, and 1926.65 also issued under 5 U.S.C. 553 and 29 CFR 1911.

Section 1926.61 also issued under 49 U.S.C. 1801-1819 and 5 U.S.C. 553.

Section 1926.62 of 29 CFR also issued under 42 U.S.C. 4853.

Section 1926.65 of 29 CFR also issued under 29 U.S.C. 655 note, and 5 U.S.C.

■ 26. In Appendix A to § 1926.50, revise the second paragraph to read as follows:

§ 1926.50 Medical services and first aid.

* * * * *

Appendix A to § 1926.50—First Aid Kits (Non-Mandatory)

* * * * *

In a similar fashion, employers who have unique or changing first-aid needs in their workplace may need to enhance their first-aid kits. The employer can use the OSHA 300 log, OSHA 301 log, or other reports to identify these unique problems. Consultation from the local fire/rescue department, appropriate medical professional, or local emergency room may be helpful to employers in these circumstances. By assessing the specific needs of their workplace, employers can ensure that reasonably anticipated supplies are available. Employers should assess the specific needs of their worksite periodically and augment the first aid kit appropriately.

* * * * *

■ 27. In § 1926.62, revise paragraph (j)(2)(iv)(B) to read as follows:

§ 1926.62 Lead.

* * * * *

- (j) * * *
(2) * * *

(B) The employer shall notify each employee whose blood lead level is at or above 40 µg/dl that the standard requires temporary medical removal with Medical Removal Protection benefits when an employee's blood lead level is at or above the numerical criterion for medical removal under paragraph (k)(1)(i) of this section.

* * * * *

[FR Doc. 2011-32853 Filed 12-23-11; 8:45 am]

BILLING CODE 4510-26-P

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 199

[DOD-2011-HA-0134; RIN 0720-AB55]

TRICARE: Certified Mental Health Counselors

AGENCY: Office of the Secretary, Department of Defense.

ACTION: Interim final rule.

SUMMARY: This rule is submitted as an interim final rule (IFR) in order to meet the Congressional requirement set forth in the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2011, Section 724, which required the Department of Defense to prescribe regulations by June 20, 2011, to establish the criteria, as had previously been studied in accordance with Section 717 of the NDAA 2008, that would allow licensed or certified mental health counselors to be able to independently provide care to TRICARE beneficiaries and receive payment for those services. Under current TRICARE requirements, mental health counselors (MHCs) are authorized to practice only with

physician referral and supervision. This interim final rule establishes a transition period to phase out the requirement for physician referral and supervision for MHCs and to create a new category of allied health professionals, to be known as certified mental health counselors (CMHCs), who will be authorized to practice independently under TRICARE.

During this transition period the MHCs who do not meet the requirements for independent practice as established in this rule, may continue to provide services to TRICARE beneficiaries under the requirements of physician referral and ongoing supervision. This transition period, ending December 31, 2014, will allow time for those MHCs who seek to continue providing services under the TRICARE program to meet the independent practice requirements as outlined in this notice. After December 31, 2014, the Department of Defense will no longer recognize those mental health counselors who do not meet the criteria for a CMHC and will no longer allow them to provide services even upon the referral and supervision of a physician.

DATES: This rule is effective on December 27, 2011. Written comments received at the address indicated below by February 27, 2012 will be accepted.

ADDRESSES: You may submit comments, identified by docket number and or Regulatory Information Number (RIN) number and title, by either of the following methods:

- *Federal eRulemaking Portal:* www.regulations.gov. Follow the instructions for submitting comments.
- *Mail:* Federal Docket Management System Office, 4800 Mark Center Drive, 2nd Floor, East Tower, Suite 02G09, Alexandria, VA 22350-3100.

Instructions: All submissions received must include the agency name and docket number or RIN for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at <http://www.regulations.gov> as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Dr. Patricia Moseley, TRICARE Management Activity, Office of the Chief Medical Officer, telephone (703) 681-0064.

SUPPLEMENTARY INFORMATION: TRICARE serves over 9.6 million beneficiaries comprised of active duty service members, retirees, and their families,

among others. The nature of the conflicts in Iraq and Afghanistan, their duration, and the Department of Defense's appreciation and sensitivity to the impact of combat on a service member's mental health have driven strong efforts to ensure that quality mental health care is available and accessible to TRICARE beneficiaries. One element of these efforts is ongoing attention to increasing the number of quality providers that can assess and treat TRICARE beneficiaries.

The National Defense Authorization Act for Fiscal Year 2006 Conference Report, No. 109-360, p. 753-4, requested from DoD a report to Congress on actions taken to improve the efficiency and effectiveness of procedures to facilitate physician referral and supervision of licensed professional counselors (LPCs), including a description of "best practices" employed throughout the military health system to ensure access to services provided by mental health counselors under the TRICARE Program. That report concluded that there remained significant variability among the States in training programs and requirements for licensure as a mental health counselor and that while there was evidence that the extent of training variability had decreased over time, it continued to be evident that professional counselors licensed to practice had quite varying exposure to classroom education and supervised clinical experiences in the assessment and treatment of persons with mental disorders. In conclusion the report noted: "Given the practical obstacles to physician supervision of LPCs and the perceived impediment to accessing services caused by the physician referral requirement, it would be prudent to explore issues of supervision, referral, provider credentialing, and scope of practice to develop options that would preserve quality of care, safeguard the health and well-being of Service members and maximize access to mental health care for all beneficiaries. An examination of these issues would certainly support other activities having the goal of improving mental health care to veterans, active duty service members and their families, including the recent creation of the DoD Task Force on Mental Health."

Section 717 of the National Defense Authorization Act of Fiscal Year 2008 directed the Secretary of Defense to study the credentials, preparation, and training of individuals practicing as licensed mental health counselors and to make recommendations for permitting licensed mental health counselors to practice independently