

Summary of Comments and Agency Decisions

Title: Federal OSHA's Standard Improvement Project Phase III (SIP-III), with an emphasis on Oregon-initiated Rules.

Administrative Order: 4-2011
Adopted Date: December 8, 2011
Effective Date: December 8, 2011
And –
Administrative Order: 5-2011
Adopted Date: December 8, 2011
Effective Date: July 1, 2012

Summary:

Phase III of Federal OSHA's Standards Improvement Project (SIP-III) was the third in a series of rulemaking actions undertaken at the federal level to improve and streamline OSHA standards. The focus areas identified for this series of improvements was based on federal OSHA's internal review of standards, on suggestions and comments from the public, or on recommendations from the Office of Management and Budget. These focus areas included rigging, transfer of records to NIOSH, and training certifications. SIP-III also removed or revised individual requirements within rules that were considered to be "confusing, outdated, duplicative, or inconsistent."

The stated goal of the improvements was to help employers better understand their obligations, to promote safety and health for employees, to promote increased compliance, and to reduce compliance costs. Federal OSHA estimated that the SIP-III changes would result in an annual savings for employers (nationwide) of over \$45 million, and an annual reduction of "paperwork burden" (nationwide) of 1.85 million hours. The federal final rule became effective on July 8, 2011. More information about the Federal SIP-III rule revisions are available at:

http://www.osha.gov/FedReg_osha_pdf/FED20110608.pdf

Oregon OSHA, like other "state plans" had six months to respond to the SIP-III rulemaking.

Our response included two types of changes to our rules in Divisions 2, 3, 4, and 5:

- 1) Adoption of the Federal rule changes without revision; or
- 2) Adoption of Oregon-initiated rules that are "at least as effective" in promoting safe and healthful employment as the Federal rules.

We adopted most of the Federal SIP-III amendments into the Oregon OSHA rules without revision. We also adopted some Oregon-initiated rules of equivalent (or greater) effectiveness and made some additional changes to standards or divisions addressed by the Federal SIP-III rulemaking. In the latter case, we identified additional opportunities to clarify, update, or provide more consistency, especially within the focus areas for this rulemaking (transfer of records, and respiratory protection programs.)

Note-worthy SIP-III changes we adopted without revision:

We changed the title of Division 2, Subdivision E from “Means of Egress” to “Exit Routes and Emergency Planning.”

In Division 2/Z, 1910.1030, Bloodborne Pathogens, and also in the Sanitation standards, we updated the definition of “hand washing facilities,” removing the word “hot” from “hot air drying machines” to allow for new technologies like high-velocity air blowers.

Other SIP-III-related changes to Oregon-initiated rules:

The definition of “potable water” in Division 4/J, *OAR 437-004-1110, Field Sanitation*; and Division 3/D, *OAR 437-003-0015, Drinking Water*, was changed to be consistent with our established definition of “potable water” in Division 2/J, *OAR 437-002-0141(1)(a), Sanitation*; and Division 4/J, *OAR 437-004-1105(1)(b), Sanitation*.

As a logical extension of the Federal OSHA SIP-III changes to the “13 Carcinogens”, we amended Division 2/Z, *437-002-0364, 4, 4'-Methylene bis (2-chloroaniline)*, the Oregon Rules for MOCA, another carcinogen. The type of respirator to use is no longer specified. Instead, the employer is required to select appropriate respirators based on the selection criteria in Division 2/I, 1910.134(d). We also removed an outdated reporting requirement.

The Oregon-initiated rules most affected during this rulemaking were the Division 2/I Personal Protective Equipment rules, and the Respiratory Protection Program requirements for the Division 2 and 3 “substance-specific” rules.

Changes to the Personal Protective Equipment Rules (Admin. Order 4-2011)

Oregon OSHA adopted the federal OSHA changes into Division 2/I that eliminated the requirements for employers to prepare and maintain written certification records for Personal Protective Equipment (PPE) training. Oregon OSHA agreed that the training certification records formerly required by the PPE rules neither provided a safety/health benefit to employees, nor were justified in terms of the time and cost to employers.

We also adopted the SIP-III federal OSHA changes to 1910.134, Respiratory Protection that revised requirements for after-market breathing-gas containers, clarified that all of the Appendices are mandatory, and made other minor changes to the text.

In addition to these changes, Oregon OSHA took the opportunity to clarify and update the Personal Protective Equipment rules. We repealed all of the following rules in Div. 2/I: 1910.132, 1910.133, 1910.135, 1910.136, and 1910.139; and *OAR 437-002-0123, 437-002-0125, 437-002-0127, 437-002-0128, 437-002-0130, 437-002-0135, 437-002-0136, and 437-002-0137.*

Put another way, repealed all of the Division 2/I rules with the exception of 1910.134, Respiratory Protection; 1910.137, Electrical Protective Equipment; *OAR 437-002-0138, Additional Oregon Rule for Electrical Protective Equipment; 437-002-0139, Oregon Administrative Rules for Working Underway on Water*, and, *437-002-1139, Working Over or In Water*; and the two Appendices to 2/I.

To replace the repealed rules, we adopted a single, new Oregon-initiated rule: *OAR 437-002-0134 Personal Protective Equipment*. The new rule simplified the existing text without significant change to the overall rule requirements. It includes sections on: application, hazard assessment and equipment selection, requirements for equipment, training, payment for equipment, fall protection, work clothing, high-visibility garments, eye and face protection, head protection, foot protection, leg protection, hand protection, and skin protection.

One change in the new rule was to move the language requiring all personal protective equipment to be “provided, used, and maintained in a sanitary and reliable condition” from the “Application” section to a stand-alone rule. Another change expanded the employers’ responsibilities to identify hazards to the entire body, including the torso and extremities, when performing the written certification of PPE hazard assessment. (In the previous rule, the assessment was limited to hazards affecting the head, hands, eyes and face, and feet.)

Although the written certification of training was removed with the SIP-III changes, training is still required. The Oregon PPE training rules apply to all types of PPE covered in the rule, including fall protection. In essence, if you protect it...you train on it.

Oregon OSHA also changed the fall protection component criteria for fall arrest and fall restraint, to align with the systems criteria in the Division 3, 1926.502 rules for construction. This eliminated conflicting criteria (such as permissible restraint fall distance and anchor point weight limitations) from the rules. The rules are now consistent for Division 2 and Division 3 activities.

The new PPE rules were adopted on December 8, 2011, but enforcement of the torso and extremities assessment is delayed until July 1, 2012.

Changes to the Substance-specific Rules (Admin. Order 5-2011)

Several of the “substance-specific” rules – such as those for Asbestos and Lead were affected by the SIP-III rulemaking. Oregon OSHA adopted the SIP-III amendments that eliminated the requirements for employers who cease to do business in the absence of a successor employer, to transfer certain employee medical and exposure records to the National Institute of Occupational Safety and Health (NIOSH).

Federal OSHA also corrected an action they took in 1996 that combined the respirator requirements for the “13 Carcinogens” standard. Four of these chemicals (methyl chloromethyl ether, bis-chloromethyl ether, ethyleneimine, and betapropiolactone) are liquids, not particulates. Based on a recommendation by the National Institute for Occupational Safety and Health (NIOSH), OSHA revised the 13 Carcinogens standard to require the use of the most protective supplied-air respirators available, either a pressure-demand SCBA or a full facepiece supplied-air respirator with auxiliary self-contained air supply, for these four liquid carcinogens.

We adopted the Federal changes to our Division 2, 1910.1025, and Division 3, 1926.62, Lead to eliminate confusion about when employers must act in response to an Action Levels of exposure and with regard to certain blood lead levels during employee medical surveillance. The previous rule addressed levels above or below a certain number and did not address levels at that number. Language specifying employer responsibilities “at or above” the action level exposures were clarified in the new rules. Also, employee blood lead levels “at or above” a specified level must be notified and removed from exposure and “below” that level they can return to work. Although the Appendices are not “mandatory,” employers are required to use the information for training employees and to provide them to medical professionals for compliance guidance. Therefore, Oregon OSHA took the initiative to up-date the information in the Appendices to the Lead rules to accurately reflect the language changes.

Oregon OSHA also addressed an inconsistency in most of the substance-specific rules related to respiratory protection. Each of the substance-specific rules in Divisions 2 and 3 has its own requirements for a respiratory protection program that refers to the parts of 1910.134, Respiratory Protection that apply to that substance. A single section was repealed in each of the following rules and an Oregon-initiated rule that specifically includes paragraph (e), the requirement for a medical evaluation and paragraph (o) the Appendices, was adopted to replace it:

Division 2, General Industry:

- Asbestos Div.2/Z 1910.1001
- Vinyl Chloride Div.2/Z 1910.1017
- Inorganic Arsenic Div.2/Z 1910.1018
- Lead Div.2/Z 1910.1025
- Cadmium Div.2/Z 1910.1027
- Benzene Div.2/Z 1910.1028
- Coke Oven Emissions Div.2/Z 1910.1029

- Cotton Dust Div.2/Z 1910.1043
- 1,2-Dibromo-3-Chloropropane Div.2/Z 1910.1044
- Acrylonitrile Div.2/Z 1910.1045
- Ethylene Oxide Div.2/Z 1910.1047
- Formaldehyde Div.2/Z 1910.1048
- Methylenedianiline Div.2/Z 1910.1050
- 1,3-Butadiene Div.2/Z 1910.1051
- Methylene Chloride Div.2/Z 1910.1052

Division 3, Construction:

- Methylenedianiline Div.3/D 1926.60
- Lead Div. 3/D 1926.62
- Asbestos Div.3/Z 1926.1101
- Cadmium Div. 3/Z 1926.1127

Each rule also has a note following the new Oregon-initiated section to clarify that these requirements are in addition to other medical surveillance and respiratory-protection-related requirements in each rule.

In most cases, the language in each rule previously read something like: “The employer must implement a respiratory protection program in accordance with 29 CFR 1910.134 (b) through (d), (except ...), and (f) through (m)....”

In almost all of these rules, paragraph “(e)” of 1910.134 was not included in the program requirements. Paragraph “(e)” is the part of the respiratory protection rule that requires a medical evaluation for employees who will use tight-fitting respirators before the respirator is used in the workplace. After consulting with advisory groups, we decided to up-date, clarify and bring consistency to the general industry and construction substance-specific rules related to the program requirements for Respiratory Protection.

As explained in the Respiratory Protection rule at 1910.134(e), “using a respirator may place a physiological burden on employees that varies with the type of respirator worn, the job and workplace conditions in which the respirator is used, and the medical status of the employee. Accordingly, this paragraph specifies the minimum requirements for medical evaluation that employers must implement to determine the employee’s ability to use a respirator.”

As a matter of consistency, employees who are required to use tight-fitting respirators to protect themselves from any workplace air-contaminant should be medically evaluated to determine the employee’s ability to use a respirator without adverse health effects. Further, this evaluation should be performed before the employee is required to use a respirator in the workplace and before any adverse health effects become apparent. In many instances, businesses must consider the rules for exposures to multiple air contaminants and so are already following the most protective of these requirements including the requirement to provide an initial medical evaluation for their employees who use respirators.

Another part of the Respiratory Protection rule that was previously not included in the program requirements for these substance-specific rules was paragraph (o). One of the SIP-III changes to 29 CFR 1910.134 was to clarify, at (o), that all of the Appendices to 1910.134 are mandatory. We also included (o) in the program requirements for the substance-specific rules so that employers understand that they must make use of these procedures and protocols. Appendix A, Fit Testing Procedures; Appendix B-1, User Seal Check Procedures; Appendix B-1, User Seal Check Procedures; Appendix C, OSHA Respirator Medical Evaluation Questionnaire; and Appendix D, Information for Employees Using Respirators When Not Required under the Standard (Voluntary Use) apply to the respiratory program requirements of the substance specific rules.