

DOT has proposed that all aviation data collected by the BTS be transmitted via the internet (e-filing). To the maximum extent practicable, the proposed e-filing system will be user friendly.

Automated, built-in data edits would alert filers of incomplete information, thus reducing filing errors and the need for corrective re-processing. E-filing is more secure than attaching files to e-mails. E-filing does not have the size limit constraints encountered by attachments to e-mail submissions. E-filing provides the submitters with immediate confirmation that the filing has been received by BTS. E-filing should eliminate the need for BTS to key punch hard copy records into its various data bases.

During this public meeting, DOT representatives will answer questions about the proposed system, the pilot program and gather additional public comments. A summary of the public meeting will be placed in the rulemaking docket.

Issued in Washington, DC, on May 8, 2007.

**Donald W. Bright,**

*Assistant Director, Airline Information,  
Bureau of Transportation Statistics.*

[FR Doc. E7-9210 Filed 5-16-07; 8:45 am]

**BILLING CODE 4910-HY-P**

## DEPARTMENT OF TRANSPORTATION

### Office of the Secretary

#### 14 CFR Part 234

#### Reporting Requirements for Aircraft Gate Returns

**AGENCY:** Office of the Secretary, DOT.

**ACTION:** Notice of public meeting.

**SUMMARY:** The U.S. Department of Transportation (DOT) is hosting a public meeting to discuss the reporting of on-time aviation data, specifically the reporting of gate-departure time when an aircraft returns to the gate after an initial gate departure, but before the wheels-off time, and the need to report gate-departure time when the flight is ultimately cancelled.

**DATES:** The meeting will be held June 20, 2007, from 1 p.m. to 4 p.m.

**ADDRESSES:** The meeting will be held at the new DOT headquarters building at 1200 New Jersey Avenue, SW., Washington, DC 20590. The room number will be announced at a later date. Persons attending the public meeting must pass through the building security; therefore, we are requesting that you register for attendance by e-mailing or calling Ms. Sharon Herman at

*Sharon.herman@dot.gov* or (202) 366-9059.

#### FOR FURTHER INFORMATION CONTACT:

Bernie Stankus, Office of Airline Information, RTS-42, Research and Innovative Technology Administration, Bureau of Transportation Statistics, telephone number (202) 366-4387, fax number (202) 366-3383 or e-mail *bernard.stankus@dot.gov*.

#### SUPPLEMENTARY INFORMATION:

##### Background

The long tarmac delays that occurred in late 2006 and early 2007 focused public attention on the DOT's Part 234 Airline Service Quality Performance Reports. In reviewing taxi-out times, it was brought to our attention that the air carriers were inconsistent in reporting gate-departure times when an aircraft returned to the gate. Some carriers were reporting the initial gate departure time while others were reporting the "second" gate departure time. There are advantages and disadvantages with both methods.

By reporting the first gate-departure time, the DOT knows the time interval from when the aircraft was ready to depart and when the aircraft actually departed the airport (wheels-off time). However, many times the air carrier is credited with an on-time departure, when in reality the aircraft returned to the gate only to depart well after the scheduled departure time. Also, the taxi-out time is miscalculated, as the time that the aircraft was parked at the gate awaiting re-boarding is counted in the taxi out time.

Reporting the second gate-departure time disguises inconveniences that the passengers endured by making it appear that they were on the aircraft for a much shorter duration before wheels-off time. Some have indicated that the taxi-out time for carriers reporting the second gate departure time is a more accurate assessment of taxi-out times.

During recent snowstorms in the northeast, many flights departed the boarding gates only to spend many hours on the tarmac being de-iced and waiting for improved weather conditions. When the weather deteriorated, flights were cancelled. Historically, carriers have not reported gate-departure times when the flight is later cancelled. During this public meeting, the Department will attempt to clarify the reporting requirements for aircraft that return to departure gates.

Issued in Washington, DC, on May 8, 2007.

**Donald W. Bright,**

*Assistant Director, Airline Information,  
Bureau of Transportation Statistics.*

[FR Doc. E7-9209 Filed 5-16-07; 8:45 am]

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## DEPARTMENT OF LABOR

### Occupational Safety and Health Administration

#### 29 CFR Parts 1910, 1915, 1917, and 1918

[Docket No. OSHA-2007-0044]

**RIN 1218-AC08**

#### Updating OSHA Standards Based on National Consensus Standards; Personal Protective Equipment

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

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** OSHA is proposing to revise the personal protective equipment (PPE) sections of its general industry, shipyard employment, longshoring, and marine terminals standards regarding the use of eye and face protective devices, head protection, and foot protection. OSHA is proposing to replace the existing references to specific consensus standards with performance language requiring PPE to be constructed in accordance with good design standards. The proposed revision includes guidance for determining what is a good design standard. In addition, OSHA is proposing to add non-mandatory appendices that list standards that constitute good design standards as used in the requirement.

OSHA is also proposing to delete a paragraph in its ventilation standard that requires safety shoes to comply with a specific American National Standards Institute (ANSI) standard, and another paragraph in its welding, cutting and brazing standard that requires filter lenses and plates in eye protective equipment to meet a test for transmission of radiant energy prescribed in another specific ANSI standard. In proposing to delete these paragraphs, OSHA intends for this safety equipment to comply with the applicable PPE design provisions in Subpart I of the general industry standards.

These proposed revisions are a continuation of OSHA's effort to update or remove references to specific consensus and industry standards

located throughout the Agency's standards.

**DATES:** Comments and requests for an informal public hearing must be submitted by the following dates:

- Hard copy: Your comments or hearing requests must be submitted (postmarked or sent) by July 16, 2007.

- Electronic transmission and facsimile: Your comments or hearing requests must be sent by July 16, 2007.

**ADDRESSES:** You may submit comments, requests for hearings and additional materials by any of the following methods:

*Electronically:* You may submit comments, requests for hearings, and attachments electronically at <http://www.regulations.gov>, which is the Federal eRulemaking Portal. Follow the instructions on-line for making electronic submissions.

*Fax:* If your submissions, including attachments, are not longer than 10 pages, you may fax them to the OSHA Docket Office at (202) 693-1648.

*Mail, hand delivery, express mail, messenger or courier service:* You must submit three copies of your comments, requests for hearings and attachments to the OSHA Docket Office, Docket No. OSHA-2007-0044, U.S. Department of Labor, Room N-2625, 200 Constitution Avenue, NW., Washington, DC 20210. Deliveries (hand, express mail, messenger and courier service) are accepted during the Department of Labor's and Docket Office's normal business hours, 8:15 a.m.-4:45 p.m., e.t.

*Instructions:* All submissions must include the Agency name and the OSHA docket number for this rulemaking (OSHA Docket No. OSHA-2007-0044). Submissions, including any personal information you provide, are placed in the public docket without change and may be made available online at <http://www.regulations.gov>.

*Docket:* To read or download submissions or other material in the docket, go to <http://www.regulations.gov> or the OSHA Docket Office at the address above. All documents in the docket are listed in the [www.regulations.gov](http://www.regulations.gov) index, however, some information (e.g., copyrighted material) is not publicly available to read or download through the Web site. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office.

**FOR FURTHER INFORMATION CONTACT:** For general information and press inquiries

contact Kevin Ropp, 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 Ted Twardowski, Directorate of Standards and Guidance, Room N-3609, OSHA, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; telephone: (202) 693-2070 or fax: (202) 693-1663. 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. Discussion of Changes

##### A. Introduction

As discussed in a previous **Federal Register** notice (69 FR 68283), OSHA is undertaking a series of projects to update its standards to reflect the latest versions of consensus and industry standards. These projects will include updating or revoking consensus and industry standards incorporated by reference, updating regulatory text of current OSHA rules that were adopted directly from the language of outdated consensus standards, and, where appropriate, replacing specific references to outdated consensus standards with performance-oriented requirements. This action is another step in OSHA's long-term effort to update or revoke references to specific consensus and industry standards.

OSHA is performing two main actions in this proposal. First, OSHA is proposing to revise the personal protective equipment (PPE) sections of its general industry, shipyard employment, longshoring, and marine terminals rules to require that PPE be constructed in accordance with good design standards. The proposed revision

also provides guidance on what is a good design standard. In addition, OSHA is proposing to add non-mandatory appendices that list standards that constitute good design standards for purposes of the requirement. Second, OSHA is proposing to delete two paragraphs in § 1910.94 (Ventilation) and § 1910.252 (Welding, cutting and brazing) referencing specific versions of American National Standards Institute (ANSI) standards on foot protection and eye and face protective devices, respectively. OSHA discusses each action below.

#### B. Revisions to PPE Sections in General Industry, Shipyard Employment, Longshoring, and Marine Terminals Standards

##### (1) Background

Subpart I of OSHA's general industry standards contains design requirements for eye and face protective devices, head protection, and foot protection. See §§ 1910.133, 1910.135, 1910.136. OSHA has similar requirements in subpart I of part 1915 (Shipyard Employment), subpart E of part 1917 (Marine Terminals), and subpart J of part 1918 (Longshoring). These rules require, among other things, that this PPE comply with certain ANSI standards incorporated by reference, unless the employer demonstrates that a piece of equipment is as effective as equipment that complies with the incorporated ANSI standard. *See, e.g.,* § 1910.133(b)(1).<sup>1</sup> These design provisions are part of comprehensive requirements to ensure that employees use PPE that will protect them from hazards in the workplace.

All of the incorporated ANSI standards have been superseded by more current versions. Table I lists the ANSI standards that are incorporated by reference and the current versions of those standards for the PPE that are covered by this proposed rule.

<sup>1</sup> The general industry and shipyard employment standards expressly allow employers to use PPE that is as protective as PPE constructed in accordance with the incorporated standards. OSHA uses its de minimis policy to allow employers covered by the longshoring and marine terminals standards to use PPE that is as protective as PPE constructed in accordance with the incorporated standards. See OSHA Instruction CPL 2.103, Field Inspection Reference Manual Ch. III, C.2.g; Memorandum from Richard Fairfax, Director, Directorate of Enforcement Programs to Regional Administrators (June 19, 2006).

TABLE 1.—CURRENT OSHA PPE REQUIREMENTS

Subpart/section	PPE	Incorporated ANSI standard	Current version of ANSI standard
Subpart I/§ 1910.133 (Eye and Face Devices-General Industry).	§ 1910.133(b)(1) Protective eye and face devices purchased after July 5, 1994.	Z87.1–1989	ANSI Z87.1–2003.
	§ 1910.133(b)(2) Protective eye and face devices purchased before July 5, 1994.	Z87.1–1968	ANSI Z87.1–2003.
Subpart I/§ 1910.135 (Headwear-General Industry).	§ 1910.135(b)(1) Protective helmets purchased after July 5, 1994.	Z89.1–1986	ANSI Z89.1–2003.
	§ 1910.135(b)(2) Protective helmets purchased before July 5, 1994.	Z89.1–1969	ANSI Z89.1–2003.
Subpart I/§ 1910.136 (Footwear-General Industry).	§ 1910.136(b)(1) Protective footwear purchased after July 5, 1994.	Z41–1991	ASTM F–2412–05 &–2413–05 <sup>2</sup>
	§ 1910.136(b)(2) Protective footwear purchased before July 5, 1994.	Z41.1–1967	ASTM F–2412–05 &–2413–05
Subpart I/§ 1915.153 (Eye and Face Devices-Shipyard Employment).	§ 1915.153(b)(1) Protective eye and face devices purchased after May 20, 1982.	Z87.1–1989	ANSI Z87.1–2003.
	§ 1915.153(b)(2) Protective eye and face devices purchased before May 20, 1982.	Z87.1–1979	ANSI Z87.1–2003.
Subpart I/§ 1915.155 (Headwear-Shipyard Employment).	§ 1915.155(b)(1) Protective helmets purchased after August 22, 1996.	Z89.1–1986	ANSI Z89.1–2003.
	§ 1915.155(b)(2) Protective helmets purchased before August 22, 1996.	Z89.1–1969	ANSI Z89.1–2003.
Subpart I/§ 1915.156 (Footwear-Shipyard Employment).	§ 1915.156(b)(1) Protective footwear purchased after August 22, 1996.	Z41–1991	ASTM F–2412–05 &–2413–05
	§ 1915.156(b)(2) Protective footwear purchased before August 22, 1996.	Z41–1983	ASTM F–2412–05 &–2413–05
Subpart E/§ 1917.91 (Eye and Face Devices-Marine Terminals).	1917.91(a)(1) Protective eye and face devices	Z87.1–1989	ANSI Z87.1–2003.
Subpart E/1917.93 (Headwear-Marine Terminals).	§ 1917.93(b) Protective headwear .....	Z89.1–1986	ANSI Z89.1–2003.
Subpart E/§ 1917.94 (Footwear-Marine Terminals).	§ 1917.94(b) Protective footwear .....	Z41–1991	ASTM F–2412–05 &–2413–05
Subpart J/§ 1918.101 (Eye and Face Devices-Longshoring).	§ 1918.101(a) Protective eye and face devices	Z87.1–1989	ANSI Z87.1–2003.
Subpart J/§ 1918.103 (Headwear-Longshoring)	§ 1918.103(b) Protective headwear .....	Z89.1–1986	ANSI Z89.1–2003.
Subpart J/§ 1918.104 (Footwear-Longshoring) ..	§ 1918.104(b) Protective footwear .....	Z41–1991	ASTM F–2412–05 &–2413–05

As Table I indicates, the incorporated ANSI standards are all over a decade old and in some instances are two decades old. All of the ANSI standards have been updated, and in one instance, the ANSI Z41 standard for protective footwear, has been completely replaced. As the standards have been updated, manufacturers have switched to manufacturing PPE that is in accord with the updated standards. As a result, employers and employees have difficulty obtaining PPE manufactured in accordance with the incorporated standards. OSHA estimates the average life of these types of PPE to be about two to four years. OSHA Docket S–060, *Preliminary Regulatory Impact & Regulatory Flexibility Analysis of the Personal Protective Equipment Standard Table IV–2* (U.S. Dep’t of Labor, OSHA, Office of Regulatory Analysis, June 30, 1989). Accordingly, the difficulty is widespread and occurs on a regular basis.

<sup>2</sup> ANSI’s Z41 standard has been withdrawn and replaced by the cited ASTM International standards. ASTM International was formerly the American Society for Testing and Materials.

In the past, OSHA has updated its PPE standards by revising them to incorporate more recent versions of the ANSI standards. 59 FR 16360 (Apr. 6, 1994). This temporarily alleviates the problem of trying to obtain PPE manufactured in accordance with an outdated version of an ANSI standard, but it ensures that the problem will arise again as the incorporated standards are superseded by future versions. Despite its best efforts, OSHA cannot propose and finalize its standards as frequently as the consensus standards development organizations (SDOs). Some consensus standards are updated every 3–5 years; OSHA simply does not have the resources to engage in full rulemaking at this frequency for all of its PPE standards.

OSHA has preliminarily concluded that incorporating specific versions of ANSI standards is not an effective approach for its PPE design requirements. Therefore, OSHA is proposing a performance-oriented approach: to replace references to specific ANSI standards with a requirement that PPE be constructed in accordance with good design standards.

It also establishes additional guidance for employers as to what constitutes a good design standard.

## 2. The Provisions of the Proposal

The crux of the proposed revision is the requirement that the PPE be constructed in accordance with good design standards. Eye and face, head, and foot PPE are commonly worn in general industry, shipyard employment, longshoring, and marine terminals. The PPE must be strong enough to protect employees from the hazards they face in the workplace. It also must be constructed and tested in accordance with sound and accepted principles that will ensure the safety of employees.<sup>3</sup>

Generally, good design standards for these types of PPE are reflected in the relevant national consensus standards.

<sup>3</sup> An inherent part of any good design standard is a testing protocol for ensuring that the manufactured equipment will provide a specified level of protection. Accordingly, the requirement that the PPE be constructed in accordance with good design standards includes the requirement that the PPE be tested in accordance with a testing protocol that is designed to ensure that the PPE provides the level of protection the good design standard is intended to achieve.

OSHA has examined the standards for eye and face, head, and foot PPE issued by ANSI and ASTM International (ASTM) over the last 40 years. OSHA has found that these standards reflect the state of the art in terms of design safety that existed at the time they were issued.<sup>4</sup> Furthermore, each successive edition of these standards has improved the design features of the PPE. For example, a comparison between the 1989 and 2003 versions of the ANSI standard for protective eye and face equipment shows that ANSI has strengthened the impact resistance requirements of the standard. Similarly, the current ASTM International standard for footwear improves on prior ANSI standards for footwear by increasing protection against electrical hazards.

To develop their standards, these SDOs receive input from industry groups, employee representatives, government agencies, safety experts, and other affected parties. *See, e.g.,* ANSI Z89.1–2003, *American National Standard for Industrial Head Protection* Foreword. As a result, they develop standards that are generally recognized as providing an adequate level of safety, as shown by the widespread use of these standards by manufacturers even where OSHA standards specify an earlier version.

Congress recognized the importance of national consensus standards in the effort to protect employee safety and health. For the first two years following promulgation of the Occupational Safety and Health Act of 1970 (OSH Act), Congress authorized the adoption of national consensus standards as OSHA standards without notice and comment. 29 U.S.C. 655(a). For standards adopted using the notice-and-comment procedures of the OSH Act, relevant national consensus standards are the baseline for evaluating OSHA standards. *See* 29 U.S.C. 655(b)(8) (when a new standard differs from a national consensus standard, the Secretary must explain why the new standard will better effectuate purposes of the Act than the national consensus standard).

In light of this, OSHA believes that design standards that are formulated pursuant to the processes described above will generally constitute good design standards. OSHA's analysis of the PPE design standards over the last 40 years provides evidence of this. OSHA is thus including in the proposal a presumption that PPE complies with the good design requirement if it is

constructed in accordance with a design standard that meets specified criteria consistent with the criteria for the development of national consensus standards.

The specific criteria of the proposal are drawn from the criteria nationally recognized testing laboratories must apply for determining if a standard is appropriate for evaluating the safety of equipment or materials. *See* § 1910.7(c). They also reflect the criteria of a national consensus standard as defined in the OSH Act and the way many SDOs operate. *See* 29 U.S.C. 652(9). The proposal is intended to codify the criteria that have been used successfully for developing design standards that ensure an adequate level of safety.

The first of these criteria ensures that the design standard incorporates safety concerns as part of the standard and that these safety concerns are related to the particular piece of PPE covered by the OSHA standard. The second ensures that the design standard provides guidelines for constructing the equipment and has achieved a minimum level of recognition by safety experts as providing an adequate level of safety. The third of these criteria is process-oriented; it ensures that knowledgeable and affected interests have an opportunity to provide input into the development of the standard, which advances the goal of ensuring that the design standard provides an adequate level of safety.

PPE constructed in accordance with the proposal's criteria for a good design standard is only presumptively compliant with the standard's general requirement that the PPE be constructed in accordance with good design standards. The presumption is primarily intended to reserve OSHA's authority to determine that a future national consensus standard for PPE design specifications will not provide an adequate level of protection and therefore will not meet the general good design requirement. OSHA believes that it will rarely, if ever, determine that a future national consensus standard related to PPE design specifications does not provide sufficient protection; nevertheless, OSHA's proposed approach provides for that possibility.

To further increase the notice employers have of their obligations under the proposed requirements, OSHA is also proposing to list in non-mandatory appendices the national consensus standards that OSHA has determined are good design standards as that concept is used in the proposal. OSHA is proposing to reference in the non-mandatory appendices the 1986 (headwear), 1989 (eye and face devices),

and 1991 (footwear) versions of the national consensus standards incorporated in the existing standards for PPE, as well as the more recent versions of those national consensus standards. Specifically, OSHA proposes to list in the non-mandatory appendices the following standards: for protective eye and face devices, ANSI Z87.1–1989, ANSI Z87.1–1998, and ANSI Z87.1–2003; for protective headwear, ANSI Z89.1–1986, ANSI Z89.1–1997, and ANSI Z89.1–2003; and for protective footwear, ANSI Z41–1991, ANSI Z41–1999, and ASTM F–2412–05 and ASTM F–2413–05. As stated above, OSHA has carefully reviewed all of these standards and has found that they establish design criteria that provide adequate protection for employees.

OSHA has not, however, proposed to list ANSI standards from before 1986. OSHA's incorporation of earlier versions in its existing PPE design standards was limited to allowing the use of PPE that was purchased by a certain date that has long passed. For ten years or more, the existing standards have not permitted the use of PPE manufactured in accordance with those earlier versions if the PPE was purchased after those specified dates. In addition, for some time manufacturers have not been manufacturing PPE in accordance with those earlier versions. Given the limited useful life of PPE and the length of time that has passed since employers and employees have been able to use PPE manufactured in accordance with those earlier versions, OSHA believes that no PPE currently in use was constructed in accordance with those earlier standards. Accordingly, there is no need to list those earlier standards.

Employers are not required to ensure that the PPE is constructed in accordance with a listed national consensus standard. The fundamental requirement is that the PPE be constructed in accordance with good design standards. However, OSHA is proposing that once a national consensus standard is listed in the non-mandatory appendices, the presumption in the standard would be conclusive for enforcement purposes. Of course, OSHA's decision to list a national consensus standard in the non-mandatory appendices would not preclude OSHA from initiating appropriate procedures to revoke that listing. But until and unless OSHA revokes a listing through that procedure, employers will be assured that their use of PPE that was constructed in accordance with a listed national consensus standard meets the good design requirement. An employer's

<sup>4</sup> OSHA has placed copies of these national consensus standards in the docket for this rulemaking (OSHA–2007–0044).

reasonable reliance on a manufacturer's certification that the PPE was constructed in accordance with any of the listed national consensus standards satisfies the employer's obligation to ensure that the PPE was constructed in accordance with a good design standard.

OSHA also intends to update in the future the non-mandatory appendices to include any future national consensus standard it determines meets the requirements of the proposed rule. OSHA is committing itself to reviewing future national consensus standards for PPE design criteria as they are promulgated. Assuming the review confirms that a newly promulgated national consensus standard is a good design standard, OSHA will use the procedures it has developed for direct final rules to add the newly promulgated national consensus standard to the non-mandatory appendices. Those procedures involve OSHA publishing the direct final rule in the **Federal Register** along with an identical proposed rule. The direct final rule will go into effect unless OSHA receives a significant adverse comment within a specified period. If OSHA receives significant adverse comments, it will withdraw the direct final rule and treat the comments as responses to the proposed rule. When using the direct final rule procedures for updating the non-mandatory appendices for the PPE design standards, OSHA will consider as significant adverse comments only those comments that explain why the reviewed version does not provide equivalent or greater protection to employees. As stated, the addition of a new national consensus standard would not require employers to use PPE constructed in accordance with that standard; it would merely provide employers with an additional option for meeting the good design requirement. OSHA anticipates that additions to the non-mandatory appendices will occur rapidly and without controversy.

Finally, in switching from a specification provision to a performance oriented provision, OSHA is not intending to decrease employee protection. The references to the specific ANSI standards in OSHA's existing rules are the minimum design specifications for PPE used in the workplace and, as stated above, OSHA is listing them in the non-mandatory appendices. PPE meeting good design standards must at a minimum be constructed to provide protection equivalent to, or greater than, this minimum level of protection. OSHA is

adding language in the regulatory text of the proposed rule that makes this clear.<sup>5</sup>

### 3. Effects of the Proposal

OSHA believes that requiring use of PPE that meets good design standards is appropriate and will increase employee safety and health by facilitating the use of state-of-the-art PPE. It is appropriate to provide this type of flexibility because, as stated above, OSHA's experience has shown that overall safety increases with each update of national consensus standards.

OSHA standards should be written to facilitate the ability of employers to take advantage of safety advances developed by ANSI and similar organizations. Even when an updated national consensus standard merely maintains the status quo in terms of safety, ensuring that OSHA standards are written to facilitate the use of PPE constructed in accordance with those standards serves the interest of protecting employee safety. Once updated standards are promulgated, over time PPE constructed in accordance with those standards become increasingly more available and PPE constructed under the predecessor standards become increasingly unavailable. Those seeking to obtain PPE will therefore usually have an easier time finding PPE manufactured in accordance with a current version than PPE manufactured in accordance with an older version.

OSHA's current PPE design standards, however, impose obstacles to allowing employers and employees to obtain the benefit of better PPE manufactured under improved standards or newer equipment manufactured under updated standards that maintain the status quo. Under the current general industry and shipyard employment standards, to obtain these benefits employers must be able to demonstrate that the PPE manufactured in accordance with the updated versions are as protective as PPE manufactured in accordance with the referenced versions. Employers need to research the referenced national consensus standards, identify and analyze the updated versions, and make the determination as to whether PPE designed to meet the updated versions provide employees with protection equivalent to or greater than the protection they receive with PPE designed in accordance with the referenced versions.

The proposal reduces if not eliminates this burden. It will authorize the use of PPE that meets the current versions of the referenced standards, which as noted above OSHA has determined meet

the good design requirement and which therefore will be listed in the non-mandatory appendices. Similarly, the proposal presumes that a future national consensus standard, as described in this proposal, will meet the good design requirement. The possibility that a future national consensus standard will not be a good design standard is remote, and employers will be able to rely on the presumption established by the proposal with a high degree of confidence.

In sum, by replacing the existing PPE provisions with performance requirements, the transition to the use of PPE built in accordance with updated standards will occur more certainly and rapidly than it occurs under the present OSHA standards. This will facilitate employer efforts to improve the safety and health of employees by providing state of the art PPE. In addition, the proposal does not add any compliance burdens on employers.

### 4. Alternatives

In developing the proposal, OSHA considered several alternatives. While some of these approaches had advantages, for the reasons stated below, OSHA has decided preliminarily not to adopt them.

First, OSHA considered proposing to update the PPE standards by incorporating the most current versions of the referenced national consensus standards. As discussed above, OSHA has done this in the past. However, this would provide only a short-term fix to the problem of references to outdated consensus standards. In OSHA's view, this approach would simply perpetuate the obstacles to using state-of-the-art PPE that are contained in the current OSHA standards.

Second, OSHA considered replacing the references to specific design standards with performance-oriented language that would require the PPE to provide the level of protection that a conscientious safety expert would provide. In OSHA's view, the proposal is superior to this alternative because it provides greater notice to employers of their compliance obligations.

Finally, OSHA considered proposing specific performance-based criteria, such as a particular level of impact-resistance, that the various types of PPE would have to meet. The specific performance-based criteria of design standards, however, are generally tied to particular test methods, and employers are not in the best position to determine if the performance-based criteria have been met. Thus, in OSHA's view, the proposal is easier for employers to implement than a standard of this type.

<sup>5</sup> See, e.g., Proposed § 1910.133(b)(2).

Moreover, OSHA believes that this alternative would tend to favor a particular design standard at the potential expense of discouraging adherence to future improved design standards.

#### 5. Request for Comments

OSHA solicits comments on the proposal's combination of a general good design requirement and the presumption that PPE constructed in accordance with certain specific criteria complies with the good design requirement. More specifically, OSHA solicits comments on the following issues:

1. Does this approach provide employers with sufficient notice of their legal obligations while also providing sufficient flexibility to account for future developments in design standards for PPE?

2. Has OSHA accurately prescribed the criteria that will ensure that a standard meeting those criteria will at least presumptively be a good design standard? Are the criteria sufficiently clear for employers to determine whether certain PPE meets the good design requirement? In particular, can employers easily understand and apply the second criterion—that a particular design standard be recognized in the United States as providing specifications that result in an adequate level of safety? If not, what criterion should be used to determine whether a particular design standard is or is not recognized in the United States as providing specifications that result in an adequate level of safety?

3. Should the listing of a design standard in a Non-Mandatory Appendix be conclusive on whether PPE constructed in accordance with that standard meets the good design requirement?

4. Are there other publicly available design standards that are not included in the proposed non-mandatory appendices that would provide an adequate level of protection and therefore should be included in the appendices?

5. Are there other alternatives the Agency should consider that will provide sufficient notice to employers, appropriate protection for employees, and flexibility to account for future developments in design standards for PPE?

6. Are there PPE currently in use that were constructed in accordance with national consensus standards not included in the proposed appendices?

#### C. Deletions of Outdated References From Ventilation and Welding Standards

Section 1910.94(a)(5)(v)(a) of OSHA's ventilation standard requires that safety shoes comply with ANSI Z41.1-1967; § 1910.252(b)(2)(ii)(I) of OSHA's welding standard requires filter lenses and plates in protective eyewear to comply with the transmission test for radiant energy prescribed in ANSI Z87.1-1968. OSHA is proposing to delete these paragraphs. By doing so, OSHA intends for the safety shoes required by § 1910.94(a)(5)(v) to comply with revised section 1910.136(b) requiring footwear to meet good design standards. OSHA intends for filter lenses and plates in protective eyewear required by section 1910.252(b)(2) to comply with revised section 1910.133(b) requiring eye and face protective devices to meet good design standards. OSHA is not deleting the requirements in §§ 1910.94 and 1910.252 that specify when, and under what conditions, employees must use certain PPE; these requirements will remain in the affected standards.

OSHA believes that these deletions will not increase compliance burdens, including compliance costs. It is unlikely that employees are using safety shoes that are manufactured in accordance with ANSI Z41.1-1967. Instead, employees are presumably using shoes that were manufactured in accordance with the 1991 or 1999 version or its current replacement, ASTM F-2412-05 and 2413-05. Furthermore, OSHA believes that virtually all employees affected by the welding standard use eyewear that complies with ANSI Z87.1-1989, ANSI 87.1-1998, or ANSI Z87.1-2003, rather than eyewear manufactured in accordance with the 1968 transmission test for radiant energy required in the existing OSHA standard.

OSHA solicits comments on whether OSHA is correct that compliance burdens would not increase under the proposal. OSHA also solicits comments on whether OSHA should, rather than delete the paragraphs, replace them with cross references to §§ 1910.136(b) and 1910.133(b).

#### II. Legal Considerations

The purpose of the Occupational Safety and Health Act of 1970, 29 U.S.C. 651 *et seq.*, is to achieve to the extent possible safe and healthful working conditions for all employees. 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.

654(b), 655(b). A safety or health standard is a standard which requires employers to maintain conditions or adopt practices that are reasonably necessary or appropriate to provide safe or healthful working conditions. 29 U.S.C. 652(8). A standard is reasonably necessary or appropriate within the meaning of section 652(8) if, among other things, a significant risk of material harm exists in the workplace and the proposed standard would substantially reduce or eliminate that workplace risk.

OSHA has already determined that requirements for PPE, including design requirements, are reasonably necessary or appropriate within the meaning of section 652(8). This proposed rule neither reduces employee protection nor alters an employer's obligations under the existing OSHA standard. Under the proposal, employers will be able to continue to use the same equipment they have been using to meet their compliance obligation under the existing standards' design criteria requirement. The proposal provides guidance on additional PPE employers can use to comply with the design criteria requirement by providing equivalent or greater protection. By facilitating but not mandating the transition to PPE constructed in accordance with updated versions of national consensus standards, employee protection will increase and compliance burdens on employers will stay the same or decrease. For these reasons, OSHA is not required in this action to determine significant risk or the extent to which the proposal would reduce that risk, as would typically be required by *Industrial Union Department, AFL-CIO v. American Petroleum Institute*, 448 U.S. 607 (1980).

#### III. Preliminary Economic Analysis and Regulatory Flexibility Act Certification

This action is not economically significant within the context of Executive Order 12866, or a major rule under the Unfunded Mandates Reform Act or Section 801 of the Small Business Regulatory Enforcement Fairness Act. The rulemaking would impose no additional costs on any private or public sector entity, and does not meet any of the criteria for an economically significant or major rule specified by the Executive Order or relevant statutes.

This action allows for increased flexibility in choosing the PPE used by employees. However, the rule does not require an employer to update or replace its PPE solely as a result of this rule, if the PPE currently in use meets the existing OSHA standard.

Furthermore, because the rule imposes no costs, OSHA certifies that it would not have a significant impact on a substantial number of small entities.

#### IV. Paperwork Reduction Act

This action does not impose new information collection requirements for purposes of the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–30.

#### V. Federalism

OSHA has reviewed this proposed rule in accordance with the Executive Order on Federalism (Executive Order 13132, 64 FR 43255, August 10, 1999), which requires that 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 there is clear constitutional authority and the presence of a problem of national scope. Executive Order 13132 provides for preemption of State law only if there is a clear congressional intent for the Agency to do so. Any such preemption is to be limited to the extent possible.

Section 18 of the OSH Act, 29 U.S.C. 667, expresses Congress' intent to preempt State laws where OSHA has promulgated occupational safety and health standards. Under the OSH Act, a State can avoid preemption on issues covered by Federal standards only if it submits, and obtains Federal approval of, a plan for the development of such standards and their enforcement (State-Plan State). 29 U.S.C. 667. Occupational safety and health standards developed by such State-Plan States must, among other things, 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 proposed rule complies with Executive Order 13132. In States without OSHA-approved State Plans, this action limits State policy options in the same manner as all OSHA standards. In State-Plan States, this action does not significantly limit State policy options. As explained below, State-Plan States will not have to adopt the proposal, if it is promulgated as proposed.

#### VI. State Plan States

When Federal OSHA promulgates a new standard or more stringent amendment to an existing standard, the 26 States or U.S. Territories with their own OSHA-approved occupational safety and health plans must revise their

standards to reflect the new standard or amendment, or show OSHA why there is no need for action, *e.g.*, because an existing State standard covering this area is already at least as effective as the new Federal standard or amendment. 29 CFR 1953.5(a). These 26 States and territories are: Alaska, Arizona, California, Connecticut (plan covers only State and local government employees), Hawaii, Indiana, Iowa, Kentucky, Maryland, Michigan, Minnesota, Nevada, New Mexico, New Jersey (plan covers only State and local government employees), New York (plan covers only State and local government employees), North Carolina, Oregon, Puerto Rico, South Carolina, Tennessee, Utah, Vermont, Virginia, Virgin Islands (plan covers only territorial and local government employees), Washington, and Wyoming.

OSHA does not consider the proposal as proposing a change that will trigger the requirements of § 1953.5(a). Accordingly, State-Plan States will not be required to adopt the proposal, if it is promulgated as proposed, or show why there is no need for action on their part. At the conclusion of the rulemaking proceedings, OSHA will advise State-Plan States if OSHA intends to require them to inform OSHA of what action, if any, they will take with regard to the matter covered by the proposal. *See* 29 CFR 1953.4(b)(7).

#### VII. Unfunded Mandates Reform Act

This proposed rule has been reviewed in accordance with the Unfunded Mandates Reform Act of 1995 (UMRA). 2 U.S.C. 1501 *et seq.* For the purposes of the UMRA, the Agency certifies that this proposed rule does not impose any Federal mandate that may result in increased expenditures by State, local, or tribal governments, in the aggregate, or increased expenditures by the private sector, of more than \$100 million in any year.

#### List of Subjects in 29 CFR Parts 1910, 1915, 1917, and 1918

Incorporation by reference, Occupational safety and health, Personal protective equipment.

#### VIII. Authority and Signature

This document was prepared under the direction of Edwin G. Foulke, Jr., Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. It is issued pursuant to sections 4, 6, and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657), section 941 of the Longshore and Harbor Workers' Compensation Act (33 U.S.C.

901 *et seq.*); 5 U.S.C. 553, Secretary of Labor's Order 5–2002, and 29 CFR part 1911.

Signed at Washington, DC this 10th day of May, 2007.

**Edwin G. Foulke, Jr.,**

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

#### Proposed Amendments to Standards

The Occupational Safety and Health Administration is proposing to amend parts 1910, 1915, 1917, and 1918 of Title 29 of the Code of Federal Regulations as set forth below.

### PART 1910—OCCUPATIONAL SAFETY AND HEALTH STANDARDS

#### Subpart A—General

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

**Authority:** Secs. 4, 6, 8, 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), or 5–2002 (67 FR 65008), as applicable.

Section 1910.6 also issued under 5 U.S.C. § 553. Sections 1910.6, 1910.7, and 1910.8 also issued under 29 CFR part 1911. Section 1910.7(f) also issued under 31 U.S.C. 9701, 29 U.S.C. 9a, 5 U.S.C. 553; Pub. L. 106–113 (113 Stat. 1501A–222); and OMB Circular A–25 (dated July 8, 1993) (58 FR 38142, July 15, 1993).

#### § 1910.6 [Amended]

2. In § 1910.6, paragraphs (e)(60), (e)(61), (e)(67), (e)(68), (e)(70), (e)(71) are removed. Paragraphs (e)(62) through (e)(66) are redesignated as paragraphs (e)(60) through (e)(64), respectively; paragraph (e)(69) is redesignated as paragraph (e)(65); and paragraph (e)(72) is redesignated as paragraph (e)(66).

#### Subpart G—Occupational Health and Environmental Control

3. The authority citation for subpart G 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, 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), or 5–2002 (67 FR 65008), as applicable; and 29 CFR part 1911.

Section 1910.94 also issued under 5 U.S.C. 553.

#### § 1910.94 [Amended]

4. Section 1910.94 is amended by removing and reserving paragraph (a)(5)(v)(a).

### Subpart I—Personal Protective Equipment

5. The authority citation for subpart I of part 1910 is revised to read as follows:

**Authority:** Sections 4, 6, and 8, 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), or 5-2002 (67 FR 65008), as applicable.

Sections 1910.132, 1910.134, and 1910.138 also issued under 29 CFR part 1911.

Sections 1910.133, 1910.135, and 1910.136 also issued under 29 CFR part 1911 and 5 U.S.C. 553.

6. Paragraph (b) of § 1910.133 is revised to read as follows:

#### § 1910.133 Eye and face protection.

\* \* \* \* \*

(b) *Criteria for protective eye and face devices.* (1) The employer shall ensure that the protective eye and face devices are constructed in accordance with good design standards. Equipment that is constructed in accordance with an equipment design standard that meets the following criteria will be presumed to be constructed in accordance with good design standards:

(i) The standard specifies the safety requirements for the particular equipment;

(ii) The standard is recognized in the United States as providing specifications that result in an adequate level of safety; and

(iii) The standard was developed by a standards development organization under a method providing for input and consideration of views of industry groups, experts, users, governmental authorities, and others having broad experience and expertise in issues related to the design and construction of the particular equipment.

(2) Non-mandatory appendix C to this subpart contains examples of national consensus standards that OSHA has determined meet the criteria of paragraph (b)(1) of this section. Protective eye and face devices that are constructed in accordance with any of the listed national consensus standards will be deemed to meet the good design requirement of paragraph (b)(1). Protective eye and face devices are not

required to be constructed in accordance with one of the listed standards, but the protective eye and face devices must be constructed in accordance with good design standards. To meet this requirement, the protective eye and face device must provide protection equivalent to or greater than a protective eye and face device of the same type that is constructed in

accordance with one of the listed national consensus standards.

7. Paragraph (b) of § 1910.135 is revised to read as follows:

#### § 1910.135 Head protection.

\* \* \* \* \*

(b) *Criteria for protective helmets.* (1) The employer shall ensure that the protective helmets are constructed in accordance with good design standards. A protective helmet that is constructed in accordance with an equipment design standard that meets the following criteria will be presumed to be constructed in accordance with good design standards:

(i) The standard specifies the safety requirements for the particular equipment;

(ii) The standard is recognized in the United States as providing specifications that result in an adequate level of safety; and

(iii) The standard was developed by a standards development organization under a method providing for input and consideration of views of industry groups, experts, users, governmental authorities, and others having broad experience and expertise in issues related to the design and construction of the particular equipment.

(2) Non-mandatory appendix C to this subpart contains examples of national consensus standards that OSHA has determined meet the criteria of paragraph (b)(1) of this section. Protective helmets that are constructed in accordance with any of the listed national consensus standards will be deemed to meet the good design requirement of paragraph (b)(1). Protective helmets are not required to be constructed in accordance with one of the listed standards, but the protective helmets must be constructed in accordance with good design standards. To meet this requirement, the protective helmet must provide protection equivalent to or greater than a protective helmet of the same type that is constructed in accordance with one of the listed national consensus standards.

8. Paragraph (b) of § 1910.136 is revised to read as follows:

#### § 1910.136 Foot protection.

\* \* \* \* \*

(b) *Criteria for protective footwear.* (1) The employer shall ensure that the protective footwear is constructed in accordance with good design standards. Protective footwear that is constructed in accordance with an equipment design standard that meets the following criteria will be presumed to be constructed in accordance with good design standards:

(i) The standard specifies the safety requirements for the particular equipment;

(ii) The standard is recognized in the United States as providing specifications that result in an adequate level of safety; and

(iii) The standard was developed by a standards development organization under a method providing for input and consideration of views of industry groups, experts, users, governmental authorities, and others having broad experience and expertise in issues related to the design and construction of the particular equipment.

(2) Non-mandatory appendix C to this subpart contains examples of national consensus standards that OSHA has determined meet the criteria of paragraph (b)(1) of this section. Protective footwear that is constructed in accordance with any of the listed national consensus standards will be deemed to meet the good design requirement of paragraph (b)(1). Protective footwear is not required to be constructed in accordance with one of the listed standards, but the protective footwear must be constructed in accordance with good design standards. To meet this requirement, the protective footwear must provide protection equivalent to or greater than protective footwear of the same type that is constructed in accordance with one of the listed national consensus standards.

9. Appendix C to Subpart I is added as follows:

#### Appendix C to Subpart I of Part 1910—Criteria for Personal Protective Equipment (Non-Mandatory)

This appendix lists equipment design standards that OSHA has determined are "good design standards" as that phrase is used in §§ 1910.133(b), 1910.135(b), and 1910.136(b).

##### 1. Good design standards for protective eye and face devices (1910.133(b))

ANSI Z87.1-2003, "American National Standard Practice for Occupational and Educational Eye and Face Protection"

ANSI Z87.1-1998, "American National Standard Practice for Occupational and Educational Eye and Face Protection"

ANSI Z87.1-1989, "American National Standard Practice for Occupational and Educational Eye and Face Protection"

##### 2. Good design standards for protective helmets (1910.135(b))

ANSI Z89.1-2003, "American National Standard for Personnel Protection—Protective Headwear for Industrial Workers—Requirements"

ANSI Z89.1-1997, "American National Standard for Personnel Protection—Protective Headwear for Industrial Workers—Requirements"

ANSI Z89.1-1986, "American National Standard for Personnel Protection—



Protective Headwear for Industrial Workers—Requirements”

3. *Good design standards for protective footwear (1910.136(b))*

ASTM F-2412-2005, “Standard Test Methods for Foot Protection,” and ASTM F-2413-2005, “Specification for Performance Requirements for Protective Footwear.” These two standards together constitute a good design standard.

ANSI Z41-1999, “American National Standard for Personal Protection—Protective Footwear”

ANSI Z41-1991, “American National Standard for Personal Protection—Protective Footwear”

**Subpart Q—Welding, Cutting and Brazing**

10. The authority citation for subpart Q of part 1910 is revised to read as follows:

**Authority:** Secs. 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), or 5-2002 (67 FR 65008), as applicable; and 29 CFR part 1911.

Section 1910.252 also issued under 5 U.S.C. 553.

**§ 1910.252 [Amended]**

11. Section 1910.252 is amended by removing and reserving paragraph (b)(2)(ii)(I).

**PART 1915—OCCUPATIONAL SAFETY AND HEALTH STANDARDS FOR SHIPYARD EMPLOYMENT**

12. The authority citation for part 1915 is revised to read as follows:

**Authority:** Sec. 41, Longshore and Harbor Workers’ Compensation Act (33 U.S.C. 941); secs. 4, 6, 8, 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), or 5-2002 (67 FR 65008), as applicable; and 29 CFR part 1911.

Sections 1915.5, 1915.153, 1915.155, and 1915.156 also issued under 5 U.S.C. 553.

**§ 1915.5 Incorporation by reference.**

13. Section 1915.5 is amended by removing paragraphs (d)(1)(iv) through (d)(1)(ix).

14. Paragraph (b) of § 1915.153 is revised to read as follows:

**§ 1915.153 Eye and face protection.**

\* \* \* \* \*

(b) *Criteria for protective eye and face devices.* (1) The employer shall ensure that the protective eye and face devices are constructed in accordance with good design standards. Equipment that is constructed in accordance with an equipment design standard that meets the following criteria will be presumed

to be constructed in accordance with good design standards:

(i) The standard specifies the safety requirements for the particular equipment;

(ii) The standard is recognized in the United States as providing specifications that result in an adequate level of safety; and

(iii) The standard was developed by a standards development organization under a method providing for input and consideration of views of industry groups, experts, users, governmental authorities, and others having broad experience and expertise in issues related to the design and construction of the particular equipment.

(2) Non-mandatory appendix C to this subpart contains examples of national consensus standards that OSHA has determined meet the criteria of paragraph (b)(1) of this section.

Protective eye and face devices that are constructed in accordance with any of the listed national consensus standards will be deemed to meet the good design requirement of paragraph (b)(1). Protective eye and face devices are not required to be constructed in accordance with one of the listed standards, but the protective eye and face devices must be constructed in accordance with good design standards. To meet this requirement, the protective eye and face device must provide protection equivalent to or greater than a protective eye and face device of the same type that is constructed in accordance with one of the listed national consensus standards.

15. Paragraph (b) of § 1915.155 is revised to read as follows:

**§ 1915.155 Head protection.**

\* \* \* \* \*

(b) *Criteria for protective helmets.* (1)

The employer shall ensure that the protective helmets are constructed in accordance with good design standards. A protective helmet that is constructed in accordance with an equipment design standard that meets the following criteria will be presumed to be constructed in accordance with good design standards:

(i) The standard specifies the safety requirements for the particular equipment;

(ii) The standard is recognized in the United States as providing specifications that result in an adequate level of safety; and

(iii) The standard was developed by a standards development organization under a method providing for input and consideration of views of industry groups, experts, users, governmental authorities, and others having broad

experience and expertise in issues related to the design and construction of the particular equipment.

(2) Non-mandatory appendix C to this subpart contains examples of national consensus standards that OSHA has determined meet the criteria of paragraph (b)(1) of this section. Protective helmets that are constructed in accordance with any of the listed national consensus standards will be deemed to meet the good design requirement of paragraph (b)(1). Protective helmets are not required to be constructed in accordance with one of the listed standards, but the protective helmets must be constructed in accordance with good design standards. To meet this requirement, the protective helmet must provide protection equivalent to or greater than a protective helmet of the same type that is constructed in accordance with one of the listed national consensus standards.

16. Paragraph (b) of § 1915.156 is revised to read as follows:

**§ 1915.156 Foot protection.**

\* \* \* \* \*

(b) *Criteria for protective footwear.* (1)

The employer shall ensure that the protective footwear is constructed in accordance with good design standards. Protective footwear that is constructed in accordance with an equipment design standard that meets the following criteria will be presumed to be constructed in accordance with good design standards:

(i) The standard specifies the safety requirements for the particular equipment;

(ii) The standard is recognized in the United States as providing specifications that result in an adequate level of safety; and

(iii) The standard was developed by a standards development organization under a method providing for input and consideration of views of industry groups, experts, users, governmental authorities, and others having broad experience and expertise in issues related to the design and construction of the particular equipment.

(2) Non-mandatory appendix C to this subpart contains examples of national consensus standards that OSHA has determined meet the criteria of paragraph (b)(1) of this section. Protective footwear that is constructed in accordance with any of the listed national consensus standards will be deemed to meet the good design requirement of paragraph (b)(1). Protective footwear is not required to be constructed in accordance with one of the listed standards, but the protective footwear must be constructed in

accordance with good design standards. To meet this requirement, the protective footwear must provide protection equivalent to or greater than protective footwear of the same type that is constructed in accordance with one of the listed national consensus standards.

17. Appendix C to subpart I is added to read as follows:

**Appendix C to Subpart I of Part 1915—Criteria for Personal Protective Equipment (Non-Mandatory)**

This appendix lists equipment design standards that OSHA has determined are "good design standards" as that phrase is used in sections 1915.153(b), 1915.155(b), and 1915.156(b).

1. *Good design standards for protective eye and face devices (1915.153(b))*

ANSI Z87.1–2003, "American National Standard Practice for Occupational and Educational Eye and Face Protection"

ANSI Z87.1–1998, "American National Standard Practice for Occupational and Educational Eye and Face Protection"

ANSI Z87.1–1989, "American National Standard Practice for Occupational and Educational Eye and Face Protection"

2. *Good design standards for protective helmets (1915.155(b))*

ANSI Z89.1–2003, "American National Standard for Personnel Protection—Protective Headwear for Industrial Workers—Requirements"

ANSI Z89.1–1997, "American National Standard for Personnel Protection—Protective Headwear for Industrial Workers—Requirements"

ANSI Z89.1–1986, "American National Standard for Personnel Protection—Protective Headwear for Industrial Workers—Requirements"

3. *Good design standards for protective footwear (1915.156(b))*

ASTM F–2412–2005, "Standard Test Methods for Foot Protection," and ASTM F–2413–2005, "Specification for Performance Requirements for Protective Footwear." These two standards together constitute a good design standard.

ANSI Z41–1999, "American National Standard for Personal Protection—Protective Footwear"

ANSI Z41–1991, "American National Standard for Personal Protection—Protective Footwear"

**PART 1917—MARINE TERMINALS**

18. The authority citation for part 1917 is revised to read as follows:

**Authority:** Sec. 41, Longshore and Harbor Worker's Compensation Act (33 U.S.C. 941); Secs. 4, 6, 8, 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), 6–96 (62 FR 111), or 5–2002 (67 FR 65008), as applicable; and 29 CFR part 1911.

Sections 1917.3, 1917.28, 1917.91, 1917.93, 1917.94 also issued under 5 U.S.C. 553. Section 1917.29, also issued under Sec. 29, Hazardous Materials Transportation Uniform

Safety Act of 1990 (49 U.S.C. 1801–1819 and 5 U.S.C. 553).

**§ 1917.3 [Amended]**

19. Section 1917.3 is amended by removing paragraphs (b)(4) through (b)(6) and redesignating paragraph (b)(7) as (b)(4).

20. Paragraph (a)(1) of § 1917.91 is revised to read as follows:

**§ 1917.91 Eye and face protection.**

(a)(1)(i) The employer shall ensure that each affected employee uses appropriate eye and/or face protection where there are exposures to eye and/or face hazards. Protective eye and face devices shall be constructed in accordance with good design standards. Equipment that is constructed in accordance with an equipment design standard that meets the following criteria will be presumed to be constructed in accordance with good design standards:

(A) The standard specifies the safety requirements for the particular equipment;

(B) The standard is recognized in the United States as providing specifications that result in an adequate level of safety; and

(C) The standard was developed by a standards development organization under a method providing for input and consideration of views of industry groups, experts, users, governmental authorities, and others having broad experience and expertise in issues related to the design and construction of the particular equipment.

(ii) Non-mandatory appendix A to this subpart contains examples of national consensus standards that OSHA has determined meet the criteria of paragraph (a)(1)(i) of this section.

Protective eye and face devices that are constructed in accordance with any of the listed national consensus standards will be deemed to meet the good design requirement of paragraph (a)(1)(i).

Protective eye and face devices are not required to be constructed in accordance with one of the listed standards, but the protective eye and face devices must be constructed in accordance with good design standards. To meet this requirement, the protective eye and face device must provide protection equivalent to or greater than a protective eye and face device of the same type that is constructed in accordance with one of the listed national consensus standards.

21. Paragraph (b) of § 1917.93 is revised to read as follows:

**§ 1917.93 Head protection.**

\* \* \* \* \*

(b)(1) The employer shall ensure that the protective helmets are constructed in accordance with good design standards. Protective helmets that are constructed in accordance with an equipment design standard that meets the following criteria will be presumed to be constructed in accordance with good design standards:

(i) The standard specifies the safety requirements for the particular equipment;

(ii) The standard is recognized in the United States as providing specifications that result in an adequate level of safety; and

(iii) The standard was developed by a standards development organization under a method providing for input and consideration of views of industry groups, experts, users, governmental authorities, and others having broad experience and expertise in issues related to the design and construction of the particular equipment.

(2) Non-mandatory appendix A to this subpart contains examples of national consensus standards that OSHA has determined meet the criteria of paragraph (b)(1) of this section.

Protective helmets that are constructed in accordance with any of the listed national consensus standards will be deemed to meet the good design requirement of paragraph (b)(1).

Protective helmets are not required to be constructed in accordance with one of the listed standards, but the protective helmets must be constructed in accordance with good design standards. To meet this requirement, the protective helmet must provide protection equivalent to or greater than a protective helmet of the same type that is constructed in accordance with one of the listed national consensus standards.

\* \* \* \* \*

22. Paragraph (b) of § 1917.94 is revised to read as follows:

**§ 1917.94 Foot protection.**

\* \* \* \* \*

(b)(1) The employer shall ensure that the protective footwear is constructed in accordance with good design standards. Protective footwear that is constructed in accordance with an equipment design standard that meets the following criteria will be presumed to be constructed in accordance with good design standards:

(i) The standard specifies the safety requirements for the particular equipment;

(ii) The standard is recognized in the United States as providing specifications that result in an adequate level of safety; and

(iii) The standard was developed by a standards development organization under a method providing for input and consideration of views of industry groups, experts, users, governmental authorities, and others having broad experience and expertise in issues related to the design and construction of the particular equipment.

(2) Non-mandatory appendix A to this subpart contains examples of national consensus standards that OSHA has determined meet the criteria of paragraph (b)(1) of this section. Protective footwear that is constructed in accordance with any of the listed national consensus standards will be deemed to meet the good design requirement of paragraph (b)(1). Protective footwear is not required to be constructed in accordance with one of the listed standards, but the protective footwear must be constructed in accordance with good design standards. To meet this requirement, the protective footwear must provide protection equivalent to or greater than protective footwear of the same type that is constructed in accordance with one of the listed national consensus standards.

23. Appendix A to subpart E is added to read as follows:

**Appendix A to Subpart E of Part 1917—Criteria for Personal Protective Equipment (Non-Mandatory)**

This appendix lists equipment design standards that OSHA has determined are "good design standards" as that phrase is used in §§ 1917.91(a)(1), 1917.93(b), and 1917.94(b).

1. *Good design standards for protective eye and face devices (1917.91(a)(1))*

ANSI Z87.1–2003, "American National Standard Practice for Occupational and Educational Eye and Face Protection"

ANSI Z87.1–1998, "American National Standard Practice for Occupational and Educational Eye and Face Protection"

ANSI Z87.1–1989, "American National Standard Practice for Occupational and Educational Eye and Face Protection"

2. *Good design standards for protective helmets (1917.93(b))*

ANSI Z89.1–2003, "American National Standard for Personnel Protection—Protective Headwear for Industrial Workers—Requirements"

ANSI Z89.1–1997, "American National Standard for Personnel Protection—Protective Headwear for Industrial Workers—Requirements"

ANSI Z89.1–1986, "American National Standard for Personnel Protection—Protective Headwear for Industrial Workers—Requirements"

3. *Good design standards for protective footwear (1917.94(b))*

ASTM F–2412–2005, "Standard Test Methods for Foot Protection," and ASTM F–2413–2005, "Specification for Performance Requirements for Protective Footwear."

These two standards together constitute a good design standard.

ANSI Z41–1999, "American National Standard for Personal Protection—Protective Footwear"

ANSI Z41–1991, "American National Standard for Personal Protection—Protective Footwear"

**PART 1918—SAFETY AND HEALTH REGULATIONS FOR LONGSHORING**

24. The authority citation for part 1918 is revised to read as follows:

**Authority:** Sec. 41, Longshore and Harbor Workers' Compensation Act (33 U.S.C. 941); Secs. 4, 6, 8, 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), 6–96 (62 FR 111), or 5–2002 (67 FR 65008), as applicable; and 29 CFR part 1911.

Sections 1918.3, 1918.90, 1918.101, 1918.103, 1918.104 also issued under 5 U.S.C. 553.

Section 1918.100 also issued under Sec. 29, Hazardous Materials Transportation Uniform Safety Act of 1990 (49 U.S.C. 1801–1819 and 5 U.S.C. 553).

**§ 1918.3 [Amended]**

25. Section 1918.3 is amended by removing paragraphs (b)(4) through (b)(6).

26. Paragraph (a)(1) of § 1918.101 is revised to read as follows:

**§ 1918.101 Eye and face protection.**

(a) \* \* \*

(1)(i) Each affected employee uses appropriate eye and/or face protection where there are exposures to eye and/or face hazards. Protective eye and face devices shall be constructed in accordance with good design standards. Equipment that is constructed in accordance with an equipment design standard that meets the following criteria will be presumed to be constructed in accordance with good design standards:

(A) The standard specifies the safety requirements for the particular equipment;

(B) The standard is recognized in the United States as providing specifications that result in an adequate level of safety; and

(C) The standard was developed by a standards development organization under a method providing for input and consideration of views of industry groups, experts, users, governmental authorities, and others having broad experience and expertise in issues related to the design and construction of the particular equipment.

(ii) Non-mandatory appendix A to this subpart contains examples of national consensus standards that OSHA has determined meet the criteria of

paragraph (a)(1)(i) of this section. Protective eye and face devices that are constructed in accordance with any of the listed national consensus standards will be deemed to meet the good design requirement of paragraph (a)(1)(i). Protective eye and face devices are not required to be constructed in accordance with one of the listed standards, but the protective eye and face devices must be constructed in accordance with good design standards. To meet this requirement, the protective eye and face device must provide protection equivalent to or greater than a protective eye and face device of the same type that is constructed in accordance with one of the listed national consensus standards.

\* \* \* \* \*

27. Paragraph (b) of § 1918.103 is revised to read as follows:

**§ 1918.103 Head protection.**

\* \* \* \* \*

(b)(1) The employer shall ensure that the protective helmets are constructed in accordance with good design standards. A protective helmet that is constructed in accordance with an equipment design standard that meets the following criteria will be presumed to be constructed in accordance with good design standards:

(i) The standard specifies the safety requirements for the particular equipment;

(ii) The standard is recognized in the United States as providing specifications that result in an adequate level of safety; and

(iii) The standard was developed by a standards development organization under a method providing for input and consideration of views of industry groups, experts, users, governmental authorities, and others having broad experience and expertise in issues related to the design and construction of the particular equipment.

(2) Non-mandatory appendix A to this subpart contains examples of national consensus standards that OSHA has determined meet the criteria of paragraph (b)(1) of this section. Protective helmets that are constructed in accordance with any of the listed national consensus standards will be deemed to meet the good design requirement of paragraph (b)(1). Protective helmets are not required to be constructed in accordance with one of the listed standards, but the protective helmets must be constructed in accordance with good design standards. To meet this requirement, the protective helmet must provide protection equivalent to or greater than a protective eye and face device of the same type

that is constructed in accordance with one of the listed national consensus standards.

\* \* \* \* \*

28. Paragraph (b) of § 1918.104 is revised to read as follows:

**§ 1918.104 Foot protection.**

\* \* \* \* \*

(b)(1) The employer shall ensure that the protective footwear is constructed in accordance with good design standards. Protective footwear that is constructed in accordance with an equipment design standard that meets the following criteria will be presumed to be constructed in accordance with good design standards:

(i) The standard specifies the safety requirements for the particular equipment;

(ii) The standard is recognized in the United States as providing specifications that result in an adequate level of safety; and

(iii) The standard was developed by a standards development organization under a method providing for input and consideration of views of industry groups, experts, users, governmental authorities, and others having broad experience and expertise in issues related to the design and construction of the particular equipment.

(2) Non-mandatory appendix A to this subpart contains examples of national consensus standards that OSHA has determined meet the criteria of paragraph (b)(1) of this section. Protective footwear that is constructed in accordance with any of the listed national consensus standards will be deemed to meet the good design requirement of paragraph (b)(1). Protective footwear is not required to be constructed in accordance with one of the listed standards, but the protective footwear must be constructed in accordance with good design standards. To meet this requirement, the protective footwear must provide protection equivalent to or greater than protective footwear of the same type that is constructed in accordance with one of the listed national consensus standards.

29. Appendix A to subpart J is added to read as follows:

**Appendix A to Subpart J of Part 1918—Criteria for Personal Protective Equipment (Non-Mandatory)**

This appendix lists equipment design standards that OSHA has determined are “good design standards” as that phrase is used in sections 1918.101(a)(1), 1918.103(b), and 1918.104(b).

1. *Good design standards for protective eye and face devices (1918.101(a)(1))*

ANSI Z87.1–2003, “American National Standard Practice for Occupational and Educational Eye and Face Protection”

ANSI Z87.1–1998, “American National Standard Practice for Occupational and Educational Eye and Face Protection”

ANSI Z87.1–1989, “American National Standard Practice for Occupational and Educational Eye and Face Protection”

2. *Good design standards for protective helmets (1918.103(b))*

ANSI Z89.1–2003, “American National Standard for Personnel Protection—Protective Headwear for Industrial Workers—Requirements”

ANSI Z89.1–1997, “American National Standard for Personnel Protection—Protective Headwear for Industrial Workers—Requirements”

ANSI Z89.1–1986, “American National Standard for Personnel Protection—Protective Headwear for Industrial Workers—Requirements”

3. *Good design standards for protective footwear (1918.104(b))*

ASTM F–2412–2005, “Standard Test Methods for Foot Protection,” and ASTM F–2413–2005, “Specification for Performance Requirements for Protective Footwear.” These two standards together constitute a good design standard.

ANSI Z41–1999, “American National Standard for Personal Protection—Protective Footwear”

ANSI Z41–1991, “American National Standard for Personal Protection—Protective Footwear”

[FR Doc. E7–9315 Filed 5–16–07; 8:45 am]

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**DEPARTMENT OF THE INTERIOR**

**Office of Surface Mining Reclamation and Enforcement**

**30 CFR Part 948**

**[WV–112–FOR]**

**West Virginia Regulatory Program**

**AGENCY:** Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

**ACTION:** Proposed rule; public comment period and opportunity for public hearing on proposed amendment.

**SUMMARY:** We are announcing receipt of a proposed amendment to the West Virginia regulatory program (the West Virginia program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). West Virginia is re-submitting a proposed amendment to revise the West Virginia Code of State Regulations (CSR) concerning the hydrologic impacts of surface mining operations. The amendments are intended to repeal a definition of “cumulative impact,” and add a definition of “material damage” to the

hydrologic balance outside the permit area. OSM had approved an earlier submittal of these same amendments on December 1, 2003 (68 FR 67035), but that approval was vacated and remanded by the United States District Court for the Southern District of West Virginia on September 30, 2005. The United States Court of Appeals for the Fourth Circuit affirmed the lower court’s ruling on December 12, 2006. We are expressly seeking comment on whether the proposed amendments and the supporting arguments and explanations presented by the State are consistent with the Federal hydrologic protection requirements under SMCRA.

**DATES:** We will accept written comments on this amendment until 4 p.m. (local time), on June 18, 2007. If requested, we will hold a public hearing on the amendment on June 11, 2007. We will accept requests to speak at a hearing until 4:00 p.m. (local time), on June 1, 2007.

**ADDRESSES:** You may submit comments, identified by WV–112–FOR, by any of the following methods:

- *E-mail:* [chfo@osmre.gov](mailto:chfo@osmre.gov). Include WV–112–FOR in the subject line of the message;

- *Mail/Hand Delivery:* Mr. Roger W. Calhoun, Director, Charleston Field Office, Office of Surface Mining Reclamation and Enforcement, 1027 Virginia Street, East, Charleston, West Virginia 25301; or

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

*Instructions:* All submissions received must include the agency docket number for this rulemaking. For detailed instructions on submitting comments and additional information on the rulemaking process, see the “Public Comment Procedures” heading in the **SUPPLEMENTARY INFORMATION** section of this document. You may also request to speak at a public hearing by any of the methods listed above or by contacting the individual listed under **FOR FURTHER INFORMATION CONTACT**.

*Docket:* You may review copies of the West Virginia program, this amendment, a listing of any scheduled public hearings, and all written comments received in response to this document at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. You may also receive one free copy of this amendment by contacting OSM’s Charleston Field Office listed below.

Mr. Roger W. Calhoun, Director, Charleston Field Office, Office of Surface Mining Reclamation and Enforcement, 1027 Virginia Street, East,