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[Proposed Rules]

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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; Notice of Informal Public Hearing

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

ACTION: Proposal; notice of informal public hearing.

SUMMARY: This notice schedules an informal public hearing on OSHA's proposed rule updating its personal protective equipment (PPE) design standards, which was published on May 17, 2007. It also establishes a date to file notices of intention to appear at the informal public hearing and sets requirements for submitting hearing testimony and documentary evidence in advance of the hearing.

DATES: Informal public hearing. OSHA will hold an informal public hearing in Washington, DC, beginning at 9 a.m. on December 4, 2007.

Notices of intention to appear. Parties who intend to present testimony at the informal public hearing must notify OSHA in writing of their intention to do so no later than October 1, 2007.

Hearing testimony and documentary evidence. Parties who request more than 10 minutes for their presentations at the informal public hearing and parties who will submit documentary evidence at the hearing

must submit the full text of their testimony and all documentary evidence no later than November 1, 2007.

ADDRESSES: You may submit notices of intention to appear, hearing testimony, and documentary evidence--identified by docket number (OSHA-2007-0044) or RIN number (1218-AC08)--by any of the following methods.

Federal eRulemaking Portal: <http://www.regulations.gov>.

Follow the instructions for submitting comments.

Fax: If your written submission is 10 pages or fewer, you may fax it to the OSHA Docket Office at (202) 693-1648.

Regular mail, express delivery, hand delivery, and courier service: Submit three copies to the OSHA Docket Office, Docket No. OSHA-2007-0044, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N2625, Washington, DC 20210; telephone (202) 693-2350. (OSHA's TTY number is (877) 889-5627.) OSHA Docket Office hours of operation are 8:15 a.m. to 4:45 p.m., e.t.

Instructions: All submissions received must include the agency name and docket number or Regulatory Information Number (RIN) for this rulemaking. All submissions received will be posted without change to <http://www.regulations.gov>, including any personal information provided. For additional information on submitting notices of intention to appear, the text of testimony, and documentary evidence, see the Informal Public Hearing heading of the SUPPLEMENTARY INFORMATION section of this document.

Docket: For access to the docket to read comments and background documents that can be posted go to <http://www.regulations.gov>. Written comments received, notices of intention to appear, and all other material related to the development of the proposed standard will be available for inspection and copying in the public record in the Docket Office at the address listed previously.

Hearing: The hearing will be held in the auditorium of the U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: General information and press inquiries: Mr. Kevin Ropp, Director, Office of Communications, Room N3647, OSHA, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693-1999. Technical information: Mr. Ted Twardowski, Office of Systems Safety, Room N3609, OSHA, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693-2070 or fax (202) 693-1663. Hearings: Ms. Veneta Chatmon, Office of Communications, Room N3647; OSHA, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC

20210; telephone (202) 693-1999.

Electronic copies of this Federal Register notice, as well as news, are available at OSHA's Web page on the Internet at <http://www.osha.gov>.

SUPPLEMENTARY INFORMATION: On May 17, 2007, OSHA published a proposal that would update OSHA standards related to certain types of personal protective equipment (72 FR 27771). Interested parties were given until July 16, 2007, to submit comments on the proposal. The 3M Company, the American National Standards Institute (ANSI), ASTM International, and the International Safety Equipment Association (ISEA) all requested an informal public hearing on the proposal.

1. Issues

OSHA has proposed to update its standards requiring that certain types of personal protective equipment (PPE) meet specifically identified ANSI standards. OSHA proposed deleting the references to the ANSI standards from the regulatory text, replacing them with a requirement to use PPE constructed in accordance with good design standards, and adding criteria for determining what constitutes a good design standard within the meaning of the proposed standard. The proposed rule also included a non-mandatory appendix listing those national consensus standards that OSHA has determined meet the criteria of a good design standard.

ISEA has objected to OSHA's proposal because they believe that modifying the PPE design standards in this way would eliminate baseline performance requirements for PPE, potentially reducing employee protection and making compliance more difficult for employers. The 3M Company, ANSI and ASTM International also requested an informal public hearing.

2. Informal Public Hearing

In response to the objections received, OSHA is convening an informal public hearing on the proposed rule. The hearing will convene at 9 a.m. on December 4, 2007. OSHA invites interested parties to provide oral testimony and documentary evidence at the informal public hearing. This section describes the procedures the public must use to participate in the hearing.

The legislative history of section 6 of the OSH Act, as well as OSHA's regulation governing public hearings (29 CFR 1911.15), establish the purpose and procedures of informal public hearings. Although the presiding officer of such hearings is an ALJ, and questioning by

interested parties is allowed on crucial issues, the proceeding is informal and legislative in purpose. Therefore, the hearing provides interested parties with an opportunity to make effective and expeditious oral presentations in the absence of procedural restraints or rigid procedures that could impede or protract the rulemaking process. In addition, the hearing is an informal administrative proceeding, rather than adjudicative one in which the technical rules of evidence would apply, because its primary purpose is to gather and clarify information. The regulations that govern public hearings, and the prehearing guidelines issued for this hearing, will ensure participants fairness and due process, and also will

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facilitate the development of a clear, accurate, and complete record. Accordingly, application of these rules and guidelines will be such that questions of relevance, procedure, and participation generally will favor development of the record.

Conduct of the hearing will conform to the provisions of 29 CFR part 1911, ``Rules of Procedure for Promulgating, Modifying, or Revoking Occupational Safety and Health Standards.'' The regulation at 29 CFR 1911.4, ``Additional or Alternative Procedural Requirements,' ' specifies that the Assistant Secretary may, on reasonable notice, issue alternative procedures to expedite proceedings or for other good cause. Although the ALJs who preside over these hearings make no decision or recommendation on the merits of OSHA's proposal, they do have the responsibility and authority to ensure that the hearing progresses at a reasonable pace and in an orderly manner.

To ensure that interested parties receive a full and fair informal hearing as specified by 29 CFR part 1911, the ALJ has the authority and power to: Regulate the course of the proceedings; dispose of procedural requests, objections, and comparable matters; confine the presentations to matters pertinent to the issues raised; use appropriate means to regulate the conduct of the parties who are present at the hearing; question witnesses, and permit others to question witnesses; and limit the time for such questioning. At the close of the hearing, the ALJ will establish a post-hearing comment period for parties who participated in the hearing. During the first part of this period, the participants may submit additional data and information to OSHA; during the second part of this period, they may submit briefs, arguments, and summations.

Notice of Intention to Appear to Provide Testimony at the Informal Public Hearing. Interested parties who intend to provide oral testimony at the informal public hearings must file a written notice of intention

to appear by October 1, 2007. In addition to containing the information required by the ADDRESSES section above, this notice must also provide the: name, address, and telephone number of each individual who will provide testimony; capacity (for example, the name of the establishment or organization the individual is representing and the individual's occupational title and position) in which each individual will testify; approximate amount of time required for each individual's testimony; a brief statement of the position that the individual will take with respect to the issue identified in this Notice; and a brief summary of any documentary evidence the individual intends to present.

OSHA emphasizes that the hearings are open to the public, and that interested parties are welcome to attend. However, only a party who files a complete notice of intention to appear may ask questions and participate fully at the hearing. If time permits and at the presiding ALJ's discretion, a party who did not file a notice of intention to appear may be allowed to testify at the hearing.

Hearing Testimony and Documentary Evidence. Parties who request more than 10 minutes for their presentations at the informal public hearing and parties who will submit documentary evidence at the hearing must submit the full text of their testimony and all documentary evidence no later than November 1, 2007. The Agency will review each submission and determine if the information it contains warrants the amount of time requested. If OSHA believes the requested time is excessive, it will allocate an appropriate amount of time to the presentation, and will notify the participant of this action, and the reasons for the action, before the hearing. The Agency may limit to 10 minutes the presentation of any participant who fails to comply substantially with these procedural requirements; in such instances, OSHA may request the participant to return for questioning at a later time.

Certification of the Record and Final Determination after the Informal Public Hearing. Following the close of the hearing and post-hearing comment period, the presiding ALJ will certify the record to the Assistant Secretary of Labor for Occupational Safety and Health; the record will consist of all of the written comments, oral testimony, and documentary evidence received during the proceeding. However, the ALJ does not make or recommend any decisions as to the content of the final standard. Following certification of the record, OSHA will review the proposed provisions in light of all the evidence received as part of the record, and then will issue the final rule based on the entire record.

Authority and Signature

This document was prepared under the direction of Edwin G. Foulke, Jr., Assistant Secretary of Labor for Occupational Safety and Health, 200 Constitution Avenue, NW., Washington, DC 20210. This action is taken pursuant to 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. 5-2007 (72 FR 31160), and 29 CFR part 1911.

Signed at Washington, DC, this 27th day of August 2007.

Edwin G. Foulke, Jr.,

Assistant Secretary of Labor for Occupational Safety and Health.

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