

## DEPARTMENT OF LABOR

## Occupational Safety and Health Administration

## 29 CFR Part 1910

[Docket No. OSHA–2007–0032 (formerly Docket Nos. OSHA–S031–2006–0665 and OSHA–S–031)]

RIN 1218–AC09

## Explosives

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

**ACTION:** Proposed rule; termination.

**SUMMARY:** In this notice, OSHA is terminating the rulemaking to amend its Explosives and Blasting Agents Standard at 29 CFR 1910.109. OSHA is taking this action because it has limited rulemaking resources, which are currently devoted to higher priority projects that will affect a more significant improvement in worker safety and health than would this rulemaking.

**DATES:** The effective date for terminating the rulemaking is February 3, 2010.

**FOR FURTHER INFORMATION CONTACT:**

*General information and press inquiries:* Contact Ms. Jennifer Ashley, Office of Communications, Room N–3647, OSHA, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–1999.

*Technical inquiries:* Contact Mr. Mark Hagemann, Office of Safety Standards, Directorate of Standards and Guidance, Room N–3609, OSHA, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; telephone: (202) 693–2255; fax: (202) 693–1663.

*Copies of this Federal Register notice.* Electronic copies of this **Federal Register** notice are available at <http://www.regulations.gov>. This **Federal Register** notice, as well as news releases and other relevant information, are also available at OSHA's Web page at <http://www.osha.gov>.

**SUPPLEMENTARY INFORMATION:****I. Background**

In 1970, Congress enacted the Occupational Safety and Health Act (29 U.S.C. 651 *et seq.*) (the Act) directing OSHA to promulgate safety and health standards to assure, as far as possible, safe and healthful working conditions for every employee in the Nation. To expedite OSHA's mission, Congress directed the Secretary of Labor, through Section 6(a) of the Act (29 U.S.C. 655(a)), to promulgate safety and health standards within the first two years of the Act's enactment by summarily

adopting existing national consensus and established Federal standards, without requiring the Agency to use the rulemaking procedures detailed in Section 6(b) of the Act, 29 U.S.C. 655(b).

On May 29, 1971, pursuant to Section 6(a) of the Act, OSHA promulgated its Explosives and Blasting Agents Standard at 29 CFR 1910.109 (36 FR 10553–10562). OSHA based the standard on two national consensus standards promulgated by the National Fire Protection Association (NFPA)—NFPA 495–1970, *Code for the Manufacture, Transportation, Storage, and Use of Explosives and Blasting Agents*, and NFPA 490–1970, *Code for the Storage of Ammonium Nitrate*. OSHA subsequently made several minor revisions to the standard (37 FR 6577, 57 FR 6356, and 63 FR 33450).

On July 29, 2002, the Institute of Makers of Explosives and the Sporting Arms and Ammunition Manufacturers' Institute petitioned OSHA to revise the standard, and, on April 13, 2007, OSHA published a **Federal Register** notice proposing a revision (72 FR 18792). On July 17, 2007, however, OSHA closed the comment period, stating that it needed to clarify the intent of the rulemaking, and that it planned to issue a new proposal at a later date (72 FR 39041).

**II. Rationale for Terminating the Rulemaking**

Continuing this rulemaking would have a limited safety and health benefit, while diverting OSHA resources from regulatory projects with a much more substantial hazard reduction potential.

*A. Lack of Major Protective Benefits Afforded by Proposed Standard*

The proposed rule would not result in a major safety or health improvement for workers. First, other Federal agencies already regulate explosives hazards in many situations; second, even in the areas subject to OSHA regulation, the proposal had a very limited scope; and finally, the proposal would not have amended many of the substantive requirements of OSHA's existing explosives standard.

1. Pursuant to Section 4(b)(1) of the OSH Act, 29 U.S.C. 653(b)(1), in most situations the Act does not apply where another Federal agency exercises "statutory authority to prescribe or enforce standards or regulations affecting occupational safety or health." As described below, a number of Federal agencies other than OSHA exercise broad authority over explosives safety. Moreover, even with respect to industries regulated by OSHA, the proposed standard would affect only a

small proportion of exposure to explosives hazards in general industry.

A significant amount of explosives use occurs in the mining industry. Pursuant to the Federal Mine Safety and Health Act of 1977 (30 U.S.C. 801 *et seq.*), the Mine Safety and Health Administration is responsible for regulating the transportation, storage, and use of explosives at mining facilities. Its relevant standards are 30 CFR 56.6000 to 56.6905, 57.6000 to 57.6960, 75.1300 to 75.1328, and 77.1300 to 77.1304. Mining-related standards issued by the Department of the Interior's Office of Surface Mining regulate blast effects, such as flyrock and ground vibration, near surface mines (30 CFR 816, 817, and 850).

Other explosives hazards occur when explosives are being transported and stored. The Department of Transportation (DOT), under the Hazardous Materials Transportation Act (49 U.S.C. 5101 *et seq.*), is responsible for regulating the safe transportation of explosives in intrastate, interstate, and foreign commerce. Although not all DOT regulations preempt OSHA standards, DOT's rules address hazards related to the movement of explosives in commerce, as well as the loading, unloading, and storage of explosives incidental to that movement (49 CFR parts 171 to 180 and 397). The Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) regulates the import, manufacture, distribution, and storage of explosives (27 CFR part 555). ATF rules require manufacturers, importers, and dealers in explosives to obtain a Federal license from ATF, and require some users of explosives to obtain a Federal permit. ATF also regulates the safe and secure storage of explosives at approved facilities.

Several other Federal agencies also regulate explosives. In maritime settings, the United States Coast Guard regulates loading, unloading, transporting, and stowing explosives on vessels and at related land-side facilities (33 CFR part 126; 46 CFR part 194; and 49 CFR parts 171 to 173 and 176). The Consumer Product Safety Commission regulates consumer fireworks as part of its mission to protect the public from unreasonable risks of serious injury or death from consumer products. (16 CFR parts 1500 and 1507.) Its regulations contain construction, performance, and labeling requirements for consumer fireworks. The Environmental Protection Agency, under such statutes as the Resource Conservation and Recovery Act (42 U.S.C. 6901 *et seq.*), the Clean Water Act (33 U.S.C. 1251 *et seq.*), and the Clean Air Act (42 U.S.C. 7401 *et seq.*), regulates releases and

wastes involved in the manufacture, use, and disposal of explosives.

2. Even with respect to activities regulated by OSHA, the proposed rule had a limited scope. It would not have covered the sale or use of consumer and public display fireworks (72 FR 18799). OSHA's construction standards at 29 CFR 1926 subpart U cover the hazards associated with blasting in the construction and demolition industries. The general industry uses addressed by the proposal include blasting of rocks, slag pockets, and beaver dams, as well as blasting associated with metal hardening, stump removal, pond creation, and avalanche control, and various types of blasting used to create art sculptures. Compared to the use of explosives by the construction and demolition industries, these general industry uses do not require large amounts of explosives, and employers perform them relatively infrequently.

Moreover, employers engaged in the manufacture of explosives (other than blasting agents) and pyrotechnics must already meet the requirements contained in OSHA's Process Safety Management (PSM) Standard at 29 CFR 1910.119, which covers working conditions during the manufacture of highly hazardous chemicals (29 CFR 1910.109(k)). The PSM Standard addresses many of the hazards associated with the manufacture of explosives and pyrotechnics.

3. Finally, OSHA did not propose substantive changes to many of the requirements in the existing standard. Whether or not the rulemaking continues, the existing protective provisions addressing hazards associated with storing explosives; transporting explosives; using explosives and blasting agents; packing, marking, and storing explosives at piers, railway stations, and cars or vessels; mixing, storing, and transporting blasting agents; mixing water gel explosives; storing ammonium nitrate; and storing small arms ammunition, small arms primers, and small arms propellants, will remain in effect.

The limited scope of the rulemaking and the breadth of existing Federal protections necessarily constrained the relative safety benefits of the rulemaking, especially when compared with OSHA's higher priority rulemaking activities. The Preliminary Economic and Regulatory Screening Analysis conducted by OSHA in conjunction with the proposed rule supports this conclusion (72 FR 18828). In this analysis, OSHA examined the extent to which the proposed rulemaking would reduce the number of deaths and injuries attributable to explosive

accidents in general industry by reviewing its accident-investigation reports for the years 1992–2002. OSHA concluded that compliance with the new requirements of the amended standard might have prevented only one of the 39 documented explosives accidents. Therefore, the proposed standard would have had limited benefit for workers exposed to explosive hazards.

#### *B. Using Limited Resources Efficiently*

In light of these limited benefits, OSHA cannot justify allocating the substantial resources it would need to utilize in order to issue a new proposal, analyze comments submitted by the regulated community, conduct a hearing, and promulgate an amended standard. As noted above, the existing standard already addresses many of the hazards associated with explosives, and much of the proposal involved clarifying the terms and scope of that standard. The proposal would have: (1) Increased the clarity and focus of the standard by rewriting requirements in plain language, correcting internal inconsistencies and duplicative requirements, and removing references to public safety that are beyond OSHA's regulatory authority; (2) increased harmonization with other Federal standards that regulate explosives;<sup>1</sup> and (3) addressed the scope of preemption by other Federal agencies (notably DOT and ATF) of OSHA authority over working conditions in the explosives industry. While these revisions could have reduced confusion among the regulated community regarding compliance and enforcement authority, they would have no substantive effect on the safety measures employers must take to control explosives hazards.

By withdrawing this proposal, OSHA can devote the resources that would have been utilized in completing the rulemaking to deservedly higher-priority projects. For example, OSHA recently announced a rulemaking to reduce combustible dust hazards in general industry. Combustible dust explosions have resulted in more than 130 deaths and 780 injuries since 1980. OSHA is also preparing to propose a standard governing occupational

<sup>1</sup> For instance, by adopting the ATF system to classify explosives storage magazines, or by following the example of DOT, which adopted the United Nations Globally Harmonized System of Classification and Labeling of Chemicals to classify explosives. This rulemaking goal is actively being addressed, as OSHA recently issued a proposal to conform its Hazard Communication Standard, 29 CFR 1910.1200, to the GHS. (74 FR 50280.) This proposal generally adopts the GHS's requirements for classifying, labeling, and providing safety data sheets for explosives.

exposure to respirable silica. Inhalation of this substance, which is extremely widespread, causes lung disease, silicosis and lung cancer. Terminating the explosives rulemaking will free resources for these and other high-impact proceedings.

#### *C. Conclusion*

Based on the findings discussed in the preceding section, OSHA concludes that terminating the proposed rulemaking will not diminish worker protection because § 1910.109, along with other OSHA standards and the standards of other Federal agencies, provide workers with substantial protection from explosive hazards. In addition, alternatives exist to increase the protection afforded by, and to improve the clarity of the standard. Therefore, terminating the proposed rulemaking will enable OSHA to devote its limited resources to other rulemakings that will provide greater protection to workers from occupational hazards than would the proposed rulemaking.

#### **III. Authority and Signature**

David Michaels, PhD MPH, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC, 20210, directed the preparation of this notice. It is issued pursuant to Sections 4, 6, and 8 of the Occupational and Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657), Secretary's Order 5–2007 (72 FR 31160), and 29 CFR part 1911.

Signed at Washington, DC, on January 29, 2010.

**David Michaels,**

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

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## **ENVIRONMENTAL PROTECTION AGENCY**

### **40 CFR Part 721**

**[EPA–HQ–OPPT–2009–0686; FRL–8796–7]**

**RIN 2070–AB27**

### **Proposed Significant New Use Rule for Multi-walled Carbon Nanotubes**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing a significant new use rule (SNUR) under section 5(a)(2) of the Toxic Substances Control Act (TSCA) for the chemical substance identified generically as multi-walled