Universities Program under 34 CFR 608.2;

(c) It would have qualified as an eligible institution for the Strengthening Institutions Program if 34 CFR 607.2(a)(3) referred to a postgraduate degree rather than a bachelor's degree;

(d) It would have qualified as an eligible institution for the Strengthening Historically Black Colleges and Universities Program if 34 CFR 608.2(a)(4)(i) referred to a postgraduate degree rather than a bachelor's degree; or

(e) It qualifies as an institution that makes a substantial contribution to graduate or postgraduate medical educational opportunities for minorities and the economically disadvantaged.

(Authority: 20 U.S.C. 1064)

3. In § 628.4, paragraphs (a) and (b) are revised to read as follows:

§ 628.4 How often is an institution eligible to receive an endowment challenge grant?

(a) Except as provided in paragraphs (b) and (c) of this section, an institution is eligible to receive an endowment challenge grant in a fiscal year, even if it has already received another endowment challenge grant in a previous fiscal year, as long as it does not receive endowment challenge grants in more than two fiscal years out of any five consecutive fiscal years.

(b) An institution that receives an endowment challenge grant in excess of $1,000,000 is ineligible to receive another endowment challenge grant in any amount for a period of ten years from the date it received the grant in excess of $1,000,000.

* * * * *

4. In § 628.5, paragraph (a)(2) is removed and reserved, paragraph (a)(3) is removed and paragraph (a)(1) is revised to read as follows:

§ 628.5 What regulations apply to the Endowment Challenge Grant Program?

(a) The following regulations apply to the Endowment Challenge Grant Program:

(1) The regulations in this Part 628.

(2) [Reserved]

* * * * *

5. In § 628.6, the introductory text is revised to read as follows:

§ 628.6 What definitions apply to the Endowment Challenge Grant Program?

The following definitions apply to the regulations in this part:

* * * * *

6. In § 628.48, paragraph (a)(2) is removed, paragraph (a)(1) is redesignated as paragraph (a)(2) and a new paragraph (a)(1) is added to read to follows:

§ 628.48 What happens if a grantee fails to administer the endowment grant in accordance with applicable regulations?

(a) * * *

(1) Withdraws or spends any part of the endowment fund corpus in violation of § 628.44(a)(1);

* * * * *

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Monday
September 28, 1987

Part IV

Department of Labor

Occupational Safety and Health Administration

29 CFR Part 1926

Revision of Construction Industry Test and Inspection Records; Final Rule

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1926

[Docket No. S-020A]

Revision of Construction Industry Test and Inspection Records

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

ACTION: Final rule.

SUMMARY: The Occupational Safety and Health Administration (OSHA) hereby revises three construction industry recordkeeping requirements to minimize the paperwork burdens imposed on employers and to clarify what information is required. The final rule eliminates certain requirements under which an employer must prepare and maintain written records. The revised provisions require, instead, that the employer simply prepare a certification record at the time the required work (inspection or test) is done, which includes the date the inspection or test was performed; the signature of the person who performed the work; and the identity of the equipment or machinery that was inspected or tested. OSHA has determined that the implementation of this final rule will minimize the paperwork burden on employers as required by the Paperwork Reduction Act of 1980, without reducing the protection of employee safety and health.

DATES: These revisions will become effective October 28, 1987.

FOR FURTHER INFORMATION CONTACT: Mr. James F. Foster, U.S. Department of Labor, Occupational Safety and Health Administration, Room N3647, 200 Constitution Avenue, NW., Washington, DC 20210, (202) 523-8148.

SUPPLEMENTARY INFORMATION:

I. Background

The Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) was enacted to minimize the Federal paperwork burden and maximize the efficiency and usefulness of Federal information-gathering activities. That Act set goals for the phased reduction of Federal information-gathering burdens. The Paperwork Reduction Act also required the Office of Management and Budget (OMB) to promulgate regulations which would guide the Federal agencies in their compliance efforts. OMB has published implementing regulations at 5 CFR Part 1320 and has issued supplemental directives.

In addition, section 8(d) of the Occupational Safety and Health Act (the OSH Act) states that "Any information obtained by the Secretary * * * under this Act shall be obtained with a minimum burden upon employers. * * *"

In an effort to meet these statutory goals, OSHA conducted a comprehensive review of the OSHA standards to identify all recordkeeping requirements. OSHA then analyzed each of the 38 requirements identified to determine which recordkeeping burdens could be reduced.

Each requirement was reviewed to determine:

—What kind of information was required;
—How this information would be used;
—Whether this information was collected by other authorities (e.g. pursuant to state and local law or regulation);
—Whether this record would provide information that a compliance officer would not otherwise ascertain at the time of inspection; and,
—Which requirements contributed directly to employee safety and health.

On the basis of this careful review and analysis, OSHA identified 22 provisions in the standards found in 29 CFR Parts 1910, 1915, and 1926 that, in its opinion, did not directly contribute to worker safety and health and, therefore, unnecessarily burdened employers with requirements that they prepare and maintain records of tests, inspections, and maintenance checks.

In particular, OSHA determined that the recordkeeping requirements in question were adopted because the Agency wanted the employer to provide evidence that the required tests and inspections had been performed. Having made that determination, OSHA compared the purposes for the recordkeeping requirements with their language and found that they required more information than OSHA needed to determine if equipment or machinery was safe to operate. Therefore, OSHA determined that revisions were appropriate.

OSHA also identified as appropriate for deletion, a duplicative recordkeeping provision and another which dealt with concerns outside OSHA's jurisdiction.

On January 3, 1986, OSHA published a Notice of Proposed Rulemaking (NPRM) in the **Federal Register** (51 FR 312) to revise the 22 provisions in question and to revoke the other two provisions. The NPRM included three recordkeeping requirements in the existing Construction Safety and Health Standards, 29 CFR Part 1926. The three recordkeeping requirements in question are § 1926.550(b)(2)—Cranes and derricks; § 1926.552(c)(15)—Material hoists, personnel hoists and elevators; and § 1926.903(e)—Underground transportation of explosives.

OSHA determined during the NPRM comment period that it had not formally consulted with the Advisory Committee on Construction Safety and Health (ACCSH) regarding those three proposed revisions as required by section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 333). The Agency, therefore, withdrew the three construction recordkeeping requirments from consideration when it issued a Notice of Informal Public Hearing on March 14, 1986 (51 FR 8844). The remaining 19 provisions were revised through the publication of a Final Rule in the September 29, 1986, **Federal Register** (51 FR 34552).

On April 29, 1986, OSHA formally consulted with the ACCSH to obtain the Committee's recommendations on revising the three recordkeeping requirements which, as has been discussed above, were removed from consideration for revision in the March 14, 1986 hearing notice. The transcript of the Advisory Committee meeting is Exhibit 2 in Docket S-020A.

On April 14, 1987, OSHA published a Notice of Proposed Rulemaking (NPRM) in the **Federal Register** (52 FR 12120) to revise the three construction provisions in question. In the preamble to the NPRM, a discussion of the Advisory Committee's recommendations concerning this revision effort can be found. In the NPRM, OSHA proposed to eliminate certain requirements for written, detailed records and reports and replace them with provisions under which employers would prepare a certification record at the time the required test or inspection was performed. The certification record would include the date the test or inspection was performed, the signature of the person who performed the test or inspection, and the identity of the equipment or machinery which was tested or inspected.

The NPRM established a 60-day period, which ended June 15, 1987, for submission of written comments and hearing requests. There were six comments received on the NPRM and no hearing requests.

As stated above, OSHA adopted the recordkeeping requirements in question to provide assurance that employers have performed the required tests and inspections. OSHA has determined, based on its 15 years of experience

enforcing those requirements, that requiring an employer to maintain detailed test or inspection records does not add to compliance with the test and inspection requirements. Therefore, OSHA is revising the pertinent requirements so that employers are required to prepare a contemporaneous certification record, as provided herein.

The contemporaneous certification record can be kept in any manner which provides the required information. For example, a list of the pieces of equipment which were inspected would have to be signed and dated only once if the same person performed all of the inspections or tests on the same date. With such a list, the person performing the inspections or tests would not have to sign and date a separate record identifying each piece of equipment.

If employers keep track of their inspections or tests with automated data processing, and if, as above, the same person performed all of the inspections or tests on the same date, compliance can be achieved by having that person sign and date a printout of equipment identifiers. The signed and dated computer printout would, of course, have to be maintained, until superseded, and made available for review at the time of an OSHA inspection.

Employer can comply with this certification requirement in the manner which least disrupts their operations. They may find that they need to place a tag on the equipment in question or they may find that the addition of an entry to a checklist or log they already maintain will suffice. Some employers may even find that they do not need to change their recordkeeping methods to comply with these revised requirements.

OSHA estimates that the revisions will reduce its imposed paperwork burden by approximately 670,000 hours and that employers will save approximately $1.8 million annually. In addition, employers will gain clear guidance as to what information must be included when verifying compliance.

OSHA has determined that the revisions will not reduce the protection of employee safety and health since the testing and inspection requirements will remain in effect. OSHA believes that a certification record will provide evidence of compliance with the pertinent testing or inspection requirements which is equivalent to that provided by the detailed records formerly required.

OSHA will continue to review its recordkeeping requirements in an effort to ensure that they provide the necessary protection for employees while imposing the minimum burden on employers.

II. Discussion of Issues Raised in the Comments

A. General Comments

OSHA received six comments in response to the Notice of Proposed Rulemaking. Four of the comments pertained to the proposed recordkeeping revisions in general. Those comments are discussed below. The comments which refer to individual provisions are discussed in the Summary and Explanation.

The New York State Conference of the International Union of Operating Engineers (Ex. 3–2) opposed the revision of the recordkeeping requirements in §§ 1926.550(b)(2) and 1926.552(c)(15). The Operating Engineers felt that OSHA was inviting "falsification of equipment inspections by unscrupulous contractors," and that the recordkeeping provisions are invaluable in preventing serious accidents. In addition, they commented that "the primary tool for inspecting a crane, a components checklist, was being replaced by a meaningless scrap of paper." The Operating Engineers, however, did not submit information to support their positions.

Concerns regarding record falsification, the value of records in preventing accidents, and the use of checklists were raised as concerns in the rulemaking relating to certain recordkeeping requirements in the General Industry and Maritime Standards (51 FR at 34553). OSHA will address these three issues in turn.

First, in the earlier rulemaking, OSHA responded to commenters' concerns regarding employer error and dishonesty by adopting the suggestion that "contemporaneous certification" would provide the necessary assurance of compliance, because a record prepared at the time work is performed is more likely to be accurate.

Second, at the public hearing held to develop the record for the earlier rulemaking, the International Union of Operating Engineers testified regarding the value of records in preventing accidents involving cranes used in general industry. This testimony also dealt with false recordkeeping. Excerpts from the Agency's discussion of that testimony in the final rule for the previous recordkeeping revisions (50 FR 34553) follows:

> Commenters who opposed the proposal, such as the United Brotherhood of Carpenters and Joiners of America [Exs. 4–4, 4–7 and 14 and Tr. 55–56] and the International Union of Operating Engineers [Exs. 4–12 and 16 and Tr. 69–70 and 73–77], have stated that the retention of currently required records is essential, or at least beneficial, to employee protection. The opponents stated that access to records enables workers to verify compliance with the substantive requirements of the standards. They, however, did not document a single instance where a hazardous situation was detected and cited or abated because an employee examined records.
>
> The International Union of Operating Engineers, for example, testified [Tr. 121–124] that having the record of a previous inspection would be beneficial to a crane operator who was inspecting equipment. However, the union witness added that, even without the record, a good inspection would be done * * *.
>
> Indeed, the Operating Engineers presented testimony at the hearing [Tr. 92–93] which indicated that a crane operator provided with inspection record information would inspect the crane anyway and not rely on the inspection record when deciding whether or not the equipment was in safe condition. Also, the Operating Engineers provided examples of "bogus" recordkeeping to explain why a written record of a test or inspection would not provide assurance that the equipment in question was safe.

OSHA notes that the Operating Engineers also testified that in at least two cases violations of recordkeeping requirements led to serious accidents. However, neither their testimony nor their post-hearing submission substantiated the existence of a causal relationship (51 FR at 34553). In the absence of evidence that the specific crane test or inspection records are necessary, OSHA has determined that compliance with the test or inspection provisions will not be affected by the shift to certification.

Finally, regarding the use of a checklist as a certification record, OSHA has specifically stated that "Employers can comply with this certification requirement in the manner which least disrupts their operations . . . they may find that the addition of an entry to a checklist or log they already maintain will suffice" (52 FR at 12121). In addition, OSHA observes that the regulations have never required that employers use a checklist to comply with the crane test or inspection requirements. Accordingly, if an employer has used a checklist, it was for purposes other than to comply with OSHA regulations. Therefore, OSHA does not expect that employers would stop using a checklist simply because OSHA has revised its requirement for information to verify compliance. Once again, OSHA emphasizes that the requirements to test or inspect the critical crane components are unchanged.

Another commenter, the National Institute for Occupational Safety and Health (NIOSH), concurred with the

substitution of certification records for detailed records. NIOSH also suggested, in general, that

—OSHA require employers to keep their certification records on file for 12 months from time of preparation so that employers will have more information on which to base equipment use decisions;
—The certification records indicate whether the inspected or tested equipment passed or failed; and,
—Sections 1926.550(b)(2) and 1926.903(e) contain the requirement already in § 1926.552(c)(15) that a "competent person," as defined in § 1926.32(f), shall perform the requisite tests and inspections.

OSHA believes that compliance with the proposed requirement for record retention will provide the necessary assurance that the employer has complied with the test or inspection requirements. The Agency does not believe that retaining the certifications for a longer period would be useful, becuase the required information would not include any of the details which might assist an employer in making decisions. Furthermore, OSHA reiterates that it adopted the recordkeeping provisions in question solely in order to obtain verification of compliance. Therefore, the suggested change, even if it provided useful information, is not relevant to the Agency's concern.

OSHA also believes that the suggested addition of pass/fail information is unnecessary because it would not contribute to verification of compliance with the test or inspection requirements. Indeed, regardless of any previous test or inspection experience, OSHA requires that employers perform the scheduled tests and inspections so that any equipment defects would be discovered. In addition, in the case of cranes, the ANSI B30.5–1968, as referenced in § 1926.550(b)(2), specifies that any "critical" crane components found to be defective be repaired or removed from service.

In addition, as OSHA stated in the final rule for the earlier recordkeeping revisions, "Just because a particular piece of equipment was in safe condition 29 days ago does not mean it is in safe condition today" [51 FR at 34554]. Regardless of the outcome of a previous inspection or test, OSHA requires the employer to conduct each scheduled test and inspection with such thoroughness that it will disclose any deficiency.

Thus, there is no need to make a written notation that the equipment or machinery passed or failed. If equipment or machinery failed the inspection or test, then it is unsafe and must be repaired or replaced. Otherwise, its use is prohibited by other construction regulations.

OSHA notes that NIOSH's suggestion for use of the term "competent person" in §§ 1926.550(b)(2) and 1926.903(e) is not related to the purpose of this rulemaking. Accordingly, OSHA has not made the suggested changes. OSHA further observes, however, that § 1926.20(b)(2) of the general safety and health provisions for construction already requires that employers designate competent persons to perform workplace inspections. Also, as regards § 1926.550(b)(2), OSHA notes that the general requirements for cranes and derricks, § 1926.550(a)(5), provide that the employer must designate a competent person to inspect all equipment and make sure that the equipment is in safe operating condition. OSHA believes, therefore, that the above-cited existing provisions already address the concern expressed by NIOSH.

OSHA is aware that some employers keep records for purposes other than complying with the OSHA standards and may desire to keep records beyond what OSHA requires. Indeed, OSHA has no objection if employers feel they need certification records which, for example, cover an extended period, such as 12 months, or which state whether the equipment passed or failed a test or inspection.

The Associated General Contractors of America (AGC) (Ex. 3–4) and Bechtel Construction, Inc. (Ex. 3–6) expressed support for the proposed changes. The Bechtel Construction, Inc. stated that, "We are pleased that the agency is making meaningful, cost effective changes * * *" The AGC stated that "AGC believes that all recordkeeping requirements for construction should be included in future proposals. If an employer is permitted to certify that he has performed certain requirements pertaining to a particular standard, there should be no differentiation." Again, OSHA reiterates that it will continue its efforts to identify provisions where the recordkeeping burdens could be reduced without reducing employee protection.

III. Summary and Explanation

Section 1926.550(b)(2)—Crawler, locomotive and truck cranes.

The final rule revises the recordkeeping portion of the provision and requires the employer to prepare a certification record. The certification record must contain the date the inspection was performed, the signature of the person who performed the inspection and the identity of the crane inspected. The final rule does not alter the existing requirements to comply with the crane inspection procedures of the ANSI B30.5–1968.

The final rule is identical to the proposed rule. In the proposed rule OSHA explained that the existing rule requires compliance with the provisions of ANSI B30.5–1968, Safety Code for Crawler, Locomotive and Truck Cranes. Section 5–2.1.5 of ANSI B30.5–1968 requires that written, dated, and signed inspection reports and records be prepared monthly on critical items such as brakes, crane hooks and ropes. The latest ANSI standard, B30.5–1982, Mobile and Locomotive Cranes, in Section 5–2.1.5 contains slightly different wording with regard to the recordkeeping requirements. It requires a dated record for periodic inspections of critical items. Neither edition of ANSI B30.5 specifies the information to be included in the record or report. Both editions are in Exhibit 2 of Docket S–020A.

OSHA received three comments on this provision. the California Department of Industrial Relations (CAL/OSHA) and the Tennessee Valley Authority (TVA) (Exs. 3–1 and 3–5) suggested that OSHA revise the existing standard to require compliance with the 1982 edition of ANSI B30.5 instead of the 1968 edition. CAL/OSHA also suggested that OSHA require the modification of cranes put in service before 1968 to comply with B30.5–1968, to the extent feasible. OSHA observes that these comments pertain to matters outside the scope of this rulemaking. Therefore, it would be necessary for OSHA to initiate a separate rulemaking proceeding in order to act on the CAL/OSHA and TVA suggestions.

In addition, NIOSH suggested that OSHA add the word "critical" to specify which crane items were covered by paragraph (b)(2). OSHA, however, believes that the suggested change is not within the scope of this rulemaking and that the standard already clearly states its requirements. The term "critical," which appears in Section 5–2.1 of ANSI B30.5–1968, effectively differentiates those crane components which are to be inspected at frequent or periodic intervals from those which need not be inspected at specified times. The 1982 edition uses the same language. Therefore, OSHA believes that no further revision of this provision is necessary.

OSHA has determined that the revised standard will not reduce the protection of employee safety and health because the existing inspection requirements are retained and employers are still required to correct

any defects found at the time of inspection.

Section 1926.552(c)(15)—Material hoists, personnel hoists and elevators.

The final rule revises the recordkeeping portion of the provision and requires the employer to prepare a certification record. The revised standard eliminates unnecessary recordkeeping burdens, and clarifies what information is to be recorded. The certification record must contain the date the work was performed, the signature of the person who performed the inspection and test, and the identity of the hoist that was inspected and tested. The final rule does not alter the inspection and test requirements of this paragraph.

In the proposed rule, OSHA explained that the existing standard requires the employer to inspect and test all hoist functions and safety devices at least every three months following assembly and erection. A similar inspection and test is required following major alterations of an existing installation. The existing standard further requires that records be maintained. However, the existing standard does not state what information should be kept on the record.

CAL/OSHA (Ex. 3–1) recommended adoption of the proposed revision because it felt, "this change clarifies the inspection test information that is to be recorded and the file retention time."

OSHA has determined that the revised standard will not reduce the protection of employee safety and health because the existing testing and inspection requirements are retained. Employers are still required to detect any defects in hoist functions or safety devices during these tests and inspections and to correct them.

Section 1926.903(e)—Underground transportation of explosives.

The final rule revises the recordkeeping requirements of this provision and requires the employer to prepare a certification record. The revised standard clarifies what information the employer must record. The certification record must contain the date the inspection was performed, the signature of the person who checked the electrical system and the identity of the truck inspected. The final rule retains the inspection requirements.

In the proposed rule, OSHA explained that the existing standard requires employers to conduct a weekly check of the electrical systems of trucks used to transport explosives underground to detect failure which may constitute electrical hazards. The standard further provides that a written record of the inspection must be kept, but does not state what information this written record must contain.

OSHA received one comment on this paragraph. CAL/OSHA (Ex. 3–1) suggested that OSHA extend the existing inspection requirements to cover vehicles other than trucks. CAL/OSHA was concerned that other vehicles might be used to transport explosives underground or might emit explosive vapors. OSHA notes that the suggestion falls outside the scope of this rulemaking. The Agency has not proposed any changes to the pertinent inspection requirements. Therefore, OSHA would have to initiate a separate rulemaking proceeding in order to act on CAL/OSHA's suggestion.

OSHA has determined that the revised standard will not reduce employee safety and health because it retains the requirement that employers conduct the weekly check of covered electrical systems.

IV. Regulatory Impact Assessment and Regulatory Flexibility Assessment

OSHA has determined that this rule is not a "major rule" under Executive Order 12291 because it is not likely to result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. Therefore, no regulatory impact analysis is required.

Based on a review of the relevant information, OSHA concludes that a regulatory flexibility analysis under the Regulatory Flexibility Act (5 U.S.C. 603, 605), is not necessary. OSHA estimates that the construction industry expends approximately $2.2 million annually in complying with the recordkeeping provisions which will be revised by this rule. OSHA also estimates that compliance costs after this rule is promulgated will be approximately $430,000 annually. Therefore, the compliance cost differential will be $1.8 million. This total economic impact will generally be distributed over numerous construction firms, so OSHA concludes that this rule will not have a significant economic impact on a substantial number of small entities.

V. OMB Approval Under the Paperwork Reduction Act

The revised provisions require that employers prepare certifications. Under the terms of 5 CFR 1320.7(k)(1), certifications are not subject to the Paperwork Reduction Act or its implementing regulations. Hence, OMB approval under the Paperwork Reduction Act is not required.

VI. State Plan States

The 25 States and territories with their own OSHA-approved occupational safety and health plans must revise their existing standards within six months of the publication date of the final standard 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 revised Federal standard. These States and territories are: Alaska, Arizona, California, Connecticut [1], Hawaii, Indiana, Iowa, Kentucky, Maryland, Michigan, Minnesota, Nevada, New Mexico, New York [1], North Carolina, Oregon, Puerto Rico, South Carolina, Tennessee, Utah, Vermont, Virginia, Virgin Islands, Washington, and Wyoming.

Authority

This document was prepared under the direction of John A. Pendergrass, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

Accordingly, pursuant to sections 6(b), 8(c), 8(d) and 8(g) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 655, 657), section 107 of the Construction Safety Act (40 U.S.C. 333), Secretary of Labor's Order No. 9–83 (48 FR 35736) and 29 CFR Part 1911, OSHA amends 29 CFR Part 1926 as set forth below.

Signed at Washington, DC this 23rd day of September, 1987.

John A. Pendergrass,

Assistant Secretary of Labor.

List of Subjects in 29 CFR Part 1926

Certification, Occupational safety and health, Recordkeeping, Safety.

PART 1926—SAFETY AND HEALTH REGULATIONS FOR CONSTRUCTION

1. The authority citation for Subpart N of Part 1926 continues to read as follows:

Authority: Sec. 107, Contract Work Hours and Safety Standards Act (Construction Safety Act) (40 U.S.C. 333); secs. 4, 6, 8,

[1] Plan covers only State and local government employees.

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), or 9–83 (48 FR 35736), as applicable.

2. In § 1926.550, paragraph (b)(2) is revised to read as follows:

§ 1926.550 Cranes and derricks.

* * * * *

(b) * * *

(2) All crawler, truck, or locomotive cranes in use shall meet the applicable requirements for design, inspection, construction, testing, maintenance and operation as prescribed in the ANSI B30.5–1968, Safety Code for Crawler, Locomotive and Truck Cranes. However, the written, dated, and signed inspection reports and records of the monthly inspection of critical items prescribed in section 5–2.1.5 of the ANSI B30.5–1968 standard are not required. Instead, the employer shall prepare a certification record which includes the date the crane items were inspected; the signature of the person who inspected the crane items; and a serial number, or other identifier, for the crane inspected. The most recent certification record shall be maintained on file until a new one is prepared.

* * * * *

3. In § 1926.552, paragraph (c)(15) is revised to read as follows:

§ 1926.552 Material hoists, personnel hoists and elevators.

* * * * *

(c) * * *

(15) Following assembly and erection of hoists, and before being put in service, an inspection and test of all functions and safety devices shall be made under the supervision of a competent person. A similar inspection and test is required following major alteration of an existing installation. All hoists shall be inspected and tested at not more than 3-month intervals. The employer shall prepare a certification record which includes the date the inspection and test of all functions and safety devices was performed; the signature of the person who performed the inspection and test; and a serial number, or other identifier, for the hoist that was inspected and tested. The most recent certification record shall be maintained on file.

* * * * *

PART 1926—[AMENDED]

4. The authority citation for Subpart U of Part 1926 continues to read as follows:

Authority: Sec. 107, Contract Work Hours and Safety Standards Act (Construction Safety Act) (40 U.S.C. 333); 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), or 9–83 (48 FR 35736), as applicable.

5. In § 1926.903, paragraph (e) is revised to read as follows:

§ 1926.903 Underground transportation of explosives.

* * * * *

(e) Trucks used for the transportation of explosives underground shall have the electrical system checked weekly to detect any failures which may constitute an electrical hazard. A certification record which includes the date of the inspection; the signature of the person who performed the inspection; and a serial number, or other identifier, of the truck inspected shall be prepared and the most recent certification record shall be maintained on file.

* * * * *

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Part V

Department of Labor

Occupational Safety and Health Administration

29 CFR Part 1910

Revision of Telecommunications Training Records; Final Rule

DEPARTMENT OF LABOR

29 CFR Part 1910

[Docket No. S-020B]

Revision of Telecommunications Training Records

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

ACTION: Final rule.

SUMMARY: The Occupational Safety and Health Administration (OSHA) hereby revises the recordkeeping requirements in the training provisions of the Telecommunications Standard (29 CFR 1910.268(c)), in order to minimize the paperwork burdens imposed on employers and to clarify what information is required. The final rule eliminates the requirement that the employer prepare a written description of the training program. It also revises the requirement that the employer maintain a record of employees trained, substituting a requirement that the employer prepare a certification record to demonstrate compliance with the training requirements. This certification record will be prepared at the time the training is completed and will include the identity of the employee trained, the signature of the employer or the person who conducted the training, and the date the training was completed. OSHA believes that this action will minimize the paperwork burden on employers, as intended by the Paperwork Reduction Act of 1980, without reducing the protection of employee safety and health.

DATES: This revision will become effective October 28, 1987.

FOR FURTHER INFORMATION CONTACT: Mr. James F. Foster, U.S. Department of Labor, Occupational Safety and Health Administration, Room N3647, 200 Constitution Avenue, NW., Washington, DC 20210, (202) 523–8148.

SUPPLEMENTARY INFORMATION:

I. Background

The Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) was enacted to minimize the Federal paperwork burden and maximize the efficiency and usefulness of Federal information-gathering activities. That Act set goals for the phased reduction of Federal information-gathering burdens. The Paperwork Reduction Act also required the Office of Management and Budget (OMB) to promulgate regulations which would guide the Federal agencies in their compliance efforts. OMB has published implementing regulations at 5 CFR Part 1320 and has issued supplemental directives.

In addition, section 8(d) of the Occupational Safety and Health Act (the OSH Act) states that "Any information obtained by the Secretary * * * under this Act shall be obtained with a minimum burden upon employers * * *."

In an effort to meet these statutory goals, OSHA conducted a comprehensive review of the OSHA standards to identify all recordkeeping requirements. OSHA then analyzed each of the 38 requirements identified to determine which recordkeeping burdens could be reduced.

Each requirement was reviewed to determine:

—What kind of information was required;

—How this information would be used;

—Whether this information was collected by other authorities (e.g., pursuant to State and local law or regulation);

—Whether this record would provide information that a compliance officer would not otherwise ascertain at the time of inspection; and,

—Which requirements contributed directly to employee safety and health.

On the basis of this careful review and analysis, OSHA identified 22 provisions in the standards found in 29 CFR Parts 1910, 1915, and 1926 that, in its opinion, did not directly contribute to worker safety and health and, therefore, unnecessarily burdened employers with requirements that they prepare and maintain records of tests, inspections, and maintenance checks.

In particular, OSHA determined that the recordkeeping requirements in question were adopted because the Agency wanted the employer to provide evidence that the required tests and inspections had been performed. Having made that determination, OSHA compared the purposes for the recordkeeping requirements with their language and found that they required more information than OSHA needed. Therefore, OSHA determined that revisions were appropriate.

OSHA also identified, as appropriate for deletion, a duplicative recordkeeping provision and another which dealt with concerns outside OSHA's jurisdiction.

On January 3, 1986, OSHA published a Notice of Proposed Rulemaking (NPRM) in the **Federal Register** (51 FR 312) to revise the 22 provisions in question and to revoke the other two provisions. The three construction industry recordkeeping requirements which were proposed for revision were removed from consideration for revision in the March 14, 1986, Notice of Public Hearing (51 FR 8844), because OSHA determined that it had not formally consulted with the Advisory Committee on Construction Safety and Health (ACCSH) regarding them. These three provisions have subsequently been formally reviewed by ACCSH and are the subject of a separate rulemaking. A public hearing was held on April 15, 1986, on the nineteen remaining provisions and they were revised by publication of a Final Rule in the September 29, 1986, **Federal Register** (51 FR 34552).

OSHA indicated in that Final Rule that it would continue its efforts to identify provisions where the recordkeeping burdens could be reduced without reducing worker protection (51 FR 34553). Consistent with this statement, OSHA reviewed the recordkeeping requirements in the training provisions of the Telecommunications Standard (§ 1910.268(c)). Currently, this standard requires that an employer develop a training program which includes a list of the subject courses and the types of personnel to be trained. The employer is also required to provide OSHA, upon request, with a written description of the program and a record of the employees trained. OSHA determined that this paragraph required more information than was needed to demonstrate compliance with the training requirement.

Based on that determination, OSHA published a Notice of Proposed Rulemaking (NPRM) in the **Federal Register** on April 14, 1987 (52 FR 12116). The Agency proposed to revise paragraph (c) of the existing standard so that employers would be required to prepare certification records to demonstrate that employees had been trained as required by the standard.

The NPRM established a 60-day period, which ended June 15, 1987, for submission of written comments and hearing requests. OSHA received four comments on the NPRM and no hearing requests. Those comments will be discussed in the Summary and Explanation section.

As OSHA noted in the NPRM, the Telecommunications Standard already specifies the elements to be included in the training program. Therefore, OSHA determined that requiring employers to write out descriptions of their training programs was redundant and unnecessarily burdensome. In addition, OSHA notes that employers have generally complied with the "written description" requirement by simply preparing a course outline for each subject listed in the training program.

The "written description," therefore, actually provided less information than would be gained from reading § 1910.268.

OSHA has also determined that employers should not be required to list the types of personnel to be trained because the stated purpose of existing paragraph (c) is to "insure that employees do not engage in the activities to which this section applies until such employees have received proper training; * * *." Therefore, the key concern is whether a given employee will be performing work covered by § 1910.268, not whether that employee has a particular job title.

In addition, OSHA has determined that the existing standard does not clearly state what constitutes a "record." The final rule clarifies the requirement so that an employer can comply by preparing a certification record which contains the identity of the employee(s) trained, the signature of the employer or the person providing the training, and the date of the training. The certification record is to be prepared when the training has been completed and will be maintained on file for review by the OSHA Compliance Officer at the time of an inspection.

As stated above, OSHA adopted the recordkeeping requirements in question to provide assurance that employees were trained as required by the standard. OSHA has determined, based on its 15 years of experience enforcing similar types of requirements, that the written documents currently required under this standard are not necessary to verify compliance with the training requirements. Therefore, OSHA is revising the pertinent requirements so that employers are required to prepare a contemporaneous certification record, as provided herein.

The contemporaneous certification record can be kept in any manner which provides the required information. For example, a list of the employees who were trained would have to be signed and dated only once if all the employees were trained on the same date. With such a list, the employer or the person performing the training would not have to sign and date a separate record for each trained employee. In addition, employers may find that they need only to sign an entry in the employee's personnel file which indicates the date the training was received. Some employers may find that they do not need to change their recordkeeping methods at all to comply with these revised requirements.

If the employer keeps track of training with automated data processing, and several employees are trained on the same date, compliance can be achieved by having the person who conducted the training, or the employer, sign and date a printout which identifies the persons trained. The computer printout would, of course, have to be maintained and made available for review at the time of an OSHA inspection.

OSHA estimates that the revision will reduce its imposed paperwork burden by about 21,000 hours and that employers in the telecommunications industry would save approximately $164,000 annually. In addition, employers will gain clear guidance as to what information must be included when the employer verifies compliance.

OSHA has determined that the revision will not reduce the protection of employee safety and health, since the requirement in § 1910.268(c) to train employees will not be changed. OSHA believes that a certification record will provide evidence of compliance with the pertinent training requirement which is equivalent to that provided by the specific records formerly required.

OSHA will continue to review its recordkeeping requirements in an effort to ensure that they provide the necessary protection for employees while imposing the minimum burden on employers.

II. Summary and Explanation

The final rule is identical to the proposed rule. In the proposed rule OSHA explained that the existing provisions of paragraph § 1910.268(c) require the employer to train employees in the precautions and safe practices required by the standard before the employer assigns employees to perform work covered by the standard. To demonstrate compliance with the training requirements, employers are required to prepare a written description of their training program, including a list of subject courses and the types of personnel to be trained. As explained in the Background section, above, OSHA determined that requiring a "written description" of the training program is redundant and unnecessary because the written description is not an elaboration of how the training will be accomplished; but, rather, a brief description of what subject areas would be covered. Therefore, the Agency has concluded that the "written description" requirement does not provide any information which the Agency could use to verify compliance with the pertinent training requirements of the standard.

In addition, under the existing standard, employers are required to prepare and maintain a record of employees who have received such training. OSHA agrees that recording the identity of employees who have been trained provides useful information by which to verify compliance with the training requirements. Therefore, the Agency has retained this provision as part of the certification requirement.

The final rule revises the recordkeeping provisions of the telecommunication standard by requiring employers to prepare a certification record which indicates that employees have been trained as required by the standard. This certification record must contain the identity of the person trained, the signature of the employer or the person who conducted the training, and the date the training was completed. The final rule does not alter the existing requirement to train employees, but eliminates the requirement to prepare a written description of the training program.

The California Department of Industrial Relations (CAL/OSHA) (Ex. 3–1) recommended adoption of the proposal and also suggested that OSHA add "Work area protection and traffic control" to the list of subjects covered by the training. OSHA observes that this suggested addition relates to matters outside the scope of this rulemaking. Therefore, it would be necessary to initiate a separate rulemaking proceeding in order to act on CAL/OSHA's recommendation.

The Connecticut Union of Telephone Workers, Inc. (CUTW) (Ex. 3–2) commented that "In order to guarantee that employees received adequate safety training, employers should continue to maintain a written description of their training program * * *." The CUTW supported their comment by explaining that "Maintaining up to date safety training records is one small step toward accomplishing this end" and that "These records are necessary for OSHA to determine whether employers are providing adequate training * * *." CUTW further stated that "In order for employees to be made aware of how this standard affects them, each training program should continue to include a list of the subject courses and the types of personnel (job titles) required to receive the instruction." The CUTW did not, however, submit any information, examples, or evidence to demonstrate that worker safety would be endangered if the training program (including the list of subject courses and types of personnel required to receive the instruction) were not written down. Nor did the CUTW submit any evidence to demonstrate that worker safety would be endangered if the employer were

allowed to prepare and maintain a certification record to demonstrate that the employee had been trained. The CUTW, also, did not explain how requiring the training program to be written would "* * * guarantee that employees received adequate safety training * * *." In the absence of information supporting the CUTW position, the Agency adheres to its determination explained above, that the deleted information requirements were not needed to verify compliance. OSHA reiterates that the requirement to train employees is not being altered by this revision.

The National Institute for Occupational Safety and Health (NIOSH) (Ex. 3–3) agreed with the certification approach to determining compliance, but recommended that the certification record include the signature of the employee trained and either a table of contents or course agenda for the training program.

As has been explained above, OSHA believes that the proposed revision will provide the necessary assurance that employers have complied with the training requirements. As with the CUTW, NIOSH has presented no evidence to substantiate the view that the recordkeeping requirements it recommends are necessary for the protection of employee safety and health. In particular, the Agency has determined that requiring the identity of trained employees on the certification record provides adequate assurance of compliance, so that also requiring the trained employees to sign the certification record is unnecessary.

Further, with regard to NIOSH's suggestion that the employee sign the training certification record, OSHA believes that the responsibility for demonstrating compliance with the training requirement should remain with the employer or the person who conducts the training. OSHA notes that employers, not employees, are required to ensure that the training requirements are followed, so trained employees are not the appropriate parties to prepare the certification of compliance.

The NIOSH suggestion that the certification record include a table of contents or course agenda would, if adopted, require employers to, in effect, continue to prepare "written descriptions" of the training programs. As has already been discussed above, OSHA had determined that such a requirement is unnecessary.

In addition, NIOSH recommended that OSHA replace the term "artificial respiration" with the more precise and commonly used term "cardio-pulmonary resuscitation (CPR)." OSHA notes that this suggestion falls outside the scope of the rulemaking. Therefore, it would be necessary for OSHA to initiate a separate rulemaking proceeding in order to act on NIOSH's recommendation.

The National Arborist Association, Inc. (NAA) (Ex. 3–4) raised two concerns related to matters outside the scope of this rulemaking. To act on either of these matters would require OSHA to initiate a separate rulemaking proceeding. The first concern was that, on one hand, the proposed standard would require that employees be "trained" before working, while, on the other hand, it would permit "on-the-job training." The NAA stated that, given the apparent conflict in the proposed regulatory language, "trainees are allowed to receive on-the-job training, but are not allowed to receive it by performing covered work!" The Agency observes that the pertinent regulatory language is not proposed for revision and, therefore, will be not changed by this final rule. As a point of clarification, however, OSHA does not consider employees receiving on-the-job training to be engaged in activities for which they have not received the required training.

The NAA also stated that the certification requirement would be too burdensome for its members because they must train large numbers of transient workers at many different times and locations. OSHA notes that although it is concerned with reducing paperwork burdens, it cannot exempt employers from complying with this standard simply because employers find any paperwork to be "too burdensome." OSHA observes that the NAA's comment could just as well be addressed to the existing recordkeeping requirements as to the revised requirement. Indeed, if anything, the NAA's members have had heavier recordkeeping burdens under the existing requirements than they will have under the new certification record provision. Accordingly, OSHA believes that the NAA's members, like other employers subject to this standard, will find that this revision provides the appropriate relief from unnecessary recordkeeping burdens.

OSHA has determined that the revised standard will not reduce the protection of employee safety and health because the existing requirement that employers train their employees before they engage in activities covered by § 1910.268 has not been revised.

III. Regulatory Impact Assessment and Regulatory Flexibility Assessment

OSHA has determined that this rule is not a "major rule" under Executive Order 12291 because it is not likely to result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. Therefore, no regulatory impact analysis is required.

Based on a review of the relevant information, OSHA concludes that a regulatory flexibility analysis under the Regulatory Flexibility Act (5 U.S.C. 603, 605), is not necessary. OSHA estimates that the telecommunications industry expends approximately $204,000 annually to comply with the recordkeeping requirement which will be revised by this rule. OSHA also estimates that compliance costs after this rule is promulgated will be approximately $40,000 annually. Therefore, the compliance cost savings will be $164,000. This total economic impact will generally be distributed over numerous employers, so OSHA concludes that this rule will not have a significant economic impact on a substantial number of small entities.

IV. OMB Approval Under the Paperwork Reduction Act

The revision requires that employers prepare a certification. Under the terms of 5 CFR 1320.7(k)(1), certifications are not subject to the Paperwork Reduction Act or its implementing regulations. Hence, OMB approval under the Paperwork Reduction Act is not required.

V. State Plan States

The 25 States and territories with their own OSHA-approved occupational safety and health plans must revise their existing standards within six months of the publication date of the final standard 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 revised Federal standard. These States and territories are: Alaska, Arizona, California, Connecticut [1], Hawaii, Indiana, Iowa, Kentucky, Maryland, Michigan, Minnesota, Nevada, New Mexico, New York [1], North Carolina, Oregon, Puerto Rico, South Carolina, Tennessee, Utah, Vermont, Virginia,

[1] Plan covers only State and local government employees.

Virgin Islands, Washington, and Wyoming.

Authority

This document was prepared under the direction of John A. Pendergrass, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

Accordingly, pursuant to sections 6(b), 8(c), 8(d) and 8(g) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 655, 657), Secretary of Labor's Order No. 9–83 (48 FR 35736), and 29 CFR Part 1911, OSHA amends 29 CFR Part 1910 as set forth below.

Signed at Washington, DC, this 23rd day of September, 1987.

John A. Pendergrass,

Assistant Secretary of Labor.

List of Subjects in 29 CFR Part 1910

Certification, Occupational safety and health, Recordkeeping, Safety, Telecommunications, Training.

PART 1910—OCCUPATIONAL SAFETY AND HEALTH STANDARDS

1. The authority citation for Subpart R of Part 1910 continues 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) or 9–83 (48 FR 35736), as applicable.

Sections 1910.261, 1910.262, 1910.265, 1910.266, 1910.267, 1910.268, 1910.274, and 1910.275 also issued under 29 CFR Part 1911.

2. In § 1910.268, paragraph (c) is revised to read as follows:

§ 1910.268 Telecommunications.

* * * * *

(c) *Training.* Employers shall provide training in the various precautions and safe practices described in this section and shall insure that employees do not engage in the activities to which this section applies until such employees have received proper training in the various precautions and safe practices required by this section. However, where the employer can demonstrate that an employee is already trained in the precautions and safe practices required by this section prior to his employment, training need not be provided to that employee in accordance with this section. Where training is required, it shall consist of on-the-job training or classroom-type training or a combination of both. The employer shall certify that employees have been trained by preparing a certification record which includes the identity of the person trained, the signature of the employer or the person who conducted the training, and the date the training was completed. The certification record shall be prepared at the completion of training and shall be maintained on file for the duration of the employee's employment. The certification record shall be made available upon request to the Assistant Secretary for Occupational Safety and Health. Such training shall, where appropriate, include the following subjects:

(1) Recognition and avoidance of dangers relating to encounters with harmful substances and animal, insect, or plant life;

(2) Procedures to be followed in emergency situations; and,

(3) First aid training, including instruction in artificial respiration.

* * * * *

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