

# Rules and Regulations

Federal Register

Vol. 74, No. 216

Tuesday, November 10, 2009

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

## DEPARTMENT OF LABOR

### Occupational Safety and Health Administration

#### 20 CFR Part 1910

[Docket No. OSHA–2008–0034]

RIN 1218–AC08

#### Revising Standards Referenced in the Acetylene Standard

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

**ACTION:** Final rule; confirmation of effective date.

**SUMMARY:** OSHA is confirming the effective date of its direct final rule that revises the Acetylene Standard for general industry by updating references to standards published by standards-developing organizations. The direct final rule stated that it would become effective on November 9, 2009, unless OSHA received no significant adverse comments on the direct final rule by September 10, 2009. OSHA received eight comments on the direct final rule by that date, which it determined were not significant adverse comments. Therefore, OSHA is confirming that the direct final rule became effective on November 9, 2009.

**DATES:** The direct final rule published on August 11, 2009, is effective on November 9, 2009. For the purposes of judicial review, OSHA considers November 9, 2009 as the date of issuance.

#### FOR FURTHER INFORMATION CONTACT:

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

*Technical information:* 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; 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>.

**ADDRESSES:** In compliance with 28 U.S.C. 2112(a), OSHA designates the Associate Solicitor of Labor for Occupational Safety and Health as the recipient of petitions for review of the final standard. Contact the Associate Solicitor at the Office of the Solicitor, Room S–4004, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; telephone: (202) 693–5445.

**SUPPLEMENTARY INFORMATION:** On August 11, 2009, OSHA published the direct final rule in the **Federal Register** that revised the Acetylene Standard for general industry by updating references to standards published by standards-developing organizations (see 74 FR 40442). In that **Federal Register** document OSHA also stated that it would confirm the effective date of the direct final rule, if it received no significant adverse comments on the direct final rule.

OSHA received eight comments on the direct final rule, which it determined were not significant adverse comments. Several of these commenters observed that the Compressed Gas Association updated the CGA G–1 standard this year, and recommended that OSHA adopt this new edition (Exs. OSHA–2008–0034–0017, –0010, and –0022). OSHA did not include the 2009 edition of CGA G–1 in the direct final rule because that edition was not made available to OSHA prior to publication of the direct final rule, and, therefore, was beyond the scope of this rulemaking. In its comments, the Compressed Gas Association noted that the only difference between the 2003 edition referenced in the direct final rule and the recently issued 2009 edition is the addition of one sentence to a note in section 5.2 of the 2009 edition, which reads, “Additionally,

single cylinders of acetylene and oxygen located at a work station (e.g., chained to a wall or building column or secured to a cart) shall be considered ‘in service’” (see Ex. OSHA–2008–0034–0020). Nevertheless, OSHA plans to update the reference to CGA G–1 in a future rulemaking as resources and priorities permit.

Another commenter complained of the economic burden imposed by the flow-rate provision of the 2003 edition of CGA G–1 (Ex. OSHA–2008–0034–0021). In this regard, the 1966 edition of the standard (the edition cited previously in 29 CFR 1910.102(a)) specified a flow rate of one-seventh of the capacity of the cylinder per hour regardless of the duration of use, while the 2003 edition reduced this flow rate to one-tenth of the cylinder capacity per hour during intermittent use, and one-fifteenth of the cylinder capacity per hour during continuous use. This commenter stated, “As long as this flow rate [in the 2003 edition] remains advisory \* \* \* this is not a problem.” In the first footnote in the preamble of the direct final rule, OSHA noted that “both of these flow-rate provisions [in either the 1966 or 2003 editions] are advisory, not mandatory.” Therefore, employers may use any flow rate that provides employees with an appropriate level of safety.

Two commenters appeared to confuse the Acetylene Standard at 29 CFR 1910.102, which was the subject of this rulemaking, with OSHA's standard regulating oxygen-fuel gas welding and cutting at 29 CFR 1910.253 (Exs. OSHA–2008–0034–0002 and –0018). The first commenter asked, “[W]hat are the dimension[s] of a wall that would separate oxygen and acetylene tanks for storage in a[n industrial] shop.” The second commenter noted that a provision in the 2003 edition of CGA G–1 requires that a regulator and flow restrictor be attached to an acetylene cylinder before opening the cylinder valve, and asserted that this provision contradicted other OSHA standards requiring that a cylinder valve be “cracked” before attaching a regulator to it. These comments address requirements for the use of acetylene in welding operations, which is regulated for general industry under 29 CFR 1910.253, and not the requirements for the generation and distribution of acetylene, which is regulated for general

industry under 29 CFR 1910.102. Accordingly, practices and conditions that apply to acetylene stored in cylinders and used in welding operations may differ from the practices and conditions appropriate to bulk storage of acetylene in generation and distribution facilities.

One commenter expressed concern that OSHA would apply retroactively to existing acetylene-generating facilities that were compliant with the appropriate standards when originally constructed, those sections of the NFPA 51A–2001 standard that address site location, design, and materials (Ex. OSHA–2008–0034–0019). The commenter noted that applying the updated NFPA standard in this fashion would require moving or demolishing the facilities, or discontinuing operations. In response to this commenter, OSHA notes that section 1.2.2 of NFPA 51A–2001 states, “An existing plant that is not in strict compliance with the provisions of this standard shall be permitted to continue operations where such use does not constitute a distinct hazard to life or adjoining property.” This provision indicates clearly that NFPA 51A–2001 does not apply to acetylene plants in existence prior to publication of the standard when the operations in these plants do not endanger employees. Therefore, OSHA considers acetylene plants in existence prior to the effective date of NFPA 51A–2001 (i.e., February 9, 2001) to be in compliance with that standard when the acetylene operations in these plants do not “constitute a distinct hazard” to employees.

#### List of Subjects in 29 CFR Part 1910

Acetylene, General industry, Occupational safety and health, Safety.

#### Authority and Signature

Jordan Barab, Acting 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 final rule. OSHA is issuing this final rule pursuant to Sections 4, 6, and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, and 657), 5 U.S.C. 553, Secretary of Labor’s Order 5–2007 (72 FR 31160), and 29 CFR part 1911.

Signed at Washington, DC, on November 5, 2009.

**Jordan Barab,**

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

[FR Doc. E9–27004 Filed 11–9–09; 8:45 am]

BILLING CODE 4510–26–P

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 117

[Docket Number USCG–2009–0963]

#### Drawbridge Operating Regulations; Victoria Barge Canal, Bloomington, TX

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of temporary deviation from regulations.

**SUMMARY:** The Commander, Eighth Coast Guard District, has issued a temporary deviation from the regulation governing the operation of the Union Pacific Railroad (UPRR) Vertical Lift Span Bridge across the Victoria Barge Canal, mile 29.4 at Bloomington, Victoria County, Texas. The deviation is necessary to allow for one phase of an on-going maintenance project to replace the lift span motors and brakes.

**DATES:** This deviation is effective from 7 a.m. on Tuesday, December 1, 2009 until 7 p.m. on Wednesday, December 2, 2009.

**ADDRESSES:** Documents mentioned in this preamble as being available in the docket are part of docket USCG–2009–0963 and are available online by going to <http://www.regulations.gov>, inserting USCG–2009–0960 in the “Keyword” box and then clicking “Search.” They are also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590 between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this rule, call or e-mail Phil Johnson, Bridge Administration Branch, Eighth Coast Guard District; telephone 504–671–2128, e-mail [Philip.R.Johnson@uscg.mil](mailto:Philip.R.Johnson@uscg.mil). If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

#### SUPPLEMENTARY INFORMATION:

The Victoria County Navigation District has requested a temporary deviation from the operating schedule of the UPRR Vertical Lift Span Bridge across the Victoria Barge Canal, mile 29.4 at Bloomington, Texas. The vertical lift bridge has a vertical clearance of 22 feet above high water in the closed-to-navigation position and 50 feet above high water in the open-to-navigation position.

Presently, the bridge opens on signal for the passage of vessels. This deviation

allows the draw span of the bridge to remain closed to navigation for 12 consecutive hours between 7 a.m. and 7 p.m. each day on December 1 and 2, 2009. Navigation on the waterway consists mainly of tugs with tows. Due to prior experience and coordination with waterway users, it has been determined that this closure will not have a significant effect on these vessels.

No alternate routes are available. The closures are necessary for one phase of an on-going maintenance project to replace the lift span motors and brakes on the bridge. The Coast Guard has coordinated the closures with the commercial users of the waterway.

In accordance with 33 CFR 117.35(e), the drawbridge must return to its regular operating schedule immediately at the end of the designated time period. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: October 28, 2009.

**David M. Frank,**

*Bridge Administrator.*

[FR Doc. E9–26984 Filed 11–9–09; 8:45 am]

BILLING CODE 4910–15–P

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 117

[Docket No. USCG–2009–0686]

#### Drawbridge Operation Regulations; Lower Grand River, Iberville Parish, LA

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of temporary deviation from regulations; request for comments.

**SUMMARY:** The Commander, Eighth Coast Guard District, has issued a temporary deviation from the regulations governing the operation of the LA 75 pontoon bridge and the LA 77 swing bridge across the Lower Grand River, mile 38.4 and 47.0 respectively, in Iberville Parish, Louisiana. This deviation will test a change to both drawbridge’s operating schedules to determine whether permanent changes to the schedules are needed. The deviation will allow an additional 30 minutes to the end of each scheduled closure period to provide more time for school buses to transit across the bridges.

**DATES:** This deviation is effective from November 25, 2009 through December 28, 2009.

Comments, requests for public meetings, and related material must be