

COMMONWEALTH OF PUERTO RICO
DEPARTMENT OF LABOR AND HUMAN RESOURCES
Office of the Secretary
Hato Rey, Puerto Rico

No. 4119

Date: February 15, 1990 9:50 A.M.

Approved: Antonio J. Colorado
Secretary of State

By: [Signature]

Assistant Secretary of State

RESOLUTION

I, Ruy N. Delgado Zayas, Puerto Rico Secretary of Labor and Human Resources, pursuant to the authority conferred by Section 8 of Puerto Rico Occupational Safety and Health Act, Number 16 of August 5, 1975, as amended (29 LPRA 361 et seq.) hereby amend the Puerto Rico Occupational Safety and Health Regulation, Number Twelve (Parts 1915, 1916, 1917 and 1918) approved on February 1st 1978 and amended on March 23, September 30, 1983, March 16, 1987, April 8, 1988 and September 28, 1988 by adopting the following amendment:

) Hazard Communication, Final Rule, Technical Amendments as published in the Federal Register, Volume 54, Number 30 of February 15, 1989 (6886-6888)

The adoption of this amendment shall be effective immediately after its approval.

Given on this

13 day of February, 1990.

[Signature]
RUY N. DELGADO ZAYAS



2. Section 10.3 is amended in paragraph (a) by alphabetically adding the definition to "Chief Counsel" to read as follows:

§ 10.3 Definitions.

(a) * * * "Chief Counsel" means the Chief Counsel of the Food and Drug Administration. * * *

3. Section 10.45 is amended by redesignating paragraph (h) as paragraph (i), by revising the cite "(h)(1)(i)" in redesignated paragraph (i)(2)(i) to read "(i)(1)(i)," and by adding new paragraph (h) to read as follows:

§ 10.45 Court review of final administrative action; exhaustion of administrative remedies.

(h)(1) For the purpose of 28 U.S.C. 2112(a), a copy of any petition filed in any U.S. Court of Appeals challenging a final action of the Commissioner shall be sent by certified mail, return receipt requested, or by personal delivery to the Chief Counsel of FDA. The petition copy shall be time-stamped by the clerk of the court when the original is filed with the court. The petition copy should be addressed to: Office of the Chief Counsel (GCF-1), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. The Chief Counsel requests that the purpose of all petitions mailed or delivered to the Office of Chief Counsel to satisfy 28 U.S.C. 2112(a) be clearly identified in a cover letter.

(2) If the Chief Counsel receives two or more petitions filed in two or more U.S. Courts of Appeals for review of any agency action within 10 days of the effective date of that action for the purpose of judicial review, the Chief Counsel will notify the U.S. Judicial Panel on Multidistrict Litigation of any petitions that were received within the 10-day period, in accordance with the applicable rule of the panel.

(3) For the purpose of determining whether a petition for review has been received within the 10-day period under paragraph (h)(2) of this section, the petition shall be considered to be received on the date of delivery, if personally delivered. If the delivery is accomplished by mail, the date of receipt shall be the date noted on the return receipt card.

Dated: February 9, 1989.

John M. Taylor,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 89-3491 Filed 2-14-89; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Public and Indian Housing

24 CFR Parts 904, 905, 913, 960 and 966

[Docket No. R-89-1020; FR-1164]

Tenancy and Administrative Grievance Procedure for Public Housing; Preliminary Injunction; Withdrawal of Final Rule

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice of preliminary injunction against implementation of final rule revising Tenancy and Administrative Grievance Procedure for Public Housing; withdrawal of final rule.

SUMMARY: A final rule to amend lease and grievance procedures for the public housing program was published on August 30, 1988 (53 FR 33216, Docket No. R-88-1020; FR 1164). On October 14, 1988, HUD published a notice announcing that the final rule would become effective on November 7, 1988 (53 FR 40220, 40221). This rule has never become effective.

On November 7, 1988 (53 FR 44876), the date on which the rule was to take effect, HUD published a notice announcing that the notice of effective date was being withdrawn pursuant to a Temporary Restraining Order in *National Tenants Organization, et al. v. Samuel R. Pierce* (United States District Court for the District of Columbia, Civil Action No. 88-3134).

Public housing agencies and others are hereby notified that the United States District Court for the District of Columbia has issued a Preliminary Injunction in this case. The Preliminary Injunction provides that the Secretary of HUD, his officers, agents, servants, employees, and those persons in active concert or participation with him are enjoined from implementing the HUD lease and grievance regulation published on August 30, 1988 pending further order of court.

For the following reasons, the August 30, 1988 regulation is withdrawn as a final rule:

- To avoid publication of the regulation in the Code of Federal Regulations, which could create public confusion as to whether the final rule is currently effective.
- Because the Department intends to solicit additional public comment on public housing lease and grievance requirements, as contemplated by

section 1013 of the Stewart B. McKinney Homeless Assistance Amendments Act of 1988 (Pub. L. 100-628, November 7, 1988) before issuing a new final rule.

The existing lease and grievance regulations (24 CFR Part 966) continue to remain in effect.

Accordingly, the Tenancy and Administrative Grievance Procedure for Public Housing published August 30, 1988 (53 FR 33216) is withdrawn as a final rule.

Date: February 10, 1989.

Thomas Sherman,

Acting General, Deputy Assistant Secretary for Public and Indian Housing.

[FR Doc. 89-3574 Filed 2-14-89; 8:45 am]

BILLING CODE 4210-33-M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Parts 1910, 1915, 1917, 1918, 1926, and 1928

Hazard Communication

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

ACTION: Final rule; technical amendments; notice regarding enforcement.

SUMMARY: On August 24, 1987 (52 FR 31852), OSHA revised its Hazard Communication Standard (HCS) to expand the scope of the industries covered by the rule from the manufacturing sector to all industries where employees are exposed to hazardous chemicals. Due to subsequent court and administrative actions, OSHA has not enforced the rule in the construction industry, and has not enforced in any industry certain requirements dealing with maintenance of material safety data sheets on multi-employer worksites, coverage of consumer products, and coverage of drugs in the non-manufacturing sector.

This notice is to advise the public that, as a result of further court actions, all provisions of the rule are now in effect in all segments of industry.

This document also makes technical amendments to the HCS by deleting all notations that certain provisions lack Office of Management and Budget approval under the Paperwork Reduction Act.

EFFECTIVE DATES: The revised HCS, codified at 29 CFR 1910.1200, 1915.99, 1917.28, and 1918.90, has been in effect for all manufacturing establishments

and for all non-manufacturing establishments other than construction since June 24, 1988. The HCS for the construction industry, codified at 29 CFR 1926.59, has been in effect since January 30, 1989. Compliance with the rule will not be checked during programmed inspections in construction establishments until March 17, 1989. The technical amendments to 29 CFR 1910.1200, 1915.99, 1917.28, 1918.90, and 1926.59 deleting notations that certain provisions lack OMB approval under the Paperwork Reduction Act are effective February 15, 1989. Compliance with the three provisions of the HCS that were not previously enforced in any industry will not be checked during programmed inspections until March 17, 1989.

FOR FURTHER INFORMATION CONTACT:

Mr. James F. Foster, Office of Information and Consumer Affairs, Occupational Safety and Health Administration, 200 Constitution Avenue NW., Room N3647, Washington, DC 20210; (202) 523-8151.

To aid employers' efforts to comply with the HCS, a single copy of the following documents may be obtained without charge from OSHA's Publications Office, Room N3101 at the above address, (202) 523-9867: the Hazard Communication Standard; OSHA 3084, Chemical Hazard Communication, a booklet describing the requirements of the rule; and OSHA 3111, Hazard Communication Guidelines for Compliance, a booklet which helps employers comply with the rule.

OSHA 3104, Hazard Communication—A Compliance Kit (a step-by-step guide to compliance with the standard) is available from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 783-3238, GPO Order No. 929-022-00000-9; \$18—domestic; \$22.50—foreign.

SUPPLEMENTARY INFORMATION:

1. *Coverage of the construction industry.* The HCS requires employers to establish hazard communication programs to transmit information on the hazards of chemicals to their employees by means of labels on containers, material safety data sheets, and training programs. The original rule, which was promulgated on November 25, 1983, covered employees exposed to hazardous chemicals in the manufacturing sector of industry (48 FR 53280). The August 24, 1987 modified rule expanded coverage to all employees exposed to hazardous chemicals, thus providing protection for those in non-manufacturing employments as well as manufacturing (52 FR 31852)(codified at 29 CFR

1910.1200, 1915.99, 1917.28, 1918.90, and 1926.59).

The August 1987 rule was scheduled to become fully effective on May 23, 1988. On May 20, 1988, the U.S. Court of Appeals for the District of Columbia Circuit transferred several consolidated cases challenging the standard to the U.S. Court of Appeals for the Third Circuit, and in the interim, ordered an administrative stay of the revised standard "until the Third Circuit ruled on the emergency motion for stay" which had been filed by petitioners representing the construction industry.

On June 24, 1988, the Third Circuit issued an order granting the stay requested by construction industry representatives. On July 8, 1988, the Third Circuit clarified its earlier order stating: "The order entered on June 24, 1988, is clarified to make clear that the stay applies only with respect to construction employers in the non-manufacturing sector."

OSHA published a notice in the Federal Register on July 22, 1988 (53 FR 27679) to alert the public that the stay only applied to the construction industry. The Agency also announced that programmed inspections in the other non-manufacturing industries would begin on August 1, 1988.

After considering the merits of the challenges to the standard which were filed by employer representatives, the U.S. Court of Appeals for the Third Circuit issued a decision on November 25, 1988 that denied the petitions for review. The Court stated: "None of the substantive or procedural challenges to the application of the hazard communication standard to the construction or grain processing and storage industries have merit. The petitions for review of ABC (Associated Builders and Contractors, Inc.), AGC (The Associated General Contractors), NGFA (The National Grain and Feed Association, Inc.) and UTC (United Technologies Corporation) will therefore be denied. The stay of those standards granted by a panel of this court on June 24, 1988, shall be vacated." *Associated Builders and Contractors, Inc. v. Brock*, 862 F.2d 63, 69 (3d Cir. 1988). Further requests from the AGC and the ABC for a continuation of the stay were denied by both the Third Circuit and U.S. Supreme Court Justice William Brennan (Nos. 88-1070, 88-1075). The Third Circuit's ruling became fully effective on January 30, 1989.

OSHA recognizes that some employers in the construction industry may be unfamiliar with these legal actions, and may be unsure whether they must comply with the revised HCS at this time. This document provides

additional notice to employers and employees in the construction sector that the HCS is in effect in their industry. As a matter of enforcement policy, OSHA will not check for compliance with the HCS during programmed inspections in the construction industry until March 17, 1989.

2. *Provisions disapproved with regard to information collection requirements.* On October 28, 1987, the Office of Management and Budget (OMB), citing authority of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), disapproved certain information collection requirements in the expanded scope rule, as of the rule's effective date. On December 4, 1987 (52 FR 46075), OSHA published OMB's letter describing its determination in a notice in the Federal Register, (see also 53 FR 15033 (Apr. 27, 1988) (OMB letter to Department of Labor dated April 13, 1988)).

The provisions that OMB disapproved were: (1) The requirement that material safety data sheets be provided on multi-employer worksites; (2) coverage of any consumer product that falls within the "consumer products" exemption included in section 311(e)(3) of the Superfund Amendments and Reauthorization Act of 1986; and (3) coverage of any drugs regulated by the Food and Drug Administration in the non-manufacturing sector. In accordance with OMB's decision, OSHA has not enforced these three disapproved requirements.

OMB's disapproval of the HCS provisions was challenged in the U.S. Court of Appeals for the Third Circuit. On August 19, 1988, the Court of Appeals invalidated OMB's disapproval and ordered that: "The Secretary [of Labor] shall publish in the Federal Register a notice that those parts of the August 24, 1987 hazard communication standard which were disapproved by OMB are now effective." *United Steelworkers of America v. Pendergrass*, 855 F.2d 108, 114 (3d Cir. 1988).

On September 2, 1988, the U.S. Department of Justice filed a petition with the Third Circuit requesting a rehearing and suggesting a rehearing *en banc*, which automatically stayed the effect of the Court's order. The Court has now denied the petition for rehearing (November 29, 1988), as well as requests for stay of the decision. In addition, a further motion by industry representatives for a stay of the decision was denied by U.S. Supreme Court Justice Brennan (January 24, 1989). The Solicitor General has authorized the filing of a petition for a writ of certiorari on behalf of the government in the

United Steelworkers case. Also, on January 27, 1989, industry resubmitted its stay request with Chief Justice Rehnquist in both United Steelworkers and Associated Builders and Contractors. That request is pending. If certiorari is granted, the Supreme Court will ultimately decide the enforceability of these provisions. The Third Circuit's decision became effective January 30, 1989.

As ordered by the Third Circuit, OSHA is publishing this document to provide notice to affected employers and employees that all provisions of the HCS are now in effect in all industries. As a matter of enforcement policy, OSHA will not check for compliance with the three provisions in programmed inspections until March 17, 1989.

To implement the court order, technical amendments are being made to the HCS to delete from notes following the headings of the standard, and from the parentheticals following the text of the standard, statements that any provisions of the HCS are disapproved by OMB. The OMB-assigned control number for the approved collection of information requirements of the HCS remain following the text of the standard. The Paperwork Reduction Act requires display of OMB control numbers with all information collection provisions.

Status in State Plan States. The twenty-five (25) states with OSHA-approved State plans and their own hazard communication rules have not been bound by either the court actions or OMB's administrative actions. Those State plan states that have voluntarily honored the court stay or suspended enforcement of the disapproved provisions are expected to similarly begin enforcement of all requirements of the standard.

Authority and Signature

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, under authority of section 41 of the Longshore and Harbor Workers' Compensation Act (33 U.S.C. 941), section 107 of the Contract Work Hours and Safety Standards Act (Construction Safety Act) (40 U.S.C. 333), 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. 9-83 (48 FR 35736), 29 CFR Part 1911, and 5 U.S.C. 553.

List of Subjects in 29 CFR Parts 1910, 1915, 1917, 1918, 1926, and 1928

Hazard communication, Occupational safety and health, Right-to-know, Labeling, Material safety data sheets, Employee training, Construction.

Signed at Washington, DC, this 9th day of February 1989.

John A. Pendergrass,

Assistant Secretary for Occupational Safety and Health.

OSHA is amending Parts 1910, 1915, 1917, 1918, and 1926 of Title 29 of the Code of Federal Regulations as follows:

PART 1910—OCCUPATIONAL SAFETY AND HEALTH STANDARDS

PART 1915—OCCUPATIONAL SAFETY AND HEALTH STANDARDS FOR SHIPYARD EMPLOYMENT

PART 1917—MARINE TERMINALS

PART 1918—SAFETY AND HEALTH REGULATIONS FOR LONGSHORING

PART 1926—SAFETY AND HEALTH REGULATIONS FOR CONSTRUCTION

1. The authority citation for Subpart Z of Part 1910 continues to read as follows:

Authority: Secs. 6, 8, Occupational Safety and Health Act (29 U.S.C. 655, 657); Secretary of Labor's Order No. 12-71 (36 FR 8754); 6-76 (41 FR 25059); or 9-83 (48 FR 35736) as applicable; and 29 CFR Part 1911.

Section 1910.1000 Tables Z-1, Z-2, Z-3 also issued under 5 U.S.C. 553.

Section 1910.1000 not issued under 29 CFR Part 1911, except for "Arsenic" and "Cotton Dust" listings in Table Z-1.

Section 1910.1001 also issued under sec. 107 of Contract Work Hours and Safety Standards Act, 40 U.S.C. 333.

Section 1910.1002 not issued under 29 U.S.C. 653 or 29 CFR Part 1911; also issued under 5 U.S.C. 553.

Section 1910.1003 through 1910.1018 also issued under 29 U.S.C. 653.

Section 1910.1025 also issued under 29 U.S.C. 653 and 5 U.S.C. 553.

Section 1910.1043 also issued under 5 U.S.C. 553 *et seq.*

Section 1910.1045 and 1910.1047 also issued under 29 U.S.C. 653.

Section 1910.1200, 1910.1499 and 1910.1500 also issued under 5 U.S.C. 553.

2. The authority citation for Part 1915 continues to read as follows:

Authority: Sec. 41, Longshore and Harbor Workers' Compensation Act (33 U.S.C. 941); secs. 4, 6, 8, Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order No. 12-71 (36 FR 8754), 8-76 (41 FR 25059), or 9-83 (48 FR 35736), as applicable; 29 CFR Part 1911.

Section 1915.99 also issued under 5 U.S.C. 553.

3. The authority citation for Part 1917 continues to read as follows:

Authority: Sec. 41, Longshore and Harbor Workers' Compensation Act (33 U.S.C. 941); secs. 4, 6, 8, Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order No. 12-71 (36 FR 8754), 8-76 (41 FR 25059), or 9-83 (48 FR 35736), as applicable; 29 CFR Part 1911.

Section 1917.28 also issued under 5 U.S.C. 553.

4. The authority citation for Part 1918 continues to read as follows:

Authority: Sec. 41, Longshore and Harbor Workers' Compensation Act (33 U.S.C. 941); secs. 4, 6, 8, Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order No. 12-71 (36 FR 8754), 8-76 (41 FR 25059), or 9-83 (48 FR 35736), as applicable.

Section 1918.90 also issued under 5 U.S.C. 553 and 29 CFR Part 1911.

5. The authority citation for Subpart D 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.

Section 1926.59 also issued under 5 U.S.C. 553 and 29 CFR Part 1911.

§§ 1910.1200, 1915.99, 1917.28, 1918.90, and 1926.59 [Amended]

6. The notes following the headings of §§ 1910.1200, 1915.99, 1917.28, 1918.90, and 1926.59 of Title 29 of the Code of Federal Regulations are removed.

7. The OMB control number statements following the text of §§ 1910.1200, 1915.99, 1917.28, 1918.90, and 1926.59 are revised to read:

(Approved by the Office of Management and Budget under Control No. 1218-0072)

[FR Doc. 89-3525 Filed 2-14-89; 8:45 am]

BILLING CODE 4510-26-01

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Part 2610

Payment of Premiums; Interest Rates

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Interim rule.

SUMMARY: This is an amendment to the Pension Benefit Guaranty Corporation's interim regulation on Payment of Premiums, which was published on June 30, 1988 (53 FR 24906). Appendix B to the interim regulation contains a table setting forth the interest rates that are