

Ex. 3
ACCSH 1994-2

WORKGROUP ON STANDARDS CLARIFICATION

DRAFT REPORT

At the January 4th & 5th, 1994 meeting OSHA requested that the ACCOSH advise the agency regarding OSHA's efforts to clarify certain construction safety and health standards. OSHA also asked the ACCOSH to identify any other similar 1926 standards.

Chairperson Mass re-appointed the Standards Codification Workgroup to study the issues and make recommendations to the ACCOSH. The workgroup has renamed itself as the Standards Clarification WorkGroup.

OSHA supplied the ACCOSH with a draft document dated January 7, 1994 (copy attached) which listed the problems to be solved and OSHA's proposed solutions.

PROBLEM #1

The incorporation by reference of the voluntary (should) provisions of consensus standards in 1926.31(a). The Agency has been unable to require the abatement of hazards for which particular OSHA Standards do not exist, but voluntary (should) provisions exist in incorporated consensus standards.

OSHA should develop a list of those 1926.31(a) incorporated consensus standard that have resulted in an enforcement problem. This list should be reviewed by the Agency and the ACCOSH to determine whether any of these consensus standards should be promulgated as OSHA mandatory standards through the OSHA Act, Section 6(B) process. Further, OSHA should revise 1926.31 by replacing it in total with the language found in the present 1910.6.

PROBLEM #2

OSHA administratively revised 1926.28(a) in 1972 to require either one of two conditions prevail to determine employer responsibility for the wearing of PPE. The original Construction Safety Act language incorporated by reference by OSHA in 1971 required that both conditions prevail to determine the employer responsibility.

OSHA's administrative action in 1972 was ruled invalid by the Review Commission in 1986. OSHA must now prove that both conditions prevail.

OSHA's proposed solution to this problem is to delete the language from the standard. The workgroup does not agree with this solution. Paragraph (a) of the present standard states that " the employer is responsible for requiring the wearing of appropriate personal protective equipment". Many specific 1926 standards state only that the employer will provide PPE but are silent as to the responsibility of the employer to require the employee to wear the equipment.

Examples are found at:

1926.52 "provided and used"
 1926.54(c) "provided with"
 1926.95(a) "provided, used and maintained"
 1926.102(a) "provided with"
 1926.106(a) "provided with"
 1926.300(c) "provided with"
 1926.353(10)(3) "provided for"

With the vagueness of this language the employer can and has argued that although he (the employer) provides PPE he has no control over whether the employee uses it. The language of the present 1926.28(a) specifically requires the employer to require the wearing of PPE.

The language found in 1926.28(a) should be amended to read " The employer is responsible for requiring the wearing of appropriate personal protective equipment where this part indicates the need for using such equipment".

Another suggestion is to put this amended language in Subpart E as paragraph 1926.95(d).

PROBLEM #3

Subparts A and B of part 1926 have pertinence only to the application of section 107 of the Contract Work Hours and Safety Standards Act and have no direct significance in the enforcement of the OSHA Act. Therefore, Subparts A and B apply to only federal and federally financed or federally assisted construction projects. Many members of the public have the impression that Subparts A and B do apply to enforcement of the OSHA Act. A possible solution is to add language to Subpart C which would precede paragraph 1926.20. The addition would be as follows.

1926.19 SCOPE AND APPLICATION

- a) The Safety and Health Standards described in Subpart C apply to the employment and places of employment as defined in both the OSH Act and Section 107 of the Contract Work Hours and Safety Standards Act (Construction Safety Act).
- b) Subparts A and B of this part apply only to employment and places of employment as defined in Section 107 of the Contract Work Hours and Safety Standards Act.
- c) Substitute the language now found in the present paragraph 1926.20(c).
- d) Substitute the language now found in the present paragraph 1926.20(d).
- e) Substitute the language now found in the present paragraph 1926.20(e).

Since 1910.12(c) incorporated Subpart C without any exclusions 1926.20(a) applies to all work, private and federally financed. The terms "laborer or mechanic", and "contractor and subcontractor", are defined in 1926.32 as "employee" and "employer" respectively. Therefore 1926.20(a) shall be amended to read " No employer shall require any employee to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous to his health or safety.

The present paragraphs 1926.21(b)(2) through (b)(6) are part of the accident prevention responsibilities found in the present paragraph 1926.20(b) and as such should be relocated in this paragraph.

The present 1926.21(b)(2) should become 1926.20(b)(5).
The present 1926.21(b)(3) should become 1926.20(b)(6).
The present 1926.21(b)(4) should become 1926.20(b)(7).
The present 1926.21(b)(5) should become 1926.20(b)(8).
The present 1926.21(b)(6) should become 1926.20(b)(9).

Paragraph 1926.21(a) should be amended to read 1926.20(b)(10). The Secretary shall establish and supervise programs for the education and training of employers and employees in recognition, avoidance and prevention of unsafe conditions in employments covered by this part.

Change 1926.21 to Recording of Injuries (Reserved).
Change 1926.22 to Reporting of Injuries.
1926.32 Definitions should be amended as follows:

- 1926.32(a) "Act" - Delete this definition.
- 1926.32(j) "Employee" - Delete this definition. Since the terms laborer or mechanic have been removed from 1926.20(a) and the OSH Act defines employees.
- 1926.32(k) - Delete this definition. Since the terms contractor or subcontractor have been removed from 1926.20(a) there is no need for this definition.
- 1026.32(0) - Delete this definition. The OSH Act defines Secretary.