

The Regulatory Amendment

■ For the reasons discussed in the preamble, we amend title 27 CFR, chapter 1, part 9, as follows:

PART 9—AMERICAN VITICULTURAL AREAS

■ 1. The authority citation for part 9 continues to read as follows:

Authority: 27 U.S.C. 205.

■ 2. Amend subpart C by adding § 9.212 to read as follows:

Subpart C—Approved American Viticultural Areas

§ 9.212 Leona Valley.

(a) *Name.* The name of the viticultural area described in this section is “Leona Valley”. For purposes of part 4 of this chapter, “Leona Valley” is a term of viticultural significance.

(b) *Approved maps.* The four United States Geological Survey 1:24,000 scale topographic maps used to determine the boundary of the Leona Valley viticultural area are titled:

- (1) Ritter Ridge, Calif., 1958; Photorevised 1974;
- (2) Sleepy Valley, CA, 1995;
- (3) Del Sur, CA, 1995; and
- (4) Lake Hughes, CA, 1995.

(c) *Boundary.* The Leona Valley viticultural area is located in Los Angeles County, California. The boundary of the Leona Valley viticultural area is as described below:

(1) From the beginning point on the Ritter Ridge map at the intersection of Elizabeth Lake Pine Canyon Road and the section 23 east boundary line, T6N, R13W, proceed straight south along the section 23 east boundary line approximately 0.1 mile to its intersection with the 3,000-foot elevation line, T6N, R13W; then

(2) Proceed west along the 3,000-foot elevation line to its intersection with the section 23 west boundary line, T6N, R13W; then

(3) Proceed south along the section 23 west boundary line to the southwest corner of section 23 at the 3,616-foot marked elevation point, T6N, R13W; then

(4) Proceed west along the section 22 south boundary line, crossing onto the Sleepy Valley map, and continuing along the section 21 south boundary line, crossing over Pine Creek, to its intersection with the 3,400-foot elevation line, T6N, R13W; then

(5) Proceed west along the 3,400-foot elevation line to its intersection with the section 19 south boundary line and Bouquet Canyon Road, T6N, R13W; then

(6) Proceed straight west along the section 19 south boundary line to its intersection with the 3,560-foot elevation line, an unimproved road, and a power transmission line, north of Lincoln Crest, T6N, R13W; then

(7) Proceed northeast along the 3,560-foot elevation line across section 19 to its east boundary line, T6N, R13W; then

(8) Proceed in a straight line north-northwest approximately 0.25 mile to its intersection with a trail and the 3,800-foot elevation line, T6N, R13W; then

(9) Proceed northwest along the meandering 3,800-foot elevation line through section 19 to its intersection with the section 13 southeast corner, T6N, R14W; then

(10) Proceed straight west, followed by straight north, along the marked Angeles National Forest border to the section 11 southeast corner; then

(11) Proceed straight north along the section 11 east boundary line to its intersection with the 3,400-foot elevation line south of an unimproved road, T6N, R14W; then

(12) Proceed generally northwest along the 3,400-foot elevation line through section 11, crossing onto the Del Sur map, to its intersection with the section 3 southeast corner, T6N, R14W; then

(13) Proceed straight west to the section 4 southeast corner, T6N, R14W; then

(14) Proceed straight north along the section 4 east boundary line approximately 0.05 mile to its intersection with the 3,600-foot elevation line, T6N, R14W; then

(15) Proceed northwest along the 3,600-foot elevation line, through section 4 and crossing onto the Lake Hughes map, to its intersection with the Angeles National Forest border and the section 4 western boundary line, T6N, R14W; then

(16) Proceed straight north along the section 4 western boundary line to its intersection with BM 3402, south of Andrade Corner, T7N, R14W; then

(17) Proceed in a line straight northeast, crossing onto the Del Sur map, to its intersection with the marked 3,552-foot elevation point, section 33, T7N, R14W; then

(18) Proceed in a line straight east-southeast to its intersection with the marked 3,581-foot elevation point, and continue in a straight line east-southeast to its intersection with the marked 3,637-foot elevation point, T6N, R14W; then

(19) Proceed in a line straight northeast to its intersection with the section 2 northwest corner, T6N, R14W; then

(20) Proceed straight east along the section 2 north boundary line 0.35 mile to its intersection with the 3,600-foot elevation line, T6N, R14W; then

(21) Proceed north and then generally southeast along the 3,600-foot elevation line that runs parallel to and south of the Portal Ridge to the elevation line's intersection with the section 7 east boundary line, T6N, R13W; then

(22) Proceed straight south along the section 7 east boundary line, crossing onto the Sleepy Valley map, to its intersection with the 3,400-foot elevation line north of the terminus of 90th Street, T6N, R13W; then

(23) Proceed generally east-southeast along the 3,400-foot elevation line that runs north of the San Andreas Rift Zone to its intersection with the section 16 east boundary line, T6N, R13W; then

(24) Proceed straight south along the section 16 east boundary line to its intersection with the 3,000-foot elevation line, between Goode Hill Road and Elizabeth Lake Pine Canyon Road, T6N, R13W; then

(25) Proceed generally southeast along the 3,000-foot elevation line, crossing onto the Ritter Ridge map, to its intersection with the section 23 east boundary line, north of the intermittent Amargosa Creek and Elizabeth Lake Pine Canyon Road, T6N, R13W; then

(26) Proceed straight south along the section 23 east boundary line, returning to the beginning point.

Signed: April 7, 2008.

John J. Manfreda,
Administrator.

Approved: August 26, 2008.

Timothy E. Skud,
Deputy Assistant Secretary (Tax, Trade, and Tariff Policy).

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DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1910

[Docket No. S–108C]

RIN 1218–AB95

Electrical Standard; Clarifications; Corrections

AGENCY: Occupational Safety and Health Administration, Labor.

ACTION: Final rule; clarifications; correcting amendments.

SUMMARY: The Occupational Safety and Health Administration (OSHA)

published a final rule revising its electrical installation standard for general industry on February 14, 2007. This notice clarifies the scope of one provision in the final standard and addresses some questions raised by stakeholders on the application of the provision. This also corrects two typographical errors located elsewhere in the final rule.

DATES: The corrections become effective on October 29, 2008.

FOR FURTHER INFORMATION CONTACT: Mr. David Wallis, Directorate of Standards and Guidance, Room N-3609, OSHA, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693-2222.

SUPPLEMENTARY INFORMATION: On February 14, 2007, OSHA published a revision of its electrical installation standard for general industry found in 29 CFR part 1910, subpart S (72 FR 7136). This final rule went into effect on August 13, 2007. Since the final rule was promulgated, the Agency has received some questions from the public regarding one provision, 29 CFR 1910.304(b)(3)(ii). At its meeting on August 1, 2007, in Oakland, CA, the Maritime Advisory Committee on Occupational Safety and Health (MACOSH) discussed the provision and several MACOSH members were uncertain about the extent of the application of this provision to shipyard employment and had questions on how the Agency would interpret the rule. Consequently, MACOSH recommended that the Agency use the best available means to assist employers in complying with the requirements of the provision and that the Agency delay the effective date of § 1910.304(b)(3)(ii) for a period of 6 months or until the Agency can clarify the standard.

In this notice, OSHA addresses these questions and makes one change to the regulatory text of the provision in order to clarify OSHA's intent regarding its scope. This change does not alter the substantive obligations of affected parties. Additionally, OSHA is correcting two typographical errors located in Table S-3 of the final rule.

Clarifications

1. What is the application of § 1910.304(b)(3)(ii)?

As originally published, the introductory text to § 1910.304(b)(3)(ii) read as follows:

The following requirements apply to temporary wiring installations that are used during maintenance, remodeling, or repair of buildings, structures, or equipment or during similar construction-like activities.

A few members of MACOSH and two other individuals have raised questions regarding the meaning of this provision. Some of the questions stem from the structure of the text of the provision, which OSHA is changing in this notice to better match the Agency's intent. Other questions relate to the meaning of the terms "construction-like" activities and "temporary wiring installations."

a. Structure of the Regulatory Text

Paragraph (b)(3)(ii) was taken from Section 2-2.4.2 of the 2000 edition of NFPA 70E, which reads, in relevant part, as follows:

2-2.4.2 Ground-Fault Protection for Personnel. Ground-fault protection for personnel for all temporary wiring installations shall be provided to comply with 2-2.4.2.1 or 2-2.4.2.2 below. This section shall apply only to temporary wiring installations used to supply temporary power to equipment used by personnel during construction, remodeling, maintenance, repair, or demolition of buildings, structures, equipment or similar activities.

Both OSHA's final rule and NFPA 70E are intended to apply to temporary wiring installations used during the performance of construction-like activities. From questions the Agency has received about this provision, the intent of the rule may not be readily apparent from the text. Because part 1910 does not apply to construction, the Agency removed "construction" from the list of activities specifically mentioned in NFPA 70E and changed "similar activities" to "similar construction-like activities." OSHA did not, however, intend to deviate from the underlying intent of the NFPA 70E provision, which was to limit its application to activities that were construction-like in nature. The Agency is concerned that the regulatory text of § 1910.304(b)(3)(ii) may be read to include activities that are not construction-like. To clarify the Agency's intent, OSHA is revising the introductory text to § 1910.304(b)(3)(ii) to read:

The following requirements apply to temporary wiring installations that are used during *construction-like activities, including certain maintenance, remodeling, or repair activities, involving buildings, structures or equipment.* [Emphasis added.]

This change makes it clear that § 1910.304(b)(3)(ii) applies only to such activities.

b. Construction-Like Activities

When determining whether the provisions of § 1910.304(b)(3)(ii) apply, employers must determine whether a particular activity is "construction-like" in nature. The preamble to the final rule

provided examples of what OSHA considers "construction-like activities" in the discussion of § 1910.305(a)(2)(iii) related to the use of temporary wiring over 600 volts (72 FR 7163).

It should be noted that the discussion of the term "construction-like activities" here and in the preamble to OSHA's final rule applies only to the use of this term in subpart S. It should also be noted that not all maintenance, remodeling, or repair work is construction-like.

Construction-like activities fall into two general categories: Activities that would be covered under OSHA's construction standards but for the fact that they are specifically covered by other OSHA standards, and all other activities that do not qualify as construction but involve electrical hazards similar to those typically found in construction work.

The vast majority of activities covered under subpart S are in the first category. For example, ship building and ship repair would be considered to meet the definition of "construction" because of their scale and complexity; nevertheless, the hazards associated with this work are specifically covered by OSHA's shipyard employment standards. However, the shipyard standards do not protect employees from all of the hazards addressed by paragraph (b)(3)(ii) of § 1910.304; in such instances, this paragraph applies to hazards not covered by the shipyard standards, as outlined in § 1910.5(c). (The application of subpart S to shipyard employment is discussed in more detail in the preamble to the final rule, 72 FR 7141.)

The remaining activities intended to be covered under subpart S fall into the second category of construction-like activities. This category includes certain "maintenance, remodeling, or repair activities involving buildings, structures, or equipment" that pose electrical hazards similar to those typically found in construction work. In this respect, OSHA intends the term "construction-like" to apply to activities that, while not construction, involve some of the hazards that are typically found in construction work. In general, these are activities that pose hazards that are similar to those associated with the use of temporary receptacles on construction sites—that is, hazards resulting from more severe use or environmental conditions. Examples of such activities include: Damage to a cord set¹ from rough use; exposure to

¹ A cord set is commonly known as an extension cord.

wet, damp, or conductive conditions, such as often encountered when working outside; and frequent reconfiguration and rearrangement of the electric equipment.

Some examples of this type of construction-like activity were given in the preamble to the final rule, including clean up and disaster remediation. To illustrate, if a storm blew over a tree on a factory's premises and temporary wiring was employed to power a chainsaw and other clean-up equipment, such remediation activity would be construction-like.

Other examples of construction-like activities follow.

Example A: Employees are engaged in a minor building repair using temporary wiring. The conditions are damp or an electric cord set is being used and is subjected to rough use or abuse.

Example B: Manufacturing prefabricated housing, in which houses or portions of houses are assembled in a manufacturing plant. This process poses some electrical hazards that are similar to those found during housing construction (for example, rough use of cord sets).

Example C: Performing heat exchanger tubing water-blasting (hydro-cleaning) using temporary wiring. This process is usually done outside in wet and conductive environmental conditions and may involve rough cord use.

Maintenance activities that do not involve electrical hazards similar to those found in construction are not "construction-like," and therefore are not subject to § 1910.304(b)(3)(ii). Building maintenance activities such as floor polishing and vacuuming and drilling holes to hang pictures on walls, would be some common examples of such activities.

Activities that are large in scale, complex, or require significant time, materials, and tools to complete typically would be considered actual construction work instead of construction-like.² As such, these activities would be subject to the construction standards instead of subpart S. To illustrate, the stripping and repainting of a bridge would not be subject to subpart S, because it would be considered construction.

²Note that confined space activities specified in OSHA Directive CPL 02-00-100, *Application of the Permit-Required Confined Spaces (PRCS) Standard, 29 CFR 1910.146*, are covered by the general industry confined space standard. Appendix E, Question 8, of that directive gives examples of activities covered by the general industry confined space standard that may be considered construction-like.

c. Temporary Wiring

In addition, paragraph (b)(3)(ii) applies only to temporary wiring installations. OSHA does not consider a single extension cord set connected to a permanent receptacle outlet to be a temporary wiring installation.³ In such situations, extension cords are typically used to extend the length of the power supply cord on a tool or appliance to reach a nearby receptacle outlet. In this application, OSHA considers the extension cord set to be part of the utilization equipment.

Paragraph (a)(2)(v)(A) of § 1910.305 requires temporary wiring branch circuits to originate in an approved power outlet or panelboard. Normally, this is done through a portable distribution board, portable power outlet, or similar equipment. All the wiring extending from the portable power outlet or panelboard would be considered temporary wiring. However, in a permanent facility, it may be possible to run a series of cord sets from permanent outlets as a means of supplying power on a temporary basis. Although the NEC and NFPA make no clear distinction between temporary wiring and the use of extension cord sets, under certain conditions, the use of multiple cord sets would constitute a temporary wiring installation. A series of extension cord sets run from a single permanent outlet would constitute temporary wiring though such an installation would not strictly comply with the requirements relating to the origin of temporary branch circuits. Similarly, running a long extension cord set from a permanent outlet to power more than one piece of electric equipment would result in a temporary wiring installation.

Thus, for the purposes of § 1910.304(b)(3)(ii), OSHA will consider as "temporary wiring" the use of more than one extension cord (connected in series or otherwise) to a permanent outlet, or the temporary connection of more than one piece of utilization equipment to an extension cord set that is connected to a permanent receptacle outlet.⁴

³It should be noted that the language in the GFCI provision in the construction standards is not the same as the language in subpart S. The construction standard (§ 1926.404(b)(1)) applies its GFCI criteria to receptacle outlets that are not a part of the permanent wiring without regard to whether they are used with a temporary wiring installation. Thus, under the construction standard, a GFCI is required for an extension cord set plugged into a permanent 120-volt, 15- or 20-ampere receptacle outlet unless the employer is using an assured equipment grounding conductor program.

⁴This interpretation does not apply to the connection of multiple pieces of electric equipment

OSHA notes, however, that this temporary wiring would only be covered by § 1910.304(b)(3)(ii) if it is used during "construction-like activities."

2. Does § 1910.304(b)(3)(ii) apply to all receptacles or only those on branch circuits?

Paragraph (b) of § 1910.304 applies only to branch circuits. The definition of "branch circuit" is "[t]he circuit conductors between the final overcurrent device protecting the circuit and the outlets." The definition of "outlet" is "[a] point on the wiring system at which current is taken to supply utilization equipment." Thus, the branch circuit extends from the final overcurrent device to points on the circuit where power is taken to supply utilization equipment (for example, an electric tool). Receptacles that are used to power downstream cord-connected overcurrent devices for additional circuits are not covered because they are not part of the branch circuit. For example, receptacles on a spider box that supply downstream spider boxes with overcurrent-protected circuits would not be covered by § 1910.304(b)(3)(ii). A spider box is a portable power outlet unit used with temporary wiring installations. The box, which is typically fed by a 125/250-volt, 50-ampere cord set, contains overcurrent protection for 125- or 250-volt, 15-, 20-, or 30-ampere receptacle outlets⁵ and frequently contains a pass-through 50-ampere outlet for downstream spider boxes. The 50-ampere receptacle outlets are not receptacle outlets when they supply downstream spider boxes. They are receptacle outlets when they supply 50-ampere electric utilization equipment directly.

3. Does the standard recognize all forms of ground-fault protection devices or only ground-fault circuit interrupters approved by nationally recognized testing laboratories (NRTL)?

The standard requires ground-fault circuit interrupters for personnel protection in § 1910.304(b)(3)(ii)(A). As electric equipment, these GFCIs must be NRTL approved.⁶ These devices have trip levels of approximately 5 milliamperes and trip in as little as 0.025 seconds. Devices such as ground-

to an approved relocatable power taps used in accordance with its listing or labeling.

⁵Spider boxes are typically manufactured with built-in GFCI protection for these receptacles.

⁶Paragraph (a) of § 1910.303 requires all electric equipment to be approved. Under the definitions of "approved" and "acceptable," this generally requires approval by an NRTL.

fault protection for equipment, earth-leakage detectors, and similar equipment are not acceptable substitutes. These devices, which may also be NRTL approved, interrupt the circuit at higher trip levels and, in some cases, do not function to trip the circuit automatically at all.

4. Does the standard require GFCIs to be used with branch circuits supplying temporary lighting?

The standard requires GFCI protection for temporary circuits supplying lighting only when those circuits also supply receptacles. Employers are not required by the standard to install GFCIs for lighting if the design of the temporary lighting is such that the circuits do not also supply receptacles.⁷

Exemptions From Notice and Comment and Delay in Effective Date

Under the Administrative Procedure Act (APA), an agency may make a “good cause” finding that notice and comment rulemaking procedures would be impracticable, unnecessary, or contrary to the public interest. 5 U.S.C. 553(b)(B); see also 26 CFR 1911.5 (permitting OSHA to promulgate minor changes or amendments to standards without notice and comment when the changes are accompanied by a statement of good cause for the absence of notice and comment). An agency may similarly make the rule effective upon publication when it determines that delaying the effective date of the rule, as normally required by 5 U.S.C. 553, is unnecessary and good cause exists to make the rule effective immediately. 5 U.S.C. 553(d)(3).

In this instance, OSHA finds that good cause exists under 5 U.S.C. 553(b)(B) and (d)(3) to forego public notice and comment for these minor amendments and to make them effective immediately upon publication in the **Federal Register**. Notice and comment procedures for the amendments herein, as well as a delay in the effective date of the amendments, are unnecessary because the amendments are minor clarifications and typographical corrections that do not affect the substantive requirements or coverage of the standards involved, modify or revoke existing rights and obligations, or establish new rights and obligations. Moreover, the clarifications respond to

⁷ OSHA notes that Section 590.4(D) of the 2005 National Electrical Code (NEC) prohibits the installation of receptacles on branch circuits that supply temporary lighting for construction sites. This requirement is intended to ensure that temporary lighting is not subject to tripping by the GFCIs required on construction sites. Subpart S does not contain a similar prohibition.

requests for immediate formal guidance to assist employers in complying with the existing standards.

List of Subjects in 29 CFR Part 1910

Electric power, Fire prevention, Hazardous substances, Occupational safety and health, Safety.

Authority

This document was prepared under the direction of Edwin G. Foulke, Jr., Assistant Secretary of Labor for Occupational Safety and Health, 200 Constitution Avenue, NW., Washington, DC 20210.

This action is taken pursuant to 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. 5–2007 (72 FR 31160), and 29 CFR Part 1911.

Signed at Washington, DC, this 24th day of October 2008.

Edwin G. Foulke, Jr.,

Assistant Secretary of Labor for Occupational Safety and Health.

Part 1910 of Title 29 of the Code of Federal Regulations is amended as follows:

PART 1910—[AMENDED]

Subpart S—[Amended]

■ 1. The authority citation for subpart S is revised 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. 8–76 (41 FR 25059), 1–90 (55 FR 9033), 5–2002 (67 FR 65008), 5–2007 (72 FR 31160), as applicable; 29 CFR part 1911.

§ 1910.303 General.

■ 2. Amend Table S–3 by correcting “2.81” and “9.01,” the first entries under the column heads “m” and “ft,” to read “2.8” and “9.0,” respectively.

■ 3. Revise the introductory text to § 1910.304(b)(3)(ii) to read as follows:

§ 1910.304 Wiring design and protection.

* * * * *

(b) * * *

(3) * * *

(ii) The following requirements apply to temporary wiring installations that are used during construction-like activities, including certain maintenance, remodeling, or repair activities, involving buildings, structures or equipment.

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DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Parts 203 and 260

RIN 1010–AD29

Royalty Relief for Deepwater Outer Continental Shelf Oil and Gas Leases—Conforming Regulations to Court Decision

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Final rule; delay of effective date.

SUMMARY: MMS is delaying until December 8, 2008, 60 days from the date of publication, the effective date of a rule that will conform the regulations at 30 CFR parts 203 and 260 to the Federal Court’s decision in *Santa Fe Snyder Corp. v. Norton*, 385 F.3d 884 (5th Cir. 2004). This delay of effective date is necessary to comply with the Congressional review provisions of the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 801 *et seq.* (the Congressional Review Act).

DATES: The effective date of the rule amending 30 CFR parts 203 and 260 published at 73 FR 58467, October 7, 2008 is delayed until December 8, 2008.

FOR FURTHER INFORMATION CONTACT: Marshall Rose, Chief, Economics Division, Minerals Management Service at (703) 787–1536.

SUPPLEMENTARY INFORMATION: The rule published October 7, 2008, amends 30 CFR parts 203 and 260 to conform the regulations to the decision in *Santa Fe Snyder*. That decision found that certain provisions of the MMS regulations interpreting section 304 of the Deep Water Royalty Relief Act are contrary to the requirements of the statute. Under the rule, MMS will determine lessees’ royalty under leases subject to Deep Water Royalty Relief Act section 304, for both past and future periods, in a manner consistent with the decision in *Santa Fe Snyder*. As stated in the preamble therein, the final rule has been determined to be both “major” and “economically significant.”

Accordingly, the Congressional Review Act requires that before this final rule can take effect, an agency shall submit the rule to Congress for review for a period of 60 days from the date of publication in the **Federal Register** or receipt of the rule by Congress, whichever is later. 5 U.S.C. 801(a)(3)(A). This delay of the effective date will assure ample time for that required review.