



MEMORANDUM

PLAINTIFF'S EXHIBIT

BIR-681

To See Distribution
From R. Roby - GV
Date July 20, 1978
Subject OSHA - BENZENE REGULATION AMENDMENT

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weight similar to that of benzene, 5 percent by volume is similar to 5.0 percent by weight.

It is the agency's judgment that much of the National Tank Truck Carrier's Association's concerns regarding the imposition of the provisions of the permanent standard on their members will be substantially relieved as users of various liquid mixtures demand products containing less than the prescribed percentage levels of benzene. In the absence of the exercise of authority by the Department of Transportation in this matter, § 1910.1028, as amended, applies to this industry (sec. 4(b)(1)).

EFFECTIVE DATE

This amendment is effective immediately on June 27, 1978. Since this amendment is a rule granting an exemption, the Administrative Procedure Act (5 U.S.C. 553) does not require a 30-day period before the amendment becomes effective. Section 533(d)(1) of the APA exempts rules which grant an exemption or relieve a restriction from the requirement that publication of a substantive rule be made not less than 30 days before its effective date. This amendment exempts from the permanent benzene standard operations utilizing liquid mixtures of 0.5 percent or less (0.1 percent or less after 3 years). Without this amendment, all employers with such operations would be required to implement the various protective requirements of the permanent standard, such as initial monitoring, training and recordkeeping. The amendment relieves them of this burden.

In addition the amendment exempts from the labelling requirements liquid mixtures which are already packaged in containers and which contain 5 percent or less benzene. Such containers would otherwise be subject to the labelling requirements of the standard. The amendment, therefore, relieves employers of the requirements to label these containers.

Accordingly, these amendments are effective June 27, 1978. As with the other operations exempted from § 1910.1028, the benzene standard contained in Table Z-2 of § 1910.1000 will continue to apply to the operations exempted by the amendments.

Upon the publication of this amendment, the limited administrative stay adopted by OSHA in conjunction with this rulemaking (43 FR 12891) is no longer in effect.

VII. AUTHORITY

This document was prepared under the direction of Eula Bingham, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, D.C. 20210.

Accordingly, pursuant to section 4(b)(2) and 6(b) of the Occupational Safety and Health Act of 1970 (84 Stat. 1592, 1593, 29 U.S.C. 653, 655), the specific statutes referred to in section 4(b)(2), Secretary of Labor's Order No. 8-76 (41 FR 25059), and 29 CFR Part 1911, Part 1910 of Title 29, Code of Federal Regulations, is hereby amended by adding new paragraphs (a)(2)(iii) and (k)(2)(iii) to 29 CFR 1910.1028.

Signed at Washington, D.C., this 21st day of June 1978.

EULA BINGHAM,
Assistant Secretary of Labor.

Part 1910 of Title 29 of the Code of Federal Regulations is hereby amended by adding a new paragraph (a)(2)(iii) and a new paragraph (k)(2)(iii) to § 1910.1028 to read as follows:

§ 1910.1028 Benzene.

- (a) *Scope and application.* * * *
- (2) This section does not apply to:

- (ii) Work operations where the only exposure to benzene is from liquid mixtures containing 0.5 percent (0.1 percent after June 27, 1981) or less of benzene by volume, or the vapors released from such liquids.

(k) *Signs and labels.* * * *

- (2) The employer shall assure that caution labels are affixed to all containers of benzene and of products containing any amount of benzene, except:

- (iii) Liquid mixtures containing 5.0 percent or less benzene by volume which were packaged before June 27, 1978.

(Secs. 4, 6, 84 Stat. 1593 (29 U.S.C. 653, 655); Secretary of Labor's Order 8-76 (41 FR 25059); 29 CFR Part 1911.)

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