



# Occupational Safety, Health & ORC Practice Issues Update

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February 2010

Occupational Safety and Health Group

This update includes U.S. occupational health and safety-related regulatory, legal, and legislative information and developments that have taken place since November 2009. Comments and suggestions for improving the Update are appreciated and should be directed to Frank White

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## 1. GENERAL OCCUPATIONAL SAFETY AND HEALTH NEWS

### 1.1. Commission on the Prevention of Weapons of Mass Destruction Proliferation and Terrorism Says Government Failing to Protect America

On January 26, 2010, former Senator Bob Graham (D-FL) and former Senator Jim Talent (R-MO), chair and vice chair of the bipartisan Commission on the Prevention of Weapons of Mass Destruction Proliferation and Terrorism, released a report card indicating that the U.S. government is not taking the necessary steps to protect the country from the threats posed by WMD and terrorism.

Of 17 grades, the report card includes three failing “F” grades on rapid and effective response to bioterrorism; Congressional oversight of homeland security and intelligence; and national security workforce recruitment. All three grades could be substantially improved by committed leadership in Congress and the Administration.

The Report Card also includes “A” grades for achieving specific actions related to a review of domestic programs to secure dangerous pathogens, for finalizing and approving an Interagency Bioforensics Strategy, and for conducting recommended reorganization inside the National Security Council.

In December 2008, the Commission released its World at Risk report with a unanimous threat assessment: unless the world community acts decisively and with great urgency, it is more likely than not that a weapon of mass destruction will be used in a terrorist attack somewhere in the world by the end of 2013. That weapon is more likely to be biological than nuclear. The Commission identified a series of recommendations and specific actions that Congress and the Administration should take to change the trajectory of risk. The report card evaluates steps taken to implement these recommendations and to protect the United States from the threats of WMD proliferation and terrorism.

The threat assessment was based on multiple factors. There is direct evidence that terrorists are trying to acquire weapons of mass destruction, and acquiring WMD fits the tactical profile of terrorists. Terrorists also have global reach and the organizational sophistication to obtain and use WMD. Finally, the opportunity to acquire and use such weapons is growing exponentially because of the global proliferation of nuclear material and biological technologies.

The bipartisan Commission on the Prevention of Weapons of Mass Destruction Proliferation and Terrorism was created by Congress to address the grave threat that the proliferation of weapons of mass destruction poses to the United States. Its World at Risk report identified 13 recommendations consisting of 49 actions that Congress and the Administration should take to change the trajectory of risk. More information about the Commission, including the interim report, is available at [www.preventwmd.gov](http://www.preventwmd.gov).

### 1.2 Whistle Blower Protection: Procedures for Handling of Retaliation Complaints under the Employee Protection Provisions of the Consumer Product Safety Improvement Act (CPSIA) of 2008

The Fall 2009 Regulatory Agenda announced that OSHA is proposing to promulgate procedures for the handling and investigation of retaliation complaints pursuant to Section 219 of the Consumer Product Safety Improvement Act of 2008. This section established a new whistleblower protection statute to be administered by OSHA that provides protection from retaliation to employees in the consumer product industry, including employees of manufacturers, importers, private labelers, distributors and retailers, who report reasonably believed violations of the Consumer Product Safety Act or any other Act enforced by the Consumer Product Safety Commission, or any order, rule, regulation, standard or ban under those Acts. Pursuant to the statute, the procedures will include remedies and legal burdens of proof provisions, and a “kick-out” provision allowing the complainant to file the complaint in District Court if within 210 days of the filing of the complaint the Secretary has not issued a final determination, or within 90 days after receiving a written determination.

Promulgation of a regulation is necessary to govern whistleblower investigations conducted under the new statute.

OSHA plans to issue an interim final rule in June 2010.

### 1.3 Mexico, US Government, New York and Catholic Church Open Call Center to Help Hispanic Workers

In December, the Labor Department formed an alliance with the Mexican Consulate in New York, the New York state Labor Department, and the Roman Catholic Diocese of Brooklyn to open a telephone call-in center to assist Mexican and other Latino workers in New York, New Jersey, and Connecticut.

In the agreement signed in New York, the Labor Department's Occupational Safety and Health Administration and Wage and Hour Division, the Mexican Consulate General, the New York state Labor Department, and the Catholic Migration Office of the Brooklyn diocese vowed to support the center, which will provide information and assistance in English and Spanish. The LABORAL call center will be operated by the Catholic Migration Office, will handle inquiries about minimum wages, overtime, youth employment, migrant and seasonal work, workplace safety, and the rights and responsibilities of workers and employers, and when necessary will direct calls and claims to the U.S. Labor Department.

A Labor Department press release quotes Labor Secretary Hilda L. Solis as stating: "It's very simple. The law says every worker has both the right to proper compensation for hours worked and to a safe workplace. The purpose of this alliance is to provide Mexican and other Latino workers in the tri-state area with the information and resources that will help them recognize and challenge unsafe and improper working conditions, and to raise awareness of their rights as working people. After all, knowledge is a worker's most valuable tool."

The LABORAL call center's toll-free telephone number is 877-52-LABOR (525-2267).

### 1.4 OSHA's San Antonio District Office to Become OSHA Area Office

On December 23 OSHA announced that it would elevate its San Antonio district office to the status of Area Office in response to "population trends, county business, and an extensive workload." As an area office, the San Antonio location will serve 17 central Texas counties, and will get an increase in staff. Many of the new staff will focus on "high risk" construction work and Hispanic construction workers. The Bureau of Labor Statistics reports that, in 2008, more than half of all workers killed in private industry construction accidents were Hispanic and San Antonio's population is more than 52 percent Hispanic.

In addition to San Antonio, OSHA currently operates area offices in Austin, Corpus Christi, Dallas, El Paso, Fort Worth, and Houston (which has two offices). There is also a district office in Lubbock.

### 1.5 President of Safety Consulting Company Sentenced to Federal Prison

Joseph Mazzurco, the president and part-owner of IMS Safety Inc. of Middletown, N.Y., was sentenced Dec. 14 by Judge Kenneth M. Karas of the U.S. District Court for the Southern District of New York to a three-year prison term for his role in a scheme to falsify the qualifications of its employees to serve as safety monitors on New York City Department of Environmental Conservation and U.S. Army Corps of Engineers construction sites. In addition, Mazzurco must pay \$1.1 million in restitution to the Department of Environmental Conservation and the corps and to forfeit the same amount.

The company itself was ordered to pay a \$500,000 fine, to serve a five-year term of probation and to pay \$1.1 million each in restitution and forfeiture. The amount represents the fees paid to IMS for work by employees with falsified qualifications.

IMS offered worker safety and health regulatory compliance services and had been hired by the Department of Environmental Conservation contractors to provide safety oversight at construction

sites under contracts specifying training and experience requirements for the firm's personnel. According to prosecutors, company officials conspired to falsify the qualifications to gain the approval of the Department of Environmental Conservation for their appointments to the safety oversight positions.

## 2. OCCUPATIONAL HEALTH

### 2.1. Hazard Communication

*ORC Comments on NPRM Aligning OSHA's Hazard Communication Standard with the Globally Harmonized System (GHS)*

On September 30, 2009, OSHA published in the Federal Register (74 FR 50280) a notice of proposed rulemaking (NPRM) to align the agency's Hazard Communication Standard (HCS) with provisions of the United Nations Globally Harmonized System of Classification and Labeling of Chemicals (GHS). Comments on the NPRM were due by December 30.

In comments submitted to OSHA on December 29, 2009, ORC affirmed its overall support for this effort, agreeing with OSHA that the proposed modifications to the agency's Hazard Communication Standard (HCS) will increase the quality and consistency of information provided to employers and employees. In addition, the changes to the HCS will be an important step in easing the burden for manufacturers and importers of complying with widely differing requirements for labels and data sheets around the world. In particular, ORC applauded OSHA's approach of limiting changes to the HCS to those required for consistency with the GHS.

Informal public hearings on the rulemaking will be held in several cities around the country. ORC has filed a notice of intention to provide testimony at the hearing in Washington, DC, which begins on March 2, 2010.

Members of the ORC GHS Integration Task Force participated in the development of ORC's comments on the NPRM. Twenty-eight ORC member companies are represented on this Task Force. ORC received written comments on the NPRM from seven member companies.

### 2.2. Hexavalent Chromium

*OSHA Booklet on Hexavalent Chromium Standards*

The Occupational Safety and Health Administration recently published [\*Hexavalent Chromium\*](#), a booklet outlining industry requirements for hexavalent chromium standards. Workers exposed to this toxic chemical can develop lung cancer and damage to the nose, throat and respiratory system.

The booklet explains OSHA's hexavalent chromium standards in a reader-friendly format and is a companion document to the *Small Entity Compliance Guide for the Hexavalent Chromium Standards* published in 2006. Requirements for exposure limits, exposure monitoring and determination, protective work clothing and equipment, medical surveillance, communication of hexavalent chromium hazards and recordkeeping are described.

Inhaling the chemical's fumes can cause allergic reactions or asthmatic symptoms, such as wheezing and shortness of breath. Hexavalent chromium is used in pigments, metal finishing, wood preservatives and fungicides. Workers may also be exposed to hexavalent chromium fumes generated during welding of chromium metal alloys.

"Hexavalent chromium is a powerful lung carcinogen and exposure to this chemical must be minimized," said Assistant Secretary of Labor for OSHA David Michaels. "OSHA provides guidance on its standards to ensure that employers and workers know the best ways to prevent workplace injuries and illnesses."

### 2.3. Infectious Disease

#### *Airborne Infectious Disease*

OSHA is considering the need for a standard to ensure that employers establish a comprehensive infection control program and control measures to protect employees from airborne infectious disease exposures to pathogens that can cause significant disease.

According to the Fall 2009 Regulatory Agenda, employees in health care and other high-risk environments face long-standing respiratory hazards such as tuberculosis (TB), varicella disease (chickenpox, shingles), and measles (rubeola), as well as new and emerging infectious disease threats, such as Severe Acute Respiratory Syndrome (SARS) and pandemic influenza. Health care workers and workers in related occupations, or who are exposed in other high-risk environments, are at increased risk of contracting tuberculosis, SARS, and other airborne infectious diseases. These diseases can be spread through respiratory secretions (which are exhaled or expelled through coughing, sneezing, etc.) and can be transmitted through a variety of exposure routes. OSHA says that it is concerned about the ability of employees to continue to provide health care and other critical services without unreasonably jeopardizing their health and considering the need for a standard. Workplaces where such control measures might be necessary include: health care, emergency response, correctional facilities, homeless shelters, drug treatment programs and other occupational settings where employees can be at increased risk of exposure to potentially infectious people. A standard could also apply to laboratories which handle materials that may be a source of pathogens, and to pathologists, coroners' offices, medical examiners and mortuaries.

OSHA plans to issue a Request for Information (RFI) notice seeking information on this issue in March 2010.

### 2.4. Nanotechnology

#### *Comment Period Extended for Proposed EPA Nanotube Rule*

In response to a request by the European Union for more time to examine the proposed rule, EPA has extended the comment period on a proposed significant new use rule (SNUR) for two carbon nanotubes from Dec. 7, 2009 until Feb. 8, 2010. The proposed SNUR covers one single-walled carbon nanotube and a multi-walled carbon nanotube, referred to by the Agency as P-08-328 and P-08-177, respectively. The proposed SNUR would apply the same requirements to all companies that intend to make these carbon nanotubes.

The pre-manufacture notices were submitted by Thomas Swan & Co. Ltd., which agreed through a consent order to comply with specific safety and health requirements when its requests to make the chemicals in or import them into the United States were granted. Swan agreed to provide workers with NIOSH-approved full-face respirators with N100 cartridges and skin protection in the form of gloves and other protective clothing impervious to the nanotubes. EPA recommended that the company conduct a 90-day toxicity inhalation study in rats, with 90-day post-exposure observation.

The proposed SNUR is likely to be precedent-setting, because EPA has approved a number of carbon nanotubes under the same requirements. Some manufacturers may believe that EPA has not made clear the criteria being applied to distinguish among various types of carbon nanotubes, and therefore sufficient information may not be available to enable them to know if the carbon nanotubes they are making or importing would fall under the proposed rule.

EPA officials have said that sufficient information may be available in the non-confidential pre-manufacture notifications for other carbon nanotube manufacturers to indicate if the same materials are being made. If companies are not sure, they can file a Notice of Bona Fide Intent to Manufacture, asking EPA if the carbon nanotubes are the same. However, manufacturers are not required to file such requests; they can simply file a pre-manufacture notice and if EPA has approved the same carbon nanotube previously, it will inform the company.

*OECD Report on Nanomaterials Information Collection Initiatives*

The Organization for Economic Cooperation and Development (OECD) published its report, *Analysis of Information-Gathering Initiatives on Manufactured Nanomaterials* on December 9. The report is an analysis of current and proposed programs for collecting information on engineered nanomaterials, and recommends issues such programs should address.

The report is the result of a project undertaken by the OECD Working Party on Manufactured Nanomaterials aimed at identifying existing voluntary and regulatory programs for nanomaterial information collection. It provides advice for countries that may be considering how to implement such programs and recommends that use patterns, physical and chemical properties, life cycle information, fate, human health toxicity, ecotoxicity, and risk management measures all be considered.

Mandatory information gathering is recommended as the preferred approach for obtaining basic use pattern information about the manufacturers or importers of nanomaterials, such as which and how much of the nanomaterials they are manufacturing or importing for current or expected uses, as well as environmental, health, and safety information. Once it is available, the report advised, countries can assess whether a voluntary program to gather more extensive information is warranted.

The report describes the categories of information collected in various programs in Australia, Canada, Denmark, Germany, Ireland, the United Kingdom, and the United States.

The report may be found at:

[http://www.oecd.org/document/53/0,3343,en\\_2649\\_37015404\\_37760309\\_1\\_1\\_1\\_1,00.html](http://www.oecd.org/document/53/0,3343,en_2649_37015404_37760309_1_1_1_1,00.html). Click “No. 19 - ENV/JM/MONO(2009)45.”

*NIST Scientists Quantify Nanoparticle-Protein Interactions*

Scientists at the United States National Institute of Standards and Technology (NIST) have quantified the effects of gold nanoparticles on five human blood proteins. The work has been undertaken in an effort to clarify how nanoparticles and key blood proteins interact. The findings are important to understanding the toxicity of specific nanoparticles, as well as in the development of nanoparticle-based medical therapies. Because molecules designed to perform different tasks in the body can be attached to their surfaces, gold nanoparticles are extremely useful for medical therapies. The tendency of proteins to stick to the nanoparticles that float freely in the bloodstream is a major problem in nanomedicine.

The NIST research team found that all the blood proteins tested adhere to the gold particles. The adhesion aggregate the nanoparticles, which can create a toxic effect, or prevent drugs attached to the nanoparticles from reaching their target. Nanoparticle-blood interactions are largely set by the protein layer, and information about it is necessary to predict how nanoparticles will act in the body. Much more work is needed to understand nanoparticle interactions with biological media.

The article may be found at: [www.nist.gov/public\\_affairs/techbeat/tb2010\\_0112.htm#nanoparticles](http://www.nist.gov/public_affairs/techbeat/tb2010_0112.htm#nanoparticles)

2.5. Respiratory Protection

*Additional Quantitative Fit-Testing Protocols Withdrawn*

OSHA has withdrawn its January 2009 proposal that would have allowed additional quantitative fit-testing protocols to be used for compliance with requirements of the Respiratory Protection Standard. In the January 27, 2010, *Federal Register* notice (75 FR 4323), OSHA stated that after a thorough review of the comments and other information available in the record it had concluded that the revised PortaCount ® quantitative fit-testing protocols are not sufficiently accurate or reliable to include among the quantitative fit tests listed in Part II of Appendix A of the Respiratory Protection Standard.

OSHA stated that it was withdrawing the proposed rule without prejudice, and invited resubmission

of the revised protocols after developers of the protocols address the issues described in this notice. Withdrawal of the NPRM is effective immediately.

To review the *Federal Register* notice which summarizes OSHA's analysis of the information contained in the rulemaking record, go to: <http://edocket.access.gpo.gov/2010/pdf/2010-1656.pdf>.

## 2.6. Toxic Substances

### *TSCA Enforcement and Reform*

In 2010, enforcement of the existing Toxic Substances Control Act (TSCA) by EPA and Congress' reform of TSCA will be key issues to follow.

EPA plans to publish 12 action plans for pesticides and toxic chemicals by the end of 2010, in which the Agency could set information thresholds for various risk management options, including regulation. The plans describe the human and environmental impacts of a chemical, and actions EPA could take to address concerns about its use.

Four action plans, non-regulatory approaches that will cover phthalates, polybrominated diphenyl ethers, perfluorinated chemicals, and chlorinated paraffins, have already been published. As an example of the type of activity included in the plans, EPA has negotiated the phase-out of the flame retardant decabromodiphenyl ether (deca-BDE) with manufacturers.

EPA will undertake efforts to more actively enforce TSCA, and work to improve chemical management in several ways: by making as much information available to the public as permitted under TSCA and the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), by limiting confidentiality claims; and by making reporting easier for chemical manufacturers. The Agency will propose these options as changes to the Inventory Update Reporting rule.

The Agency aims to clarify its approach to determining the status of engineered nanoscale materials as either new chemicals and not on the TSCA inventory, or existing chemical already listed. TSCA requires that EPA review potential health and environmental risks of new chemicals. However, it is not required to review existing chemicals. There is legitimate concern that the health and safety risks of engineered nanomaterials are not being identified as the substances enter into commerce. EPA may issue a significant new use rule (SNUR) that covers all engineered nanomaterials, designating them as new substances under TSCA.

Sen. Frank Lautenberg (D-N.J.) chair of the Senate Environment and Public Works Committee, is expected to introduce a TSCA reform bill in the Senate during the first quarter of 2010. The Committee will hold hearings on the bill during the year.

### *EPA Requires Electronic TSCA Section 5 Filings*

The Environmental Protection Agency has issued a final rule that requires chemical manufacturers and importers to file notices under TSCA Section 5 electronically. These include pre-manufacture notices (PMNs), significant new use notices, test market exemptions, notices of commencement of manufacture or import, low-volume exemption notices, low exposure/low release exemption notices, biotechnology notifications for genetically modified microorganisms, and supporting documents such as correspondence and test data manufacturers. In order to allow them to learn the new process, EPA will give companies two years to switch from paper filing to electronic filing. The effective date of the rule is April 6, 2010. As of April 6, 2012, all submissions will have to be filed electronically through EPA's Central Data Exchange.

The Agency will allow submissions on paper, and on CDs or DVDs until April 6, 2011. EPA has developed new electronic-PMN (e-PMN) software that must be used to generate all notices, regardless of the format in which the information is provided. Paper submissions will not be acceptable after April 6, 2011; CD and DVD submissions after April 6, 2012.

Currently, a chemical manufacturer or importer can use an agent to submit required Section 5 information, in which case both the manufacturer or importer and the agent must sign the PMN form.

Under the revised procedure, the signature of the designated agent will no longer be required, simply his/her name and contact information. The authorized company official will continue to be accountable for any false or misleading statements.

EPA estimates that companies could on average save an average of \$1,352 in the first year of implementation, \$1,396 in the second and third years, and \$1,352 in subsequent years because less time and effort will be needed to file the required notices. Overall, EPA estimates savings of \$379,271 in the first year, \$424,863 in the second year, \$457,066 in the third year, and \$457,628 annually thereafter.

#### *PFOA, PFOS and Thyroid Disease*

A study published in *Environmental Health Perspectives* January 21 found a relationship between perfluorooctanoic acid (PFOA), perfluorooctane sulphonate (PFOS) and thyroid disease. PFOA is used to make fluoropolymers and can also be released by the transformation of some fluorinated telomers. Consumer products made with fluoropolymers and fluorinated telomers, however, including Teflon® and other trademark products, are not PFOA; some may contain trace amounts of PFOA and other related perfluorinated chemicals as impurities. It has been of concern because it is very persistent in the environment, is found at very low levels both in the environment and in the blood of the general U.S. population, remains in the body for a very long time, and causes developmental and other adverse effects in laboratory animals. PFOS has been used as a fabric protector and stain repellent, a component of fire-fighting foams, and alcohol-type concentrate foams, as an impregnation agent for textiles, paper, and leather; in wax, polishes, paints, varnishes, and cleaning products for general use, and in metal surfaces, and carpets. It has been designated as a persistent organic pollutant under the Stockholm Convention.

The study included 3,966 adults in the National Health and Nutrition Examination Survey (NHANES). Blood levels of PFOA of 5.7 nanograms per milliliter (ng/ml) or higher in women were more than twice as likely to be associated with thyroid disease than those below 4.0 ng/ml. Although not statistically significant, the association was similar in men. In men, blood levels of PFOS 36.8 ng/ml or higher were associated thyroid disease twice as often, compared with PFOS blood levels of 25.5 ng/ml or less. Exposure in women was not directly related to thyroid disease. Results indicated a need for further research on human health effects of low-level exposure to chemicals that are persistent and widespread in the environment. The study is available at <http://ehp03.niehs.nih.gov/article/fetchArticle.action?articleURI=info%3Adoi%2F10.1289%2Fehp.0901340>.

#### *Study Shows Flame Retardants Affect Neurodevelopment*

Fetal exposure to high concentrations of certain polybrominated diphenyl ether (PBDEs) flame retardants was associated with neurodevelopmental problems, scientists with Columbia University and the Centers for Disease Control and Prevention said in a study published in *Environmental Health Perspectives* January 4. The study examined umbilical cord blood from approximately 100 babies, and then periodically evaluated them as they reached ages 1, 2, 3, 4, and 6. Lower developmental scores were seen in children with the highest 20 percent cord blood concentrations of three PBDEs more often, compared to children with the lowest 80 percent concentrations. The findings are of potential concern, according to the researchers, “because IQ is a predictor of future educational performance and the observed reductions in IQ scores are in the range seen with low level lead exposure.” The study may be found at: <http://ehp03.niehs.nih.gov/article/fetchArticle.action?articleURI=info%3Adoi%2F10.1289%2Fehp.0901340>.

### 3. OCCUPATIONAL SAFETY

#### 3.1. US Chemical Safety Board

##### *Safety Board Releases Voting Records*

In response to calls for increased transparency, the U.S. Chemical Safety and Hazard Investigation Board announced Jan. 8 that it had posted voting records from Nov. 10, 2009, onward and dozens of board orders on its website.

The move follows the disclosure of a deadlocked vote Aug. 31 on urgent recommendations and a safety bulletin on a June 9 explosion at a ConAgra Slim Jim factory in Garner, N.C., that killed four workers. The Chemical Safety Board later released a revised bulletin on Oct. 2.

The House Education and Labor Committee, in a Nov. 10 letter, asked the Chemical Safety Board to post on its website all notational votes since its establishment, including the text of each item voted on, each board member's vote, written justifications and memos related to the votes, and the Board Action Reports prepared by the agency's general counsel.

Notational voting involves the circulation of material among the board members for written vote and comment.

In addition to the committee, several labor unions said they were concerned the board took so many votes without public knowledge.

“The [Chemical Safety Board] is committed to conducting more of its business in public meetings and making additional information on agency operations readily available to the American public,” Chairman John Bresland said in a written statement. “We will continue to add agency information to our website in an effort to improve the public's understanding of the Board's decisions.”

The voting records and board orders concern all matters related to the safety board, including drafts of reports, safety recommendations, and internal operations.

Bresland said the board will release more voting information by early February.

#### 3.2. Combustible Dust

##### *OSHA to Hold More Stakeholder Meetings in February*

OSHA has announced that it will hold two additional informal stakeholder meetings on the workplace hazards of combustible dust. OSHA plans to use the information gathered at these meetings in developing a proposed standard for combustible dust.

Dates and locations for the next two stakeholder meetings are:

- February 17, 2010, at 9 a.m., in Atlanta, GA;
- February 17, 2010, at 1:30 p.m., in Atlanta, GA;

OSHA says additional meetings are planned for 2010, and will be announced in one or more subsequent Federal Register notices. The deadline for confirmed registration for the meetings above is February 3, 2010. To get more details about how to register for each of these sessions, go to: <http://www.orc-dc.com/?q=node/3387>. Please note that the meetings only about three hours in length and that each is a separate meeting with different participants (although all government staff will be the same at both).

ORC attended one of the stakeholder sessions (as an observer) in Washington, DC, in December. A report of the meeting is available at: <http://orc-dc.com/?q=node/3400>.

*ORC Combustible Dust Task Force*

ORC has established a Combustible Dust Task Force to assist in the preparation of ORC comments in response to the Advance Notice of Proposed Rulemaking published on October 21, 2009 (74 FR 54334). The Task Force has held a series of three web-based meetings to discuss each of the questions raised in the ANPR in preparation for drafting the comments. ORC is in the process of drafting its comments and plans to submit them to the Agency by March 5. [Note: ORC contacted OSHA concerning an extension of time for filing its comments. OSHA said they would not extend the comment period, but that it was advising those seeking additional time that the docket would remain open to receive them and that we should inform OSHA of the date we intended to submit them. In January, ORC submitted a letter informing OSHA of our intent to submit comments by March 5.]

If you would like to be part of the Combustible Dust Task Force effort, please contact Reepa Shroff at ORC.

3.3. Construction

*Labor Department Summit to Address Concerns of Latino Construction Workers*

The Department of Labor has scheduled a “National Action Summit” to be held April 14-15, in Houston, Texas, to address Latino worker health and safety, especially in the construction industry. The summit will take place at the Hilton Americas Hotel, and will be sponsored by OSHA and the National Institute for Occupational Safety and Health in partnership with the National Institute of Environmental Health Sciences.

The primary focus of the summit is Latino workers in the construction industry, where they make up about one-quarter of the workforce. Construction also accounts for the largest number of fatal traumatic injuries among immigrant workers. However, the conference will also target other high-risk industries that employ large numbers of Latino workers, such as building and grounds cleaning and maintenance, production, such as food processing and manufacturing, food preparation and serving, transportation and material moving, farming, fishing, and forestry.

To register for the Summit, go to: <http://www.osha.gov/latinosummit/index.html>.

3.4. Explosives

*Proposed Explosives Standard Revision to Be Withdrawn*

OSHA plans to withdraw the proposed revision to its standard for standard on explosives and blasting agents that it published in April 2007 (72 FR 18792) according to the Fall 2009 Regulatory Agenda. The Agenda indicated that the withdrawal would take place in December 2009, but to date no formal (i.e., *Federal Register*) notice of the proposal’s withdrawal has been published.

At the time it was proposed, OSHA said the revisions to § 1910.109 were:

“intended to enhance the protections provided to employees engaged in the manufacture, storage, sale, transportation, handling, and use of explosives. The proposal updates and clarifies the regulatory language, addresses regulatory inconsistencies between OSHA and other Federal agencies, incorporates updated consensus standards, and provides the regulated community with greater compliance flexibility.”

However, during the public comment period, the proposal garnered much criticism from Congress and gun owners because the revisions would have applied both to manufacture of explosive devices but to the sale and use of small arms ammunition. Further, members of Congress alerted then-Secretary of Labor Elaine Chao that the proposal had national security and homeland defense implications related to the fact that the Department of Defense was purchasing ammunition on the commercial market because its arsenal could not meet

demand. As a result, OSHA abruptly closed the comment period in July 2007 (just days after it extended the period until September 2007) stating that it would re-propose the rule at a later date. No such re-proposal was issued.

### 3.5. Fall Protection / Walking and Working Surfaces

#### *NPRM to Be Published on March*

OSHA's Fall 2009 Regulatory Agenda states that the agency will publish a new notice of proposed rulemaking (NPRM) on walking and working surfaces and fall protection in March 2010. It looks as if the Agency is well on track to meeting that deadline as the Office of Management and Budget's Office of Information and Regulatory Affairs (OIRA) has noted that the NPRM has been under review since January 19, 2010. The new rulemaking is now entitled: Walking Working Surfaces and Personal Fall Protection Systems (Slips, Trips, and Fall Prevention).

The history of this rulemaking dates back to April 1990 when OSHA proposed a rule (55 FR 13360) addressing slip, trip, and fall hazards and establishing requirements for personal fall protection systems. Although public hearings were held and a rulemaking record was developed, no further action was taken until May 2003 when OSHA re-opened the rulemaking record to request information on a limited set of issues. As a result of the comments received on that notice, OSHA has now determined that the rule proposed in 1990 does not reflect current industry practice or technology and that a new proposal, modified to reflect current information, is necessary. OSHA said it will update its regulatory analysis and re-assess the impact of the proposal as well.

The May 2003 Federal Register notice contained a copy of the regulatory language (but not the preamble) from the 1990 notice of proposed rulemaking. To view the 2003 notice, go to: <http://edocket.access.gpo.gov/2003/pdf/03-10617.pdf>.

To view or download a copy of the original 1990 NPRM, see [http://orc-dc.com/files/2010/3389/walking\\_working\\_surfaces\\_4\\_10\\_1990\\_pdf\\_18158.pdf](http://orc-dc.com/files/2010/3389/walking_working_surfaces_4_10_1990_pdf_18158.pdf).

### 3.6. Power Presses

#### *Standard Revision Planned*

Pursuant to requirements of section 610 of the Regulatory Flexibility Act, OSHA performed a look-back review of its standards for power presses beginning in June 2007. Although OSHA had adopted standards the use of presence-sensing device initiation (PSDI) on mechanical power presses believing that the provision would substantially protect workers and improve productivity, the standard requires PSDI systems to be validated by an OSHA-certified third party. To date, no organization has agreed to validate PSDI installations.

The Current ANSI standard permits PSDI without independent validation but includes other provisions to maintain PSDI safety. Based on the look-back review, OSHA now plans to revise and update the standard on power presses.

According to the Fall 2009 Regulatory Agenda, OSHA is currently planning to base the revision of the Mechanical Power Presses standard on the most recent version of the American National Standards Institute standard on Mechanical Power Presses, ANSI B11.1. Further, OSHA is considering expanding the standard to cover other presses such as hydraulic and pneumatic power presses and to include the latest guarding techniques. This revision will provide the first major update of the Mechanical Power Presses Standard since it was originally published in 1971.

This action is considered a "long term" one according to the Regulatory Agenda and no date for a next step has been provided.

### 3.7. Transportation

#### *DOT Issues Regulatory Guidance Prohibiting Texting While Driving for Commercial Drivers*

On January 26, 2010, U.S. Transportation Secretary Ray LaHood announced federal guidance to expressly prohibit texting by drivers of commercial vehicles such as large trucks and buses. The prohibition is effective immediately and is the latest in a series of actions taken by the Department to combat distracted driving since the Secretary convened a national summit on the issue last September.

The Federal Motor Carrier Administration published the regulatory guidance that clarifies the applicability of the Agency's current safety regulations to prohibit texting and driving by commercial drivers. According to the January 27, 2010 Federal Register (75 FR 4305-4307) this regulatory guidance "serves as an interim measure to deter texting while driving" while they work to "initiate a rulemaking to address the safety risks associated with texting by prohibiting all truck and bus drivers from texting while they are operating on public roads."

The changes to the regulatory guidance are as follows:

#### **Part 390**—Federal Motor Carrier Safety Regulations; General

##### Sections Interpreted

Section 390.17 Additional equipment and accessories:

**Question 1:** Do the Federal Motor Carrier Safety Regulations prohibit "texting" while driving a commercial motor vehicle in interstate commerce?

**Guidance:** Yes. Although the current safety regulations do not include an explicit prohibition against texting while driving by truck and bus drivers, the general restriction against the use of additional equipment and accessories that decrease the safety of operation of commercial motor vehicles applies to the use of electronic devices for texting. Handheld or other wireless electronic devices that are brought into a CMV are considered "additional equipment and accessories" within the context of § 390.17. "Texting" is the review of, or preparation and transmission of, typed messages through any such device or the engagement in any form of electronic data retrieval or electronic data communication through any such device. Texting on electronic devices while driving decreases the safety of operation of the commercial vehicles on which the devices are used because the

Secretary LaHood has made reducing the impact of distracted driving a top priority for his Department.

A copy of the Federal Register notice is available on our website (<http://orc-dc.com/?q=node/3391>).

#### *TRB Announces International Conference on Commercial Driver Health and Wellness*

The Transportation Research Board (TRB) and the U.S. Department of Transportation's Federal Motor Carrier Safety Administration (FMCSA), are hosting an International Conference on Commercial Driver Health and Wellness, November 8–10, 2010, in Baltimore, Maryland.

The Conference objectives are:

1. Review evidence-based benefits—both return-on investment and personal—of health and wellness programs for commercial drivers and their employers:
  - Human capital strategy and cost-benefits of health and wellness programs,
  - Case studies of practices that work and that do not seem to work, and
  - Recent policy developments affecting health and wellbeing.
2. Learn about the latest research examining health issues that impact the performance and safety of commercial drivers, such as:
  - Obesity, hypertension, cardiovascular issues, diabetes, and others;
  - Physical fitness, diet and nutrition, and smoking cessation;

- Injuries, musculoskeletal disorders, sprains, and pains;
  - Psychological stress, mental health, and depression;
  - Work structure and organizational contributions to health issues;
  - Aging, communicable diseases, and sleep disorders; and
  - Disease management, access to, and delivery of needed health care.
3. Identify best practices and other industry corporate experiences with health and wellness programs:
- Establishing a corporate and personal health and wellness philosophy,
  - Making health and wellness changes and behavioral modifications, and
  - Involving families in successful health and wellness initiatives.

For more information visit the TRB website:

<http://pressamp.trb.org/conferencewebsites/default.aspx?CID=12&MID=15>

PLEASE NOTE: This conference is being held the same week as ORC's Quarterly Meetings.

## 4. ENFORCEMENT

### 4.1. OSHA Enforcement Statistics

Fifteen per cent fewer fatality investigations were conducted by OSHA in fiscal year 2009 over the previous year. In fiscal 2009, OSHA conducted 797 fatality investigations, down from 936 in 2008. 1,043 fatalities were investigated in 2007; with 1,081 and 1,114 in 2006 and 2005, respectively. Employers are required to report workplace fatalities to OSHA within eight hours. OSHA is required to investigate all reported fatalities.

OSHA issued 87,663 citations in fiscal 2009, a 0.5 percent increase over FY 2008, in which 87,210 were given. In 2009 25 per cent of inspections resulted in no findings; in 2008 the rate was 23 per cent. The proportion of violations cited as serious has been rising over the last five years, increasing from 72 percent in 2005 to 77 percent in 2009. OSHA's inspection activity saw a slight increase in fiscal 2009. The Agency conducted 39,004 inspections, a 0.9 percent increase over the 38,667 inspections completed in 2008. Sixty-two per cent of inspections were programmed and 38 per cent were initiated by complaints or fatalities. In 2008, 60 per cent were programmed and 40 percent were unprogrammed.

In 2009 the five most-cited general industry standards were hazard communication, respiratory protection, lockout/tag out, electrical wiring, and powered industrial trucks. For the first time, the general duty clause ranked 10<sup>th</sup>.

The five most-cited construction standards in 2009 were scaffolding, fall protection, ladders, fall protection training requirements, and hazard communication.

### 4.2. National Emphasis Programs

OSHA plans to develop new national emphasis programs targeting isocyanates, hexavalent chromium, and primary metals. The isocyanates effort is in response to the Agency's research to develop an occupational asthma program, which has been directed toward isocyanates to line up with the Obama administration's emphasis on green jobs. Isocyanates are the primary ingredients in polyurethane foams used for weatherizing buildings. Isocyanate exposure can cause severe asthma in sensitive individuals. OSHA is examining ways to target workers involved in such applications in buildings and construction who may have exposure to isocyanates.

The hexavalent chromium emphasis program is aimed at industries that are known to have high worker exposures in operations such as welding, shipbuilding and repair, paint and pigment manufacturing, metal finishing, and wood preservatives. Exposure standards for general industry (29

C.F.R. 1910.1026), maritime (1915.1026), and construction (1926.1126) were published in 2006 published in response to a court order. All hexavalent chromium compounds are regarded by OSHA and NIOSH as likely human carcinogens.

The primary metals NEP is directed at iron and steel companies in Standard Industrial Classification codes 3312, 3315, 3316, and 3399, and emphasizes noise, silica, and lead exposures in those industries.

OSHA is involved in an ongoing evaluation of its amputations emphasis program, which seeks to identify and to reduce workplace machinery and equipment hazards.

The Agency will determine whether to expand its one-year pilot project on chemical process safety management plants, which focuses only on regions 1, 7, and 10, when the program expires in July 2010.

The Severe Violators Enforcement Program announced April 28, 2009 will be finalized, and criteria will be published in a directive that is now in the final stages of development. Employers who meet the program criteria will be subject to follow-up inspections and additional actions.

#### 4.3. Recordkeeping

##### *OSHA Proposes to Reinstate Column for Work-Related MSDs on OSHA 300*

On January 28, OSHA announced that it would publish a proposed rule to revise its Occupational Injury and Illness Recording and Reporting regulation (29 CFR 1904) to restore a column to the OSHA 300 Log that employers would use to record work-related musculoskeletal disorders (MSD). This proposed rule would require employers to place a check mark in the MSD column, instead of the column they currently mark, if a case is an MSD that meets the Recordkeeping regulation's general recording requirements. The proposal will appear in the *Federal Register* on January 29, 2010.

Written comments on the proposal must be received or postmarked by March 15, 2010. OSHA will hold a public meeting on the proposed rule from 9 a.m. to 5 p.m. on March 9, 2010. If necessary, the meeting may be extended to subsequent days. Requests to speak at the public meeting and requests for special accommodation at the meeting must be submitted by February 16, 2010.

OSHA's proposed regulatory language states:

2. A new §1904.12 is to be added to read as follows:

§ 1904.12 Recording criteria for cases involving work-related musculoskeletal disorders.

(a) Basic requirement. If any of your employees experiences a recordable work-related musculoskeletal disorder (MSD), you must record it on the OSHA 300 Log by checking the "musculoskeletal disorder" column.

(b) Implementation. (1) What is a "musculoskeletal disorder" or MSD? MSDs are disorders of the muscles, nerves, tendons, ligaments, joints, cartilage and spinal discs. MSDs DO NOT include disorders caused by slips, trips, falls, motor vehicle accidents, or other similar accidents. Examples of MSDs include: Carpal tunnel syndrome, Rotator cuff syndrome, De Quervain's disease, Trigger finger, Tarsal tunnel syndrome, Sciatica, Epicondylitis, Tendinitis, Raynaud's phenomenon, Carpet layers knee, Herniated spinal disc, and Low back pain.

(2) How do I decide which MSDs to record? There are no special criteria for determining which MSDs to record. An MSD case is recorded using the same process you would use for any other injury or illness. If an MSD disorder is work-related, is a new case, and meets one or more of the general recording criteria, you must record the case as an MSD in the MSD column. The following table will guide you to the appropriate section of the rule for guidance on recording MSD cases.

(i) Determining if the MSD is work-related. See § 1904.5.

(ii) Determining if the MSD is a new case. See § 1904.6.

(iii) Determining if the MSD meets one or more of the general recording criteria:

- (A) Days away from work, See §1904.7(b)(3);
- (B) Restricted work or transfer to another job, See § 1904.7(b)(4); or
- (C) Medical treatment beyond first aid. See § 1904.7(b)(5).

(3) If a work-related MSD case involves only subjective symptoms like pain or tingling, do I have to record it as an MSD? The symptoms of an MSD are treated the same way as symptoms for any other injury or illness. You must record the case on the OSHA 300 Log as an MSD if:

- (i) An employee has pain, tingling, burning, numbness or any other subjective symptom of an MSD;
- (ii) The symptoms are work-related;
- (iii) The MSD is a new case; and
- (iv) The case meets one or more of the general recording criteria.

(4) When do I have to start recording work-related MSDs on the MSD column? You must begin recording work-related MSDs on the MSD column as of January 1, 2011.

#### *OSHA MSD Column.*

The “sleeper issue” with this proposal may not have anything to do with the change in the form; with the reinstatement of the 2001 definition of an MSD; or with any new recording trigger that may result from the regulatory process.

The “sleeper” is that OSHA is also proposing to do away with the “preventive transfer” provision in the OSHA Compliance Directive that allows employers to conduct “work hardening” to prevent injury without experiencing an OSHA recordable case. As it currently stands, employers can temporarily transfer an employee with minor musculoskeletal pain or discomfort to another job to prevent further (recordable) injury without having a recordable case, if: 1. at the time of the transfer there is a medical assessment that the employee is fully able to perform all of their routine job functions for a full work shift: and 2. none of the other recording criteria are met.

The reasons listed for OSHA’s reversing its position are:

1. There might be confusion between “minor musculoskeletal discomfort” and MSD pain that is recordable;
2. There might be confusion between a preventive transfer and restricted work activity or job transfer situations that have already become recordable;
3. The provision might not be necessary if the employee hasn’t experienced a “case.”

ORC members have found the current provision useful over the years. Frankly we have concerns that removing the interpretation will ultimately increase confusion and leave the door open for misapplication by OSHA and others.

#### *OSHA Interested In Electronic Data Collection*

David Michaels hosted a meeting on Friday, January 29<sup>th</sup>, to discuss the feasibility and utility of collecting OSHA injury and illness data electronically. The stated objective was to “bring OSHA into the 21<sup>st</sup> century” when it comes to data submission. The real objectives seem to be to increase the timeliness of reporting and to improve the usefulness of the information for OSHA and for others – particularly smaller employers with less sophisticated S&H programs. Dr. Michaels believes that the electronic flow of information will enhance OSHA resource allocation (targeting) and improve the pool of data available for research.

Frank White and Steve Newell attended the meeting for ORC along with representatives from organized labor, state health departments, academia, the American College of Occupational and Environmental Medicine, MSHA, NIOSH, and of course, OSHA.

Specifically, OSHA is looking to have employers report injury and illness data in “real time,” although there is some uncertainty as to what that really means. OSHA also seems interested in making the data transparent. The Agency intends to have the data provided on some sort of a flow basis, by company and by site. OSHA would then provide the data back to employers in a form that would assist them in identifying and addressing hazards. Approximately 77% of the employers that provide site specific data to OSHA each year do so electronically. So OSHA believes that any increase in burden will be minimal.

There is still uncertainty as to the universe of industries and sites that will be included in the data collection. Also the scope of the data collection has yet to be decided. OSHA intends to hold stakeholder meetings to get input on these and related issues. ORC will track this initiative and will keep members abreast of any developments and opportunities for input.

#### 4.4. Occupational Safety and Health Review Commission

##### *Status of the Review Commission*

With the expected confirmation of Cynthia L. Attwood, who was nominated by President Obama last November 10, all three seats of the Commission will be filled for the first time in almost three years.

Attwood and Chair Rogers will join Bush appointee, Horace A. (Topper) Thompson, in an agency that is likely to remain a stable three- member Commission until at least April 2011 when Thompson’s term ends. Attwood’s term will end in April 2013 while Rogers, who was originally a Clinton appointee and then reappointed by Bush, has a term ending in April 2015.

Attwood’s background according to a White House press release includes “three years as an Administrative Appeals Judge on the Department of Labor’s Administrative Review Board . . . (and) eight years as an Attorney Advisor for the Board. (She) also served in the Senior Executive Service at DOL for over ten years, both as the Associate Solicitor for Occupational Safety and Health and before that as the Associate Solicitor for Mine Safety and Health. She also previously worked at the Department of Justice, where she began her career as a civil rights litigator.”

##### *Miguel Saurez v. Pacific Northstar Mechanical Inc. (California Court of Appeals, First Appellate District, A121349, December 18, 2009)*

In a case involving a multiemployer worksite, a California appeals court reversed a trial court’s summary judgment in favor of the subcontractor, Pacific Northstar. In this case, the “subcontractor’s employee, while working at a multiemployer construction site, was slightly injured by a preexisting, nonobvious hazard that had not been created in the course of the subcontractor’s work. The employee told his foreman about the incident, but the foreman did not report it to the general contractor. Shortly thereafter, two employees of the general contractor were severely injured by the same hazard.”

The question arising in this case is “can the injured employees of the general contractor sue the subcontractor for negligence, based on the subcontractor’s failure to warn the general contractor about the hazard? (The Appeals Court in its decision stated that) we hold that neither the common law nor the applicable construction contract created a duty on the part of the subcontractor to take affirmative steps to protect those working for other employers from hazards not created by the subcontractor.”

Despite that holding, the Appeals Court concluded, “that the subcontractor did have a statutory duty of care, created by applicable workplace safety statutes and regulations requiring the subcontractor to report hazards to which its employees were exposed. Under California Supreme Court case law (the Appeals went on to find), one who breaches such a duty is liable in tort. Accordingly, (the Appeals Court reversed) the trial court’s grant of summary judgment in favor of Pacific Northstar.”

##### *Wendland v. AdobeAir Inc. (Arizona Court of Appeals, No. 1 CA-CV 07-0815, December 8, 2009)*

In another case where the plaintiff is not an employee of the party that has created the hazard, the Arizona Court of Appeals affirmed a trial court decision in favor of Wendland. Wendland was

seeking a contract with a third party for the installation of acoustical ceiling tiles. He had difficulty finding the third party's construction office. Using directions from the third party, he entered a building controlled by AdobeAir. The lighting was poor, and Wendland fell into a pit that was left from the removal of a press machine. AdobeAir was supposed to have place tape and barrels around the pit, but Wendland testified that he did not see either.

Before the trial, AdobeAir moved to “preclude the testimony of the Wendland work-site safety expert.... AdobeAir asserted that (the expert), whose opinion as to the standard of care was essentially based on OSHA standards, should not be allowed to testify because no employer-employee relationship existed between AdobeAir and Mr. Wendland. According to AdobeAir, Mr. Wendland was not a member of the class of persons OSHA was intended to protect and therefore . . . “(Wendland) could not properly invoke a violation of OSHA standards as evidence of negligence or negligence *per se*.”

Wendland argued that the expert's testimony was relevant and that the case AdobeAir based its argument on “(does not even suggest) a general exclusion of OSHA standards from a jury's consideration in all kinds of cases.” AdobeAir argued that the expert's “testimony was expected to establish a standard of care that required a safety guarantee and would thus misstate the law. (Wendland), however, assured the trial court . . . (that the expert) would not opine that the appropriate standard was a guarantee of safety. The court then denied AdobeAir's motion, concluding that . . . (the expert's) testimony ‘may be some evidence of negligence, but it's not determinative of the issue.’ The trial court also alerted the parties that it would instruct the jury to limit the weight of the OSHA evidence.”

The Appeals Court found that “the trial court acted within its discretion in allowing the jury to consider this evidence. At no time was the jury told that OSHA standards were binding on AdobeAir or that those standards were the sole yardstick against which AdobeAir's conduct should be measured. Instead, the jury was presented with Mr. Wendland's testimony as to the circumstances leading up to his fall and Horton's opinion regarding the safety measures that should have been employed to guard against the danger of open pits. In addition, AdobeAir was permitted to demonstrate that it acted reasonably under the circumstances.”

*Dillard Smith Construction Company v. Commissioner of Labor and Workplace Development (Tennessee Court of Appeals, No. M2008-735, December 15, 2009)*

The Tennessee Court of Appeals reversed in part and affirmed in part an administrative order Handed down by the Tennessee Department of Labor, Division of Occupational Safety and Health (TOSHA). The Appeals Court concluded that there was sufficient evidence to uphold the six safety violations issued by the Tennessee Department of Labor against Dillard, all of which were originally affirmed by the TOSHA Review Commission. A Chancery court subsequently agreed to the Commission's findings in five of the violations but rejected the sixth. Both parties appealed the Chancery Court's ruling to the Court of Appeals.

Because of the strength of the evidence, the Appeals Court had little trouble agreeing with the Chancery Court and affirming the five violations. The Appeals Court held that “Dillard Smith, through its foreman Jones, was required to ensure that . . . (the employee) maintain a minimum distance from an energized pole unless he had proper safety equipment protecting him from the energized line.

It is undisputed that no one checked the pole to determine whether it was energized before Jones left, and it is also undisputed that . . . (the employee) was not wearing the proper protective equipment while working on the pole. Regardless of whether Jones assumed the pole was not energized, Jones had an affirmative duty to ensure [as required by 1910.269(l)(2)] . . . ‘that no employee approaches or takes any conductive object closer to exposed energized parts than set forth in Table R-6 through Table R-10 (of the standard), unless (i) [t]he employee is insulated from the energized part . . . , (ii) [o]r the energized part is insulated from the employee and from any other conductive object at a different potential, (iii) [o]r the employee is insulated from any other exposed conductive object, as during live-line bare-hand work.’ Jones, and thus Dillard Smith, failed to ensure that the mandate in . . . 1910.269(l)(2) was done.”

As to the sixth violation, which was for the failure to conduct a safety briefing, the Appeals Court noted that Dillard had only to provide a job briefing on the day or beginning of the shift the work was

being done. Dillard's foreman "testified that he conducted job briefings every day. The Review Commission discredited Jones's testimony, though. Moreover, no witness corroborated Jones's assertion that he conducted any briefings."

*Secretary of Labor v. Buford's Tree Inc. (OSHRC, No. 07-1899, January 8, 2010)*

The OSHRC reversed an ALJ decision and reinstated a citation against Buford alleging a serious violation of the OSH Act's general duty clause "based on the deceased employee's failure to wear a seatbelt." The ALJ held that "the Secretary had proven the elements of a general duty clause violation, including constructive knowledge. He vacated the citation, however, because he found . . . (Buford) established that the deceased employee's failure to wear the seatbelt was the result of unpreventable employee misconduct."

In reaching its decision, the Commission stated that "to establish the affirmative defense of unpreventable employee misconduct, an employer is required to prove that '(1) it has established work rules designed to prevent the violation; (2) it has adequately communicated those rules to its employees; (3) it has taken steps to discover violations; and (4) it has effectively enforced

the rules when violations have been discovered.' As we have found, (the Commission concluded) the record shows that . . . (Buford) failed to adequately monitor compliance with its requirement that the operability of seatbelts be inspected on a daily basis. These findings also establish that . . . (Buford) failed to prove the violation was the result of unpreventable employee misconduct." Accordingly, the Commission affirmed the citation.

*Comings v. Mike Hook Inc. (U.S. Court of Appeals for the Fifth Circuit, 22 OSHC 1857, September 14, 2009)*

The U.S. Court of Appeals for the Fifth Circuit affirmed a district court decision in favor of Hook after Comings had become injured after diving head first off a skiff into shallow water. The Appeals Court agreed with the view of the district court that Comings "testimony regarding the accident to be unreliable" and that Comings had been warned "that the water was only two to three feet deep and (he was ) instructed . . . to 'scoot' off the bow of the skiff into the water."

Comings also argued that there was a violation of 1926.1051, a construction standard requiring ladders or stairs under certain conditions. The Appeals Court agreed with the district court that although the skiff was covered by OSHA, 1926.1051 applied only to construction and no one claimed that this was a construction activity.

*Sanderson Farms Inc. v. OSHRC (The U.S. Court of Appeals for the Fifth Circuit, 22 OSHC 1889, October 12, 2009)*

The U.S. Court of Appeals for the Fifth Circuit an unpublished decision upheld in an ALJ decision that was declined for review by the OSHRC. Because the Commission declined review "thereby adopting the ALJ findings," Sanderson was able to seek direct review by a U.S. Court of Appeals.

While repairing a rack leg in a freezer, a worker was killed by a fire caused by a cutting torch when a pallet of frozen chicken fell on him and trapped him. After the hearing, in affirming the citation, "the ALJ concluded that, although the racks could support their intended weight, there was an insufficient 'margin of error' in the rack system such that the pallets were not secure against sliding or collapse."

Sanderson argued that there was unpreventable employee misconduct. The Appeals Court notes that if this argument is to be successful the employer must show the following: "(1) that it has established work rules designed to prevent the violation; (2) that it has adequately communicated these rules to its employees; (3) that it has taken steps to discover violations; and (4) that it has effectively enforced the rules when violations have been discovered." The Appeals Court held that "there is substantial evidence to support the ALJ's rejection of Sanderson's affirmative defense of unpreventable employee misconduct."

Finally, the Appeals Court concludes that "Sanderson focuses its argument on the policy . . . (the employee) violated by attempting to repair a rack without first clearing it of pallets. This argument is unavailing, however, because the OSHA citation was for unsafe storage, not for unsafe repair

procedures; the storage violation would have existed even if . . . (the employee) had not worked on the racks improperly.”

## 5. FEDERAL LEGISLATION

### 5.1. Congressional Agenda

During the past three months the congressional agenda, for the most part, has remained focused on health care legislation. The Senate passage of the health care bill in December, following the House of Representatives’ passage of the bill in November, appeared to signal that the end of the debate was near and that other legislation, such as occupational safety and health reform (specifically, the Protecting America’s Workers Act (PAWA), HR 2067 and S 1580), would move up the agenda for consideration. However, the somewhat unexpected election of Republican Scott Brown (MA) in January to fill the Senate seat vacated by the death of Senator Kennedy, has thrown the health care debate and its timetable into uncertain territory.

The election of the Republican candidate in the Senate resulted in the loss of the Democratic majority in the Senate, which now means that Republicans have enough votes to successfully filibuster legislation. The problem for the Democrats and the Administration is that two very different health care bills were approved by the House of Representatives and the Senate respectively. So unless the House of Representatives approves the same version of the health care bill that the Senate approved, a compromised version of the bill would have to be returned to the Senate for a vote by the full chamber. If they stay united, Senate Republicans would be able to filibuster, and potentially stop, the compromise bill from passing. Although there are a few other legislative strategies that could be employed to avoid a filibuster, the bottom line is that there is currently huge uncertainty about the prospects for the health care reform bill. It could mean additional debate on a new health care bill or it could mean no more debate if the issue is put on the legislative shelf.

Despite the uncertainty of consideration, the House Education and Labor Committee staffers, however, have continued to work on refining the PAWA. As reported in the last update, modifications are currently being made to the legislation. For example, ORC has learned that changes in the bill are being considered regarding: (1) the bill’s provision that requires the immediate abatement for serious violations, with possibly an amendment that would allow an appeal process; (2) clarifying that an employer’s practices and policies must have the “effect of” discouraging the reporting of work-related injuries or illnesses before they are found to violate the Act, as opposed to the current provision that does not require a showing of negative impact before the policy is found to be in violation; (3) modifying the standard of proof within the criminal penalties portion of the bill by requiring that a corporate officer “knowingly,” as opposed to “willfully” which is in the current bill, violate any standard, rule or order before liability is found; and (4) removing the section of the bill that would have allowed for employees or their representatives to object to modifications of citations.

Each of these possible changes, along with other provisions, is currently being considered by the Committee’s legislative staff. None of them, however, have been officially incorporated into the current bill. Any changes would have to be offered as amendments during a mark-up of the bill or a new version of the bill could be offered as a substitute for the original version.

### 5.2. AIHA Says Patient Handling Bill Should Not Cover Home Health Worker Ergonomics

According to a recent report in the *BNA Daily Labor Report*, American Industrial Hygiene Association president Cathy Cole has advised Sen. Al Franken (D-Minn.) not to extend the patient handling ergonomics bill to home health workers. The January 22 letter to Franken, sponsor of Senate bill S. 1788, the “Nurse Protection Act” states:

“While we recognize (as is evidenced in our position statement) that home health care workers are also exposed to significant ergonomic risk, equipment and other control approaches are not currently available to adequately reduce all of these exposures.” Research should be funded and other efforts undertaken to fill this knowledge gap.”

Franken's bill, introduced in October 2009, would require OSHA to propose a “safe patient handling and injury prevention standard” to prevent musculoskeletal disorders for direct-care registered nurses and all other health care workers handling patients in health care facilities. A final safe patient handling and injury prevention standard is to be promulgated not later than 2 years after the date of the bill's enactment.

The legislation directs OSHA to include a requirement for the use of “engineering controls to perform lifting, transferring, and repositioning of patients and the elimination of manual lifting of patients by direct-care registered nurses and all other health care workers, through the use of mechanical devices to the greatest degree feasible, except where the use of safe patient handling practices can be demonstrated to compromise patient care.”

The bill directs OSHA to promulgate a standard that applies to all health care employers and which requires at least the following:

1. Each health care employer to develop and implement a safe patient handling and injury prevention plan which includes hazard identification, risk assessments, and control measures in relation to patient care duties and patient handling.
2. Each health care employer to purchase, use, maintain, and have accessible an adequate number of safe lift mechanical devices not later than 2 years after the date of issuance of the final standard.
3. Each health care employer to obtain input from direct-care registered nurses, health care workers, and employee representatives of direct-care registered nurses and health care workers in developing and implementing the safe patient handling and injury prevention plan, including the purchase of equipment.
4. Each health care employer to establish and maintain a data system to track and analyze trends in injuries relating to the application of the safe patient handling and injury prevention standard and to make such data and analyses available to employees and employee representatives.
5. Each health care employer to establish a system to document each instance when safe patient handling equipment was not utilized due to legitimate concerns about patient care and to generate a written report in each such instance, which includes the following information: the work task being performed; the reason safe patient handling equipment was not used; the nature of the risk posed to the worker from manual lifting; and the steps taken by management to reduce the likelihood of manual lifting and transferring when performing similar work tasks in the future.
6. Each health care employer to train nurses and other health care workers on safe patient handling and injury prevention policies, equipment, and devices at least on an annual basis.
7. Each health care employer to post a uniform notice that explains the safe patient handling and injury prevention standard; includes information regarding safe patient handling and injury prevention policies and training; and explains procedures to report patient handling-related injuries.
8. Each health care employer to conduct an annual written evaluation of the implementation of the safe patient handling and injury prevention plan. The evaluation must be conducted with the involvement of nurses, other health care workers, and their representatives. Health care employers shall take corrective action as recommended in the written evaluation.

The bill is identical to a version (H.R. 2381) introduced in the House Committee on Education and Labor, Ways and Means Committee, and the Energy and Commerce Committee by Rep. John Conyers (D-Mich.) on May 13.

## 6. NATIONAL INSTITUTE FOR OCCUPATIONAL SAFETY AND HEALTH ACTIVITIES

### 6.1. New NIOSH Exposure Limits; Increased Interagency Collaboration

Research activities for the National Institute for Occupational Safety and Health in 2010 will include publishing more recommended exposure limits and increasing interagency collaboration. A recent budget increase will add support to the agency. NIOSH was appropriated \$373.2 million for fiscal year 2010, a \$13.1 million increase over FY 2009. Over \$117 million will go to the institute's National Occupational Research Agenda, \$70 million for the World Trade Center Medical Monitoring and Treatment Program, and \$55 million for the Energy Employees Occupational Illness Compensation Program.

#### *New Recommended Exposure Limits*

A top priority for NIOSH will be updating its recommended exposure limits (RELs). The institute hopes to coordinate with OSHA on prioritizing the substances on which to focus its limited resources. OSHA has made a regulatory priority of controlling exposures to diacetyl and other food flavorings, therefore completing work on an REL and criteria document for diacetyl will be one of the first projects for NIOSH in 2010.

The Institute is searching for ways to share its risk assessment data on diacetyl and other health hazards with OSHA without violating the privacy of individuals who participated in the studies. NIOSH cannot publicize or share much of its exposure data, with OSHA because scientists collected the information in such a way that one could easily connect the data to specific individuals.

#### *Interagency Cooperation*

NIOSH will work to revive the OSHA, NIOSH, Mine Safety and Health Administration (MSHA), and Environmental Protection Agency Committee (OMNE Committee), which will focus primarily on asbestos. Frank Hearl, NIOSH Chief of Staff, coordinates NIOSH's OMNE Committee activities. The committee also will examine efforts to reform the Toxic Substances Control Act and opportunities to share data on chemicals as Europe continues to implement its Registration, Evaluation, Authorization, and Restriction of Chemical substances law.

NIOSH will ask the Bureau of Labor Statistics (BLS) to address issues related to under-reporting of injuries and illnesses, in light of a recent Government Accountability Office (GAO) report on the issue.

MSHA has an initiative focused on eliminating black lung disease. In support, NIOSH will release two sets of research papers on miners' exposure to diesel fumes, one on exposure assessment, and a second on health effects.

#### *New Construction Office*

NIOSH opened a new Construction Safety and Health Office within the Office of the Director on December 7, to better integrate construction research activities within the institute. Christine Branche, NIOSH's principal associate director, will serve as acting director of the new office. The office will act as a liaison among NIOSH's construction researchers, and will also focus on helping OSHA with its regulations on cranes and derricks, silica, and confined spaces.

#### *Extramural Funding*

NIOSH wants to increase the number of grant applicants it accepts to 25 - 30 percent, similar to other levels at the National Institutes of Health. In the past, as few as 9 percent have been funded. NIOSH wants to see investigator-initiated research, educational centers, and the ability to accept specific, unique projects to continue.

### *Pandemic Influenza Research*

NIOSH will initiate multiple pandemic influenza studies on transmissibility, respiratory protection, and engineering controls, among other issues. NIOSH is currently developing a study of how respirable-size influenza particles spread throughout hospital and clinic waiting and patient rooms.

NIOSH also plans to study the effectiveness of N95 respirators and surgical masks in protecting health care workers from contracting influenza, in partnership with the Department of Veterans Affairs.

Another study will examine the effectiveness of engineering controls for influenza, including ultraviolet irradiation, currently used to prevent airborne transmission of tuberculosis. NIOSH is seeking alternatives to respirators as ways to more effectively curtail the spread of influenza.

The Food and Drug Administration (FDA) has raised jurisdictional questions regarding the NIOSH respirator certification program, which is administered by the National Personal Protective Technology Laboratory (NPPTL). FDA believes that respirators may be included in its definition of devices, in which instruments, apparatuses, or machines used to diagnose, cure, treat, or prevent disease are included, and over which it has regulatory jurisdiction.

### *Other Research Priorities*

NIOSH will host a conference to discuss issues regarding medical surveillance, exposure registries, and epidemiologic research involving workers in nanotechnology industries. The conference, “Nanomaterials and Worker Health: Medical Surveillance, Exposure Registries, and Epidemiologic Research” will be held in Keystone, Colorado July 21–23.

In addition, the institute will update its guidance documents on nanotechnology to incorporate more standardized recommendations, such as a model nanotechnology occupational health and safety program.

### *WorkLife Program*

Soldiers re-entering the workforce frequently suffer from chronic medical conditions; studies have shown obese workers tend to have more lost work days; and aging workers face a variety of unique hazards, including higher susceptibility to musculoskeletal disorder. NIOSH will address these issues under its WorkLife Initiative.

## 6.2. NIOSH Research on Diacetyl Substitutes

In an effort to assist in the agency's rulemaking, NIOSH has provided OSHA with a summary of the latest, unpublished research it has conducted in conjunction with the National Toxicology Program regarding the hazards of three potential substitutes for diacetyl. The substances are starter mix, a diacetyl-containing distillate; acetoin; and 2,3-pentanedione, which has a similar chemical structure to diacetyl.

In its letter to OSHA, NIOSH expressed concern that chemicals and materials used as alternatives to diacetyl are not known to be less hazardous, and cited a fermentation process byproduct known as ‘starter mix’ as containing high concentrations of diacetyl.

NIOSH research suggests that 2,3-pentanedione causes similar respiratory damage to diacetyl. NIOSH conducted a health hazard evaluation of 2,3-pentanedione, which was being used as a diacetyl substitute at a bakery mix production facility. Medical examinations of facility workers indicated elevated rates of shortness of breath and asthma.

The National Toxicology Program (NTP) is conducting a two-year chronic toxicity study of diacetyl, has conducted two-week sub chronic exposure studies on rats for both acetoin and 2,3-pentanedione. Pathology reports are pending on acetoin and 2-3-pentanedione before 90-day exposure studies will

begin. The 2,3-pentanedione study will provide the first published exposure data on the chemical. NTP also has released preliminary data on diacetyl to OSHA.

OSHA plans a peer review of health effects and risk assessments as part of its diacetyl rulemaking, slated for October 2010. The Agency also has indicated that it could broaden the scope of its rulemaking to include additional artificial flavorings, if warranted. A national emphasis program targeting the food flavorings industry was launched October 30, 2009. OSHA will inspect 83 flavoring facilities to identify exposures that exceed OSHA permissible exposure limits (PELs). Under the NEP acetoin and 2,3-pentanedione are listed as a high-priority substances

## 7. STATE ACTIVITY

### 7.1. State Laws Aimed at Cell Phones and Texting

Some states and territories have enacted bans on hand-held devices or texting to help reduce the dangers to the public from distracted driving.

Bans on hand-held devices have been enacted in:

- \* California
- \* Connecticut
- \* District of Columbia
- \* New Jersey
- \* New York
- \* Oregon
- \* Washington
- \* Virgin Islands

A texting ban has been enacted in:

- \* Alaska
- \* Arkansas
- \* California
- \* Colorado
- \* Connecticut
- \* District of Columbia
- \* Illinois
- \* Louisiana
- \* Maryland
- \* Minnesota
- \* New Hampshire
- \* New Jersey
- \* New York
- \* North Carolina
- \* Oregon
- \* Rhode Island

- \* Tennessee
- \* Utah
- \* Virginia
- \* Washington
- \* Guam

Some states ban cell phone use in school zones or construction sites, and some place restrictions on novice drivers and school bus drivers. Six states have laws that prohibit local jurisdictions from enacting restrictions. They are Florida, Kentucky, Louisiana, Mississippi, Nevada, and Oklahoma. In other states, localities are allowed to ban cell phone use or texting while driving. (Source: [Distraction.gov](http://Distraction.gov).)

For more information about various state laws addressing the use of cell phones and texting while driving, please see <http://distraction.gov/state-laws>, or the Governors Highway Safety Association at [http://www.ghsa.org/html/stateinfo/laws/cellphone\\_laws.html](http://www.ghsa.org/html/stateinfo/laws/cellphone_laws.html).

## 7.2. California

### *Draft Proposed Sensitizer Standard*

After a number of years of advisory committee review and discussion, Cal/OSHA Staff is putting the finishing touches on a draft, first-in-nation standard for Sensitizing Substances, Section 5179. This rulemaking effort began in 2005 with the addition of a footnote to Section 5155, Airborne Contaminants, and medical questionnaire requirements for substances recognized as sensitizers. Then, a new Section 5179, Sensitizing Substances, was added that includes provisions requiring exposure monitoring and control measures, information and training, personal protective equipment, and medical surveillance. ORC has participated in some of the advisory committee meetings and has been tracking the development of this effort. View or download draft of this proposed standard on our website at: [http://orc-dc.com/files/2010/3324/5179\\_sen\\_proposal\\_as\\_of\\_12\\_09\\_pdf\\_83167.pdf](http://orc-dc.com/files/2010/3324/5179_sen_proposal_as_of_12_09_pdf_83167.pdf).

## 7.3. Nevada

### *Nevada Issues Emergency Rule Requiring New Construction Training*

On December 29, Nevada Governor James Gibbons signed an emergency regulation, effective for 120 days from January 1, 2010, requiring all construction workers in the state to complete a 10-hour training course at least once every five years. Construction supervisors must take a 30-hour course at least once every five years. In addition, the new rules specify card renewal and recordkeeping processes, and the type of credentials trainers must have. Under the emergency regulation, a “construction worker” is defined as any person who “actually performs physical work at a construction site.”

Of concern to workers and employers is a requirement in Assembly Bill 148, the legislation that required Nevada OSHA to develop the regulations, which says that workers must provide proof that they have completed their training either by January 1, 2010, or within 15 days of being hired. Many are concerned that they will not be able to meet the deadlines.

Nevada OSHA is planning to issue a final regulation to replace the emergency one and is in the process of reviewing and considering the comments received during a December 22, 2009, public hearing. While the emergency regulations are now effective, Nevada OSHA does not plan to do any special sweeps or focused inspections to enforce the rule, but rather will check during programmed inspections or as a result of complaints or referrals.

The emergency regulation is available at [http://dirweb.state.nv.us/AB148\\_Emergency\\_Regs.pdf](http://dirweb.state.nv.us/AB148_Emergency_Regs.pdf). Nevada Assembly Bill No. 148 is available at [http://leg.state.nv.us/75th2009/Bills/AB/AB148\\_EN.pdf](http://leg.state.nv.us/75th2009/Bills/AB/AB148_EN.pdf).

#### 7.4. Texas

##### *Texas Senator Likely to Introduce Bill for State OSHA Plan*

Sen. Mario Gallegos (D-Houston) is expected to introduce a bill that would enable the state to operate its own occupational safety and health program in 2011. The senator probably will not introduce the bill in 2010 because the Texas legislature will meet only part-time this year.

Senator Gallegos introduced similar legislation in 2009, but the bill was not considered because it was regarded as too expensive in that it would have created a tax. Legislation was first introduced in 2007 in response to the explosion at the Texas City refinery operated by BP North America. That event killed 15 people and injured more than 100 others in July 2005, and led some officials in Texas to believe that the tragedy could have been prevented had the state had a stronger occupational safety and health program.

The Houston Ship Channel area is of particular concern. The Ship Channel, a 30-mile waterway between Galveston and Houston, is lined with petroleum refineries and chemical plants along the 15-mile stretch from La Porte to Houston, creating a high potential for explosions. The Chairman of the U.S. Chemical Safety Board, John S. Bresland, is seeking to establish an office in Houston to respond to the high frequency of events in the area.

OSHA it must approve any state plan as being at least as effective as the federal agency in providing safe and healthy workplaces before it can be put in place. Currently, twenty-seven states and territories have OSHA-approved state plans.

#### 7.5. Washington

##### *Construction Cranes Lack Certification*

According to a report in the *BNA Occupational Safety and Health Reporter*, most cranes in Washington State remain uncertified despite the state's new crane safety regulations, which took effect Jan. 1 requiring such certification. According to Washington Department of Labor & Industries staff, only 1,025 of an estimated 7,000 cranes used in construction in the state have been certified.

The state's rule (Cranes, Derricks, Hoists, Elevators, and Conveyors Chapter 296-155 - Part L) requires that both cranes and crane operators be certified and requires operators to have 2,000 hours of experience before being certified. The rule requires all cranes used in construction to be inspected annually. In addition, tower cranes must be inspected by the operator prior to assembly, following erection, and when they are extended. Only 40 of the 1,025 currently certified cranes are tower cranes. The National Commission for the Certification of Crane Operators says that approximately 2,000 crane operators in Washington State are certified.

According to a Dec. 22 press release, the Washington Department of Labor & Industries has deployed 50 inspectors to enforce the crane standards. Such inspections can take anywhere from a few hours to a week or more.

##### *House Clears Bill to Ban Bisphenol A in Containers*

By a 95-1 vote, the Washington House passed a bill on January 25 that would ban the manufacture and sale of sports water bottles and food and beverage containers used by young children that contain bisphenol A (BPA). BPA is a plastic hardener that is used to make a wide variety of products. The ban would take effect on July 1. Manufacturers, retailers, or distributors who knowingly distribute products containing BPA will be subject to a civil penalty of \$5,000 for the first offense and \$10,000 for subsequent offenses. Retailers who sell BPA-containing products unknowingly are not subject to penalties. More information on H.B. 1180 is available at <http://apps.leg.wa.gov/billinfo/summary.aspx?bill=1180>.

## 8. ORC PRACTICE ISSUES

### 8.1. Annual Performance Benchmarking Data Collection

ORC's annual performance benchmarking data collection instruments are now available for collecting 2009 illness and injury data and 2009 management system assessment data. Companies can enter data for their whole corporation or only for specific business units in the corporation. However, the system is defaulted to the assumption that you will be entering data representing the whole corporation. Once you have logged in, the data collection forms for the companies and business units that you have access to will appear. If the company or business units that you want to input data for are not shown or are shown incorrectly, please contact Joanne Linhard.

#### *Injury and Illness Data Entry*

Companies can enter data covering both U.S. and non-US employees. However, data for non-US employees must be entered for each country separately. When you login to the data collection site, click "add/edit" data and, then, "Add New". If you need more help, there are instructions available on the left side blue bar under "Instructions" "Getting Started" guides you through the process of data input. "Reading Reports" shows you how to read the draft tables that are available to you as an authorized data entry person while the data is being input by other companies. Note: these reports will change daily.

We ask members to input their 2009 injury and illness data by April 1, 2010, so that we can post a draft of the 2010 Report in early May. The draft and final annual reports of these data will be available only to companies that submit data.

In anticipation of OSHA's plan to reinstate the musculoskeletal disorder (MSD) check box on the OSHA 300 Log (effective in 2011), and in recognition of a developing ORC Occupational Illness Task Force effort to collect and analyze information on occupational illness that will begin with a focus on work-related hearing loss and MSDs, ORC has modified current data collection instrument (for the US only) to include this category of occupational illness. We encourage ORC members who have not been reporting the items from Section M of the OSHA log to begin to do so this year. If members have been collecting the MSD data (despite OSHA's not previously requiring it), we encourage you to input this data on the ORC data collection form this year.

If you have any questions about data entry, please contact Joanne Linhard.

#### *Management Systems Assessment Data Entry*

A management system is a set of interrelated elements, including processes, programs and policies that affect and influence the quality of an organization's Safety and Health performance. Leading indicators were developed by the ORC Alternative Metrics Task Force to monitor the quality and effectiveness of overall safety management system implementation. These metrics were formulated to measure a number of different things, including progress toward specific goals and objectives tied to a company's strategic plan or vision.

ORC's benchmarking instrument is based on a subset of five key management system elements identified by the Task Force. ORC chose to use the safety and health management system as a cornerstone of its benchmarking framework because safety and health professionals see the elements of the management system as essential to effective programs. The ultimate or "root" causes of incidents are often found within these elements.

The benchmarking instrument is used to tally the assessed maturity level of five key elements of your safety and health management system. Assessment ratings should be completed by a safety and health representative for the corporation or business unit with working knowledge of the safety and health management system and access to management system assessment data. Answers to the questions are to be based on information obtained from objective sources, which may include:

external EH&S audit and/or inspection reports and/or scores, internal EH&S audit and/or inspection reports and/or scores, either qualitative or quantitative; risk assessment records; or other documentation of safety and health management system status. At the end of each question (or group of related questions) you will be asked to indicate the source used to respond to the question.

Click the button next to the description that best describes the company or business unit that you are reporting. Once you complete the question, select from the drop down menu one of the “sources” to indicate the source of data used to respond to the question.

Answers should reflect a composite of information. If you are reporting at the corporate level, the description selected should represent a composite of information from individual business units, and/or sites. If you are entering information for a business unit, the data should reflect a composite of individual sites that comprise the business unit. You may calculate the composite by using a simple average based on the number of business units or sites represented; or you may want to adjust the average to give more weight to larger sites. One way to do this adjustment would be to weight the data according to the number of employees in each business unit or at each site.

Please note that to report data for a business unit, rather than for the whole corporation, you must select from the list of business units available for your company. If no list of business units is shown (the current list is based on those submitted for last year's injury and illness data collection), please contact Joanne Linhard, so that ORC can insert business units for your company.

To participate in this benchmarking, please go to <http://data.orc-dc.com/MgtSys>. Login using your username and password. (If you don't remember your username or password, please contact Jo Linhard.)

## 8.2. ORC Occupational Illness Task Force—Accomplishments and Next Steps

The ORC Occupational Illness Task Force is a member-initiated activity with 2 goals:

- Benchmarking on member company occupational illness experience
- Discussion of approaches to occupational illness surveillance, management, and ultimately—prevention of work-related illnesses.

The Task Force was first proposed at the August 2008 Corporate Health Directors Network meeting. An initial planning teleconference was held in October of 2008. More than a dozen participants from ten companies participated in this call to discuss project scope, goals, and processes. A general consensus emerged that Task Force members would:

- Share occupational illness data and data sources used
- Discuss occupational illnesses that may not meet the criteria for OSHA log recordability and processes for analyzing such data
- Discuss how occupational illness identification and management processes fit into a company's overall effort to identify and eliminate hazards
- Review past work done by NIOSH and others to improve occupational illness surveillance.

The discussion continued in conference calls held in January, March, July, and October of 2009. Topics of particular interest included: OSHA Occupational illness categories; skin diseases and disorders; respiratory conditions; occupational hearing loss; poisonings; and MSDs

Task Force members agreed that discussions would encompass occupational illness surveillance both in the US and globally, but initial data benchmarking would be on US experience only.

Key questions raised by Task Force members include:

- What are the barriers to finding cases of occupational illness?
- How will cases of occupational illness be defined for Task Force purposes?
- What have been the experiences of companies trying to capture cases of occupational illness?
- What data sources have companies used?
- How is the data used?

Highlights of Task Force activities include:

January 2009-- Dr. Theresa Schnorr, Director, NIOSH Division of Surveillance, Hazard Evaluations and Field Studies (DSHEFS) and Mr. John Sestito, consultant to NIOSH provided a presentation/dialogue on the status of NIOSH efforts on its Occupational Sentinel Health Events project.

March 2009--Dr. Myron Harrison, ExxonMobil, discussed work that the International Association of Oil and Gas Producers (OGP) has been doing in the area of occupational illness ascertainment and reporting. Dr. Jim Wesdock discussed the development of occupational disease metrics at Alcoa

July 2009—This meeting focused on a discussion of:

- How to move forward with an initial data collection/benchmarking project?
- Scope of initial data collection (hearing loss and MSDs?)
- Should prevalence data be collected instead of incidence data?
- How should MSDs be defined, for purposes of this project?
- Should work stress-related disorders be included in this initial data collection effort? If so, what case definitions should be used?

August 2009--Dr. Will Ponsonby discussed Shell's Occupational Illnesses Classification and Reporting. Task Force members discussed a path forward for Task Force and decided to continue to meet every few months to address both the data benchmarking effort and discussion of approaches to finding, managing and ultimately preventing cases of occupational illness.

October 2009—At this meeting, members discussed a refined a statement of the goal, scope and reference definitions and reviewed a data possible collection tool. A definition of stress-related disorders remains under discussion

In a parallel activity, ORC EHS Director Joanne Linhard used the new data collection form to re-analyze occupational illness data that ORC collected from 2005-2008 as part of our annual occupational injury and illness data collection effort.

The Task Force decided that any ORC occupational illness data collection effort should complement ORC's multi-year, on-going Injury and Illness Data Collection project. The collection of company occupational illness data presents some challenges. The current data collection effort collects the number of cases that meet the "check box" criteria on OSHA's Log. Few ORC members submit information for US employees. It should be noted that ORC has not requested occupational illness data for employees in non-US locations. In addition, current ORC reports do not enable a differentiation between rates and cases of occupational illness versus occupational injury.

Where Are We Now?

Task Force members want to reach out to members of all ORC OSH Groups to:

- Raise awareness of this Task Force effort
- Raise awareness of the value of better management of occupational illness
- Encourage reporting of company occupational illness data in the ORC annual survey (at a minimum for US).

A key question is, “Do we want to begin collecting data on MSDs as part of the ORC annual survey?” OSHA intends to restore MSD column to the Form 300. A NPRM was published on January 29, 2010, using the same definition as used in earlier OSHA requirements to report MSDs on the 300 log.

If you have questions about this activity or would like to participate in the ORC Occupational Illness Task Force, please contact [Ann Brockhaus](#), [Joanne Linhard](#), or Scott Madar. The next teleconference will be scheduled for a date in mid-March.

### 8.3. Upcoming ORC Webcasts

ORC Worldwide is delighted to announce three upcoming ORC Occupational Safety and Health Group webcasts sponsored by the ORC Occupational Safety and Health Lawyers Group.\* The webcasts are available to all ORC members free of charge and there is no limit on how many people per company may participate. Hopefully, the subject matter of the webcasts described below will be of interest and value across our ORC networks.

*The “New OSHA” – What Does it Mean and What Should You Do?*

Presented by: Stephen C. Yohay, Esq., with the law firm of Ogletree, Deakins.

Steve Yohay represents major employers nationwide in federal and state OSHA inspections and citation contests. He has particular expertise in addressing OSHA investigations, settlement negotiations and litigation following major industrial accidents, including civil and criminal matters. He also advises employers on developing safety and health programs, and conducting audits under privilege.

Topic Description: Steve will review the agenda and announced programs of the “new OSHA,” under the leadership of David Michaels, the recently confirmed Assistant Secretary of Labor for OSHA. He will discuss what OSHA is actually doing and planning to do, how these actions could impact ORC members, and how member companies should address these issues to best protect their companies.

Date & Time: February 18, 2010, 1:00 – 2:00 p.m. (EST)

*GINA’s Impact on the Workplace & Workplace Wellness Programs*

Presented by: Jackson Lewis’ Workplace Disability and Leave Management Practice Group. The law firm of Jackson Lewis is one of the largest and fastest-growing workplace law firms in the United States. The firm’s Workplace Disability and Leave Management Practice Group, headed up by Frances C. Alvarez, Esq., works closely with clients to: develop workplace safety programs; draft policies concerning leaves of absence and reasonable accommodation and related issues; and train managers on the interplay between federal and state laws.

Topic Description: The Genetic Information Nondiscrimination Act (GINA), which took effect on November 21, 2009, prohibits discrimination by health insurers and employers based on an individual’s genetic information. Specifically, the law prohibits the use of genetic information in making employment decisions, restricts the acquisition of genetic information by employers and others and imposes strict confidentiality requirements on employers. The Jackson Lewis team, in a two-part webcast, will, in the first part, review GINA and its impact on employers’ workplace wellness programs and safety and health programs and, in the second part, focus on the regulatory guidance for the employment provisions of GINA (Title II), which thus far is in a Notice of Proposed Rulemaking from the EEOC and which the agency is in the process of promulgating in final form.

Dates and Times:

GINA I (overall review) – March 11, 2010, 1:00 – 2:00 p.m. (EST)

GINA II (regulatory review) – April 8, 2010, 1:00 – 2:00 p.m. (EST)

To Register:

Please complete the form located at <http://orc-dc.com/?q=node/3399> and indicate which webcast(s) you plan to attend. REMINDER: If you log into the website the form will auto-complete your personal information thereby saving you time.

For more information about the webcasts, please contact [Susan.Nussbaum@orcww.com](mailto:Susan.Nussbaum@orcww.com)

\* The ORC Worldwide Occupational Safety and Health Lawyers Group is a network of in-house counsel who are responsible for managing the legal issues pertinent to occupational safety and health for their companies. For membership information, please contact [Susan.Nussbaum@orcww.com](mailto:Susan.Nussbaum@orcww.com).

8.4. ORC Fatality and Serious Injury Task Force

ORC member companies and other organizations that have experienced declining overall injury and illness case rates continue to experience fatal and serious incidents. As a means to advance knowledge about how and why such incidents occur, the **ORC Fatality and Serious Injury Task Force** was formed with the prevention of fatalities and serious injuries in the workplace as its primary objective.

Last October we organized a planning committee for the task force, to ensure that its activities would add value for participants. Members of the committee included Chuck Bush, Northrop Grumman; Cathy Catton, Ontario Power Generation; Ron Henderson, Tower Automotive; Robert Friedman, Siemens; David Jacobi, Kimberly-Clark; Kurt Krueger, GE; Glenn Murray, ExxonMobil; Jeff Shockey, Alcoa; and Jay Small, Otis (United Technologies). The committee developed a charter that outlines the principles and format for task force work. In addition, a draft of a definition of serious injury was prepared, based on input from committee members.

Both Items are available on our website and can be obtained by contacting ORC staff.

The ORC Worldwide Fatality and Serious Injury Task Force will meet on a quarterly basis in 2010, to facilitate consistent exchange of information and work on developing means to collect useful data. Three of the meetings will be virtual; one will be face-to-face in conjunction with the August 2010 quarterly OSH meeting. The Task Force meeting schedule will be as follows:

February 18, 2010 (Web cast) 1:30 pm – 4:30 pm EST

May 20, 2010 (Web cast) 1:30 pm – 4:30 pm EDT

August 4, 2010 (In-person, following the OSH meeting and reception) 6:30 pm  
- 9:00 pm EDT

November 18, 2010 (Web cast) 1:30 pm – 4:30 pm EDT

Prior to the February 18 meeting we will send an update on the fatality data project including a draft of a modified data collection instrument to those who have expressed interest in participating in the meeting.

Please contact Dee Woodhull, Steve Newell or Reepa Shroff if you would like to participate on the ORC Task Force. If so, please mark your calendars. Details on connecting to the web cast, telephone call-in, and agenda topics will be provided as the meeting dates approach. We look forward to working with you.

ORC and several of our members are also engaged in a ***joint research project on fatality and serious injury prevention with Behavioral Science Technologies (BST)***. The ORC/BST research involves:

1. Re-examining the Heinrich Pyramid;
2. Pooling data among a limited number of participating companies to identify precursors that lead to fatalities and serious injuries; and
3. Developing intervention principles, criteria, and methods to address causes and contributing factors

If you would like more information about the ORC/BST research, please contact Steve Newell or Frank White.

We are excited about both initiatives and hopeful that they will lead to new and improved prevention strategies.

**APPENDIX A: OSHA REGULATORY TABLE – JANUARY 2010**

REGULATION IDENTIFICATION NUMBER (RIN)	STANDARD	RULEMAKING STAGE & HISTORY	NEXT ACTION AND DATE
<b>GENERAL INDUSTRY - SAFETY</b>			
1218-AB80	Walking/Working Surfaces and Personal Fall Protection Systems (Slips, Trips and Fall Prevention) (29 CFR 1910, Subparts D & I)	NPRM published 04/10/90. OSHA drafting new NPRM. Rulemaking record reopened 05/02/03. Comment period ended 07/31/03 Regulatory Agenda indicated publication of second NPRM in 08/00/08.	Fall 2009 Regulatory Agenda says Second NPRM to be issued 3/00/10.
1218-AC09	Explosives - Amendment of rules (29 CFR 1910.109)	NPRM published 04/13/07 (72 FR 18791). Comment period and period for filing request for public hearing extended for 60 days (09/10/07) on 07/09/07 (72 FR 37155). Public comment period closed 07/17/07 (72 FR 39041) April 2007 Regulatory Agenda stated that OSHA plans to re-propose. Fall 2009 Regulatory Agenda says the agency plans to withdraw proposal 12/00/09. No action published to date.	Publication of notice of withdrawal to be determined.
1218-AC17	Emergency Response and Preparedness (29 CFR 1910)	Pre-rule stage. Request for information published 09/11/07 (72 FR 51735). Comment period closed December 2007. OSHA analyzing record. Fall 2009 Regulatory Agenda says agency will hold stakeholder meeting in June 2010.	Publication of notice of stakeholder meeting to be determined.
1218-AC22	Power Presses (29 CFR 1910.217); Revision and Update	ANPRM published 06/04/07 (42 FR 30729). Comment period ended 08/03/07. Fall 2009 Regulatory Agenda states that OSHA is planning to revise and update the standard on mechanical power presses, based on most recent version of the American National Standards Institute standard on Mechanical Power Presses, ANSI B11.1. Further, OSHA is considering expanding the standard to cover additional types of presses such as hydraulic and pneumatic power presses and to include the latest guarding techniques. Action classified as “Long Term.”	Next action to be determined.
1218-AC40	Tree Care Operations (29 CFR 1910)	ANPRM published 9/18//08 (73 FR 54118). Comment period ended 12/17/2008. OSHA analyzing comments until 3/00/10.	Next action to be determined.

REGULATION IDENTIFICATION NUMBER (RIN)	STANDARD	RULEMAKING STAGE & HISTORY	NEXT ACTION AND DATE
1218-AC41	Combustible Dust (29 CFR 1910, Subpart H)	ANPRM published 10/21/09 (74 FR 54333). Comment period end 01/19/10. Stakeholder meetings held 12/14/09 and scheduled for 2/17/10.	Additional stakeholder meetings to be announced.
<b>CONSTRUCTION – SAFETY</b>			
1218-AB47	Confined Spaces in Construction (Preventing Suffocation/ Explosions in Confined Spaces) (29 CFR 1926.36)	NPRM has been drafted. SBREFA Panel Report published 11/24/03. NPRM published 11/28/07 (72 FR 56352). Comment period extended to 02/28/08 (73 FR 3893). Public hearing held 07/22/08. Rulemaking record closed 10/23/08.	Analyze rulemaking record and comments by 03/00/10.
1218-AB67	Electric Power Transmission and Distribution; Electrical Protective Equipment (§§1926.950-.968, 1926.97, 1910.136, 1910.137 and 1910.269)	NPRM published 06/15/05 (70 FR 34821). Comment period open until 01/11/06. SBREFA Panel Report published 06/30/03. Public hearing held 03/06/06. Post-hearing comment period ended 07/14/06. Notice of limited reopening of rulemaking record published 10/22/08 (73 FR 62942). Rulemaking record closed 11/21/08. Limited reopening of the rulemaking record 09/14/09 (74 FR 46958). Public comment period ended hearing record closed 10/15/09. Public hearing scheduled for 10/28/09. Post hearing comment period ends 02.00/10.	Final rule to be published 09/00/10.
1218-AC01	Cranes and Derricks (29 CFR 1926, Subpart N)	Negotiated Rulemaking Committee charter filed 06/27/03 (68 FR 35172). Rulemaking negotiations completed 07/30/04. Pre-rule stage. SBREFA Panel review in process. SBREFA report forwarded to OSHA 10/17/06. NPRM published 10/09/08 (73 FR 59714). Comment period ends 12/08/08. Public hearing held 03/17/09. Post-hearing comment period closed 06/19/09. Record under review.	Final rule to be published 07/00/10.
<b>MARITIME – SAFETY</b>			
1218-AB50	General Working Conditions for Shipyard Employment (29 CFR 1915, Subpart F)	NPRM published 12/20/07 (72 FR 72451) Comment period closed 03/19/08. Announcement of public hearings 06/30/08 (73 FR 36923). Public hearings held 09/09/08 and 10/21/08.	Final rule to be published 09/00/10.

HEALTH STANDARDS			
1218-AB70	Occupational Exposure to Crystalline Silica (29 CFR 1910, 1926, 1915, 1917, 1918)	Completed SBREFA report 12/19/03. Complete Peer Review of Health Effects and Risk Assessment by 01/00/10. Publish NPRM.	Publish NPRM 07/00/10.
1218-AB76	Occupational Exposure to Beryllium (29 CFR 1910)	Pre-rule. Complete SBREFA report by 01/00/08.	Initiate Peer Review of Health Effects and Risk Assessment by 03/00/10.
1218-AB89	Hearing Conservation Program for Construction Workers (29 CFR 1926.52)	ANPRM published 08/06/02. Comment period ended 11/04/02. Stakeholder meetings took place 03/24/04 and 07/21/04.	Next action to be determined.
1218-AC23	Methylene Chloride (29 CFR 1910.1052)	Section 610 Review. Review began on 07/10/07. Comments due by 10/09/07.	End review 04/00/10.
1218-AC33	Occupational Exposure to Diacetyl and Food Flavorings Containing Diacetyl	Petition for emergency standard denied by agency 9/25/07. Initial stakeholder meeting held 10/17/07 (72 FR 54619). Advance notice of proposed rulemaking published 01/21/09 (74 FR 3938). ANPR withdrawn 03/17/09 (74 FR 11329). SBREFA panel process initiated 05/06/09. SBREFA panel process completed 07/02/09.	OSHA will initiate a Peer Review of its Health Effects and Risk Assessment in 10/00/10.
1218-AC34	Blood borne Pathogens (29 CFR 1910.1030)	Section 610 Review began 10/22/09.	A request for comments to be published 04/00/10.
1218-AC43	Occupational Exposure to Hexavalent Chromium (29 CFR 1910.1026(d)(4); 29 CFR 1915.1026(d)(4); 29 CFR 1926.1126(d)(4))	Revisions of Final Rule in response to Court remand on employee notification requirements.	NPRM and Direct Final Rule to be published 02/00/10.
1218-AC47	Airborne Infectious Diseases (29 CFR 1910)	Pre-rule.	Request for Information to be published 03/00/10.

OTHER STANDARDS & REGULATIONS			
1218-AC08	Updating OSHA Standards Based on National Consensus Standard (29 CFR 1910, 1915, 1917, 1918 and 1926)	On-going and long-term project. Second set NPRM published 05/17/07 (72 FR 27771). Comment period ended. 07/26/2007. NPRM/direct final rule published 12/14/07 (71 FR 71061). Direct final rule became effective 03/14/08 (73 FR 13753). Direct Final Rule (Acetylene) published 08/11/09 (74 FR 40442) Effective 11/09/09. Direct Final Rule (PPE) published 09/09/09; effective 10/09/09 (74 FR 46350).	None. According to Fall 2009 Regulatory Agenda, this action is now complete.
1218-AC19	Standards Improvement – Phase III	Pre-rule stage. ANPRM published 12/21/06 (71 FR 76623). Comment period ended 02/20/07. April 2007 Regulatory Agenda stated that OSHA would issue an NPRM in 1/00/08. 2009 Reg Agenda says NPRM will be published 02/00/10.	Publish NPRM 02/00/10.
1218-AC20	Hazard Communication – Amendments (29 CFR 1910.1200; 29 CFR 1915.1200; 29 CFR 1917.28; 29 CFR 1918.90; 29 CFR 1926.59; 29 CFR 1928.21).	Pre-rule stage. ANPRM published 09/12/06 (71 FR 53617). Comment period ended 11/13/06. Complete peer review of economic analysis 11/00/07. NPRM published 09/30/09 (74 FR 50279). Public hearings scheduled for 03/02/10 (74 FR :68756)	Public hearings begin 03/02/10.
1218-AC25	Procedures for Handling Discrimination Complaints Under Federal Employee Protection Statutes (29 CFR 24)	Final rule stage. Interim Final Rule and Request for Comments published 08/10/07 (72 FR 44956). Comment period ended 10/09/07.	Publish final rule 02/00/10.
1218-AC27	Nationally Recognized Testing Laboratories Fee Schedule - Revised Approach	Proposed rule stage. NPRM scheduled for 07/00/08. Now scheduled for 02/00/10.	Publish NPRM 02/00/10.
None	Nationally Recognized Testing Laboratories; Proposed Satellite Notification and Acceptance Program	Pre-rule. Request for comment published in FR on 04/21/08 (73 FR 21378) Comment period ends 05/21/08.	To be determined.
1218-AC29	Abbreviated Bitrex® Qualitative Fit-Testing Protocol (29 CFR 1910.134)	OSHA has been asked to consider adding a fit testing protocol that modifies the existing Bitrex® protocol. NPRM published 12/26/07 (72 FR 72971). Comment period ends 02/25/08. NPRM withdrawn 06/25/09.	None. Rulemaking withdrawn.
1218-AC32	Cooperative Agreements (29 CFR 1908)	Publication of NPRM was scheduled for 07/00/08. Now scheduled for 02/00/10.	Publish NPRM 02/00/10.

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1218-AC36	Procedures for Handling Employee Discrimination Complaints Under the National Transit Systems Security Act of 2007; Surface Transportation Assistance Act of 1982, as Amended; and Federal Rail Safety Act	Interim final rule scheduled for 03/00/10.	Publish interim final rule 03/00/10.
1218-AC39	Abbreviated PortaCount Quantitative Fit-Testing Protocol (29 CFR 1910.134)	NPRM published 01/21/09 (74 FR 3526). Comment period ended 03/23/09. NPRM withdrawn 01/27/10 (75 FR 4323).	None. Rulemaking withdrawn.
1218-AC45	Occupational Injury and Illness Recording and Reporting Requirements (29 CFR 1904)	Proposed Rule stage.	NPRM to be published 01/00/10.
1218-AC47	Procedures for the Handling of Retaliation Complaints Under the Employee Protection Provisions of the Consumer Product Safety Improvement Act (CPSIA) of 2008 (29 CFR 1983)	Final rule stage.	Interim final rule to be published 06/00/10.

Abbreviations used above:

ACCSH = Advisory Committee on Construction Safety and Health

FR = *Federal Register*

ANPRM = Advance Notice of Proposed Rulemaking

NPRM = Notice of Proposed Rulemaking

SBREFA = Small Business Regulatory and Enforcement Fairness Act

APPENDIX B:

ORC UPDATE ON OCCUPATIONAL SAFETY & HEALTH FEDERAL LEGISLATION  
INTRODUCED IN THE 111<sup>TH</sup> CONGRESS

UNITED STATES HOUSE OF REPRESENTATIVES

(Listed Chronologically by Date of Introduction)

(\*Action Level in Status Box Refers to Amount of Congressional Activity on the Legislation and Chance of Passage)

<b>Title</b>	<b>Bill No./ Sponsor</b>	<b>Summary</b>	<b>Status &amp; Action Level</b> Rated on 1-5 Scale: 1 = no/low action 5 = high action
Untitled	HR 242/Green (D-TX)	Would direct Secretary of Labor to revise regulations regarding recording and reporting of occupational injuries and illnesses to require site-controlling employers to keep a site log for all recordable injuries and illnesses occurring among all employees on the site, whether such employees are employed directly by the site-controlling employer or employed by contractors or temporary help or employee leasing services.	Introduced 1/7/09; referred to Committee on Education & Labor  <b>Action level = 3</b>
Worker Protection Against Combustible Dust Explosions and Fire Acts  HR 849/ Miller (D-CA)		Introduced 2/4/09; referred to Committee on Education and Labor Would require OSHA to issue a final interim standard within 90 days of enactment followed by a final standard within 18 months of enactment. The interim standard would have to include requirements for: hazard assessment; 2) written programs that include hazardous dust inspection, testing, housekeeping and control; 3) engineering, administrative and operating procedures for control of fugitive dust emission and ignition sources; 4) housekeeping controls for the accumulation of combustible dust; 5) employee participation in hazard assessment, development of and	<b>Action level = 3</b>

<b>Title</b>	<b>Bill No./ Sponsor</b>	<b>Summary</b>	<b>Status &amp; Action Level</b> Rated on 1-5 Scale: 1 = no/low action 5 = high action
		<p>compliance with a written program; and 6) written safety and health information and employee training.</p> <p>The final standard would have to additionally include requirements for:</p> <p>1) managing change of dust producing materials, technology, equipment staffing and procedures; 2) building design controls such as explosion venting, ducting and sprinkler; 3) explosion protection, including separation and segregation of the hazard; and 4) relevant provisions of the National Fire Protection Association combustible dust standards. The bill also requires revision of the definition of “physical hazard” under the Hazard Communication Standard to include “combustible dust.” ;</p>	
Hazardous Materials Cooperative Research Act	HR 1013/ Cummings (D-MD)	<p>Would authorize \$20 million over four years to fund research into hazardous materials transportation across agencies and transportation modes. Research must “consider issues not adequately addressed by existing federal or private sector research programs.</p>	<p>Introduced 2/12/09; referred to Subcommittee on Technology and Innovation.</p> <p><b>Action level = 2</b></p>
Protecting America’s Workers Act	HR 2067/Woolsey (D-CA)	<p>Would modify OSH Act to: expand scope of Act; extend broader protections to whistle blowers; expand greater rights to victims and their families; and increase civil and criminal penalties. See in depth analysis of bill on ORC Worldwide website.</p>	<p>Introduced 4/23/09; referred to Education and Labor Committee.</p> <p><b>Action level = 3.5</b></p>
Corporate Injury, Illness and Fatality Reporting Act	HR 2113/Hare (D-IL)	<p>Would require the Secretary of Labor to prescribe regulations requiring employers with more than one establishment and not fewer than 500 employees to report work-related deaths, injuries, and illnesses at least once a year to the Secretary of Labor.</p> <p>The regulations would require that the report, which must be “certified,” contain information for each establishment on: (1) the numbers and rates of work-related deaths, injuries and illnesses; (2) compliance</p>	<p>Introduced 4/27/09; referred to Education and Labor Committee.</p> <p><b>Action level = 3</b></p>

Title	Bill No./ Sponsor	Summary	Status & Action Level Rated on 1-5 Scale: 1 = no/low action 5 = high action
		<p>data including: (a) the inspection number of each inspection conducted by the Secretary; (b) the opening date of the inspection; and (c) the total number of violations and any citations issued as a result of such violations. Under the bill, the regulations would also require each large employer to identify on all records and reports: (1) each establishment, and (2) whether an establishment has been acquired, sold or transferred since the last report filed. Finally, the regulations would allow the Secretary to issue citations to any large employer for violations of the reporting requirements.</p>	
<p>Chemical Facility Antiterrorism Act of 2009</p>	<p>HR 2868/ Thompson (D-MS)</p>	<p>Would extend for one year the temporary chemical security rules that were promulgated by the Department of Homeland Security (DHS) in October, 2006. The bill would also establish permanent regulations for facilities handling chemicals that could be used in terrorist attacks, create new requirements for those facilities, and extend coverage of the regulations to wastewater treatment plants. Under a provision in the earlier law that mandated the chemical security regulations, DHS’s authority to regulate chemical facilities expires on October 4, 2009 and therefore, to maintain the program, new authorizing legislation is required. HR 2868 would extend the existing regulations for one year while at the same time enact a permanent regulatory program following, for the most part, the existing regulatory framework. Bill contains new provision for certain high-risk facilities to change to safer processes or chemicals, a concept known as “inherently safer technology.” Additionally, HR 2868 would extend coverage for the first time to wastewater treatment facilities.</p>	<p>Introduced 6/15/09; referred to Homeland Committee 6/15/09; reported out of Committee 7/13/09; referred to Judiciary Committee 7/13/09; reported out of Energy &amp; Commerce Committee, 10/23/09; discharged from Judiciary Committee, 10/23/09; placed on House Calendar, 10/23/09.</p> <p><b>Action level = 5</b></p>

<b>Title</b>	<b>Bill No./ Sponsor</b>	<b>Summary</b>	<b>Status &amp; Action Level</b> Rated on 1-5 Scale: 1 = no/low action 5 = high action
Wastewater Treatment Works Security Act of 2009	HR 2883/Johnson (D-TX)	Would put the Environmental Protection Agency (EPA) in charge of security at both wastewater and drinking water sectors.	Introduced 6/16/09; referred to Subcommittee on Water Resources and Environment; reported out of Energy & Commerce Committee, 10/23/09; placed on House Calendar, 10/23/09.  <b>Action level = 5</b>

UNITED STATES SENATE  
(Listed Chronologically by Date of Introduction)

(\*Action Level in Status Box Refers to Amount of Congressional Activity on the Legislation and Chance of Passage)

<b>Title</b>	<b>Bill No./ Sponsor</b>	<b>Summary</b>	<b>Status &amp; Action Level</b> Rated on 1-5 Scale: 1 = no/low action 5 = high action
Untitled	S. 1274/ Rockefeller (D-WV)	Would amend the maritime transportation security law to prevent the classification of information as security sensitive in order to conceal violation of a law, inefficiency, or administrative error; to prevent embarrassment to a person, organization, or agency; to restrain competition; and to prevent or delay the release of information that does not require protection in the interest of transportation security.	Introduced 6/16/09; referred to Committee on Commerce, Science and Transportation 6/16/09.  <b>Action level = 3</b>
Protecting America's Workers Act	S. 1580/ Kennedy (D-MA)	Would modify OSH Act to: expand scope of Act; extend broader protections to whistleblowers; expand greater rights to victims and their families; and increase civil and criminal penalties. See in-depth analysis of bill on ORC Worldwide website.	Introduced 8/5/09; referred to HELP Committee.  <b>Action level = 3</b>
Nurse Protection Act	S. 1788/Franken (D-MN)	Would require OSHA to issue standard mandating health care workers to use mechanical lift equipment when moving patients. Under the bill, hospitals would be required to purchase and use safe patient lift devices, implement safe patient handling and injury prevention plans, track musculoskeletal injuries under a data system, train staff to use the devices and on safe patient handling policies, and evaluate their efforts. The bill also includes whistleblower provisions for health care workers who report violations of any safe patient handling standard and establishes a \$200 million grant program to assist health care facilities to purchase equipment. OSHA would have to publish a final standard within two years of enactment.	Introduced 10/15/09; referred to HELP Committee.  <b>Action level = 2</b>

**APPENDIX C:  
NIOSH REGULATORY AGENDA**

Stage	Title	RIN*
Pre-rule	Amendments to Powered Air-Purifying Respirator Requirements for Approval of Respiratory Protection Devices <a href="#">☞</a>	0920-AA16
Proposed Rule	Amendments to Specifications for Medical Examinations of Underground Coal Miners <a href="#">☞</a>	0920-AA21
Proposed Rule	Total Inward Leakage Requirements for Respirators <a href="#">☞</a>	0920-AA33
Final Rule	Amendments to Quality Assurance and Administrative Provision for Approval of Respiratory Protective Devices <a href="#">☞</a>	0920-AA04
Final Rule	Amendments to Self-Contained Breathing Apparatus Requirements for Approval of Respiratory Protective Devices <a href="#">☞</a>	0920-AA10
Long-Term Actions	Amendments to Performance Requirements for Chemical, Biological, Radiological, and Nuclear (CBRN) Approval of Respiratory Protective Devices <a href="#">☞</a>	0920-AA17

\* RIN -- The Regulation Identifier Number is assigned by the Regulatory Information Service Center to identify each regulatory action listed in the Unified Agenda and The Regulatory Plan, as directed by Executive Order 12866 (section 4(b)).