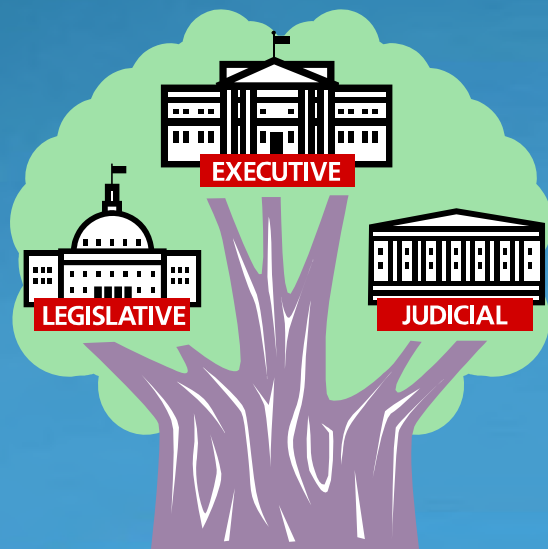


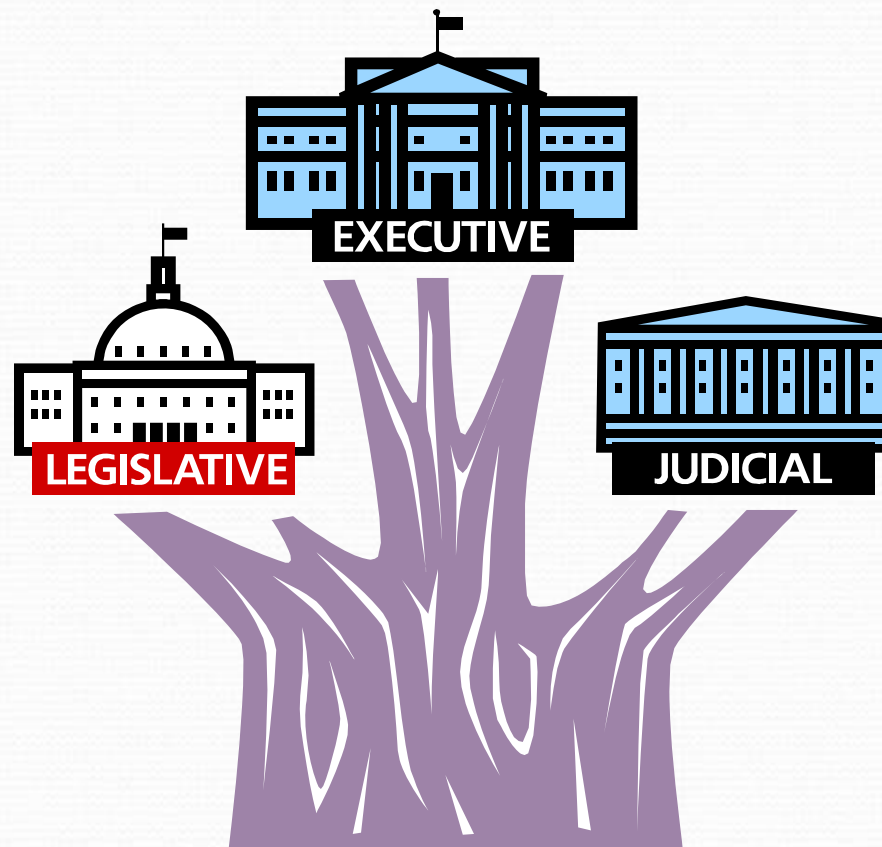


The Washington Scene



Joanne B. Linhard
September 2007

Legislation



Oversight Hearings!



Topics of Oversight

- MSHA enforcement
- Diacetyl exposure
- OSHA enforcement
- OSHA standard setting
- Independent contractor safety
- BP explosion in Texas City
- Asbestos ban
- Chemical Safety & Hazard Investigation Board authority
- Domestic violence in the workplace
- Whistleblower protections

Occupational Safety & Health Bills

House:

- HR 141 – Contractor Recordkeeping
- HR 1327 – Protective Equipment
- HR 2049 – OSHA Reform
- HR 2693 – Diacetyl Exposure
- HR 2768 & 2769 – Mine Safety Reform

Senate:

- S 732 – Asbestos Ban
- S 1244 – OSHA Reform

House Education & Labor Committee



**Rep. George Miller (D-CA)
Committee Chair**

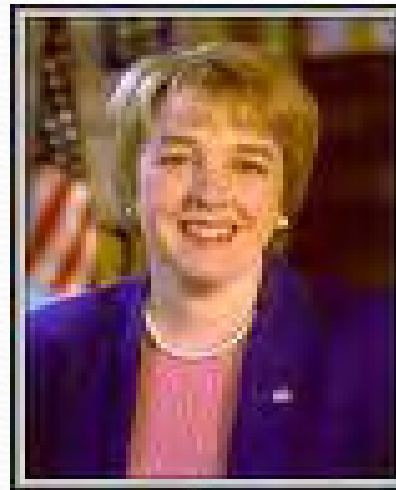


**Rep. Lynn Woolsey (D-CA)
Chair, Subcommittee on
Workforce Protections**

Senate HELP Committee



**Sen. Ted. Kennedy (D-MA)
Committee Chair**



**Sen. Patty Murray (D-WA)
Subcommittee Chair**

Protective Equipment for America's Workers Act (HR 1327)

- March 6 – Introduced by Rep. Roybal-Allard (D-CA)
- OSHA must complete its rulemaking on employer payment for PPE within 30 days of enactment
- No less protection / no further exceptions than those published in 1999 proposal
- Referred to Workforce Protections Subcommittee in June
- No further activity
- OSHA has promised to complete rulemaking on PPE payment issue by November pursuant to Court Order.

Contractor Recordkeeping (HR 141)

- Introduced by Rep. Gene Green (D-TX) – January 4
- Would direct Secretary of Labor to revise regs to require “site controlling” employers to keep a site log for all employees on site (employees, contractors, temporary, leased).
- Green represents the district (Texas City) where BP explosion occurred.
- Referred to Workforce Protections Subcommittee in May
- No hearings or markup have occurred to date

Protecting America's Workers Act

(HR 2049 & S. 1244)

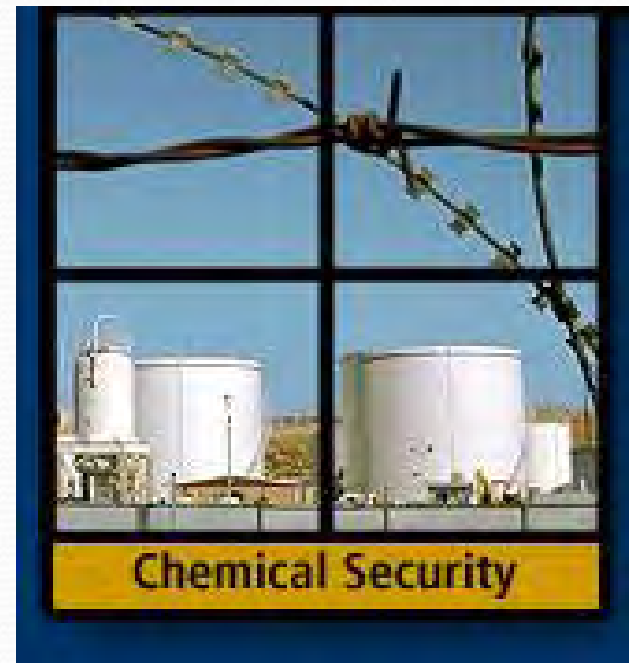
- Introduced by Woolsey in House (Kennedy in Senate)
- Expands coverage of the Act to federal & state employees
- Increases whistleblower protections
- Increases employer responsibilities & penalties
 - Posting of employee rights
 - Investigations after “serious incident”
 - Victims’ rights
 - No modification of citation without notice to employee
 - Increased civil penalties

OSHA Appropriations Riders

- Personal Protective Equipment
 - OSHA must issue final rule on PPE payment by November 2007
- Standards Timetable
 - Would require OSHA to submit quarterly reports to Congress with timetables/benchmarks for safety and health standards

DHS Appropriations: Chemical Security

- DHS interim regulation issued in April 2007
- Prohibited preemption by stricter state laws
- DHS appropriations bill passed by House and Senate – allows more expansive state laws



Ban Asbestos in America Act (S. 742)

- Sponsored by Sen. Murray
- Would amend Toxic Substances Control Act to:
 - Prohibit persons from importing, manufacturing, processing or distributing in commerce asbestos containing products, with certain exemptions;
 - Require disposal of asbestos-containing products within two years of enactment;
 - Require NIOSH studies;
 - Require EPA education efforts on asbestos danger;
 - Create a clearinghouse and research program at HHS.

Ban Asbestos in America Act (S. 742)

- Hearing before Environment and Public Works Committee on 6/12/07;
- Senator Murray personally motivated and in position to move bill through Senate

Chemical Safety Board -- Power Play?

Merritt testimony
before House Labor
Committee, 6/22/07 on
BP explosion -

- Lambasted OSHA
- Issued “urgent safety recommendations” to OSHA & API



Carolyn Merritt, Chairman, CSB

Chemical Safety Board -- Power Play?

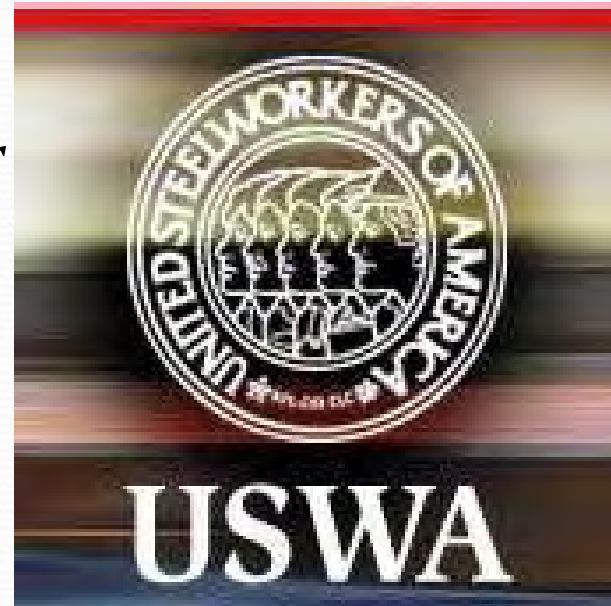
Merritt testimony before Senate Committee
on Environment & Public Works
Subcommittee, 7/10/07:

- Emphasis on CSB modeled after NTSB
- “Clarify” CSB authority to:
 - Preserve evidence
 - Coordinate testing
 - Access to OSHA & EPA records and personnel
- Requested more funds
- Discontinuation of EPA Inspector General on Board

Chemical Safety Board -- Power Play?

USWA also testified –

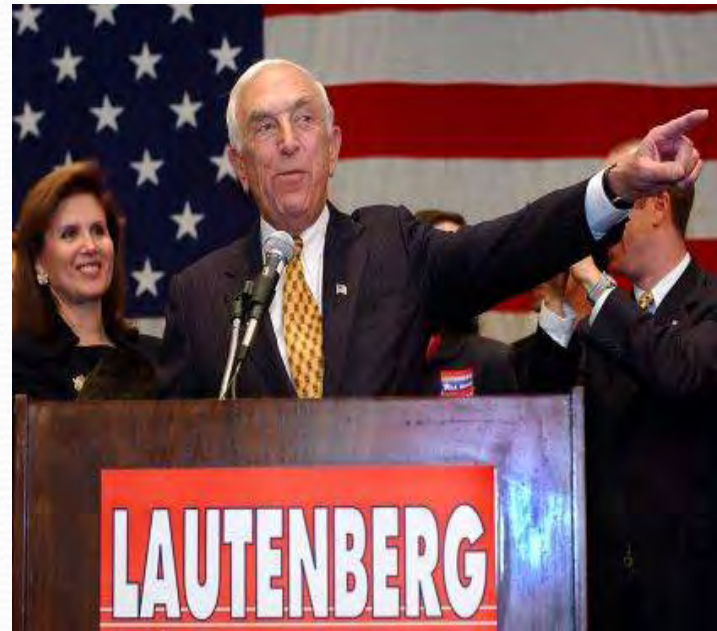
- In support of expanding CSB authority the union wants –
 - Partisan balance on CSB = Labor representative
 - CSB clear *lead* authority
 - Similar to NTSB
- “Past 5 years, CSB the only governmental voice calling for stronger federal standards and enforcement.”



Chemical Safety Board -- Power Play?

Sen. Frank Lautenberg (D-NJ) :

- Supports increase CSB funding;
- Will introduce legislation to:
 - Strengthen the CSB
 - Improve its investigating ability



Chemical Safety Board -- Power Play? - The Plot Thickens!

Mine Safety Legislation –

- Gives right to victim or representative to request independent CSB investigation
- At DOL's expense!



**Rep. George Miller (D-CA)
Committee Chair**

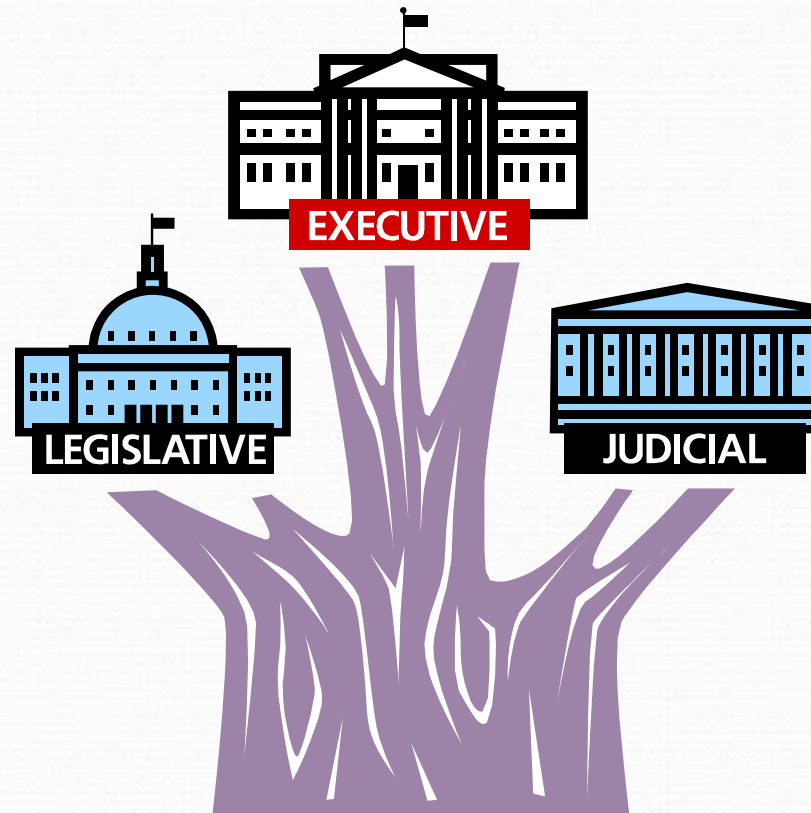
Putting all these pieces together...



An agency to rival OSHA, MSHA & EPA ?



Regulations, Standards & Enforcement



First-Aid Guidance

- Effective June 26, 2007 OSHA CPL 2-2.53 “Guidelines for First Aid Training Programs” (1991) was cancelled.
- New guidance document published May 2006: “Best Practices Guide: Fundamentals of a Workplace First-Aid Program”
- Primary components:
 - Identify & Assess risks
 - Design Program Specific to Worksite
 - Instruct all workers about Program, including what to do if co-worker is injured/ill
 - Evaluate and modify to keep current, including regular assessment of the first-aid training course

First-Aid Guidance

- Policies and program should be written
- Where do I get the document?
 - www.osha.gov
 - Select Publications link
 - Looks for title “Best Practices . . . In list of publications
 - AKA OSHA 3317

New OSHA/EPA Chemicals Database

- OSHA and EPA jointly developed and maintain this database
- Designed to be “a convenient reference for the occupational safety and health community”
- Database compiles information from several government agencies and organizations
- Covers more than 800 chemicals commonly found in the workplace

New OSHA/EPA Chemicals Database

- Available database reports include:
 - Physical Properties
 - Exposure Guidelines
 - NIOSH Pocket Guide
 - Emergency Response Information including DOT Emergency Response Guide.
 - An all-in-one report



U.S. Department of Labor
Occupational Safety & Health Administration

www.osha.gov



Search



[Advanced Search](#) | [A-Z Index](#)

OSHA/EPA Occupational Chemical Database

Welcome to the OSHA/EPA Occupational Chemical Database. OSHA and EPA jointly developed and maintain this database as a convenient reference for the occupational safety and health community. This database compiles information from several government agencies and organizations. Available database reports include: "Physical Properties," "Exposure Guidelines," "NIOSH Pocket Guide," and "Emergency Response Information," including the DOT Emergency Response Guide. In addition, an all-in-one report, "Full Report," is available.

SEARCH OPTIONS	CHEMICAL NAME / CAS NUMBER INDEX
<p>Chemical Name: <input type="text"/> <input type="radio"/> <i>Exact Match</i> (or name fragment)</p> <p>CAS Number: <input type="text"/> (e.g., 7782-50-5, or CAS# fragment, e.g., 7782-5)</p> <p><input type="button" value="Search"/></p> <hr/> <p>View All Chemicals with:</p> <ul style="list-style-type: none"><input type="radio"/> PELs<input type="radio"/> Carcinogen Designations<input type="radio"/> Skin Designations<input type="radio"/> IDLH Values <p><input type="button" value="View"/></p>	<p>Table of Contents by Chemical Name</p> <p>A B C D E F G H I J K L M N O P Q R S T U V W X Y Z</p> <p>[Note: Chemicals beginning with <i>pn</i>, <i>mn</i>, and <i>on</i> are listed alphabetically, e.g., <i>m</i>xylene is found under "M" rather than "X."]</p> <p>Table of Contents by <input type="button" value="CAS Number"/></p>

<http://www.osha.gov/web/dep/chemicaldata/#target>

Total number of records returned: 131

Chemical Name	CAS #	Formula	Synonyms	Reports Available				
CADMIUM METAL AND COMPOUNDS, as Cd	7440-43-9	Cd	Cadmium metal; Cadmium. Other synonyms vary depending upon the specific cadmium compound	Full Report	Physical Properties	Exposure Guidelines	NIOSH Pocket Guide	Emergency Response Information
CADMIUM OXIDE FUME, as Cd	1306-19-0	CdO/Cd	Cadmium monoxide; Cadmium oxide fume	Full Report	Physical Properties	Exposure Guidelines	NIOSH Pocket Guide	Emergency Response Information
CALCIUM ARSENATE	7778-44-1	AsH3O4.3/2Ca	Calcium salt (2:3) of arsenic acid; Cucumber dust; Tricalcium arsenate; Tricalcium ortho-arsenate	Full Report	Physical Properties	Exposure Guidelines	NIOSH Pocket Guide	Emergency Response Information
CALCIUM CARBONATE	1317-65-3	CaCO3	Calcium salt of carbonic acid; Limestone; Marble	Full Report	Physical Properties	Exposure Guidelines	NIOSH Pocket Guide	Emergency Response Information
CALCIUM CHROMATE, as Cr	13756-19-0	Cr	Synonyms of chromates (i.e., chromium(VI) compounds) such as zinc chromate vary depending upon the specific compound.	Full Report	Physical Properties	Exposure Guidelines	NIOSH Pocket Guide	Emergency Response Information
CALCIUM CYANAMIDE, WITH MORE THAN 0.1% CALCIUM CARBIDE	156-62-7	CH2N2.Ca	Calcium carbimide; Cyanamide; Lime nitrogen; Nitrogen lime	Full Report	Physical Properties	Exposure Guidelines	NIOSH Pocket Guide	Emergency Response Information
CALCIUM CYANIDE	592-01-8	C2CaN2		Full Report	Physical Properties	Exposure Guidelines	NIOSH Pocket Guide	Emergency Response Information
CALCIUM HYDROXIDE	1305-62-0	CaH2O2	Calcium hydrate; Caustic lime; Hydrated lime; Slaked lime	Full Report	Physical Properties	Exposure Guidelines	NIOSH Pocket Guide	Emergency Response Information
CALCIUM OXIDE	1305-78-8	CaO	Burned lime; Burnt lime; Lime; Pebble lime; Quick lime; Unslaked lime	Full Report	Physical Properties	Exposure Guidelines	NIOSH Pocket Guide	Emergency Response Information
Calcium salt of carbonic acid	1317-65-3	CaCO3	LIMESTONE	Full Report	Physical Properties	Exposure Guidelines	NIOSH Pocket Guide	Emergency Response Information

New OSHA CPL on HAZWOPER

- **Hazardous Waste Operations and Emergency Response**
- Instruction published August 27 updates policy/provides clarification on 12 issues:
 1. HAZWOPER's application to a terrorist incident response involving chemical, biological, radiological, or nuclear materials
 2. OSHA's relationship with Homeland Security Presidential Directive (HSPD-5), including discussion addressing the National Response Plan (NRP), the Worker Safety and Health Support Annex, and the National Incident Management System (NIMS).
 3. OSHA's National Emergency Management Plan (NEMP) and Regional Emergency Management Plans (REMPs)

New OSHA CPL on HAZWOPER

4. Definition of “First Receivers”
5. OSHA’s “Best Practices for Hospital-Based First Receivers of Victims from Mass Casualty Incidents Involving the Release of Hazardous Substances”
6. Shelter-in-Place
7. Damaged packages during shipping
8. Skilled Support Personnel
9. Emergency responder training levels
10. Medical Surveillance for emergency responders
11. Computer-based training
12. Updates to citation guidelines

Emergency Response and Preparedness

- OSHA published Request for Information on September 11, 2007
- OSHA asks for information and comment from the public on what action -- if any -- the Agency should take to further address emergency response and preparedness at both common and large scale emergencies:
 - Fires
 - Emergency medical
 - Other rescue situations
 - Natural disasters
 - Intentional disasters

Emergency Response and Preparedness

- Emergency Response and Preparedness is currently regulated by OSHA under a number of standards:
 - Hazardous Waste Operations and Emergency Response
 - Personal protective equipment (general requirements)
 - Respiratory protection standard
 - Permit-required confined space standard
 - Fire brigade standard
 - Bloodborne pathogens standard

Emergency Response and Preparedness

- Some of these standards were promulgated decades ago
- None was designed as a comprehensive emergency response standard
- They do not address the full range of hazards or concerns currently facing emergency responders
- Do not they reflect major changes in performance specifications for protective clothing and equipment
- Current OSHA standards also do not reflect all the major improvements in safety and health practices that have already been accepted by the emergency response community and incorporated into industry consensus standards.

Emergency Response and Preparedness

- Areas of Interest:
 - Scope of Emergency Response
 - Personal Protective Equipment
 - Training and qualifications for required tasks
 - Medical Evaluation/Health Monitoring
 - Safety
 - Other –
 - Costs
 - Conflicts
- Comments requested by December 10, 2007

DHS Chemical Facility Anti-Terrorism Standards

- Interim final rules issued April 9, 2007
- Effective immediately except for Appendix A
- Proposed Appendix A listed 344 “chemicals of interest” with Screening Threshold Quantities (STQ)
- 30 day comment period (ended May 9)
- Within 60 days following publication of final Appendix A, covered facilities must submit Top Screen portion of the CSAT (Chemical Security Assessment Tool)

DHS CFATS: What's the Problem?

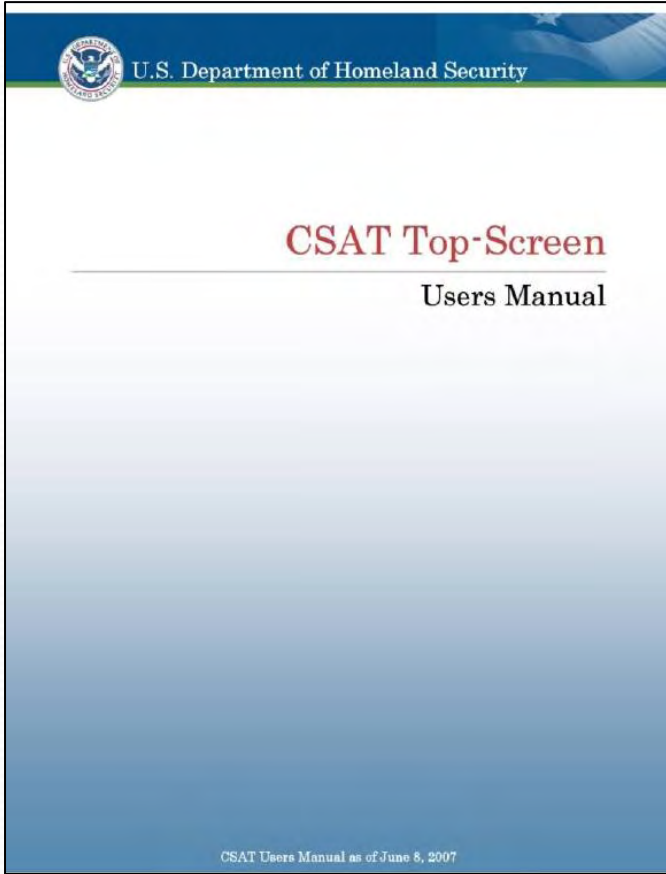
- 105 of 344 substances listed a STQ of “any quantity”
 - Potential to cover large number of facilities
- No guidance regarding mixtures/how to calculate quantities
- Interim rule did not provide information on Top Screen questions
 - Entering the Top Screen site to gather info could not be done without entering a facility registration

DHS CFATS: What's Happened? Where is Appendix A?

- Appendix A not yet published
- Large outcry from chemical users, such as college laboratories, especially over the “any amount STQs”
 - Not originally thought to be the types of facilities DHS would cover
- National Propane Gas Association and coalition of agriculture groups state that farms and agriculture will be “disproportionately affected” by 7500 lb STQ for propane
 - Attempted (but failed) to get relief through DHS appropriations
 - Sen. Grassley (R-IA) says he will introduce a bill seeking relief from DHS rules for propane and farmers when he returns from August recess

DHS CFATS: Moving Forward

- In early August DHS posted a number of new items on its website
- Items of particular interest:
 - CSAT Top-Screen User Manual (66 pages)
 - CSAT Top-Screen Questions (80 pages)
 - “How Appendix A: Chemicals of Interest Was Developed”
- Chemical Safety Assessment Tool (CSAT) tool launched in June/July
 - NOTE: Only those who receive a letter from DHS are obligated to register or input Top Screen data at this time



Get Familiar with CSAT Process & Rules

For Example: CSAT User Access Roles -

1. The **Preparer** is authorized to enter the data into the CSAT system, but not submit the data to DHS. This person is a qualified individual familiar with the facility in question.
2. The **Submitter** is designated by the company to submit the information collected in the CSAT system to DHS.
3. The **Authorizer** is the individual that provides assurance to DHS that the submitter and preparer are authorized to complete the CSAT information.
4. The **Reviewer** (optional role), is allowed to review information but not enter, edit or submit the information. This is a read-only role.

Update of PPE Standards – Public Hearing

- NPRM published May 17, 2007 – Part of long-term effort to update OSHA standards
 - Bring into line with national consensus standards
- Proposal: Replace references to specific consensus standards with requirement to have PPE “constructed in accordance with good design standards”
 - Guidance on what is GSD to be provided in Appendix
- August 31, 2007 - OSHA announced plan to hold public hearing in DC on December 4
- Notices of intention to appear filed by October 1

PPE Payment Rule

- AFL-CIO and United Food and Commercial Workers filed suit in January 2007 in U.S. Court of Appeals for the District of Columbia Circuit to compel OSHA final rule:
 - OSHA's failure to issue the rule eight years after it was formally proposed in 1999 constitutes "an egregious example of unreasonable delay"
- OSHA (March 2007) says it will issue final rule in November
- Union said it would not oppose if the following conditions are met:
 - Secretary will issue a final rule on employer payment for PPE in November, absent unforeseen circumstances;
 - Secretary will promptly notify the court and petitioners if it appears she will be unable to meet the November date; and
 - Labor groups retain the right to promptly seek judicial remedies if they learn that publication of the final rule may be delayed beyond November 2007.

Noise

- January 2007 - International Safety Equipment Association petitioned OSHA to reduce the PEL to 85 dBA TWA because research shows that workers exposed at 85-90 face significant risk (26%) of hearing impairment (even those compliant with HCP)
- Also asked for reduction in the time/intensity relationship (aka exchange rate) from 5 to 3dBA
- AIHA joined in the petition in March 2007
- August 17, ISEA received letter from OSHA saying that it will not take action – too busy with other higher priority regulatory actions

OSHA Recordkeeping

- We may be on the verge of another “perfect storm”
- Focus on quality of OSHA data seems to be increasing
- Congressional testimony questions quality/accuracy
- Independent studies question rate decreases
- OSHA conducting more detailed record checks
- Abbreviated version of key recordkeeping concepts that may help members achieve/ensure compliance

Globally Harmonized System of Classification and Labeling of Chemicals (GHS)

- What it is:
 - An internationally accepted common and coherent approach to:
 - Defining and classifying chemical hazards
 - Communicating hazard information on labels and safety data sheets
 - Target audiences include workers, consumers, transport workers, and emergency responders
 - It is intended to provide the underlying infrastructure for establishment of national, comprehensive chemical safety programs
 - The UN Goal: Adoption by 2008

What the GHS Isn't . . .

- A model regulation or a standard that can simply be adopted
- It has criteria or provisions and explanatory text
- Countries and authorities will choose those parts of the system that apply to their sphere of regulation and prepare implementing text consistent with their own requirements

GHS Goals

- To improve public health and environmental protection and promote safer transport, handling and use of chemicals
- To facilitate international trade in chemical products by promoting greater consistency in regulatory requirements
- To reduce need for testing and evaluation
- To assist countries in developing strategies for sound management of chemicals

Expected Benefits of GHS Adoption

- Greater consistency in information provided to people exposed to chemicals
 - Increased health and environmental protection by providing clear, consistent label messages to users of chemicals, workers and the public
 - Signal words, pictograms, and hazard statements will have the same meaning in all settings and across sectors and internationally
- Greater consistency in regulatory requirements companies must meet at home and abroad
 - The GHS will reduce market barriers and facilitate compliance by eliminating need to learn and comply with multiple hazard classification and communication systems
 - Companies will only have to classify once for all authorities that implement the GHS, including other domestic agencies

Expected Benefits of GHS Adoption

- Lower costs associated with hazard classification, labels and SDSs
- Improved comprehensibility and accuracy of SDSs and labels
- Reduction in risk of injury or loss of property from mishandling of chemicals

Current System: Issues of Concern

- Multiple labels and data sheets are needed for the same product to meet differing requirements globally
- Inconsistencies in definitions of hazards can create confusion
- “Uneven playing field” is created by differences in information included on labels and SDSs
- Inconsistent label and SDS formats can make critical hazard information hard to find

US Agencies Affected by GHS

- Environmental Protection Agency (EPA)
 - Pesticides Program
- Department of Transportation (DOT)
 - Hazardous Materials Regulations
- Consumer Product Safety Commission (CPSC)
- Occupational Safety and Health Administration (OSHA)

GHS Impact Will Be Significant

- Amending the OSHA Hazard Communication Standard to be consistent with the GHS will affect all US companies that manufacture, import or use chemicals
- HCS impacts:
 - 7 million workplaces
 - 100 million employees
 - 945,000 hazardous chemical products
- Promises to improve Hazard Communication
- Removes a technical barrier to trade

OSHA Rulemaking Status

- OSHA has begun the process of adopting GHS:
 - Advance Notice of Proposed Rulemaking (ANPR) published in the *Federal Register* -- September 12, 2006
 - Comments due November 13, 2006
 - Notice of Proposed Rulemaking expected by end of 2007
 - Foulke says on track for completion in 2008
- OSHA expects to maintain a scope of coverage similar to current requirements when adopting the GHS

Stakeholder Feedback to OSHA

Main concerns:

- Allow sufficient time to compliance
- Harmonize classification criteria, and label and data sheet elements, while maintaining flexibility in in-plant labeling systems
- Minimize costs

Adopt GHS but Minimize Cost

- Modify only those sections of the OSHA HCS that must be changed to be consistent with GHS
 - Definitions of hazards
 - Required order of information on Safety Data Sheets (SDSs)
 - Required “core information” for labels
- Maintain the scope, application, and interpretations of the current standard
- Maintain flexibility in in-plant labeling systems
- Provide resources for training workers on changes
- Allow adequate time to comply with new rules

Court Vacates Some Hours of Service Rules

- July 24 – US Court of Appeals for the DC Circuit vacated two provisions of August 2005 Hours of Service regulations:
 - Drivers allowed to drive 11 hours in a single work period
 - Re-start of weekly on-duty clock after 34 consecutive hours off-duty
- Said FMCSA violated APA by:
 - Failing to provide explanations for certain critical elements of its methodology used to justify longer driving hours
 - Failing to provide stakeholders w/ opportunity to comment

Court Vacates Some Hours of Service Rules

- Changes to become effective on September 14 unless Court rules otherwise
- In August, ATA asked FMCSA to issue interim final rule to continue the current provisions while it addresses the Court ruling
- September 5 - ATA asked Court to stay effective date of its decision for eight months to give FMCSA time to make changes in the rule
- The filing of the motion acts as a temporary stay until it is acted upon by the Court. Under ordinary procedures, the Court will receive further filings on the motion for approximately 14-days and will issue a ruling a few weeks after that time (i.e., by sometime in late Sept. or early Oct.)
- Until then, the 11-hour and 34-hour provisions remain in place. Also, the FMCSA will have until the additional time to consider and possibly act upon the IFR petition.

Hexavalent Chromium Status

- Public Citizen and Edison Electric Institute petitions are the only two challenges remaining --both seek vacation of the standard
- Building and Construction Trades Department (AFL-CIO); Laborers' International Union; International Brotherhood of Teamsters; National Association of Manufacturers, Specialty Steel Industry of North America, and the Surface Finishing Industry Council have settled their claims and withdrew their petitions in May.
- NAM and other industry groups will file as interveners to attempt to prevent Public Citizen' effort to lower the standard further.

Hexavalent Chromium Interpretation

- OSHA interpretation letter part of settlement
- Letter issued May 31, 2007 covers:
 - Welding on stainless steel in confined spaces
 - **Use of engineering and work practice controls to extent feasible and supplement with respirators to reach PEL is OK**
 - Housekeeping provisions when no exposures above PEL would be reached
 - **Do not apply where the employer has data demonstrating that PEL will not be reached or exceeded under any expected conditions of use**
 - Waste disposal for large and cumbersome materials
 - **If disposal in impermeable containers is infeasible, employers don't have to, but employers' decisions are subject to OSHA review.**

Questions??

Joanne B. Linhard
Senior Consultant
ORC Worldwide
1800 K Street, NW
Washington, DC 20006
202-293-2980
Joanne.Linhard@ORCWW.com