OSHA'S CONTEMPLATED SAFETY AND HEALTH PROGRAM STANDARD

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BEFORE THE

COMMITTEE ON SMALL BUSINESS
HOUSE OF REPRESENTATIVES

ONE HUNDRED FIFTH CONGRESS

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Thursday, June 26, 1997

HOUSE OF REPRESENTATIVES,
COMMITTEE ON SMALL BUSINESS,
Washington, DC.

The Committee met, pursuant to notice, at 10:05 a.m., in room 2359, Rayburn House Office Building, Hon. Jim Talent [Chairman of the Committee] presiding.

Chairman TALENT. I am going to go ahead and convene the hearing, since the two really important people are present.

Mr. LAFALCE. You and your counsel?

Chairman TALENT. Yes, and by that we mean the Majority and Minority counsel, they are here. They are what is important.

Today's hearing is about a proposed OSHA standard requiring federally dictated health and safety programs. We will be looking specifically at the working draft of that proposal. Judging by the working draft, the proposed standard would place heavy new burdens of a procedural recordkeeping nature on every small business in the country, including those which have no record of safety problems and which are otherwise in compliance with OSHA's substantive standards.

Moreover, this new burden would be different in kind from OSHA's typical standards in two ways: First, OSHA typically regulates safety, not management. OSHA usually requires that employers maintain safe conditions in the workplace, but doesn't regulate how they run the business, provided that they achieve the safe conditions.

For example, my brother is a tavern owner in St. Louis, a fact of which I am very proud. There very well may be regulations requiring that he store beer kegs at a safe pressure level, but to this point OSHA hasn't told him what management technique he must use in getting the kegs to that level.

Second, OSHA typically requires the elimination of hazards which can be objectively identified. This new regulation would require that small employers maintain safety programs, the elements of which are almost totally subjective in nature. Under the working draft, for example, small-business people must systematically manage safety with programs that are appropriate; must provide supervisor training commensurate with their responsibility; must allow each employee meaningful participation in the program through ongoing and effective communication and so on.

When I read the working draft, I wasn't certain whether I was reading a proposed law or a draft script for the Oprah Winfrey Show.

The working draft offers no definition of what these terms mean, nor could it, because the terms are conceptual and relative, rather than objective in nature. Unless the working draft is fundamentally modified during the process of rulemaking, it will result in a standard with which no employer in the country can comply, because it will not be a standard at all, but a series of vague, if well-intended, admonitions carrying the penalties, but not the clarity, of real law.

I hope the Agency doesn't respond to these concerns by promising to be flexible in enforcing this new standard and assuring us its inspectors will be adaptable in applying its vague language to small employers. Far from being a virtue of the new rule, the vesting of arbitrary power in the Agency and its inspectors, the power to make and redefine the law while enforcing it, is a serious vice. The American people are entitled to know what the law requires them to do before the law is enforced against them. They should not have to depend for their rights on the good faith, the good will or the good mood of any government official on any given day.

I have many other concerns with the proposed draft, but will withhold discussing them until after the witnesses have testified. I want to defer as always now to my colleague, the distinguished Ranking Member and former Chairman of this Committee and my good friend from upstate New York for any comments he may wish to make as an opening statement.

[Mr. Talent's statement may be found in the appendix.]

[The information may be found in the appendix.]

Mr. LAFALCE. Thank you very much, Mr. Chairman, most especially for holding this hearing about OSHA's draft safety and health program standard.

This is appropriately a subject of concern to our Committee because any action in this area will most definitely have an impact on the small business community. One question for us to look into is whether that impact will be good or otherwise, and to offer our suggestions to help ensure that small business' legitimate concerns are dealt with as the process moves forward.

I am pleased to learn that OSHA has been working with the Small Business Administration and its Office of Advocacy, as well as countless trade associations which represent the small business community, in developing and refining its proposed program standard. This is the way the regulatory process ought to work, and I commend Acting Assistant Secretary Watchman and his colleagues at OSHA for those efforts.

Mr. Chairman, the people of the United States want to know that their workplaces are as safe as reasonably possible. Employers and employees alike have a definite interest in preventing workplace illnesses and workplace injuries to the extent it is possible. Doing so will mean happier, healthier workers, lower costs for our products, lower insurance rates, a stronger economy. As always, the devil will be in the details.

So I will take no longer today except to join you in thanking the witnesses for coming to share their knowledge and opinions with us on these important matters, and to thank you again, Mr. Chair-

man, for holding this hearing at an early enough point in the process for our efforts to make a difference as OSHA moves forward with this program standard.

Chairman TALENT. I thank the gentleman for his comments and for his long-standing commitment to worker safety, which I know has been one of his priorities. Nothing would make me happier, as I know it would make him happier, than if we found some angels in the details as well as devils in the details.

[The information may be found in the appendix.]

Chairman TALENT. Our first witness today is the Honorable Greg Watchman, the Acting Assistant Secretary for Occupational Safety and Health. Before I ask Mr. Watchman to proceed, I want to thank him for his willingness to be available both for this hearing and also making himself available to me for personal discussions about this and other topics. I really am very pleased at the time he has made available to me, and I am grateful for that.

Having said that, I wanted to comment on the procedure today. I have discussed this briefly with my friend yesterday, but I think it is important now to air this with the Committee as a whole. The Committee may recall that I have said on several occasions that when we have executive branch witnesses and small business people or citizens, that I typically would want the executive branch witnesses to testify after the citizens do, not that they are not citizens, but after the nongovernment witnesses, and there are three reasons for that. The first two are practical. One of them is that I know that many of the Members wanted to question the executive branch officials, and I have been at too many hearings when once that questioning is over, the Members who have other things to do leave, and they are not available for the nongovernment witnesses, some of whom have come from halfway across the country. Also, I think it is important that the government witnesses hear the concerns that are raised and then be available to answer them. That is a very practical concern.

Then the third reason is not practical, it is just that I feel strongly that we work for all of them, and we should be at their service rather than the other way around. But I have rather consistently received letters and communications from the protocol people in the various executive branch agencies who are concerned that testifying second would somehow affect the — what is the right word — the "majesty" of the offices at stake, and so they have been reluctant to do it.

Now, to Mr. Watchman's credit, and to the credit of many of the actual officials, they don't seem to care personally. They would just as soon go second, but they feel like they have to comply with the policies of their Department.

I am going to have entered into the record without objection a letter to that effect that we received from the Department of Labor.

Chairman TALENT. I welcome again Mr. Watchman, and thank him for his flexibility. He will testify on the first panel, but he has agreed to withhold answering questions until the second panel is finished so we can question everybody at the same time. That deals with the substantive concerns and that housekeeping matter, so I will now ask Mr. Watchman to go ahead with his statement.

STATEMENT OF GREG WATCHMAN, ACTING ASSISTANT SECRETARY FOR OCCUPATIONAL SAFETY AND HEALTH, U.S. DEPARTMENT OF LABOR

Mr. WATCHMAN. Thank you, Mr. Chairman. Thank you for the opportunity this morning to tell you about our progress on developing a safety and health program proposed standard. This morning I would like to answer four questions about this rulemaking.

First, why do American workers need a safety and health program standard? Second, what is OSHA considering? Third, what is the rulemaking process we are using to develop the standard? Fourth, what is OSHA doing to address the needs of small employers?

The first question, why do American workers need a safety and health program rule? We have made a lot of progress in the last 25 years in this country in reducing occupational fatality rates, but the reality is the job is far from done. Every year tens of thousands of workers die in safety accidents or from occupational disease, and millions more are injured. These incidents cost our society over $100 billion each year. The good news is that most of these incidents are preventable, but OSHA lacks the resources to get to these workplaces to protect workers. We have only 2,000 Federal and State inspectors across the country to protect over 100 million workers, so we need employers and employees to play a much larger role in protecting workers through ongoing systematic approaches to safety and health.

Safety and health programs represent exactly this kind of approach. We have substantial experience with safety and health programs. Many States already require them. Most collective bargaining agreements require them, and many employers somewhere established them on their own.

Ultimately we have learned that safety and health programs help to reduce injury and illness rates. They can save between $4 and $6 for every dollar invested in a safety and health program, and they also in many cases have been shown to improve morale and productivity in workplaces across this country.

Let me give you several examples of the success of these programs. In Colorado, over 500 employers established a safety and health program under an insurance industry program. Accidents declined by 23 percent, accident costs declined by 62 percent, and ultimately the employers that participated in this program saved $23 million just in the first year of the program.

Second, in Massachusetts, employers with safety and health programs in a study had their losses decline by 17 percent, while those without a safety and health program saw their losses increase by 15 percent.

Our voluntary protection programs, which recognize excellence in safety and health, are another piece of evidence. Participants in these programs have comprehensive safety and health programs, and they have injury rates that are 35 to 90 percent below their industry averages.

Last, in Maine, we had a cooperative compliance program called Maine 2000. By establishing comprehensive safety and health programs, employers were able to identify 14 times more hazards than OSHA could have identified through inspections alone.

We have seen many examples of what happens when employers use safety and health programs and when they do not. Boise Cascade had a program, and they were able to reduce their workers' compensation costs from $1.3 million to just $37,000 a year. In contrast, in North Carolina, Imperial Foods had no safety program, no means of identifying and fixing fire hazards. There was a fire there; 25 workers died. Subsequently, North Carolina enacted its own safety and health program requirement.

Question number 2: What is OSHA considering? We are considering development of a rule consistent with five new OSHA themes following five principles with five core elements. The new OSHA themes are to develop a rule that is consistent with common sense, that involves stakeholders in the process, that is written in plain language, that shifts the Agency's focus from technical violations to a systematic approach, and that treats responsible employers differently from less responsible employers.

The five principles we are following are to include the core elements necessary for an effective standard, to make the standard as flexible and performance-based as possible, to focus on effectiveness rather than documentation, to address the needs of small businesses, and to provide extensive compliance assistance.

The five core elements include management commitment, employee involvement, finding and fixing hazards, employee training, and evaluation of the program. There is very substantial agreement within the safety and health community about these core elements.

Question 3: What is the rulemaking process we are using? We began work in 1993. We started stakeholder meetings in October 1995. We held a second series in June 1996, and a third series last December. We are now working on a proposed standard, and our hope is to publish a proposed standard by the end of this calendar year.

Obviously the proposal will only then trigger the formal rulemaking process, which itself is very thorough and allows for lengthy hearings, comment periods and cross examination of witnesses.

Along the way we have had many, many other informal meetings. We have interacted and met with hundreds of stakeholders, including many employers, employer representatives, worker representatives, and safety and health professionals. We have also taken many significant steps in the working draft and in our subsequent efforts to address the concerns that employers have raised, as well as the concerns that workers have raised.

The last question: What is OSHA doing to address small-business concerns? First we are attempting to identify those concerns by including small employers and their representatives at our stakeholder meetings; by holding separate meetings, which we began in Cleveland in 1995 and intend to continue next month in Atlanta, Philadelphia, Columbus, and Portland, Oregon; also by conducting a regular SBREFA regulatory review panel process; and last by working closely with SBA to address small-employer concerns.

All of these are steps we are taking prior to the issuance of a proposal, and we will have a lengthy process, as I said, after that dur-

ing which small employers can make their views known before a final rule ever takes effect.

Second, in addition to identifying their concerns, we are responding to those concerns. We have deleted many requirements and have stripped the standard down to core elements. We have based it on flexible language and plain language. We have added long phase-in periods and made a commitment to compliance assistance. We have dropped a written program requirement, minimized the documentation requirement, and exempted the smallest employers from that requirement.

Last, we have addressed the enforcement issue up front and have adopted a policy under which no penalty would be issued for a violation of the standard unless there was also a pattern of serious hazards or violations.

In conclusion, Mr. Chairman, first, American workers need a safety and health program standard. Second, OSHA is considering a common-sense approach that has a long track record of success. Third, OSHA has listened and will continue to listen to stakeholders regarding the development of this rule. Last, OSHA has taken steps and will continue to address small employer concerns in the future.

Thank you.

Chairman TALENT. I thank you. Thank you also for summarizing your testimony, Mr. Watchman.

[Mr. Watchman's statement may be found in the appendix.]

Chairman TALENT. We will now go to the second panel. Mr. Watchman, you can either stay or retire for the time being and then come on back for questions. So I ask the second panel to come forward.

Our next witnesses, I do want to ask the witnesses, I know you have prepared statements, which will all be admitted into the record without objection. In the case of statements that are fairly long, if you could summarize the high points, that would be helpful to the Committee. Often the most fruitful parts of these hearings are when the Members get to ask questions about the areas of concern to them. I am not trying to put a damper on anybody, but if you could keep that in mind, that would be good.

Our first witness is Ms. Melissa Bailey, Esquire, of McDermott, Will and Emery, of Washington, DC, who is a legal expert on OSHA and health and safety matters. Ms. Bailey.

Mr. LAFALCE. Mr. Chairman, before we proceed, Mr. Watchman, when the turn comes for questioning, my first question is going to be what comments do you have to make on the most salient points made by each of the other of the five witnesses. So I would ask you to listen to them and jot down at least their most salient points, and then I will ask the Chair for leniency in time in permitting you to answer that.

Mr. WATCHMAN. Thank you for the advanced warning, Mr. LaFalce.

Chairman TALENT. I will give an advance ruling. Of course the gentleman has unlimited time for the questions he may wish to ask.

STATEMENT OF MELISSA BAILEY, ESQ., MCDERMOTT, WILL AND EMERY

Ms. BAILEY. Thank you, Chairman Talent and Members, for inviting me to testify today about OSHA's draft proposed safety and health program standard. I appreciate the opportunity.

My name is Melissa Bailey, and I am an Attorney in McDermott, Will and Emery's OSHA practice group here in Washington. The OSHA practice group consists of eight attorneys who spend the majority of their time representing employers of all sizes in inspections, enforcement litigation, rulemaking, and compliance counseling.

OSHA issued a draft proposed safety and health programs standard in November, 1996. The standard would apply to employers of all sizes and would mandate that safety and health programs with certain core elements be established in each workplace.

OSHA has set out a laudable goal in this draft proposal, to require employers to implement comprehensive safety and health programs to prevent injuries in the workplace. The problem is that on the day this standard is adopted, every employer will become a lawbreaker. The reason for that is simple: The language is so vague that OSHA inspectors will be able to interpret it any way they want to, and no employer will ever be sure whether or not he or she is in compliance.

OSHA adopts basically two types of standards: Specification standards and performance standards. A standard requiring guardrails is an example of a specification standard, because OSHA tells the employer how high and how wide the guardrail has to be for the employer to be in compliance. A performance standard lets the employer decide the best and most efficient way to reach a certain safety goal. The noise standard, for example, provides that if employers get to a certain decibel level, then they are in compliance with the standard. The employer, rather than OSHA, decides how to get to that level.

This draft proposal is neither a performance standard nor a specification standard. OSHA calls the proposal a "performance-based" standard, but it lacks an objective safety goal. Rather, it just lays out a set of very general, vague requirements. Just to give one of many examples, the draft says the employer must conduct hazard assessments "as often as necessary" and in a way "appropriate" to safety and health conditions.

What inevitably happens with this kind of vague language is that the company thinks it is "appropriately" assessing hazards "as often as necessary," but the compliance officer shows up and believes otherwise. A favorite professor of mine described it like this: A performance standard becomes a specification standard in the hands of the OSHA inspector.

When OSHA adopted the process safety management, or PSM, standard for the chemical industry in 1992, it too was touted as a performance-based standard. Having represented employers throughout the nation in PSM inspections and enforcement litigation, we have discovered that once a standard leaves Washington and lands in the hands of OSHA inspectors, the idea of a performance standard becomes a hoax.

The PSM standard's requirements for operating procedures are an excellent example of this problem. The standard requires that operating procedures be "clear." There was very little debate over this provision during the PSM rulemaking because employers believed that they knew how to write clear operating procedures. What employers have now discovered is that they don't know how to write operating procedures, it is OSHA who knows how to write operating procedures. It is OSHA that issues citations and penalties that specify the level of detail that make the procedures "clear" enough for employees to understand.

OSHA is trying to sell this standard to stakeholders as harmless because it is "performance-based" and flexible. What employers will find if this standard is adopted is that compliance is a moving target.

In addition to enforcement concerns, the draft raises significant policy issues with regard to OSHA rulemaking and the way employers are cited. OSHA issues two types of citations to employers: Citations alleging violations of hazard-specific standards such as the machine-guarding standard; and citations alleging that the employer has violated the general duty clause by failing to maintain a workplace free of hazards. The general duty clause is basically used when OSHA does not have a standard on a particular hazard. In recent years, OSHA has used the general duty clause to cite employers for ergonomics violations since the Agency has not been able to adopt an ergonomics rule.

The draft safety and health program standard mandates that employers assess, prevent, and control all hazards, including hazards like ergonomics that OSHA currently has to cite using the general duty clause. So, this draft is in essence a back-door ergonomics standard because, rather than going to the trouble of issuing a general duty clause citation, it will allow OSHA to cite the employer for a violation of the safety and health program standard and then require abatement of the ergonomics hazards.

In other words, OSHA will simply use the safety and health program standard to cite the employer for having an ineffective program that doesn't deal with ergonomics. So, by adopting a safety and health programs rule, OSHA is really adopting back-door standards on ergonomics, workplace violence, and every other conceivable hazard that could be the subject of a general duty clause citation. But rather than being forced to develop a record, talk to experts, and negotiate with industry and labor, OSHA is able to avoid all the controversy of actually adopting this type of standard.

I am sure I must sound like the voice of doom at this point, and I guess to some degree I am, because this draft standard simply cannot be fixed. Any standard broad enough to cover all of American industry and yet flexible enough to account for each workplace's special circumstances will inevitably use the broad language that is so problematic once it leaves Washington.

The good news, if you will, is that a safety and health program standard is simply not necessary because it doesn't add anything new to what OSHA can already regulate. It does not focus on a specific hazard, and OSHA already has the enforcement authority to issue citations and penalties for every hazard included in the

safety and health program standard by using the general duty clause and the standards it has already promulgated.

In addition, a safety and health program standard duplicates the requirements set out in hazard-specific standards. OSHA already has requirements in numerous hazard-specific standards like lockout/tagout, PSM, personal protective equipment, and others that require the same type of hazard assessments this standard would.

The draft proposal says that OSHA is prepared to launch "the most extensive outreach, education and compliance assistance campaign in the Agency's history" to help small businesses develop programs. I question why the Agency needs a standard to conduct such a campaign. Why not help small businesses without promulgating a costly, unnecessary standard?

The enforcement and rulemaking issues I have raised are the most significant problems in the draft, but there are others that are detailed in my written testimony that I simply didn't have time to mention. For example, the draft may expand OSHA's ability to issue criminal penalties, and it implicates important labor-management relations issues.

Thank you for giving me the opportunity to speak today.

Chairman TALENT. Thank you, Ms. Bailey.

[Ms. Bailey's statement may be found in the appendix.]

Chairman TALENT. Our next witness is Mr. Brian Landon. He is the proprietor and operator of Landon's Car Wash and Laundry and Landon's Paint and Touchup in Canton, Pennsylvania.

You don't launder the cars, you launder, I take it, clothes, right?

Thank you for coming here, Mr. Landon. We will hear your testimony now, sir.

STATEMENT OF BRIAN LANDON, PROPRIETOR AND OPERATOR, LANDON'S CAR WASH AND LAUNDRY, LANDON'S PAINT AND TOUCHUP

Mr. LANDON. Mr. Chairman and Members, good morning.

As the Chairman said, I am Owner and Operator of Landon's Car Wash and Laundry and Landon's Paint Touchup in Canton, Pennsylvania. I have been a small-business owner for 22 years. Currently I have two employees.

Mr. Chairman, I respectfully request that my written statement be entered into the record.

Chairman TALENT. Without objection.

Mr. LANDON. It is my pleasure to offer comments on the draft proposal of OSHA's safety and health program standard for general industry. Today I am speaking not only for myself, but on behalf of the National Federation of Independent Business, of which I have been a member for over 20 years. With two employees and gross sales of just over $200,000, I am fairly typical of the 600,000 NFIB members.

In opening, I would like to say that I, like other NFIB members, have a strong commitment to my employees' safety and health. This is a commitment that is rooted in the unique relationships that exist in a small business, relationships that come about by working side by side with my employees at the car wash, at the laundry, and in the paint touchup business; working in an atmos-

phere where there are no strict job descriptions, and daily tasks are often shared between myself and my employees.

I am typical of many small businesses whose employees are family and friends. In my case, one of my employees is a good friend and my brother-in-law, and another is another close friend. It is these personal relationships that drive my concern for safety.

My employees know that I will provide them with whatever support, be it information, supplies or equipment, that is necessary to create a safe workplace and to protect their health. I work alongside my employees at each of the work sites, so it is both to the advantage of myself and my employees to provide a safe workplace. I am proud to say we have never had an injury, accident or health hazard occur at my car wash, laundry or paint touchup business.

I am extremely concerned with the burdens and associated costs that the requirements in the draft proposal would place on me and my small business, requirements that include implementation of a general health and safety standard for each work site, management leadership, employee participation, hazard prevention and control, training, and system evaluation. Although the recordkeeping, monitoring and application checkoff lists are not mandated by the standard, for liability protection purposes I would need to undertake each of them. In my case, these requirements are compounded by the fact that my car wash, laundry and paint touchup businesses encompass four different buildings.

As a small two-employee business, I cannot assign these tasks to a management team or a manager or even one of my employees. The full burden would fall on me. This would have a serious detrimental effect on my productivity, and it is my productivity on which the success of my small business and my employees' jobs depend.

As always, the cost of compliance would fall heaviest on my small business and other small businesses like mine. As published in the document by the Small Business Administration, regulatory costs to small businesses are approximately 50 percent higher per employee than larger firms, and the smaller the firm, the higher those costs.

Although the draft suggested that there would be a phase-in for small businesses with fewer than 10 employees, this phase-in would only delay the inevitable and in no way offset the disproportionate costs in dollars and productivity that my small business would incur.

The draft proposal states that the participation of my employees will be a necessary element of any new general OSHA standard, and that this participation should include employee activity in assessing and controlling hazards, developing safe and healthful work practices, training and evaluating the safety and health program. I have four different buildings where my small businesses are located. Oftentimes my employees must travel from one site to the next to complete their duties. With only two employees and four work sites, my employees will be so busy completing their assignments under the general industry standard that they will not have time to do their jobs. Again, this employee participation would have a negative impact on the productivity of my employees without necessarily adding to safety in the workplace in any form.

So, because the draft safety and health standard does not allow for the unique nature of the smallest employers like myself, and because the burdens and costs would fall heaviest on the smallest of small businesses such as mine without significantly increasing workplace safety, I strongly urge the Agency to provide a very meaningful small-business exemption.

Mr. Chairman, thank you again for the invitation to appear before your Committee, and I will be happy to take any questions you might have.

Chairman TALENT. Thank you, Mr. Landon.

[Mr. Landon's statement may be found in the appendix.]

Chairman TALENT. Our next witness is Dr. Gary Rainwater of Dallas, Texas.

Dr. Rainwater.

STATEMENT OF GARY RAINWATER, D.D.S.

Dr. RAINWATER. Thank you very much. I assume that the written testimony will be entered into the record.

Chairman TALENT. Without objection.

Dr. RAINWATER. At least when I talk to you, something intelligent will come out of my testimony. I would just like to have a conversation with you. I would like to tell you who I am. I am Gary Rainwater. I am a Dentist. I am in full-time private practice of dentistry in Dallas, Texas, except for this year, and I am there only maybe a day or two because I am also President of the American Dental Association, and as such I represent 144,000 licensed practicing dentists across this country.

In November, I went to Washington, and I had a meeting with Greg Watchman and Joe Dear. This is when I first learned about this proposed safety and health standard.

I went there for a different reason, a very unusual reason, a reason that I would never have thought I would have gone there 5 years before. I went there to compliment OSHA for being reasonable, for listening to us, for being receptive, for doing some common-sense things. They have introduced the phone and fax method of dealing with complaints in dental offices. It makes sense; pick up the phone and ask if there is a problem, and can we solve it before we send an inspector out. It has worked very well. It is a good thing they are doing, and I applaud them for it.

Chairman TALENT. Dr. Rainwater, I am sure Mr. Watchman would want to make sure everybody in the room heard that, right? You went to see him and Mr. Dear to compliment OSHA on its responsiveness and its common sense.

Dr. RAINWATER. Yes. Five years before I would have never have thought I would be in that position. But we did do that. That doesn't mean that I agree with everything that OSHA does and that I agree with a lot of these regulations, but I do applaud them for changing, trying to be rational, and trying to be sensible, and they have done a good job to that effect, at least for our profession.

Mr. LAFALCE. Did you take Congressman Charlie Norwood, another dentist, with you?

Dr. RAINWATER. No, Charlie was not there.

This is when I first learned about this proposed standard. I said to Joe Dear and to Craig that, wait just a minute. Now, as I read

this, you are going to come out with this, and it is already covered under our blood-borne pathogens standard, it is already covered on our hazard communication standard. We have sat down with you and come up with this OSHA compliance checklist for a dental office, and you can go through this and you can come up with every possible hazard that you can in dentistry, and we have a checklist that we go through with our members. So we already have two standards that cover this, and everything else involved is intrinsic to the practice of modern dentistry.

We sit down with our employees and have regular meetings, how to treat patients better, to deal with new materials and new techniques, and to discuss those things regularly as to how in that dental office we can make it safer.

The typical dental office in the United States of America today has a solo practitioner in the office. Over 80 percent are solo practitioners. They have typically three or four employees. The average dental office is about 1,000 square feet. All offices, I believe, under 96 or 97 percent don't take my figures entirely, but somewhere along 96, 97, or 98 percent are under 4,000 square feet. The thing about it is that we all work along beside each other. I do the same things my employees do. I may do them on a different level, but I am exposed day in, day out to the same workplace hazards that my employees are. So that means that I am as conscious about safety in our workplace as my employees.

In my office I have three employees. I have got a secretary, I have got a hygienist, I have got a chairside. They have been with me 27 years. They are like a family. I work in 1,500 square feet. If I called together a committee of my office staff and said, we are going to form a committee and it is going to be "find and fix," they are going to laugh at me. Find and fix what? Are you talking about the light bulb burned out over there? When I get enough time in my busy duties, I will replace the light bulb. In a small office like mine, that is something we do day in and day out, when we pass in the hall. That is something we do in the meetings we regularly hold. This is not something that is going to really be received very well.

On a national level, dentistry is saying with the five core elements of this, we are already complying with this. We are already going beyond it. We are looking for emerging hazards; not only the hazards there, but the ones out there. We are dealing with the nitrous oxide situation and have been since 1979, to make the equipment safe and to be sure it is properly maintained. We are also dealing with the ergonomic issue. We are engaged in research and have reported it. Do we need more research to see is there a real problem out there? Does good science tell us that there is a problem with ergonomics in the dental office?

So, you say if you are doing all this, why are you protesting about it? It is one more layer of regulation. It is one more one size fits all. This regulation might apply to a Fortune 500 company, it might apply to a manufacturing company, it might apply to a warehouse, but it does not apply to a modern dental office. It creates more problems for us in dentistry than it solves.

We worry about the enforcement of it, and I don't care what you say, we are scared to death of the enforcement. Is this double jeop-

ardy? If we violate the blood-borne pathogen, we also violate this. Are we fined twice?

We agonize over the recordkeeping. Don't tell me we don't need to keep records on this. We have dealt with OSHA for many years, and we know we need to document everything that we do.

We are concerned because this is vague. We don't know what to read into it. When it goes out to my members, it may make sense in here to somebody, but when it goes out there, it is not going to make good sense to them.

It is going to be one more regulation. Where do you get to the point that everybody throws up their hands and says, there are so many regulations out there now, there is no way that we can possibly deal with all of them, and just give up and say, I will take my chances? When do you get to that point? You may be getting to it now.

So, to summarize this, it is unnecessary for the regulation of dentistry because it is already covered under other things, and it is part of the intrinsic practice of dentistry. If we are going to talk about common sense here, common sense then dictates dental offices should be exempt, because dental offices already have an effective alternative in place.

Thank you.

Chairman TALENT. Thank you, Dr. Rainwater.

[Dr. Rainwater's statement may be found in the appendix.]

Chairman TALENT. Now Ms. Katherine Gekker, the President of the Huffman Press Company of Alexandria, Virginia. Thank you for being here.

STATEMENT OF KATHERINE GEKKER, PRESIDENT, THE HUFFMAN PRESS, INC.

Ms. GEKKER. I wanted to thank you, Chairman Talent and Members, for giving me the opportunity to speak to you about the OSHA proposed safety and health program standard.

My name is Katherine Gekker, and I am the owner of the Huffman Press, located in Alexandria, Virginia. I am also here representing the Printing Industries of America.

I have been in business since 1974. My company specializes in high-quality printing for graphic artists, corporations and museums. Currently I have nine full-time employees and one to two part-time employees, depending upon our workload. Our gross sales are roughly $1.2 million annually.

Safety within the Huffman Press is a priority for me because I am trying to build the healthiest company that I can. If I do not provide a healthy work environment, my employees, our customers, and our suppliers and I myself suffer.

We participate currently in industry safety programs and buy the many workbooks and guides made available to us about plant safety and training. It is a constant struggle to keep up, and while we do our best, I will admit readily I am not able to read everything that I should or even all of the safety and training materials that we buy.

My business is typical of many in the printing industry. In fact, the average printer has 11 employees. Because of our small size, changing government regulations place a significant burden on my

company as well as on most other small companies. We do not have the resources to hire an expert on safety, nor do we have the time most days to fully keep up with new rules, training requirements, or other regulations. In fact, most days we barely keep up with the demands of our customers, suppliers and tax and payroll laws.

My plant manager and I are constantly scrambling to make sure we are conscientious with respect to safety and health. A number of years ago when my business was doing a little bit better than it is right now, we used an insurance carrier that would send out an inspector on an annual basis to conduct an audit of our safety and health program. She would issue a report outlining what they believed to be violations and even trained our employees in safe work practices. I cannot tell you how much I appreciated this information and service. Having come close to losing my own finger in one of our machines, I personally value knowing I am doing everything I can to provide a safe workplace. Unfortunately, we have had to switch to a less expensive insurance carrier recently, and they do not offer that service.

We have also benefited from the city of Alexandria program in which the fire department inspects us annually for fire and chemical safety. Again, I welcome their inspections because I know that they will tell me what I need to do to create a healthier work environment, and that they will give me the time to correct what needs to be corrected without penalizing me.

I have also invited the Virginia Department of Safety to inspect our premises and to advise us on audio levels and chemical levels in order to learn if we were within safe parameters. This voluntary inspection was also done without fear of penalty.

While my business has never been cited by OSHA, I do not relish the thought of a surprise inspection. I have heard inspectors never leave without expensive citations, regardless of a business's good intent. I and other business owners would jump, however, at the chance to get information about how to make our plants safer. It would be particularly valuable if we could do this without being punished for wanting to learn.

I believe that all employees should play an active role in promoting safe practices in the workplace. However, OSHA's proposed safety and health program standard does not appear to do anything that would help me make my plant safer. The proposed standard is very vague and leaves a lot up to the individual inspector and individual business owner. If it were enacted, I may think I am doing everything I can to develop the best safety program for my plant by asking my employees for meaningful participation and by conducting periodic self-inspection, but an OSHA inspector may see it altogether differently. Effectively, this is a closed-loop system in which no real communication takes place.

The proposal also fails to solve the problem of lack of safety education and consultation for employers. We need more specific information about safety. Without providing extensive training, consultative services and direct guidelines, this proposal will do little to prevent accidents. It offers a one-size-fits-all safety program that simply does not provide what employers desire most, industry-specific information.

Mistakes and accidents occur everywhere. Historically, the majority of the accidents that have occurred in my plant were caused by carelessness, and they would not have been prevented by the kind of safety and health program OSHA is proposing.

In closing, I would like to stress that I and most business owners I know see a strong need for OSHA. Most of us want to do, and will do, the right thing. We simply need help. I am leery of a new standard that requires more paperwork from employers. This proposal reminds me of what it is like to deal with the IRS. Tax laws can be interpreted many different ways, they are confusing, take a lot of time, and they are expensive. Interpretations differ with whomever you speak with. I am afraid that the same will be true with OSHA's proposal.

I believe OSHA can have a real impact on safety by permitting people like me to seek expertise without fear. It would also help if OSHA undertook a voluntary compliance program that used warnings in lieu of citations. This type of approach would do a lot more for preventing accidents than the proposed safety and health program standard.

Thank you for your time. I will be happy to answer any questions.

Chairman TALENT. Thank you. I should have mentioned that you received a major educator of the year award this year. Congratulations to you for that.

[Ms. Gekker's statement may be found in the appendix.]

Chairman TALENT. Our final witness is Ms. Earlyn Church, who is the Vice President of the Superior Technical Ceramics Corporation of St. Albans, Vermont.

You have come a long way, Ms. Church. I thank you for being here. We will hear your testimony now.

STATEMENT OF EARLYN CHURCH, VICE PRESIDENT, SUPERIOR TECHNICAL CERAMICS CORPORATION

Ms. CHURCH. Thank you, Chairman Talent. Good morning to the panel and to the Committee. I appreciate this opportunity to testify before you on OSHA's proposed safety and health program standard.

My name is Earlyn Church, and I am Owner and Officer of Superior Technical Ceramics Corporation of St. Albans, Vermont. STC manufactures high-tech ceramic components for the welding, aerospace and electronic industries. We are labor-intensive with 100 highly skilled employees. STC is 100 years old.

I am also on the Board of Directors of the National Association of Manufacturers. Further, I am President of Excalibur Laboratories, which employs 12 people.

I am testifying today on behalf of the NAM's more than 14,000 members, 10,000 of which are classified as small manufacturers. Through them we represent 18 million people who make things in America.

We appreciate the attention the Small Business Committee Members and staff are paying to OSHA's initiatives and proposed standards. Our safety program consists of written manuals, an employee handbook, a training program for all new hires with some use of videos, and continuous education of all employees. An em-

ployee safety committee meets monthly. They report to management, who then makes appropriate corrections.

We oppose OSHA's safety and health program standard, not because employers who ignore worker safety would be punished under the proposed standard, but rather because employers, such as STC, who have taken every reasonable step to assure compliance with the standard, could also be severely punished. Good companies with excellent safety and health programs could face punishment in terms of increased costs, criminal prosecution, arbitrary enforcement by OSHA, breaches of confidentiality, and mandated safety committees that by their structure violate employer-employee relations as prescribed under the National Labor Relations Act.

STC is fortunate that we have someone to oversee our human resources. This same person, however, in addition to maintaining all records required for OSHA, EEOC, ADA, and FMLA, administers all documentation and training for our workers' comp program, our hazardous waste program, community right to know, and she herself trains constantly. We felt the need to hire such a full-time person approximately 10 years ago because of rising regulations. To comply with the proposed standard, we would have to hire more staff.

I stress the size of STC to show that a 100-employee company extremely stressed to meet existing regulations. Tiny Excalibur is not exempt. You, as a Member of the House Small Business Committee, must be as confused as I as to what small business exemptions are.

STC uses computer systems with adequate software for the currently required data. Such packages cost us in excess of $1,000 per year. This system is reaching capacity. Upgrading our hardware or purchasing a new software program and hiring consultants to comply with these new requirements would be enormously expensive. It would not increase the safety and health of our employees. We would rather spend that money on training or making modifications to our facility.

STC is wary, given OSHA's past record, of the vague language of the proposed standard. It must be vague in order to cover all industries. Because it is vague, it allows OSHA broad latitude in enforcement under the general duty clause, which allows OSHA to cite employers for hazards not covered by specific standards.

The general duty clause was most recently used to cite the employer in Pepperidge Farm, decided by the Occupational Safety and Health Review Commission in April 1997. OSHA's proposed safety and health program standard would require employers to "provide for the systematic control of hazards."

Right now we are being asked to anticipate feelings of discomfort in the workplace. Already STC is employing workers' comp managed care to help with the whole range of reported repetitive motion injuries. Without speaking at length on the dreaded E word, ergonomics, we are having a very hard time distinguishing between the pain from a weekend or a second job and pain related to factors in our workplace. If the injuries are cumulative, where did the accumulation begin? Is work the sole factor, or play, or home or the second job?

While we never get up in the morning and set out to kill or maim our work force, as suggested repeatedly at OSHA at the stakeholders meetings I attended, we are often faced with situations where a worker violates company policy and is injured. Sometimes there are hazards impossible to identify or foresee. We do conduct a monthly walk-through with our safety committee, but in a job shop, the workplace is different every day.

OSHA's proposed standard seems more a deliberate attempt to prove the hazards of going to work, yet the No. 1 cause of work-related deaths in the statistics is vehicular accidents, which do not take place at work sites under the supervision of employers. The No. 2 cause is violence in the workplace. Are these work risks or life risks?

As to confidentiality, employees' rights would be violated by the revelation of names, addresses and medical information not now available to other employees or outside sources other than required by law. Under this proposed standard, other employees and their legal or union representatives have access to employee records, personnel, medical and otherwise.

BLS stats show that the workplace today is safer than at any other time since the information was tracked. STC's workers' comp experience modification has decreased 15 percent over the past 4 years due to company initiatives separate from any OSHA requirements. We are being proactive in increasing health and safety in our place because it is a good business practice. Why hamper and discourage these initiatives and those of other good companies with onerous paperwork requirements, increased costs to the employer for staffing, computer needs and consulting?

We appreciate this opportunity and look forward to answering questions.

Chairman TALENT. Thank you. I am sorry the mikes went out. I hope that is not the case with all the others.

[Ms. Church's statement may be found in the appendix.]

Chairman TALENT. We now have one combined panel here. I appreciate the number of Members who have come, and in view of the Members waiting to ask questions, I will defer my questions. I am going to, after Mr. LaFalce has his opportunity, I am going to recognize Members in the order in which they have appeared, and those who were here when the hearing began will be recognized first, according to seniority. We will go after Mr. LaFalce to Mr. Snowbarger and then Mr. Pascrell and so on.

Now I will recognize my good friend Mr. LaFalce.

Mr. LAFALCE. I thank the Chair. I am just going to have a few brief questions for Dr. Rainwater, and then I will go to my question for Assistant Secretary Watchman.

First, congratulations on being president of the American Dental Association. This is unrelated to this hearing, but I was very surprised when we were debating health care at all that the dental association didn't try to take a much more aggressive role in trying to ensure that dental services would be covered in whatever coverage might be enacted into law. It just seemed to me at that time, circa 1993, they weren't as aggressive as they were passive. That is the first point. I appreciate your comments on that.

Second, it is my — I am taking the advantage of the fact that I have the president of the dental association — it seems to me that insurance coverage for dental work is absolutely atrocious; that there is necessary dental work that must be done, and it is almost never covered. Whether is it is a root canal or a crown or what have you, these are necessary items, and when there is coverage, that the coverage is so minimal.

For example, with respect to Federal employees, I don't think there has been an increase in coverage for dental work for Federal employees in over a dozen years, and they utilize a very low base cost. Whatever it is they call usual and customary, it is extremely low. What is the dental association doing about this? This might have nothing to do with OSHA, but I am interested.

Dr. RAINWATER. What are we doing about it?

Chairman TALENT. I am sure my friend doesn't expect Mr. Watchman to respond to that.

Mr. HEFLEY. Mr. Watchman, he also has a wisdom tooth fairy.

Dr. RAINWATER. Are you talking in 1993 we were not aggressive? We certainly were not aggressive in 1993 when the Health Care Reform Act came forward. We saw all kinds of problems with it. I think that you saw the wisdom of our ways, as you deliberated and didn't enact that at that time. We have great concern about government programs that involve dentistry, because we need to be sure in those programs and very often they are not adequately funded. So it is one thing to put them in there. But if you don't put the money in there to back them up, it doesn't work.

Mr. LAFALCE. Let's talk about the insurance coverage.

Dr. RAINWATER. See, that is our problem. We have a hard time explaining dental insurance to the public, because it is not dental insurance. It is simply prepayment of dental care. There is no great accident that is going to occur out there usually to give one person more dental problems than another one. They have different problems. So it is very difficult to insure it, because if you open insurance all the way, the people who have the major problems and the expensive problems sign up.

You are right, dental insurance has not increased probably since I have been in practice. It covers approximately 40 to 45 percent of the dental bill; 55 percent is still paid out of the patient's pocket. That is stimulus for the patient participation and is probably the reason we have held down dental costs across this nation. We still have freedom of choice of the patient for dentistry. They are able to choose the dentistry that they are to receive.

It needs to cover more, but to cover more, somebody has to pay for it. What you are finding now is that you are seeing in managed care areas in which they are promising more, but the dollars are not there to pay for it. So therefore, when you get into it, that is not to say managed care is all bad, but if you don't fund it, and if the money is not there to cover it, when you get into that plan, you find you have no benefits, you find that it covers little, and you find very often that you might be better off just paying for it out of your own pocket.

So it is a matter of economics. If you are going to have dental insurance, you have got to put the money into it. The employer has to put the money into it in order to get good care.

Mr. LAFALCE. All right. That is off the subject. I just personally think that the insurance coverage for dental care is either atrocious or nonexistent.

Dr. RAINWATER. I agree with you.

Mr. LAFALCE. I don't think the American Dental Association has done very much at all about it.

Let me go on to Mr. Watchman. Mr. Watchman, what comments do you have about the most important points made by the other members of the panel?

Mr. WATCHMAN. Thank you for the opportunity to respond, Mr. LaFalce.

Let me just say briefly overall, I am very grateful that the small employer/owners, small-business owners here this morning have chosen to make their views known and participate in our process of developing a rule. We are taking steps to address many of the concerns that they have raised this morning, and I would welcome an opportunity to work with all of you toward the development of a rule that does take into account the concerns that you have raised.

That being said, I have a number of specific concerns and clarifications I would like to make with regard to some of the testimony. First, I think it is important to clarify in response to Ms. Church's accusation. She claimed that OSHA repeatedly said during our stakeholder meetings that employers get up in the morning and set out to kill or maim their work force. Maybe some of us recognize that as rhetoric, but I just want to make clear that such a statement was never made a single time, let alone repeatedly, at any stakeholder meeting. I am frankly disappointed in Ms. Church that she would make such an accusation in this forum. She was an active and useful participant in that dialog, and we have tried hard to respond to her concerns.

Let me talk a little bit about Ms. Bailey's concerns. She made some very negative predictions about the standard. I think really there is no need to speculate here. As I said, many States already have safety and health program requirements that apply to hundreds of thousands of employers in this country. I have not heard in 2 years of working on our proposal a single employer come forward to show any of the requirements imposed by those statutes and regulations are burdensome. In fact, in 1992, the General Accounting Office did a study of safety and health programs. They looked at Oregon and Washington, both of which have comprehensive safety and health program requirements, and they found that small employers as well as large employers did not have problems implementing those requirements.

Let me correct also several particular claims that she made. First, the notion that the performance-based standard is a hoax. Let me make clear, sir, and to the Members of the Committee at large, OSHA used to develop and issue very specific standards which detailed every last thing an employer needed to do to address a particular hazard. The employer community for years has pushed us to develop performance-based standards that would set a goal of regulating employee exposures to a hazard, but let the employer determine the best way, given the circumstances at that workplace, to get to that goal.

That is the desire of the stakeholders in this instance as well. Through our meetings, the vast majority of stakeholders have asked us to draft a standard that is flexible and performance-based. That being said, it is not an easy thing to do. I recognize that some of the wording we have used in that working draft needs some more definition and clarification. But we are taking steps to do that.

First, we are revising the standard and will do so further before we issue a proposal. Second, we have agreed to work with stakeholders to prepare a compliance directive that will instruct our inspectors about how to enforce this standard. Third, we have agreed that we would not impose a penalty for violation of the standard unless there was a pattern of hazards or violations at that workplace. Fourth, we have agreed to produce a vast range of compliance assistance materials like programs and checklists and videos. Last, we have agreed that many of these materials should serve as safe harbors. If employers have complied and followed them, they will be in compliance with the standard.

Another issue regards the supposed effort of OSHA to circumvent our statutory requirements under the OSHA Act, SBREFA and the Reg Flex Act. Let me be clear, we are complying with all of those laws and fully intend to comply with them in the development of this rule. In fact, we are working closely with SBA to go beyond our SBREFA obligations and hold many more meetings with stakeholders, and particularly small businesses around the country.

Ms. Bailey also suggested that the standard goes beyond recognized hazards. Let me make clear that our standard specifically says on pages 4 and again on page 5 that it does not go beyond recognized hazards, it only governs hazards that are covered by our standards currently or covered currently by our general duty clause. In fact, Ms. Bailey admits that subsequently in her testimony on page 6.

Let me now address several comments made by the other witnesses. Mr. Landon, it sounds like, has a terrific safety approach at your workplace. We have done some preliminary time estimates for what would be involved for a small workplace like Mr. Landon's to comply with the safety and health program requirement. We estimate that it would take about 20 hours initially to startup the program, and that after that it would take about 10 hours a year to keep the program running. That would be at a workplace with maybe 10 or fewer employees with relatively few risks.

We are in the process of planning our meetings in July with small employers around the country to evaluate whether those time estimates are accurate and get input from small employers about whether it would take more or less time to maintain a safety and health program.

With regard to Dr. Rainwater, I want to thank you for your compliments. Those may be the only compliments we get today. I do want to also applaud the dental community for already doing much of what the standard would require, as Dr. Rainwater has indicated. Let me make clear, though, there is no requirement in the working draft or any other OSHA plans for a safety and health committee. We do say specifically in the proposal, or in the working

draft, rather, that informal approaches would be expected and would be acceptable at small workplaces.

I also want to make clear that employers could not be fined twice for a single violation by the development of a safety and health program rule. On page 13 of our working draft, we specifically make clear that there would be no piggyback violations.

I think Ms. Gekker recognized the importance of finding hazards and the importance of training workers with regard to hazards in their workplace, and those really are the core fundamental parts of this program.

She also stated that she has heard that inspectors never leave workplaces without issuing citations and penalties, and I want to clarify that, in fact, about 1 out of every 3 inspections that we conduct, we find no violations, or we find violations but do not issue any penalties.

Last, she indicated a desire for consultation. I just want to let you know that we, in fact, offer free consultation through 50 State Programs around the country that are 90 percent funded through Federal OSHA, and those inspections and visits from consultants can occur free of charge without citations and penalties.

Those are my overall comments for some of the particular concerns that were raised, but I would be happy to answer further questions as well.

Mr. LAFALCE. Thank you very much.

Chairman TALENT. Before I go to Mr. Snowbarger, where does it say you will not piggyback? I was looking for that. I don't have my pages numbered.

Mr. WATCHMAN. This is late in the draft.

Chairman TALENT. Outreach, Compliance?

Mr. WATCHMAN. Subheading (i), Outreach, Compliance; (i)(3)(i), a violation of another OSHA standard or the general duty clause will continue to be cited as such and does not in itself constitute a violation of this standard.

What we are really contemplating in terms of enforcement, first, as I said, we would not issue any penalty unless there was a pattern of hazards or violations; second, we would be looking for systematic failures rather than individual technical violations. This is part of really, I think, the new OSHA's shift in emphasis away from individual technical violations and more toward a systematic approach.

Chairman TALENT. In fairness, does not in itself constitute a violation of the standard, but in connection with something else, it could be evidence of a violation of the standard, couldn't it?

Mr. WATCHMAN. Certainly if we found a broad range of hazards at a workplace, that would suggest the employer was not making sufficient efforts to find and fix those hazards.

Chairman TALENT. It doesn't say a broad range.

Mr. WATCHMAN. The particular issue about a piggyback violation is that a single violation of a standard would entail two rather than one violation.

Chairman TALENT. I think the concern is how this thing is going to work in practice, and if you can say, well, here is a violation of the standard, and now looking at your program, I think in view of the fact that you have a violation of this standard, I don't think

your training in this area was appropriate or adequate, it is a violation plus something, you see? I think that is probably the concern you are getting at.

I wasn't going to ask questions until the others have, so I will thank you, Mr. LaFalce.

Mr. Snowbarger will be next.

Mr. SNOWBARGER. Thank you, Mr. Chairman.

My question is to Mr. Watchman. First, just a general question. I would be interested to know what OSHA perceives is its role, what is your purpose, why are you there?

Mr. WATCHMAN. Our statutory mission is to protect worker safety and health in workplaces across the country.

Mr. SNOWBARGER. I am going to make two or three observations that do not come from this panel this morning, they come directly from my district. They are confirmed by things I have heard on the panel this morning.

First observation is a presumption on the part of OSHA that OSHA knows best, that employers and employees are not concerned about — employers aren't concerned about their employees' safety, that employees aren't concerned about their own safety, and that somebody in Washington knows better how to handle those workplace risks than either employers or employees.

The second observation, followed by a third one, is that OSHA is there in more of a punitive role than in an assistance role. The term used back in my district is that the attitude of OSHA is to come in and be able to leave saying "gotcha." Followed by the third observation, that I have had companies in my district that are so convinced that OSHA is in a "gotcha" mode, they create visible violations so inspectors can go away feeling like they have accomplished their mission. Those companies in essence figure out how much they can afford to spend on the fine, create the violation, and know that inspectors, once they have found the easy one, will walk away.

I am going to suggest those observations lead me to the conclusion that OSHA is not performing its statutory duty in actually changing workplace safety.

So my question is what are your observations about those observations, I guess?

Mr. WATCHMAN. I guess I would make a couple of points. First, I think it probably was a fair accusation some years ago that in many issues OSHA did presume it knew best. We have made a lot of effort over the last several years to listen to stakeholders, and we recognize, and I think the administration recognizes, that government doesn't always know best, and that we need to listen to the regulated community, to workers and to business owners, about the real world problems in workplaces around this country.

But I will tell you, this is not a concept that we dreamed up. This is a concept that thousands of employers are using around this country, successfully, to reduce their injury and illness rates, but also to save large amounts of money, so it really does improve the bottom line.

Mr. SNOWBARGER. You are making my point, that employers and employees have an interest in doing this. I don't understand what you mean by stakeholder, but it seems to me that the employer has

a much greater interest in employee safety than OSHA will ever have, because it is in their economic interest.

Mr. WATCHMAN. I would agree that it is in the economic interest of employers. The reality is, many, many employers don't have safety and health programs or any systematic approach to protect workers, and we do have millions of workers that are injured on the job every year. As I said, many of these incidents can be prevented through a systematic approach.

Mr. SNOWBARGER. Thank you, Mr. Chairman.

Chairman TALENT. I thank the gentleman.

A thought just struck me, Mr. Watchman. Would this apply to the Congress? I guess it would, wouldn't it?

Mr. WATCHMAN. The Congress is covered by occupational safety and health regulations, but has a separate enforcement office of its own, as you know. So that office would have to consider the standard and how it would apply to Congress.

Chairman TALENT. Because I don't have a systematic safety program in my office, and maybe I should. I don't know.

Mr. Pascrell will be next.

Mr. PASCRELL. Mr. Chairman, thank you. I strongly support OSHA's plan to conduct field hearings in order to get input from small businesses. I think this is a critical, critical step forward and a very positive way. Whether you have the resources to do it to the department you are talking about is another question.

My first question to you is, what about those resources that you mentioned in the beginning? Where have you come from in the last 5 years in terms of number of inspectors out in the field to work with businesses, particularly small businesses, as we have been talking about today? Are we going in the right direction or the wrong direction?

Mr. WATCHMAN. Well, our staff has actually declined significantly in the last 10 or 15 years, but we have recently added some staff to OSHA, and many of the staff people we have added are folks that are going to help with a lot of compliance assistance activities.

In addition to our enforcement program, which is required by our statute, we have a broad range of consultation programs, compliance assistance programs and activities designed to help employers in a broad range of ways.

Mr. PASCRELL. Your approach, OSHA's approach, seems to be running on a parallel basis with what we have talked about in other areas, compliance with Superfund, changes in Superfund, changes in environmental standards.

Are we moving in the direction of abatement rather than prosecution, rather than citations? Is this what you are communicating to us this morning?

Mr. WATCHMAN. Yes, sir. In fact, the Agency for many years used to judge performance based on the numbers of inspections and citations and penalties. We dropped those performance measurements in 1994, and we are now judging inspector performance based on customer service, prompt abatement of hazards, promotion of voluntary and cooperative efforts, and targeting of the most dangerous hazards.

Mr. PASCRELL. I frankly do not see anything negative in terms of fallout here. On page 4 when you talk about the draft-proposed safety and health program standards, the purpose of the standard, the standard requires employers to set up a program for managing workplace safety and health in order to reduce the incidence of occupational deaths, injuries and illnesses.

It would seem to me that the reason why we do this is to anticipate — going back to a comment that Ms. Church talked about, I don't find that to be foolish. I find that to be very sound and logical, to be able to anticipate those problems in order to avoid them.

Is this what we are talking about in this standard?

Mr. WATCHMAN. Yes. One of the goals of the OSHA act is the prevention of illness and injuries and fatalities before they occur. That is basically the principal goal of a systematic approach.

Mr. PASCRELL. Having said that, do you think there is an algebraic relationship between the ability — because we have set this up in certain States, according to State law, do you think that there is a real concrete relationship between our ability to establish those standards, those prestandards in certain States and a reduction of insurance rates or number of comp cases that are involved? Do you have the data to present to us about that?

Mr. WATCHMAN. In my opening statement, I cited some of the studies that have made those kinds of conclusions, that have demonstrated not only that safety and health programs or systematic approaches can reduce injuries and illnesses, but they do have a significant positive impact on the bottom line in terms of reducing Workers' Comp costs, as well as employee turnover and training costs and other costs related to accidents.

Mr. PASCRELL. Would you provide the committee with that information?

Mr. WATCHMAN. Certainly.

[The information may be found in the appendix.]

Mr. PASCRELL. I have a final question to Ms. Gekker.

In some States in the Union, many insurance companies give premium reductions to firms which have effective safety and health programs, like the one that is being proposed, I believe, by OSHA now. Do you think this is a good idea, and how do you relate it to your own experiences if that is the case?

Ms. GEKKER. I have never been able to participate in one. Despite having, I think, a fairly good health and safety program in effect, we have never gotten a reduced rate because of having that program. I think it is a good idea——

Mr. PASCRELL. Do you think you should have?

Ms. GEKKER. I am afraid the effectiveness of our program has been lacking. We are in a business where there are many injuries, and I think we have rarely gone more than 2 or 3 years without one.

Mr. PASCRELL. Isn't this the point, then? We wanted to set up standards that are reasonable and are going to help the business and protect the workers and those people who operate the business, but if there is no concurrent reduction in insurance costs — as I have found, by the way; I don't know if you found that or if Mr. Watchman has found that, although he says he is going to give us information to the contrary — it would seem to me that if we could

show that relationship, that this would be an encouragement, this would help precipitate the kinds of programs that at least OSHA talks about in its presentation, in its draft presentation. I think it would help us in reducing costs and reducing paperwork.

This Committee acted upon the reduction of paperwork 3 months ago, which I think is critical. So we know how much money is spent on providing paperwork in a lot of Federal laws, many of which are incidental and do not help us provide for a healthier or safer workplace.

So we want to get to a point where it is safe for everybody, and we want to get to a point where it reduces, specifically, insurance rates, and that is not happening. The insurance companies are making fools of you guys and those of us on this side of the table, because this should be there. We should insist upon this, because this is trying to deal proactively with a problem; or else we ought to put these guys out of business. I don't think we want to do that yet.

Thank you, Mr. Chairman.

Chairman TALENT. I thank the gentleman for his comments and his questions.

Mr. Hill is next.

Mr. HILL. Thank you, Mr. Chairman.

Mr. Watchman, I am going to give you a compliment, although it is going to be a qualified compliment; but at least you are going to get compliment, and it may surprise you to get one from this side of the table. I agree with you that the idea of setting performance standards instead of specific standards and micromanaging the workplace is successful in creating safe workplaces. In fact, I have worked substantially to try to build safety groups; and in the instances where we put safety groups together, we have seen phenomenal success in terms of reducing the cost of Workers' Compensation and reducing the rate of injury.

The problem I see with regard to what you are suggesting here is that this new standard is going to be added to the existing standards, rather than a replacement for the existing standards and the existing mechanisms. The first suggestion I would make to you is, you make this optional, that you allow employers to have the option of choosing whether they want to have a performance-based standard or a specific standard mechanism for complying with OSHA standards.

In that regard, I would also suggest to you that you work to certify existing safety group programs, whether they exist on a State basis or whether they exist on an industry basis, where performance standards are already being implemented and certify those, so you don't have to reinvent the wheel.

There are a lot of efforts going on out there in the marketplace to encourage employers to create what we refer to in Montana as a "culture of safety" in the workplace. One of the things I think, from the testimony, that you have heard is that part of the problem here is that there is distrust in the culture of your organization, and that is that people see your organization as an organization that is simply trying to police the workplace, rather than trying to create a safe workplace. You have done that by trying to micromanage hazards rather than trying to create an environment in which

employers work with their employees to try to find ways to manage those hazards in a constructive fashion.

The first thing I would suggest to you is that you try to fashion this as an optional alternative program to the existing methods that you are using with the workplace.

With that, I am really going to ask my question of Ms. Bailey.

If, in fact, this was an alternative that was offered to employers, as opposed to added on as a new set of standards, do you think that your view of this would change?

Ms. BAILEY. I think it would. This is something that came out of the stakeholder meeting that I attended with Mr. Watchman. At the end of the meeting, I think the general consensus was, this can be a very valuable resource tool, especially for small businesses who may not have much experience in this area, and they can use this type of document to develop a program.

But to make this a mandatory standard that everyone has to comply with just doesn't make any sense. It is duplicative. The enforcement programs would just be enormous.

There is one general comment I wanted to make on some of Mr. Watchman's comments. All of these statements about what goes on here in Washington in terms of the new OSHA culture and the new way they are going to enforce things, those things are all wonderful, and I applaud him for trying to make those changes. What really counts is what happens out in the field, because where the rubber meets the road is when we are talking about enforcement. That is when the compliance officer comes and knocks on your door. So I think that is really the important thing that we need to be talking about here.

Yes, I think making this an optional standard was an excellent idea. I think it can really be an important tool, for small businesses in particular.

Mr. HILL. I appreciate that comment. Mr. Watchman, one of the other concerns raised — in trying to implement safety culture in Montana, we ran into this problem, and I think it was raised by more than one witness in testimony in regard to the National Labor Relations Act — and that is, are you creating a bargaining unit when you establish a safety committee within the organization?

Is it the Administration's position that it would support legislation that clarified that, so that in the creation of safety groups to comply with the enforcement requirements here, that there would be a safe harbor for employers so they would not be subject to the conflicts and problems associated with the application of the National Labor Relations Act?

Mr. WATCHMAN. As you probably know, the administration has not supported the legislation known as the TEAM act that has been considered in this Congress and the previous Congress.

Mr. HILL. I am talking here specifically about the issue with regard to safety groups. Let's take everything else off the table.

With regard to the creation of safety committees within the employment situation, is it now the administration's position that we could exempt those from the National Labor Relations Act?

Mr. WATCHMAN. I think you would have to be careful about exempting every safety committee, because there may be some that

in fact do involve substantial employer interference or domination in a way that may infringe on worker rights under the NLRA.

What we have tried to do in drafting the working draft and progressing beyond that point in the last few months is to require employee involvement as a general core element, but allow employers to determine what kind of employee participation they want to have at their particular work site. You would imagine that in a workplace of 10 people, it is going to be a lot more informal than at a plant that has a couple of thousand people.

Mr. HILL. You certainly understand the concerns that small employers have, particularly with regard to the potential that that could be interpreted as a bargaining unit that could subject them to rules and regulations and laws they are not now subject to.

Mr. WATCHMAN. It is not so much they would be considered a bargaining unit as they might be considered a labor organization for purposes of 882 of the NLRA. We are working with the NLRB in the development of this rule to make sure we address the issue in a way that it doesn't put employers in a position where they have to violate one statute to comply with another.

Mr. HILL. Would it be our expectation to see some directive from the National Labor Relations Board to clarify this issue to make sure employers are going to be protected if you go forward with these rules?

Mr. WATCHMAN. I couldn't speak for the NLRB, but I would say we are having conversations with them to make sure that we resolve this issue in a way that small employers can understand as we go forward.

Mr. HILL. Thank you, Mr. Chairman.

Chairman TALENT. I appreciate the gentleman's questions.

We are going to have to break now. We have at least one vote and maybe two, so I can't say that we will definitely reconvene in 15 minutes or anything like that. But it will be shortly. I ask the witnesses to stay, and I ask the members to return if they can.

We will reconvene in a few minutes.

[Recess.]

Chairman TALENT. All right, I will reconvene the hearing without waiting for my good friend, Mr. LaFalce, who has other obligations and told me he would not be able to return today.

Next in line to be recognized is Mr. Davis.

Mr. DAVIS. Thank you very much, Mr. Chairman. First, I ask permission to submit a written statement for the record.

Chairman TALENT. Without objection.

Mr. DAVIS. Thank you very much. I have got just a couple of questions.

Mr. Watchman, both Dr. Rainwater and Ms. Gekker indicated some fears that there might be surprise investigations, there might be penalties, or there might be unexpected activity on the part of OSHA in a sense. Although you have answered this question in part once, I just want to reiterate as certain, when there is an investigation and a need for compliance, whether any intervening actions are required before any real penalties are levied?

Mr. WATCHMAN. Well, we do conduct inspections, and in many cases, we do not give advance warnings of inspections to employers. Our statute is designed to achieve a preventive and deterrent effect

from our enforcement program, and we want employers to act proactively before we ever get to their workplace, particularly given the fact that we don't get to many workplaces in the course of a given year. It is important for employers to have an approach to protecting workers before we ever arrive.

That being said, we have developed a new targeting and enforcement system called the "cooperative compliance programs," under which we will send out letters to the highest hazard workplaces around the country, letting them know that they are on our inspection list, so they will have an opportunity to find and fix hazards before we arrive.

With regard to this particular standard that we are working on, that is the subject of this hearing today, we are currently considering an enforcement policy under which we would not assess a penalty for a good-faith employer that is in violation of the standard. We would only assess a penalty if there were a pattern of hazards or a pattern of serious violations.

Mr. DAVIS. So actually one would not have a great deal to fear, other than the fear of not wanting to comply even after it has been indicated that there is a need to do so?

Mr. WATCHMAN. I think there is concern over the way we have drafted the standard as a performance-based standard. I recognize that when you use performance-based language, it does raise subtleties and ambiguities, and these are issues that we are aware of and we are attempting to clarify further through modifications to the working draft, but also through working with stakeholders, meaning employers and workers and safety and health professions in the making of a compliance directive that will tell our inspectors how the standards will be enforced, so all the ambiguities can be resolved and clarified in that document as well.

We will also be providing extensive compliance assistance to employers in many forms before the standard ever takes effect.

Mr. DAVIS. Both you and Dr. Rainwater suggested that dentists were partially or pretty much in compliance with this rule already. How much distance is there between where the dentists are and where perhaps the rule is trying to get them?

Mr. WATCHMAN. I think probably in the case of dental offices, as well as in many other industries, most of the employers are acting in good faith to protect their workers. But we typically find in most industries, there are a few bad actors that are not taking adequate steps to protect their workers, and that is really why we need a standard, to set minimum threshold performance for a systematic approach to protect workers.

Mr. DAVIS. You would not view this as any additional burden on those dentists, for example, who were already in compliance and carrying out what would become the mandate?

Mr. WATCHMAN. That is correct. In fact, this would serve as a very useful tool to make compliance with other regulations much easier in a systematic way.

Mr. DAVIS. I have one question that I would like one of the members of the industry, to answer.

I understand that there are States like Oregon and Washington which already have programs that are pretty much like the one we are talking about, and my question is, have you heard of any ad-

verse effects on businesses in those States as a result of the program?

Ms. CHURCH. Mr. Davis, may I reply? Vermont is one of those States. There are 25 States which have control over the OSHA regs, not using Federal inspectors. The Vermont plan is a suggested use of the safety program. However, they hand out literature that was written by Federal OSHA and suggest that we come into compliance with it because ultimately it will be law.

That is a pretty loose statement, but as you go through it and try to meet it, it is not easy to dot all the I's and cross the T's. Then you have to look at the fact that I call them preemptive States, although that is not quite the correct legal term. The States that run their own safety and health programs — Vermont Occupational Safety and Health, VOSHA is the name, tries to be stricter; they always try to go one step further than any Federal regulation. So on top of this we are always going to look forward to then what is going to be applied at home.

Remember, when you get down to a very small statistical base, like in a State that has 600,000 people all together, the Federal numbers do not work. It just is not a good analysis.

Thank you.

Mr. DAVIS. You are saying there is some fear that in some States where there is an effort to go beyond Federal requirements and regulations that there might be more harsh treatment of the businesses than what you would find in other areas?

Ms. CHURCH. That is true. When we read the kind of books that have been handed out to us, we sit down and say, do they really want a book of plans in place? Do they want us to walk through? How often? Who do they want to carry this out? Who have we got to carry it out?

It is all suggested, but it is very loose, so we do the best we can and use it as advantageously as we can, but we don't want something imposed upon us.

Mr. DAVIS. Thank you very much.

If Mr. Watchman could respond to that question, Mr. Chairman, that would conclude my questioning.

Mr. WATCHMAN. The State plans that exist around the country, in about half of the States currently, do have an opportunity to adopt standards that are either consistent with and identical to Federal standards, or to go beyond those standards and provide a greater level of worker protection. That is why in fact in a number of States there exist today safety and health program requirements despite the fact that there is no Federal requirement at this time.

I would suggest, though, to Ms. Church that in the preparation of this rule, we will allow a compliance assistance period of several years before any provision of it becomes effective. During that time, we want to engage in a very broad and comprehensive effort to disseminate the kind of materials that will go beyond the regulatory text in very simple and plain language terms, through model programs or checklists or interactive software, to let employers know in all industries the kinds of things they should be looking for in their particular industries, to help them set up and implement and maintain a comprehensive safety and health program.

Mr. DAVIS. Thank you very much.

Thank you, Mr. Chairman.

Chairman TALENT. I thank the gentleman.

I recognize the gentlewoman from New York, Mrs. Kelly.

Mrs. KELLY. Thank you, Mr. Chairman. I appreciate the panel being here. I am sorry I wasn't able to hear all of your testimony. It has been a busy morning for a lot of us.

I was interested in what Mr. Watchman said just a minute ago about the implementation of this and what you actually desire to do with this in terms of implementing this with businesses. You said there would be no fines unless a pattern of violations were found.

I would like to know what you mean by "a pattern"? Is that clearly defined?

Mr. WATCHMAN. Yes. On page 16 of the working draft we have defined it to mean a failure to control a number of serious hazards of the same or similar type, or serious hazards resulting from the same or similar deficiencies in the program.

Mrs. KELLY. But that is exactly my problem, "a number." Is there a number? Who decides that number?

Mr. WATCHMAN. That is one of the issues that we would need to clarify.

Mrs. KELLY. Exactly.

Mr. WATCHMAN. From a compliance directive to our inspectors. As I said, we have expressly announced our intent to work closely with employers and workers in the development of that.

Mrs. KELLY. That is exactly the kind of thing where, if you get a vindictive inspector, you could put a company out of business. I am concerned about that.

Another thing: I think that you use a lot of statistics in the testimony and in the draft. In particular, I am thinking about the claim that injuries cost U.S. businesses over $110 billion a year. Every $1 that employers spend on safety and health programs will save them $4 to $6 in Workers' Compensation expenses, reduced employee turnover and so on.

I am not doubting the accuracy of the figures, but I would like to know how you arrived at them.

Mr. WATCHMAN. The first figure is from the National Safety Council. They put out a book, I think called Accident Facts, something like that, every year, which tries to estimate the total number of injuries and fatalities around the country from a variety of causes, including work-related injuries.

Mrs. KELLY. These are not hard-core reports, but estimates?

Mr. WATCHMAN. I am not sure exactly of the methodology. I think they are fairly confident about their estimates, but they are estimates, I believe. They estimate $110 billion a year just for injuries. That doesn't count all of the costs incurred as a result of fatalities, as well as occupational illnesses.

Mrs. KELLY. How many fatalities are there a year?

Mr. WATCHMAN. There are 6,000- or 7,000 reported to the Bureau of Labor Statistics, and then there are others that are not within their jurisdiction of reporting.

Mrs. KELLY. I am wondering about whether or not you have done anything with regard to rough estimates on what this draft will be in terms of costs to the businesses to implement this standard.

This may have been addressed before I got here, but if not, I would like you to answer the question.

Mr. WATCHMAN. Sure. First, we don't have a formal proposal yet, so we have not estimated the cost of the proposal yet. But that being said, we have looked at a lot of evidence that suggests that employers can save money by implementing these programs.

Mrs. KELLY. How so?

Mr. WATCHMAN. Because I noted in my testimony and there are a host of other examples in which employers have implemented programs, reduced their Workers' Comp costs significantly and reduced employee turnover and training costs as well. We do believe that the aggregate benefits will outweigh the costs, as well as believing, for individual employers, the benefits will outweigh the costs.

Just to cite one example of that, in Missouri — in your State, Mr. Chairman — our voluntary protection program, which recognizes excellence in safety and health; we have 13 VPP sites in Missouri. Eight of those are medium and small employers. Those companies have injury rates that are 53 percent below the national average. These are companies that have implemented a comprehensive safety and health program.

With those reductions come reductions in Workers' Comp costs and other related costs.

Mrs. KELLY. I understand you basically to be saying, if you can get it to cost businesses $25 billion a year to implement with this safety and health program, there will be no more costs to the U.S. businesses for injury. Is that sort of what you are saying?

Mr. WATCHMAN. First of all, I would not agree with the $25 billion estimate for a standard, because we don't have a formal proposal yet. But our estimate is that this will be a significant rule that may involve costs of over $100 billion, but it will apply to tens of millions of workers at millions of work sites around the country, and is likely to produce benefits that far exceed the costs.

Mrs. KELLY. I have one last question and that is, of the core elements of the draft standard, you state that employers should regularly evaluate the effectiveness of the safety programs.

I want to know what you define as "regularly."

Mr. WATCHMAN. In the working draft, we talk about the frequency issue on page 11. We say that an employer must evaluate the program as often as necessary to ensure that it is effective, and then set a specific guidance saying, in any event, after the deadline for complete guidance with the standard, the employer must evaluate the program at least once in the next 12 months and at least once in the succeeding 24 months.

Mrs. KELLY. Are you going to evaluate your own regulations as regularly as you expect the businesses to do that?

Mr. WATCHMAN. We have started to review regulations. We have a variety of projects under way, yes, to review our own regulations.

Mrs. KELLY. This particular one you will also review every 12 months?

Mr. WATCHMAN. We with not review it every 12 months, because we have a fair number of regulations, but we do review regulations on a regular basis.

Mrs. KELLY. No, that is not what I am asking.

I am asking: You are expecting an employer to take this program and review what they have put in place once every year, if I understand you correctly. I am asking you, if you are going to do the same, to make sure that this program is continuing to be valuable.

Mr. WATCHMAN. We would certainly monitor the implementation of the standard, and in practice for the standards we have already issued, we either have in many cases reopened the rule to clarify issues that have come up in the implementation or to correct problems that have come up.

In other cases, we issue compliance directives to the field that are published, that indicate how certain issues that have come up should be resolved, so we either can come back and reopen the rule or issue compliance directives.

Mrs. KELLY. Would you be willing to write into the rule that you will review it every 12 months?

Mr. WATCHMAN. It really is a review that goes on on an ongoing basis as people raise questions with us.

Mrs. KELLY. You are waiting for people to come from outside to raise the questions. You are not raising them yourselves. You are not monitoring themselves them yourselves. That is my concern.

Mr. WATCHMAN. Concerns are raised by outside stakeholders, employers and workers, as well as OSHA staff out there trying to enforce our standards.

We have experts in each of our standards at the national office, and those folks basically are working full-time in the implementation of our standards. So it is not something we would come into and review after a year or once a year; it is a continual process of review.

Mrs. KELLY. So there is no total review ever?

Mr. WATCHMAN. That is what I was talking about in the first part, that at some point then we come back and do a comprehensive review of each standard and determine whether it is still warranted.

Mrs. KELLY. I am trying to find out at what point.

Mr. WATCHMAN. I couldn't say at this point how quickly we would do one. We have a couple of projects going on currently for standards review, but it is something that we do periodically.

Mrs. KELLY. Thank you very much.

Chairman TALENT. I thank the gentlelady and want to thank all the witnesses for their patience, and particularly for being willing to wait through that vote that we had. I don't think we are going to have a vote for a while, so we should be handle to wrap this up pretty quickly.

I do have a number of questions, and I want to encourage — I may direct them at a particular person. I would encourage those who have comments to make them even if I haven't directed it to you in particular.

Mr. Watchman, let me just followup. I was going to ask about a regulatory flexible analysis, and Mrs. Kelly was getting into that anyway. Are you planning to do a regular flex analysis with the rule?

Mr. WATCHMAN. Yes.

Chairman TALENT. So although it is a preliminary stage, you do think the rule is going to have a significant impact on a substantial number of small businesses?

Mr. WATCHMAN. We haven't made that determination yet, but we think we should do a regulatory flexibility analysis.

Chairman TALENT. How are you going to define small businesses for the purpose of your regular flex analysis?

Mr. WATCHMAN. We anticipate using the SBA definition of "small entities" for purposes of our regulatory flexibility analysis.

Chairman TALENT. Very good. You are not going to have to consult with them about changing it. That was a concern I had about the draft, because in terms of your compliance, you are going to have different attitudes in compliance toward employers with nine or fewer employees than you would with nine or more.

Where did you get the nine, anyway?

Mr. WATCHMAN. The 10 or fewer, 9 or fewer, is a frequently used cutoff point for our standards. It is also, I think, used in the appropriations rider that the Congress enacts every year.

Chairman TALENT. Why 9? I agree, but why 9? You see, some of us have a sense like, you have a dart board with numbers up there and you threw a dart up there and hit 9. You don't know why nine, as opposed to 10?

Mr. WATCHMAN. I don't know what the historical cause was.

Chairman TALENT. There is no apparent justification for 9 as opposed to 10. Can you see any?

Mr. WATCHMAN. It may be a reflection of how the statistical data is reported by other agencies.

Chairman TALENT. It may not be; it may be something else. I notice you have more time to comply if you have nine or fewer, but that is nine employees on any day in the preceding 9 months. Now, that would cover a whole lot of people who normally don't have nine employees.

Again, I don't want to focus on my family, but my brother has a couple of people who wait tables and work in his tavern, but if he has a private party on a given night, he may hire a few extra people to wait the tables. So, bang, he has the nine. Would it cover part-time as well as full-time?

Mr. WATCHMAN. I think it does take into account part-time employees in the calculation.

Chairman TALENT. You are getting very, very broad coverage there. We are not certain, are we? It doesn't say part-time or full-time, does it?

Mr. WATCHMAN. That is the kind of provision we would expand upon in the compliance directive and in the preamble to the regulation.

Chairman TALENT. Would you anticipate, by the way, because you already referred in response to other questions to a number of aspects of this that you are going to have to clarify; I am going to go over some others that I think — and I will see what you respond, but I think you are going to have to clarify.

Are you going to clarify those in the proposed rule?

Mr. WATCHMAN. I am not sure of all of the issues you are referring to, so maybe we should take them one by one.

Chairman TALENT. Is the proposed rule going to be in substantially greater detail than this working draft?

Mr. WATCHMAN. We have some conflicting goals. We want to issue a standard that is as short as possible so people can deal with it. We certainly recognize small employers don't have a lot of extra time on their hands, and if we are going to have a proposal like this that we want them to implement, we should make it as short as possible.

But that being said, I think we can accomplish the goal of providing sufficient information through a variety of compliance guides and models and checklists.

Chairman TALENT. See, here is something I want to get into. Ms. Bailey referred to this before.

My opening statement, when I talked a little bit about the nature of law, OK, I don't want to turn this into the Judiciary Committee, but when you say we are going to put it in compliance guides, compliance guides are not subject to the safeguards and the APA, the Administrative Procedures Act and the other kinds of rulemaking, are they?

Mr. WATCHMAN. Right.

Chairman TALENT. We don't know what is going to be in the compliance guides. But then it is too late for us to comment, to give you any input, right?

Mr. WATCHMAN. Well, certainly the issues you have raised are issues we would be considering during the rulemaking——

Chairman TALENT. OK.

Mr. WATCHMAN [continuing]. Clearly. But in terms of trying to provide assistance to employers, we would clarify some things in the compliance guides.

Chairman TALENT. You are going to do a compliance guide for small employers under SBREFA?

Mr. WATCHMAN. Yes. In fact what we would like to do is target them at some particular sectors or industry groups so we can provide more specific assistance.

Chairman TALENT. Let me get into a couple of the areas where I am deeply concerned.

I said in my opening statement that this working draft is not really, in my judgment, a law. It is sort of, you are urging people to go out and be safe, is the way I regard it. The problem with that is, when you have substantial legal penalties in connection with it, you are just not telling people what they need to do.

Let's get into the employee participation. I think you could take this with any one of these core elements. You define "meaningful participation" as ongoing, effective communication between the employer and the employees, so I presume — are they going to have to have official meetings, safety meetings?

Mr. WATCHMAN. Not necessarily. That would be one way of having ongoing, effective communication.

Chairman TALENT. But in some circumstances, probably yes; in some circumstances, probably no. Is that what you are telling me?

Mr. WATCHMAN. We want to allow employers as much flexibility as we can to determine what kind of participation is appropriate for their workplace. In a workplace like Mr. Landon's, with only a few employees, there really would not be a need for formal meet-

ings necessarily, but perhaps one-on-one conversations, an understanding if employees encounter a hazard, they are free to raise it with Mr. Landon and he will respond to their concerns.

Chairman TALENT. You said "flexibility," which I think is the key word. Believe it or not, even in my own mind, I am not convinced you should not go forward with this in some form or another. I think it is important you keep a distinction in your mind between a rule that allows flexibility for the employer and a rule that allows arbitrariness on the part of the inspector.

You see, if you say in the rule, employers can at their discretion have formal meetings or not, or employers with under 10 employees or something can, that is flexibility. But if you just say, well, have as many meetings as necessary, then what you have done is you have taken the job of making laws and you have given that to the inspectors to do, haven't you?

Mr. WATCHMAN. Again, that is where the compliance directive comes into play, and we would want to work closely with stakeholders in the development of that. I think you are raising a concern that our stakeholders have raised with us in many meetings, which is, we are comfortable with a lot of what you are doing in this working draft, but the real question is, how are you going to enforce it?

Typically, we draft a compliance directive on our own and put it out there for the inspectors to follow. That clarifies a lot of issues. This time around we want to work with stakeholders to allay their concerns about the kind of discretion that our inspectors will have in the enforcement of this standard, and we hope to do that at the proposal stage long before it ever becomes a final rule, years before.

Chairman TALENT. I will let you know right now, my judgment is that taking all these issues which should be part of the law or the regulation and putting them in the compliance directive isn't good enough.

The compliance directive, for example, is not clearly covered by the regular flex amendment. It would not necessarily subject to judicial review. You can't get around your responsibilities by putting them in a compliance directive; they need to be part of the rule, which is the way Congress has instructed the Agency to legislate when it legislates. Do you see what I am getting at?

Compliance directives on minor points are one thing, but on major points — and there is major point after major point here: Employee involvement in such areas as assessing and controlling hazards. Again, do you have to have meetings with the employees? Do there have to be surveys? Can you form teams? Evaluating the effectiveness of the safety and health program, do you have to hire consultants?

I think what you probably are going to answer — do you want to answer that?

Mr. WATCHMAN. I would just say, any of those could be acceptable means of meeting the employee participation requirement, but none of them would be specifically required.

Chairman TALENT. When you say, any would be acceptable, so if the employer says, I have had meetings, and the inspector says, OK, under the law I cannot cite you now, is that what you are saying?

Mr. WATCHMAN. Yes, if in fact the inspector talks to workers and they say, we had meetings, we talked about safety and health issues.

Chairman TALENT. Sure, assuming the factual statement is correct, assuming he could make sure what is being represented is correct, sure. A way for employees to promptly report job-related injuries, would that mean they would have to have written forms?

Mr. WATCHMAN. We do already have a written form requirement for recording injuries, and I think that is really an important aspect of our program, that employers can be made aware of the injuries that are occurring.

Chairman TALENT. "Promptly." What does that mean? See, you don't know. You are the head of the Agency and now you have people out there trying to figure out what to do.

By the way, I have to tell you, Mr. Watchman, because of something Mr. Landon said, when I was reading through this thing, the management leadership section, sub 3, when you say small employers may choose to carry out the responsibilities listed above instead of delegating them, that really is very quaint, because I have to tell you, most small employers are not going to have any choice but to carry them out themselves. You need to keep that in mind.

You referred to the States. I have been going through — I am not as expert as you are in all — in what all the States have. It seems to me most of the stated planks I looked at are narrower, and rather substantially so, in terms of whether they apply to or what they impose upon employers, than what you are proposing.

Oregon, for example, exempts employers with 10 or fewer, unless there is something about their industry or their own particular records to suggest that they may need a health and safety program.

Are you still considering whether you might just exempt very small employers or maybe subject them, conditional to some showing that they have themselves a poor safety record or are part of an industry that is high risk? Is that still something you are considering?

Mr. WATCHMAN. We are considering the general coverage issues for the standard, yes. Our stakeholders agreed, I think fairly universally, that they felt that all workplaces should be covered and that employees at small workplaces should have the same protections as employees at large workplaces.

But they felt very strongly we should treat smaller workplaces differently and expect different things from smaller employers. I would agree with that recommendation.

Chairman TALENT. I will give Mr. Watchman a break. Would anybody like to comment on that?

Dr. RAINWATER. I would like to comment. Did you say there is a possibility that you are going to exempt some employers? Did I hear that? I heard that.

Mr. WATCHMAN. We have not conclusively resolved these issues. We are still looking at these issues, but again, I am reporting what the stakeholders — employers and workers — expressed to us in our stakeholder meetings.

There also are some serious problems with the data that would make exemptions difficult to apply without exempting some work-

places where workers really are in need of protection. So we are looking at these issues. Again, we have not resolved conclusively the direction we want to go.

Obviously, we have looked at a lot of these different State laws as well.

Chairman TALENT. I would urge you to consider that very strongly. One of the concerns I have about regulations in general is that in order to get more control of a relatively small fraction of people who have a problem, something applies to everybody; and it seems to me we should not confine ourselves to those two universes.

Either we make everybody carry large costs that many people don't need to carry — I think you will agree, as Ms. Church said, and Ms. Gekker, many employers are doing all they can; and your suggestions are not going to help them as much. Why can't we tailor a rule for those who need the help or are the bad actor, make people who have bad histories or are in lines of business that are particularly hazardous — frankly, if you wanted to have a safety and health program requirement for businesses where they make explosives, I don't think I would be having this hearing?

Is that something you can consider doing? Maybe tailoring it on the background of the business?

Mr. WATCHMAN. There is a certain logic obviously in trying to target a standard at the highest-hazard workplaces. The reality is, we still have significant injury rates around this country, that the average rate for the country is about 7.8 workers out of 100 that will be injured in the course of a year. But even in the safest industries, one out of 50 workers will be injured in the course of a year, and that is a very significant level. Over the course of 10 years, 10 of those 50 workers will be injured.

I think there is a lot we can do to reduce these injuries and illnesses, even in the low-risk industries; and safety and health programs have proven to be a very successful way of reducing injury and illnesses and saving money for the employers.

So, yes, there is some logic there, and we are looking at that issue. But I think there is also a counterargument that makes sense, to try to extend the same protections to all workers, but to try to reduce the impact and burden on small employers of complying with the standard.

Chairman TALENT. Ms. Bailey, I wanted to followup with something you talked about, back-door rulemaking, which I think is a real danger of this working draft. Let me say what I understand you to be saying, and you tell me whether this is correct.

Let's suppose that OSHA has been considering or working on a rule — in particular you mentioned ergonomics; it could be one of a number of them — and for one reason or another has not promulgated that rule, or perhaps Congress said, do not promulgate that rule, or do not promulgate it now or in this form. But this rule goes forward.

So now the employer has the responsibility to have a health and safety program covering not just the specific standards of OSHA, but also comprehending hazards that would be hazards only under the general duty clause.

Ms. BAILEY. That is correct.

Chairman TALENT. So let's go back to my example in my opening statement about the beer keg that, let's say, weighs more than 25 pounds — and I don't know how much they weigh; I have never approached them from that standpoint, picking them up. The hose, I could tell you how much they weigh, that you put in there. So the inspector comes into the workplace.

Now, as far as his working draft is written, is it your belief, as it is my belief, that there is nothing at all to keep that inspector from saying, there is a hazard over here, under the general duty clause with this beer keg? You have not listed it as a hazard or not corrected the hazard, and in fact that incorporates the ergonomic rule into the safety and health program.

Is there anything you could see to keep him from doing that?

Ms. BAILEY. No, there is not. As long as the lifting of a keg that size is a recognized hazard in that industry and would be covered by the general duty clause, then there is no basis — they can't form the basis for a citation saying, you do not have an effective safety and health program. That is preventive control in regard to that hazard.

Chairman TALENT. Mr. Watchman can speak for himself, and I will give him a chance to comment, but perhaps he can say, then you can litigate it.

Let's get reality into the open here. What is the first stage at which an employer gets an impartial adjudication of an OSHA citation? The ALJ?

Ms. BAILEY. Yes.

Chairman TALENT. What is the nature of the proceeding before an ALJ?

Ms. BAILEY. It is very much like a trial. There is no jury, but the ALJ is essentially the judge, and both sides present their arguments. It is a full-blown trial.

Chairman TALENT. You examine and cross-examine witnesses?

Ms. BAILEY. Yes.

Chairman TALENT. You file written pleadings?

Ms. BAILEY. Yes, all those things.

Chairman TALENT. Briefs?

Ms. BAILEY. Yes.

Chairman TALENT. So if the employer wants to have much chance, he has to have representation.

Ms. BAILEY. Being a lawyer, I would say yes.

Chairman TALENT. I am a lawyer, too, and I used to be in the field of labor law. So how much would a reasonably — not a complex, but an average trial before an ALJ cost an employer?

Ms. BAILEY. Quite a bit.

Chairman TALENT. Even for somebody a little bit less qualified than the people at McDermott, Will and Emery, it would probably cost $25,000 or $30,000 maybe?

Ms. BAILEY. Yes, I would venture to say. Yes. If you have to go beyond the ALJ level, up through the review commission and the appellate court, you are talking about hundreds of thousands of dollars.

Chairman TALENT. So the inspector says, I will tell you what, I am going to fine you $1,500 for the beer keg thing and don't ever do it again. Now you can get take the $1,500, or maybe go to the

regional director and try and get that settled, or hire somebody like you for $1,000, or you can litigate it for a minimum of $25,000- or $30,000. What are the tavern owners, as a practical matter, going to do?

Ms. BAILEY. They are going to have to spend a lot of money, it sounds like.

Chairman TALENT. Which means, as a practical matter, that that inspector is making the law at that workplace, isn't he?

Ms. BAILEY. That is true to some degree.

What you also have to realize is, we are not just talking about penalties that come with citations. Suppose you have a tavern owner — what you have to think about also is abatement. I mean, the real costs don't come with the $1,500 fine. They come with the way you have to completely revamp your business to change the way you operate, and that is where some of the really big costs can come in.

It is not necessarily the $1,500 fine; it is the way you have to change the way you operate your business.

Chairman TALENT. Now, Mr. Watchman, I will give you a chance to comment if you want. But let me just add, see, when you combine a remedial procedure, which is very expensive for the average person — and I am not saying there is anything we can do about that — we ought to put our heads together and try to figure it out. But on the one hand, getting a clarification of the law before even a semineutral adjudicator is very expensive.

Then a law, which is very vague, what the average small employer is just confronted with then is the person that comes out to inspect is the law. I mean, it is like, well, I am not going to say what it is like. It is what offends me, I guess, in principle, about this kind of a process, that people don't know what they can and cannot do; and in order to find out, it is extremely — prohibitively expensive. These are people who in many cases may not have any problem with safety.

Do you have a response to that? Is there anything we can do to try and move forward with something you are trying to do and minimize that risk?

Mr. WATCHMAN. I think this is a very creative argument that Ms. Bailey has raised, but I don't think there is any merit to it. We have made clear in the working draft and we will continue to make clear in any proposal we come up with that, first, the standard only applies to hazards for which the general duty clause already applies or a specific standard already applies.

If in fact the handling of the kegs represents a hazard under the general duty clause that is likely to cause death or serious physical harm, or is causing death or serious physical harm, if in fact it is a recognized hazard in that industry, and if in fact there are feasible means of abating that hazard, a general duty clause violation would be appropriate in that instance — but only if those criteria are met.

If they are not met, it would not be appropriate. But the existence or nonexistence of a safety and health program standard would have absolutely no impact on whether or not the handling of kegs represented a general duty clause violation.

So, again, I think the argument is a creative one, but I don't see it as being a problem.

Chairman TALENT. In fairness, though, to Ms. Bailey, the Agency's position on these kinds of things hasn't always been consistent. A few years ago it was the view of the Agency, evidently, that in order to do what you are trying to do now, Congress had to pass a law, wasn't it?

Mr. WATCHMAN. No, sir.

Chairman TALENT. Wasn't the COSHRA bill, introduced in 1992 and 1993 by Senator Kennedy and Senator Ford, designed to give you the authority that evidently they felt they had to give you, that you didn't already have, to promulgate a national safety and health standard?

Mr. WATCHMAN. It was. It was the time of a different administration.

Chairman TALENT. Not in 1993 it wasn't.

Mr. WATCHMAN. In 1993, that is true. But that legislation was designed to enact a number of reforms to the OSHA statute. But I don't believe the sponsors felt that a safety and health program rule had to be enacted by legislation.

Our statute, in fact, gives us broad authority to set standards to reduce injuries and illnesses in the workplace, and in fact section 8(c)(1) of our statute specifically gives us the authority to require employers to conduct self-inspections, which is really at the heart of this working draft.

Chairman TALENT. When I look at a side-by-side of COSHRA and your safety and health proposal, it looks pretty similar to me. Obviously, there are a few differences.

Basically, they tried to require through the law — and they were, by the way, unable to pass through a Congress that in both sessions was controlled by the other party — essentially what you are trying to do here. So you see why Ms. Bailey and some of us are concerned, because administrations change and views change and compliance guides change, and none of that is subject even to the safeguards in the Administrative Procedures Act, much less the safeguards in the Constitution regarding how laws are passed here.

To this point, I don't think you have addressed the concerns that I think are here in trying to have such broad coverage of a law that must inevitably be vague in what it actually says. You are trying to cover everybody, and you recognize appropriately that, look, some people may have meetings, some people may have surveys.

You appreciate the fact we could be here all day if I wanted to go through all of the elements and bring out what is vague in all of them. Wouldn't you recognize there is a whole lot more vague in here than what I have talked about to this point?

Mr. WATCHMAN. As I recognize in my testimony, the challenge is to respond to employer wishes for a performance-based standard, but also giving enough guidance that people know what we are asking of them.

I am not sure we have gotten it exactly right. I think we do need to do a better job of defining a lot of these terms. But I think there is also a balance to be struck here; it is not just a question of defining the terms. Because the more specific we make the standard,

the more employers are going to tell us, why are you telling me to do it that way; I do it this other way, and that works perfectly well.

Chairman TALENT. Which would suggest that if you end up giving discretion to people who can't be attacked in the enforcement stage, that that may be the way to go. That is true flexibility; that isn't arbitrariness. Give people safe harbors.

You mentioned checklists before. I know this is in the back of the mind and is something you are thinking about. I would also suggest to you there is more than just a compromise here; there are some very basic principles of law here.

There is an old Anglo-Saxon maxim of law that what is not prohibited is allowed. If you do not let people know with reasonable specificity what they cannot do, then they are allowed to do it. It is hard to regulate a vast society following that principle, but we ought to try to do it as much as possible.

Let me see if I have any other questions. I filibustered Mr. Hill out of his. He handed me a note. When he has been around here longer, he will just butt in. When he has been around here a very long time, he may ask you about his teeth.

Dr. RAINWATER. I am waiting for a reply on that.

Chairman TALENT. I had a question about effective alternatives, because I think that is one possible safety valve here. Under "discussion," I am interested in this discussion, some kind of concept evidently, and I have not tried to codify it or to set it forth with great specificity here, but some kind of concept that employers who have some effective alternative are deemed to be in compliance. That is kind of a general safe harbor. Could you elaborate on your thinking in that regard?

Mr. WATCHMAN. Sure. We included language to this effect in response to concerns that stakeholders raised. The basic concern that was raised initially was, we already have an effective safety and health program in our workplace, and we are reducing injuries, doing a lot of things, but why should we have to change it, when it is working, to comply with the standard?

Our intent is not to force changes in effective programs, but the way we have drafted the standard in terms of boiling it down to the very basic core elements, they are fairly common sense. You have to be committed at a high level of management, and not just make it a pro forma exercise.

You have got to talk to your workers and communicate with them. You have got to actually try to identify and address hazards that are present at your workplace, if there are some. You have to train workers that are exposed to serious hazards about how to identify them and how to deal with them.

Then it makes sense to review the overall approach periodically to just get a sense of whether it is working or not.

Nevertheless, we have considered whether we could do some alternative language that would allow for other effective approaches. But what we have said at every single stakeholder meeting is — to both many different individual employers that are present at those meetings, as well as employer representatives that represent hundreds of thousands of businesses — give us examples of the kinds of approaches you are conceiving of that you think would not

meet the core elements. Not a single employer has given us an example, and we have asked repeatedly.

I would ask again today, if there are companies that feel that they are not providing one of those basic core elements or not providing it exactly the way we envision it, either we can include an alternative provision or we can broaden that particular core element so it allows for that type of delivery of that core element.

Chairman TALENT. Would anybody else like to comment on the possibility of that being a saving clause for this, if you will, and if so, what you think it would have to contain. This idea that if you are running your own program and it is an effective program, tell me how you think that might need to be defined, that that might be a pretty good safe harbor; or do you think it would be ineffective? Any comments on that?

Ms. CHURCH. Chairman Talent, I have a feeling it comes down to "I will know it when I see it." I don't think that will work.

Chairman TALENT. Any other comments?

Dr. RAINWATER. I would like to comment to Mr. Watchman.

The OSHA compliance checklist for the dental office that the dental profession has worked with OSHA to come up with, which includes about everything you can possibly dream of from labeling to training to means of egress to fire prevention to exits, would that not be a sufficient document to comply with everything in this standard?

Mr. WATCHMAN. It sure sounds like it would. It looks pretty comprehensive and looks like it addresses the kinds of issues we would envision being addressed in the safety and health program. So this is the kind of material that we envision as potentially using as a safe harbor under the standard.

Chairman TALENT. OK.

Dr. RAINWATER. May I then ask, would it be possible that either we could get an exemption, because we are already doing that, or get some sort of directive from OSHA saying that if you comply with all this stuff, that is all you need to do to fulfill this? Is that possible?

Mr. WATCHMAN. The problem with an exemption for an entire industry is that it assumes every employer is taking exactly the same steps. As I am sure you understand, there are many employers doing exactly the right thing, some going beyond what is required, and then others that are not doing enough. So I think we need to apply the standard in places where there are problems and industries where there are problems, but I think we need to make every effort to develop these kinds of industry-specific checklists that can be used as safe harbors.

Chairman TALENT. Let me ask you this, Secretary, because it seems to me the core of your argument comes down to the fact there are people out there who, either through ignorance or they don't care — and I do agree, the economic motive, although if humanity doesn't move people to care about safety, which in most cases it does, the economic motive ought to. But I agree with you, there are some people out there who are going to companies over that thin ice and just hope it never hurts anybody. But cannot we apply the same thing to regulatory agencies from a different perspective?

Most regulators I know of are pretty conscientious people trying to advance the interests of what they are supposed to be doing without necessarily hurting people. But there are some out there, either untrained or ignorant or malicious — they got up on the wrong side of the bed this morning, so we are going to stick it to somebody.

So suppose I said to you, Congress is going to pass a law requiring the agencies to be fair, and because we are trying to cover all the agencies and all the circumstances in which you might be regulating people, is it impossible for us to be more specific than that? But we are going to have the General Accounting Office — we are going to give them several thousand people, and they can go around whenever they want, walk into one of your regional offices or follow an inspector or demand documents, which you will have to provide, and they are going to implement what is fair. They will have compliance guidelines.

Now, those will not be subject to the Administrative Procedures Act and they could change without any notice, but we will promise we are going to work with your stakeholders. If they decide that you are not being fair in a particular instance, there is monetary liability for the inspector, but they can contest it if they want before a system of ALJ's, most of whom, by the way, will be former GAO auditors, OK?

Now, would you say to me, Congressman, that seems kind of unfair and it might stop us in the legitimate things we are doing? Or would you say, we have to do something because there are some people out there who otherwise are not going to be fair?

How would you respond to that kind of setup?

I could file a bill like that. Everybody wants fairness.

Mr. WATCHMAN. In the course of our rulemaking, I don't want to suggest that we are going to shuffle off some of these issues into a compliance directive that will not be considered in the course of the rulemaking. We recognize that there are serious concerns that people have about how we could craft a standard that could apply in a variety of contexts. It is a tough challenge.

But the issues you have raised, and that a lot of the witnesses have raised, are issues that we do intend to explore during the rulemaking. Again, there are all these steps involving meetings with small businesses, the SBREFA regulatory review panel process, interaction with SBA and OMB, and all of that takes place before we ever issue a proposal.

We are still years from issuing a final rule. During the postproposal stage, we will have hearings and an opportunity with written comments, and again, witnesses can cross-examine each other to really get into the detail of these types of issues, to hammer out a standard that is fair and reflects as big a consensus as possible among stakeholders.

So I do think we have a very fair process. I think OSHA's processes for developing rules is one of the more thorough and public processes that exist in the Federal Government, and we have only added to that process through all of the preproposal activity we have engaged in.

Chairman TALENT. You haven't commented, whether you would support that bill or not, whether the Agency would. You would probably want to look at it a little bit more.

Mr. WATCHMAN. Probably.

Chairman TALENT. That is all I have. I want to thank the witnesses for their patience.

Mr. Watchman, I know you needed to go about 1. I want to thank you for answering these questions and being willing to be so responsive and to listen. I think that speaks very well for you and your leadership. I am grateful to you for doing that.

Without objection, I will keep the record open for 5 days so that other members can direct written followup questions that they may have to any of the witnesses or submit other statements for the record. Without objection, that is ordered.

[Mr. McIntosh's statement may be found in the appendix.]

[Mr. Poshard's statement may be found in the appendix.]

[Mr. Jackson's statement may be found in the appendix.]

[Mr. Pascrell's statement may be found in the appendix.]

Chairman TALENT. The hearing is adjourned. Thank you all again.

[Whereupon, at 1 p.m., the Committee was adjourned, subject to the call of the Chair.]

APPENDIX

OPENING STATEMENT OF CHAIRMAN JIM TALENT

HOUSE COMMITTEE ON SMALL BUSINESS

HEARING ON OSHA'S PROPOSED SAFETY AND HEALTH PROGRAM STANDARD

June 26, 1997

Today's hearing is about a proposed OSHA standard requiring federally dictated health and safety programs. We will be looking specifically at the working draft of that proposal. Judging by the working draft, the proposed standard would place heavy new burdens of a procedural and record keeping nature on every small business in the country, including those which have no record of safety problems and which are in compliance with all of OSHA's substantive standards.

Moreover, this new burden would be different in kind from OSHA's typical standard in two ways. First, OSHA typically regulates safety, not management. OSHA usually requires that employers maintain safe conditions in the workplace, but does not regulate how they run the business provided that they achieve the safe condition. My brother has a tavern in St. Louis. I'm sure there are regulations requiring that he store beer kegs at a safe pressure level; but to this point OSHA has not told him what management technique he must use in getting the kegs to that level. Second, OSHA typically requires the elimination of hazards which can be identified; this new regulation would require that small employers maintain safety programs, the elements of which are totally subjective in nature. Under the working draft, small business people must "systematically" manage safety and health with programs that are "appropriate," must provide

training to supervisors "commensurate" with their responsibilities, must allow each employee "meaningful" participation in the program through "ongoing and effective" communication, and so on. The working draft offers no definition of what these terms mean, nor could it, because the terms are conceptual and relative rather than objective in nature. Unless the working draft is fundamentally modified, it will result in a standard with which no employer in the country can comply, because it will not be standard at all, but a series of vague, if well intended admonitions carrying the penalties, but not the clarity, of real law.

I hope the agency does not respond to my concerns by promising to be flexible in enforcing this new standard and assuring us that its inspectors will be adaptable in applying its vague language to small employers. Far from being a virtue of the new rule, the vesting of such arbitrary power in the agency and its inspectors -- the power to make the law while enforcing it -- is a serious vice. The people in a free society are entitled to know what the law requires them to do before the law is enforced against them. They should not have to depend for their rights on the good faith, the good will, or the good mood of any government official.

I have many other concerns with the proposed draft, but will withhold them until after the witnesses have testified.

DAVID M. McINTOSH
7TH DISTRICT, INDIANA

GOVERNMENT REFORM AND OVERSIGHT COMMITTEE

SUBCOMMITTEE CHAIRMAN
NATIONAL ECONOMIC GROWTH, NATURAL RESOURCES AND REGULATORY AFFAIRS

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STATEMENT OF REP. DAVID MCINTOSH (R-IN)
COMMITTEE ON SMALL BUSINESS
HEARING ON THE OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION'S FORTHCOMING SAFETY AND HEALTH PROGRAM STANDARD
June 26, 1997

Over the past two years, we in Congress have heard a great deal about the "New OSHA." President Clinton has promised that OSHA will no longer play "gotcha" with America's small businesses. Former Assistant Secretary Joe Dear frequently touted OSHA's new ways -- working with employers instead of against them, issuing warnings instead of fines for first-time violations, focusing on education instead of enforcement. I believe that OSHA's draft Safety and Health Program standard reverses any progress OSHA may have made in reinventing itself. Moreover, it is too broad and too vague to be effective in protecting the safety and health of America's workers.

Under this new standard, employers would waste a great deal of time and money trying to understand and implement its vague and sweeping mandates, instead of focusing their resources on preventing real, known risks in their individual workplaces. OSHA inspectors, on the other hand, would be given increased power by the standard to determine whether violations have occurred, even though employers have not been able to determine for themselves what constitutes a violation and what constitutes compliance. The end result will most likely be more "gotcha" and endless litigation that only serves to pad the pockets of lawyers, not to increase workplace safety.

I want to thank Chairman Talent for holding this hearing today to shed light on how OSHA came up with this broad, new standard and how it will impact small businesses. Congress has a important role to play in overseeing new regulations under the Congressional Review Act, which was signed into law in the 104th Congress. This law gives Congress the ability to review new regulations and veto them if they don't meet common-sense criteria. If Congress takes its new job seriously, this law could become the most important regulatory relief measure in 50 years. I hope we will be able to work out our differences with OSHA on the Safety and Health Program standard before it becomes final, and today's hearing may start us down the right path. I look forward to hearing from Acting Assistant Secretary Watchman on this matter. But if we can't resolve our differences, and I will do everything I can to ensure that we do, this standard becomes a candidate for Congressional review.

I am also looking forward to the testimony of the small businessmen and women who are here today. As the chair of the Government Reform and Oversight Subcommittee on Regulatory Affairs, I have heard first-hand from small business people across the country how OSHA rules

affect their businesses and interfere with their ability to create new jobs and pay higher wages. At a hearing we held in St. Paul, Minnesota, we heard from Bruce Gohman, the president of a small construction company. He testified that although he would like to expand his company, he keeps the number of employees under 50 so that he will not be subject to more regulations. In my home district, I heard from Gary [redacted], who runs a small construction company in Sulphur Springs, Indiana. Although Mr. [redacted]' company had an impeccable safety record, he was fined almost $55,000 by OSHA for some minor violations on one of his construction sites. Over several years and after much litigation, the fines were reduced to about $32,000, which is still a prohibitive amount for his small company. That amount equals the annual salary of at least one worker. Mr. [redacted] will likely be forced to lay off at least one worker as a result -- all because of a couple of minor violations which did not cause anyone any harm or injury.

Mr. [redacted]'s story is a clear of example of government regulators misdirecting resources toward a very minor risk at the expense of greater risks to public safety and health. I fear that is what OSHA may be doing with their new Safety and Health Program standard. We all want a cleaner, safer, healthier America. When 60% of the money spent on Superfund goes to trial lawyers, consultants, and studies, that's not "cleaner." When the top OSHA citation is for a paperwork violations rather than real safety violations, that's not "safer." When FDA takes twice as long as Great Britain and other industrialized countries to approve new drugs that could save tens of thousands of Americans, that's not "healthier." As we restore common-sense to the regulatory process, we can fulfill the promise of a clean, safe, healthy America without hurting small businesses or costing jobs.

The Safety andHealth Program Standard developed by OSHA seeks to improve the safety and health conditions in work sites across America. A natural result of such efforts will be a reduction in health insurance costs, workers' compensation claims and an improvement in the overall quality of life for the American worker. We can all agree that these are results that the American public and our respective constituents overwhelmingly favor.

The Safety and Health Program Standard would also continue the trend toward a more flexible and less onerous regulatory scheme with an emphasis on forging a working partnership between industry and OSHA. The Standard is performance-based which permits industry to determine the best way to achieve compliance.

This proposal also goes a long way toward building a rapport between industry and the agency in that it does not call for the imposition or levying of fines fines on a business that fails to identify all hazards so long as their failure to do so occured in good faith. This proposal spells out for industry what will qualify as good faith. Good Faith will entail an open line of communication between employers and employees about existing hazards, and a sharing of information and training on how to cope with identified hazards.

So there clearly are some real, well-intended and desireable changes in this proposal. However, there appears to be a lot of concerns and unanswered questions in terms of the actual costs of this legislation.

With the benefits clearly outlined, I anticipate the debate will center on a cost analysis. May I suggest that we refrain from conclusory characterizations such as "it cost too much" or "it will hamper productivity." These statements are undebatable and do not readily lend

themselves to discussion.

As elected officials, we are required to make tough decisions on issues that people feel passionately about on both sides. Consequently, it is highly imperative, when we assemble a knowledgeable panel such as this, that we receive as objective information as possible.

I look forward to your testimony and hope that we can get a better understanding of the issues presented by this developing program.

STATEMENT BY CONGRESSMAN JESSE L. JACKSON, JR.
FULL COMMITTEE SMALL BUSINESS HEARING
ON
OSHA SAFETY AND HEALTH PROGRAM STANDARD
JUNE 26, 1997

I would like to thank the distinguished Chairman for the opportunity to welcome the witnesses who are participating in today's hearing. As a member on the Small Business Committee, I am interested in hearing the views and concerns of both the witnesses from the small business community and from the representative of the Occupational Safety and Health Administration (OSHA). I believe that the purpose of such dialogue should be directed toward accomplishing one specific goal: the reduction of workplace accidents and illnesses. It is my opinion that such efforts will save lives and costs incurred by business owners.

As Ranking Member for the Regulatory Reform and Paperwork Reduction Sub-Committee, I will closely examine whether OSHA's draft proposal is sensitive to the employer's obligations while ensuring employee safety. Thus, today's witnesses must be committed to assisting this committee in assessing both the effectiveness and necessity of OHSA's draft proposals.

I thank the Chairman for holding this hearing, and I look forward to reviewing the testimony from our witnesses.

Statement by Bill Pascrell, Jr.

Small Business Committee Hearing on OSHA Safety and Health Program Standard

June 26, 1997

Mr. Chairman, I am pleased to participate in this hearing concerning OSHA's draft proposal which would require employers to establish systematic plans dealing with workplace safety and health matters. Over the years, OSHA has contributed greatly to improving the safety of workplace conditions. Countless workers in this country have avoided serious injury or death because of the standards that OSHA has produced.

With that said, I think that the special concerns of small businesses need to be kept in mind. Balancing the safety of workers and maintaining the viability of small businesses is a goal that, with the proper communication and interaction, I believe can be achieved. By identifying those areas where regulations adversely affect small businesses, I am certain that solutions can be found.

Let me also say that I strongly support OSHA's plan to conduct field hearings in order to get input from small businesses. I believe this is critical. Additionally, I feel that the incremental fine structure is a fair one, with habitual offenders being open to the most serious fines.

I look forward to hearing our witnesses this morning, Mr. Chairman. Thank you once more for calling this hearing.

The Honorable Glenn Poshard

the 19th Congressional district of Illinois

Full Committee hearing on the Occupational Safety and Health

Administration's forthcoming Safety and Health Program Standard

Opening Statement

June 26, 1997

Thank you Mr. Chairman. I appreciate the opportunity to examine the effect of the Occupational Safety and Health Administration Safety and Health Program Standard. At the outset, I would like to thank the panel of witnesses, and my esteemed colleagues, for their time.

I am interested in hearing what the panel has to say about this program. It is important to know if this program would be effective in alerting their workers to potential health hazards. The safety of our workers must be our number one priority, but none of us should be eager to endorse a program which results in frivolities that serve to impede our nation's economy. If this is a sound program, the delay at U.S. OSHA must be scrutinized and explained.

Mr. Chairman, I look forward to today's proceedings, and am interested in learning what this panel has to share with us today.

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OSHA'S DRAFT PROPOSED SAFETY AND HEALTH PROGRAMS STANDARD

Testimony of
Melissa A. Bailey, Esq.

HEARING BEFORE THE COMMITTEE ON SMALL BUSINESS
HOUSE OF REPRESENTATIVES
105TH CONGRESS
JUNE 26, 1997

COMMITTEE ON SMALL BUSINESS
HOUSE OF REPRESENTATIVES
105TH CONGRESS
JUNE 26, 1997

OSHA'S DRAFT PROPOSED SAFETY AND HEALTH PROGRAMS STANDARD

At first glance, the idea of the Occupational Safety and Health Administration (OSHA) requiring an employer to have a sound safety and health program seems unassailable. Stakeholders, including employers who already have well-established, sophisticated programs may conclude, therefore, that OSHA's move to develop such a standard should not be of concern.

Upon closer examination, however, OSHA's draft proposed standard should be of significant concern. The standard would greatly expand compliance obligations for employers as well as their exposure to significant OSHA citations and other civil and criminal penalties.

BACKGROUND

This testimony reflects the collective experience of the OSHA Practice Group at McDermott, Will & Emery (MW&E), one of the largest occupational safety and health practices in the United States. The attorneys in MW&E's OSHA practice group represent employers of all sizes in inspections, enforcement litigation, rulemaking, and compliance counseling.

In evaluating OSHA's draft standard, we see direct parallels to the OSHA standard on chemical Process Safety Management (PSM). Like safety and health programs, PSM has a laudable purpose - avoiding catastrophic accidents. Also like PSM, OSHA's draft uses so-called "performance" language, which is intended to state the safety and health goal that the employer is to reach, but ostensibly leaves it to the employer to select the specific means of achieving that goal.

Having represented employers throughout the nation in PSM inspections and enforcement litigation, however, we have come to understand that in the hands of an OSHA compliance officer, the idea of a "performance" standard is a hoax. The "real world," as we and more importantly, employers, have discovered, is that OSHA compliance officers use the latitude provided by the vague terms of a performance standard to apply the classic "second guess" -- rather than allowing the employer to decide what practices meet the required goal, OSHA cites employers for lacking whatever detailed practice or procedure the compliance officer happens to believe should have been implemented.

As we now explain, we see the same possibilities lurking in OSHA's draft safety and health standard.

ENFORCEMENT AND POLICY CONCERNS FOR EMPLOYERS

The provisions of the draft safety and health programs standard raise serious enforcement and policy concerns for employers of all sizes. The following are examples of the problems that the proposal could create:

The Perils of a "Performance-Based" Standard

Perhaps the most significant problem with the draft standard is the vague language and terms it contains. OSHA describes the standard as "performance-based" and says that it will give employers flexibility in complying. Experience shows, however, that what OSHA calls a "performance standard" becomes a specification standard in the hands of the OSHA inspector. The vague terms that permeate the draft standard would provide a vehicle for OSHA compliance personnel to issue significant citations whenever they feel that the employer's program could be improved. These suggestions for improvement will come through citations requiring the payment of penalties and abatement. In short, there is no such thing as a "performance" standard. Performance standards become specification standards when the compliance officer inspects and disagrees with your "performance."

The tendency to second-guess the employer's judgment on the components of a safety and health program will be especially pronounced when an accident or injury occurs. Once there is "blood on the floor," compliance officers will be tempted to disregard the draft standard's statement that "an employer can have an effective workplace safety and health program even though all hazards may not be identified and controlled." Compliance officers will inevitably want to believe that the occurrence of an accident is proof that the employer's program could have been better, and will issue citations dictating exactly how the program must be improved.

Comparison to PSM Standard

Many employers have already encountered problems with vague language in the Process Safety Management (PSM) standard. The standard was written using the same type of "performance-based" language used in the safety and health programs proposal. Enforcement of the PSM standard has been problematic for employers because the vague language allows compliance officers to second-guess the employer's judgment. For example, OSHA has cited employers for having procedures that are not sufficiently detailed. The PSM standard's requirement that procedures be "clear" provides no objective measure of compliance, yet OSHA continues to substitute its own judgment for that of the employer as to the level of detail that is required. This example is illustrative of what is likely to happen

with a safety and health programs standard: OSHA will continue to impose specification requirements under the guise of interpreting a performance standard.

Contractor Safety Example

The provision governing multi-employer worksites is a good example of the problem with vague language. Under the draft standard, employers would be required to provide "appropriate" safety information to contractors and "appropriately allocate" safety and health responsibilities among contractors at a multi-employer worksite. After an accident, when OSHA is most likely to scrutinize the employer's safety and health program, the compliance officer's definition of "appropriate information" or "appropriately allocate" may differ from the employer's.

The Last OSHA Standard?

On its face, the draft standard is relatively simple: it sets out some rather general guidelines on what components a safety and health program should include. The safety and health programs standard would, however, also serve as a mechanism allowing OSHA to regulate every conceivable workplace hazard without having to promulgate any additional standards.

OSHA issues two types of citations: those alleging violations of hazard-specific standards such as the machine-guarding standard; and those alleging that the employer has failed to maintain a workplace free from "recognized hazards," and therefore has violated the General Duty Clause. OSHA uses the General Duty Clause to cite employers when the agency has not adopted a standard targeting a particular hazard. For example, OSHA has used the General Duty Clause in recent years to cite employers for ergonomic hazards in the workplace.

The draft standard would require employers to assess and control *all* hazards, including hazards that could be the basis for General Duty Clause citations. Apart from the administrative burden that this requirement would impose, this means that the employer could be cited if he fails to identify and control any and all hazards for which OSHA does not have a hazard-specific standard. This could have the effect of requiring employers to canvass all potential hazards identified in sources as diverse as voluntary consensus standards, ACGIH standards, perhaps NIOSH recommendations, as well as hazards which OSHA currently contends are "recognized," such as ergonomics and workplace violence.

By including hazards which could be the subject of General Duty Clause citations, the draft standard allows OSHA to engage in backdoor rulemaking by imposing new requirements on individual employers without following the mandates of formal rulemaking. For example, if the draft standard were enacted, OSHA would have no reason to attempt to issue an ergonomics standard because employers would already be required to "assess" and "control" repetitive motion hazards pursuant to the safety and health programs standard. OSHA would no longer have to issue citations alleging violations of hazard-specific standards

or the General Duty Clause because it could simply cite an employer for having an insufficient safety and health program. As such, the draft is essentially a "Trojan Horse" that encompasses every conceivable hazard and allows OSHA to cite an employer for any hazard without following the rulemaking requirements of the OSH Act, the Regulatory Flexibility Act, and the Small Business Regulatory Enforcement Fairness Act.

Criminal Penalties

The draft standard would expand the situations in which OSHA can pursue criminal penalties against employers. Section 17(e) of the OSH Act allows OSHA to assess criminal penalties when an employer's violation of a standard has caused the death of an employee. Section 17(e) is limited to violations of a specific standard, so OSHA cannot seek criminal penalties when the employer's violation of the General Duty Clause has caused a death. Because the safety and health programs standard would be a "standard" under § 17(e), OSHA would be able to seek criminal penalties any time an employee death is allegedly caused by the failure to "assess," "prevent," or "control" any hazard that could be cited under the General Duty Clause. For example, an employer could conceivably be criminally liable under the draft standard where the hazard of workplace violence was not "assessed," "prevented," or "controlled" and an employee is killed by a customer or fellow employee. This possibility is particularly troublesome because no matter how diligent an employer is, it is often impossible for an employer to anticipate every set of circumstances that may create a fatal accident.

Erosion of Management Control

The employee participation provision of the draft standard may have a serious impact on the way companies manage their businesses. The employer's employee participation program must include "employee involvement in such areas as assessing and controlling hazards." This provision can be interpreted as requiring that employers cede some degree of management control to employees and unions. The proposal would essentially alter the management-labor relationship and implicate issues traditionally governed by the National Labor Relations Act (NLRA) and collective-bargaining agreements.

An additional concern is the tension between employee participation programs and the prohibition in § 8(a)(2) of the NLRA against "company unions." The National Labor Relations Board (NLRB) has interpreted § 8(a)(2) as defining certain types of employee committees, including safety committees, as "company unions" that violate the statute. OSHA cautions in the draft standard that the employer must establish an employee participation program that is "consistent with other Federal labor laws," but from a practical standpoint, this will be difficult. Unless the employer hires an expert to wade through the complex cases the National Labor Relations Board has decided on this issue, there is a significant possibility that the employer's employee participation program will violate § 8(a)(2).

"Whistleblower" Provision

The draft standard significantly amends the anti-retaliation provision contained in § 11(c) of the OSH Act. Under current law, an employer cannot "discharge or in any manner discriminate against" an employee who has filed a complaint with OSHA, talked to an OSHA compliance officer, or testified at an OSHA hearing. Retaliation cases are litigated in the federal district courts.

The draft standard allows OSHA to issue a citation when it finds that the employer has "discouraged" employees from participating in safety-related activities. OSHA will likely interpret "discourage" broadly, and thus cite employers for conduct that is currently lawful. For example, compliance officers have complained that giving employees bonuses when no injuries occur for a certain time period or disciplining employees who break safety rules "discourages" the reporting of injuries. Citations making such allegations would also be difficult to litigate because they would likely dissolve into contests over whether an employer "discouraged" the employee. In addition, the draft provides that "discouragement" claims would be heard by the Occupational Safety and Health Review Commission rather than in federal courts as contemplated by Congress in the OSH Act.

WILL THE "PATTERN" PROVISION PROTECT EMPLOYERS?

OSHA asserts that the draft standard contains a protection against enforcement abuse for employers because even if citations are issued, penalties would be sought only where the employer has a "pattern of serious hazards." This protection is, however, largely illusory because the terms "pattern of serious hazards" and "serious" are defined so vaguely that most workplaces will qualify.

OSHA can prove a "pattern" by showing the existence of hazards that are the "same or similar" or result from the "same or similar deficiencies" in the safety and health program, or by showing a "general failure to control a variety of serious hazards as a result of various deficiencies in the program." The "seriousness" of a hazard is based on the "likelihood of employee exposure, the severity of harm associated with the exposure, and the number of employees exposed." These criteria are so subjective that a compliance officer will almost always be able to assess a penalty.

Moreover, the issuance of a citation even without a penalty has serious implications. The standard's vague language will allow OSHA to issue citations imposing burdensome abatement requirements under the guise of "interpreting" the standard. OSHA's propensity to do this is illustrated by the agency's interpretation of the Lockout/Tagout standard. OSHA has interpreted the Lockout/Tagout standard as requiring that maintenance employees be trained on each different piece of equipment they repair. If upheld, this interpretation would impose costs on employers many times higher than those originally estimated during the rulemaking. Given the vague terms used in the draft standard, the costs of a safety and health programs standard will skyrocket in a similar manner as OSHA compliance officers "interpret" the standard as requiring expensive amendments to an employer's program.

PROPOSED STANDARD OR OSHA-REFORM LEGISLATION?

The draft standard does not attempt to regulate specific workplace hazards; OSHA does this through the General Duty Clause and hazard-specific standards. Rather, the draft safety and health programs standard attempts to tell employers how to comply with the OSH Act. Because it focuses on methods of compliance rather than actual workplace hazards, the draft proposal is more akin to reform legislation than a standard. The Kennedy-Metzenbaum reform bill (S. 575) introduced in 1993 contained detailed provisions requiring safety and health programs and employee participation that are similar to the requirements in the proposal. Like the Kennedy-Metzenbaum bill, a safety and health programs standard eliminates the need to promulgate rules because OSHA no longer has to cite based on hazard-specific standards or the General Duty Clause, but can simply cite an employer for having an insufficient program.

WHAT ARE THE ALTERNATIVES?

The vagueness of the terms used in the draft standard are perhaps its greatest source of problems. Unfortunately, a standard broad enough to cover all industry and flexible enough to apply to the special circumstances of each workplace must use the ambiguous language contained in the draft. Thus, the draft standard simply cannot be fixed.

The safety and health programs standard OSHA is contemplating is not, however, necessary. Every hazard that would be regulated by a safety and health programs standard is by definition already covered by a specific standard or the General Duty Clause. OSHA already has the enforcement authority to cite employers when these hazards exist.

Moreover, the standard is unwarranted for policy reasons. The vast majority of large and medium sized employers already have safety and health programs designed to eliminate hazards and injuries and reduce workers' compensation costs. As OSHA notes in the draft standard, employers with ineffective programs can expect higher injury rates and workers' compensation costs than their counterparts with effective programs. Thus, from an economic and competitive standpoint, employers are already working hard to achieve effective programs, and do not need the mandate of a costly OSHA standard that allows the agency to dictate the minutiae of every employer's program.

OSHA recognized at its stakeholder meetings that many companies currently have effective safety and health programs, but that smaller businesses may not have programs because of a lack of resources or expertise. The small employers without programs do not need a government mandate requiring them to establish programs containing elements dictated by OSHA or compliance officers. Rather, small businesses need consultative help to establish effective programs allowing them to reduce injuries and workers' compensation rates. OSHA states in the draft standard that it "will work with employers, especially small employers, through the most extensive outreach, education, and compliance assistance campaign in the Agency's history, to help them establish effective, systematic approaches to workplace safety and health." This consultative help could certainly be forthcoming without a standard. The draft standard and the voluntary guidelines on safety and health programs OSHA issued in 1989 are excellent resource tools to help small businesses in establishing safety and health programs, but issuing a costly standard may hurt rather than help America's small businesses and their employees.

Legal Affairs

Sweeping Changes in Store with OSHA's Safety Program Standard

In the April 1997 issue of *Occupational Hazards*, Zack Mansdorf took a "first look" at the practical implications of OSHA's planned safety and health program standard from the perspective of a safety professional. In this article, we will examine the ramifications of such a standard from the perspective of a lawyer. Like Dr. Mansdorf, we will analyze OSHA's 1996 draft standard, but our observations will likely apply to almost any foreseeable draft.

Every Employer a Lawbreaker

If OSHA's safety program standard ever becomes effective, every employer in the United States will become a lawbreaker. No matter how hard an employer tries to comply, the standard's provisions are so subjective that an OSHA inspector will be able to cite almost anything in an employer's program that he dislikes. The vagueness of the standard will tempt OSHA inspectors to try to force employers to adopt what they consider a better way to run a safety program.

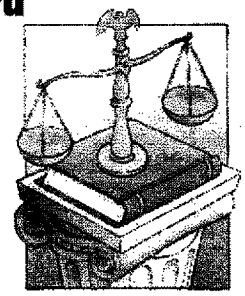
Consider the the draft standard's wording. It would require employers to:

- "Manage" safety and health;
- "Control" workplace "hazards";
- Inspect the workplace "as often as necessary" or "appropriate";
- Give employees "appropriate" information and training in workplace hazards "at the frequency required by safety and health conditions at the workplace";
- Ensure that the program is "effective" and "appropriate";
- Correct "significant" program deficiencies; and
- "Coordinate communication" so that "appropriate" safety information is given to contractors.

The unfortunate fact is that a safety and health program standard will inevitably be this vague. Any standard broad enough to cover all of American industry (as OSHA desires) and yet flexible enough to accommodate every employer's special circumstances (as industry desires) must use such nebulous terminology. In short, the vagueness of the draft standard is a problem that cannot be fixed.

OSHA has nevertheless assured employers that, because the program standard will be a "performance" standard, it will give employers flexibility in compliance. Experience has taught, however, that this flexibility is illusory. Once OSHA disagrees with the way that an employer has implemented its program, the flexibility of a so-called "performance" standard disappears. OSHA will dictate its own specifications by prescribing specific compliance steps in a citation.

For example, under the Process Safety Management (PSM) Standard, which also was touted to be a "performance" standard, OSHA has tinkered with and freely second-guessed employers' chemical process safety management programs. It has issued to chemical manufacturers citations attempting to dictate precise details of how operating and maintenance procedures should be written.



The standard's provisions are so subjective that an OSHA compliance officer will be able to cite almost anything he dislikes.

Thus, one chemical company received a citation alleging that a procedure was not "clear" within the meaning of the PSM Standard because it stated "flush each dip pipe"; OSHA wanted it to read "flush the long dip pipe, the mid dip pipe, and the short dip pipe." Another employer received a citation prescribing such minutiae as methods for gaining access after 5 p.m. to equipment manufacturers' manuals. Although the Occupational Safety and Health Review Commission has told OSHA several times that attempting to dictate ad hoc to an employer precise specifications on how the employer must comply is inconsistent with the principle of a "performance" standard (e.g., *Lowe Constr. Co.*, 13 BNA OSHC 2182, 2185 (OSHRC 1989)), OSHA ignores these admonitions. OSHA can be expected to do the same with any safety program standard.

'There's Blood on the Floor'

Enforcement of the program standard will be especially problematic when the inspection is precipitated by an accident. There is a saying among OSHA officials, "There's blood on the floor," i.e., if an employee has been killed or seriously injured, the employer did something wrong and must pay.

Once an injury or death has occurred, OSHA feels great political and emotional pressure to find something to cite. Inspectors investigating an accident will, thus, disregard the statement in the draft safety program standard that "an employer can have an effective workplace safety and health program even though all hazards may not be identified and controlled" because

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If you have questions regarding OSHA standards and enforcement for the OSHA Practice Group of McDermott, Will & Emery, send them to: Legal Affairs, c/o Occupational Hazards, 1100 Superior Avenue, Cleveland, OH 44114-2543. All questions used in the column will be handled anonymously.

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they will be tempted to treat the occurrence of an accident as proof that the employer could have had a better safety program. This is an additional reason why the so-called "performance" nature of the program standard will prove to be illusory.

Will 'Pattern' Provision Protect Employers?

OSHA claims that the draft standard has a mechanism to prevent enforcement abuse. The draft standard states that, if OSHA finds violations of the safety program regulation, it will order correction by issuing a citation but will seek penalties only if there is a "pattern" of "serious" hazards.

This protection is, however, illusory because the words "pattern" and "serious" are so loosely defined that enforcement abuse is inevitable. The draft defines "pattern" as "a number" of serious hazards of "the same or similar type," the occurrence of serious hazards resulting from "the same or similar deficiencies" in the program, or a "general" failure to control a "variety" of serious hazards as a result of "various" deficiencies in the program. The definition of "serious" similarly states no clear criterion but instead would have a judge weigh the likelihood of employee exposure, the severity of harm, and the number of employees exposed. These criteria are so subjective that whether OSHA seeks penalties against an employer will largely depend on the personality and emotional state of the compliance officer.

Even if OSHA does not allege a "pattern" and issues a citation without a proposed penalty, the vague language that permeates the standard will allow OSHA to issue citations imposing onerous new abatement duties under the guise of "interpreting" the standard. OSHA's Lockout/Tagout Standard provides an example of OSHA's propensity to do this. OSHA has interpreted the Lockout/Tagout Standard to require that each maintenance employee be trained on how to lock out each type of machine he or she services – an interpretation that would, if upheld, cause the standard to impose costs hundreds of times greater than originally estimated. Employers can similarly expect the costs of a safety program standard to balloon out of sight once OSHA begins interpreting it.

This problem is worsened by the holding of the U.S. Supreme Court in *Martin* v. *OSHRC* (*CF&I Steel Corp.*), 499 U.S. 144 (1991), that, when a standard is ambiguous, OSHA's interpretation wins if it is merely "reasonable," even if a judge thinks the interpretation is wrong. Because OSHA enforcement officials almost never think that their interpretation of an ambiguous standard is unreasonable, much less wrong, they will freely cite employers whenever they think that the employer's program could stand some improvement. OSHA enforcement officials have used this power to create a grey zone around standards of entirely new requirements never intended by the standards' drafters and without the benefit of notice-and-comment rulemaking. They will do the same with a safety program standard.

Managerial Authority

The draft standard would require employers to provide employees and their "designated representatives" with opportunities for "participation" in the "implementation" of the employer's program and "involvement" in "controlling" hazards.

This wording would literally require that employers share authority over their workplaces with unions and employees. This wording would supersede much of federal labor law, which permits the employer to manage the workplace as he sees fit and requires him to bargain with employees over safety. It will also force employers in nonunion workplaces to come perilously close to either creating what could be charged to be company unions or, what may be worse for some employers, creating an infrastructure of "designated representatives" that could later become the nucleus of a union organizing campaign. At the very least, the standard could sow discord in labor-management relations.

Backdoor Rulemaking?

The draft standard would require that each employer conduct hazard assessments and then control hazards regulated by either OSHA standards or the General Duty Clause. This feature of the standard allows OSHA to engage in backdoor rulemaking, i.e., use the

standard to impose new requirements on individual employers without formal rulemaking.

A prime example could be ergonomics. OSHA has not promulgated an ergonomics standard and faces strong industry opposition if it attempts to do so. OSHA has long maintained, however, that the General Duty Clause requires employers to protect employees from ergonomic hazards, and it has issued multimillion-dollar ergonomic citations. It is thus likely that OSHA will interpret a safety program standard to require employers to assess and "control" ergonomic hazards in their workplaces. The same could be true for other conditions which are arguably "hazards" not now regulated by OSHA standards, such as workplace violence. In effect, the draft standard would force employers to, during the hazard assessment process, go through in miniature the very rulemaking process that OSHA has been unable to conduct.

An End Run Around the General Duty Clause?

The standard might also be used to negate limitations on the General Duty Clause. Although standards can require an employer to protect employees of other employers, the General Duty Clause obligates an employer to protect only his own employees.

The contractor provision of the safety program standard would effectively nullify this limitation. It would require a host employer at a multi-employer worksite (e.g., a factory with an outside maintenance crew) to ensure that "appropriate" information about hazards is provided to all employees of all employers and to "appropriately" allocate safety and health program responsibilities among the site's employers.

More Criminal Prosecutions?

Theoretically, the draft standard may also increase employers' criminal liability. Under the federal OSH Act, an employer may be subject to criminal prosecution only if an employee dies from a violation of a standard. Thus, an employer cannot be federally prosecuted for a General Duty Clause violation that causes a death. Because the draft program standard would be a "standard"

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and, moreover, would require assessment and control of hazards regulated by the General Duty Clause, a violation of the duties to assess and control hazards theoretically could lead to a criminal prosecution even if the hazard itself is not regulated by any standard. This is particularly troublesome, for it may well be impossible for an employer to anticipate every set of conditions that might converge to create a fatal accident.

Anti-Retaliation Law

The draft standard would effectively rewrite and expand the anti-retaliation provision in Section 11(c) of the OSH Act. Section 11(c) permits suits in federal district courts for restitution and reinstatement of employees "discharged or otherwise discriminated against" for making complaints and exercising legal rights under the OSH Act. The draft standard would change the anti-retaliation provisions in three significant ways.

First, it would change the employer's duty. While Section 11(c) makes it unlawful for an employer to "discharge or otherwise discriminate against" employees, the draft standard would forbid an employer from merely "discouraging" employees from engaging in safety-related activities. OSHA will likely interpret that amorphous term to forbid employer conduct that is now lawful and to forbid policies, or even statements by foremen, that make employees "feel" discouraged. For example, OSHA compliance officers have complained that giving employees bonuses if the worksite has no recordable injuries, or disciplining employees who cause injuries, "discourages" employees from reporting their injuries.

Second, the standard would, for the first time, permit OSHA to propose penalties for retaliation against employees. Unlike the Federal Mine Safety and Health Act of 1977, the OSH Act does not authorize penalties for discrimination.

Third, the standard would place discrimination controversies in the hands of the Review Commission instead of the federal district courts, where Congress put it.

Status of the Draft Rule

OSHA's Acting Assistant Secretary, Greg Watchman, has stated that publishing a proposed safety and health programs standard is the agency's top priority for 1997. Indeed, it will even take precedence over publishing an ergonomics proposal and a revised recordkeeping standard. OSHA plans to submit the proposed standard to the Office of Management and Budget in June and publish it by October 1997.

Contributing Editors Robert C. Gombar and Arthur G. Sapper are partners and Melissa A. Bailey is an associate in the OSHA Practice Group of McDermott, Will & Emery, headquartered in Washington, D.C.

NAM National Association of Manufacturers

MANUFACTURING MAKES AMERICA STRONG

Testimony

of Earlyn Church
Executive Vice President, Superior Technical Ceramics Corporation
President and CEO, Excalibur Laboratories Corporation
St. Albans, Vermont

before the Committee on Small Business
U.S. House of Representatives

on OSHA's proposed Safety and Health Program Standard

June 26, 1997

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Manufacturing:

The Key to Economic Growth

- The United States was rated number one in overall global competitiveness by the World Economic Forum in 1994, and again in 1995.
- U.S. manufacturing productivity growth averaged more than 3 percent over the last decade, compared with less than 1 percent growth in the rest of the U.S. economy.
- U.S. manufacturing's direct share of the Gross Domestic Product (GDP) has remained remarkably stable at 20 percent to 23 percent since World War II. Manufacturing's share of total economic production (GDP plus intermediate activity) is nearly one third.
- A change in manufacturing output of $1 results in a total increase of output throughout the economy of $2.30.
- The U.S. share of world exports in manufactured goods is now 12.9 percent, up from 11.6 percent 10 years ago.
- Manufacturing provides the bulk of technological advances and innovation for the economy.

TESTIMONY OF EARLYN CHURCH

EXECUTIVE VICE PRESIDENT

SUPERIOR TECHNICAL CERAMICS CORPORATION

on behalf of

THE NATIONAL ASSOCIATION OF MANUFACTURERS

REGARDING

OSHA's PROPOSED SAFETY AND HEALTH PROGRAM STANDARD

before the

COMMITTEE ON SMALL BUSINESS

U.S. HOUSE OF REPRESENTATIVES

June 26, 1997

Mr. Chairman and fellow committee members, I appreciate and welcome the opportunity to testify before you on OSHA's proposed Safety and Health Program Standard. My name is Earlyn Church and I am the Executive Vice President of Superior Technical Ceramics Corporation (STC), of St. Albans, Vermont. STC manufactures industrial components for the welding, aerospace, electrical and other industries. We are labor-intensive. We employ 100 highly skilled workers in the factory where we produce fired and unfired ceramics, using advanced machine-shop technology. I am also on the Board of Directors of the National Association of Manufacturers. Further, I am President of

Excalibur Laboratories Corporation, a metrology lab, located in Burlington, Vermont, which employs 12 people.

I am testifying today on behalf of the NAM's more than 14,000 members, 10,000 of which are classified as small manufacturers. Through them we represent 18 million people who make things in America. We appreciate the attention the Small Business Committee members and staff are paying to OSHA's initiatives and proposed standards.

Vermont, my home state, acts in place of OSHA under the Vermont Occupational Safety and Health Act. Under this act, employers in Vermont are required to have safety committees and already must comply with some of the provisions of federal OSHA's Safety and Health Program Standard. A total of 25 states have state-run safety and health programs.

Our safety program consists of written manuals for all departments, an employee handbook with safety rules, a training program for all new hires with use of videos, continuous education for all employees (as recommended by our workers compensation carrier), covering lifting, lockout/tagout, first aid, CPR, and forklift operations and fire drills. A safety committee that rotates annually and consists of five factory employees, an engineer and our human resources officer meets monthly to review previous reports and walk through the entire facility to make suggested improvements. The committee reports to management, who then makes corrections. While we support employee participation, we would be uncomfortable with establishment of committees made up of employees and

their union or legal representatives, who are then given the authority to actually evaluate and implement the employers' safety and health program.

We oppose OSHA's Safety and Health Program Standard *not* because employers who ignore worker safety would be punished under the proposed standard, but rather because employers such as STC who have taken every reasonable step to assure compliance with the standard could also be severely punished. Good companies with excellent safety and health programs could face punishment in terms of increased costs, criminal prosecution, arbitrary enforcement by OSHA (because of the vague language of the proposed standard), breaches of employee confidentiality and mandated safety committees that, by their structure, violate employer-employee relations as prescribed under the National Labor Relations Act.

Superior Technical Ceramics Corporation is fortunate among small businesses in that we have been able to afford to hire someone to oversee our human resources. This same person, however, in addition to maintaining all records required for OSHA, EEOC, ADA and FMLA, administers all documentation and training for our workers' comp program and all documentation and training for our hazardous-waste program and community right-to-know. This person also attended seventeen outside courses in the last year to keep abreast of changes in regulations. We felt the need to hire such a full-time person approximately 10 years ago. Until that time, all these duties fell to me. To comply with the proposed Safety and Health Program Standard, we would either have to hire another person to handle additional recordkeeping or shift duties to another individual, who

would not, then, be spending as much time on production. I stress the size of STC and our one person with many hats to show that a 100 employee company is extremely stressed to meet existing regulations. Excalibur Laboratories Corporation cannot afford any of the previously stated luxuries but it is not exempt from the standards. You, as a member of the House Small Business Committee, must be as confused as I, as to what "small business exemptions" are. While some bills and laws talk in 10's, (e.g. 10 or fewer employees) or 50's, rarely do I hear small business exemptions apply to companies with 500 or fewer employees, which is the Small Business Administration definition of a small business.

Our one human resources person is fortunate enough to have a computer system with adequate software to monitor these issues and report the required data. Such packages cost in excess of $1,000 per year and this system is reaching its capacity. I now see a boom in the software industry, fueled by the anticipated need for even more complex recordkeeping and reporting requirements in OSHA's proposed Safety and Health Program Standard. Upgrading our hardware or purchasing a new software program to comply with these new requirements would be not only enormously expensive, but would not increase the safety and health of our employees. Further, to meet enhanced reporting and written health and safety programs, STC will need to invest more money with consultants as we do not have the time or expertise available. We would rather spend that money on training or making modifications to our Vermont facility.

Superior Technical Ceramics is wary, given OSHA's past record, of the vague language of the proposed standard. It must apply to all industries. But in that it is vague, it allows OSHA broad latitude in enforcement under the General Duty Clause. The General Duty Clause allows OSHA to cite employers for hazards not covered by specific standards. The General Duty Clause was most recently used to cite the employer in *Pepperidge Farm*, decided by the OSH Review Commission in April 1997. OSHA's proposed Safety and Health Program Standard would require employers to "...provide for the systematic control of hazards...." Now we are being asked to anticipate feelings of discomfort in the workplace. Already, STC is employing workers' comp managed care to help us discriminate between and administer cases of back strain, carpal-tunnel syndrome and the whole range of repetitive-motion injuries. Without speaking at length on the "E-word", ergonomics, we are having a very hard time distinguishing between the pain from the weekend or a second job and pain related to factors in our workplace. If the injuries are cumulative, where did the accumulation begin? Is work the sole factor, or play, or the second job, that may not be covered by workers' comp.

While we never get up in the morning and set out to kill or maim our workforce, as suggested repeatedly by OSHA at the stakeholders meetings, we are often faced with situations where a worker violates company policy and is injured. Sometimes, there are hazards impossible to identify or foresee. We conduct a monthly walk-through with our safety committee. We are always mindful that a potential hazard seen on a walk-through may not be there the next day, and that another may be present. (In a job shop, the workplace is different every day). OSHA's proposed standard that we are discussing

today seems more a deliberate attempt to prove hazards of going to work, hazards that labor can use to justify slowing down the pace of work and adding more jobs. The number one cause of work-related deaths in the 1992 DOL statistics is vehicular accidents, accidents that do not take place at a work site under supervision of employers. The number two cause is violence in the workplace. Are these truly work-related? Are they work risks or life risks?

As to confidentiality, employees rights would be violated by the publication of names, addresses and medical information on the workers' comp reports. Such information is not now available to other employees or outside sources other than required by law. Under this proposed standard, other employees and their union or legal representatives have access to all employees' records, personal, medical and otherwise. And, I might note, the information used in the first report forms varies from state to state. If the Internet is used in reporting, this information is vulnerable to even more abuse.

Bureau of Labor Statistics stats show that the workplace today is safer than at any other time since the information has been tracked. STC's workers' comp experience modification has decreased 15 percent over the past four years due to company initiatives separate from any OSHA requirements. We are being more proactive in increasing health and safety in our workplace because it is a good business practice. Why hamper and discourage these initiatives and those of other good companies with onerous paperwork requirements; increased cost to the employer for staffing, computer needs and consulting; mandated safety committees that violate labor law; and enforcement by OSHA that is arbitrary.

We appreciate the opportunity to address the NAM's concerns before this Committee. I will be pleased to answer any questions you may have.

Printing Industries of America, Inc.

TESTIMONY OF

KATHERINE GEKKER
PRESIDENT/OWNER
THE HUFFMAN PRESS

ON BEHALF OF
THE PRINTING INDUSTRIES OF AMERICA, INC.

BEFORE THE COMMITTEE ON SMALL BUSINESS
U.S. HOUSE OF REPRESENTATIVES

JUNE 26, 1997

For additional information, contact:
Benjamin Y. Cooper
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Testimony of Katherine Gekker
The Huffman Press
On behalf of the Printing Industries of America
June 26, 1997
Before the House Small Business Committee
On OSHA's Proposed Safety and Health Program Standard

Good Morning. I want to thank you, Chairman Talent, and members of the committee for giving me the opportunity to speak to you about the Occupational Safety and Health Administration's proposed Safety and Health Program Standard.

My name is Katherine Gekker, and I am the owner of The Huffman Press, located in Alexandria, Virginia. I am also representing the Printing Industries of America.

I have been in business since 1974. We specialize in high quality printing for graphic artists, corporations, and museums. Currently, I have nine full time employees and one to two part-time employees, depending on the work load. Our gross sales are roughly $1.2 million annually. Due to increased technology and regulation, a weakened economy, and competition, I earn approximately as much as I did eight years ago.

Safety within The Huffman Press is a priority for me because I am trying to build the healthiest company I possibly can. If I do not provide a healthy work environment, my employees, our customers, our suppliers, and I suffer.

We participate in industry safety programs, and buy the many workbooks and guides that are made available to us about plant safety and training. It is a constant struggle to keep up, and while we do our best, I will readily admit that I am not able to read everything I should, or even all the safety and training materials we buy.

My business is typical of many in the printing industry. In fact, the average printer has eleven employees. Because of our small size, changing government regulations place a significant burden on my company, as well as on most other small companies. We do not have the resources to hire an expert on safety, nor do we have the time most days to fully keep up with new rules, training requirements, or other regulations. Most days we barely keep up with the demands of our customers, our suppliers, and tax and payroll laws.

My plant manager and I are constantly scrambling to make sure we are conscientious with respect to safety and health. A number of years ago when my business was doing better, we used an insurance carrier that actually sent out an inspector on an annual basis to conduct an audit of our safety and health programs. She would issue a report outlining what she believed would be violations and she even trained our employees in safe work practices. I cannot tell you how much I appreciated this information and service. Having come close to losing my finger in one of our machines, I personally value knowing that I am doing everything I can to provide a safe work place. Unfortunately, we have had to switch to a less expensive insurance carrier who does not offer that service.

We have also benefited from a City of Alexandria program in which the Fire Department inspects us annually for fire and chemical safety. I welcome their inspections because I know that they will tell me what I need to do to create a healthier work place, and that they will then give me the time to correct what needs to be corrected without penalizing me.

I have also invited the Virginia Department of Safety to inspect our premises and advise us on audio levels and chemical levels in order to learn if we were within safe parameters. This too was done without fear of penalty.

While my business has never been cited by OSHA, I don't relish the thought of a surprise inspection. I have heard that the inspectors never leave without expensive citations, regardless of a business' good intent. I and other business owners would jump at the chance to get information about how to make our plants safer. It would be particularly valuable if we could do this without being punished for wanting to learn.

I believe that all employers should play an active role in promoting safe practices in the workplace. However, OSHA's proposed Safety and Health Program Standard does not appear to do anything that would help me make my plant safer. The proposed standard is very vague and leaves a lot up to the individual inspector and the business owner. If it were enacted, I may think I'm doing everything I can to develop the best safety program for my plant by asking my employees for meaningful participation and conducting periodic self-inspections, but an OSHA inspector may see it altogether differently. Effectively, it is a closed loop system in which no real communication takes place.

The proposal also fails to solve the problem of lack of safety education and consultation for employers. We need more specific information about safety. Without providing extensive training, consultative services, and direct guidelines, this proposal will do little to prevent accidents. It offers a one-size-fits-all safety program that simply does not provide what employers desire most, industry specific assistance.

Mistakes and accidents occur everywhere. Historically, the majority of accidents that have occurred in my plant were caused by carelessness and would not have been prevented by the kind of safety and health program OSHA is proposing.

In closing, I would like to stress that I, and most business owners I know, see a strong need for OSHA. Most of us want to and will do the right thing. We simply need help. I am leery of a new standard that requires more paperwork from employers. This proposal reminds me of what it is like to deal with the Internal Revenue Service. Tax laws can be interpreted many different ways, are confusing, take a lot of time and are expensive. Interpretations differ with whomever you speak with. I'm afraid that the same will be true of OSHA's proposal.

I believe that OSHA can have a real impact on safety by permitting people like me to seek expertise without fear. It would help if OSHA undertook a voluntary compliance program that used warnings in lieu of citations. This type of approach would do a lot more for preventing accidents than the proposed Safety and Health Program standard.

I will be happy to answer any questions.

STATEMENT OF

BRIAN LANDON

OWNER OF

LANDON'S CAR WASH & LAUNDRY

LANDON'S PAINT TOUCH-UP

CANTON, PENNSYLVANIA

Subject:	**Safety and Health Program for General Industry**
Before:	**House Small Business Committee**
Date:	**June 26, 1997**

Introduction

My name is Brian Landon. I am the owner and operator of Landon's Car Wash & Laundry and Landon's Paint Touch-up, located in Canton, Pennsylvania. Today I am speaking not only for myself, but also on behalf of the National Federation of Independent Business (NFIB) of which I have been a member for over 20 years. It is my pleasure to offer comments on the draft rule of OSHA's Safety and Health Program Standard for General Industry. This draft rule will add to my federal reporting requirements as a small business owner without increasing my workplace safety in any significant manner.

I have been a small business owner for 22 years. I currently have two employees; one is my brother-in-law and the other, a close friend. With two employees and gross sales of approximately $215,000 I am fairly typical of the NFIB membership. (While there is no standard definition of an average small business, the typical NFIB member employs five workers and reports gross sales of around $350,000 per year.)

I, like other NFIB members, have a strong commitment to employee safety and health. In my small business, as with many other small businesses, this commitment to safety is rooted in the unique relationship that I have with my employees. This is a relationship that comes about by working side by side with my employees in my car wash, laundromat, and paint touch-up businesses, in an atmosphere where there are no strict job descriptions and daily tasks are often shared and traded between myself and my employees. I am typical of many small businesses whose employees are family or friends. These personal relationships drive my concern for safety.

General Statement Regarding Undue Burden

I believe that this draft rule places an undue burden upon me, as a small business owner, and thus runs contrary to executive branch directives and legislative prescription.

In a recent Executive Order, President Clinton directed all agencies of the federal government to "draft...regulations to be simple and easy to understand, with the goal of minimizing the potential for uncertainty and litigation arising from uncertainty." The President expanded upon this in the March 1995 Directive on Regulatory Re-invention Initiative. In that directive, agencies were admonished for drafting rules with "such detailed lists of do's and don'ts that the objectives they seek to achieve are undermined." Agencies were strongly encouraged to regulate "in a focused, tailored and sensible way." The President concluded by explicitly ordering all agencies to "avoid regulations that are...duplicative of other regulations."

President Clinton's orders lend executive support to the legislation from which OSHA receives its authority to collect such data. Specifically, Section 8(d) of the OSHA Act mandates that "Any information...shall be obtained with a minimum burden upon employers...Unnecessary duplication of efforts in obtaining information shall be reduced to the maximum extent feasible." Obviously, the intent of the enacting legislation is the imposition of minimal administrative costs and burdens upon employers.

Summary of Provisions and Corresponding Comments

Scope and Application

The draft rule states that OSHA is considering a number of alternatives ranging from covering all employers to exempting some small employers. I strongly recommend that OSHA exempt at a minimum all employers with 50 or fewer employees, such as myself. Although the record-keeping, monitoring and application of check-off lists are not mandated by the standard, for liability protection purposes, I would need to undertake each of them. These additional burdens and associated costs would fall disproportionately on my small business and other small businesses like mine. To further this point I site the following data: (from "The Changing Burden of Regulation, Paperwork and Tax Compliance on Small Business: A Report to Congress", U.S. Small Business Administration, October 1995)

- The regulatory cost per employees to small firms is approximately 50 percent more than the cost to large firms.

- Regulatory costs per employee are the highest for the smallest firms. The smaller the small business, the higher the costs.

Although the draft, as it is now written, provides various phase-ins for small businesses eventually I and other small businesses would have to comply with all parts of OSHA's general industry standard. With only two employees, my small business would feel these disproportionate

costs. These costs would stifle the ability of my small business to grow and diminish my ability to create new jobs in the future.

Small Employers Extended Compliance Time

The proposal recommends that employers with fewer than 10 employees in the work site would be given later deadlines than larger employers for meeting the requirements of the standard. While I appreciate the extra consideration given to small employers, giving my small business a longer compliance time does not solve the problem, it only delays the inevitable.

Basic Obligation

The standard requires me to implement a general health and safety program for each work site. This requirement would create a significant burden for me because my car wash, laundromat and paint touch-up companies are located in four different buildings. The program would have to include elements regarding: management leadership and employee participation, hazard prevention and control, information and training, and a system evaluation. I, like most small businesses, do not employ an individual to carry out these assignments. Therefore, the full responsibility for carrying out these standards would fall on me, the small business owner.

My approach to safety is to supply my employees with safety information and equipment or support specific to their jobs. I work alongside of my employees at each of the work sites so it is both to the advantage of my employees and myself to provide a safe workplace. We have never had

an injury, accident, or health hazard occur at my car wash, laundromat or paint touch-up companies. This standard would have a serious detrimental effect on my productivity, on which the success of my small business and my employees' jobs depend, without adding to the safety of my workplace.

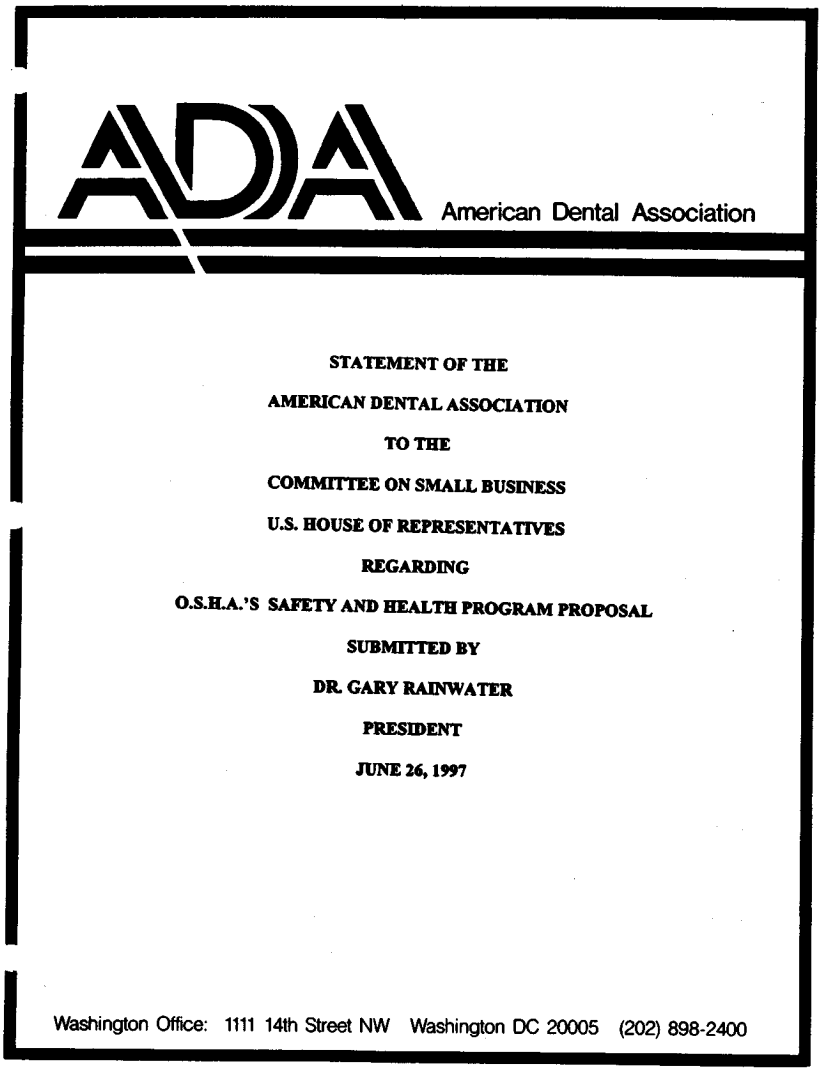
Employee Participation

The draft proposal states that the participation of my employees will be a necessary element of any new general OSHA standard. This participation should include employee activity in assessing and controlling hazards, developing safe and healthful work practices, training and evaluating the safety and health program. I have four different buildings where my small businesses are located. Often times my employees must travel from one site to the next to complete their duties. With only two employees and four work sites, my employees will be so busy completing their assignments under the general industry standard that they won't have any time to do their jobs in my car wash, laundromat and paint touch-up companies. Again, this employee participation would have a negative impact on the productivity of my employees without necessarily adding to safety in the workplace in any form.

Information and Training

OSHA recommends that employers should be required to provide information and training to each employee who is exposed to an occupational hazard. I am concerned that the definition of occupational hazard will follow the Hazardous Communication Standard Material Safety Data sheets which categorize even the most harmless chemical at a work site as a hazardous chemical. The costs and responsibilities would of course fall on me as the small business owner.

In general, I and the members of NFIB believe that OSHA's new safety and health program for general industry is ill advised for small business because it does not take into account the unique nature of the smallest employers such as myself, and the disproportionate costs that would be placed on them.



STATEMENT OF THE

AMERICAN DENTAL ASSOCIATION

TO THE

COMMITTEE ON SMALL BUSINESS

U.S. HOUSE OF REPRESENTATIVES

REGARDING

O.S.H.A.'S SAFETY AND HEALTH PROGRAM PROPOSAL

SUBMITTED BY

DR. GARY RAINWATER

PRESIDENT

JUNE 26, 1997

Washington Office: 1111 14th Street NW Washington DC 20005 (202) 898-2400

Mr. Chairman and members of the Committee: My name is Gary Rainwater, and I am a full-time practicing dentist in Dallas, Texas. I am also President of the American Dental Association (ADA), which represents 140,000 licensed U.S. dentists. On their behalf, I thank you for the opportunity to talk about OSHA's proposed Safety and Health Program Standard, which we understand will cover all workplaces, no matter how small. I also want to thank you, Mr. Chairman, for your particular interest in the impact of OSHA regulations on dentistry.

The vast majority of dental practices are very small enterprises, with three to four employees. My own is a bit smaller than average; I employ one dental hygienist, one dental assistant, and one secretary/bookkeeper. They have been with me for many years.

I first learned about the Safety and Health Program proposal last fall, when I came to Washington to meet with Mr. Dear and Mr. Watchman and others at OSHA. We dentists were there primarily to say "thanks." OSHA had approved the streamlined phone/fax complaint procedure for dentistry, with the result that the time that it takes to investigate and respond to complaints of safety and health violations in dental offices is way down, and disruptive on-site inspections by OSHA compliance officers are down too. In other ways, too, the agency's top staff has been accessible and receptive, and we appreciated--and still appreciate--the new open-door policy.

Given the opportunity to express an early opinion on the Safety and Health Program Standard, I stated that *dentists already do everything that this new proposal*

would require; therefore, it would be unnecessary and duplicative as far as dentistry is concerned.

I meant that everything that would be required by the new standard is already required by the other OSHA standards or is being done because it is essential to the practice of modern dentistry. Dentists and their employees work side-by-side; they are exposed to the same hazards, and communication among the members of the dental team about many issues, including workplace safety, is a routine part of any dentist's practice. The average dental office is probably no more than 1000 square feet. This is not the kind of workplace where hazards go unnoticed, and when they are noticed, the small size of the staff and close working proximity means that they are inevitably brought to the dentist's attention, usually in a very short time.

Let me elaborate:

The two main OSHA standards that apply to dentistry are the Bloodborne Pathogens Standard and the Hazard Communication Standard. The Bloodborne Pathogens Standard addresses in a comprehensive way employee exposure to blood and other potentially infectious materials. The Hazard Communication Standard does the same for employee exposure to hazardous chemicals. Then, there are the host of general safety standards covering such subjects as personal protective equipment, medical services and first aid, electrical and compressed gases. We have every reason to believe based on ADA surveys that the overwhelming majority of dentists comply. Apparently, OSHA does too, or it would not have authorized the phone/fax investigation procedure for dental offices.

Let me illustrate how dentists, by complying with just the two main standards—Bloodborne Pathogens and Hazard Communication—already address the five "core elements" in OSHA's proposal.

Management leadership and employee participation. Dentists routinely hold regular meetings with their dental office staff to discuss emerging technology, patient care and treatment, practice management and workplace safety and health issues. Additional training required by the Bloodborne Pathogens and Hazard Communications standards has been incorporated into this practice.

Hazard Assessment and *Hazard Prevention and Control.* The comprehensive and detailed "Exposure Control Plan" that dentists are required to develop and follow under the Bloodborne Pathogens Standard is an excellent example of two of the "core elements" mentioned in OSHA's Safety and Health Program proposal. The exposure control plan includes hazard assessment as well as engineering and work practice controls and requirements for personal protective equipment that are used by the entire dental team .

Training. The employee training OSHA already requires is comprehensive and thorough. Under Bloodborne Pathogens, dentists are required to train employees before they begin work, to document that training, to update the training at least annually and to document that as well. Training under the Hazard Communication Standard covers every hazardous chemical used in the dental office. Employees learn proper storage, handling and use; they learn how to read material safety data sheets (MSDS) and what to do in case of accidental exposures.

Evaluation. Because of the close proximity in which they work, dentists and their office staffs continuously communicate about health and safety issues, including the

effectiveness of office safety and health programs. Existing training programs offer a formal opportunity to evaluate their effectiveness at least annually. The success of the programs that are already in place in dental offices is demonstrated by the fact that dentists report a very low incidence of serious illnesses or injuries in the workplace.

This doesn't mean that dentistry is resting on its safety record. The American Dental Association is in the forefront of identifying workplace hazards and making recommendations to the profession on how to address them.

For example, in 1993 the Association developed an *OSHA Compliance Checklist for the Dental Office*. The checklist pulls out from the voluminous *Code of Federal Regulations* the OSHA standards that are most likely to apply to the average dental office and lists in plain English the things dentists need to do to comply. The checklist was reviewed by OSHA. The agency agreed that use of the checklist would help dentists meet their OSHA obligations. As you can see, dentistry has already engaged in a systematic effort to "find and fix" workplace hazards, by developing a checklist of the kind called for in the proposed standard.

All of what I have said so far poses an obvious question: If the dental profession is already doing what the standard would require, then why does the dental profession want to be exempted from the standard?

The short answer is, redundancy aside, the standard could create more problems than it solves.

Still unresolved to our satisfaction is whether employers would be able to form the kind of employee committees that might be needed to provide meaningful participation, as required by the proposed OSHA standard, without running afoul of labor laws that

prohibit employer-dominated unions. An amendment to those laws might be required to address this dilemma. An even more fundamental question is how the many dentists who have only a few employees would be able to form an employee committee. In some dental offices, the result would be a committee of one!

The proposed standard raises various fairness issues. It seems that an employer could be penalized twice by OSHA for essentially the same offense: once for violating a standard that addresses a specific hazard (e.g., bloodborne) and once for not systematically addressing that hazard under the proposed safety and health standard. Looked at another way, even though an employer was completely in compliance with other OSHA standards and the general duty clause, the mere fact that he or she did not have a systematic safety and health program in place to address the hazards covered by these standards could expose the employer to liability. I cannot see that the proposed standards adds anything substantive to the protections which employees already have under other OSHA standards and the general duty clause, but it certainly could add to the opportunities for employers to become entangled with OSHA's enforcement apparatus, something that will always hit very small employers like dentists particularly hard.

On balance, then, the ADA believes that the proposed Safety and Health Program Standard simply is not needed in dental offices.

Thank you Mr. Chairman for the opportunity to testify. I will now be happy to take questions.

STATEMENT OF GREGORY R. WATCHMAN
ACTING ASSISTANT SECRETARY OF LABOR
FOR OCCUPATIONAL SAFETY AND HEALTH
before the
HOUSE COMMITTEE ON SMALL BUSINESS

June 26, 1997

Mr. Chairman and Members of the Subcommittee:

Thank you for the opportunity to testify on OSHA's plans to develop a Safety and Health Program Standard. This rulemaking is extremely important for America's workers, and OSHA is pleased to respond to the Small Business Committee's interest in it. It is important to emphasize that OSHA does not have a proposed rule yet and that it is in the process of seeking public comment as it develops a proposed rule.

Each year, thousands of workers die in accidents or from occupational diseases while working to provide for themselves and their loved ones. Despite the progress that has been made since OSHA's inception in 1970, six thousand Americans die each year from workplace injuries. Tens of thousands more die from illnesses caused by workplace exposures, and millions more suffer non-fatal workplace injuries. Injuries cost U.S. businesses over $110 billion annually.

The good news is that many of these tragedies are preventable. Experience shows that a systematic approach to workplace safety and health can substantially reduce work-related injuries and illnesses. Workplace safety and health programs provide such an approach.

Safety and health programs have helped many employers achieve lower injury and illness rates. Under OSHA's Voluntary Protection Programs, for example, employers that have set up comprehensive safety and health programs have experienced injury rates substantially below the average for their industry. In addition, every dollar employers spend on safety and health

programs is estimated to save them between $4 and $6 in workers' compensation expenses, reduced employee turnover, and other related costs. A variety of studies, including analyses by the General Accounting Office, have recounted the benefits of safety and health programs--they are good for workers and good for business.

While many options exist for protecting workers from life-threatening or other workplace hazards, OSHA can't do the job alone. By implementing their own safety and health programs, employers and their workers can help OSHA improve workplace safety without a significant infusion of new resources. The programs can also help employers and workers together identify and eliminate hazards on which OSHA may not have standards. For example, in OSHA's Maine 200 program, employers who established safety and health programs have identified and abated a total of 134,434 hazards in nearly 4 and one half years. In contrast, experience during the four preceding years suggests that OSHA would have identified fewer than 20,000 hazards or violations using traditional enforcement methods.

Despite the clear benefits of adopting safety and health programs, many employers have not utilized them. OSHA attempted to encourage employers to act nearly a decade ago. In 1989, OSHA issued voluntary Safety and Health Management Guidelines. The guidelines described program elements successfully used by employers, and were widely distributed. Safety and health professionals, corporations and labor unions endorsed the guidelines. Then-Secretary of Labor Lynn Martin wrote to 600 chief executive officers of major companies urging them to implement their own programs. Since that time, some OSHA standards, including Process Safety Management and Permit-Required Confined Spaces, have required that employers establish hazard-specific safety and health programs.

Today, about half the States have some form of safety and health program requirement. A federal safety and health program standard is needed to advance nationwide worker protection.

PROGRAMS THAT WORK

Safety and health programs have long been accepted in the safety and health community as a mainstay of worker protection. The states and employers that rely on them have seen dramatic results. As for States, after the State of Oregon instituted a safety and health program requirement and other reforms, employers there experienced significant reductions in occupational injury and illness rates and double-digit declines in their workers' compensation rates. According to some estimates, if we were to duplicate Oregon's success nationwide, we would prevent 754,000 lost workday injuries. Colorado's experience is equally striking. Several years ago, the State began providing premium dividends to employers who established worker protection programs. In 1993, Colorado reported that the 517 firms participating in the program had reduced accidents by 23 percent and accident costs by 62 percent, generating an estimated $23 million in savings for firms in the first year of the program.

One notable success story in private industry involves Boise Cascade's paper mill in Rumford, Maine. The paper mill established a safety and health program after a 1989 inspection in which OSHA found 3,000 violations. After the program was implemented, the company's workers' compensation costs plummeted--from $1.3 million in 1988 to $37,000 in 1993. In another example, the Business Roundtable reported that, after implementing a safety and health program, Air Products and Chemicals, Inc. reduced workplace injuries by more than half in a five-year period, saving $1.7 million in workers' compensation.

Accountability improves safety. When employers and employees work together to systematically eradicate hazards, money and lives are saved. During 1991 and 1992, the Argonaut Insurance Company evaluated the effectiveness of its management accountability program. The program emphasized accountability and routine safety activities like new employee orientation, toolbox meetings and enforcement of PPE rules. High level managers were held accountable for incident rates and costs of accidents among their employees. The study found that losses decreased by 36 percent among the firms using this technique, while a control group saw losses increase by 96 percent.

In contrast, the tragedy that killed 25 workers at Imperial Foods in Hamlet, North Carolina, occurred at a company without a safety and health program. Imperial Foods had no ongoing, systematic approach to protect the safety of their employees from fire hazards or other safety problems. Those workers might still be alive today if their employer had actively implemented a safety and health program. In fact, the State of North Carolina responded to the Imperial Foods tragedy by requiring that certain employers with 11 or more employees operate safety and health programs.

As noted above, Voluntary Protection Program members have also seen the benefits that safety and health programs provide. Since 1982, OSHA has been approving workplaces with exemplary safety and health management programs for participation in its Voluntary Protection Programs. Participating employers have lost-workday injury rates ranging 35-90 percent below the national average.

Most participating sites report improved employee morale and productivity as a by-product of their programs. For example, a site operated by Kerr McGee exceeded its production

goal by 35 percent. VPP participants have also realized impressive savings from their programs. The VPP sites operated by Mobil Chemical realized a 70% reduction in workers compensation costs over 4 years, saving $1.6 million. A Mobil refinery in Joliet, Illinois cut workers compensation costs by 89 percent over 6 years after establishing a program, and another Mobil workplace saw a 25 percent decrease in absenteeism. The Georgia Power Company saved $4.1 million in workers compensation costs in one year. Clearly, safety and health programs have made a difference in many workplaces, and can be equally valuable resources for many more.

OSHA'S WORKING DRAFT

Our many years of experience with safety and health programs demonstrate that the best programs involve top management leadership, worker participation, clear lines of responsibility, proactive hazard identification, prevention and control, and training. OSHA does not yet have a safety and health program proposal, but has been fashioning a working draft that includes these elements: (1) Employers should take an active role in protecting their workforce from serious hazards; (2) there should be regular communication between employers and employees, encouraging workers to identify hazards and suggest solutions; (3) employers should use self-inspections and accident investigations to find and fix workplace hazards; (4) employers should inform and train workers about the hazards in their work environment; and (5) employers should regularly evaluate the effectiveness of their programs.

The "New OSHA" philosophy is guiding our thinking as we develop a safety and health program proposal. The rule will be flexible and have minimum requirements for low-risk worksites. Responsible employers will be treated differently from those who fail to safeguard

their work environment. Third, the Agency will emphasize effectiveness rather than documentation. OSHA's goal is to maximize the benefits resulting from such programs while making implementation as easy as possible.

The General Accounting Office in 1992 "concur[red] with OSHA's assessment of the value of comprehensive safety and health programs." GAO also said consideration should be given to requiring high risk employers to have safety and health programs even if some uncertainty exists about the likely burden, "because the potential number of lives saved or injuries and illnesses averted is high." OSHA is using input from GAO, workers, employers and other stakeholders to fashion a reasonable, balanced approach.

STAKEHOLDER DIALOGUE

OSHA has sought to involve stakeholders at each stage in this potential rulemaking effort. The Agency has spoken with many individual stakeholders on an informal basis. In addition, OSHA has held a series of facilitated meetings with representatives of business (including the U.S. Chamber of Commerce and the National Federation of Independent Business), labor, state governments, and public health and safety organizations. The Agency held one such meeting during two days in October of 1995. A further set of meetings was held in June of 1996 to discuss revisions to a concept paper. After receiving this extensive input, OSHA shared an initial working draft of a proposed standard with stakeholders in November of last year.

Together with our stakeholders, OSHA is discussing a wide range of issues, including the scope of a proposed standard; the treatment of responsible versus less responsible employers;

criteria for citations and penalties; and training requirements. OSHA is making every effort to hear the concerns and understand the priorities of interested parties. Our stakeholders have much to contribute, both in terms of their knowledge of their industries and their history with implementing safety and health programs.

SMALL EMPLOYER CONCERNS

Small and large businesses, alike, need safety and health programs. Even the smallest businesses have significant numbers of workplace fatalities and injuries. Indeed, establishments employing fewer than 10 workers account for 17 percent of employment but over 33 percent of workplace fatalities. Over one million work-related injuries and illnesses each year occur in establishments with fewer than 20 employees. For these reasons, many states, such as Oregon, Washington, and California, require safety and health programs in even the smallest firms.

While seeing the need for safety and health programs, OSHA is especially concerned with providing regulatory flexibility for small businesses. In addition to involving small businesses in general stakeholder meetings, OSHA in the fall of 1995 met with small business owners in Cleveland to discuss the safety and health program concept. In response to suggestions raised by small businesses, the working draft the Agency distributed in November:(1) increased the flexibility and performance-based nature of the standard; (2) was written in plain language; (3) included longer phase-in-periods for small employers; (4) dropped the previous requirement for a written program; and (5) exempted small employers from hazard documentation requirements.

In cooperation with SBA's Office of Advocacy, we plan to hold a series of regional meetings with small business owners next month in four cities: Atlanta, Georgia; Philadelphia,

Pennsylvania; Portland, Oregon; and Columbus, Ohio. These discussions will involve the scope of the standard, exemptions for the smallest employers, and any other suggestions or concerns small businesses have about the working draft. Following these meetings, OSHA will work with SBA's Office of Advocacy, OMB, and small business representatives in the SBREFA Regulatory Review Panel Process.

STATUS OF RULEMAKING

OSHA expects to receive valuable input from small businesses during the upcoming series of regional meetings. The Agency also plans to meet with employees, including those who work for small businesses. Following this stakeholder input, OSHA will make appropriate revisions to the draft proposal and begin the process for SBREFA Panel review with SBA's Office of Advocacy and the Office of Management and Budget.

CONCLUSION

Safety and health programs already make a significant difference in the lives of many of our nation's workers and in the financial bottom line of many businesses. OSHA is working hard with the small employer community and our other stakeholders to draft a sensible, effective standard. The Agency's efforts to work with stakeholders in develop a safety and health program standard are an important example of the kind of cooperative dialogue envisioned by the Regulatory Flexibility Act and SBREFA. OSHA hopes this dialogue will lead to safer, more healthy workplaces for millions of America's workers.

OSHA'S Working Draft of a Proposed Safety and Health Program Standard

Introduction

The Problem:

Every year, thousands of workers die in safety accidents or from occupational disease, and over a million more are injured and made ill. These injuries, illnesses, and fatalities cost employers as much as $100 billion annually in workers' compensation and other costs.

The Solution:

Most of these occurrences are preventable. In fact, experience has shown that a systematic approach to workplace safety and health can substantially reduce injuries, illnesses, and fatalities. Under one OSHA program, participants with effective safety and health programs have injury and illness rates 40 to 60 percent below their industry averages. In addition, for every dollar spent on safety and health programs, most employers are likely to save between $4 and $6 in workers' compensation expenses, reduced employee turnover, and other related costs.

OSHA's Draft Proposed Safety and Health Program Standard:

OSHA's draft proposed safety and health program (S&HP) standard requires employers to take a systematic approach to addressing safety and health hazards already covered by the OSH Act and OSHA standards. The specific requirements described below have been developed through an extensive dialogue with workers, employers, and safety and health professionals. They also reflect employers' preferences for flexible, performance-based obligations. With such obligations, employers may tailor their programs to their own workplaces, and smaller businesses can adopt more informal approaches. But OSHA requires employers to take these common-sense actions:

1. *Take An Active Role: Rather than handing off the responsibility, or developing a paper program that just sits in a binder, employers are required to take active steps that demonstrate to workers that worker protection is an important priority. These include,*

for example, active efforts to implement the elements described below. However employers choose to protect their workers, they are required to periodically evaluate the effectiveness of their approach and to take steps to improve it as necessary.

2. *Communicate With Workers: Workers can help improve workplace safety and health in many ways. Employers are required to communicate with workers on a regular basis, and to encourage workers to identify hazards, suggest solutions, and report incidents, injuries and illnesses promptly.*

3. *Find and Fix Hazards: To protect their workers, employers are required to find and fix hazards. This involves a workplace inspection, a review of safety and health information, and an investigation of incidents. Hazards covered by existing OSHA standards must continue to be identified and addressed as required by such standards.*

4. *Train Workers Exposed to Hazards: Employers are also required to make sure that workers who are exposed to hazards are informed about their exposure and are trained to recognize those hazards, take protective measures, and follow emergency procedures.*

The New OSHA's Enforcement Policy for the S&HP Standard--Relief For Good Faith Employers [and Effective Alternatives]:

The agency's enforcement policy for this standard will be consistent with the New OSHA's goal of treating responsible employers differently from irresponsible ones. [Employers who have an effective alternative S&HP that includes the core elements will be considered to be in compliance and will not be cited or fined.] When an employer does not comply with the requirements of this standard [either directly or through an effective alternative], OSHA's response will depend on the level of protection against serious hazards that the employer is providing to its workers:

- *Employers Who Provide Adequate Protection: [Employers who have an effective alternative to protect workers will not be cited for a violation of this standard or fined.]*

- *Employers Who Provide Moderate Protection: Employers who have made some effort, but have not complied with the S&HP standard [either directly or through an effective alternative], and do not have a pattern of serious hazards, will be cited for a non-serious violation of this standard, with no fine. The citation would set a reasonable period of time for the employer to establish a S&HP to protect workers in the future.*

- *Employers Who Provide Little Or No Protection: Employers who have done little or nothing to set up a S&HP [either directly or through an effective alternative], and have a pattern of serious hazards at the workplace, will be cited for a serious violation of this standard and fined.*

Extensive Compliance Assistance:

Prior to issuance of a final standard, OSHA will work with employers, employees, employer organizations, worker representatives, and safety and health professionals to develop extensive compliance assistance materials, such as model programs, checklists, and Q&As. These more specific materials will be available for employers who prefer guidance beyond the performance-based obligations of the standard. Notably, a safe harbor will be provided to employers who in good faith follow an approved checklist to identify and assess workplace hazards.

Long Phase-In Period and Small Businesses:

OSHA will provide extended phase-in periods, ranging from 6 months to four years, for implementing the elements of the standard. Small businesses will be given twice as long to comply as larger businesses. During this time, OSHA will work with employers, especially small employers, through the most extensive outreach, education and compliance assistance campaign in the Agency's history, to help them establish effective, systematic approaches to workplace safety and health.

Free Consultation:

OSHA will continue to offer free advice on how to protect workers, through OSHA-funded, state-run, consultation programs. These programs provide free consultative visits to help small employers find and fix hazards and set up systematic approaches to workplace safety and health.

Draft Proposed Safety and Health Program Standard

29 CFR 1910.10
(Docket No. S&H-1)

Key Questions about This Standard	Regulatory Text--Action Required by this Standard (The following terms are defined in paragraph (k) of this standard: Assistant Secretary, checklist, contract employer, control, designated representative, documented (or, in writing), employee, employer, exposure, hazard, hazard assessment, host employer, multi-employer workplace, pattern of serious hazards, program, safety and health information, and serious hazard.)	Compliance Deadlines ... (Expressed as months after effective date)
What is the purpose of this standard?	**PURPOSE** This standard requires employers to set up a program for managing workplace safety and health in order to reduce the incidence of occupational deaths, injuries and illnesses. The standard does not impose duties on employers to control hazards that they are not already required to control. Instead, the standard provides a basic framework for systematically identifying and controlling workplace hazards covered by other OSHA standards and the "general duty clause" of the OSH Act and for assuring compliance with those requirements.* * The general duty clause of the OSH Act, Section 5(a)(1), says that "[e]ach employer...shall furnish to each of his employees employment and a place of employment which are free from recognized hazards that are causing or likely to cause death or serious physical harm to his employees."	

Who is covered by this standard? *What hazards are covered by this standard?*	(a) **SCOPE AND APPLICATION** (1) Employers. This standard applies to all employers who are covered by the OSH Act, except to the extent that they are engaged in construction or maritime activities. (2) Hazards. This standard addresses all hazards that are covered by other OSHA standards and all hazards covered by the general duty clause.	
What is the employer's basic obligation under this standard? *What are the core elements of a safety and health program?* *What if an employer already has an effective safety and health program but it is different from this standard?*	(b) **BASIC OBLIGATION** (1) Basic obligation. The employer must set up a program to systematically manage safety and health. The program must be appropriate to conditions in each workplace, such as the hazards to which employees are exposed and the number of employees there. The smaller the employer, the simpler and more informal the program may be. (2) Core elements. The program must have the following core elements: (i) Management leadership and employee participation; (ii) Hazard assessment; (iii) Hazard prevention and control; (iv) Training; and (v) Evaluation of program effectiveness. *UNDER DISCUSSION:* *[Effective alternative: Employers who demonstrate that they have an effective alternative for managing safety and health are in compliance with this standard if the alternative includes all of the core elements.]*	

	(c) MANAGEMENT LEADERSHIP AND EMPLOYEE PARTICIPATION	
What does the employer have to do to provide management leadership?	**(1) MANAGEMENT LEADERSHIP.**	**Small employers:** 12 months **Larger employers:** 6 months
	(i) Basic obligation. The employer must take responsibility for managing safety and health at the workplace.	
	(ii) Allocation of responsibilities. To fulfill this responsibility, the employer must:	...
	(A) Establish the responsibilities of managers, supervisors, and other persons for managing safety and health at the workplace;	
	(B) Provide managers, supervisors, and employees with authority, access to relevant information, and training commensurate with their safety and health responsibilities; and	
	(C) Identify at least one manager, supervisor, or other person to receive reports about workplace safety and health conditions and to initiate appropriate corrective action.	
What about small employers?	**(iii) Small employers.** Small employers may choose to carry out the responsibilities listed above instead of delegating them.	

	(2) EMPLOYEE PARTICIPATION.	Small employers: 24 months Larger employers: 12 months
What does the employer have to do to provide for employee participation?	(i) Basic obligation. The employer must provide employees and their designated representatives with opportunities for meaningful participation in the establishment, implementation, and evaluation of the employer's safety and health program, consistent with other Federal labor laws. (ii) Meaningful participation. Meaningful participation includes: (A) Ongoing, effective communication between the employer and employees about occupational safety and health matters, including providing employees with access to information relevant to the program; (B) Employee involvement in such areas as assessing and controlling hazards, training, and evaluating the effectiveness of the safety and health program; (C) A way for employees to promptly report job-related injuries, illnesses, and hazards, and make recommendations about appropriate ways to control those hazards; and (D) Prompt responses by the employer to such employee reports.	
Is there anything else the employer must do to facilitate employee participation?	(iii) Safeguarding employee participation. The employer must not discourage employees from making reports or recommendations concerning fatalities, injuries, illnesses or hazards in the workplace, or from otherwise participating in the employer's safety and health program.	

	(d) **HAZARD ASSESSMENT**	Small employers: 36 months Larger employers: 18 months
What does the employer have to do to identify and assess hazards?	(1) **Basic obligation.** The employer's program must provide for the systematic identification of hazards covered by this standard. As part of the hazard assessment, the employer must at least: (i) Conduct an inspection of the workplace; and (ii) Review available safety and health information.	
How often must the employer conduct hazard assessments?	(2) **Frequency.** The employer must conduct hazard assessments as often as necessary to ensure that all hazards covered by this standard are identified. The scope and frequency of the assessment must be appropriate to safety and health conditions at the workplace.	
What does the employer have to investigate?	(3) **Investigations.** The employer also must investigate each workplace death, each serious injury or illness, and each incident that created a substantial risk of death or serious injury or illness.	
Will OSHA provide employers with guidance on hazard assessment and a "safe harbor" if they use it?	(4) **Checklists.** The employer may rely on checklists provided by OSHA to assess hazards. If the employer makes a good faith effort to follow the checklist, no penalty will be assessed for failure to comply with the hazard assessment requirements of this standard.	
Must employers have a written program? NO. ***What do larger employers have to document?***	(5) **Documentation.** (i) **Obligation.** The employer must document hazard assessment and hazard control activities. The employer must maintain documentation for as long as necessary to ensure that hazards are identified and controlled. Documentation must be made available for inspection and copying within 15 work days on request by an employee, the employee's designated representative, or the Assistant Secretary.	
Do documentation requirements apply to small employers?	(ii) **Exemption.** Small employers are exempt from the documentation requirements imposed by this standard.	

	(e) **HAZARD PREVENTION AND CONTROL**	Small employers: 48 months Larger employers: 24 months
What does the employer have to do to prevent and control hazards?	(1) **Basic obligation.** The employer's program must provide for the systematic control of hazards that are covered by this standard. (2) **Prevention and control.** As part of hazard prevention and control, the employer must: (i) Identify the hazards in new equipment, materials, and processes. (Ideally, this should be done before hazards are brought into the workplace); and (ii) Prioritize all hazards based on their seriousness and track progress in controlling them.	
Does this standard change the employer's duty to assess and control hazards covered by other OSHA standards or the general duty clause?	(3) **Relation to other standards and the general duty clause.** The requirement of this standard that the employer set up a program to systematically assess and control workplace hazards is distinct from the underlying requirements in existing OSHA standards and the general duty clause to assess and control hazards. Hazards covered by other OSHA standards must be controlled in accordance with the hazard-specific requirements set out in those standards. Violations of other OSHA standards and of the general duty clause will continue to be cited as they have been. In particular, the deferred compliance deadlines provided in this standard for setting up a program to assess and control hazards do not affect the employer's duty to assess and control hazards under other OSHA standards or the general duty clause.	

	(f) INFORMATION AND TRAINING	Small employers: 24 months Larger employers: 12 months
What information and training must the employer provide?	(1) Basic obligation. The employer must provide information and training to each exposed employee so that the employee may perform his or her job safely. Information and training must be appropriate to workplace safety and health conditions, and must include the following subjects: (i) The employer's program for managing workplace safety and health, including opportunities for managers, supervisors, and other employees to participate; (ii) The nature of the hazards to which the employee is exposed and how to recognize them; (iii) What the employer is doing to control these hazards; (iv) Protective measures that the employee must follow to prevent or minimize exposure to workplace hazards; and (v) Procedures to be followed in an emergency.	...
When and how often must the employer provide information and training?	(2) Frequency. (i) Initial training. The employer must provide information and training to current employees prior to the compliance deadline and to new employees prior to initial assignment. (ii) Previous training. However, the employer need only provide initial training in those subjects listed above for which current and new employees have not been previously trained. (iii) Periodic training. After initial training, the employer must provide information and training at the frequency required by safety and health conditions at the workplace.	
What information and training must the employer provide to person(s) responsible for managing safety and health?	(3) Information and training for person(s) with program responsibilities. The employer must ensure that the person(s) responsible for managing safety and health periodically receive sufficient information and training to enable them to carry out their safety and health responsibilities.	

	(g) EVALUATION OF PROGRAM EFFECTIVENESS	**Small employers:** 48 months **Larger employers:** 24 months
Does the employer have to evaluate the workplace safety and health program?	(1) **Basic obligation.** The employer must periodically evaluate the safety and health program to ensure that it is effective and appropriate to workplace conditions.	
How often must the employer evaluate the program?	(2) **Frequency of evaluation.** (i) **General.** The employer must evaluate the program as often as necessary to ensure that it is effective. (ii) **Initial.** In any event, after the deadline for complete compliance with this standard, the employer must evaluate the program at least once in the next 12 months and at least once in the succeeding 24 months.	
Must the employer respond to deficiencies revealed by an evaluation?	(3) **Updates.** The employer must revise the program, as necessary and in a timely manner, to correct any significant deficiencies revealed by the evaluation.	

	(h) SMALL BUSINESSES AND MULTI-EMPLOYER WORKPLACES	
Are small businesses expected to comply with this standard in the same way as larger businesses?	**(1) SMALL BUSINESSES.** (i) Compliance methods for small employers. The number of employees is an important consideration in determining the kind of safety and health program that is appropriate to workplace conditions. In general, small employers may rely on simple and informal methods to comply with this standard.	
Are small businesses given longer times to comply with this standard?	(ii) Compliance dates for small employers. Small employers are given twice as much time as larger employers to come into compliance with this standard.	...
	(2) MULTI-EMPLOYER WORKPLACES.	**Small employers:** 12 months
Do employers at multi-employer workplaces have additional responsibilities?	(i) Host employer responsibilities. To take account of the added complexities at multi-employer workplaces, the host employer must coordinate communication among all employers at the workplace so that: (A) Appropriate information about hazards, controls, safety and health rules, and emergency procedures are provided to all employers at the workplace whose employees are exposed to those hazards; and (B) Safety and health responsibilities are appropriately allocated among the various employers.	**Larger employers:** 6 months
	(ii) Contract employer responsibilities. The contract employer must ensure that the host employer is aware of the hazards presented by the contract employer's work and how the contract employer is addressing them. The contract employer must also advise the host employer of any other previously unidentified hazards found by the contract employer at the workplace.	

Is OSHA developing special outreach, compliance assistance, and enforcement policies for this standard?

How will OSHA begin to implement this standard?

Will employers be subject to "piggyback" S&HP-standard violations every time they violate another OSHA standard or the general duty clause?

Will OSHA cite employers and require abatement of violations of this standard?

Will employers be fined for every violation of this standard?

(i) **OUTREACH, COMPLIANCE ASSISTANCE AND ENFORCEMENT**

(1) General. OSHA will implement this standard through a combination of education, compliance assistance, and a performance-based approach to enforcement and abatement. Much of OSHA's effort in education and compliance assistance will be directed at helping small employers.

(2) Start-up.

(i) Prior to the effective date, OSHA will provide technical assistance materials to give guidance to employers in establishing their program and in determining the effectiveness of their program.

(ii) Before the deadline for coming into compliance with specific requirements of this standard, OSHA, consistent with its resources, will provide extensive technical assistance or arrange with trade associations and other providers for the provision of such assistance.

(3) Enforcement of this standard.

(i) Violations of hazard-specific standards and the general duty clause. A violation of another OSHA standard or the general duty clause will continue to be cited as such, and does not in itself constitute a violation of this standard. OSHA understands that an employer can have an effective workplace safety and health program [or an effective alternative], even though all hazards may not be identified and controlled.

(ii) Violations of this standard. A violation of this standard occurs when an employer fails to comply with its requirements [either directly or through an alternative]. OSHA will issue citations for, and require abatement of, violations of this standard. However, OSHA will impose a penalty on the employer only for certain violations.

How will penalties be determined for violations of this standard? ***Will the employer's good faith efforts be considered in determining whether a penalty will be issued?***	(iii) Penalties for violations of this standard. Penalties for violations of this standard will be calculated according to an administratively-set schedule of uniform penalties. Those penalties will be adjusted to reflect the employer's good faith efforts to develop and implement a safety and health program [either directly or through an effective alternative], the number and severity of hazards, the number of employees, and the employer's history of OSHA violations. Thus: (A) Compliance = no citation + no penalty. Where the employer complies with the requirements of this standard [either directly or through an effective alternative], no citation or penalty will be issued even though all hazards may not be identified and controlled. (B) Noncompliance + no pattern of serious hazards = citation + no penalty. Where the employer does not comply with the requirements of this standard [either directly or through an effective alternative], and there is no pattern of serious hazards present, the employer will be cited for a non-serious violation of this standard but not penalized for failure to comply. (C) Noncompliance + pattern of serious hazards = citation + penalty. Where the employer does not comply with the requirements of this standard [either directly or through an effective alternative], and there is a pattern of serious hazards, the employer will be cited for a serious violation of this standard and penalized for failure to comply.	
When does this standard take effect? ***Must employers comply with all requirements by the effective date?***	(j) **DATES.** (1) Effective date. The effective date for this standard is [insert date 90 days after the date of publication in the Federal Register]. (2) Phased-in compliance dates. All of the requirements in this standard are phased in after the effective date. Employers must comply with phased-in requirements by the deadline stated in column 3 for each element.	

(k) **DEFINITIONS**

Assistant Secretary means the Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, or designee.

Checklist means material, such as a decision tree or an audit program, that is provided by OSHA to assist employers in assessing workplace hazards. A checklist, properly used, provides one way, but not the only way, to comply with the hazard assessment requirements of this standard.

Contract employer is an employer who performs work for the host employer on or adjacent to a host employer's workplace. A contract employer does not include an employer providing incidental services that do not influence the workplace safety and health program (e.g., food and drink services, delivery services, or other supply services), whose employees are only incidentally exposed to hazards at the host employer's workplace.

Control means to prevent, eliminate, or control hazards to the extent feasible, and to provide appropriate supplemental and/or interim protection, as necessary, to employees.

Designated representative means any individual or organization to whom an employee gives written authorization to exercise the employee's rights under this standard. A recognized or certified collective bargaining agent automatically must be treated as a designated representative without regard to written employee authorization.

Documentation means a written, printed, or electronic record. Routine business records, such as receipts, purchase orders, invoices, and bills of lading, may provide documentation.

Employee means all persons who are considered employees under the OSH Act, including temporary, seasonal, and "leased" employees.

Employer means all persons who are considered employers under the OSH Act. Small employers, for purposes of this standard, are those who did not employ more than 9 employees on any day during the preceding 12 months.

Exposure (exposed) means that an employee in the course of employment is reasonably likely to be subjected to a hazard.

Hazard means an object, condition, process, or action at the workplace that poses a risk of death, illness or injury to an employee and is covered by another OSHA standard or by the general duty clause.

Hazard assessment means the identification of hazards.

Host employer means an employer who controls conditions at a multi-employer workplace.

Multi-employer workplace means a workplace where there is a host employer and at least one contract employer.

Pattern of serious hazards means: (1) a failure to control a number of serious hazards of the same or similar type or serious hazards resulting from the same or similar deficiencies in the safety and health program; or (2) a general failure to control a variety of serious hazards as a result of various deficiencies in the program.

Program means procedures, methods, processes, and practices that are part of routine management of safety and health in the workplace.

Safety and health information includes fatality, injury, and illness experience, OSHA 200 logs, workers' compensation claims, the results of any medical screening, employee safety and health complaints, and incident investigations at the workplace.

Seriousness means the likelihood of employee exposure, the severity of harm associated with the exposure, and the number of employees exposed.

Safety and Health Programs of The Occupational Safety and Health Administration

statement by the

American Health Care Association

June 26, 1997

U.S. House of Representatives
Committee on Small Business

The American Health Care Association (AHCA), formed in 1949, is a federation of 50 affiliated associations that represent more than 11,000 non-profit and for-profit assisted living, nursing facility, and subacute care providers nationwide. AHCA members care for more than one million disabled and frail elderly Americans. AHCA strongly opposes any efforts by the Occupational Safety and Health Administration (OSHA) to enforce guidelines under the "General Duty Clause." In addition, we continue to oppose OSHA's special emphasis program targeting nursing facilities.

In 1995, OSHA identified the nursing home industry as a target of the agency's heightened scrutiny of organizations and businesses with a high incidence of workplace injuries and illnesses. Former Secretary of Labor, Robert Reich, using a phrase often intoned by labor unions, called nursing facilities "the most dangerous workplaces in America." This phrase was used even though based on 1994 Bureau of Labor and Statistics (BLS) data nursing facilities are ranked sixth in the number of injuries & illnesses. When severity of the injury or illness is taken into consideration through the number of lost workdays, there are 26 industries with higher injury and illness rates than the nursing facility industry. Nevertheless, OSHA targeted nursing facilities for a new program. The special emphasis program is currently being pilot tested in seven states (Florida, Illinois, Massachusetts, Missouri, New York, Ohio, and Pennsylvania) covered by federal OSHA. Similar programs for nursing homes have also begun in California where facilities fall under a state Occupational Safety and Health Plan approved by federal OSHA.

OSHA's intent to nationalize this initiative appears clear as it has designated a "nursing home coordinator" in each of its regional offices throughout the country. As a result, AHCA has contacted federal and state OSHA officials, and is seeking a delay in any further implementation and enforcement of this initiative. The delay should continue until the program can be revised to address what we believe are serious flaws in the agency's pilot program.

The Occupational Safety and Health Act of 1970 authorizes OSHA to conduct workplace inspections at long term care facilities. During facility inspections, OSHA can not only determine a provider's level of compliance with standards issued by the agency but may also enforce OSH Act Section 5(a)(1), better known as the "General Duty Clause." Section 5(a)(1) specifically requires that every employee be provided a safe and healthful workplace that is free from "recognized hazards."

Until now, OSHA has selected nursing facilities for inspection based on employee complaints or on an area office's schedule for a programmed inspection based on the degree of hazard it attributes to the industry. With the advent of this new program, a facility's selection for inspection may more likely be based on the facility's number of worker injuries and illnesses recorded on its OSHA 200 log. Alternatively, the agency also may inspect a facility following an OSHA-conducted employer training seminar and free facility consultation provided by regional and local OSHA offices. This "consultation" is to measure the facility's compliance and the success of the special emphasis initiative itself.

AHCA believes that employers have a responsibility to provide a safe and healthful workplace for their employees. However, we disagree with the level of involvement organized labor has had in OSHA's nursing home initiative. We believe that labor unions are involved solely for purposes of unionizing an industry workforce that has not shown interest in the past. Nursing facilities have an established record of implementing programs to improve safety. These programs have brought a steady decline in the number of workplace injuries since 1992. Consequently, AHCA opposes OSHA's initiative. It will impose additional layers of costly, unfunded regulations at a time when our industry has been lowering injury and illness rates.

Emphasis Program Description

The OSHA nursing home initiative began with a three-day training course for agency field personnel in August 1996. Following this, the agency then conducted a series of free voluntary training seminars for nursing facility personnel in the seven pilot states from September through November 1996. During these training sessions, OSHA presented information and materials heavily focused on the need for nursing facilities to develop written comprehensive safety and health programs. Within the framework of such a

comprehensive program OSHA expects facilities to concentrate on hazards the agency alleges exist at every nursing facility worksite. Many of the hazards are covered by current agency standards and are familiar to facility employers and employees. These hazards include: bloodborne pathogens, hazardous materials, emergency fire and safety prevention, personal and respiratory protective equipment and electrical hazards. On the other hand, the focus of OSHA's training to facilities was on those hazards the agency alleges exist but are not now covered by regulation. Emphasizing workplace violence, tuberculosis and patient handling (ergonomics), OSHA made it clear that these perceived hazards are critical components in any facility specific health and safety program. These hazards are now the subject of voluntary guidelines or proposed standards currently in development at OSHA.

During the nursing facility training sessions, OSHA unveiled a document entitled "Framework for a Comprehensive Health and Safety Program in Nursing Homes." According to OSHA's document, a comprehensive health and safety program should contain the following core elements: management commitment and leadership; employee participation; workplace hazard analysis; accident and record analysis; hazard prevention and control; safety and health training; medical management; and regular program review and evaluation.

However, OSHA failed to disclose during training that the agency has "drafted" a proposed Health and Safety Program standard intended to cover all workplaces in all industries. The proposed general industry program standard is almost a mirror image of the framework presented to nursing facilities. This draft proposed health and safety program standard has been the subject of much controversy and criticism by industry stakeholders, including AHCA, who were asked to comment on the draft standard. Industry representatives have taken issue with OSHA over the program's vague performance-based criteria under each core element and the lack of an effective method or means to measure a facility's compliance with the elements. In addition, there is a belief that OSHA will not apply and enforce consistently and that there has been an omission of a valid approach to a cost/benefit analysis. These concerns have been raised for the very similar voluntary program laid out for the nursing home industry reinforcing AHCA's opposition.

Some Key Industry Concerns

- Lack of industry input, expertise and experience in the development of the inspector and facility training programs.
  OSHA has stated, "to prepare for this pilot [nursing home initiative], OSHA compliance officers have been specially trained in the characteristics of the nursing home industry." Yet, AHCA is unaware of any industry representative who has been allowed to participate in the development of the program or provide substantive information to accurately describe a facility workplace and workforce. Such participation and information seems essential for an appropriate identification of safety and health hazards that may pose risks to nursing home employees. In fact, AHCA learned from its affiliate offices in certain pilot states that OSHA regional and state personnel refused (at the direction of Federal OSHA) to discuss program development, content, or format with industry representatives. State affiliates were limited to registering attendees to guarantee facility anonymity at the employer training sessions.

- Lack of expertise and experience in the long term care industry exhibited by OSHA representatives conducting the training.
  The absence of industry involvement in the development of the nursing home initiative was apparent in the scope, focus and depth of the training sessions presented by federal and state OSHA personnel. While the issues covered in each state's training seminar were similar, the quality and content of the presentations ranged from good to very poor according to attendees. Inconsistent application of OSHA regulations in different states has often been central to the industry's mistrust of the agency in the past. The training seminars have done little to dispel that mistrust and lend credence to OSHA's assurances that the comprehensive safety and health program approach will ensure compliance and enforcement consistency in the future.

- Heavy emphasis on workplace hazards such as patient handling (ergonomics) and workplace violence.

OSHA issued a "draft" proposal for an ergonomics standard in March of 1995. Industry opposed the proposed standard based on leading medical opinions that there is no valid evidence to support the theory that repetitive stress injuries in the workplace are the major contributing cause of musculoskeletal disorders. In the case of workplace violence, OSHA, again with no long term care industry input, issued "voluntary" guidelines specific to health care settings in early 1996. OSHA compliance directives, designed to instruct agency compliance officers on conducting investigations and issuing citations stemming from workplace violence and repetitive stress injuries, are currently being used to cite employers for these hazards under the general duty clause. A clear message was delivered during facility training that OSHA expects nursing home employers to be "doing something about these hazards or they will be cited" for workplace violence and ergonomic violations.

- Presence of union representatives at facility training seminars.
  OSHA promised repeatedly that the initiative would not involve organized labor, and billed it as a partnership between government and the nursing home industry. However, union officials were by Secretary Reich's side when the program was launched in Washington. In addition, unions participated in OSHA inspector training and attended training offered to facility personnel in the pilot states.

- OSHA's intent to hold only one facility training session per state regardless of size of the state or number of facilities within the state.
  While OSHA selected pilot states based on the high number of nursing facilities in each state employing thousands of workers, the agency conducted only one training seminar in one location throughout the state. The lack of accessibility and opportunity to obtain information and materials related to a program facilities are expected to comply with puts many employers at risk for enforcement. OSHA plans to inspect facilities with the highest numbers of recorded illness and injuries and to cite these facilities where employers cannot demonstrate that an effective comprehensive safety and health program is in place. The message delivered during facility training is that citations issued during post-training inspections will result in fines regardless of "on-the-spot" hazard fixes by the facility.

- Potential conflicts with other applicable federal regulations.
  There are legal and practical concerns that have arisen for employers when trying to comply with certain requirements in OSHA standards and guidelines. This is because they conflict or give an appearance of conflicting with other federal, state and local laws. In certain situations, conflicts may exist within the content and application of various provisions of the Americans With Disabilities Act, Family Medical Leave Act, OBRA '87 Nursing Home Reform regulations, the National Labor Relations Act, Life Safety Code and OSHA requirements.

Conclusion

AHCA believes that the increased scrutiny of the industry by OSHA based on the assumption that nursing facilities are highly hazardous and dangerous places to work is unfounded and misplaced. The number of workplace accidents when viewed in the context of the severity of the injury or illness and actual lost work days does not justify equating the nursing facility setting with coal mines. Resident handling tasks or episodes of unintentional resident abuse to staff rarely, if ever, expose nursing facility employees to deadly or life-threatening risks that lead to fatalities.

It is important that the industry address its realistic potential health and safety problems such as over-exertion, workplace violence, bloodborne pathogens and TB where exposure to hazards may occur. Overstating the problem, however, will not lead employers to identify real hazards and correct those problems that do occur. Many nursing facility providers have developed exceptional health and safety problems that are effective in reducing injuries and illnesses by abating hazards that are reasonably expected to occur in healthcare facilities. The industry must be allowed to provide OSHA with more input on actual "significant" recognized hazards and to suggest its own solutions for prevention and abatement. OSHA must be persuaded that even with high-tech equipment, job redesign and engineering controls, nursing facilities can never eliminate every hazard.

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STATEMENT OF THE AMERICAN FARM BUREAU FEDERATION

HEARING ON OSHA'S DRAFT SAFETY AND HEALTH PROGRAM STANDARD
HOUSE COMMITTEE ON SMALL BUSINESS

SUBMITTED FOR THE RECORD OF THE HEARING HELD JUNE 26, 1997

STATEMENT OF THE AMERICAN FARM BUREAU FEDERATION

HEARING ON OSHA'S DRAFT SAFETY AND HEALTH PROGRAM STANDARD
HOUSE COMMITTEE ON SMALL BUSINESS

SUBMITTED FOR THE RECORD OF THE HEARING HELD JUNE 26, 1997

The American Farm Bureau Federation appreciates this opportunity to submit testimony for the record of the Small Business Committee's hearing on OSHA's draft Safety and Health Program Standard. Farm Bureau is the nation's largest voluntary general farm organization. Farm Bureau has member organizations in all 50 states and Puerto Rico representing 4.7 million member families. Farm Bureau farmer and rancher members produce every type of agricultural commodity produced commercially in the United States.

We agree emphatically with the comments made by Chairman Talent in his statement opening the hearing: the new procedural and record-keeping burdens on small business (such as most farms) would be heavy; OSHA would be regulating how small business people must run their enterprises; and the subjective nature of the draft standard would brew a toxic mixture of duties that are unclear to small employers and vast discretion would be given to OSHA's inspectors in how to define those duties for enforcement purposes. In this statement we will point to several specific problems that the draft standard would cause for America's farmers. We commend the committee for your attention to these problems, and we urge you to continue that attention on behalf of farms and other small businesses.

Coverage of Agriculture

According to the draft standard, it would apply to all employers covered by the Occupational Safety and Health Act, except for employers engaged in construction or maritime activities. Since OSHA has separate standards for agriculture, this apparently means that OSHA intends simply to incorporate the draft standard by reference in the agricultural standards. There is no indication that OSHA has considered, or plans to consider, the issues unique to agriculture.

"Small Employers"

A good example of OSHA's insensitivity to the unique circumstances of agriculture can be seen from the definition of "small employers" in the draft standard. Mr. Watchman, OSHA's Acting Assistant Secretary, went to great lengths in his testimony before this committee to discuss how OSHA has reduced the burdens imposed on "small employers." But, for agriculture, this supposed relief would be illusory.

Under OSHA's definition, "small employers" would be those who did not employ more than nine employees on any day during the preceding 12 months. This definition is likely to mean that most farm employers will not be classified as "small employers" under the draft standard. For example: a farm may start the calendar year with only two or three employees because that is a less active part of the year. When time comes for planting and cultivation, the farm may add another employee or two. But, when harvest time arrives, the farm employer typically will need to hire several more people for a brief period (usually for only a few days) to do the work. These temporary or seasonal employees specifically are included in the definition of "employee" in the draft standard, and thus their employment counts toward the nine employee threshold.

The day on which the farm employer has more than nine employees, the farm employer is deemed, for the next 12 months, not to be a "small employer" under the draft standard. As a result, this farm employer, whose workforce for all but a few days in the year is nine people or less, must comply with the shorter phase-in periods and must comply with the hazard documentation requirements. It is exactly this kind of mechanistic approach to applying a general industry standard to agriculture without change that indicates that there are fundamental problems in the draft standard for America's farmers. Other federal labor and employment laws recognize the special circumstances of agriculture, of which OSHA is apparently unaware.

Documentation of Hazard Assessment and Hazard Control

Since most farmers will not be regarded as "small employers," they will have 18 months to identify and assess hazards, rather than the 36 months afforded small employers. Farmers will be required to "document" hazard assessment and hazard control activities, and to retain that documentation indefinitely.

These requirements create at least four basic problems. First, how extensive will OSHA, in enforcing these requirements, expect this documentation to be? Most farmers are likely to face a difficult choice. They could assemble (and keep updated) a substantial volume of expensive documentation. Or, they may opt for less extensive documentation, which exposes them to the risk that an OSHA inspector may issue a citation and penalty because he or she believes that a hazard that was not covered in sufficient detail.

Second, there is no indication that OSHA has given any attention to the costs of hazard assessment and hazard control for farmers, and particularly for smaller farming operations. Most farmers, and particularly those in the latter category, will have to go to outside sources for assistance in complying with these requirements. Unlike large industrial facilities, with on-staff health and safety personnel, farmers simply do not have these capabilities internally.

Third, will the hazard assessment and control requirements, as enforced by OSHA, track the division between general industry standards and agricultural standards? A hazard may be regulated by a general industry standard, but that standard would not apply to a farm employer.

Farmers need assurance that their hazard assessment and control responsibilities would not extend to hazards regulated under general industry standards.

Fourth, and most fundamentally, a farmer's obligation to comply with the hazard assessment, control and documentation requirements would be separate from, and in addition to, his obligation to comply with other standards and the OSH Act's General Duty Clause. As discussed below, this creates a totally new source of OSHA liability for employers.

"Backdoor" Regulation of Hazards

Under current law, an employer can be cited for a violation of a hazard-specific standard. Or, the employer can be cited for a violation of the General Duty Clause, because the employer allegedly failed to keep the workplace from "recognized hazards." Under the draft standard, a farmer would be required to assess and control all hazards, specifically including hazards that could be the basis for a General Duty Clause citation.

The scope of this requirement (and the accompanying compliance burden) is daunting. A farmer would have to retain an expert to look at a broad variety of sources identifying potential hazards, such as voluntary consensus standards (such as ANSI standards), and standards promulgated by safety and health groups (such as the ACGIH). What is particularly troublesome is that OSHA has given no indication that it will provide guidance as to whether these voluntary standards or safety and health group standards will be deemed to apply to agriculture.

OSHA also could use the approach contained in the draft standard to impose new regulatory duties on farmers without going through the process for adopting a new hazard-specific standard under the OSH Act, the Small Business Regulatory Enforcement Fairness Act and the Regulatory Flexibility Act. For example, OSHA cites alleged ergonomic violations under the General Duty Clause. The agency has not, however, promulgated an ergonomics standard. If the draft safety and health program standard is adopted, OSHA could require farmers and other employers to assess, control and document ergonomics hazards. This "backdoor" approach essentially would eliminate OSHA's need to promulgate an ergonomics standard.

Agricultural Multi-Employer Workplaces

Whenever a farmer brings a contractor onto the farm to do work, the farm would be deemed a multi-employer workplace under the draft standard. The use of contractors is common and extensive in agriculture: farm labor contractors, irrigation contractors, pesticide application contractors, fertilizer application contractors, mechanical contractors, electrical contractors and the like.

As such, farmers would be required to provide "appropriate" safety information to these contractors. Farmers also would be required to "appropriately allocate" safety and health responsibilities among these contractors. These vaguely stated requirements would make it

difficult for farmers to understand their compliance obligations, and these requirements, like others in the draft standard, appear not to take into account the unique circumstances of multiple employers in agriculture.

Employee Participation

These provisions of the draft standard effectively would require farmers to turn over part of their management control to employees and unions. This would be a fundamental change in an area governed by the National Labor Relations Act (NLRA). Further, if a farmer does not qualify for the agricultural exemption contained in the NLRA, the farmer would be placed at risk of being deemed to have violated section 8(a)(2) of the NLRA through organizing an employee participation program to comply with the draft standard.

These problems would become particularly acute in the case of seasonal or temporary employees, whose use is common on farms during certain cultivation periods and during harvest season. The nature of this workforce, which is highly transitory both within the season and from season to season, is virtually impossible to reconcile with the assumptions underlying the employee participation requirements in the draft standard.

Separately, the draft standard would impose new liability beyond that contained in the anti-retaliation provision contained in section 11(c) of the OSH Act. Under the draft standard, a violation would occur if OSHA concluded that an employer had "discouraged"an employee from participating in safety-related activities. This highly subjective standard contrasts sharply with the objective concepts of discharge and discrimination used in section 11(c). Further, while section 11(c) cases are litigated in federal district courts, "discouragement" violations would be litigated, like other cases under standards, before the OSH Review Commission. This creates the risk that an entirely separate body of case law and precedent would be developed before the Commission, apart from section 11(c) decisions by the federal courts.

"Performance-Based Standard"

OSHA characterizes the draft standard as a "performance-based" standard which provides flexibility to employers for compliance. While performance-based standards have some attractive attributes, we are concerned about a performance basis here where the draft standard is vague, riddled with ambiguities, and does not take into the special circumstances of agriculture. Our concern is reinforced by reports that we have received from counsel indicating that OSHA enforcement personnel have used other performance-based standards, such as the Process Safety Management standard, to second-guess employers' judgments.

Enforcement

OSHA trumpets its assertion that when an employer is cited for a violation of the standard, penalties will be sought only where the employer has a "pattern of serious hazards." The

problem is that the criteria underlying the determination of "pattern" and "serious" are so subjective that, in practice, most employers are likely to be subject to penalties.

Separately, if an employer is issued a citation for a violation of the draft standard, the employer must abate the violative hazard even if a penalty is not assessed. The costs of abatement may be significant. For example, a farmer may be required to comply with the hazard assessment, control and documentation requirements as a larger employer (for the reasons discussed above). If OSHA believes that the documentation is inadequate, it could require specifically, as a condition of abatement, that the farmer must obtain additional, and expensive, documentation.

Finally, the draft standard would expand criminal liability under the OSH Act. Under current law, a violation of the General Duty Clause cannot be prosecuted criminally. But, if the draft standard is violated, and results in an employee's death, criminal liability could attach, even though the underlying hazard is not regulated by a hazard-specific standard.

* * *

Farm Bureau strongly opposes the draft standard being considered by OSHA. OSHA could elect not to make this standard applicable to agriculture, as it has done with the majority of the general industry standards. Many of the concerns we have expressed here, however, are common to small business generally. Thus, unless OSHA is prepared to make substantial changes in the draft standard, we do not believe that it should be adopted.

The Honorable Jim Talent
Chairman
Committee on Small Business
United States House of Representatives
2361 Rayburn House Office Building
Washington, DC 20515-6315

Dear Mr. Chairman:

Thank you for your decision to hold a hearing on the potential impact of the Occupational Safety and Health Administration's (OSHA) proposed safety and health program standards on small businesses. Forty-six percent of the Society for Human Resource Management's (SHRM) membership comes from companies with fewer than 500 employees and 20 percent comes from firms with fewer than 100 people, thus, SHRM appreciates the opportunity to submit written testimony on this important issue.

The Society is the leading voice of the human resource profession and represents the interests of more than 85,000 professional and student members from around the world. SHRM provides its membership with education and information services, conferences and seminars, government and media representation, online services and publications that equip human resource professionals for their roles as leaders and decision makers within their organizations. The Society is also a founding member and Secretariat of the World Federation of Personnel Management Associations (WFPMA) which links human resource associations from around the globe.

Although SHRM is encouraged by OSHA's efforts to change its adversarial relationship with employers by attempting to work with employers and employees instead to achieve safe and healthy work environments, SHRM has grave reservations concerning the proposed safety and health program standards for general industry because, among other things, the proposed standards are too vague in nature and could potentially lead to widespread enforcement abuse. A brief treatment of the Society's main concerns follows, but a more complete discussion of the proposed standards can be found in to the attached May 24, 1996, letter to Joseph Dear, the Assistant Secretary of Labor at the time.

The vague language and undefined terms contained in the proposed standards will adversely

affect businesses. Without clear and objective guidance from OSHA, employers will have great difficulty complying with the proposed standards. For example, regardless of employers' exercise of sound business judgement to "conduct worksite hazards assessment ***as often as necessary*** to ensure that serious hazards are identified[,]" to "control ... hazards within ***a reasonable time***[,]" to "keep ... ***such records as are essential*** to ensure the effectiveness of the safety and health programs[,]" and to maintain "records required by this standards ... ***for as long as necessary*** in light of their intended use[,]" the vagueness of the proposed standards would give OSHA inspectors unfettered discretion to second guess employers' courses of action and impose fines as they see fit. Small businesses would be particularly vulnerable under this paradigm because, among other things, they often do not have the means to absorb the costs of storing all records for great lengths of time in order to avoid violating OSHA's unascertainable rules, nor have they ability to forecast to which safety and health program model the inspector subscribes in order to match it and increase the likelihood of being found in compliance with these subjective standards.

The Society is also concerned that the "management leadership and employee participation" element imposed as "basic obligations" under the proposed standards would result in employers violating section 8(a)(2) of the National Labor Relations Act (NLRA). Section 8(a)(2) of the Act makes it an unfair labor practice for an employer "to dominate or interfere with the formation or administration of any labor organization or contribute financial or other support to it[.]" 29 U.S.C. § 158(a)(2). "Labor organization" is broadly defined in Section 2(5) of the Act as "any agency or employee representation committee or plan, in which employees participate and which exists for the purpose ... of ***dealing with*** employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or ***conditions of work***. 29 U.S.C. § 152(5) (emphasis added).

The type of "ongoing employee participation in assessing and controlling hazards, investigating incidents, developing safe and healthful work practices, training and evaluating safety and health programs" envisioned by OSHA would likely satisfy the current administrative and judicial interpretation of the "dealing with" and "conditions of work" elements for Section 8(a)(2) violations. As interpreted by the National Labor Relations Board (NLRB) and widely enforced by the federal courts, Section 8(a)(2) limits opportunities for employers and employees to resolve workplace problems through team-based employee involvement structures because such employee involvement devices may constitute labor organizations dominated or interfered with by management and, hence, be unlawful. NLRB v. Cabot Carbon Co., 360 U.S. 203 (1959) (merely making proposals or recommendations to the employer that the employer can accept or reject is sufficient to constitute a committee's "dealing with" the employer under Section 2(5)); Camvac Int'l, Inc. 288 N.L.R.B. 816, 846 (1988), modified, 302 N.L.R.B. No. 100 (1991) (employee committees that exist, at least in part, to deal with employers concerning grievances or conditions of work are deemed to be labor organizations); and Electromation Inc. v. NLRB, 35 F.3d 1148 (7th Cir. 1994) (a determination of what is a labor organization under the Act is fact-specific and must be made on a case-by-case basis: the "Action Committees" in Electromation were labor organizations

which were unlawfully dominated by the company).

Congress is currently considering legislation to clarify the legal status of employee involvement programs. SHRM is extremely pleased with the current bipartisan efforts in the Senate to enable employers and employees to work together to address workplace issues and improve their competitive standing in the global marketplace. If enacted, such legislation would bring American employment policies, at least in part, into harmony with the realities of the workplace and allow for employer-employee structures as envisioned by the proposed OSHA standards. Until such legislation is enacted and the confusion regarding the legality of employee involvement programs is resolved, however, SHRM cannot support the proposed requirement for employee participation in safety and health programs.

The vagueness and inclusion of the employee participation requirement in the proposed rules are especially disconcerting in light of the current Administration's efforts to change the Federal Acquisition Regulations (FAR) to require compliance with a host of labor laws, including the Occupational Safety and Health Act (OSH Act) and the NLRA. Under the proposed federal contract regulations being considered, federal contractors who do not have satisfactory records of compliance with labor laws would be debarred. It is distressing that despite an employer's best efforts to comply with the vague safety and health program standards as proposed, due to their subjective nature, an inspector could still find the business to be in violation of the standards and issue citations for those violations, debarring the company from future federal contracts as a result.

For the reasons stated above and in the attached OSHA comments, the Society for Human Resource Management strongly supports the Committee on Small Business' endeavors to study the potential impact of the proposed standards and to encourage OSHA to fundamentally modify them so that true partnership with employers and employees could be achieved without the clarity of law being sacrificed. Please feel free to contact Hien C. Duong-Tran at (703) 548-3440, ext. 3610, if we could be of further assistance.

Sincerely,

Susan R. Meisinger, SPHR
Senior Vice President

Att.: May 24, 1996, letter to Assistant Secretary of Labor

May 24, 1996

The Honorable Joseph A. Dear
Assistant Secretary of Labor
Occupational Safety and Health Administration
Department of Labor
200 Constitution Ave., N.W.
Washington, DC 20210

Dear Assistant Secretary Dear:

On behalf of the Society for Human Resource Management ("SHRM"), thank you for this opportunity to comment on the ***draft summary of the proposed standards*** for Safety and Health Programs ("S&HP") for general industry. SHRM is the leading voice of the human resource profession, representing the interests of more than 70,000 professional and student members from around the world. Fifty-seven percent of SHRM members are from companies with fewer than 1,000 employees. The Society provides its members with education and information services, conferences and seminars, government and media presentation and publications that equip human resource professionals for their roles as leaders and decision makers within their organizations. SHRM is also a founding member and Secretariat of the World Federation of Personnel Management Association ("WFPMA") which links human resource associations in 55 nations.

Members of SHRM's National Workplace Health and Safety Committee are also available to participate in your upcoming stakeholder's meetings.

SHRM Position Statement

SHRM believes employers should be responsible leaders in promoting a safe and healthy workplace, and supports regulations that can have a direct impact in the reduction of workplace accidents and illnesses. However, SHRM strongly opposes any workplace safety regulations that would impair employer-employee cooperation, impose unnecessarily high costs on employers or increase litigation. First, SHRM believes that any new federal safety and health programs should not hinder the cooperative and voluntary nature of existing programs. Second, any

nonconstructive employee interference in the monitoring and adjudication of workplace safety issues is likely to limit any employer's ability to effectively manage a safety and health program.

SHRM opposes any occupational safety and health regulations that create an adversarial environment in the workplace between employers and employees without addressing real improvements to workplace safety.

General Comments

First, given that the proposed standards are provided in draft summary form, our comments are necessarily general in nature. It is difficult to articulate support for or concerns regarding the standards until we have had an opportunity to review the actual language itself. We look forward to working with the Agency by providing more specific feedback when a more concrete draft of the actual language is available.

Second, SHRM both firmly believes that employers should play a leadership role in promoting a healthy work environment and is fully cognizant of the budgetary constraints of federal agencies; however, we are concerned that employers are increasingly being forced to shoulder additional responsibilities in the form of unfunded mandates. The privatization of costs will impair American businesses in an increasingly global and competitive economy, and will ultimately harm American workers, employers, and the American society. Thus, while "employers and workers [should] . . . play a larger role in advancing the nation's progress toward safe and healthful workplaces for all[,]" the proposed standards should include safeguards and language to prevent the unfettered transference of major governmental responsibilities unto employers.

The final issue of general concern, which also serves as an example of the need for the safeguards mentioned above, is the presence of vague language in these proposed standards. For example, the section addressing "Information and training" states that "OSHA is . . . considering requiring employers to develop and keep for this standard ***only such records as are essential*** to ensure the effectiveness of the S&HP" and "[a]ny records required by this standard would have to be maintained for ***as long as necessary*** in light of their intended use[.]" The section addressing hazard assessment and control states that the "employer would have to conduct worksite hazard assessment ***as often as necessary*** to ensure that serious hazards are identified. . . . [and] control . . . hazards within ***a reasonable time***." Undefined, and potentially subjective, requirements such as these must be avoided because they would force businesses to keep all records for great lengths of time, at great costs, in order to avoid violating OSHA's unascertainable rules.

Specific Comments

SHRM joins others in the business community and the Congress to express a serious concern about the economic impact of these regulatory requirements. While the Agency is to be commended for its efforts to responsibly discharge its role and concurrently be responsive to business needs, sometimes, despite the best of efforts and intentions, adverse consequences occur. Thus, formal cost-benefit analyses should be conducted to determine the best course of Agency action. Here, costs of compliance with the proposed S&HP standards should include heightened exposure to other liabilities, confusion caused by overlapping requirements and administrative burden.

Legal Liabilities. Employers implementing S&H programs which would meet the "basic obligation" currently being considered could be susceptible to liabilities for violating section 8(a)(2) of the National Labor Relations Act ("NLRA"). The proposed "basic obligation" would call for the S&HP to include an element of "management leadership and employee participation" in health and safety issues. As human resource professionals, SHRM's membership recognizes the importance of employer-employee participation in today's competitive markets and strongly supports this employer-employee teamwork approach; however, given the current state of confusion in the law, this approach may be violative of the NLRA. Section 8(a)(2) of the Act makes it an unfair labor practice for an employer "to dominate or interfere with the formation or administration of any labor organization or contribute financial or other support to it[.]" 29 U.S.C. § 158(a)(2). "Labor organization" is broadly defined in section 2(5) of the Act as:

> any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of ***dealing with*** employees concerning grievances, labor disputes, wages, rates of pay, hours of employment, or ***conditions of work***.

29 U.S.C. § 152 (5) (emphasis added). The type of "ongoing employee participation in assessing and controlling hazards, investigating incidents, developing safe and healthful work practices, training and evaluating S&HP" envisioned by the Agency would likely satisfy the current interpretation of the "dealing with" and "conditions of work" elements.

As interpreted by the National Labor Relations Board ("NLRB") and widely enforced by the federal courts, these provisions limit opportunities for employers and employees to resolve workplace problems through team-based employee involvement structures. In essence, the Board and the courts have held that such devices may constitute labor organizations dominated

or interfered with by management and, hence, be unlawful under Section 8(a)(2). Congress is currently considering a bill to amend Section 8(a)(2) of the NLRA. SHRM is extremely pleased that H.R. 243, the Teamwork for Employees and Managers Act, has already passed the House of Representatives. We continue to work with the Senate toward the passage of S. 295, its version of the legislation at the earliest opportunity. If enacted, the TEAM Act would bring American employment policy, at least in part, into harmony with the realities of the American workplace and allow for employer-employee structures as envisioned by the proposed standards.

In addition to the potential NLRA violation, the proposed standards could force employers to reveal confidential information under the section regarding "management leadership and employee participation," since businesses would have to provide "employees [on S&HP committees]. . . access to relevant information, training and other resources commensurate with their responsibilities in the program." This access to restricted information could also conflict with employers' confidentiality requirements under the Americans with Disabilities Act.

Confusion. Overlapping OSHA standards would result in confusion. OSHA has already issued standards for many hazards, is in the process of promulgating these standards for general industry, and is contemplating additional standards for the construction and maritime industries. "[T]he employer's hazard-specific obligations would continue to be governed by [existing] . . . standards[:]" in addition, the employer would have to comply with relevant new standards. Multiple layers of requirements would increase the costs of and confusion regarding compliance with the regulatory structure. For example, this proposal would "requir[e] employers to develop and keep . . . such records as are essential to ensure the effectiveness of the S&HP." To what extent would compliance with the new recordkeeping and reporting requirements OSHA recently proposed satisfy the recordkeeping requirements under these proposed standards? Who determines what records are "essential to ensure the effectiveness of the S&HP[?]" What factors would be considered in making that determination?

While SHRM appreciates the Agency's efforts to draft flexible standards and recognizes the necessity of such flexibility, it is important that clear guidelines and definitions are provided to assist employers in determining whether they are in compliance with relevant laws.

Administrative Burden. SHRM strongly encourages all employers to have a written workplace health and safety policy. However, in drafting requirements for these S&HP, the Agency should be careful to ensure that the new requirements do not simply add to the employers' administrative burden by over-emphasizing documentation requirements and doing nothing to ensure that S&HP are actually being implemented. For example, would the reduction in injury rates be a better measure of a S&HP's effectiveness than the number of training sessions held or paperwork requirements satisfied?

The Agency's approach here has been inconsistent. In the "recordkeeping" section, it acknowledged this concern by requiring that "[e]ach covered employer should have a worksite S&HP that is effective in practice, regardless of how the program may look on paper." However, in the "scope and application" section, it exempts "effective alternative S&HP . . . as long as that alternative program includes all the elements listed" under the "basic obligation" section. (Items listed include: management leadership and employee participation, hazard assessment and control, training, record keeping "as necessary", system evaluation and, if appropriate, the assignment of responsibilities for multi-employer worksites.) The exemption provision is problematic in several ways. First, it does not define the term "effective". Second, it is self-contradictory: the provision would ***exempt alternative S&HP that are effective if they include all the basic elements required under OSHA's standards.*** In essence, there are no exemptions. Employers' S&H programs must meet the standards as defined by OSHA regardless of whether they have resulted in incident rates much lower than the national rate for the particular industries.

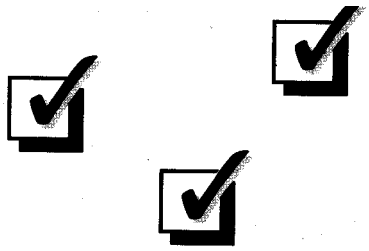
The proposed standards should state that regardless of how the S&HP may look on paper, if it is effective in practice, employers will not be cited for failure to comply with relevant OSHA requirements. In addition, the standards should provide that employers who act in good faith at the time of a violation will only be required to abate the violation, but not be subject to a fine.

Overall, SHRM agrees with the Agency that both employers and employees should play a larger role in promoting a safe and healthy workplace. However, SHRM is unable to support the proposed standards until we have an opportunity to review the actual language. We look forward to working with the Agency as it continues to develop, refine and finalize these draft S&HP standards.

If you have any questions regarding SHRM's comments, please call me at (703) 548-3440, ext. 3610.

Sincerely,

Hien C. Duong-Tran
Legislative Representative
Congressional Affairs



OSHA COMPLIANCE CHECKLIST

FOR THE DENTAL OFFICE

ADA®

American Dental Association
Division of Legal Affairs
211 East Chicago Avenue
Chicago, Illinois 60611-2678

L200

A MESSAGE FROM THE PRESIDENT


Dr. Harris

ADA ®

January, 1993

Dear Member:

Sometimes members ask me what they get for their dues dollars. Well, the checklist you're receiving with this issue of the *ADA News* is an outstanding example of the value of ADA membership. It's exactly the type of hands-on resource that members are telling us they need—and it's available only to you, the ADA member.

The checklist is a major achievement in the Association's ongoing efforts to help you cope with OSHA. It represents a substantial cooperative effort of several ADA agencies, a panel of dentists, and OSHA officials in meetings over a period of many months.

We are pleased to provide the checklist to you as an exclusive benefit of ADA membership. Non-members will be unable to obtain this checklist at any price. I would like to personally thank the Association's legal division, Washington office and the Council on Dental Practice for their work on this project.

The ADA continues to be committed to challenging areas of the OSHA standards that we believe are not justified by science and do not promote employee safety and health. However, we are also committed to helping you comply with the law until we can change it —and helping you avoid OSHA citations and penalties.

We certainly appreciate OSHA's willingness to work with us to achieve this objective. As noted in the accompanying letter from Dorothy Strunk, Acting OSHA Administrator, " The use of this checklist will assist dentists to comply with the basic requirements of the bloodborne pathogens standard, hazard communications standard and general safety standards covered by the checklist."

I encourage you to use this checklist to review your office's compliance with the standards. I recommend that you use the checklist to conduct a mock inspection of your office. It should help you to have a better understanding of what OSHA expects you to do and how you can comply.

As a member, you are receiving this material at no charge. I trust that you will find this membership benefit helpful. The benefits to you in your day-to-day practice will more than justify the effort the Association has undertaken on your behalf.

Together, we can make a difference.

Professionally,

Jack W. Harris, DDS

Jack Harris
President

U.S. Department of Labor

Assistant Secretary for
Occupational Safety and Health
Washington, D.C. 20210

Dr. William E. Allen
Executive Director
American Dental Association
211 East Chicago Avenue
Chicago, Illinois 60611

Dear Dr. Allen:

This is in response to the American Dental Association's request that the Occupational Safety and Health Administration (OSHA) review a checklist developed by the Association to help dentists comply with OSHA standards. OSHA has conducted a general review of the checklist you submitted and has provided comments. We are pleased that our comments have been incorporated in the final version of the checklist.

Our comments were limited to the standards covered in the checklist and do not address other standards which apply to dental offices. The checklist cannot substitute for the standard itself, for it is the standard that is the legal requirement to which an employer will be held. The final determination of compliance can only be made by a compliance officer who can take into account the particular factors pertaining to potential hazards at a given worksite.

That having been said, OSHA agrees that the use of this checklist will assist dentists to comply with the basic requirements of the Bloodborne Pathogens Standard, Hazard Communication Standard and the "general safety" standards covered by the checklist.

I hope this information helps you in your worthy effort to assist your members in dealing with what is for many of them a new experience. We encourage your efforts and hope that this undertaking will be successful, both in assisting your members to come into compliance with OSHA standards and in assuaging to some degree the level of anxiety that has been created by OSHA's increased attention to the dental office workplace.

Sincerely,

Dorothy L. Strunk
Acting Assistant Secretary

CONTENTS

This checklist is designed to help dentists comply with OSHA standards by informing them about the basic requirements of OSHA's Bloodborne Pathogens Standard, Hazard Communication Standard and certain other General Safety Standards. The checklist does not cover all of OSHA's many standards, only those which OSHA has cited most often in dental offices in the past. An OSHA inspection will always be based on the specific conditions that exist in a particular workplace. It is not possible, therefore, to guarantee in an inspection that an OSHA inspector will not identify a violation of a standard that is not covered by this checklist. The checklist is not intended to replace OSHA standards or to establish a standard of care or industry custom and practice. The information contained in the checklist should not be construed as legal advice or substituted for the advice of the dentist's own legal counsel. Dentists should always consult their personal attorneys for answers to their specific legal questions.

A GENERAL INFORMATION

Appointment of one person to be the office compliance manager is recommended, but not required. It is also recommended that emergency telephone numbers (e.g., fire, police, medical) be posted where they can readily be found.

All employers:

☐ OSHA Poster (Form 2203) is displayed in a conspicuous place

Employers with 11 or more employees only:

- ○ An individual record is made of each recordable occupational injury or illness using OSHA Form 101, or an equivalent. A "recordable occupational injury" is an injury that involves a fatality, lost workdays, a job change or medical treatment, other than first aid
- ○ A running log and summary is kept of all recordable occupational injuries and illnesses for each calendar year using OSHA Form 200, or an equivalent
- ○ Once a year, between February 1 and March 1, the summary (Form 200) for the previous year is posted in a conspicuous place
- ○ Forms 101 and 200 are kept for 5 years

B BLOODBORNE PATHOGENS STANDARD

1 Exposure Control Plan

☐ A written Exposure Control Plan is on file and is accessible to employees

The written Exposure Control Plan includes the following elements:

- ○ Exposure determination
- ○ Methods and schedule for implementing the different sections of the standard
- ○ Justification for recapping needles (if applicable)
- ○ Office policy on hepatitis B vaccination
- ○ Protocol for post-exposure evaluation and follow-up
- ○ Procedure for evaluating circumstances surrounding an exposure incident
- ○ Labels and color-coding used to communicate biohazards to employees
- ○ When and how employees are trained
- ○ How medical and training records are maintained and who is allowed to have access to them

☐ The written Exposure Control Plan is reviewed and updated at least annually, or whenever changes are made in tasks or procedures that affect occupational exposure

2 Exposure Determination

The exposure determination identifies employees who are covered by the standard and includes:

- ☐ A list of job classifications in which <u>all</u> employees in those job classifications have occupational exposure (e.g., dental hygienist, dental assistant)
- ☐ A list of job classifications in which <u>some</u> employees in those job classifications have occupational exposure. This list must also include a list of the tasks or procedures that give rise to the exposure (e.g., one of the receptionists cleans the operatory between patients)

3 Methods of Compliance

❖ **Employees use universal precautions to prevent contact from blood and other potentially infectious materials (OPIM) involved in care of all patients**

NOTE: OSHA defines OPIM to include saliva in dental procedures

The following engineering and work practice controls have been implemented:

- ☐ Employees wash hands immediately, or as soon as feasible, after removing gloves or other personal protective equipment (PPE)
- ☐ Employees wash hands and skin and flush mucous membranes immediately, or as soon as feasible, after contact with blood or OPIM
- ☐ Employees do not bend, recap or remove contaminated needles or other contaminated sharps <u>unless</u> recapping, etc. is required by the procedure <u>or</u> no alternative is available (e.g., administering incremental doses of anesthesia to the same patient)
- ☐ The justification for recapping (i.e., required by the procedure or no alternative available) is stated in the Exposure Control Plan
- ☐ If recapping is permitted, it is done using a mechanical device or one-handed scoop technique
- ☐ Shearing or breaking of contaminated needles is <u>never</u> permitted
- ☐ <u>Reusable</u> contaminated sharps (e.g., sharp instruments) are placed in leakproof, puncture resistant containers while they are waiting to be processed; the containers are labeled with the biohazard label or color-coded red
- ☐ Employees do not reach by hand into containers of reusable contaminated sharps
- ☐ Employees do not eat, drink, smoke, apply lip balm or makeup or handle contact lenses where occupational exposure is likely to occur, for example, in the operatory, lab or sterilization area or where Regulated Waste is stored

- [ ] Food and drink are stored separately from materials contaminated with blood or OPIM
- [ ] Procedures are performed in a manner to minimize splashing or spraying, consistent with patient care considerations
- [ ] Equipment is decontaminated to the extent feasible before servicing or shipping
- [ ] Equipment that cannot be completely decontaminated before servicing or shipping is labeled with a biohazard label that states what parts of the equipment are still contaminated

❖ The employer ensures that employees use appropriate personal protective equipment (PPE)

- [ ] PPE is provided, repaired, cleaned, replaced and disposed of at no cost to employees
- [ ] Employees use PPE whenever contact between blood or OPIM and skin, mucous membranes, street clothes or undergarments is reasonably anticipated
- [ ] Gowns, aprons, shirts or other garments used as PPE cover the parts of the body that can reasonably be anticipated to become contaminated during a particular dental procedure
- [ ] The fabric selected for PPE prevents blood or OPIM from passing through to the underlying garments or skin under normal conditions of use

NOTE: OSHA has stated that cotton, cotton-poly clinic jackets or lab coats are usually satisfactory barriers for routine dental procedures. An ordinary shirt or blouse may also be appropriate, depending on the task and degree of exposure anticipated

- [ ] Garments are changed immediately or as soon as feasible after they are penetrated by blood or OPIM
- [ ] Masks and protective eyewear (such as goggles or glasses with solid side-shields) are worn whenever eye, nose or mouth contamination with blood or saliva can reasonably be anticipated; a chin-length face shield may be worn in place of mask and protective eyewear
- [ ] Gloves are worn during dental procedures whenever hand contact with blood or saliva is reasonably anticipated and when handling instruments, materials and surfaces that are contaminated
- [ ] Employees are provided with gloves in appropriate sizes
- [ ] Employees who are allergic to gloves normally provided are provided with hypoallergenic gloves, glove liners, powderless gloves or similar alternatives
- [ ] Disposable gloves are changed and discarded as soon as practical when they become contaminated (e.g., between patients) or as soon as feasible if they become torn or punctured

- ☐ Utility gloves may be reused, but they are discarded when they become torn or otherwise ineffective as a barrier
- ☐ If employees are expected to administer CPR as part of their job duties, resuscitation bags, pocket masks or other ventilation devices are provided
- ☐ PPE is removed before employees leave the work area (i.e., the dental office, with the exception of eating areas)
- ☐ After it is removed, PPE is put in a designated area or container for storage, washing, decontamination or disposal
- ☐ "Contaminated laundry" (laundry soiled with blood or OPIM or that may contain sharps) is placed and transported in a bag or container with the biohazard label or color-coded red
- ☐ Contaminated laundry is handled as little as possible; it is not sorted or rinsed where it is used
- ☐ The employer is responsible for laundering contaminated laundry using a method such as:
  - ○ Outside laundry service
  - ○ Washing machine and dryer on site
  - ○ Employer takes home (unincorporated dentist only)
- ☐ Employees wear gloves (and gown if needed) to handle contaminated laundry

❖ The office is maintained in a clean and sanitary condition

- ☐ There is a written schedule for cleaning and decontaminating the different areas of the office
- ☐ All equipment, environmental and working surfaces are decontaminated after contact with blood or OPIM

  Contaminated working surfaces are decontaminated with an appropriate disinfectant:
  - ○ Between patients
  - ○ Immediately or as soon as feasible when overtly contaminated
  - ○ After any spill of blood or OPIM
  - ○ At the end of the workday if they may have become contaminated since the last cleaning

NOTE: The particular disinfectant used depends on the circumstances in which the housekeeping task occurs, but in most circumstances OSHA would consider an EPA-regulated disinfectant that is tuberculocidal following the manufacturer's instructions to be appropriate

- ☐ If they are used, protective coverings (such as plastic wrap) are replaced whenever visibly soiled and at the end of the workday
- ☐ Bins, pails, cans and other receptacles that are likely to become contaminated are inspected and decontaminated on a regular basis or as soon as feasible when visibly contaminated

- ☐ Broken, contaminated glassware is picked up with a mechanical device (e.g., brush and dust pan or forceps), never by hand
- ☐ The following items are treated as Regulated Waste:
  - ○ Contaminated disposable sharps (including exposed ends of dental wires)
  - ○ Unfixed tissue, including teeth
  - ○ Liquid blood or OPIM
  - ○ Items so saturated with blood or OPIM that they would release blood or OPIM in liquid or semiliquid form if compressed
  - ○ Items caked with blood or OPIM that would release blood or OPIM if handled
- ☐ Contaminated disposable sharps are placed immediately, or as soon as feasible, in containers that are leakproof on the sides and bottom, puncture resistant, closable and labeled with the biohazard label or color-coded red
- ☐ Containers for disposable sharps are located as close as feasible to the immediate area where the sharps are used
- ☐ Sharps containers are inspected on a regular basis to make sure they do not become overfilled
- ☐ Sharps containers are kept upright while in use
- ☐ Sharps containers are closed before they are moved
- ☐ Other Regulated Waste is placed in containers that are leakproof, closable and labeled with the biohazard label or color-coded red
- ☐ Containers of other Regulated Waste are closed before they are moved
- ☐ Regulated Waste is disposed of according to state and local law

4 Hepatitis B Vaccination

- ☐ Hepatitis B vaccination is made available to all employees with occupational exposure at no cost to the employee
- ☐ Vaccination is made available (i.e., first dose administered) within 10 working days of an employee's assignment to a job involving occupational exposure
- ☐ Employees are given training about hepatitis B vaccination before the vaccine is offered to them (see **# 7 Training** below)
- ☐ Vaccination is provided according to U.S. Public Health Service (PHS) recommendations

NOTE: PHS does not presently recommend routine post-vaccination testing or boosters

- ❑ An employee who declines to be vaccinated must sign an "informed declination" form, using the exact language provided in the standard
- ❑ The health care professional who administers the vaccine is given a copy of OSHA's Bloodborne Pathogens Standard; multiple copies need not be given to same health care professional
- ❑ A written opinion is obtained from the health care professional stating whether hepatitis B vaccine was indicated for the employee and whether it was administered
- ❑ The health care professional's written opinion is kept in the employee's medical record, and a copy is given to the employee within 15 days of the evaluation

5 Post-Exposure Evaluation and Follow-up

- ❑ Employees who have an exposure incident are provided with post-exposure evaluation and follow-up at no cost to the employee
- ❑ Employees are required to report exposure incidents (e.g., needlesticks) immediately

The following steps are taken as soon as an exposure incident is reported:

1. A written report is prepared, stating when, what and how the incident occurred, and identifying the source patient, if possible; the incident report notes if the source patient is unknown or if it would be a violation of state or local law to disclose the source patient's identity
2. The source patient is asked to consent to testing unless his or her HIV/HBV status is already known; the incident report notes if the source patient refuses to be tested
3. Information about the source patient's HIV/HBV status is made available to the exposed employee if the source patient consents to disclosure or if state law permits disclosure without the source patient's consent
4. The exposed employee is warned about further unauthorized disclosure of information about the source patient's HIV/HBV status
5. The employee is offered any medically indicated prophylaxis (as recommended by the Public Health Service), plus counseling and evaluation of any reported illnesses
6. The employee's blood is collected as soon as feasible for baseline testing (with the employee's consent)
7. If the employee consents to have blood collected, but not tested, the blood is kept for 90 days after the exposure incident to allow the employee to change his or her mind
8. The health care professional who performs the post-exposure evaluation and follow-up is given copies of:
   - OSHA's Bloodborne Pathogens Standard
   - the incident report
   - relevant sections of the employee's medical record
   - the source patient's test results, if the source patient consents or consent is not required by law

   Multiple copies of the standard need not be given to the same health care professional
9. A written opinion is obtained from the health care professional stating that the employee was informed of the results of the evaluation and told about any medical conditions that require further evaluation or treatment
10. The opinion is kept in the employee's medical record, and a copy is given to the employee within 15 days of the evaluation

6 Medical Records

☐ A medical record is maintained for each employee with occupational exposure

NOTE: The medical record may be maintained in the dental office or the dentist may arrange with the employee's health care professional to maintain the record, as long as the arrangement requires the health care professional to keep the record confidential and retain it for the length of employment plus 30 years

☐ The medical record contains the employee's name, social security number, hepatitis B vaccination status and any of the following which may apply:

- ○ Form refusing vaccination
- ○ Exposure incident report
- ○ Form refusing post-exposure evaluation and follow-up (*not required, but highly recommended*)
- ○ Any written opinions of health care professionals

☐ Procedures have been adopted to ensure the confidentiality of employee medical records

☐ Employees are entitled to a copy of their medical record upon request

☐ OSHA will be given access to the employee's medical record upon presentation by the inspector of an official access order

☐ Employee medical records are kept for the length of employment plus 30 years

☐ If this practice is sold, medical records will be transferred to the new owner; if the practice is closed, medical records will be offered to NIOSH (contact OSHA for the address and phone number)

7 Training

☐ Employees with occupational exposure participate in a training program during work hours and at no cost to the employee

☐ Training is provided before the employee begins work that involves occupational exposure and at least annually, or as often as changes in the job require

☐ The trainer is someone who is familiar with the standard as it relates to the dental office

Training covers the following subjects:

- ○ Explanation of the Bloodborne Pathogens Standard and where a copy is kept in the office
- ○ General information about the epidemiology and symptoms of bloodborne diseases
- ○ Modes of transmission of bloodborne pathogens
- ○ Explanation of the Exposure Control Plan and how employees can obtain a copy
- ○ How to recognize tasks involving occupational exposure
- ○ Use and limits of engineering controls, work practice controls and personal protective equipment (PPE)

- ❍ Where PPE is located and how to use, remove, handle, decontaminate and dispose of it
- ❍ How to select appropriate PPE
- ❍ Effectiveness, safety, benefits and method of administering hepatitis B vaccine and that the vaccine will be provided free of charge
- ❍ What to do if there is an emergency spill of blood or OPIM
- ❍ What to do if an exposure incident occurs
- ❍ Post-exposure evaluation and follow-up that will be made available to employees after an exposure incident
- ❍ The system of labels or color-coding used to warn employees against biohazards
- ❍ An opportunity for interactive questions and answers

❑ A record is made of all training sessions, including the date, contents, name and qualifications of trainer, and names and job title of employees who attended

❑ Training records are kept for 3 years from the date of training (a duplicate may be placed, if desired, in the employee's personnel record)

❑ Employees are entitled to a copy of their training records upon request

C HAZARD COMMUNICATION STANDARD

1 Hazard Communication Program

❑ A written Hazard Communication Program is on file and is made available to employees on request. The written Hazard Communication Program:

- ❍ Lists all hazardous chemicals known to be present in the office
- ❍ Describes the labeling system used in the office to warn employees against chemical hazards
- ❍ Describes the procedures for obtaining Material Safety Data Sheets (MSDSs) and making them available to employees (e.g., MSDSs are kept in a notebook in the front office)
- ❍ Describes the manner in which employees are provided information and training

NOTE: Consumer products (i.e., products employees use in the same manner and frequency as they would at home) or drugs in solid, final form do not need to be included in the Program

2 List of Hazardous Chemicals

❑ A list has been prepared of all hazardous chemicals known to be present in the office

❑ Hazardous chemicals on the list are cross-referenced to MSDSs by name or other method

3 Labeling

- ❑ The following products are exempt from OSHA labeling requirements, but must be included in the rest of the Program (i.e., list as hazard chemical, obtain MSDS and include in training)
  - ○ Drugs and devices subject to FDA labeling requirements
  - ○ Consumer products (e.g., household cleaners) subject to Consumer Product Safety Commission labeling requirements
  - ○ Pesticides and disinfectants subject to EPA labeling requirements
- ❑ Labels on all incoming containers of products that are <u>not</u> exempt from OSHA labeling requirements include the manufacturer's name and address, the identity of the hazardous chemical(s) and appropriate hazard warnings
- ❑ If the label on an incoming container is missing or defaced, a copy of the missing/defaced label has been requested from the manufacturer in writing, and a copy of the request is kept on file
- ❑ If a hazardous chemical is transferred from the manufacturer's container to a secondary container, the secondary container is labeled by the employer with the identity of the hazardous chemical(s) and appropriate hazard warnings
- ❑ No label is required on hazardous chemicals transferred to a secondary container for the immediate use during the workday of the employee who makes the transfer

4 MSDSs

- ❑ An MSDS is on file for each hazardous chemical known to be present in the office
- ❑ Any missing MSDS has been requested in writing from the manufacturer or supplier and a copy of the request is kept on file
- ❑ MSDSs are readily accessible to all employees

5 TRAINING

- ❑ Training is provided at the time of initial assignment or whenever changes in tasks or procedures occur or new hazards are added that increase employee exposure
- ❑ Employees are provided with information and training on hazardous chemicals in their work area. Information and training covers the following subjects:
  - ○ Explanation of Hazard Communication Standard
  - ○ How the office's Hazard Communication Program will be made available to employees
  - ○ Operations in the employee's work area involving hazardous chemicals
  - ○ How to detect the presence or release of hazardous chemicals in the work area (e.g., odor)
  - ○ Physical and health hazards of chemicals in the work area
  - ○ How employees can protect themselves against these hazards, using engineering and work practice controls, emergency procedures and personal protective equipment
  - ○ How to use an MSDS and where they are kept in the office

- Labeling system used in the office to warn employees against hazardous chemicals

A written record of all training sessions (who, what, when and where) is recommended, but not required

D GENERAL SAFETY STANDARDS

1 Access to Employee Exposure and Medical Records

- ☐ Employees are told about the OSHA standard (§1910.20) that gives them the right of access to their medical and exposure records (contact OSHA for a copy of this standard and an explanatory booklet)
- ☐ A copy of §1910.20 is kept in the office and made available to employees upon request
- ☐ Employees are given a copy of their records upon request
- ☐ OSHA is given access to employee medical records upon presentation of a written access order

2 Means of Egress

❖ EMERGENCY ACTION PLAN

- ☐ An Emergency Action Plan is developed and reviewed with employees initially, when employee duties under the Plan change and whenever the Plan changes

The Emergency Action Plan describes the following procedures used to protect employees in case of fire or other emergency:

- Alarm system
- Escape procedures and routes
- Procedures to account for all employees when evacuation is complete
- Rescue and medical duties of employees who perform them
- How to report fires and other emergencies
- Who to contact for more information

- ☐ Any employees who are expected to assist in evacuation are trained in their duties

A written record of all training and review sessions is recommended, but not required

Employers with 11 or more employees only:

A written Emergency Action Plan is on file and made available to employees

Employers with fewer than 11 employees may use an oral Plan, but a written Plan is highly recommended

❖ EXITS

- ❑ Exits are unobstructed
- ❑ No lock is installed that would prevent free escape from the building
- ❑ Exits are marked with a readily visible exit sign
- ❑ Exit signs display the word "EXIT" in lettering at least 6 inches high and 3/4 inch wide
- ❑ Exit signs are illuminated by a reliable light source
- ❑ Directions to exits are marked, if the direction is not readily apparent

❖ FIRE PREVENTION PLAN

- ❑ A Fire Prevention Plan is developed and reviewed with employees upon initial assignment
- ❑ The Fire Prevention Plan covers the following subjects:
  - ○ List of major workplace fire hazards and how to prevent them
  - ○ Who in the office is responsible for fire prevention
- ❑ Employees are trained in any fire hazards to which they are exposed
  A written record of all training and review sessions is recommended, but not required
- ❑ Every automatic sprinkler system, fire detection and alarm system or fire door is in proper operating condition

Employers with 11 or more employees only:
A written Fire Prevention Plan is on file and made available to employees

Employers with fewer than 11 employees may use an oral Plan, but a written Plan is highly recommended

3 Fire Protection

If fire extinguishers are provided, they are:

- ○ Mounted in readily accessible locations
- ○ Maintained (fully charged) and operational at all times
- ○ Inspected visually once a month and given an annual maintenance check (a record is kept of annual inspections)
- ○ Employees who are expected to use fire extinguishers are trained in their use
  A written record of all training sessions is recommended, but not required

4 Compressed Gases

- ☐ A visual inspection of compressed gas cylinders for obvious defects is conducted periodically
- ☐ Compressed gas cylinders are secured to prevent them from being knocked over (e.g., chained or in a holder). Compressed gas cylinders are stored:
  - ○ Away from radiators and other sources of heat
  - ○ In areas where they will not be damaged by passing or falling objects or subject to tampering by unauthorized persons
- ☐ Valves are closed on empty cylinders
- ☐ Valve protection caps are placed on cylinders when the cylinders are not in use or connected for use

5 Medical Services and First Aid

- ☐ If there are no hospitals or other medical services in near proximity to the office, at least one trained first aider is available to render first aid to employees
- ☐ If there are no hospitals or other medical services in near proximity to the office, first aid supplies needed to treat employees have been approved by a physician and are readily available
- ☐ If employees may be exposed to injurious, corrosive chemicals, an eyewash station is provided in the work area for immediate emergency use

6 Machinery and Machine Guarding

- ☐ Machines that expose employees to rotating parts, nip points, flying chips, sparks or other hazards are adequately guarded
- ☐ Employees use protective eyewear as needed to guard against flying objects

7 Electrical

- ☐ Electrical outlets and appliances are properly grounded
- ☐ Extension cords have a grounding conductor
- ☐ Exposed wiring and cords with frayed or deteriorated insulation are repaired or replaced promptly
- ☐ All electrical enclosures, such as switches, receptacles, junction boxes, etc., are provided with tight-fitting covers or plates
- ☐ Receptacles installed in a wet or damp location are suitable for the location or otherwise protected

Statement for the Record

of

The Associated General Contractors of America

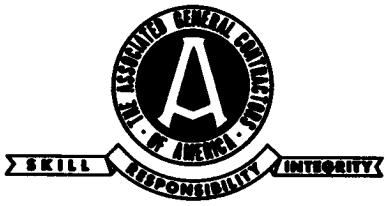
Presented to the House Committee on

Small Business

on OSHA's Proposed

Written Safety and Health Program Standard

June 26, 1997



The Associated General Contractors of America (AGC) is a national trade association of more than 33,000 firms, including 7,500 of America's leading general contracting firms. They are engaged in the construction of the nation's commercial buildings, shopping centers, factories, warehouses, highways, bridges, tunnels, airports, waterworks facilities, waste treatment facilities, dams, water conservation projects, defense facilities, multi-family housing projects and site preparation/utilities installation for housing development.

The Associated General Contractors of America
1957 E Street N.W., Washington, D.C. 20006-5199, (202) 393-2040, FAX: (202) 347-4004

SUMMARY OF THE ASSOCIATED GENERAL CONTRACTORS STATEMENT FOR THE RECORD ON OSHA'S PROPOSED WRITTEN SAFETY AND HEALTH PROGRAM STANDARD

The Associated General Contractors of America (AGC) is a national trade association representing more than 32,500 firms, including 8,000 of America's leading general contracting firms. AGC supports the concept of requiring a written safety and health program, **as long as the program is simple, flexible, and improves workplace safety and health.**

AGC supports using written safety and health programs as a central part of any program to prevent injuries and illnesses in the workplace. Since the written safety and health program standard was proposed, AGC has been working with OSHA to develop a standard that would improve safety and health without imposing more paperwork requirements on contractors. AGC wants to build on the successful written safety and health programs being used throughout the construction industry. To that end, AGC, along with several other construction trade associations, have proposed a draft written safety and health program. On October 16, 1996, AGC, along with six other construction industry trade associations, presented to OSHA a draft written safety and health program standard that all of the groups support as the best means for improving workplace safety and health. AGC, along with the rest of these groups, supports a written safety and health program standard, **provided the standard is simple, flexible, and improves workplace safety and health.** Unfortunately, it appears that OSHA is moving in a different direction than the proposal put forward by the construction industry.

Instead of a simple, flexible standard, OSHA is moving in the direction of a detailed, descriptive plan that attempts to dictate specific instructions as to carrying out a written safety and health program. The 3/14/97 Advisory Committee on Construction Safety and Health (ACCSH) written safety and health program draft outline for the construction industry contains 35 separate requirements for contractors. A document with 35 separate requirements is neither flexible nor simple. In addition, there are at least six new definitions contained in the draft which are inconsistent with or amending the Occupational Safety and Health Act. Also, earlier drafts of the written safety and health program standard would have "grandfathered" all existing safety and health programs already in use. OSHA has backed off this position. OSHA is also attempting through this proposed standard to make general contractors responsible for the safety and health of a subcontractor's employees on a worksite. Finally, OSHA will not commit to issuing a separate written safety and health program standard for the construction industry, even though OSHA has already recognized that construction is different from general industry.

AGC commends Chairman Talent for holding this important hearing, and looks forward to working with him to ensure that any written safety and health program standard addresses the concerns of the construction industry.

THE ASSOCIATED GENERAL CONTRACTORS OF AMERICA
STATEMENT FOR THE RECORD
ON OSHA'S PROPOSED WRITTEN SAFETY AND HEALTH PROGRAM STANDARD

I. Introduction

The Associated General Contractors of America (AGC) is a national trade association representing more than 32,500 firms, including 8,000 of America's leading general contracting firms. They are engaged in the construction of the nation's commercial buildings, shopping centers, factories, warehouses, highways, bridges, tunnels, airports, water works facilities, waste treatment facilities, dams, water conservation protects, defense facilities, multi-family housing projects and site preparation/utilities installation for housing developments. AGC has committed significant resources to expanding safety and health education and training programs, including those sponsored in cooperation with OSHA. AGC is continuously developing new safety programs, products and services to advance construction industry safety and health.

AGC supports using written safety and health programs as a central part of any program to prevent injuries and illnesses in the workplace. As part of the statement for the record, AGC is attaching a copy of the association's model safety and health program. This document is the building block for safety and health programs in the construction industry.

II. History of AGC involvement with the written safety and health program draft

Since the written safety and health program standard was proposed, AGC has been working with OSHA to develop a standard that would improve safety and health without imposing more paperwork requirements on contractors. AGC wants to build on the successful written safety and health programs already being used throughout the construction industry. As a result of OSHA's request for stakeholder involvement, AGC, along with several other construction trade associations, have proposed a draft written safety and health program. On October 16, 1996, AGC, along with six other construction industry trade associations, submitted to OSHA a draft written safety and health program standard that all of the groups support as the best means of improving workplace safety and health. A copy of the construction industry draft safety and health program standard, along with a letter signed by AGC and the other six construction industry trade associations is attached to this statement. AGC, along with the rest of these groups, supports a written safety and health program standard, **provided the standard is simple, flexible, and improves workplace safety and health.** Unfortunately, it appears that OSHA is moving in a different direction than the proposal put forward by the construction industry.

Instead of a simple, flexible standards, OSHA is moving in the direction of a detailed, descriptive plan that attempts to dictate specific instructions on how to carry out a written safety and health program. On August 8, 1996, the ACCSH issued a draft summary of a written safety and health program. On March 14, 1997, ACCSH issued a follow-up draft summary. Both contain a multitude of requirements that must be met in order for a contractor to comply with the draft written safety and health program standard.

III. Problems with the written safety and health program draft

Among the problems AGC has with the draft written safety and health program standard are:

A. **New definitions:** Using the 3/14/97 ACCSH draft, there are six new definitions contained in this document, including:

1. Authorized person - a person approved or assigned by the employer to perform a specific type of duty or duties or to be at a specific location or locations at the jobsite.

2. Qualified - one, who by possession of a recognized degree, certificate, or professional standing, or who by extensive knowledge, training, and experience, has successfully demonstrated his ability to solve or resolve problems relating to the subject matter, the work, or the project.

3. Employer - contractor or subcontractor within the meaning of the Act and of this part.

4. Employee - every laborer or mechanic under the Act, regardless of the contractual relationship which may be alleged to exist between the laborer and mechanic and the contractor or subcontractor who engaged him.

5. Suitable - which fits, and has the qualities or qualifications to meet a given purpose, occasion, condition, function, or circumstance.

6. Hazard analysis - the method to identify and evaluate work processes and associated hazards including the elimination, prevention or control of the hazard.

B. **Mandates instead of flexibility:** The 3/14/97 ACCSH written safety and health program draft outline for the construction industry contains 35 separate requirements for contractors. A document with 35 separate requirements is neither flexible nor simple. The requirements of this draft for contractors include:

1. Develop, implement, and maintain a written safety and health program that includes safe work procedures that apply to conditions, operations, tasks, or processes that their employees perform during construction work.

2. Develop and implement specific safety and health plan and procedures as part of the program, for particular aspects of their work, conditions, operations, tasks or processes not covered by the program, where hazards and work are provided for in the program, a jobsite plan is not required.

3. Conduct frequent and regular inspections of their work area to monitor the effectiveness and implementation of the safety and health program.

4. Assign and describe the duties of individuals responsible for effectiveness and implementation of the program.

5. Identify the individual(s) responsible for conducting job site inspections and require that the work be stopped in the event of an imminent danger.

6. Designate at least one competent person who has received documented safety and health training appropriate to the work being performed and who has the authority and the responsibility to take prompt corrective measures, is knowledgeable of the employer's program and applicable standards, and is capable of identifying existing and predicable hazards.

7. Establish and follow procedures for coordinating their safety and health activities with other affected employers at the site.

8. Notify affected contractors and employees of high hazard operations and the precautions to be taken prior to the start of the operation.

9. Make the safety and health program and plan available to affected employees.

10. Require and provide for the director or anonymous reporting of unsafe conditions, unsafe acts, and non-conformance with the program.

11. Identify phases, activities, and operations requiring the services of a licensed professional engineer wherever provided in this program.

Each contractor shall establish and implement procedures for the following elements to be included in the contractor's written safety and health program -

12. Frequency and scope of inspections during their phase of work.

13. Hazard control method(s) such as engineering controls, administrative controls, safe work procedures and personal protective equipment.

14. Reporting of injuries, illnesses, and other safety and health incidents.

15. Conducting incident investigation and implementing corrective action to prevent recurrence.

16. Job site and activity hazard analysis.

17. Emergency response plans.

18. Methods and frequency of program evaluation to verify program implementation and identify areas for improvements.

19. The employer's and the employee's role, responsibility and accountability for following their employer's safety and health program.

Employee Participation: Each contractor shall provide the opportunity for employee involvement in -

20. The implementation, maintenance, and review of the safety and health program.

21. Identification and correction of hazardous conditions.

22. Safety and health training and evaluation of training effectiveness.

23. Review of project fatality, injury, illness and exposure records while protecting individual confidentiality and privacy.

Training: Each contractor shall --

24. Establish procedures for identifying and providing training required for a particular job

25. Not direct or allow employees to perform work unless they have received training in the avoidance of hazards associated with the work or where uncontrolled hazards exists.

26. Permit only those employees qualified by training or experience to operate equipment and machinery.

27. Language describing general training to be submitted for review from the "training work group."

28. Training shall be documented.

29. Where employee knowledge has been clearly demonstrated and documented, the contractor need not replicate the training.

30. In job site areas where harmful plants or animals are present, employees who may be exposed shall be instructed regarding the potential hazards, and how to avoid injury and the first aid procedures to be used in the event of injury.

31. **All employees required to enter into confined or enclosed spaces shall be instructed as to the nature of the hazards involved, the necessary precautions to be taken, and in the use of protective and emergency equipment required. The employer shall comply with any specific regulations that apply to work in dangerous or potentially dangerous areas.**

Housekeeping:

32. **During the course of construction, alteration, or repairs, form and scrap lumber with protruding nails and all other debris, shall be kept cleared from work areas, passageways, and stairs, in and around building and other structures.**

33. **Combustible scrap and debris shall be removed at a regular intervals during the course of construction. Safe means shall be provided to facilitate such removal.**

34. **Containers shall be provided for the collection and separation of waste, trash, oily and used rags, and other refuse. Containers used for garbage and other oily, flammable, or hazardous wastes, such as caustics, acids, harmful dusts, shall be equipped with covers. Garbage and other waste shall be disposed of at frequent and regular intervals.**

Personal Protective Equipment:

35. **The employer is responsible for requiring the warning of appropriate personal protective equipment in all operations where there is an exposure to hazardous conditions or where this part indicates the need for using such equipment to reduce the hazards to the employees.**

In contrast, the draft proposal from AGC and six other trade associations would require a written safety and health program, set the basic elements of a plan, set the responsibilities for both employers and employees in such a plan, set broad parameters to ensure that a written safety and health program meets the necessary criteria to be a credible plan, and defines the safety and health responsibilities on a multi-employer worksite.

C. **Grandfather existing safety and health programs:** When OSHA initially proposed a written safety and health program standard, the agency offered to "grandfather" existing safety and health programs. Since most companies already use written safety and health programs, this is a policy that AGC supports. Construction companies that have proven successful safety programs should be allowed to keep those plans in place.

Since the initial proposal, OSHA has backed off from grandfathering existing safety and health programs. AGC supports grandfathering existing safety and health programs proven to provide a safe and healthful workplace.

D. **Multi-employer issues:** Since the mid 1980's, OSHA has been holding general contractors responsible for violations of the Occupational Safety and Health (OSH) Act committed by subcontractors. The justification for this policy came from the OSHA field operations manual, and had no basis in the OSH Act. OSHA has never issued regulations or promulgated a standard holding contractors liable for violations by subcontractors. Throughout the draft written safety and health program, OSHA is attempting to change the definition of terms in the OSH Act to make contractors liable for the OSHA violations of their subcontractors.

For example, the definition of employee contained in the draft written safety and health program is, "*Every laborer or mechanic under the Act, regardless of the contractual relationship which may be alleged to exist between the laborer and mechanic and the contractor or subcontractor who engaged him.*" The definition of employee contained in the Occupational Safety and Health Act is, *"an employee of an employer who is employed in a business of his employer which affects commerce."* By changing the definition of employee, OSHA can then hold contractors liable for the safety violations of their subcontractors.

In the 8/28/96 written safety and health program standard draft, ACCSH made contractors directly responsible for all workers on a construction site. The 3/14/97 referred to language that would require general contractors to coordinate safety programs among different employers. Again, the general contractor would be subject to citations for violations of the OSH Act by subcontractors.

AGC does not support holding contractors liable for violations of the OSH Act unless the contractor was aware of the violation and took no action to correct it. Moreover, OSHA does not have the statutory power to cite contractors for violations of the OSH Act by subcontractors. Section 5(a)(1) of the OSH Act states, *"Each employer shall furnish to each of his employees (underline added) employment and a place of employment which are free from recognized hazards that are causing or are likely to cause death or serious physical harm to his employees."* It is clear from the OSH Act that employers are responsible for their employees.

E. **Failure to commit to a construction specific proposal**

Although OSHA has issued an outline of a draft construction industry proposal, the agency will not commit to issuing a construction-specific written safety and health plan standard. Previously, OSHA indicated there would be a construction-specific standard. If OSHA moves forward with a written safety and health program standard, it must be tailored to meet the unique working conditions of the construction industry.

IV. Conclusion

AGC supports using written safety and health programs as a central part of any program to prevent injuries and illnesses in the workplace. If OSHA is going to issue a written safety and health program standard, **provided the standard is simple, flexible, and improves workplace safety and health.** Unfortunately, it appears that OSHA is moving in a different direction than the proposal put forward by the construction industry. Instead of a simple, flexible standard, OSHA is moving in the direction of a detailed, descriptive plan that attempts to dictate specific instructions as to carrying out a written safety and health program. AGC supports giving general contractors the flexibility to use a safety and health program that best reflects the unique features of each worksite. If the draft OSHA written safety and health program is adopted, general contractors will lose the flexibility necessary to ensure safe and healthful workplaces.

October 16, 1996

Joseph A. Dear
Assistant Secretary of Labor (OSHA)
U.S. DOL
Room S-2315
200 Constitution Avenue, N.W.
Washington, D.C. 20210

Dear Assistant Secretary Dear:

The undersigned associations are pleased to submit a draft written safety and health program standard for the construction industry. The draft was prepared by seven construction industry associations representing more than 230,000 of America's construction employers.

We fully endorse the concept of a written safety and health program rule. However, to be effective the rule must be kept simple, flexible and friendly to America's smaller construction employers. We believe our draft rule would accomplish this while providing appropriate protection for America's construction workers nationwide.

We thank you for the opportunity to participate in this rule-making process.

Sincerely,

Air Conditioning Contractors of America

American Subcontractors Association, Inc.

Associated Builders and Contractors, Inc.

Associated General Contractors of America

National Association of Home Builders

National Association of Plumbing-Heating-Cooling Contractors

Painting and Decorating Contractors of America

SAFETY AND HEALTH PROGRAM

(a) ***General.*** **(1) Each construction employer shall maintain a written safety and health program which contains policies, procedures, and practices to recognize and protect their employees from occupational safety and health hazards.**

(2) Each program shall include provisions for the identification, evaluation and prevention or control of workplace hazards.

(b) ***Major Elements.*** **Each safety and health program shall include the following elements:**
(1) Employer Commitment and Employee Involvement.

(i) Each construction employer shall prepare a policy statement on safe and healthful work and working conditions.

(ii) Each construction employer shall communicate the safety and health program objective.

(iii) Each construction employer shall provide for employee involvement in the implementation of the safety and health program.

(iv) Each construction employer shall assign and communicate responsibility for the program.

(v) Each construction employer shall review program operations to evaluate their success in achieving safe and healthful working conditions.

(vi) Each employee shall be responsible for following safe work procedures established by the employer. Citations will not be given to employers whose employees fail to comply with established procedures provided the employer has:

(A) informed employees about their obligation to comply with the safe work practices;

(B) provided safety and health training as required by (b)(4) of this section; and

(C) established a disciplinary action program to address employee non-compliance with the program.

(2) Inspections

(i) Each construction employer shall conduct jobsite safety and health inspections.

(ii) Each construction employer shall investigate jobsite accidents.

(3) Hazard Prevention and Control.

(i) Each construction employer shall establish procedures in the following order for hazard prevention and control where feasible and appropriate:

(A) Engineering and work practice controls;

(B) Administrative controls; and

(C) Personal protective equipment.

(ii) Each construction employer shall establish procedures for emergency response including first aid and emergency medical care.

(4) Safety and Health Training. Each employer shall ensure that all employees have been informed about the hazards to which they may be exposed and how to prevent harm to themselves and others from exposure to the hazards.

(c) *Multi-Employer Jobsites.* On multi-employer jobsites each construction employer shall establish procedures for the following practices:

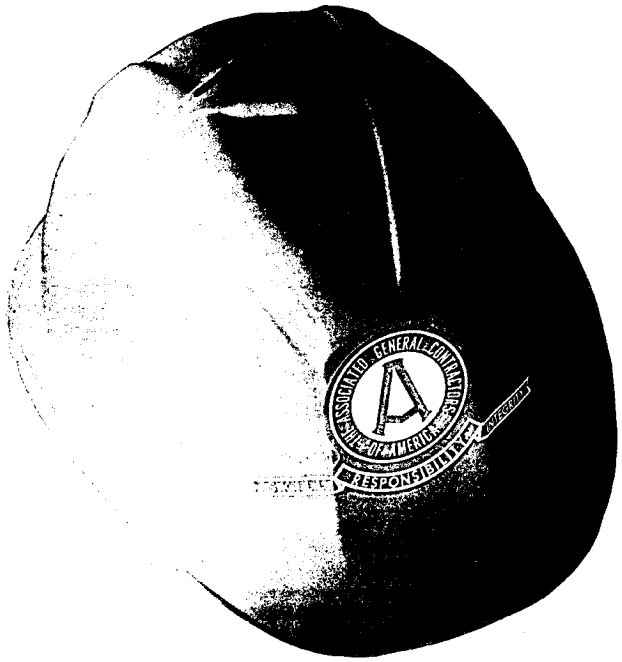
(1) Coordinating their safety and health activities with other directly affected construction employers at the site; and

(2) notifying other affected construction employers of high hazard operations and the precautions to be taken prior to the start of the operation.

APPENDIX 1--APPROVED MODEL SAFETY AND HEALTH PROGRAMS

Air Conditioning Contractors of America	Guide To Safety and Loss Control
American Subcontractors Association	Conquering the Safety Crisis: A Model Program of Subcontractors
Associated Builders and Contractors	Construction Site Safety Program
Associated General Contractors of America	AGC Guide for a Basic Company Safety Program
Painting and Decorating Contractors of America	PDCA Safety System
National Association of Home Builders	The Model Company Safety & Health Program for The Building Industry
National Association of Plumbing -Heating-Cooling Contractors	Safety Program

AGC
Guide For A
Basic Company Safety Program



ASSOCIATED GENERAL CONTRACTORS OF AMERICA

AGC GUIDE FOR A BASIC COMPANY SAFETY PROGRAM

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Third Printing – October 1994

AGC GUIDE FOR A BASIC COMPANY SAFETY PROGRAM

I. THE PURPOSE OF THE AGC GUIDE FOR A BASIC COMPANY SAFETY PROGRAM

The AGC Guide for a Basic Company Safety Program has been developed by the AGC Safety and Health Committee and the AGC Safety Engineers Advisory Committee. The Guide is intended to aid general contractors, specialty contractors and subcontractors of all sizes in the development of a company safety program.

Safety programs are most effective when they are designed to meet the specific and individual needs of each company. It may even be useful to develop one for each company construction project. This publication does not constitute a complete and comprehensive safety program. It must be modified to address the safety needs of your company, its projects and the employees who will implement its procedures.

The intent of this guide is to encourage the development of individual company programs by providing sample formats and suggested wording for program components. Additional assistance is available from various sources including insurance carriers, equipment manufacturers, suppliers, local AGC Chapters, qualified safety consultants, OSHA and National AGC.

The AGC Guide for a Basic Company Safety Program is not intended to be an exhaustive treatment of the subject, and should not be interpreted as precluding other procedures which would enhance safe construction operations. Issuance of this Guide is not intended to nor should it be construed as an undertaking to perform services on behalf of any party either for their protection or for the protection of third parties.

The Guide is also not intended nor should it be construed to provide legal advice. Construction contractors should determine whether to seek legal counsel as to all matters on which legal advice may be appropriate. The Associated General Contractors of America assumes no liability for reliance on the contents of this Guide.

II. IMPORTANCE OF A WRITTEN COMPANY SAFETY POLICY

This Guide is about Construction Worksite Safety

It is important for each construction company to establish a written safety **policy.** The safety **policy** will serve many purposes but the primary purpose is to provide guidelines by which a complete safety **program** can be developed. A written safety policy should be comprehensive and properly implemented. At a minimum, a comprehensive safety policy should:

- Portray corporate commitment.
- Establish goals and ground rules for a successful safety program.
- Be carried out conscientiously on a daily basis.

A comprehensive safety policy can be an effective mechanism for reducing accidents in construction. Comprehensive safety policies consist of many interrelated parts, each of which must be emphasized to prevent weakening of the company's entire safety program.

III. QUESTIONS TO ASK YOUR COMPANY

A. Commitment

Does your company have the **commitment** necessary to make safety work?

The best safety programs have commitment from employees at all levels. To establish commitment on all levels, top management must first be convinced that a company safety program will be beneficial. When top management acknowledges the significance of a construction site safety program, a priority will be established which will filter down though middle management to all employees.

Construction companies take pride in the areas in which they excel. In most cases, a close look at the reasons for a company's success in a particular area will show top management's commitment to that area. Likewise, a close look at a company's deficient areas may show a lack of top management's commitment to those areas.

AGC believes that safety must be a top priority for both moral and economic reasons. Companies whose top managers share this belief generally have good safety programs, low injury rates and low insurance costs to show for it.

Middle management must also be committed to safety. Analyzing a firm's safety records is a good way to determine the level of middle management's commitment. Substandard safety records show lack of commitment and that changes are in order.

Construction workers must also be committed to compliance with the safety program. Commitment can be developed by structuring elements of the safety program to show employees that **safety is for their benefit.** Employees who appreciate management's concern for their health and safety will understand the need for safety rules and will make the effort to comply.

B. Assignment of Duties

Does each employee from management on down know his or her **assigned duties** concerning worksite safety?

Following the commitment of top management comes the **assignment** of safety duties. Employees at all levels must share in these duties because each employee has a safety duty to every other employee, regardless of their level within the company.

Safety assignments must be understood by all employees. The right of each employee to a safe workplace must be explained and delineated, along with the duty to help keep it that way.

Management needs to make specific safety assignments to all employees. It may be helpful to put these assignments in writing. Suppliers and subcontractors often find their safety assignments set forth in contract documents.

C. Safety Planning

When your company plans for a construction project does it make safety an integral part of the planning process? To do so, your firm should start with a written safety policy.

While a company's written safety policy should be comprehensive, it does not have to be long or overly detailed. A safety policy should state management's commitment to accident prevention and loss control. The policy should also cover items in the safety spectrum pertinent to the company's more specific operations.

The first section of the policy is usually a statement of commitment from a senior company officer. The second section is a generalization of program elements expressed in the form of worksite safety rules. This section should include a description of each duty assigned to each employee to assist in implementation of the safety program.

The basic statement of safety policy is followed by the development of specific safety rules to establish safe work practices. Rules must be concise and easily understood. They are instructions to your field personnel for safe working procedures. They must be presented in a format which can be easily implemented in the field.

It may be beneficial to establish rules for each specific type of operation performed. These rules can be disseminated in one-page handouts for operations like building scaffolds, moving cranes, operating equipment and trench shoring. There should also be a list of general rules regarding the use of personal protective equipment such as hard hats, safety eyeglasses and safety belts. These rules should be simple, brief and to the point. The following list of resources may be helpful in developing specific rules to meet your company's needs.

1. Trade associations often publish safety guidelines for specific construction tasks/operations.
2. OSHA provides basic guidelines.
3. Many manufacturers publish "safe work practices" for individuals who work with their products. Material Safety Data Sheets are also furnished by manufacturers or suppliers for use with chemical products.
4. Qualified safety consultants are a good source to use for developing safety rules.
5. Insurance carriers have information based on past data which may be helpful to you.

Using only pertinent safety rules will prove to be more effective. Try not to burden employees with unnecessary safety rules.

When planning for construction projects make safety as much a part of the planning process as setting up the schedule. Production and safety are interdependent. Safe projects are more productive, cost effective and profitable.

Safety planning should also include emergency procedures to minimize the impact of accidents that do occur. Such procedures include emergency first aid, rescue, fire fighting and evacuation plans.

In addition to planning for the safety of your own employees, you need to consider the safety of the general public and others on or near your worksite.

D. Internal Communication

Do you communicate to your employees about the need for safety?

In order to follow safety rules, your employees must know and understand them. Communication is vital to an effective safety program.

A good safety program utilizes written communication. Safety policies and practices should be produced in written form and disseminated to all employees.

Verbal communication plays an important role in reinforcing written policies and practices. Frequent "tool box talks" are an excellent way to convey the significance of safety.

Communication through conduct—leading by example—lends credence to your safety program. A safety program is made much more effective with the "do as I do" approach. Nothing communicates your commitment to safety faster than your good example.

Communication is a two way flow of information. Safety always suffers when communication breaks down.

When a crew completes a difficult task without injury, praise them for their effort. Emphasize the positive accomplishments and dwell on the negative only when it is necessary.

IV. TOOLS OF THE TRADE

A. Training

Safety-related work rules help prevent injuries, but because it is difficult to establish rules for every single work task, training should be an important part of your safety program. Select the training method you believe will be most successful. Remember to consider any collective bargaining agreements to which you are a party when making arrangements for training.

There are two types of training:

- Training for specific tasks; and
- General training in accident avoidance and prevention.

Accident avoidance and prevention training is vital to an effective safety program. Experts estimate that up to 90% of all accidents result from human error, yet there are no standards or rules to prevent workers from making mistakes. To help prevent accidents you have to make "doing it safely" synonymous with "doing it well" and "doing it right."

There are several ways to provide employee training. The following are some of the more popular training methods you can use.

Weekly tool box talks are an effective training method. To be truly effective, however, they must be presented in a manner which is interesting to the workers and which includes worker participation. Meetings should include time for attendees to ask questions and to raise concerns about safety issues. Many insurance companies and trade associations, such as AGC, provide "tool box talks" to assist employers in the selection and delivery of safety topics. Private subscription services are also available to provide new topics on a regular basis. Remember to keep written records of:

- Topics covered.
- Times, dates and locations of the "talks".
- Names of employees in attendance.

Many insurance companies conduct safety seminars on the jobsite as part of their workers compensation coverage. This type of training can be utilized effectively before employees start work on more hazardous operations.

Local Safety Councils and trade associations may provide free or low-cost training programs. These programs are tailor-made to meet specific training requirements.

Many universities and other schools offer extensive safety courses. These courses may be used selectively to enhance the training of key employees.

In-house training is also extremely important. Each time a supervisor provides instructions on how to perform a task, he or she should include the related safety aspects. It only takes a few extra minutes to outline the safety requirements of a given task. Doing so will help employees to think about safety while performing the task.

Employee meetings offer the perfect opportunity to discuss safety. Corporate benefits of safety meetings could include increases in employee morale and loyalty.

B. New Employee Orientation

New employee safety orientation sets the tone for safety on construction sites.

A "new" employee can be defined as any person unfamiliar with a specific construction operation. This definition includes:

- Persons new to the company.
- Persons new to a particular jobsite.
- Persons new to a particular crew.
- Persons new to a particular task or process.

A supervisor should be assigned to cover orientation duties although he or she may delegate this assignment. The supervisor generally outlines specific safety orientation procedures to be followed by the foreman and other employees assigned to the training function. The supervisor should follow-up to make sure training is satisfactory.

The supervisor or delegate should distribute company safety materials to each new employee and explain the contents thoroughly. New employees should be allowed sufficient time to ask questions and to clarify safety rules or procedures. **Any required signatures to verify employee training should be obtained and forwarded to the company office.**

Other activities recommended for inclusion in new employee safety orientation are:

- Description of the work.
- Explanation of the proper use of required personal protective equipment.
- Identification of hazards, off limits areas and pertinent safety regulations.
- Follow-up to make sure safety procedures and rules are understood.

C. On-Site Inspections

One of the better tools for enhancing safety programs is a system of frequent on-site inspections. Inspections can be conducted by several different sources.

One source of safety inspection is the supervisor. Supervisors should be required to observe, identify and correct safety hazards.

Loss prevention services provided by your workers compensation insurance carrier may include inspections. Often, when you purchase workers compensation coverage you receive loss prevention services at no extra charge. Give your insurance company a list of all ongoing projects and set up an inspection schedule. Loss-control representatives have the advantage of observing how other construction contractors handle safety problems. Most carriers have national support groups to address especially difficult problems. Insurance companies know where losses are most likely to occur because of their wide claims experience. They can help you direct resources toward the safety practices that will be the most effective. Insurance companies are an under-utilized resource that can greatly improve safety programs.

The same statute that established OSHA field enforcement also established on-site consultation programs. **These voluntary programs receive OSHA funds, but are independent and do not engage in enforcement activity.** Consultation personnel will conduct health and safety inspections on your jobsites. They will make appropriate assessments and convey the results. There is no charge for this service.

OSHA's enforcement branch conducts unsolicited worksite inspections. Recommendations resulting from inspections performed by OSHA's enforcement branch can be used to improve existing safety programs.

Regular safety inspections should be an assigned duty of in-house safety personnel. On-site inspections keep safety at the forefront and ensure a high degree of compliance with company safety rules.

D. Accident Investigations

Every accident should be investigated, even incidents without injury. If for example, a sling breaks and a load is dropped, it should be considered an accident even if there are no injuries.

Supervisors should investigate all accidents. The results of each investigation should be reported on a standard company form. Appropriate steps should be taken to prevent recurrence.

Accident reports highlight problem areas. Through the use of good reports, accident patterns can be detected and resources directed toward prevention. Accident reports make excellent training tools. The cause and effect of accidents can be reviewed at safety meetings.

An accident report contains, at a minimum:

1. *Employee Information*—Name, address, social security number, sex, marital status, occupation, and date of birth.
2. *Worksite Information*—Address of jobsite, employee occupation, weather conditions.
3. *Accident Data*—Information on what the employee was doing, how the accident occurred, who was injured and where. Diagrams should be included.
4. *Eyewitnesses*—Names of eyewitnesses and their independent statements.
5. *Safety Rules*—What safety rules were in effect, which rules in effect were not followed and what could have been done to prevent the accident.
6. *Analysis*—Primary, secondary and contributory causes of the accident.
7. *Corrective Action*—Steps to be taken to prevent recurrence of this or similar incidents.

E. Disciplinary Procedures

Even the best safety programs with the strongest commitment will be ineffective without enforcement through established disciplinary procedures. Someone should be assigned to help assure compliance with the company's safety program. That person should have the authority necessary to assist with the enforcement of the company's safety policy. Violations must be dealt with in a firm, fair and consistent manner. An enforcement system should include warnings, layoffs and dismissal for those who do not comply.

Look at safety rule compliance in the same manner you would view other work orders. A brick mason who refused to lay brick would be fired. Safety violations must be handled in much the same way. Refusing to wear a hardhat when company policy requires wearing a hardhat is a flagrant violation of policy and comparable to ignoring a work order.

Field supervisors should have the authority necessary to assist in the enforcement of company safety policy as it pertains to the crews. They are on-site and in a position to take corrective action. Field supervisors should always be aware of safety where their crews are concerned. If a disproportionate share of OSHA violations or accidents occur on a job, it's a good bet that safety practices are not a top priority. In such cases, supervisors should be confronted and appropriate corrections made.

F. Incentive Programs

Incentive programs are an effective way to show management's commitment to safety. Incentives can range from informal recognition to more elaborate awards programs. Everyone likes to be recognized and in many cases a few dollars spent on incentives can amount to significant savings in the long run. Your insurance carrier or local trade association can often help you structure an incentive program to meet the needs of your company.

Employees know that their company values accomplishment, such as completing projects under budget. Let them know the company values safety performance as well. Employees who realize that safety is part of the evaluation process for bonuses and promotions will make safety part of their work priority.

G. Recordkeeping

An increasingly important part of a complete safety program is accurate recordkeeping.

The Occupational Safety and Health Act requires each employer to maintain a log of recordable, occupational injuries and illnesses, which lists each employee who is injured or who acquires a job-related illness. Any employee who receives medical treatment, loses consciousness, is restricted in motion, requires a job transfer for medical reasons or dies as a result of a workplace injury must be recorded on the log along with details of the incident. This log must be maintained at the start of each job and posted during February of each year. A new log must be started on January 1 for each year of the job. The log must be available for review during OSHA inspections. Assistance in meeting the recordkeeping requirements can be found in an OSHA publication entitled *Recordkeeping Guidelines For Occupational Injuries and Illnesses.* **Remember to report any fatality to OSHA within 48 hours.**

Your company's program should also address the collection and maintenance of other safety records such as training records, safety materials received and monitoring test results. Remember that your employees have the right of access to their medical records along with monitoring and test results.

V. ANCILLARY PROGRAMS

A. Hazard Communication

The Hazard Communication Standard is complex and requires thorough company review to assure compliance. The standard requires a company specific written hazard communication program, development of a hazardous chemical list, the collection of material safety data sheets, labeling of chemical containers and employee training. The entire regulation is explained in detail in a companion document produced by the AGC of America entitled *Hazard Communication Compliance Guide for Construction* (Publication No. 109). A sample program is included in this guide, but you are cautioned not to rely on it without a full understanding of the standard.

B. Drugs and Alcohol

Construction sites are far too dangerous to have employees working under the influence of drugs or alcohol. Drug tests performed on injured employees indicated that 35% were under the influence of a controlled substance at the time of the injury. In addition, it is likely that the activities of impaired workers have caused injury to non-user coworkers. The intricacies of setting up a complete program exceed the scope of this document. *A sample is included but only to serve as a catalyst for internal development of a company program.* The sample is not intended to deal with recent federal legislation. For all Federal contracts over $25,000 written or revised after March 18, 1989, prime contractors are required to implement a Drug-Free Workplace Policy. Requirements of the federal legislation are explained in AGC of America's publication entitled *The Drug-Free Workplace Act Compliance Guide for Contractors.* (Publication No. 164). Guidelines for programs not covered by federal regulations are in AGC of America's publication entitled *Guide to A Drug-Free Workplace)* (Publication No. 160). State and local laws vary a great deal in this regard. Any program you develop must be reviewed by legal counsel.

VI. WORKING WITH REGULATORY AGENCIES

Various regulatory agencies are charged with enforcing workplace safety and health laws. These include the Occupational Safety and Health Administration, Mine Safety and Health Administration, various state safety departments, the U.S. Army Corps of Engineers, the Bureau of Reclamation and others. Since OSHA is the agency with primary construction site safety responsibility, OSHA will be discussed here in some detail.

The Occupational Safety and Health Administration (OSHA) was established to administer the Occupational Safety and Health Act of 1970. This federal law was promulgated to afford a safe and healthful work place for all employees. The standards which govern the construction industry are contained in Section 29 of the Code of Federal Regulations, Part 1926, with some incorporated references from Part 1910. References are made to ANSI Standards and various other professional safety standards. A number of points to consider when dealing with OSHA are listed below.

A. Harassment

Federal compliance officers and state inspectors are not to be harassed, intimidated or abused.

B. Responsibilities

Among other things, federal law requires employers to:

1. Provide a place of employment free of hazards which may cause illness, injury or death to employees.
2. Comply with standards, rules, or regulations adopted by the U.S. Department of Labor.
3. Post notices which inform employees of their rights and duties as defined by the OSH Act.
4. Maintain records regarding injuries, accidents and site inspections.
5. Provide such personal protective equipment as needed and required.
6. Provide required employee safety training.
7. Conduct periodic jobsite safety inspections.

C. Recordkeeping

Each site must maintain records and logs of employee job-related injuries and illnesses. The required forms are:

1. Log of Occupational Injuries and Illnesses (OSHA Form 200).
   a. Entries must be current within six working days from the time the employer is notified of the injury or illness.
   b. The official log need not be maintained on-site but its location must be one that allows adherence to the six-day requirement. A copy of the log, updated to within 45 days of the current date, must be available for inspection on-site.
2. Supplementary Record of Occupational Injuries or Illnesses (OSHA Form 101).
   a. This form is a detailed record of individual injuries or illnesses which are job-related and must be completed for each entry recorded on OSHA Form 200.
   b. "State First Report of Injury" forms, provided by the Workers Compensation Division of some insurance companies may be used if it provides the same information required by OSHA Form 101.

D. What To Do If OSHA Inspects

It is a company's right to require a search warrant from OSHA prior to an inspection.

An OSHA inspection may result from any of the following:

- Inspection stemming from an employee complaint.
- Inspection following a fatality or serious injury.
- Generally scheduled inspection.
- Follow-up inspections to ensure compliance with previous violations.
- Voluntary consultation inspection.

The function of the Compliance Officer is to identify conditions and/or acts which the officer considers unsafe and in violation of the construction safety regulations.

The Compliance Officer may not violate any known safety regulation and is responsible for providing and wearing the appropriate personal protective equipment. Failure to comply with the project safety program is cause to deny the officer admittance to the site or to prematurely halt the inspection.

The Compliance Officer may consult with employees regarding matters of safety and health to the extent necessary to conduct a thorough inspection.

The Compliance Officer will present identification and state the purpose of the visit. An opening conference will be held with representatives from all on-site contractors, union stewards on unionized projects and any construction managers.

The Compliance Officer will:

1. State the nature of the inspection: General Complaint, Target Industry, Other.
2. State the approximate time the inspection will take place.
3. Request copies of safety programs, accident reports and inspection surveys.
4. Approve members of the inspection party. Each employer has the right to representation.
5. Generally discuss the purpose of the OSH Act, its sanctions, and the authority vested in the OSHA Compliance Officers by the Act.
6. Advise that at the conclusion of the inspection, a closing conference will be held to discuss any alleged violations noted to determine abatement deadlines and to answer any questions.

During the inspection:

1. Do not permit unnecessary contractor employees to linger near the inspection party.
2. Do not harass, threaten, or otherwise intimidate the Compliance Officer.
3. The employer has the right to protect trade secrets.

At the completion of the inspection, the Compliance Officer will either hold a general meeting of all contractors or will meet with each contractor individually.

E. Citations

As a result of an inspection, citations and notice of monetary penalty may be issued. Should a citation/penalty notice be received, the following must be done:

1. Post copies of citations near the area cited. Postings must remain for three working days or until corrections have been made.
2. The company has fifteen working days from receipt of a citation to contest the citation or to accept it. Failure to take action within those fifteen days means the company has accepted the citation and is judged in violation. An employer has the right to an informal conference with the OSHA area director in an attempt to resolve any problems. If this does not yield a satisfactory result, it is the employer's right to have a hearing before an Administrative Law Judge. It is strongly recommended, though not necessary, that you have an attorney to represent your interests. If the Administrative Law Judge rules against you it is your right to appeal to the Occupational Safety and Health Review Commission.

VII. COMPONENTS OF A BASIC COMPANY SAFETY PROGRAM

A. *Sample Corporate Commitment Letter* signed by a senior company officer. (Page 11)

B. *Sample General Statement of Policy* outlining overall company safety commitment and assignment of duties. (Page 12)

C. *General Work Rule Guide* usable in most construction firms. In tailoring your firm's policy, you should select those sections most applicable to your company. Some operations and specialty types of construction will need more detailed rules. (Page 14)

D. *Written Hazard Communication Program Guide* to assist in compliance with the Hazard Communication Standard for Construction, 29 CFR 1926.59. (Page 26)

E. *Sample Drug and Alcohol Program* (Page 28)

F. *Sample Problem Solving Procedure* (Page 31)

G. *Sample Checklist For Safety Program Compliance* (Page 32)

H. *Sample Incentive Programs* (Page 38)

(COMPONENT A)
SAMPLE CORPORATE COMMITMENT LETTER

*******, 19**

TO ALL:

EMPLOYEES, SUBCONTRACTORS, SUPPLIERS, AND CUSTOMERS OF*******

RE: SAFETY IN CONSTRUCTION

Safety in all ********** operations is not just a corporate goal, *it is a requirement!*

To this end, we have formulated this written policy to govern all the operations of *******.

It is a condition of employment with ********** that all *employees* adhere faithfully to the requirements of this policy, as well as the safety rules, instructions, and procedures issued in conjunction with it. Failure to do so will result in disciplinary action as outlined in the attached policy.

It is a condition of all subcontracts and purchase orders issued by ********* that this policy and the safety rules, instructions and procedures issued in conjunction with it, as well as all applicable state, federal and local codes and regulations be adhered to. Failure to comply is a breach of contract terms.

All visitors to any ********** operation including but not limited to suppliers, owner representatives, agents of the architect or engineer, regulatory authorities and insurance company representatives shall be required to follow all safety rules and regulations in effect during their visit.

********** will make an effort to ensure that the operations of other contractors not under our control do not endanger the safety of our employees. To this end all employees are required to report hazardous activities of other employees to appropriate ********* officials.

The Safety Director, General Superintendent, Job Superintendents and foremen have the full support of management in enforcing the provisions of this policy as it relates to responsibilities assigned to them.

Sincerely,

Senior Company Officer

(COMPONENT B)

SAMPLE GENERAL STATEMENT OF POLICY

It is the policy of this company to provide a safe and healthful place of employment for **ALL OF ITS EMPLOYEES.**

It is therefore the purpose of this stated policy to:

1. Abide by all federal, state and local regulations as they pertain to construction.
2. Apply good sense and safe practices to all jobs.
3. Exercise good judgment in the application of this policy.
4. Protect the public from any and all hazards which result from our operations.

To further these goals the following assignments of responsibility are made:

MANAGEMENT

1. Establish rules and programs designed to promote safety and make known to all employees the established rules and programs.
2. Provide all supervisors with copies of appropriate rules and regulations.
3. Make available training necessary for employees to perform their tasks safely.
4. Provide protective equipment for employees where required.
5. Impress upon all the responsibility and accountability of each individual to maintain a safe workplace.
6. Record all instances of violations and investigate all accidents.
7. Discipline any employee disregarding this policy.
8. Require all subcontractors as a matter of contract and all material suppliers through purchase order terms to follow safety rules.
9. Encourage all prime contractors to work safely.
10. Appoint a company employee with enforcement authority over safety matters.
11. Conduct safety inspections of all the company's jobsites, maintain records, and continually monitor the program for effectiveness.

PROJECT SUPERINTENDENTS COOPERATING WITH ON-SITE SAFETY PERSONNEL

1. Plan production so that all work will be done in compliance with established safety regulations.
2. Be completely responsible for on-the-job safety and health and secure the correction of safety deficiencies.
3. Make sure proper safety materials and protective devices are available and used and all equipment is in safe working order.
4. Instruct foremen in safety requirements.
5. Review accidents, supervise correction of unsafe practices, and file accident reports.
6. Conduct jobsite safety meetings and provide employees with proper instruction on safety requirements.
7. Require conformance to safety standards from subcontractors.
8. Notify company office of safety violations.
9. Provide for the protection of the public from company operations.
10. Attempt to ensure safe performance by others present on the site, including owner and architect/engineer representatives, the general public, visitors, and the employees of other contractors.

JOB FOREMEN

1. Carry out safety programs at the work level.
2. Be aware of all safety requirements and safe working practices.
3. Plan all work activities to comply with safe working practices.
4. Instruct new employees and existing employees performing new tasks on safe working practices.
5. Install and maintain devices to protect the public from company operations.
6. Make sure protective equipment is available and used.
7. Make sure work is performed in a safe manner and no unsafe conditions or equipment are present.
8. Correct all hazards, including unsafe acts and conditions which are within the scope of your position.
9. Secure prompt medical attention for any injured employees.
10. Report all injuries and safety violations.

WORKERS

1. Work safely in such a manner as to ensure your own safety as well as that of coworkers and others.
2. Request help when unsure about how to perform any task safely.
3. Correct unsafe acts or conditions within the scope of the immediate work.
4. Report any uncorrected unsafe acts or conditions to the appropriate supervisor.
5. Report for work in good mental and physical condition to safely carry out assigned duties.
6. Avail yourself of company and industry sponsored safety programs.
7. Use and maintain all safety devices provided.
8. Maintain and properly use all tools under your control.
9. Follow all safety rules.
10. Provide fellow employees help with safety requirements.

ALL PERSONNEL

1. Strive to make all operations safe.
2. Maintain mental and physical health conducive to working safely.
3. Keep all work areas clean and free of debris.
4. Assess result of your actions on the entire workplace. Work will not be performed in ways that cause hazards for others.
5. Before leaving work replace or repair safety precaution signs removed or altered. Unsafe conditions will not be left to imperil others.
6. Abide by the safety rules and regulations of every construction site.
7. Work in strict conformance with federal, state and local regulations.

SUBCONTRACTORS AND SUPPLIERS

1. Abide by the safety rules of contractors on site.
2. Notify all other contractors when their activities could affect the health or safety of other company employees.
3. Check in with jobsite supervision before entering the jobsite.
4. Inform controlling contractor of all injuries to workers.
5. Report to controlling contractor any unsafe conditions that come to your attention.

ARCHITECTS, ENGINEERS, OWNERS AND VISITORS SHALL BE REQUESTED TO:

1. Abide by all safety rules.
2. Inform construction site superintendent before entering a construction site.
3. Check in with the jobsite supervisor so personal protective equipment may be provided such as hard hats, eye protection and respirators if necessary.

(COMPONENT C)
GENERAL WORK RULE GUIDE

The rules shown in this section should not be used without revision. These rules are to be used as a guide only. Company specific rules should be developed for your company from this guide and other sources as required.

Abrasive Grinding
Abrasive wheel bench or stand grinders must have safety guards strong enough to withstand bursting wheels. Adjust work rests on grinders to a clearance not to exceed 1/8 inch between rest and wheel surface. Inspect and ring-test abrasive wheels before mounting. Always leave wheel in working condition for next user. Properly dress wheel before and after use.

Access
Use only safe means of access to and from work areas. Jumping from or to work areas is not allowed, nor is sliding down cables, ropes or guys.

Air Tools
Secure pneumatic tools to hose in a positive manner to prevent accidental disconnection. Install and maintain safety clips or retainers on pneumatic impact tools to prevent attachments from being accidentally expelled. All hoses exceeding 1/2 inch inside diameter require safety devices at the source of supply to reduce pressure in case of hose failure.

Attitude
All company employees are required to treat safety as the number one priority. As such, they are expected to report to work in good mental and physical condition to safely perform their assigned duties. Before starting any task, employees must consider the possible effects of their actions on themselves and others and take appropriate protective measures.

Belt Sanding Machines
Belt sanders will not be used without guards in place.

Compressed Air, Use of
Compressed air used for cleaning purposes may not exceed 30 psi, and then only in conjunction with effective chip guarding and personal protective equipment. Exceptions to 30 psi are allowed only for concrete form, mill scale, and similar cleaning operations. The use of compressed air to clean off yourself or other workers is not allowed.

Compressed Gas Cylinders
Put valve protection caps in place before compressed gas cylinders are transported, moved, or stored. Cylinder valves will be closed when work is finished and when cylinders are empty or being moved.

Compressed gas cylinders will be secured in an upright position at all times. Keep cylinders at a safe distance, or shield from welding or cutting operations and place where they cannot become part of an electrical circuit. Oxygen and acetylene must not be stored together.

Oxygen and fuel gas regulators must be in proper working order while in use.

The rules shown in this section should not be used without revision. These rules are to be used as a guide only. Company specific rules should be developed for your company from this guide and other sources as required.

Concrete, Concrete Forms and Shoring
All protruding reinforcing steel, onto or into which employees could fall, must be guarded to eliminate the hazard of impalement. Wire mesh needs to be secure from recoiling.

Form work and shoring will be designed and constructed to safely support all loads imposed during concrete placement. All components will be inspected prior to erection. Drawings or plans of jack layout, form work, shoring, working decks and scaffolding systems will be available at the jobsite.

Forms and shores may not be removed until it has been determined that the concrete has gained sufficient strength to support its weight and superimposed loads.

Cranes or Derricks
Rated load capacities, recommended operating speeds, and special hazard warnings or instructions must be conspicuously posted on all equipment. Instructions or warnings must be visible from the operator's station.

Accessible areas within swing radius of a crane must be barricaded to prevent employees from being struck or crushed by the crane.

Except where electrical distribution and transmission lines have been de-energized and visibly grounded, or where insulating barriers not a part of or an attachment to the equipment or machinery have been erected to prevent physical contact with the lines, no part of a crane or its load shall be operated within 10 feet of a line rated to 50kV or below; 10 feet + 4 inches for each 1kV over 50kV for lines rated over 50kV, or twice the length of the line insulator, but never less than 10 feet. Cranes will be inspected before each use by the operator. Any defects must be corrected before use. Logs of crane inspections must be kept with the crane.

Crane and Derrick Suspended Personnel Platforms
Crane or derrick suspended personnel platforms may not be used unless the erection, use, and dismantling of conventional means of reaching the worksite would be more hazardous or not possible. Equipment used for this purpose must be tested and equipped in strict accordance with 1926.550(g) or state plan equivalents.

Disposal Chutes
Use an enclosed chute whenever materials are dropped more than 20 feet to any exterior point of a building. When debris is dropped through floor holes without a chute, the area where the material is dropped must be enclosed with barricades at least 42 inches high and not less than 6 feet back from the projected edges of the opening above. Post warning signs at each level.

Drugs and Alcohol
Use or possession of alcoholic beverages or non-prescription drugs on the jobsite is forbidden. Workers reporting under the influence of alcohol or controlled substances will not be allowed to work.

The rules shown in this section should not be used without revision. These rules are to be used as a guide only. Company specific rules should be developed for your company from this guide and other sources as required.

Electrical-General

All extension cords must be 3-wire type, protected from damage, and not fastened with staples, hung from nails, or suspended from wires. No cord or tool with a damaged ground plug may be used. Splices must have soldered wire connections with insulation equal to the cable. Worn or frayed cables may not be used.

Except where bulbs are deeply recessed in a reflector, bulbs on temporary light will be equipped with guards. Temporary lights may not be suspended by their electric cords unless so designed.

Receptacles for attachment plugs will be of approved, concealed contact type. Where different voltages, frequencies, or types of current are applied, receptacles must be such that attachment plugs are not interchangeable.

Each disconnecting means for motors and appliances, and each service feeder or branch circuit at point of origin, must be legibly marked to indicate its purpose, unless located and arranged so that the purpose is evident.

Cable passing through work areas will be covered or elevated to protect from damage. Boxes with covers for the purpose of disconnecting must be securely and rigidly fastened to mounting surface.

No employee may work in proximity to any electric power circuit that may be contacted during the course of work, unless protected against electric shock by de-energizing circuit and grounding it or by guarding with effective insulation. In work areas where the exact location of underground electric power lines is unknown, workers using jackhammers, bars or other hand tools which may contact lines must wear insulated protective gloves.

Electrical—GFCI or Inspection

15 and 20-ampere receptacle outlets on single-phase, 120-volt circuits for construction sites which are not a part of the permanent wiring of the building or structure, must be protected by either ground-fault circuit interrupters or an assured equipment grounding conductor program.

An assured equipment grounding conductor program covers all cord sets, receptacles which are not a part of the permanent wiring of the building or structure, and equipment connected by cords and plugs.

Inspect each cord set, attachment cap, plug and receptacle of cord sets, and any equipment connected by cord and plug, except cord sets and receptacles which are fixed and not exposed to damage, before each day's use for external defects and possible internal damage. Remove from service or repair immediately any defective items.

Tests will be performed on all cord sets, receptacles which are not a part of the permanent wiring of the building or structure, and cord and plug-connected equipment required to be grounded. Grounding conductors will be tested for continuity. Each receptacle and attachment cap or plug will be tested for correct attachment of the equipment grounding conductor.

Tests will be recorded. The test record must identify each receptacle, cord set, and cord and plug-connected equipment that passed the test, and will indicate the last date it was tested or the interval for which it was tested. No electrical tool or cord may be used unless it has been tested according to the company's assured grounding program. The noncurrent-carrying metal parts of fixed, portable and plug-connected equipment must be grounded, except those protected by an approved system of double insulation. The path from circuits, equipment, structures, and conduit or enclosures to ground must be permanent and continuous and have ample current-carrying capacity.

The rules shown in this section should not be used without revision. These rules are to be used as a guide only. Company specific rules should be developed for your company from this guide and other sources as required.

Equipment Operation
No employee will operate electric, gas or hand-powered tools or equipment unless familiar with use of the item and safety precautions required. Supervisors will provide necessary safety information for all tasks and equipment.

Excavating and Trenching
Before opening any excavation, efforts (including utility company contact) must be made to determine if there are underground installations in the area. Underground utilities must be located and supported during excavation operations.

Walls and faces of trenches 5 feet or more in depth, and all excavations in which employees are exposed to danger from moving ground or cave-in, must be guarded by shoring or sloping.

Where employees may be required to enter excavations, excavated material must be stored at least 2 feet from the edge of the excavation.

Appoint a competent person. Make daily inspections of excavations. If evidence of possible cave-ins or slides is apparent, cease all work in the excavation until precautions have been taken.

Excavations over 20 feet deep must have shoring or sloping designed by a professional engineer. Trenches 4 feet deep or more require adequate means of exit such as ladders or steps, located so as to require no more than 25 feet of lateral travel.

Explosives and Blasting
Only authorized and qualified persons will be permitted to handle and use explosives. Smoking and open flames are not permitted within 50 feet of explosives and detonator storage magazines.

Eye and Face Protection
Eye and face protection will be provided and must be worn when machines or operations present potential eye or face injury. Employees involved in welding operation must wear filter lenses or plates of the proper shade number. Employees exposed to laser beams must use suitable laser safety goggles which will protect for the specific wave length of the laser and be optical-density (O.D.) adequate for the energy involved.

Goggles will be worn over any employee owned prescription glasses that do not meet industrial safety standards.

Fencing
Security fencing protects employees, the company and the general public. All fencing must be maintained by all employees to the extent of their job description. Report to your supervisor defects beyond your ability to repair.

Fire Protection
Fire fighting equipment must be conspicuously located and readily accessible at all times, and periodically inspected and maintained in operating condition. Report any inoperative or missing equipment to your supervisor.

If the project includes automatic sprinkler protection, installation will closely follow construction and be placed in service, as soon as applicable laws permit, following completion of each story.

Fire extinguishers, rated not less than 2A, will be provided for each 3,000 square feet of building area (or major fraction). Travel distance from any point to the nearest fire extinguisher may not exceed 100 feet with at least one extinguisher per floor. In multi-story buildings, at least one fire extinguisher must be located adjacent to the stairway.

The rules shown in this section should not be used without revision. These rules are to be used as a guide only. Company specific rules should be developed for your company from this guide and other sources as required.

Flag Personnel
When signs, signals, and barricades do not provide necessary protection on or adjacent to a highway or street, flag personnel or other appropriate traffic controls, must be used. Flag personnel will wear a red or orange warning garment. Warning garments worn at night will be of reflectorized material.

Flammable and Combustible Liquids
Only approved containers and portable tanks will be used for storage and handling of flammable and combustible liquids.

No more than 25 gallons of flammable or combustible liquids may be stored in a room outside of an approved storage cabinet.

No more than 60 gallons of flammable or 120 gallons of combustible liquids may be stored in any one storage cabinet.

No more than three storage cabinets may be located in a single storage area. Inside storage rooms for flammable and combustible liquids must be of fire-resistive construction, with self-closing fire doors, 4-inch sills or depressed floors, a ventilation system of at least six air changes per hour, and electrical wiring and equipment approved for Class I, Division 1 locations.

Storage in containers outside buildings may not exceed 1,100 gallons in any one pile or area. Grade storage areas to divert possible spills away from buildings or other exposures, or surround storage areas with a curb or dike. Locate storage areas at least 20 feet from any building and keep free from weeds, debris, and other combustible materials. Keep flammable liquids in closed containers when not in use.

Post conspicuous and legible signs prohibiting smoking in service and refueling areas.

Floor Openings, Open Sides, Hatchways, Etc.
Guard openings with a standard guardrail and toeboards or cover. Provide railing on all exposed sides, except at entrances to stairways.

Every open-sided floor or platform, 6 feet or more above adjacent floor or ground level, must be guarded by a standard railing, or equivalent, on all open sides except where there is entrance to a ramp, stairway, or fixed ladder.

Runways 4 feet high or more need standard railings on all open sides.

Guard ladderway floor openings or platforms with standard guardrails and standard toeboards on all exposed sides, except at entrance to opening, with passage through the railing provided by a swinging gate or offset so a person cannot walk directly into opening.

Temporary floor opening will have standard railings or effective covers.

Floor holes into which persons can accidentally walk will be guarded by either a standard railing with standard toeboard on all exposed sides, or a standard floor hole cover.

While the cover is not in place, the floor hole will be protected by a standard railing.

The rules shown in this section should not be used without revision. These rules are to be used as a guide only. Company specific rules should be developed for your company from this guide and other sources as required.

Gases, Vapors, Fumes, Dusts, and Mists
Exposure to toxic gases, vapors, fumes, dusts, and mists at a concentration above those specified in the "Threshold Limit Values of Airborne Contaminants" of the ACGIH should be avoided.

When engineering and administrative controls are not feasible to achieve full compliance, protective equipment or other protective measures will be used to keep the exposure of employees to air contaminants within the limits prescribed. Any equipment and technical measures used for this purpose must be reviewed for each particular use by a technically qualified person. Employees will wear all furnished equipment at all times.

Hand Tools
Employees will not use unsafe hand tools. Wrenches may not be used when jaws are sprung to the point slippage occurs. Keep impact tools free of mushroomed heads. Keep wooden tool handles free of splinters or cracks and assure a tight connection between the tool head and the handle.

Electric-power operated tools will either be approved double insulated, be properly grounded, or used with ground fault circuit interrupters.

Hard Hats
Hard hats will be worn at all times on construction sites.

Hazard Communication
Employees will receive training on their rights, duties and responsibilities under the Hazard Communication Standard. A copy of the company's program and the standard will be made available to all employees on request. Employees will review Material Safety Data Sheets when working with a covered material for the first time and anytime thereafter when a question arises. Safety precautions outlined on Material Safety Data Sheets are to be followed.

Hearing Protection
Hearing protection will be worn in areas where sound levels may exceed 85 decibels.

Heating Devices, Temporary
Fresh air must be present in sufficient quantities to maintain the safety of workers. Solid fuel salamanders are prohibited in buildings and on scaffolds.

Hoists, Material and Personnel
Rated load capacities, recommended operating speeds, and special hazard warnings or instructions posted on cars and platforms may not be exceeded. Entrances to material hoists will be protected by substantial full width gates or bars. Hoistway doors or gates of personnel hoists will be not less than 6 feet 6 inches high, and be protected with mechanical locks which cannot be operated from the landing side and are accessible only to persons on the car. Provide overhead protective covering on the top of the hoist cage or platform.

Horseplay
All disruptive activities usually referred to as "horseplay" are forbidden. No practical jokes or fights will be tolerated.

Housekeeping
Form and scrap lumber with protruding nails and other debris will be kept clear from work areas. Remove combustible scrap and debris at regular intervals. Containers will be provided for collection and separation of all refuse. Covers are required on containers used for flammable or harmful substances.

At the end of each phase of work, return all tools and excess material to proper storage. Clean up all debris before moving on to the next phase. Each employee is responsible for keeping their work areas clean.

The rules shown in this section should not be used without revision. These rules are to be used as a guide only. Company specific rules should be developed for your company from this guide and other sources as required.

Illumination
Construction areas should be lighted to not less than minimum illumination intensities listed while work is in progress:

Foot Candles	*Area of Operation*
Illumination Intensity-5	General construction area lighting: General construction areas, concrete placement, active storage areas, loading platforms, refueling and field maintenance areas and stairways.
Illumination Intensity-5	Indoor: warehouses, corridors, hallways, and exitways
Illumination Intensity-5	Tunnels, shafts and general underground work areas (Exception: minimum of 10 foot candles is required at tunnel and shaft heading during drilling, mucking and scaling. Bureau of Mines approved cap lights shall be acceptable for use in tunnel heading.)
Illumination Intensity-10	General construction plant and shops (For example: batch plants, screening plants, mechanical and electrical equipment rooms, carpenters shops, rigging lofts and active storerooms, mess halls, indoor toilets and workrooms.)

Injuries
All injuries, even those that appear to be slight, will be reported immediately to your supervisor.

Jointers
Each hand-fed planer and jointer with a horizontal head must be equipped with a cylindrical cutting head. Keep opening in the table as small as possbile. Each hand-fed jointer with a horizontal cutting head must have an automatic guard to cover the section of the head on working side of fence or cage. Guards may not be removed. A proper jointer guard will automatically adjust itself to cover unused portion of the head, and will remain in contact with material at all times. Each hand-fed jointer with horizontal cutting head must have a guard which will cover the section of the head back of the cage or fence.

Ladders
The use of ladders with broken or missing rungs or steps, broken or split side rails, or with other faulty or defective construction is prohibited. When ladders with such defects are discovered, withdraw them from service immediately. Place portable ladders on a substantial base at a 4-1 pitch, have clear access at top and bottom, extend a minimum of 36 inches above landing or, where not practicable, provide grab rails. Secure against movement while in use.

Portable metal ladders may not be used for electrical work or where they may contact electrical conductors.

Job-made ladders will be constructed for their intended use. Cleats will be inset into side rails ½ inch, or filler blocks used. Cleats will be uniformly spaced, 12 inches, top-to-top.

Lasers
Only trained employees will be allowed to operate lasers. Employees will wear proper eye protection where there is a potential exposure to laser light greater than 0.005 watts (5 milliwatts).

Beam shutters or caps will be utilized, or laser turned off, when laser transmission is not actually required. When lasers are left unattended for a substantial period of time, turn them off.

The rules shown in this section should not be used without revision. These rules are to be used as a guide only. Company specific rules should be developed for your company from this guide and other sources as required.

Liquefied Petroleum Gas (LPG)
Each system will have containers, valves, connectors, manifold valve assemblies, and regulators of an approved type. Each container and vaporizer must be provided with one or more approved safety relief valves or devices. Containers will be placed upright on firm foundations or otherwise firmly secured.

Portable heaters must be equipped with an approved automatic device to shut off the flow of gas in event of flame failure. Storage of LPG within buildings is prohibited. Storage locations must have at least one approved portable fire extinguisher, rated not less than 20-B.C.

Masonry Access Zone
Limited access zones are to be established on the unscaffolded side of unbraced masonry walls. The zones are to be equal to the finished height of the wall, plus four feet.

Medical Services and First Aid
When a medical facility is not readily accessible, a person trained to render first aid will be available at the worksite.

First aid supplies must be readily available.

The telephone numbers of physicians, hospitals or ambulances must be conspicuously posted.

Motor Vehicles and Mechanized Equipment
Check all vehicles in use at beginning of each shift to assure all parts, equipment and accessories affecting safe operation are in proper operating condition and free from defects. All defects shall be corrected before placing vehicle in service.

No employee shall use any motor vehicles, earthmoving, or compacting equipment having an obstructed view to the rear unless: vehicle has a reverse signal alarm distinguishable from the surrounding noise level, or vehicle is backed up only when an observer signals it is safe to do so.

Heavy machinery, equipment, or parts thereof, which are suspended or held aloft will be substantially blocked to prevent falling or shifting work under or between them.

Personal Protective Equipment
The employee is responsibile for wearing appropriate personal protective equipment in operations where there is exposure to hazardous conditions, or where need is indicated to reduce hazards.

Lifelines, safety belts and lanyards will be used only for employee safeguarding. Employees working over or near water, where danger of drowning exists, will wear U.S. Coast Guard-approved life jackets or buoyant work vests.

Powder-Actuated Tools
Only trained employees will be allowed to operate powder-actuated tools. All powder-actuated tools will be tested daily before use and all defects discovered before or during use will be corrected. Tools will not be loaded until immediately before use. Loaded tools will not be left unattended.

Power Transmission Mechanical
Belts, gears, shafts, pulleys, sprockets, spindles, drums, flywheels, chains, or other reciprocating, rotating, or moving parts of equipment must be guarded if such parts are exposed to contact by employees or otherwise constitute a hazard. No equipment may be used without guards in place.

The rules shown in this section should not be used without revision. These rules are to be used as a guide only. Company specific rules should be developed for your company from this guide and other sources as required.

Protection Of The Public
All company personnel are charged with aiding in the protection of the public including, as your job description dictates, installation and maintenance of signs, signals, lights, fences, guardrails, ramps, temporary sidewalks, barricades, overhead protection, etc. as may be necessary.

Radiation, Ionizing
Pertinent provisions of the Atomic Energy Commission's *Standards for Protection Against Radiation* (10 CFR Part 20) relating to protection against occupational radiation exposure, will apply. Persons using radioactive materials or X-rays will be specially trained, or licensed if required.

Railings
A standard railing will consist of top rail, intermediate rail, toeboard, and posts, and have a vertical height of approximately 42 inches from upper surface of top rail to floor, platform, etc. The top rail of a railing will be smooth-surfaced, with a strength to withstand at least 200 pounds. The intermediate rail will be approximately halfway between top rail and floor.

A stair railing will be of construction similar to a standard railing, but the vertical height will not be more than 34 inches nor less than 30 inches from upper surface of top rail to surface of tread in line with face of riser at forward edge of tread.

Respiratory Protection
In emergencies, or when feasible engineering or administrative controls are not effective in controlling toxic substances, approved respiratory protective equipment will be provided and used. Respiratory protective devices will be approved for the hazardous material involved and extent and nature of work requirements and conditions. Employees required to use respiratory protective devices will be thoroughly trained in their use. Respiratory protective equipment will be inspected regularly and maintained in good condition.

Rollover Protective Structures (ROPS)
Rollover protective structures (ROPS) standards apply to the following types of materials handling equipment: all rubber-tired, self-propelled scrapers, rubber-tired front-end loaders, rubber-tired dozers, wheel-type agricultural and industrial tractors, crawler tractors, crawler-type loaders, and motor graders, with or without attachments, that are used in construction work. This requirement does not apply to sideboom pipelaying tractors.

Safety Nets
Safety nets are required when workplaces are more than 25 feet above the surface and the use of ladders, scaffolds, catch platforms, temporary floors, safety lines, or safety belts are impractical. State or local regulations may differ.

The rules shown in this section should not be used without revision. These rules are to be used as a guide only. Company specific rules should be developed for your company from this guide and other sources as required.

Saws
All portions of band saw blades will be enclosed or guarded, except for working portion of blades between bottom of guide rolls and table.

Portable, power-driven circular saws will be equipped with guards above and below the base plate or shoe.

The lower guard will cover the saw to depth of teeth, except for minimum arc required to allow proper retraction and contact with the work, and will automatically return to covering position when blade is removed from the work.

Radial saws will have an upper guard which completely encloses upper half of the saw blade. The sides of lower exposed portion of blade will be guarded by a device that will automatically adjust to the thickness of and remain in contact with material being cut. Radial saws used for ripping must have non-kickback fingers or dogs. Radial saws will be installed so the cutting head will return to starting position when released by operator.

All swing or sliding cut-off saws will be provided with a hood that will completely enclose the upper half of the saw.

Limit stops will be provided to prevent swing or sliding type cut-off saws from extending beyond the front or back edges of the table.

Each swing or sliding cut-off saw will be provided with an effective device to return the saw automatically to the back of table when released at any point of its travel.

Inverted sliding cut-off saws will be provided with a hood that will cover the part of the saw that protrudes above top of the table or material being cut.

Circular table saws will have a hood over the portion of the saw above the table mounted so that the hood will automatically adjust itself to the thickness of and remain in contact with the material being cut.

Circular table saws will have a spreader aligned with the blade, spaced no more than ½ inch behind the largest blade mounted in the saw. Circular table saws used for ripping will have non-kickback fingers or dogs. Feed rolls and blades of self-feed circular saws will be protected by a hood or guard to prevent the hands of the operator from coming into contact with inrunning rolls at any time.

Scaffolds (General)
Scaffolds will be capable of supporting 4 times maximum intended load and will be erected on sound, rigid footing, capable of carrying the maximum intended load without settling or displacement.

Guardrails and toeboards will be installed on all open sides and ends of platforms more than 10 feet above ground or floor. Exceptions to this would be needle beam scaffolds and floats which require the use of safety belts. Scaffolds 4 feet to 10 feet in height, with a minimum dimension in either direction of less than 45 inches, will have standard guardrails installed on all sides and ends.

There will be a screen with maximum ½ inch openings between toeboards and guardrail, where persons are required to work or pass under scaffolds. Planking will be Scaffold Grade, or equivalent, as recognized by approved grading rules for the species or wood used. Overlap scaffold planking a minimum of 12 inches or secure from movement.

Scaffold planks will extend over end supports not less than 6 inches nor more than 12 inches. Scaffolding and accessories with defective parts will be immediately replaced or repaired.

The rules shown in this section should not be used without revision. These rules are to be used as a guide only. Company specific rules should be developed for your company from this guide and other sources as required.

Scaffolds (Mobile)
Platforms will be tightly planked with full width of scaffold, except for necessary entrance opening. Platforms will be secured in place.

Guardrails made of lumber, not less than 2 x 4 inches (or equivalent) approximately 42 inches high, with a midrail of 1 x 6 inch lumber (or equivalent), and toeboards, will be installed at all open sides and ends on scaffolds more than 10 feet above ground or floor. Toeboards will be a minimum of 4 inches in height. Where persons are required to work or pass under scaffolds, install wire mesh between toeboard and guardrail.

Scaffolds (Swinging)
On suspension scaffolds designed for a working load of 500 pounds, no more than two persons will be permitted to work at one time. On suspension scaffolds with a working load of 750 pounds, no more than three persons may work at one time. Each employee will wear an approved safety belt or harness attached to a lifeline. The lifeline will be securely attached to substantial members of the structure (not scaffold), or to securely rigged lines, which will safely suspend employee in case of fall.

Scaffolds (Tubular Welded Frame)
Scaffolds will be properly braced by cross bracing or diagonal braces, or both, for securing vertical members together laterally. Cross braces will be of such length as will automatically square and align vertical members so erected scaffold is plumb, square, and rigid. All brace connections will be made secure.

Signs
For the protection of all, warning signs such as "No Smoking," "Keep Out," "Eye Protection Required," "Out of Order—Do Not Use," and "Authorized Personnel" will be posted. All employees will obey these directions and aid in maintaining the signs.

Stairs
Flights of stairs having four or more risers will be equipped with standard stair railings or handrails as specified below. Stairways less than 44 inches wide with one side open must have at least one stair railing on the open side. Stairways less than 44 inches wide having both sides open must have one stair railing on each side. Stairways more than 44 inches wide but less than 88 inches wide must have one handrail on each enclosed side and one stair railing on each open side.

On all structures 20 feet or over in height, stairways, ladders, or ramps will be provided. Rise height and tread width will be uniform throughout any flight of stairs.

Storage
All materials stored in tiers will be secured to prevent sliding, falling or collapse.

Aisles and passageways will be kept clear and in good repair.

Stored materials will not obstruct exits. Materials will be sorted with due regard to fire characteristics.

Tire cages
A safety tire rack, cage, or equivalent protection will be provided and used when inflating, mounting, or dismounting tires installed on split rims, or rims equipped with locking rings or similar devices.

Toilets
Toilets will be provided according to the following: 20 or fewer persons—one facility; 20 or more persons—one toilet seat and one urinal per 40 persons; 200 or more persons—one toilet seat and one urinal per 50 persons. Remember to provide facilities with locks for female employees.

The rules shown in this section should not be used without revision. These rules are to be used as a guide only. Company specific rules should be developed for your company from this guide and other sources as required.

Wall Openings
Wall openings, from which there is a drop of more than 4 feet and the bottom of opening is less than 3 feet above working surface, will be guarded. When the height and placement of the opening in relation to the working surface is such that a standard rail or intermediate rail will effectively reduce the danger of falling, one or both will be provided. The bottom of a wall opening, which is less than 4 inches above the working surface, will be protected by a standard toeboard or an enclosing screen.

Welding, Cutting and Heating
Proper precautions (isolating welding and cutting, removing fire hazards from the vicinity, providing a fire watch, etc.) for fire prevention will be taken in areas where welding or other "hot work" is being done. No welding, cutting or heating will be done where the application of flammable paints, or presence of other flammable compounds, or heavy dust concentrations, creates a fire hazard. Equip torches with anti-flashback devices.

Arc welding and cutting operations will be shielded by noncombustible or flameproof shields to protect employees from direct arc rays.

When electrode holders are left unattended, electrodes will be removed and holder will be placed or protected so they cannot make electrical contact. All arc welding and cutting cables will be completely insulated. There will be no repairs or splices within 10 feet of electrode holder, except where splices are insulated equal to the insulation of the cable. Defective cable will be repaired or replaced.

Fuel gas and oxygen hose must be easily distinguishable and not interchangeable. Inspect hoses at beginning of each shift and repair or replace if defective.

General mechanical or local exhaust ventilation or air line respirators will be provided, as required, when welding, cutting or heating hazardous materials or in confined spaces. Always wear approved tinted eye protection when welding or when in areas where welding is being done.

Wire Ropes, Chains, Ropes and Other Rigging Equipment
Wire ropes, chains, ropes and other rigging equipment will be inspected prior to use and as necessary during use to assure their safety. Remove defective rigging equipment from service immediately.

Job or shop hooks and links, or makeshift fasteners, formed from bolts, rods, or other such attachments will not be used. When U-bolts are used for eye splices, the U-bolt will be applied so the "U" section is in contact with dead end of rope.

Woodworking Machinery
All fixed power-driven woodworking tools will be provided with a disconnect switch that can be either locked or tagged in the off position.

(COMPONENT D)

WRITTEN HAZARD COMMUNICATION PROGRAM GUIDE

This program has been prepared to assist you in complying with the requirements of the federal OSHA Standard 1926.59, and to insure that the information necessary for safe use, handling and storage of hazardous chemicals is provided and readily accessible to all employees.

This program includes guidelines on identification of chemical hazards and the preparation and proper use of container labels, placards and other types of warning devices.

A. Chemical Inventory

1. *(Your Company & Worksite Name and Identity)* maintains an inventory of all known chemicals in use on the worksite. A chemical inventory list is available from the *(Name or Title)*.
2. Hazardous chemicals brought onto the worksite by *(Your Company Name)* will be included on the hazardous chemical inventory list.

B. Container Labeling

1. All chemicals on site will be stored in their original or approved containers with a proper label attached, except small quantities for immediate use. Any containers not properly labeled should be given to *(Name or Title)* for labeling or proper disposal.
2. Workers may dispense chemicals from original containers only in small quantities intended for immediate use. Any chemical left after work is completed must be returned to the original container or *(Name or Title)* for proper handling.
3. No unmarked containers of any size are to be left in the work area unattended.
4. *(Your Company Name)* will rely on manufacturer applied labels whenever possible, and will ensure that these labels are maintained. Containers that are not labeled, or from which the manufacturer's label has been removed, will be relabeled.
5. *(Your Company Name)* will ensure that each container is labeled to identify any hazardous chemical inside and any appropriate hazard warnings.

C. Material Safety Data Sheets (MSDS)

1. Employees working with a hazardous chemical may request a copy of the material safety data sheet (MSDS). Requests for MSDSs should be made to *(Name or Title)*.
2. MSDSs should be available, and standard chemical reference may also be available, on the site to provide immediate reference to chemical safety information.
3. An emergency procedure to gain access to MSDSs information will be established.

D. Employee Training

Employees will be trained to work safely with hazardous chemicals. Employee training will include:

1. Methods that may be used to detect a release of a hazardous chemical(s) in the workplace,
2. Physical and health hazards associated with chemicals,
3. Protective measures to be taken,
4. Safe work practices, emergency responses and use of personal protective equipment,
5. Information on the Hazard Communication Standard including:
   - Labeling and warning systems, and
   - An explanation of Material Safety Data Sheets.

E. Personal Protective Equipment (PPE)

Required PPE is available from *(Name or Title)*. Any employee found in violation of PPE requirements may be subject to disciplinary actions up to and including discharge.

F. Emergency Response

1. Any incident of over exposure or spill of a hazardous chemical/substance must be reported to *(Name or Title)* at once.
2. The foremen, or the immediate supervisor, will be responsible for ensuring that proper emergency response actions are taken in leak/spill situations.

G. Hazards of Non-Routine Tasks

1. Supervisors will inform employees of any special tasks that may arise which would involve possible exposure to hazardous chemicals.
2. Review of safe work procedures and use of required PPE will be conducted prior to the start of such tasks. Where necessary, areas will be posted to indicate the nature of the hazard involved.

H. Informing Other Employers

1. Other on-site employers are required to adhere to the provisions of the Hazard Communication Standard
2. Information on hazardous chemicals known to be present will be exchanged with other employers. Employers will be responsible for providing necessary information to their employees.
3. *(Your Company Name)* written hazard communication program will be readily accessible to other onsite employers.

I. Posting

(Name of Company) has posted information for employees at this job site on the Hazard Communication Standard. This information can be found at *(Location)*.

(COMPONENT E)

SAMPLE DRUG AND ALCOHOL PROGRAM

This program is provided as a sample and is not designed to meet the Drug Free Work Place Act requirements for federal projects. Competent legal advice will be needed before implementing a drug and alcohol program.

CONSTRUCTION COMPANY
NOTICE

Drug and Alcohol Program

The company prohibits the use, possession or distribution on its premises, facilities or work places of any of the following: alcoholic beverages, intoxicants and narcotics, illegal or unauthorized drugs (including marijuana), "look-alike" (simulated) drugs, and related drug paraphernalia.

Company employees must not report for duty under the influence of any drug, alcoholic beverage, intoxicant or narcotic or other substance (including legally prescribed drugs and medicines) which will in any way adversely affect their working ability, alertness, coordination, response, or adversely affect the safety of others on the job.

Entry into or presence on company premises, facility or workplace by any person is conditioned upon the company's right to search the person, personal effects, vehicles, lockers, baggage and quarters of any employee or other entrant for any substances named in the paragraphs above. By entering into or being present on company premises, facility or workplace, any person is deemed to have consented to such searches which may include periodic and unannounced searches of anyone while on, entering or leaving company premises, facility or workplace. These searches may include the use of electronic detection devices, scent trained dogs or the taking of blood, urine, or saliva samples for testing to determine the presence of substances named in the paragraphs above. The company also reserves the right, at all times, to have authorized personnel conduct periodic examinations of its employees and employees of its subcontractors and suppliers for the purpose of determining if any such persons present on a company jobsite are using marijuana, illegal drugs, or alcohol.

THE TAKING OF BLOOD, URINE, OR SALIVA SAMPLES FOR TESTING MAY ALSO BE REQUIRED FROM ANY PERSON ON COMPANY PREMISES OR WORKPLACE WHO IS SUSPECTED OF BEING UNDER THE INFLUENCE OF DRUGS OR ALCOHOL, WHO IS INVOLVED IN A VEHICLE ACCIDENT, OR WHO IS INJURED IN THE COURSE OF EMPLOYMENT.

Any person who refuses to submit to a search, screening or testing as described in this policy, or who is found using, possessing or distributing any of the substances named in the first paragraph of this policy, or who is found under the influence of any such substances, is subject to disciplinary action including immediate discharge of an employee, or removal and future prohibition from the premises, if not our employee.

Legally prescribed drugs may be permitted on company premises or work locations, provided the drugs are contained in the original prescription container and are prescribed by an authorized medical practitioner for the current use of the person in possession. Any person in possession of a valid prescription drug when on or entering the company premises or workplace locations may be required to complete a "prescription drug" form and the company may, as it deems appropriate, determine if the drug produces hazardous effects.

The company has the right, in its discretion, to report the use, possession or distribution of any substance named in the first paragraph of this policy to law enforcement officials and to turn over to the custody of law enforcement officials any such substances on company property.

_____

Senior Company Officer

I hereby acknowledge receipt of this Notice of Policy concerning the Company Drug and Alcohol Abuse Program.

Employee Name _____ Signature _____

(Please Print)

_____ _____ _____

Date Employee Number

****

CHAIN OF CUSTODY AND AUTHORIZATION FOR BLOOD/URINE/SALIVA TEST

Date: _____

I agree to have a urine, blood, or saliva test to detect alcohol, drugs or marijuana levels. I also agree for the report of said test(s) to be released to _____ (company).

Signature _____

Date and Time _____ Witness _____

By Whom Was The Specimen Obtained? _____

Date and Time _____ Type of Specimen _____

Results _____ (Positive) _____ (Negative) _____

Name of Medical Facility or Lab _____

Date and Time _____

PRESCRIPTION DRUG FORM

To ensure the safety of all personnel and equipment, the following information is required for the prescription drug, or drugs, you now possess.

Name: _____

Employer: _____

Prescribing Physician's Name: _____

City: _____ Telephone: _____

Name of Drug: _____ Prescription Number: _____

Date Prescribed: _____ Length of time to be taken: _____

Does the Drug Produce Side Effects? Yes _____ No _____. If yes, describe: _____

_____

_____

I hereby give my consent for the above-named prescribing physician to answer any questions about my use of the above drug.

Date: _____ Signature: _____

(COMPONENT F)

SAMPLE PROBLEM SOLVING PROCEDURE

To have an effective safety program, communication must take place on all rungs of the corporate ladder. When a safety problem arises, everyone in the company must know where and to whom to turn. Employees must know that each safety problem will be corrected. The following is a sample corporate procedure for solving safety problems.

_____ (company)

SAFETY PROBLEM SOLVING

It is the intent of _____ Company to provide a safe work place for all employees. Supervisory personnel have been instructed to watch for and correct all unsafe conditions immediately. Construction sites are complex and items are easily overlooked. It is important that all employees be on the lookout for unsafe conditions. If you observe a condition that is unsafe, the following actions are to be taken:

1. If possible, correct the condition immediately. Many safety hazards, such as a piece of missing guardrail, are easy to correct.
2. If you are not able to take corrective action, report the condition to your immediate supervisor for correction.
3. All company employees with any supervisory responsibility have been instructed to take corrective action or contact someone who can when a safety concern is raised. In the event corrective action is not begun in a reasonable length of time, the employee is requested to contact _____, who is corporate director and can be reached at _____.

We appreciate your cooperation in reporting all safety problems. If we all work together, we can all work safely.

(COMPONENT G)

SAMPLE CHECKLIST FOR SAFETY PROGRAM COMPLIANCE

Each company should develop its own checklists for compliance with site specific operations. The following samples can be used to *guide* you in development of documents to meet the specific needs of your company. A sample document is also provided.

1. JOB SITE REQUIREMENTS

TEMPORARY FACILITIES

a. GFCI's or assured grounding program
b. Site/storage layout for placement of materials, shanties, equipment, etc.
c. Communication system
d. Water (including drinking water) and sanitary facilities
e. Jobsite security equipment (fencing, lights, etc.)
f. Temporary access and parking facilities
g. Adequate temporary power

PAPER WORK REQUIREMENTS

a. Copy of OSHA standards & poster
b. Posting area for employee notices
c. Emergency phone numbers
d. OSHA 200's (during February)
e. Copy of assured grounding program (if in use)
f. Maintenance records for equipment (cranes, material hoists, etc.)
g. Contractors safety program and rules
h. Approvals (deep trenches, high scaffolds, demo surveys, shoring, etc.)
i. Proof of training and safety instructions (lasers, power actuated tools, first aid, etc.)
j. Written respiratory protection program (if respirators are in use)
k. Required signs (Hard Hats, No Trespassing, Danger, Caution, etc.)
l. Required special permits (burning, welding, traffic, etc.)
m. Workers Compensation notice
n. Accident and treatment report forms
o. Written hazard communication program
p. MSDS for all materials on-site
q. Hazardous chemical list

EMERGENCY NEEDS

a. First aid trained personnel
b. First aid kit (checked at least weekly)
c. Fire extinguishers (or water equivalent)
d. Emergency evacuation plans

PROTECTIVE EQUIPMENT

a. Hard hats
b. Safety glasses
c. Respirators
d. Ear Plugs
e. Guarding material for perimeter scaffolds and floor holes
f. Safety cans for flammable liquids
g. Tagged alloy steel chains
h. Safety belts, lifeline, and lanyards or nets
i. Trench and excavation shoring materials
j. Personal Protective Equipment for visitors
k. Back-up alarms operational
l. Safety cans for all flammable liquids

GENERAL SAFETY REQUIREMENTS

a. Cleanup schedule and waste disposal facilities
b. Safe access (stairs, ladders, etc.)
c. Safety library—manufacturers instructions, safety handouts, data sheets, etc.
d. Flashers, signals, barricades and reflective clothing for traffic controls
e. Shop drawings and completion schedules
f. Schedule for safety meetings
g. Hazard communication orientation and training materials
h. Equipment maintenance schedule and procedure
i. Proper and sufficient material and equipment for the scope of the work
j. Only qualified operators using powder-actuated tools
k. Proper ladders: length, style, and usage
l. Scaffolds properly erected, braced, and supported

OTHER REQUIREMENTS

A. GENERAL

- First aid kits and trained personnel available
- Emergency phone numbers posted
- OSHA poster on job
- Drinking water available
- Sufficient sanitary facilities
- Storage areas properly maintained
- Hazard Communication program and data sheets

B. EQUIPMENT

- Maintenance records up to date
- Backup alarms working
- Fire extinguishers available
- Glass in distortion free state
- All equipment guards in place
- Monitoring equipment for confined spaces
- Safety cans for gasoline

C. PERSONAL PROTECTIVE EQUIPMENT

- Hard hats in use
- Eye protection where needed
- All traffic control barricades in place

D. TRENCHING OPERATIONS

- Ladders 36" above landing and within 25 feet of travel
- Trench protection
- Sloping (1 to 1 in most soils)
- Shoring (sufficient for width & depth)
- Trench box—large enough for width & depth
- Hydraulic shores—enough for the project
- Spoil—piled back at least two feet from excavation

SAFETY GUIDELINE FOR BUILT UP ROOFING ON LOW PITCHED ROOFS

I. DEFINITIONS:

Low Pitched Roof:

a. Eave height more than 16'
b. Pitch of 4 in 12 or less

Mechanical Equipment is everything but:

a. Wheel barrows
b. Mop Carts

Motion Stopping Systems:

a. Standard Railings
b. Guardrails
c. Scaffolds and Platforms (with guardrails)
d. Safety Nets
e. Safety Belts, etc.

Safety Monitoring—A system of observation by a competent person who:

a. Is on same roof
b. Is in voice contact with roofers
c. Is in visual contact with roofers

Warning Line—A system of wire, rope, or chain supported by stanchions and erected around the entire work area.

II. SYSTEMS DESIGN AND USE

Motion Stopping Systems can be used anywhere. They must be used:

a. When work is being done mechanically at roof edge
b. At roof edge material handling areas
c. At roof edge storage areas

Safety Monitoring can only be used:

a. On roofs 50 feet or less in width
b. For hand roofing work between warning lines and roof edge.

Warning lines must be:

a. Wire, rope, or chain with a minimum tensile strength of 500 lbs.
b. Flagged at least at 6 foot intervals with high visibility materials
c. Held at a height of no more than 39" and no less than 34"
d. Positively fastened to a stanchion that is capable of resisting a 161 lb. force applied 30 inches above the base without tripping
e. Erected no closer than 6' to building perimeter for hand roofing operation
f. For mechanical equipment usage, minimum distances are:
   1. 6 feet in direction parallel to equipment use
   2. 10 feet in direction perpendicular to equipment use

MASONRY OPERATIONS

1. SCAFFOLDING
   a. All scaffolding set on adequate level bearing
   b. All required bracing installed
   c. All guardrails, midrails and toeboards in place
   d. All scaffolds fully planked
   e. Proper tie-ins to prevent tipping
   f. No defective scaffolding units
   g. Ladders in place and high enough
2. EQUIPMENT
   a. All guards in place—saws, mixers, others
   b. Forklift bells, horns, alarms, fully functional
   c. Fuel stored in safety cans
   d. GFCI's or up-to-date Assured Grounding Program in use
   e. All cords of 3-wire type and in good operating condition
3. PERSONAL PROTECTIVE EQUIPMENT
   a. Hard hats worn by all
   b. Safety glasses and/or respirators available at saws
   c. Hearing protection available where required
4. GENERAL
   a. First Aid personnel and equipment available
   b. Emergency phone numbers and phones available
   c. Material neatly and properly stored
   d. Good housekeeping practiced
   e. Sufficient fire extinguishers
   f. Proper light levels in work areas
   g. All hand tools in good working condition
   h. All floor and wall openings properly guarded
   i. All temporary heaters properly installed, maintained and vented
   j. Wall is braced or control zones set up
   k. Hazard communication program in effect

MULTI-CONTRACT CHECKLIST

1. Job Site Safety Program
   a. Emergency facilities and/or first aid trained personnel
   b. First aid facility (or kit)
   c. Safety postings including OSHA poster and emergency phone numbers
   d. Safety Meetings
   e. Safety Inspections
   f. Accident Investigations
2. Safety rails and covers for openings
3. Fire protection program
4. Fire prevention
5. Street and sidewalk protection and maintenance
6. Special notices to utilities, adjoining property owners, etc.
7. Temporary water (installation, cost)
8. Temporary toilets
9. Temporary telephones
10. Temporary heat (Prior to enclosure)
11. Temporary heat (After enclosure)
12. Temporary power/light
13. Temporary ladders and temporary stairs, including access ramps and runways
14. Allocation of site storage space
15. Jobsite security fence
16. Temporary roads and parking area
17. Hoisting during construction
18. Hoisting after structure is complete
20. Final clean-up and window washing
21. Road and street cleaning
22. Street repairs
23. Main building permit
24. Sidewalk or street use permit
25. Approach and driveway permits
26. Insurance and bonds
27. Performance and payment bonds
28. Jobsite sign
29. Watchman
30. Offices and sheds, owner-architect and contractor
31. Testing
    a. Compaction
    b. Concrete
    c. Other materials

SAFETY MEETING REPORT

JOB _____ DATE _____

PERSON CONDUCTING MEETING _____

Signatures of Company Employees in Attendance

_____ _____

_____ _____

Others in Attendance _____

Topic Discussed _____

_____ _____

_____ _____

Suggestions Made _____ _____

_____

_____

Comments _____

_____

_____

Report prepared by _____

Warnings issued: List names and/or companies.

_____

_____

_____

_____

(COMPONENT H)

SAMPLE INCENTIVE PROGRAM—I

EVERYONE HAS HEARD OF A COLOR CALLED SAFETY GREEN.

NOW _____ COMPANY ANNOUNCES!

GREEN FOR SAFETY $$$$$$$$$$$$$$$$$$$$$$$$$$$$$$

_____ Company has always maintained a strong commitment to construction safety.

In order to highlight the importance of working safely and to reward field personnel, we are initiating a safety incentive plan. For every month during which there are no lost time injuries, a drawing will be held for a $500 U.S. Savings Bond.

For any consecutive 6 month period, an additional drawing will be held for a $100 U.S. Savings Bond. If the entire workforce remains free of injury for 12 consecutive months, a drawing will be held for a $500 U.S. Savings Bond!

Additional contest rules are as follows:

1. A lost time accident is defined as injury or job related illness that results in time lost beyond remainder of the day in which the injury occurred.
2. The requirement for promptly reporting injuries does not change. The company will continue its policy of requiring medical treatment for even minor injuries. As long as no time is lost beyond the day of injury, minor injuries and medical treatment will not affect the contest.
3. All field personnel are eligible for the drawing. The names of all employees on the payroll as of the last reportable payroll period of the month will constitute the base for the drawing. The award winner, or reason there was no drawing, will be announced in a payroll stuffer.
4. The award of any 6 month or year prize automatically starts the new time requirements for future prizes.
5. The company reserves the right to discontinue the program if it is not effective in controlling accidents.

A safe construction company is an efficient and competitive one. We believe attention to safety is important to the overall well being of the company and all of its employees. We hope this contest will serve as a reminder to all of us that *doing it right is doing it safely!*

Please feel free to contact me if you have any questions. I am looking forward to presenting these prizes.

Sincerely:

_____

President

SAMPLE INCENTIVE PROGRAM—II

THINK SAFETY—A SAFETY MESSAGE TO ALL EMPLOYEES

One of our prime concerns is to provide a safe and healthful work environment for all employees. Cooperation among all employees practicing carefully prepared principles of safe operation is the key to the success of the company safety program.

People make mistakes and on a construction job, mistakes are dangerous. Giving safety a good bit of our attention means safety conscious employees and safer projects. This can be accomplished through an extensive program to promote safety on and off the job.

It is our intention to establish a program to recognize exceptional safety performance. We have established two safety incentive programs designed to keep safety foremost in everyone's mind. They are the 6,000 Hour Club and the Quarterly Safety Award Program which will both add new meaning to the words "Safety Pays."

6,000 HOUR SAVINGS BOND AWARD PROGRAM

We have developed an innovative safety incentive program for non-supervisory field employees. The purpose of this program is to reward those employees who have made special effort to work safely as an individual and a team. The following guidelines will determine eligibility:

1. The employee must work the minimum hours without a reportable injury (defined as one which requires off-site medical attention.)
2. If the employee suffers a reportable injury, the eligibility hours start again at zero.
3. Employees returning to work after a layoff of less than 1 year start with their pre-layoff hours. Employees off for one year or more start at zero.
4. When an employee has reached a prescribed level of hours without injury, an award will be made.
5. Once an employee has reached 6,000 hours, the hours are zeroed out and the accumulation starts over.

Award levels are:

Number of Injury Free Hours	*Award*
1,000 hours	$50 U.S. Savings Bond
2,000 hours	$200 U.S. Savings Bond
4,000 hours	$500 U.S. Savings Bond
6,000 hours	$1,000 U.S. Savings Bond

QUARTERLY SAFETY AWARD PROGRAM

Effective immediately, employees of any project who have completed three consecutive months without a medical or lost time injury will be eligible to receive an award of their choice from the following list:

1. _____
2. _____
3. _____
4. _____

(Possible awards include baseball caps, T-shirts, key rings, belt buckles, coffee mugs, etc. all with suitable company logos or safety message)

This program is intended to recognize employees for their individual and team safety records and to encourage safety on all sites.)

American
Dental
Association

ADA.

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(202) 898-2400
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July 10, 1997

The Honorable Jim Talent
Chairman
House Small Business Committee
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

Thank you again for the opportunity to testify before your committee regarding OSHA's draft safety and health program standard.

During my June 27 testimony, Mr. LaFalce asked me about perceived dental coverage inadequacies and expressed his concern that the American Dental Association did not support President Clinton's 1993 health reform initiative. Because I did not have ample time to respond completely at the hearing, I would like to do so for the record.

First, neither the Association nor its dentist members determine the scope of dental coverage, which primarily is available to individuals and families through employment, though not all employers choose to offer it. Coverage may range from minimal to comprehensive depending to a great extent on how much employers and employees are willing to spend for prepaid dental care.

The Association last year provided every Member of Congress and staff information about dental plans available to them as federal employees. We expect to follow up later this year with a more comprehensive analysis of dental coverage in the Federal Employees Health Benefits Program.

Second, with regard to the Clinton Administration's reform proposal, the Association requested that dentistry not be included in the basic benefits package on the basis that individuals who are able to pay, should pay for their own dental coverage. At the same time, the Association advocated and continues to advocate support for those individuals unable to afford coverage, particularly children.

You may direct further inquiries to me or Michael Graham in our Washington Office. It is a pleasure working with you and your staff.

Sincerely,

Gary Rainwater

Gary Rainwater, D.D.S.
President

GR:dim
cc: Mr. Jim Hale, Counsel, House Small Business Committee

U.S. Department of Labor

Chief of Staff to the
Secretary of Labor
Washington, D.C. 20210

The Honorable James Talent
Chairman
Committee on Small Business
U.S. House of Representatives
Washington, D.C. 20515

Dear Chairman Talent:

I write regarding the committee's invitation to Acting Assistant Secretary for Occupational Safety and Health Greg Watchman to testify on June 26th on OSHA's forthcoming proposed health and safety program standard.

Acting Assistant Secretary Watchman is pleased to appear before the committee to provide testimony and to respond to any questions the committee members may have concerning this issue. Tradition and protocol have always permitted Assistant Secretaries, be they confirmed or acting, to be the first witness at a hearing to provide Administration views on policy before the Congress. It is my understanding that you propose to reverse that order at the hearing on the 26th and hear testimony from outside witnesses prior to Acting Assistant Secretary Watchman addressing the committee.

The Department would appreciate your affording Acting Assistant Secretary Watchman the courtesy of being the first witness. We do appreciate your desire to have Acting Assistant Secretary Watchman hear and respond to the testimony of outside witnesses. To insure that this occurs, he is willing to remain at the hearing throughout the testimony of other witnesses and be available to the committee for any additional questions they might want to ask him after hearing the outside testimony.

We very much want to cooperate in working with you and members of your committee to resolve public policy issues in as timely and effective manner as possible. I appreciate your attention to this request and am available to discuss this matter with you further if you desire. I can be reached at 219-8271.

Sincerely,

Theodore Mastroianni
Chief of Staff

cc: The Honorable John J. LaFalce

EXHIBIT III-1. Worker Protection Program Success Stories*

COMPANY NAME	DESCRIPTION	SUCCESS MEASURE(S)	KEY ASPECTS OF PROGRAM
Rome Cable Company	Rome, NY cable manufacturer; not unionized	Accident rate fell from 2 times to one-half industry average $500,000 annual savings in workers' compensation costs Lower absenteeism Fewer product defects Better employee morale	Created a collaborative team atmosphere; empowered employees to take responsibility for safety
Mack Truck Power-Train Plant	Hagerstown, MD power-train manufacturer; unionized (UAW)	One of the lowest accident rates of any Mack Truck plant Number of lost-time accidents and lost workdays dropped from 100 and 1,200 in 1987, respectively, to 36 and 950 in 1990	Joint committees established in early 70's Recently developed ergonomics program

* The worker protection programs implemented by these employers may not be identical in all respects to the programs mandated by the States; however, all contain at least some of the elements of such programs.

Exhibit III-1. Worker Protection Program Success Stories* (continued)

COMPANY NAME	DESCRIPTION	SUCCESS MEASURE(S)	KEY ASPECTS OF PROGRAM
Cuddy Farms	London, Ontario chicken processing plant; 750 workers; unionized	From 44 workers per month disabled to none since August 1991 Program cost $1,000,000 but returned $6 for every dollar spent Increased efficiency has reduced overall operating costs to pre-1986 levels	Ergonomics program Job safety analysis "Early warning" system Extensive, multi-lingual training
International Nickel Company	International mining company with tens of thousands of workers worldwide; Sudbury, Ontario plant; unionized	From the 1960's on, experienced 20 fatalities per year; since implementation of program in 1978-79, an estimated 400 lives have been saved	Joint committees OSH programs
Tile Technology Roofing Company	Tacoma, WA roofing company; non-unionized	Workers' compensation premiums declined by 18 percent in first year of program	Joint employee-employer safety and health committees; weekly safety and health meetings; coordinated training; written safety and health policies

* The worker protection programs implemented by these employers may not be identical in all respects to the programs mandated by the States; however, all contain at least some of the elements of such programs.

Exhibit III-1. Worker Protection Program Success Stories* (continued)

COMPANY NAME	DESCRIPTION	SUCCESS MEASURE(S)	KEY ASPECTS OF PROGRAM
Pella/Rolscreen Company	Des Moines, IA manufacturer of windows, doors, sunrooms, and skylights	Reduced workers' compensation losses by 66 percent from 1987 to 1990; claims fell by $1 million between 1989 and 1991 Recordable injury rate dropped from 16.1 per 100 workers in 1987 to 4.78 per 100 in 1991 Productivity increased	National Safety Council consultation program used to develop company's safety program Safety is first order of business at all gatherings, from shareholder meetings to weekly plant reviews Training and education Enforcement of PPE requirements Ergonomics program Increased information exchange and participative management style
Mecklenburg County Engineering Department	County department with 200 employees covering such activities as drainage and landfills	Reduced work-related injuries by 60 percent over 5 years Annual workers' compensation costs reduced from over $50,000 in 1985 to $15,448 in 1990	Tool box safety meetings Safety teams (team assigned by management was not successful, but team selected by workers was successful in enhancing safety)

* The worker protection programs implemented by these employers may not be identical in all respects to the programs mandated by the States, however, all contain at least some of the elements of such programs.

Exhibit III-1. Worker Protection Program Success Stories* (continued)

COMPANY NAME	DESCRIPTION	SUCCESS MEASURE(S)	KEY ASPECTS OF PROGRAM
3M Company	Large diverse firm with 120 manufacturing locations in the United States	Plants with most fully developed and implemented programs reduced OSHA recordable incident rate by 43 percent	Job site analysis
Sierra Chemical Company	Reno, NV firm; program emphasizes trucking operations	No accidents in 2-year period Program costs $20,000 per year, but more than pays for itself in terms of accident repairs, insurance, and lost time avoided	Truck drivers are paid for 30 minutes every day to inspect vehicles and report on results before driving vehicle
Barden Corporation	Dansbury, CT firm	Workers' compensation costs cut 16 percent between 1988 and 1990 Claims down from $500,000 to $18,000	Safety incentives program Training Safety meeting and communiques

* The worker protection programs implemented by these employers may not be identical in all respects to the programs mandated by the States, however, all contain at least some of the elements of such programs.

SMALL VPP FACILITIES IN NEW YORK

Thirteen of the 29 VPP sites in New York State have fewer than 250 employees. Four of the sites are represented by unions. Altogether they employ 1,488 people.

Collectively in 1996 these sites have lost workday case rates that are 52% below and injury rates that are 65% below the averages for their industries. Using OSHA's Office of Regulatory Analysis figure of $27,000 for the direct and indirect cost of each lost workday case, these sites saved $837,000 by avoiding 31 cases that should have occurred had they been average for their industries.

Six of these sites had no lost workday cases at all in 1996. Three had no recordable injuries at all.

The sites are Mobil Chemical Company's Commercial Films and Technical Center in Macedon; Tenneco's Canandaigua and Canandaigua Pilot plants in Canandaigua and Flexible Packaging plant in Macedon; American Ref-Fuel's plants in Hempstead and Niagara Falls, Adirondack's Hudson Falls plant; International Paper's Oswego Mill; Corning's Precision Molding and Machine plant in Corning; Lafarge Gypsum's plant in Buchanan; Occidental Chemical Company's Technical Center in Grand Island; and Torcon Construction Company's site in Suffern.

All these facilities have demonstrated that managed safety and health programs with substantial employee involvement in them provide effective worker protection.