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HIGHLIGHTS OF CURRENT REPORT

A FISCAL 1981 APPROPRIATIONS bill for the Occupational Safety and Health Administration is approved by the House, with an amendment restricting job safety and health inspections of small companies having a better-than-average safety record. The measure, part of the overall appropriation for the Departments of Labor, Education and Health and Human Services, provides funding of \$207.6 million to OSHA and \$81.2 million for the National Institute for Occupational Safety and Health (p. 357).

OSHA'S ACCESS TO MEDICAL RECORDS rule fits the definition of a standard and therefore must be reviewed by a federal appeals court, the U.S. District Court for the Western District of Louisiana says in dismissing an industry suit brought against the OSHA rule. The court also rejects the Louisiana Chemical Association's request for a preliminary injunction, which if granted would have barred the rules from taking effect September 4, as scheduled (p. 357).

THE STEEL INDUSTRY WITHDRAWS its request to the Supreme Court for review of OSHA's 1976 standard on coke oven emissions, a rule which the Court earlier agreed to review. A spokesman for the American Iron and Steel Institute said the group is withdrawing its appeal because its member companies are installing, or making commitments to install, the required engineering controls. But the spokesman says the Supreme Court's July 2 ruling on the benzene standard also was a factor in AISI's decision to withdraw (p. 358). The same group also appeals a district court ruling on OSHA's cancer policy (p. 358).

CONFLICTING DEMANDS AND duplicative requirements are sometimes imposed on industry by federal regulation, the Congressional Research Service says in a preliminary report released by the Joint Economic Committee August 25. The informal study of eight sectors of the economy found that 27 different agencies regulate the iron and steel industry, and that there are more than 300 health programs run by the Federal Government (p.

368). Finding more productive ways to meet safety and health regulatory goals would be one of the tasks of President Carter's proposed Economic Revitalization Board, the White House says August 28 (p. 359).

AGRICULTURAL WORKERS should not be covered by OSHA rules on access to medical and exposure records, agricultural employers say in comments submitted to OSHA. The agency is seeking information on whether its May 23 rule, now applicable to general industry, maritime, and construction employment, should be extended to agricultural workers. Groups representing workers urge OSHA to include farm workers, stating that compliance is feasible (p. 360).

ASBESTOS INDUSTRY representatives and the president of the asbestos workers union call for full-scale hearings on a bill to set minimum federal standards for compensation of asbestos-related disease. The measure, introduced by Senator Gary Hart (D-Colo), would provide a system for dividing compensation costs between "responsible parties" including employers, manufacturers, and in some cases the Federal Government (p. 361).

RESPIRATOR MANUFACTURERS are asked by the National Institute for Occupational Safety and Health to submit data on the effectiveness of air-purifying respirators in filtering air contaminants, particularly carcinogenic agents. Information submitted by industry will be used to study the ability of the respirator's filter to screen carcinogenic substances during the whole period of use, and to study the face fit of certain types of respirators (p. 361).

INDUSTRIAL CHEMISTS will have an increasing responsibility to inform the public of risks posed by chemical products, a responsibility which may place chemists' loyalty to employers in conflict with their obligation to society, the 2nd Chemical Congress of the North American Continent is told (p. 366). . . Other conference speakers address the problems of the unexpected occurrence of chemical "bad actors" (p. 365) and the question of risk assessment (p. 364).

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Current Report

Legislation

HOUSE-APPROVED DOL APPROPRIATION INCLUDES LIMITATION ON OSHA AUTHORITY

The House approved August 27 a fiscal year 1981 appropriation for the Occupational Safety and Health Administration of \$207.6 million, the same amount recommended by the House Appropriations Committee. At the same time, it added a floor amendment restricting job safety and health inspections of small companies having a better-than-average safety record.

The money bill (HR 7998) provides a total appropriation for fiscal 1981 of \$84.55 billion for the Departments of Labor, Education, and Health and Human Services. Approval was by a vote of 320 to 83.

Besides \$207.6 million for OSHA, the bill includes \$81.2 million for the National Institute for Occupational Safety and Health and \$7.8 million for the Occupational Safety and Health Review Commission (Current Report, August 28, p. 341).

House passage of the appropriation measure came two days after it considered and passed a bill (HR 3904) amending the Employee Retirement Income Security Act without the three nongermane amendments tacked on by the Senate in July (Current Report, August 28, p. 342).

The OSHA rider to the ERISA bill would have permanently amended the Occupational Safety and Health Act to exempt small businesses with better than average lost workday rates from routine OSHA safety inspections.

The second nongermane amendment would have transferred jurisdiction over stone, sand, and gravel surface mining operations from the Mine Safety and Health Administration to OSHA while the third affected affirmative action requirements for small federal contractors.

On August 25, the House approved the closed rule adopted August 21 by the House Rules Committee under which the three nongermane amendments were stripped from the ERISA bill.

Elimination of the OSHA and MSHA riders from the ERISA bill thus lead the way for consideration of these provisions in connection with the Department of Labor appropriation measure.

Consideration on House Floor

During floor consideration, Representative Beverly Byron (D-Md) proposed the amendment that would prohibit inspections of any employer with 10 or fewer employees that is included within an industrial category having an occupational injury lost work day case rate that is less than the national average as published by the Bureau of Labor Statistics. The small companies would be categorized under the Standard Industrial Classification Code.

Strong opposition was voiced to the Byron amendment, which finally passed on a 225 to 178 vote. Chairman Joseph Gaydos (D-Pa) of the Education Committee's Subcommittee of Health and Safety first raised a point of order against the Byron proposal but was overruled by the chair. He then argued that this restriction would exempt from some of the current OSHA provisions about 2.3 million workplaces, or 53 percent of the total presently covered under the Act. Gaydos said this would reduce the protection now afforded some 7.7 million workers, or 12 percent of those now covered.

Representative John Erlenborn (R-Ill) favored the amendment and said that present appropriations allow inspections

of only 2 percent of the nation's work areas relatively free of danger, representing almost half of the country's plants. Thus, he argued, 4 percent of the more dangerous places could be inspected in a single year.

Other floor amendments added to the appropriations bill included language prohibiting the Mine Safety and Health Administration from applying regulations under the Federal Mine Safety and Health Act of 1977 to operations engaged in the surface mining of stone, clay, sand, gravel or colloidal phosphate. These operations would come under the jurisdiction of OSHA.

Rejected by the House was a proposed amendment to prohibit OSHA's use of funds to acquire ex parte inspection warrants. The vote was 85 against the 22 in favor of the amendment.

Also rejected was an amendment that sought to reduce the appropriation for OSHA by \$25.69 million.

AFL-CIO, Chamber Reactions

G. John Tysse, director of labor law, U.S. Chamber of Commerce termed the House action on OSHA "another positive sign that Congress is becoming aware of bureaucratic excesses and is taking steps to allow American business to operate efficiently and free of overburdening government controls."

However, an AFL-CIO spokesman told OSHA that it was "very distressed about this amendment and plans to fight it in the Senate and in conference."

Litigation

MEDICAL RECORDS RULE IS STANDARD, DISTRICT COURT SAYS IN DISMISSING CASE

A district court judge in Louisiana August 29 dismissed an industry suit over the Occupational Safety and Health Administration's access to medical and exposure records rule, stating that review of the rule belongs in the courts of appeal.

The ruling in *Louisiana Chemical Association v. Bingham* (No. 80-1178) dismissed a case brought by an industry association representing some of the largest U.S. chemical companies, and four individuals who with the association sought a preliminary injunction barring OSHA from enforcing the rule. In dismissing the case, the judge also denied the request for preliminary injunction, resulting in a new effective date of September 4 for enforcement of the rules.

The access to records rule, announced by OSHA May 23 (Reference File, 31:4501) was challenged by the industry group in both the U.S. District Court for the Western District of Louisiana and in the U.S. Court of Appeals for the Fifth Circuit (Current Report, August 7, p. 263).

An attorney for the industry group said that although no firm decision had been made, it is "likely" that the group will appeal the ruling.

The district court challenge was initiated, according to industry briefs to the court, because of industry's contention that the OSHA rule is not a standard, as defined in the Occupational Safety and Health Act of 1970, and thus was not limited to review by an appeals court, as prescribed by the Act.

However, in his ruling, Judge Earl E. Veron defined an occupational safety and health standard, found that the medical

records rule met the definition, and concluded "jurisdiction over this suit properly lies in the courts of appeal."

Two 'Essential Qualities'

According to the ruling, Congress intended an occupational safety and health standard to possess two qualities: "(1) it must address a particular hazard existing in a work environment; and (2) it must establish a measure against which the condition existing, or the practices, means, methods, operations or processes used in a work place may be compared for an immediate determination of whether the work place is safe with respect to the hazard addressed by the standard."

In identifying the "two essential qualities" of a standard, the court said it rejected industry's definition that a standard must regulate the physical environment of the workplace. The court said that it was Congress' desire to give OSHA the authority to require employers to adhere to certain administrative procedures, or practices, designed to reduce hazards.

"OSHA contends that the rule prescribes a practice designed to reduce the risk presented by a denial of access to employer medical records," the court said. "We find that the denial of access to medical records may fairly be considered a practice. The rule in question addresses the hazard posed by a denial of access and prescribes an alternative practice designed to reduce it."

The court ruled that it was not necessary for it to determine if denial of access to medical records actually posed a hazard to employees. To decide the jurisdiction question, the court said, it was sufficient to know that OSHA wrote the rule "with what could reasonably be considered a hazard in mind."

"The importance of medical records to the maintenance of good health cannot be denied," the court wrote. "To find that the denial of access to medical records poses somewhat of a hazard is therefore not unreasonable." The court continued that while it would be up to the appeals court to decide whether denial of access is indeed a hazard, "We simply find that for jurisdictional purposes the rule addresses a hazard and thus possesses one of the two essential qualities of a standard."

The court also found that Congress specifically intended that standards be reviewed in appeals courts both to focus in those courts judicial expertise in occupational safety and health and to reduce the number of potentially conflicting rulings "which might otherwise impair the activities of an agency having national responsibilities."

Rule Effective

The access to records rule, originally scheduled to take effect August 21, was administratively stayed by OSHA until September 4 for members of the Louisiana Chemical Association, pending the judge's ruling on the request for preliminary injunction (Current Report, August 28, p. 341). An OSHA attorney said no request for extension of the stay had been received from LCA.

This ruling will appear in a future Decisions issue.

Litigation

STEEL INDUSTRY GROUP WITHDRAWS REQUEST FOR HIGH COURT REVIEW OF COKE OVEN RULE

The American Iron and Steel Institute August 26 withdrew its petition to the U.S. Supreme Court asking for review of the Occupational Safety and Health Administration's coke oven emissions standard, a rule the Court earlier agreed to review.

A spokesman for the industry group said the case was dropped because most of the institute's member companies, in the years that legal appeals of the standard have been pending, have installed required engineering controls or made commitments to install the necessary equipment.

But the spokesman added that the Court's ruling in OSHA's benzene standard, handed down the same day as the decision to grant certiorari in the coke oven case, also was a factor in AISI's decision to withdraw the case. The Court, on July 2, upheld a circuit court of appeals ruling vacating OSHA's benzene standard (Current Report, July 10, p. 147).

In the Supreme Court's benzene ruling (8 OSHC 1586), the plurality opinion held that OSHA must show that a "significant risk" exists that a new health standard will alleviate. The Court noted that in writing the coke oven standard, OSHA calculated that 21,000 exposed coke oven workers had an annual excess mortality of 200, and that the proposed standard "might well eliminate the risk entirely."

Industry officials declined comment on whether the coke oven standard met the "significant risk" requirement, and thus might be upheld by the Court, and merely stated that the benzene ruling was one of "various reasons" in the decision to drop the coke oven case.

The standard, issued by OSHA in October 1976 (Reference File, 31:8338), was upheld unanimously by the U.S. Court of Appeals for the Third Circuit in April 1978 (6 OSHC 1451) except for certain portions of the standard relating to research and development and quantitative fit testing of respirators.

AISI and Republic Steel Corporation petitioned the Supreme Court in December 1978 to review the lower court ruling, but granting of certiorari was delayed pending disposition of the benzene case.

USWA 'Pleased'

Spokesmen for both AISI and the United Steelworkers of America agreed that steel companies are not yet in full compliance with the OSHA standard, although Michael Wright, USWA industrial hygienist, said the compliance rate is "gradually improving."

Adolph Schwartz, director of the union's safety and health department, said in an August 26 statement that plant safety and health committees "would insist that the standard be met at all times."

Joe Odorcich, USWA vice president for administration, said the union is "pleased" with the industry's decision, and that the standard represents "a further step towards a healthy, hazard-free workplace." He added that the decision to withdraw "may have resulted from the recognition that the standard is quite reasonable."

Litigation

AISI APPEALS DISTRICT COURT RULING DISMISSING OSHA CANCER POLICY CASE

The American Iron and Steel Institute joined two other industry associations in appealing to the U.S. Court of Appeals for the Fifth Circuit a lower court ruling on the Occupational Safety and Health Administration's cancer policy.

The August 27 appeal, consolidated with the appeals of the American Industrial Health Council and the American Petroleum Institute, was in response to an August 5 ruling by Judge Carl O. Bue, Jr. of the U.S. District Court for the Southern District of Texas (8 OSHC 1789).

In his ruling, Judge Bue found that the OSHA cancer policy (Reference File, 41:7301) was "a nationally applicable standard addressed to regulation of toxic substances," and

therefore, reviewable in an appeals court, not a district court, as specified by law. Industry attorneys had argued that the cancer policy was not a standard, but merely a set of general, nonbinding regulations (Current Report, August 14, p. 285).

AIHC and API appealed the August 5 ruling immediately after its announcement.

Federal Agencies

OSHA ISSUES CORRECTIONS, ADDITIONS TO SAFETY AND HEALTH PROPOSED RULES

Corrections to the proposed amendments to regulations concerning basic program elements for federal employee safety and health programs were published September 2 by the Occupational Safety and Health Administration.

According to the OSHA notice (45 FR 58144), the corrections cover several provisions that were "inadvertently omitted" in the proposed revision. The proposed amendments originally were published by the agency August 15 (Current Report, August 21, p. 312, 323).

In addition to certain changes in regulatory wording, the corrections cover additions to the provision on the authority of the General Services Administration and other agencies, in particular the National Institute for Occupational Safety and Health. New language also is added to the section on the reporting of serious incidents.

Comments on these corrections as well as the original proposed amendments are to be submitted by September 15 to the Docket Officer, Docket No. F-002, Room S-6212, U.S. Department of Labor, Washington, D.C. 20210.

The OSHA corrections notice appears in the Full Text section of this Current Report.

Litigation

DENIAL OF EMPLOYER'S MOTION TO QUASH INSPECTION WARRANT IS NOT APPEALABLE

A district court's decision not to quash an Occupational Safety and Health Administration inspection warrant is not an appealable final order until the district court decides the question of civil contempt against the employer for its refusal to honor the warrant, the U.S. Court of Appeals for the Third Circuit ruled August 27.

This decision in *Establishment Inspection of Consolidated Rail Corporation* (No. 80-1079) required the appellate court to dismiss the employer's appeal for lack of appellate jurisdiction and let stand the district court's original ruling (7 OSHC 2015).

The case arose out of the employer's refusal to allow OSHA to conduct, pursuant to a valid search warrant, a full investigation of allegedly unsafe working conditions at the employer's Altoona, Pa., locomotive repair shop. The employer argued that OSHA did not have the authority to investigate locomotive plants because the Federal Railroad Administration was the sole regulator of locomotive safety. The district court which heard the argument, denied the employer's motion to quash the inspection warrant and held that the argument should be raised before the Occupational Safety and Health Review Commission in the event the employer is found to be in violation of Occupational Safety and Health Act standards. According to the district court, this would permit the development of a factual record before the jurisdiction issue was decided.

The district court then scheduled a show cause hearing on the issue of whether to hold the employer in contempt for its refusal to honor OSHA's inspection warrant. That show cause hearing was stayed pending the outcome of the employer's appeal.

The appellate court held that the district court's order, refusing to quash the OSHA inspection warrant, was not appealable until the district court decided the issue of whether to hold the employer in contempt for its refusal to honor that warrant. According to the appellate court, until such an adjudication is made, the employer still has the choice of purging itself of contempt or appealing the adjudication of contempt.

The appellate court in reaching its decision rejected all of the employer's attempts to place itself within the exceptions to the general principle of nonappealability of similar orders.

This decision, written by Circuit Judge Dolores K. Sloviter, who was joined by Circuit Judge Ruggero J. Aldisert and District Judge John B. Hannum of the U.S. District Court for the Eastern District of Pennsylvania, sitting by designation, will appear in a future Decisions issue.

General Policy

CARTER PROPOSES CREATION OF BOARD TO EXAMINE REGULATORY COSTS, BENEFITS

Making recommendations on means "for most productively meeting the goals of health and safety regulations" will be one of the tasks of President Carter's proposed Economic Revitalization Board, according to an August 28 White House announcement.

Carter announced the proposed creation of the board as part of his proposed "economic renewal plan" to increase industrial productivity and fight inflation over the next decade.

According to the President, the board would be composed of "some of the best leaders from American labor, industry, and the public." Proposed co-chairmen are AFL-CIO President Lane Kirkland and E.I. du Pont de Nemours & Company chief executive officer Irving Shapiro.

The board, Carter stated, would "address the long-range problems of balancing regulatory costs and benefits."

Senate Labor and Human Resources Committee Chairman Harrison A. Williams (D-NJ) applauded the Carter economic plan, and said his committee will hold hearings on it later this month.

Senate Republican Policy Committee Chairman John Tower (R-Texas) criticized the program, however, and said it fails to "address the problem of a growing federal deficit and excess government regulation."

Litigation

WORKER COMPLAINTS ABOUT OSHA STANDARD DO NOT SUPPORT ADMINISTRATIVE WARRANT

Complaints to the Occupational Safety and Health Administration from employees at a Georgia textile manufacturing plant that the OSHA standard which requires the wearing of respirator masks is oppressive will not support an administrative search warrant to inspect the plant, a federal court ruled August 28.

The U.S. District Court for the Northern District of Georgia for this reason quashed the OSHA inspection

warrant in *West Point-Pepperell, Inc. v. Marshall* (No. C80-160R).

The question considered by the court was whether probable cause for the search warrant exists when it is supported by employee complaints not directed against the employer for some noncompliance, but instead against OSHA's own regulation, citing the negative effects on employees that result from the employer's compliance. The Secretary of Labor in this case sought to inspect the plant to determine if the regulations in question are more restrictive than necessary, and presented the employee complaints as probable cause for the inspection.

The employer sought to enjoin the inspection because it amounted to a prohibited follow-up inspection of another citation currently under contest and pending before the Occupational Safety and Health Review Commission. The regulation in question, 29 CFR 1910.1043, requiring employees to wear masks commensurate with cotton dust exposure levels, is not presently being enforced, pending the completion of monitoring of cotton dust levels by the company.

U.S. district court Judge Horace T. Ward ruled in favor of the employer and granted the injunction because the need of OSHA to determine if its regulations are more restrictive than necessary is less weighty than the more commonly-invoked purpose of inspecting for dangerous working conditions. This purpose, the judge concluded, is insufficient to outweigh the employer's Fourth Amendment right to be free from unreasonable searches. The Secretary never alleged that the inspection was part of a neutral, general enforcement program that was broader in scope than the specific target establishment. Nor was there any evidence that specific violations were occurring.

In the absence of some alternate showing of administrative probable cause, the employee complaints about OSHA's respirator requirements are insufficient to support an inspection of the textile mill.

This ruling will appear in a future Decisions issue.

Recordkeeping

OSHA MEDICAL RECORDS PROVISION FOR AGRICULTURE WORKERS DRAWS MIXED REACTION

The Occupational Safety and Health Administration should not extend to agricultural workplaces the provisions of a new regulation permitting employee access to medical and exposure records, according to comments submitted by agricultural employers.

"The arguments advanced in support of the proposal in the preamble are spurious and do not support extension of the industrial requirements to agriculture," Vernie R. Glasson, director, national affairs division, American Farm Bureau Federation, told OSHA in comments filed July 23.

However, organizations representing agricultural workers, such as the AFL-CIO, took the position that the "overall provisions of the access standard are both necessary and appropriate for the protection of agricultural workers and that compliance is feasible for the agriculture industry."

The statements received by the agency were in response to OSHA's May 23 notice seeking information on whether or not farm employees and their designated representatives should be allowed access to relevant employer created or maintained medical and exposure records (45 FR 35298). The current final records access standard is applicable to employers in general industry, maritime, and construction,

but does not mention agricultural employers (Current Report, May 29, p. 1203).

In the initial notice, OSHA asked that comments be submitted by August 21. However, according to Patricia Buhl, senior project officer, office of health standards, the comment period is being extended to October 31 and a notice to that effect is expected to appear in the Federal Register on September 5.

Violation of Civil Rights

Under Section 1928.20(c)(3), union officials would be allowed access to health information without permission of the farm worker while Section 1928.20(e)(2)(i)(B) would allow employees to review records of other employees without permission. Both Glasson and Harold Scharp, operations manager of the Michigan Agricultural Services Association, Lansing, see these proposals as "violations of the right of employees to privacy" and something that "would expose employers to potential lawsuits."

Under the proposed regulation, employees would be allowed to see data concerning the chemicals used in agricultural operations which "in some instances," Glasson argued, "would violate the trade secrets and confidentiality of the agricultural employer."

Requiring health examinations as a condition of employment, which currently is required only in the state of California, "would virtually assure that farmers would not engage in medical surveillance in the future and would serve as a detriment, rather than an aid, to the employee," Scharp told OSHA in his August 15 comments.

Further, Glasson argued that requiring employers to maintain medical records for 30 years would place an "undue burden on agricultural employers." Instead, he suggested that the "records be given to the employee or his union and that they assume the responsibility for their maintenance."

As a final point, Scharp stated that the proposal "ignores the historical limitation" placed on OSHA inspections in the agency's annual appropriation measure and therefore, according to Glasson, "is in violation of the law" and "must be withdrawn immediately."

Great Need For Standard

Taking the opposite position, Margaret Seminario, industrial hygienist, department of occupational safety and health, AFL-CIO, maintained that statistically, agricultural employees are a "high risk occupational group suffering a disproportionate incidence of work related deaths and injuries" and that "few occupational groups" are in "greater need of such a standard and resultant protections than farm workers."

The National Association of Farmworker Organizations, according to Francisco Castellanos, national representative and Maria E. Mazorra, industrial hygienist, want worker access to the pesticide label and its directions for application since such information "is vital to the prevention of illness and disease."

Without such information, they argued, the farmworker is "denied the choice and right to refuse to work."

The AFL-CIO, according to Seminario, sees the proposed regulation as creating a barrier "for any individual or organization, besides a union, to gain access to records for a group of workers." Thus, she suggested that OSHA include in the final standard "language which would provide advocacy

groups, designated by farm workers as a group to represent farm workers interests, direct access to information, except confidential medical records."

As far as the AFL-CIO is concerned, the provision for agricultural workers contains two deficiencies that also are present in the final access standard for other industries, and which in fact have prompted the federation to take legal action (Current Report, May 29, p. 1203).

The federation wants both standards amended to allow designated representatives access to individual records with personal identifiers removed and union designated licensed physicians to be allowed to review medical information "for the purpose of conducting epidemiologic studies when good cause is shown."

Publications

GUIDE FOR SAFETY PROFESSIONALS FOR DEVELOPING PROGRAMS AVAILABLE

Modern Safety and Health Technology, a book intended to assist safety and loss control managers in their duties, is available from John Wiley & Sons, Inc.

According to the publishers, the book emphasizes the development of safety and health programs that conform to "modern management principles and practices." Topics include safeguarding machines and equipment, safety training, accident investigation, noise control, fundamentals of industrial hygiene, and concepts of accident prevention.

Author of the book is Russell DeReamer, data systems division manager for safety, industrial hygiene, and emergency control, International Business Machines Corporation.

Copies of the book are available for \$32.50 from John Wiley & Sons, Inc., 605 Third Ave., New York, N.Y. 10158.

Respirators

NIOSH SEEKS MANUFACTURER DATA ON AIR-PURIFYING DEVICE EFFICIENCY

Respirator manufacturers were asked to supply the National Institute for Occupational Safety and Health with "all data" regarding the effectiveness of air-purifying respirators in filtering out air contaminants, particularly carcinogenic agents.

The request came in a letter from Jon R. May, NIOSH special assistant for testing and certification, sent to respirator manufacturers the week of August 25.

May said the institute is "deeply concerned about the use of dust, fume, and mist respirators, and other air-purifying respirators, against carcinogenic substances." These concerns, he added, focus on two major issues:

- (1) The ability of the respirator's filter medium to screen out carcinogenic substances during the whole period of use.
- (2) The "questionable face fit" of some dust, fume, and mist respirators, particularly the single-use type.

Information requested of the manufacturers will be used in a study planned by NIOSH to resolve these concerns, May indicated.

Existing certification provisions in 30 CFR Part 11 permit the use of respirators with replaceable filters to protect the wearer against asbestos-containing dust and mists; dusts such as arsenic, cadmium, and chromium which are "suspected human carcinogens"; and the dusts, fumes, and mists of beryllium and radionuclides, which "can produce cancer," May stated. These provisions, he added, prohibit

NIOSH and the Mine Safety and Health Administration from rescinding approval "without appropriate administrative procedures."

However, according to May, NIOSH now believes that approval for the air-purifying respirators should be based on their "demonstrated effectiveness," and not on "a policy adopted when the carcinogenicity of certain chemicals and other substances was unrecognized."

Efficiency, Protection Factor

In his letter, May asked manufacturers to provide data on the efficiency of air-purifying respirators in "removing contaminants, particularly any data involving actual testing against carcinogenic agents," and information regarding the calculation of protection factors for their devices.

Excessive leakage of a substance such as asbestos into a respirator as a result of either ineffective filtration or a poor seal "is unacceptable and presents a potentially serious hazard to the wearer," May maintained. In such circumstances, the possibility that a respirator wearer may develop lung cancer or mesothelioma as a result of asbestos exposure "cannot be ignored," he stated.

The NIOSH official noted that 30 CFR 11.130(h) permits single-use respirators to be worn as protection against asbestos as a "fibrosis-producing dust." In light of current knowledge on the carcinogenicity of asbestos, this description of asbestos "can only be viewed as misleading," he asserted.

It is not NIOSH's position at the present time that "single-use dust respirators will provide adequate protection against the cancer causing potential of asbestos," May emphasized.

The NIOSH official noted that manufacturers having any questions about the request should write him at Room 8A-53, NIOSH, Parklawn Building, 5600 Fishers Lane, Rockville, Md. 20857, or call (301) 443-3680.

Workers' Compensation

ASBESTOS COMPANY, UNION CHIEFS CALL FOR HEARINGS ON HART PROPOSAL

The chief executive of the largest asbestos manufacturing company and the president of the asbestos workers union both called for full-scale hearings on S 2847, a bill to set minimum federal standards for asbestos-related disease state compensation claims, in testimony before the Senate Labor and Human Resources Committee August 27.

This bill, introduced in June by Senator Gary Hart (D-Colo.), establishes a voluntary minimum award of two-thirds the claimant's average gross weekly wage and provides a system to apportion the cost of the benefits among "responsible parties," including the employer, asbestos manufacturers, and in some cases, the federal government (Current Report, June 26, p. 96). Testimony on the bill was heard during committee hearings on occupational disease compensation (see related article in this issue).

John A. McKinney, chairman of the board of Johns-Manville Corporation, told the committee that the company believes S 2847 to be "a very positive step," and urged it to convene "full-scale legislative hearings devoted exclusively" to the bill. "The Asbestos Health Hazards Compensation Act of 1980 is by no means perfect," he said, "but it is a significant step forward, and I commend the bill to your attention."

In prepared testimony delivered by General Counsel Laurence J. Cohen, International Association of Heat and Frost Insulators and Asbestos Workers General President

Andrew T. Haas said the union is "wholeheartedly supporting" the bill. He asserted that "the approach embodied in S 2847 is the only approach which will provide adequate compensation to the hundreds of thousands disabled by asbestos-related diseases," and expressed his hope that the committee will schedule hearings on the bill soon.

No 'Bailout,' McKinney Claims

McKinney defended his company's support of the bill against what he said were claims that programs established by S 2847 would represent a "bailout" of employers who "knowingly" exposed workers to asbestos hazards. Denying that evidence exists to prove that Johns-Manville "knowingly" exposed its workers to the hazards, McKinney stated that the federal government, "at one point," asserted that shipyard workers were not employed in a hazardous occupation, and said that "prior to 1964, the medical profession was unclear as to the hazards to which workers handling products of less than 100 percent asbestos fiber were subject." He also said that no court has ever awarded punitive damages to asbestos-exposed workers seeking them against an employer.

"I can think of no greater demonstration that the coverage charge is a complete fabrication," McKinney concluded.

Describing backlogs in workers' compensation claims that he said drove workers to "law suits seeking to circumvent workers' compensation," McKinney said that the growth of such suits could lead to "a massive, perhaps even total, collapse of the basic 'social contract' underlying workers' compensation — the elimination of employee-initiated suits against their employers in exchange for a no-fault delivery of occupational injury compensation."

He praised provisions of the bill that would assure prompt delivery of benefits and expressed satisfaction that medical criteria for asbestos-related disease has been established and that improved work practices and products assured that the bill would apply to a "fixed worker population," i.e. those exposed during the 1940s, 1950s, and 1960s. He also expressed approval of the "dramatic" increase in benefits the bill would foster.

Haas lauded provisions of the bill that allow compensation to household members disabled as a result of another's occupational exposure and permit recipients of partial-disability benefits to re-apply for benefits as their conditions worsen. He also noted that benefits would increase as the income a worker would have earned increases.

Comprehensive Bill Delay

The union president supported the concept of comprehensive occupational disease compensation legislation, but asserted that "the problem of disability due to occupational exposure to asbestos cannot wait until" the "technical and political difficulties" surrounding such a law are resolved. He added, "Hundreds of thousands could die before Congress enacts a comprehensive occupational [disease] act." In lieu of a comprehensive bill, Haas stated, Congress should enact legislation aimed specifically at asbestos exposure. An asbestos-related disease bill could serve as a model for a future comprehensive bill, he offered.

Haas attacked many state compensation programs that he said afford workers few benefits for asbestos-related disability. He asserted that some state laws are drafted specifically to prevent such claims, noting that eight states place special restrictions on asbestos-related payments, eleven omit or "somehow qualify" benefits for asbestos-related partial disability, and seven states limit partial disability payments for occupational diseases.

He also noted what he said were prohibitive statutes of limitation for occupational-disease claims, and charged that

insurance companies rarely settle claims based on an asbestos-related disease. The result in some cases, he said, was financial ruin among families of his union's members, sometimes leading to suicide by the former wage-earner.

Hart Testimony

Hart told the committee that statistics confirm that asbestos-related disease will be "one of the most serious health issues to come before this Congress," saying that projected figures indicate that 17 percent of all cancers detected in the U.S. may be traced to occupational asbestos exposure.

He called his legislation a compromise bill, citing its support by portions of labor and business, and said that the specific provisions of the bill were less important than the "serious effort to solve a problem that we really have very little time left to solve." He urged the committee to join in the attempt to "review and rethink past positions and programs, and then go forward toward new, untried approaches," and invited contributions that would improve the bill.

Federal Agencies

POSTAL SERVICE SAID MAKING PROGRESS TO IMPROVE HEALTH AND SAFETY PROGRAM

The U.S. Postal Service is making "important progress" in its safety and health program, but there still is much to be done in order for the service to have a "model safety program," according to Carl C. Ulsaker, senior assistant postmaster general, employee and labor relations.

Ulsaker appeared before the House Post Office and Civil Service Subcommittee on Postal Personnel and Modernization August 26 to explain what the service has been doing over the past five months to upgrade its safety program.

In March, Postmaster General William F. Bolger outlined for the subcommittee the 14 areas where the service was making specific efforts to improve its safety and health program. Congressional concern for the safety of postal employees intensified following a fatal accident in December 1979 at the New York Bulk and Foreign Mail Center (Current Report, March 13, p. 953).

After the accident, Occupational Safety and Health Administration inspectors identified 12 serious safety hazards at the facility which contributed to the death of postal employee Michael McDermott (Current Report, January 24, p. 793). Subsequently, OSHA expanded its review of USPS's safety and health program to include five bulk mail facilities (Current Report, February 28, p. 908). At the New York bulk facility, Ulsaker reported that the workload has been reduced by a transfer of certain processing operations and that there has been an overall drop in the lost workday injury rate at all the bulk mail centers.

Management Taking Leadership Role

According to Ulsaker, top management is taking a leadership role in the safety area — something that OSHA said it found lacking in its inspections and termed a key contributor to the service's poor safety record. Safety engineer positions have been established at each of the five postal regions, and additional safety personnel have been proposed, and some hired, at headquarters.

Further, the postal official told the subcommittee that certain safety-related engineering equipment changes have been initiated, specific compliance control procedures implemented, and expedited procedures for investigating

employee reports of unsafe working conditions adopted. Safety training is being upgraded and expanded, he added.

Independent outside reviews by both Du Pont and the National Safety Council are in the works, Ulsaker reported, adding that in an informal, oral summary Du Pont also was critical of the "level of commitment to safety on the part of the Postal Service line management."

While attitudes in USPS "are not easily and quickly changed," Ulsaker promised that the "service is committed" to improving its safety program and "we believe that progress is being made."

'Lack of Understanding'

Basil Whiting, deputy assistant secretary of labor for occupational safety and health, described OSHA's role in connection with the service's program, reiterating that the agency's investigation "revealed a lack of understanding and commitment by some Postal Service management concerning the importance of worker safety and health as an integral part of their overall responsibility."

The prevalent attitude, Whiting asserted, appears to be one of "the mail must go through." While agreeing that the USPS "mission is a vital one to the country," Whiting added that "a safe and healthful working environment does not decrease productivity but rather enhances and increases it."

Support for HR 826

Both Ulsaker and Whiting expressed support for the provisions of a House bill (HR 826) which would put the safety and health of postal employees under OSHA jurisdiction. The bill was passed by the House October 22, 1979, and is expected to come up for action by the Senate when it reconvenes on September 3 following the Labor Day recess, according to Michael Hudson, subcommittee staff director (Current Report, October 25, 1979, p. 491).

However, Whiting declared that in this opinion, the bill *definitely should include a provision giving OSHA the authority to impose criminal penalties against postal officials for violation of safety standards.* Also, he stated that USPS should be exempt from Section 18 of the Occupational Safety and Health Act concerning the authority of states.

Subcommittee Chairman Mickey Leland (D-Tex), who recently assumed the position, said that he will be making the health and safety of postal employees a "priority item." He expressed hope that the postal service will "escalate its activities" in the health and safety area to make the changes which the committee members want to see to improve employee working conditions. The subcommittee is expected to hold further hearings on this matter, Hudson told OSHR, adding that they are tentatively scheduled for early September.

Workers' Compensation

SENATORS SEEK INDUSTRY COOPERATION IN DRAFTING OCCUPATIONAL DISEASE BILL

Charging that state systems have failed to compensate occupational disease victims adequately, Senators Jacob K. Javits (R-NY) and Howard M. Metzenbaum (D-Ohio) proposed August 26 that the insurance industry join with them to help draft federal legislation for a "fair and equitable compensation system."

The proposal came in remarks following testimony before the Senate Labor and Human Resources Committee on legislation to establish federal programs for disease compensation related to cotton dust, uranium, and asbestos exposure (Current Report, June 28, p. 96). The committee

heard insurance industry spokesmen, representatives of the Brown Lung Association, and Nik B. Edes, deputy undersecretary of labor for legislation and intergovernmental relations.

Criticizing insurance industry representatives for what he said was their persistent opposition to any piece of federal legislation that would change current compensation systems, Metzenbaum asserted, "It's time to sit down, work together, and draft some legislation." He called workers' compensation "a problem that cries out for solution" and noted that Congress had been "dealing with it for seven years."

When the industry spokesman, Andre Maisonpierre, of the Alliance of American Insurers, replied that convincing data on the extent of the problem does not yet exist, Metzenbaum told him, "I am formally requesting you to go back to your board of directors and tell them that the committee, or at least a portion of the committee, has proposed that we attempt to work out a piece of legislation."

He told Maisonpierre that, though current legislation may not pass this year or next, it will pass eventually, "because there is a need." Without industry cooperation, he maintained, the bill would be "stronger" and "tougher" than industry can tolerate, and would probably "make some mistakes" of overkill.

Olive Branch

Javits joined with Metzenbaum, saying that the current system is "just too unfair" and "there are just too many victims." He added, "We extend the olive branch."

Javits also criticized the Labor Department for slowness in completing its study of occupationally related pulmonary and respiratory diseases, which was mandated by Congress in 1977. "We want a definitive report with recommendations, and I think it's shocking that the best the Department of Labor can do is ask for more research, more time." If such a report is not forthcoming, he said, Congress will proceed with legislation without Administration guidance.

Javits was referring to a DOL interim report discussed in testimony by Edes. That report, which found that almost two million workers are severely or partially disabled as a result of occupationally related diseases and that only 5 percent of the severely disabled receive workers' compensation benefits (Current Report, July 10, p. 151), was contested by Maisonpierre.

He charged that the DOL report relied on "grossly inadequate material" to support "often-expressed preconceived biases against our state compensation laws." He challenged the sources of the report, which include a 1972 Social Security Administration survey and an interdepartmental workers' compensation task force study, as dated and limited in applicability.

Stating that there is no "empirical evidence" to substantiate claims that the workers' compensation system does not adequately meet the needs of workers suffering from occupationally related diseases, Maisonpierre recommended that Congress rely on the National Academy of Sciences to conduct "needed research programs," since the Labor Department had "demonstrated such lack of objectivity in the recent past."

Multiple Causation

Robert W. Flockhart, testifying for the American Insurance Association, asserted that the problem of multiple causation of disabilities makes the issue "a complex one that does not lend itself to definitive answers." He urged that Congress avoid creating "legal diseases" where no "sound medical evidence" establishes causation, and concluded, "It is in the best interest of all to allow the state legislatures and

the state workers' compensation administrators to continue to cope with and resolve these complex issues."

Brown Lung Testimony

Two representatives of the Brown Lung Association testified that workers are losing hope that fair compensation can be attained in the states and look to the Federal Government instead. Paul Cline, president of the association's Greenville, S.C., chapter and himself a victim of byssinosis, said that contested claims by insurance companies and the reluctance of textile industry-controlled physicians to diagnose brown lung cause most victims to receive less than adequate or no compensation for their disease.

He asserted that only two of 250 brown lung claims filed in South Carolina have been approved, and charged that the insurance companies "litigate us to death." Victims often are forced to accept a much lower settlement than they are entitled to, he said, just to avoid incurring additional legal expenses.

"The compensation laws of South Carolina," he continued, "work against all victims of occupational diseases. The burden of proof is on the sick worker, who lacks the resources to make a case without a lawyer. The industries have the money to pressure the politicians their way. Last year, the textile industry spent \$28,000 lobbying in Columbia against improving the occupational disease section of the law."

Cline cited a *Charlotte Observer* series indicating that 100 percent of brown lung claims are contested by insurance companies. He said jurisdictional confusion and vagueness concerning statutes of limitation in South Carolina ensure that even successful claims are delayed to such an extent that victims rarely collect.

Testifying on behalf of the Carter Administration, Edes said Congress should seek a list of possible compensable occupational diseases and substances causing the diseases, and then proceed to gather data to determine the potential costs of compensation.

It was his testimony that provoked Javits's attack on the department's slowness to react to the problem with solutions adoptable by Congress. Javits questioned the need for further research indicated by Edes, saying, "Research has killed more people, more ideas, more proposals."

The hearings were convened to hear testimony on S 381, the Brown Lung Disability Act of 1979, introduced by Senator Ernest F. Hollings (D-SC); S 1827, the Uranium Miners Compensation Act of 1979, introduced by Senator Pete V. Domenici (R-NM); and S 2847, the Asbestos Health Hazards Compensation Act of 1980, introduced by Senator Gary Hart (D-Colo).

Regulatory Reform

REGULATIONS SHOULD BE REASSESSED TO OPTIMIZE ODDS. CHEMICAL GROUP TOLD

LAS VEGAS — (By a BNA staff correspondent) — Because risks cannot be regulated away — and should not be — the Government should reassess its regulatory processes to optimize the odds in gambles taken, a speaker told the 2nd Chemical Congress of the North American Continent August 27.

"There is no such thing as zero risk," William D. Rowe, director of the Institute for Risk Analysis at American University, Washington, D.C., told participants at the meeting.

Instead, Rowe maintained, regulatory agencies must deal with the concept of societal gambles, both voluntary and involuntary.

"Preoccupation with optimizing risk loses sight of the broader goal of optimizing [the odds of] societies' gambles," he said.

As examples, Rowe cited the Occupational Safety and Health Administration and the Environmental Protection Agency, whose regulation of the acute effects of exposure to toxic substances breaks down when that regulation must deal with the issue of chronic exposure to such substances.

These agencies, and others with similar goals, lack the ability "to step aside and take a broader view," to make sensible choices on what should be regulated and what should not, Rowe added.

Rowe criticized the weighing of risk using dose-response relationships. He also criticized as inadequate the concept of zero risk as applied to substances known to be carcinogenic. There always will be risks in any society, Rowe maintained, adding that society must decide what risks are acceptable and must prioritize the actions it takes against risks to maximize the protection such actions afford.

"One must conclude that mechanistic, analytical methods cannot deal effectively with the imprecision and diversity of human values and the wide uncertainty in information," Rowe noted.

"Such analyses can sometimes help in structuring problems so that the broader risk questions can be addressed, including that of societal gamble for which the risk is undertaken. However, the decisions involving human values must take into account both the quality and quantity of life in total context."

Global Action Needed

Independent minimization of risk by one nation, geographic area, or agency may cause an unevaluated increased risk in another area, Rowe said. Citing lead poisoning, Rowe noted that both OSHA and the Department of Health and Human Services could regulate such exposure.

In the U.S., "institutional barriers are so well established that even reasonable considerations" of the cumulative effects or consequences of such actions "are not possible," Rowe added.

According to the speaker, the U.S. should establish a national plan outlining goals of the regulatory process. Congress and the regulatory agencies, however, are too enmeshed in reacting to short term or localized problems to undertake such a task, Rowe said.

He suggested that perhaps the Office of Technology Assessment or the Office of Science and Technology might be logical choices for undertaking such a planning effort on both a national and international scale.

"We, as a society, need to step back and look at the total gamble and reflect on what it is that is worth gambling for and what risks can be minimized in obtaining them," Rowe said. "Implementation is not easy, but recognition of need comes first."

Formaldehyde

STUDY OF EMBALMERS SHOWS NECESSITY FOR VENTILATION, NIOSH REPORT SAYS

Persons occupationally exposed to formaldehyde, such as pathologists and embalmers, should "be aware" of the need for proper ventilation, protective clothing, personal protective equipment, and periodic or continuous monitoring of airborne concentrations of the substance, the National Institute for Occupational Safety and Health advised.

The recommendation came in a report of a NIOSH health hazard evaluation concerning formaldehyde, in the August

22 issue of the Center for Disease Control's "Morbidity and Mortality Weekly Report."

Conducted at an embalming laboratory at an unnamed Ohio college of mortuary science, the evaluation was prompted by the early disability retirement of a 30-year old embalming instructor, the report stated. The instructor had developed asthmatic bronchitis after five years of laboratory exposure.

Positive histories of allergies were found by NIOSH among all four instructors working at the laboratory at the time of the health hazard evaluation, the report stated. The instructors were exposed to embalming fluids consisting of formaldehyde, phenol, unspecified preservatives, ketone, and ester solvents.

According to NIOSH, the exposure was on a daily basis for periods ranging from three to 12 years, and symptoms noted by the instructors during exposure periods included burning eyes and noses, dryness of the mouth and throat, coughs, headaches, and excessive secretion of tears.

NIOSH said that it took air samples for formaldehyde and phenol on two different days. On the first day, the ventilation system was not in operation — the institute said this was "not an unusual condition." Also, it noted, a "greater-than-usual number of bodies were embalmed" that day.

The second day's sampling took place while the ventilation system was in operation.

Concentration Exceeded Limits

Although phenol concentrations were found to be below the level of detection, the airborne formaldehyde levels analyzed the first day were above the Occupational Safety and Health Administration limit of three parts per million, NIOSH stated. Two samples for that day showed levels of 3.93 and 3.65 ppm, it reported.

On the second day, with ventilation and exhaust systems working properly, concentrations in all samples were below the OSHA limit, the report observed.

These findings show "the potential for overexposure to formaldehyde for embalmers when proper ventilation and exhaust systems are not operating," the report maintained.

CDC observed that formaldehyde gas has been linked with sensory irritation at levels of one ppm and below, while its inhalation at high levels has caused chemical pneumonitis, pulmonary edema, and death.

Also, it added, a 1979 chemical industry study indicated a "high incidence" of nasopharyngeal cancer in laboratory rats exposed to formaldehyde (Current Report, October 19, 1979, p. 471). NIOSH currently is conducting an occupational epidemiologic study "to help evaluate the human carcinogenicity rate due to formaldehyde exposure," the report said.

Health Hazards

UNEXPECTED OCCURRENCE OF 'BAD ACTORS' EMPHASIZED BY CHEMICAL CONGRESS SPEAKERS

LAS VEGAS — (By an OSHA staff correspondent) — At the second Chemical Congress of the North American Continent, an August 26 session devoted to "bad actors" showed that toxic chemicals can show up at unexpected times and places.

Reporting to a symposium on measurement and control of chemical hazards from special toxicants in workplace environments, Christoffer Rappe of the University of Umea, Sweden, presented a paper on occupational exposure to polychlorinated dioxins (PCDDs) and polychlorinated dihydrofurans (PCDFs).

Rappe said, "It is very important to distinguish between isomers of these compounds because they can differ markedly in their activity. For instance, 2,3,7,8-tetrachlorodibenzo-p-dioxin (TCDD) is one of the most deadly compounds known, with a lethal dose for 50 percent of an animal test population of one microgram per kilogram of body weight. On the other hand, 1,2,3,8-TCDD, although still toxic, has an LD-50 that is more than 10,000 micrograms per kilogram."

Because there are 75 possible PCDDs and 135 possible PCDFs, this fact can lead to considerable complexity, the scientist indicated. Rappe and his colleagues synthesize all of the compounds and are able to detect them individually by sensitive analytical techniques.

Rappe's studies and analysis showed that some of the most toxic of the compounds are also the ones most efficiently retained by animal organisms. He said no metabolites have been discovered for 2,3,7,8-PCDD. This is an indication that the body has no means of eliminating it, and it will stay and accumulate for indefinitely long periods.

An example of the apparent long-range persistence reported by Rappe was a seasonal exposure pattern among Swedish lumber workers. Pentachlorophenol as a wood preservative is used in Sweden only in the summertime, yet workers after six months of freedom from exposure had blood and urine levels of TCDD comparable to other workers newly exposed for a month.

Rappe said PCDDs and PCDFs are present as contaminants in the herbicide 2,4,5-T, in chlorophenols, and in the germicide hexachlorophene, although in hexachlorophene, he said he suspects another "bad actor," 1,2,4,6,8, 9-hexachloroxanthene, may pose more of a threat.

In a rundown of working populations at hazard, Rappe mentioned workers in chemical plants producing the contaminated bearer compounds, pesticide sprayers, nurses, and workers in sawmills, tanneries, textile plants, paper mills, and metal treatment.

Nitrosamines

David P. Rounbehler of the New England Institute for Life Sciences, Waltham, Mass., reported on work sponsored by the National Institute for Occupational Safety and Health on the occurrence of nitrosamines in industrial atmospheres.

Nitrosamines are readily formed by the reaction of amines with nitrogen oxide or nitrites, and Rounbehler concluded that the opportunities for formation of nitrosamines will probably result in their formation.

He described a very detailed study of tanneries for sources of nitrosamine contamination. One tannery visited had dimethylnitrosamine levels of 5.6 micrograms per cubic meter of air, although none of the processes currently used in the plant were obvious sources of contamination. Investigations showed that in times past a process using dimethylamine sulfate for dehairing hides was used.

Rounbehler conjectured that operation of forklift trucks or electric heaters could produce nitrogen oxide that could react to form nitrosamines. In any case, he said he found that wood floors sluiced down with water from the process in the past were still emitting the nitrosamines being found.

Health Hazards

STUDY OF AIRLINE EMPLOYEE HAZARDS BEING CONDUCTED BY NIOSH, PANEL TOLD

Respiratory, reproductive, and ergonomic problems are being investigated by the National Institute for Occupational Safety and Health in a study of possible hazards faced by airline flight attendants, a House subcommittee was told.

James M. Melius, chief of the NIOSH hazard evaluations and technical assistance branch, discussed the institute's plans August 16 in a hearing by the House Government Operations Subcommittee on Government Activities and Transportation on airline personnel safety and health.

According to Melius, the study resulted from a request by the Independent Federation of Flight Attendants, supported by other flight attendant unions, that "the occupational hazards their members face be thoroughly investigated." The request was made to the Occupational Safety and Health Administration, which in turn asked NIOSH for assistance, he said.

The first phase of the study will deal with attendants' respiratory problems, Melius told the subcommittee. The project probably will include a thorough evaluation of the available scientific literature, analysis of the substances to which flight attendants are exposed, an interview of a "representative sample" of employees regarding their symptoms and medical histories, and pulmonary function testing, he indicated.

Melius estimated that the study will take about one year. Similar protocols, he added, will be developed to evaluate reproductive and ergonomic problems.

OSHA and the Federal Aviation Administration also will be involved in the project, with FAA helping the institute to obtain the cooperation of airline companies for the study, the subcommittee was told.

'Hidden' Hazards

NIOSH became involved earlier this year with investigating occupational exposures to flight attendants when it was asked to investigate a rash nicknamed the "red sweat" that was reported by some flight attendants, Melius noted. The rash was traced to a red ink from flotation vests carried on some Miami to New York flights (Current Report, April 3, p. 1028).

The institute became more aware then of the potential hazards faced by flight attendants and of "their concern that no one was conducting research in this area," Melius said.

Many attendants, he added, "believe that what has been traditionally considered a short-term glamorous occupation carries with it hidden health and safety hazards."

Frequent respiratory problems are reported by attendants, including coughs, chest pains or tightness, and palpitations, Melius commented. They also have noted "what seems to be an increasing prevalence of reproductive problems," such as menstrual difficulties, miscarriages, and birth defects, he said.

Headaches, swollen ankles, back pain, and other musculo-skeletal problems are reported as well, he continued.

Some working conditions that could account for these problems, the subcommittee was told, include:

- ▶ Time spent at high altitudes, resulting in increased exposure to radiation and ozone.
- ▶ Exposure to carbon monoxide, hazardous components of jet exhaust, and cigarette smoke.
- ▶ Frequent changes in cabin pressure.
- ▶ Exposure to an atmosphere of low humidity, continual vibration, and noise.
- ▶ Frequent time zone and schedule changes.
- ▶ Lifting and moving of heavy objects in confined quarters.

Few studies are available that evaluate the specific exposures received by flight attendants and attempt to correlate the exposures with symptoms reported by the attendants, according to the NIOSH official.

Ground Crews

NIOSH currently is gathering information on health and safety problems experienced by airline ground crews, Melius said. This information will be used to compile a report requested by the Government Operations Committee, he added.

Some findings by NIOSH, he said, are these:

▶ Considerable potential for accidental injury and death exists for ground crews. These include injuries due to baggage handling, hazardous material transport, fuel handling, motor vehicle traffic, and jet exhaust.

▶ Most ground crew workers are exposed to noise levels "well above" current OSHA limits.

▶ A variety of chemicals from jet fuel and exhaust may pose problems, including hydrocarbons, polynuclear aromatics, particulates, and carbon monoxide.

▶ Ground crews are exposed to radiation during maintenance operations and from radar and other sources at airports.

▶ Cold stress and heat stress may result from weather conditions in which ground crews work.

These findings emphasize "the need for the monitoring and regulation of occupational exposures and for further research . . . to assure that ground crew workers are adequately protected," Melius asserted.

Chemicals

WARNING RESPONSIBILITY TO FALL ON CHEMISTS, CONFERENCE SPEAKERS SAY

LAS VEGAS — (By an OSHR staff correspondent) — The professional responsibility of reporting risks posed by chemical products increasingly will fall on front-line chemists, placing their loyalty to their employer and their obligation to society in direct conflict, speakers told an August 26 symposium at the 2nd Chemical Congress of the North American Continent.

Speakers from organizations as diverse as the Conservation Foundation, a law firm, a medical school, and a research laboratory weighed the responsibility of chemists to society during the three-hour long symposium.

Richard Cooper, an attorney with the Washington, D.C., law firm of Williams and Connolly and former general counsel for the Food and Drug Administration, told the symposium that the time is approaching when federal agencies may disqualify scientists who do not disclose risks associated with their products or scientific findings.

Such disqualification would prohibit the scientist from working on any project to develop data to be submitted to the disqualifying regulatory agency, Cooper said. Taking such an action could have strong professional and economic consequences for the disqualified scientist, he added.

With regulatory trends seemingly pushing federal agencies toward such action, it might behoove professional groups like the American Chemical Society to formulate a professional code that would preclude such federal action, Cooper advised.

Cooper, like other speakers at the symposium, criticized scientists' unwillingness to take part in the federal regulatory process and their incautious speaking to the public or the media, citing statistics while omitting the qualifying data. Scientists also lack an understanding of the regulatory process, and try to impose the criteria of scientific sufficiency of data on the regulatory community, whose goal is to protect the public before it is harmed, Cooper maintained.

Scientists also allow themselves to be used, Cooper said. Virtually every test to determine the safety of a substance is flawed in some way, he maintained. The real issue, which scientists often are unwilling to address, is whether the results are applicable in a real life situation, Cooper said.

Cooper also cautioned scientists to "be careful with numbers," explaining that they take on a life of their own and will be cited and quoted out of the context in which they are given.

Little Guidance

In the same vein, Sam Gusman, of the Conservation Foundation, Washington, D.C., told the symposium that the Chemists' Creed, adopted by the American Chemical Society in 1965, "now appears to offer little guidance" for chemists involved in developing new substances or new uses for existing ones.

He cited the case of the university professor who wants his students to work with a substance that might be dangerous and the case of the industrial chemist who knows that a product of his firm is an analogue to a highly toxic substance.

In such cases, the responsibility to society and to the employer, and sometimes to pure scientific research, differ, Gusman noted.

"There is a gray area regarding responsible action," Gusman said. "There is no consensus" on what a scientist should do in cases of such hazards and this "is hurting the chemists' professional respect" among the public.

The chemist tends to strive for extreme excellence in scientific research, often refusing to consider the effect of such dogmatism on public health and welfare, Gusman said. The need for professional recognition, and obligations to employers tend to allow such scientists to sidestep the need for social responsibility, he added. "Then the government makes a regulation and the chemist must obey the law . . . no easy task."

Uncomfortable Area

Gusman also offered many reasons for the chemist's discomfort with the regulatory sphere. Like Cooper, he noted that scientists like to speak on an issue only when 100 percent certain about the results. A scientist testifying on a hazard issue either may mislead the public or look incompetent or incapable of giving a straight answer if he hedges, Gusman said.

Scientists also are unaccustomed to the adversary relationships that develop in the regulatory arena, he noted. They also do not like to make value judgments, yet such judgments are the nature of the public arena, he added.

"Responsible action is being answerable for and accountable for what is within one's power, control, and management," Gusman said. This often leaves the scientist faced with taking a stand against a hazard with two options: taking heroic action and putting one's job on the line or slipping into a scientific shell and ignoring the risk.

He concluded by suggesting that chemists upgrade their professional stature by placing the public interest ahead of their own private or professional interest or that of their employer.

Assortment of Responsibility

Robert F. Sieck, a residue chemist with Lilly Research Laboratories, Greenfield, Ind., told the audience of a typical week's work in which he evaluated a pesticide for its leaching properties.

During that week, Sieck said, he faced the following responsibilities: to do his job; to define the meaning of safe; to maintain professional integrity; to meet Environmental Protection Agency regulatory demands; and to make judgments on allowing his employer to develop compounds that could harm the world environment.

"What does a scientist do with all the responsibility laid on him?" Sieck said. "Chemists are poorly trained in ethical value discussion." They need professional agreement on what they are responsible for, he said, for then "the path will be an easier road."

Science v. Technology

Irving S. Bengelsdorf, a science writer for California Institute of Technology and a controlling columnist for the Los Angeles Herald Examiner, gave the media viewpoint on the chemist's dilemma. Part of the confusion, Bengelsdorf said, is caused by lack of a distinction between science and technology.

Finding a new discovery is not controversial; it is the technological use to which that discovery is put that places the scientist in a controversial position, he maintained.

Technology is a two-edged sword, with both benefits and hazards. Science is a knowledge/discovery endeavor, while technology is a social function, Bengelsdorf said.

Most people are not interested in science but in technology — what application of scientific discoveries can do for them, he maintained. The confusion between the two, however, has made it difficult for scientists who must decide whether they are scientists or technologists, he said. For this reason, much of the Chemists' Creed is inoperable because the chemist is torn between loyalty to job and loyalty to society.

A 'Tough Animal'

Robert Olson, of the St. Louis University School of Medicine, said scientists must realize that public policy will involve science and that scientists must "speak out and not be intimidated" by what appears to be the growing "terror with which we view our environment."

Man is an "incredibly tough animal" and will not be harmed by many of the supposed chemical risks heralded in the news media, Olson said.

Olson, using statistics from various government studies, maintained there is no increase in the incidence of cancer, that there are problems with animal experiments, that saccharin should not be banned, and that court decisions are going to shift regulatory excesses to "sound policy."

He specifically cited the Supreme Court's recent decision on benzene (8 OSHC 1586) as a case where the courts were able to take a sensible approach to government overregulation.

He also called the government's 40 percent cause and effect relationship between occupational exposure to chemicals and cancer "a distortion." The contribution of industrial chemicals to cancer is between 1 percent and 5 percent, with even 5 percent being a very high number, Olson said.

Protect the Public

In concluding the symposium, Benjamin J. Luberoft, editor of CHEMTECH magazine, published by the American Chemical Society, cautioned scientists that they must not become the "high priests" from which the public must be protected.

Scientists must learn to use language which the public understands and be ready to deal with the uncertainties that new scientific discoveries bring. "If you're not going to, then you're being high priests and somebody's going to be needed to protect the public from you."

Utah

OSHA APPROVES STATE PLAN SUPPLEMENTS TO INCLUDE FEDERAL FIELD MANUAL CHANGES

The Occupational Safety and Health Administration announced approval of amendments to the Utah Field Operations Manual to bring the Utah manual into conformity with changes made in the OSHA field operations manual.

The minor revisions include amendments concerning establishment of safety inspection priorities, calculation and classification of penalties, definitions, and administrative changes, according to the August 22 notice (45 FR 56052).

Utah submitted the supplements August 23 and December 17, 1979, in response to federal program changes made after the state plan's approval January 10, 1978, the announcement said. The assistant secretary of labor found that the supplements were substantially identical to OSHA policies and procedures, and approved the amendments August 15.

A copy of the plan and supplements is available for public inspection and copying during normal business hours at:

- OSHA Technical Data Center, Room S-6212, 200 Constitution Ave., N.W., Washington, D.C. 20210;

- Office of the Regional Administrator, Room 1554, Federal Office Building, 1961 Stout St., Denver, Colo. 80294.

- Utah Industrial Commission, UOSHA Offices, 448 South 400 East, Salt Lake City, Utah 84111.

Further information may be obtained by contacting Charles Boyd, Project Officer, Office of State Programs, OSHA, 200 Constitution Ave., N.W., Washington, D.C. 20210; telephone (202) 523-8081.

Regulatory Reform

OVERLAP, CONFLICT IN REGULATIONS SEEN IN REPORT ON EIGHT INDUSTRIES

The Occupational Safety and Health Administration and other federal agencies sometimes create a "spiderweb" of conflicting demands and duplicative requirements on industry, the Congressional Research Service said in a "rough cut" picture of the Federal Government's regulation array, issued by the Joint Economic Committee August 25.

The CRS found in its informal survey that 27 different agencies regulate the iron and steel industry and that there are over 300 health programs run by the federal government which often overlap and conflict. The study covered eight sectors of the economy.

"Conflicting regulations can create situations that might be humorous if they weren't so serious," Senator Lloyd Bentsen (D-Texas), JEC chairman said, in releasing the report.

In one instance, Bentsen said, the report found, "in some plants, the Occupational Safety and Health Administration requires that employees wear masks or respirators that fit tightly around the mouth to prevent inhalation of dangerous substances — a standard which cannot be met by bearded employees."

However, the report added, the Equal Employment Opportunity Commission "prohibits discrimination in job assignment and prevents companies from requiring employees to be clean shaven."

In some instances, the report said, regulations also conflicted with "broader national economic objectives as well,

such as the goals of increasing productivity, promoting economic growth, reducing inflation, conserving and allocating scarce resources, and providing affordable housing for low and moderate income families."

The authors of the report emphasized in the introduction to the 40-page pamphlet that their information, coming largely from industry, recent articles, and the agencies themselves, has not been checked for accuracy or whether it is representative.

The eight sectors involved in the study are the iron and steel industry, automobiles, chemicals, pharmaceuticals, health care, farming, housing, and the coal and nuclear sectors of the energy industry.

In the iron and steel industry, the report said the major complaint is the conflict between the Environmental Protection Agency's regulation of coke oven emissions and OSHA's regulations concerning worker safety. EPA favors placing hoods over the ovens to collect and treat the emissions while OSHA opposes the hoods because they increase the emissions breathed by the workers.

In the heavy industries, the report said, the conflicts and duplication are most often just "nuisance items," but added that there are instances in which "some pose major obstacles to industrial production."

EPA was the agency most often cited as causing conflicts with other areas of regulation.

The report did not try to put a dollar cost on the either duplicative or conflicting regulations.

Currently, there is one bill before Congress to reduce duplicative reporting requirements. Sponsored by Senator Lawton Chiles (D-Fla) and called the Paperwork and Red Tape Reduction Act (S 1411), it was approved August 5 by the Senate Governmental Affairs Committee but has not yet been reported to the floor.

Meetings

JOINT OCCUPATIONAL HEALTH CONFERENCE PLANNED FOR OCTOBER IN SAN FRANCISCO

The 1980 Joint Occupational Health Conference of the American Academy of Industrial Hygiene, the American Academy of Occupational Medicine, and the Society of Toxicology will be held October 28-31 in San Francisco, Calif., the organizations announced.

Topics to be discussed at the conference include chemically induced reproductive problems in males and females, union health and safety programs under collective bargaining, skin absorption of chemicals, inhalation toxicology, Q fever outbreak among workers at a medical center, and kidney and liver workshops, the organizations reported.

Speakers will be drawn from government, industry, medicine, academia, and independent consulting firms, according to the announcement.

The general scientific session will be preceded October 28 by four postgraduate seminars providing credit toward maintenance of certification or toward the physicians recognition award of the American Medical Association, the notice added. The conference will be held at the Hyatt Regency Hotel.

For further information, contact the American Academy of Industrial Hygiene, 475 Wolf Ledges Parkway, Akron, Ohio 44311, telephone (202) 762-7707.

Construction

CONSTRUCTORS GROUP PLANS SERIES OF SLIDE SHOWS TO INSTRUCT FOREMEN

A series of slide shows will be developed to help craft and general foremen recognize and eliminate construction site safety and health hazards, under a three-year project announced by the National Constructors Association.

The \$695,000 project, partially funded under a "new directions" training grant from the Occupational Safety and Health Administration, will result in a series of audio-visual presentations intended to be shown on the job site itself, according to NCA.

In addition to being the "target audience" of the slide presentations, construction foremen also will assist in preparing the series, the association stated.

During the first year of the project, a prototype slide show will be field tested at selected job sites, according to NCA Education and Training Director Fred Shultz. This experience "will virtually assure the effectiveness of the 26 shows slated for production during the remaining two years of the project," Shultz commented.

For further information, contact Shultz or NCA President M.L. Mosier at the National Constructors Association, 1101 15th St., N.W., Suite 1000, Washington, D.C. 20005, telephone (202) 466-8880.

Meetings

TECHNOLOGY OF SAFETY, HEALTH TOPIC OF SEMINAR SCHEDULED BY ASSE

A seminar on the technology of occupational safety and health will be held September 24-25 at the University of Maryland, College Park, Md., the National Capital Chapter of the American Society of Safety Engineers announced.

Co-sponsored by ASSE and the Washington Chapter of the Federal Safety and Health Council, the seminar will open with a day-long session on general safety topics. According to the agenda, speakers will include Occupational Safety and Health Review Commission General Counsel Robert Gombor, discussing trends and rulings of the commission, and

Earl Heath, director of training for the Occupational Safety and Health Administration, with an update on OSHA training requirements and offerings.

The second day of the seminar will deal with occupational health, the agenda noted. Presentations will be made on recognition and control of health hazards, requirements for ventilation, noise control, special hazard chemicals, personal protective equipment, and occupational health standards.

Speakers will include John R. Froines, deputy director of the National Institute for Occupational Safety and Health, and Morton Corn, head of the division of environmental engineering, Johns Hopkins University.

For further information, contact Bill Fine, ASSE seminar committee, telephone (202) 245-2170.

Procurement

NIOSH NEGOTIATING WITH UNIVERSITY FOR ADDITIONAL PHYSICIAN SERVICES

The National Institute for Occupational Safety and Health is negotiating with the University of Utah for additional effort under an existing contract for professional physicians' services, the institute announced August 18.

The synopsis was published for informational purposes only, NIOSH said. Solicitation documents concerning the request for proposal (No. NIOSH-R-86-80) are not available, it added.

Further information may be obtained by contacting Roberta Gjolstad, Contracting Officer, NIOSH, 5600 Fishers Lane, Room 8-29, Rockville, Md. 20857.

The Defense Supply Service is conducting negotiations, based on an unsolicited proposal, with Safety Sciences, Inc., San Diego, Calif., to develop an investment strategy for occupational safety and health, the service announced August 13.

Further information may be obtained by contacting U. Joiner, Defense Supply Service, Room 1D245, The Pentagon, Washington, D.C. 20310.

Copies of court opinions reported in Occupational Safety & Health Reporter and not yet published in OSHR Decisions are available on loan to subscribers by contacting BNA's Opinions Clerk, (202) 452-4202. Review Commission rulings and other documents may be obtained by contacting BNA's Research and Special Projects Division, (202) 452-4324.



Review Commission Activity

ACTIVITY OF OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION

This Section includes —

Review Commission Decisions: Decisions and orders of the full commission.

Review Commission Final Orders: Judges' reports which have become final, with date of finality.

Notices of Contest: Notices of contest to Labor Department citations.

Abatement Petitions: Contested petitions for extensions of abatement dates.

REVIEW COMMISSION DECISIONS

Capital City Excavating Company, Inc., 8/22/80 — case directed for review on issue of timeliness of filing notice of contest; judge's order that notice of contest was timely filed is vacated; citation sent to employer by certified mail and received by clerical employee on September 13, 1978; employer's corporate secretary received citation on September 15, 1978, and notice of contest, dated October 6, 1978, was postmarked October 7, 1978; judge erred in his conclusion that date of receipt by corporate secretary on September 15, 1978, was date of effective service and that notice of contest was timely filed; notice of contest must be filed within 15 working days of service of citation upon employee situated to bring it to attention of appropriate corporate official; clerical employee qualifies for such service, and date of effective service therefore was September 13, not September 15; for notice of contest to have been timely filed, it should have been accomplished by October 4, 1978 (No. 78-4725).

Druth Packaging Corporation, 8/20/80 — citation for violation of 1910.95(a) and (b)(1), for failure to protect employees against effects of noise at excessive levels, is affirmed as to finding of noncompliance and vacated as to finding that abatement dates were reasonable; employer's notice of contest, answer to Secretary's complaint, and evidence adduced at hearing made no attempt to rebut allegations of noncompliance, but rather contested abatement program set out in citation; likewise employer's petition for review limited its statement of exceptions to judge's finding as to reasonableness of abatement dates; direction for review referred only to issues raised by petition; accordingly, issue of noncompliance is not before commission on review; reasonableness of abatement dates was at issue continuously from notice of contest forward and, accordingly, burden of proving reasonableness lies with Secretary; judge did not cite to any evidence of record in support of finding that abatement dates were reasonable, only that employer did not prove that abatement period was unreasonable; judge's decision was based not on record evidence, but on misconception of respective burdens of proof of parties (No. 77-3266).

GAF Corporation and Local 227, International Chemical Workers Union, 8/22/80 — judge's decision approving settlement agreement is approved; commissioner directed review of judge's decision for consideration of whether judge had erred in approving settlement agreement which contained exculpatory language; language at issue provided that this stipulation, and employer's withdrawal of notices of contest or answers, abatement of violations or payment of penalty may not be construed as admission or finding of violation in

any investigation or proceeding under Occupational Safety and Health Act involving a facility of employer's other than that involved in this proceeding; employer challenged authority of commissioner to direct review of judge's decision *sua sponte*, and jurisdiction of commission to review settlements; Section 12(j) of OSH Act, as well as commission rule 92(d), grants each member of commission the authority to direct review of judge's decision despite absence of a party request for review; furthermore, commission decisions have upheld commission's jurisdiction to review settlement agreements and to approve agreements meeting requirements of commission rule 100 even if agreements contain exculpatory language; since agreement in issue conforms with requirements of cited rule and is not "clearly repugnant to OSH Act's objectives and provisions," affirmance of decision is warranted (Nos. 78-867 and 78-1399).

Missouri Farmer's Association, Inc., MFA Boonville Exchange, MFA, Inc., d/b/a MFA Grain Division, Desert Gold Feed Company, 8/22/80 — judge's decision disapproving settlement agreements in consolidated cases is reversed and agreements are approved; settlement agreements contained language to effect that employers did not admit violations of that withdrawal of notice of contest would have no effect in actions other than those under Occupational Safety and Health Act; judge based his decision disapproving settlements on existence of this exculpatory language in agreements; since judge's decision, commission has held that agreements which meet requirements set out in *Dawson Brothers-Mechanical Contractors* (1 OSHC 1024), as adopted by commission rule 100, will be approved even if exculpatory language is used in agreements; since agreements comport with criteria set forth in rule 100 and they are not "clearly repugnant" to OSH Act's objectives and provisions, they are approved (Nos. 78-1155, 78-1214, 78-1409).

PPG Industries (Caribe), 8/20/80 — judge's decision vacating citation for serious violations of 1910.1000(b)(1) and (e), for exposing employees to excessive levels of mercury fumes and failing to implement feasible administrative and engineering controls to reduce such exposure, and affirming citation for violation of 1910.134(e)(5)(i), for permitting employees to wear respirators under conditions which prevented a proper face seal, as *de minimis*, is affirmed and accorded the precedential value of an unreviewed judge's decision; commissioner *sua sponte* directed case for review; employer later filed a brief urging affirmance of vacated items and vacation of *de minimis* violation; Secretary indicated that he did not desire review of decision; since violation was classified as *de minimis*, employer is

not aggrieved by judge's disposition and review is unwarranted; furthermore, judge's decision raises no issue of compelling public interest and therefore does not merit review (No. 77-2235).

Southwestern Electric Power Company, 8/19/80 — citation for violation of 1910.212(a)(1), for failing to guard the rotating chucks of two lathes, is affirmed as *de minimis* violation; judge's decision changing citation from non-serious violation to *de minimis* violation was consistent with commission decisions on hazards too trifling to warrant imposition of abatement requirement or assessment of penalty (Nos. 77-3391, 77-3890).

REVIEW COMMISSION FINAL ORDERS

Central Soya of Puerto Rico, Inc., 8/13/80 — citation for willful violation of Section 5(a)(1) of Occupational Safety and Health Act for failing to take precautions to prevent steel plates from giving way due to corrosion creating falling hazards, is affirmed with penalty of \$2,500 assessed; testimony, and 14-foot fall of employee that resulted from giving way of steel plate upon which he was standing established that steel plates on second floor of four-story steel tower, used by animal feed manufacturer to unload bulk grain from ships and barges, were corroded around edges and hazard was likely to cause death or serious physical harm; testimony of employer's supervisor, that about four weeks before accident he notified department head of corrosion, demonstrated employer's knowledge; removal and replacement of steel plates after accident demonstrated feasibility and utility of measures that could have been taken to avoid accident; employer's direction of employees to second floor to install guide rollers to new conveyor belt despite warnings of hazardous condition demonstrated willfulness of violation.

Citation for willful violation of 1910.23(a)(7) for failing to protect employees from falling hazards due to absence of railings or guards around perimeters of temporary floor openings, affirmed with penalty of \$500 assessed; evidence established that employees observed by compliance officer were working in close proximity to two uncovered floor openings were in "zone of danger" and exposed to potential falls of about 14 feet.

Citation for repeat violation of 1910.219(f)(3), charging that sprocket wheel and chain on a motor on fourth floor of tower was unguarded, is vacated; evidence established that motor is activated by switches located on third floor and that during normal plant operation no employee other than maintenance workers would have been exposed to the nip-point hazard. (Tannenbaum, Judge; No. 79-4505)

Kropp Forge Company, 8/7/80 — citation for alleged serious violation of 1910.1001(f)(1), for failure to conduct initial monitoring to determine employee exposure to airborne asbestos fibers, is vacated; only evidence Secretary introduced with regard to this violation was fact that roll of paper was found in employer's plant and that sample of paper disclosed unknown amount of asbestos; Secretary failed to introduce any evidence as to whether asbestos fibers were released into atmosphere; Secretary failed to meet his burden of proving employee exposure to asbestos; citation for willful-serious violation of 1910.95(b)(3), for failure to provide employees with effective on-going hearing conservation program, is affirmed with \$5,000 penalty.

Employer's argument, that cited standard is unenforceably vague, is rejected; appellate court decisions on this issue have consistently upheld noise standard; employer's argument, that there is no evidence of forging industry custom and practice with regard to requirements for

effective hearing conservation program, is rejected; industry custom and practice, although relevant, is not conclusive as to requirements for effective hearing conservation programs; evidence proved that employer failed to give annual hearing tests to its employees, although uncontroverted evidence proved annual tests were essential; evidence proved that all noise measurements taken by Secretary were in excess of that permitted by Occupational Safety and Health Administration standards; employer admitted existence of hazard associated with high noise levels and the necessity for a hearing conservation program; record of employer's testing of employee hearing indicated hearing loss in several of its employees; despite severe shifts in hearing ability, employer seldom referred affected employees to physician because of employer's concern about workers' compensation claims; company nurse testified that 50 to 60 decibel shift in audiogram was necessary before employer would refer employee to physician; expert testimony proved that 20 decibel shift in audiogram would indicate hearing irregularity requiring referral to physician; evidence proved that employer allowed each employee to select type of hearing protector he or she wanted to use; further evidence proved that employer did not train its employees concerning hearing protection devices or their proper use; compliance officer observed several employees using cotton stuffed in their ears despite inadequacy of this method of hearing protection; several other employees were observed wearing their hearing protection devices improperly; preponderance of evidence shows that employer's hearing conservation was incomplete and ineffective; evidence proved that employer was participant and signatory to study recommending use of personal hearing protection and annual audiometric examinations; preponderance of evidence proves employer awareness of hazard and deliberate, conscious disregard to providing adequate and effective hearing conservation program for its employees (Alesia, Judge; No. 79-2969).

North Bergen Piece Dye Works, 8/8/80 — citation for violation of 1910.20(d) for failing to make available, upon request, to Secretary of Labor, employee medical records for examination and copying, is affirmed with no penalty assessed; prior to issuance of citation in this case, employer had been found in violation of 1910.95(b) for failing to maintain an effective hearing conservation program and ordered to perform audiograms on its employees as part of an abatement plan; evidence established that employer refused to turn over results of audiogram testing to Occupational Safety and Health Administration because it had not been given a written assurance that records would not be released to employees; evidence further indicated that employer's refusal was motivated by concern that employees, if granted access to records, would use them in support of workers' compensation claims or that OSHA would use results as basis for issuing further citations.

Employer's argument, that physician-patient privilege precluded it from disclosing records, is rejected; federal court cases have held that neither common law nor federal courts recognize such a privilege, and that employee's right to privacy can be waived when public interest is involved; employer's further contention, that records need not be made available until a year from date of abatement order since results are intended only for determining whether significant hearing changes had occurred over year's time, also is rejected; purpose of regulation is to prevent destruction of employee medical records; accordingly, violation has been established; however, employees are not granted access to records but may be notified by Secretary if any hearing deviations are found (Cerbone, Judge; No. 80-2).

Smith and Mahoney, 8/7/80 — citation for alleged violation of 1926.350(a)(9), for failure to store oxygen cylinder in upright position, is vacated; evidence proved that six oxygen cylinders were stored in building's basement in a horizontal position; however, Secretary failed to prove that employer either knew of violative condition or with exercise of reasonable diligence could have known of violative condition; citation for violation of 1926.851(c), for failure to provide illumination in stairway used for ingress and egress to floors of multistory building, is affirmed; evidence proved that all illumination provided in stairway came from natural lighting; employer's argument, that it supplied flashlight to person who accompanied Occupational Safety and Health Administration inspector but that he forgot flashlight on day of inspection, is rejected; although this might constitute defense as to that one employee, it does not provide a defense to employer's failure to supply illumination for rest of employees at worksite; citation for violation of 1926.500(d)(1), for failure to guard open sided areas adjacent to stairwells leading to and from roof of building, is affirmed; preponderance of evidence conclusively established violative condition; employer's main defense to all citations was that it did not create nor control hazardous conditions at worksite since it was only consulting engineering firm hired to oversee building's demolition; reading of employer's contract indicates that it had broad powers and duties with regard to demolition being performed; employer who has such broad powers is under duty to take necessary steps to assure compliance with Occupational Safety and Health Act (Cerbone, Judge; No. 79-6783).

Wheeling-Pittsburgh Steel Corporation and United Steelworkers of America, AFL-CIO, and Local 1190, 8/13/80 — citation for violation of Section 5(a)(1) of Occupational Safety and Health Act for requiring employees to work in pit area beneath coilers thereby exposing employees to hazard of being struck by flying steel, is affirmed with penalty of \$25 assessed; evidence established that employees had been ordered to do repair work in pit area underneath one of two coilers, which were used to roll hot strips of steel, while machinery was operating; testimony of four employees indicated that pieces of steel are often projected off edge of feed line and into pit area during normal operation of coilers; employer argued unsuccessfully that hazard did not exist since an accident had not occurred and was unlikely to occur due to cited condition; employer failed to rebut showing that steel was projected off line or prove that any means had been taken to prevent this condition; employer's contention, that hazard was not recognized since its practice of allowing repairs to be made while machinery operated was equivalent to that of steel industry in general, is rejected; evidence proved that employer knew of hazardous nature of condition, since it had never before required employees to work in pit area until machinery was shut down and had instituted measures to protect coiler operators during their normal work; record also supports conclusion that hazard from flying steel was likely to cause death or serious injury; accordingly, violation is upheld; since violation in issue represented an isolated incident, proposed penalty of \$640 is found excessive and is reduced to \$25 (Brenton, Judge; No. 79-6493).

Wright & Lopez of Florida, Inc., 8/8/80 — citation for alleged violation of Section 5(a)(1) of Occupational Safety and Health Act, for allowing employee to ride in backhoe's bucket, is vacated; evidence proved that employee rode in backhoe bucket along with load of pea rock for distance of approximately 50 feet; speed at which backhoe moved during time when employee was in bucket was described as being "slower than pace at which National Guard marches dur-

ing its drills;" documents introduced into evidence by Secretary fail to prove that employee riding in backhoe's bucket was recognized as hazardous; although riding in bucket of backhoe is recognized as hazardous under certain circumstances, Secretary failed to prove that under particular facts of this case it was a hazardous practice; evidence also failed to prove that employee riding in bucket was exposed to substantial probability of death or serious physical harm; Secretary also failed to prove feasibility and utility of steps employer could have taken to avoid present citation (Brady, Judge; No. 79-4901).

COURT CASES

Anheuser-Busch, Inc., appeal filed by Secretary, 8/15/80, 5th Cir., No. 80-1886 (RevComm: No. 79-5002, 8 OSHC 1770).

Bergin Corporation, appeal filed by Secretary, 8/19/80, 7th Cir., No. 80-2122 (RevComm: No. 78-4204, 8 OSHC 1773).

Circle T Drilling Company, appeal filed by employer, 8/25/80, 5th Cir., No. 80-3696 (RevComm: No. 79-2667, 8 OSHC 1681).

Detrae Enterprises Inc., appeal filed by employer, 8/1/80, 2nd Cir., No. 80-4126 (RevComm: No. 79-5785, 8 OSHC 1943).

NOTICES OF CONTEST

ACF Industries, Inc., Shippers Car Line Division, Red House, W.Va., is contesting a serious citation and a \$1,000 penalty for Section 5(a)(1) for failure to utilize a confined space entry procedure that adequately protected employees entering confined spaces (No. 80-4178).

AJ Warehouses, Inc., Gretna, La., is contesting a serious citation and a \$1,100 penalty for 1910.101(b) for failure to ensure that compressed gas cylinders were not stored where moving objects could strike them, 1910.134(a)(2) for failure to provide respirators where required, and 1910.151(c) for failure to provide suitable quick drenching facilities for employees exposed to corrosive materials.

The company also is contesting a nonserious citation for 1903.2(a)(1) for failure to post a notice informing employees of their rights and obligations under the Occupational Safety and Health Act, 1910.22(a)(2) for failure to maintain a work area in a clean and orderly condition, and 1910.132(a) for failure to maintain protective gloves and goggles in a sanitary condition (No. 80-4004).

Abitibi Corporation, Toledo, Ohio, is contesting a serious citation and a \$420 penalty for 1910.95(a) for failure to protect employees against the effects of noise (No. 80-3823).

Admiral Division of Magic Chef, Inc., Galesburg, Ill., is contesting a nonserious citation for 1910.134(b)(3) for failure to train and instruct respirator users in proper use of the equipment (No. 80-4067).

Allied Aviation Fueling Company, of St. Louis, Inc., New York, N.Y., is contesting a repeated citation and a \$1,000 penalty for Section 5(a)(1) for failure to ensure that safety interlocking switches for hose nozzle receivers were working properly and for failure to ensure that hose nozzles did not leak fuel (No. 80-3791).

Amoco Production Company, Lafayette, La., is contesting a nonserious citation for 1903.2(a)(1) for failure to post a notice informing employees of their rights and obligations under the Occupational Safety and Health Act and 1904.2(a)

for failure to maintain a log of occupational injuries and illnesses as required (No. 80-4003).

Are Electrical Construction Company, Inc., New York, N.Y., is contesting a serious citation and a \$600 penalty for 1926.100(a) for failure to ensure employees' use of protective helmets and 1926.500(d)(1) for failure to guard open-sided floors adequately.

The company also is contesting a nonserious citation for 1926.25(a) for failure to keep work areas clear of debris and 1926.400(h)(3)(i) for failure to make available for inspection a written description of the employer's assured equipment grounding program (No. 80-3842).

ASARCO Inc., Columbus, Ohio, is contesting a repeated citation and a \$1,680 penalty for 1910.1000(b)(1) for failure to ensure that employees were not overexposed to cadmium dust and 1910.1000(c) for failure to ensure that employees were not overexposed to zinc oxide product dust (No. 80-3588).

T.W. Blount, Jr. and Son Contracting Company, Jacksonville, Fla., is contesting a seven-item serious citation and a \$3,600 penalty, including 1926.550(f)(1)(ii) for failure to provide every crane with a securely-fixed load rating chart, 1926.550(b)(2) for failure to repair bent and corroded critical parts for a crane, and 1926.550(a)(7)(ii) for failure to take damaged wire ropes out of service (No. 80-3788).

Carborundum Company Filters Division, Lebanon, Ind., is contesting a serious citation and a \$1,050 penalty for 1910.23(c)(1) for failure to guard an open-sided platform and 1910.212(a)(1) for failure to guard machinery ingoing nip points.

The company also is contesting a nonserious citation for 1910.24(e) for failure to install fixed stairs at a proper angle, 1910.106(e)(2)(ii)(b)(2) for failure to ensure that more than 120 gallons of flammable liquids were not stored outside an inside storage room, 1910.219(c)(3) for failure to enclose vertical or inclined shafting, and 1910.219(c)(4)(i) for failure to ensure that unguarded projecting shaft ends did not project more than one-half the diameter of the shaft (No. 80-4056).

Caterpillar Tractor Company, Peoria, Ill., is contesting a repeated citation and a \$1,900 penalty for 1910.134(b)(6) for failure to store respirators in a clean, convenient, and sanitary location, and 1910.1000(c) for failure to ensure that employees were not overexposed to respirable silica.

The company also is contesting a serious citation and a \$1,890 penalty for 1910.134(b)(5) for failure to clean respirators as required, 1910.141(g)(2) for failure to ensure that employees were not permitted to consume food or beverages in areas exposed to toxic materials, 1910.1000(b)(1) for failure to ensure that employees were not overexposed to inorganic lead, and 1910.1025(e)(2) for failure to reduce employee exposure to inorganic lead.

The company also is contesting a serious citation and a \$1,380 penalty for 1910.212(a)(1) for failure to guard machinery nip points, 1910.108(e)(6)(i) for failure to take adequate precautions against the ignition of flammable vapors, and Section 5(a)(1) for failure to ensure that an employee was not permitted to leave a machine without locking out power and for failure to ensure that an employee did not attempt to lock out power by placing a vent knife against the controls (No. 80-4061).

Chicago Markets, Utica, N.Y., is contesting a serious citation and a \$360 penalty for 1910.178(n)(2) for failure to ensure that an employee did not go under the elevated load of a powered fork lift truck (No. 80-3772).

Stephen Coates, South Venice, Fla., is contesting a serious citation and a \$540 penalty for 1926.450(a)(9) for failure to ensure that ladder siderails did not extend at least 36 inches above a landing, 1926.500(b)(2) for failure to guard ladderway floor openings, 1926.500(d)(1) for failure to guard an open-sided floor, and 1926.500(e)(1)(ii) for failure to guard an open-sided stairway.

The company also is contesting a nonserious citation for 1926.51(a)(4) for failure to prohibit use of a common drinking cup and 1926.500(f)(5)(ii) for failure to provide sturdy floor-opening covers (No. 80-3462).

Concho Construction Company, Inc., Dallas, Tex., is contesting a serious citation and a \$490 penalty for 1926.28(a) and 1926.105(a) for failure to provide adequate fall protection (No. 80-4002).

Cumberland Farms Dairy, Inc., Canton, Mass., is contesting an eight-item serious citation and a \$1,750 penalty, including 1910.22(a)(1) for failure to keep a workplace clean and orderly, 1910.151(c) for failure to provide suitable quick drenching facilities for employees exposed to corrosive materials, and 1910.213(c)(1) for failure to guard circular hand-fed ripaws as required.

The company also is contesting a 21-item nonserious citation, including 1910.22(a)(1) for failure to keep a workplace clean and orderly, 1910.22(b)(2) for failure to mark permanent aisles, and 1910.134(b)(7) for failure to inspect respirators and replace worn or deteriorated parts (No. 80-3569).

Davis-McKee, Inc., Columbus, Ohio, is contesting a willful citation and a \$3,000 penalty for Section 5(a)(1) for failure to conduct atmospheric tests for oxygen deficiency and flammable toxic gases prior to employees' entry to a syphon chamber.

The company also is contesting a serious citation and a \$1,800 penalty for 1910.134(a)(2) for failure to provide respirators where required and 1926.21(b)(6)(i) for failure to instruct employees required to enter a confined space as to the nature of hazards involved (No. 80-3589).

DeSoto, Inc., Chemical Coatings Division, Columbus, Ohio, is contesting a serious citation and a \$910 penalty for 1910.212(a)(1) for failure to guard machinery ingoing nip points and 1910.219(f)(3) for failure to enclose sprocket wheels and chains (No. 80-3003).

Sam W. Emerson Company, Cleveland, Ohio, is contesting a repeated citation and a \$510 penalty for 1926.28(a) for failure to ensure employees' use of personal protective equipment.

The company also is contesting a serious citation and a \$240 penalty for 1926.700(a) for failure to ensure that a full platform was erected for concrete placement and that an employee operating a vibrator did not stand at the edge of an unguarded form (No. 80-3591).

Fowler and Hammer, Inc., La Crosse, Wis., is contesting a serious citation and a \$160 penalty for 1926.500(d)(1) for failure to guard an open-sided floor (No. 80-3827).

G & H Steel Service, Inc., Drexel Hill, Pa., is contesting a serious citation and a \$630 penalty for 1926.28(a) and 1926.105(a) for failure to provide adequate fall protection (No. 80-4009).

Glorgi Interior Systems, Inc., Bedford Heights, Ohio, is contesting a serious citation and a \$360 penalty for failure to guard a floor opening (No. 80-4037).

Globe Manufacturing Company, Philadelphia, Pa., is contesting a 13-item serious citation and a \$1,400 penalty, including 1910.309(b) for failure to protect conductors against

physical damage. 1910.309(a) for failure to ensure a permanent, continuous grounding path from equipment, and 1910.309(a) for failure to guard live parts of electrical equipment against accidental contact.

The company also is contesting an eight-item nonserious citation, including 1910.219(p)(1) for failure to keep power-transmission equipment in good working condition, 1910.219(p)(6)(ii) for failure to keep belts, lacings, and fasteners in good repair, and 1910.212(b) for failure to securely anchor machines designed for fixed locations (No. 80-4043).

Hobart Corporation, Troy Sunshade Company, Troy, Ohio, is contesting a serious citation and a \$350 penalty for 1910.212(a)(3)(ii) for failure to guard machinery points of operation (No. 80-3610).

Hull Dye & Print Works, Inc., Derby, Conn., is contesting a \$67,100 additional penalty for failure to correct 23 violations, including 1910.176(b) for failure to ensure that stacked materials were secured against sliding or collapse, 1910.309(b) for failure to enclose loosely spliced wires in a box, and 1910.22(a)(2) for failure to maintain drainage when wet processes were in use.

The company also is contesting a five-item repeated citation and a \$7,720 penalty, including 1910.309(a) for failure to guard live parts of electrical equipment against accidental contact, 1910.262(t)(2) for failure to guard clip openers on tenter frame machines, and 1910.309(b) for failure to ensure that working space about electrical equipment was not used for storage.

The company also is contesting a serious citation and a \$900 penalty for 1910.212(a)(2) for failure to ensure that machine guards were not installed so as to create hazards in themselves (No. 80-4058).

Industrial Color, Inc., Joliet, Ill., is contesting a 13-item willful citation and a \$41,850 penalty, including 1910.1025(l)(1) for failure to establish a training program for employees exposed to lead, 1910.1025(j)(1)(i) for failure to institute a medical surveillance program for employees overexposed to lead, and 1910.1025(d)(2) for failure to make an initial determination of employees' exposure to lead.

The company also is contesting a serious citation and a \$1,620 penalty for 1910.1007(c)(4)(ii) for failure to provide continuous local exhaust ventilation, 1910.1007(d)(2) for failure to establish emergency procedures, and 1910.1007(c)(4)(iv) for failure to provide employees handling 3,3'-dichlorobenzidine with proper respirators.

The company also is contesting a nonserious citation and a \$200 penalty for 1904.5(a) for failure to post an annual summary of occupational injuries and illnesses (No. 80-3974).

Intermagnetics General Corporation, Guilderland, N.Y., is contesting a serious citation and a \$300 penalty for 1910.134(a)(2) for failure to provide respirators where required.

The company also is contesting a \$300 penalty for a serious citation for Section 5(a)(1) for failure to provide written handling procedures and training in suitable emergency practices for employees handling hydrofluoric acid (No. 80-4098).

International Reinforced Plastics, Inc., Denmark, S.C., is contesting an eight-item willful citation and a \$72,000 penalty, including 1910.106(e)(6)(i) for failure to take adequate precautions against the ignition of flammable vapors, 1910.309(a) for failure to ensure that exposed live parts were not permitted to exist in Class I, Division I locations, and 1910.309(a) for failure to ensure that fixed and portable lighting fixtures were approved for Class I, Division I locations.

The company also is contesting a six-item serious citation and a \$5,220 penalty, including 1910.106(e)(2)(iv)(a) for failure to keep flammable liquids in containers when not in use, 1910.106(e)(6)(ii) for failure to ensure safe dispensing of Class I flammable liquids, and 1910.134(a)(2) for failure to establish and maintain a respiratory protection program as required (No. 80-4000).

Iowa Beef Processors, Inc., of Emporia, Kan., is contesting a serious citation and a \$630 penalty for 1910.212(a)(1) for failure to guard machinery pinch points (No. 80-3851).

Don Jensen Siding Construction Company, Chippewa Falls, Wis., is contesting a serious citation and a \$720 penalty for 1926.28(a) for failure to ensure employees' use of appropriate personal protective equipment, 1926.401(c) for failure to ensure a permanent, continuous grounding path from equipment, and 1926.400(h)(1) for failure to use an assured equipment grounding conductor program for temporary wiring.

The company also is contesting a nonserious citation for 1926.400(a) for failure to protect conductors from physical damage and 1926.451(a)(7) for failure to use portable ladders at the proper pitch (No. 80-3873).

Joliet Colors, Inc., Joliet, Ill., is contesting a 13-item willful citation and a \$49,260 penalty, including 1910.1007(c)(2)(ii) for failure to require employees to wash up before each exits from a regulated area, 1910.1007(c)(4)(iii) for failure to provide employees with full-body protective clothing prior to entering a regulated area, and 1910.1007(d)(4)(iii) for failure to establish and implement decontamination procedures to remove 3,3'-dichlorobenzidine from materials and equipment.

The company also is contesting a six-item serious citation and a \$2,940 penalty for 1910.1007(c)(4)(iv) for failure to provide and to require employees to use approved respirators while handling 3,3'-dichlorobenzidine, 1910.1007(d)(2) for failure to establish emergency procedures, and 1910.1007(c)(4)(ii) for failure to provide operations with continuous local exhaust ventilation.

The company also is contesting a nonserious citation and a \$200 penalty for 1904.5(a) for failure to post an annual summary of occupational illnesses and injuries as required (No. 80-3967).

Korvettes Department Stores, division of Korvettes, Inc., New York, N.Y., is contesting a serious citation and a \$200 penalty for 1910.132(a) for failure to ensure employees' use of elbow-length rubber gloves where required.

The company also is contesting a nonserious citation for 1904.2(a) for failure to maintain a log of occupational injuries and illnesses as required (No. 80-3836).

L & H Insulation, Inc., Middletown, Ohio, is contesting a serious citation and a \$420 penalty for 1926.300(b)(2) for failure to guard equipment moving parts (No. 80-3820).

Laquila Construction, Brooklyn, N.Y., is contesting a serious citation and a \$420 penalty for 1926.400(h)(1) for failure to use an assured equipment grounding conductor program for temporary wiring.

The company also is contesting a nonserious citation for 1926.401(a)(1) failure to ground plug- and cord-connected equipment and 1926.650(e) for failure to ensure employees' use of personal protective equipment (No. 80-3861).

Lukens Steel Company, Coatesville, Pa., is contesting a serious citation and an \$800 penalty for 1910.179(n)(3)(i) for failure to ensure that a load was well-secured and properly balanced in a sling before lifting (No. 80-3798).

Master Sheet Metal Contractors, Inc., Rockford, Ill., is contesting a serious citation and a \$520 penalty for 1926.451(e)(10) for failure to guard a scaffold adequately and 1926.500(f)(1) for failure to ensure that guarding met specifications (No. 80-3830).

Mr. Hanger, Inc., Ringtown, Pa., is contesting a repeated citation and a \$4,100 penalty for 1910.22(b)(2) for failure to mark permanent aisles, 1910.23(c)(1) for failure to guard an open-sided platform, 1910.217(b)(4)(i) for failure to protect controls of mechanical power presses against accidental activation, and 1910.309(a) for failure to guard live parts of electrical equipment against accidental contact.

The company also is contesting a serious citation and a \$1,900 penalty for 1910.309(b) for failure to mechanically secure a cable assembly to an enclosure, 1910.217(c)(2)(i)(b) for failure to ensure that point of operation guards on mechanical power presses met specifications, and 1910.309(a) for failure to ensure that tension was not transmitted from flexible cords to a terminal screw.

The company also is contesting a nonserious citation for 1910.141(a)(3)(ii) for failure to maintain a workroom floor in a dry condition (No. 80-4022).

Nypro, Inc., Clinton, Mass., is contesting a serious citation and a \$920 penalty for Section 5(a)(1) for failure to ensure that elevators were not operated with defective non-interlocked hoistway doors and 1910.23(b)(1)(i) for failure to guard wall openings (No. 80-3978).

Okland Construction Company, Salt Lake City, Utah, is contesting a serious citation and a \$1,740 penalty for 1926.304(f) for failure to guard circular hand-fed ripaws adequately, 1926.304(f) for failure to guard the lower exposed portions of radial saw blades, 1926.451(y)(4)(iii) for failure to secure poles of a jack-pump scaffold adequately, and 1926.500(d)(1) for failure to guard an open-sided platform.

The company also is contesting a five-item nonserious citation, including 1903.2(a)(1) for failure to post a notice informing employees of their rights and obligations under the Occupational Safety and Health Act, 1904.2(a) for failure to keep a log of occupational injuries and illnesses as required, and 1926.400(c)(1) for failure to ensure that employees were not permitted to work in proximity to an uncovered receptacle outlet box (No. 80-3796).

Pillsbury Company, Minneapolis, Minn., is contesting a serious citation and a \$490 penalty for Section 5(a)(1) for failure to provide written procedures to lock out power at the main disconnect prior to scraping excess popcorn.

The company also is contesting a nonserious citation for 1910.219(f)(3) for failure to enclose sprocket wheels and chains (No. 80-4051).

Purcell, Beck & Dillard, Inc., Marbleton, Ga., is contesting a \$560 penalty for a serious citation for 1926.652(e) for failure to take additional precautions to prevent trench slides and cave-ins where excavations were subjected to vibrations from highway traffic (No. 80-4093).

RM Construction Company, Inc., Elizabeth, N.J., is contesting a serious citation and a \$240 penalty for 1926.500(b)(1) for failure to guard floor openings and 1926.651(t) for failure to provide adequate barrier physical protection at remotely located excavations.

The company also is contesting a nonserious citation for 1926.350(a)(9) for failure to secure compressed gas cylinders in an upright position (No. 80-3844).

RSR Quemetco, Indianapolis, Ind., is contesting a serious citation and a \$450 penalty for 1910.1025(j)(1)(iii) for

failure to provide required medical surveillance at no cost to employees (No. 80-3907).

Rainbow Drilling Company, Inc., Kilgore, Tex., is contesting a serious citation and a \$500 penalty for 1910.36(b)(2) for failure to mount a safety slide on a drilling rig and 1910.133(a)(1) for failure to ensure that eye protection provided was suitable to the work to be performed (No. 80-4010).

Republic Steel Corporation, Mahoning Valley District, Warren, Ohio, is contesting a serious citation and an \$800 penalty for 1910.95(a) for failure to protect employees against the effects of noise.

The company also is contesting seven items of an eight-item nonserious citation, including 1904.2(a) for failure to properly maintain a log of recordable occupational illnesses and injuries, 1910.107(b)(5)(i) for failure to install a visible gauge or audible alarm in a spray booth, and 1910.107(e)(9) for failure to ensure safe transfer of flammable liquids (No. 80-4036).

Rudolph/Libbe/Inc., Walbridge, Ohio, is contesting a serious citation and a \$1,120 penalty for 1926.20(b)(3) for failure to ensure that a damaged lift truck was not removed from service and 1926.402(a)(8) for failure to cover cable leads passing through work areas (No. 80-4039).

Salco Mechanical Contractors, division of A. Tasker, Inc., Springfield, Va., is contesting a serious citation and a \$280 penalty for 1926.500(b)(1) for failure to guard floor openings.

The company also is contesting a nonserious citation for 1926.400(h)(1) for failure to use an assured equipment grounding conductor program for temporary wiring (No. 80-4029).

Schenectady Chemicals, Inc., Schenectady, N.Y., is contesting a repeated citation and a \$600 penalty for 1910.151(c) for failure to provide suitable quick drenching facilities for employees exposed to corrosive materials.

The company also is contesting a nonserious citation for 1910.108(c)(2)(i) for failure to equip dip tanks with a properly trapped overflow pipe (No. 80-4094).

Security International, Inc., Omaha, Neb., is contesting a serious citation and an \$840 penalty for 1910.106(d)(2)(i) for failure to use approved containers for flammable liquids, 1910.132(a) for failure to ensure employee's use of protective equipment, and 1910.151(c) for failure to provide suitable quick drenching facilities for employees exposed to corrosive materials.

The company also is contesting a nine-item nonserious citation and a \$70 penalty, including 1910.169(b)(3)(i) for failure to equip a compressed air receiver with spring-loaded safety valves, 1910.184(f)(1) for failure to ensure that approved wire rope slings were not used, and 1910.213(a) for failure to guard the lower exposed portion of a radial saw blade (No. 80-3479).

Servair Inc., subsidiary of Dynallectron Corporation, Jamaica, N.Y., is contesting a six-item serious citation and a \$2,610 penalty, including 1910.178(p)(1) for failure to withdraw defective powered industrial trucks from service, 1910.133(a)(1) for failure to ensure employees' use of eye and face protective equipment, and 1910.178(q) for failure to examine powered industrial trucks for defects after each shift.

The company also is contesting a repeated citation and a \$2,210 penalty for 1910.309(a) for failure to ground plug and cord-connected equipment and 1910.309(a) for failure to ensure a permanent, continuous grounding path from equipment (No. 80-3858).

Skoglund Outdoor Advertising, division of Skoglund Communications, Inc., Duluth, Minn., is contesting a willful citation and a \$3,200 penalty for 1926.500(d)(1) for failure to guard an open-sided platform.

The company also is contesting a repeated citation and a \$600 penalty for 1926.450(a)(10) for failure to secure portable ladders from displacement (No. 80-3972).

Terminal Construction Company, Inc., Woodbridge, N.J., is contesting a serious citation and a \$420 penalty for 1926.304(f) for failure to guard the lower exposed portion of a radial saw blade and 1926.500(d)(1) for failure to guard an open-sided floor (No. 80-3853).

Texas Utilities Generating Company, Mount Pleasant, Tex., is contesting a serious citation and a \$490 penalty for 1910.212(a)(1) for failure to guard machinery ingoing nip points (No. 80-4006).

Therrel-Kizer, Inc., Smyrna, Ga., is contesting a serious citation and a \$200 penalty for 1926.450(a)(9) for failure to ensure adequate ladder siderail extension (No. 80-3845).

Tra-Mar Communications, Inc., Union City, N.J., is contesting a \$360 penalty for a serious citation for 1910.36(b)(8) for failure to furnish a second exit from a building where required (No. 80-3784).

Transamerica Delaval, Inc., Huntington, W.Va., is contesting a serious citation and a \$1,020 penalty for 1910.95(a) for failure to protect employees against the effects of noise and 1910.1001(f)(1) for failure to conduct initial asbestos monitoring as required (No. 80-4182).

Union Carbide Corporation, Coatings Materials Division, Somerset, N.J., is contesting a five-item serious citation and a \$3,060 penalty, including 1910.106(d)(4)(v) for failure to ensure that flammable liquids were dispensed from approved pumps, 1910.106(e)(2)(iv)(d) for failure to ensure safe transfer of flammable or combustible liquids, and 1910.106(e)(6)(i) for failure to take adequate precautions against the ignition of flammable vapors (No. 80-3864).

Union Carbide Corporation, Metals Division, Marietta, Ohio, is contesting a repeated citation and a \$1,280 penalty for 1910.22(a)(2) for failure to maintain workroom floors in a dry condition.

The company also is contesting a nonserious citation for 1910.134(b)(6) for failure to store respirators in a convenient, sanitary, and clean location (No. 80-4042).

Theo. Utschig & Son, Inc., Appleton, Wis., is contesting a serious citation and a \$1,400 penalty for 1926.450(a)(2) for failure to ensure that defective ladders were not used, 1926.451(e)(4) for failure to tightly plank scaffold platforms, and 1926.550(a)(9) for failure to barricade accessible areas within the swing radius of a crane (No. 80-3970).

Van Scott Builders, Inc., Palmyra, N.Y., is contesting a \$120 penalty for a serious citation for 1926.450(a)(10) for failure to secure portable ladders against displacement (No. 80-3871).

Wade Lupe Construction Company, Inc., Schenectady, N.Y., is contesting a willful citation and a \$3,500 penalty for 1926.400(h)(1) for failure to use an assured equipment grounding conductor program for temporary wiring.

The company also is contesting a repeated citation and a \$940 penalty for 1926.152(a)(1) for failure to ensure that an unapproved container was not used for handling gasoline, 1926.350(a)(9) for failure to secure compressed gas cylinders in an upright position, and 1926.401(a)(1) for failure to ground plug- and cord-connected equipment.

The company also is contesting a serious citation and a \$240 penalty for 1926.400(a) for failure to ground an electrical receptacle.

The company also is contesting a nonserious citation for 1926.451(a)(13) for failure to provide safe access to a scaffold (No. 80-3849).

R.L. Wagner & Son, Inc., St. Charles, Ill., is contesting a repeated citation and a \$900 penalty for 1926.21(b)(2) for failure to instruct employees in the recognition and avoidance of unsafe conditions and applicable regulations and 1926.400(h)(1) for failure to use an assured equipment grounding conductor program for temporary wiring.

The company also is contesting a serious citation and a \$120 penalty for 1926.100(a) for failure to ensure employees' use of head protection and 1926.401(c) for failure to ensure a permanent, continuous grounding path from equipment (No. 80-3450).

Watco Tanks, Inc., La Vernia, Tex., is contesting a \$2,660 penalty for an 11-item serious citation, including 1910.23(c)(1) for failure to guard open-sided floors, 1910.107(c)(5) for failure to ensure that unapproved electrical equipment was not located in a spray area, and 1910.212(a)(3)(ii) for failure to guard machinery points of operation (No. 80-4138).

Westinghouse Electric Corporation, Lamp Division, Bloomfield, N.J., is contesting a nonserious citation for 1910.176(a) for failure to keep a passageway clear (No. 80-3634).

Windcrest Farms, Lebanon, Conn., is contesting a \$90 penalty for a serious citation for 1910.219(f)(3) for failure to enclose sprocket wheels and chains (No. 80-3911).

Wisconsin Tissue Mills, Menasha, Wis., is contesting a serious citation and a \$1,140 penalty for 1910.95(a) for failure to protect employees against the effects of noise and 1910.106(e)(2)(iv)(a) for failure to keep flammable liquids in covered containers when not in use (No. 80-4050).



**CORRECTIONS TO PROPOSED REVISION OF OSHA REGULATION
ON BASIC PROGRAM ELEMENTS FOR FEDERAL EMPLOYEE
OCCUPATIONAL SAFETY AND HEALTH PROGRAMS**

[45 FR 58144, September 2, 1980]

**Occupational Safety and Health
Administration**

29 CFR Part 1960

[Docket No. F-002]

**Basic Program Elements for Federal
Employee Occupational Safety and
Health Programs; Corrections**

AGENCY: Occupational Safety and
Health Administration, Labor.

ACTION: Proposed rulemaking—
corrections.

SUMMARY: On Friday, August 15, 1980, OSHA published in the Federal Register a proposed revision of 29 CFR Part 1960 on basic program elements for Federal employee occupational safety and health programs. (45 FR 54355) Several provisions of that proposal were inadvertently omitted. The purpose of this document is to correct the proposal by adding the omitted provisions.

DATE: Comments should be submitted on or before September 15, 1980.

ADDRESS: Comments should be sent to: Docket Officer, Docket No. F-002, Room S-6212, U.S. Department of Labor, Washington, D.C. 20210.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Broderick, OSHA, U.S. Department of Labor, Washington, D.C. 20210. Telephone [202] 376-3005.

The proposal published at 45 FR 54355 is hereby corrected as follows:

§ 1960.35 [Amended]

1. Page 54355, column 3, 1960.35 should be changed by deleting "[Reserved]" and inserting the following: "National Institute for Occupational Safety and Health."

§ 1960.76 [Amended]

2. Page 54358, column 1, 1960.76 should be changed by deleting "Agency annual reports" and inserting the following:

"Accident, injury and illness investigation."

§ 1960.77 [Amended]

3. Page 54358, column 1, 1960.77 should be changed by deleting

"[Reserved]" and inserting the following: "Agency annual reports."

§ 1960.34 [Amended]

4. Page 54363, column 2, 1960.34 should be changed by adding a new paragraph (e) following § 1960.34(d) and by adding a new § 1960.35 as follows:

(e) *Safety and health services.* GSA will operate and maintain for user agencies the following services:

(1) listings in the "Federal Supply Schedule" of safety and health services which are approved for use by agencies when needed. Examples of such services are: workplace inspections, training, industrial hygiene surveys, asbestos bulk sampling, and mobile health testing;

(2) rules for assistance in the preparation of agency "Occupant Emergency Plans" (formally called "Facility Self-Protection Plans"). GSA shall publish these rules in 41 CFR 101, and

(3) an effective maintenance program in the Interagency Motorpool System which will ensure the safety and health of Federal employees utilizing the vehicles. Critical items to be included are: exhaust systems, brakes, tires, lights, and steering.

§ 1960.35 National Institute for Occupational Safety and Health Services.

(a) The Director of the National Institute for Occupational Safety and Health (NIOSH) shall, upon request by the Secretary, assist in the evaluation of Federal Agency Safety and Health Programs; and, reports of unsafe or unhealthful conditions received by the Secretary.

(b) The Director of NIOSH shall provide a Hazard Evaluation (HE) program for Federal agencies. This program shall be designed to respond to significant safety and health hazards that are identified in the Federal sector. Requests for such HEs may be submitted to the Director by:

- (1) The Secretary of Labor;
- (2) The Head of a Federal Agency;

(3) An agency safety and health committee if half the committee requests such service, and

(4) An employee who is not covered by a certified safety and health committee.

(c) The Director of NIOSH may assist agencies by providing technical services, training materials and conducting training programs upon request by an Agency and with reimbursement.

§ 1960.71 [Amended]

5. Page 54367, column 1, § 1960.71 should be changed by adding a new paragraph (c) following § 1960.71(b), as follows:

(c) Agencies shall construe the term "occupational incident" in a liberal manner for the purposes of this section, and shall report them even where there is some doubt as to the relationship between the accident and the "course" or "scope" of employment activities.

The reporting of an incident pursuant to this section therefore does not preclude an agency from making separate determinations regarding the circumstances of the incident as they may relate to administrative or legal proceedings to establish liability for compensation.

6. Page 54367, column 3, "§ 1960.76" should be changed to read "§ 1960.77" and a new § 1960.78 inserted to read as follows:

§ 1960.78 Accident, injury and illness investigation.

Each Federal agency head shall ensure that all accidents, injuries and illnesses are investigated to determine causes, factors and preventive measures. The extent of such investigations shall be reflective of the seriousness of the incident.

Signed at Washington, D.C. this 27th day of August, 1980.

Eula Brigham,
Assistant Secretary of Labor.



MEETINGS SCHEDULED

September 16 — Machine Guarding, Jamesburg, N.J. (Mary S. Hill, New Jersey State Safety Council, 50 Park Place, Suite 820, Newark, N.J. 07102; tel: (201) 642-3123).

September 16-18 — Chromates symposium, Rockville, Md. (Machael Russak, Industrial Health Foundation, 5231 Centre Ave., Pittsburgh, Pa. 15232; tel: (412) 687-2100).

September 16-18 — Determining Toxicity of Commercial Products, Tucson, Ariz. (Herschella L. Horton, Arizona Center for Occupational Safety and Health, Univ. of Arizona Health Sciences Center, Tucson, Ariz. 85724; tel: (602) 626-6835).

September 17 — Industrial Health, Hygiene, and Hazardous Materials for Supervisors and Foremen, Burbank, Calif. (Training Institute, 616 South Westmoreland Ave., Los Angeles, Calif. 90005; (213) 385-6461).

September 17 — Personal Protective Equipment, Jamesburg, N.J. (Mary S. Hill, New Jersey State Safety Council, 50 Park Place, Suite 820, Newark, N.J. 07102; tel: (201) 642-3123).

September 17 — Health Risk Management: Lead Industry, Palo Alto, Calif. (WORKSMART, Center for Toxicology, Man and Environment, Inc., 6825 E. Tennessee Ave., Suite 365, Denver, Colo. 80224; tel: (303) 399-2700).

September 17-18 — Hazardous Material Safety, Pittsburgh, Pa. (Registrar, Starson Corporation, NHCI Division, P.O. Box 133, Stanton, N.J. 08885).

September 17-19 — Skin and Eye Hazards, Gatlinburg, Tenn. (Joe T. Kretchick, Fireman's Fund Insurance Co., 2207 Crestmoor Rd., Nashville, Tenn. 37215).

September 18 — Leadership and Management Safety Training, Burbank, Calif. (Training Institute, 616 South Westmoreland Ave., Los Angeles, Calif. 90005; tel: (213) 385-6461).

September 18 — Office Safety, Bernardsville, N.J. (Mary S. Hill, New Jersey State Safety Council, 50 Park Place, Suite 820, Newark, N.J. 07102; tel: (201) 642-3123).

September 18-19 — Supervising for Safety, El Paso, Tex. (Jin Broughton, Texas Safety Association, P.O. Box 9345, Austin, Tex. 78766; tel: (512) 451-7421).

The course also will be offered September 24-25 in Harlingen, Tex., and Dallas, Tex.

September 18-19 — Electronic and Semiconductor Industry Health Risk Management, Palo Alto, Calif. (Center for Toxicology, Man and Environment, Inc., 6825 E. Tennessee Ave., Suite 365, Denver, Colo. 80224; tel: (303) 399-2700).

September 18-19 — Risk Management for Hazard Control Managers, Washington, D.C. (International Institute of Occupational Safety and Health, 9413 Jones Pl., Seabrook, Md. 20801; tel: (301) 469-9448).

September 18-19 — Hazardous Chemical Safety Seminar, Detroit, Mich. (Carole Morris, J.T. Baker Chemical Company, Phillipsburg, N.J. 08865; tel: (201) 454-2500).

The course also will be held September 22-23 in Philadelphia, Pa., September 25-26 in Charlotte, N.C., and September 29-30 in Denver, Colo.

September 19 — Occupational Medicine for the Practicing Physician, Seattle, Wash. (Jack Rider, Univ. of Washington, Northwest Occupational Safety and Health Educational Resource Center, SC-34, Seattle, Wash. 98185; tel: (206) 545-1069).

September 22-23 — Industrial Noise Problems and Hearing Conservation, Hasbrouck Heights, N.J. (Mary S. Hill, New Jersey State Safety Council, 50 Park Place, Suite 820, Newark, N.J. 07102; tel: (201) 642-3123).

September 22-24 — Overhead Cranes and Rigging, Orlando, Fla. (Thomas Poulos, Jr., U.S. Crane Certification Bureau, Inc., 8000 South Orange Ave., P.O. Box 13568, Orlando, Fla. 32859; tel: (305) 351-4777).

September 22-24 — Crane Safety Training Program on Overhead Cranes and Rigging (Thomas Poulos, Jr., U.S. Crane Certification Bureau, Inc., 8000 South Orange Ave., P.O. Box 13568, Orlando, Fla. 32859; toll-free tel: (800) 327-0300; (in Fla.): (305) 351-4777).

September 22 — Vehicle Accident Investigation Seminar, St. Louis, Mo. (Marion A. Rupe, Safety Council of Greater St. Louis, 1015 Locust St., Suite 314, St. Louis, Mo. 63101; tel: (314) 621-9200).

September 22-24 — Safety in Chemical Laboratories and Pilot Plants, Chicago, Ill. (Rosanne Razzano, Dept. NR, Center for Professional Advancement, P.O. Box H, East Brunswick, N.J. 08816; tel: (201) 249-1400).

The course also will be held October 6-8 in Atlanta, Ga., and October 27-29 in San Francisco, Calif.

September 22-25 — Carcinogenicity/Mutagenicity, Amsterdam, N.Y. (Rosanne Razzano, Dept. NR, Center for Professional Advancement, P.O. Box H, East Brunswick, N.J. 08816; tel: (201) 249-1400).

September 22-25 — Eighth Medichem Congress, Tokyo, Japan (N. Takemura, Department of Public Health, Jikei University, School of Medicine, Minato-ku, Tokyo 105, Japan).

September 23 — Hazardous Material Handling, Brighton, Minn. (Minnesota Safety Council, 145 Hamm Building, St. Paul, Minn. 55102).

September 23 — Fundamentals of Industrial Accident Investigation, Burbank, Calif. (Training Institute, 616 South Westmoreland Ave., Los Angeles, Calif. 90005; tel: (213) 385-6461).

September 23-24 — Second Annual Health in the Workplace Seminar, E. Lansing, Mich. (Russel G. Scovill, Division of Occupational Health, P.O. Box 30035, Lansing, Mich. 48909; tel: (517) 373-1360).

September 24 — Respiratory Protection, Morristown, N.J. (Mary S. Hill, New Jersey State Safety Council, 50 Park Place, Suite 820, Newark, N.J. 07102; tel: (201) 642-3123).

September 24 — Office Safety Training, Burbank, Calif. (Training Institute, 616 South Westmoreland Ave., Los Angeles, Calif. 90005; tel: (213) 385-6461).