

OCCUPATIONAL SAFETY AND HEALTH (OSH) ACT REFORM PROPOSED POLICY

BACKGROUND

Legislation was introduced earlier this year to attempt the first major changes to the Occupational Safety and Health (OSH) Act since its creation in 1970. The proposed legislation (called the Comprehensive Occupational Safety and Health Reform Act), as introduced, would bring about substantial changes in the law and in the agency that administers it. The legislation as introduced is broad in scope and goes beyond traditional questions of health and safety, addressing numerous labor law reform issues as well. In CMA's view, major portions of the pending bills would not be an improvement over current law and, most important, would do little to raise the level of safety and health protection in American workplaces.

Since CMA's last comprehensive review of the Occupational Safety and Health Administration (OSHA) prepared during the transition to the Bush Administration, CMA has maintained there is no need for a massive overhaul of the OSH Act. In the more than 20 years the law has been in force, it has proved to be effective and flexible in addressing workplace safety and health issues. At the same time the law has become more understood and its goals held in high regard.

However, CMA has also maintained that OSHA can be improved -- and that improvements could be accomplished either administratively or by routine regulatory procedures. In recent years, there have been numerous instances when OSHA has improved its performance using both these methods, including development of voluntary programs; enhancement of state training and consultation initiatives; and issuance of generic, performance-based regulations such as the Hazard Communication Standard.

CMA is committed to continually improving the safety and health of all chemical industry employees, contractors and visitors in the workplace, as evidenced by our Responsible Care® program and its codes of management practices. Furthermore, the Association and its members are committed to working with the Occupational Safety and Health Administration to accomplish this goal. Although agency performance has improved in recent years, CMA believes there is room for further improvement. In addition, public perception of the state of workplace health and safety is supportive of changes in the law, presenting the opportunity for CMA to be a part of a critical review of the OSH Act.

PROPOSED CMA POLICY

CMA believes the existing Occupational Safety and Health (OSH) Act of 1970 has contributed significantly to the health and safety of American workers. CMA also believes the law and the Occupational

Safety and Health Administration (OSHA) can be improved and strengthened resulting in better safety and health protection in the workplace.

CMA supports changes in the existing law that will improve health and safety. In addition, CMA believes that there are some improvements that can be made effectively through legislative action as well as others through administrative and regulatory initiatives.

CMA does not support the proposed Comprehensive Occupational Safety and Health Reform Act (COSHRA), H.R. 3160 and S. 1622, in their current form. The measures will not bring about further improvements in workplace health and safety protection. In addition, they address labor law issues unrelated to health and safety protection.

CMA believes there are a number of workplace health and safety issues that should be addressed on their merits, and that they should be examined carefully. In our view, this examination should be done in partnership with the Administration, Congress, organized labor and the rest of the business community. The mutual goal should be to promote real improvements in occupational safety and health for American workers. To that end, CMA will actively participate in deliberations with the goal of achieving legislative reform that truly promotes safety and health protection.

Detailed positions on individual issues embodied in the proposed COSHRA legislation are referenced in the attached Exhibit A. The basis for these individual positions are rooted in the proposed legislative policy and previously approved policies.

ACTION REQUESTED

Approval of proposed OSHA reform policy and positions on individual issues as set forth in Exhibit A.

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EXHIBIT A

PROPOSED POSITIONS ON INDIVIDUAL ISSUES
CONTAINED IN H.R. 3160/S. 1622

1. Issue: Mandated written safety and health programs

Position: 1.1 Support inclusion of a written safety and health program with a non-mandatory list of elements.
1.2 Oppose mandated list of specific program elements.
2. Issue: Mandated joint labor management committees by legislation or regulation

Position: 2.1 Oppose mandated committees and specific list of duties, make-up, and selection of members.
2.2 Support the requirement that employers create the opportunity for employees to participate in workplace safety and health program activities but allow employers flexibility to design and implement methods appropriate to their specific workplace.
3. Issue: Mandated training of employees and annual training of committee representatives

Position: 3.1 Support health and safety training of employees.
3.2 Oppose mandating training specifics through legislation.
4. Issue: Employee Pay

Position: Do not oppose pay for time employees are trained or working on safety and health program activities as presently legislated and regulated.
5. Issue: Coverage

Position: 5.1 Oppose elimination of the proven standard of federal agency preemption contained in the existing law.
5.2 Support extension of coverage to governmental employees, but only if preemption is unchanged.
5.3 Oppose as unnecessary the provision addressing federal nuclear facilities.
6. Issue: General Duty Clause

Position: 6.1 Support making a site owner responsible for: providing a safe workplace; informing employees and contractor employees of workplace hazards and precautions required for safe work related to site specific operations; and controlling hazards accordingly.
6.2 Oppose making a site owner responsible for contractor employees, and for safety and health conditions beyond the control of the site owner.

7. Issue: Standards setting process and public disclosure of all written or verbal communications regarding promulgation of standards.

Position: 7.1 Oppose legislation of a list of specific standards to be promulgated by OSHA as well as the specific timetables for completion.
7.2 Oppose the imposition of timetables and mechanisms for OSHA to respond to petitions from "interested persons" regarding OSHA standards; the present provisions of the Act are adequate.
7.3 Support OSHA's authority and responsibility under the current Act to establish its own priorities and promulgate occupational safety and health standards as they determine the need.
7.4 Oppose change in public disclosure of communications by OSHA as existing law is adequate.
7.5 Oppose re-definition of Occupational Safety and Health Standard that eliminates the need for cost benefit analysis.

8. Issue: Recording of work-related illnesses

Position: Oppose recording of suspected work related illnesses.

9. Issue: Enforcement

Position: 9.1 Support the concept that the current OSH Act recognizes consideration of complaints to OSHA from any source.
9.2 Support Agency establishing its own priorities in addressing complaints.
9.3 Oppose redefinition of serious incident requiring OSHA inspection.

10. Issue: Abatement

Position: 10.1 Oppose requirement to abate alleged hazard citation while under legal challenge by the employer.
10.2 Do not oppose requirement that the employer verify abatement of hazards that are not contested; OSHA has existing authority to require such an employer response.

11. Issue: Employee participation in settlement process

Position: 11.1 Oppose the authorization of employees and employee representatives to file contest of citation for more than reasonableness of the abatement period.
11.2 Oppose authorization of employee representatives to participate as parties to hearings and other proceedings which includes settlement discussions between employer and Agency.

12. Issue: Imminent Danger and Work Refusal

Position: Oppose any change in definition of imminent danger from conditions that could be expected to cause death or serious physical harm; support maintaining current procedure requiring OSHA to seek temporary restraining order to either shut down or remove employees from work area.

13. Issue: Penalties

Position: 13.1 Oppose changes to the penalty structure including the addition of criminal penalties.
13.2 Oppose personalizing fines; allow company assets to support individual employee.

14. Issue: Whistleblowing

Position: 14.1 The existing Act provides for protection of an employee from discrimination based on complaints or testimony given relative to safety and health matters in the workplace; oppose any broadening of these provisions.
14.2 Oppose further definition of conditions that will allow employees to refuse to perform hazardous work without fear of reprisals; employees already have the right to refuse hazardous work under court decisions and the current Act.

15. Issue: NIOSH

Position: 15.1 Support maintenance of NIOSH in CDC.
15.2 Oppose giving NIOSH authority to force OSHA to justify nonacceptance of regulatory recommendations.
15.3 Oppose mandating that NIOSH contractors or designees have authorization to inspect facilities and question employees; oppose authorizing NIOSH to investigate accidents.
15.4 Oppose NIOSH communication of increased risk of disease directly to employees.
Support employee notification of increased risk by employer under jurisdiction of OSHA Hazard Communication.
Support employer determination of medical surveillance needs.
Oppose mandated generic medical removal provisions.

16. Issue: State Plans

Position: Do not oppose increased oversight of state plans by federal OSHA.

PROPOSED OSHA REFORM POLICY (TAB 7)
AMENDED VERSION OF LAST PAGE (P.4)

17. Issue: Victims' Rights

Position: 17.1 Do not oppose communication with victims and
their families

17.2 Oppose mandatory victim and victim family
participation in OSHA decisions, proceedings and
settlement negotiations.

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