

CFR Part 1904, the Commission held that FRA has issued recordkeeping requirements for the railroad industry that preempt OSHA enforcement of its recordkeeping regulations.

4. *Action: FRA Jurisdiction.* In accordance with these decisions, FRA jurisdiction is applicable to those workplace hazards in the railroad industry which may be reduced by FRA under enforceable regulations issued by that agency. Those hazards exist in the following areas and operations: track conditions; inspection and operation of rolling stock; signal operation; and transportation of hazardous materials. Not all hazards in those areas and operations, however, are preempted by FRA regulations. This includes only those hazards which could be eliminated or reduced under the provisions of the FRA regulations.

b. *OSHA Jurisdiction.* Fatality, catastrophe, complaint investigations, and random inspections will be conducted by OSHA field staff in the same manner as in other industries, with respect to all workplace hazards to which FRA has not exercised its statutory authority by issuing enforceable standards which permit FRA to reduce or eliminate those particular conditions. This includes, but is not necessarily limited to, occupational safety and health inspections as to workplace hazards on railroad properties such as:

- (1) offices, stations, terminals, shops,
- (2) warehouses, storage areas, loading docks, support facilities,
- (3) rights-of-way,
- (4) yards,
- (5) rolling stock to the extent that occupational safety and health hazards are not covered by FRA standards,
- (6) transportation between duty stations and worksites,
- (7) living facilities provided by the employer when employees are away from home.
- (8) all construction, installation, and maintenance activities, including but not limited to:
 - (a) tracks,
 - (b) signal and communication systems,
 - (c) power systems,
 - (d) bridges,
 - (e) buildings,
 - (f) other equipment and facilities.

In general, the CSHO shall operate on the assumption that OSHA has jurisdiction unless there are known FRA standards.

c. *Citation Policy.* Appropriate citations and penalties should be issued for all violations using appropriate standards — 29 CFR 1910 and 1926. Citations and penalties should also be issued in accordance with the Field Operations Manual, Chapter XI, page XI-9, for violations of the poster requirement in 29 CFR 1903.2.

d. *Recordkeeping.* Citations and penalties should not be issued, pending further notification, with respect to recordkeeping violations under 29 CFR 1904. However, the CSHO should request and examine the FRA injury and illness records and utilize them for purposes of inspection. No citations or penalties shall be issued with regard to these records.

e. *Imminent Danger.* Where appropriate, imminent danger procedures should be followed. See Field Operations Manual, Chapter IX.

f. *Right of Entry.* If entry to a railroad workplace is refused, the procedures in the Field Operations Manual, Chapter V, page V-6, should be followed.

g. *National Office Contract.* If a question arises as to the procedures in this directive, or the exercise of FRA statutory authority over specific working conditions, the OSHA field staff should contact the National Office, Office of

Compliance Programming, by telephone, 202-961-2884/3971.

If the OSHA National Office determines that the specific working condition is covered by FRA authority, the complaint will be referred directly to the National Office of the FRA, unless they request direct referral to their Regional Offices. If a complaint is involved, the complainant shall be notified in writing, by either the National Office or Regional Office as directed, of the disposition of the complaint.

h. State Plans.

(1) *Routine State Inspections.* States with approved 18(b) plans should be advised of these guidelines for conducting routine railroad inspections. The scope of State coverage in the railroad industry is expected to be equivalent to that provided by OSHA, unless it has been determined that under the particular State plan, coverage of the railroad industry is excluded under 29 CFR 1902.2(c).

(2) *Referral to Operational States.* In States that are determined to be operational under 29 CFR 1954.3 and OSHA Program Directive #74-11, all employee complaints and fatality and catastrophe investigations involving working conditions in the railroad industry within OSHA jurisdiction as defined in the preceding paragraph 4(b), will be referred to the State in accordance with the State's operational agreement. The procedures in the preceding paragraph 4(g) should be followed for complaints or portions thereof not within the defined OSHA jurisdiction.

5. *Effective Date:* This directive is effective immediately and shall be retained until superseded or amended.

Field Memoranda

OSHA SAYS DISCHARGED EMPLOYEE COMPLAINTS SHOULD BE DEEMED VALID

Workplace complaints filed by someone who alleges to have been discriminatorily discharged should be deemed valid complaints and promptly investigated, according to Field Information Memorandum 75-1 issued January 3.

The clarification was made by Occupational Safety and Health Administration Associate Assistant Secretary for Regional Programs Barry J. White regarding Section 11(c) and Chapter VI, Section A.2.D.(1) of the Field Operations Manual. The text of the memorandum follows:

"For the purposes of submitting a complaint, an 'employee' would normally be a present employee of the employer whose establishment is being complained about. However, in some circumstances, it may be a former employee; for example, where the employee may have been discriminatorily discharged for a complaint about unsafe or unhealthful conditions in the workplace."

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Field Memoranda

OSHA INSTRUCTS FIELD TO RESUME INSPECTIONS FOR VINYL CHLORIDE

Inspections for vinyl chloride should be resumed immediately, Barry J. White, associate assistant secretary for regional programs, Occupational Safety and Health Administration said in Field Information Memorandum 75-4 issued January 8.

The memo reiterates OSHA's position to enforce the provisions of the levels of the temporary emergency standard, which expired October 4, but which are similar to the

first stage of the permanent standard which has been stayed by the Second Circuit Court of Appeals

The text of the memorandum follows

"Attached for your information is a copy of the memorandum to Assistant Secretary John H. Stender from the Solicitor of Labor, dated January 2.

"With this memorandum as a basis, I am directing that inspections for exposure to vinyl chloride be resumed effective immediately.

"Subsection (o)(1) of 29 CFR 1910.93q dated October 4, 1974, page 35898 of the Federal Register [Reference File 31:5343] shall continue in effect although the date is past January 1, 1975. Citations shall be on 1910.93q(o)(1) published October 4, 1974. This means that until further notice all the provisions of the emergency temporary standard (ETS) for exposure to vinyl chloride dated April 5, 1974, shall be implemented and enforced. The April 5, 1974, provisions are found on pages 12342 through 12344 of the Federal Register of that date.

"The amendments of December 3, 1974, in the Federal Register shall not apply nor shall any of the provisions of the October 4, 1974 pages 35896 through 35898 apply except 1910.93q(o)(1) on page 35898.

"OSHA Program Directive 200-29 (Current Report, May 23, p. 1622) of May 22, 1974 remains in effect."

Solicitor's Memo

"The solicitor's memo to Stender referred to in the Field Information Memorandum pointed out the government's request for clarification from the court on its order (Current Report, January 9, p. 925). The memo explains further the Labor Department's position that the stay of the standard refers only to the "second stage of the standard," which requires respirators and a 1 ppm exposure ceiling.

Field Memoranda

OSHA DISCONTINUES ENFORCEMENT OF MOCA STANDARD, RELATED LABORATORY ACTIVITIES

Occupational Safety and Health Administration compliance officers were instructed to discontinue enforcement of the standard for 4,4'-Methylene bis (2-chloroaniline) (MOCA) in 1910.93e, and laboratory activities for all 14 carcinogens in 1910.93(c)(6) through p(6)(3).

The order was issued in Field Information Memorandum 75-2 on January 7 and was signed by Associate Assistant Secretary for Regional Programs Barry J. White. The text of the memorandum follows:

"The standard, 29 CFR 1910.93 4,4' Methylene bis (2-chloroaniline) MOCA has been vacated and remanded by a court decision. Simultaneously, the 14 laboratory activities subsections of 29 CFR 1910.93(c)(6) through p(c)(6) were also vacated.

"Therefore, you are directed to immediately discontinue enforcing the MOCA standard and the laboratory activities subsections (c)(6) of 29 CFR 1910.93c through p.

"A new MOCA standard is being prepared by the Office of Standards. New laboratory subsections (c)(6) for the remaining carcinogens standards are being prepared also.

"This memorandum is effective until further notice. Please notify all area offices and agreement states accordingly.

"Questions concerning the above should be directed to Ray McClure or Flo Ryer, Division of Occupational Health Programming, Room 760, 1726 M Street, N.W., Washington, D.C. 20210."

Field Memoranda

OSHA NOTES CORRECTIONS IN SAFETY, HEALTH STANDARDS

Two corrections in job safety and health standards for bakery equipment were noted in Field Information Memorandum 75-3 issued by the Occupational Safety and Health Administration on January 7.

The changes correct references to revoked sections of the electrical standards. The text of the memorandum follows:

"Region VII has brought to my attention an error on page 23761 of 29 CFR 1910, 'Occupational Safety and Health Standards,' dated June 27, 1974. In paragraph 1910.263 (d) (1) (i) (a) so much as reads, 'required by 1910.312 and 1910.320' is in error. The line should read, 'required by Subpart S of this part.'

"Paragraph 1910.263 (d) (1) (viii), page 23761 is also in error. So much as reads, 'requirements of 1910.326' should read, 'requirement of Subpart S of this part.'

Please advise appropriate personnel accordingly."

The memorandum was signed by Associate Assistant Secretary Barry White.

General Policy

RESEARCH GROUP SEEKS INVESTIGATION OF RELOCATION OF HAZARDOUS INDUSTRIES

United States industries involved in hazardous manufacturing operations are moving their manufacturing activities selectively to developing nations and should be investigated by the International Trade Subcommittee of the Senate Finance Committee, according to the Maryland Public Interest Research Group.

The research group made its request to Senator Abraham Ribicoff (D-Conn), chairman of the subcommittee, on January 9. According to a report prepared by the group, manufacturers of asbestos textiles are engaged actively in this activity.

Large vinyl chloride and other industries, the research group added, may follow this lead.

A spokesman for Ribicoff confirmed that his office had received the group's report, but that the senator had not had time to read the document and issue a statement. The group said worker and environmental protection laws are strictest and control costs highest in advanced industrial nations; therefore manufacturers who face stiff regulation here may move to so-called "unregulating" countries, while continuing to sell products in the United States.

Department of Commerce statistics show a steep increase in asbestos textile imports from Mexico, Brazil, Venezuela, and Taiwan, the group said. These countries supplied 50 percent of U.S. asbestos textile imports in 1973, an increase from zero in the years 1964 to 1969. These countries are all distant from either the U.S. or deposits of the fire-resistant mineral.

The group said it was unable to get information from most American manufacturers, including the largest ones, about their foreign holdings.

"We also asked them if they would support a move to get congressional protection for the domestic industry against imports. We got four replies to 14 letters," Barry Castleman, the group's environmental engineer, said.

Similar inquiries were sent to the American manufacturers of vinyl chloride gas and polyvinyl chloride, a ubiquitous plastic, the group said. Only half of the companies, most of which are multinational oil and chemical firms,