

## OSHA REGULATORY ACTIVITIES

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### Abstract

Some of the more significant OSHA regulatory activities are discussed: (1) ergonomics, proposed in November 1999 and the most immediate priority of OSHA's regulatory plan in 2000, would require all employers with manufacturing and manual handling to have a program; (2) safety and health program rule, a high priority, is still under internal review at OSHA and could be proposed by July 2000. If it is promulgated as in the draft proposals, OSHA essentially will not need any other regulations; (3) Occupational Exposure to Crystalline Silica (about 20% of soil is crystalline silica and it is now considered a human carcinogen) is now scheduled to be proposed in 2001; (4) Recording and Reporting Occupational Injuries and Illnesses, another high priority, is scheduled to be finalized in April 2000; (5) Occupational Exposure to Tuberculosis (supposed to cover health workers only) is scheduled for a final standard in July 2000; (6) Employer Payment for Personal Protective Equipment is scheduled for a final standard in July 2000; (7) Consultation Agreements is scheduled for a final standard February or March 2000; and (8) Permissible Exposure Limits for Air Contaminants is scheduled to be proposed in April 2000 (it will not include hexane).

### Introduction

In 1999, OSHA was an agency both in retreat – a court decision in April 1999 killed OSHA's cooperative compliance program (CCP) – and on the offensive by releasing the very controversial ergonomics proposed rule on November 23, after Congress had left for recess. In 2000, OSHA is expected to continue to be very active in enforcement and in the regulatory arena. Charles Jeffress, OSHA Head, believes in inspections as a valuable tool to get employers' attention and also feels that safety and health management programs are a key to a good OSHA programs. Jeffress is also attempting to streamline the standards setting process at OSHA; most standards take years from initiation to final rule.

After the U.S. Court of Appeals for the District of Columbia Circuit struck down CCP, OSHA took another approach and started targeting high-hazard employers. This initiative, according to OSHA, is already producing tangible results and continues in 2000. On Feb. 4 in a directive (CPL 2) OSHA issued a new site-specific enforcement plan that targets as

many as 4,200 high-hazard work sites for unannounced comprehensive safety and health inspections. OSHA will send letters to facilities/work sites with the highest injury rates, telling the companies that they have problems and OSHA intends to inspect some of them. The new plan initially selects all work sites with a lost workday illness and injury rate at or above 14 per 100 workers based on 1998 data collected in the 1999 Data Initiative (a nationwide collection of establishment-specific injury and illness data from about 80,000 employers). This plan replaces OSHA's plan for last year, which targeted 2,200 hazardous work sites. The new Targeting directive will expire Feb. 3, 2001, and it is expected that all workplaces on the target list will be inspected by Jan. 31, 2001. No cotton industry sectors should be on the target list.

Near the end of 1999 OSHA sent an "advisory letter" to a company in TX concerning "at-home work" (home offices) which raised much controversy and was withdrawn by Secretary of Labor Herman on January 5, 2000. Jeffress, OSHA Administrator, acknowledged the letter was overstated and that OSHA does not make inspections of home offices unless there is an accident that is reported that requires them to inspect (this has been done about ten times). OSHA makes a distinction between the growing number of telecommuters and the at home workers (e.g., piece work) that are potentially exposed to hazardous materials and processes. OSHA head, Jeffress, told Congress (1-28-00) that employers will not be held liable for any violations that occur at home offices for telecommuters and that the Agency will take no action that would discourage this form of work. But employers are not exempt from liability for hazardous manufacturing work that employees perform in their homes. Jeffress said the Agency would issue a directive spelling out the government policy for all OSHA employees and legislation has been introduced to clarify the OSH Act. The letter raised the whole issue of how the agency gives advice and is causing OSHA's internal review process to be much more extensive by top staff, including Jeffress.

In 2000 several standards will be finalized and there will be several new proposals. The current OSHA regulatory activities are summarized in Table 1. This paper will briefly review some of the more important regulatory activities that potentially impact cotton industry sectors. The following regulatory activities are discussed in the section titled "OSHA Regulatory Activities" in the order as numbered below:

1. Ergonomics Program Standard
2. Safety and Health Program Rule
3. Occupational Exposure to Crystalline Silica
4. Occupational Injury and Illness Recordkeeping and Reporting Rule
5. Employers Payment for Personal Protective Equipment

6. Consultation Agreements
7. Occupational Exposure to Tuberculosis
8. Bloodborne Pathogens
9. Permissible Exposure Limits (PELs) for Air Contaminants
10. Respiratory Protection (Proper Use of Modern Respirators)
11. Process Safety Management
12. Cotton Dust Standard
13. Control of Hazardous Energy Sources (Lockout/Tagout)
14. Flammable and Combustible Liquids
15. Fire Brigades
16. Metalworking Fluids: Protecting Respiratory Health
17. Diesel Exhaust (Particulate Matter)

### **General Information**

OSHA has authority over all standards affecting the workplace. Table 2 contains information on OSHA regulations that apply to the various cotton industry sectors. Cotton production and ginning are agriculture, other cotton industry sections are general industry.

The OSH Act requires that each employer shall maintain a safe and healthful workplace (“general duty clause”), i.e., a place of employment free from recognized hazards that are causing or are likely to cause death or serious physical harm to employers. OSHA can cite for alleged violation under this so-called “general duty clause” [Section 5(a)(1) of the OSH Act] if there is not a specific standard to cite. OSHA is increasingly using the “general duty clause” to cite for workplace violations (alleging industry practices for some industry voluntary actions) and bringing more criminal penalties. Record keeping, training, and hazard communication are the most cited standards. In addition, OSHA can refer a case to the Department of Justice to bring criminal penalties against an employer.

Federal OSHA enforces all OSHA standards except where there is a state plan program. (See Table 3 for a list of cotton belt states with state plans.) You should know whether your state is a “state plan” state (i.e., administers its own OSHA program) or is under Federal OSHA, since 23 state plan states have different regulations than Federal OSHA – state standards only have to be “as effective as the Federal standards”, but they can be more severe.

### **OSHA Regulatory Activities**

#### **1. Ergonomics Program Standards (29 CFR 1910.900-945)**

In 2000 development of an ergonomics standard is the most immediate priority for OSHA. There was an Advanced

Notice of Proposed Rulemaking in 1992. OSHA published the ergonomics program standard proposal on November 23, 1999 (64 FR 65768). Comments are due March 2, 2000 and eight weeks of hearings at three locations are planned followed by a post-hearing comment period set by an administrative law judge. The final standard could be a year or two away even though OSHA is hopeful to have it out by the end of 2000. Agriculture is not covered by the proposed regulations but could be added later. Ergonomics alleged violations are already being enforced in some instances by OSHA under the general duty clause. So OSHA could enforce an ergonomics standard in agriculture with the general duty clause even if there is not a agriculture specific standard. An ergonomics regulation would be very costly to agriculture and other cotton industry sectors.

The proposed standard would require all employers with manufacturing or manual handling operations to have an ergonomics program. The program would include three elements: (1) Management Leadership; (2) Employee Participation; and (3) Hazard Information and Reporting. The Proposed Ergonomics Standard would also apply to any general industry worksite, where one employee experiences one “recordable” work-related musculoskeletal disorder (MSD). This trigger is met if: 1) a health care provider diagnoses an MSD; 2) an employee reports an objective MSD symptom (such as redness or swelling); or 3) an employee reports a subjective symptom (such as tingling, numbness or pain) that is accompanied by medical treatment, a job transfer, or lost or restricted work time.

Employers in general industry (including manufacturing and manual handling operations) who experience one recordable MSD would have two options: implement either a) a “quick-fix” or b) a comprehensive ergonomics program. Employers that experience more than one recordable MSD would have to establish a comprehensive program. The “quick-fix” option would require the employer to provide medical management to the affected employee, perform a detailed job hazard analysis on all jobs within the employee’s classification, identify methods of controlling ergonomics hazards, implement such methods within 90 days of the first report of the MSD and prevent the recurrence of any MSD signs or symptoms. The “comprehensive program” would cover those job classifications where an MSD was recorded. Employers would have to maintain the program until they have not had a recordable MSD for the previous three years. The full program would include the three elements described above for manufacturing and manual handling operations, plus would require: job hazard analysis and control, employee training, MSD management, medical removal protection, and record-keeping.

The FY’99 omnibus spending bill contained language requiring the \$890,000 National Academy of Sciences (NAS)

two-year study on ergonomics (due by January 2001 on the relationships between MSDs and work activities) and there has been legislation (HR 987) introduced by Representative Blunt (R-MO) that would require OSHA to consider the results of this study before finalizing a rule. However, OSHA has indicated that they do not think it is necessary to consider the NAS study results.

The California Occupational Safety and Health Standards Board adopted an ergonomics regulation, which became law on July 3, 1997. The measure would apply to all California businesses and would be triggered when two workers performing identical tasks have been diagnosed with repetitive motion injuries (RMI) in a 12-month period. North Carolina proposed an ergonomics standard in November 1998, which would cover agriculture as well as general industry. In 1999, the North Carolina state legislature voted not to provide funding for implementation of the ergonomic rule if finalized, and the Rules Committee threw the standard out. No matter what North Carolina ends up doing, at a minimum they will have to adopt the Federal Standard when it is finalized, which, if it is published in the present form, has many problems, which are discussed in this section, plus agriculture would be effectively covered through the general duty clause. If promulgated as proposed, the federal ergonomics standard would supersede and be more severe than the California or North Carolina standards. In addition, the American Society for Testing and Materials (ASTM) and the American National Standards Institute (ANSI) have draft standards under consideration (ASC Z – 365 draft, Control of CTDs, 6-97).

OSHA has made many changes to the proposal, but it is still seriously flawed and too vague to be enforceable. The scope is too broad, the trigger is too low (signs or symptoms of a recordable MSD), it doesn't say when an employer knows that it has sufficiently controlled MSD hazards, the agency does not offer employers any guidance as to how it will determine work-relatedness, it is overwhelming for small businesses, supersedes state workers' compensation system (requires employers to pay temporarily disabled workers their full salary and benefits for up to six months), and it has an illusory grandfather clause.

## **2. Safety and Health Program Rule (29 CFR 1900.1)**

The rule, to promote a safe and healthful workplace and identify and control/eliminate hazards in the workplace is one of OSHA's top priorities. A draft OSHA proposal was released in May 1996; a second draft was released in November 1998; the proposal is still under review at OSHA but could go to go to the Office of Management and Budget (OMB) for a 90 day review soon; and a proposal could be published by July 2000. Attorneys think the court decision overturning CCP almost compels OSHA to issue this regulation as a standard rather than just as a rule. Standards

require more extensive justification. On January 4, 1999 a small business panel (SBREFA panel) report indicated that this rule could cost small business 10 to 20 times more than the Agency indicated.

A draft version of the rule (November 1998) would require employees to establish workplace safety and health programs to ensure compliances with OSHA standards and the general duty clause of the Occupational Safety and Health Act, which requires that jobs be free from recognized hazards. It would apply to all employers covered by the act, with the exception of construction and agricultural to start with and would focus on significant hazards according to OSHA. Companies with existing programs may be grandfathered.

The elements of the Safety and Health Program Rule according to "OSHA Draft" are:

- management leadership of the program
- active employee participation in the program
- analysis of the worksite to identify significant safety and health hazards of all types
- eliminating or controlling those hazards in an effective and timely way

The rule would essentially codify the OSHA "general duty clause" with a "one size fits all" regulation. If published as in the draft it may have more of an impact than the ergonomic standard.

Report language in the FY'00 Labor appropriations required an OSHA study to examine the effectiveness of comprehensive workplace safety and health programs Congress directed OSHA to utilize their compliance assistance funds to implement this about \$2 million, two-year project with employers on safety and health programs and to report its findings to Congress. The head of OSHA has indicated that OSHA will not let this delay the standard.

An industry coalition (Alliance for Workplace Safety) led by U.S. Chamber of Commerce in fighting OSHA's attempt to promulgate this rule. The alliance is not opposed to the implementation of safety and health programs unique to an industry. However, the alliance does not believe that an OSHA one-size-fits-all regulation would work. They feel the rule would require businesses to have safety and health programs that fit the "decisions and whims of OSHA." It would give OSHA inspectors wide ranging enforcement powers including enforcement for ergonomics. The alliance will encourage employers to consider, design and implement their own health and safety programs while fighting OSHA's planned regulation.

NCC participates in OSHA stakeholder issues of this issue, which could have far reaching effects on industry and is part

of coalitions that are attempting to make changes in the rule to make it more flexible and possibly voluntary.

California has had a standard since 1989 (“Injury and Illness Protection”), which would have to be changed if OSHA promulgates a standard like the latest draft. Also, the American Industrial Hygiene Association (AIHA) is planning to develop a voluntary model safety program rule that would complement the OSHA rule and could help small business.

### **3. Occupational Exposure to Crystalline Silica (29 CFR 1910.1000)**

Revision of the crystalline Silica standard is one of OSHA’s priority regulatory efforts. Crystalline Silica, which may represent as much as 20% of soil dust, was designated by the International Agency on Cancer Research (IARC) as a known human carcinogen (for lung cancer) in February 1997. American Conference of Governmental Industrial Hygienists (ACGIH) added it to its list of suspect carcinogens in 1998 and in 1999 changed the TLV to 0.05 mg/m<sup>3</sup>. The National Toxicology Programs (NTP) proposed to change the current listing for crystalline silica to “known to be a human carcinogen” (63 FR 57132; October 26, 1998). Crystalline silica exposure can also cause acute and chronic non-malignant respiratory disease [silicosis (restrictive lung disease) and chronic obstructive pulmonary disease (COPD)] and possibly other health risks. OSHA also has a special emphasis program (SEP) on silica for silicosis (started in 1996). The OSHA project leader, Loretta Schuman, strongly believes that the lifetime risk of silicosis from exposure to crystalline silica at the current PEL is 35% to 47%, and that recent studies suggest that the current standard is insufficient to protect against silicosis.

Crystalline silica was added to the OSHA regulatory agenda in October 1997 for rulemaking for a “full and comprehensive standard” (a proposal is scheduled for June 2000 in the regulatory calendar, but OSHA now indicates that they most likely will propose it in 2001). Agriculture may not be covered by this standard. However, OSHA could enforce it in agriculture with the general duty clause. OSHA plans to update and could lower the permissible exposure limit (PEL), which is now about 0.1 mg/m<sup>3</sup>, in addition to adding workplace exposure monitoring, medical monitoring, training, and engineering controls. The Mine Safety and Health Administration (MSHA) is expected to propose a comprehensive rule in 2000, but OSHA is more likely to follow ACGIH.

The industry’s position is that the revision should focus on controlling exposures through personal protection, dust monitoring and other engineering solutions, not a more stringent PEL.

### **4. Occupational Injury and Illness Recordkeeping and Reporting Rule (29 CFR 1904)**

This is one of OSHA’s priority rulemaking in 2000. OSHA requires employers to keep records of illness and injuries. These records are used by OSHA and the Bureau of Labor Statistics (BLS), among others, to develop data on workplace safety and health by industry and across industries. The occupational injury and illness records maintained by employers are an important component of OSHA’s programs. The records are used by employers and employees to identify and evaluate workplace safety and health hazards, and they provide source data for Annual Survey of Occupational Injuries and Illnesses conducted by the BLS. All of the uses of the data are affected by the quality of the records employers maintain. Higher quality data leads to higher quality analyses, which in turn leads to better decisions about occupational safety and health matters.

To improve the quality of records and enhance the utility of the information for all the entities using the data, OSHA needs to provide clearer guidance to employers; simplify the recordkeeping forms; and provide employees with access to the information. OSHA published a proposal February 2, 1996 (61 FR 4030) that contained revised recordkeeping requirements and forms.

A final rule implementing a host of changes to Labor Department requirements for recording workplace injuries and illness is now targeted for publication in July 2000, so that the revised system can be in place by January 1, 2001. The final rule will resolve a number of important issues that continue to be debated at OSHA, including the issue of how the agency will define whether an injury or illness is work-related and must be recorded.

An industry task force is proposing that employers be only required to record those cases that are “clearly linked to the workplace”. Currently, two things enter into whether a case is recorded: Is it work-related and does it rise to the level of severity required. OSHA feels that if it has to be 100 percent work-related it would wipe out the recording of almost all cases of mixed causation (e.g., some back injuries, respiratory disease and hearing loss).

Also under consideration are the industries that will be exempted or covered by the rule. OSHA 1996 proposal would broaden the exemption for small businesses – currently, employers with 10 or fewer employees do not have to record cases – to those with 19 or fewer.

### **5. Employer Payment for Personal Protective Equipment**

Generally OSHA standards require that protective equipment (including personal protective equipment [PPE; abbreviation “PPE” covers both personal protective equipment and other protective equipment]) be provided and used when necessary to protect employees from hazards that can cause them injury,

illness, or physical harm. However, the regulatory language regarding the employer's obligation to pay for the PPE has varied. OSHA attempted to clarify its position on the issue of payment for required PPE in a compliance memorandum to its field staff dated October 18, 1994. The memorandum stated that it was the employer's obligation to provide and pay for PPE except in limited situations. However, the Occupational Safety and Health Review Commission declined to accept this interpretation (Secretary of Labor v. Union Tank Car, OSHRC No. 96-0563), finding that the Secretary had failed to adequately explain the policy outlined in the 1994 memorandum in light of several inconsistent earlier letters of interpretation from OSHA. Therefore, OSHA has proposed (3/30/99; 64 FR 15401) to revise its PPE standards to clarify who is to pay for required PPE and under what conditions, to eliminate any confusion and unnecessary litigation (i.e., the policy issue is what should be required and who should be required to pay for it).

According to the proposal, employers would be required to provide all OSHA-required PPE at no cost to employees, with the following exceptions: the employer would not need to pay for safety-toe protective footwear or prescription safety eyewear if all three of the following conditions are met: (1) the employer permits such footwear or eyewear to be worn off the job-site; (2) the footwear or eyewear is not used in a manner that renders it unsafe for use off the job-site (for example, contaminated safety-toe footwear would not be permitted to be worn off a job-site); and (3) such footwear or eyewear is not designed for special use on the job. The final rule is scheduled for July 2000.

#### **6. Consultation Agreements (29 CFR 1908)**

OSHA has proposed (7/2/99; 64 FR 35972) to amend regulations for consultation agreements to provide for full employee involvement in the consultative process in line with the President's directive to enhance worker participation in the OSH Act's section 7(c)(1) consultation program – The New OSHA: Reinventing Worker Safety and Health, May 1995. The final action is scheduled for February 2000.

#### **7. Occupational Exposure to Tuberculosis (TB)**

On October 17, 1997, OSHA published its proposed standard for occupational exposure to TB (62 FR 54160). The proposed standard would cover workers in hospitals, nursing homes, hospices, correctional facilities, homeless shelters, and certain other work settings where workers are at significant risk of becoming infected with TB while caring for their patients or clients or performing certain procedures. The proposed standard would require employers to protect TB-exposed workers using infection control measures that have been shown to be highly effective in reducing or eliminating work-related TB infections. Such measures include procedures for early identification of individuals with infectious TB, isolation of individuals with infectious TB

using appropriate ventilation, use of respiratory protection in certain situations, and skin testing and training of employees. A final rule is scheduled for July 2000.

#### **8. Bloodborne Pathogens (29 CFR 1910.1030)**

This standard has been in effect since 1992 and affects all workplaces. On November 5, 1999, OSHA issued a revised compliance directive to update the 1992 directive (see [www.osha.gov](http://www.osha.gov)). This directive stresses employer use of new medical advances.

#### **9. Permissible Exposure Limits (PELs) for Air Contaminants**

OSHA enforces hundreds of permissible exposure limits (PELs) for toxic air contaminants found in U.S. workplaces. These PELs apply to general industry but not to agriculture directly. Most of the air contaminant limits were adopted by OSHA in 1971 from recommendations issued by the American Conference of Governmental Industrial Hygienists (ACGIH) and the American National Standards Institute (ANSI). Most of these PELs have not been updated since 1971. Since then, much new information has become available that indicates, in many cases, these early limits are outdated and insufficiently protective of worker health. To correct this situation, OSHA issued a final rule in 1989 (54 FR 2332); it lowered the existing PELs for 212 toxic air contaminants and established PELs for 164 previously unregulated air contaminants. On June 12, 1992 (57 FR 26001), OSHA proposed a rule that would have extended these limits to construction, maritime, and agriculture. However, on July 10, 1992, the Eleventh Circuit Court of Appeals vacated the 1989 final rule on the grounds that (1) OSHA failed to establish that existing exposure limits in the workplace presented significant risk of material health impairment or that new standards eliminated or substantially lessened the risk; and (2) OSHA did not meet its burden of establishing that its 428 new permissible exposure limits (PELs) were either economically or technologically feasible. The Court's decision forced the Agency to return to the earlier PELs although some state OSHA's have retained the revised PELs.

For the first stage in the current rulemaking process OSHA has decided to propose new PELs for four chemicals, not including n-hexane or any chemicals important to the cotton industry, and OSHA has modified or developed new quantitative risk assessment approaches for cancer, respiratory sensitization and irritation, cardiovascular disease and neurotoxicity effects. The specific hazards associated with the initial air contaminants selected for regulation include cancer, neurotoxicity, respiratory and skin irritation and sensitivity, and cardiovascular disease, etc. Using the same criteria as those used in the Priority Planning Process, OSHA evaluates for each substance: the severity of the health effect, the number of exposed workers, toxicity of the

substance, uses and prevailing exposure levels of the substance, the potential risk of reduction, and the availability and quality of information useful in quantitative risk assessment to ensure that significant risks are addressed and that workers will experience substantial benefits in the form of enhanced health and safety. OSHA is proposing new risk assessment methodology and will have risk assessments peer reviewed.

The proposal is scheduled for April 2000. Publication of the proposal allows OSHA to continue to develop a mechanism for updating and extending its air contaminants limits, that will, at the same time, provide added protection to many workers who are currently being over exposed to toxic substances in the workplace. OSHA is also considering supplemental mechanisms proposed by stakeholders to increase the effectiveness and timeliness of the process. OSHA may consider using an advisory committee to review issues related to the PELs process.

#### **10. Respiratory Protection (Proper Use of Modern Respirators) (29 CFR 1910.134)**

In January 1998 (1/8/98; 63 FR 1152) OSHA published the final respiratory protection standard, except for the reserved provision on assigned protection factors (APFs). APFs are numbers that estimate the degree of performance of the various classes of respirators. OSHA has developed a statistical model for analyzing available data that will be used to derive APFs. OSHA will request public comment on the analysis conducted using that model, the ANSI Z88.2-1992 APFs, the NIOSH Respirator Decision Logic APFs and other relevant methods for deriving APFs. OSHA expects to complete the rulemaking on APFs in 2000. This is a long-term action, so the actual timing is uncertain.

#### **11. Process Safety Management (29 CFR 1910.117)**

OSHA is considering two regulatory actions concerning the Process Safety Management of Highly Hazardous Chemicals (PSM) standard, which went into effect on May 26, 1992 and establishes procedures and systems for hazardous material processes to prevent fires, releases and explosions that would lead to catastrophic events. One action is to publish an advance notice of proposed rulemaking (ANPR) to address the need to add reactive chemicals that are not currently covered by PSM to the rule and the need to revise the language of the rule to clarify OSHA's intent to cover flammable liquids stored in atmospheric tanks that are connected to a process. Another action is a proposal to add chemicals that were not included in the OSHA standard but were included in the Environmental Protection Agency's (EPA) Risk Management Program (RMP) rule (section 112(r)) (one part of the RMP rule addresses compliance with the OSHA Process Safety Management rule). OSHA has been asked by the regulated community to bring its chemical list into closer alignment with the RMP rule. An ANPR is

scheduled by the end of 2000, but this is a long-term action which is really undetermined in timing.

#### **12. Cotton Dust Standard (Section 610 review) (29 CFR 1910.1043)**

The final revised cotton dust standard, promulgated in 1978 and amended in 1985, specifically exempts cotton ginning [29 CFR 1910.1043(a)(2)], warehouses, classing, and only requires medical surveillance and recordkeeping in cottonseed oil mills, but covers textile processing and slashing and weaving as well as some parts of the waste cotton industry. In 1998, OSHA undertook a review of the cotton dust standard as required by section 610 of the Regulatory Flexibility Act (RFA) and Executive Order (EO) 12866 to determine the effectiveness of the standard and to determine if changes are necessary (6/23/98; 63 FR 34140). NCC testified at the July 30, 1998 hearing and submitted comments in September 1998. The comments offered suggestions to make the standard less burdensome on industries covered as well as reminding OSHA that there was no basis to considering expansion of coverage of the standard, since OSHA over a 15-year rulemaking had thoroughly evaluated and included all cotton processing and handling industries where there was information showing a problem. OSHA is not likely to suggest many changes to the standard, other than adding batch washing as an acceptable method to wash cotton. OSHA could address respirator use and extended work shifts (8 hours vs. 12 hours). Any change to the standard would have to go through notice and comment rulemaking so this would be at a pre-rule stage. OSHA is scheduled to issue a report by May 2000.

#### **13. Control of Hazardous Energy Sources (Lockout/Tagout) (Section 610 review) (29 CFR 1910.147)**

In 1996 OSHA undertook a review of the "Lockout/Tagout" standard as required under section 610 of the RFA and EO 12866 to determine if the standard is necessary and effective and to determine if changes are necessary (10/1/96; 61 FR 51305). After a thorough review of their experience in enforcing this standard, the available literature, and comments received in connection with this review, OSHA determined that there is a continued need for the rule, and that no technological, economic or other factors have arisen since the rule was published that would necessitate amendment or rescission of the rule at this time (11/22/99; 64 FR 64657). OSHA has concluded that no change should be made to the rule that will further minimize any significant impact on a substantial number of small entities. To respond to comments received during this review of the standard, OSHA will revise the compliance directive, review the Agency's interpretive guidance pertaining to this rule, and develop and disseminate training and other assistance materials to assist employers in complying with the rule.

#### **14. Flammable and Combustible Liquids (29 CFR 1910.106)**

OSHA has started this rulemaking that will revise the regulations contained in 29 CFR 1910.106 addressing flammable and combustible liquid storage. The purpose of this rulemaking will be to revise this standard into plain language, which responds to the President's Executive Memo of June 1998 to revise standards by rewriting them in plain language. A proposal is scheduled by the end of 2000, but this is really a long-term action, which is really undetermined in timing.

#### **15. Fire Brigades (29 CFR 1910.156)**

Fire fighting exposes a member of fire brigades to a significant risk of harm. To mitigate these risks, OSHA promulgated a standard for fire brigades in 1980 (29 CFR 1910.156). The standard is now about 20 years old, and does not reflect current advances in technology and safety. It would be helpful to revise the existing fire brigade standard to reflect the latest technology and safety, particularly with respect to personal protective equipment and emergency procedures, and to address gaps in coverage, since the existing fire brigade standard does not cover wildland fire fighting or crash-rescue type fire fighting. However, this was withdrawn as a rulemaking in November 1999 (11/22/99; 64 FR 64670) because OSHA no longer intends to pursue this rulemaking action at this time.

#### **16. Metalworking Fluids: Protecting Respiratory Health**

This rulemaking has interest for the cotton industry because one of the respiratory contaminants potentially in metalworking fluids is endotoxin from gram-negative bacteria. Endotoxin is also a component of cotton-related dust and airborne endotoxin workplace levels are better associated with worker reaction than respirable dust levels. In December 1993, several unions, including the Agriculture Implement Workers of America, petitioned OSHA to take emergency regulatory action to protect workers from the risks of occupational cancers and respiratory illnesses due to exposure to metalworking fluids. In response to the petition, OSHA established a 15-member Standards Advisory Committee to make recommendations to OSHA regarding the need for a standard, a guideline, or other appropriate response to the dangers of occupational exposures to metalworking fluids. The Committee recommended that OSHA proceed with a rulemaking on metalworking fluids under section 6(b)(5) of the Act. Workers exposed to these fluids are at risk of developing respiratory diseases, including hypersensitivity pneumonitis, occupational asthma, as well as lung cancer and dermatitis. A proposal is scheduled for December 2000, but this is a long-term rulemaking, which is really undetermined in timing.

#### **18. Diesel Exhaust (Particulate Matter)**

Epidemiological studies indicate that diesel exhaust presents potential health risks to workers ranging from headaches and nausea to respiratory disease and cancer. The National Institute for Occupational Safety and Health (NIOSH) considers whole diesel exhaust to be a potential occupational carcinogen. The International Agency for Research on Cancer (IARC) found that diesel engine exhaust is probably carcinogenic to humans. The National Toxicology Program (NTP) listed diesel particulate as a carcinogen in the 9<sup>th</sup> report on carcinogens in 1999.

Mining most likely will be the first industrial sector required to control diesel particulate matter from diesel engines in the workplace. The Mining Safety and Health Administration (MSHA) proposed regulations on April 9, 1998 (63 FR 1742) and October 29, 1998 (63 FR 58104) that would limit exposure to diesel particulate matter (DPM) for underground coal and metal and nonmetal mines, respectively, through a combination of engineering and work practice control methods. The agency defined DPM as a "very small particle in diesel exhaust". MSHA states that there is clear evidence that exposure to high concentrations of DPM can result in a variety of serious health effects that include: (1) sensory irritations and respiratory symptoms; (2) death from cardiovascular, cardiopulmonary, or respiratory causes; and (3) lung cancer. In addition, the Agency supplemented the rulemaking records with additional studies by Christie et al., Johnston et al., and Steenland et al. to further support their finding of adverse health effects (64 FR 7144; February 12, 1999). MSHA's proposal for underground coal mines would not establish any specific controls, but, "An operator could filter the emissions from diesel-powered equipment, install cleaner-burning engines, increase ventilation, improve fleet management, or use a variety of other available controls". According to the MSHA proposals, a final limit of 160 mg/m<sup>3</sup> of air would take effect in five years. However, an interim limit of 400 mg/m<sup>3</sup> would go into effect following an 18-month period of MSHA education and technical assistance. OSHA is expected to follow MSHA's lead on this, although this has not yet been added to the OSHA regulatory agenda for rulemaking. Both of these standards are scheduled by September 2000.

#### **OSHA Reform and Other Legislation**

There are several significant OSHA-related legislative efforts (see Table 4). OSHA reform (S. 385) would provide employers a one-year exemption from OSHA civil penalties for having work sites "audited" by a safety consultant. This legislation puts emphasis on consultation and education, rather than focusing limited OSHA resources solely on enforcement and would be an important step towards modernizing the OSHA. OSHA Audit/Whistleblower Legislation (H.R. 1439) shields employer safety and health

audits from OSHA and strengthens anti-discrimination protection for workers.

### Summary

The list of new and potential regulations discussed indicates that OSHA has a very active agenda for 2000. This will cause the cotton industry to be very busy with OSHA regulatory activities this year. Fortunately, there are very many outstanding engineers and safety and health professionals in the ginning industry and in other cotton industry sectors to assist in these efforts. Also, through the efforts of NCGA and the regional gin associations and other cotton associations, cotton gins and other cotton industry sectors have very good health and safety programs.

Table 1. OSHA Rulemaking<sup>1</sup>

| ISSUE   | STATUS  |
|---|---|
| <b>1. CURRENT REGULATORY AGENDA</b>   |   |
| • Ergonomics Program Standards (29 CFR 1910.900-945)  | "Centerpiece of OSHA's 2000 plan"; ANPR 8/03/92 (57 FR 34192); Several stakeholder meetings in 1998; draft rule 2/19/99; proposed 11/23/99 (64 FR 65768) (agriculture not covered); ANSI draft 1998; CA Standard final -- effective 7/97; NC proposal 11/98   |
| • Safety and Health Program Rule (for general industry); (agriculture not covered)(29 CFR 1900.1)             | Draft proposal 11/98; to OMB Spring 2000; NPRM due 7/00 [CA standard 1989 – Injury and Illness Prevention]  |
| • medical surveillance (ANPR 9/88; withdrawn 3/95)  | could be part of S&H Program Rule   |
| • monitoring (ANPR 9/88; withdrawn 3/95)  | could be part of S&H Program Rule   |
| • Silica (crystalline)  | OSHA Special Emphasis Program (SEP) for Silicosis 10/31/96; IARC has classified as human carcinogen (10/96); ACGIH added to list suspect carcinogen; NTP designated as human carcinogen in 1999 and changed the TLV to 0.05 mg/m <sup>3</sup> ; OSHA rulemaking underway; proposal 2001; recent studies suggest that current standard insufficient to protect against silicosis (all industries except agriculture are expected to be covered in proposal), OSHA likely to follow ACGIH |
| • Occupational Injury and Illness Recordkeeping and Reporting Rule (29 CFR 1904)                              | Proposal 2/2/96 (61 FR 4030); final action due 4/00, with implementation Jan 1, 2001  |
| • Occupational Exposure to Tuberculosis   | Proposal 10/17/97 (62 FR 54160); covers health care workers; final standard due 7/00.   |
| • Employer payment for personal protective equipment  | NPRM 3/30/99; final rule due 7/00.  |
| • Consultation Agreements (29 CFR 1908)   | NPRM 7/2/99; final rule due 2/00  |
| • PELs for Air Contaminants Update (4 new PELs) (29 CFR 1910.1000)  | (n-hexane in 1996 notice, not on current list) public meeting 2/22/96; proposal due 4/00 (will also contain OSHA guide for risk assessment and mechanism for update)  |
| • Process Safety Management of Highly Hazardous Chemicals (29 CFR 1910.117) (Pre-rule stage)                  | Adding new chemicals, raising issue of reactives, and clarifying coverage of flammable liquids; NPRM due early 2000.  |
| • Cotton Dust (29 CFR 1910.1043) (Section 610 Review)(Prerule stage)  | Review under section 610 of Reg. Flex. Act, EO 12866; Review need for standard and other aspects of rule including industry changes in technology, economic conditions, etc; began review 1998 (6/23/98; 63 FR 34140) hearing 7/98; comments 9/98; report due 5/00. (batch washed cotton; other changes not known)  |
| • Control of Hazardous Energy Sources (lockout/tagout) (29 CFR 1910.147) (Section 610 Review) (Prerule stage) | Began review on effectiveness of standard, need for update, etc. 10/01/96, end 10/97; report 1999, standard necessary; OSHA revisiting compliance directive and developing compliance assistance materials  |
| • Grain Handling Facilities (29 CFR 1910.272) (Section 610 Review) (Prerule stage)                            | Changing definition of a storage facility as related to confined space. (Proposal 12/95). Final action 3/8/96; Section 610 review began 10/97; report due 6/00.   |
| • Fire Brigades (29 CFR 1910.156) revise and update   | Notice of intent to revise 20 year old standard in 1999; 11/99 withdrawn.   |
| • Flammable and Combustible liquids storage (29 CFR 1910.106) revise and update to streamline requirements    | NPRM 12/00 (long term), to get comment to make less complex and remove unnecessary parts, put in plain language.  |
| • Metal Working Fluids (oil mist)   | Could affect respiratory disease/endotoxins; Standards Advisory Committee (SAC) named 7/97, recommended mandatory standard; moved to current Agenda 1999; NPRM due 12/00 (long term).   |
| • Indoor Air  | Proposal 4/94; hearings; OSHA reviewing comments; 11/96 court declined to compel regulation of tobacco smoke; long term/undetermined.   |
| • Hazard Communication (29 CFR 1910.1200) (Internal OSHA Task Force)  | NACOSH held 4 hearings in 1996 to discuss issues relating to simplifying MSDSs, recordkeeping, training effectiveness, nuisance dust, etc.; Next action undetermined.   |
| • Respiratory Protection (proper use of modern respirators) (29 CFR 1910.134)                                 | Proposal for comments for assigned protection factors (APFs); long term   |



|   |  |
|---|--|
| • Respirators (29 CFR 1910.134)   | ANPR 1982; proposal 11/94; final standard (1/8/98; 63 FR 1153)   |
| • Powered Industrial Truck Operator Training (29 CFR 1910.178)  | Covers forklift truck; final standard 12/1/98 (63 FR 66239)  |
| • Confined Space (revisions to clarify rescue and emergency services, flexibility in retrieval line attachment, employee rights to observe evaluations and results)(29 CFR 1910.146)              | Proposal 11/94; final standard 12/1/98 (63 FR 66018)   |
| <b>2. TOP NEW PRIORITIES (10/96 published 6/97): To be added to OSHA's regulatory calendar as others are completed</b>  |  |
| • PELs Update (more extensive/on regular basis)   | Agriculture proposal 6/92, included cotton dust  |
| • Noise/Hearing Conservation  | For construction and other non-covered industries (e.g., agriculture)  |
| <b>3. ADDITIONAL PRIORITIES: These will be addressed through guidelines, voluntary industry initiatives, informational campaigns, and other means, without developing new rules at this time.</b> |  |
| • Diesel Exhaust  | NTP added to list as carcinogen in 1999; IARC probable human carcinogen; MSHA proposals (4/9/98; 63 FR 17496 and 10/20/98; 68 FR 57132); final MSHA standards due Sep. 2000                            |
| • Workplace Violence  | 3/96 non-mandatory guidelines for health-care and social service workers. 10/27/97 Guide to Federal Agencies; OSHA holding add'l stakeholder meetings; proposed guidelines late-night retail workplace |
| • Motor Vehicle Safety  | Proposal 7/90; withdrawn 3/95  |
| • Occupational Asthma (including latex allergy)   | Could affect all organic dusts   |
| • Solvents  |  |
| • Reproductive Hazards  |  |

<sup>1</sup> Section 1: OSHA current Regulatory Agenda (11/22/99; 64 FR 64627-29; 64 FR 64656-71)

Section 2: On December 13, 1995, OSHA released its Priorities List for protection of worker health and safety. They gave special priorities to these New Priorities. These issues will be added to the Regulatory Agenda as current rulemakings are completed.

Section 3: Additional priority issues (from the priorities list) will be addressed through voluntary guidelines to encourage worker protection without developing new rules on these issues at this time.

Table 2. OSHA Regulations that Apply to Cotton Industry Sectors<sup>1</sup>

| Industry Sector  | 81C Code             | NAICS                                | OSHA Standards that Apply                 |
|--|----------------------|--------------------------------------|---|
| Cotton Farming   | 0131                 | 11192                                | (Agriculture) <sup>2</sup><br>29 CFR 1928 |
| Cotton Ginning   | 0724                 | 11511                                | (Agriculture) <sup>2</sup><br>29 CFR 1928 |
| Cottonseed Oil Mills<br>(cottonseed processing)                    | 2074                 | 311223<br>(other oilseed processing) | (General Industry)<br>29 CFR 1910         |
| Warehouse (Farm Product<br>Warehousing and Storage)                | 4221                 | 49313                                | (General Industry)<br>29 CFR 1910         |
| Textile Mills (yarn spinning mills,<br>thread mills, fabric mills) | 28, 2281, 2284, 2211 | 313, 313111, 313113, 3132            | (General Industry)<br>29 CFR 1910         |

<sup>1</sup> Regulations that apply to all sectors:

- OSH Act (29 U.S. Code 651 et seq.); (General duty clause is sec. 5(a)(1))
- 29 CFR 1903 – Inspections, citations, and proposed penalties
- 29 CFR 1904 – Posting, recording and reporting requirements for occupational injuries and illnesses
- 29 CFR 1905 – Rules for Variance, limitations and exceptions
- 29 CFR 1906 – Consultation agreements

<sup>2</sup> The only general industry standards that apply to agriculture are specifically listed under 29 CFR 1928.21(a).

Table 3. Cotton Belt States OSHA Enforcement

| OSHA State Plan States | State Under Federal OSHA Jurisdiction |
|------------------------|---------------------------------------|
| AZ                     | AL                                    |
| CA                     | AR                                    |
| NC                     | FL                                    |
| NM                     | GA                                    |
| SC                     | KA                                    |
| TN                     | LA                                    |
| VA                     | MO                                    |
|                        | MS                                    |
|                        | OK                                    |
|                        | TX                                    |

Table 4. Significant OSHA Legislation

| Legislative Purpose   | Status  | Outlook  |
|---|---|--|
| <b>OSHA AUDIT/WHISTLEBLOWER LEGISLATION</b>   |   |  |
| (H.R. 1439) This legislation shields employer safety and health audits from OSHA and strengthens anti-discrimination protections for workers. Whistleblower provisions include a longer statute of limitations and allow workers to pursue their case separately from the Labor Department.   | <p><b>HOUSE :</b><br/> <b>H.R. 1439</b>, by Rep. Cass Ballenger (R-NC). Approved by the subcommittee May 19.</p> <p><b>SENATE:</b><br/> No comparable bill in the Senate.</p> <p><b>ADMINISTRATION:</b><br/> Opposes audit protection proposal; whistleblower provisions include <b>some positive changes</b> but eliminate compensatory and exemplary damages already available to whistleblowers.</p>   | <p><b>HOUSE:</b><br/> Not heard by the full committee and may not move forward in an election year.</p> <p><b>SENATE:</b><br/> No bill.</p> <p><b>ADMINISTRATION:</b><br/> <b>Opposes bill.</b></p>  |
| <b>WHISTLEBLOWER PROTECTION</b>   |   |  |
| (S. 652) The Democrats' whistleblower bill extends the deadline for employees to file complaints and includes extensive financial remedies, including new authority to seek punitive damages and attorney's fees from employers.  | <p><b>HOUSE:</b><br/> H.R. 1851, by Rep. Major Owens (R-NY). No hearing held.</p> <p><b>SENATE:</b><br/> <b>S. 652</b>, by Sen. Paul Wellstone (D-MN). No hearings held.</p> <p><b>ADMINISTRATION:</b><br/> Whistleblower reform is OSHA's top legislative priority.</p>  | <p><b>HOUSE:</b><br/> No action expected.</p> <p><b>SENATE:</b><br/> No action expected, given the GOP focus on the third-party audit bill by Sen. Enzi</p> <p><b>ADMINISTRATION:</b><br/> Supports a Democratic bill.</p>   |
| <b>OSHA REFORM</b>  |   |  |
| (S. 385) Legislation would provide employers a one-year exemption from OSHA civil penalties for having work sites "audited" by a safety consultant. Supporters argue it would provide employers an added incentive to voluntarily improve safety. Democrats say the penalty exemption creates a conflict of interest between consultants and the employers who hire them. | <p><b>HOUSE:</b><br/> <b>H.R. 1427</b>, by Rep. James Talent (R-MO). Bill has not moved in the House; Senate is taking the lead.</p> <p><b>SENATE:</b><br/> <b>S. 385</b> by Sen. Michael Enzi (R-WY) and approved by the Senate labor committee April 29.</p> <p><b>ADMINISTRATION:</b><br/> Opposes the third-party audit scheme and has <b>vowed to veto</b> the bill.</p>   | <p><b>HOUSE:</b><br/> Supporters have waited for the Senate to move first.</p> <p><b>SENATE:</b><br/> Bill has stalled due to continuing opposition to far-reaching OSHA reforms, which has stalled virtually all such legislation over the last decade.</p> <p><b>ADMINISTRATION:</b><br/> President vows to veto bill if passed unchanged by the Senate.</p> |
| <b>SAFETY TEAM BILL</b>   |   |  |
| (H.R. 1434) Legislation proposes to amend the Occupational Safety and Health Act to shield employers from labor law violations when they set up worker-management safety committees.  | <p><b>HOUSE:</b><br/> <b>H.R. 1434</b>, by Rep. Cass Ballenger (R-NC)</p> <p><b>SENATE:</b><br/> No comparable Senate bill.</p> <p><b>ADMINISTRATION:</b><br/> Labor Department strongly opposes the bill.</p>  | <p><b>HOUSE:</b><br/> Bill will likely pass the full House Education and the Workforce Committee, but not the full House.</p> <p><b>SENATE:</b><br/> No action expected.</p> <p><b>ADMINISTRATION:</b><br/> President will likely veto the bill if passed.</p>   |
| <b>ERGONOMICS BILL</b>  |   |  |
| (H.R. 987) GOP effort to stop OSHA from promulgating an ergonomics rule until the National Academy of Sciences completes a two year study due by January 2001 on the relationship between those disorders and work activities   | <p><b>HOUSE:</b><br/> <b>H.R. 987</b>, by Rep. Roy Blunt (R-MO) was approved by the House Education and the Workforce Subcommittee on Workforce Protections May 19; approved by full committee June 23 and by the full House, by a vote of 217-209, on Aug 3.</p> <p><b>SENATE:</b><br/> <b>S. 1070</b>, by Sen. Christopher "Kit" Bond (R-MO) would provide a congressional mechanism to review the NAS study conclusions before the OSHA rule moves forward. No Senate action taken.</p> <p><b>ADMINISTRATION:</b><br/> Opposes bill.</p> | <p><b>HOUSE:</b><br/> Bill approved Aug. 3.</p> <p><b>SENATE:</b><br/> Should see Senate floor action.</p> <p><b>ADMINISTRATION:</b><br/> President will veto the bill.</p>  |