



# **“OSHA Listens”**

## **Public Input On Key Issues Facing the Agency**

### **PUBLIC HEARING**

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**Submitted by**

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The American Industrial Hygiene Association (AIHA) is pleased to submit the following comments to the Occupational Safety and Health Administration (OSHA) on key issues facing the agency and suggestions on how to improve the health and safety of workers.

Founded in 1939, AIHA is the premier association serving the needs of professionals involved in occupational and environmental health and safety practicing industrial hygiene in industry, government, labor, academic institutions, and independent organizations. The AIHA mission is to promote healthy and safe environments by advancing the science, principles, practice, and value of industrial and occupational hygiene. AIHA is not only committed to protecting and improving worker health, but the health and well-being of adults and children in our communities. One of AIHA's goals is to bring "good science" and the benefits of our workplace experience to the public policy process directed at worker health and safety.

Representing professionals entrusted to assist employees and employers in making the workplace healthier and safer, AIHA is particularly pleased to submit comments on the issue of how the agency might improve its relationship with employers, employees and others as well as opportunities the agency might consider as it moves forward in this decade.

AIHA would like to thank the Assistant Secretary of Labor for OSHA on behalf of the millions of Americans, both employees and employers who desire a healthy and safe workplace, for your forward thinking in holding this meeting to solicit input from all stakeholders. Your leadership is critical to improving this country's record of workplace-related injury and illness.

Over the course of the last several years, there have been numerous legislative proposals to amend the Occupational Safety and Health Act and/or take a closer look at the way the Occupational Safety and Health Administration (OSHA) has addressed the issue of rulemaking, enforcement and compliance assistance. While few of these proposals have made their way into law, it goes without saying that the sponsors of these measures all had the same goal – to assure the health and safety of every worker. AIHA shares this goal.

It is also true that OSHA has faced considerable difficulty in obtaining the needed resources “to assure so far as possible every working man and woman in the nation safe and healthful working conditions”. A healthy and safe workplace is central to our ability to enjoy health, security, and the opportunity to achieve success and happiness. Assuring worker health and safety in a complex and sometimes dangerous global economy is a vital function of government, employers, employees and specifically industrial hygienists and other occupational health, safety, and environmental professionals.

Since the announcement of this public meeting to discuss key issues facing the agency, AIHA has reached out to our membership soliciting ideas and suggestions to present to the agency. Not only did we contact our many technical committees for input; AIHA held a “town hall meeting” for members to call in and offer suggestions and listen to recommendations from others. We were very pleased with the overwhelming response to this approach and the dozens of suggestions and comments received.

With so little time to put any “meat” on the recommendations, AIHA offers you some of the many suggestions we received. Not all of these suggestions are in fact AIHA position statements; however we feel it is important the Agency receive as many ideas as possible. We are providing only those suggestions that received a number of responses.

1. What can the agency do to enhance and encourage the efforts of employers, workers, and unions to identify and address workplace hazards?

- Do more outreach outside of the compliance arm on communicating top health and safety issues in various industries. Many respondents recommended more and better communication to employers and employees. Some suggested OSHA be a more frequent presence in the workplace (although resource limitations were mentioned). It was also suggested the agency increase communications with the media to promote workplace health and safety.
  - Retain the VPP Program. This received considerable response. Again, respondents are aware of the resource limitations and the fact OSHA is moving some resources from this program to the enforcement area. AIHA supports agency efforts to review the existing program in order to seek improvements and supports continuation of the program. Many believe VPP has been an effective tool to improve health and safety in the workplace and raised concerns the agency is moving too far from the success of many VPP participants. The agency might also consider looking at similar programs to encourage employers to improve health and safety. Seek out companies where similar programs have resulted in a successful reduction of injuries and illnesses.
  - Work toward passage of a required written health and safety program for the workplace. In coordination with this approach, workplace health and safety committees should be encouraged to include adequate training in effective operations and hazard recognition.
  - Increase criminal penalties to a level that is taken seriously. AIHA has long supported an increase in criminal penalties for employers who knowingly violate an OSHA regulation that results in the death or serious injury to an employee.
  - Provide greater outreach to small business. Perhaps conduct town hall meetings outside the workplace with employers and workers. Many small businesses are not aware of the assistance that can be provided by the agency and believe the agency is only interested in larger workplaces; yet there are more workers in small business.
  - Increase enforcement and increase compliance assistance. Obviously this generated strong reactions on both sides. Many said OSHA needs to increase its enforcement arm to address workplace problems while others believe the Agency should refrain from the “stick” only approach.
2. What are the most important emerging or unaddressed health and safety issues in the workplace, and what can OSHA do to address these?

Comment: It is obvious the agency can only move so fast on the rule-making process when addressing emerging issues and other unaddressed problems. While AIHA encourages the agency to move forward, we are aware these issues take a considerable amount of time. Notwithstanding this fact, AIHA members encourage the agency to consider moving forward on the following:

- GHS (Globally Harmonized System)
- Nanotechnology
- Control banding – should OSHA push this as hard as it is pushed in Europe?
- Hearing Conservation for construction workers
- Exposure assessment
- Management systems
- Construction safety
- Emergency Response
- Aging workforce
- Safe-Patient Handling/Ergonomics
- Recordkeeping
- More coordination with EPA and NIOSH on research issues
- Expansion of OSHA coverage to include all workers

3. How can the agency improve its efforts to engage stakeholders in programs and initiatives?

- As stated in response to the first question, better communication with employers, employees, professional associations, the media and even the community is recommended.
- OSHA personnel should attend as many conferences, trade shows, H&S conferences and other gatherings where workers and employers might be. Personnel should be equipped with agency or regulatory “news” and specifics on special emphasis programs as well as specifics on localized hazards.
- Use standards advisory committees made up of cross sectional groups, set up virtual standards development websites where the process unfolds transparently.
- Require all OSHA offices (including State Plans) to hold quarterly open house meetings where stakeholders can actively engage staff.
- Promote better partnerships with professional associations, like AIHA, to get the word out about OSHA’s requirements. However, these partnerships should also enlist association support in providing input on upcoming rulemakings, input that may improve the rulemaking.
- Make use of surveys, town halls and other communication options. With today’s technology, communication vehicles are almost unlimited.

4. What specific actions can the agency take to enhance the voice of workers in the workplace, particularly workers who are hard to reach, do not have ready access to information about hazards or their rights, or are afraid to exercise their rights?

- Better outreach with associations who represent these workers.
- Consider bulletins targeted to establishments where these workers might shop.
- Public education. It all starts in our schools. Perhaps the Agency could work with the Department of Education to develop a program that could be used in every high school. These workers are the future and it is easiest to teach them health and safety mentality in the workplace from the ground up. AIHA already has such a program to promote the profession of industrial hygiene.

5. Are there additional measures to improve the effectiveness of the agency’s compliance assistance efforts and the on site consultation program, to ensure that small businesses have the information needed to provide safe workplaces?

- Small business lacks the means to hire outside consultants to assist with workplace health and safety. While AIHA has consistently supported the idea of a third party workplace review program, most small businesses could not afford such a program even it was created. However, the agency might seek out the means where the agency could hire third party consultants, those who are specialized in specific workplace issues, to assist small business. Using this approach, agency consultants would be able to focus on other requests where their expertise lies.
- Work with state business licensing agencies to develop a program to assist small business when they apply for licensing. Perhaps not a mandatory requirement, but offer these small businesses the opportunity to learn more about workplace health and safety and how it can benefit their bottom line.

6. Given the length and difficulty of the current OSHA rulemaking process, and given the need for new standards that will protect workers from unaddressed, inadequately

addressed and emerging hazards, are there policies and procedures that will decrease the time to issue final standards so that OSHA may implement needed protections in a timely manner?

Comment: Possibly one of the most difficult issues to address at the agency. It is obvious the rule-making process is “broken” and most feel only a legislative fix will solve the problem. As to what this legislative fix might be is anyone’s guess.

- One suggestion is for the agency to create a federal advisory committee, composed of labor, industry, small business, professional associations and others to take a look at the process and offer suggestions as to how the process might be improved.

The longer the agency goes without addressing this issue, the more threat to the long-term viability of the agency to impact worker health and safety. Much of the credibility of the agency rests on whether or not rules and regulations can be adopted to address existing hazards. When the agency takes upwards of 10 years to develop these rules, workers and employers are on their own.

OSHA needs to spend much more time working with its stakeholders to see if a “fix” can be found.

7. As we continue to progress through a new information age vastly different from the environment in which OSHA was created, what new mechanisms or tools can the agency use to more effectively reach high risk employees and employers with training, education and outreach? What is OSHA doing now that may no longer be necessary?

- The agency should consider different types of communication, perhaps daily or weekly podcasts to update workers, and regular town hall meetings via telephone and the web.
- On-line training and information resources should be increased, for example hazard communication, effective safety committees, elements of hazcom.
- Create an on-line “chat” where individuals can talk with others about very specific problems and receive answers to many common questions. OSHA could have a “specific issue” day with these chats, focusing on one issue each day and have an OSHA expert on-line to assist with the questions and answers.
- Review all existing regulations and rewrite these regulations in easy-to-understand language.

8. Are there indicators, other than worksite injuries and illness logs that OSHA can use to enhance resource targeting?

Comment: Most of the suggestions AIHA received on this question pertained to workers compensation issues, an area the association does not monitor on a regular basis. However, there were several additional suggestions:

- Target industries not using OSHA compliance consultation or those that do not have a safety and health professional assisting with compliance.
- OSHA should promote and identify leading indicators, related to topics such as training and work observations. Use leading indicators, not lagging ones.
- Some suggested OSHA should scrap the injury and illness logs and focus on compliance not statistics.

9. In the late 1980s, OSHA and its stakeholders worked together to update the Permissible Exposure Limits (PELs) (exposure limits for hazardous substances; most adopted in

1971), but the effort was unsuccessful. Should updating the PELs be a priority for the agency? Are there suggestions for ways to update the PELs, or other ways to control workplace chemical exposures?

Comment: Updating the PELs has been the number one issue of AIHA membership for the past ten years. Some suggestions:

- Updating the PELs should be a priority as many have been outdated because of better toxicology, etc. While OSHA has to consider the economic impact as well as the toxicology, emphasis should also be placed on the health effects.
- Require written health and safety programs contain selection of the appropriate PELs for the specific industry.
- OSHA should drop the outdated PEL system and incorporate by reference independent third party standards, i.e., ACGIH and AIHA, like they do for others such as ANSI.
- Look to Europe and what is taking place with REACH.
- Enlist the expertise of professional organizations involved in setting exposure limits to see what type of approach might work. It is obvious the agency can not continue down the present path. A legislative fix may be the only approach.
- Do we even need to have exposure limits set for every hazard or might we better off to have the agency address hazards with an alternative approach?

It should be noted AIHA did not provide comments on specific rulemaking currently undertaken or being considered by the Agency. Reason for not commenting on many of these issues is because AIHA believes this "OSHA Listens" meeting is intended to look at broader issues to make the agency more efficient. Current rulemaking efforts should continue. While not providing comments in support or opposition to individual issues, AIHA supports efforts underway to address issues such as:

- ❖ Adoption of the Globally Harmonized System
- ❖ Rulemaking on combustible dust
- ❖ Rulemaking on diacetyl
- ❖ Hearing Conservation for construction workers
- ❖ Safety and Health Programs
- ❖ Public Expansion for OSHA coverage
- ❖ Recordkeeping
- ❖ Safe-Patient Handling

### **AIHA View of Occupational Health and Safety on a National and Global Scale**

In addition to the many comments, suggestions and recommendations provided by our membership, AIHA would also like to provide input on our long-term view of OSHA and its impact on occupational health and safety.

1) During this time of economic uncertainty it is important to remember the driving force that created the Occupational Safety & Health Act. The goal the legislative crafters had in mind was "to provide a safe and healthful workplace" for every worker. Workplaces in America have become safer because of the Act. As demonstrated by the significant reductions in fatalities, injuries and illnesses since its inception, the agency has been a positive force in advancing that original worthwhile goal.

AIHA believes continuing federal oversight is necessary to achieve "safe and healthful" workplaces throughout the U.S.

**2)** Since the creation of OSHA, employers and workers have recognized the agency as having primary responsibility, along with their state partners, for workplace health and safety issues in our country. As employers develop comprehensive health and safety programs, they look toward OSHA for guidance and information to ensure their programs meet federal standards. The development of health and safety standards by agencies other than OSHA has created a regulatory environment in which compliance is unnecessarily difficult. Mechanisms must be developed to improve coordination of standard setting to avoid regulatory conflict and duplication.

OSHA should be provided with lead authority for development and coordination of workplace health and safety standards.

**3)** AIHA believes uniform national standards are necessary to establish minimum health and safety requirements that employers should comply with to prevent on-the-job injury and illness. OSHA is the appropriate authority for promulgating and enforcing health and safety standards. However, major challenges exist in the current enforcement/standard setting process.

AIHA supports reform of the standard-setting process to allow for timely promulgation of needed new standards. There have been few new health standards since 1970. The effect has been a splintering of the motivations of U.S.-based organizations in the promotion of health and safety performance. Many leading organizations have looked internally and benchmarked with their peers to drive improvements in performance and monitoring. OSHA has not been a catalyst for improved performance in some of these organizations for more than a decade. On the other hand, many small and medium sized businesses, most with limited resources, have relaxed to the lowest common denominator of OSHA standards. The result is a clear gap in protection afforded to the majority of the U.S. working population.

**4)** A basic problem in standards development at OSHA has been the philosophy that every hazard must be addressed individually with a highly specific standard. This is an impossible task under current regulatory requirements. The number of chemicals in commercial use cannot be regulated individually. The number of health and safety hazards is enormous and also cannot be addressed separately.

However, AIHA membership consistently ranks the issue of “updating the PELs” as the most important issue facing the profession. While we are aware of the many technical and political hurdles the agency faces in attempting to accomplish this goal, doing nothing is not the answer. AIHA supports any effort by the agency to look at how best to update the PELs or find an alternative approach to these outdated exposure limits.

One alternative may be that perhaps a relatively small number of effectively enforced generic performance regulations that would incorporate up to date Workplace Environmental Exposure Guidelines (WEEL), Recommended Exposure Limits, Permissible Exposure Limits or current Threshold Limit Values would be most effective.

Generic occupational health and safety standards provide greater flexibility both for government, in the role of oversight and intervention, and for employers, in the design of programs to protect workers. OSHA should focus on developing the generic tools that could be used to define program expectations and the measurement systems to define progress. OSHA should describe what these national measures should be at the worksite. This should be done in a manner that allows full participation of all affected stakeholders in every facet of the rulemaking process. These generic standards would be complimentary to the current standards that are in place and have been developed over the past forty years.

**5)** Employers have the ultimate responsibility for health and safety of employees and for assuring compliance with related standards. OSHA's responsibility should be to develop compliance schemes that are least burdensome, but with incentives, to encourage the widest possible acceptance and implementation of health and safety programs and new approaches to the management of health and safety. In essence, we are suggesting OSHA expand its role in program criteria development, quality control, consultation services, and training of employers and labor in hazard identification and control methods.

This is particularly true for small businesses. They typically cannot afford full time industrial hygienists and/or other occupational health, safety, and environmental professionals, but would most likely implement programs appropriate to their size if they could get the help to do it. AIHA also suggests that OSHA include non-traditional, performance based approaches in their activities, such as management systems approaches, i.e., AIHA Guidance on Health and Safety Management Systems, etc.).

The goal of OSHA should be to advance occupational health and safety. It is our opinion this can be best achieved when effective and efficient health and safety programs are viewed as an asset.

**6)** The reality is OSHA has limited resources. Add to this the fact that OSHA standards and regulations have been slow to change compared to changes in current state-of-the-art practices and workplaces. Given the millions of workplaces, it should be obvious most will never see a compliance officer. Therefore, other strategies such as third party assistance should be considered.

OSHA's goal should be to encourage every employer to collaborate with employees/labor to perform an assessment, conducted by a competent health and safety professional recognized by national accrediting bodies (e.g., a Certified Industrial Hygienist, Certified Safety Professional, Registered Occupational Hygienist, or equivalent), of their facilities to identify and correct health and safety hazards.

In view of limited resources, OSHA should explicitly describe (design) *model* health and safety programs. Consultants, including those in the 21 (d) free consultation program, who are competent health and safety professionals (e.g. CIH, CSP, or ROH) could prepare site-specific programs, based upon the OSHA models. OSHA could approve third party consultants as competent based on nationally recognized certifications and conformity assessment programs. Additional block grants to various interest groups could help fund the cost of consultants to lessen the financial burden on employers with fewer than 25 employees.

Employers should be encouraged to perform internal self-inspections or to hire third party reviewers to analyze company health and safety management systems. Self-inspections and audits are one of the essential tools for employers to maintain effective health and safety programs. This would help achieve the OSHA mission of improving health and safety.

To promote the use of these workplace reviews, some form of legal and/or regulatory protection for the employer may be needed, as well as a mechanism for assuring quality control for third party reviewers such as certification in industrial hygiene or safety.

Companies that demonstrate they have effective health and safety programs should get credit for their efforts by judicious use of "good faith" or "good actor" status that allows for more mediation of monetary fines where appropriate. Those employers or occupational health, safety, and environmental professionals who prepare fraudulent health and safety plans should be penalized with substantial monetary penalties to the extent provided by law. In this way a level playing field

could be established and OSHA could change its paradigm to one of becoming more of a partner with the nation's businesses.

AIHA supports the concept of a third-party workplace review program and encourages OSHA and other policymakers to work together to develop a program that will be acceptable to all parties (i.e., government, labor, business).

**7)** Since its inception, OSHA has provided our nation's workers with the expectation of a safe and healthful workplace. OSHA also provided an avenue for workers to express their concern for their health and safety without fear of losing their employment for voicing that concern. OSHA should be encouraged to simplify the process of workers filing complaints, especially in the case of those workers with poor literacy skills, no assistance in representation, or for whom English is not their primary language.

OSHA should respond to complaints, but only those made in writing and signed by an employee or employee representative. OSHA must assure the identity of the employee is kept confidential.

While it is recognized OSHA may change the mechanism for addressing employee complaints, AIHA believes whatever change occurs in our federal health and safety laws a worker's right to ask for assistance in preventing injuries and illnesses should be a mainstay of any legislative action. Protection of every worker's right to identify and report problems without fear of reprisal or loss of employment should be included in OSHA reinvention.

**8)** The collection and dissemination of health and safety data is essential, because it is needed for establishing national goals on health and safety, and for measuring progress in achieving them. A strong federal program makes sense for this function. While states and other stakeholders must participate in changing old data collection systems and creating new ones, it is good public policy to retain a common reporting and distribution system that can allow for a national picture of progress in occupational health and safety.

AIHA believes we need to move away from viewing data collection as merely a "paperwork" exercise and to view it as a core function of any program, one that creates an asset for focusing efforts and setting priorities. Data collection should not just be intended for OSHA. It should be used to measure and benchmark performance and to set goals at all levels, from the workplace where it is collected, to corporate, state and employee levels as well.

OSHA should establish metrics to evaluate the health and safety performance of our nation's workplaces. In the absence of accurate occupational illness data, OSHA should develop systems based on exposure data to better measure and track the risk of occupational diseases. The agency can also help by streamlining where appropriate and by partnering with others to promote better use of information. For injury and illness reporting, OSHA should limit reporting to the metrics that the Bureau of Labor Statistics or a third party such as the National Research Council considers the most reliable and best indicators of the incidence of occupational injuries and disease.

**9)** The OSHA Training Institute staff should be expanded and directed toward educating employers, employees, and public interest groups in those generic performance elements so that effective programs can be designed for the workplace. The principles of occupational health and safety should be emphasized and incentives developed to encourage employers to attend.

The vast training experience of the National Institute for Occupational Safety and Health (NIOSH), private industry, labor, and academia could be brought to the task. A very large arsenal of training

resources could be at OSHA's beckoning to educate and provide guidance to our nation's employers and employee groups for designing and implementing health and safety programs.

In addition, OSHA could foster the development of electronic databases, including the establishment of local centers available to small business that could be used for "real-time" training and technology transfer by employers. These training resources could also be provided to employee groups such as unions for their use in the training of their members. We also believe that NIOSH should play a role in evaluating the effectiveness of training provided by the government, employers and other groups.

One of the most effective means to reduce the burden of regulation, while improving the well being of American workers, would be for OSHA to reinvent health and safety training requirements by creating a generic training standard. Rather than overlapping and duplicate training specifications, as is currently the case, OSHA could organize training requirements so they would make sense as a whole.

The goal for OSHA should be to educate employers and allow them to use training packages that address workplace hazards.

**10)** As OSHA directs its efforts to more complex hazards in the workplace, these new interests will require expanded research activities to identify more efficient and cost-effective solutions, especially those that can be carried out in small and medium-sized companies. Therefore, it is important that NIOSH, the agency created to provide research, become more directly involved in OSHA's strategic planning and in discussion with OSHA of emerging occupational health and safety concerns. This would allow NIOSH to better support OSHA's mission.

As OSHA develops programs to provide for the education, training and especially guidance to employers, the need for sound strategies for preventing occupational injuries and illnesses will be paramount. OSHA must have access to information that demonstrates that programs are effective and can be implemented in the workplace and achieve desired results.

It is imperative that NIOSH and OSHA develop a closer working relationship, to ensure specific technical support and research activities at NIOSH are directly identified as supportive of OSHA initiatives. This will require that OSHA develop a long-range view of needs and set priorities to enable NIOSH to properly plan and implement its support and research program.

**11)** With the growth of new technology, new hazards and information on existing hazards are discovered at an ever-increasing pace. The present regulatory scheme does not permit OSHA to respond to this information in the timely manner needed to protect worker health and safety. Therefore, AIHA supports a strengthening of the existing General Duty Clause (section 5(a) (1)) to help bridge this gap.

The General Duty Clause requires each employer to "furnish each of his employee's employment and a place of employment which are free from recognized hazards that are causing or likely to cause death or serious physical harm to his employee." The future OSHA must build upon and expand this language by requiring industries to develop and adopt consensus standards that address serious occupational health and safety hazards such as ANSI occupational health and safety standards, AIHA WEELs, and ACGIH TLVs. This is the only component of the current "regulatory" structure which allows for control of newly discovered hazards and application of the latest consensus and expert standards such as the American National Standards Institute standards, the American Conference of Governmental Industrial Hygienists' Threshold Limit Values, and AIHA committee technical publications.

**12)** AIHA believes OSHA should increase incentives and programs for employers and labor to voluntarily achieve excellence in occupational health and safety.

OSHA should provide opportunities modeled after existing efforts such as the Voluntary Protection Program (VPP). Programs of this type need to be developed, which require a minimal amount of administrative effort by OSHA and the employer to join, while still encouraging excellence in performance in occupational health and safety.

OSHA should develop a means to highlight the advantages of participation in these programs, such as a cost-benefit model, as well as provide incentives (e.g. positive publicity) for those organizations that demonstrate achievement. OSHA should promote new thinking with a focus on leadership, the piloting of new ideas, and the sharing of successful strategies through programs such as a streamlined VPP.

OSHA should require these programs: demonstrate management commitment; fully involve workers and labor representatives; and, use appropriate methods to ensure these programs accomplish what they document.

**13)** The worker is the primary stakeholder of occupational health and safety regulations, has an intimate knowledge of workplaces, and is a valuable resource for improving performance. These factors support the notion that improved health and safety performance requires the active participation of the work force at many levels. Worker involvement is needed in standard setting, establishing performance goals, self auditing, training program design, establishing workplace health and safety programs and procedures and in developing solutions to control hazardous conditions.

Worker participation should be integrated into all phases of the agency's activities and the health and safety programs of employers. AIHA believes health and safety committees operate well in many workplace environments and should be encouraged by OSHA. OSHA's mission should be to facilitate "partnering" among all workplace stakeholders, including the facilitation of novel approaches to achieve this goal.

### **Conclusion**

AIHA believes changes such as those suggested in these comments will help OSHA focus its limited resources toward fresh thinking concerning prioritizing regulation, promulgating standards, training, consulting and setting the national agenda for occupational health and safety.

In addition, many of these same changes could have a positive impact on the health and safety of workers around the world, ultimately resulting in a global economy with reduced fatalities, injuries and illnesses in all workplaces.

AIHA is supportive of any and all programs that positively address occupational health and safety in the workplace. AIHA applauds your efforts and sincerely hopes you will be successful in your endeavor to advance the cause of worker health and safety. As one of the leading associations in the occupational and environmental health and safety field, AIHA stands ready to assist OSHA in every possible way in developing solutions that best protect workers.

Thank you.