



**Legislative Bulletin.....April 30, 2008**

**Contents:**

**H.R. 5522—Combustible Dust Explosion and Fire Prevention Act**

**Summary of the Bill Under Consideration Today:**

**Total Number of New Government Programs: 0**

**Total Cost of Discretionary Authorizations: \$41 million over five years**

**Effect on Revenue: \$0**

**Total Change in Mandatory Spending: \$0**

**Total New State & Local Government Mandates: Several**

**Total New Private Sector Mandates: Several**

**Number of Bills Without Committee Reports: 0**

**Number of Reported Bills that Don't Cite Specific Clauses of Constitutional Authority: 0**

**H.R. 5522—Combustible Dust Explosion and Fire Prevention Act  
(Rep. Miller, D-CA)**

**Please note the conservative concerns, Administration position,  
and outside group positions below.**

**Order of Business:** The bill is scheduled to be considered on Wednesday, April 30<sup>th</sup>, likely subject to a structured rule. The RSC will circulate a subsequent document summarizing the rule and any amendments made in order therein.

**Background:** On February 7, 2008, an explosion occurred at an Imperial Sugar Company refinery in Port Wentworth, Georgia. As a result of the explosion, thirteen workers died and five-dozen other workers suffered extensive burns. About a week later, the Occupational Safety and Health Administration (OSHA), after initial investigations by the local fire department and the federal Bureau of Alcohol, Tobacco, Firearms, and Explosives (BATFE) found that the explosion was not the result of foul play, commenced its investigation into the cause of the explosion. Though the OSHA investigation is not yet complete, by law OSHA has **six months** to investigate the accident and, if warranted, assess penalties on violators of workplace safety laws. **NOTE:** Six months from the start of the OSHA investigation would be August 15, 2008.

**Summary:** H.R. 5522 would require expedited issuance of Labor Department standards for combustible dust—which is dust that can explode in the manufacturing process. Specifically, the bill would:

- Require that OSHA, within 90 days of the enactment of this legislation, issue an interim standard that, 30 days after issuance, would apply to manufacturing, processing, blending, conveying, repackaging, and handling of combustible dust (including requirements for hazard assessment, operating controls and prevention, removal, employee participation, and worker training);
- Require that OSHA, within 18 months of the enactment of this legislation, issue a final standard regulating combustible dust explosions (including such factors as the interim standard plus longer-term factors like building design, as well as the existing standards of the National Fire Protection Association); and
- Require OSHA to revise its Hazard Communication Standard, within six months of the enactment of this legislation, to include combustible dust as an additional example of a “physical hazard” in the workplace.

The Hazard Communication Standard is the existing standard under which OSHA regulates combustibles and other hazards in the workplace (see “Additional Background” below).

**Additional Background:** Combustible dust—which is dust that can ignite or explode—consists of fine particles of either a primary manufactured product or the leftovers of producing some other product. Often such explosions happen as a result of ventilation issues—or sometimes problems with heat sources. For more information on combustible dust and the resulting explosions, go to this webpage: <http://www.osha.gov/dts/shib/shib073105.html>.

OSHA’s [Hazard Communication Standard](#) requires that businesses monitor and inform employees of the hazards associated with certain materials in the workplace. The standard requires that every affected employer establish a program to inform employees of these hazards, featuring five main components: 1) written Hazard Communication Program documentation; 2) identification and inventory of hazardous chemicals; 3) maintenance of material safety data sheets on the identified hazards; 4) labeling of hazardous materials with their name and hazard; and 5) training of employees on the standard, safety information, labeling, and protective measures.

Under the Hazard Communication Standard, employers are currently required to maintain data sheets that list the hazards, including the combustibility, of materials brought onto a worksite. OSHA currently has the authority to cite employers for failing to comply with these standards—and has done so after a combustible dust accident investigation concludes that the Hazard Communication Standard was violated.

The “[General Duty Clause](#)” of the Occupational Safety and Health Act requires all employers to “furnish each of his employees employment and a place of employment which are free from recognized hazards that are causing or are likely to cause death or serious physical harm to his employees.” Since combustible dust has caused death and injury in many high-profile accidents, one could argue that the General Duty Clause already covers combustible dust.

OSHA, in testifying before Congress on this legislation, noted that, while the investigation into the Imperial Sugar accident continues, OSHA has already initiated many new outreach programs to alert employers and employees about combustible dust. For example, according to the Education and Labor Committee, in early March 2008, OSHA created a new webpage and sent letters and fact sheets to 30,000 employers with combustible dust hazards, warning them to “take necessary steps” to prevent such explosions.

OSHA noted that it has not ruled out a formal rulemaking process.

**RSC Bonus Fact:** Although the impetus for this legislation is the Imperial Sugar accident, combustible dust is not just a problem for the sugar industry, or even just the food industry at large. Combustible dust is a concern in the manufacturing of plastics, wood, rubber, furniture, textiles, pesticides, pharmaceuticals, dyes, coal, metals, fossil fuel power generation, and of course food (particularly candy, starch, flour, and feed).

<http://www.osha.gov/dts/shib/shib073105.html>

**Committee Action:** On March 4, 2008, the bill was introduced and referred to the Education and Labor Committee, which, on April 9<sup>th</sup>, marked up, amended, and ordered the bill reported to the full House by voice vote.

**Possible Conservative Concerns:** Some conservatives, including Education and Labor Committee Ranking Member and RSC Member Buck McKeon (R-CA), have expressed various concerns about the legislation, including the following:

**Too Much, Too Soon.** Democrats, through this legislation, are proposing that formal OSHA rulemaking on combustible dust proceed without having the benefit of lessons learned as a result of the federal investigation into the Imperial Sugar accident. Such speed could result in the creation of an ineffective, un-nuanced, unenforceable safety standard that could actually harm many of our nation’s workplaces.

**Increased Uncertainty for Employers and Employees.** Creating an interim rule on short order with the knowledge that a final standard will be issued about a year thereafter, creates tremendous uncertainty for employers and employees, whose new duties may be unclear.

**Particular Harm on Small Businesses.** As with any business uncertainty resulting from shifting federal mandates, small businesses would be the least able to absorb them and the associated costs easily. Any new federal mandates created by the congressional-forced rulemaking could thus yield higher marginal costs for small businesses, forcing some of them to lay off workers, reduce compensation, or delay compensation increases.

**Possible Increase in Food Prices.** Since the food manufacturing industry is affected by combustible dust more than any other industry, any new and varying federal mandates on dust could yield higher costs for food production—and thus higher prices at the cash register for American consumers at a time when food prices are already soaring.

**Unrealistic and Unsafe.** OSHA noted that it is unrealistic for it to promulgate an interim standard within just 90 days, given the number of stakeholders (i.e. the number of industries) affected by combustible dust, the varying types of dust, the different causes of dust ignitions and explosions, and the different types of ignitions and explosions that take place. The result of an expedited interim standard could therefore be a one-size-fits-all standard, which ultimately fits no one, making workplaces no safer—and in some case perhaps less safe—than they are now.

**Administration Position:** Although a Statement of Administration Policy (SAP) was not available at pres time, reports indicate that the forthcoming SAP for H.R. 5522 will contain a veto threat.

**Cost to Taxpayers:** CBO estimates that H.R. 5522 would authorize \$1 million in fiscal year 2009 and \$41 million over the FY2009-FY2013 period. CBO notes, “These costs consist of \$1 million in 2009 for economic and feasibility studies to support the development of the final standard, and \$10 million a year—about a five percent increase in OSHA’s enforcement workload—beginning in 2010 for enforcement of the final standard.”

**Does the Bill Expand the Size and Scope of the Federal Government?:** Yes, the bill would impose increased federal regulations on industrial establishments that manufacture, process, or otherwise handle materials that produce combustible dusts.

**Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates?:** Yes, CBO confirms that the rule-making on combustible dust would impose private-sector mandates (the exact nature of which would depend on the interim and final standards) and intergovernmental mandates (to the extent that they would preempt state laws on combustible dust). CBO reports that at least two states have implemented or are in the process of implementing standards to prevent combustible dust explosions. The standards in such states would be preempted by regulations promulgated under H.R. 5522, unless such state standards are more robust than the federal standards.

**Does the Bill Comply with House Rules Regarding Earmarks/Limited Tax Benefits/Limited Tariff Benefits?:** The Education and Labor Committee, in [House Report 110-601](#), asserts that, “H.R. 5522 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9(d), 9(e) or 9(f) of rule XXI.”

**Constitutional Authority:** The Education and Labor Committee, in [House Report 110-601](#), cites constitutional authority in Article I, Section 8, Clause 3 (Congress' power to regulate commerce among the several states).

**Outside Organizations:** The following organizations have expressed public **opposition** to H.R. 5522:

- Alliance for Worker Freedom
- American Bakers Association
- American Composites Manufacturers Association
- Americans for Tax Reform
- Associated Builders and Contractors
- Associated General Contractors
- Corn Refiners Association
- Industrial Minerals Association - North America
- Institute for Liberty
- Mason Contractors Association
- National Association of Home Builders
- National Association of Manufacturers
- National Automobile Dealers Association
- National Federation of Independent Business
- National Industrial Sand Association
- National Mining Association
- National Roofing Contractors Association
- Plumbing Heating Cooling Contractors - National Association
- Printing Industries of America
- Retail Industry Leaders Association
- U.S. Chamber of Commerce

The following organizations have expressed public **support** for H.R. 5522:

- United Auto Workers
- United Food and Commercial Workers Union
- International Brotherhood of Teamsters

*USA Today* issued an editorial in March in favor of formal OSHA rulemaking on combustible dust.

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