



## H.R. 5522 – Combustible Dust Explosion and Fire Prevention

### EXECUTIVE SUMMARY

H.R. 5522 was introduced by Representative George Miller (D-CA) and was reported, as amended, by the Committee on Education and Labor by voice vote on April 18, 2008. The bill is expected to be considered under a structured rule on April 30, 2008.

On February 7, 2008, the Imperial Sugar Company refinery in Port Wentworth, GA, was involved in a combustible dust explosion that killed 13 employees and injured more than 60 others. The Occupational Safety and Health Agency (OSHA) is responsible for the ongoing investigation of this explosion.

H.R. 5522 requires OSHA to issue an interim final rule that includes measures to mitigate combustible dust risks within 90 days of enactment of the bill. It requires a final rule to be issued within 18 months of enactment.

The Administration has issued a Statement of Administration Policy that contains a veto threat because it “has serious concerns with the expedited and one-size-fits-all regulatory approach required by the bill, which will impact as many as 200,000 workplaces in a variety of industries throughout the United States.”

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### FLOOR SITUATION

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H.R. 5522 is being considered on the floor under a structured rule. The rule:

- Provides one hour of general debate equally divided and controlled by the Chairman and Ranking Minority Member of the Committee on Education and Labor.
- Waives all points of order against consideration of the bill except for clauses 9 and 10 of rule XXI.
- Provides that the amendment in the nature of a substitute recommended by the Committee on Education and Labor, now printed in the bill, shall be considered as an original bill for the purpose of amendment and shall be considered as read.
- Waives all points of order against the amendment in the nature of a substitute except for clause 10 of rule XXI. This waiver does not affect the point of order available under clause 9 of rule XXI (regarding earmark disclosure).
- No amendments shall be in order except those amendments printed in the Rules Committee report accompanying the resolution.
- Provides that the amendments made in order may be offered only in the order printed in the report, may be offered by a Member designated in the report, shall be considered as read, shall be debatable for the time specified in the report equally divided and controlled by the proponent and an opponent, shall not be subject to amendment, and shall not be subject to a demand for division of the question in the House or in the Committee of the Whole.
- Waives all points of order against the amendments printed in the report except for clauses 9 and 10 of rule XXI.
- Provides one motion to recommit with or without instructions.



Representative George Miller (D-CA) introduced H.R. 5522 on March 4, 2008. The bill was reported, as amended, by the Committee on Education and Labor by voice vote on April 18, 2008.

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## BACKGROUND

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On February 7, 2008, the Imperial Sugar Company refinery in Port Wentworth, GA, was involved in a combustible dust explosion that killed 13 employees and injured more than 60 others. The Occupational Safety and Health Agency (OSHA) is responsible for the ongoing investigation of this explosion.

OSHA's website states that any combustible material in a finely divided form can burn rapidly. An explosion may occur if the combustible dust is in a certain concentration suspended in the air near an ignition source. The following materials may form combustible dust: metals, wood, coal, plastics, biosolids, wheat, pollen, sugar, paper, soap, dried blood, and certain textiles.

OSHA took steps prior to the Imperial Sugar explosion to raise awareness about the risks of combustible dust. In July 2005, they issued a Safety and Health Information Bulletin that highlights the risks of combustible dust and the need for appropriate worker training about controlling dust in the workplace. In addition, OSHA implemented a National Emphasis Program in October 2007 to inspect facilities that generate or handle combustible dusts.

OSHA reissued the National Emphasis Program following the Imperial Sugar refinery explosion to increase its enforcement activities and to focus on specific industry groups that are prone to combustible dust incidents. As of March 2008, OSHA had conducted 51 inspections and found 109 violations of existing standards under this National Emphasis Program

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## SUMMARY

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**Interim Final Standard:** H.R. 5522 requires the Secretary of Labor to issue an interim final standard to regulate combustible dust within 90 days of enactment. It requires the interim final rule to include measures to mitigate combustible dust hazards by improving house keeping procedures, hot work procedures, preventative maintenance, common ignition sources, and lock-out and tag-out procedures. The Interim Final Rule is exempt from standard rulemaking requirements.

**Final Standard:** This legislation requires a final standard to be issued within 18 months of enactment of the bill.

**Hazard Communication Standard:** The bill requires the Secretary to include combustible dust as an example of a "physical hazard" in the Hazard Communication Standard.

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## AMENDMENTS

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*(Below is the summary of the amendment that was made in order by the Rules Committee and may be offered on the floor of the House of Representatives)*

- 1) Representative George Miller (D-CA): The Manager's Amendment makes four adjustments to the bill: (1) corrects the short title; (2) provides that engineering controls required by the interim standard shall be effective 6 months after issuance of the standard (rather than 30 days); (3) maintains the provision that DOL shall include appropriate and relevant NFPA standards in the final standard but eliminates references to specific NFPA standards; and (4) clarifies that the final standard shall be conducted in accordance with usual rulemaking procedural requirements, including those that provide for small business review.



- 2) Representative Joe Wilson (R-SC): **Amendment in the Nature of a Substitute.** The Substitute amendment directs OSHA to wait for the outcome of the Imperial Sugar investigation and finding from the combustible dust National Emphasis Program before deciding on whether to move forward with a standard.

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#### COST

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According to the Congressional Budget Office cost estimate, "CBO estimates that implementing H.R. 5522 would cost \$1 million in fiscal year 2009 and \$41 million over the 2009-2013 period. 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. Enacting the bill would not affect revenues or direct spending." ([CBO Cost Estimate](#))

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#### ADDITIONAL VIEWS

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According to the Statement of Administration Policy, "The Department of Labor's Occupational Safety and Health Administration (OSHA) currently enforces seventeen standards that collectively provide protections against combustible dust hazards. The Administration has serious concerns with the expedited and one-size-fits-all regulatory approach required by the bill, which will impact as many as 200,000 workplaces in a variety of industries throughout the United States. If H.R. 5522 were presented to the President, his senior advisors would recommend that he veto the bill." ([SAP for H.R. 5522](#))

According to the Republican views included in the Committee Report, "Committee Republicans believe that Congress, at a minimum, should allow for OSHA to complete its investigation of the accident before enacting legislation, taking into consideration all of the variables related to the accident."

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#### MOTION TO RECOMMIT

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Please find the Republican Motion to Recommit [here](#).

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#### STAFF CONTACT

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For questions or further information contact Brianne Miller at (202) 226-2302.