

111TH CONGRESS
1ST SESSION

H. R. 849

To require the Secretary of Labor to issue interim and final occupational safety and health standards regarding worker exposure to combustible dust, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 4, 2009

Mr. GEORGE MILLER of California (for himself, Mr. BARROW, and Ms. WOOLSEY) introduced the following bill; which was referred to the Committee on Education and Labor

A BILL

To require the Secretary of Labor to issue interim and final occupational safety and health standards regarding worker exposure to combustible dust, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Worker Protection
5 Against Combustible Dust Explosions and Fires Act of
6 2009”.

7 **SEC. 2. FINDINGS.**

8 Congress finds the following:

1 (1) An emergency exists concerning worker ex-
2 posure to combustible dust explosions and fires.

3 (2) Fourteen workers were killed and more than
4 60 seriously injured in a catastrophic combustible
5 dust explosion at Imperial Sugar in Port Wentworth,
6 Georgia on February 7, 2008.

7 (3) Following 3 catastrophic dust explosions
8 that killed 14 workers in 2003, the Chemical Safety
9 and Hazard Investigation Board (CSB) issued a re-
10 port in November 2006, which identified 281 com-
11 bustible dust incidents between 1980 and 2005 that
12 killed 119 workers and injured 718. The CSB con-
13 cluded that “combustible dust explosions are a seri-
14 ous hazard in American industry”.

15 (4) A quarter of the explosions occurred at food
16 industry facilities, including sugar plants. Seventy
17 additional combustible dust explosions have occurred
18 since 2005.

19 (5) Material Safety Data Sheets (MSDSs) often
20 do not adequately address the hazards of combus-
21 tible dusts, and the OSHA Hazard Communication
22 Standard (HCS) inadequately addresses dust explo-
23 sion hazards and fails to ensure that safe work prac-
24 tices and guidance documents are included in
25 MSDSs.

1 (6) The CSB recommended that OSHA issue a
2 standard designed to prevent combustible dust fires
3 and explosions in general industry, based on current
4 National Fire Protection Association (NFPA) dust
5 explosion standards.

6 (7) The CSB also recommended that OSHA re-
7 vise the Hazard Communication Standard (HCS)
8 (1910.1200) to clarify that combustible dusts are
9 covered and that Material Safety Data Sheets con-
10 tain information about the hazards and physical
11 properties of combustible dusts.

12 (8) OSHA has not initiated rulemaking in re-
13 sponse to the CSB's recommendation.

14 (9) OSHA issued a grain handling facilities
15 standard (29 C.F.R. 1910.272), in 1987 that has
16 proven highly effective in reducing the risk of com-
17 bustible grain dust explosions, according to an
18 OSHA evaluation.

19 (10) No Occupational Safety and Health Ad-
20 ministration standard comprehensively addresses
21 combustible dust explosion hazards in general indus-
22 try.

23 (11) Voluntary National Fire Protection Asso-
24 ciation standards exist which, when implemented, ef-

1 fectively reduce the likelihood and impact of combus-
2 tible dust explosions.

3 **SEC. 3. ISSUANCE OF STANDARD ON COMBUSTIBLE DUST.**

4 (a) INTERIM STANDARD.—

5 (1) APPLICATION AND RULEMAKING.—Notwith-
6 standing any other provision of law, not later than
7 90 days after the date of enactment of this Act, the
8 Secretary of Labor shall promulgate an interim final
9 standard regulating combustible dusts. The interim
10 final standard shall, at a minimum, apply to manu-
11 facturing, processing, blending, conveying, repack-
12 aging, and handling of combustible particulate solids
13 and their dusts, including organic dusts (such as
14 sugar, candy, paper, soap, and dried blood), plastics,
15 sulfur, wood, rubber, furniture, textiles, pesticides,
16 pharmaceuticals, fibers, dyes, coal, metals (such as
17 aluminum, chromium, iron, magnesium, and zinc),
18 fossil fuels, and others determined by the Secretary,
19 but shall not apply to processes already covered by
20 OSHA's standard on grain facilities (29 C.F.R.
21 1910.272).

22 (2) REQUIREMENTS.—The interim final stand-
23 ard required under this subsection shall include the
24 following:

1 (A) Requirements for hazard assessment to
2 identify, evaluate, and control combustible dust
3 hazards.

4 (B) Requirements for a written program
5 that includes provisions for hazardous dust in-
6 spection, testing, hot work, ignition control, and
7 housekeeping, including the frequency and
8 method or methods used to minimize accumula-
9 tions of combustible dust on ledges, floors,
10 equipment, and other exposed surfaces.

11 (C) Requirements for engineering controls
12 (which requirements shall be effective 6 months
13 after the date on which the interim standard is
14 issued), administrative controls, and operating
15 procedures, such as means to control fugitive
16 dust emissions and ignition sources, the safe
17 use and maintenance of dust producing and
18 dust collection systems and filters, minimizing
19 horizontal surfaces where dust can accumulate,
20 and sealing of areas inaccessible to house-
21 keeping.

22 (D) Requirements for housekeeping to pre-
23 vent accumulation of combustible dust in places
24 of employment in such depths that it can
25 present explosion, deflagration, or other fire

1 hazards, including safe methods of dust re-
2 moval.

3 (E) Requirements for employee participa-
4 tion in hazard assessment, development of and
5 compliance with the written program, and other
6 elements of hazard management.

7 (F) Requirements to provide written safety
8 and health information and annual training to
9 employees, including housekeeping procedures,
10 hot work procedures, preventive maintenance
11 procedures, common ignition sources, and lock-
12 out, tag-out procedures.

13 (3) PROCEDURE.—The requirements in this
14 subsection shall take effect without regard to the
15 procedural requirements applicable to regulations
16 promulgated under section 6(b) of the Occupational
17 Safety and Health Act of 1970 (29 U.S.C. 655(b))
18 or the procedural requirements of chapter 5 of title
19 5, United States Code.

20 (4) EFFECTIVE DATE OF INTERIM STAND-
21 ARD.—Except as specified in paragraph (2)(C) with
22 regards to engineering controls, the interim final
23 standard shall take effect 30 days after issuance.
24 The interim final standard shall have the legal effect
25 of an occupational safety and health standard, and

1 shall apply until a final standard becomes effective
2 under section 6 of the Occupational Safety and
3 Health Act (29 U.S.C. 655).

4 (b) FINAL STANDARD.—

5 (1) RULEMAKING.—Not later than 18 months
6 after the date of enactment of this Act, the Sec-
7 retary of Labor shall, pursuant to section 6 of the
8 Occupational Safety and Health Act (29 U.S.C.
9 655), promulgate a final standard regulating com-
10 bustible dust explosions.

11 (2) REQUIREMENTS.—The final standard re-
12 quired under this subsection shall include the fol-
13 lowing:

14 (A) The scope described in subsection
15 (a)(1).

16 (B) The worker protection provisions in
17 subsection (a)(2).

18 (C) Requirements for managing change of
19 dust producing materials, technology, equip-
20 ment, staffing, and procedures.

21 (D) Requirements for building design such
22 as explosion venting, ducting, and sprinklers.

23 (E) Requirements for explosion protection,
24 including separation and segregation of the haz-
25 ard.

1 (F) Relevant and appropriate provisions of
2 National Fire Protection Association combus-
3 tible dust standards.

4 (3) PROCEDURE.—The final standard required
5 by this subsection shall be promulgated in accord-
6 ance with the procedural requirements for rule-
7 making under section 6(b) of the Occupational Safe-
8 ty and Health Act of 1970 (29 U.S.C. 655(b)) and
9 under title 5, United States Code, including the re-
10 quirements relating to small businesses in chapter 6
11 of such title.

12 **SEC. 4. REVISION OF THE HAZARD COMMUNICATION**
13 **STANDARD.**

14 (a) REVISION REQUIRED.—Notwithstanding any
15 other provision of law, not later than 6 months after the
16 date of enactment of this Act, the Secretary of Labor shall
17 revise the hazard communication standard in section
18 1910.1200 of title 29, Code of Federal Regulations, by
19 amending the definition of “physical hazard” in subsection
20 (c) of such section to include “a combustible dust” as an
21 additional example of such a hazard.

22 (b) EFFECT OF MODIFICATIONS.—The modification
23 under this section shall be in force until superseded in
24 whole or in part by regulations promulgated by the Sec-
25 retary of Labor under section 6(b) of the Occupational

1 Safety and Health Act of 1970 (29 U.S.C. 655(b)) and
2 shall be enforced in the same manner and to the same
3 extent as any rule or regulation promulgated under section
4 6(b).

5 (c) EFFECTIVE DATE.—The modification to the haz-
6 ard communication standard required shall take effect
7 within 30 days after the publication of the revised rule.

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