2017 ILMA Annual Meeting

Safety, Health, Environmental & Regulatory Affairs Committee

Sunday, October 15, 2017

2:30 – 4:00 PM (ET)

Orlando, Florida
OSHA’s Electronic Injury and Illness Reporting Final Rule
OSHA Electronic Reporting

• The deadline for employers to submit electronically their injury and illness data to OSHA is December 1, 2017 under its “Improve Tracking of Workplace Injuries and Illnesses” final rule.

• Originally July 1, 2017 but postponed to give industry time to understand rules mandates and Trump Admin to review.
OSHA Electronic Reporting

• Currently, covered employers are required to record each reportable injury and illness on OSHA Form 300, the “Log of Work-Related Injuries and Illnesses,” and must prepare an incident report on Form 301, the “Injury and Illness Incident Report.”

• Finally, employers must prepare Form 300A, “Summary of Work-Related Injuries and Illnesses,” and post it within the facility from February 1 through April 30 each year.
OSHA Electronic Reporting

• OSHA is now requiring every workplace with 250 or more employees in industries covered by the recordkeeping regulation to submit information electronically from their 2016 Form 300A by December 1, 2017.
  – Additional requirements for large employers commence in 2018.

• Establishments with 20-249 employees in specified “high-risk industries” – identified by OSHA on a specific list and including all employers in manufacturing industries – must also submit their Form 300A electronically by December 1, 2017.
OSHA Electronic Reporting

- OSHA launched the web-based reporting portal in August 2017 that outlines the specific requirements for submission by the **December 1 deadline**.
  - OSHA estimates 20 minutes to create account, input data, submit.
- Again, OSHA did state that it would issue another proposed rule seeking comments on the substance of the regulation that would possibly lead to its reconsideration, revision, or repeal.
  - Not yet occurred, TBD
Department of Labor

Overtime Rule
Overtime Rule

- Generally, Fair Labor Standards Act requires employers to compensate employees time and one half for all hours worked in excess of 40.
- Certain exemptions, including for Executive, Administrative, and Professional.
- In order for an employee to be exempt from overtime compensation:
  - First, that individual must be paid on a salary basis.
  - Second, the salary must meet or exceed a certain minimum threshold.
  - Third, the employee must perform certain duties.
Overtime Rule

• Obama Admin. significantly raised the minimum salary threshold from $455 per week or $23,660 (set in 2004) to $913 per week or $47,476.

• Legal challenges ensued, resulting in U.S. District Ct. judge first enjoining and then invalidating rule late August.

• Found that DOL had exceeded its authority with the rule, but the judge said the Agency does have the ability to use a salary test, but eligibility for overtime pay must be based on a combination of a worker’s duties and wages.
Overtime Rule

• DOL issued RFI and received over 160,000 comments before September deadline.
• As expected, variety of opinion of how DOL should proceed.
  – Example, some want salary based on region of country, but multi-state employers against that.
• Likely DOL will review all comments received and publish new proposed rule that will establish new threshold likely between 2004 and attempt Obama levels
• DOL at SBA Roundtable offered no insight only “We are reviewing all of our options.”
ILMA 2017 Annual Meeting
SHERA Committee

HCS 2012 Update

John K. Howell, Ph.D., GHS Resources Inc.
Outline

• Top violations/top HCS violations
• Dates
• Concentration ranges/Mixtures
• UN GHS Subcommittee update
• Future HCS Rulemaking
# Top 10 OSHA Violations

1. Fall protection – General requirements (1926.501): 6,072
2. Hazard communication (1910.1200): 4,176
5. Lockout/tagout (1910.147): 2,877
7. Powered industrial trucks (1910.178): 2,162
9. Fall protection – Training requirements: 1,523

Note: Federal data only, 10/01/15 – 09/30/16
Top 5 Hazard Communication Violations

1. 1910.1200(e)(1) – written program
2. 1910.1200(h)(1) – information and training program
3. 1910.1200(g)(8) – maintain MSDS/SDS and readily accessible during each work shift
4. 1910.1200(h)(3) – training: shipped labels, workplace labeling & SDS
5. 1910.1200(g)(1)
   – manufacturers and importers – SDS for each chemical they produce or import;
   – Employers – SDS in workplace for each chemical used

Note: Federal data only, 12/01/13 – 09/01/16
Classes of HCS Violations – 20,708 total

1. Serious – 11,891
2. Willful - 15
3. Repeat - 535
4. Other – 8,267

Note: Federal data only, 12/01/13 – 09/01/16
Dates: One More to Go

• June 1, 2016
  – Update alternative workplace labelling – (f)(6)
  – Update hazard communication programs as necessary – (h)(1), and
  – Provide additional employee training for newly identified physical or health hazards – (h)(3)

• Manufacturer or importer with existing stock:
  – Must use HCS 2012 compliant labels, unless
  – “reasonable diligence and good faith” efforts can be demonstrated

• June 1, 2017
  – All manufacturers and importers: products must be HCS 2012 labeled

• December 1, 2017
  – Distributors: all containers shipped must be HCS 2012 label compliant
Use of Concentration Ranges

• A concentration range may be used:
  – When a trade secret claim has been made (for the exact percentage)
  – When there is batch-to-batch variability in the production of a mixture; or
  – For a group of substantially similar mixtures with similar compositions and hazards

• Trade secret status may be claimed for the exact percentage composition but not for concentration ranges

• When classifier uses a range of concentrations, they:
  – Must be sufficiently narrow to meet the intent of disclosing the actual concentration
  – And must be an accurate representation of the variation

Note: the classification must represent the highest degree of hazard that the mixture could present

(https://www.osha.gov/dsg/hazcom/hazcom-faq.html#collapse33)
## Concentration Ranges/Trade Secret

<table>
<thead>
<tr>
<th>Does Mfg/Imp consider the specific chemical identity a trade secret?</th>
<th>Is the Mfg/Imp using an exact percentage or percentage range to identify the ingredient?</th>
<th>Can the percentage be claimed as a trade secret?</th>
<th>Trade secret indication</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
<td>Exact percentage</td>
<td>Yes</td>
<td>SDS indicates the ingredient name and/or exact percentage is being withheld as a trade secret</td>
</tr>
<tr>
<td>No</td>
<td>Exact percentage</td>
<td>Yes</td>
<td>SDS indicates the exact percentage is being withheld as a trade secret but <strong>not</strong> the ingredient name</td>
</tr>
<tr>
<td>Yes</td>
<td>Percentage range</td>
<td>No</td>
<td>SDS indicates the ingredient name is being withheld as a trade secret but <strong>not</strong> the percentage range</td>
</tr>
</tbody>
</table>
HCS versus DOT label

HCS label

In Transport – DOT Label

HCS label
GHS UN Subcommittee Update

• UN Sub-committee on GHS activities: met in July
  – Major updates:
    • Classification issues of explosives (Chapter 2.1)
    • Work on labeling for small packages continues
    • Updates to precautionary statements (Annexes 1 to 3)
  – New work items:
    • Non animal testing
    • Aspiration hazard
GHS UN Subcommittee Update

• Annex 1 to 3 (work streams 1, 2 and 3)
  – 1: develop proposals to rationalize and improve comprehensibility of hazard and precautionary statements for users, while taking into account usability for labeling
  – 2: eliminate inconsistencies in presentation of precautionary statements in Annex 3, including disparities between the application of precautionary statements for different hazard classes/categories
  – 3: address other issues as they arise
GHS UN Subcommittee: Annexes 1 to 3

• Keep out of reach of children
  – Progress reported on development of precautionary statements for medical response and a possible precautionary pictogram to transmit message, “Keep out of reach of children.” Proposals expected next meeting.
Pictogram for keep out of the reach of children

- **ASTM icon for liquid laundry packets**

- **A.I.S.E. Safe Use Icon Keep away from children**

- **Annex V of EU Directive on “Safety of toys”**

- **ISO Keep away from children symbol for use on equipment**

- **Safe use icon developed by the Japan Soap and Detergent Association (JSDA)**

- **OSHA**
negligible critical confusion

54%-62% with sufficient understanding of the hazard

only 3% with sufficient understanding of the hazard
GHS UN Subcommittee Update

• Non animal testing
  – Discussion: should draft text about “test criteria for *in vitro* methods be included within the text of Chapter 3.2 or as guidance. Moving to an integrated approach or maintaining the existing tiered approach for classification in Chapter 3.2 was also under consideration.”

• Aspiration hazard
  – International Paint and Printing Ink Council document expected to be submitted prior to July, 2018, meeting
GHS UN Subcommittee Update

• Non animal testing
  A. Starting with a hazard class to be determined by working group, identify and evaluate \textit{in vitro} test methods, relative to existing accepted \textit{in vivo} test methods upon which existing GHS classification criteria are based
  B. For each hazard class, determine the appropriate approach
  C. Prepare draft amendments and additions to the GHS to facilitate hazard classification using non-animal methods
  D. Report back to GHS Sub-committee as appropriate
Future HCS Rulemaking: Purpose

• Maintain alignment with GHS
• Address issues identified during implementation of HCS 2012
• Identify issues of concern for those complying with WHMIS 2015
Future HCS Rulemaking: Principles & Assumptions

• As with HCS 2012, OSHA plans to modify only the provisions of the HCS that must be changed to align with the GHS
  – Basic framework of the HCS will remain the same
    • Chemical manufacturers/importers responsible for providing information about identities/hazards of chemicals
    • All employers with hazardous chemicals in their workplaces are required to have a hazard communication program

• OSHA will maintain or enhance the overall current level of protection of the HCS
Future HCS Rulemaking: Comments So Far

• Cautiously improve alignment with Canada
  – Concentration ranges/CBI
• Visit issues with small packages
• Distribution issues
  – Relabeling at time of shipment versus “release for shipment”
• Maintain alignment with EU
• Cut-off values - variances
Future HCS Rulemaking: Questions to consider

• How the change will effect your company or Industry?
• What are the burdens your industry/company expects?
• Please provide information on potential feasibility issues
  – Technical – can not physically be done
  – Financial
  – Please provide examples/costs associated with issues
• Written comments should refer to Docket #: OSHA-2016-0005

https://www.regulations.gov/docket?D=OSHA-2016-0005

Note: information on several slides abstracted from presentations of OSHA’s Sven Rundman III and Maureen Ruskin at Society for Chemical Hazard Communication Fall, 2017, meeting, Arlington, VA, September 26 - 27, 2017
ILMA 2017 Annual Meeting
SHERA Committee

REACH 2018
John K. Howell, Ph.D., GHS Resources Inc.
REACH 2018

• Last REACH deadline, May 31, 2018, for substances 1 – 100 m. tons

• Registration costs are large: 1 – 10, €20 – €40; 10 – 100, €150 - €250

• 145,299 substances pre-registered; only 16,401 – 15,469 registered as of 09/13/2017, including intermediates: where are the other 130,000 substances?

• If you export to the EU, BE SURE that your suppliers are in the process of registering all of your component chemicals. If you create salts in situ, you are the responsible manufacturer; consult your Only Representative for necessary action steps.
If you or your supplier are part of a Substance Information Exchange Forum (SIEF), you can check on progress:

- **12,146** Joint Submissions as of **09/22/2017** with Lead Registrant identified:
  

- ECHA recognizes that “SME’s” face “financial challenges” under REACH. “The main problem seems to be the cost of data needed for registration”
  
SMEs face financial challenges registering under REACH

ECHA/NI/17/31

A recent study on the segmentation of the small and medium-sized enterprise (SME) market confirms uncertainties regarding the SMEs’ intentions to register their substances by the 31 May 2018 deadline. The main hurdle seems to be the cost of data needed for registration. It also makes recommendations for the Agency on how to convince SMEs to use and benefit from the ECHA Cloud Services.

Helsinki, 3 October 2017 – The study, commissioned by ECHA, gathered insights on the SME market structure, mainly for marketing the recently launched ECHA Cloud Services giving SMEs online access to IUCLID. It also collected information on the SMEs’ intentions to register by the last registration deadline on 31 May 2018 and analysed issues these smaller companies face in the registration process.

Three types of SME market segments were introduced, based on the SMEs’ role within REACH and their attitudes towards registration:

1. Product builders and suppliers that manufacture and import substances and have direct registration duties. This segment is further divided into companies that have a good understanding of REACH and have set aside resources for registration; companies who are not sure whether or not they have to register; and SMEs who fear losing their businesses as they cannot afford to register.

2. Advice givers that assists and guide the first segment.

3. Experts, who are either service providers or in-house experts.

Among these segments, the key finding is that while most SMEs (95 % of the respondents) are aware of their duties, a sizeable number struggle with the high costs of registration, in particular, the costs for letters of access and participating in the substance information exchange forums (SIEFs). As a result, a proportion of companies are rationalising their substance portfolios and finding alternative solutions, for example, reconsidering their production and import volumes to remain below the one tonne per year threshold that triggers registration obligations.
SME fees under REACH and CLP

Before you declare your company as an SME, make yourself familiar with the relevant EU definition. The Commission Recommendation 2003/361/EC is the sole authentic basis for determining the conditions regarding qualification as micro, small or medium-sized enterprise.

For Only Representatives (ORs), the pertinent assessment of whether the fee reduction for SMEs applies shall be determined by the relevant data of the enterprise that is represented by that OR, including relevant information from linked and partner companies of that enterprise, in accordance with the Commission Recommendation.

It is important to get this right. If you wrongly declare your company size, you will have to pay an administrative charge and the balance to the correct fee. Remember that it is you, the registrant, that is entirely responsible for the correctness and authenticity of the information provided in the process of the dossier submission in REACH-IT. The Agency does not assume any responsibility for the accuracy of the advice given by third parties to determine your company size or the size of the company you represent as an Only Representative.

How to determine the company size category

Step-by-step instructions on assessing the company size category.

What to do if you incorrectly indicated the SME size category

If you indicated the incorrect company size category in REACH-IT, read the following instructions on how to inform ECHA.
ILMA 2017 Annual Meeting
SHERA Committee

Proposition 65
Mike Pearce, CLS®, CMFS®, W.S. Dodge Oil Company
John K. Howell, Ph.D., GHS Resources Inc.
Outline

• Amendments to Article 6, “Clear and Reasonable Warnings:” language for Occupational and Consumer or Environmental Exposures
• New Prop. 65 Warning Site
• Updates and Enforcement Actions
• Out-of-State Manufacturers
• “Clear and Reasonable Warnings:” Questions and Answers for Businesses
• Acrylamide
Notice of Adoption Article 6: Clear and Reasonable Warnings

Sep 2, 2016
Go to downloads

On August 30, 2016, the Office of Administrative Law approved the adoption of amendments to Article 6, Clear and Reasonable Warnings, of the California Code of Regulations. This regulatory action repeals all the regulatory provisions of Title 27 of the California Code of Regulations, Article 6 (sections 25601 et seq.), except those added via an emergency rulemaking in April 2016 related to warnings for exposures to bisphenol A in canned foods and beverages (Sections 25603.3(f) and (g)). The action will replace the repealed sections with a new regulation divided into two new Subarticles to Article 6. The repealed and new regulations provide, among other things, methods of transmission and content of warnings deemed to be compliant with the Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65).

The regulation will be operative August 30, 2018. In the interim, businesses may comply with the regulation in effect on August 30, 2016, or the provisions of the new regulation. This will allow for a reasonable transition period for businesses to begin providing warnings under the new provisions.

The regulatory text and the supporting rulemaking documents are available below.

Questions regarding this regulatory action can be directed to Monet Vela, at mvela@healtheffects.ca.gov (916) 324-5517; or Maria Fernandez, Staff Counsel at mferandez@healtheffects.ca.gov (916) 324-5467.
Occupational Exposures

• Occupational:

(a) A warning to an exposed employee about the chemical in question which fully complies with all information, training and labeling requirements of the federal Hazard Communication Standard (29 Code of Federal Regulations, section 1910.1200), the California Hazard Communication Standard (Title 8, California Code of Regulations section 5194), or, for pesticides, the Pesticides and Worker Safety requirements (Title 3, California Code of Regulations section 6700 et seq.) meets the requirements of this Article.
Consumer and Environmental Exposures

• Consumer:
WARNING: This product can expose you to chemicals including [one or more listed chemicals] which is [are] known to the State of California to cause cancer [and/or birth defects or other reproductive harm]. For more information, go to www.P65Warnings.ca.gov

• Pictogram:

• Environmental: similar to Consumer but source(s) of exposure must be named
https://www.p65warnings.ca.gov/
Petroleum Products

New Warning (effective beginning 8/30/16)  Old Warning (effective until 8/30/18)

⚠️ WARNING: Crude oil, gasoline, diesel fuel and other petroleum products can expose you to chemicals including toluene and benzene, which are known to the State of California to cause cancer and birth defects or other reproductive harm. These exposures can occur in and around oil fields, refineries, chemical plants, transport and storage operations such as pipelines, marine terminals, tank trucks and other facilities and equipment. For more information go to: www.P65Warnings.ca.gov/petroleum.

Fact Sheets

- Benzene
Updates and Enforcement Actions

• Almost 1,000 chemicals on list (987 as of July 7, 2017)
Source: https://oehha.ca.gov/proposition-65/proposition-65-list

• In 2016, 760 (up from 582 in 2015) settlements as reported by CA Attorney General’s office with total settlement payments of $30,150,111 (up from $26,226,671 in 2015), or average of $39,673/settlement, including civil penalties and attorney’s fees

• “60-day Notices” (prelude to bringing a Prop 65 action) last month alone (September, 2017) for all chemicals: 2,213 (You can search here😊) https://oag.ca.gov/prop65/60-day-notice-search)
Out of State Manufacturers

• For chemical products that are used exclusively in the workplace and which are manufactured outside of California:
  – In June, 1997, OSHA approved incorporation of Proposition 65 into the State of California’s Hazard Communication Standard
  – OSHA ruled that compliance with the OSHA Hazard Communication Standard was sufficient to comply fully with Proposition 65
Out of State Manufacturers

• California’s Hazard Communication Standard, including Proposition 65, may not be applied to or enforced against out-of-state manufacturers of industrial-only products

• San Francisco Superior Court (April, 1998) in As You Sow v. Shell Oil Company acknowledged the 1997 OSHA order
  – The burden of compliance with Proposition 65 for industrial-only products manufactured out-of-state is on the California employers who use such chemicals

https://www.plainsite.org/dockets/vp0zouz0/superior-court-of-california-county-of-san-francisco/as-you-sow-vs-shell-oil-co/
Q42: Section 25606(a) states that a warning is not required on products that meet the requirements of the Hazard Communication Standard (HCS). If a product contains a Proposition 65 chemical, but the quantity is not enough to trigger classification under the HCS, does it still require a Proposition 65 warning?
Proposition 65 imposes separate warning requirements from the HCS. Section 25606 provides that a business can comply with state and federal occupational training and warning requirements *when a warning is required* under federal or California HCS, or the California Pesticides and Worker Safety Requirements. In the event that there is an occupational exposure to a Proposition 65 listed chemical with no warning requirement under these laws, *a Proposition 65 warning may still be required.* Section 25606(b) provides businesses the option to use safe harbor warning methods and content for an exposure to a Proposition 65 listed chemical in an occupational setting.
Questions and Answer for Businesses (Revised August, 2017)

Q43: Can a business place the Proposition 65 warning on a Safety Data Sheet?

Safety Data Sheets (SDS) are outside the scope of this regulation, as OEHHA cannot prescribe the content of forms under the authority of another federal or other state agency. While SDS may be used to provide occupational exposure warnings, they are not a safe harbor warning method for other exposure types such as a consumer product or environmental exposures covered by Article 6.
Acrylamide

- Added to Prop 65 list in 1990
  - [https://oehha.ca.gov/proposition-65/general-info/acrylamide](https://oehha.ca.gov/proposition-65/general-info/acrylamide)
  - Acrylamide is on the Proposition 65 list of chemicals known to the state to cause cancer or reproductive toxicity (such as birth defects
Coffee sold in California could carry cancer warning labels

- A nonprofit group wants coffee manufacturers, distributors and retailers to post ominous warnings about a cancer-causing chemical seeping in every brew and has been presenting evidence in a Los Angeles courtroom to make its case.
- At the center of the dispute is acrylamide, a carcinogen found in cooked foods such as French fries that is also a natural byproduct of the coffee roasting process.

Published 5:51 AM ET Tue, 26 Sept 2017 | Updated 9:59 AM ET Tue, 26 Sept 2017

AP
Editorial Warning: Too many warning signs are bad for your health

By The Times Editorial Board

September 30, 2017, 4:00 AM

Starbucks, Whole Foods and about 80 other places in California that sell coffee may soon be forced to put warning labels on grande lattes and coffee bean packages to alert consumers that the product within contains acrylamide, a chemical that may be carcinogenic.

Wait a minute. Coffee causes cancer? Actually, research increasingly points to the opposite conclusion. Two large studies published earlier this year in the Annals of Internal Medicine found compelling indications that drinking coffee protects against heart disease, a number of cancers and other common ailments. Furthermore, researchers found that higher coffee consumption was associated with a lower risk of premature death. Maybe it has to do with the antioxidants present in a cup of joe that help the body heal itself, or maybe it’s some other properties of this complex brew.

But that doesn’t matter under Proposition 65. Formally known as the Safe Drinking Water and Toxic Enforce ment Act of 1986, it requires businesses with 10 or more employees to...
TSCA Implementation: Inventory Reset
TSCA - Inventory Reset

• Toxic Substances Control Act significantly amended for first time in June 2016 since it was enacted in 1976.

• Frank Launtenberg Chemical Safety for the 21st Century Act (LCSA).

• Mandated that EPA promulgate several implementing regulations for risk prioritization, risk evaluation, and the TSCA Inventory Reset by June 2017
TSCA – Inventory Reset

• EPA finalized the final rule by June 22, 2017 to determine what chemicals are “active” and “inactive” in commerce. The regulation is commonly referred to as the “Inventory reset rule.”
  – In 1976 all chemicals grandfathered in and placed on Inventory
  – EPA wants to determine what industry is currently using
  – Importantly will not involve removal of substances from Inventory, simply an “inactive” designation.
TSCA – Inventory Reset

• Under the rule, retrospective reporting applies to manufacturers and importers of chemicals that were manufactured or imported for nonexempt commercial purposes during the 10-year period from June 21, 2006 until June 21, 2016.

• EPA did reduce the volume of information required to provide in the final rule, eliminating the requirements that a date range of manufacture and the type of activity (e.g., if manufactured or imported) be provided.
TSCA – Inventory Reset

• Manufacturers and importers have until February 7, 2018 to submit notifications to EPA using the Agency’s Central Data Exchange (CDX) reporting portal.
  – Mandatory reporting
  – Submission of Notice of Activity From A
  – Some exemptions (e.g., previously reported during 2012 or 2016 CDR periods)
  – EPA will publish a “draft Inventory” that will outline all of the information received hopefully within 60 days of receipt

• Processors have until September 5, 2018, to report substances voluntarily to EPA.
  – Permissive, not mandatory, but beneficial.
TSCA – Inventory Reset

• **Manufacture** means “to import . . . in to the U.S., produce, or manufacture.”

• **Process** means “the preparation of a chemical substance or mixtures, after its manufacture, for distribution in commerce –
  – (a) in the same form or physical state as, or in a different form or physical state from, that in which it was received by the person so preparing such substance or mixture, or
  – (b) as part of an article containing the chemical substance or mixture”
TSCA – Inventory Reset

• The final rule also mandates that manufacturers and processors notify the Agency of their intent to manufacture or process a substance deemed “inactive” 90 days before the anticipated date of manufacturing or processing.

• The final rule also covers the transitional period between June 22, 2016 and the date that EPA designates chemical substances on the Inventory as active or inactive -- the day that forward-looking reporting begin.

• EPA clarified in the final rule that a substance will not be deemed fully “inactive” until 90 days after the Agency states its intention to list the chemical in that manner.
  – Interested party can then submit NOA via the CDX to ensure it remains “active.”
TSCA – Inventory Reset

• Beneficial to review universe of substances a business uses.
• Definitions are important.
• Talk with suppliers to ensure they are aware of reporting obligations.
• Review closely the “draft” inventory once published.
• Consider voluntary submission to ensure prospective availability of materials.
Congressional and Regulatory Update
Congressional Review Act

- Congressional Review Act allows Congress to nullify federal regulations if acted upon within 60 legislative days.
- Only used once before Trump administration.
  - Used 14 times, but “clock” expired earlier this year.
- House Joint Resolution (H.J. Res.) 83 – OSHA -- Congress passed a CRA resolution nullifying OSHA’s recordkeeping rule.
- OSHA attempted to expand amount of time -- to five years -- within which an inspector could cite an employer for failure to create and preserve accurate injury and illness records.
- OSH Act provides a six-month statute of limitations period, and the CRA resolution cements the six-month limitations period going forward.
Executive Orders & Memos

• Frenzy of Executive Orders and Memorandums to reduce regulatory burdens
• Federal Hiring Freeze Memo – 1/23
• EO – 3/13 – Comprehensive Plan for Reorganizing the Federal Government – Directs OMB to devise a plan to combine, reorganize, and eliminate unnecessary agencies
  – House Dems on Oversight Committee sent letter earlier this month to Chairman Gowdy requesting oversight hearing on matter
Executive Orders and Memos

• EO – 2/28 – Directed EPA and Army Corps of Engineers to review the WOTUS rule for consistency with principle to promote economic growth and environmental protection.
  – 6th Circuit stayed implementation and Supreme Court heard oral arguments on 10/11 on venue question (e.g., district ct. v. appeals ct.)
  – EPA holding listening sessions, starting in September through end of November to gather input on re-write
Executive Orders and Memos

• EO 13777 – 2/24 – Enforcing the Regulatory Reform Agenda.
  – Required agencies to designate reform task force and officer to identify rules that inhibit growth and/or are outdated, or impose costs that exceed benefits

• EO 13771 – 1/30 – Reducing Regulations and Controlling Regulatory Costs
  – The “one in, two out” requirement that must identify two regs for elimination for any new rule
Regulatory Update

• 1/24 - Presidential Memorandum on Streamlining Permitting and Reducing Regulatory Burdens for Domestic Manufacturing
  – In conjunction with EOs 13777 and 13771
• Commerce Department responsively published a RFI to gather input
• ILMA submitted substantive comments in March 2017
• Commerce finally published its report October 6, 2017
Commerce Recommendations

• Cost benefit analysis methods should be refined, and made more rigorous and enforced by OIRA, with a view toward continual improvement, including development of new methods and more thorough evidence bases.
• Cumulative costs should be rigorously weighed where appropriate.
• Regulations should not impede innovation.
• There should be meaningful public engagement prior to issuing significant proposed rules.
• Regulations should be more sensitive to the impact on small business.
• Regulations should only be enacted and enforced when there are adequate resources available for review, implementation and oversight.
Commerce Recommendations

• Define WOTUS more narrowly
• Supports OSHA’s intention to potentially revise electronic reporting rule.
  – Many other recommendations as well
• Key next step: Each agency’s Regulatory Reform Taskforce should deliver to the President no later than December 31, 2017, an “Action Plan” to address the issues highlighted in the responses to the RFI.
  – Each Agency Task Force currently undertaking internal reviews
Agency Staffing

• President Trump has been slow to appoint key nominees to important positions
• Still no OSHA Secretary nominee
• Michael Dourson nominated to be EPA’s AA for OPPT
  – Currently Professor at University of Cincinnati
  – One of five Trump nominees had hearing on Oct. 4 before Senate EPW, only one heavily criticized by Dems for industry-sponsored work
Staffing

• Senate confirmed President Trump’s nominee William Emanuel to serve on the NLRB and previously confirmed Trump’s other nominee, Marvin Kaplan.
• Both Mr. Kaplan and Mr. Emanuel are Republican lawyers with extensive experience and backgrounds in labor law.
• As a result of the confirmation vote, Republicans now have a majority of the five-member NLRB, as the current Chairman, Phillip Miscimarra is a Republican.
  – Likely shift NLRB’s direction moving forward
Emergency Action Plans

Mike Ogburn
August Mack Environmental
The purpose of an EAP is to facilitate and organize employer and employee actions during workplace emergencies.

- Written document > 10 employees
- Means of reporting emergencies
  - Fires
  - Weather Related
    - Tornados / Hurricanes
    - Floods / Others
  - Loss of Power
  - Operational Emergencies
Evacuation Procedures / Emergency escape routes

Employee Accountability
- Employee – Non Critical
- Employee - Critical

Procedure for rescue or medical duties

Training
- Plan Development
- New employee / Responsibility under plan change
- EAP plan changes
Rail Customer Coalition (RCC)
RCC

• ILMA joined the Rail Customer Coalition (RCC), a group of nearly 50 trade associations that addresses issues with the freight rail industry, including decreased competition, rates and fees, outdated rail transportation policies, and service issues.

• ILMA initially joined to help address members’ issues with operational changes with the railroad CSX.

• More info: https://www.freightrailreform.com
RCC

• Since March, CSX has been implementing a plan called “precision rail roading.”
  – The plan includes more precise schedules, shutting down rail yards that sort long trains, and removing older locomotives and other equipment from the fleet.

• These changes by CSX have hindered timely freight shipments for a large segment of the rail shipping community.
  – Several ILMA members provided details of their issues
RCC Activities

• RCC moved the Surface Transportation Board (STB) Reauthorization Act of 2015 through Congress, which gives STB additional authority to investigate claims on issues of national or regional significance.
  – STB is an independent, bipartisan adjudicatory board that provides oversight to many common carriers, including the railroad industry.

• Held oversight “listening session” on CSX on October 11 in D.C.
  – CSX as well as many freight shippers participated.
  – Weekly conference calls with CSX management since July
RCC

- CSX CEO Hunter Harrison testified for an hour and said that it was not his “architecture” for “precision railroading” that was to blame for service failures, suggested the CSX employees implementing it were to blame, and suggested that personnel changes at CSX would fix the issues.
  – Also blamed shippers for not operating “24/7-365”

- The two STB Commissioners Ann Begeman and Deb Miller did not give any indication for future STB action on this issue during their questioning, but did ask some probing questions, although nothing particularly illuminating.
Additional RCC Activities

- RCC educating Congressional offices on the various issues
- Advocating that Senators support nominees to the STB who are generally understanding of the needs of the rail shipping community.
- While the RCC is comprised of an impressive cross-section of significant industry sectors, the freight rail lobby has been pushing back against many of the initiatives put forth by the coalition
  – Back and forth likely to continue
- Contact ILMA with any freight shipping issues
New SHERA Secretary Election