

NATIONAL MARITIME SAFETY ASSOCIATION, INC.

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Dedicated to Maritime Safety & Health

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REGISTRATION OPEN
2010 NMSA ANNUAL MEETING
June 23-25, 2010
Windsor Court Hotel
New Orleans, LA

Tentative Schedule

Wed., June 23	All Day TC Meeting Afternoon Board Meeting Evening Reception - World War II Museum
Thur., June 24	All Day General Meeting Evening Reception/Dinner
Fri., June 25	Morning General Meeting

See attached Registration Form.

IN THE COURTS

• **Late Breaking News on NMSA VTL Lawsuit**—The U.S. Court of Appeals for the D.C. Circuit granted NMSA's request for an extension until May 14, 2010 to file its reply brief. Final briefs will then be due from all parties on June 4, 2010. The extension was granted over an objection to the extension from the ILWU.

IN THE CONGRESS

• **OSHA Reform Bill Update (H.R. 2067)**—After holding hearings on the legislation, Rep. Lynn Woolsey (D-CA) has been actively pursuing additional co-sponsors (there are currently 65 co-sponsors). As the legislation is currently written, it increases civil penalties and imprisonment for willful violation convictions, establishes mandatory minimum penalties for violations involving the death of a worker, and permits felony prosecutions for willful violations. Also included in the bill is an expanded definition of "employer," which will now include "any responsible corporate officer."

Subsequent to the hearings, Rep. Woolsey proposed some additional amendments to the legislation. These include: lowering the mens rea requirements for a criminal conviction from a "willful" state of mind to a "knowing" state of mind, which lowers the bar for a conviction; altering the definition of "employer" from "any responsible corporate officer" to an "officer or director," which expands the

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Ports of the Delaware River Marine Trade Association · British Columbia Maritime Employers Association · Maritime Employers Association (Montreal)



number of corporate executives who could be charged; eliminating the \$50,000 penalty for fatalities associated with “other than serious” category of violations because that could put a cap of \$50,000 on the daily accumulation (\$12,000/day) of violations; and, requiring that employers immediately abate violations, even if they are appealing citations.

AGENCY UPDATES

- **OSHA Strategic Planning**—The Department of Labor is developing a new overall six year strategic plan. OSHA held a web chat to answer questions regarding its plan on April 7, 2010 (see article below). [Information](#) on the strategic plans for each of DOL’s agencies is available on the DOL website.

OSHA’s plan includes “measuring results differently” through a reduction in the number of fatalities from the four leading workplace causes of death, “increasing the number of targeted hazards abated,” and, increasing “worker and employer awareness of OSHA rights, responsibilities and programs.”

OSHA also notes that it is “using new approaches” to achieve these goals, including strengthening enforcement and regulatory capabilities, “increasing OSHA’s presence in the workplace,” protecting workers in high-hazard industries and workers who are in vulnerable and hard-to-reach worker populations, and reviewing and restructuring penalties, among others.

- **OSHA Strategic Plan [Web Chat](#)**—During the April 7, 2010 web chat several issues of interest to NMSA members were discussed. Primary among these issues was a discussion regarding **ergonomics**. The initial questioner asked if ergonomics will be on OSHA’s agenda. The answer, from Deputy Assistant Secretary Jordan Barab was that, yes, ergonomics would be on the agenda along with other workplace hazards, that the MSD column is being added to the OSHA log, and that there will be **increased “enforcement activities addressing ergonomic issues.”** **A SUBSEQUENT RESPONSE NOTED THAT ERGONOMICS ENFORCEMENT WILL BE CONDUCTED UNDER THE GENERAL DUTY CLAUSE.** The lengthiest response came from Assistant Secretary David Michaels, “**Until recently, enforcement around ergonomic hazards languished. We recognize that thousands of workers annually suffer from musculoskeletal conditions associated with ergonomic hazards and OSHA must do more. OSHA’s field staff will be looking for ergonomic hazards in their inspections and we will be providing them with the support and back-up they need to enforce under the general duty clause. In addition, we will be examining employer logs to see if MSDs are accurately reported.**” Another questioner asked how an employer would “comply if enforcement is left to the discretion of the inspector?” The response was that “[e]nforcement is not left to the discretion of the inspector. **In order to document a general duty clause violation for ergonomics, among other things, the agency would have to demonstrate industry recognition and feasible ways to abate the hazard.**”

Steve Crouch, Ceres Marine Terminals Vice President of Environment, Safety & Security, asked about the role of **Alliances** in OSHA’s Strategic Plan. Steve Witt, Director of Cooperative and State Programs, stated that Alliances “will continue to be an integral part of the agency’s overall programs. Though we are considering some changes to the alliance model, the agency will continue to support them.” A question arose regarding **post-injury drug testing** as a “disincentive to reporting a workplace injury,” and Secretary Michaels response noted that “it is clear that there are a number of policies that employers use that discourage injury reporting.”

Also mentioned during the web chat was a notation in the strategic plan of **restructuring penalties**. Deputy Assistant Secretary Rich Fairfax said that “OSHA will shortly be changing our penalty calculation



method resulting in higher penalties. Stay tuned.” Another questioner asked if OSHA was examining ways to “**expedite the rulemaking process.**” The short answer to that question was “yes.”

- **DOL [Open Government Plan](#)**—The Obama Administration has initiated an “Open Government Initiative” intended to make government operations “more transparent while expanding opportunities for public participation and collaboration.” DOL expects that all data it collects (excluding personally identifiable data) will eventually “be made public online and in downloadable formats.”
- **DOL [Enforcement Data Website](#)**—The DOL, as part of its “Open Government Plan,” has established a website specifically for the dissemination of enforcement data from DOL enforcement agencies. The website is currently a work in progress.
- **MSDs: NMSA/NAWE Joint Comments**—NMSA and NAWA submitted joint comments on the proposed addition of an MSD column to the OSHA 300 Log. The primary argument made in the comments is that OSHA’s definition of a musculoskeletal disorder (MSD) “is open-ended, and confuses known injury-related disorders and syndromes...with ‘symptoms’ of injuries, as in the case of ‘sciatica’ and ‘low back pain’...” In addition, the possibility that an MSD could be characterized as an illness, rather than an injury, “will have a direct impact on many LHWCA and state workers’ compensation claims,” likely trigger litigation over whether an MSD is an illness or an injury, and, further, cause confusion over the requirement that an MSD must be work-related. The industry notes that the MSD definition is vague and subjective. A National Academy of Sciences study concluded that most MSDs are not “uniquely caused by work exposures.” Furthermore, the National Advisory Committee on Ergonomics was unable to reach a consensus on a definition of an MSD.

Led by the Chamber of Commerce, the general business community filed a tome’s worth of comments in opposition to the MSD requirement and “definition,” clearly laying the groundwork for a legal challenge to the rule.

- **OSHA Assistant Secretary Michaels: “New Sheriff in Town”**—Dr. Michaels, at an ABA Occupational Safety and Health Law Committee meeting, commented that OSHA is “a public health agency intent on saving workers’ lives.” Secretary Michaels said his priorities are strong enforcement, including egregious citations and confiscation of property, where necessary, in place of fines, and setting standards with “an aggressive regulatory system.” He also commented on musculoskeletal injuries calling them among “the biggest workplace health and safety problems in industry.” He acknowledged that OSHA has not decided how to deal with the ergonomics issue because of the cumbersome regulatory process and political issues. Dr. Michaels also said that OSHA would ensure that there is no underreporting of workplace injuries through an increase in surveillance programs.
- **MACOSH Request for Nominations**—OSHA announced that it will be rechartering the Maritime Advisory Committee on Occupational Safety & Health for another two years. The current charter will expire in September. The request for nominations was published in the [Federal Register on March 23, 2010](#) and also includes all requirements for submitting nominations. Nominations should be postmarked by May 7, 2010. The NMSA Board is in the process of advancing the names of two nominees for the MACOSH.
- **[MACOSH Meeting Scheduled](#)**—A MACOSH meeting is scheduled for April 27 and April 29 at the Newport Marriott Hotel in Newport, RI. The Shipyard and Longshore workgroups will meet on Tuesday, April 27, and the full Committee will meet on Thursday, April 29, 2010.



- **Injury and Illness Rates Letters**—OSHA announced on March 9, 2010 that it had sent letters to about 15,000 workplaces with the highest rate of injury and illnesses. The [list of workplaces](#) is available on the OSHA website.

- **OWCP—Division of Longshore: Strategic Planning**—Not to be outdone, the Longshore Division of the OWCP notes that its mission is to “minimize the impact of employment injuries and deaths on employees and their families by ensuring that workers’ compensation benefits are paid promptly and properly.” It hopes to ensure “income support when work is impossible or unavailable” and facilitate return-to-work. They will measure results by focusing on “dispute resolution timeliness” and on insurer performance in “timely reporting claims and delivering benefits.” They want to reduce the number of days to first report of injury and first benefit payment. They hope to achieve their goals by: focusing “on identifying deficiencies in reporting and paying,” “escalate to corporate executives if necessary,” and “assess fines and penalties for violations.”

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