
Health & Safety Regulatory and Miscellaneous Update

**2004 Telecommunications
Safety Conference
September 22, 2004**

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ORC Worldwide**

What We'll Cover

- OSHA Rulemaking and other actions
- The upcoming election!?
- “Hot” EHS Issues
 - The GHS
 - Control Banding
 - ANSI Z10
- OSHA Recordkeeping
- International H&S
- Federal Legislation to Watch
- California!!

Status of OSHA Rulemaking and Other Actions

US Health & Safety

- Under current Administration, little regulatory action
- From now until Election Day, it is unlikely that any significant regulatory actions will be published
 - Possible exception: NPRM on Hexavalent Chromium
- Regardless of election outcome, little regulatory action expected for the remainder of this year.

Employer Payment for PPE

- Rulemaking record re-opened on “Employer Payment for PPE” – July 8 – August 23
- Issue: Should any PPE be considered “tools of the trade”?
- *Federal Register* notice seemed to indicate OSHA close to decision on final rule
- OSHA staff do not see action before end of year

Ergonomics

- No regulations
- Guidelines
- New Guidelines for Poultry Processing published last week (Sept 2)
- Next ones are for Shipyard Employment
- Already Published:
 - Nursing Homes
 - Grocery Stores

Electrical

- OSHA NPRM – April 5, 2004
- Covers workplace electrical installations
- Would bring OSHA into conformance with updated Part I of NFPA 70E
- Not a lot of controversy
- ORC submitted comments
- No date for final rules

Updating OSHA Standards Based on National Consensus Standards

- Consensus standards organizations asked to provide list of standards most needing update
- OSHA may initiate rulemaking to update some of the standards identified
- Considerations:
 - Controversy
 - Do new versions of the consensus standards reduce risk?
- OSHA may use direct final rule approach for some
- Others will use NPRM process
- The latest Semiannual Regulatory Agenda lists September 2004 as date for publication of such proposals

Crystalline Silica

- Generally accepted that PEL is too high and standard needs revision
- Still in the “Prerule” stage despite being under development for many years
- Next step in the rulemaking process: completion of a Peer Review of the Risk Assessment by February 2005
- No indication of when an NPRM will be published

Hexavalent Chromium

- Office of Management and Budget currently reviewing the NPRM
- Details regarding the changes incorporated (since SBREFA review) into the proposal that was sent to OMB on July 8 are not known
- OSHA is under order by Third Circuit Court to issue a proposed rule no later than October 4, 2004, and a final rule no later than January 18, 2006

Hazard Communication

- OSHA's Hazard Communication Initiative
- Two components:
 - Compliance assistance
 - Enforcement
- Goal: Improve quality of chemical hazard information on MSDS, labels, and training

Hazard Communication (cont.)

- Guidance documents in process:
 - hazard determination (draft posted)
 - hazard communication training (draft posted)
 - preparation of MSDS
 - compliance guidance for OSHA enforcement staff
 - dropped plans to develop “model MSDS”
 - instead will develop checklist to help compliance officers evaluate the adequacy of MSDS

The Upcoming Election!?

**A few thoughts!
Impact on Federal OSHA?**

“Hot” S&H Topics

The Globally Harmonized System for Hazard Communication (GHS)

- A common and coherent approach to defining and classifying hazards, and communicating information on labels and safety data sheets.
- Target audiences include workers, consumers, transport workers, and emergency responders.
- Provides the underlying infrastructure for establishment of national, comprehensive chemical safety programs.

Why A Globally Harmonized System?

- 1992 UNCED (UN Conference on Environment and Development) mandate
- To develop a GHS for classification and labeling of chemicals
- Adopted after a decade of work by multiple stakeholders
- Includes criteria for classifying, health and environmental effects, physical hazards

Benefits of Harmonization

Potential benefits for countries, international organizations, chemical producers and users of chemicals:

- Enhance protection of humans and environment.
- Facilitate international trade in chemicals.
- Reduce need for testing and evaluation.
- Assist countries and international organizations to ensure the sound management of chemicals.

Scope of the GHS

- Covers all hazardous chemical substances, dilute solutions, and mixtures.
- Pharmaceuticals, food additives, cosmetics and pesticide residues in food will not be covered at the point of intentional intake, but will be covered where workers may be exposed, and in transport.

Key Label Elements

- Product identifier
- Supplier identifier
- Chemical identity
- Hazard pictograms*
- Signal words*
- Hazard statements*
- Precautionary information

***Standardized**

Safety Data Sheets

- Used primarily in workplace settings, but also for community right-to-know.
- GHS provisions are based on the 16-section SDS format developed by industry in ANSI and ISO standards.
- Both ISO and ANSI are pursuing changes to their standards to make them consistent with the GHS.

Impact on OSHA

- Hazard Communication Standard includes the affected requirements.
- OSHA has more requirements affected by the GHS than other agencies (CPSC, DOT and EPA):
 - ❑ Cover all acute and chronic hazards.
 - ❑ Have requirements for labels and material safety data sheets.
 - ❑ Cover over 3 million workplaces and 650,000 hazardous chemical products.

Significant Differences

- The HCS is performance-oriented while the GHS is specification-oriented.
 - In order to harmonize, decisions needed to be made regarding specific aspects of hazard communication.
 - Other systems started with a more specific approach.

US Implementation Process

- GHS is a non-mandatory recommendation, rather than a mandatory instrument, such as a convention.
- There is a clear process for adoption of mandatory instruments.
- Non-mandatory process is less clear-- multiple agencies are involved, and each agency has different statutes and processes.

Stakeholder Input

- Stakeholder support is critical to moving forward on implementation of the GHS.
 - There will be costs and other impacts associated with changing current regulatory requirements.
 - Agencies will need to know that stakeholders strongly support implementation before initiating changes.

OSHA's Current Activities

- Awareness raising.
 - Presentations at meetings of trade associations, consensus standards committees, and professional societies.
 - In the process of preparing a Guide to the GHS to help disseminate information.
 - Web page on the GHS.

Current Activities (cont.)

- International coordination:
 - OSHA represents the US on the United Nations Subcommittee of Experts on the GHS.
 - OSHA and Health Canada conducted a workshop on the GHS in Mexico City as part of NAFTA discussions regarding handling of hazardous substances in the workplace.
 - OSHA and the European Commission discussed GHS implementation at a joint conference on occupational safety and health in October 2003, and proposed a pilot project related to the GHS.

Control Banding

- A complementary approach to current methods of exposure assessment and control
- Focuses resources on exposure controls
- A chemical is assigned to a “band” for control measures, based on
 - its hazard classification according to international criteria
 - the amount of chemical in use, and
 - its volatility / dustiness.

Control Banding

The outcome is one of four recommended control strategies:

- Use good industrial hygiene practice,
- Use local exhaust ventilation,
- Enclose the process,
- Seek specialist advice.

Control Banding

- Industrial hygiene expertise is not replaced—specific operating knowledge and professional judgment are required for implementation of the best "reasonably practicable" combination of controls to minimize risks to workers.

Control Banding:

Generic Risk Assessment and Management

Health Hazard	Exposure Potential	Generic Risk Assessment	Control Approach (risk management)
Substances allocated to hazard group using R phrases	Substances allocated a dustiness or volatility band and a band for the scale of use	Combination of health hazard and exposure potential factors determine desired level of control	Type of approach needed to achieve adequate control

UK Approach to Control Banding

- ... an instrument designed by the U.K. HSE
- ... designed for small and medium size enterprises
- ... for doing qualitative exposure assessments
- ... results in a recommended control approach



[\(http://www.coshh-essentials.org.uk/\)](http://www.coshh-essentials.org.uk/)

COSHH Essentials

“easy steps to control health risks from chemicals”

Hazard

Control



Assessment

Collects data:

- unit operation
- chemical / product
- risk [R] phrases
- amount used
- volatility / dustiness
- process temperature
- task duration

Produces:

- control solutions
(Control Guidance Sheets)
- assessment log
(evidence of assessment)



Challenges in Applying Control Banding in the U.S.

- Compliance strategy vs. regulatory scheme
- R-phrases
- Validation of effectiveness
- Shift in thinking from “exposure assessment” to “exposure control”
- How to handle mixtures? Other gaps?
- OSHA?
 - Would OSHA consider CB as “de facto” compliance?
 - Could their IHs use CB as “sampling screen”?

ANSI Z10 - Occupational Health and Safety Management Systems Standard

- Standard has been under development for over three years
- American Industrial Hygiene Association is the Committee Secretariat
- Proposed standard is now ready for balloting and available for public comment.
- The deadline for submission of Committee ballots and public comments is October 15, 2004.
- ORC and several ORC member companies have been active participants in the ANSI Z10 Committee in the development of the draft standard.

ANSI Z10 ISSUES

- **General** - Shoulds vs. Shalls – What should be mandatory and what advisory or explanatory
- **Sec. 2** - Definitions -- Review all, but focus on, e.g., Employee, Exposure, Organization, Top Management
- **Sec. 3** - Management Leadership/Employee Participation -- Review Policy, Responsibility and Authority, Employee Participation
- **Sec. 5** - Implementation -- Design Review/Management of Change, Procurement, Contractors, Documentation (General and Specific provisions)
- **Sec. 7** - Management Review

ANSI Z10 - Occupational Health and Safety Management Systems Standard

- All documents and comment forms are available on ORC's Occupational Safety and Health Group Website (see "What's New")

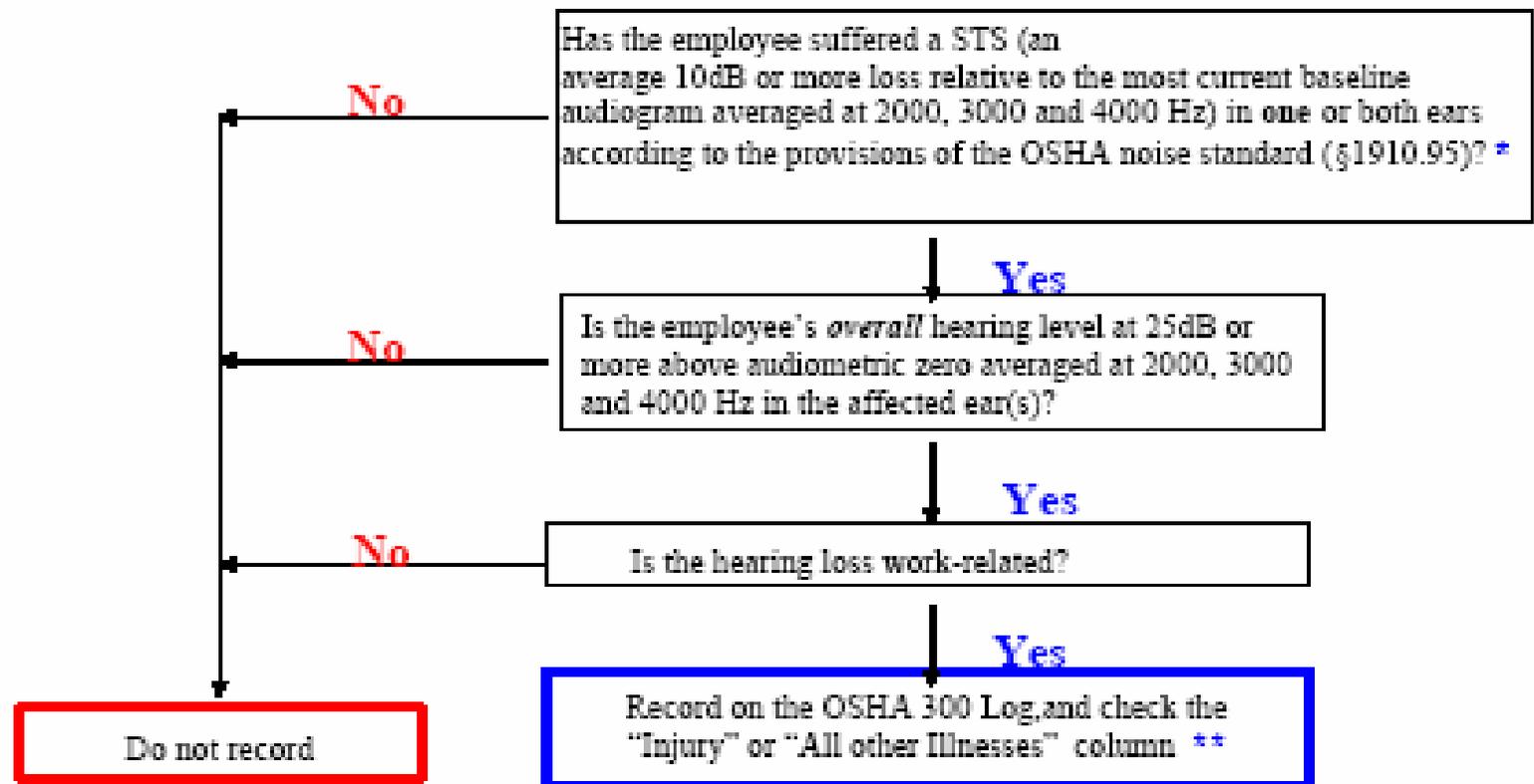
OSHA Recordkeeping

OSHA Recordkeeping

- Problem areas
 - Recording of soft tissue injuries
 - Recording of hearing loss cases
- Site-Specific Targeting (SST)
- SIC Code vs. NAICS



Use this 'decision tree' to determine whether the results of an audiometric exam given on or after January 1, 2003 reveal a recordable STS.



Note: In all cases, use the most current baseline to determine recordability as you would to calculate a STS under the hearing conservation provisions of the noise standard (§1910.95). If an STS occurs in only one ear, you may only revise the baseline audiogram for that ear.

* The audiogram may be adjusted for presbycusis (aging) as set out in 1910.95.

** A separate hearing loss column on the OSHA 300 Log beginning in Calendar year 2004.

International H&S

Europe

- European Agency to launch information campaign on workplace noise in 2005
 - The implementation date for the new noise Directive is February 15, 2006.
 - New law will cover all sectors of the economy including maritime and air transport sectors (previously excluded from scope), as well as workers in the music and entertainment sectors (an extended implementation period of 5 years applies to this sector). The Directive does not cover members of the public.
 - The Directive limits exposure to noise at work of an average of 67db calculated over a period of one week.
- Why is this important to us in the US?

Europe

- Directive on Exposure of Workers to Optical Radiation (lasers, all optical sources of radiation except natural (sunlight))
- Text of proposed language introduced in June 2004

Asia-Pacific

■ China:

- ❑ **New Legislation Requires Registration of Certified Safety Engineers**
- ❑ 21-May-2004
- ❑ certified safety engineers are in charge of, amongst other things, facility safety management, technical research, testing and inspection, technical consulting, safety assessment for construction projects, safety assessment or evaluation for facilities.

Asia-Pacific

■ Singapore:

- **New Fire Safety (Buildings Requiring Fire Certificate) Order 2004** (July 30, 2004)
- Order repeals the *Fire Precautions Act 1971* and amends or removes the many provisions dealing with fire safety that are contained in other pieces of legislation. These provisions are replaced by a single Order, applying the risk assessment principles introduced by the *Fire Precautions (Workplace) Regulations 1997*. The result will be one fire safety regime, which will apply to all workplaces and other non-domestic premises.

Federal Legislative Initiatives to Watch

The last days of the 108th Congress, 2nd Session—U.S. Senate

Asbestos Legislation

- ❑ Main controversy is over amount of fund
- ❑ Sen. Frist introduced new bill - S. 2290
 - Fund increased to \$124 billion
- ❑ CBO Report - April 20, 2004
 - Demand against fund \$150 billion
- ❑ Floor vote - April 22, 2004 - 50/47

Asbestos—A House of Cards?

- Sen. Daschle's June Counter-Offer
 - \$145 billion 27-year trust fund
 - Pending cases may remain in court
- Sen. Frist's July Counter-Counter Offer
 - \$140 billion 30-year trust fund
 - Pending cases folded into trust fund
 - "We have never been this close to an agreement."
- \$5 billion difference!

Prospects for S. 2290

- Organized Labor wants \$149 billion fund; pending cases in court
- Industry wants the pending cases folded into fund
- Trial Lawyers – Hate it!
(Is there a John Edwards issue?)

Safety Advancement for Employees Act (SAFE Act) S. 2719

- Introduced July 22, 2004 by Sen. Enzi (R-WY)
- The “Something for Everyone Act”
- Legislation would establish:
 - ❑ 3rd party consultation program
 - ❑ Alternative OSHA inspection abilities
 - ❑ Alternative, equally protective, employer compliance methods
 - ❑ OSHA warnings in lieu of citations
 - ❑ Codification of VPP

SAFE Act

- Legislation would also:
 - Require OSHA to develop model MSDS for approximately 135 highly hazardous chemicals
 - Establish a Global Harmonization Commission to consider implementation of the UN's Globally Harmonized System of Classification and Labeling of Chemicals (More on this later!)

SAFE Act

- Finally, legislation would:
 - Increase criminal penalties for willful violations that result in a worker's death from 6 months to 18 months; and a repeat willful violation that results in a worker's death from 1 year to 3 years.
- Status and support? Very unlikely come to a vote--even hearings on this legislation unlikely in this Congress.

Other Senate Legislation

- Sen. Kennedy (D-MA) OSHA Reform Bill (S. 2371)
- Sen. Inhofe Chemical Security Bill (S. 994)
- Sen. Corzine (D-NJ) Criminal Penalties Bill (S. 1272)

House Activity

- Asbestos Legislation

- Majority Leader Tom DeLay (R-TX) -- “House will act this year on issue.”
- HR 1114, HR 1586 & HR 1737

- OSHA Reform Bills

- Rep. Norwood (R-GA) OSHA Reform Bills
- All 4 bills passed the House on May 18, 2004
- Unlikely to see Senate action

Occupational Safety & Health Business Day in Court (H.R. 2728)

- Would provide adjudicative flexibility if employer misses 15-day period to file notice of contest following issuance of citation if due to “mistake, inadvertence, surprise, or excusable neglect.”

Occupational Safety & Health Small Employer Access to Justice Act (H.R. 2731)

- Would provide for the award of attorney's fees and costs to small employers when they prevail in litigation prompted by OSHA citations.

Occupational Safety & Health Review Commission Efficiency Act (H.R. 2729)

Would:

- Increase number of Commissioners from 3 to 5;
- Allow President to extend a Commissioner's term, for no more than 365 days, after term has expired until a successor has been nominated;
- Require a candidate for the Commission to have "legal training."

More OSHA Reform Legislation

- HR 4712, OSHA & Employer Cooperation Act introduced by Rep. Tiahrt (R-KS)
- Bill would provide:
 - 30 days for OSHA to cite & employer to contest
 - 72 hours to abate
 - Citations only to employers with workers on site
 - Change criteria for repeat violations
 - Require OSHA written report to employer at end of inspection

Rep. Owen's Criminal Penalties Bill (HR 4270)

Would:

- Increase increase criminal penalties for willful violations of safety and health laws that result in a fatality
- Change penalty from misdemeanor to felony
- Increase prison terms
- Increase monetary fines

The Battle Lines Are Drawn!

Republicans

- Norwood OSHA Reform Bills
- Tiahrt OSHA Reform Bill
- Enzi SAFE Act

Democrats

- Kennedy OSHA Reform Bill
- Corzine Criminal Penalty Bill
- Owens Criminal Penalty Bill

In-Between

- Asbestos Legislation

California!!

SB 1809: Revised Labor Code Private Attorneys General Act of 2004 (SB 796)

- Penalties redistributed
 - 75% to LWDA for enforcement and education
 - 25% to aggrieved employee
- No civil action for violation of posting or filing requirements: except workplace injury reporting
- Court authorized to award lesser penalties and review settlements
- Nondiscrimination provision

SB 1809

- Specific procedure for alleged OSH violations detailed
 - Detailed written notice to DOSH and employer w/copy to LWDA
 - DOSH shall investigate or inspect
 - If citation issued, no civil action and notification of correction
 - If citation not issued, employee may challenge decision in superior court

SB 1809

- If DOSH Fails to act
 - Employer may cure within 33 calendar days
 - Must notify employee and LWDA of cure
- If employee disputes cure
 - Provide written notice to employer and LWDA
 - LWDA must review within 17 days
 - Written notice of decision to employee and employer
 - Employee can appeal decision to Superior Court
- DOSH is developing regulations

CA Rulemaking Activity

- Hearing Conservation
- LO/TO
- Airborne Contaminants
- Excavation and Trench Fall Protection

California Performance Review (CPR) Recommendations

- Proposed new Department of Labor and Economic Development (DLED)
 - OSH Standards Board; OSH Appeals Board; and Commission on Health, Safety and Workers' Compensation Eliminated
 - New Workplace Protection Division
 - 1 of 4 Divisions
 - Functions of DIR and OSH Standards Board transferred to this Division
 - Focus is economic development and business promotion

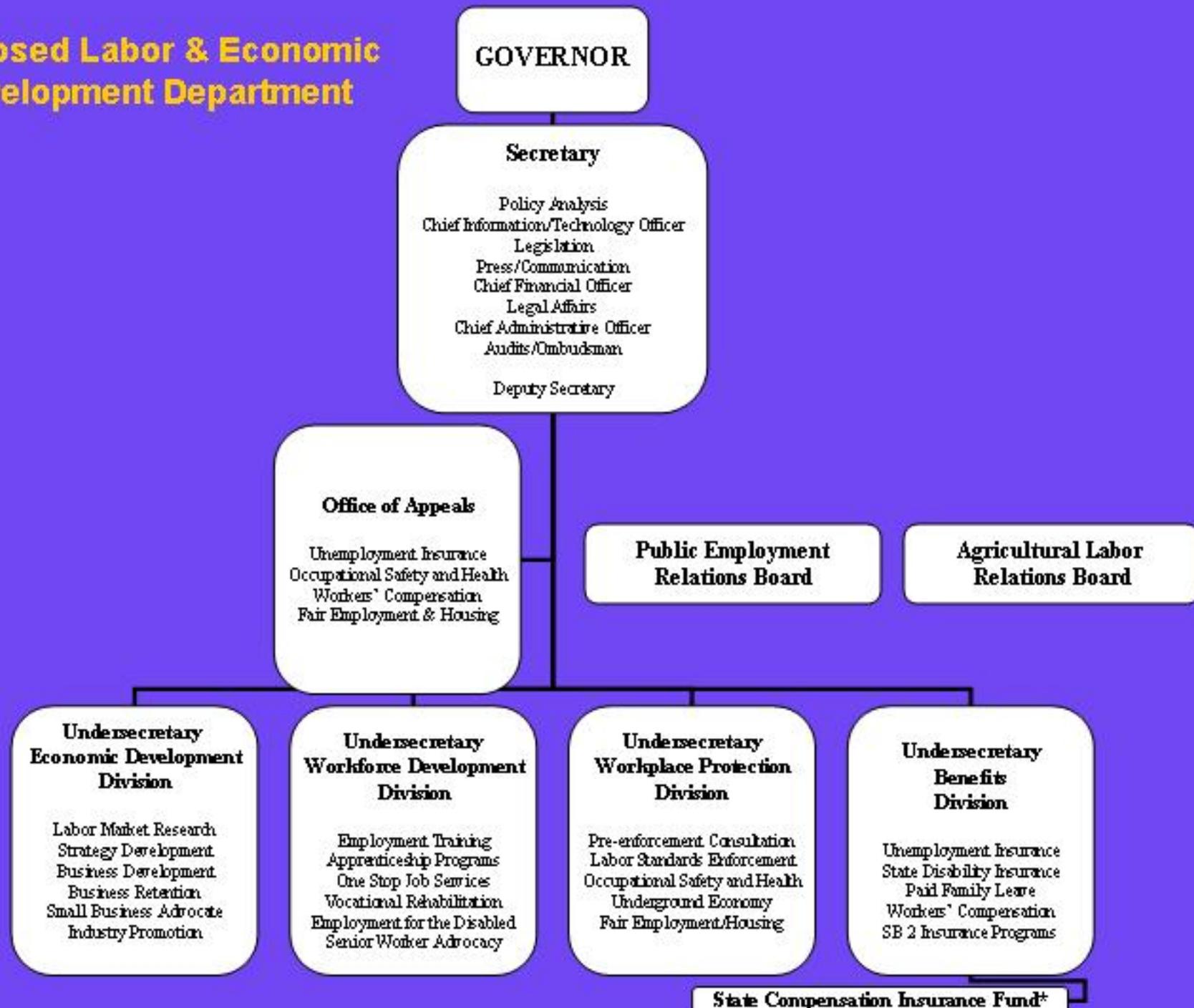
California Performance Review (CPR) Recommendations

- Proposed new Office of Appeals
 - OSH Appeals Board function transferred to this Office
 - Includes all worker-related issues & claims (OSH, Workers' Compensation, Unemployment and Disability Insurance, Employee Relations, Discrimination in Housing and Employment)
 - Final Decisions by Secretary of DLED

CPR Status

- Public Hearings
- Report From Office of Legislative Analyst
- Governor Issues Final Plan
- Review by Little Hoover Commission
 - 90-day timeline in statute
- Legislature Votes

Proposed Labor & Economic Development Department



Appeals Board

- Problems with Elimination:
 - No Fed/OSHA approval
 - Dilution of ALJ expertise

Appeals Board

- Benefits of Elimination:
 - Flexibility in assignments
 - Reduce duplication and expense
 - Reduce current back-log

Standards Board

- Problems with Elimination:
 - ❑ Will bury promulgation process
 - ❑ Lose independence
 - ❑ Lose diverse backgrounds of Board system
 - ❑ Reduce public access
 - ❑ Increase litigation

Standards Board

- Benefits of Elimination:
 - ❑ Reduce cost
 - ❑ Speed up process
 - ❑ Influence process by elected officials

Questions??
