

# OSHA

## UP TO DATE®



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## Senators push latest attempt to make VPP permanent

Senators on both sides of the aisle are again seeking to make OSHA's Voluntary Protection Programs a permanent fixture.

The Voluntary Protection Program Act (S. 1878), co-sponsored by Sens. Mike Enzi (R-WY) and Michael Bennett (D-CO), was introduced Sept. 27 and at press time had been referred to the Senate Health, Education, Labor and Pensions Committee.

"The Voluntary Protection Program is a win for employers, employees and the federal government," Enzi said in a Sept. 27 press release. "We have a proven program that can protect the health and safety of employees while saving the government and private sector hundreds of millions of dollars by avoiding injuries and illness.

"It's time we cement this program into law to ensure that it can grow and provide help for more of America's small businesses."

Enzi and Bennett introduced legislation with the identical purpose in

April 2016, but it never moved out of committee.

Members of the House also have tried to accomplish the same goal, with the latest attempt made in March. That bill, H.R. 1444, remained in the House Education and the Workforce Committee at press time. Reps. Todd Rokita (R-IN), Gene Green (D-TX) and Martha Roby (R-AL), among others, also co-sponsored a bill in May 2015 that did not move out of the House Workforce Protections Subcommittee.

### Inspector General calls for changes to VPP

If VPP sticks around, the Department of Labor Office of Inspector General is looking for changes to the program's processes.

OSHA has stated that it will make some adjustments, after a DOL OIG audit uncovered several weaknesses in recording and reporting systems involving contract workers. A February 2014 hotline complaint to DOL OIG alleged that "a contract-worker fatality occurred

at a VPP worksite and regional program officials did not take appropriate follow-up actions in response," according to an OIG report, released Sept. 11.

In response to the complaint, OIG conducted a performance audit of VPP, following up on 23 contract-worker catastrophes or fatalities reported by VPP participants between July 1, 2013, and Sept. 30, 2016, and added 75 randomly selected VPP participants (with 212 contract workers) in Region III to investigate for system failures. OIG concluded that the 2014 complaint had no

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## Rep. Rosa DeLauro to OSHA: Hire more inspectors

Concerned about the pace at which OSHA is hiring new inspectors, Rep. Rosa DeLauro (D-CT) is requesting information on the agency's staffing levels.

In a letter sent Oct. 4 to Loren Sweatt, OSHA's acting assistant secretary of labor, DeLauro states that, even though President Donald Trump's administration lifted a hiring freeze on the federal workforce in April, it is her "understanding that [the] agency has not filled many vacant inspector positions."

DeLauro points out that OSHA has 1,838 federal and state inspectors for the nearly 8 million workplaces under the agency's jurisdiction, meaning it has "only enough funding to inspect every workplace under its jurisdiction every 159 years."

She adds that 4,800 workers were killed and more than 3 million were

seriously injured in 2015, "even with evidence of underreporting," and highlights a National Safety Council estimate that work-related injuries cost employers \$198 billion per year.

DeLauro is asking Sweatt to provide the following numbers on nonsupervisory certified safety and health officers and supervisory CSHOs in each area office:

- OSHA inspectors working as of Jan. 20
- Inspector vacancies as of Jan. 20
- Inspectors who have left since Jan. 20
- Inspectors who have been hired and number of new inspectors since Jan. 20
- Current vacancies for inspectors



- Inspector vacancies OSHA plans to fill by the end of FY 2017

"OSHA should have the adequate staff to help ensure that employers identify and eliminate serious workplace hazards and provide safe workplaces for the workers," DeLauro wrote.

Read the full letter at <http://sb-m.ag/2yrse0j>.

Photo: House Committee on Education and the Workforce Democrats, Flickr

## ASK THE EXPERT

with Rick Kaletsky

**Q:** *What is an example of management failing to satisfactorily address a hazard, even though it was sure it had done so?*

**A:** If a slippery, wet floor is encountered, the reflex action is to clean up the liquid and walk away. That reasoning is flawed. Avoid a "replay" by getting to the root cause(s).

Some of the questions that should be considered include: Where did the liquid come from? How did it get on the floor? What is the substance? Was it from a roof leak? Was it from a pipe leak? Was it from a tank overflow or a tank seam leak? Was it hydraulic (or other) fluid leaking from a forklift truck? (If so, the dangerous condition could occur in several areas of the facility.)

Also consider this: Was it the result of a spill from a bucket that was being carried? (If so, did the person who carried the bucket realize the liquid had spilled? If the person realized it, did he/she take steps to clean up the spill, temporarily block it off, summon assistance, etc.?)

Did the spill emanate from a drum being transported by pallet jack? Was the liquid from recent mopping, not followed up with "CAUTION: WET FLOOR" signs? How many people saw the hazard and failed to take appropriate action?



Former OSHA inspector turned consultant **Rick Kaletsky** is a 46-year veteran of the safety industry. He is the author of "OSHA Inspections: Preparation and Response," published by the National Safety Council. Now in its 2<sup>nd</sup> edition, the book was updated and expanded in 2016. Order a copy at [www.nsc.org](http://www.nsc.org).

## In Other News...

### OSHA awards \$10.5 million in Harwood Grants

OSHA has awarded \$10.5 million in one-year federal safety and health training grants to 80 nonprofit organizations, as part of the Susan Harwood Training Grant Program, the agency announced Sept. 26.

With the grant money, the organizations will provide education and training to businesses and workers to help address workplace hazards and adopt best practices for avoiding workplace injuries, a press release from OSHA states.

Recipients will focus on safety and health topics designated by OSHA, including chemical, electrical, excavation and grain handling hazards; fall prevention in the construction industry; and machinery and machine guarding hazards, according to the release.

Since 1978, more than 2.1 million workers have been trained through the Susan Harwood Training Grant Program.

### New OSHA PSM guide focuses on petroleum refineries

OSHA recently published a guide intended to help oil refineries comply with the agency's Process Safety Management Standard (1910.119).

Since OSHA issued the standard in 1992, no other industry sector has experienced as many fatal or catastrophic incidents related to the release of highly hazardous chemicals as the petroleum refining industry, the guide states.

In the guide, OSHA makes recommendations for employers to review their PSM programs to ensure violations are not present, and suggests ways to avoid specific violations within each PSM area.

The guide is available at [www.osha.gov/Publications/OSHA3918.pdf](http://www.osha.gov/Publications/OSHA3918.pdf).

## OSHA STANDARD INTERPRETATIONS

*OSHA requirements are set by statute, standards and regulations. Interpretation letters explain these requirements and how they apply to particular circumstances, but they cannot create additional employer obligations. Enforcement guidance may be affected by changes to OSHA rules.*

### Occupational noise exposure

**Standard:** 1910.95

**Date of response:** Oct. 12, 2012

In your letter, you posed questions regarding OSHA's occupational noise exposure standard, 29 CFR 1910.95, and its requirements as it relates to audiometric tests and standard threshold shifts (STS). Your paraphrased scenario and questions are presented below.

Scenario: Associates In Acoustics, Inc., reviews retest audiograms with standard threshold shifts (STS) for client-employers. Recently, employers have been submitting retest audiograms for only the ear that experienced the STS. The employers purposely blacken out the results for the ear that did not incur the STS. The employers have stated that the STS retest applies only to one ear, and by retesting only that ear, they will avoid the potential to trigger a new STS incident in the opposite ear. Many of the audiometric software do not allow for testing of only one ear and as such, a "placeholder" for the non-tested ear is used. As a professional reviewer, it's difficult to judge whether the ear actually was tested or not.

**Question 1:** *What is OSHA's definition of a valid STS retest? Are both ears required to be tested during the same testing session to be considered a valid retest?*

**Response:** OSHA's occupational noise exposure standard [paragraph 1910.95(g)(7)(i)] states: "Each employee's annual audiogram shall be compared to that employee's baseline audiogram to determine if the audiogram is valid and if a standard threshold shift ... has occurred." Therefore, both ears are required to be tested for baseline audiograms and must be tested at the same time and place to determine whether an STS has occurred. With regard to audiometric retests, paragraph 1910.95 (g)(7)(ii) allows, but does not require, an employer to retest an employee's annual audiogram if it shows that the employee may have suffered an STS. If an employer chooses to do so, the retest must be conducted within 30 days of the test that revealed the STS. A retest would be considered valid if the retest was done in both ears at the same time and place, and within 30 days.

OSHA's Recording criteria for cases involving occupational hearing loss at 1904.10 allows an employer to revise a baseline based on whether an STS occurred in either one or both ears, for recordkeeping purposes only. When an STS is observed upon retest, a new baseline may only be recorded for the affected ear(s). The baseline may not be revised for the unaffected ear. For further clarification, refer to our May 8, 2003, letter of interpretation written to Ms. Linda Ballas.

**Question 2:** *If the one ear retest is acceptable, how should the results be recorded in the audiometric database?*

**Response:** The one ear retest is not acceptable. Please be aware that if the retest indicates that an STS is persistent, and all of the other recordkeeping requirements are met, the hearing loss for "the affected ear" must be recorded on the OSHA 300 log within seven days of the retest.

**Thomas Galassi, Director**  
Director of Enforcement Programs

Excerpted from [www.osha.gov/pls/oshaweb/owadisp.show\\_document?p\\_table=INTERPRETATIONS&p\\_id=29006](http://www.osha.gov/pls/oshaweb/owadisp.show_document?p_table=INTERPRETATIONS&p_id=29006).

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merit, but both the follow-up and audit revealed several failures:

- OSHA does not require, by regulation, complete information on contract workers.
- Systems for recording information are inefficient.
- Each of the first two issues led to OSHA being 1) unsure if all incidents were reported, and 2) unable to properly evaluate VPP participants and determine whether they should remain in the program.

OIG recommends the establishment of a system to collect and disseminate VPP contractor information, controls to ensure the information is complete, and an expansion of the collection of contractor information to all VPP participants.

In an Aug. 31 response to the OIG report, Loren Sweatt, OSHA's acting assistant secretary of labor, said that the agency "recognizes that the current procedures can be strengthened and is committed to implementing enhanced processes and technology improvements to better enable the agency to identify and track enforcement activities, including contract-worker fatalities, at VPP sites."

Sweatt added that the improvements will lead to "a more systematic and comprehensive approach to determining whether a participant should be allowed to remain in VPP following enforcement activity." OSHA is seeking to finalize improvements to VPP within the next year, Doug Kalinowski, director of OSHA's Directorate of Cooperative and State Programs, said Sept. 26 at the 2017 National Safety Council Congress & Expo in Indianapolis.

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