

OSHA

UP TO DATE®

 nsc.org

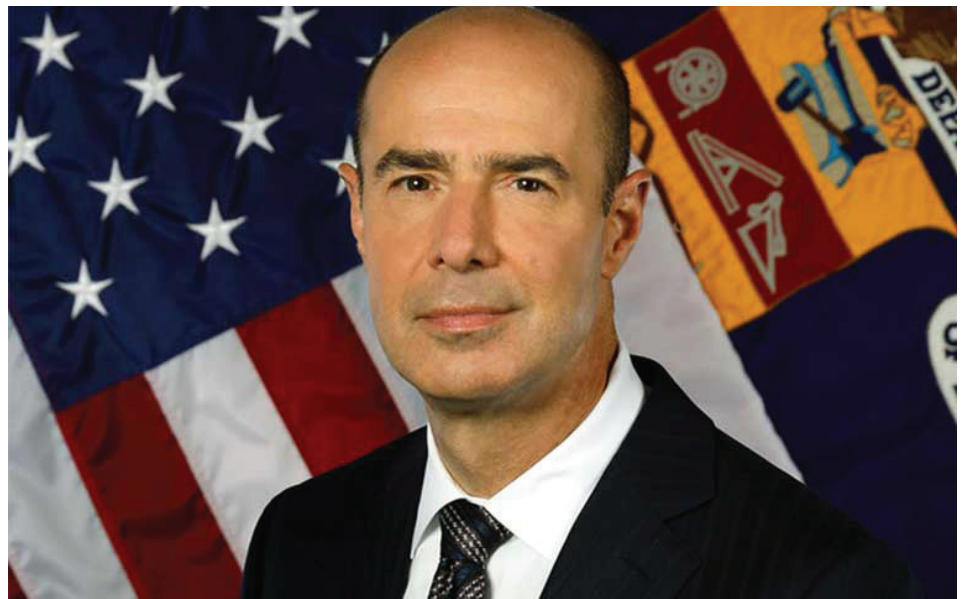
VOL. 49, NO. 11 | NOVEMBER 2020

OSHA COVID-19-related fines: Senators claim penalties ‘inadequate,’ ask Scalia to respond

Two dozen Democratic senators have taken issue with the dollar amounts OSHA has chosen to levy against employers in its individual COVID-19-related fines. In a letter sent Sept. 29 to Secretary of Labor Eugene Scalia, the lawmakers call the fines “inadequate” and suggest that the Department of Labor “does not fully appreciate the life or death impact of strong enforcement of worker safety standards.”

At press time, OSHA had issued three press releases detailing its COVID-19-related citations. In the release dated Oct. 16, the agency stated that it has cited 85 establishments, resulting in more than \$1.2 million in proposed penalties combined. The largest individual fine was \$28,070 to an establishment in North Bergen, NJ.

The senators claim that OSHA could have increased some of those fines to six figures. “OSHA had the option to issue multiple citations for each area of the facilities where proper precautions were not implemented, which would have multiplied the total fine amount per company,” they wrote. “In addition, OSHA elected



to treat each citation as serious, instead of willful or egregious, which would have allowed for fines up to \$134,937 to be levied.”

As OSHA stated in the release, its current penalties are proposed. Those fines can change through at least a couple of different methods, including informal settlements or via the Occupational Safety and Health Review Commission.

As of Oct. 16, five penalties already had been reduced, according to OSHA’s Establishment Search. In addition, eight of the 85 establishments on OSHA’s list have current fines of zero dollars.

Many of OSHA’s more recent COVID-19-related cases are still listed as open, meaning the agency could reduce those fines as well or even add citations/fines.

— article continues on p. 4

COVID-19 pandemic: OSHA updates FAQs on reporting hospitalizations, deaths

OSHA has updated a series of answers to frequently asked questions on protecting workers from exposure to the coronavirus to include a section on the need to report confirmed, work-related COVID-19 hospitalizations and deaths.

The FAQs cover a wide range of topics, such as testing, cleaning and disinfection, employer requirements, personal protective equipment, returning to work, training, and worker protection concerns. The section provides answers to these questions:

- How do I report the fatality or in-patient hospitalization of an employee with a confirmed, work-related case of COVID-19?
- An employee has been hospitalized with a work-related, confirmed case of

COVID-19. Do I need to report this in-patient hospitalization to OSHA?

- An employee has died of a work-related, confirmed case of COVID-19. Do I need to report this to OSHA?

“The employer must report such hospitalization within 24 hours of knowing both that the employee has been in-patient hospitalized and that the reason for the hospitalization was a work-related case of COVID-19,” OSHA states. “Thus, if an employer learns that an employee was in-patient hospitalized within 24 hours of a work-related incident, and determines afterward that the cause of the in-patient hospitalization was a work-related case

of COVID-19, the case must be reported within 24 hours of that determination.”

In the case of a fatality, if an employer learns that a worker died within 30 days of a work-related incident and determines the cause of death was a work-related case of COVID-19, the case must be reported within eight hours of that determination.

OSHA in May issued revised enforcement guidance on recording COVID-19 cases with a three-part test. A case is recordable if the illness is confirmed as COVID-19, the illness is work-related as defined by 29 CFR 1904.5 and the case involves at least one of the general recording criteria listed in 29 CFR 1904.7. Learn more at [osha.gov/SLTC/covid-19/covid-19-faq.html#reporting](https://www.osha.gov/SLTC/covid-19/covid-19-faq.html#reporting).

OSHA ALLIANCES

The OSHA Alliance Program fosters collaborative relationships with groups committed to worker safety and health. Alliance partners help OSHA reach targeted audiences and give them better access to workplace safety and health tools and information. For more on OSHA alliances, go to [osha.gov/dcsp/alliances/index.html](https://www.osha.gov/dcsp/alliances/index.html).

American Chemistry Council Center for the Polyurethanes Industry, Diisocyanates and Aliphatic Diisocyanates Panels

Date of alliance: Sept. 15, 2020

The alliance will focus on workplace practices for reducing and preventing exposure to aliphatic and aromatic diisocyanates (MDI, TDI, HDI, HMDI and IPDI); promoting guidance and information that address the health and safety issues affecting workers within the polyurethanes value chain, as well as the broader chemical industry; and understanding the rights of workers and the responsibilities of employers under the Occupational Safety and Health Act of 1970.

Raising awareness:

Outreach and communication

- Share information about OSHA’s national initiatives (emphasis programs, regulatory agenda, outreach), compliance assistance products, and



opportunities to participate in initiatives and the rulemaking process, including those relevant to diisocyanates and the general chemical industry.

- Develop and disseminate information (e.g., print and electronic media, electronic assistance tools, and OSHA and/or ACC websites) to employers and workers that promotes the safe use and handling of diisocyanates.
- Educate the broader chemical industry about OSHA’s initiatives, campaigns and resources that promote a safer working environment.

- Speak, exhibit or appear at OSHA, ACC or industry conferences, local meetings, or other events.

Training and education:

- Work with applicable safety and health workers from the polyurethanes value chain to develop products, workshops and other training resources on chemical hazards, as well as OSHA standards and regulations.
- Deliver effective training to educate OSHA personnel on safe use and handling of diisocyanates, including an “Introduction to Diisocyanates” webinar that will communicate health and safety guidance information.

Excerpted from [osha.gov/alliances/national/acc_renewal_20200915](https://www.osha.gov/alliances/national/acc_renewal_20200915).

In Other News...

OSHA awards more than \$11.2 million in Harwood Grants

OSHA has awarded over \$11.2 million in one-year federal safety and health training grants to 90 non-profit organizations, as part of the Susan Harwood Training Grant Program.

Grant recipients will use the funding to provide education and training to address serious workplace hazards, including COVID-19; implement injury prevention measures; and help workers and employers understand their rights and responsibilities under the Occupational Safety and Health Act of 1970, a Sept. 18 agency press release states.

The grants were awarded in three categories: targeted topic training, training and educational materials development, and capacity building.

The grants total \$11,216,991.

Scalia renews charter for national advisory committee

Secretary of Labor Eugene Scalia has renewed the two-year charter for the National Advisory Committee on Occupational Safety and Health, OSHA announced in a notice published in the Oct. 2 *Federal Register*.

NACOSH advises, consults with and makes recommendations to the secretaries of labor and health and human services on matters relating to occupational safety and health. The committee met Dec. 12 for the first time in three years; six of its 12 members' terms expired July 31.

A request for nominees appeared in the Feb. 26 *Federal Register*, with a deadline of April 27. All members are appointed by the secretary of labor.

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.

Consuming hydrating liquids and solids in aluminum smelting facilities with beryllium below 0.1% by weight

Date of response: Sept. 28, 2020

Standards: 1910.141(g)(2), 1910.1024, 1910.1024(b), 1910.1024(i)(4) and 1910.1024(i)(4)(ii)

Background: You state that concentrations of beryllium in the materials that you process, and in the dust present in your facilities, are significantly below 0.1% beryllium by weight. You further state that because aluminum smelters are extremely hot workplaces, and that temperatures in some parts (e.g., potrooms) can reach 140° F indoors during the hottest summer days, you encourage employees to intermittently and briefly consume water, electrolyte drinks and popsicles in those areas to prevent heat-related illness. You state that the bottles and cups from which workers drink hydrating fluids are stored in refrigerators, coolers or plastic wrapping, that water is dispensed from coolers on a cart, and that popsicles and other hydrating solids are also stored in coolers. As a result, you state that dust accumulation on these items prior to their use is minimal to nonexistent, and that any dust that did accumulate would contain significantly less than 0.1% beryllium by weight.

Question: *Would the areas of our facilities other than designated break rooms, which work with materials and dusts containing less than 0.1% beryllium by weight, be considered "eating and drinking areas" under paragraph 29 CFR 1910.1024(i)(4) of the beryllium standard if employees consume hydrating liquids and solids in those areas to prevent heat-related illness?*

Response: At worksites where beryllium is present, the beryllium standard requires employers to implement measures in eating and drinking areas to minimize the possibility that employees will be exposed to beryllium due to their ingestion of, or dermal contact with, beryllium-contaminated food and drink (29 CFR 1910.1024(i)(4)). Specifically, the beryllium standard requires that beryllium-contaminated surfaces in eating and drinking areas be kept as free of beryllium as practicable (29 CFR 1910.1024(i)(4)(i)), and that no employees enter any eating or drinking area with beryllium-contaminated personal protective clothing or equipment unless, prior to entry, it is cleaned, as necessary, to be as free as practicable of beryllium (29 CFR 1910.1024(i)(4)(ii)). The beryllium standard defines "beryllium-contaminated" as "contaminated with dust ... containing beryllium in concentrations greater than or equal to 0.1% by weight" (29 CFR 1910.1024(b)).

The beryllium standard establishes that employees have "dermal contact with beryllium" when their skin is exposed to soluble beryllium compounds, solutions, dust, fumes or mists, any of which contain beryllium in concentrations greater than or equal to 0.1% by weight (29 CFR 1910.1024(b)).

Patrick J. Kapust, Acting Director
Directorate of Enforcement Programs

Excerpted from [osha.gov/laws-regs/standardinterpretations/2020-09-28](https://www.osha.gov/laws-regs/standardinterpretations/2020-09-28).

OSHA

UP TO DATE®

In This Issue

- OSHA COVID-19-related fines: Senators claim penalties 'inadequate,' ask Scalia to respond
- COVID-19 pandemic: OSHA updates FAQs on reporting hospitalizations, deaths
- OSHA Alliances: American Chemistry Council Center for the Polyurethanes Industry, Diisocyanates and Aliphatic Diisocyanates Panels
- OSHA Standard Interpretations

VOL. 49, NO. 11 | NOVEMBER 2020

Board of Directors

Andrew O. Johnson, Chairman
Elaine Beitler, Vice Chairman

Delegates

Elaine Beitler, Chair of Delegates

President and CEO

Lorraine M. Martin

Chief Operating Officer and Chief Strategy Officer

Nicholas Smith

Chief Marketing Officer

Tom Bell

Publisher

Deborah Meyer, deborah.meyer@nsc.org

Editor

Melissa J. Ruminski, melissa.ruminski@nsc.org

Managing Editor

Jennifer Yario, jennifer.yario@nsc.org

Copy Editor

Paul Wleklinski, paul.wleklinski@nsc.org

Associate Editors

Barry Bottino, barry.bottino@nsc.org

Kevin Druley, kevin.druley@nsc.org

Alan Ferguson, alan.ferguson@nsc.org

Senior Graphic Designer

Michael Sharkey

Online Content Manager

Amy Bellinger

Production Coordinator

Joy Tan-Pipilas

Subscriptions/Circulation

subscriptions@nsc.org

OSHA Up To Date (ISSN 09941-0000) is published monthly by the National Safety Council, 1121 Spring Lake Drive, Itasca, IL 60143, and is printed in the United States. © 2020 by the National Safety Council.

Information contained in this publication is compiled from sources believed to be reliable. The National Safety Council makes no guarantee as to, and assumes no responsibility for, the correctness, sufficiency or completeness of such information. Additional measures may be required under particular circumstances. Information in this publication may not be reproduced without permission from the publisher.

For single and bulk subscription prices, as well as mailing inquiries and address changes, contact NSC Customer Service at (800) 621-7619.

— continued from p. 1

The group of lawmakers, which includes Sens. Sherrod Brown (D-OH) and Tammy Baldwin (D-WI), took particular issue with the \$13,494 fine levied against Smithfield Packaged Meats Corp., “a \$15 billion company.” Four workers died of COVID-19 and 1,300 more contracted the disease at Smithfield’s facility in Sioux Falls, SD, the group of senators contend in their letter, citing OSHA findings.

“The fine amounted to approximately \$10 for each worker who contracted the virus,” wrote the senators, who are calling on OSHA to issue an emergency temporary standard on infectious diseases.

They also were seeking answers to a list of 10 questions from Scalia by Oct. 16.

In its latest press release, OSHA states that its citations have included those for failures to implement a written respiratory protection program and failures to “provide a medical evaluation, respirator fit test, training on the proper use of a respirator and personal protective equipment.”

OSHA also has cited establishments for failures to report injuries, illnesses or fatalities; failures to record injury or illnesses on its required recordkeeping forms; and failures to comply with the General Duty Clause, or Section 5(a)(1) of the Occupational Safety and Health Act of 1970.

Of the 85 establishments that OSHA has cited for COVID-19-related violations, 36 are in New Jersey and another 20 are in New York. Massachusetts (five establishments) and Florida (four) were the next on the list.

Get the safety message to the front line.



Today's Supervisor offers concise news and information for front-line managers. Each issue includes:

- The Five Minute Safety Meeting
- A summary of NIOSH fatality reports and tips on how to avoid similar incidents
- News Briefs and Safety Stats
- Articles on safety trends

For more information, contact NSC Customer Service at (800) 621-7619.