

OSHA

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OIG reviewing ‘integrity’ of rulemaking at OSHA, DOL

The Department of Labor Office of Inspector General is “currently reviewing the integrity of the rulemaking process” at OSHA and DOL, Inspector General Scott Dahl states in a Jan. 25 written response to five lawmakers.

Sen. Elizabeth Warren (D-MA) and Reps. Bobby Scott (D-VA), Mark Takano (D-CA), Rosa DeLauro (D-CT) and Lucille Roybal-Allard (D-CA) on Jan. 7 requested that DOL OIG audit the department’s proposed rule that would allow unsupervised 16- and 17-year-old health care workers to operate powered patient lifts.

In its response, DOL OIG states that, “Prior to receiving your letter, and as part of our ongoing risk assessment and audit planning process, the OIG had identified the need for a broader review of the rulemaking process at DOL. The objective of this review is to determine how well DOL manages the issuance of regulations.”

Although not directly stated, OIG’s OSHA review also could involve the agency’s recent decision to roll back much of its electronic recordkeeping requirements for worker injury and illness data, in a final rule published Jan. 25 in the *Federal Register*.



OSHA has cited privacy concerns as one of its main reasons for making the change, but three advocacy groups filed a lawsuit on Jan. 25 asserting that OSHA has not given “a reasoned explanation for reversing its position regarding the risks and benefits” of its Improve Tracking of Workplace Injuries and Illnesses final rule, initially published in May 2016. Without a “reasoned explanation,” a court could consider the action “arbitrary and capricious,” and a violation of the Administrative Procedure Act, which governs regulations.

The lawsuit also states that the agency did not adequately consider opposing comments before making its change.

Regarding the proposed rule on teen workers and patient lifts, the legislators note in their letter that the notice of proposed rulemaking “cites exactly one piece of direct, empirical evidence” – the 2012 Massachusetts Department of Public Health’s Teens at Work Project survey. DOL also did not include full survey results in its original docket or “any information regarding its methodology.” The agency’s “failure to publicly disclose the 2012 survey during the public comment period deviates from [Executive Order 13563] transparency requirements that ensure the public is able to make

– article continues on p. 4

OSHA issues bulletin on lithium battery hazards

OSHA has released a Safety and Health Information Bulletin warning employers and workers of potential fire and explosion hazards stemming from lithium batteries used to power small or wearable electronic devices.

More than 25,000 overheating or fire incidents – involving more than 400 types of lithium battery-powered products – occurred between January 2012 and July 2017, according to the Consumer Product Safety Commission.

“Lithium batteries are generally safe and unlikely to malfunction (i.e., fail), but only so long as there are no defects

and the batteries are not damaged,” OSHA states in the Jan. 18 bulletin. “When lithium batteries fail to operate safely, they may present a fire or explosion hazard.”

Battery damage can occur from physical impact, exposure to extreme temperatures or failure to follow manufacturers’ recommendations when charging a device or battery.

OSHA’s advice for prevention and training includes:

- Make sure lithium batteries and all other equipment are tested under appropriate standards, certified by a

Nationally Recognized Testing Laboratory and rated for their intended uses.

- Ensure replacement batteries and chargers are designed and approved for use with specific devices. Buy batteries or chargers from the device’s manufacturer or an authorized reseller.
- Remove lithium-powered devices and batteries from chargers when they are fully charged.
- Store devices and batteries in fire-resistant containers and in cool, dry locations.

Download the safety bulletin at sb-m.agl/2T8GdSH.

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.

The Fertilizer Institute and the Agricultural Retailers Association

Date of alliance: Feb. 4, 2019

Through the alliance, OSHA, the Fertilizer Institute and the Agricultural Retailers Association will work together to provide partner members and the public with information, guidance, and access to training resources to help



them protect the health, safety and security of workers, emergency responders and the communities surrounding establishments in the agricultural retail and supply industry, as well as understand the rights of workers and the responsibilities of employers under the Occupational Safety and Health Act. The alliance will focus particularly on the safe storage and handling of fertilizers (ammonium nitrate and anhydrous ammonia), as well as the sharing of emergency response

information between the agribusiness communities and first responders.

Raising awareness:

Outreach and communication

The participants intend to work together to achieve the following objectives:

- Further leverage the success of the ResponsibleAg program, an industry training program that works to enhance health and safety performance at agricultural retail facilities.
- Share information on OSHA’s National Initiatives (emphasis programs, regulatory agenda, outreach), opportunities to participate in initiatives and the rule-making process.
- Share information on occupational safety and health laws and standards, including the rights and responsibilities of workers and employers.
- Share information about safety and health tools and resources on the recognition

and prevention of workplace hazards (e.g., through print and electronic media, electronic assistance tools, and the TFI and ARA websites) with employers and workers in the industry.

- Speak, exhibit or appear at OSHA, TFI and ARA conferences; local meetings; or other events, including the OSHA Alliance Program Forum.
- Share information among OSHA personnel, small businesses, and industry safety and health professionals regarding TFI and ARA good practices or effective approaches through training programs, workshops, seminars and lectures.
- Encourage TFI and ARA local sections to build relationships with OSHA regional and area offices to address health and safety issues, including the safe storage and handling of fertilizers.

Excerpted from osha.gov/dcsp/alliances/tfi_ara/tfi_ara.html.

In Other News...

DOL adjusts civil penalty amounts for inflation

The Department of Labor has raised civil penalty amounts for violations around 1 percent to adjust for inflation.

The increase – which went into effect Jan. 23 – is 1.02522 percent for DOL agencies, including OSHA and the Mine Safety and Health Administration, according to a final rule published in the Jan. 23 *Federal Register*.

The maximum penalty increased to \$13,260 from \$12,934 for serious, other than serious, failure to correct and posting requirements violations.

The maximum “willful” or “repeated” fines increased to \$132,598 per violation from \$129,336.

Under the Federal Civil Penalties Inflation Adjustment Act, DOL is required to adjust civil penalty levels for inflation by Jan. 15 each year. DOL determines annual adjustment rates via the Consumer Price Index for All Urban Consumers.

Video details inspection process under ammonium nitrate emphasis program

OSHA has published a video highlighting the inspection process under the agency’s Regional Emphasis Program for fertilizer-grade ammonium nitrate and agricultural anhydrous ammonia.

The 10-minute video, released Feb. 4 and available at sb-m.ag/2EEEcFQ, discusses the three phases of an OSHA compliance officer’s visit – opening conference, walkaround and closing conference – and what occurs during each.

For information on the inspection process related to this REP, which launched Oct. 1 and covers Arkansas, Kansas, Louisiana, Missouri, Nebraska, Oklahoma and Texas, visit OSHA’s website at osha.gov/depl/fertilizer_industry or call (800) 321-OSHA (6742).

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.

Hazard Communication Standard – SDS responsible party and hazards not otherwise classified

Standards: 1910.1200, 1910.1200(f)(6), 1910.1200(g)(2)(iii), (1910.1200) App C and 1910.1200 App D

Date of response: Sept. 18, 2018

Your letter requested clarification on the required contact information on Safety Data Sheets for imported products. You also asked if importers may create a hybrid SDS and label, meeting both OSHA’s revised Hazard Communication Standard (HCS 2012) at 29 CFR 1910.1200 and Canada’s revised Hazardous Products Regulations (HPR) with its modified Workplace Hazardous Materials Information System (WHMIS 2015). We apologize for the delay in our response. This letter constitutes OSHA’s interpretation only of the requirements discussed and may not be applicable to issues not delineated within your original correspondence. Your paraphrased questions and our responses are below.

Question 1: *Is it permissible to list a foreign address in Section 1 of the SDS as the responsible party or must a U.S. address and phone number always be listed on the SDS to be considered compliant? Is it ever permissible to use a foreign phone number (non-emergency) for the responsible party? Can the emergency phone number in Section 1 of the SDS be a foreign number, as long as the person answering it can speak English and is competent?*

Response: No. Section 1 of the SDS must include the name, address and telephone number of the manufacturer, importer or other responsible party. Section 1 must also include an emergency phone number. The address must be in the United States, and the phone number must be a domestic number. If a manufacturer, importer, distributor or employer chooses to add a foreign address (non-U.S. based) to an SDS, it may be listed in Section 1 if the responsible party believes it may be able to provide additional supplemental information and is done in a fashion that does not cause confusion. To avoid confusion, the supplemental information may, instead, be provided in Section 16 of the SDS. (See also, OSHA Instruction CPL 02-02-079, *Inspection Procedures for the Hazard Communication Standard (HCS 2012)*, July 9, 2015, specifically, Section X.G.1.o.).

Question 2: *If a chemical is imported from a foreign supplier by a U.S. company for use only in its own workplace (the material/product will not be leaving the facility it was imported to and will be fully consumed onsite), is the U.S. importer now considered the responsible party?*

Response: Yes. The first U.S. company (importer/distributor) to receive the shipment from the foreign supplier is the responsible party for that chemical.

Amanda Edens, Acting Director
Directorate of Enforcement Programs

(To be continued in the May 2019 issue of OSHA Up To Date.)

Excerpted from osha.gov/laws-regs/standardinterpretations/2018-09-18.

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meaningful, informed comments on proposals,” the letter states.

The lawmakers also express concerns that the survey violates DOL’s data quality guidelines. Debbie Berkowitz, program director for worker safety and health for the National Employment Law Project, an advocacy group, obtained a copy of the full results and shared them with *Safety+Health* magazine in December.

The survey was sent to 42 vocational programs, but 25 or fewer responded to 12 of the 15 multiple-choice questions. The median number of responses to the questions was 22. When asked if they knew about the DOL policy on “the conditions under which hoists can be used by persons under the age of 18,” eight of 22 respondents said no and two answered they did not know.

“The results of this survey were that Massachusetts decided they need to educate votech programs and employers on the new policy – not that the new policy was not working,” Berkowitz wrote in an email to *S+H*.

In their letter, the lawmakers also point to a 2011 NIOSH report that concluded “many 16- and 17-year-old employees cannot safely operate power-driven hoists to lift and transfer patients by themselves” and recommends that two caregivers operate the lift to move patients.

The proposed rule states that teens seeking to learn the skill would need – according to federal or state regulations – at least 75 hours of training and at least 16 hours of supervision under a registered nurse who has at least two years of experience.

Read the Jan. 25 response from Dahl at sb-m.ag/2MU7R0b.

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