

# OSHA

## UP TO DATE®



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## Acosta to lawmakers: 'I fully expect' inspections to increase

Secretary of Labor R. Alexander Acosta touted the number of OSHA inspections conducted over the past two fiscal years – despite the agency being short-staffed – during an April 3 congressional appropriations hearing, saying he expects an increase when recently hired inspectors get fully up to speed.

Acosta appeared before the House Labor, Health and Human Services, Education, and Related Agencies Appropriations Subcommittee for the first time since Democrats won the majority in the 2018 midterm elections and Rep. Rosa DeLauro (D-CT) took over as chair.

He pointed out that OSHA inspections exceeded 32,000 in FYs 2017 and 2018 – surpassing the 31,948 total in FY 2016 – despite attrition of compliance safety and health officers at the agency. The number of CSHOs was a record-low 875 as of Jan. 1, according to a National Employment Law Project data brief published March 14.

Acosta also called attention to a decrease of 43 workplace fatalities from calendar year 2016 to CY 2017 – the most recent data available – and more than 40,000 fewer workplace injuries. NELP, however,



states in its brief that OSHA conducted 929 fatality/catastrophe investigations in 2018, the most in a decade. That may indicate an increase in fatalities when the Bureau of Labor Statistics publishes its Census of Fatal Occupational Injuries, likely in December.

Acosta conceded that some inspections involved compliance assistance, and the NELP brief noted that OSHA's enforcement units in its Enforcement Weighting System, which places values on certain types of inspections, have trended slightly downward over the past three fiscal years.

When asked about OSHA's relatively flat budget proposal for FY 2020, Acosta pointed to an increase in enforcement funding (around \$3.8 million more for federal enforcement) and the hiring of CSHOs.

The Department of Labor has committed to bringing 26 new full-time equivalent inspectors to the agency for the upcoming fiscal year and hired 76 CSHOs in FY 2018.

"I would take issue with the budget not reflecting an enforcement priority because, in fact, it does," Acosta said.

DeLauro noted that the attrition in number of OSHA inspectors is, in part, a result of a mandated hiring freeze during the first year of the Trump administration. Retirements and resignations also have played a role.

Acosta's written testimony, submitted before the hearing, states that it takes one to three years to get new CSHOs working in the field unsupervised.

"Once these inspectors can go out in the field independently, I fully expect, and have told OSHA that I expect, the inspections to be up even more," Acosta said.

OSHA is in line to receive \$300,000 more than the \$557.2 million the agency received in FY 2019, but that likely will change with Democrats holding a House majority. The overall flat funding is largely

– article continues on p. 4

## OSHA eyes update of powered industrial trucks standard; issues Request for Information

OSHA is seeking input to aid in a possible update of its powered industrial trucks standard (1910.178), which covers forklifts, fork trucks, tractors, platform lift trucks and motorized hand trucks, among others, according to a Request for Information published in the March 11 *Federal Register*.

The agency's powered industrial trucks regulations for the construction, maritime and general industries are "based on industry consensus standards from 1969,"

OSHA states in a March 8 press release. The requirements went into effect in 1971, when the agency was established.

OSHA is requesting information on "types, ages and usage of powered industrial trucks; maintenance and retrofitting; how to regulate older powered industrial trucks; types of accidents and injuries associated with operating these machines; costs and benefits of retrofitting the machines with safety features; and other components of a safety program."

The agency states it will use the information received to "determine what action, if any, it may take to reduce regulatory burdens and create jobs while improving worker safety."

Comments on the RFI are due by June 10. To do so, go to [sb-m.ag/2FRTGqF](https://www.sba.gov/2FRTGqF).

The powered industrial trucks standard has been a perennial fixture on OSHA's annual list of Top 10 most frequently cited violations. Check out the most-recent list at [sb-m.ag/2Ql3EGZ](https://www.sba.gov/2Ql3EGZ).

### 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).*

## Toledo Electrical Joint Apprenticeship and Training Committee

**Date of alliance:** March 1, 2019

Through the alliance, the organizations will use relevant injury, illness and hazard exposure data when appropriate to help identify areas of emphasis for alliance awareness, outreach and communication activities. The alliance also will explore and implement selected options to evaluate effectiveness and measure the impact of its overall effort on improving workplace safety for employers and workers.

### Raising awareness: Outreach and communication

- To share publicly available information on OSHA's national/regional/local emphasis programs, regulatory agenda, green industries initiatives and opportunities to participate in the rulemaking process.
- To share publicly available information on occupational safety and health



laws and standards, including electrical safety, fall protection, cave-in protection, rigging, heat-related illnesses, and rights and responsibilities of workers and employers.

- To convene or participate in forums, roundtable discussions or stakeholder meetings on wind tower and photo-voltaic cell installation and maintenance practices to help forge innovative solutions in the workplace or to provide input on safety and health issues.
- To encourage worker participation in workplace safety and health by collaborating on OSHA 30-hour courses for apprentices and journeypersons electricians.

### Training and education

- To develop effective training and education programs for apprentice and journeypersons electricians and OSHA personnel regarding electrical safety and arc-flash hazards, wind tower safety, photo-voltaic cell installation and maintenance safety, rigging, fall protection, and cave-in protection, and to communicate such information to constituent employers and workers.
- To develop effective training and education programs for apprentice and journeypersons electricians to promote understanding of workers' rights, including whistleblower rights, the use of the OSHA complaint process, and the responsibilities of employers, and to communicate such information to workers and employers.

Excerpted from [osha.gov/dcsp/alliances/regional/reg5/teject\\_renewal2019.html](https://www.osha.gov/dcsp/alliances/regional/reg5/teject_renewal2019.html).

## In Other News...

### Third annual Safe + Sound Week set for Aug. 12-18

OSHA, NIOSH and a number of safety organizations – including the National Safety Council – are teaming up for the third annual Safe + Sound Week, set for Aug. 12-18.

Employers of all sizes and from all industries who seek to recognize their commitment to the safety of workers, customers, the public and supply chain partners are encouraged to participate.

In addition, employers can sign up for a monthly newsletter and share their activities or events on social media channels. The OSHA website includes links to more information, a brochure and a webinar titled, “Three Core Elements of Effective Safety and Health Programs.”

Learn more at [osha.gov/safeandsound](https://osha.gov/safeandsound).

### OSHA publishes video on soil classification

OSHA recently released a video highlighting the importance of soil classification when planning trenching and excavation work.

The free, 11-minute video examines how visual inspection of soil is performed by a competent person before work begins, as required by OSHA. Testing the soil helps employers determine its stability, which dictates the proper protective system to use on a jobsite.

The OSHA standard for trenching and excavation (29 CFR 1926.650, Subpart P) requires protective systems for trenches that are 5 feet or deeper, unless the excavation occurs in stable rock. Soil may be classified as Type A, B or C, listed in descending order of stability. Trenches can be cut through multiple types of soil, the agency points out.

According to OSHA, 23 workers died in trench collapses in 2016, more than the combined total from 2014 and 2015.

Watch the video at [sb-m.ag/2WFUJzn](https://sb-m.ag/2WFUJzn).

## 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)(ii), 1910, 1200 App C and 1910.1200 App D

**Date of response:** Sept. 18, 2018

*(Continued from the April 2019 issue of OSHA Up To Date.)*

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).

**Question 3:** *If the answer to Question 2 is yes, then is the U.S. importer now liable for all HCS 2012 requirements for that chemical, including classification and developing an SDS as soon as the chemical is in its possession?*

**Response:** Yes. The importer assumes the responsibility to ensure it is compliant with OSHA’s HCS, including classifying the chemical and developing or obtaining an SDS. If the chemical will not be leaving the facility, the U.S. importer may follow the workplace labeling requirements of 29 CFR 1910.1200(f)(6).

**Question 4:** *If the U.S. importer does not receive an HCS-compliant SDS with the foreign shipment, is it obligated to author one? If so, is it allowed to use the foreign manufacturer’s address in Section 1 of the SDS if its own address is present?*

**Response:** The importer is the responsible party, and if it does not receive an SDS from the foreign supplier that meets the requirements of HCS 2012, then it is required to create an HCS-compliant SDS. The SDS must have the importer’s U.S. address, but may contain a foreign manufacturer’s address in Section 1, as well. To avoid confusion, the foreign manufacturer’s address 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 5:** *If the importer received an HCS 2012-compliant SDS from its overseas distributor, is it allowed to use that SDS in its own workplace?*

**Response:** Yes. Please see our response to Question 3.

**Amanda Edens, Acting Director**  
Directorate of Enforcement Programs

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

Excerpted from [osha.gov/laws-regs/standardinterpretations/2018-09-18](https://osha.gov/laws-regs/standardinterpretations/2018-09-18).

### In This Issue

- Acosta to lawmakers: 'I fully expect' inspections to increase
- OSHA eyes update of powered industrial trucks standard; issues Request for Information
- OSHA Alliances: Toledo Electrical Joint Apprenticeship and Training Committee
- OSHA Standard Interpretations

VOL. 48, NO. 5 | MAY 2019

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— continued from p. 1

because of a third consecutive attempt to eliminate the Susan Harwood Training Grant Program.

Even when Republicans held the majority in the House, Congress has not complied with the administration's proposal and allocated a little more than \$10.5 million to the program in FY 2019.

"We hope that we can do a little bit better for you than your own budget," said Rep. Tom Cole (R-OK), the subcommittee's ranking member.

The Mine Safety and Health Administration is slated for an increase of more than \$2.2 million to its \$373.8 million FY 2019 budget. The budget proposes combining coal mine safety and health enforcement with metal/nonmetal mine enforcement and allocating about \$273,000 less for these activities.

Under the administration's budget proposal, DOL funding would be cut by 9.7

percent, or \$1.2 billion, to \$10.9 billion in FY 2020.

The administration also is pushing, for a third straight year, to eliminate the Chemical Safety Board. Congress has rejected previous requests to eliminate CSB, and likely will do so again, with Democrats holding a majority in the House. CSB, in its FY 2020 budget request, is seeking a 3.7 percent increase, or nearly \$1.5 million, to approximately \$12.5 million.

The Department of Health and Human Services, meanwhile, is proposing to cut \$146 million from NIOSH's \$336 million FY 2019 budget. Recent budget requests have featured similar proposed cuts to the agency's funding, but Congress has not complied.

Unlike this past fiscal year, the administration will not attempt to shift NIOSH to the National Institutes of Health from its current position as part of the Centers for Disease Control and Prevention.

## Get the safety message to the front line.



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

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- A summary of NIOSH fatality reports and tips on how to avoid similar incidents
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