

Continued OSHA Initiatives

Reinhart Takes a Look at Continued OSHA Initiatives

As 2013 winds down, the Occupational Safety and Health Administration of the U.S. Department of Labor (OSHA) continues to pursue its various initiatives in full force. This e-alert briefly summarizes several of these OSHA efforts.

Frequently Cited Violations of OSHA Standards

OSHA recently listed the ten most frequently cited violations for fiscal year (FY) 2013 (October 1, 2012 to September 30, 2013). This list is provided below with the OSHA regulatory standards that pertain to the FY 2013 violations. For comparison purposes, the third column contains the FY 2012 rankings.

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	OSHA Standard (For FY 2013 Rankings)	FY 2013 Ranking	FY 2012 Ranking
1	29 CFR 1926.501	Fall Protection (C) ¹	Fall Protection (C)
2	29 CFR 1910.1200	Hazard Communication	Hazard Communication
3	29 CFR 1926.451	Scaffolding (C)	Scaffolding (C)
4	29 CFR 1910.134	Respiratory Protection	Respiratory Protection
5	5 29 CFR 1910.305	Electrical: Wiring	Lockout/Tagout
6	29 CFR 1910.178	Powered Industrial Trucks	Powered Industrial Trucks
7	29 CFR 1926.1053	Ladders (C)	Electrical: Wiring
8	29 CFR 1910.147	Lockout/Tagout	Ladders (C)
9	29 CFR 1910.303	Electrical: Systems Design	Machinery and Machine Guarding

	OSHA Standard (For FY 2013 Rankings)	FY 2013 Ranking	FY 2012 Ranking
10	29 CFR 1910.212	Machinery and Machine Guarding	Electrical System Design

The top four violations are the same in FY 2013 and FY 2012. Fall Protection and Scaffolding ranked first and third, respectively, as the most frequently cited standards in FY 2013 and FY 2012. The second most frequently cited standard in both years was chemical Hazard Communication. Respiratory protection was the fourth most frequently cited standard each year. Employers should review facility operations to confirm their operations comply with the applicable most frequently cited OSHA regulations. OSHA will particularly focus on compliance with these regulations.

Hazard Communication Standard (HCS)

We noted in previous e-alerts that the first compliance deadline for OSHA's revised chemical Hazard Communication Standard—Training Requirements—is December 1, 2013. By now, employers should have implemented a program to achieve compliance with the HCS training requirements. The two HCS training requirements are:

- **Safety Data Sheet (SDS).** The SDS requirements include providing information on each of the 16 sections under the standardized SDS format.
- **Label Elements.** The new label requirements include: name, address and phone number of the chemical manufacturer, distributor or importer; product identifier; signal word; pictogram; hazard statement; precautionary statements; and how the employee might use the labels in the workplace.

The SDS and labeling training requirements must be provided by the employer in a manner and using language that employees can understand. Employers must also provide the appropriate communications to nonliterate employees. The [OSHA Fact Sheet](#) regarding training requirements for the revised HCS is attached to this e-alert.



New OSHA Limits for Silica Exposure

Our February 4, 2013 e-alert noted that OSHA was developing a comprehensive standard for crystalline silica. Ten months later, the proposed standard is subject to public comment (see below).

OSHA recently proposed new rules to reduce crystalline silica exposure in the workplace and prevent nearly 700 estimated deaths a year by reducing exposure to these very small particles. Exposure to silica dust can cause lung cancer and other diseases such as silicosis, chronic obstructive pulmonary disease and kidney disease. The current exposure limits were adopted by OSHA four decades ago. Business groups lobbied against the proposal, questioning whether it would be feasible to carry out and noting that silicosis deaths were declining. Labor leaders pushed for the new limits.

The public comment period on the new rules originally was scheduled to end on December 11, 2013. However, OSHA reconsidered and extended the public comment period for an additional 47 days, to January 27, 2014. The extra time allows stakeholders to comment on the proposed rule and its supporting analyses.

OSHA also extended the deadline to submit notices of intention to appear at its informal public hearings by an additional 30 days, from November 12, 2013 to December 12, 2013. Public hearings are scheduled to begin on March 18, 2014. The duration of the hearings will be determined by the number of members of the public that appear. The hearings are expected to continue for several weeks and will be followed by a post-hearing public comment period.

Additional information on the proposed rule includes five fact sheets and procedures for submitting written comments and participating in public hearings is available on the [OSHA website](#). Members of the public may comment on the proposal by visiting [Regulations.gov](#).

In addition to minimizing workplace silica dust exposure, OSHA is also concerned with preventing on-the-job dust explosions. Thus, OSHA has prepared a "Quick Card" of precautions for firefighters to take to prevent dust explosions. This Quick Card is attached to this e-alert.



New Safety and Health Certificate Program for Public Sector Employees

OSHA has initiated a new certificate program that provides training on occupational safety and health in order to reduce injuries, illnesses and fatalities for state and local government workers. The certificate program, called Public Sector Safety and Health Fundamentals, is available in construction and general industry. Students can choose from a variety of courses, including:

- Occupational safety and health standards for construction or general industry;
- Safety and health management;
- Accident investigation;
- Fall hazard awareness; and
- Recordkeeping

To earn a certificate, participants must complete a minimum of seven courses, consisting of three required courses and additional elective courses, totaling at least 68 hours of in-class training. This certificate program is administered by OSHA Training Institute Education Centers, a nonprofit organization authorized by OSHA to deliver occupational safety and health training.

Proposed New Rule to Improve Tracking of Workplace Injuries and Illnesses

The annual [Occupational Injuries and Illnesses Report](#) of the Bureau of Labor Statistics estimates that three million workers were injured on the job in 2012. Consequently, on November 7, 2013, OSHA issued a proposed rule to improve workplace safety and health through improved tracking of workplace injuries and illnesses. The proposal does not add a new requirement to keep records; it modifies an employer's obligation to transmit these records to OSHA.

OSHA developed the proposed rule following a series of stakeholder meetings in 2010 to help OSHA gather information about electronic submission of establishment-specific injury and illness data. OSHA proposes to amend its current recordkeeping regulations to add requirements for the electronic submission of injury and illness information that employers are already required



to keep under the existing standards in Part 1904. For example, establishments with more than 250 employees (and who are already required to keep records) would be required to electronically submit the records on a quarterly basis to OSHA. Establishments with 20 or more employees, in certain industries with high injury and illness rates, would be required to electronically submit their summaries of work-related injuries and illnesses to OSHA once a year. Currently, many employers report this information to OSHA under OSHA's Data Initiative. Information on the proposed rule can be found on the [Department of Labor](#) website and [osha.gov](#). The public will have 90 days, through February 6, 2014, to submit written comments on the proposed rule. A public hearing will be held on January 9, 2014 in Washington D.C.

Whistleblower Complaints Under the Affordable Care Act

In our [May 16, 2013 e-alert](#), we discussed the Affordable Care Act (ACA) and its provisions concerning whistleblower complaints. Activities and interest associated with the ACA have increased in recent weeks and will likely continue to rise in the future. Thus, we take this opportunity to remind you of this provision in the ACA. We attach to this e-mail an OSHA summary regarding whistleblower complaints. In a future e-alert, we will update you detailed discussions regarding OSHA whistleblower complaints under the ACA. We will continue to update you as significant OSHA-related regulatory developments occur. In the meantime, please contact your Reinhart attorney or one of us with your questions or to address any concerns that you may have regarding OSHA compliance issues and OSHA's enforcement efforts.

¹ "C" is the Construction Standard

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