How Does OSHA Conduct an Inspection, and then what?

Tuesday, February 24, 2015
10:00 to 11:00

Dale Glacken,
Compliance Assistance Specialist
This information has been developed by an OSHA Compliance Assistance Specialist and is intended to assist employers, workers, and others as they strive to improve workplace health and safety. While we attempt to thoroughly address specific topics [or hazards], it is not possible to include discussion of everything necessary to ensure a healthy and safe working environment in a presentation of this nature. Thus, this information must be understood as a tool for addressing workplace hazards, rather than an exhaustive statement of an employer’s legal obligations, which are defined by statute, regulations, and standards. Likewise, to the extent that this information references practices or procedures that may enhance health or safety, but which are not required by a statute, regulation, or standard, it cannot, and does not, create additional legal obligations. Finally, over time, OSHA may modify rules and interpretations in light of new technology, information, or circumstances; to keep apprised of such developments, or to review information on a wide range of occupational safety and health topics, you can visit OSHA’s website at www.osha.gov.
Overall Agenda:

- OSHA Inspection Process
- OSHA Updated Reporting Requirements
- Fall Protection Stand Down
- Questions and Answers
PURPOSE:

- "... to assure so far as possible every working man and woman in the Nation safe and healthful working conditions and to preserve our human resources."
OSHA's Purpose

• Encourage employers and employees to reduce workplace hazards and implement new or improve existing S&H programs

• Provide for research in occupational S&H

• Maintain a reporting and record keeping system to monitor job-related injuries and illnesses
OSHA's Purpose

- Establish occupational S&H training programs
- Develop and enforce mandatory job S&H standards
- Provide for development and approval of state occupational S&H programs
The Act’s Coverage

- Extends to all employers and their employees in the 50 states, District of Columbia, Puerto Rico, and all other territories under Federal Government jurisdiction
- Coverage provided either directly by federal OSHA or through an OSHA-approved state program
The Act's Coverage

• Employer defined as any "person engaged in a business affecting commerce who has employees, but does not include the United States (except for the U.S. Postal Service) or any State or political subdivision of a State"
Not Covered by the Act

- Self-employed persons.
- Farms which employ only immediate members of the farmer's family.
- Working conditions for which other federal agencies, operating under the authority of other federal laws, regulate worker safety. This category includes most working conditions in mining, nuclear energy and nuclear weapons manufacture, and many aspects of the transportation industries.
- Employees of state and local governments, unless they are in one of the states operating an OSHA-approved state plan.

State and Local Governments

• OSHA provisions do not apply to state and local governments in their role as employers

• Any state seeking OSHA approval for its own S&H program must provide coverage for these employees

• State plans may also cover only public sector employees
State Plans

• 26 States operate OSHA-approved State Plans

• State Plans provide unique compliance assistance resources, tailored to state-specific standards and industries

• State Plans have a variety of cooperative programs similar to those of Federal OSHA
  – Voluntary Protection Programs (VPP)
  – Strategic Partnerships
  – Consultation
  – Alliances
Standards

- OSHA is responsible for promulgating legally enforceable standards
- Where OSHA has not promulgated specific standards, employers are responsible for following the Act's General Duty Clause
- States with OSHA-approved programs must set standards at least as effective as federal standards
Where to Get OSHA Standards

• Federal Register in public libraries
• CD-ROM subscription through U.S. Government Printing Office (GPO)
• Code of Federal Regulations (CFR) in public libraries and through GPO, (866) 512-1800
• OSHA web site - OSHA standards, interpretations, directives (www.osha.gov)
As of January 1, 2015, all covered Employers must report fatalities and severe injuries to OSHA.
OSHA Law & Regulations

Welcome to OSHA's Law and Regulations page. This page contains links to all current OSHA standards, provides information on the rulemaking process used to develop workplace health and safety standards, and includes links to all Federal Register notices that are currently open for comment. This page also provides links to the Occupational Safety and Health Act of 1970 (OSH Act) and other relevant laws. Finally, this page includes resources to explore the Federal Register, the Code of Federal Regulations, and RegInfo.gov, the federal government’s public portal for all agency regulatory information.

Under the OSH Act, employers are responsible for providing a safe and healthful workplace. OSHA’s mission is to assure safe and healthful workplaces by setting and enforcing standards, and by providing training, outreach, education and assistance. Employers must comply with all applicable OSHA standards. Employers must also comply with the General Duty Clause of the OSH Act, which requires employers to keep their workplace free of serious recognized hazards.

Find an OSHA standard:

- General Industry
- Construction
- Maritime
- Agriculture
- Recordkeeping
- State Plans
- All

1910 Full Table of Contents  Top 10 Viewed  Printed Copies
General Duty Clause

- Each employer "shall furnish . . . a place of employment which is free from recognized hazards that are causing or are likely to cause death or serious physical harm to his employees."
General Duty Clause

SEC. 5. Duties

• (a) Each employer --

  (1) shall furnish to each of his employees employment and a place of employment which are free from recognized hazards that are causing or are likely to cause death or serious physical harm to his employees;

  (2) shall comply with occupational safety and health standards promulgated under this Act. 29 USC 654

• (b) Each employee shall comply with occupational safety and health standards and all rules, regulations, and orders issued pursuant to this Act which are applicable to his own actions and conduct.
How Does OSHA Decide Who to Inspect?

OSHA cannot inspect all workplaces it covers each year. The agency seeks to focus its inspection resources on the most hazardous workplaces.
DIRECTIVE NUMBER: CPL 02-00-148
Priority Category

- Imminent Danger
- Fatality
- Complaints/Referrals (May include Hospitalization/Amputation/Loss of an Eye)
- Programmed Inspections
OSHA INSPECTIONS
Inspection/Investigation Types

Inspection Priorities:

• Unprogrammed inspections:
  – Imminent Danger
  – Fatality
  – Complaints and Referrals (Possibly including Hospitalization/Amputation/Loss of an Eye)
OSHA INSPECTIONS

Imminent Danger

- Imminent Danger-Any condition where there is reasonable certainty that a danger exist that can be expected to cause death or serious physical harm immediately
- Formal employee complaints of unsafe or unhealthful working conditions and to referrals from any source about workplace hazards.
Some Inspection Definitions

• **Formal complaint**: a signed complaint alleging the existence of a violation threatening physical harm, submitted by a current employee, a representative of employees (such as unions, attorneys, family members, etc.), or an employee of another company also exposed to the alleged hazard. OSHA keeps the identity of the complainant confidential.
Some Inspection Definitions

- **Phone/Fax Investigations** - For lower-priority hazards or complaints from former employees, OSHA may phone the employer to describe safety and health concerns, following up with a fax providing details on the alleged hazards. The employer must respond within five working days, identifying any problems found and noting corrective actions. If the response is adequate and the complainant is satisfied with the response, OSHA generally does not conduct an inspection.
**Referral:** Notice of an alleged hazard of a violation, given by a source other than those listed under formal complaint, for example, the media, police, other government agency, etc.
The rule requires an employer to report to OSHA, within eight hours, all work-related fatalities and within 24 hours, all work-related in-patient hospitalizations, amputations and loss of an eye.
How does OSHA define "in-patient hospitalization"?

• OSHA defines in-patient hospitalization as a formal admission to the in-patient service of a hospital or clinic for care or treatment. Source: FAQ

• In-patient hospitalization does not require an overnight stay and is not defined by the length of time spent in the facility. The facility determines if it is a formal admittance to the in-patient section of the hospital or clinic. Source: Draft Verbiage
How does OSHA define “amputation”?

An amputation is the traumatic loss of a limb or other external body part. Amputations include a part, such as a limb or appendage, that has been severed, cut off, amputated (either completely or partially); fingertip amputations with or without bone loss; medical amputations resulting from irreparable damage; amputations of body parts that have since been reattached. Amputations do not include avulsions (tissue torn away from the body), enucleations (removal of the eyeball), deglovings (skin torn away from the underlying tissue), scalpings (removal of the scalp), severed ears, or broken or chipped teeth.
Loss of an eye

- Loss of an eye is the physical removal of the eye from the socket. Damage to the eye or loss of sight without removal of the eye is not reportable.  
  
  Source: Draft Verbiage
What if the fatality, in-patient hospitalization, amputation, or loss of an eye does not occur during or right after the work-related incident?

- If a **fatality** occurs within **30 days** of the work-related incident, or if **an in-patient hospitalization, amputation, or loss of an eye** occurs within **24 hours** of the work-related incident, then you must report the event to OSHA. If the fatality occurs **after** more than 30 days of the work-related incident, or if the in-patient hospitalization, amputation, or loss of an eye occurs **after** more than 24 hours after the work-related incident, then you do not have to report the event to OSHA. However, you must record the event on your OSHA injury and illness records, if you are required to keep OSHA injury and illness records.

Source: FAQ
How do I report these events to OSHA?

You have three options for reporting the event:

• By telephone to the OSHA Area Office nearest to the site of the work-related incident, during normal business hours.

• By telephone to the 24-hour OSHA hotline (1-800-321-OSHA or 1-800-321-6742).

• Electronically, using the event reporting application that will be located on OSHA's public website. http://www.osha.gov/report_online
Inspection Priorities:

- Programmed Inspections:
  - Site-Specific Targeting (SST),
  - Construction
  - Scheduling for Maritime Inspections
  - Special Emphasis Programs (SEPs).
  - National Emphasis Programs (NEP),
  - Regional (REP) & Local Emphasis Programs (LEP),
  - Other Special Programs.
OSHA INSPECTIONS

• Program inspections aimed at specific high-hazard industries, workplaces, occupations or health substances, or other industries identified in OSHA’s current inspection procedures. OSHA selects industries for inspection on the basis of factor such as the injury incidence rates, previous citation history, employee exposure to toxic substances or random selection. OSHA may also develop local, regional or national emphasis programs.

• Follow-up inspections determine if the employer has corrected previously cited violations.
Inspection/Investigation Types

• **Programmed/Planned**: inspections of worksites which have been scheduled based on neutral selection criteria. Worksites selected according to national scheduling plans or special emphasis plans. Example: Dodge report

• **Programmed Related**: inspections of employers at multiemployer worksites whose activities were not included in the programmed assignment, such as low injury rate employers.
OSHA's National Emphasis Program

• **COMBUSTIBLE DUST:** [OSHA Instruction CPL 03-00-008](https://www.OSHA.gov) (Reissued) (Date: 03/11/2008)

• **FEDERAL AGENCIES:** [OSHA Notice 13-02 (FAP 01)](https://www.OSHA.gov) (FEDTARG13)  (Date: 01/24/2013)

• **HAZARDOUS MACHINERY:** [OSHA Instruction CPL 03-00-003](https://www.OSHA.gov) (Date: 10/27/2006)

• **HEXAVALENT CHROMIUM:** [OSHA Instruction CPL 02-02-076](https://www.OSHA.gov) (Date: 02/23/2010)[PDF*]

• **ISOCYANATES:** [OSHA Instruction CPL 03-00-017](https://www.OSHA.gov) (Date: 06/20/2013)[PDF*]

• **LEAD:** [OSHA Instruction CPL 03-00-009](https://www.OSHA.gov) (Date: 08/14/2008) [PDF*]

• **NURSING AND RESIDENTIAL CARE FACILITIES:** [OSHA Instruction CPL 03-00-016](https://www.OSHA.gov) (Date: 04/05/2012)[PDF*]

• **PRIMARY METAL INDUSTRIES:** [OSHA Instruction CPL 03-00-013](https://www.OSHA.gov) (Date: 05/19/2011)[PDF*]

• **PROCESS SAFETY MANAGEMENT:**
  • [CPL 03-00-014](https://www.OSHA.gov) - PSM Covered Chemical Facilities National Emphasis Program (Date: 11/29/2011)[PDF*]
  • [OSHA Instruction CPL 03-00-010](https://www.OSHA.gov) - Petroleum Refinery Process Safety Management National Emphasis Program (Date: 08/18/2009) [PDF*]. Note: This NEP is still in effect, but Federal inspections of all refineries have been completed and there are no inspections currently programmed. However, this NEP may still provide guidance for State Plan Offices which program refinery inspections within their jurisdictions.

• **SHIPBREAKING:** [OSHA Instruction CPL 03-00-012](https://www.OSHA.gov) (Date: 11/04/2010)

• **SILICA:** [OSHA Instruction CPL 03-00-007](https://www.OSHA.gov) (Date: 01/24/2008)

• **TRENCHING & EXCAVATION:** [OSHA Instruction CPL 02-00-069](https://www.OSHA.gov) (Date: 9/19/1985)
Region III Local Emphasis Program
(DE, DC, MD, **PA, VA, **WV)

- Regional Emphasis Program for the Oil and Gas Service Industry. 2015-01 (CPL 04)
- Regional Emphasis Program for High Level Noise. 2015-2 (CPL 04)
- Regional Emphasis Program for Fall Hazards in the Construction Industry. 2015-03 (CPL 04)
- Regional Emphasis Program- Silica. 2015-04 (CPL 04)
- Regional Emphasis Program for Tree Trimming and Clearing Operations. 2015-05 (CPL 04)
- Local Emphasis Program for Programmed Maritime Inspections. 2015-06 (CPL 04)
- Local Emphasis Program for Health Hazards in Metal Fabrication Except Structural. 2015-07 (CPL 04)
- Local Emphasis Program for the Health Care Industry. 2015-10 (CPL 04)
- Local Emphasis Program for Logging in West Virginia. 2015-12 (CPL 04)
- Local Emphasis Program for Ship/Boat Building and Repair. 2015-20 (CPL 04)

23 Feb 2015
Compliance Officer’s Responsibility

• To carry out the mandate given to the Secretary of Labor, namely, “to assure so far as possible every working man and woman in the Nation safe and healthful working conditions…”
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Tuesday, February 24, 2015
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Compliance Officer’s Responsibility

• Compliance officers carry out their responsibilities by conducting effective inspections to determine whether employers:
  – Furnish workplaces free from recognized hazards that are causing or are likely to cause death or serious physical harm to employees (this is the General Duty clause from the OSHA Act), and
Inspector’s Credentials

- Inspector displays credentials
- Asks to meet an appropriate employer representative
- Employers should always ask to see credentials.
- Employer can call local OSHA office to verify
Opening Conference

- Inspector explains the purpose of the visit
- Inspector explains how the establishment was selected
- Inspector explains what the likely scope of the inspection will be
Inspection Scopes

• **Comprehensive**: a substantially complete inspection of the potentially high hazards areas of a workplace.

• **Partial**: an inspection whose focus is limited to certain potentially hazardous areas, operations, conditions, or practices in a workplace.

  *Can expand a partial inspection based on information gathered during the inspection.*
Opening Conference

• Inspector determines if a consultation visit is in progress
• Inspector provides a copy of the complaint (if applicable)
• Inspector asks for an employer representative to accompany them during the inspection
Opening Conference

- Inspector asks for an authorized employee representative (union) to accompany them during the inspection
The Inspection Process, Walk Around

- Inspector proceeds through the establishment to identify safety and health hazards
- Inspector determines route and duration of the inspection
- Inspector talks privately with employees
The Inspection Process, Walk Around

- Inspector notes safety and health condition and practices
- Inspector takes photos/videotapes
- Inspector measures noise levels
- Inspector collects air samples to monitor employee exposure to toxic fumes, gases, and dust
The Inspection Process, Walk Around

• Inspector evaluates existing engineering controls
• Inspector examines records and programs
• Inspection may cover part or all of an establishment
• Trade secrets remain confidential
The Inspection Process, Walk Around

- Employees are consulted, in private, about safety and health conditions and practices
- Employees are protected from discrimination for exercising their rights
- Records (deaths, injuries, illnesses, first reports, haz com)
The Inspection Process, Walk Around

- Inspector points out unsafe or unhealthful conditions
- Inspector discusses feasible corrective action
- Violations corrected immediately may reflect employers good faith for penalty consideration
Quick-Fix Reduction: Employers will receive consideration for immediately abating identified hazards.
The Closing Conference

- Inspector reviews all observed unsafe and unhealthful conditions.
- Inspector indicates alleged violations for which a citation and penalty may be issued.
- Employer provided “Employer Rights and Responsibilities Following and OSHA Inspection (OSHA 3000)”.
The Closing Conference

• Inspector will not indicate any specific penalty but informs employer of appeal rights
• Good time for the employer to produce records of compliance efforts and provide information to help determine timeframes for abatement
The Closing Conference

- Inspector may determine if second closing conference is necessary (air monitoring)
- Inspector discusses OSHA’s full service resource program
- Separate closing conference if employee representative does not participate
The Closing Conference

- Inspector reports findings
- Area Director determines whether citations will be issued and whether penalties will be proposed
Inform the employer and employees of the regulations and standards alleged to have been violated along with penalties.

Inform the employer and employees of the proposed length of time set for their abatement.
Citations

- OSHA must issue a citation and proposed penalty within six months of the violation’s occurrence.
- Employer will receive citations and notices by certified mail or FedEx.
- Employer must post a copy of each citation at or near the place the violation occurred for 3 days or until it is abated.
Penalties

- Violations
  - other-than-serious
  - serious
  - willful
  - repeated
  - failure-to-abate
  - Posting Requirements
Other-Than-Serious

- Direct relationship to job safety and health but would not cause death or serious physical harm
- Penalty $0 to $7000 per violation
- May be adjusted downward as much as 95% (gravity, size, good faith, and history)
Serious

- Substantial probability that death or serious physical harm could result
- Penalty $1500 to $7000
- May be adjusted downward for size, good faith, and history
Willful

- Employer intentionally and knowingly commits:
  - Employer is aware of the hazardous condition
  - Employer knows it violates a standard or obligation of the Act
  - Employer makes no reasonable effort to eliminate the hazard
Willful

- Penalty $5000 to $70,000
- Criminal sanctions may be imposed if resulting in the death of an employee:
  - Penalty of $250,000 ($500,000 corporation)
  - or 6 months imprisonment
  - or both
Repeat

- Inspection reveals a substantially similar violation is found and the original citation has become final order
- Penalties up to $70,000 for each violation
Failure-to-Abate

• Employer fails to correct a prior violation
• Penalties up to $7000 per day beyond the prescribed abatement date
Additional Violations

• Falsifying records, reports, applications may bring criminal penalty of $10,000 or 6 months imprisonment, or both
• Posting requirements up to $7000
• Assaulting a CSHO, intimidating, or interfering with the inspection may bring a criminal penalty of $5000 and 3 years imprisonment
Penalty Factors

1. Gravity-Based Penalty
2. History
3. Good Faith
4. Size
5. Increased Minimum Penalties
6. Repeat Violations
7. Application of penalty adjustment factors
8. Severe Violator Enforcement Program
Appeals by Employees

• Employee (or authorized representative) may request an informal review if no citations are issued if a complaint initiated the inspection

• Employees cannot contest citations or penalties

• Employees can contest abatement dates
Appeals by Employees

- Employees can contest an employer’s Petition for Modification of Abatement (PMA)
- Must be done within 10 working days of posting
- Employees may request an informal conference with the Area Director to discuss issues of the inspection, citation, penalty, or employer’s notice of contest
Employer Options
The Occupational Safety and Health Administration would like to announce a new electronic payment option available to you.

You can make your payment electronically at [www.pay.gov](http://www.pay.gov). On the left side of the pay.gov homepage, you will see an option to Search Public Forms. Type “OSHA” and click Go. From the results, click on *OSHA Penalty Payment Form*. You can also use the direct link below.

[https://www.pay.gov/paygov/forms/formInstance.html?agencyFormId=53090334](https://www.pay.gov/paygov/forms/formInstance.html?agencyFormId=53090334)

You will be required to enter your inspection number when making the payment. Payments can be made by credit card or Automated Clearing House (ACH) using your banking information. Payments of $50,000 or more require a Transaction ID, and also must be paid using ACH. If you require a Transaction ID, please contact the OSHA Debt Collection Team at (202) 693-2170.

If you are offered an EXPEDITED INFORMAL SETTLEMENT AGREEMENT (EISA) with your citation and accepted the EISA you must sign and return the EISA to OSHA within 15 Federal working days (excluding weekends and Federal holidays) of the receipt of the citation.
Appeals by Employers

• Employer (who wishes to contest) must submit a written objection to OSHA within 15 working days

• Area Director forwards to the Occupational Safety and Health Review Commission (OSHRC)
Appeals by Employers

- Employer may request an informal conference with the Area Director
- Area Director is authorized to enter into settlement agreements
- Area Director may revise citations and penalties to avoid prolonged legal disputes for speedier hazard abatement
Petition for Modification of Abatement (PMA)

- Employer who has made good faith efforts to abate hazards but cannot due to factors beyond their control
- Employer must have interim protection
- Must be applied for, in writing, with reasons why additional time is needed
Petition for Modification of Abatement (PMA)

• Copy of the petition must be posted for employee notification (in the event they want to contest)
Notice of Contest

- Employer has 15 working days to contest the citation, penalty, or abatement period
- Must be in writing
- Must clearly identify basis for filing
Notice of Contest

- Will become “final order”, without appeal, if not submitted timely
- Must be posted in a prominent location or given personally to each employee
Review Procedure

- If timely, the Notice of Contest is forwarded to the OSHRC
- OSHRC is an independent agency not associated with OSHA
- Case assigned to an administrative law judge (ALJ)
Review Procedure

- Hearing scheduled near the employer’s workplace
- Employer and employees have the right to participate
- OSHRC does not require employer to have an attorney
Review Procedure

- Once the ALJ has ruled, any party may request further review by OSHRC
- OSHRC rulings may be appealed before the U.S. Court of Appeals
Severe Violator Enforcement Program (SVEP)
Does the Case Qualify for SVEP?
Any inspection that meets **one or more** of these criteria.

- **FATALITY**
  - \( \geq 1 \) W, R or FTA based on a serious violation related to a death of an employee or three or more hospitalizations

- **NON-FATALITY**
  - \( \geq 2 \) W, R or FTA based on **high gravity serious** violations related to a **High-Emphasis Hazard** *

- **NON-FATALITY**
  - \( \geq 3 \) W, R or FTA based on **high gravity serious** violations related to hazards due to the potential release of a highly hazardous chemical, as defined in the PSM standard

- **Egregious**
  - Any Egregious Enforcement Action

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*High Emphasis Hazards: **High gravity serious** violations of specific standards covered under falls or the National Emphasis Programs (NEPs), regardless of the type of inspection being conducted (e.g., complaint, SST, Local Emphasis Programs, National Emphasis Programs). Low and moderate gravity violations will not be considered for a SVEP case.*
Join the National Safety Stand-Down To Prevent Falls in Construction

MAY 4-15, 2015

The purpose of the National Fall Prevention Stand-Down is to raise awareness of preventing fall hazards in construction. Fatalities caused by falls from elevation continue to be a leading cause of death for construction workers, accounting for 279 of the 805 construction fatalities recorded in 2012. Those deaths were preventable. Fall prevention safety standards were among the top 10 most frequently cited OSHA standards, during fiscal year 2014.

Announcements

- Stand Tall, Stand Proud and Stand-Down for Fall Safety!

https://www.osha.gov/StopFallsStandDown/
Temporary/contingent workers, such as:

• day laborers,
• warehouse workers,
• hotel housekeepers, and
• other workers hired on a contingent basis through temporary agencies.
Major revisions to the HCS 2012

- **Hazard classification**: Provides specific criteria for classification of health and physical hazards, as well as classification of mixtures.

- **Labels**: Chemical manufacturers and importers will be required to provide a label that includes a harmonized signal word, pictogram, and hazard statement for each hazard class and category. Precautionary statements must also be provided.

- **Safety Data Sheets**: Will now have a specified 16-section format.
Pennsylvania OSHA Area Offices

Allentown Area Office
(267) 429-7542

Erie Area Office
(814) 874-5150

Harrisburg Area Office
(717) 782-3902

Philadelphia Area Office
(215) 597-4955

Pittsburgh Area Office
(412) 395-4903

Wilkes-Barre Area Office
(570) 826-6538

Main OSHA Number:
1-800-321-OSHA,
1-800-321-6742

Rev: 2014 April 4
Additional Assistance

Harrisburg Area Office

Duty Officer Hours
8:00 am - 4:30 pm

(717) 782-3902

Web Site:
www.osha.gov