



HazCom: CPL tells you what OSHA inspectors will look for

OSHA *finally* issued its compliance directive for the Hazard Communication Standard, which was revised Mar. 26, 2012. The new CPL 02-02-079, was anticipated before June 1, 2015, but was issued July 20, 2015, after agency delays.



The 124-page directive instructs OSHA inspectors on how to ensure consistent enforcement of 29 CFR 1910.1200; however, covered employers and HCMIDs (hazardous chemical manufacturers, importers, and distributors) now have access and can use the CPL to better understand the regulation, its revisions, and what inspectors are watching for.

First aid kit standard errors corrected

The voluntary first aid kit standard, ANSI/ISEA Z308.1 is again being revised — this time to correct four measurement errors relating to antibiotic and antiseptic volumes and splint and trauma pad sizes. The minor corrections in the 2015 edition come on the heels of the 2014 edition announced last January that introduced two kit classes and four type designations. Changes in both editions take effect in 2016. See safetyequipment.org.



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This instruction outlines the 2012 revisions, such as the revised hazard classification of chemicals, standardized label elements for containers of hazardous chemicals, and the new format and required content for safety data sheets (SDSs).

It explains how the revised standard is to be enforced before and after it's fully implemented on June 1, 2016. The CPL also explains what allowances may be made for HCMIDs that have exercised "reasonable diligence" and "good faith" to obtain compliant SDSs from upstream suppliers but have not received them.

Under §1910.1200(j), employers were required to train workers on

TB directive adopts 2005 CDC guidance

While OSHA does not have a comprehensive regulation for occupational exposure to *Mycobacterium tuberculosis*, the agency has long had a directive to instruct OSHA inspectors how to conduct inspections and issue citations under existing statute and regulations related to worker exposures to tuberculosis in healthcare settings. Now the agency updated this directive, effective June 30. The new CPL 02-02-078 supersedes CPL 02-00-106.

OMB activity relates to WWS, beryllium rules

On July 2, the Office of Management and Budget (OMB) *began* its review of the final rule to address walking-working surfaces and fall protection for general industry. OMB generally takes at least 90 to 120 days to review and approve a rule for publication in the *Federal Register*. The last OSHA agenda slated the rule for August 2015, however.

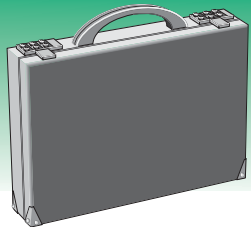
the new label elements and SDSs by Dec. 1, 2013. HCMIDs had to comply with revised SDS requirements by June 1, 2015. Manufacturers and importers also had to comply with new labeling provisions by June 1, 2015. Distributors still have until Dec. 1, 2015, to comply with labeling provisions as long as they are not relabeling materials or creating SDSs, in which case they must comply with the June 1 deadline.

With the issuance of CPL 02-02-079, OSHA is cancelling two former directives — CPL 02-02-038 and 02-02-039 — and two enforcement memos, dated Feb. 9, 2015, and May 29, 2015. Visit JKKeller.com/wsc.

OSHA explains that this directive reflects 2005 CDC guidance, which may be used to support a General Duty Clause citation. Other updates include coverage of additional healthcare settings, introduction of the blood analysis for *M. tuberculosis* (BAMT), use of the term tuberculin skin test (TST) instead of purified protein derivative test (PPD), and new risk classifications. Go to JKKeller.com/wsc.

On July 7, OMB completed its review of the proposed rule to reduce the agency's current permissible exposure limit and require provisions such as exposure monitoring and medical surveillance that are typical of OSHA health standards. This proposal may reach the *Federal Register* any day. Watch JKKeller.com/wsc.

In brief



Kinesiology tape

OSHA has reevaluated its classification of the application of kinesiology tape and finds that its use is included within the definition of first aid treatment, and thus the use of such tape alone would not be considered medical treatment. See 1.usa.gov/1KNVmys.

Oil and gas well sites

A hazard alert was issued to better protect workers conducting storage tank gauging, sampling, and fluid transfer activities at oil and gas well sites. See bit.ly/1KIE5db.

Heat illness video

OSHA's Campaign to Prevent Heat Illness in Outdoor Workers is now in its fourth year. A new video reminds employers and workers of the importance of water, rest, and shade. See bit.ly/1HSEWPj.

Powder-actuated tools

Oregon OSHA issued a fact sheet on powder-actuated tools. See bit.ly/1SCVKix.

Formaldehyde

The American Industrial Hygiene Association (AIHA) created a Formaldehyde Resource Center at bit.ly/1GEhJib.

EPCRA for oil/gas operations

A brochure covers drilling and production facility reporting for oil and gas operations under the Emergency Planning and Community Right-to-Know Act. See JKeller.com/wsc.

PCB manifest

EPA corrected an item number referenced in 40 CFR 761 for the Special Handling Instructions Box on the manifest form (EPA Form 8700-22). See JKeller.com/wsc.

Ferroalloys production

EPA finalized an emissions standard for the ferroalloys production source category. See JKeller.com/wsc.

Cal/OSHA alleged deficiencies have merit: OSHA



Last year the Public Employees for Environmental Responsibility (PEER) sent a letter to federal OSHA alleging that Cal/OSHA does not have an adequate number of inspectors to effectively protect public and private workers in the state. Federal OSHA investigated and found merit in four of five areas of concern:

- Cal/OSHA performs a much lower percentage of programmed inspections than federal OSHA (21.6 percent to 56.6 percent);
- Cal/OSHA failed to adhere to its own follow-up inspection policy;
- Cal/OSHA takes 33 and 69

percent longer to issue health and safety citations, respectively, than federal OSHA takes;

- Cal/OSHA's complaint response time is a concern (the longest time period for serious and non-serious hazards was 106 and 300 days, respectively, in fiscal year 2013).

In a letter dated June 26, federal OSHA says it believes inadequate staffing is partly to blame and encourages Cal/OSHA to improve staff levels. It also made several recommendations for the state agency to reverse the deficiencies. The state, in turn, is required to remedy these deficiencies or face federal sanctions. See bit.ly/1Kl0fik.

Food workers at increased injury/death risk

Workers involved in nearly every "step" of the modern food industry are at increased risk of work-related illness/injury and death, compared to other industries, reports a study in the July *Journal of Occupational and Environmental Medicine*, a publication of the American College of Occupational and Environmental Medicine (ACOEM).

According to the study, food industry workers overall had a higher rate of occupational illness and injury —

60 percent higher than workers in non-food industries. Severe injuries requiring time off work were more than twice as frequent in the food industry. Although occupational deaths were relatively rare, the risk was also higher in the food industry — 9.5 times higher.

ACOEM explains that the study also lends insights into the causes of injuries in specific types of food industry jobs. Read the article at bit.ly/1g6zgL3.

NIOSH offers ways to control flavoring hazard

Diacetyl is a food flavoring ingredient. However, NIOSH says workers who handle diacetyl or work in areas where diacetyl exposure occurs are at risk of developing severe lung disease if their exposures are not properly controlled. Now the agency has developed guidance in a variety of areas to reduce workers' expo-

sure to diacetyl through engineering controls, best work practices, and techniques for monitoring airborne diacetyl exposures. Although these guidelines emphasize diacetyl, they can be applied to reduce exposures to diacetyl substitutes such as 2,3-pentanedione and other alpha-diketones. Visit JKeller.com/wsc.

Indep. contractor or employee? WHD issues letter

The federal Wage and Hour Division (WHD) published an interpretation on July 15 to help employers evaluate whether a worker is an employee or an independent contractor. The WHD has found that many workers are misclassified as contractors and denied the protections available to employees, such as overtime pay and

workers' compensation.

The interpretation addresses six factors that all must be considered to determine whether the worker is economically dependent on the employer (and thus an employee) or is really in business for him or herself (and thus an independent contractor). See JKeller.com/hrc.

Electronic logging rule headed for OMB soon

A long-awaited final rule governing electronic logging devices (ELDs) for commercial drivers was expected to head to the White House on July 21, 2015, according to the latest projection from the FMCSA. However, that did not happen, and the rule is still missing in action at our press time. The rule has been undergoing review by the office of Transportation Secretary Anthony Foxx since June 1.

Yet, with pressure to publish the rule by Sept. 30, 2015, we'd anticipate the rule to arrive at the White House Office of Management and Budget (OMB) any day. Approval from OMB is the last step before the final ELD rule can be published and go into effect.

Team says FMCSA needs to focus on crash risk

DOT asked an Independent Review Team (IRT) to provide recommendations on ways FMCSA could improve motor carrier safety. While the IRT report was sent to DOT last summer, it was just made public now at 1.usa.gov/1LKdDN8.

According to the report, the CSA (Compliance, Safety, Accountability) methodology successfully identifies a large group of high-risk carriers and then assigns cases to the field. However, once that assignment is made, the system does not help field staff identify which specific carriers demand the most urgent attention.

State CDL testing oversight could be improved

Commercial motor-vehicle industry stakeholders have raised concerns that prospective drivers may face delays taking the "skills" test generally needed to obtain a commercial driver's license (CDL). A majority of states (29 of 50) use both state testers (i.e., departments of motor vehicle sites) and third-party testers to administer CDL driving skills tests.

As of July 2015, state CDL programs are subject to revised federal regulations that increase federal safety standards and place new requirements on states' licensing agencies.

The ELD rule will require most interstate commercial truck/bus drivers to begin using electronic recorders to track their hours of work. In other words, most who presently complete paper logs will likely need to switch to ELDs within two years after the rule's effective date.

The rule will also include technical specifications for electronic logs and new provisions related to the "supporting documents" that drivers and motor carriers must retain for auditing purposes. We also expect the rule to have an exception for drivers who only have to complete a standard log eight days or less within a 30-consecutive-day period. These drivers would be allowed to use paper logs instead of ELDs.

In fact, the IRT found that if there is a significant backlog of nearly-due or overdue investigations, the agency manages the workload primarily as a first-in-first-out production model and no longer as a risk-targeting application of resources.

The review team says meaningful enforcement needs to be risk-based and agile. The IRT suggests that to more effectively target the "worst of the worst," FMCSA should modify the queuing approach so that it can respond quickly to carriers whose safety performance degrades after a compliance review is assigned.

FMCSA must oversee states' compliance with these rules.

However, the Government Accountability Office now finds that FMCSA's policy on oversight of CDL programs is not clear, and there's no mechanism to accurately track these activities, consistent with federal standards for internal control. Therefore, FMCSA cannot provide reasonable assurance that state CDL programs comply with applicable federal regulations, the primary objective of FMCSA oversight. Visit gao.gov/assets/680/671429.pdf.

Comments on diabetes, oral testing proposals

The American College of Occupational and Environmental Medicine (ACOEM) weighed in with comments on the recent diabetes and oral drug testing proposals.



The organization supports simplifying driver qualification

rules for those with insulin-treated diabetes mellitus but has concerns with the proposal mostly over provisions that call for medical examiners to rely on the evaluation of a "treating clinician" to determine the safety of a driver. These treating clinicians may not be physicians and may be unaware of commercial driving hazards and trucker lifestyles, argues ACOEM.

The organization also supports the oral fluid testing proposal saying the "time has come" for this alternative testing method because it is more efficient and hygienic than urine testing, and oral fluid is less likely to be adulterated than urine. However, the organization requests FMCSA to direct personnel "to document a refusal to test when there is an obvious attempt at oral fluid adulteration." Read the comments from ACOEM at acoem.org/Public_Comments.aspx.

Should those under 21 be able to get a CDL?

Senator Deb Fischer (R-NE) introduced a bill that would allow drivers under age 21 to obtain a Class A commercial driver's license. The idea is to create jobs and help to solve the commercial truck driver shortage.

These drivers could only operate in a state or states where the governor has approved to participate, and participating states would provide minimum licensure standards acceptable for interstate travel. These standards may include age restrictions, distance from origin provisions, reporting requirements, or additional hours-of-service restrictions. Search for *s1672* at congress.gov.

DOI unveils proposed stream protection rule

The Dept. of Interior released proposed regulations to prevent or minimize impacts to surface water and groundwater from coal mining. The proposed changes would apply to both surface mines and the surface effects of underground mines. The Stream Protection proposal would revise 30 CFR 700-827 to:

- Clearly define “material damage to the hydrologic balance outside the permit area”;
- Collect adequate pre-mining data about the site of a proposed mining operation and adjacent areas to establish a baseline;
- Adjust monitoring requirements;
- Ensure protection or restoration of perennial and intermittent streams and related resources;
- Ensure permittees and regulatory authorities make use of advances in science and technology;
- Ensure that land disturbed by mining operations is restored to a condition capable of supporting the uses that it was capable of supporting before mining; and
- Codify the requirements to protect threatened or endangered species and designated critical habitat.

Visit 1.usa.gov/1LmOB5g.

Will waters of the U.S. rule stay afloat?

Over 20 states are challenging EPA’s Waters of the U.S. final rule in court. They also request to have the courts block the agency from enforcing the rule. Currently, the rule is set to take effect August 28. See 1.usa.gov/1HK0tfg and bit.ly/1MoOVcC.

Farm SPCC threshold to drop to 2,500 gallons

The Water Resources Reform and Development Act (WRRDA) calls for EPA to conduct a study to determine the aggregate aboveground oil storage capacity threshold for farms subject to the Spill Prevention Control and Countermeasure (SPCC) regulation.

The agency has now finished the study, and reports that, based on a lack of data to support any higher threshold, it is appropriate to set the threshold at the minimum of 2,500 gallons provided by the WRRDA amendments for farms, instead of the interim exemption of up to 6,000 gallons. EPA maintains that requiring measures, such as adequate containment, periodic inspection of containers, and regular review of oil handling practices, is an “appropriate way” to address the risk of spills to waters for farms storing 2,500 gallons or more aggregate aboveground oil storage capacity.

EPA will issue a rule amending 40 CFR 112 requirements associated with the applicability thresholds and other WRRDA amendments. If the 2,500 gallon threshold is finalized, it would become the threshold at or above which a farm must have a written SPCC plan. View 1.usa.gov/1fn66q1.

EPA inspectors use checklists for RMP audits

Does your facility fall under EPA’s Risk Management Program regulations at 40 CFR 68? EPA just posted two checklists that agency inspectors will use to inspect or audit Program 1 and 2 or 3 stationary sources.

Facilities holding more than a threshold quantity of a regulated substance in a process are required to comply with Part 68, implement a risk management program, and submit their program to EPA every five years.

Should a facility undergo an EPA

inspection, the latest checklists allow agency staff inspectors to run through key Part 68 provisions; indicate whether the provision is met, not met, or not applicable; and note in the comment field any



evidence supporting a found violation. The documents are divided into the Subparts and sections of Part 68.

Go to both 1.usa.gov/1CQK0Hn and 1.usa.gov/1fn6moK.

Ozone SIP and SNAP regulations in the news

Three ozone items popped up recently. On July 13, EPA found that 24 states have failed to submit complete “good neighbor” State Implementation Plans (SIPs). These plans must demonstrate how the state will address air pollution that crosses its border and impacts other states’ ability to attain and maintain the ozone standards established in 2008.

On July 16, the agency expanded the

list of acceptable substitutes under the Significant New Alternatives Policy (SNAP) program for use in five industry sectors. However, in a July 20 final rule, various hydrofluorocarbons (HFCs) and HFC-containing blends that were formerly listed as acceptable alternatives are now listed as unacceptable for uses in three industry sectors. Check out JJKeller.com/wsc.

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