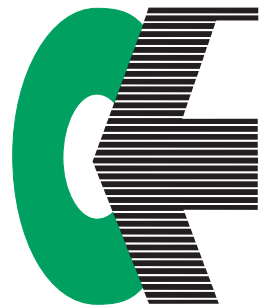


# J. J. KELLER'S Compliance Focus



Workplace Safety, Environment, Transportation, and More

## Bills press for broader OSHA coverage, stiffer fines

A single, willful OSHA violation that caused or contributed to the death of an employee could cost an employer \$250,000, and if convicted, a corporate officer may face 20 years in prison. Those are just two of the new provisions



proposed in legislation introduced by Senator Al Franken (D-MN) and House Rep. Joe Courtney (D-CT).

The Protecting America's Workers Act (PAWA) is intended to strengthen existing employee safety and health protections. Specifically, the provisions of S. 1112 and H.R. 2090 would amend the Occupational Safety and Health Act of 1970 to:

- Cover federal, state, and local public employees, and some private sector employees not currently covered, such as flight attendants;
- Amend the General Duty Clause to include all workers on a site;
- Direct OSHA to revise regulations for site-controlling employers to keep a log for all recordable injuries and illnesses among all employees on the site;
- Require employers to inform employees of their OSHA rights;
- Update the protections to give employees 180 days to file a



This newsletter is available online. Additional online features include: Editor's message, "Ask an Expert" tool, and a rolling 12-month archive. Read on the go with our mobile and tablet friendly interface.

[JJKellerPublications.com](http://JJKellerPublications.com)

whistleblower complaint;

- Increase penalties by making felony charges available; and
- Set a minimum penalty of \$25,000 for an employee's death caused by a willful violation.

Our online version of this newsletter offers a bonus comparison table of current civil and criminal penalties

## Groups urge OMB to release beryllium proposal

You'll recall that OSHA sent its Occupational Exposure to Beryllium proposal to the White House's Office of Management and Budget (OMB) back on September 4. According to guidelines under Executive Order 12866, as amended, the OMB must review a rule within 120 days maximum. However, it's been more than double that time and at press time, we see that the office has not yet completed its review.

This delay has not gone unnoticed by two organizations — Public Citizen and the American Industrial Hygiene

## OSHA: Assess hazards for PPE at each worksite

OSHA 29 CFR 1910.132(d)(1) calls for a hazard assessment of the workplace, but what if you have several locations? Do you have to assess each one for hazards? One case tries to answer that question.

The agency cited a company for not performing a hazard assessment at site A, despite the fact that the company argued it conducted an assessment at another site B, and the hazards would be similar because both locations have a similar layout.

The regulation is silent regarding the method an employer must use to

and those found in PAWA. However, where no fatality is involved, the maximum fine for a willful violation would amount to \$120,000, while the maximum for serious and other-than-serious violations would be \$12,000. The bills also include a provision for penalty increases or decreases to account for inflation. Search for the bill numbers at [congress.gov](http://congress.gov).

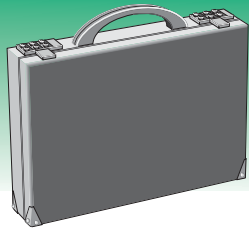
Association — who are now calling for the OMB to quickly wrap up its review and return the proposed rule to OSHA so the agency may publish it in the *Federal Register*. In this way, all stakeholders and the public will have a chance to weigh in on the rule.

OSHA intends to issue the proposed rule for beryllium to reduce the agency's current permissible exposure limit and require provisions such as exposure monitoring and medical surveillance, which are typical of OSHA health standards.

assess its workplace for hazards, so until another case comes up, we may never know whether the "sister-site" assessment would suffice. However, the preamble to the rule *does* indicate that the assessment must take into account the conditions specific to *each* worksite.

In the case, no one determined from a personal observation that the conditions at site A and B were the same. In other words, no one verified the equivalency of conditions between the two locations. Site A also did not otherwise undergo a hazard assessment. So the violation was affirmed.

## In brief



### Rail transport: Flammables

DOT announced a final rule for the safe transport of flammable liquids by rail. See [1.usa.gov/1FgARbQ](http://1.usa.gov/1FgARbQ).

### Fall stand-down certificate

Did you host or participate in the stand-down to prevent falls? You can print your Certificate of Participation to recognize your commitment to workplace safety by visiting [1.usa.gov/1kGzpDL](http://1.usa.gov/1kGzpDL).

### Construction workers

NIOSH issued a report that examines the risks to young immigrants working in small construction firms. See [1.usa.gov/1Fr6CMd](http://1.usa.gov/1Fr6CMd).

### Combustible dust levels

OSHA posted guidance in calculating the levels of combustible dust allowed to accumulate at workplaces. See [JKeller.com/wsc](http://JKeller.com/wsc).

### Ethanol processing safety

OSHA added a new chapter to its Technical Manual. The chapter covers the safety hazards of ethanol processing. See [1.usa.gov/1jOB70f](http://1.usa.gov/1jOB70f).

### Safety AND health program

Do you manage your safety program separately from your health and wellness program? A recent paper proposes integrating the two. See [bit.ly/1F0Mr13](http://bit.ly/1F0Mr13).

### CFATS guidance

The Dept. of Homeland Security posted guidance for the expedited approval program, a voluntary option for high-risk chemical facilities to submit their site security plans under the Chemical Facility Anti-Terrorism Standards (CFATS) at 6 CFR 27. See [1.usa.gov/1EmDstI](http://1.usa.gov/1EmDstI).

### Waste disposal facilities

EPA seeks comment by June 30 on draft guidelines for evaluating and adjusting the post-closure care period for hazardous waste disposal facilities. See [1.usa.gov/1LqYLaf](http://1.usa.gov/1LqYLaf).

## Four resources on fall and respiratory provisions

Hot off the presses, OSHA issued four publications — two on falls and two on respiratory hazards and protection. OSHA's new booklet *Protecting Roofing Workers* provides guidance in preventing roof falls, which accounted for nearly 1,200 fatalities between 2008 and 2012.

An updated publication, *Fall Protection in Construction*, is now available to help workers and employers better understand 29 CFR 1926 Subpart M and the criteria for fall protection at construction jobsites.

OSHA issued a new resource to help employers conduct medical evaluations in workplace situations where

respirators are required to protect employees from hazardous airborne contaminants. The new *Respirator Medical Evaluation Questionnaire Infosheet* provides the mandatory minimum required medical questionnaire for the evaluation required under 29 CFR 1910.134.

OSHA also released a new toolkit to help healthcare employers protect hospital staff from respiratory hazards on the job. The *Hospital Respiratory Protection Toolkit* includes information provided by the Joint Commission. Go to [JKeller.com/cmsc](http://JKeller.com/cmsc) and [JKeller.com/wsc](http://JKeller.com/wsc) to find respective publications.

## OSHA puts new spin on sight loss question

OSHA posted yet another letter of interpretation to clarify the eye loss reporting provisions under 29 CFR 1904.39. In the latest letter, dated April 7, 2015, OSHA first reiterated what it has been saying for months — that loss of sight without the physical removal of the eye is not a reportable event under the §1904.39.

However, don't leap to the conclu-

sion just yet that there's nothing to report. The letter added a bit more clarification. OSHA stated that if the case involving loss of sight results in the in-patient hospitalization of the worker within 24 hours of the work-related incident, then the event would be reportable.

Read the letter at [1.usa.gov/1IO8mTG](http://1.usa.gov/1IO8mTG).

## No statute of limitations for PSM violations

A company bought a refinery in which the prior owner conducted process hazard analyses and compliance audits in accordance with the



Process Safety Management Standard provisions §1910.119(e)(5) and (o)(4). The new owner, according to OSHA, was in violation

because it failed to address the findings and recommendations of the analyses and audits.

However, since those analyses and audits were conducted over six months prior to OSHA's inspection, the company thought the statute of limitations had passed. No such luck with process safety, said the Occu-

pational Safety and Health Review Commission (OSHRC).

The violations in the case fall under what's called the "continuing violations theory" and are not time-barred by the six-month statute of limitations. The commission's decision explains that the corrective actions required by the cited provisions directly address preventing or minimizing the consequences of catastrophic chemical releases, and failing to take those actions means the dangers described in the analyses and audits persisted.

That means each day that passed without the recommendations being addressed meant the violative conditions continued, and could be cited by OSHA. Therefore, OSHRC rejected the company's argument that the citations were time-barred.

Look for Docket No. 08-1386 at [oshrc.gov/decisions](http://oshrc.gov/decisions).

## NTSB touts vehicle onboard video systems

The National Transportation Safety Board (NTSB) released a safety report on the benefits of commercial vehicle onboard video systems. These systems record video either continuously or as the result of a trigger event. NTSB explains that video systems can be used to:

- Monitor passenger behavior and dissuade negative actions, such as bullying or theft;
- Monitor traffic surrounding the vehicle and assist in recording the observance of traffic laws; and
- Enhance driver safety through feedback programs that correct potentially unsafe behaviors.

## Concrete truck drivers granted limited exemption

FMCSA granted the National Ready Mixed Concrete Association (NRMCA) a limited exemption from the 30-minute rest break provision of the hours-of-service (HOS) regulations at 49 CFR 395.3(a)(3)(ii) for commercial motor vehicle (CMV) drivers operating ready-mixed concrete trucks.

Through April 3, 2017, these drivers may use 30 minutes or more of on-duty “waiting time” to satisfy the requirement for the 30-minute rest break, provided:

- The driver does not perform any other work during the break (wait time means time spent while

## Hazmat letter covers residue on equipment

If hazardous material residue cannot be removed from transporting pumps and mechanical equipment without special tools or the possibility of rendering the equipment unusable, can this residue be considered *integral to the equipment* when it is offered for transportation? PHMSA says yes.

A March 24, 2015, response letter explains that residue in components of equipment or machinery may be considered integral if the residue is necessary to the function of the

After a crash, NTSB also uses information from onboard video systems to help determine the probable cause and make recommendations.

In addition to benefits, the report addresses the importance of proper installation and maintenance of onboard video systems, in order to obtain useful video. NTSB explains that a video system should be able to show a view of what is happening in front of the vehicle and view all seating positions, including the driver. The system should also be capable of recording in low light or at night and offer higher frame rates. Visit [1.usa.gov/1Kgr9r7](http://1.usa.gov/1Kgr9r7).

waiting with the CMV at a job site or terminal and performing no other on-duty activities during this time);

- The driver has a copy of the exemption document in their possession while operating under the terms of the exemption;
- The motor carrier has a “satisfactory” safety rating with FMCSA or is unrated; and
- The carrier has a Safety Measurement System score below FMCSA’s intervention threshold, as shown at [ai.fmcsa.dot.gov/sms/](http://ai.fmcsa.dot.gov/sms/).

Roughly 68,000 drivers will be impacted. Membership in NRMCA would not be required to be eligible for the exemption. Check out [JJKeller.com/tmc](http://JJKeller.com/tmc).

equipment, its removal would cause damage to the equipment, or it performs some other function necessary to the equipment, such that it cannot be removed while in transportation.

The agency notes that the proper shipping names “Dangerous Goods in Machinery” and “Dangerous Goods in Apparatus” are appropriate for equipment that contains residue. The hazardous materials must comply with 49 CFR 173.222. See [1.usa.gov/1FeE7iz](http://1.usa.gov/1FeE7iz).

## Insulin-use prohibition proposed for removal

CMV drivers using insulin to control diabetes may soon be allowed to operate in interstate commerce without first obtaining an exemption from 49 CFR 391.41(b)(3). That’s because FMCSA published a proposal considering the amendment of its medical qualification standards to allow CMV operation by drivers who are healthy enough to drive safely.

Under the proposal, a driver’s treating clinician would be required to provide documentation annually to a health professional listed on the National Registry of Certified Medical Examiners who is performing the DOT medical qualification exam affirming that the driver’s insulin-treated diabetes mellitus is stable and well-controlled.

Unless and until the agency issues a final rule, insulin-dependent drivers must continue to hold exemptions from §391.41(b)(3) to operate in interstate commerce. FMCSA seeks comment by July 6 on the proposal. Go to [JJKeller.com/tmc](http://JJKeller.com/tmc).

## OIG examines high-risk carriers, PHMSA issues

On May 5, the DOT Office of Inspector General announced that it will be initiating two new audits. The first audit will assess FMCSA’s processes to ensure that compliance reviews of motor carriers flagged for investigation as high-risk carriers are timely and adequate. The concern is that FMCSA has failed to investigate a high-risk carrier in the past.

The second audit will assess PHMSA’s progress in addressing Congressional mandates and other federal recommendations issued since 2005, the agency’s process for and barriers to implementing those mandates and recommendations, and efforts to address safety issues raised by the DOT administration. Some have concerns with the time it takes PHMSA to meet its assignments. See [oig.dot.gov](http://oig.dot.gov).

## Breakthrough reached on TSCA reform bill

In bipartisan fashion six Senators held a press conference on May 7 to announce “major progress” on the bill to reform the Toxic Substances Control Act (TSCA). So far, 39 Senators (20 Republicans and 19 Democrats) cosponsor the bill.

The Senators proudly explained that several hurdles have been resolved so that S. 697 can finally reach the Senate floor. The compromise legislation would no longer preempt state activity on toxic chemicals. Rather, it now would allow states to co-enforce the federal law and set their own laws for “high-risk” chemicals. Various entities would also be able to challenge a “low-priority” designation.

## Agency sets new emission factors for VOCs

To resolve a legal case, EPA issued new and revised emission factors for volatile organic compounds for flares and other refinery process units. The agency also issued its final determination that revisions to existing emissions factors for tanks and wastewater treatment systems are not necessary. Visit [1.usa.gov/1KnGSoh](http://1.usa.gov/1KnGSoh).

## Portions of fuel rule withdrawn

EPA received adverse comment on certain elements of a direct final rule dated Feb. 19, 2015, involving tier 3 motor vehicle fuel. Therefore, the agency is withdrawing those elements of the rule. Those elements include amendments to 40 CFR 80.1453, .1616, and .1621. The remaining elements of the rule go into effect pursuant to the direct final rule. View [1.usa.gov/1SkOz0W](http://1.usa.gov/1SkOz0W).

## EPA seeks input on lead test kits

The Lead-based Paint Renovation, Repair, and Painting (RRP) Standard at 40 CFR 745 establishes two sets of criteria for lead test kits to be recognized by EPA — negative-response and positive-response. Lead test kits recognized before Sept. 1, 2010, must meet only the negative-response criterion, while kits recognized after that date must meet both the negative- and positive-response criteria.

Despite EPA’s efforts, to date no test kit has met both of these per-

formance criteria. Therefore, in an effort to understand the current state of the science for lead test kits and lead-based paint field



testing alternatives, as well as the existing market and potential availability of additional test kits, EPA is soliciting input by July 6. For details, go to [JJKeller.com/wsc](http://JJKeller.com/wsc).

## New mechanism to rescind GHG-related permits

On June 23, 2014, the Supreme Court said that EPA may not treat greenhouse gases as an air pollutant when determining whether a source is required to obtain a Prevention of Significant Deterioration (PSD) pre-construction permit or title V operating permit. The court determined that EPA regulations implementing that approach for determining whether a PSD or title V permit is necessary are

invalid.

Now EPA issued a direct final rule to provide a regulatory mechanism that the agency and delegated state and local permitting authorities need to begin to rescind PSD permits issued under Step 2 of the Greenhouse Gas Tailoring rule, which was published on June 3, 2010. The rule does not rescind any permits, however. Go to [1.usa.gov/1AizB66](http://1.usa.gov/1AizB66).

## Check out EPA deadlines that pop up in July 2015

You may have four EPA reporting/recording deadlines in July. Take a look:

**40 CFR 372** — By July 1, facilities in certain industries that manufactured, processed, or used certain chemicals or chemical categories in 2014 and met §372.22 criteria must submit Form R or Form A. See [epa.gov/tri](http://epa.gov/tri).

**40 CFR 141** — By July 1, public drinking water systems must deliver a consumer confidence report to the community served. If the water system sells water to other communities, then reports must be issued to buyers. See [1.usa.gov/1mLGsuI](http://1.usa.gov/1mLGsuI).

**40 CFR 761.180** — Two reports relate to this regulation. By July 1, facilities that used or stored at any one time 99.4 pounds or more of poly-chlorinated biphenyls (PCBs) contained in PCB containers, or one or more PCB transformers, or 50 or more PCB capacitors in 2014 must complete an annual document that logs the dispositions of PCBs and PCB items. Then by July 15, each owner or operator of a facility used for commercial storage or disposal of PCBs and PCB items must prepare an annual report for PCBs and PCB items that were handled as PCB waste during 2014. See [1.usa.gov/1Ao5zxAX](http://1.usa.gov/1Ao5zxAX).

Copyright 2015 J. J. Keller & Associates, Inc.

Neither the *Compliance Focus* nor any part thereof may be reproduced without the written permission of J. J. Keller. Government regulations change constantly, therefore, J. J. Keller cannot assume responsibility or be held liable for any losses associated with omissions, errors, or misprintings in this publication. This publication is designed to provide reasonably accurate information and is sold with the understanding that J. J. Keller is not engaged in rendering legal, accounting, or other professional services. If legal or other expert advice is required, the services of a competent professional should be sought.

DIRECTOR OF EDITORIAL RESOURCES: Paul V. Arnold

EDITOR: Tricia S. Hodkiewicz

CONTRIBUTING EDITORS: Kathy Close, Daren Hansen, Peter McLaughlin, Lisa Neuberger, Travis Rhoden, Angie Zernzsch

ISSN 1087-853X

GST R123-317687

(40961)

 **J. J. Keller**  
& Associates, Inc.<sup>®</sup>  
Since 1953

 Printed on  
Recycled Paper  
(30% Post Consumer)

 PRINTED WITH  
SOY INK