



REG REVIEWSM

February 2020

OSHA Revises National Emphasis Program to Reduce, Eliminate Worker Exposure to Silica

OSHA has issued a revised National Emphasis Program (NEP) to identify and reduce or eliminate worker exposures to respirable crystalline silica in general industry, maritime, and construction. The NEP – which took effect February 4 – targets specific industries expected to have the highest numbers of workers exposed to silica, and focuses on enforcement of the new silica standards? However, OSHA says it will conduct 90 days of compliance assistance for affected employers prior to beginning programmed inspections for the NEP.

Revisions to the NEP include:

- Revised application to the lower permissible exposure limit (PEL) for respirable crystalline silica to 50 micrograms per cubic meter ($\mu\text{g}/\text{m}^3$) as an 8-hour time-weighted average in general industry, maritime, and construction;
- Updated list of target industries – listed by NAICS codes – that OSHA area offices will use to develop randomized establishment lists for targeted inspections;
- OSHA compliance safety and health officers (CSHOs) will refer to current enforcement guidance for silica inspection procedures;
- OSHA regional and area offices must comply with the NEP, but are not required to develop and implement corresponding regional or local emphasis programs; and
- State Plan participation in the NEP is mandatory.

While the silica standards became effective in June 2016, construction employers were required to begin complying with their standard as of September 23, 2017, and general industry and maritime employers were required to begin complying with their standard as of June 23, 2018.

Cal/OSHA Issues Guidance on Protecting Healthcare Workers from Coronavirus

Cal/OSHA has issued guidance for employers on protecting healthcare workers from exposure to coronavirus. The guidance covers safety requirements when providing care for suspected or confirmed patients of coronavirus or when handling pathogens in laboratory settings in California.

Coronavirus is an airborne infectious disease covered by Cal/OSHA's Aerosol Transmissible Diseases (ATD) standard, which requires certain employers to protect workers from diseases and pathogens transmitted by aerosols and droplets.

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The ATD standard applies in healthcare facilities, laboratories, public health services, police services, and other locations where employees are reasonably anticipated to be exposed to confirmed or suspected cases of aerosol transmissible diseases. It requires covered employers to protect employees through:

- Written ATD exposure control plan and procedures;
- Training;
- Engineering and work practice controls;
- Personal protective equipment;
- Medical services, including vaccination and infection determination and treatment; and
- Laboratory operation requirements.

Affected California employers should review their health and safety procedures as well as the recommendations and standards detailed in the issued guidance.

Data Show Rise in Fatal Occupational Injuries To Older Workers

Fatal occupational injuries among workers age 55 and over are on the rise, according to data from the Bureau of Labor Statistics' Census of Fatal Occupational Injuries (CFOI) program.

Data from 1992 to 2017 show that the number of employees in the workplace age 55 and over more than doubled and that these employees incurred 56 percent more fatal work injuries in 2017 than in 1992. The trend was more pronounced for workers age 65 and older. During this same period, the number of fatal occupational injuries to workers age 54 and under declined.

For full-time equivalent (FTE) workers in 2017, the data show the following fatal injury rates:

- Workers age 65 and older: 10.3 per 100,000 FTE workers
- Workers ages 55 to 64: 4.6 per 100,000 FTE workers
- All workers: 3.5 per 100,000 FTE workers

The top three causes of fatal injuries involved roadway incidents falls to a lower level and being struck by an object or equipment.

Based on this data, employers of older workers will want to pay extra attention to the types of jobs assigned to older workers along with ergonomic issues. Job tasks should be carefully matched to the needs of the individual and may require adaptations of workplace conditions. In addition, older workers can benefit from a proactive health and wellness program.

Employing older workers provides many benefits to a workplace, including their greater institutional knowledge and experience. These workers often have more productive work habits, lower levels of job stress, and a cooperative mindset. They are also more likely to be aware of their own limitations and take a cautious approach to workplace risks.

OSHA Raises Penalties for 2020

OSHA, along with other Department of Labor agencies, will see an increase in penalties in 2020. The Department of Labor (DOL) released a pre-publication version of its final rule revising civil monetary penalties assessed or enforced in the regulations for 2020. The Penalties Inflation Adjustment Act Improvement Act of 2015 requires the DOL to adjust its assessed penalty levels no later than January 15 of each year.

OSHA's adjusted penalties for 2020 are shown in the following table. They will take effect January 15 and apply to any penalties assessed after that date.

Regulation	Type of violation	Penalty amounts - 2019	Penalty amounts - 2020
§1903.15(d)(1)	Willful violation, minimum	\$9,472	\$9,639
§1903.15(d)(1)	Willful violation, maximum	\$132,598	\$134,937
§1903.15(d)(2)	Repeated violation	\$132,598	\$134,937
§1903.15(d)(3)	Serious violation	\$13,260	\$13,494
§1903.15(d)(4)	Other-than-serious violation	\$13,260	\$13,494
§1903.15(d)(5)	Failure to correct violation	\$13,260	\$13,494
§1903.15(d)(6)	Posting requirement violation	\$13,260	\$13,494

May Employees Take FMLA Leave for the Coronavirus?

The 2019 Novel Coronavirus (2019-nCoV) has been justifiably making headlines as it continues to spread, and could easily make its way into the workplace, if it hasn't already. Employers may need to respond to the issue, walking a fine line between keeping the workplace safe and not stepping on employee rights.

Those rights include the FMLA, which entitles eligible employees to up to 12 workweeks of job-protected leave in a 12-month leave year period. Here's how the FMLA might apply to some situations:

- An employee has traveled through China and might have been exposed: If the employee is not incapacitated, the FMLA would not apply. You could require that the employee refrain from returning to work until cleared by a doctor.

- An employee has the condition but has no symptoms: You could require the employee to stay away from work and should report the situation to your local health department. You may also suggest that the employee seek medical attention. Since the employee is not incapacitated, the FMLA would not apply.
- An employee has the condition and is exhibiting symptoms: If the employee meets the FMLA eligibility criteria and is damaged to the point he or she is unable to work because of the condition, the employee would be entitled to FMLA protections for the related absence.

The issue might also involve an employee's family member, entitling an employee to take FMLA leave to care for the family member.

Beyond the FMLA

You are also prohibited from discriminating against individuals who are disabled or perceived as disabled because they are exhibiting symptoms suggestive of having contracted the coronavirus, per the Americans with Disabilities Act, or against individuals belonging to certain races or nationalities where the virus is most prevalent, per Title VII of the Civil Rights Act.

The ADA requires that you keep employee (and applicant) medical information confidential and separate from the general personnel file, so you should not share employee medical information. Therefore, while you might want to announce to all your employees if a coworker is at risk of or actually has the disease, please refrain.

Instead, as with any other transmittable disease, inform your employees on how to avoid the coronavirus. This includes frequently washing their hands with soap and water for at least 20 seconds; avoiding touching their eyes, nose, or mouth with unwashed hands; avoiding close contact with people who are sick, staying home when sick; covering coughs or sneezes with a tissue then throwing the tissue in the trash; cleaning and disinfecting frequently touched objects and surfaces; and generally using universal precautions. They may also wear a facemask when around other people who might have been exposed.

Roadcheck 2020 Will Focus on Driver Requirements

Driver requirements will be the emphasis of the 2020 International Roadcheck, hosted annually by the Commercial Vehicle Safety Alliance (CVSA).

This year's Roadcheck is scheduled to take place May 5-7, a month earlier than its traditional date. Organizers said the date change may allow for more favorable weather conditions in many of the participating jurisdictions across North America.

During that 72-hour period, commercial motor vehicle (CMV) inspectors throughout the United States, Canada, and Mexico will conduct roadside inspections on drivers and CMVs.

Driver requirement inspections

During the inspection, inspectors will collect and verify the driver's documents, identify the motor carrier, check the driver's license and record of duty status, and review periodic inspection reports.

If applicable, the inspector will also check the driver's medical examiner certificate, medical variance documents, and daily vehicle inspection report. Other driver-focused categories include seat belt use, sickness or fatigue, and alcohol and/or drug possession or impairment.

Driver requirements and vehicle mechanical fitness are the two primary parts of a North American Standard Level I inspection, a 37-step procedure. A third part, hazardous materials/dangerous goods, may also be part of a Level I inspection if applicable.

Driver violations reached almost 950,000 in 2019

Driver violations made up a significant number of violations in 2019, according to the Federal Motor Carrier Safety Administration (FMCSA).

Based on the most recent 2019 FMCSA data released on December 27, of more than 3.35 million inspections conducted, 944,794 resulted in driver violations, of which 195,545 were out-of-service conditions.

Prepare drivers for Roadcheck

Inspections are conducted every day of the year across North America, but drivers should realize that the risk of being stopped will increase during Roadcheck.

While the May 5-7 dates are important, Roadcheck should serve as a reminder to carriers and drivers that they should always be ready for roadside inspections regardless of the time of year.

Entry-level Driver Training Rule Delayed

The wait will continue for the entry-level driver training (ELDT) rule. The Federal Motor Carrier Safety Administration (FMCSA) has announced that all provisions of the rule, originally slated to go into effect February 7, 2020, will now become effective February 7, 2022.

Reasons for the delay

In its interim final rule, FMCSA states that the delay will give the agency extra time to complete development of the Training Provider Registry (TPR). When completed, the TPR will allow training providers to self-certify that they meet the training requirements. It will also provide the electronic interface that will receive and store ELDT certification information from training providers and transmit that information to the State Driver Licensing Agencies (SDLAs).

The delay also provides SDLAs with time to modify their information technology systems and procedures, as necessary, to accommodate their receipt of driver-specific ELDT data from the TPR.

About the rule

Work on this version of an ELDT rule began in 2015 under the rarely used negotiated rulemaking process. Under this process, 26 individuals, representing a cross-section of motor carrier interests, crafted an ELDT document that became the basis of the ELDT proposal, issued in March 2016.

The final rule, issued in December 2016, requires instruction on five areas of theory and just under two dozen behind-the-wheel training topics. The training must be provided by an entity that meets requirements related to curriculum, facilities, equipment, and instructor credentials. The training provider must be listed on FMCSA's TPR.

Commercial learner's permit (CLP) holders must successfully complete this training and provide proof of successful completing prior to taking the skills test to obtain a commercial driver's license (CDL).

The final rule also includes provisions for individuals obtaining a passenger, schools bus, or hazardous materials endorsement.

What does this mean?

The current process to obtain a commercial driver's license (CDL) will remain in place. This means that an individual with a commercial learner's permit (CLP) is not subject to a specific course of knowledge and skills training, provided by an FMCSA approved entity prior to taking the CDL skills test.

For training entities, this means not having to meet all of the curriculum, facility, and trainer requirements that would have been mandated by the rule. While some training entities may delay putting these provisions in place, others will continue to implement the requirements as a best practice measure in anticipation of the rule going into effect at a later date.

Though the rule is delayed for two years, continuing to develop an ELDT plan is recommended, as the curriculum changes are robust. It will take training entities considerable time to implement and become comfortable with all the new requirements.

FMCSA Drug and Alcohol Clearinghouse Website has Problems Verifying CDLs

Although the Drug and Alcohol Clearinghouse system is working after technical difficulties following its launch on January 6, 2020, users are experiencing intermittent issues verifying drivers' commercial driver's license (CDL) information.

The Federal Motor Carrier Safety Administration (FMCSA) has instructed those experiencing the problem to continue requesting the report until successful.

Check your entry

If the database does not recognize a driver's CDL, your first step is to make sure it was not an entry error on your part. The same would be true of a driver trying to register for a personal account.

The system does not recognize:

- Dashes

- Symbols
- Spaces

In addition, you need to confirm the correct state of issuance was selected.

If the CDL number was entered correctly, the error message is likely the site's inability to verify the license.

Meanwhile, handling driver queries

The sporadic technical difficulties do not have to disrupt your new hire process. An employer does not have to delay hiring and assigning a driver to a safety-sensitive position due to the pending query.

Instead, as previously communicated by FMCSA on the clearinghouse site, employers would use the procedures set forth in §391.23(e), the DOT testing history portion of the safety performance history inquiry. Once users can access the site, they would be expected to have the pre-employment query as required in §382.701(a).

Additional attempts at getting the pre-employment query should be timely. As evidence of your compliance efforts, it is suggested that employers take a screen shot of the clearinghouse message indicating that it is unable to verify the driver's CDL.

Deadline for Tier II Reporting March 1

EPA reminds affected employers that completed Tier II forms are due by March 1, 2020, under the Emergency Planning and Community Right-to-Know Act (EPCRA). The requirement to submit the Tier II inventory form applies to the owner or operator of any facility that is required to prepare or have available a safety data sheet (SDS) under OSHA's Hazard Communication Standard for any chemical present in the facility during the previous calendar year in quantities equal to or greater than the threshold amounts, unless the chemical is specifically excluded. The threshold amounts are listed in 40 CFR Part 370.

While states may have different reporting methods and requirements, many accept federal EPA's Tier2 Submit electronic chemical inventory report.

Tier II reporting is required under 40 CFR Part 370. Its intention is to give emergency responders, including state and local officials, and the public a heads up on the types and amounts of potentially hazardous substances being stored in facilities in or near their communities.

As FMCSA Crash Study Looms, do Your Drivers Know Post-Crash Procedures?

The Federal Motor Carrier Safety Administration (FMCSA) announced recently that it is planning to study the factors contributing to large truck crashes. The announcement comes just months after the National Highway

Traffic Safety Administration announced that fatalities involving crashes with large trucks increased slightly from 2017 to 2018.

Drivers take great pride in their safety records. But sometimes even the safest drivers are involved in an accident. When they do happen, you want to make sure your drivers are prepared for what's next.

Establish an accident procedure

Training drivers on the seven-step accident procedure can help drivers prepare for when the unexpected occurs. Accident-procedure training should be done periodically, as it is easy to forget what to do in a panic situation.

The driver should:

1. Stop immediately, remain calm, and do the following:
 - Pull the vehicle as far off the road as possible,
 - Shut the engine off completely,
 - Set the emergency brake, and
 - Turn on the four-way flashers.
2. Set out emergency warning devices within 10 minutes of stopping.
3. Check for injuries.
4. Notify law enforcement and be ready to provide the following information:
 - Accident location,
 - Number of people injured and severity of injuries,
 - Extent of property damage, and
 - Contact information.
5. Document the accident, including the following information:
 - Time, location, and weather/road conditions;
 - Description of damages;
 - Names and addresses of all involved and insurance companies;
 - Type, make, model, and license number of all vehicles involved; and
 - Name and department of investigating officer.
6. Notify the company and follow all company notification policies and procedures.

7. Complete a preliminary accident report.

When an accident happens, drivers need to take immediate action. Their initial response and ability to stay calm at the scene will contribute greatly to preventing the situation from escalating.

Encouraging Near-Miss Reporting

You can't address hazards if you don't know about them, and encouraging employees to report hazards is a great way to identify them. In particular, near miss incidents reveal conditions or work practices likely to cause future accidents. They are accidents waiting to happen, and if they aren't addressed, they will happen again — but may not be a “miss” next time.

Unfortunately, employees may be reluctant to report near miss incidents for fear of getting a coworker in trouble.

Getting started

Training on hazard recognition could be a good place to start. Obviously, employees won't report hazards if they can't recognize problems. Things like cluttered aisles or unlabeled chemical containers should be easily identified and reported. Once employees get comfortable reporting these things, they may be more likely to report near misses.

To encourage reporting, you'll need to address employees' concerns of getting a coworker in trouble for reporting unsafe conduct. First, explain that any discussion with the reported employee will focus on safety, not on discipline. You'll assume the employee simply didn't know or understand something, even if the hazard was previously covered in training. You'll use the opportunity to reinforce training (and you might even identify a need for additional training). Discipline should not occur unless these reminders fail to correct the problem.

Next, point out that unsafe conduct cannot be allowed to continue. Ask employees how they'd feel if they witnessed a near miss, didn't report it, and the next incident resulted in serious injury to a coworker. The witness might have prevented the injury by reporting the near miss. Further, ask them, “what if YOU were injured because you didn't report the near miss?” After all, unsafe conditions could affect anyone.

Tracking near misses

Once employees start reporting near misses, you can look for patterns to address. You probably already review your [300 Log](#) to identify hazards. However, you shouldn't have many serious injuries on your 300 log. In fact, if your 300 Log has enough serious injuries to identify hazard patterns, you're probably way behind the curve.

With a small number of serious injuries, the limited data set may prevent you from finding patterns. Adding near miss incidents to the data can help you identify conditions or work practices likely to cause injuries, and then take action to address them before an injury occurs.

Explain all of this to your employees. You need their help to identify hazards and unsafe behaviors. Your goal isn't to "catch" someone doing something wrong. Rather, your goal is to prevent injuries by addressing dangerous situations. If they do not report unsafe conditions, they increase the risk of injury to their coworkers and to themselves. That's what you mean when you tell them that safety is everyone's responsibility.

Training Employees Who Call for Emergency Help

You have an action plan in case of a fire or other emergencies. If one of those potential emergencies is a hazardous chemical release, however, your employees may need special training even if they only alert the proper authorities before evacuating.

Employees likely to witness or discover a significant hazardous substance release may be expected to notify the proper authorities. For example, a security guard might be expected to recognize an emergency release and contact authorities. Under OSHA's Hazardous Waste Operations and Emergency Response (HAZWOPER) standard, such employees must be trained at the first responder awareness level, even if they take no action beyond notification.

Among other things, that training covers hazardous substances and risks, an understanding of potential outcomes, and the ability to recognize an emergency. There is no specific number of hours required in this training; rather, OSHA says the employee must develop the required competencies regardless of how long it takes.

Incidental or emergency?

Not every chemical spill creates an emergency. OSHA recognizes a difference between an incidental and an emergency release. An incidental release does not pose a significant safety or health hazard to employees in the immediate area or to the employee cleaning it up and it does not have the potential to become an emergency in a short time frame. It may be safely cleaned up by employees familiar with the hazards (think of hazard communication training). OSHA gave an example of workers repairing a small leak caused by routine maintenance, where the release can be addressed without threatening the safety or health of employees.

However, the properties of the material (toxicity, flammability, volatility, etc.), local ventilation, and even the availability of personal protective equipment may impact whether a release is incidental, or constitutes an emergency. Even a relatively small release could be an emergency in the right (or wrong) circumstances.

Containing a release

The HAZWOPER standard requires training beyond the awareness level for employees who take further actions. The first responder operations level requires eight hours of training, and allows the employee to respond defensively. The worker would not try to stop the release, but could contain it from a safe distance and keep it from spreading by placing sorbent, constructing dykes, shutting off valves outside the danger area, or activating emergency control systems. If an employee will approach the point of release in order to stop the release, the individual would require 24 hours of training at the hazardous materials technician level.

Now, if workers decide they cannot (or should not) respond and simply evacuate the area, they would not need HAZWOPER training — not even at the first responder awareness level, if they aren't expected to contact authorities. They may have received training under the hazard communication standard, but would otherwise follow your emergency plan under 1910.38.

When Do I Need a Trip Permit?

Motor carriers are not required to apportion vehicles at or below 26,000 pounds, but some carriers still opt to do so. Particularly relevant to this decision is whether the states you operate in require trip permits.

Compliance? It's complicated

For carriers operating trucks between 10,001 and 26,000 pounds, compliance can be confusing, especially when it comes to the International Fuel Tax Agreement (IFTA) and the International Registration Plan (IRP).

IFTA and IRP apply to:

- Interstate vehicles with a gross weight or registered gross weight over 26,000 pounds;
- Combinations with a gross weight over 26,000 pounds; or
- Vehicles with three or more axles regardless of weight (counting axles on the power unit only).

IFTA does not apply for trucks or combinations with two axles that are at or under 26,000 pounds gross weight or registered gross weight.

However, when trucks or combinations have two axles and are at or under 26,000 pounds gross weight or registered gross weight, the determination as to whether you need IRP apportioned plates becomes complicated.

Registration options

Under IRP, vehicles that have two axles and are at or under 26,000 pounds can be registered with apportioned plates at the registrant's option. In considering whether this is the right move, motor carriers must investigate the situation on a state-by-state basis.

Some states — but not all — require trip permits or apportioned plates to operate vehicles into or within those states. If you choose to apportion your vehicles between 10,000 and 26,000 pounds, it depends both on the states in which you operate, the exact nature of your business in the other states, and the frequency of operation in those states.

If trips are infrequent, then trip permits may be best. But if you operate frequently in states that require trip permits for these vehicles, the most cost-effective strategy might be apportioning for interstate travel.