

# OSHA

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## OSHA under Obama: What can be accomplished in the final year?

OSHA, under President Barack Obama, has many items left on its regulatory agenda. But OSHA will be unable to accomplish many tasks in the time left in the current administration. With limited time and limited resources, here's a review of what OSHA might accomplish in the remaining months of Obama's presidency.

### Silica and beryllium

Every expert who spoke to *OSHA Up To Date* agreed that a final rule on silica likely will be released before Obama leaves office.

"It's clearly now the agency's top rule-making priority," said Luke George, senior government relations manager at the National Safety Council. "This is a rulemaking they feel could make the greatest impact in the time they have left."

OSHA has been publicly working on updating its silica rule for more than a decade, and it issued a proposed rule two years ago. The agency was scheduled to analyze comments this past summer, but it gave no indication on when the final rule would be issued.

However, a silica standard faces strong opposition from some industry and employer groups, who have questioned the need for a lower permissible exposure limit, according to Marc Freedman, executive director of labor law policy for the U.S. Chamber of Commerce.



Although a proposed beryllium rule was issued in August, stakeholders feel this standard has a strong chance of being finalized before January 2017. The rule is small in scope, and was developed with input from both labor and industry. This makes beryllium less controversial.

(See "OSHA seeks to strengthen Beryllium Standard" on p. 2.)

### Recordkeeping

OSHA has placed a great deal of focus on recordkeeping, and two new rules

could be issued in the next 15 months, stakeholders say.

One rule would require many employers to regularly submit their injury and illness records; those records then would be made publicly available. The other rule is a clarification that recording an injury is an "ongoing obligation," which would work around a court ruling barring OSHA from citing an employer past a six-month statute of limitations.

"If you look at OSHA, for not being able to do much for six years, all the

— article continues on p. 4

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## OSHA seeks to strengthen Beryllium Standard

OSHA is proposing to dramatically lower its decades-old permissible exposure limit for beryllium to one-tenth of the current level.

The current PEL for the metal is 2.0 micrograms of respirable beryllium per cubic meter of air. The agency's proposal would set the PEL at 0.2  $\mu\text{g}/\text{m}^3$ . An official notice of proposed rulemaking was published Aug. 7.

The rule is a "long overdue step" toward better protecting workers from harmful beryllium exposures, OSHA administrator David Michaels said during an Aug. 6 press conference.

Beryllium exposure has been linked to lung cancer, and workers who inhale beryllium particles are at risk of developing chronic beryllium disease – an incurable and potentially fatal lung

condition. According to OSHA, the new rule would protect about 35,000 general-industry workers, as well as prevent nearly 50 serious illnesses and 100 deaths from chronic beryllium disease and lung cancer each year. OSHA estimates that the proposed rule would cost workplaces about \$37 million per year but would result in \$575 million in annual benefits for the next 60 years.

The proposal's requirements are supported by industry and labor, Michaels said, adding that their help in developing the rule gave the agency "momentum" to complete the rule. Specifically, the United Steelworkers and material manufacturer Materion Corp. took part in a historic collaboration to craft the rule's framework.

Materion, based in Mayfield Heights, OH, is the only U.S. producer of pure

beryllium metal. The company has partnered with NIOSH for two decades in an effort to learn how workers can be protected from beryllium.

Although considered an improvement over the current rule, the proposed rule does not cover workers exposed to trace amounts of beryllium in raw materials. This includes employees at coal-burning power plants and aluminum production facilities, as well as workers who perform abrasive blasting work with coal slag in the construction and maritime industries.

OSHA is interested in finding out more about beryllium-specific exposure among workers, Michaels said, as the agency currently lacks enough data to promulgate a new beryllium PEL in certain fields. Stakeholders have until Nov. 9 to comment on the proposal.

## ASK THE EXPERT

with Rick Kaletsky

**Q:** Must portable (handheld) powered saws have a "dead man's" control?

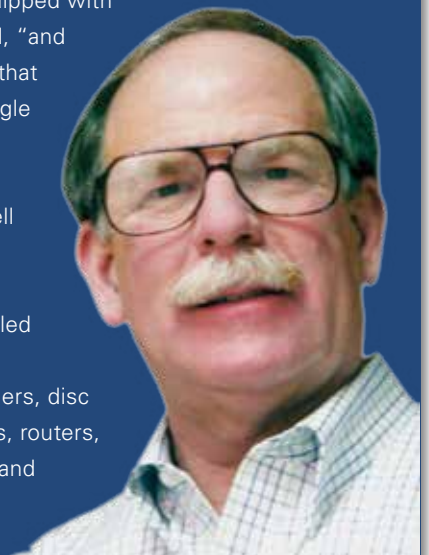
**A:** 1910.243(a)(2), which is seldom referenced, addresses many of those saws, while using the more up-to-date term: "constant pressure switch or control."

1910.243(a)(2)(i) states that circular saws having a blade diameter greater than 2 inches, and chain saws that are electric, hydraulic or pneumatic, must be equipped with a constant pressure switch or control that will shut off the power when the pressure is released. The standard (with slightly different language) adds that gasoline-powered chain saws must be equipped with a constant pressure throttle control, that will shut off the power "to the saw chain" when the pressure is released.

1910.243(a)(2)(ii) more liberally (with less stringent safety requirements) states that reciprocating saws, saber saws,

scroll saws, and jig saws with blade shanks greater than a nominal one-fourth inch must be equipped with a constant pressure switch or control, "and may have a lock-on control provided that turnoff can be accomplished by a single motion of the same finger or fingers that turn it on."

Portions of 1910.243(a)(2) also spell out requirements for switches and controls on other handheld, powered tools. These tools include (with detailed criteria, in some cases): percussion tools, tappers, fastener drivers, grinders, disc sanders, belt sanders, platen sanders, routers, planers, laminate trimmers, nibblers and shears.



Former OSHA inspector turned consultant **Rick Kaletsky** is a 44-year veteran of the safety industry. He is the author of "OSHA Inspections: Preparation and Response," published by the National Safety Council. Now in its 2<sup>nd</sup> edition, the book has been updated and expanded. Order a copy at [www.nsc.org](http://www.nsc.org), and contact Kaletsky with safety questions at [safehealth@nsc.org](mailto:safehealth@nsc.org).

## In Other News...

### OSHA directive details new resolution process for whistleblower disputes

A new OSHA directive outlines procedures for the agency's new process in assisting early resolution of whistleblower disputes.

The new process is part of OSHA's regional Alternative Dispute Resolution program, which facilitates whistleblower settlement negotiations. ADR processes aim to assist whistleblowers and respondents in resolving complaints in a cooperative and voluntary manner, and more quickly than through the traditional whistleblower investigative process.

OSHA ran an ADR pilot program in two regions from October 2012 to September 2013. The program was successful enough in resolving whistleblower disputes to prompt OSHA to expand the ADR program to all of its regions.

OSHA oversees whistleblower provisions under 22 statutes protecting employees who report violations of laws, including occupational safety, health insurance, food safety, transportation and nuclear.

Read the directive at <http://tinyurl.com/lou67aaz>.

### OSHA updates National Emphasis Program on amputations

OSHA has updated its National Emphasis Program on amputations to reflect the latest enforcement and injury data, the agency announced Aug. 13.

The updated NEP, which went into effect June 30, will focus on worksites in 80 industries, including bakeries, forging and several types of manufacturing sectors such as home products, concrete products, and motor vehicle body. The inspections will focus on employee exposures to machinery or equipment that could cause

## OSHA STANDARD INTERPRETATIONS

OSHA requirements are set by statute, standards and regulations. Interpretation letters explain these requirements and how they apply to particular circumstances, but they cannot create additional employer obligations. Enforcement guidance may be affected by changes to OSHA rules.

### Clarification regarding the applicability of the recording criteria for an injury occurring while commuting to or from work

**Standard:** 1904.5

**Date of response:** April 13, 2015

**Scenario:** An employee is commuting from home to work in a company vehicle. The employee is involved in a motor vehicle accident and sustains injuries that require medical treatment beyond first aid. Is this a recordable injury?

**Response:** The injury is not considered work related and is therefore not recordable on the OSHA Log.

OSHA's recordkeeping regulation at Section 1904.5(b)(2)(vii) allows an employer to exclude cases where an employee is injured in a motor vehicle accident while commuting from home to work or from work to home. The mode of transportation is not determinative of OSHA's definition of an employee's commute. Under your scenario, the daily trips between the residence and work site are considered the employee's commute, regardless of whether they are made by personal vehicle or company-provided vehicle. An accident occurring during the employee's commute is not considered work-related.

**Amanda Edens, director**

Directorate of Technical Support and Emergency Management

Excerpted from: [www.osha.gov/pls/oshaweb/owadisp.show\\_document?p\\_table=INTERPRETATIONS&p\\_id=29402](http://www.osha.gov/pls/oshaweb/owadisp.show_document?p_table=INTERPRETATIONS&p_id=29402)

amputations during operations such as jam clearing, cleaning and greasing.

About 2,000 workers suffered an amputation on the job in 2013, with employees in the manufacturing industry experiencing an amputation rate more than twice that of all private industry, Bureau of Labor Statistics data shows.

### Interactive OSHA webpage offers details on large fines

A new webpage from OSHA highlights recent fines levied against employers for safety and health violations.

Announced Aug. 17, the webpage features an interactive map with a listing of every penalty greater than \$40,000 that



federal OSHA has issued in each state since Jan. 1. Other details include the name of the employer cited, the city, the penalty amount and the date the penalty was issued. Visitors can click for additional information on each case, including what specific rules were violated.

OSHA said it will update the page weekly. Access the page at [www.osha.gov/topcases/bystate.html](http://www.osha.gov/topcases/bystate.html).

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recordkeeping stuff is huge,” said Dave Heirdon, manager of government affairs and policy for the Des Plaines, IL-based American Society of Safety Engineers. “I think that’s going to be their legacy.”

Despite some controversy surrounding the feasibility of the electronic recordkeeping proposal, a final rule was expected in September. At press time, the rule had not been published.

### Unlikely rules

Two major rules unlikely to be issued in the remainder of Obama’s presidency are injury and illness prevention programs and combustible dust.

I2P2 originally was OSHA’s No. 1 priority, but the agency’s focus in this area has shifted to encouraging employers to adopt prevention programs. George speculated that OSHA put I2P2 on the back burner because of lack of resources. When agency staff looked at its agenda, they likely determined they could get a rule on silica finalized by the end of the administration but not I2P2, he said.

OSHA has been working on a rule addressing combustible dust since 2009, and many stakeholder groups – including the Chemical Safety Board – have been pushing for the agency to move on it. OSHA has indicated that it intends to convene hearings under the Small Business Regulatory Enforcement Fairness

Act on the rule in 2016. If those hearings take place, Freedman said, it is likely the agency has a draft regulation. “That suggests they could get a proposal on the street,” he said.

Although this won’t amount to a final rule before Obama walks out of the Oval Office, it could result in a proposed rule on which stakeholders could comment. What happens after that would depend on Obama’s successor.

### Non-regulatory actions

Issuing rules may not be the only action OSHA takes as Obama’s administration comes to a close. “I worry about the interpretations and the guidances and the sub-regulatory actions,” Freedman said.

An example includes using the Hazard Communication Standard or NFPA consensus standards to cite employers for combustible dust hazards. Another example are permissible exposure limits, which Freedman alleged are a possible means by which OSHA can cite employers for failure to meet voluntary limits well-publicized by other agencies and organizations.

The agency also could pursue more employer-friendly initiatives, such as continuing its Spanish-language outreach and compliance assistance efforts. Several guidances could be issued, including on I2P2, and protecting temporary and contract workers.