

OSHA Enforcement Update

OSHA - Austin Area Office

Casey Perkins, Area Director

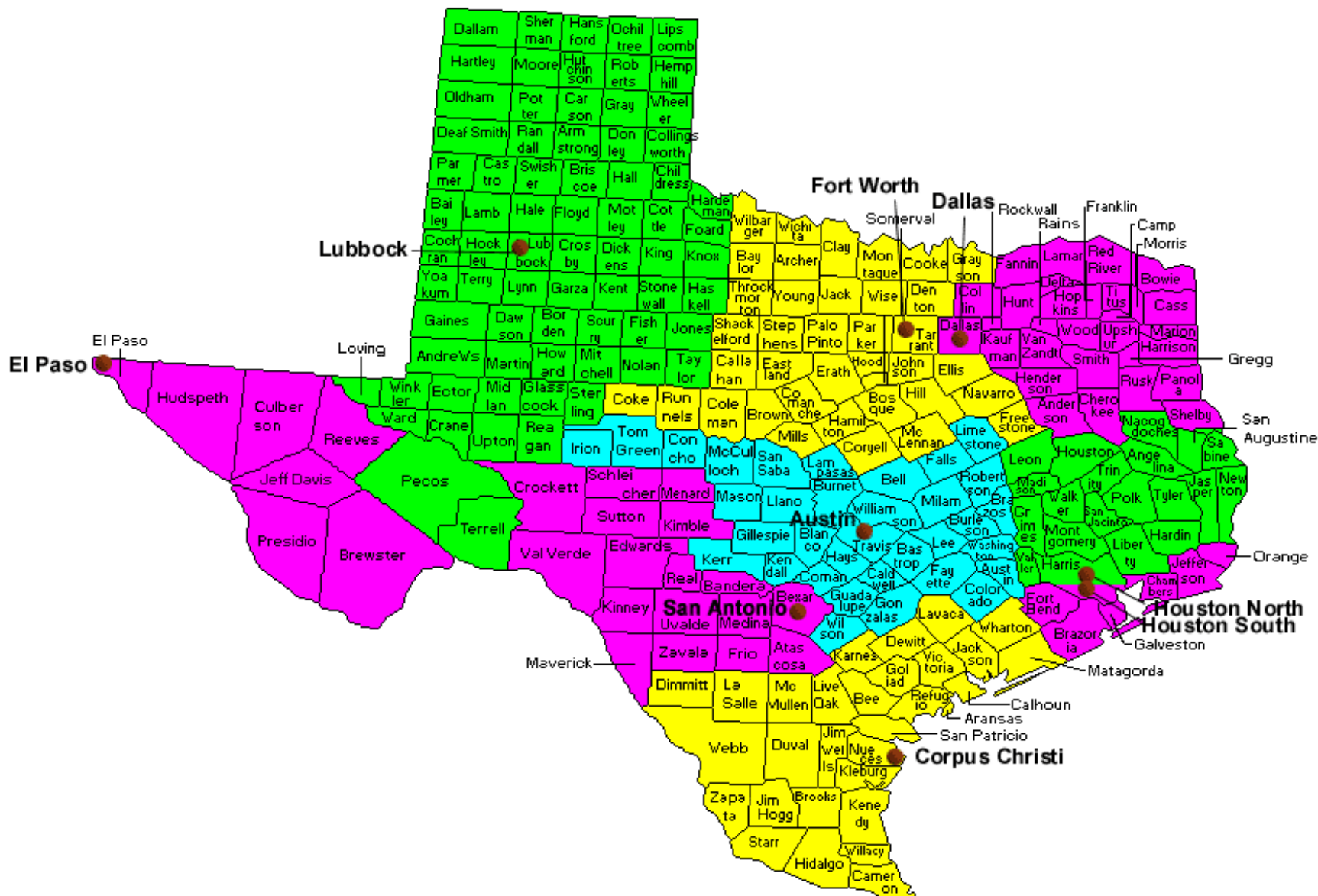
Elizabeth Slatten, Asst. Area Director

Michael Jarvis, Asst. Area Director

Joann Natarajan, Compliance Assistance

Lyndol Miller, Voluntary Protection (VPP)





How did OSHA pick Me?

- Inspection priorities:
 - 1) Imminent Danger
 - 2) Fatalities
 - 3) UPA – Complaints & Rapid Response
 - 4) Programmed Inspections



Inspection Priorities

- Imminent Danger = likely to be seriously injured or killed due to the condition.
- Ex: Ees in a trench, after rain, over their heads, with no shoring or sloping.
- Ex: Ees removing asbestos without wearing respiratory protection.
- Ex: Ee on a pallet on forklift changing light bulbs.

Workplace Fatalities



- Whenever a worker dies on the job, OSHA is required by law to conduct an investigation

Rapid Response Investigations (RRI)

- As of January 1, 2015, employers are required to report worker injuries that result in an in-patient hospitalization, loss of eye or amputation to OSHA within 24 hours
- OSHA is deciding on a case-by-case basis which of these to inspect, currently 40% of these cases
- Non-inspected RRI's receive an enhanced phone/fax procedure.



RRI's

- Purpose of the RRI reporting rule is to gather information, and direct targeting of OSHA's limited resources
- The reporting has resulted in about 1000 reports nationwide per month.
- Texas is averaging 200+ reports a month
- OSHA has found that grocery stores are having amputation cases



Programmed Inspections = OSHA Priorities

- NEP / REP – Emphasis Programs
 - Noise, Amputation hazards
 - Fabricated metals, Process Safety Mgmt
 - Lead, Hex Chrome, Combustible Dust
 - Trenching, Silica, Fall Protection
- OSHA outreach letters to employers
- Random inspection lists



How to Pique OSHA's curiosity

- Injury to worker under Age 18
- OSHA History – inspections / complaints
- Media, Fire Dept., EMS referrals
- Temporary Workers



Local Trends

- Machine Guarding & LO/TO violations
- Fall Protection in General Industry
- Forklift operation – Fall, Crash, Struck-by
 - Elevating Workers w/o ENGINEERING
- Electrical

Onsite Inspections

- 300 – 400 onsite inspections per year
- 12 Fatalities per year
- 800 Non-formal inquiries
- 50 : 50 Construction vs. General Industry
- 90% with Serious, Willful, Repeat vios.
- Historically 25% are In-compliance

Official OSHA Process

- Illegal for advanced notice of an inspection
- Unannounced, but highly identifiable
 - Agency credentials/badge
 - Business cards
 - Call OSHA 1-800-321-OSHA; Local Office
- Mgmt ranks for Opening Conference
- No money, Nothing for Sale



Inspection Process

- 300 Logs, training Records, written programs are reviewed
- Photos of hazards and conditions
- Workers - interviewed confidentially
- Managers - interviewed on support

Inspection Process

- Official close of onsite inspection
- Closing conference shares Hazard Concerns
- Officially notified of the hazards via a written document = The Citation

Post Inspection Process

- From receipt of citation, a 15 Federal working day period to DECIDE:
- Employers can:
 1. Accept the citation as proposed
 2. Request an informal conference
 3. Contest the penalty, abatement date or violations = Written Notice of Contest

Simple Case Study

CSHO identifies a Hazard...



CSHO moves in...



Working from Aerial Bucket without a Harness.





U.S. Department of Labor
Occupational Safety and Health Administration
Robinson Plaza
55 N. Robinson, Suite 315
Oklahoma City, OK 73102
Phone: (405)278-9560 FAX: (405)278-9572



Citation and Notification of Penalty

To:
Public Service Co. of Oklahoma

and its successors
212 E. 6th St.
Tulsa, OK 74119

Inspection Site:
K St. & Main St.
Quinton, OK 74561

Inspection Number: 312379795
Inspection Date(s): 11/21/2008 - 11/21/2008

Issuance Date: 12/08/2008

The violation(s) described in this Citation and Notification of Penalty is (are) alleged to have occurred on or about the day(s) the inspection was made unless otherwise indicated within the description given below.

This Citation and Notification of Penalty (this Citation) describes violations of the Occupational Safety and Health Act of 1970. The penalty(ies) listed herein is (are) based on these violations. You must abate the violations referred to in this Citation by the dates listed and pay the penalties proposed, unless within 15 working days (excluding weekends and Federal holidays) from your receipt of this Citation and Notification of Penalty you mail a notice of contest to the U.S. Department of Labor Area Office at the address shown above. Please refer to the enclosed booklet (OSHA 3000) which outlines your rights and responsibilities and which should be read in conjunction with this form. Issuance of this Citation does not constitute a finding that a violation of the Act has occurred unless there is a failure to contest as provided for in the Act or, if contested, unless this Citation is affirmed by the Review Commission or a court.

Posting - The law requires that a copy of this Citation and Notification of Penalty be posted immediately in a prominent place at or near the location of the violation(s) cited herein, or , if it is not practicable because of the nature of the employer's operations, where it will be readily observable by all affected employees. This Citation must remain posted until the violation(s) cited herein has (have) been abated, or for 3 working days (excluding weekends and Federal holidays), whichever is longer. **The penalty dollar amounts need not be posted and may be marked out or covered up prior to posting.**

Informal Conference - An informal conference is not required. However, if you wish to have such a conference you may request one with the Area Director during the 15 working day contest period. **To schedule an informal conference, you must contact this office by telephone.** During such an informal conference you may present any evidence or views which you believe would support an adjustment to the citation(s) and/or penalty(ies).

If you are considering a request for an informal conference to discuss any issues related to this Citation and Notification of Penalty, you must take care to schedule it early enough to allow time to contest after the informal conference, should you decide to do so. Please keep in mind that a written letter of intent to contest must be submitted to the Area Director within 15 working days of your receipt of this Citation. The running of this contest period is not interrupted by an informal conference.

If you decide to request an informal conference, please complete, remove and post the page 4 Notice to Employees next to this Citation and Notification of Penalty as soon as the time, date, and place of the informal conference have been determined. Be sure to bring to the conference any and all supporting documentation of existing conditions as well as any abatement steps taken thus far. If conditions warrant, we can enter into an informal settlement agreement which amicably resolves this matter without litigation or contest.

Right to Contest - You have the right to contest this Citation and Notification of Penalty. You may contest all citation items or only individual items. You may also contest proposed penalties and/or abatement dates without contesting the underlying violations. Unless you inform the Area Director in writing that you intend to contest the citation(s) and/or proposed penalty(ies) within 15 working days after receipt, the citation(s) and the proposed penalty(ies) will become a final order of the Occupational Safety and Health Review Commission and may not be reviewed by any court or agency.

Penalty Payment - Penalties are due within 15 working days of receipt of this notification unless contested. (See the enclosed booklet and the additional information provided related to the Debt Collection Act of 1982.) Make your check or money order payable to "DOL-OSHA". Please indicate the Inspection Number on the remittance.

OSHA does not agree to any restrictions or conditions put on any check or money order for less than the full amount due and will cash the check or money order as if these restrictions or conditions do not exist.

Notification of Corrective Action - For violations which you do not contest, you should notify the U.S. Department of Labor Area Office promptly by letter that you have taken appropriate corrective action within the time frame set forth on this Citation. Please inform the Area Office in writing of the abatement steps you have taken and of their dates, together with adequate supporting documentation, e.g., drawings or photographs of corrected conditions, purchase/work orders related to abatement actions, air sampling results, etc. If the citation indicates the violation was "Corrected During Inspection", no abatement certification is required for that item.

Employer Discrimination Unlawful - The law prohibits discrimination by an employer against an employee for filing a complaint or for exercising any rights under this Act. An employee who believes that he/she has been discriminated against may file a complaint no later than 30 days after the discrimination occurred with the U.S. Department of Labor Area Office at the address shown above.

U.S. Department of Labor
Occupational Safety and Health Administration



NOTICE TO EMPLOYEES OF INFORMAL CONFERENCE

An informal conference has been scheduled with OSHA to discuss the citation(s) issued on 12/08/2008. The conference will be held at the OSHA office located at Robinson Plaza, 55 N. Robinson, Suite 315, Oklahoma City, OK, 73102 on _____ at _____.

Employees and/or representatives of employees have a right to attend an informal conference.

Notice to Employees - The law gives an employee or his/her representative the opportunity to object to any abatement date set for a violation if he/she believes the date to be unreasonable. The contest must be mailed to the U.S. Department of Labor Area Office at the address shown above and postmarked within 15 working days (excluding weekends and Federal holidays) of the receipt by the employer of this Citation and Notification of Penalty.



U.S. Department of Labor
Occupational Safety and Health Administration

Inspection Number: 312379795
Inspection Dates: 11/21/2008 - 11/21/2008
Issuance Date: 12/08/2008



Citation and Notification of Penalty

Company Name: Public Service Co. of Oklahoma
Inspection Site: K St. & Main St., Quinton, OK 74561

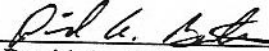
Citation 1 Item 1 Type of Violation: **Serious**

29 CFR 1926.453(b)(2)(v): A body belt was not worn and a lanyard attached to the boom or basket when working from an aerial lift:

On or about November 21, 2008, for an employee hanging Christmas lights in an Altec Category C 46KV vehicle mounted extensible boom lift greater than 15 feet above concrete pavement without personal fall protection exposing the employee to the hazard of falling.

*****Abatement Certification and Documentation Required*****

Date By Which Violation Must be Abated:	12/12/2008
Proposed Penalty:	\$ 4500.00



David A. Bates
Area Director



U.S. Department of Labor
Occupational Safety and Health Administration
Robinson Plaza
55 N. Robinson, Suite 315
Oklahoma City, OK 73102
Phone: (405)278-9560 FAX: (405)278-9572



INVOICE/ DEBT COLLECTION NOTICE

Company Name: Public Service Co. of Oklahoma
Inspection Site: K St. & Main St., Quinton, OK 74561
Issuance Date: 12/08/2008

Summary of Penalties for Inspection Number 312379795

Citation 1, Serious	= \$	4500.00
TOTAL PROPOSED PENALTIES	= \$	4500.00

To avoid additional charges, please remit payment promptly to this Area Office for the total amount of the uncontested penalties summarized above. Make your check or money order payable to:
"DOL-OSHA". Please indicate OSHA's Inspection Number (indicated above) on the remittance.

OSHA does not agree to any restrictions or conditions put on any check or money order for less than full amount due and will cash the check or money order as if these restrictions or conditions do not exist.

If a personal check is issued, it will be converted into an electronic fund transfer (EFT). This means that our bank will copy your check and use the account information on it to electronically debit your account for the amount of the check. The debit from your account will then usually occur within 24 hours and will be shown on your regular account statement. You will not receive your original check back. The bank will destroy your original check, but will keep a copy of it. If the EFT cannot be completed because of insufficient funds or closed account, the bank will attempt to make the transfer up to two (2) times.

Pursuant to the Debt Collection Act of 1982 (Public Law 97-365) and regulations of the U.S. Department of Labor (29 CFR Part 20), the Occupational Safety and Health Administration is required to assess interest, delinquent charges, and administrative costs for the collection of delinquent penalty debts for violations of the Occupational Safety and Health Act.



Employer Decision Time...

- Meet informally with the OSHA Office
- Send letter of Contest
- Pay the penalty in full and make corrective action



OSHA influence time...

- OSHA's #1 concern is Employee Safety
 - Prepare to discuss corrective measures
- OSHA's #2 is Employer Accountability
 - Do not blame the Employee
 - Identify all FACTORS of influence
- OSHA's least concern is Penalty \$\$
 - Always ask for reasonable reduction = EISA



EXAMPLE
ABATEMENT CERTIFICATION (Completed)

David A. Bates, Area Director
U.S. Department of Labor/OSHA
55 N. Robinson, Suite 315
Oklahoma City, OK 73102
Phone: (405) 278-9560
Fax: (405) 278-9572

The hazard referenced in Inspection Number 123456789 for the violation identified as Citation 1, Item 1 was corrected on 4/25/97 and by what means: installing a lower blade guard on the table saw

The hazard referenced in Inspection Number Same for the violation identified as Citation 1, Item 2 was corrected on 4/25/97 and by what means: installing a 42-inch high guardrail across the storage loft opening

The hazard referenced in Inspection Number Same for the violation identified as Citation 1, Item 3 was corrected on 4/26/97 and by what means: buying gloves for the employee(s) who stocks the bulk supplies in the loft and ensuring the employee(s) uses them

The hazard referenced in Inspection Number _____ for the violation identified as Citation _____, Item _____ was corrected on _____ and by what means: _____

The hazard referenced in Inspection Number _____ for the violation identified as Citation _____, Item _____ was corrected on _____ and by what means: _____

The hazard referenced in Inspection Number _____ for the violation identified as Citation _____, Item _____ was corrected on _____ and by what means: _____

I attest the information contained in this document is accurate and the affected employees and their representatives have been informed of the abatement activities described in this certification.

John Doe
Signature

John Doe
Typed or Printed Name



Abatement Certification Letter

Acme Drilling Co. – **Simple & Done**

- Citation 2 Item 2: Abatement was completed on August 15, 2006. The diesel tank has been properly labeled.



Abatement Certification Letter

Acme Drilling Co. – Spending \$\$\$\$

- Citation 1 Item 1: Abatement was completed on September 8, 2006.
- Implemented a Jones Brake System, company-wide, at a cost of approximately **\$1,000,000**.
- Redesigned the engagement locking devices on all Company rigs.
- Further, at a cost of approximately **\$500,000**, emergency stop devices have been installed on all existing rigs
- Monthly in-house rig inspection requirements have been updated to include, specifically, brake inspections; tool pushers and drillers have been re-instructed to implement safe descent speeds, not to exceed 180 feet/minute.



Abatement Certification Letter

Acme Co. – OSHA visit special circumstance

Citation 1 Item 2: Abatement was completed during the inspection by closing the V-door; V-doors on all rigs remain closed when the opening is not in active use.

***Employees had been instructed to do so prior to the inspection,

***We believe the arrival of the OSHA compliance officer distracted the hands from doing so on the date of the inspection.

Ees are frequently reminded to keep the V-door closed if pipe is not being loaded into the rack.



Informal Conference Discussion

- Business casual – Attorney or No Attorney
- Key personnel – Photo review
- Discussion, but not evidence review
- Abatement Actions, dates, costs, extensions
- Interpretations – Standard application
- Classification of Citation

INFORMAL SETTLEMENT AGREEMENT

The undersigned Employer and Occupational Safety and Health Administration (OSHA), in settlement of the above citations and penalties which were issued on 04/23/09, hereby agree as follows:

1. The Employer agrees to correct the hazards identified in the above citations or as amended below.
2. The Employer agrees to comply with all applicable abatement verification provisions of 29 CFR 1903.19, including but not limited to, all certification, documentation, and posting requirements. Abatement certification shall be accomplished within 10 calendar days after the abatement date by mailing a letter/certification to Occupational Safety and Health Administration, 55 N. Robinson Avenue, Suite 315, Oklahoma City, Oklahoma 73102, stating abatement has been completed, the date and method of abatement, and affected employees and their representatives have been informed of the abatement. Any required abatement documentation shall be submitted along with the abatement certification.
3. The Employer agrees to pay the proposed penalties, if any, as issued with the above citation(s), or, if amended by this Agreement, as amended below. **Such penalty is to be remitted with the signed copy of this Agreement, or within five (5) days of the signing of this Agreement, or within the final order date. If the original signed Agreement and payment is not received in accordance within this time period, the Agreement shall be null and void and all original penalties shall become payable along with appropriate fees and interest.**
4. The Employer and OSHA agree to amend the citations and penalties, if any, as follows:



Cit 01 Item 002 - Amended to Other-Than-Serious with no penalty.

Cit 01 Item 003 - No change.

Cit 01 Item 004 - Amended to Other-Than-Serious with no penalty.

The Employer agrees to pay the New Total Penalty of \$1,500.00.

5. The Employer promises to permit OSHA access to the workplace at issue herein subsequent to the date fixed for abatement for the specific and limited purpose of determining if the conditions described in the citations have been corrected.
6. The Employer agrees to continue to comply with the applicable provisions of the Occupational Safety and Health Act of 1970, and the applicable safety and health standards promulgated pursuant to the Act.
7. The Employer, by signing this Agreement, hereby waives its rights to contest the above citations and penalties, as amended in paragraph 4 of this Agreement.
8. The Employer agrees to immediately post a copy of this Agreement in a prominent place at or near the location of the violations referred to in paragraph 4 above. This Agreement must remain posted until the violations cited have been corrected, or for three (3) working days (excluding weekends and Federal holidays), whichever is longer.
9. Each party hereby agrees to bear its own attorney's fees, costs and other expenses incurred by such party in connection with any stage of the above-referenced proceeding including, but not limited to, attorney's fees which may be available under the Federal Arbitration Act.

10. The Employer agrees to provide training for supervisors and other critical personnel as to the safety and health requirements and hazards as detailed in the citations noted herein. Employer agrees to provide OSHA office documentation of supervisor(s)' completion of OSHA 10 hour or OSHA 30 hour Construction Standards training within six (6) months of signing this agreement.

11. The employer agrees to have (1) one site visit by State OSHA Consultation at a jobsite within (12) twelve months of signing this agreement. OSHA Consultation administered by the Oklahoma Department of Labor can be reached at (405) 528-1500.

For Occupational Safety and Health Administration
David A. Bates
Area Director
(signature and date)

For The Employer
(signature and date)

OSHA Penalties Update

- Per Congressional direction, penalties are annually indexed with inflation.
- Serious, Posting, & OTS
 - Maximum **\$13,260** per violation
 - Failure to Abate = Per Day
- Repeat & Willful : **\$132,598** per violation
- As of January 23, 2019



Penalties

- Penalties are determined based on the severity and probability of an accident occurring.
- Employers can request a reduction of penalties at an informal conference
- If an employer contests, they do not have to pay the fine until the case is settled or a court case is completed.

Whistleblower Protections

- OSHA investigates alleged discrimination under 23 statutes
- Each statute has its own deadline to file
- For OSHA discrimination, worker must file within 30 days of the discriminatory action



OSHA: Pre-Rule Stage

- Emergency Response and Preparedness
- Mechanical Power Presses
- Powered Industrial Trucks
- Lock-Out/Tag-Out Update
- Workplace Violence in Health Care and Social Assistance

Pre-Rule Stage: Mechanical Power Presses

- Current OSHA standard is 40 years old and does not address technological changes or the use of hydraulic or pneumatic power presses.
- OSHA plans to issue a request for information (RFI) in December 2018 to determine how to proceed.



Pre-Rule Stage: Powered Industrial Trucks

- OSHA's powered industrial trucks standard relies on ANSI standards from 1969.
- The Industrial Truck Association has asked OSHA to update and expand the OSHA standard to account for the substantial revisions to ANSI standards on powered industrial trucks over the last 45 years.
- The current standard covers 11 types of trucks, and there are now 19 types. In addition, the standard itself incorporates an out-of-date consensus standard.
- OSHA plans to issue a request for information (RFI) in October 2018 to begin the process to develop a proposed rule updating the consensus standard referenced from the 1969 version of B56.1 to the 2016 version.



Pre-Rule Stage: Lock-Out/Tag-Out



- Recent technological advancements that employ computer-based controls of hazardous energy (e.g., mechanical, electrical, pneumatic, chemical, radiation) conflict with OSHA's existing lock-out/tag-out standard.
- The use of these computer-based controls has become more prevalent as equipment manufactures modernize their designs.
- October 2018 OSHA plans to issue a request for information (RFI) in October 2018 to help it understand the strengths and limitations of this new technology, and potential hazards to workers.

Pre-Rule Stage: Workplace Violence in Health Care and Social Assistance

- Labor unions and National Nurses United petitioned OSHA to issue a standard on preventing workplace violence in health care. OSHA granted the petitions in January 2017.
- OSHA previously issued a request for information (RFI) asking health care employers and workers about the impact of workplace violence and prevention strategies.
- **March 2019 - OSHA plans to initiate the Small Business Regulatory Enforcement Fairness Act (SBREFA) process.**





www.osha.gov
800-321-OSHA (6742)



For Further Information

- Contact OSHA at 512-374-0271 if you have questions about safety and health.
- Natarajan.joann@dol.gov
- 512-374-0271 x 232

