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CITATION

This citation alleges violations of Section 215 of the Congressional Accountability Act (2 U.S.C. § 1341), which requires compliance with Section 5 of the Occupational Safety and Health Act (29 U.S.C. § 654).

Employing Office: United States Capitol Police
Location: Department-wide

Issuance Date: July 2, 2021

CITATION: 69

Type of Violation: Serious

Citation 69, Item 1

Officers of the United States Capitol Police (“USCP” or “the Department”) who were on duty at and around the U.S. Capitol to police the planned demonstration on January 6, 2021 lacked adequate protective equipment, contrary to section 5 of the Occupational Safety and Health Act (OSHA), 29 U.S.C. § 654, which is applicable to the USCP by virtue of section 215(a) of the Congressional Accountability Act (CAA), 2 U.S.C. § 1341(a).

Under 29 C.F.R. § 1910.132(a), “Protective equipment, including personal protective equipment for eyes, face, head, and extremities, protective clothing, respiratory devices, and protective shields and barriers, shall be provided, used, and maintained in a sanitary and reliable condition wherever it is necessary by reason of hazards of processes or environment, chemical hazards, radiological hazards, or mechanical irritants encountered in a manner capable of causing injury or impairment in the function of any part of the body through absorption, inhalation or physical contact.”

While attempting to protect the Capitol and its occupants against the demonstration on January 6, 2021, which – according to official testimony and numerous reports – was expected to be a large demonstration with the potential for violence, USCP officers were exposed to hazards of process and environment, as well as chemical hazards, that are associated with such events. Nearly all of the categories of PPE listed in the standard would have been appropriate for use by officers on duty that day, yet the video footage, official testimony and reports, and officer accounts all reveal that most officers had little or no such PPE. Nor was adequate PPE staged nearby or otherwise made readily available to the officers; not only did the USCP not have sufficient PPE in its possession to equip all officers on duty that day, but even some of the available PPE was inaccessible, such as protective shields that were staged in a locked bus that could not be accessed by the officers who needed them, as reported by the USCP Inspector General (IG). Additionally, some of the PPE in use on January 6, 2021 did not meet the requirement of the standard that equipment be “maintained in a sanitary and reliable condition,” as the USCP IG reported that some of the riot shields shattered on impact as a result of improper inspection and storage. This also

puts the USCP in violation of 29 C.F.R. § 1910.132(e), which provides that “Defective or damaged personal protective equipment shall not be used.”

Additionally, the PPE standard at 29 C.F.R. § 1910.132(d) requires the employing office to conduct a hazard assessment in order to select and outfit employees with appropriate PPE from the hazards identified:

(1) The employer shall assess the workplace to determine if hazards are present, or are likely to be present, which necessitate the use of personal protective equipment (PPE). If such hazards are present, or likely to be present, the employer shall:

(i) Select, and have each affected employee use, the types of PPE that will protect the affected employee from the hazards identified in the hazard assessment;

(ii) Communicate selection decisions to each affected employee; and,

(iii) Select PPE that properly fits each affected employee.

(2) The employer shall verify that the required workplace hazard assessment has been performed through a written certification that identifies the workplace evaluated; the person certifying that the evaluation has been performed; the date(s) of the hazard assessment; and, which identifies the document as a certification of hazard assessment.

The USCP did not provide us with a written certification describing any workplace hazard assessment that had been conducted with respect to PPE to protect officers from the hazards associated with large demonstrations with the potential for violence, and the evidence shows that even if such an assessment was conducted, the USCP did not select and have each affected employee use proper PPE on January 6, 2021 to protect the employee from those hazards.

In the alternative, if it is determined that the PPE standards do not apply to any or all of the circumstances described above, the USCP is in violation of the General Duty Clause, section 5(a)(1) of the OSHAct, and section 215(a) of the CAA, which incorporates by reference section 5(a)(1) of the OSHAct, because the risk of injury to police officers on duty during a large demonstration with the potential for violence is a recognized hazard that is likely to cause death or serious physical harm to the Department’s employees, and the use of PPE is a feasible means of eliminating or materially reducing the hazard.

Citation 69, Item 2

USCP officers who were on duty at and around the U.S. Capitol to police the planned demonstration on January 6, 2021 lacked adequate eye and face protection, contrary to section 5 of the OSHAct and section 215(a) of the CAA.

Under 29 C.F.R. § 1910.133(a)(1), an employer must “ensure that each affected employee uses appropriate eye or face protection when exposed to eye or face hazards from flying particles, molten metal, liquid chemicals, acids or caustic liquids, chemical gases or vapors, or potentially injurious light radiation.” The standard at 29 C.F.R. § 1910.133(a)(2) also specifically requires the employer to “ensure that each affected employee uses eye protection that provides side protection when there is a hazard from flying objects.”

The evidence shows that multiple USCP officers on duty on January 6, 2021 suffered eye injuries from chemicals, including pepper spray and other irritants. Given that there is a reasonable chance that a

demonstration with potential for violence could involve flying objects and chemical irritants – including both those used by demonstrators and those deployed by the police in an effort to break up a violent demonstration – USCP officers facing a demonstration with the possibility of violence should have been provided with PPE to protect against those hazards, in accordance with the standard.

In the alternative, if it is determined that the standards for eye and face protection do not apply to any or all of the circumstances described above, the USCP is in violation of the General Duty Clause, section 5(a)(1) of the OSHAct, and section 215(a) of the CAA, which incorporates by reference section 5(a)(1) of the OSHAct, because the risk of eye and facial injuries to police officers on duty during a large demonstration with the potential for violence is a recognized hazard that is likely to cause death or serious physical harm to the Department's employees, and the use of PPE to protect the eyes and face is a feasible means of eliminating or materially reducing the hazard.

Citation 69, Item 3

USCP officers who were on duty at and around the U.S. Capitol to police the planned demonstration on January 6, 2021 lacked adequate respiratory protection, contrary to section 5 of the OSHAct and section 215(a) of the CAA.

Under 29 C.F.R. § 1910.134(a)(2), it is required that "A respirator shall be provided to each employee when such equipment is necessary to protect the health of such employee. The employer shall provide the respirators which are applicable and suitable for the purpose intended." 29 C.F.R. § 1910.134(d) sets forth the requirements for selection of respirators; in particular, section 1910.134(d)(1)(iii) provides that "The employer shall identify and evaluate the respiratory hazard(s) in the workplace; this evaluation shall include a reasonable estimate of employee exposures to respiratory hazard(s) and an identification of the contaminant's chemical state and physical form. Where the employer cannot identify or reasonably estimate the employee exposure, the employer shall consider the atmosphere to be IDLH [immediately dangerous to life or health]."

There is currently no evidence that the USCP conducted such an evaluation to identify potential respiratory hazards faced by officers on duty during a large demonstration with the possibility of violence, to determine whether there was potential exposure to respiratory hazards from chemicals used by the protestors, the police themselves, or both. Numerous officers were indeed exposed to airborne chemical irritants – described in the publicly-available information to include pepper spray, bear spray, and tear gas – suggesting that respiratory protection may have been necessary. Preparations for large demonstrations with the possibility of violence must include an evaluation of such potential respiratory hazards.

In the alternative, if it is determined that the standards for respiratory protection do not apply to any or all of the circumstances described above, the USCP is in violation of the General Duty Clause, section 5(a)(1) of the OSHAct, and section 215(a) of the CAA, which incorporates by reference section 5(a)(1) of the OSHAct, because the risk of respiratory harm to police officers on duty during a large demonstration with the potential for violence is a recognized hazard that is likely to cause death or serious physical harm to the Department's employees, and the use of respiratory protection is a feasible means of eliminating or materially reducing the hazard.

Citation 69, Item 4

USCP officers who were on duty at and around the U.S. Capitol to police the planned demonstration on January 6, 2021 lacked adequate head protection, contrary to section 5 of the OSHAct and section 215(a) of the CAA.

Under 29 C.F.R. § 1910.135(a)(1), an employer “shall ensure that each affected employee wears a protective helmet when working in areas where there is a potential for injury to the head from falling objects.” Large demonstrations with the potential for violence carry the possibility of items falling onto officers’ heads, whether those items are used as projectiles or bludgeons. However, it has been well-documented that many USCP officers on duty on January 6, 2021 were not provided with tactical helmets or any equivalent form of head protection.

In the alternative, if it is determined that the standards for head protection do not apply to any or all of the circumstances described above, the USCP is in violation of the General Duty Clause, section 5(a)(1) of the OSHAct, and section 215(a) of the CAA, which incorporates by reference section 5(a)(1) of the OSHAct, because the risk of head injuries to police officers on duty during a large demonstration with the potential for violence is a recognized hazard that is likely to cause death or serious physical harm to the Department’s employees, and the use of PPE to protect the head is a feasible means of eliminating or materially reducing the hazard.

Citation 69, Item 5

The USCP did not provide employment and a place of employment that were “free from recognized hazards that [were] likely to cause death or serious physical harm to [its] employees” on January 6, 2021, contrary to section 5(a)(1) of the OSHAct, and section 215(a) of the CAA, which incorporates by reference section 5(a)(1) of the OSHAct.

Large demonstrations with the possibility of violence present certain hazards to police officers that are widely recognized by police departments and experts, are likely to cause death or serious physical harm, and can feasibly be eliminated or materially reduced. Such hazards can be – and routinely are – addressed by other police departments through a combination of engineering controls, administrative controls, and PPE. Some of the hazards might fall outside the coverage of the specific standards discussed in items 1-4 of this Citation, but the USCP is nevertheless required under the General Duty Clause to protect its employees from those hazards.

The USCP did not take sufficient steps to protect its officers against the recognized hazards associated with large demonstrations with the possibility of violence in its planning for the January 6, 2021 demonstration. Among the means available for eliminating or materially reducing the hazards to officer safety presented by such events are: the proper analysis and dissemination of information about the event; the development of a job hazard analysis for the event, to ensure that appropriate engineering and administrative controls can be properly implemented and to identify appropriate PPE; and the proper use of PPE, including selection of PPE based on the hazards identified, proper storage and maintenance of the PPE, training on the correct use of the PPE, and provision of the PPE to all affected employees in such a way that it is available when needed. Other means include engineering controls such as physical barriers, internal radio systems, devices for communicating with the crowd, etc., and administrative controls such as operational plans, staffing plans, officer training, medical training, internal communications, etc. The USCP’s planning for January 6, 2021 was deficient in all of these areas, in violation of the General Duty Clause.

Abatement

The USCP must:

1. Develop and implement a plan providing for the use of all available information to conduct an accurate and comprehensive job hazard analysis (JHA) for demonstrations, particularly for large demonstrations with the possibility of violence;
2. Develop and implement a plan providing that the required job hazard analysis be used to identify potential respiratory hazards faced by officers on duty during a large demonstration with the possibility of violence;
3. Develop and implement a plan providing that the required job hazard analysis be used to select PPE for all officers to protect against the hazards identified in the JHA and respiratory hazard evaluation, including but not limited to protection for the head, eyes, face, and extremities, as well as respiratory protection; and
4. Develop and implement a plan for integrating occupational safety and health considerations into its operational and staffing plans for demonstrations, to improve the effectiveness of engineering, administrative, and PPE controls.

After the OCWR General Counsel approves the plans submitted by the USCP, the USCP must: (1) submit sufficient proof to the OCWR General Counsel that it has sought funding for implementation of the plans for FY 2023 and every subsequent fiscal year until all plans are approved and fully implemented; and (2) provide quarterly reports to the OCWR General Counsel describing all measures being taken to protect USCP employees from the hazards identified herein until all plans are approved and fully implemented.

DATE BY WHICH PLANS ARE TO BE DEVELOPED: DECEMBER 31, 2021

DATE BY WHICH PLANS ARE TO BE FULLY IMPLEMENTED: JULY 1, 2022

NOTE: NOTICE OF CORRECTIVE ACTION REQUIRED