

INFORMATION MEMORANDUM 96 X 100

TO: ALL COMPLIANCE PERSONNEL

FROM: W. M. Lybrand

DATE: May 13, 1996

SUBJECT: Citation Policy for Paperwork and Written Program Requirement Violations

A. Purpose

To revise and clarify OSHA citation policy for paperwork and written program violations.

B. Scope

This instruction applies to all inspections.

C. Background

OSHA recognizes that in some situations, violations of certain standards which require the employer to have a written program to address a hazard, or to make a written certification (e.g., hazard communication, personal protective equipment, permit-required confined spaces, and others), are perceived to be “paperwork deficiencies” rather than critically important implementation problems. In other circumstances, violations of such standards have a significant adverse impact on employee safety and health.

The purpose of this instruction is to provide guidance which will lead to consistent and effective enforcement of OSHA’s standards, particularly where technical violations involve employer obligations for posting, recordkeeping and documentation of performance, and have no adverse impact on worker safety and health.

D. Procedures for Evaluation and Citation

The “paperwork” and “written program” requirements addressed by this directive include recordkeeping, posting of the OSHA Notice, written program requirements in standards such as lockout-tagout, permit-required confined spaces, bloodborne pathogens, hazard communication, personal protective equipment, and other essentially similar requirements found in OSHA standards. The following guidance is to assist OSHA staff in the determination of appropriate citations and penalties in particular circumstances. OSHA staff shall adhere to the following procedures when evaluating and citing violations of paperwork and written program requirements.

1. Failure to Post the OSHA Notice (Subarticle V, 71-502A)
 - a. The employer shall be provided a copy of the Notice and shall be advised of the legal requirement to post it for employees. The employer shall also be informed of the consequences of failure to post the Notice. These actions shall be noted in the case file. This policy applies in all cases, except as noted in “b” below.
 - b. A citation for failure to post the OSHA Notice is warranted if: the pattern of violative conditions for a particular establishment demonstrates a consistent disregard for the employer’s responsibilities under the Occupational Safety and Health Act of 1970 (Act); and
 - i. Interviews show that employees are unaware of their rights under the Act; or
 - ii. The employer has been previously cited or advised by OSHA of the posting requirement.
2. Injury and illness records (Subarticle III)
 - a. Where no records are maintained and there have been injuries or illnesses which meet the requirements for recordability, as determined by other records or by employee interviews, a citation for failure to maintain records shall normally be issued.
 - b. Where no records are maintained and there have been no injuries or illnesses, as determined by employee interviews, a citation shall not be issued.
 - c. When the required records are maintained but no entry is made for a specific injury or illness which meets the requirements for recordability, a citation for failure to record the event shall normally be issued.
 - d. When the required records are maintained but have not been completed with the detail required by the regulation, or the records contain minor inaccuracies, the records shall be reviewed to determine if there are deficiencies that materially impair the understandability of the nature of hazards, injuries and illnesses in the workplace. If the records are defective to this degree, a citation for failure to record shall normally be issued.
 - e. In all other cases, the employer shall be provided information on maintaining the records for the employer’s analysis of workplace injury trends and on the means to maintain the records accurately. The employer’s promised actions to correct the deficiencies shall be recorded and no citation shall be issued.
 - f. Where citations are issued, penalties shall be proposed only in the following cases:
 - i. Where OSHA can document that the employer was previously informed of the requirements to keep records; or,
 - ii. Where the employer’s deliberate decision to deviate from the recordkeeping requirements, or the employer’s plain indifference to the requirements, can be documented.
3. Requirements for a Written Plan or Certification: General Principles

(Such as requirements in the Respiratory Protection, Confined Spaces, Bloodborne Pathogens, Lockout/Tagout, Personal Protective Equipment Standards, and other Similar Standards.) The following **general principles** apply to issuance of citations for violation of requirements that an employer prepare a written plan or certification to address a hazard. In each of the situations discussed below: (1) the employer is covered by a standard that requires a written plan or certification to address a hazard. (2) OSHA finds that the written plan or certification is missing or deficient, and (3) the violation is not willful.

- a. If employees are exposed to serious hazards because of a missing or deficient plan or certification, a citation for a serious violation will be issued.
- b. When the employer has followed the proper protective measures required by the standard, and it is unlikely that the deficiency in the plan will result in failure to follow proper practices in the future, a citation for an other-than-serious violation with no penalty shall normally be issued. In addition, the employer shall be: (1) provided literature to assist it in developing a proper written plan, and (2) informed of possible penalties for subsequent violations.
- c. When a standard requires an evaluation of a potential hazard in the workplace, and the employer has failed to conduct the evaluation, but no such hazard exists or could reasonably be anticipated in the future in the employer's workplace, or the hazard could not be present at a level to present a risk to employees, no citation shall be issued.
- d. When the employer has complied fully with a requirement in a standard (e.g., for taking particular protective measures, for an evaluation, or for training), except that the employer has failed to make a required written certification that the action was taken, no citation shall be issued. The requirement for a certification and the reasons for the requirement shall be explained to the employer and the action noted in the case file. The employer shall also be informed of possible penalties for subsequent violations.
- e. When the employer's written plan to address a hazard is deficient, it will ordinarily be appropriate to issue one citation for all of the deficiencies in the plan. In rare instances, the specifics of a case may indicate that citing each deficiency separately may be warranted. In such cases, a careful review of the facts and objectives behind all citation items must be conducted. The total penalties for plan deficiencies shall not exceed the penalties that would be imposed for complete lack of a plan.

4. Requirements for a Written Plan or Certification: Examples

- a. Permit-Required Confined Spaces (1910.146).
 - i. When an employer did not perform an evaluation of the workplace to determine whether there were permit required confined spaces that would be subject to the standard, and no such spaces are discovered during the inspection, no citation shall be issued.

ii. When an employer did not perform an evaluation of the workplace to determine whether there were permit required confined spaces that would be subject to the standard, and such hazardous spaces are discovered during the inspection, a citation with penalty shall normally be issued.

b. Personal Protective Equipment (1910.132)

i. When an employer carries out the required assessment of workplace hazards and determines, correctly, that there are no hazards which require personal protective equipment, but has not completed the required documentary certification of the assessment, no citation shall be issued.

ii. When an employer carries out the required assessment of workplace hazards and determines, correctly, that there are hazards which require personal protective equipment and has provided the appropriate PPE, but has not completed the required documentary certification of the assessment, no citation shall be issued.

iii. When an employer has failed to conduct the required assessment and does not provide personal protective equipment needed to guard against a serious risk of eye injury, a citation with penalty shall normally be issued.

c. Lockout/Tagout (1910.147). An employer's lockout procedures incorrectly call for use of control circuitry rather than acceptable energy control devices during covered servicing or maintenance procedures. A citation, with penalty, shall normally be issued.

5. Hazard Communication (1910.1200 and 1926.59)

a. Where employees are exposed or potentially exposed to a hazardous chemical; **and** labeling, MSDS, chemical inventory, and training requirements are met; **but** there is no written plan; **then** violations of 1910.1200(e) shall be noted as De Minimis and no citations shall be issued.

b. Where employees are exposed to a hazardous chemical and, for example, they did not receive the information necessary to safely handle or use the substance, and the employer had developed no written program (or a deficient one), one citation item shall be issued for the grouped violations of (1) lack of written program, and (2) the most directly applicable portion of the standard.

EXAMPLE: Where employees were exposed to a hazardous substance because the appropriate control measures had not been covered in training, and where there was no written plan, violations of 1910.1200(e) and 1910.1200(h)(2)(ii) shall be grouped to make one citation item.

c. For specific guidance on the application of the HAZCOM standard to consumer products and articles, refer to the June 21, 1995 memo from Dale Zigler, Compliance Manager.

- d. Violations of the Hazard Communication standard are normally to be grouped into a single citation item.