

**OREGON OCCUPATIONAL SAFETY AND HEALTH DIVISION
DEPARTMENT OF CONSUMER AND BUSINESS SERVICES**

PROGRAM DIRECTIVE

Program Directive: **A-216**
Issued: **July 1, 1997**
Revised: **January 25, 2012**

SUBJECT: Citation: Paperwork and Written Program Violations

**AFFECTED CODES/
DIRECTIVES:** OSHA Instruction CPL 2.111, November 27, 1995

PURPOSE: The purpose of this instruction is to revise and clarify Oregon OSHA's policy regarding issuance of citations for violation of "paperwork" and "written program" requirements.

BACKGROUND: Oregon 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.

- A. Oregon OSHA is involved in an effort to re-direct limited resources to those activities which most promote its central mission. Unnecessary issuance of citations for minor technical violations of paperwork and written program requirements undermines the agency's efforts to promote the agency mission.
- B. The purpose of this directive is to provide guidance which will lead to consistent and effective enforcement of Oregon 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.

- C. Application of these guidelines will require informed professional judgment on the part of Safety and Health Compliance Officers (S/HCO) and careful attention to the circumstances in the workplace which affect the impact of violations on the health and safety of workers.

SCOPE: This guide applies Oregon OSHA wide.

APPLICATION: This instruction applies to all inspections of general industry, construction, maritime, forest activities and agriculture employers.

**PROCEDURES FOR
EVALUATION AND
CITATION:**

The "paperwork" and "written program" requirements addressed by this directive include recordkeeping, posting of the OSHA Safety and Health on the Job Poster, 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 Oregon OSHA standards. The following guidance is to assist Oregon OSHA staff in the determination of appropriate citations and penalties in particular circumstances. The procedures below will be followed when evaluating and citing violations of paperwork and written program requirements.

A. Failure to Post the OSHA Safety and Health on the Job Poster.

1. Provide the employer a copy of the Safety and Health poster (["It's the Law"](#)). Advise the employer of the legal requirement to post it for employees and inform them of the consequences of failure to post. Note these actions in the case file. This policy applies in all cases, except as noted in "2b" below.
2. A citation for failure to post the OSHA Safety and Health poster is warranted if the pattern of violative conditions for a particular establishment demonstrates a consistent disregard for the employer's responsibilities under the OSEAct; and
 - a. Interviews show that employees are unaware of their rights under the Act; or
 - b. The employer has been previously cited or advised by Oregon OSHA of the posting requirement.

B. Injury and Illness Records.

1. If no records are maintained and there have been injuries or illnesses which meet the recording requirements, as determined by other records or by employee interviews, issue a citation for failure to maintain records.
2. If no records are maintained and there have been **no** injuries or illnesses, as determined by employee interviews do not issue a citation
3. When the required records are maintained but no entry is made for a specific injury or illness which meets the recording requirements, issue a citation for failure to record the event.
4. When required records are maintained but not completed with detail required by the regulation, or the records contain minor inaccuracies, review the records to determine if there are deficiencies that impair understanding of the nature of hazards, injuries and illnesses in the workplace. If the records are defective, issue a citation for failure to record.
5. In all other cases, provide the employer information on maintaining the records for the employer's analysis of workplace injury trends and on maintaining accurate records. Record the employer's actions or proposed actions to correct the deficiencies. No citation will be issued.
6. Where citations are issued, only propose penalties in the following cases:
 - a. Where Oregon OSHA can document that the employer was previously informed of the requirements to keep records; or,
 - b. Where the employer's deliberate decision to deviate from the recordkeeping requirements, or the employer's plain indifference to the requirements, can be documented.

C. 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) Oregon OSHA finds that the written plan or certification is missing or deficient, and (3) the violation is not willful.

1. When the employer failed or is likely to fail to follow protective measures required by the standard in a manner related to the deficiency in the plan so that employees are exposed to a risk of serious harm, issue a citation for a serious violation of the standard with a penalty. Propose penalties in accordance with an assessment of the exposure.
2. When the employer followed the proper protective measures required by the standard, and it is unlikely that deficiencies in the plan will result in failure to follow proper practices in the future, issue a citation for an other-than-serious violation with no penalty. In addition, provide the employer literature to assist in developing a proper written plan, and inform them of possible penalties for subsequent violations.
3. When a standard requires an evaluation of a potential hazard in the workplace, do not issue a citation if the employer has failed to conduct the evaluation, but no hazard exists, could reasonably be anticipated in the future, or could not be at a level to present a risk to employees.
4. 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, do not issue a citation. Explain the requirement for a certification and the reasons for the requirement to the employer and note the action in the case file. Inform the employer of possible penalties for subsequent violations.
5. 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 warrant citing each deficiency separately. In such cases, conduct a review of the facts and objectives behind all citation items. The total penalties for plan deficiencies must not exceed the penalties that would be imposed for complete lack of a plan.

D. Requirements for a Written Plan or Certification: Examples.

1. Permit Required Confined Spaces (1910.146).
 - a. 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 hazardous spaces are not observed during the inspection, do not issue a citation.
 - b. 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 hazardous spaces are discovered during the inspection, issue a citation with penalty.
2. Personal Protective Equipment (437-002-0134).
 - a. When an employer does the required assessment of workplace hazards and correctly determines that there are no hazards which require personal protective equipment, but has not completed the required written certification of the assessment, do not issue a citation.
 - b. When an employer does the required assessment of workplace hazards and correctly determines that there are hazards which require personal protective equipment and has provided the appropriate PPE, but has not completed the required written certification of the assessment, do not issue a citation.
 - c. When an employer failed to conduct the required assessment and does not provide personal protective equipment needed to guard against a serious risk of injury, issue a citation with penalty.
3. Lockout/Tagout (1910.147 and 437-004-1275). When an employer's lockout procedures incorrectly call for use of control circuitry rather than acceptable energy control devices during covered servicing or maintenance procedures, issue a citation with penalty.

E. Hazard Communication (1910.1200, 1926.59 and 437-004-9800).

1. When 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 note violations of 1910.1200(e) as minimal and do not issue a citation. Construction 1926.59(e) and agriculture 437-004-9800(4) also require a written hazard communication program,
2. When 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 not developed a written program (or a deficient one), issue one citation item 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) will be grouped to make one citation item.

3. For specific guidance on the application of the Hazard Communication Standard to consumer products and articles, refer to the March 21, 1995 memorandum to Regional Administrators from John B. Miles, Jr., Director, Directorate of Compliance Programs. This memorandum is included as Appendix A of this directive.
4. Group violations of the Hazard Communications Standard into a single citation item.

Appendix A

March 21, 1995

Memo To: ALL REGIONAL ADMINISTRATORS

From: JOHN B. MILES JR., DIRECTOR
DIRECTORATE OF COMPLIANCE PROGRAMS

Subject: Hazard Communication Standard: Documentation of Citations Related to the
Exposure to Hazardous Substances and Consumer Products

This memorandum provides clarification and guidance for the Hazard Communication Standard, (HCS) 29 CFR 1910.1200, 1915.1200, 1917.28, 1918.90, and 1926.59, when applied to the standard's provisions for exemptions of consumer products and articles.

OSHA has reviewed its enforcement history with respect to instances where the consumer product safety/hazardous substance (1910.1200(b)(ix)) or article (1910.1200(b)(v)) exemptions could have been applied. HCS citations have been issued for materials, such as bricks, rebar, lubricating oils, welding rods and dishwashing liquid without adequate documentation of employee exposure to a specific hazardous chemical or that their use fails to meet OSHA's consumer product exemption. It is not the intent of the standard that we issue citations for consumer products and articles except for conditions of use that greatly exceed those of a normal consumer or are outside the products normal intended use. As a matter of policy, OSHA Compliance Officers shall not issue HCS citations for consumer products unless there is documentation that exposure(s) causing serious injury or illness are occurring. Please be aware that exposure is defined in the HCS to include potential exposure.

The performance-oriented nature of HCS makes it difficult to draw clear, exact lines for the number of times a consumer product or the circumstances under which an article can be used before the provisions of the rule apply. During the course of an inspection, to justify a citation, it is imperative that the compliance officer document that employee use of a consumer product containing hazardous ingredients at his or her workplace is such that frequency or duration clearly exceeds what a reasonable person would concede to be normal consumer use in a home or household environment. Situations where employee use of a consumer product is similar to the way a consumer would use a product or where the hazardous chemical under consideration meets the definition of an article shall not be cited as a violation of HCS.

To ensure that citations of HCS for consumer products are appropriate, the following elements must be included as documentation in the case file:

1. Document what information establishes the chemical as a consumer product. Was the container labeled with a label that is subject to the regulations of the Consumer Product Safety Act?

2. Document the hazardous chemical(s) present in the consumer product that employees were exposed to. Does the chemical present an acute or chronic hazard? Was the chemical on the employer's hazardous chemical inventory?
3. Document the duration of use, the period of time the chemical was used during the workshift and week. Did it greatly exceed normal or expected use by a consumer?
4. Document the frequency or pattern of use. Did it greatly exceed normal or expected use by a consumer?
5. Document the purpose of use. Was the consumer product used as recommended by the manufacturer or proscribed by the manufacturer?
6. Document the manner of use; was the consumer product used in a concentrated form or solution? What amount (i.e., the liters or grams) of the chemical was used?
7. Attach the MSDS, where available, for the cited product, i.e., is it defined as a hazardous chemical; what is its intended use(s)?

When citing HCS violations involving consumer products, identify in the citation the specific hazardous chemical and the concentration of the hazardous chemical present in the consumer product. In addition, the frequency and duration of use that resulted in exposures significantly greater than those of a consumer must be documented. The Agency shall not issue any citations simply stating the "glue" or "dishwashing liquid" was the hazardous chemical.

In a similar fashion, for HCS violations involving manufactured items or commercial products which under normal conditions of use may release hazardous chemicals and do not meet the criteria of the "article" exemption (1910.1200(c)), the specific hazardous chemical identified in the specific item shall be described in the citation. In the case of mixtures, the concentration of the specific hazardous chemical shall be included in the citation. For example, the Agency shall not issue any citations specifically for brick. In this case, compliance officers shall identify the specific hazardous chemical, such as silica, present in the item, the concentration of the specific hazardous chemical in the item, the product name of the item, the specific operation(s) where an employee is or may be exposed to a physical or health hazard and the duration of employee exposure.

To ensure that citations of HCS for items that appear to be "articles" (rebar, bricks, structural steel beams, etc.) are appropriate, the following elements must be included as documentation in the case file:

1. Document the hazardous chemical(s) and the concentration that was present in the item that employees were exposed to. Was the chemical on the employer's hazardous chemical inventory?
2. Document the activities or operations that resulted in employee exposure to the hazardous chemical(s) in the item and the duration of use.

3. Attach the MSDS, where available, for the cited product, ie., does it defines it as a hazardous chemical and any statements of its intended use(s)?

In summary, the specific hazardous chemical identify shall be provided in any HCS citation. The commercial or product name shall not be used by itself to identify a hazardous chemical. If the hazardous chemical is an ingredient in a mixture, compliance officers shall identify in the citation the specific hazardous chemical(s) present, and the relative concentration(s) of the chemical(s) present, and the relative concentration(s) of the chemical(s) in the mixture. In addition, the specific operations where an employee is or may be exposed to a physical or health hazard and the duration of employee exposure shall also be identified.

Should you have any questions regarding this issue, please call Tom Galassi in the Office of Health Compliance Assistance at (202) 219-8036.