



OSHA INSTRUCTION

U.S. DEPARTMENT OF LABOR

Occupational Safety and Health Administration

DIRECTIVE NUMBER: ADM 8-0.4

EFFECTIVE DATE: Dec. 11, 2000

SUBJECT: Non-Policy Issuances

ABSTRACT

- Purpose:** To describe and implement OSHA's system for managing its non-policy issuances (NPI).
- Scope:** OSHA-Wide
- References:** OSHA Instruction ADM 8-0.2, OSHA Policy Issuances; OSHA Instruction ADM 8-0.3, OSHA Directives System; OSHA Instruction ADM 12-0.1, OSHA Classification System; ADM 1-0.20, OSHA Internet and Intranet Policies and Guidelines.
- Cancellations:** None
- State Impact:** This Instruction is not a Federal Program Change requiring State adoption or response, but States are encouraged to consider its implications for their operations.
- Action Offices:** National, Regional and Area Offices
- Originating Office:** Office of Management Systems and Organization, DAP
- Contact:** OSHA Directives Officer, Office of Management Systems and Organization (OMSO), DAP

By and Under the Authority of
Charles N. Jeffress,
Assistant Secretary

Significant Changes:

This Instruction implements policy provided by OSHA Instruction ADM 8-0.2 and provides direction and procedures and assigns responsibility for the management of OSHA's non-policy issuances (NPI), including such supplementary guidance materials as Letters of Interpretation (LI).

Executive Summary:

This Instruction establishes OSHA's system for the management of the Agency's non-policy issuances (NPI), including such supplementary guidance materials as its Letters of Interpretation (LI), and other non-policy statements issued by the Agency, and fixes responsibility for the management, clearance, and release of NPIs by OSHA Directorates, Regions, and Offices. It requires the heads of Directorates, Regions and Offices that issue NPIs to establish written procedures for the review and clearance of such materials before their release by the Agency. Appendices are included that identify the elements which must be included in the written clearance procedures required to be established by National Office and field originators of NPIs.

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Non-Policy Issuances

- I. Purpose. Effective administration of the Occupational Safety and Health Act of 1970 requires that OSHA provide information to its staff, partners, customers and stakeholders, and to the general public, and that its statements of Agency policy and procedure, and its non-policy issuances (NPI), including such supplementary guidance materials as Letters of Interpretation (LI) and other non-policy statements issued by the Agency, be reliable and accurate reflections of Agency positions; complete and up-to-date; easy to read and understand; and easy to locate and reference. The management of OSHA policy issuances is governed by OSHA Instructions ADM 8-0.2 and ADM 8-0.3. In order to effectively manage the communication of NPIs, this instruction establishes a system and fixes responsibility for the management, clearance and release of such materials by the Agency.
- II. Scope. This instruction applies OSHA-wide.
- III. Cancellations. None.
- IV. References. OSHA Instruction ADM 8-0.2, OSHA Policy Issuances; OSHA Instruction ADM 8-0.3, OSHA Directives System; OSHA Instruction ADM 12-0.1, OSHA Classification System, ADM 1-0.20, OSHA Internet and Intranet Policies and Guidelines.
- V. State Impact. This Instruction is not a Federal Program Change requiring State adoption or notice, but States are encouraged to consider its implications for their operations.
- VI. Action Information.
 - A. Responsible Office. Office of Management Systems and Organization (OMSO).
 - B. Action Offices. National, Regional and Area Offices.
 - C. Information Offices. State designees, consultation project managers.
- VII. Actions Required. All OSHA offices will implement the policy and procedures contained in this instruction.
- VIII. Responsibilities.
 - A. The Assistant Secretary of Labor for Occupational Safety and Health provides policy direction and oversight for managing OSHA's non-policy issuances (NPIs).
 - B. The Director, Administrative Programs provides operational oversight and advice to OSHA Program Directors and Managers on compliance with this Instruction and on related processes.

- C. OSHA Program Directors, Regional Administrators and All Other OSHA Managers, Supervisors and Employees shall effectively implement and comply with the provisions of this and related Instructions.
- D. OSHA Program Managers and Regional Administrators Initiating NPIs shall comply with the provisions of this Instruction. They shall:
 - 1. Initiate and develop proposed NPIs within the scope of their authority or significantly affecting the operations of their program.
 - 2. Provide to all reviewers of proposed NPIs appropriate policy and other background information to assure that the proposed issuance is thoroughly understood and considered.
 - 3. Obtain and appropriately consider critical policy and other issues identified by subordinate staff and others in the development of such proposed NPIs.
 - 4. Considering the subject and intended application of a proposed NPI, request review and clearance proposed issuances by appropriate OSHA Directorates, Regions and Offices, the national or regional Office of the Solicitor, the Assistant Secretary, and other entities.
 - 5. Refer to their Deputy Assistant Secretary any unresolved disagreements or issues concerning the substance or potential policy implications of a proposed NPI, or the priority accorded to its review, that emerge during the clearance process.
- E. OSHA Program Directors and Regional Administrators Receiving a Proposed NPI for Review and Clearance shall carefully consider each such proposed NPI (and any associated critical policy or non-policy issues identified by their subordinate staff), and promptly respond to the originator, with respect to:
 - 1. Technical considerations;
 - 2. Its potential impact upon the programs and policies for which the Program Manager or Regional Administrator is responsible;
 - 3. Its implications for Agency-wide policy and operations; and
 - 4. Its anticipated reception by Agency customers or other interested parties.

IX. Limitations on Non-Policy Issuance Coverage.

- A. New or Amended Policies or Procedures or Interpretations of the OSH Act. OSHA Instruction ADM 8-0.2 provides that, in order to ensure that OSHA's

policies and procedures are effectively communicated to Agency staff and interested parties, the Agency shall state its policy and procedures through publication in the Code of Federal Regulations (CFR), the Federal Register (FR) and/or as an issuance of the OSHA Directives system, with exceptions as may be approved in writing by the Assistant Secretary (See ADM 8-0.2, Paragraph IX.). Agency policy or procedure, therefore, shall not be established or amended, nor shall the OSH Act be interpreted, by memorandum, letter, e-mail, report or any other non-policy format, regardless of medium.

- B. NPI Coverage. All other written materials issued by the Agency, ranging from Federal Register Notices that do not include new or revised statements of policy or procedure to fact sheets, from press kits to publications, and from health bulletins to e-mails providing interpretive guidance, are covered by this Instruction.

- X. Written Procedures. The head of each OSHA Directorate, Region or Office that issues NPIs must develop and publish written procedures that define and specify mandatory Clearance Officials and processes for clearing each class of issuance, including standard clearance time frames and processes for the resolution of comments and, when necessary, re-clearance of materials. Such procedures shall also define formatting requirements, where appropriate. A copy of each such procedure and each amendment thereto must be provided to the Director, Administrative Programs. Such written procedures shall be constructed to ensure that Agency issuances of the category(ies) covered in the procedure:
 - A. Adhere to established Agency policy and procedure regarding such issuances, and to the applicable provisions of OSHA Instructions ADM 8-0.2, ADM 8-0.3, and ADM 1-0.20.
 - B. Are consistent with all other statements of Agency policy and procedure.
 - C. Are necessary to the effective management of Agency policies, procedures and programs.
 - D. Explicitly reference the governing policy or procedure, at a minimum through reference to the CFR, FR or OSHA Directives system number and effective date.
 - E. Are maintained in files searchable by subject, date, and requestor name and location.
 - F. Include a standardized disclaimer statement, appropriately highlighted.

- XI. Required Process Steps. Appendix A. lists the elements required to be covered in the written procedures to be established by each Directorate, Region or Office for the development of NPIs.

- XII. Aids for Developing and Clearing Non-Policy Issuances. Appendix B. provides guidance

in determining whether proposed material is appropriate for release as an NPI. Appendix C. provides a check-list of steps for drafting and clearing a proposed NPI. Appendix D. is a new OSHA Form 202, OSHA Non-Policy Issuance Clearance, that may be used to document the clearance of a proposed NPI.

- XIII. Required Training. The head of each OSHA Directorate, Region or Office that issues NPIs shall periodically provide training to involved staff to ensure that the established clearance procedures and processes are understood and consistently applied.
- XIV. Establishment and Maintenance of Clearance Records. The head of each OSHA Directorate, Region or Office that issues NPIs must maintain, in a manner providing for easy retention and retrieval, a record documenting the views and clearance of each responsible position and entity identified in the applicable written procedure as a mandatory clearance point. The retention of such records is governed by OSHA Records Disposition Schedules.
- XV. Use of Disclaimer Statement(s). NPIs that provide guidance concerning compliance matters shall include a standardized disclaimer statement that shall be approved by the Assistant Secretary with advice from the Solicitor of Labor.

Appendix A

Required Elements for Non-Policy Issuance (NPI) Written Procedures.

Written procedures for preparation and clearance of each class of non-policy issuances (NPI) must:	
1.	Specify members of the class of NPI covered by the procedure and provide examples, as necessary, of issuances falling within the class definition.
2.	Refer the reader to OSHA Instructions ADM 8-0.2, 8-0.3 and 8-0.4, as appropriate.
3.	Fix responsibility for Directorate, Regional or Office training in NPI procedures, to ensure that the established clearance procedures and processes for that class of NPI are understood and consistently applied.
4.	Fix responsibility for managing proposed non-policy issuances of the covered class through the prescribed preparation, review and clearance process.
5.	Identify all mandatory review and Clearance Officials (intra- and extra-organizational) for issuances of the covered class.
6.	Specify any Directorate, Regional or Office formatting requirements for the covered class of NPIs. (Provide examples, as necessary.)
7.	Require that all reviewers of proposed issuances are provided specific due dates for review and clearance of proposed issuances and indicate the official to whom requests for additional time should be addressed.
8.	Require that copies of appropriate policy and other background information necessary to assure that the proposed issuance is understood and considered are provided to each Clearance Official.
9.	Require, and establish means for assuring that the views of subordinate staff, mandatory and other appropriate clearance officials, and the Office of the Solicitor, as appropriate, are obtained and considered in the clearance and revision process.
10.	Specify the Directorate, Regional or Office official authorized to approve the release of the class of NPI.
11.	Specify the Directorate, Regional or Office official responsible for maintaining, in a manner providing for easy retention and retrieval, records documenting the views and clearance of each clearance official. (The retention of such records is governed by OSHA Records Disposition Schedules).
12.	Specify the Directorate, Regional or Office official responsible for maintaining and updating the procedure, and for providing a copy of the procedure and each amendment thereto to the Director, Administrative Programs.

Appendix B

OSHA Non-Policy Issuance Process Flow Checklist

To be used to determine whether a proposed issuance is appropriate for release as a non-policy issuance.

Does the Proposed Issuance...	Then...
1. Establish new policy or procedure (CFR, FR or Directive)?	1. If YES, STOP . Prepare for publication in the CFR or FR or for issuance as an OSHA Directive. See ADM 8-0.2 and ADM 8-0.3. Consult Assistant Secretary, SOL, Directives Officer, as appropriate. 2. If NO, proceed to next question.
2. Amend established policy or procedure (CFR, FR or Directive)?	Same as 1., above.
3. Interpret the OSH Act of 1970?	Same as 1., above.
4. Delegate or assign authority or responsibility, or change such?	Same as 1., above.
5. Establish or change organizational structure?	Same as 1., above.
6. Revise or cancel an OSHA Directive?	Same as 1., above.
7. Establish a recurring report or reporting format?	Same as 1., above.
8. Provide information that is consistent with all current policy (CFR, Directives) and relevant non-policy (LI, advisors, or other published or web-posted materials) issuances?	1. If YES, proceed to Appendix C, following. 2. If NO, STOP . Reconsider the NPI, prepare for publication in the CFR or FR or for issuance as an OSHA Directive; cancel or amend conflicting or inconsistent policy and non-policy issuances, as appropriate.

Appendix C

NPI Process Check List

(Step-by-step Process for Drafting and Clearing NPIs.)

Process Step	Action(s)
1. Is there a written procedure for processing and formatting NPIs originated within your Directorate, Region or Office that is in conformity with the provisions of ADM 8-0.4?	1. If YES, review the procedure and prepare a draft of the NPI accordingly. 2. If NO, STOP . Consult Directorate, Regional or Office management (and the OSHA Directives Officer or Liaison), as appropriate, to obtain guidance; prepare procedure and train staff in its application.
2. Have the views of subordinate staff and the anticipated reception by significant stakeholders been considered in developing the pre-clearance draft?	1. If YES, proceed. 2. If NO, STOP . Consult with Directorate, Regional or Office management to obtain input, revise pre-clearance draft in consideration of such input, and proceed.
3. Does the proposed NPI deal with subject matter that resides exclusively within the scope of authority of the originating Directorate, Region or Office with its impact limited to the originating Directorate, Region or Office?	1. If YES, proceed. 2. If NO, STOP . Consult with affected/responsible Directorates, Regions and/or Offices, national or regional OSOL, the Management Team or A/S, as appropriate, and proceed in consideration of their advice.
4. Have all mandatory and other appropriate clearance/review offices or individuals internal and external to the Directorate, Region or Office been identified?	1. If YES, proceed. 2. If NO, STOP . Consult with Directorate, Regional or Office management to identify same.

<p>5. Has an appropriate disclaimer statement, as required by ADM 8-0.4 been included?</p>	<p>1. If YES, proceed.</p> <p>2. If NO, STOP. Consult with Directorate, Regional or Office management, national or regional OSOL, etc., as appropriate, include appropriate disclaimer language, and proceed.</p>
<p>6. Has all other relevant background material, including program-related and Agency-wide policy implications of the proposed NPI, been provided and highlighted with the draft prepared for clearance?</p>	<p>1. If YES, proceed.</p> <p>2. If NO, STOP. Consult with Directorate, Regional or Office management, and highlight in the package of materials provided to mandatory and other clearance officials all such information.</p>
<p>7. Are all related OSHA policy and non-policy issuances explicitly referenced in the draft prepared for clearance?</p>	<p>1. If YES, proceed.</p> <p>2. If NO, STOP. Amend draft NPI to cite explicit references.</p>
<p>8. Is reasonable time provided to allow clearance officials a thorough review, considering the exigencies of the matter and the complexity, novelty or implications of the issues addressed in the proposed NPI?</p>	<p>Directorate, Regional or Office management should accommodate any reasonable requests for extensions of review time based on circumstances attending the NPI.</p>
<p>9. Has an individual been assigned to manage the review/clearance of the proposed NPI, including the tracking and consideration of reviewer comments and suggestions, and calling to the attention of Directorate, Regional or Office management any issues, especially critical policy issues, raised in the review process?</p>	<p>1. If YES, proceed.</p> <p>2. If NO, STOP. Have this task assigned to a qualified individual and proceed.</p>

<p>10. Have technical, program-related and Agency-wide policy issues (including conflicts or inconsistencies between the proposed NPI and other OSHA policy issuances or NPIs) and the concerns of Clearance Officials and other reviewers been discussed and resolved at an appropriate management level?</p>	<p>1. If YES, proceed.</p> <p>2. If NO, STOP. Inform and advise Clearance Officials and other reviewers, National or regional OSOL, the OSHA Management Team, and the A/S, as appropriate, on issues and recommendations for resolution. Redraft and reclear NPI as appropriate.</p>
<p>11. Has the reviewed issuance been recirculated for clearance with comments when such comments result in the proposed NPI being amended?</p>	<p>1. If YES, proceed.</p> <p>2. If NO, STOP. Recirculate amended NPI for review and clearance.</p>
<p>12. Has cleared NPI been approved by an authorized issuing official (See B. 1., above)?</p>	<p>1. If YES, issue.</p> <p>2. If NO, STOP. Reconsider, redraft, reclear, as appropriate.</p>

Appendix D.

OSHA Form 202 appears on the following page.

OSHA Non-Policy Issuance Clearance

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



1. ORIGINATING ORGANIZATION <i>(Directorate, Independent Office or Regional Office)</i>	2. DATE
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3. CLEARANCE OFFICIALS *(Directors of directorates or independent offices, or regional administrators or other designated officials specified in OSHA Instructions ADM 8-0.2, ADM 8-0.3 or ADM 8-0.4.)* *(Enter names and organization of clearance officials.)* *(Check (✓) or "X" the box of the address to whom this clearance copy is addressed.)* *(For additional information, see OSHA Instructions ADM 8-0.2, ADM 8-0.3, and ADM 8-0.4.)*

1.	10.
2.	11.
3.	12.
4.	13.
5.	14.
6.	15.
7.	16.
8.	17.
9.	18.

4. SUBJECT OF CLEARANCE

5. ORIGINATING OFFICIAL <i>(Name and Signature)</i>	6. DUE DATE
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7. ORIGINATING OFFICE CONTACT. Return this Clearance to:

<i>(Name)</i>	<i>(Organization)</i>	<i>(Room No.)</i>	<i>(Phone No.)</i>
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CLEARANCE OFFICE ACTION

8. CONCURRENCE. *(Check (✓) or "X" the appropriate box.)* *(If the clearance office disagrees with any part of the enclosed document, the exact language of any suggested change should be shown on this form, an enclosure or directly on the document. See note below regarding referrals.)*

<input type="checkbox"/> Concurrence.	<input type="checkbox"/> Conditional Concurrence. <i>(Subject to acceptance of comments/recommended changes)</i>	<input type="checkbox"/> Non Concurrence. <i>(Reasons for non-concurrence must be stated.)</i>
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9. CLEARANCE OFFICE CONTACT <i>(Name)</i>	<i>(Organization)</i>	<i>Room No.)</i>	<i>(Phone No.)</i>
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The signature of the clearance official (see block 3.) certifies that the proposed non-policy issuance (and any associated critical policy issues identified by subordinate staff) has been carefully considered with respect to technical matters, potential impact upon the programs and policies for which the official is responsible, and implications for Agency-wide policy and operations, and that any issues identified are communicated herewith to the originator.

The originating Program Director will notify the clearance official that a response has not been received or problems with the comments cannot be resolved, and a meeting with the Deputy Assistant Secretary(ies) or Assistant Secretary, as appropriate, will be scheduled to obtain clearance or resolve any difficulties the clearance official may have with the draft directive. Refer to OSHA Instruction ADM 8-0.4.

10. CLEARANCE OFFICIAL'S SIGNATURE	11. DATE CLEARED.
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