



OSHA INSTRUCTION

U.S. DEPARTMENT OF LABOR

Occupational Safety and Health Administration

DIRECTIVE NUMBER: CPL 2-0.121

EFFECTIVE DATE: March 12, 1998

SUBJECT: Providing Assistance to Smaller Employers

ABSTRACT

- Purpose:** This instruction describes OSHA's policies and procedures for providing assistance to smaller employers and their employees.
- Scope:** Federal OSHA
- References:** OSHA Instruction CPL 2.103, Field Inspection Reference Manual (FIRM)
OSHA Instruction STP 2.22A, State Plan Policies and Procedures Manual.
OSHA Instruction CPL 2.51I, Exemptions and Limitations Under the Current Appropriations Act.
- Cancellations:** None
- State Impact:** None
- Action Offices:** National, Regional and Area Offices
- Originating Office:** Directorate of Compliance Programs (DCP)
- Contact:** Office of General Industry Compliance Assistance
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By and Under the Authority of
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Assistant Secretary

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- I. Purpose. This instruction describes OSHA's policies and procedures for providing assistance to smaller employers and their employees, including compliance assistance that is to be provided to all employers, and specific services and relief that are to be provided to smaller employers.
- II. Scope. This instruction applies to National Office, Regional Offices and Area Offices.
- III. Action Information.
 - A. Responsible Office. Directorate of Compliance Programs (DCP)
 - B. Action Offices. National, Regional and Area Offices
 - C. Information Offices. State designees, consultation project managers
- IV. Action Required. OSHA Regional Administrators, Area Directors, and National Office Directors shall ensure that the guidelines and procedures set forth in this instruction are followed for providing assistance to smaller employers and their employees.
- V. References.
 - A. OSHA Instruction CPL 2.103, September 26, 1994, Field Inspection Reference Manual (FIRM).
 - B. OSHA Instruction STP 2.22A, January 29, 1990, State Plan Policies and Procedures Manual.
 - C. OSHA Instruction CPL 2-0.51I, October 15, 1997, Exemptions and Limitations Under the Current Appropriations Act.
- VI. Federal Program Change. This instruction describes a Federal program change which does NOT affect State plans. State plans are, however, encouraged to offer similar compliance assistance to smaller employers.
 - A. The Regional Administrator shall ensure that this change is promptly forwarded to each State designee, using a format consistent with the Plan Change Two-Way Memorandum in Appendix P of the State Plan Policies and Procedures Manual (OSHA Instruction STP 2.22A).
 - B. The Regional Administrator shall explain to each State designee, as requested, the technical content of this change.

- VII. Background. In 1995, the Congress passed the Small Business Regulatory Enforcement Fairness Act (SBREFA), in an attempt to respond to the concern expressed by the small business community that Federal regulations were too numerous and complex, and that small businesses needed special assistance in understanding and complying with those regulations.
- A. Required Programs. All Federal agencies regulating small businesses are required to have in place programs to provide:
1. Guidance/Compliance Assistance. This program must contain procedures to answer inquiries by small entities (small businesses) concerning information on, and advice about, compliance with statutes and regulations, interpreting and applying the law to specific sets of facts supplied by the small entity. (Section 213 of SBREFA)
 2. Penalty Relief. This program must provide, under appropriate circumstances, for the reduction, and in some cases for the waiver, of civil penalties for violations of a statutory or regulatory requirement by a small entity. (Section 223 of SBREFA)
- B. Programs Described by this Instruction. This instruction describes programs that comply with the requirements of SBREFA. In the cases of policies for providing compliance assistance and penalty relief, this instruction does not establish new programs; rather, it formalizes and/or references programs that have been in place for many years.
- C. Small Entities. SBREFA makes reference to “small entities” or small businesses. With regard to OSHA’s guidance and compliance assistance programs, the following services shall be provided to all employers regardless of size. With regard to penalty relief, this shall be applied as described in paragraph XI .
- VIII. Responding to Requests for Assistance. All requests from employers or employees for compliance information or assistance are to receive timely, accurate, and helpful responses from OSHA.
- A. This applies no matter how the request is communicated--e.g., orally or in writing; by letter, telephone, telefax, e-mail, or other means; formally or informally.
- B. To ensure fair and orderly access to information, requests that arrive through means such as e-mail and telefax shall receive no greater or lesser priority for response than those arriving by regular mail, telephone call, or personal visit. Generally, follow the principle of first-come, first-served.

- C. Wherever possible, the response should come from the organizational level closest to the requester that is able to provide the requested information (e.g., District, Area, or Regional Office), with a minimum of referrals. When the Regional Office cannot provide the information, the request may be referred to the National Office.
- D. Requesters are to be given the most accurate, complete, and pertinent information available. Wherever appropriate, requesters shall be advised of additional sources of information, including the OSHA Computerized Information System (OCIS), the OSHA System for Compliance Assistance and Referral (OSCAR), the OSHA CD-ROM, and OSHA online (Internet) resources.

NOTE: OCIS and OSCAR will eventually be combined into the OSHA-Link. The OSHA Internet Homepage can be accessed at www.osha.gov.

IX. Providing Guidance and Compliance Assistance to Employers. The guidance and compliance assistance programs described below shall be provided to all employers, regardless of size. Regional Administrators and Area Directors shall ensure, however, that every smaller employer contacting the Agency is informed of all compliance resources that are available and is encouraged to make full use of them.

- A. Outreach Program Plan. The Regional Administrator shall maintain an outreach program plan appropriate to local conditions and shall determine, at the Regional Administrator's discretion, which Area Offices is to provide the specific assistance. The plan need not be independent of existing outreach programs already in operation.

NOTE: Regional Administrators may combine their outreach efforts with those of other Department of Labor agencies, especially where high-risk groups of employees have been identified.

1. Each Regional Administrator shall identify the targets of the out-reach program in accordance with the needs in the service area, the mission of Federal OSHA in the area, and the resources available in the Area Offices. These targets are expected to vary with different areas.

NOTE: Area Directors in State plan States shall coordinate outreach activities with the State designee and provide appropriate assistance to the State should the State decide to offer outreach services.

2. Such outreach targets shall include--but shall by no means be limited to-- industries or employers and their employees which are the subject of National or Local Special Emphasis Programs.

B. Regional Office Support Services. The Regional Administrator shall ensure that the Area Directors receive the support necessary to maintain their programs.

1. Each Area Director shall draw up a list of compliance officers (CSHOs) and other OSHA staff personnel who have specialized knowledge, skills, or academic credentials not generally available among OSHA compliance personnel. Area Directors may also inventory areas of particular expertise gained by OSHA staff with significant experience in certain industries or with certain standards, such as process safety management, lockout/tagout, or electrical standards.

The Area Office shall send a copy of the list to the Regional Office.

The Area Office list shall be updated as needed.

State program administrators shall be invited to submit an equivalent list of knowledgeable CSHOs or consultants on the State enforcement or consultation staffs. Participating State programs shall also be requested to update their lists periodically.

2. When questions arise in an Area Office which appear to require specialized assistance in order to resolve a particular safety or health concern, the Regional Administrator shall be contacted, if necessary, and asked to recommend a CSHO or other OSHA staff personnel from among those listed by the Area Directors who may be able to offer assistance.

The Regional Administrator shall ensure that a knowledge-able CSHO is recommended and shall make arrangements with the Area Director to whom the CSHO is assigned for his/her services to be made available to the requesting Area Director.

The Regional Administrator shall develop guidelines governing the circumstances under which CSHO services will be provided in response to requests for assistance.

3. The Area Offices shall develop special handout packages which can be provided to interested persons. The Regional Office shall maintain a copy of each Area Office package so that distribution could be made at the regional level in the event that requests come to the Regional Office instead of the Area Office. The "handout" packages may consist of printed and photocopied materials. All requesters shall be informed of the availability of OSHA material on the Internet and on the CD-ROM.

NOTE: The Office of Training and Education shall be kept fully informed in advance of any newly developed or original training and educational materials and shall be provided with copies of any such training materials to avoid duplication of efforts and to encourage cooperative efforts.

4. Short courses addressing specific issues may also be utilized by the Regional Training Office in conjunction with the Office of Training and Education both for presentation by OSHA Area Office personnel and for loaning out to others for delivery. Such courses shall be planned so that they do not normally exceed 6 hours training time.

C. OSHA's Consultation Program. Regional Administrators and Area Office Directors may recommend OSHA's Consultation Service to employers requesting compliance assistance.

1. The Consultation Program is the first and foremost among the agency's small business efforts and is delivered by State governments using well-trained professional consultants.
2. The service is available in all 50 States and U.S. Territories at no cost to small employers in high hazard industries.
3. The service provides:
 - priority on-site assistance to entities with fewer than 250 workers at a fixed worksite, 500 nationwide.
 - compliance assistance information that is geared to individual companies' specific needs.
4. The service provides small employers and their employees with no-cost training as part of every consultation visit.
5. The service assists employers in developing or maintaining an effective safety and health management program.
6. Employers who meet specific program criteria may be eligible for the Safety and Health Achievement Recognition Program (SHARP) which provides for a one-year exclusion from OSHA programmed inspections.
7. The Consultation Program is completely independent from OSHA's inspection and enforcement efforts.

- No penalties are proposed.
- No citations are issued for any safety or health problems identified.
- The service is completely confidential.

D. Training and Education Services. The Area Office should serve as the center for the diffusion of safety and health information into the community.

1. Identification of Materials. An inventory of all resource material in the Area Office shall be made and updated annually.

A list of the training resources available in each Area Office library; e.g., films, slides, film strips, videotapes, records, audio tapes and other training materials, shall be sent to the Regional Administrator.

Technical library materials shall also be identified.

The Regional Administrator shall be kept informed of any data bases to which Area Offices may have access.

The Regional Administrator shall have a list of what published materials are available for CSHOs to distribute during closing conferences or whenever appropriate.

All CSHOs and other front-line contact persons shall be informed of the identified resource materials that are available.

2. Lending Policies. It is OSHA policy to make training and technical materials available to the public whenever they can be of assistance in safety and health matters.

Guidelines shall be developed in each Region governing the lending policies and procedures to be followed in the Area Office.

Books and other library materials normally shall not be available to the public for use outside the physical location of the Area Office. Copies of video and audio materials, however, may be loaned out to the public. All materials may be loaned out to other Federal agencies, to 18(b) State program administrators, to OSHA 7(c)(1) consultation managers, or to appropriate public agencies such as vocational or other schools.

Some control method, such as a checkout system with return due date, shall be instituted so that the whereabouts of the loaned materials can be tracked.

NOTE: Printed material meant for distribution to the public, such as copies of laws, and informational brochures, pamphlets, and booklets shall be provided free of charge wherever possible.

3. Informational Services. OSHA desires to keep employers and employees accurately informed of current developments within the agency.

OSHA's Office of Information and Consumer Affairs shall issue News Releases, Fact Sheets and other informational material to inform the employer and employee community of new standards, rules, and regulations issued by OSHA under the Act. Directives can be found on the Internet at <http://www.osha.gov> under "Other OSHA Related Documents". In addition, single copies of OSHA related publications can be obtained from OSHA Publications, telephone (202) 219-4667.

Regional Administrators (or as delegated to the Area Directors) shall include in their outreach program plan a procedure for informing the safety and health community in their jurisdictions--including employers, employees, safety/ health professionals, and other interested parties--of OSHA developments, such as:

- New or revised standards;
- Other standards activity, as appropriate, including the status of proposed standards, comment periods, or public hearings;
- Developments in the area of voluntary compliance, such as workplace violence guidelines;
- Courses offered at the OSHA Training Institute;
- Accident information fact sheets, when appropriate; etc.

OSHA 7(c)(1) consultation or 18(b) State program consultation projects shall be given wide publicity.

- E. Referral Services. The Regional Office and Area Office shall make every effort to be aware of the safety and health resources available within their jurisdiction. The Regional Administrator and Area Director and their staff shall be prepared to

make appropriate referrals when the occasion arises.

1. Examples of such resources are:
 - Local professional safety and health organizations, either private or public--e.g., National Safety Council chapters, COSH groups, anti-violence coalitions, victims' rights organizations;
 - Community resources such as local public safety and health agencies, hospitals, clinics, community service organizations, trade and vocational schools, etc.;
 - Discretionary Grantees;
 - OSHA 7(c)(1) or State program onsite consultation projects;
 - Other related Federal Government agencies; e.g, National Institute for Occupational Safety and Health (NIOSH), Wage and Hour, Food Safety Inspection Service (FSIS), Environmental Protection Agency (EPA); and
 - NIOSH-approved laboratory analysis services.
2. The specific offerings of each of the resources identified shall be determined so that proper use may be made of them.
3. Lists of these resources with names of contact persons, addresses and telephone numbers shall be developed and kept on file. They shall be updated at least once a year.
4. Referrals of private safety and health services or equipment distributors should be done without the appearance of promoting a specific enterprise or business. OSHA does not wish to promote or to give the appearance of promoting specific enterprises.
5. In State plan Area Offices, referral services would, of course, include referral to available State plan program services, such as enforcement and other compliance services, and training and education.

F. Other Services.

1. Voluntary Protection Programs. The Regional Administrator and staff shall be familiar with the various VPP possibilities and should encourage

and assist employers who may be apt participants in such programs. At the Regional Administrator's discretion this may be delegated to an Area Director.

2. Abatement Assistance. It is OSHA policy to offer assistance in every feasible manner toward the removal of safety or health hazards from the workplace. Such assistance shall be offered to any interested party as deemed appropriate and feasible by the Area Director in consultation with the Regional Administrator. Abatement assistance may be offered in connection with an enforcement inspection or independently of such an inspection.

When connected with citations issued as a result of an inspection, abatement assistance shall be governed by the guidelines in the FIRM.

When no inspection is involved, OSHA shall offer any appropriate off-site assistance in removing hazards from the workplace.

- Employers and employee representatives shall be encouraged to seek such assistance whenever it could be helpful.
- The offering of such assistance shall be a part of the outreach program plan developed by each Area Director. The means of making known OSHA's policy of offering hazard removal assistance shall be determined as a part of that program plan.

NOTE: Area Office assistance is appropriate when notice of an unsafe or unhealthful working condition comes to the Area Director's attention in an establishment otherwise exempt from enforcement activity by virtue of an exemption under the Appropriations Act. (See OSHA Instruction CPL 2-0.51I, or the most current version.) For example, if a complaint or a referral is received for such an establishment, it would be appropriate to write a letter to the employer noting the allegation, outlining the requirements of OSHA standards, and suggesting voluntary abatement action.

Onsite assistance, known as an Agency Technical Assistance Request (ATAR), will be provided by the area office, at the area office discretion, to a Federal agency which requests such assistance.

3. Other Technical Services. It is OSHA policy to offer technical assistance whenever appropriate.

Such services shall be available to any interested party within the Area Office community. They shall not be limited only to employers covered by the OSH Act.

The Area Office may loan out selected technical equipment on a limited basis to other Federal agencies, State program administrators, and OSHA 7(c)(1) consultation managers, provided that the borrowers are trained in the use of the equipment, for the purpose of conducting initial monitoring to identify potential health hazards, emergency monitoring, single case monitoring when processes have been changed, or for other legitimate purposes. Loans of equipment for routine monitoring are not appropriate.

Guidelines shall be developed in each Region governing the lending policies and procedures to be followed in the Area Office. Such policies and procedures shall include at least the following national guidelines:

- Some control method, such as a checkout system with return due date, shall be instituted so that the whereabouts of the loaned equipment can be tracked.
- The equipment to be loaned shall be thoroughly checked out and its condition noted. The lender shall sign an agreement to repair any damage resulting to the equipment while it is in his/her custody.
- Equipment shall not be loaned out when that equipment is necessary for the Area Office to carry out its compliance mission.

- G. Public Information Policy. The Area Director may publicize the services offered by way of local news releases or public service announcements as appropriate in local circumstances. Such publicity efforts shall be part of a public information section within the outreach program plan.
1. All news and public service announcements shall be approved by the Regional Administrator prior to release.
 2. Professional staff are encouraged to become members of professional safety and health organizations and/or to attend the meetings of such organizations regularly. Such meetings can be a vehicle for informing the public of OSHA's balanced program mix.
 3. The Area Director shall extend the agency's cooperation toward all local cooperative safety and health efforts in the community. This cooperation shall be expressed in whatever way seems most appropriate.

X. Regional Small Business Coordinator. Each Regional Administrator shall designate a Small Business Coordinator for the Region.

- A. The Small Business Coordinator shall address all complaints regarding enforcement or responsiveness that are received from small businesses or employees of small businesses.
 - 1. The Small Business Coordinator shall track the progress and resolution of such complaints and the response that is made to the complainant.
 - 2. All complaints regarding enforcement or responsiveness shall be considered as being received from small businesses, if the size of the business is unknown.
- B. Any such complaint that cannot be resolved by the Small Business Coordinator shall be referred to the Regional Administrator for resolution.
- C. Any such complaint that cannot be resolved by the Regional Administrator shall be referred to the Director of Compliance Programs and to the Special Assistant for Small Business Liaison for resolution.

XI. Penalties. The Occupational Safety and Health Act of 1970 provides that penalties shall be assessed on the basis of four factors: the gravity of the violation, the size of the business, the good faith of the employer, and the employer's history of previous violations. As set forth in the FIRM, Chapter IV, paragraph C., the gravity of the violation is the primary consideration in determining penalty amounts. The gravity-based penalty may be reduced depending upon the employer's good faith, size of business, and history of previous violations. The following penalty considerations are available to small businesses:

- A. Size Adjustment. For all employers with fewer than 250 employees, the gravity-based penalty for alleged violations shall be reduced by the following percentages in accordance with the FIRM:

<u>Employees</u>	<u>Percent reduction</u>
1-25	60
26-100	40
101-250	20
251 or more	0

- B. Good Faith Adjustment. For all employers including small businesses, the gravity-based penalty is reduced by the following percentages in accordance with the FIRM. The good faith reductions are 25%, 15%, or 0% depending on how well the employer has implemented an effective safety and health program in the workplace.
- C. History. In accordance with the FIRM, a reduction of 10 percent is given to employers, including small businesses, who have not been cited by OSHA for any serious, willful, or repeated violations in the past three years.
- D. The Regional Administrator shall offer State programs the same program support as that offered to Area Offices in Paragraph G.2., and make compliance assistance resource material available to the States for their use and/or adaption.

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