

State of Alaska
Department of Labor
Division of Labor Standards and Safety

AKOSH Program Directive 92-6

Date: August, 1992

To: All AKOSH Compliance Staff

From: Richard Arab, Deputy Director

Subject: Guidelines for Implementing the Field Sanitation Standard (1928.110), Subchapter 14, Agriculture

A. Purpose: This Program Directive (PD) provides guidelines for the inspection of agricultural establishments covered by the Field Sanitation standard.

B. Background: Federal OSHA has been criticized by several employee advocacy organizations about its compliance policies of targeting farming operations during peak and non-peak periods of planting and harvesting of crops and fibers; its response time to complaints from farm workers; and its classification of violations and related penalties; and inspection follow-ups. Employer organizations, on the other hand, have expressed concerns about federal OSHA's interpretation of the scope of coverage of the standard and its application to field situations where fewer than 11 employees are engaged in hand-labor operations on the day of the inspection.

OSHA, therefore, issued a directive on June 22, 1992, OSHA Instruction CPL 2-2.42, to clarify its policies and provide guidelines for inspecting of agricultural establishments.

Although there are few, if any farming operations, that may be covered by the standard in Alaska, AKOSH is adopting a similar directive in order to assure that its policies and procedures relating to field sanitation complies with OSHA policies and procedures.

C. Appropriation Restrictions and Scope of Standard.

1. The current appropriation law enacted by the U.S. Congress exempts from OSHA regulation farming operations that employ 10 or fewer employees and do not maintain a temporary labor camp. OSHA has consistently interpreted this appropriation restriction as permitting OSHA regulation of any farming operation that has employed 11 or more employees on any given day during the 12 months preceding the inspection. The

appropriation law specifically permits OSHA to regulate any farming operation that maintains a temporary labor camp, regardless of the number of employees.

2. OSHA affirms, therefore, that the standard applies to any agricultural establishment or employer that has employed, during the previous 12 months, at any one time, eleven (11) or more employees engaged in hand-labor operations in the field. This coverage applies regardless of the location(s) of the field(s) and regardless of the number of employees in any particular field or the number of employees engaged in hand-labor operations in the field on the day of the inspection. AKOSH will follow this interpretation of the scope of the Alaska field sanitation standard.

D. Training and Education of AKOSH Personnel. The Director shall ensure that all safety and health compliance officers (CSHOs) are trained in the Field Sanitation Standard and this PD prior to conducting field sanitation inspections.

1. The entire preamble to the federal standard, in addition to the standard itself, shall be used as the basis of the training and CSHOs shall be familiar with its contents.

It contains a full discussion of the record upon which the final standard was based, and OSHA's interpretations and intentions about the meaning of the individual requirements of the standard. In order to ensure an adequate understanding of the standard and encourage consistent enforcement, particular attention shall be given during training to the following:

- a. Scope of the standard;
 - b. Definitions, especially agricultural employer, agricultural establishment, and hand-labor operations;
 - c. Requirements for drinking water, toilet and handwashing facilities.
2. Continued training shall be provided, on a regular basis, to field sanitation enforcement personnel. This training will be coordinated by the Consultation and Training unit of AKOSH.

E. Scheduling Procedures.

1. The procedures outlined in the Compliance Manual for programmed inspections in general industry, construction, and maritime employment cannot be used in scheduling inspections of applicable agricultural establishments employing hand-labor operations in the field.

- a. These operations tend to be seasonal and of short duration. Some variables which may affect the scheduling and inspection of these operations include types and location of crops, duration and season.
- b. For these reasons, inspection scheduling procedures as found in Chapter II, E.2.b.(5) of the Compliance Manual shall be followed to obtain information on the location of sites potentially available for inspection.
- c. All compliance personnel shall be instructed to look for hand-labor operations in the field when in rural areas where such operations are expected to be in progress.
- d. Each observation of such operations shall be handled in the following manner:
 - (1) During the peak period of planting or harvesting of crops or fibers, the CSHO making the observation shall initiate an inspection of the operation if one or more employees engaged in hand-labor operations are observed in the field.
 - (a) During the opening conference, if it is determined that the scope of coverage is applicable to the operation, the CSHOs shall proceed with the inspection; otherwise the inspection shall terminate.
 - (b) The Chief may define the circumstances under which inspections based on CSHO observations of employees in the field must be cleared by the supervisor.
 - (c) The inspection shall be initiated at the earliest possible time, depending on the local inspection priorities.
 - (2) During non-peak periods of planting or harvesting, the CSHO making the observation shall initiate an inspection of the operation only if five (5) or more employees engaged in hand-labor operations are observed in the field(s). The other restrictions as outlined in E.1.d. (a)-(c) apply.
 - (3) If contact with an employer is made, but no inspection is conducted due to lack of coverage, an OSHA-1 shall be filled out and marked "No Inspection."

NOTE: All of the above inspections shall be recorded as programmed if the observing CSHO makes the inspection; otherwise, they shall be recorded as referrals.

2. All complaints/referrals received concerning alleged violations of the Field Sanitation Standard shall be processed by the Chief, Compliance as quickly as priorities permit, because of the short duration of these operations. Due consideration shall also be given to available resources.
3. If a denial of entry occurs, a warrant may be sought.
 - a. The Chief shall consider factors such as the following before processing a warrant application:
 - (1) Warrant processing time;
 - (2) Anticipated duration of the hand-labor field operation;
 - (3) Impact on compliance; and
 - (4) Violations already documented.
 - b. In these instances where denial of entry is the known policy of a given employer, a preinspection warrant should be obtained by the Chief.

F. Classification of Violations.

1. Failures to comply with the standard's requirements to supply water or sanitation facilities in the field, especially during peak planting or harvesting periods, generally shall be classified as serious violations. Violations will be classified as other-than-serious only when it is clear that the failures to comply are minimal or that, under the conditions in the particular field, the hazards to be controlled by compliance are minimal.
 - a. A failure to comply would be minimal, for example, when an employer provided a single toilet (at an appropriate place in the field) for 21, instead of 20 employees.
 - b. Conditions in the field could minimize the relevant hazards, when, for example, an employer failed, during cold weather, to provide adequate potable water in a field where toxic agrichemicals had not recently been applied.

2. The classification of safety and health violations involves the exercise of maximum professional judgment. All relevant factors must be carefully considered when making classification decisions.

G. Abatement of Violations. Due to the short duration of hand-labor field operations the abatement period shall be the shortest possible interval, with particular emphasis given to immediate abatement.

H. Follow-up Inspections. Due to the short duration of field activities, field sanitation followup inspections cannot be scheduled in the manner provided in the Compliance Manual. The Chief shall implement procedures that will ensure that at least five percent (5%) of field sanitation inspections resulting in serious citations receive followup inspections.

I. Recording in IMIS. Current instructions for completing the Inspection Report, OSHA-1, as found in the IMIS Manual shall be used with the following additional instructions:

1. The OSHA-1, Item 24 shall be marked as appropriate.
2. The OSHA-1, Item 25 "National Emphasis Program" will be marked and "FIELDSAN" entered in the "specify field" for all field sanitation inspections.

NOTE: The field sanitation inspections are not National Emphasis Program inspections, but the above entry is required due to the lack of an additional field under Item 25 at this time.