


CANCELLED

ALASKA DEPARTMENT OF LABOR
DIVISION OF LABOR STANDARDS AND SAFETY

AKOSH Program Directive 93-2

Date: April 26, 1993
To: All AKOSH Staff
From:  Donald G. Study, CSP, Director
Subject: OSHA Exemptions and Limitations

- A. Purpose. This program directive establishes inspection, tracking and accounting procedures for activities which have not been funded by Congress.
- B. Directives Affected: DOSH Program Directive 91-5, dated February 22, 1991 is canceled.
- C. Background: The U.S. Congress continues to place some riders to OSHA appropriations in FY 1993 which either prohibit inspections in specified industries or limit the type of activities that can be performed in other industries.

Although Congress has placed these restrictions on federal OSHA appropriations, there are no such restrictions on state monies. State statutes require certain actions that Alaska must follow. These exempted activities will, therefore, be funded by "State only" monies.

- D. Guidelines. The Appropriations Act maintains certain exemptions and limitations on federal OSHA activities which were imposed in previous fiscal years.
 - 1. The Appropriation Acts maintains the previously implemented exemption of certain farming operations from all rules, regulations, standards or orders under the Occupational Safety and Health Act.
 - 2. Farming Operations: No scheduled safety or health inspections or consultative visits will be conducted for farming operations which employ 10 or fewer employees if the operations do not maintain temporary labor camps.
 - a. The CO shall make an exemption determination as soon as possible after arrival at a farming operation and leave the premises if the operation is exempt.

NOTE: Family members of farm employers shall not be counted as employees when determining employee number.

- b. A temporary labor camp which is unoccupied at the time of the inspection and is expected to remain unoccupied during the subsequent 12-month period shall not be considered an active camp and does not affect the exempt status of the farming operation.
- c. COs shall conduct an inspection in accordance with the Compliance Manual under either of the following conditions:
 - (1) If a farming operation currently employs, or has employed at any time during the preceding 12 months more than 10 employees; or
 - (2) If a farming operation maintains an active temporary labor camp.

NOTE: The inspection may include all working conditions covered by AKOSH standards; or it may be limited (e.g., to migrant housing facilities), depending on the availability of resources.

- d. If an inspection is not conducted because a farming employer is exempt, the CO shall complete an OSHA-1 Form according to current IMIS instructions.
- e. Definitions pertinent to this section are the following:
 - (1) A "farming operation" is defined as any operation involved in the growing or harvesting of crops, the raising of livestock or poultry, or related activities conducted by a farmer on sites such as farms, ranches, orchards, dairy farms or similar farming operations.
 - (2) A "temporary labor camp" is defined as farm housing directly related to the seasonal or temporary employment of migrant farm workers.
 - (3) "Housing" includes both permanent and temporary structures located on or off the property of the employer, provided it meets the foregoing definitions.
- f. "State only" funded Inspection of Farming Operations. Alaska Statute 18.60.058 requires the Department to investigate fatalities and Alaska Statute 18.60.088 requires the department to respond by inspection to formal employee complaints. If one of the above circumstances occurs, the State will perform an inspection of a farming operation with 10 or fewer employees, using state only monies.

- (1) Only the Chief or the Director will assign a CO to a complaint or fatality inspection of a farming operation with 10 or fewer employees.
 - (2) A complaint inspection will be conducted only on a formal complaint and the Chief will evaluate a formal complaint to assure that the hazards are serious enough to warrant an on-site inspection. If the hazards complained about are non-serious in nature, the complaint will be handled by letter.
 - (3) Any inspection conducted as a result of a fatality will be limited to the working condition that caused the fatality. A complaint inspection will be limited to the hazards complained about.
 - (4) All inspection time conducted under paragraph D.1.f. will be charged to 780071 for both safety and health. The Administrative Assistant will provide the Chief with the total hours spent on such activity on a bi-weekly basis.
3. Recreational Hunting, Shooting or Fishing. Recreational hunting, shooting or fishing activities are no longer addressed in the Appropriations Act as an exempt industry. Organizations (profit or nonprofit) engaged in such activities, therefore, can be inspected if they are not exempted under the small business exception described in D.4. of this PD. However as a matter of policy, AKOSH will not develop a special emphasis scheduling program that targets these industries because they are no longer exempt.
4. Employer's Lost Workday Injury Rate Below the National Average. The U.S. OSHA Appropriations Act exempts from programmed safety inspections any employer with 10 or fewer employees currently and at all times during the last 12 months and within an industry having an occupational injury lost workday case rate lower than the national average rate for the private sector as most recently published by the Bureau of Labor Statistics (3.7 for 1991) at the most precise Standard Industrial Classification (SIC) code for which such data is published using the 1987 manual.
 - a. LWDI. Employers with 10 or fewer employees within an industry classified in a SIC code with an LWDI rate less than 3.7 are exempt from all safety inspections, both programmed and unprogrammed, except as described in D.3.(c). The affected SIC codes are listed in Appendix A.
 - b. Exemption From Inspection. The Chief, Safety Compliance shall determine an employer's SIC code before conducting any programmed or unprogrammed safety inspection.

- (1) If the employer is in an industry within an exempt SIC code, the Chief shall determine if the employer meets the employment criterion in D.4.
 - (2) If the number of employees cannot be determined prior to the safety inspection, the CO shall determine the number during the opening conference.
 - (3) If the employer currently has and has had 10 or fewer employees at all times during the preceding 12 months, the inspection shall not be conducted except as noted in D.4.c.
- c. Exceptions in the Appropriations Act. The following activities are permissible in establishments of employers that are otherwise exempt under D.4.
- (1) Consultation, technical assistance, and educational and training services may be provided; and surveys and studies may be conducted.
 - (2) Inspection or investigation may take place in response to an employee complaint, in accordance with current complaint procedures.
 - (a) Citations may be issued for any violation found during a formal complaint inspection whether or not the violative condition is a subject of the complaint.
 - (b) The U.S. Congressional limitations and exemptions allows OSHA to assess penalties for safety violations found during a formal complaint inspection only when such violations are classified as willful violations or as failure to abate. AKOSH will not assess penalties for repeat violations or for "other" violations regardless of the number of such "other" violations. However Alaska Statutes (AS) 18.60.095 (b) requires Alaska OSH to assess a penalty for a serious violation and AS 18.60.095(g) requires a penalty be assessed if the employer fails to post a citation. If AKOSH must assess a penalty that is not allowed under OSHA's appropriation limitations and exemptions, the time involved in assessing such penalties will be charged to State only code 780071. See, Paragraph D.2.f. on how to handle time spent on assessing a serious or failure to post a citation violation.

- (3) AKOSH may take any action authorized by AS 18.60.010 - .105 in regard to imminent danger situations.
- (4) Alaska OSH may take any action authorized by the Statutes with respect to health hazards.
 - (a) Health inspections shall be scheduled, observed health hazards cited, and penalties assessed for all classifications of violations in accordance with current procedures.
 - (b) Apparent safety violations noted during a health inspection of an establishment are exempted by the Appropriations Rider and OSHA may not cite or refer for later inspection such violations unless such violations result from hazards alleged in a formal complaint, a report of imminent danger or a fatality/catastrophe report. Alaska OSH, however, must per AS 18.60.095(b) and (g) issue citations and penalties for serious violations and failure to post a citation. IHs will, therefore, issue citations or refer such violations. If this should occur, the procedures set out in D.1.f. must be followed.
- (5) AKOSH may take any action authorized by the statute with respect to employment accidents involving a fatality of one or more employees or hospitalization of two or more employees . All apparent violation conditions involving safety or health may be cited and penalties proposed regardless of whether the conditions were related to the accident.
 - (a) AS 18.60.058 (a), the accident reporting statute has not been changed. Employers must still report accidents that are fatal to one or more employees or which results in the overnight hospitalization of one or more employees. Under the Congressional rider, federal OSHA monies may be used to inspect accidents that result in a fatality or that results in the hospitalization of two or more employees.
 - (b) AKOSH, therefore, has decided to adopt a policy to, depending on the circumstances involved in the accident, inspect accidents that result in the hospitalization of two or more employees in work places of employers covered under D.4. The Chief will make

the decision as to whether or not to investigate such accidents.

- (6) AKOSH may take action authorized by AS 18.60.089 with respect to alleged discrimination against employees.
- (7) If it is learned after an inspection that the employer was exempt at the time of the inspection, the Chief shall ensure that the procedures set out in D.4.c(2)(b) and E. are followed.

E. Tracking Time Spent on Assessing Serious Safety Violations:

1. When a compliance officer is assigned a complaint inspection of an establishment that is covered by the Appropriations Rider, the Chief Compliance, will instruct the Co or IH of the restrictions that apply to such an inspection and instruct him or her to keep track of the time spent assessing a penalty for a serious violation or a posting violation. Time spent for such activity must be charged to 780/380. Should such a penalty be contested, all CO or IH time related to that contest must also be charged to state only monies (780).
2. When an Industrial Hygienist is assigned to inspect an establishment covered by the Appropriations Rider, the Chief Compliance will instruct the IH of the restrictions that apply to such an inspection and instruct the IH to keep track of time he spends citing, penalizing or referring "safety" or regulatory violations. Such time will be charged to 780/380. Should the safety or regulatory violation or penalty be contested, all IH costs related to that contest must also be charged to state only monies (780).
3. The Anchorage Office Manager will add such hours together with any time spent on restricted farming operations, or recreational hunting and fishing activities, when making the bi-weekly report required in D.2.f.(4).
4. If an inspection was conducted in any of the industries covered by the exemptions and limitations under this DOSH PD, the Administrative Officer, Chief, and Office Manager will determine the time that is to be charged to State-only monies. When this determination is made the Administrative Officer in Juneau will write a memorandum to the Department's Fiscal Section informing them of the number of hours that should be charged to this account.
5. The department's fiscal section will follow the formula set out in Appendix D to assure the correct amount is charged to state only monies.