



MNOSHA Instruction **CPL 2.111**

March 11, 2015

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## **SUBJECT: Paperwork and Written Program Violations**

### **Purpose:**

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

### **Scope:**

This notice applies MNOSHA-wide.

### **References:**

1. Federal OSHA Instruction CPL 02-00-111 (former version CPL 2.111), "Citation Policy for Paperwork and Written Program Requirement Violations," dated November 27, 1995.
2. MNOSHA Instruction CPL 2-2.38, "Enforcement Guidelines for the Employee Right-to-Know Standard (Minn. Rules Chapter 5206) in General Industry and Construction."
3. MNOSHA Instruction CPL 2-0.135 "Recordkeeping Policies and Procedures."

### **Cancellation:**

This directive supersedes MNOSHA Instruction CPL 2.111, "Paperwork and Written Program Violations," dated November 29, 2010.

## Background:

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 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.

1. 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 OSHA’s efforts to promote its mission.
2. The purpose of this instruction is to provide guidance which will lead to consistent and effective enforcement of 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.
3. Application of these guidelines will require informed professional judgment on the part of OSHIs and careful attention to the circumstances in the workplace which affect the impact of violations on the health and safety of workers.

## ACTION:

### A. Evaluation of “Paperwork” Violations.

The following guidelines are provided to assist OSHIs in the determination of appropriate citations and penalties in particular circumstances. Paperwork violations are “administrative” violations and, when cited, are normally cited as non-serious. Penalties shall be proposed in accordance with FCM Chapter VI. Civil Penalties. OSHIs shall adhere to the following procedures when evaluating and citing violations of paperwork requirements:

1. Failure to Post the OSHA Poster (Minn. Rules 5210.0420, subp. 1)
  - a) The employer shall be provided a copy of the OSHA Poster and shall be advised of the legal requirement to post it for employees. The employer shall also be informed of the consequences of failure to post it. These actions shall be noted in the case file. This policy applies in all cases, except as noted in paragraph b.
  - b) A citation for failure to post the OSHA Poster is warranted if the pattern of violative conditions for a particular establishment demonstrates a consistent disregard for the employer’s responsibilities under the Minnesota Occupational Safety and Health Act of 1973 (Act); and
    - (1) Interviews show that employees are unaware of their rights under the Act; and

- (2) The employer has been previously cited or advised by OSHA of the posting requirement.

## **B. Evaluation of “Written Program” or “Certification” Violations:**

(Such as requirements in the Respiratory Protection, Bloodborne Pathogens, Lockout/Tagout, Personal Protective Equipment, and other similar standards. For “written program” violations under the Employee Right-to-Know or Hazcom Standards, see MNOSHA Instruction CPL 2-2.38.)

### **1. General Principles**

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

- a. When the employer has failed or is likely to fail to follow protective measures required by the standard in a manner that is related to the deficiency in the plan, so that employees are exposed to a risk of serious harm, a citation for a serious violation of the standard with a penalty shall normally be issued. Penalties shall be proposed in accordance with an assessment of the exposure.
- b. When the employer has followed the proper protective measures required by the standard, and it is unlikely that the deficiency in the plan will result in failure to follow proper practices in the future, a citation for a non-serious violation with no penalty shall normally be issued. In addition, the employer shall be: (1) provided literature to assist in the development of a proper written plan, and (2) informed of possible penalties for subsequent violations.
- c. When a standard requires an evaluation of a potential hazard in the workplace, and the employer has failed to conduct the evaluation, but no such hazard exists or could reasonably be anticipated in the future in the employer’s workplace, or the hazard could not be present at a level to present a risk to employees, no citation shall be issued.
- d. 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, no citation shall be issued. The requirement for a certification and the reasons for the requirement shall be explained to the employer and the action noted in the case file. The employer shall also be informed of possible penalties for subsequent violations.

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- e. 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 indicate that citing each deficiency separately may be warranted. In such cases, a careful review of the facts and objectives behind all citation items must be conducted. These cases typically would enter the litigation case selection process. The total penalties for plan deficiencies shall not exceed the penalties that would be imposed for complete lack of a plan, unless the case meets the requirements for egregious penalties (FCM, Chapter VI- Egregious Penalties).

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James Krueger, OMT Director  
For the OSHA Management Team

Distribution: OSHA Compliance and WSC Director

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