

OSH INFORMATION MEMORANDUM: 78-X-33

TO: All OSH Directors, Supervisors and Field Personnel

FROM: William M. Lybrand, Director of OSH

SUBJECT: De Minimis Violations

DATE: November 29, 1978

Purpose

The purpose of this directive is to implement new guidelines on de minimis violations which have no direct or immediate relationship to safety and health; clarify the prior definition of de minimis violations; and direct safety specialists and industrial hygienists to recognize insignificant standards and minor technical deviations which have no direct or immediate relationship to safety and health as de minimis violations.

Documentation Affected

- a. This directive supplements the following paragraphs of the Compliance Manual:
  - (1) Chapter VIII, paragraph B.3.(a) and (b)
  - (2) Chapter XII, paragraph B.6.
- b. Any other directives pertaining to de minimis notices, in (a) above, are superseded by this directive

Background

On May 19, 1977, Federal OSHA announced a new "common sense" approach to implementation of the Occupational Safety and Health Act, including a redirection of OSHA's enforcement efforts towards significant safety and health hazards. In order to implement the new "common sense" approach, South Carolina OSHA believes that it is necessary to clarify existing instructions regarding the proper utilization of the de minimis provision in section 9(a) of the Federal Act to ensure that State authority will be utilized in all appropriate circumstances. South Carolina Labor Law 41-15-280 provides for the issuance of a notice instead of a citation with respect to de minimis violations which have no direct or immediate impact on safety or health.

Explanation

The following are the criteria for de minimis and specific examples of each criterion.

- a. An employer complies with the clear intent of the standard, but deviates from its particular requirements in a manner which has no direct or immediate relationship

to safety and health. These deviations may involve distance requirements, material requirements, the use of color, specifications and sign wording, and slight variations in inspections, testing, recordkeeping and maintenance requirements. Maximum professional discretion must be exercised by Safety Specialists or Industrial Hygienist Supervisors in determining the point at which noncompliance with a standard is no longer de minimis, but bears a relationship to safety or health.

Examples:

- (1) Section 1910.27(b)(1)(ii) – Which allows 12 inches as the maximum distance between ladder rungs. Where the rungs are 13 inches apart, the condition should be treated as de minimis.
  - (2) Section 1910.28(j)(1) – Specifying that boatswain’s chairs be made out of wood of a specific dimension. If it were made out of another material of equivalent strength, the condition should be treated as de minimis.
  - (3) Section 1910.217(e)(1)(ii) – Which requires that mechanical power presses be inspected and tested at least weekly. If the machinery is seldom and sporadically used, inspection and testing prior to each use would be adequate to meet the intent of the standard.
- b. An employer complies with a proposed amended change to a standard, rather than with the standard presently in effect and the proposed amendment provides equal or greater safety and health protection.

Example:

Section 1910.178(m)(6) – Powered Industrial Trucks, allowing trucks to open railroad freight car doors. (See OSH Program Directive, Number: 77-1910-178-3.)

- c. An employer’s workplace is at the “state of the art” which is technically advanced beyond the requirements of the applicable standard, and provides equivalent or better safety and health protection. An example would be where OSHA standards, derived from such consensus groups as NEC, NFPA, etc., have been updated in later consensus publications in accord with new technology or equipment and the updated standard provides equal or greater safety and health protection.

Example:

Section 1910.309 of South Carolina OSHA Rules and Regulations – Adopting the 1978 edition of the National Electrical Code. (See OSH Program Directive, Number: 78 – Articles VI, VII and VIII – 1 (Revision of ’76).)

## Action

- a. Assistant Director of Compliance.
  - (1) Shall no longer issue de minimis notices. All de minimis conditions will be noted on the Compliance Worksheet (DOSH-C-1A Form). The applicable descriptive information and data will be entered to assure meaningful discussion during the closing conference and adequacy for use in file retention and supervisory discussion.
  - (2) Shall assure that all de minimis violations are inserted and retained in the case file.
  - (3) Shall ensure that no additional reports are prepared by the Safety Specialist or Industrial Hygienist for the purpose of meeting obsolete MIS reporting requirements.
- b. Safety Specialists and Industrial Hygienists.
  - (1) Will discuss and advise employers at the closing conference on all de minimis conditions noted during the walkaround.
  - (2) Shall advise the employer that de minimis conditions will be subject to review in the same manner as OSHA violations. (See Compliance Manual, Chapter V, paragraph I.2.(b).) Employer comments shall be noted on the DOSH-C-1C Form.
  - (3) Should be cautioned that Federal proposed amendments do not automatically change the requirements of existing standards. Until a proposal becomes final, deviations from existing standards should be recognized as de minimis only where they have no direct or immediate relationship to safety or health.

## Effective Date

This directive is effective upon receipt and will remain in effect until cancelled or superseded. Questions related to this directive may be referred to the Assistant Director of Compliance for discussion with the Director of OSH.