



MN OSHA Instruction **CPL 2.42B**

September 23, 2015

Reissued in accessible format: March 23, 2022

SUBJECT: MNOSHA Jurisdiction and Interagency Agreements

Purpose:

To provide a summary of Interagency Agreements which apply and do not apply to MNOSHA inspection activities.

Scope:

This notice applies MNOSHA-wide.

References:

1. Federal OSHA Instruction CPL 02-00-042 (formerly known as CPL 2.42), dated March 14, 1980 and Change 1 dated September 16, 1980, "Interagency Agreement Between the Mine Safety and Health Administration and the Occupational Safety and Health Administration, U. S. Department of Labor."
2. Federal OSHA Instruction CPL 02-00-086 (formerly known as CPL 2.86), dated December 22, 1989, "Memorandum of Understanding between the Occupational Safety and Health Administration and the U. S. Nuclear Regulatory Commission."
3. Federal OSHA Instruction CPL 02-00-095 (formerly known as CPL 2.95), dated February 10, 1992, "Enforcement Authority at the Department of Energy's (DOE) Government-Owned, Contractor-Operated (GOCO) Sites."
4. MNOSHA Field Compliance Manual: [G:\OSHA-ENF\Manuals\Field Compliance Manual \(FCM\).docx](G:\OSHA-ENF\Manuals\Field Compliance Manual (FCM).docx)

Cancellation:

This instruction cancels MNOSHA Instruction CPL 2.42, dated October 15, 2014.

Background:

Section 4(b)(1) of the Federal OSH Act exempts from OSHA coverage those working conditions over which other Federal agencies have exercised their statutory authority. The Minnesota OSH Act requires the Commissioner to insure "maximum possible consistency in procedures and to insure minimum duplication between the department and the other agencies that may be involved in occupational safety and health" [Minn. Stat. § 182.67, subd. 3].

Questions about where jurisdiction begins and ends for some Federal and State agencies have resulted in a number of Interagency Agreements to clarify agency boundaries. This policy summarizes currently effective interagency agreements that apply to Minnesota OSHA activities.

ACTION:

- A. On July 10, 1975, the Federal Aviation Administration (FAA) published a Federal Register Notice asserting FAA's complete and exclusive responsibility for the regulation of the safety of civil aircraft in operation, and asserting that FAA prescribes and enforces standards and regulations affecting occupational safety or health with respect to U.S. registered civil aircraft in operation.

https://www.osha.gov/pls/oshaweb/owadisp.show_document?p_id=283&p_table=MOU.

On April 1, 2014 Federal OSHA issued a memorandum stating that OSHA now has limited authority over the working conditions of cabin crew members (e.g., flight attendants) while they are on board aircraft in operation. OSHA has discussed this change with the state-plan States and they have all agreed that Federal OSHA will maintain authority over crew members on aircraft in operation.

https://www.osha.gov/dep/letters/04012014_AircraftCabinCrewmembers.html. MNOSHA does not have jurisdiction concerning cabin crews (also known as flight attendants), but will continue to cover aviation industry employees, such as maintenance and ground support personnel.

- B. In 1978, the Federal Railroad Administration (FRA) published a Policy Statement, 43 FR 10583, <http://www.orosha.org/pdf/mous/F-1.pdf>, which outlined the respective areas of jurisdiction between the FRA and the OSHA in the railroad industry. The FRA exercises authority over railroad operations and OSHA exercises authority over occupational safety and health issues. On July 6, 2012 Federal OSHA signed a Memorandum of Understanding with the FRA regarding inspection of whistleblower complaints indicating that Federal OSHA will investigate all discrimination complaints without regard to whether the protected safety or health activity relates to substantive safety issues covered by OSHA or FRA.

https://www.osha.gov/pls/oshaweb/owadisp.show_document?p_table=MOU&p_id=1125

MNOSHA will refer all such whistleblower inquiries to Federal OSHA.

- C. Interagency Agreement Between the Mine Safety and Health Administration (MSHA) and OSHA. In March, 1980, Federal OSHA entered into an interagency agreement with MSHA to clarify situations that involve overlapping jurisdiction with respect to the health and safety of miners. Minnesota OSHA agreed to follow that agreement.

In general, unsafe and unhealthful working conditions on mine sites and in mineral milling operations come under the jurisdiction of MSHA and its regulations. This jurisdiction includes construction at mine and mineral milling sites, including construction related to mining and milling performed by independent contractors. Where the provisions of the Mine Act and standards issued under it either do not cover or do not apply to occupational safety and health hazards on mine or mill sites (e.g., in those facilities unrelated to mining or milling such as hospitals on mine sites), OSHA applies. Also, when MSHA receives information about possible unsafe working conditions in an area over which it has authority, but for which its statutes or standards afford no appropriate remedy, it will refer the matter to OSHA. The agreement also clarifies MSHA and OSHA authority, outlines enforcement procedures and establishes means for interagency coordination.

"Mining" is defined as including mining operations (coal, metals, and non-metals), underground mining, open-pit mining, quarrying, solution mining, dredging (when the primary purpose is to recover metal or nonmetallic minerals for milling and/or sale or use), hydraulicking, ponds (brine evaporation), and auger mining. "Milling" processes which MSHA has authority to regulate include crushing, grinding, pulverizing, sizing, concentrating, washing, drying, roasting, pelletizing, sintering, evaporating, calcining, kiln treatment, heat expansion, retorting (mercury), leaching, and briquetting. MSHA jurisdiction also includes salt processing facilities on mine property; electrolytic plants (where the plants are an integral part of milling operations); stone cutting and stone sawing operations (on mine property where such operations do not occur in a stone polishing or finishing plant); and alumina and cement plants.

A complete copy of the Interagency Agreement is included in Federal OSHA Instruction CPL 02-00-042.

- D. Memorandum of Understanding Between OSHA and the U. S. Nuclear Regulatory Commission (NRC). On October 21, 1988, (revised September 6, 2013), Federal OSHA signed a Memorandum of Understanding with the Nuclear Regulatory Commission (NRC) to define the general areas of responsibility of each agency in NRC-licensed facilities, describe the efforts of each agency to protect workers in these facilities, and to coordinate agency activities. Minnesota OSHA agreed to follow the guidelines set out in this agreement. Generally, NRC is responsible for the nuclear and radiological safety in these facilities; OSHA is responsible for the industrial/worker safety issues. Hazards in NRC-licensed nuclear facility are divided into the following five types:
- 1) radiation risk produced by radioactive material;
 - 2) chemical risk produced by radioactive materials;
 - 3) plant conditions which affect the safety of radioactive materials and present an increased

- 4) radiation risk to workers (e.g., these might produce a fire or explosion and cause a release of radioactive materials or unsafe reactor condition); and
- 5) plant conditions which result in an occupational risk but do not affect the safety of licensed radioactive materials.

Usually, the NRC covers the first three hazards; OSHA covers the fourth and fifth hazards.

Under the agreement, fatality, catastrophe, and complaint inspections are to continue as usual in OSHA jurisdictional areas; however, any observations relating to areas where increased management attention is required are to be referred to the NRC, including such things as lax security control or work practices that may affect nuclear or radiological health and safety, improper posting of radiation areas, or licensee employee allegations on NRC license or regulation violations.

A complete copy of the Interagency Agreement is included in Federal OSHA Instruction CPL 02-00-086.

- E. OSHA Enforcement Authority at the Department of Energy's (DOE) Government-Owned, Contractor-Operated (GOCO) Sites. In 1992, Federal OSHA issued CPL 2.95 to clarify OSHA's policy for inspections at Department of Energy GOCO sites. Minnesota OSHA agreed to follow the guidelines in that CPL.

New construction activities within DOE sites are not considered part of OSHA's jurisdiction; this determination is generally supported by case law. Complaints from employees at such sites are to be referred to DOE for resolution.

- F. On February 2, 2014, Minnesota OSHA (MNOSHA) and Federal OSHA signed a Memorandum of Understanding whereby MNOSHA will provide case file information, summary data or appropriate information to Federal OSHA for administratively closed discrimination cases. When technology improvements allow for the transfer of case file information from Minnesota OSHA Operations System Exchange (MOOSE) to the federal Whistleblower Application, this MOU is considered expired. See Appendix A.

- G. Other Jurisdiction Matters:

1. USDOL/ESA: MNOSHA does not have a Memorandum of Understanding (MOU) between the Employment Standards Administration (ESA) and OSHA; this applies to Federal OSHA only. In 1991, Federal OSHA issued CPL 2.92, which provides guidelines for implementing the Memorandum of Understanding (MOU) between the ESA, Wage and Hour Division, (ESA/WH) and the Occupational Safety and Health Administration (OSHA). MNOSHA will use its established referral process to the Department of Labor and Industry, Labor Standards Unit, when needed.

September 23, 2015

2. FAA: On August 27, 2013, the Federal Aviation Administration and Federal OSHA signed a Memorandum of Understanding concerning airline cabin crews. However, MNOSHA does not have jurisdiction concerning cabin crews (also known as flight attendants), but will continue to cover aviation industry employees, such as maintenance and ground support personnel.
3. Maritime: On July 30, 1985, MNOSHA was granted final approval of its state plan under section 18(e) of the OSHA Act.
https://www.osha.gov/pls/oshaweb/owadisp.show_document?p_table=STANDARDS&p_id=11044
4. While Federal OSHA thus relinquished authority over most activity within Minnesota, it retained its authority relative to safety and health in private sector offshore maritime activities and will continue to enforce all provisions of the Act, rules or orders, and all Federal standards, current or future, specifically directed to maritime employment (29 CFR Part 1915, shipyard employment; Part 1917, marine terminals; Part 1918, longshoring; Part 1919, gear certification) as well as provisions of general industry and construction standards (29 CFR Parts 1910 and 1926) appropriate to hazards found in these employments, as they relate to employment under the exclusive jurisdiction of the Federal government on the navigable waters of the United States. (50 FR 30832, 1985).

James Krueger, Director MNOSHA Compliance
For the MNOSHA Management Team

Distribution: OSHA Compliance and WSC Director

Attachments: Appendix A, February 2013, MOU Providing Discrimination Case Information to Federal OSHA

NOTICE: Minnesota OSHA Directives are used exclusively by MNOSHA personnel to assist in the administration of the OSHA program and in the proper interpretation and application of occupational safety and health statutes, regulations, and standards. They are not legally binding declarations and they are subject to revision or deletion at any time without notice.

Appendix A: February 2013, MOU Providing Discrimination Case Information to Federal OSHA

A Memorandum of Understanding
Between
The United States Department of Labor Occupational Safety and Health Administration And
The State of Minnesota
Department of Labor and Industry

Purpose

The purpose of this memorandum of understanding (MOU) is to set forth the principles by which the State of Minnesota will share certain discrimination (i.e., Whistleblower) case information with federal OSHA.

Background

Minnesota OSHA (MNOSHA) developed and has sole ownership in a proprietary computer program and related source codes and documentation, known as Minnesota OSHA Operations Exchange System (MOOSE), for use by employees of MNOSHA to capture work place safety inspection and discrimination information. USDOL, OSHA, desires to obtain certain information concerning discrimination cases which have been administratively closed. MNOSHA has entered the case information in its MOOSE System, but does not have the resources to duplicate the data entry into the federal Whistleblower Application web-based database for these cases which are not investigated. At present, Minnesota's MOOSE system and the federal Whistleblower Application system do not communicate with each other and therefore the data cannot be exchanged electronically.

Procedures

Upon request of USDOL-OSHA, MNOSHA will provide case information, summary data or other appropriate information to USDOL-OSHA for administratively closed discrimination cases which may have occurred during the requested time period. The format of the information will be mutually agreed upon, and may change during the duration of this MOU.

Termination

If technology improvements allow for the direct electronic transfer of MNOSHA's discrimination case information from

MOOSE to the Whistleblower Application, this memorandum shall be considered expired.

Contact Persons

MNOSHA -James Krueger, Director, Occupational Safety and Health Division

USDOL-OSHA -Mary Ann Howe, Assistant Regional Administrator, Region V Whistleblower Protection Program

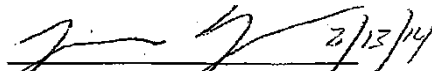
September 23, 2015

This document sets forth the entire agreement between the parties. Any understandings, agreements, representations, or warranties not contained in this MOU, or a written amendment shall not be binding on either party.

The parties acknowledge and accept the terms and conditions stated in this memorandum which is signed by the persons named below who warrant that they have the authority to execute it on behalf of MNOSHA and USDOL- OSHA.



Mark Hysell, Area Director date
USDOL-OSHA



James Krueger, Director date
Minnesota Department of Labor and Industry
Occupational Safety and Health Division