

**North Carolina Department of Labor
Occupational Safety and Health Division**

Raleigh, North Carolina

Field Information System

Operational Procedure Notice 130B

Subject: Emergency Action Plans and Fire Prevention Plans

A. **Purpose.**

This notice establishes North Carolina's policy for the enforcement of the requirements of 29 CFR 1910.38, Emergency Action Plans and 29 CFR 1910.39, Fire Prevention Plans.

B. **Scope.**

This policy applies to general industry activities throughout North Carolina where: (1) an applicable OSHA standard requires compliance with 29 CFR 1910.38 or 29 CFR 1910.39; and/or (2) an employer has elected to comply with 29 CFR 1910.38 or 29 CFR 1910.39 in order to meet an exemption for another OSHA standard.

C. **References.**

CPL 2-1.037 – Emergency Action Plans & Fire Prevention Plans
North Carolina Field Operations Manual
Field Inspection Reference Manual
29 CFR 1910.38 - Emergency action plans
29 CFR 1910.39 - Fire prevention plans
29 CFR 1910.119 - Process safety management of highly hazardous chemicals
29 CFR 1910.120 - Hazardous waste operations and emergency response
29 CFR 1910.157 - Portable fire extinguishers
29 CFR 1910.160 - Fixed extinguishing systems, general
29 CFR 1910.164 - Fire detection systems
29 CFR 1910.272 - Grain handling
29 CFR 1910.1047 - Ethylene oxide
29 CFR 1910.1050 - Methylenedianiline
29 CFR 1910.1051 - 1,3-Butadiene
CPL 2-2.45A - Process safety management

D. **Cancellations.**

This OPN will be used in lieu of CPL 2-1.037 that was never approved as policy in North Carolina. Additionally, this OPN rescinds the citation policy of 29 CFR 1910.120(q)(1) contained in Appendix F of CPL 2-2.59A, Inspection Procedures for the Hazardous Waste Operations and Emergency Response Standard.

E. **Discussion.**

29 CFR 1910.38 Emergency action plans and 29 CFR 1910.39, Fire prevention plans state in the scope of each subparagraph, they only apply if required by another OSHA standard in that part, (1910). Citations will not be issued for violations of 29 CFR 1910.38 or 29 CFR 1910.39 alone, since these standards do not apply unless specifically referenced by another standard.

Some standards specifically require an employer to have an emergency action plan and/or a fire prevention plan that comply with 1910.38 or 1910.39 respectively. Other standards allow compliant plans as an alternative to meeting the requirements of certain standards. In either case, 1910.38 and 1910.39 should be regarded as mandatory criteria rather than as independent standards.

Required Plans

Emergency action plans are required by the following standards:

29 CFR 1910.119(n): Process Safety

29 CFR 1910.160(c)(1): Fixed Extinguishing Systems, General

29 CFR 1910.272(d): Grain Handling

Both emergency action plans and fire prevention plans are required by these standards:

29 CFR 1910.1047(h)(1)(iii): Ethylene Oxide

29 CFR 1910.1050(d)(1)(iii): Methylenedianiline

29 CFR 1910.1051(j): 1,3-Butadiene

(For the purposes of this procedure, these standards will be referred to as “host standards.”)

Each of the host standards requires that the plan(s) comply with all of the appropriate paragraphs of 29 CFR 1910.38 and/or 29 CFR 1910.39. Failure of an employer to establish and implement a required plan, or to comply with any one of the elements in the appropriate standard, would mean that the employer failed to comply with the host standard. A citation would then be issued for violation of the host standard, and elements of 29 CFR 1910.38 and/or 29 CFR 1910.39 which were not met would be included in the AVD text and the documentation portion of the OSHA Form 1B, but separate citations would not be issued for violations of the Subpart E standards.

Exemptions

Certain sections of the 1910 standards allow an employer to establish and implement an emergency action plan and/or a fire prevention plan as an alternative to meeting the requirements of other standards, but stipulate that the plan(s) must comply with the relevant paragraph of 29 CFR 1910.38 and 29 CFR 1910.39 respectively.

29 CFR 1910.157 requires employers who provide fire extinguishers in the workplace to select, distribute and maintain them properly and to educate annually all employees in the use of extinguishers and the dangers associated with fighting an incipient stage fire. However, 29 CFR 1910.157(a) and (b) provide employers an exemption from most or all of the requirements of this section by meeting specific alternative requirements, one of which is the establishment of an emergency action plan and fire prevention plan that comply with 29 CFR 1910.38 and 29 CFR 1910.39 respectively. If an employer fails to have these plans, or fails to meet any of the requirements of 29 CFR 1910.38 or 29 CFR 1910.39, then the employer has not met the requirements for exemption, and must therefore comply with 29 CFR 1910.157(c) through (g).

29 CFR 1910.120(l)(1), (p)(8)(1), and (q)(1) require affected employers to develop emergency response plans, but provide an exemption to employers who will evacuate their employees from the danger area, not allow employees to assist in the handling of an emergency, and have an emergency action plan which complies with 29 CFR 1910.38. Again, an employer who does not meet all of the elements of 29 CFR 1910.38 does not meet the requirements for exemption, and must then have an emergency response plan instead.

29 CFR 1910.164(e)(3) prohibits the delay of alarms or devices initiated by the actuation of a fire detector for greater than 30 seconds unless such delay is necessary for the immediate safety of employees. If the delay exemption is used, the employer must have an emergency action plan meeting the requirements of 29 CFR 1910.38. Failure to meet even one of the requirements of 29 CFR 1910.38 means failure to meet the delay exemption, leaving the prohibition in effect.

In all three cases above, the employer is not specifically required to have an emergency action plan or fire prevention plan; therefore, citations may not be issued for violations of 29 CFR 1910.38 or 29 CFR 1910.39. However, if the employer attempts to meet an exemption but fails by not complying with even one of the requirements of 29 CFR 1910.38 or 29 CFR 1910.39, then citations would be issued for the violated standards, with the violated elements of 29 CFR 1910.38 and/or 29 CFR 1910.39 referenced in the documentation to prove why the exemption was not met.

On July 9, 2002, the U.S. Department of Labor OSHA issued CPL 2-1.037 for the purpose of bringing all OSHA activities into compliance with the policy stated above. However, this document contains contradictory statements that make the prohibition against issuing citations on 29 CFR 1910.38 standards unclear. This OPN will be used in lieu of CPL 2-1.037 that was never approved as policy in North Carolina.

F. **Action.**

1. During the inspection, the Compliance Officer will determine that one or more of the following conditions apply:
 - a. The employer is operating a grain handling operation and/or is using total flooding fire suppression systems, which requires the employer to have an emergency action plan.
 - b. The employer is using ethylene oxide, methylenedianiline, and/or 1,3-Butadiene, which requires both an emergency action plan and fire

prevention plan. (Note: the emergency action plan and the fire prevention plan may be the same document.)

If a plan is required, the Compliance Officer will attempt to obtain a copy of the plan(s) from the employer, and will evaluate the plan(s) against the elements of the appropriate standard of Subpart E.

If the employer does not have the appropriate plan or the plan does not comply with all the elements in the relevant paragraph, citations will be issued for the standard requiring the plan. As appropriate, the Compliance Officer will state in the AVD that the employer had no plan, or will include the standard numbers and elements that were not in the plan(s).

Abatement for such citations would be adjustment and implementation of the plan(s) to comply with the violated elements of 29 CFR 1910.38 Emergency action plans and/or 29 CFR 1910.39 Fire prevention plans.

2. During the inspection, the Compliance Officer will determine if the employer's operations include processes that meet the requirements of 29 CFR 1910.119(a)(1), and are not excluded by 29 CFR 1910.119(a)(2). If true, the Compliance Officer will follow the steps outlined in 1.a. and b. above, and will follow the procedures outlined in CPL 2-2.45A.
3. During the inspection, the Compliance Officer will evaluate the workplace for compliance with the requirements of 29 CFR 1910.157 and, if appropriate, 29 CFR 1910.120 and 29 CFR 1910.164.
 - a. If violations are observed, the Compliance Officer will determine if the employer had attempted to meet the requirements for exemption from the violated standards. This includes an evaluation of the emergency action plan and (for 29 CFR 1910.157) the fire prevention plan against the elements contained in the relevant paragraphs of 29 CFR 1910.38 and 29 CFR 1910.39 respectively.
 - b. If the Compliance Officer determines that the plan(s) does (do) not meet one or more requirements of 29 CFR 1910.38, 29 CFR 1910.39 and/or one or more requirements in the standard allowing the exemption, then the exemption is not valid and the employer remains responsible for complying with the original standards. Citations will then be issued for each paragraph of 29 CFR 1910.157, 29 CFR 1910.120, and/or 29 CFR 1910.164 violated. The Compliance Officer will include a note in the AVD stating that the requirements for exemption were not met, and will include in the OSHA 1B documentation each element of 29 CFR 1910.38, 29 CFR 1910.39 and/or the exemption standard that were not met.
 - c. Abatement of such citations would be either compliance with the cited standards or correction and implementation of the violated elements of 29 CFR 1910.38 and/or 29 CFR 1910.39.

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4. No citation for violation of any provision of 29 CFR 1910.38 or 29 CFR 1910.39 will be issued by the North Carolina Department of Labor, either by itself or grouped with other violations.

G. **Effective Dates.**

OPN 130A is canceled. This OPN is effective on the date of signature. It will remain in effect until canceled or revised by the Director.

Signed on Original
Susan V. Haritos
Health Standards Officer

Signed on Original
Allen McNeely
Director

6/23/08
Date of Signature