Chapter 21

SPECIAL ORDER

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Chapter 21

SPECIAL ORDER

Policy Statement: It is the policy of the Division of Occupational Safety and Health (DOSH), also known as Cal/OSHA or the Division, to consider issuance of a Special Order to correct an unsafe condition, device, or place of employment which poses a threat to the health or safety of an employee, and which cannot be made safe under an existing Title 8 Safety Order.

Authority: DOSH will administer this policy in compliance with all applicable laws, rules, and guidance:

- California Labor Code Sections 6305(b), 6308(c) and 6600.5 and Title 8 of the California Code of Regulations Sec. 332.2 and 332.4.

PROCEDURES:

A. USE AND APPLICATION

1. Use

   A Special Order (Cal/OSHA Form 3) is an Order written by the Chief of the Division of Occupational Safety and Health, or his or her authorized representative, to remedy an unsafe condition, device, or place of employment which poses a threat to the health or safety of an employee, and which cannot be made safe under an existing Title 8 Safety Order.

2. Application

   A Special Order has the same effect as any other Title 8 Safety Order, but applies only to the employment or place of employment specified in the Special Order.

B. HAZARD IDENTIFICATION AND DOCUMENTATION

1. During the course of an inspection or investigation, if compliance personnel identify an unsafe condition, device, or place of employment that poses a threat to the health or safety of an employee and to which no existing Title 8 Safety Order can be applied, compliance personnel must determine whether circumstances support issuance of a Special Order.

NOTE: After determining that circumstances may support issuance of a Special Order, compliance personnel should discuss the identified hazard with the employer as early in the inspection as possible. The compliance personnel must also inform the employer of the issuance of a Special Order only after discussing with the District Manager and determining that a Special Order will be issued. The compliance personnel must document these conversations with the employer in the case file.

2. If the hazard identified to which no existing Title 8 Safety Order can be applied involves a serious health-related condition, compliance personnel must contact the Medical Unit to determine the need for on-site Medical Unit involvement in the inspection or investigation. If it is determined that on-site Medical Unit evaluation of the hazard is necessary, compliance personnel must follow the referral procedures set forth in Chapter 4 to obtain a Medical Unit referral. See Chapter 4.

C. INITIAL PREPARATION

1. Prior to preparing a Special Order for issuance to the employer, compliance personnel must first inform the District Manager that a hazardous condition has been identified to which no existing Title 8 Safety Order can be applied and that a Special Order may need to be issued.

2. The District Manager must then review the documentation provided by compliance personnel (e.g., photos, employer statements) to verify that the identified hazardous condition is one to which no existing Title 8 Safety Order can be applied.

   NOTE: If assistance is required to make a determination about the applicability of an existing Title 8 Safety Order, the District Manager must consult with the Regional Senior staff, or with personnel in any other appropriate administrative unit of the Division, e.g., Medical Unit, Crane Unit, Research and Standards, Occupational Carcinogen Control Unit, or Legal Unit.

3. After the District Manager verifies that a Special Order should be issued, compliance personnel must prepare a draft of the Special Order according to instructions found in Section I of this P&P and the documentation in the case file. Compliance personnel and the District Manager must make every effort to prepare the Special Order as soon as practicable.

D. REVIEW

1. District Manager

   After compliance personnel prepare a draft of the Special Order, the District Manager must work with the compliance personnel to review the draft to ensure that the statements in the Special Order are supported by evidence in the case file, approve the Special Order for issuance, and forward a copy of the draft Special Order to the Regional Manager.

2. Regional Manager

   a. The Regional Manager must review the draft Special Order and approve the Special Order for issuance.

   b. If approved, the Regional Manager must forward the draft Special Order to the Chief of the Division for approval and entry into the Special Order Log.

      NOTE: At Headquarters, the draft Special Order must be reviewed, as appropriate, by the Deputy Chief for Field Enforcement, the Deputy Chief for Research and Standards, the Legal Unit, and any other person deemed appropriate by the Chief.

3. Request for New, or Change in Existing, Safety Order

   a. When appropriate, compliance personnel must prepare a Cal/OSHA Request for New, or Change in Existing, Safety Order (Form 9) requesting that the Division propose a new safety order, or a change in an existing safety order, for adoption consideration by the Occupational Safety and Health Standards Board relating to the hazard identified in the Special Order, and submit it to the District Manager for approval.

   b. If the Cal/OSHA Form 9 is approved, the District Manager must forward the Form 9 along with the draft Special Order to the Regional Manager for review and approval.

E. ISSUANCE

1. Final Version

   After the draft Special Order has been approved for issuance by the Chief, compliance personnel must prepare the final version of the Special Order for issuance to the employer incorporating any changes requested by the Chief.

2. Office Issuance

   All Special Orders must be office-issued to the employer via Certified Mail—Return Receipt Requested.

3. Closing Conference

   During the Closing Conference, compliance personnel must inform the employer who has been issued a Special Order of the following:

   a. No civil penalties are imposed by the Division in conjunction with issuance of the Special Order.

   b. The employer is required to:

      (1) Post the Special Order at or near the referenced site of the hazardous condition giving rise to the Order;

      (2) Position the Special Order so as to be easily read by employees working nearby; and

      (3) Maintain the posting for a period of three working days or until the unsafe condition is abated, whichever is longer.

   c. The employer has the right to appeal the action ordered by the Division in the Special Order, the abatement periods specified by the Division in the Order, or the reasonableness of the corrective changes required by the Division in the Order by notifying the Occupational Safety and Health Appeals Board within 15 working days of receipt of the Special Order.

F. FOLLOW-UP INSPECTIONS

Compliance personnel must conduct a follow-up inspection of the establishment of each employer who is issued a Special Order. See Chapter 14.

G. OFFICE PROCEDURES

1. The final version of the Special Order issued to the employer will be completed by the Office Support Staff or compliance personnel.

2. Office Support Staff must mail all Special Orders to the employer via Certified Mail—Return Receipt Requested.

H. FORM DISTRIBUTION

1. Office Support Staff must file a copy of the Special Order in the employer's case file.

2. Office Support Staff must also file a copy of the Special Order in the District Office's pend file to expedite a follow-up inspection based on the Special Order.

I. FORM COMPLETION

1. District Office

   Enter the name, address and telephone number of the issuing District Office.

2. Employer Address

   Enter the name and mailing address of the employer.

3. Page Number

   Enter the page number, e.g., 1 of 3.

4. Special Order Number

   Enter the Special Order Log Number provided by the Chief of the Division. Each Special Order has a unique Log Number.

5. Worksite Inspected, Inspecting CSE/IH and Inspection Date

   Enter the address of the worksite inspected, the name of the inspecting compliance personnel and the date the inspection was conducted.

6. Item Number and Number of Instances

   a. Item Number

      Enter an item number.

      NOTE: Each Special Order shall cover only one Item. If more than one Item is subject to a Special Order, compliance personnel must complete additional Special Orders.

   b. Number of Instances

Enter the number of instances of the item.

7. Basis of the Special Order — Labor Code Provision

   Enter Labor Code §6401.

   NOTE: Labor Code §6305 represents a definitional section only and should not be used as the sole legal basis for a Special Order.

8. Special Order

   Enter the text of the Special Order.

9. Abatement Date

   Enter the date fixed for compliance with the provisions of the Special Order.

10. Signatures and Date of Issuance

    Enter the signature of the issuing compliance personnel and the District Manager together with the date of issuance.

11. Region, District, ID Number, Optional Report Number and OIS Inspection Number

    Enter the Region and District numbers, the ID Number of the issuing compliance personnel, the Optional Report Number, and the seven-digit OIS Inspection Number.