

**General Industry  
System for Programmed Inspections**

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## **General Industry System for Programmed Inspections**

The Michigan Occupational Safety and Health Act, Act 154 of 1974, as amended, requires an employer to furnish to each employee, a place of employment which is free from recognized hazards that can cause death or serious physical harm to the employee. To achieve this goal, Act 154 authorizes inspections of workplaces by compliance safety and health officers of the Michigan Department of Labor and Economic Opportunity (LEO). The inspections identify whether occupational safety and health hazards are present, and the inspections prompt correction of the hazards through issuance of citations to the employer. Act 154 and the rules and standards promulgated under Act 154 define the "recognized hazards" and the appropriate methods to control the hazards.

In Michigan, the General Industry Safety and Health Division (GISHD) of the Michigan Occupational Safety and Health Administration (MIOSHA), in the LEO, is responsible for conducting safety and health inspections in the "general industry" category of industrial classifications, i.e., industries other than construction, mining, domestic employment, and maritime activities. In Michigan, the general industry category comprises at least 230,000 establishments.

As it is not feasible to inspect each of these establishments in a given year, a system for selecting establishments for programmed inspections has been established to leverage GISHD resources. In November 2019, GISHD had 43 compliance safety and health officers. Moreover, judicial decisions such as *Marshall v. Barlow's, Inc.*, 436 U.S. 307 (1978), regarding the right of entry for the purpose of conducting an administrative inspection, emphasize the need for efficient and unbiased utilization of inspection resources.

The system adopted by MIOSHA for selecting establishments for programmed inspections in Michigan workplaces involves two major steps. In the first step, MIOSHA designates target industries. In the second step, MIOSHA generates a list of establishments to be inspected based on the targeted industries and random selection.

### **1. Target Industries**

MIOSHA selects target industries for its recurring five-year strategic plans. The current strategic plan is the MIOSHA Strategic Plan for Fiscal Years 2019-2023, and the objectives of the plan guide program activity during the five-year period covered by the plan. The goals in the MIOSHA strategic plan are consistent with those of federal OSHA. The strategic plan defines goals that are outcome-oriented, rather than activity-oriented, thus providing clear benchmarks for evaluating performance. In the current strategic plan, two goals designate target industries. The industries are classified according to the North American Industry Classification System (NAICS) code:

- **Goal – 1.1 Reduce by 2% a year (10% total for 5 years) the total incident rate of non-fatal worker injuries and illnesses in high-hazard general industries and other industries showing emerging hazards:**
  - **Wood Product Manufacturing (321)**
  - **Primary Metal Mfg. (331)**
  - **Fabricated Metal Product Mfg. (332)**
  - **Machinery Mfg. (333)**
  - **Transportation Equipment Mfg. (336)**
  - **Support Activities for Transportation (488)**
  - **Hospitals (622)**
  - **Nursing & Residential Care Facilities (623)**
  
- **Goal – 1.2 Reduce the number of MIOSHA-covered general industry fatalities by 2% a year (10% total for 5 years).**

During the life of the FY 2019-2023 strategic plan, MIOSHA can remove or add targeted industries to the lists in Goals 1.1 and 1.2. The criteria for removing and adding target industries are given in Agency Instruction MIOSHA-ADM-16-1R1, Targeting Industries Under Emphasis 1.1 and 1.2 of the Strategic Plan, dated May 30, 2019. Removals and additions can occur any time during the year as the need arises. At least once a year, MIOSHA considers removals and additions during an annual review of targeted industries and fatality statistics for Goals 1.1 and 1.2.

Under Agency Instruction MIOSHA-ADM-16-1R1, certain conditions can trigger the addition of an industry or hazard to the targeted list. An industry or hazard can be added if it has:

- A high rate of injuries, illnesses, or fatalities.
- An increase in injuries, illnesses, or fatalities.
- An increase in the number of employees in Michigan (i.e., an emerging industry).
- A new safety and health standard that impacts specific industries.
- New activity at the federal level, such as a new local emphasis program or cooperative program (Alliance Program or Strategic Partnership) with the U.S. Occupational Safety and Health Administration (OSHA), an Alert with the National Institute for Occupational Safety and Health (NIOSH), or new Susan Harwood Training Grants from federal OSHA.
- A new initiative with the Consultation, Education and Training Division (CET).
- Public concern.

The U.S. Bureau of Labor Statistics (BLS) is the source of the injury and illness rate information. The BLS data are specific to Michigan. BLS data are available for most two-digit and three-digit NAICS codes; in manufacturing, the BLS data may be available for six-digit NAICS codes. Fatality counts come from an internal MIOSHA database. The numbers for the latest available fiscal year are compared against the numbers from the baseline year, which is 2016 for the FY 2019-2023 strategic plan.

Meeting one of the triggers does not automatically place an industry or hazard on the targeted list. MIOSHA will evaluate the industry or hazard to determine if it is appropriate for targeting.

Certain factors make an industry or hazard suitable for targeting. These factors are:

- The hazard (or industry) has a significant impact on workers in Michigan.
- The hazard affects a significant number of establishments in Michigan.
- The hazard affects a significant number of employees in Michigan.
- The hazard creates a significant number of injuries, illnesses, or fatalities in Michigan.
- MIOSHA has jurisdiction over the hazard.
- MIOSHA has a standard to cover the hazard, or adopts a new federal standard.
- The hazard is in general industry, not construction.
- The hazard is not already routinely covered during inspections.
- For air contaminants, the MIOSHA laboratory has found a significant number of over-exposures.
- OSHA mandates or requests state action.

An industry or hazard does not have to meet each of the criteria to be targeted. MIOSHA applies the criteria on a case-by-case basis. Other objective data that help MIOSHA decide the suitability of an industry for targeting are the number of prior inspections; the number of serious, repeat, or willful citations; the percentage of all citations that are serious, repeat, or willful; the number of failure-to-abate citations; the number of significant cases (penalties greater than \$100,000); and the number of establishments not found or not in operation.

The criteria used to add industries and hazards can also be used to remove them from the list. For example, if an increase in fatalities is used to add an industry to the list, then a decrease in fatalities can be used to remove it from the list. When any of the eight high-hazard industries in Goal 1.1 achieves an injury and illness rate reduction of 10% from baseline, which is the goal of Goal 1.1, it may be taken off the targeted list.

The addition scheme described above was used by MIOSHA to choose the original eight high-hazard industries under Goal 1.1 of the FY 2019-2023 Strategic Plan. The high-hazard industries become a focus of the programmed inspection list of establishments.

## **II. Programmed Inspection List**

The programmed inspection list is a list of establishments in Michigan that have been selected for programmed inspections. The list is a random sample of Michigan employers. The establishments are selected from publicly available and government-supplied directories of employers in Michigan, as well as other sources as necessary to provide the best representation of employers in the targeted industries. MIOSHA uses directories that have large numbers of employers and wide representation across the NAICS codes. To ensure that the programmed inspection list is not a function of the data collection method of a particular directory, the directory used to generate the programmed inspection list is rotated. Also, MIOSHA combines lists of employers from multiple directories. The suppliers of the directories update their information (e.g., name of employer, address, telephone number, number of employees, NAICS code, whether employer is still in business) quarterly to annually to keep the information current.

To generate the programmed inspection list, MIOSHA uses stratified, random sampling from the

employer registers. The stratification is on NAICS code. One sample (stratum) is from the 8 high-hazard industries (NAICS codes) under Strategic Plan Goal 1.1. This group may represent 50-80% of the selected establishments. The second sample is from all the remaining NAICS codes. Therefore, any Michigan employer under the jurisdiction of GISHD can receive a programmed inspection; however, the sampling is weighted towards establishments in the high-hazard industries.

MIOSHA excludes establishments from the sampling pool. Several of the exclusionary criteria are the converse of the industry inclusionary criteria for Goals 1.1 and 1.2 in Agency Instruction MIOSHA-ADM-16-1R1. Exclusionary criteria can be:

- Establishments with 10 or less employees.
- Establishments in industries with few safety and health hazards and with very low rates of injuries, illnesses, and fatalities. An example would be real estate offices. These industries are non-manufacturing, although not all non-manufacturing NAICS are excluded.
- Establishments in the construction industry. These are covered by MIOSHA's Construction Safety and Health Division.
- Establishments that had a recent planned programmed inspection. The definition of recent has ranged from one to three years.
- Establishments exempt because of a Congressional limitation or rider.

Even after being selected for the programmed inspection list, an employer can avoid a programmed inspection by working with MIOSHA's Consultation, Education and Training Division (CET). Participants in the Michigan Voluntary Protection Program, Michigan Safety and Health Achievement Recognition Program, and MIOSHA Challenge Program receive exemptions from GISHD programmed inspections. Full-service 21(d) on-site consultations visits preclude programmed inspections by GISHD. Likewise, full-service 23(g) consultation visits preempt GISHD programmed inspections until 30 days after the last date CET is at the worksite. The full policy is found at Agency Instruction, MIOSHA-ADM-06-8R4, Coordination of Enforcement and Consultation Interventions, dated August 13, 2019.

New programmed inspection list assignments are typically sent to the compliance safety and health officers as they complete their current list of assigned establishments. The programmed inspection list is valid until a new programmed inspection list is issued or the current list is inspected, which could be up to several years.

### **III. Special Programs**

As a supplement to the programmed inspection list, MIOSHA creates other, special programs to focus inspection resources. Ongoing special programs include:

- Project SENSOR—Project SENSOR (Sentinel Event Notification System for Occupational Risks) is a federally funded grant to assist the state in conducting patient and workplace follow up for the approximately 15,000 to 20,000 occupational disease reports MIOSHA receives each year. Michigan State University (MSU), under contract to MIOSHA, administers the occupational disease reporting and surveillance program. Upon referral from

MSU, GISHD conducts enforcement inspections to assess current conditions and exposures at facilities where patients developed their illnesses. Project SENSOR is a state emphasis program.

- **Process Safety Management**—GISHD follows federal OSHA’s national emphasis program for the Process Safety Management of Highly Hazardous Chemicals Standard (PSM Standard). The Chemical Compliance Section of GISHD conducts programmed inspections of establishments in the chemical industry to determine compliance with the PSM Standard. The establishments are selected at random for PSM inspection from a list of plants in Michigan that have the threshold quantities of chemicals required for application of the PSM Standard.
- **National Emphasis Programs**—Federal OSHA implements national emphasis programs (NEPs) for important occupational safety and health issues, and for many of these NEPs, state plans like Michigan are required to adopt the NEP in its entirety or an alternate program that accomplishes the same objective. As part of the NEP, federal OSHA may provide MIOSHA with a list of establishments to inspect and/or require MIOSHA to conduct a certain number of inspections within an industry, using a federally provided list or a Michigan-generated list. NEPs can result in programmed inspections or inspections based on accidents, complaints, and referrals. Current NEPs requiring state adoption include amputations, process safety management-covered chemical plants, hexavalent chromium, combustible dust, and primary metals industries.
- **State Emphasis Programs**— MIOSHA implements state emphasis programs (SEPs) for occupational safety and health issues not covered by an NEP. In February 2017, GISHD began an SEP for fall prevention. Apart from no NEP, the criteria for an SEP are similar to the criteria for adding an industry or hazard to the targeted list for strategic plan goal 1.1/1.2.
- **Reinspections**—GISHD conducts reinspections of establishments that have received a high number of serious violations during an inspection. The reinspection conditions are: for establishments with up to 249 employees, five or more serious citations; for establishments with 250-499 employees, seven or more serious citations; and for establishments with 500 or more employees, 10 or more serious citations. The reinspections are assigned annually to biennially. The reinspections continue until the establishment is below the threshold number of citations.
- **Severe Violator Enforcement Program**—Establishments meeting the criteria for a severe violator enforcement case receive enhanced follow-up inspections. The severe violator criteria are described in Agency Instruction, MIOSHA-COM-11-2R3, Severe Violator Enforcement Program (SVEP), dated August 3, 2018.

#### **IV. Summary Comments**

MIOSHA strives to achieve a safe and healthful work environment for all Michigan workers. It uses an inspection targeting system to maximize the impact of its inspection resources. The programmed inspection system is considered to be objective. It is updated and revised

continually based on experience from the field staff and on outcome analysis. It utilizes the latest data available to formulate the programmed inspection list and is based on the occupational injury and illness experience of an industry or establishment.

Apart from programmed inspections, GISHD continues to conduct inspections in response to complaints, referrals, accidents, fatalities, and as follow-ups to prior inspections. These non-programmed inspections represent about 60 percent of GISHD's enforcement activity. The non-programmed inspections provide an avenue for GISHD to address safety and health hazards in industries and establishments that were excluded or deemphasized in the programmed inspection list, or that were not selected in the random sampling. This ensures that all employees in Michigan, regardless of industry or establishment, can receive the benefits of a GISHD compliance inspection.