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Second Circuit Rules OSHA Not Bound By Field Operations Manual's Look-Back Period for Repeat Violations

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On February 14, 2018, the Second Circuit Court of Appeals issued a summary order upholding the characterization of a citation as "repeat" even though the prior citations were issued over four years earlier. The circuit court reached this decision by holding that the Occupational Safety and Health Administration ("OSHA") is not required to follow the time limit set forth in its own Field Operations Manual ("FOM") because neither the Occupational Safety and Health Act ("OSH Act") nor OSHA's own regulations limit the time period for establishing a repeat citation. This affirms prior cases from the Occupational Safety and Health Review Commission that OSHA's ability to issue repeat citations is not restricted by the guidance in the FOM.

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