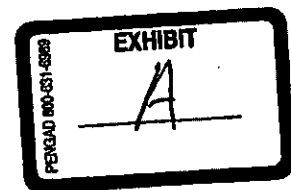

OSHA's Field Operations Manual (FOM)



Chapter 3

INSPECTION PROCEDURES

I. Inspection Preparation.

The conduct of effective inspections requires judgment in the identification, evaluation, and documentation of safety and health conditions and practices. Inspections may vary considerably in scope and detail depending on the circumstances of each case.

II. Inspection Planning.

It is important that the Compliance Officer (CSHO) adequately prepare for each inspection. Due to the wide variety of industries and associated hazards likely to be encountered, pre-inspection preparation is essential to the conduct of a quality inspection.

A. Review of Inspection History.

1. Compliance Officers will carefully review data available at the Area Office for information relevant to the establishment scheduled for inspection. This may include inspection files and source reference material relevant to the industry. CSHOs will also conduct an establishment search by accessing the IMIS database. CSHOs should use name variations and address-matching in their establishment search to maximize their efforts due to possible company name changes and status (e.g., LLC, Inc.).
2. If an establishment has an inspection history that includes citations received while performing work in a State Plan State, CSHOs should be aware of this information. This inspection history may be used to document an employer's heightened awareness of a hazard and/or standard in order to support the development of a willful citation and may be considered in determining eligibility for the history penalty reduction. However, the state plan citation may **not** be used to support a repeat violation.

B. Review of Cooperative Program Participation.

CSHOs will access the Regional Homepage to obtain information about employers who are currently participating in cooperative programs. CSHOs will verify whether the employer is a current program participant during the opening conference. CSHOs will be mindful of whether they are preparing for a programmed or unprogrammed inspection, as this may

affect whether the inspection should be conducted and/or its scope. See Paragraph V.D. of this chapter, *Review of Voluntary Compliance Programs*.

C. OSHA Data Initiative (ODI) Data Review.

The CSHO must obtain ODI survey information for SST inspections, which is available from <http://app1.erg.com/oshasstl1/login> (this site is available only to OSHA field personnel and requires a user name and password). If assistance is needed, contact the OSHA Regional Recordkeeping Coordinator for assistance. See CPL 02-00-135, *Recordkeeping Policies and Procedures Manual*, dated December 30, 2004.

D. Safety and Health Issues Relating to CSHOs.

1. Hazard Assessment.

If the employer has a written certification that a hazard assessment has been performed pursuant to § 1910.132(d), the CSHO shall request a copy. If the hazard assessment itself is not in writing, the CSHO shall ask the person who signed the certification to describe all potential workplace hazards and then select appropriate protective equipment. If there is no hazard assessment, the CSHO will determine potential hazards from sources such as the OSHA 300 Log of injuries and illnesses and shall select personal protective equipment accordingly.

2. Respiratory Protection.

CSHOs must wear respirators when and where required, and must care for and maintain respirators in accordance with the CSHO training provided.

a. CSHOs should conduct a pre-inspection evaluation for potential exposure to chemicals. Prior to entering any hazardous areas, the CSHO should identify those work areas, processes, or tasks that require respiratory protection. The hazard assessment requirement in § 1910.132(d) does not apply to respirators; see CPL 02-02-054, *Respiratory Protection Program Guidelines*, dated July 14, 2000. CSHOs should review all pertinent information contained in the establishment file and appropriate reference sources to become knowledgeable about the industrial processes and potential respiratory hazards that may be encountered. During the opening conference, a list of hazardous substances should be obtained or identified, along with any air monitoring results. CSHOs

should determine if they have the appropriate respirator to protect against chemicals present at the work site.

b. CSHOs must notify their supervisor or the respiratory protection program administrator:

- If a respirator no longer fits well (CSHOs should request a replacement that fits properly);
- If CSHOs encounter any respiratory hazards during inspections or on-site visits that they believe have not been previously or adequately addressed during the site visit; or
- If there are any other concerns regarding the program.

3. Safety and Health Rules and Practices.

Section 1903.7(c) requires that CSHOs comply with all safety and health rules and practices at the establishment and wear or use the safety clothing or protective equipment required by OSHA standards or by the employer for the protection of employees.

4. Restrictions.

CSHOs will not enter any area where special entrance restrictions apply until the required precautions have been taken. It shall be the Area Director's responsibility to determine that an inspection may be conducted without exposing the CSHO to hazardous situations and to procure whatever materials and equipment are needed for the safe conduct of the inspection.

E. Advance Notice.

1. Policy.

- a. Section 17(f) of the Act and § 1903.6 contain a general prohibition against the giving of advance notice of inspections, except as authorized by the Secretary or the Secretary's designee. The Act regulates many conditions that are subject to speedy alteration and disguise by employers. To forestall such changes in worksite conditions, the Act prohibits unauthorized advance notice.

b. **Advance Notice Exceptions.**

There may be occasions when advance notice is necessary to conduct an effective investigation. These occasions are narrow exceptions to the statutory prohibition against advance notice. Advance notice of inspections may be given only with the authorization of the Area Director or designee and only in the following situations:

- In cases of apparent imminent danger to enable the employer to correct the danger as quickly as possible;
- When the inspection can most effectively be conducted after regular business hours or when special preparations are necessary;
- To ensure the presence of employer and employee representatives or other appropriate personnel who are needed to aid in the inspection; and
- When giving advance notice would enhance the probability of an effective and thorough inspection; e.g., in complex fatality investigations.

c. **Delays.**

Advance notice exists whenever the Area Office sets up a specific date or time with the employer for the CSHO to begin an inspection. Any delays in the conduct of the inspection shall be kept to an absolute minimum. Lengthy or unreasonable delays shall be brought to the attention of the Area Director or designee. Advance notice generally does not include non-specific indications of potential future inspections.

In unusual circumstances, the Area Director or designee may decide that a delay is necessary. In those cases the employer or the CSHO shall notify affected employee representatives, if any, of the delay and shall keep them informed of the status of the inspection.

2. **Documentation.**

The conditions requiring advance notice and the procedures followed shall be documented in the case file.

F. Pre-Inspection Compulsory Process.

1. Section 1903.4 authorizes the agency to seek a warrant in advance of an attempted inspection if circumstances are such that “pre-inspection process (is) desirable or necessary.” Section 8(b) of the Act authorizes the agency to issue administrative subpoenas to obtain relevant information.
2. Although the agency generally does not seek warrants without evidence that the employer is likely to refuse entry, the Area Director or designee may seek compulsory process in advance of an attempt to inspect or investigate whenever circumstances indicate the desirability of such warrants.

NOTE: Examples of such circumstances include evidence of denied entry in previous inspections, or awareness that a job will only last a short time or that job processes will be changing rapidly.

3. Administrative subpoenas may also be issued prior to any attempt to contact the employer or other person for evidence related to an OSHA inspection or investigation. See Chapter 15, Legal Issues.

G. Personal Security Clearance.

Some establishments have areas that contain material or processes that are classified by the U.S. Government in the interest of national security. Whenever an inspection is scheduled for an establishment containing classified areas, the Area Director or designee shall assign a CSHO who has the appropriate security clearances. The Regional Administrator shall ensure that an adequate number of CSHOs with appropriate security clearances are available within the Region and that the security clearances are current.

H. Expert Assistance.

1. The Area Director or designee shall arrange for a specialist and/or specialized training, preferably from within OSHA, to assist in an inspection or investigation when the need for such expertise is identified.
2. OSHA specialists may accompany CSHOs or perform their tasks separately. CSHOs must accompany outside consultants. OSHA specialists and outside consultants shall be briefed on the purpose of the inspection and personal protective equipment to be utilized.

III. Inspection Scope.

Inspections, either programmed or unprogrammed, fall into one of two categories depending on the scope of the inspection:

A. Comprehensive.

A comprehensive inspection is a substantially complete and thorough inspection of all potentially hazardous areas of the establishment. An inspection may be deemed comprehensive even though, as a result of professional judgment, not all potentially hazardous conditions or practices within those areas are inspected.

B. Partial.

A partial inspection is one whose focus is limited to certain potentially hazardous areas, operations, conditions or practices at the establishment.

1. A partial inspection may be expanded based on information gathered by the CSHO during the inspection process consistent with the Act and Area Office priorities.
2. CSHOs shall use pre-determined criteria from their offices to determine the necessity for expanding the scope of an inspection, based on information gathered during records or program review and walkaround inspection.

IV. Conduct of Inspection.

A. Time of Inspection.

1. Inspections shall be made during regular working hours of the establishment except when special circumstances indicate otherwise.
2. The Area Director or designee and the CSHO shall determine if alternate work schedules are necessary regarding entry into an inspection site during other than normal working hours.

B. Presenting Credentials.

1. CSHOs are to present their credentials whenever they make contact with management representatives, employees (to conduct interviews), or organized labor representatives while conducting their inspections.

2. At the beginning of the inspection, the CSHO shall locate the owner representative, operator or agent in charge at the workplace and present credentials. On construction sites this will most often be the representative of the general contractor.
3. When neither the person in charge nor a management official is present, contact may be made with the employer to request the presence of the owner, operator or management official. The inspection shall not be delayed unreasonably to await the arrival of the employer representative. This delay should normally not exceed one hour. On occasions when the CSHO is waiting for the employer representative, the workforce may begin to leave the jobsite. In this situation the CSHO should contact the Area Director or designee for guidance. If the person in charge at the workplace cannot be determined, record the extent of the inquiry in the case file and proceed with the physical inspection.

C. Refusal to Permit Inspection and Interference.

Section 8 of the Act provides that CSHOs may enter without delay and at reasonable times any establishment covered under the Act for the purpose of conducting an inspection. Unless the circumstances constitute a recognized exception to the warrant requirement (i.e., consent, third party consent, plain view, open field, or exigent circumstances) an employer has a right to require that the CSHO seek an inspection warrant prior to entering an establishment and may refuse entry without such a warrant.

NOTE: On a military base or other Federal Government facility, the following guidelines do not apply. Instead, a representative of the controlling authority shall be informed of the contractor's refusal and asked to take appropriate action to obtain cooperation.

1. **Refusal of Entry or Inspection.**
 - a. When the employer refuses to permit entry upon being presented proper credentials, or allows entry but then refuses to permit or hinders the inspection in some way, an attempt shall be made to obtain as much information as possible about the establishment. See Chapter 15, Legal Issues, for additional information.
 - b. If the employer refuses to allow an inspection of the establishment to proceed, the CSHO shall leave the premises and immediately report the refusal to the Area Director or designee. The Area Director shall notify the RSOL.

- c. If the employer raises no objection to inspection of certain portions of the workplace but objects to inspection of other portions, this shall be documented. Normally, the CSHO shall continue the inspection, confining it only to those certain portions to which the employer has raised no objections.
- d. In either case, the CSHO shall advise the employer that the refusal will be reported to the Area Director or designee and that the agency may take further action, which may include obtaining legal process.
- e. On multi-employer worksites, valid consent can be granted by the owner, or another employer with employees at the worksite, for site entry.

2. Employer Interference.

Where entry has been allowed but the employer interferes with or limits any important aspect of the inspection, the CSHO shall determine whether or not to consider this action as a refusal. Examples of interference are refusals to permit the walkaround, the examination of records essential to the inspection, the taking of essential photographs and/or videotapes, the inspection of a particular part of the premises, private employee interviews, or the refusal to allow attachment of sampling devices. See § 1903.7(b).

3. Forcible Interference with Conduct of Inspection or Other Office Duties.

Whenever an OSHA official or employee encounters forcible resistance, opposition, interference, etc., or is assaulted or threatened with assault while engaged in the performance of official duties, all investigative activity shall cease.

- a. If a CSHO is assaulted while attempting to conduct an inspection, they shall contact the proper authorities such as the Federal Protective Services or local police and immediately notify the Area Director.
- b. Upon receiving a report of such forcible interference, the Area Director or designee shall immediately notify the Regional Administrator.
- c. If working at an offsite location, CSHOs should leave the site immediately pending further instructions from the Area Director or designee.

4. Obtaining Compulsory Process.

If it is determined, upon refusal of entry or refusal to produce evidence required by subpoena, that a warrant will be sought, the Area Director shall proceed according to guidelines and procedures established in the Region for warrant applications. See Chapter 15, Legal Issues.

D. Employee Participation.

CSHOs shall advise employers that Section 8(e) of the Act and §1903.8 require that an employee representative be given an opportunity to participate in the inspection.

1. CSHOs shall determine as soon as possible after arrival whether the employees at the inspected worksite are represented and, if so, shall ensure that employee representatives are afforded the opportunity to participate in all phases of the inspection.
2. If an employer resists or interferes with participation by employee representatives in an inspection and the interference cannot be resolved by the CSHO, the resistance shall be construed as a refusal to permit the inspection and the Area Director or designee shall be contacted.

E. Release for Entry.

1. CSHOs shall not sign any form or release or agree to any waiver. This includes any employer forms concerned with trade secret information.
2. CSHOs may obtain a pass or sign a visitor's register, or any other book or form used by the establishment to control the entry and movement of persons upon its premises. Such signature shall not constitute any form of a release or waiver of prosecution or liability under the Act.

F. Bankrupt or Out of Business.

1. If the establishment scheduled for inspection is found to have ceased business and there is no known successor, the CSHO shall report the facts to the Area Director or designee.
2. If an employer, although bankrupt, is continuing to operate on the date of the scheduled inspection, the inspection shall proceed.

3. An employer must comply with the Act until the day the business actually ceases to operate.

G. Employee Responsibilities.

1. Section 5(b) of the Act states: "Each employee shall comply with occupational safety and health standards and all rules, regulations, and orders issued pursuant to the Act which are applicable to his own actions and conduct." The Act does not provide for the issuance of citations or the proposal of penalties against employees. Employers are responsible for employee compliance with the standards.
2. In cases where CSHOs determine that employees are systematically refusing to comply with a standard applicable to their own action and conduct, the matter shall be referred to the Area Director who shall consult with the Regional Administrator.
3. Under no circumstances are CSHOs to become involved in an onsite dispute involving labor-management issues or interpretation of collective-bargaining agreements. CSHOs are expected to obtain sufficient information to assess whether the employer is using its authority to ensure employee compliance with the Act. Concerted refusals to comply by employees will not bar the issuance of a citation if the employer has failed to exercise its control to the maximum extent reasonable, including discipline and discharge.

H. Strike or Labor Dispute.

Plants or establishments may be inspected regardless of the existence of labor disputes, such as work stoppages, strikes or picketing. If the CSHO identifies an unanticipated labor dispute at a proposed inspection site, the Area Director or designee shall be consulted before any contact is made.

1. **Programmed Inspections.**

Programmed inspections may be deferred during a strike or labor dispute, either between a recognized union and the employer or between two unions competing for bargaining rights in the establishment.

2. **Unprogrammed Inspections.**

- a. Unprogrammed inspections (complaints, fatalities, referrals, etc.) will be performed during strikes or labor disputes. However, the credibility and veracity of any complaint shall be

thoroughly assessed by the Area Director or designee prior to scheduling an inspection.

- b. If there is a picket line at the establishment, CSHOs shall attempt to locate and inform the appropriate union official of the reason for the inspection prior to initiating the inspection.
- c. During the inspection, CSHOs will make every effort to ensure that their actions are not interpreted as supporting either party to the labor dispute.

I. Variances.

The employer's requirement to comply with a standard may be modified through granting of a variance, as outlined in Section 6 of the Act.

1. An employer will not be subject to citation if the observed condition is in compliance with an existing variance issued to that employer.
2. In the event that an employer is not in compliance with the requirement(s) of the issued variance, a violation of the applicable standard shall be cited with a reference in the citation to the variance provision that has not been met.

V. Opening Conference.

A. General.

CSHOs shall attempt to inform all affected employers of the purpose of the inspection, provide a copy of the complaint if applicable, and include any employee representatives, unless the employer objects. The opening conference should be brief so that the compliance officer may quickly proceed to the walkaround. Conditions of the worksite shall be noted upon arrival, as well as any changes that may occur during the opening conference. At the start of the opening conference, CSHOs will inform both the employer and the employee representative(s) of their rights during the inspection, including the opportunity to participate in the physical inspection of the workplace. Publications OSHA 3000, *Employer Rights & Responsibilities Following an OSHA Inspection* and OSHA 302 1, *OSHA: Employee Workplace Rights* may be distributed.

CSHOs shall request a copy of the written certification that a hazard assessment has been performed by the employer in accordance with §1910.132(d). CSHOs should then ask the person who signed the certification about any potential worksite exposures and select appropriate personal protective equipment.

1. **Attendance at Opening Conference.**

a. CSHOs shall conduct a joint opening conference with employer and employee representatives unless either party objects.

b. If there is objection to a joint conference, the CSHO shall conduct separate conferences with employer and employee representatives.

2. **Scope of Inspection.**

CSHOs shall outline in general terms the scope of the inspection, including the need for private employee interviews, physical inspection of the workplace and records, possible referrals, rights during an inspection, discrimination complaints, and the closing conference(s).

3. **Video/Audio Recording.**

CSHOs shall inform participants that a video camera and/or an audio recorder may be used to provide a visual and/or audio record, and that the videotape and audiotape may be used in the same manner as handwritten notes and photographs in OSHA inspections.

NOTE: If an employer clearly refuses to allow videotaping during an inspection, CSHOs shall contact the Area Director to determine if videotaping is critical to documenting the case. If it is, this may be treated as a denial of entry.

4. **Immediate Abatement.**

CSHOs should explain to employers the advantages of immediate abatement, including that there are no certification requirements for violations quickly corrected during the inspection. See Chapter 7. Post-Inspection Procedures and Abatement Verification.

5. **Quick-Fix Penalty Reduction.**

CSHOs shall advise both the employer and employee representatives, if applicable, that the Quick-Fix penalty reduction may be applied to each qualified violation (i.e., those which meet the criteria noted in Chapter 6), which the employer immediately abates during the inspection and is visually verified by the CSHO. CSHOs shall explain the Quick-Fix criteria and answer any

questions concerning the program. See Chapter 6, Penalties and Debt Collection.

6. Recordkeeping Rule

- a. The recordkeeping regulation at § 1904.40(a) states that once a request is made, an employer must provide the required recordkeeping records within four (4) business hours.
- b. Although the employer has four hours to provide injury and illness records, the compliance officer is not required to wait until the records are provided before beginning the walkaround portion of the inspection. As soon as the opening conference is completed the compliance officer is to begin the walkaround portion of the inspection.

7. Abbreviated Opening Conference.

An abbreviated opening conference shall be conducted whenever the CSHO believes that circumstances at the worksite dictate the walkaround begin as promptly as possible.

- a. In such cases, the opening conference shall be limited to presenting credentials, purpose of the visit, explanation of rights, and a request for employer and employee representatives. All other elements shall be fully addressed in the closing conference.
- b. Pursuant to § 1903.8, the employer and the employee representatives shall be informed of the opportunity to participate in the physical inspection of the workplace.

B. Review of Appropriation Act Exemptions and Limitation.

CSHOs shall determine if the employer is covered by any exemptions or limitations noted in the current Appropriations Act. See CPL 02-00-05 1, Enforcement Exemptions and Limitations under the Appropriations Act, dated May 28, 1998.

C. Review Screening for Process Safety Management (PSM) Coverage.

CSHOs shall request a list of the chemicals on site and their respective maximum intended inventories. CSHOs shall review the list of chemicals and quantities, and determine if there are highly hazardous chemicals (HHCs) listed in §1910.119, Appendix A or flammable liquids or gases at or above the specified threshold quantity. CSHOs may ask questions,

conduct interviews, or a walkaround to confirm the information on the list of chemicals and maximum intended inventories.

1. If there is an HHC present at or above threshold quantities, CSHOs shall use the following criteria to determine if any exemptions apply:
 - a. CSHOs shall confirm that the facility is not a retail facility, oil or gas well drilling or servicing operation, or normally unoccupied remote facility (§1910.119(a)(2)). If the facility is one of these types of establishments, PSM does not apply.
 - b. If management believes that the process is exempt, CSHOs shall ask the employer to provide documentation or other information to support that claim.
2. According to §1910.119 (a)(1)(ii), a process could be exempt if the employer can demonstrate that the covered chemical(s) are:
 - a. Hydrocarbon fuels used solely for workplace consumption as a fuel (e.g., propane used for comfort heating, gasoline for vehicle refueling), if such fuels are not a part of a process containing another highly hazardous chemical covered by the standard, or
 - b. Flammable liquids stored in atmospheric tanks or transferred, which are kept below their normal boiling point without the benefit of chilling or refrigeration.

NOTE: Current agency policies for applying exemptions can be found on the OSHA website. See CPL 03-00-004, Petroleum Refinery Process Safety Management National Emphasis Program, dated June 7, 2007.

D. Review of Voluntary Compliance Programs.

Employers who participate in selected voluntary compliance programs may be exempted from programmed inspections. CSHOs shall determine whether the employer falls under such an exemption during the opening conference.

1. **OSHA On-Site Consultation Visits.**
 - a. In accordance with §1908.7 and Chapter VII of CSP 02-00-002, The Consultation Policies and Procedures Manual, CSHOs shall ascertain at the opening conference whether an OSHA-funded consultation visit is in progress. A consultation

Visit in Progress extends from the beginning of the opening conference to the end of the correction due dates (including extensions).

b. An on-site consultation Visit in Progress has priority over programmed inspections except for imminent danger investigations, fatality/catastrophe investigations, complaint investigations, and other critical inspections as determined by the Assistant Secretary as noted in §1908.7(b)(2).

2. Safety and Health Achievement Recognition Program (SHARP).

a. Upon verifying that the employer is a current participant, the CSHO shall notify the Area Director or designee so that the company can be removed from the OSHA General Programmed Inspection Schedule for the approved exemption period, which begins on the date the Regional Office approves the employer's participation in SHARP.

b. The initial exemption period is up to two years. The renewal exemption period is up to three years, based on the recommendation of the Consultation Project Manager.

3. Voluntary Protection Program (VPP).

Inspections at a VPP site may be conducted in response to referrals, formal complaints, fatalities, and catastrophes.

NOTE: A Compliance Officer who was previously a VPP on-site team member cannot conduct an enforcement inspection at that VPP site for the following 2 years or until the site is no longer a VPP participant, whichever occurs first. See CSP 03-01-003, Voluntary Protection Programs (VPP): Policies and Procedures Manual, dated April 18, 2008.

E. Disruptive Conduct.

CSHOs may deny the right of accompaniment to any person whose conduct interferes with a full and orderly inspection. See §1903.8(d). If disruption or interference occurs, the CSHO shall contact the Area Director or designee as to whether to suspend the walkaround or take other action. The employee representative shall be advised that during the inspection matters unrelated to the inspection shall not be discussed with employees.

F. Classified Areas.

In areas containing information classified by an agency of the U.S. Government in the interest of national security, only persons authorized to have access to such information may accompany a CSHO on the inspection. See §1903.8(d)

VI. Review of Records.

A. Injury and Illness Records.

1. Collection of Data.

- a. At the start of each inspection, the CSHO shall review the employer's injury and illness records for three prior calendar years, record the information on a copy of the OSHA-300 screen, and enter the employer's data using the IMIS Application on the NCR (micro). This shall be done for all general industry, construction, maritime, and agriculture inspections and investigations.
- b. CSHOs shall use these data to calculate the Days Away, Restricted, or Transferred (DART) rate and to observe trends, potential hazards, types of operations and work-related injuries

2. Information to be Obtained.

- a. CSHOs shall request copies of the OSHA-300 Logs, the total hours worked and the average number of employees for each year, and a roster of current employees.
- b. If CSHOs have questions regarding a specific case on the log, they shall request the OSHA-301s or equivalent form for that case.
- c. CSHOs shall check if the establishment has an on-site medical facility and/or the location of the nearest emergency room where employees may be treated.

NOTE: The total hours worked and the average number of employees for each year can be found on the OSHA-300A for all past years.

3. Automatic DART Rate Calculation.

CSHOs will not normally need to calculate the Days Away, Restricted, or Transferred (DART) rate since it is automatically calculated when the OSHA-300 data are entered into the micro (for IMIS). If one of the three years is a partial year, so indicate and the software will calculate accordingly.

4. Manual DART Rate Calculation.

If it is necessary to calculate rates manually, the CSHO will need to calculate the DART Rates individually for each calendar year using the following procedures. The DART rate includes cases involving days away from work, restricted work activity, and transfers to another job.

The formula is:

$(N/EH) \times (200,000)$ where:

- *N* is the number of cases involving days away and/or restricted work activity and job transfers.
- *EH* is the total number of hours worked by all employees during the calendar year; and
- *200,000* is the base number of hours worked for 100 full-time equivalent employees.

EXAMPLE 3-1: Employees of an establishment (XYZ Company), including management, temporary and leased workers, worked 645,089 hours at XYZ company. There were 22 injury and illness cases involving days away and/or restricted work activity and/or job transfer from the OSHA-300 Log (total of column H plus column I). The DART rate would be $(22 \div 645,089) \times (200,000) = 6.8$.

5. Construction.

For construction inspections/investigations, only the OSHA-300 information for the prime/general contractor need be recorded where such records exist and are maintained. It will be left to the discretion of the Area Director or the CSHO as to whether OSHA-300 data should also be recorded for any of the subcontractors.

6. Federal Agencies.

Federal agency injury and illness recording and reporting requirements shall comply with the requirements under §1904, subparts C, D, E, and G, except that the definition of “establishment” found in §1960.2(h) will remain applicable to Federal agencies.

B. Recording Criteria.

Employers must record new work-related injuries and illnesses that meet one or more of the general recording criteria or meet the recording criteria for specific types of conditions.

1. Death;
2. Days Away from Work;
3. Restricted Work;
4. Transfer to another job;
5. Medical treatment beyond first aid;
6. Loss of consciousness;
7. Diagnosis of a significant injury or illness; or
8. Meet the recording criteria for Specific Cases noted in § 1904.8 through §1904.11.

C. Recordkeeping Deficiencies.

1. If recordkeeping deficiencies are suspected, the CSHO and the Area Director or designee may request assistance from the Regional Recordkeeping Coordinator. If there is evidence that the deficiencies or inaccuracies in the employer’s records impairs the ability to assess hazards, injuries and/or illnesses at the workplace, a comprehensive records review shall be performed.
2. Other information related to this topic:
 - a. See CPL 02-00-135, *Recordkeeping Policies and Procedures Manual*, dated December 30, 2004, and CPL 02-02-072, *Rules of Agency Practice and Procedure concerning OSHA Access to*

*Employee Medical Records for Policy Regarding Review of
Medical and Exposure Records, dated August 22, 2007.*

- b. Other OSHA programs and records will be reviewed including hazard communication, lockout/tagout, emergency evacuation and personal protective equipment. Additional programs will be reviewed as necessary.
- c. Many standard-specific directives provide additional instruction to CSHOs requesting certain records and/or documents at the opening conference.

VII. Walkaround Inspection.

The main purpose of the walkaround inspection is to identify potential safety and/or health hazards in the workplace. CSHOs shall conduct the inspection in such a manner as to avoid unnecessary personal exposure to hazards and to minimize unavoidable personal exposure to the extent possible.

A. Walkaround Representatives.

Persons designated to accompany CSHOs during the walkaround are considered walkaround representatives, and will generally include those designated by the employer and employee. At establishments where more than one employer is present or in situations where groups of employees have different representatives, it is acceptable to have a different employer/employee representative for different phases of the inspection. More than one employer and/or employee representative may accompany the CSHO throughout or during any phase of an inspection if the CSHO determines that such additional representatives will aid, and not interfere with, the inspection. See §1903.8(a).

1. Employees Represented by a Certified or Recognized Bargaining Agent.

During the opening conference, the highest ranking union official or union employee representative onsite shall designate who will participate in the walkaround. OSHA regulation § 1903.8(b) gives the CSHO the authority to resolve all disputes as to whom is the representative authorized by the employer and employees. Section 1903.8(c) states that the representative authorized by the employees shall be an employee of the employer. If in the judgment of the CSHO, good cause has been shown why accompaniment by a third party who is not an employee of the employer (such as an industrial hygienist or a safety engineer) is reasonably necessary to the conduct of an effective and thorough physical inspection of the

workplace, such third party may accompany CSHOs during the inspection.

2. No Certified or Recognized Bargaining Agent.

Where employees are not represented by an authorized representative, there is no established safety committee, or employees have not chosen or agreed to an employee representative for OSHA inspection purposes (regardless of the existence of a safety committee), CSHOs shall determine if other employees would suitably represent the interests of employees on the walkaround. If selection of such an employee is impractical, CSHOs shall conduct interviews with a reasonable number of employees during the walkaround.

3. Safety Committee.

Employee members of an established plant safety committee or employees at large may designate an employee representative for OSHA inspection purposes.

B. Evaluation of Safety and Health Management System.

The employer's safety and health management system shall be evaluated to determine its good faith for the purposes of penalty calculation. See Chapter 6, Penalties and Debt Collection.

C. Record All Facts Pertinent to a Violation.

1. Safety and health violations shall be brought to the attention of employer and employee representatives at the time they are documented.
2. CSHOs shall record, at a minimum, the identity of the exposed employee(s), the hazard to which the employee(s) was exposed, the employee's proximity to the hazard, the employer's knowledge of the condition, and the manner in which important measurements were obtained and how long the condition has existed.
3. CSHOs will document interview statements in a thorough and accurate manner; including names, dates, times, locations, type of materials, positions of pertinent articles, witnesses, etc.

NOTE: If employee exposure to hazards is not observed, the CSHO shall document facts on which the determination is made that an employee has been or could be exposed. See Chapter 4.

Violations and Chapter 5, Case File Preparation and Documentation.

D. Testifying in Hearings.

CSHOs may be required to testify in hearings on OSHA's behalf, and shall be mindful of this fact when recording observations during inspections. The case file shall reflect conditions observed in the workplace as accurately and detailed as possible.

E. Trade Secrets.

A trade secret, as referenced in Section 15 of the Act, includes information concerning or related to processes, operations, style of work, or apparatus, or to the identity, confidential statistical data, amount or source of any income, profits, losses, or expenditures of any person, firm, partnership, corporation, or association. See 18 USC 1905.

1. Policy.

It is essential to the effective enforcement of the Act that CSHOs and OSHA personnel preserve the confidentiality of all information and investigations which might reveal a trade secret.

2. Restriction and Controls.

When the employer identifies an operation or condition as a trade secret, it shall be treated as such. Information obtained in such areas, including all negatives, photographs, videotapes, and OSHA documentation forms, shall be labeled:

"ADMINISTRATIVELY CONTROLLED INFORMATION"
"RESTRICTED TRADE INFORMATION"

- a. Under Section 15 of the Act, all information reported to or obtained by CSHOs in connection with any inspection or other activity which contains or which might reveal a trade secret shall be kept confidential. Such information shall not be disclosed except to other OSHA officials concerned with the enforcement of the Act or, when relevant, in any proceeding under the Act.
- b. Title 18 USC 1905 provides criminal penalties for Federal employees who disclose such information. These penalties include fines of up to \$1,000 or imprisonment of up to one year, or both, and removal from office or employment.

c. Trade secret materials shall not be labeled as "Top Secret," "Secret," or "Confidential," nor shall these security classification designations be used in conjunction with other words unless the trade secrets are also classified by an agency of the U.S. Government in the interest of national security.

3. If the employer objects to the taking of photographs and/or videotapes because trade secrets would or may be disclosed, CSHOs should advise the employer of the protection against such disclosure afforded by Section 15 of the Act and §1903.9. If the employer still objects, CSHOs shall contact the Area Director or designee.

F. Collecting Samples.

1. CSHOs shall determine early in the inspection whether sampling such as, but not limited to, air sampling and surface sampling is required, by utilizing the information collected during the walk around and from the pre-inspection review.
2. Summaries of the results shall be provided on request to the appropriate employees, including those exposed or likely to be exposed to a hazard, employer representatives and employee representatives.

G. Photographs and Videotapes.

1. Photographs and/or videotapes, whether digital or otherwise, shall be taken whenever CSHOs determine there is a need.
 - a. Photographs that support violations shall be properly labeled, and may be attached to the appropriate OSHA-1B.
 - b. CSHO shall ensure that any photographs relating to confidential or trade secret information are identified as such and are kept separate from other evidence.
2. All film and photographs or videotape shall be retained in the case file. If lack of storage space does not permit retaining the film, photographs or videotapes with the file, they may be stored elsewhere with a reference to the corresponding inspection. Videotapes shall be properly labeled. For more information regarding guidelines for case file documentation with video, audio and digital media, see OSHA Instruction CPL 02-00-098, *Guidelines for Case File Documentation for Use with Videotapes and Audiotapes*,

dated October 12, 1993, and any other directives related to photograph and videotape retention.

H. Violations of Other Laws.

If a CSHO observes apparent violations of laws enforced by other government agencies, such cases shall be referred to the appropriate agency. Referrals shall be made using appropriate Regional procedures.

I. Interviews of Non-Managerial Employees.

A free and open exchange of information between CSHOs and employees is essential to an effective inspection. Interviews provide an opportunity for employees to supply valuable factual information concerning hazardous conditions, including information on how long workplace conditions have existed, the number and extent of employee exposure(s) to a hazardous condition, and the actions of management regarding correction of a hazardous condition.

1. Background.

- a. Section 8(a)(2) of the Act authorizes CSHOs to question **any employee privately** during regular working hours or at other reasonable times during the course of an OSHA inspection. The purpose of such interviews is to obtain whatever information CSHOs deem necessary or useful in carrying out inspections effectively. The mandate to interview employees in private is OSHA's right.
- b. Employee interviews are an effective means to determine if an advance notice of inspection has adversely affected the inspection conditions, as well as to obtain information regarding the employer's knowledge of the workplace conditions or work practices in effect prior to, and at the time of, the inspection. During interviews with employees, CSHOs should ask about these matters.
- c. CSHOs should also obtain information concerning the presence and/or implementation of a safety and health system to prevent or control workplace hazards.
- d. If an employee refuses to be interviewed, the CSHO shall use professional judgment, in consultation with the Area Director or designee, in determining the need for the statement.

2. Employee Right of Complaint.

CSHOs may consult with any employee who desires to discuss a potential violation. Upon receipt of such information, CSHOs shall investigate the alleged hazard, where possible, and record the findings.

3. Time and Location of Interview.

CSHOs are authorized to conduct interviews during regular working hours and at other reasonable times, and in a reasonable manner at the workplace. Interviews often occur during the walk-around, but may be conducted at any time during an inspection. If necessary, interviews may be conducted at locations other than the workplace. CSHOs should consult with the Area Director if an interview is to be conducted someplace other than the workplace. Where appropriate, OSHA has the authority to subpoena an employee to appear at the Area Office for an interview.

4. Conducting Interviews of Non-Managerial Employees in Private.

CSHOs shall inform employers that interviews of non-managerial employees will be conducted in private. CSHOs are entitled to question such employees in private regardless of employer preference. If an employer interferes with a CSHOs ability to do so, the CSHO should request that the AD consult with RSOL to determine appropriate legal action. Interference with a CSHO's ability to conduct private interviews with non-managerial employees includes, but is not limited to, attempts by management officials or representatives to be present during interviews.

5. Conducting Employee Interviews.

a. General Protocols.

- At the beginning of the interview CSHOs should identify themselves to the employee by showing their credentials, and provide the employee with a business card. This allows employees to contact CSHOs if they have further information at a later time.
- CSHOs should explain to employees that the reason for the interview is to gather factual information relevant to a safety and health inspection. It is not appropriate to assume that employees already know or understand the agency's purpose. Particular sensitivity is required

when interviewing a non-English speaking employee. In such instances, CSHOs should initially determine whether the employee's comprehension of English is sufficient to permit conducting an effective interview. If an interpreter is needed, CSHOs should contact the General Services Administration (GSA) tele-interpreter or use the Area Office's protocol for interpreters.

- Every employee should be asked to provide his or her name, home address and phone number. CSHOs should request identification and make clear the reason for asking for this information.
- CSHOs shall inform employees that OSHA has the right to interview them in private and of the protections afforded under Section 11(c) of the Act.
- In the event an employee requests that a representative of the union be present, CSHOs shall make a reasonable effort to honor the request.
- If an employee requests that his/her personal attorney be present during the interview, CSHOs should honor the request and, before continuing with the interview, consult with the Area Director for guidance.
- Rarely, an attorney for the employer may claim that individual employees have also authorized the attorney to represent them. Such a situation creates a potential conflict of interest. CSHOs should ask the affected employees whether they have agreed to be represented by the attorney. If the employees indicate that they have, CSHOs should consult with the Area Director, who will contact RSOL.

b. Interview Statements.

Interview statements of employees or other persons shall be obtained whenever CSHOs determine that such statements would be useful in documenting potential violations. Interviews shall normally be reduced to writing and written in the first person in the language of the individual. Employees shall be encouraged to sign and date the statement.

- Any changes or corrections to the statement shall be initialed by the individual. Statements shall not otherwise be changed or altered in any manner
- Statements shall include the words, "I request that my statement be held confidential to the extent allowed by law" and end with the following; "I have read the above, and it is true to the best of my knowledge."
- If the person making the declaration refuses to sign, the CSHO shall note the refusal on the statement. The statement shall, nevertheless, be read back to the person in an attempt to obtain agreement and noted in the case file.
- A transcription of any recorded statement shall be made when necessary to the case.
- Upon request, if a management employee requests a copy of his/her interview statement, one shall be given to them.

c. The Informant Privilege.

- The informant privilege allows the government to withhold the **identity** of individuals who provide information about the violation of laws, including OSHA rules and regulations. CSHOs shall inform employees that their statements will remain confidential to the extent permitted by law. However, each employee giving a statement should be informed that disclosure of his or her identity may be necessary in connection with enforcement or court actions.

NOTE: Whenever CSHOs make an assurance of confidentiality as part of an investigation (i.e. informs the person giving the statement that their identity will be protected), the pledge shall be reduced to writing and included in the case file.

- The privilege also protects the contents of statements to the extent that disclosure may reveal the witness's identity. Where the contents of a statement will not disclose the identity of the informant (i.e., does not reveal the witness' job title, work area, job duties, or other information that would tend to reveal the

individual's identity), the privilege does not apply. Interviewed employees shall be told that they are under no legal obligation to inform anyone, including employers, that they provided information to OSHA. Interviewed employees shall also be informed that if they voluntarily disclose such information to others, it may impair the agency's ability to invoke the privilege.

J. Multi-Employer Worksites.

On multi-employer worksites (in all industry sectors), more than one employer may be cited for a hazardous condition that violates an OSHA standard. A two-step process must be followed in determining whether more than one employer is to be cited. See CPL 02-00-124, Multi-Employer Citation Policy, dated December 10, 1999, for further guidance.

K. Administrative Subpoena.

Whenever there is a reasonable need for records, documents, testimony and/or other supporting evidence necessary for completing an inspection scheduled in accordance with any current and approved inspection scheduling system or an investigation of any matter properly falling within the statutory authority of the agency, the Regional Administrator, or authorized Area Director or designee, may issue an administrative subpoena. See Chapter 15, Legal Issues.

L. Employer Abatement Assistance.

1. Policy.

CSHOs shall offer appropriate abatement assistance during the walkaround as to how workplace hazards might be eliminated. The information shall provide guidance to the employer in developing acceptable abatement methods or in seeking appropriate professional assistance. CSHOs shall not imply OSHA endorsement of any product through use of specific product names when recommending abatement measures. The issuance of citations shall not be delayed.

2. Disclaimers.

The employer shall be informed that:

- a. The employer is not limited to the abatement methods suggested by OSHA;

- b. The methods explained are general and may not be effective in all cases; and
- c. The employer is responsible for selecting and carrying out an effective abatement method, and maintaining the appropriate documentation.

VIII. Closing Conference.

A. Participants.

At the conclusion of an inspection, CSHOs shall conduct a closing conference with the employer and the employee representatives, jointly or separately, as circumstances dictate. The closing conference may be conducted on-site or by telephone as CSHOs deem appropriate. If the employer refuses to allow a closing conference, the circumstances of the refusal shall be documented in the OSHA-1A narrative and the case shall be processed as if a closing conference had been held.

NOTE: When conducting separate closing conferences for employers and labor representatives (where the employer has declined to have a joint closing conference with employee representatives), CSHOs shall normally hold the conference with employee representatives first, unless the employee representative requests otherwise. This procedure will ensure that worker input is received before employers are informed of violations and proposed citations.

B. Discussion Items.

1. CSHOs shall discuss the apparent violations and other pertinent issues found during the inspection and note relevant comments on the OSHA-1B, including input for establishing correction dates.
2. CSHOs shall give employers the publication, "Employer Rights and Responsibilities Following an OSHA Inspection," (OSHA-3000) which explains the responsibilities and courses of action available to the employer if a citation is issued, including their rights under the Small Business Regulatory Enforcement Fairness Act (SBREFA). (See SBREFA on OSHA's public webpage.) They shall then briefly discuss the information in the booklet and answer any questions. All matters discussed during the closing conference shall be documented in the case file, including a note describing printed materials distributed.
3. CSHOs shall discuss the strengths and weaknesses of the employer's occupational safety and health system and any other applicable programs, and advise the employer of the benefits of an

effective program(s) and provide information, such as, OSHA's website, describing program elements.

4. Both the employer and employee representatives shall be advised of their rights to participate in any subsequent conferences, meeting or discussions, and their contest rights. Any unusual circumstances noted during the closing conference shall be documented in the case file.
5. Since CSHOs may not have all pertinent information at the time of the first closing conference, a second closing conference may be held by telephone or in person.
6. CSHOs shall advise employee representatives that:
 - a. Under §2200.20 of the Occupational Safety and Health Review Commission regulations, if an employer contests a citation, the employees have a right to elect "party status" before the Review Commission;
 - b. The employer should notify them if a notice of contest or a petition for modification of abatement date is filed;
 - c. They have Section 11(c) rights; and
 - d. They have a right to contest the abatement date. Such contests must be in writing and must be postmarked within 15 working days after receipt of the citation.

C. Advice to Attendees.

1. The CSHO shall advise those attending the closing conference that a request for an informal conference with the OSHA Area Director is encouraged as it provides an opportunity to:
 - a. Resolve disputed citations and penalties without the need for litigation which can be time consuming and costly;
 - b. Obtain a more complete understanding of the specific safety or health standards which apply;
 - c. Discuss ways to correct the violations;
 - d. Discuss issues concerning proposed penalties;
 - e. Discuss proposed abatement dates;

- f. Discuss issues regarding employee safety and health practices; and
 - g. Learn more of other OSHA programs and services available.
2. If a citation is issued, an informal conference or the request for one does not extend the 15 working-day period in which the employer or employee representatives may contest.
 3. Verbal disagreement with, or intent to, contest a citation, penalty or abatement date during an informal conference does not replace the required written Notice of Intent to Contest.
 4. Employee representatives have the right to participate in informal conferences or negotiations between the Area Director and the employer in accordance with the guidelines given in Chapter 7, Section II., Informal Conferences.

D. Penalties.

CSHOs shall explain that penalties must be paid within 15 working days after the employer receives a citation and notification of penalty. If, however, an employer contests the citation and/or the penalty, penalties need not be paid for the contested items until the final order date.

E. Feasible Administrative, Work Practice and Engineering Controls.

Where appropriate, CSHOs will discuss control methodology with the employer during the closing conference.

1. Definitions.

a. Engineering Controls.

Consist of substitution, isolation, ventilation and equipment modification.

b. Administrative Controls.

Any procedure which significantly limits daily exposure by control or manipulation of the work schedule or manner in which work is performed is considered a means of administrative control. The use of personal protective equipment is not considered a means of administrative control.

c. **Work Practice Controls.**

A type of administrative controls by which the employer modifies the manner in which the employee performs assigned work. Such modification may result in a reduction of exposure through such methods as changing work habits, improving sanitation and hygiene practices, or making other changes in the way the employee performs the job.

d. **Feasibility.**

Abatement measures required to correct a citation item are feasible when they can be accomplished by the employer. The CSHO, following current directions and guidelines, shall inform the employer, where appropriate, that a determination will be made as to whether engineering or administrative controls are feasible.

e. **Technical Feasibility.**

The existence of technical know-how as to materials and methods available or adaptable to specific circumstances, which can be applied to a cited violation with a reasonable possibility that employee exposure to occupational hazards will be reduced.

f. **Economic Feasibility.**

Means that the employer is financially able to undertake the measures necessary to abate the citations received.

NOTE: If an employer's level of compliance lags significantly behind that of its industry, allegations of economic infeasibility will not be accepted.

2. **Documenting Claims of Infeasibility.**

- a. CSHOs shall document the underlying facts which give rise to an employer's claim of infeasibility.
- b. When economic infeasibility is claimed, the CSHO shall inform the employer that, although the cost of corrective measures to be taken will generally not be considered as a factor in the issuance of a citation, it may be considered during an informal conference or during settlement negotiations.

- c. Complex issues regarding feasibility should be referred to the Area Director or designee for determination.

F. Reducing Employee Exposure.

Employers shall be advised that, whenever feasible, engineering, administrative or work practice controls must be instituted, even if they are not sufficient to eliminate the hazard (or to reduce exposure to or below the permissible exposure limit). They are required in conjunction with personal protective equipment to further reduce exposure to the lowest practical level.

G. Abatement Verification.

During the closing conference the Compliance Officer should thoroughly explain to the employer the abatement verification requirements. See Chapter 7, Post Inspection Procedures and Abatement Verification.

1. Abatement Certification.

Abatement certification is required for all citation item(s) which the employer received except for those citation items which are identified as "Corrected During Inspection."

2. Corrected During Inspection (CDI).

The violation(s) that will reflect on-site abatement and will be identified in the citations as "Corrected During Inspection" shall be reviewed at the closing conference.

3. Abatement Documentation.

Abatement documentation, the employer's physical proof of abatement, is required to be submitted along with each willful, repeat and designated serious violation. To minimize confusion, the distinction between abatement certification and abatement documentation should be discussed.

4. Placement of Abatement Verification Tags.

The required placement of abatement verification tags or the citation must also be discussed at the closing conference, if it has not been discussed during the walkaround portion of the inspection. See §1903.19(d).

5. Requirements for Extended Abatement Periods.

Where extended abatement periods are involved, the requirements for abatement plans and progress reports shall be discussed.

H. Employee Discrimination.

The CSHO shall emphasize that the Act prohibits employers from discharging or discriminating in any way against an employee who has exercised any right under the Act, including the right to make safety or health complaints or to request an OSHA inspection.

IX. Special Inspection Procedures.

A. Follow-up and Monitoring Inspections.

1. The primary purpose of a follow-up inspection is to determine if the previously cited violations have been corrected. Monitoring inspections are conducted to ensure that hazards are being abated and employees protected, whenever a long period of time is needed for an establishment to come into compliance (or to verify compliance with the terms of granted variances). Issuance of willful, repeated and high gravity serious violations, failure to abate notifications, and/or citations related to imminent danger situations are examples of prime candidates for follow-up or monitoring inspections. These type of inspections will not normally be conducted when evidence of abatement is provided by the employer or employee representatives.

2. Failure to Abate.

a. A failure to abate exists when a previously cited violation continues unabated and the abatement date has passed or the abatement date is covered under a settlement agreement, or the employer has not complied with interim measures within the allotted time specified in a long-term abatement plan.

b. If previously cited items have not been corrected, a Notice of Failure to Abate Alleged Violation shall normally be issued. If a subsequent inspection indicates the condition has still not been abated, the RSOL shall be consulted for further guidance.

NOTE: If the employer has demonstrated a good faith effort to comply, a late Petition for Modification of Abatement (PMA)

*may be considered in accordance with Chapter 7, Section III,
Petition for Modification of Abatement (PMA).*

- c. If an originally cited violation has at one point been abated but subsequently recurs, a citation for a repeated violation may be appropriate.

3. Reports.

- a. For any items found to be abated, a copy of the previous OSHA-1B, OSHA-1B-IH, or citation can be notated with "corrected" written on it, along with a brief explanation of the abatement measures taken. This information may alternately be included in the narrative of the investigative file.
- b. In the event that any item has not been abated, complete documentation shall be included on an OSHA-1B.

4. Follow-up Files.

Follow-up inspection reports shall be included with the original (parent) case file.

B. Construction Inspections.

1. Standards Applicability.

The standards published as 29 CFR Part 1926 have been adopted as occupational safety and health standards under Section 6(a) of the Act and §1910.12. They shall apply to every employment and place of employment of every employee engaged in construction work, including non-contract construction.

2. Definition.

The term "construction work" as defined by §1926.32(g) means work for construction, alteration, and/or repair, including painting and decorating. These terms are also discussed in §1926.13. If any question arises as to whether an activity is deemed to be construction for purposes of the Act, the Director of the Directorate of Construction shall be consulted.

3. Employer Worksite.

- a. Inspections of employers in the construction industry are not easily separable into distinct worksites. The worksite is

generally the site where the construction is being performed (e.g., the building site, the dam site). Where the construction site extends over a large geographical area (e.g., road building), the entire job will be considered a single worksite. In cases when such large geographical areas overlap between Area Offices, generally only operations of the employer within the jurisdiction of any Area Office will be considered as the worksite of the employer.

- b. When a construction worksite extends beyond a single Area Office and the CSHO believes that the inspection should be extended, the affected Area Directors shall consult with each other and take appropriate action.

4. Upon Entering the Workplace.

- a. CSHOs shall ascertain whether there is a representative of a Federal contracting agency at the worksite. If so, they shall contact the representative, advise him/her of the inspection and request that they attend the opening conference.
- b. If the inspection is being conducted as a result of a complaint, a copy of the complaint is to be furnished to the general contractor and any affected sub-contractors.

5. Closing Conference.

Upon completion of the inspection, the CSHO shall confer with the general contractors and all appropriate subcontractors or their representatives, together or separately, and advise each one of all the apparent violations disclosed by the inspection to which each one's employees were exposed, or violations which the employer created or controlled. Employee representatives participating in the inspection shall also be afforded the right to participate in the closing conference(s).

C. Federal Agency Inspections.

Policies and procedures for Federal agencies are to be the same as those followed in the private sector. See Chapter 13, Federal Agency Field Activities, for additional guidance.

Chapter 9

COMPLAINT AND REFERRAL PROCESSING

I. Safety and Health Complaints and Referrals.

A. Definitions.

1. Complaint.

Notice of an alleged safety or health hazard (over which OSHA has jurisdiction), or a violation of the Act. There are two types; formal and non-formal.

a. Formal Complaint.

Complaint made by a current employee or a representative of employees that meets all of the following requirements:

- Asserts that an imminent danger, a violation of the Act, or a violation of an OSHA standard exposes employees to a potential physical or health harm in the workplace;
- Is reduced to writing or submitted on an OSHA-7 form; and
- Is signed by at least one current employee or employee representative.

b. Non-formal Complaint.

Any complaint alleging safety or health violations that does not meet all of the requirements of a formal complaint identified above and does not come from one of the sources identified under the definition of Referral, below.

2. Inspection.

An onsite examination of an employer's worksite conducted by an OSHA compliance officer, initiated as the result of a complaint or referral, and meeting at least one of the criteria identified in Section C, *Criteria Warranting an Inspection*, below.

3. **Inquiry.**

A process conducted in response to a complaint or a referral that does not meet one of the identified inspection criteria as listed in Section C. It does not involve an onsite inspection of the workplace, but rather the employer is notified of the alleged hazard(s) or violation(s) by telephone, fax, email, or by letter if necessary. The employer is then requested to provide a response, and OSHA will notify the complainant of that response via appropriate means.

4. **Electronic Complaint.**

A complaint submitted via OSHA's public website. All complaints submitted via OSHA's public website are considered non-formal.

5. **Permanently Disabling Injury or Illness.**

An injury or illness that has resulted in permanent disability or an illness that is chronic or irreversible. Permanently disabling injuries or illnesses include, but are not limited to amputation, blindness, a standard threshold shift in hearing, lead or mercury poisoning, paralysis or third-degree burns.

6. **Referral.**

An allegation of a potential workplace hazard or violation received from one of the sources listed below.

- a. **CSHO referral** – information based on the direct observation of a CSHO. (On the OSHA-90, code 14A – A. *CSHO (Within Office).*)
- b. **Safety and health agency referral** – from sources including, but not limited to: NIOSH, state programs, consultation, and state or local health departments, as well as safety and/or health professionals in other Federal agencies. (As appropriate, code 14A – B. *Federal OSHA*, C. *State OSH*, F. *Consultation*, G. *State/Local Government*, or I. *Other.*)
- c. **11(c) complaint referral** – made by a whistleblower investigator when an employee alleges that he or she was retaliated against for complaining about safety or health conditions in the workplace, refusing to do an allegedly imminently dangerous task, or engaging in other activities related to occupational safety or health (Code 14A – D. *Discrimination.*)

- d. **Other government agency referral** – made by other Federal, State, or local government agencies or their employees, including local police and fire departments. (As appropriate, code 14A – E. *Other Federal Agency*, or G. *State/Local Government*.)
 - e. **Media report** – either news items reported in the media or information reported directly to OSHA by a media source. (Code 14A – H. *Media*.)
 - f. **Employer report** - of accidents other than fatalities and catastrophes. (Code 14A – I. *Other*.)
7. **Representative of Employees.**

Any of the following:

- a. An authorized representative of the employee bargaining unit, such as a certified or recognized labor organization.
- b. An attorney acting for an employee.
- c. Any other person acting in a bona fide representative capacity, including, but not limited to, members of the clergy, social workers, spouses and other family members, and government officials or nonprofit groups and organizations acting upon specific complaints and injuries from individuals who are employees.

NOTE: The representative capacity of the person filing complaints on behalf of another should be ascertained unless it is already clear. In general, the affected employee should have requested, or at least approved, the filing of the complaint on his or her behalf.

B. Classifying as a Complaint or a Referral.

Whether the information received is classified as a complaint or a referral, an inspection of a workplace is normally warranted if **at least one** of the conditions in the section *Criteria Warranting an Inspection* is met.

C. Criteria Warranting an Inspection.

An inspection is normally warranted if **at least one** of the conditions below is met (but see also Paragraph I.D. of this chapter, *Scheduling an Inspection of an Employer in an Exempt Industry*):

1. A valid formal complaint is submitted. Specifically, the complaint must be reduced to writing or submitted on an OSHA-7 form, be signed by a current employee or representative of employees, and state the reason for the inspection request with reasonable particularity. Additionally, there must be reasonable grounds to believe either that a violation of the Act or OSHA standard that exposes employees to physical harm exists, or that an imminent danger of death or serious injury exists, as provided in Section 8(f)(1) of the Act.
2. The information received in a signed, written complaint from a current employee or employee representative that alleges a record-keeping deficiency that indicates the existence of a potentially serious safety or health violation.
3. The information alleges that a permanently disabling injury or illness has occurred as a result of the complained of hazard(s), and there is reason to believe that the hazard or related hazards still exist.
4. The information alleges that an imminent danger situation exists.
5. The information concerns an establishment and an alleged hazard covered by a local, regional, or national emphasis program, the Site-Specific Targeting Plan.
6. The employer fails to provide an adequate response to an inquiry, or the individual who provided the original information provides further evidence that the employer's response is false or does not adequately address the hazard(s). The evidence must be descriptive of current, on-going or recurring hazardous conditions.
7. The establishment that is the subject of the information has a history of egregious, willful, failure-to-abate, or repeated citations within the Area Office's jurisdiction during the past three years, or is an establishment or related establishment in the Enhanced Enforcement Program. However, if the employer has previously submitted adequate documentation for these violations demonstrating that they were corrected and that programs have been implemented to prevent a recurrence of hazards, the Area Director will normally determine that an inspection is not necessary.
8. A whistleblower investigator or Regional Supervisory Investigator requests that an inspection be conducted in response to an employee's allegation that the employee was discriminated against for complaining about safety or health conditions in the workplace,

refusing to perform an allegedly dangerous job or task, or engaging in other activities related to occupational safety or health.

9. If an inspection is scheduled or has begun at an establishment and a complaint or referral that would normally be handled via inquiry is received, that complaint or referral may, at the Area Director's discretion, be incorporated into the scheduled or ongoing inspection. If such a complaint is formal, the complainant must receive a written response addressing the complaint items.
10. If the information gives reasonable grounds to believe that an employee under 18 years of age is exposed to a serious violation of a safety or health standard or a serious hazard, an onsite inspection will be initiated if the information relates to construction, manufacturing, agriculture, or other industries as determined by the Area Director. Limitations placed on OSHA's activities in agriculture by Appropriations Act provisions will be observed. See CPL 02-00-051, *Enforcement Exemptions and Limitations under the Appropriations Act*, dated May 28, 1998. A referral to Wage and Hour should also be initiated.

NOTE: The information does not need to allege that a child labor law has been violated.

D. Scheduling an Inspection of an Employer in an Exempt Industry.

In order to schedule an inspection of an employer in an exempt industry classification as specified by Appropriations Act provisions:

NOTE: See CPL 02-00-051, Enforcement Exemptions and Limitations under the Appropriations Act, dated May 28, 1998.

1. The information must come directly from a current employee; OR
2. It must be determined and documented in the case file that the information came from a representative of the employee (see Paragraph I.A.7. of this chapter, *Representative of Employees*), with the employee's knowledge of the representative's intended action.

E. Electronic Complaints Received via the OSHA Public Website.

1. Electronic complaints submitted via the OSHA public website are automatically forwarded via email to a designated Area Office in the appropriate state. That Office then forwards the electronic complaints to the appropriate Area Office in the state.

2. Each Area Office manages a "Complaints" mailbox and processes electronic complaints according to internal complaint processing procedures. The complaints mailbox is monitored daily and every incoming complaint is reviewed for jurisdiction.
 - a. If the complaint falls within the jurisdiction of the Area Office, the complaint is entered into IMIS and processed as usual.
 - b. If the complaint falls within the jurisdiction of another Area Office, the complaint is forwarded appropriately.
3. Area Offices will coordinate with State Plan States to establish procedures to process electronic complaints. The State establishes its own internal procedures for responding to such complaints. These procedures may be the State's usual procedures for handling unsigned complaints or they may include some further coordination with the complainant prior to action. In State Plan states, the Federal Monitoring office will screen the complaints unless there is another arrangement. If the complaint falls within the individual State Plan's jurisdiction, the Screening Office will follow the procedures developed with the State Plan for processing the complaint.
4. Complete an OSHA-7 form for all complaint information received. In order to facilitate the tracking of electronic complaints, enter the following code in the Optional Information field:

N-1 1-LOGXXXXXX

- Where N-11 indicates that the complaint was filed electronically; and
 - The digits following LOG are the unique complaint ID/log numbers assigned to the electronic complaint when processed by the Salt Lake Technical Center. The log number may vary and does not have to be exactly six digits. In entering the code, there is no space between the word LOG and the digits that follow.
5. Information received electronically from a current employee is considered a non-formal complaint until that individual provides a signed copy of the information. The employee can send or fax a signed copy of the information, request that an OSHA-7 form be sent, or sign the information in person at the Area Office. Normally a complainant has five working days to formalize an electronic complaint. The Area Office must actively follow up on

information received electronically in order to provide the employee with the opportunity to formalize the complaint.

6. All complaint-related material received electronically should be printed and date stamped with the date the material was submitted and received. When these dates are not the same, the Area Director will determine the appropriate date for the incoming material.

F. Information Received by Telephone.

1. While speaking with the caller, OSHA personnel will attempt to obtain the following information:
 - a. Whether the caller is a current employee or an employee representative.
 - b. The exact nature of the alleged hazard(s) and the basis of the caller's knowledge. The individual receiving the information must determine, to the extent possible, whether the information received describes an apparent violation of OSHA standards or the OSH Act.
 - c. The employer's name, address, email address, telephone and fax numbers, as well as the name of a contact person at the worksite.
 - d. The name, address, telephone number, and email address of any union and/or employee representative at the worksite.
2. As appropriate, OSHA will provide the caller with the following information:
 - a. Describe the complaint process, and if appropriate, the concepts of "inquiry" and "inspection," as well as the relative advantages of each.
 - b. If the caller is a current employee or a representative of employees, explain the distinction between a formal complaint and a non-formal complaint, and the rights and protections that accompany filing a formal complaint. These rights and protections include:
 - The right to request an onsite inspection.

- Notification in writing if an inspection is deemed unnecessary because there are no reasonable grounds to believe that a violation or danger exists.
 - The right to obtain review of a decision not to inspect by submitting a request for review in writing.
3. Information received by telephone from a current employee is considered a non-formal complaint until that individual provides a signed copy of the information. The employee can send or fax a signed copy of the information, request that an OSHA-7 form be sent, or sign the information in person at the Area Office. Normally a complainant has five working days to formalize an electronic complaint.
 4. If appropriate, inform the complainant of rights to confidentiality in accordance with Section 8(f)(1) of the Act for private sector employees, and Executive Order 12196, dated February 26, 1980, for Federal employees, and ask whether the complainant wishes to exercise this right. When confidentiality is requested, the identity of the complainant is protected regardless of the formality of the complaint.
 5. Explain Section 11(c) rights to private sector employees and employees of the U.S. Postal Service, or reprisal and discrimination protection provided by Executive Order 12196, §1960.46 and the Whistleblowers Protection Act of 1989 to Federal employees. See Chapter 13, Paragraph III.E., for reports of reprisal or discrimination from Federal employees.

G. Procedures for Handling Complaints Filed in Multiple Area Offices or Regions.

1. When a Regional Office determines that multiple offices within the Region have received the same complaint or, if the Regional Office suspects the same complaint has been filed in multiple Regions, the Regional Office should contact the Director or Deputy Director of the Directorate of Enforcement Programs (DEP).
2. DEP will query all 10 Regions and coordinate with the Directorate of Cooperative and State Programs to query the State Plan States in order to determine whether similar complaints were filed in multiple offices.
 - a. If multiple Regions have received the same complaint, the National Office will address the complaint with the employer.

- b. Area Offices should indicate in IMIS that these complaints have been transferred to the National Office. On the OSHA-7, in field 45a., select *A. Federal OSHA*; in field 45b., select *00 – National Office*. The complaint should then be closed using field 48.

H. Procedures for an Inspection.

1. Upon receipt of a complaint or referral, the Area Director (or his or her designee) will evaluate all available information to determine whether there are reasonable grounds to believe that a violation or hazard exists.
 - a. If necessary, reasonable attempts will be made to contact the individual who provided the information in order to obtain additional details or to clarify issues raised in the complaint or referral. See the Complaint Questionnaire beginning on page 9-17.
 - b. The Area Director may determine not to inspect a facility if he/she has a substantial reason to believe that the condition complained of is being or has been abated.
2. Despite the existence of a complaint, if the Area Director, believes there is no reasonable grounds that a violation or hazard exists, no inspection or inquiry will be conducted.
 - a. Where a formal complaint has been submitted, the complainant will be notified in writing of OSHA's intent not to conduct an inspection, the reasoning behind the determination, and the right to have the determination reviewed under §1903.12. The justification for not inspecting will be noted in the case file.
 - b. In the event of a non-formal complaint or referral, if possible, the individual providing the information will be notified by appropriate means of OSHA's intent not to conduct an inquiry or inspection. The justification for not inspecting or conducting an inquiry will be noted in the case file.
3. If the information contained in the complaint or referral meets at least one of the inspection criteria listed in Paragraph I.C. of this chapter, *Criteria Warranting an Inspection*, and there are reasonable grounds to believe that a violation or hazard exists, the Area Office is authorized to conduct an inspection.

- a. If appropriate, the Area Office will inform the individual providing the information that an inspection will be scheduled and that he or she will be advised of the results.
 - b. After the inspection, the Area Office will send the individual a letter addressing each information item, with reference to the citation(s) or a sufficiently detailed explanation for why a citation was not issued.
4. If an inspection is warranted, it will be initiated as soon as resources permit. Inspections resulting from formal complaints of serious hazards will normally be initiated within five working days of formalizing.

I. Procedures for an Inquiry.

1. If the complaint or referral does not meet the criteria for initiating an onsite inspection, an inquiry will be conducted. OSHA will promptly contact the employer to notify it of the complaint or referral and its allegation(s), and fax or email a confirming letter.
2. If a non-formal complaint is submitted by a current employee or a representative of employees that does not meet any of the inspection criteria, the complainant may be given five working days to make the complaint formal.
 - a. The complainant may come into the Area Office and sign the complaint, or mail or fax a signed complaint letter to OSHA. Additionally, an OSHA-7 form can be mailed or faxed to the complainant, if appropriate.
 - b. If the complaint is not made formal after five working days, after making a reasonable attempt to inform the complainant of the decision, OSHA will proceed with the inquiry process.
3. The employer will be advised of what information is needed to answer the inquiry and encouraged to respond by fax or email. See Chapter 13, Federal Agency Field Activities, for differing Federal Agency procedures. Employers are encouraged to do the following:
 - a. Immediately investigate and determine whether the complaint or referral information is valid and make any necessary corrections or modifications.

- b. Advise the Area Director either in writing or via email within five working days of the results of the investigation into the alleged complaint or referral information. At the discretion of the Area Director, the response time may be longer or shorter than five working days, depending on the circumstances. Additionally, although the employer is requested to respond within the above time frame, the employer may not be able to complete abatement action during that time, but is encouraged to do so.
 - c. Provide the Area Director with supporting documentation of the findings, including any applicable measurements or monitoring results, and photographs and/or videos that the employer believes would be helpful, as well as a description of any corrective action the employer has taken or is in the process of taking.
 - d. Post a copy of the letter from OSHA where it is readily accessible for review by all employees.
 - e. Return a copy of the signed Certificate of Posting to the Area Office.
 - f. If there is a recognized employee union or safety and health committee in the facility, provide it with a copy of OSHA's letter and the employer's response.
4. As soon as possible after contacting the employer, a notification letter will be faxed to the employer, or mailed where no fax is available. Sample letters to complainants and employers are provided on the NCR. Note that some of these letters are for private sector use and some are for Federal Agency use. If email is an acceptable means of responding, this should be indicated in the notification letter and the proper email address should be provided.
5. If no employer response or an inadequate employer response is received after the allotted five working days, additional contact with the employer may be made before an inspection is scheduled. If the employer provides no response or an inadequate response, or if OSHA determines from other information that the condition has not been or is not being corrected, an inspection will be scheduled.
6. The complainant will be advised of the employer's response, as well as the complainant's rights to dispute that response, and if the alleged hazard persists, of the right to request an inspection. When OSHA receives an adequate response from the employer and the

complainant does not dispute or object to the response, an onsite inspection normally will not be conducted.

7. If the complainant is a current employee or a representative of employees and wishes to dispute the employer's response, the disagreement must be submitted in writing and signed, thereby making the complaint formal.
 - a. If the employee disagreement takes the form of a written and signed formal complaint, see Paragraph I.H. of this chapter, *Procedures for an Inspection.*
 - b. If the employee disagreement does not take the form of a written and signed formal complaint, some discretion is allowed in situations where the information does not justify an onsite inspection. In such situations, the complainant will be notified of OSHA's intent not to conduct an inspection and the reasoning behind the determination. This decision should be thoroughly documented in the case file.
8. If a signed complaint is received after the complaint inquiry process has begun, the Area Director will determine whether the alleged hazard is likely to exist based on the employer's response and by contacting the complainant. The complainant will be informed that the inquiry has begun and that the complainant retains the right to request an onsite inspection if he/she disputes the results and believes the hazard still exists.
9. The complaint must not be closed until OSHA verifies that the hazard has been abated.
10. The justification for not conducting an inquiry will be noted in the case file.

J. Complainant Protection.

1. Identity of the Complainant.

Upon request of the complainant, his or her identity will be withheld from the employer in accordance with Section 8(f)(1) of the Act. No information will be given to the employer that would allow the employer to identify the complainant.

2. Whistleblower Protection.

- a. Section 11(c) of the Act provides protection for employees who believe that they have been the subject of an adverse

employment action in retaliation for engaging in activities related to workplace safety or health. Any employee who believes that he or she has been discharged or otherwise retaliated against by any person as a result of engaging in such activities may file a whistleblower complaint. The complaint must be filed within thirty days of the discharge or other retaliation.

- b. Complainants should always be advised of their Section 11(c) rights and protections upon initial contact with OSHA and whenever appropriate in subsequent communications.

K. Recording in IMIS.

Information about complaint inspections or inquiries must be recorded in IMIS following current instructions given in the IMIS manual. See OSHA Instruction IRT 01-00-007, *The IMIS Enforcement Data Processing Manual for Use with the NCR Computer System* (Table of Contents and Chapters 1 through 7), dated September 20, 1993.

II. Whistleblower Complaints.

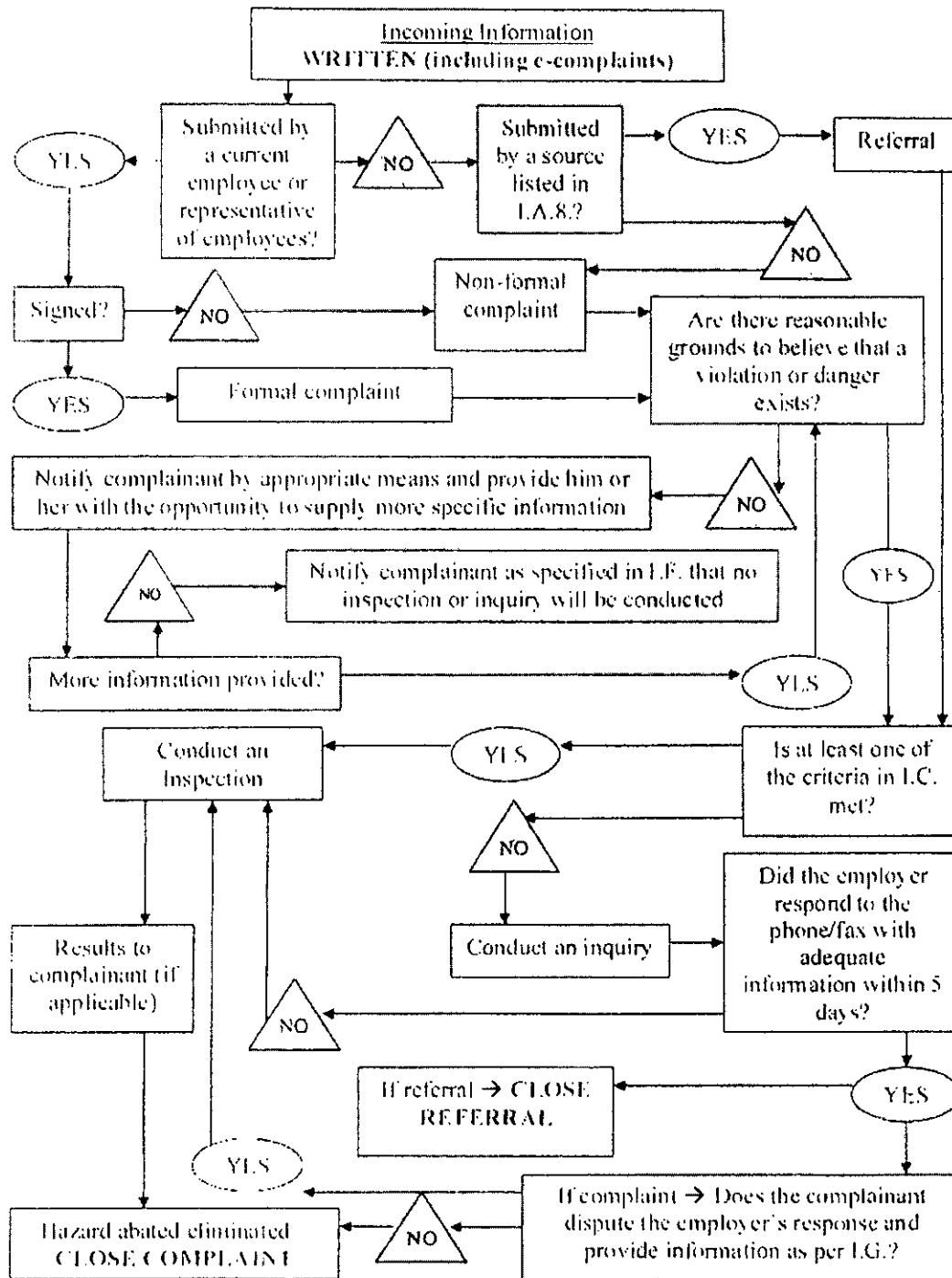
- A. OSHA enforces the whistleblower or anti-retaliation provisions of the OSH Act and sixteen other federal statutes. A desk reference summarizing these statutes can be found in the Whistleblower Investigations Manual on OSHA's Web site. These statutes generally provide that employers may not discharge or otherwise retaliate against an employee because the employee has reported an alleged violation related to the statute to an employer or a government agency, or otherwise exercised any rights provided to employees by the various statutes.
- B. When a retaliation complaint is made under any of the sixteen federal whistleblower statutes enforced by OSHA other than the OSH Act, the complainant should be referred promptly to the Regional Supervisory Investigator or Team Leader because the requirements for filing complaints under those statutes vary from those of the OSH Act. They should also be advised that there are statutory deadlines for filing these complaints.
- C. In the context of an OSHA enforcement action or a consultation activity, the complainant will be advised of the protection against retaliation afforded by Section 11(c) of the Act. A Section 11(c) complaint may be in any form, including an oral complaint made to a CSHO. Thus, if a person alleges that he has suffered an adverse action because of activity protected under

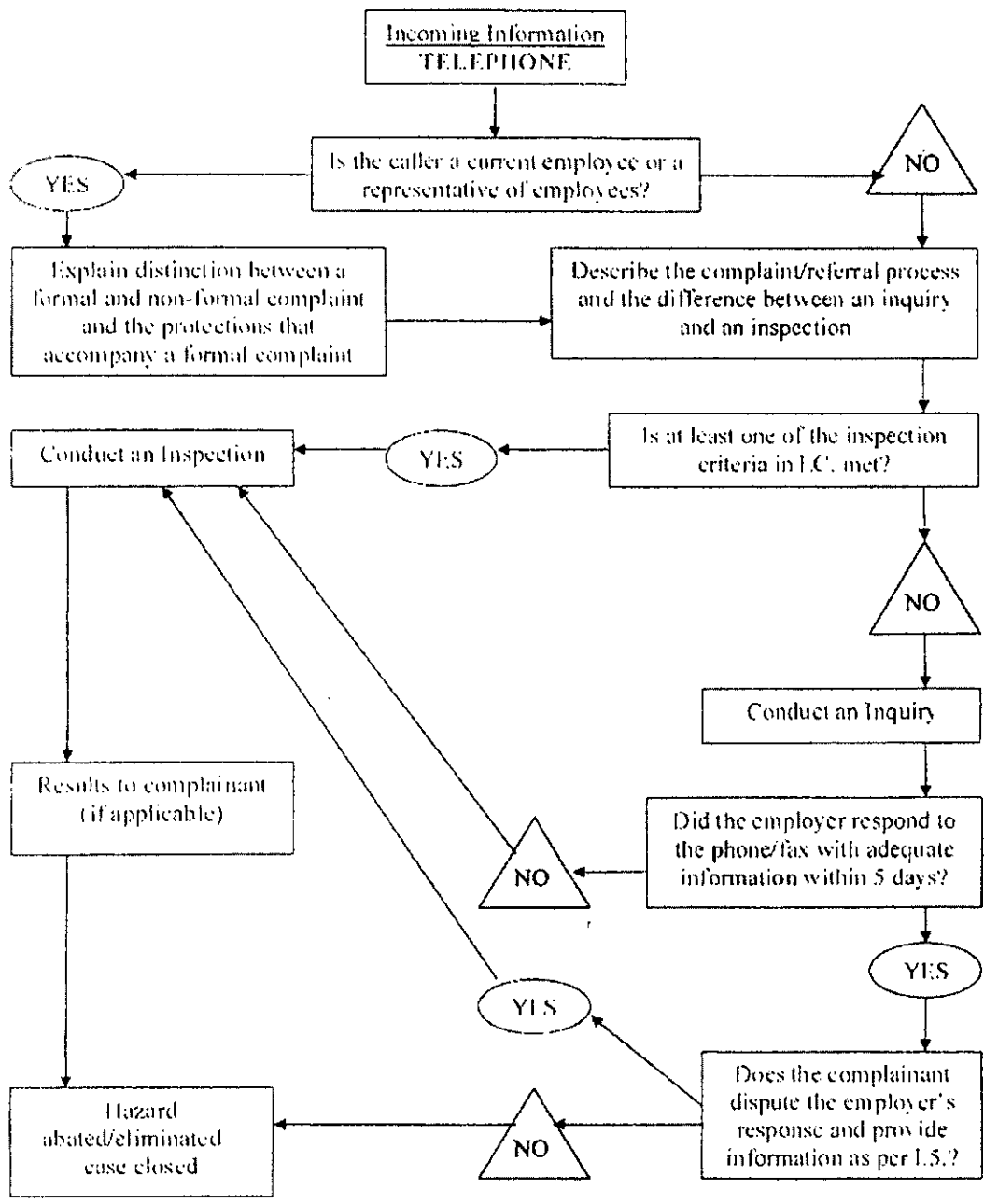
Section 11(c), CSHOs will record that person's identifying information and the date and time of this initial contact on an OSHA-87 form and forward it to the Regional Supervisory Investigator or Team Leader for processing.

- D. In State Plan States, employees may file occupational safety and health retaliation complaints with Federal OSHA, the State, or both. Federal OSHA normally refers such complaints to the State Plan States for investigation. OSHA's Whistleblower Manual outlines the Agency's referral/deferral policies for such complaints.

III. Decision Trees.

- A. See tree on page 9-15 for OSHA enforcement action or consultation activity when information is obtained in writing.
- B. See tree on page 9-16 for OSHA enforcement action or consultation activity when information is





Complaint Questionnaire

Obtain information from the caller by asking the following questions, where relevant.

For All Complaints:

1. What is the specific safety or health hazard?

2. Has the hazardous condition been brought to the employer's attention? If so, when?
How?

3. How are employees exposed to this hazard? Describe the unsafe or unhealthful working conditions; identify the location.

4. What work is done in the unsafe/unhealthful area? Identify, as well as possible, the type and condition of equipment in use, the materials (e.g., chemicals) being used, the process/operation involved, and the kinds of work being done near the hazardous area. Have there been any recent chemical spills, releases, or accidents?

5. With what frequency are employees doing the task that leads to the exposure? Continuously? Every day? Every week? Rarely? For how long at one time? How long has the condition existed (so far as can be determined)? Has it been brought to the employer's attention? Have any attempts been made to correct the condition, and, if so, who took these actions? What were the results?

6. How many shifts are there? What time do they start? On which shift does the hazardous condition exist?

7. What personal protective equipment (e.g., hearing protection, gloves or respirators) is required by the employer relevant to the alleged exposure? Is it used by employees? Include all PPE and describe it as specifically as possible. Include the manufacturer's name and any identifying numbers.

8. How many people work in the establishment? How many are exposed to the hazardous conditions? How near do they get to the hazard?

9. Is there an employee representative or a union in the establishment? Include the name, address, and telephone number of the union and/or the employee representative(s).

For Health Hazards

10. Has the employer administered any tests to determine employee exposure levels to the hazardous conditions or substance? Describe these tests. Can the employees get the results (as required by the standard)? What were the results?

11. What engineering controls are in place in the area(s) in which the exposed employees work? For instance, are there any fans or acoustical insulation in the area which may reduce exposure to the hazard?

12. What administrative or work practice controls has the employer put in place?

13. Do any employees have any symptoms that may have been caused by exposure to hazardous substances? Have any employees ever been treated by a physician for a work-related disease or condition? What was it?

14. Have there been any "near-miss" incidents?

15. Are respirators worn to protect against health hazards? If so, what kind? What exposures are they protecting against?

16. If the complaint is related to noise, what, if any, hearing protection is provided to and worn by the employees?

17. Do employees receive audiograms on a regular basis?

For Safety Hazards:

18. Under what adverse or hazardous conditions are employees required to work? This should include conditions contributing to stress and "other" probability factors.

19. Have any employees been injured as a result of this hazardous condition? Have there been any "near-miss" incidents?
