Disclaimer

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Chapter 49.17 RCW, known as the Washington Industrial Safety and Health Act (WISHA) gives the Director of the Department of Labor and Industries the authority and responsibility for administration of Washington State's workplace safety and health program.

RCW 43.22.040 gives the Assistant Director of DOSH Services (statutorily titled "Supervisor of Industrial Safety and Health") the authority to perform those duties delegated by the Director and charged by statute (Chapter 49.17 RCW, the WISH Act).

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CHAPTER 1
ADMINISTRATIVE AND PRE-INSPECTION PROCEDURES

A. GENERAL RESPONSIBILITIES AND ADMINISTRATIVE PROCEDURES

The Department of Labor and Industries (L&I) has designated authority and responsibility for ensuring compliance with *Chapter 49.17 RCW*, Washington Industrial Safety and Health Act (WISHA). Within L&I, the Division of Occupational Safety and Health (DOSH) is the designated representative for the implementation and enforcement of WISHA.

The DOSH Compliance Manual describes DOSH's policies and procedures for the enforcement process, including inspections. Responsibilities for DOSH central and regional management and staff are described in this manual. All agency staff with responsibility related to DOSH activities must follow and adhere to all the established procedures and requirements described in this manual.

Note: Templates for all documents used in coordination with this Compliance Manual are located in the WIN System or on the DOSH Intranet.

A.1. Assistant Director.

The Assistant Director of DOSH is designated by statute as the Supervisor of Industrial Safety and Health (*RCW 43.22.040*). This position has responsibility and authority for program and policy development and statewide oversight of all services and programs provided by DOSH, including but not limited to standards promulgation, all compliance, consultation and outreach activities, technical support, and training. The Assistant Director is appointed by and reports to the Director.

A.2. Statewide Compliance Manager.

The Statewide Compliance Manager reports to the Assistant Director of DOSH. The position has responsibility and authority to manage all aspects of DOSH's statewide Compliance Program (Compliance Operations, Regions 1 through 6, and Region 8).

A.3. Regional Compliance Manager.

Regional Compliance Managers report to the Statewide Compliance Manager and have responsibility and authority to manage the compliance programs within their respective region (Regions 1 through 6, and Region 8).

A.4. Compliance Supervisor.

Compliance Supervisors have first level supervisory authority and responsibility over Safety and Health Specialists and Industrial Hygienists (commonly known as "CSHOs" – Compliance Safety and Health Officers). Compliance Supervisors are responsible for scheduling and assigning the work of the CSHOs who report to them. Compliance Supervisors report to their Regional Compliance Manager. The Statewide Compliance program includes both Safety Compliance Supervisors and Hygiene Compliance Supervisors who are housed in various field offices.

A.4.a. Quality Assurance. Compliance Supervisors are required to thoroughly review inspection reports to ensure technical sufficiency of their staff's work. Compliance Supervisors must ensure that correct codes are cited, that violations are adequately documented with sufficient facts, and that all related policies and procedures are followed. Compliance Supervisors must also work with CSHOs to address and correct deficiencies before approving final reports. They must also ensure timely follow-up for abatement verification for cited violations. Additionally, Compliance Supervisors have responsibility for ensuring the protection of DOSH Compliance staff through implementation of L&I's internal safety and health program.

A.4.b. Accompanied Inspection. Compliance Supervisors must accompany each CSHO he or she supervises on at least one enforcement inspection per year. The purpose of accompanied inspections is to ensure consistency, to provide guidance to CSHOs, and to prepare the Compliance Supervisor to conduct the CSHO's annual performance evaluation.

The CSHO must complete all required documentation for the inspection. The Compliance Supervisor must evaluate the CSHO using an *Accompanied Visit/Spot Check Review Checklist form (see Appendix 1A)*. This includes a review of paper and electronic files and any citations issued to the employer. The results of the evaluation will be shared with the CSHO. The Compliance Supervisor will maintain a confidential desk file for accompanied inspection evaluations.

NOTE: In some regions, Safety and Health Specialist 3 lead workers conduct accompanied inspections. This can include completion of the Accompanied Inspection Evaluation Form to document CSHO performance or additional training needs. Compliance Supervisors must still meet the minimum requirement of at least one accompanied inspection per CSHO per year.

A.4.c. Spot Check Visits.

(1) Compliance Supervisors must also conduct at least one spot check visit per year for each CSHO he or she supervises, following an enforcement inspection the CSHO conducted. The purpose of spot check visits is to ensure CSHOs are correctly enforcing WISHA standards. This includes ensuring the CSHO has identified and addressed unsafe working conditions and practices in the work place. Spot checks are also used by the Compliance Supervisor to prepare the CSHO's annual performance evaluation and identify whether additional training is necessary. The CSHO is typically not present during the spot check.

(2) No employer will be cited as a result of a supervisory spot check of a CSHO's previous inspection. If a violation was not identified as part of the original inspection, the subsequent spot check will not be considered sufficient to issue a citation. The employer must immediately be advised of any violations identified during a spot check in an attempt to secure abatement. The Compliance Supervisor must also document the violation by sending the employer a written description of the violation with an explanation that all violations must be corrected and could be subject to a follow-up inspection. A copy of the letter must be kept in the original inspection case file.

(3) Every effort must be made to provide the employer sufficient time to abate the violations identified during the spot check. Follow-up inspections must not be scheduled until the employer has had sufficient time to abate any hazards identified during the spot check. If the employer still has not complied with the violation after being provided written notice and sufficient time to abate the hazards, the employer is subject to citation upon review with the Regional Compliance Manager and the Statewide Compliance Manager.

NOTE: These procedures also apply if an employer has allowed DOSH to use his or her place of business for DOSH training purposes.

A.5. Compliance Safety and Health Officer (CSHO).

Compliance Safety and Health Officers (CSHOs) are either Safety and Health Specialists or Industrial Hygienists, depending on their area of expertise. Safety and Health Specialists report to a Safety Compliance Supervisor and Industrial Hygienists report to an Industrial Hygiene Compliance Supervisor.

A.5.a. Assure Safe and Healthful Working Conditions. The primary responsibility of the CSHO is to perform compliance inspections and enforce WISHA safety and health standards. These inspections must be conducted in accordance with the procedures described in this manual and in a professional manner consistent with the mandate given to the Director of L&I, which is "to assure, insofar as may be reasonably possible, safe and healthful working conditions for every man and woman working in the state of Washington...."

A.5.b. Documentation and Abatement of Violations. Through inspections and other employee/employer contact, CSHOs identify hazards and ensure they are eliminated to protect workers. CSHOs must document inspections and violations in the case file, and must verify that violations are abated. Based on workplace hazards or conditions, CSHOs may need to make a referral through their Supervisor to the other DOSH discipline, or for technical assistance (safety or health). **CSHOs and their Supervisors are responsible for the technical adequacy of each case file.**

A.5.c. Subpoena Served on CSHO. CSHOs may be called upon to testify in a variety of situations. If a CSHO is served with a subpoena, the CSHO must inform his or her Supervisor and Regional Compliance Manager immediately, and follow the instructions below.

(1) Testimony in Support of a DOSH Citation. CSHOs may have to testify before the Board of Industrial Insurance Appeals about a citation that was issued following an inspection they conducted. The CSHO must keep this in mind when recording observations and documenting violations during inspections. The case file must reflect conditions observed in the workplace as accurately as possible. If the CSHO is called upon to testify, the case file will be invaluable as a means for recalling actual conditions. This type of testimony is a logical extension of the compliance process, and is necessary.

(2) Third Party Cases. CSHOs may also be called upon to testify in what are known as "third party" cases. These are cases where the CSHO performed an inspection or investigation, and attorneys for either an employee or another entity such as the manufacturer or general contractor want the CSHO to testify about the inspection or citation. CSHOs may also be asked by attorneys for either side to spend time explaining the case, or what their testimony will be.

L&I's policy is that unnecessary involvement in third party cases is not an effective use of employee resources, and unnecessarily takes CSHOs away from their duties. Therefore, CSHOs are directed to only participate in third party cases to the extent required by a subpoena for either a "Notice of Oral Examination" (deposition), or for testimony in a Superior Court trial.

(3) Expert vs. Factual Testimony. There are two types of testimony: "expert testimony" and "factual testimony."

- **Expert testimony** involves giving one's opinion as to certain issues. For example, expert testimony would involve stating that you believe a certain practice to be unsafe.
- **Factual testimony** is limited to explaining facts without embellishing these facts with any opinions. For example, a CSHO could explain that certain documents appear to be accurate photocopies of their work notes or the Citation and Notice issued following their inspection. Other examples of factual testimony would include stating "yes, these are the photographs that I took" or "yes, I recommended a violation of WAC 296-_____."

- **CSHOs may provide only factual, not expert testimony in cases where L&I is not a party to the action.** Neither side in a lawsuit should be provided free expert testimony by the State. Again, this is not an efficient use of state resources. The Compliance Supervisor may coordinate with the Attorney General's Office as appropriate to the circumstances.

A.6. Data Compiler.

Data Compilers are responsible for reviewing completed inspections reports and attached notes, referrals, complaints, and Certification of Abatement forms from Compliance Safety and Hygiene Inspectors, to ensure required information and data entry are complete, and that grammar and spelling is correct. Other duties include:

- Scanning inspection reports, photos and related material and uploads into WIN
- Gathering and collecting safety and health data to produce monthly reports
- Tracking and ensuring time requirements are met for report and complaint processing
- Researching elements that will assist field staff in investigations using DOL, LINIIS, Employment Security, and Corporate Search computer systems
- Producing letters and file copies of regional inspection reports.

A.7. Sharing Inspection Information with other Agencies.

If another agency, such as local Clean Air Authority, Department of Ecology, local Health Department, or Police, is involved with a parallel investigation relating to the DOSH inspection, staff should work with the other agency as closely as possible to:

- Obtain all the information concerning the other agency's investigation
- Assist each other with inspection of the site
- Minimize duplication of effort by sharing relevant documents, such as photographs, sample results, test results, and interviews/statements, in a timely manner. If there are any questions about whether or not a document can be released, contact your Supervisor and Regional Compliance Manager.

Confidential information, such as the complainant's name and medical information must not be released. If the information is critical to the other agency's investigation, staff should recommend the complainant, or individual, contact the agency directly.

Trade secret or business confidential information requests will be directed to Public Records.

NOTE: Although staff is encouraged to share investigative documents, they must not share opinions, conclusions, or copies of the official file.

B. SCOPE AND TYPES OF INSPECTIONS

B.1. Programmed vs. Unprogrammed.

B.1.a. Unprogrammed. Inspections scheduled in response to reports of suspected or alleged hazardous working conditions at a specific worksite are called "unprogrammed." This type of inspection responds to reports of imminent danger, fatalities or catastrophes, and complaints or referrals. Follow-up and monitoring inspections are also considered unprogrammed. Based on the nature of the alleged hazard(s), unprogrammed inspections will normally be scheduled and conducted prior to programmed inspections. This category includes all employers on multi-employer worksites directly affected by the subject of the unprogrammed activity.

B.1.b. Unprogrammed Related. Inspections of employers at multi-employer worksites whose operations are not directly affected by the subject of the unprogrammed activity are called "unprogrammed related."

EXAMPLE: *A complaint is received alleging lack of fall-protection for employees of a roofing contractor at a multi-employer construction site. The Compliance Supervisor schedules an unprogrammed inspection. While the CSHO is at the worksite, he/she observes a trenching hazard that was not identified in the original complaint. In addition to the unprogrammed inspection of the roofing contractor, the CSHO conducts an" unprogrammed related" inspection of the excavation contractor who created the trenching hazard.*

B.1.c. Programmed. Inspections of worksites which have been scheduled based upon objective selection criteria and are called "programmed." Programmed inspections are sometimes called targeted or scheduled inspections. All programmed inspections must be comprehensive.

- Programmed inspections are scheduled from lists which are normally generated using worker's compensation data for individual employer accounts**.** DOSH also uses industry, hazard, claims, and employer history data to identify employers and/or industries with high potential for hazards that could cause serious injuries. Programmed inspection scheduling is used for both safety and hygiene and includes high hazard industries such as construction, agriculture, logging, maritime, and electrical utilities and communications.
- In addition, regions may use local emphasis programs (LEPs) that are approved in writing by DOSH Management in Central Office.
- An employer in a fixed industry who has received a comprehensive DOSH safety or hygiene consultation visit is deferred from programmed inspections within the same discipline as the comprehensive visit (safety, health or both) at that worksite for the next 12 months. This does not include other worksites of the same employer, construction sites, or employers who received a limited service onsite consultation visit.

B.1.d. Programmed Related. Inspections of employers at multi-employer worksites whose activities were not included in the programmed assignment are called "programmed related." However, all high hazard employers at the worksite will normally be included in the programmed inspections.

EXAMPLE: *A large retail business is doing extensive remodeling at one of its stores, which is still open for business during the construction period. A programmed inspection is scheduled for a roofing contractor who is working there. While onsite, the CSHO observes that a framing contractor's employees are exposed to nail-gun safety hazards. In addition, in the back stock room of the store (a non-targeted employer), an exit doorway is blocked with stacked pallets and there is debris on the floor which could cause the retail employees to slip or trip. The inspection of the framing contractor, a high hazard employer, is considered "programmed" but the inspection of the retail business is "programmed related."*

B.2. Scope of Inspection.

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

B.2.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.

During a comprehensive inspection, CSHOs must review the employer's OSHA-300 log, training records, Accident Prevention Program, and other applicable written safety and health management programs such as lock-out/tag-out, respiratory protection, or fall protection program.

B.2.b. Partial. An inspection whose focus is limited to certain potentially hazardous areas, operations, conditions or practices at the establishment is called "partial." If other hazards are observed, the inspection will normally be expanded to a comprehensive inspection.

CSHOs must review the employer's OSHA-300 log, training records, Accident Prevention Program, and other applicable written safety and health management programs such as lock-out/tag-out, respiratory protection, or fall protection as it relates to the scope of the partial inspection. If the CSHO performing the inspection has reviewed the APP and other relevant programs within the last year and no significant changes in the employer's business operations have occurred, a review of the written programs is not necessary. The CSHO must document that written programs were not reviewed and reference the prior inspection number in which the CSHO previously reviewed the programs.

B.2.c. Examples of When to Expand a Partial Inspection. The following factors may indicate the need to expand the scope of a partial inspection:

(1) Lack of a comprehensive safety and health program.

(2) Significant deficiencies in critical programs such as respiratory protection programs, hazard communication, lock-out/tag-out, wire rope inspection for cranes, or fire protection programs.

(3) Serious violations observed in areas not covered by the partial inspection.

(4) A review of the OSHA-300 log or injury records reveal concentrations of injuries or illnesses in specific areas of the plant.

(5) High injury and/or illness rate relative to the industry SIC or NAICS (experience factor higher than one).

(6) When employee interviews indicate other areas of the business operations may have unsafe working conditions and/or practices.

B.3. Coordinated and Joint Inspections.

- When both safety and hygiene CSHOs participate in an inspection of the same workplace, the activity is classified as a **coordinated inspection** and both CSHOs submit individual reports with separate inspection numbers.
- When a team of CSHOs of the same discipline (all safety or all hygiene) participate in the same inspection, the activity is classified as a **joint inspection** and only one inspection report is prepared.
- When there are both safety and hygiene teams (**coordinated inspection**) one inspection report is prepared by the safety team, and a separate inspection report is prepared by the hygiene team.

C. INSPECTION SCHEDULING

C.1. Inspection Scheduling Criteria.

DOSH's system for prioritizing and conducting enforcement inspections is designed to ensure that maximum feasible worker protection is provided to the degree possible with available resources.

Compliance Supervisors must ensure that inspections are scheduled following DOSH policies and procedures including all manuals and directives, and that they are consistent with DOSH goals and objectives.

C.1.a. Consultation Visit Will Not Trigger Inspection. In no case other than a referral from Consultation when an employer has failed to correct serious hazards, will a consultation visit, or information obtained during a consultation visit, be used to initiate enforcement action, nor will it be used to determine the scope or subject of a compliance inspection.

C.1.b. Employer Requests for Information Will Not Trigger Inspection. DOSH will not use employer requests for information as a trigger to schedule an inspection. However, these kinds of requests will not protect employers against inspections scheduled through established DOSH policy.

NOTE: If a conversation with an employer or their representative reveals that an imminent danger exists or that a fatality, catastrophe or accident with serious injuries has occurred, Compliance Supervisors must promptly assess the situation and in most cases, schedule an immediate inspection.

C.2. Inspection Priorities.

C.2.a. Order of Priority. Generally, priority of inspections will be as follows. Deviations from this priority list are allowed so long as they are justifiable, lead to efficient use of resources, and contribute to the effective protection of workers.

Priority	Category
1st	Imminent Danger
2nd	Fatality/Catastrophe Investigations
3rd	Complaints/Referrals - that meet criteria for an inspection – See *Chapter 2, Section D., Evaluating Complaints and Referrals.*
4th	Follow-up or Monitoring Inspections
5th	Programmed Inspections

C.2.b. Follow-up Inspections. In cases where follow-up inspections are necessary, they must be conducted according to the procedures in *Chapter 4, Section D,* in this manual. When available, the CSHO who performed the initial inspection should be assigned to perform the follow-up inspection.

(1) Priority Compared to Programmed and Unprogrammed.

- Except in unusual circumstances, follow-up inspections take priority over all programmed inspections.
- They normally do not take priority over unprogrammed inspections with hazards evaluated as serious.

(2) During Appeal. Follow-up inspections should not normally be conducted to check cited violations within the appeal period (15 working days), unless imminent danger conditions exist.

Follow-up inspections may be conducted for violations under appeal when there is a final abatement order, and the violations are required to be abated during the appeal. See *Chapter 8, Section A.5.d.* in this manual for additional information.

C.3. Scheduling Unprogrammed Inspections While Appeal from a Prior Inspection is Pending.

In some cases (fatality, accident, imminent danger, complaint or referral alleging serious hazards), an inspection must be scheduled when an employer's appeal from a prior inspection is still pending. In these cases, normally a partial inspection will be conducted. All items under appeal must be excluded from the inspection unless a potential imminent danger is alleged. However, if the employer has only appealed the penalty, the inspection will be scheduled using normal priorities as if there were no appeal.

C.4. Home-Based Worksites.

C.4.a. Home Offices. DOSH does not normally perform any inspections of employees' home offices. A home office is defined as office work activities in a home-based setting/worksite (e.g., filing, keyboarding, computer research, reading, writing) and may include the use of office equipment (e.g., telephone, facsimile machine, computer, scanner, copy machine, desk, file cabinet).

C.4.b. Other Home-Based Operations. DOSH normally only conducts inspections of other home-based worksites, such as manufacturing operations, when a complaint or referral is received alleging that a violation of a safety or health standard exists that threatens physical harm, that an imminent danger is present, or that there was a work-related hospitalization or fatality.

C.4.c. CSHO Safety. A CSHO might arrive at the address for a programmed inspection and find that it is a private residence and there is no clear worksite at that location. The location may be the employer's home address and all work is actually conducted at the customers' sites. If this happens, the CSHO should not approach the residence but should contact the Compliance Supervisor for specific guidance appropriate to the circumstances. This may include phoning the employer to set up a meeting in a public location to learn more about the employer's business operations and where the employer's work is conducted. This type of contact could result in an opening conference followed by an inspection of a worksite at the first available opportunity and would not be considered advance notice.

The CSHO can later discuss the information with his/her supervisor, who will determine whether authorized advance notice is appropriate under the requirements described in *Section D.7.c*,. in this chapter. The **CSHO's safety** is of the utmost importance.

NOTE: CSHOs may only conduct opening conferences in home residences if approved by the Compliance Supervisor.

D. INSPECTION PREPARATION

D.1. Pre-inspection Planning.

It is very important that CSHOs adequately prepare for inspections.

D.1.a. Schedule Planning. CSHOs must plan their schedules in advance in coordination with their Compliance Supervisor, reflecting the priorities in *Section C.2.a.*, in this chapter.

D.1.b. Background and File Review. Due to the wide variety of industries inspected and associated hazards likely to be encountered, CSHOs must carefully review available information sources such as LINIIS, the Employer Profile application, and WISHA Information Network (WIN) inspection and consultation history to ensure that the inspection they conduct is of the highest possible quality. The Compliance Supervisor should be consulted when necessary.

(1) Industrial Processes, Hazards and PPE. CSHOs must review all pertinent information contained in the establishment file and other appropriate sources to become knowledgeable about the potential hazards and industrial processes that may be encountered. CSHOs must identify the personal protective equipment (PPE) necessary for protection against these anticipated hazards, based on the industry type and previous inspection history.

(2) Standards and Sampling Methods. CSHOs must review appropriate standards and sampling methods relevant to the industry. Based on professional experience and case file information, CSHOs must select the instruments (if any) that will be needed for the inspection and prepare them according to the standard methods of sampling and calibration.

D.1.c. Review of Previous Citations. During the review of an employer's previous inspection history, CSHOs must note citations that were issued, if any, and their abatement status.

D.2. Coordination with DOSH Consultation.

Close coordination between DOSH Compliance and Consultation programs is essential. Prior to making a programmed inspection assignment, Compliance Supervisors must determine whether an employer is scheduled for a DOSH safety or health Consultation visit. An onsite DOSH **Consultation in progress** has priority over a **programmed inspection.**

D.2.a. When a Consultation Visit is Scheduled or "In Progress." If a Consultation visit has been scheduled, the Compliance Supervisor must contact the Consultation Supervisor to find out whether the visit is already in progress. A programmed inspection will normally only be deferred or canceled if a Consultation visit is actually in progress, not because the employer is on a waiting list, or a visit has been scheduled but not initiated.

(1) For conditions covered by the employer's request for consultation, a Consultation visit is considered in progress from the beginning of the opening conference through the end of the hazard correction due dates, if any, and any approved extensions.

(2) For conditions not covered by the employer's request, the Consultation visit is considered in progress only while the DOSH Consultant is at the worksite.

D.2.b. Unprogrammed Compliance Inspection to be Conducted. If an unprogrammed inspection will be conducted, its scope must be limited to those areas required to complete the purpose of the inspection. In other words, the inspection must not be comprehensive. The compliance inspection may not include any item covered by a DOSH Consultant's abatement plan.

D.2.c. Multi-Employer Worksite. If a programmed inspection is scheduled for a multi-employer worksite, such as a construction site, the following guidelines apply.

(1) If a general contractor has invited a DOSH Consultant on site, the Consultant will be considered on site with respect to the entire worksite.

(2) If a DOSH Consultant has been invited by one of the subcontractors and the scope of the Consultant's visit is limited to the operations of that one subcontractor, the programmed inspection of the entire worksite should be conducted. However, the subcontractor who has invited the DOSH Consultant to visit will be excluded from the scope of the programmed inspection.

D.2.d. Deferral from Programmed Inspections. An employer in a fixed industry who has received a comprehensive DOSH safety or hygiene consultation visit is deferred from programmed inspections within the same discipline as the comprehensive visit (safety, health, or both) at that worksite for the next 12 months. This does not include other worksites of the same employer, construction sites, or employers who received a limited service onsite consultation visit.

D.3. Obtaining Expert Assistance for an Inspection.

At times, technical expertise that is not available within a region may be needed to conduct an inspection. The resources may exist elsewhere in DOSH, or it may be necessary to contract for the services of a qualified outside professional. In these situations, the Compliance Supervisor or Regional Compliance Manager should contact Compliance Operations to arrange for a specialist from within DOSH or to assist in locating a qualified outside professional. All agency and state contracting requirements must be followed when obtaining outside services.

a. Expert assistance may be necessary during inspections involving the implementation of engineering or administrative controls such as noise, air contaminants, complicated machine guarding, or construction.

b. DOSH specialists may accompany CSHOs, or may perform their tasks separately. DOSH specialists must be briefed on the purpose of the inspection and personal protective equipment to be used.

c. All documentation, recommendations and corresponding actions from the assigned specialists must be made part of the inspection report.

D.4. Inspection Materials and Equipment.

Compliance Supervisors must ensure that appropriate personal protective equipment (PPE) and technical equipment is provided to and used by CSHOs. This includes training and periodic review on the proper use, maintenance and limitations of the equipment. When monitoring equipment requires certification or calibration, it must be maintained or calibrated in accordance with L&I standards and/or the manufacturer standards of care, whichever is more stringent. The DOSH Industrial Hygiene Lab or Technical Services Program may be contacted for assistance if necessary.

For more information on required use of PPE, refer to *Internal Safety and Health Policy 8.15, Personal Protective Equipment,* located on the L&I Intranet. The Regional Safety and Health Coordinator may be consulted for additional assistance if necessary. CSHOs must have:

- Copies of appropriate report forms to document the inspection
- Assigned personal protective equipment (PPE) ready and in serviceable condition
- Handouts for employers and employees, if appropriate
- Equipment necessary to conduct the inspection, such as a camera, tape measure, sound level meter, electrical tester, etc.

D.4.a. Personal Protective Equipment (PPE). Approved hard hats, approved safety glasses with permanently or rigidly attached side shields, and approved safety shoes must be worn by CSHOs on the walkaround phase of the onsite visit unless no overhead hazards, eye hazards, and/or foot hazards are likely to be present. CSHOs must also use PPE specific to the hazards of the worksite. This will set an example for industry and provide minimum acceptable protection for CSHOs.

Under WAC 296-800-160, Personal Protective Equipment, employers must complete a written certification that a hazard assessment for PPE has been performed. CSHOs should request a copy and must use any required or appropriate personal protective equipment during the inspection.

D.4.b. Respirators. CSHOs must be qualified to use a respirator before being assigned to conduct an inspection that requires one. Inspections requiring the use of negative pressure respirators must not be assigned without a determination using physician-established guidelines that the CSHO may use a respirator, and the CSHO having had an adequate quantitative fit test within the last year. Since respirators with tight-fitting face pieces require the skin to be clean shaven at the points where sealing occurs, CSHOs assigned to conduct inspections which involve the use of such respirators cannot have facial hair which interferes with the face to facepiece seal or function of the respirator valve(s). For additional information on respirator use, refer to *Internal Safety and Health Policy 8.22, Respiratory Protection,* located on the L&I Intranet.

D.5. Safety and Health Rules of the Employer.

CSHOs must comply with all appropriate safety and health rules and practices at the establishment and wear or use appropriate safety clothing or PPE required by DOSH standards or by the employer for the protection of employees.

D.6. Special Entrance Requirements.
CSHOs must not enter any area of the worksite where special entrance restrictions apply, until the required precautions have been taken. Compliance Supervisors are responsible for procuring materials and equipment that are needed for the safe conduct of inspections.

D.7. Advance Notice of Inspections is Prohibited.
RCW 49.17.190, Violations—criminal penalties, prohibits giving advance notice of inspections except as authorized by the Director or the Director's designee.

D.7.a. Rationale. DOSH regulates many conditions which are subject to speedy alteration and disguise by employers. To forestall such changes in worksite conditions, the WISHA statute prohibits unauthorized advance notice and authorizes DOSH to enter worksites "without delay" in order to preserve the element of surprise.

D.7.b. Narrow Exceptions. CSHOs must not normally make appointments to do programmed inspections. There are **very limited** circumstances where advance notice is necessary to conduct an effective investigation. These are narrow exceptions to the statutory prohibition against advance notice.

D.7.c. Conditions for Management Authorization of Advance Notice.
Advance notice of an inspection may only be given with the authorization of a Regional Compliance Manager or higher DOSH authority and only in the following situations:

(1) Imminent Danger. In cases of apparent imminent danger, to enable the employer to correct the danger as quickly as possible, advance notice may be given by a CSHO or Compliance Supervisor if the Regional Compliance Manager is not immediately available for authorization. The Compliance Supervisor and Compliance Manager must be notified as soon as possible and kept appraised of all details.

(2) After Regular Hours. When the inspection can most effectively be conducted after regular business hours or when special preparations are necessary.

(3) Ensure Presence of Representatives. To ensure the presence of employer and employee representatives or other appropriate personnel who are needed to aid in the inspection.

(4) Enhance Probability of Effective Inspection. When giving advance notice, would enhance the probability of an effective and thorough inspection; e.g., in complex fatality investigations.

D.7.d. Authorized Advance Notice Must Be Documented. The reason for advance notice, and who authorized it, must be documented in the case file. CSHOs must also document the workplace conditions and procedures followed at the worksite in the case file.

D.7.e. What Constitutes Advance Notice. Advance notice exists whenever L&I sets up a specific date or time with the employer for a CSHO to begin an inspection. It generally does not include nonspecific indications of potential future inspections. Any delays in the conduct of the inspection must be kept to an absolute minimum. Lengthy or unreasonable delays must be brought to the attention of the Compliance Supervisor, who must assist CSHOs in determining an appropriate course of action. This could include treating the delay as refusal of entry, following the procedures in *Chapter 3, Section A.6., Refusal to permit inspection.*

D.7.f. Delay Approved. In unusual circumstances, Compliance Supervisors may decide that a delay is necessary. In those cases CSHOs must notify (or ask the employer to notify) affected employee representatives, if any, of the delay and must keep them informed of the status of the inspection.

D.8. Classified and Trade Secret Information.

Any classified or trade secret information and/or personal knowledge of such information by DOSH personnel must be handled according to the requirements of:

- *Chapter 19.108 RCW, Uniform Trade Secrets Act.*
- *RCW 49.17.200, Confidentiality-Trade Secrets*, which protects the confidentiality of trade secret information obtained during a DOSH inspection.
- Any regulations of the responsible agency.

The collection of such information, and the number of personnel with access to it, must be limited to the minimum necessary for the conduct of compliance activities. CSHOs must identify classified and trade secret information in the case file. (*See also Chapter 3, Section C.11., Trade Secrets*).

D.9. Preemption/Jurisdiction by Another Agency.

In many cases, determining whether DOSH has jurisdiction or is preempted by another agency is a highly complex matter. To avoid any misunderstanding with other agencies or adverse actions by employers or agencies, Compliance Supervisors must use the following guidelines whenever a situation arises involving a possible preemption of jurisdiction situation.

D.9.a. Agreements with Other Agencies. CSHOs and Compliance Supervisors must be aware of potential conflicts with other agencies at all times. If a question arises, usually on receipt of a complaint, referral, or other inquiry, Compliance Supervisors must immediately determine whether the issue has been addressed in a Memorandum of Understanding (MOU) or other agreement with the agency involved.

NOTE: The *DOSH Administrative Manual* includes copies of existing MOUs affecting DOSH.

D.9.b. Clarifying Issues of Jurisdiction. If there is no MOU, or if there are questions about an MOU, the Compliance Supervisor or Regional Compliance Manager should contact the DOSH Statewide Compliance Manager, Compliance Operations Manager, or the DOSH Operations Manager.

D.9.c. DOSH Referral to Appropriate Agency. If it is determined that DOSH does not have jurisdiction, the case must be referred to the appropriate agency, especially if there is reason to believe that hazards may exist.

D.9.d. Jurisdictional Question Arises During Inspection. At times an inspection may have already begun when a jurisdictional question arises. In these cases the CSHO must interrupt the inspection and contact the Compliance Supervisor for guidance. If a referral to Federal OSHA or another agency is made, in most cases, relevant information already obtained by the CSHO should be passed on with the referral.

D.9.e. Citation and Penalty Cleared with DOSH Central Office. If following completion of an inspection there is still any question about DOSH coverage, the proposed citation and penalty must be cleared with the DOSH Assistant Director prior to issuance.

D.9.f. Inspection on Federal Lands. The issue of when DOSH has jurisdiction, and when OSHA has jurisdiction for inspection purposes over private employers and civilian contractors working on federally owned land within the State of Washington is complex, and raises difficult legal jurisdictional issues.

(1) Determining Jurisdiction. The courts have generally concluded that if the State of Washington has ceded exclusive jurisdiction to the United States over a parcel of land, then there is no DOSH jurisdiction on that land. If the State has only granted the U.S. partial or concurrent jurisdiction, then there may be DOSH jurisdiction.

- Because it will often be unclear before starting an inspection whether the State has ceded exclusive jurisdiction or not, the CSHO or the Compliance Supervisor should contact DOSH Compliance Operations for advice regarding the status of the federal lands in question.

(2) No DOSH Jurisdiction. There is no DOSH jurisdiction in the following areas:

- All employers within the boundaries of U.S. government military reservations within the State of Washington.
- Government owned, contractor operated, Department of Energy (DOE) sites.
- National parks, including road projects within the boundaries.

(3) DOSH Jurisdiction. On the other hand, DOSH does have jurisdiction to inspect on national forest land that is not part of a national park.

In addition, DOSH Consultation and Compliance staff must exercise jurisdiction in relation to the following facilities on the Hanford Reservation:

- The Washington Public Power Supply System (WPPSS) facility.
- The U.S. Ecology operated/Department of Health licensed low-level radioactive waste facility.
- Non-federal employers operating in the industrial park area known as the Port of Benton.

(4) Inspection Procedures.

- Once a determination is made that DOSH has jurisdiction, policies and procedures for inspection of private employers and civilian contractors working on federally owned land are the same as those followed in the private sector.
- When an inspection is scheduled for a federal facility, the CSHO must first contact the government official or representative in charge to inform him or her of DOSH's presence at the facility, to request permission to inspect a contractor, and to invite appropriate participation.

APPENDIX 1A

ACCOMPANIED VISIT / SPOT CHECK REVIEW CHECKLIST

1. Region	8. Report Number
2. Office	9. Comments
3. Inspector	
4. Supervisor	10. Type of Inspection
5. Date of spot check / 6. Date of L & I Inspection	❑ Initial ❑ Follow-up ❑ Referral ❑ Accident ❑ Other (identify) ❑ Complaint

7. Name of employer	Address	State	ZIP+4

I. ENTRANCE PROCEDURES	Yes	No	N/A	Remarks
A. Was the time of entry during normal plant work hours?				
B. Were credentials presented to management's representative?				
C. Was this a complaint inspection?				
1. If yes, was copy of complaint given to the employer?				
2. Was identity of the formal complainant protected? (if requested)				
II. Opening Conference				
A. Did the inspector take proper measures to achieve approp. mgmt. representation at the opening conference?				
B. Did the inspector include the following items in the opening conference:				
1. Purpose, nature, and scope of inspection?				
2. Legal authority for inspection?				
3. Provision for protection of trade secrets?				
4. Request for employer representative to accompany inspector during walk around?				
5. Request for employee representative to accompany inspector during walk around?				
6. Copy of appropriate standards and information material provided to employer.				
7. Review of employer's safety program.				
III. Employee Rights				
A. Did workers have an employee representative?				
B. If workers have employee representative, did the inspector:				
1. Take an employee representative for a walk around inspection?				
2. Inform employee representative of employee's rights under law?				
3. Give employee representative opportunities to point out hazards?				
4. Interview other employees?				
C. If not accompanied by employee representative, did inspector conduct appropriate employee interview?				
1. List names of employees interviewed under remarks column?				
D. Did inspector inform interviewed employees of employee's rights under the law?				

ACCOMPANIED VISIT / SPOT CHECK REVIEW CHECKLIST (Continued)	Yes	No	N/A	Remarks
IV. Inspection Walkaround				
A. Checked for compliance with posting requirements?				
B. Checked for compliance with record keeping requirements?				
C. Covered all pertinent areas of the work site?				
D. Did employer use toxic materials or harmful physical agents in the workplace?				
1. Ascertained if employees are aware of exposure to toxic materials or harmful physical agents?				
E. Were additional violations observed? (List on separate sheet.)				
F. Were instruments required to check for hazardous conditions?				
1. Used instruments where necessary? (ventilation, noise, etc.)				
G. Was imminent danger situation encountered?				
1. If an imminent danger situation was found, was Compliance Manual procedure followed?				
H. Was additional expertise required to complete the inspection?				
V. Closing Conference				
A. Were any alleged violations of State Standards observed?				
1. Were observed violations discussed?				
2. Were related instances of alleged violation(s) to State Standards discussed?				
B. Informed employer that citations may be issued?				
C. Informed employer that penalties may be proposed?				
D. Obtained information from employer for establishing abatement dates?				
E. Informed employer of requirements for posting citation?				
F. Informed employer of his protections under the law?				
G. Described follow-up procedures to employer?				
H. Did employees request a closing conference?				
1. Was closing conference held at employees request?				
I. Was a follow-up inspection conducted? If so, were the following procedures followed?				
1. Held opening conference?				
2. Presented credentials?				
3. Took employer representative on walk around?				
4. Took appropriate employee representative on walk around or interviewed employees?				
5. Checked all items cited for abatement?				
6. Were all items cited, abated during follow-up inspection?				
7. Held closing conference?				
8. Determined if employer posted citation?				

CHAPTER 2
COMPLAINTS AND REFERRALS

A. CLASSIFYING COMPLAINTS AND REFERRALS

The Division of Occupational Safety and Health (DOSH) receives notice of alleged workplace hazards through a variety of sources. These can include current or former employees, representative of employees, other government agencies, other L&I staff, the media, and any other named or anonymous sources.

A.1. Who Can File a Formal Complaint.

In accordance with *RCW 49.17.110*, any employee or representative of employees, who in good faith believes that a violation of a safety or health standard exists, may file a complaint with L&I requesting an inspection of the workplace. To qualify as a complaint, it must meet all of the following:

A.1.a. Detailed explanation of the grounds for the complaint.

A.1.b. Submitted in writing or electronically by fax, computer, email, etc.

A.1.c. Signed by one of the following in writing or electronically An electronic signature means photographs or scans of the complainant's original signature contained within a complaint email:

(1) A current employee at the workplace.

(2) A representative of employees. This includes any of the following:

- Forwarded current employee filed complaints signed and filed with Federal OSHA
- An authorized representative of the employee bargaining unit, such as a certified or recognized labor organization
- An attorney acting for an employee
- Any other person acting in a bona fide representative capacity, including, but not limited to, members of the clergy, social workers, medical providers, safety committees, spouses and other family members, and government officials or nonprofit groups and organizations acting upon specific safety and health complaints for 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.

(3) A current employee of another company if that employee is exposed to hazards at a workplace that is identified in the complaint.

A.2. What is Considered an Informal Complaint.

Any ex-employee complaint alleging workplace safety or health violations or an unwritten or unsigned formal complaint.

A.3. What is Considered a Referral.

A referral is an allegation of a potential workplace hazard or violation which comes to the attention of Department personnel, or is received from any other source such as those listed below:

- **CSHO or other internal referral** – information based on the direct observation.
- **Safety and health agency referral** – from sources including, but not limited to: NIOSH, state programs, and state or local health departments, as well as safety and/or health professionals in other Federal agencies. This does not include employee complaints filed with Federal OSHA.
- **Other government agency referral** – made by other Federal, State, or local government agencies or their employees, including local police and fire departments.
- **Media report** – either news items reported in the media or information reported directly to DOSH by a media source.
- Any other public person.

A.4. Reports of Hospitalization and Incidents

Unless there is a fatality or catastrophe, hospitalizations and near miss incidents will be evaluated as a complaint or a referral, depending on the source and how it is reported. If an inspection is performed, it must be handled using the procedures in *Chapter 3, General Inspection Procedures*, in this manual.

B. RETALIATION AGAINST INDIVIDUALS REPORTING A HAZARD IS PROHIBITED BY LAW

Any CSHO or other DOSH staff communicating with an individual who wishes to submit a safety complaint or referral must advise the individual of **protection against discrimination** which is provided by *RCW 49.17.160(1)* of the Washington Industrial Safety and Health Act (WISHA).

- Staff must inform the complainant/referrer of the procedure for filing a discrimination complaint. Emailing or passing out the DOSH Discrimination Brochure can achieve this.
- Staff should communicate that **discrimination complaints must be filed within 30 days of the alleged discriminatory action.**
- Complainants and Referrers must be given contact information for the regional Discrimination Investigator or the DOSH Audit & Discrimination Manager or program supervisor, and may also be given a copy of the DOSH Discrimination Complaint form in case it is needed.

- During an inspection, make notes of statements or remarks made by the employer concerning who they think made the complaint. This could end up being documentation in the event of a discrimination case.

Additional information on handling reports of discrimination can be found in the *DOSH Discrimination Investigations Manual*.

C. CONFIDENTIALITY

C. 1. When Confidentiality Applies.

- Any employee or representative of employees who files a formal complaint can request confidentiality. A complainant's confidentiality will be maintained by DOSH only if it has been specifically requested.
- Staff must attempt to contact persons who submit an unsigned written or electronic complaint form, if it would qualify as a "formal" complaint if signed, and inform them that a signature is required to assure their confidentiality. If the person does not wish to sign the complaint form, it will be handled as an "informal" complaint as described in *Section C.3* in this chapter.
- In the case of information received by telephone that would qualify as a formal complaint if in writing and signed, staff must attempt to contact the person and inform them of the requirements for formal complaints. If the person does not wish to sign the complaint form, it will be handled as an "informal" complaint as described in *Section C.3* in this chapter.
- If the confidentiality section of a signed formal complaint form has not been completed, or questions remain regarding confidentiality, staff will contact the complainant prior to initiating a complaint inspection.
- When OSHA forwards worker complaints where it is undetermined if it was signed, or information that would qualify as a complaint if in writing and signed, staff must attempt to contact the person and inform them of the requirements for formal complaints. If the worker or representative has not signed OSHA's complaint form and does not wish to sign the complaint form, it will be handled as an "informal" complaint as described in Section C.3 in this chapter.
- Confidentially will apply to photographs, scans or images of a signed formal complaint.

C. 2. How to Provide Confidentiality.

- For complainants filing a **formal** complaint, when confidentiality has been requested, no information will be given to employers that would allow them to identify the complainant. Identifying information such as employee names, titles or addresses will not be included in the employer's copy of the complaint.
- All complaints shall be typed, and reworded, if necessary, so that the identity of the complainant cannot be discerned by the employer. The complaint must be typed and printed using the form on the "letter list" in the WIN system.
- Photocopies of original handwritten complaints must not be used even if names are removed.

- Any correspondence related to the complaint must not be sent to the complainant's work address unless permission has been given by the complainant to use the work address.

C. 3. Informal Complaints and Referrals Are Not Confidential.

If the employer requests to know the identity of the person who made the informal complaint or referral, the employer should be informed that the information can be obtained through Public Records. Employees are still protected from discrimination as a result.

a. Informal Complaints. The identity of informal complainants is only disclosable through the public records request process.

b. Referrals. The CSHO will inform the employer that the information can be obtained through Public Records.

D. EVALUATING COMPLAINTS OR REFERRALS

When the complaint or referral does not provide essential information, or it is too vague to evaluate, an attempt must be made to clarify the allegations. The Compliance Supervisor may use the following questions as a guide in determining whether additional information is needed to evaluate the complaint or referral.

NOTE: When a complaint or referral alleges both safety and health hazards, it must be sent to both the Safety and Hygiene Compliance Supervisors. The Supervisors will work together to evaluate the complaint/referral and determine what action to take.

D.1. For All Complaints or Referrals.

D.1.a. What is the hazard? How are workers exposed to this hazard? Describe the unsafe or unhealthy conditions; identify the location.

D.1.b. What work is done in the unsafe/unhealthy area? Identify, as well as possible, the type and condition of equipment in use, the materials (i.e. 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?

D.1.c. With what frequency are workers 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 as 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?

D.1.d. How many shifts are there? What time do they start? On which shift does the hazardous condition exist?

D.1.e. What personal protective equipment (i.e., hearing protection or respirators) relevant to the alleged exposure does the employer require? Do employees use it? Include all PPE and describe it as specifically as possible. Include the manufacturer's name and any identifying numbers.

D.1.f. How many people work in the establishment? How many are exposed to the hazardous conditions? How near do they get to the hazard?

D.1.g. Have there been any accidents or "near-misses"?

D.1.h. Is there an employee representative (union or safety committee) in the establishment? Include the name, address, and telephone number of the union and/or of the employee representative(s).

D.2. Health Hazards – Additional Information.

D.2.a. Has the employer administered any tests to determine employee exposure levels to the hazardous conditions or substance? Describe these tests. What were the results?

D.2.b. 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 that may reduce exposure to the hazard?

D.2.c. What administrative or work practice controls has the employer put into effect?

D.2.d. Do any employees have any symptoms that may have been caused by exposure to hazardous substances? Have any employees ever been treated by a doctor for a work-related Are respirators worn to protect against health hazards, and if so, what kinds?

D.2.e. What exposures are they protecting against? Disease or condition? What was it?

D.2.f. If the complaint is related to noise, what, if any, hearing protection is provided to and worn by the employees?

E. INVESTIGATING/INSPECTING COMPLAINTS OR REFERRALS

E.1. Timeline for Responding to Complaints or Referrals.

Complaints or referrals must be evaluated promptly to determine whether an inspection or phone inquiry will be conducted. If a decision is made to inspect, the inspection must be conducted as soon as possible, but no later than within 15 working days for complaints or referrals alleging serious hazards, and 30 working days for complaints or referrals alleging general hazards.

NOTE: DOSH's goal is a rapid response to complaints or referrals, and rapid abatement of any hazards. These are the **maximum** timeframes allowed for complaint response.

E.2. Untimely Allegations of Hazards or Violations.

DOSH will not initiate a complaint or referral inspection or phone inquiry when the alleged hazard last occurred more than six months ago. However, if mitigating circumstances exist such as the employer had concealed the violation, and if in the Compliance Supervisor's opinion an inspection or phone inquiry is warranted, the time limitation may be suspended.

NOTE: This does not apply when an inspection is already being conducted and the information about the alleged hazard is received during the inspection. In that case, CSHOs must check on the alleged hazard whenever possible to determine whether it exists.

E.3. Responding to Alleged Imminent Danger Conditions.

Any allegation of imminent danger received by an L&I office must be handled using the following procedures:

E.3.a. The Compliance Supervisor must immediately determine whether there is a reasonable basis for the allegation.

E.3.b. Imminent danger inspections must be scheduled with the highest priority and inspected following the procedures in *Chapter 3, General Inspection Procedures, and Chapter 4, Special Inspection Procedures*, in this manual.

E.3.c. When an immediate inspection cannot be made, the Compliance Supervisor or CSHO must:

(1) Contact the employer immediately (and when known, the employee representative)

(2) Obtain as many pertinent details as possible concerning the situation; **and,**

(3) Attempt to have any employees affected by imminent danger voluntarily removed. This notification is considered advance notice and must be handled using the procedures in *Chapter 1, Administrative and Pre-inspection Procedures,* in this manual.

E.4. Inspections.

E.4.a. An onsite inspection will be performed under circumstances such as the following:

(1) Allegations of imminent danger situations.

(2) Allegations of serious hazards that in the judgment of the Compliance Supervisor require an onsite inspection.

(3) Permanently disabling injuries or illnesses, related to hazards apparently still in existence, have occurred.

(4) Significant history of non-compliance.

(5) Referral by WISHA Discrimination Investigator.

(6) Employer response to a phone/fax inquiry is determined by DOSH to be inadequate, or disputed by the complainant, and in the judgment of the Compliance Supervisor, indicates further inquiry into the alleged hazard is necessary.

E.4.b. When an inspection is performed, the inspection procedures in *Chapter 3 and Chapter 4* in this manual must be followed as appropriate based on the nature of the complaint or referral. The complainant must be sent a copy of the inspection results.

E.4.c. If a decision is made not to inspect, a letter must be sent to the complainant advising of the decision and its reasons, including cases where DOSH does not have jurisdiction. *(See Section F* for procedures.)

E.4.d. If a complaint or referral is received about a worksite, and the employer is on a programmed inspection list, a comprehensive inspection should be performed whenever possible. When the scope of inspection is converted to comprehensive, the CSHO should inform the employer that they are scheduled for an inspection, and that there is also a complaint or referral.

E.4.e. If an employee reports an alleged hazard during a DOSH enforcement inspection, it will be considered a complaint if it is in writing and signed by the employee. Otherwise, it will be treated as a referral.

- The CSHO should investigate the alleged hazard while onsite.
- If it is not possible to investigate while onsite, the complaint or referral will be given to the Compliance Supervisor for evaluation and processing.

E.5. Phone/Fax/Email Complaint and Referral Handling.

Use the following guidance when contacting the employer by telephone, letter, fax or email:.

(1) When complaints or referrals do not meet the criteria for an onsite inspection, they will be investigated by telephone/fax/email inquiry, or in some cases such as indoor air quality or smoking, by mailing a letter to the employer. All phone/fax complaints must be sent to the employer as soon as possible, and no more than five (**5) working days** after receipt. The reason and circumstances for any case requiring more than five working days to contact the employer must be documented in the case file.

(2) The Compliance Supervisor must contact the employer to notify them that a complaint or referral has been filed and make them aware of the specific allegation(s). The employer should be advised of the need to investigate and respond with the results of their investigation before the assigned deadline. The Compliance Supervisor must use discretion, based on the nature of the alleged hazard, in assigning the deadline which should normally be five working days and under no circumstances more than 30 working days.

(3) The employer should be asked for the name of the contact person at the establishment, the employer's fax number or email address, and the name, address and telephone number of the authorized employee representative

(4) A letter/email/fax describing the alleged hazard(s) must be sent to the employer along with a *Certification of Posting* letter that should be signed and returned by the employer. The employer must also be advised of the need to post a copy of the letter and to give a copy to the authorized employee representative.

Compliance staff must also send a copy of the letter to the complainant with the appropriate cover letter which explains what actions DOSH has taken, that the complainant will be kept informed, and what to do if the employer takes action against the complainant. *(Letter templates are located on the DOSH Intranet).*

(5) The employer should be informed of the method and level of detail required by DOSH to ensure that the complaint or referral has been investigated, and that any hazards found have been abated. The employer should be asked to respond by fax, if possible. The use of invoices, screening or sampling results, photos,

videos, or whatever is necessary to document the hazard abatement should be explained.

(6) When DOSH receives an adequate response from the employer, an onsite inspection generally will not be conducted. No citation will be issued when there is no onsite inspection. The complainant must be provided with a copy of the employer's response. (See *Section F* for procedures.)

E.6. Investigating Specific Hazards.

E.6.a. Environmental Tobacco Smoke (ETS). *WAC 296-800-240* regulates occupational exposure to environmental tobacco smoke in office work environments. If DOSH receives a complaint or referral for an alleged or observed violation of the ETS rule at a particular worksite, the Compliance Supervisor must investigate the complaint or referral by phone/fax/email. An onsite inspection is not required.

E.6.b. Indoor Air Quality (IAQ). IAQ allegations must be carefully evaluated by Hygiene Compliance Supervisors to determine whether there are reasonable grounds to believe a serious violation can be documented. Refer to *DOSH Directive 10.10, Indoor Air Quality,* to determine whether an onsite inspection should be scheduled, or whether a letter should be sent to the employer advising them of the complaint and providing appropriate resource materials to assist them in resolving the issue.

E.6.c. Work-Related Musculoskeletal Disorders (WMSDs) or Ergonomic Hazards. CSHOs must not initiate or expand any inspection activity based on a complaint or referral related to ergonomics or WMSDs. All ergonomic or WMSD related complaints, referrals or other information must be forwarded to the DOSH Compliance Operations Manager, who will provide appropriate direction based on the specifics of the situation.

E.7. Complaint and Referral Correspondence. The appropriate letter template must be used for correspondence with employers, complainants and referral sources. If the letters are modified for a referral, or to fit the circumstances of a complaint or referral, caution must be used to ensure that required elements are not deleted or altered. Letters sent must be logged in the WIN system for tracking purposes.

F. INFORMING COMPLAINANTS OF RESULTS

F.1. Complaints Investigated by Phone/Fax/E-mail.

Compliance Supervisors must send a copy of the employer's response to the complainant using the appropriate letter template:

- DOSH is satisfied with the employer's response and will not be conducting an inspection, or
- DOSH is not satisfied with the employer's response and is conducting an inspection. CSHOs must wait until after the opening conference to send this letter in order to avoid giving (or create the appearance of giving) advance notice.

F.2 Complaints Investigated by Inspection.

The Compliance Supervisor must ensure complainants are sent a letter with the results of the inspection using the appropriate letter template. The letter must be sent within 15 calendar days of the issuance of any citation. The letter must:

- Address each item in the complaint.
- Include a copy of any citation issued, or if no violations were cited, a sufficiently detailed description of the findings and why they did not result in a violation.
- Inform the complainant of their rights to appeal the abatement date of a citation.
- Inform the complainant that they are protected against discrimination for filing a complaint.

F.3. Complainant's Right to Request Review of Inspection and Appeal Outcomes.

- The complainant who filed the original complaint may request a review of the decision to not conduct an inspection, the outcome of the inspection, or the outcome of a first level appeal.

- The request to review the decision must be submitted in writing to the DOSH Assistant Director. The Assistant Director, or his or her designee, will review the decision and will send the complainant a written response outlining the reasons for the final outcome of the case or whether any further action will be taken.

G. COMMUNICATING RESULTS OF REFERRALS

The Compliance Supervisor must ensure a letter transmitting the results of the inspection or inquiry is sent to any person making a referral for which we have contact information, and to any referring agency or department if they requested notification of the results. The letter must be sent within 15 calendar days of the issuance of any citation. Letters sent must be logged in the WIN system for tracking purposes. *(Letter templates are located on the DOSH Intranet).*

CHAPTER 3
GENERAL INSPECTION PROCEDURES

A. ENTERING THE WORKSITE

When a Compliance Safety and Health Officer (CSHO) approaches the establishment, he or she must maintain a professional attitude reflecting a thorough concern for safety and health. Diplomacy is a key factor in engaging employers and employees in the inspection process and gaining their cooperation in achieving DOSH's objective – safe and healthful workplaces.

Chapter 49.17.RCW (WISHA) authorizes the Department of Labor and Industries to conduct unannounced workplace safety and health inspections. It is essential that CSHOs follow the written policies in this chapter regarding obtaining the employer's consent for entry to the workplace. CSHOs should contact their supervisor for guidance if they encounter any unique or unusual circumstances not covered in this chapter.

A.1. Time of Inspection.

Inspections will be conducted during regular working hours of the establishment except when special circumstances indicate otherwise. CSHOs and Compliance Supervisors must confer with regard to entry during other than normal working hours.

A.2. "No Trespassing" Sign.

If the property is posted with a "No Trespassing" sign (whether directed to the general public, to DOSH, to L&I or to government agents in general), the sign will not, by itself, be considered a denial of entry.

Whenever the CSHO encounters a "No Trespassing" sign, they will record any relevant observations both in writing and by photograph (including a description of the property, any apparent violations and any visible activity) from outside the property. The CSHO may then enter the property for the purpose of making contact with the agent in charge and obtaining consent to perform the inspection. The CSHO can proceed in obtaining consent if at least one of the following conditions is true.

A.2.a. When the CSHO has actual knowledge, based on past experience with the employer, that the employer does not intend the sign in question to constitute a denial of entry to DOSH CSHOs.

A.2.b. When contact can be made with the employer or an employer representative on the site and unambiguous consent to enter can be obtained before crossing the property line.

A.2.c. When the sign obviously is not intended to exclude DOSH CSHOs from the property (for example, a sign reading "Members Only" at a country club).

A.2.d. When an apparent violation constituting imminent danger is observed and the CSHO must enter the site to have the violation immediately corrected (or to issue an order of immediate restraint).

A.3. Entry of the Workplace.

The CSHO must enter the worksite at an entry point designated by the employer to request the consent described in this section. If the employer has not designated an entry point, then the CSHO must enter at a reasonably recognizable entry point. The CSHO must make a good faith effort to determine whether there is an employer-designated entry point prior to entering at a recognizable entry point. In the event a CSHO cannot identify an entry point designated by an employer, the CSHO must document the efforts he/she made to identify the employer-designated entry point and the reasons he/she believed the point of entry constituted a "reasonably recognizable entry point."

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.

NOTE: When any circumstances exist that make it unclear whether or not entry onto the property may pose a hazard to the CSHO's safety, the CSHO will contact his or her supervisor, manager or DOSH Compliance Operations before entering the property.

A.4. Obtaining and Confirming Consent to Conduct Inspections.

A.4.a. How to Obtain and Document Consent. *RCW 49.17.070(3)* requires DOSH enforcement staff to obtain consent from the owner, manager, operator, or his or her on-site person in charge of the worksite prior to performing an inspection at any worksite located on private property.

When a CSHO enters or approaches a worksite, he or she will identify the owner, manager, operator, or his or her on-site person in charge of the worksite. The CSHO must use the following to identify himself or herself and to request consent to perform the inspection.

"My name is _____. I am an inspector for the State of Washington Department of Labor and Industries. I am here to conduct a health and or workplace safety (select one) inspection. [The CSHO will show his/her credentials, as appropriate.] May I have your permission/consent [select one] to perform the inspection?"

If the owner, manager, operator, or on-site person in charge of the worksite says "Yes," or otherwise affirmatively responds, the CSHO, using complete and accurate quotations, will document the question and the employer's response in the inspection work notes and proceed with the opening conference and walkaround inspection. The name of the employer representative granting consent must also be noted on the inspection worksheet.

The CSHO may need to make inquiries to identify the owner, manager, operator, or his or her on-site person in charge of the worksite. Any inquiries are to be limited to questions relevant to determining who is the owner, manager, operator, or his or her on-site person in charge of the worksite. The information obtained in these inquiries can only be used to obtain proper consent.

Some employers may have questions they want answered prior to giving consent. The CSHO may answer reasonable questions presented by the employer such as the scope of the inspection, purpose, or anticipated duration.

A.4.b. Questionable Consent. When permission to enter or inspect is not clearly given, the CSHO must make an effort to clarify the employer's intent.

(1) If there is a doubt as to whether the employer intends to permit an inspection, the CSHO must not proceed but must contact the CSHO Supervisor immediately. When the employer's intent is clarified, the CSHO must either conduct the inspection or proceed as outlined in this chapter in *Section A.6.a, Refusal of Entry or Inspection.*

(2) When the employer hesitates or leaves for a period of time so that permission is not clearly given within one hour of initial entry, the CSHO must contact the CSHO Supervisor, who will decide whether or not permission is being refused.

A.5. Determining Employer, Management Representative or Person in Charge.

A.5.a. Single Employer Worksite. If the person in charge or management representative is not present, CSHOs must attempt to contact the employer by telephone and obtain consent for the inspection. The CSHO will inform the owner that an inspection is being conducted, and that the owner or management designee has the right to be present during the inspection. The management representative can be the owner, manager, operator, or anyone else the owner designates. The inspection will not be delayed unreasonably to await the arrival of the employer representative. This delay will not normally exceed one hour. The CSHO needs to get approval from their supervisor if the delay will exceed one hour. See *Section B.6.a.,* in this chapter, for procedures when an imminent danger situation is alleged.

A.5.b. Multi-Employer Sites. On multi-employer worksites, valid consent can be granted by the general contractor, the owner, or another co-occupier of the space, for site entry. Individual consent from each sub-contractor that will be inspected must be obtained and documented if consent was not obtained from the general contractor. If the *person in charge* at the workplace cannot be determined, CSHOs must contact the employer to determine who the *person in charge* is and obtain consent. The extent of the inquiry must be documented in the case file. If the CSHO cannot determine who the *person in charge* is, the CSHO must contact the Compliance Supervisor.

A.6. Refusal to Permit Inspection.

RCW 49.17.070, Right of Entry--Inspections and Investigations--Subpoenas—Contempt, 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 imminent danger) 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. See the *"Note" in Section B.11.* of this chapter for procedures to follow when an employer who refuses entry requests a consultation visit.

A.6.a. Refusal of Entry or Inspection. If the owner, manager, operator, or on-site person in charge of the worksite does not affirmatively respond to the above request for consent to perform the inspection, the CSHO will then state:

> *"Thank you. The State may seek a warrant for entry upon and inspection of the premises from a court of competent jurisdiction and such a warrant may be issued to permit me to conduct the inspection."*

The CSHO must not engage in an argument concerning refusal. When the employer refuses to permit entry upon CSHO request and being presented proper credentials, or allows entry but then refuses to permit or hinders the inspection in some way, a tactful attempt must be made to obtain as much information as possible about the establishment. (See *Appendix 3A* in this chapter for the information the CSHO must attempt to obtain if a warrant will be sought.)

(1) If the employer refuses to allow an inspection of the establishment to proceed, the CSHO must leave the premises and immediately report the refusal to the CSHO Supervisor, who must notify the Regional Compliance Manager.

(2) If the employer raises no objection to inspection of certain portions of the workplace but objects to inspection of other portions, this must be documented. Normally, the CSHO must continue the inspection, confining it only to those certain portions to which the employer has raised no objections.

(3) In either case the CSHO must advise the employer that the refusal will be reported to the CSHO Supervisor and that the agency may take further action, which may include obtaining a warrant.

A.6.b. CSHO Response to Employer Questions. The CSHO may answer reasonable questions presented by the employer such as the scope of the inspection, purpose, or anticipated duration of the inspection.

(1) If asked about DOSH's authority to conduct inspections, the CSHO will explain that Washington law (*Chapter 49.17 RCW*) provides L&I the statutory authority to conduct unannounced inspections. The CSHO must also mention that the employer has the legal right to insist upon a warrant. This guidance applies even in those cases where the warrant is not strictly required.

(2) If asked what will happen next or whether DOSH will pursue a warrant, the CSHO will indicate that a warrant to conduct the inspection may be sought. The CSHO will not make a definite statement that the warrant will be granted or even that one will be sought, such as, "If you make me, I'll get a warrant" or "I know I can get a warrant."

(3) If asked whether a warrant request will be successful, the CSHO will indicate that it is the court's decision, but, DOSH is often able to obtain warrants when requested. Again, the CSHO will avoid any definite statement that a warrant will be sought or granted, but the CSHO can say, for example, "If we decide to request a warrant, we will present our case to a judge, and the judge will decide whether to grant L&I the warrant."

(4) Under no circumstances may the CSHO suggest in any way that the employer will be penalized for having asked the CSHO to obtain a warrant. If the employer raises the issue (for example, by saying something such as, "Well, sure I can make you get a warrant, but then you'll just come back here with an attitude"), the CSHO will make clear that there will be no such result (for example, by responding, "You are allowed to request a warrant, and I have no problem with you doing so. If I come back with a warrant, I'll do a thorough inspection, just like I would if you let me in right now").

A.6.c. Employer Interference. Where entry has been allowed but the employer interferes with or limits any important aspect of the inspection, the CSHO must 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, indispensable employee interviews, or the refusal to allow attachment of sampling devices. The CSHO should contact the Compliance Supervisor for guidance as needed.

A.6.d. Seeking a Warrant. If it is determined, upon refusal of entry or refusal to produce evidence required by administrative subpoena, that a warrant will be sought, the Compliance Supervisor will consult with the Regional Compliance Manager. The Regional Compliance Manager will inform the Statewide Compliance Manager and Compliance Operations Manager if a warrant is obtained.

NOTE: There may be cases such as an employer with a history of denying entry, or awareness that a job will only last a short time or that job processes will be changing rapidly, where DOSH will decide to seek an **anticipatory warrant in advance of initiating an inspection**. The need for an anticipatory warrant must be discussed with and approved by the Regional Compliance Manager before seeking a warrant.

A.6.e. Warrant Process. When a court order or warrant is obtained requiring an employer to allow an inspection, the CSHO is authorized to conduct the inspection in accordance with the provisions of the court order or warrant. All questions from the employer about the reasonableness of any aspect of an inspection conducted under a warrant must be referred to the Compliance Supervisor.

A.6.f. Timeline for Initiating an Inspection Under a Warrant. The inspection will normally begin within 24 hours of receipt of a warrant or on the date authorized by the warrant for the initiation of the inspection.

(1) Serving the Warrant. The CSHO must serve a copy of the warrant on an employer representative. The employer representative may be the owner, a manager, receptionist, or the on-site person in charge. The CSHO must note the time, place, name, and job title of the individual served. If the employer's representative refuses service of the warrant, the CSHO must contact the Compliance Supervisor for further instructions.

(2) Apparent Refusal. When an apparent refusal to permit entry or inspection is encountered upon presenting the warrant, the CSHO must specifically inquire whether the employer is refusing to comply with the warrant.

(3) Employer Refuses to Comply with Warrant. If the employer refuses to comply with the terms of the warrant (for example, the employer expresses an objection to the inspection) the CSHO must not attempt to conduct the inspection and must leave the premises and contact the Compliance Supervisor for guidance. The CSHO must make notations (including all witnesses to the refusal or interference) and fully report all relevant facts.

(a) The Regional Compliance Manager must notify the Office of the Attorney General concerning the refusal to comply or the interference.

(b) The Regional Compliance Manager jointly with an Assistant Attorney General (AAG), must decide what further action will be taken, including notification to the judge who issued the warrant.

(4) Interference or Resistance Anticipated. If physical resistance or interference by the employer is anticipated, the Compliance Supervisor, Regional Safety and Health Coordinator, and the Regional Compliance Manager must determine appropriate action to ensure the safety of the CSHO.

(5) Local Law Enforcement. Local law enforcement may be requested to accompany the CSHO when the warrant is presented.

(6) Additional Warrant Sought. If circumstances make it appropriate, a second warrant may be sought based on the review of records or on "plain view" observations of other potential violations during a limited scope walkaround.

(7) Return of Service. At the soonest reasonable opportunity after leaving the worksite, the CSHO will complete the Compliance Officer's Return of Service document and give it to the Compliance Supervisor for appropriate follow-up action.

A.6.g. Obtaining an Administrative Subpoena. Whenever there is a reasonable need for records, documents, testimony and/or other supporting evidence necessary for completing an inspection, the Compliance Supervisor or Regional Compliance Manager may issue an administrative subpoena.

DOSH uses two types of administrative subpoenas: an **interview/testimony subpoena**, or a **document/records subpoena** (also called a "subpoena duces tecum"). The records specified in the subpoena must include (as appropriate) injury and illness records, the written chemical hazard communication program, the written lockout-tagout program, and records relevant to the employer's safety and health program, such as safety and health manuals or minutes from safety meetings.

The Compliance Supervisor or Regional Compliance Manager may issue, for each inspection, an administrative subpoena which seeks production of the above specified categories of documents. The subpoena may call for immediate production of the records except that a period of five working days must normally be allowed for production of the documents relevant to the safety and health management program.

EXCEPTION: If access is needed to employee medical records, WACs 296-802-50005 and 50010 must be followed.

A.7. Forcible Interference with Conduct of Inspection or Other Official Duties.

Although the employer is legally entitled to refuse permission to conduct an inspection without a warrant, the Washington Industrial Safety and Health Act (WISHA) does not permit threats or assaults against CSHOs. In addition, the Legislature has made intimidating a public servant a Class B Felony (see *RCW 9A.76.180 (I), Intimidating a Public Servant*.)

A.7.a. Report Threats and Assaults to Compliance Supervisor. CSHOs must immediately report the following types of threats and forcible conduct to their Compliance Supervisor. Compliance Supervisors must respond to these incidents in accordance with L&I's Internal *Policy 9.03, Handling Assaults, Threats and Harassment*.

(1) Anyone physically holding, grabbing, pushing, shoving, or in any way limiting a CSHO's freedom of action or choice of action. The threat of any action which limits freedom of action or choice of action is included.

(2) Anyone striking, kicking, or in any way inflicting or attempting to inflict injury, pain or shock on a CSHO. The threat of such action is included, as is oral abuse which menaces or causes concern for the CSHO's safety.

(3) Anyone assaulting or threatening a CSHO with a weapon of any kind. The handling or display of weapons in a menacing manner is included.

A.7.b. Black's Law Dictionary Definitions. These definitions are provided to assist employees in interpreting a situation as to the level of violence.

(1) Threat. A communicated intent to inflict physical or other harm on any person or property; A declaration of an intention to injure another or his/her property by some unlawful act.

(2) Assault. Any willful attempt or threat to inflict injury upon the person of another, when coupled with an apparent present ability to do so, and any intentional display of force such as would give the victim reason to fear or expect immediate bodily harm; An assault may be committed without actually touching or striking, or doing bodily harm to the person of another; Frequently used to describe illegal force which is technically a battery.

(3) Battery. The unlawful application of force to the person of another.

A.7.c. Withdrawal from Inspection to Ensure Personal Safety. It is extremely important that CSHOs and other L&I staff take all necessary precautions to ensure their personal safety. Whenever a CSHO encounters forcible resistance, interference, opposition, etc., or is assaulted or threatened with assault while performing his or her duties, all investigative activity must cease. The paramount concern is the safety and welfare of the CSHO and separation from the situation.

It may be necessary to call the local police (911 or alternate local emergency number) to assist with separation and protection of the CSHO(s). Caution must be used so as not to escalate the situation with a visible 911 call if a CSHO feels that the person(s) making the threat would react violently. CSHOs must use their best judgment and recognize escalating behavior when working with a hostile client, to leave before it escalates to bodily harm. (The five warning signs of escalating behavior are listed in *Appendix 3B* in this chapter).

In cases where the CSHO is able to separate from the situation, thereby defusing it without police assistance, local police should still be notified as soon as possible, particularly in more violent instances.

A.7.d. Prevention Strategies – Working with Law Enforcement Agencies. Compliance Supervisors, Regional Safety and Health Coordinators, and/or Regional Compliance Managers should meet with local law enforcement agencies (LEAs) as these situations occur to establish a dialogue with them to provide protection to L&I employees.

In cases of known hostile clients, coordination with local law enforcement prior to a CSHO's visit to the work site could aid in rapid police response or possible police escort as a precaution. In addition, local law enforcement may offer other assistance on how to deal with known difficult individuals in their communities. Involving the local police may temper or change the hostile behavior, allowing the CSHOs to do their job at the work site.

Documenting all incidents as soon as possible after they occur will assist L&I and law enforcement to follow-up with any legal action as necessary. As a strategy, it may be advisable under some situations that two or more CSHOs conduct agency business at a hostile work site both to minimize the exposure time, and as mutual support.

For more information on prevention strategies, see L&I's *Internal Safety and Health Policy 8.06, Workplace Hazard Control and Prevention*, on the L&I Intranet.

A.8. Signing Release for Entry.

CSHOs must not sign any form or release or agree to any waiver. This includes any employer forms concerned with trade secret information.

A.8.a. If an employer asks the CSHO to sign a release before entering the establishment, CSHOs must inform them of L&I's right of entry authority under WISHA. **It is important that CSHOs follow all policies in this chapter for obtaining the employer's consent.** If an employer still insists on the signing of a release, the CSHO must suspend the inspection and report the matter promptly to the Compliance Supervisor who will decide whether the situation is to be treated as a refusal of entry.

A.8.b. 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. This type of signature does not constitute any form of a release or waiver of prosecution of liability under WISHA.

A.8.c. If an employer requires site specific training prior to entry for all visitors, a CSHO may sign a verification form certifying they have completed the employer's required training.

A.8.d. In case of any doubt, CSHOs must consult with the Compliance Supervisor before signing any document.

A.9. Bankrupt or Out of Business.

If the establishment scheduled for inspection is found to have ceased business and there is no known successor, CSHOs must report it to the Compliance Supervisor and record the facts in the inspection documentation. If an employer, although adjudicated bankrupt, is continuing to operate on the date of the scheduled inspection, the inspection will proceed. Employers must comply with WISHA until the day a business actually ceases to operate.

A.10. Strike or Labor Dispute.

Plants or establishments may be inspected regardless of the existence of labor disputes involving work stoppages, strikes or picketing. If a CSHO identifies an unanticipated labor dispute at a proposed inspection site, the Compliance Supervisor must be consulted before any contact is made. During an inspection, CSHOs will make every effort to ensure that their actions are not interpreted as supporting either party to the labor dispute.

A.10.a. Programmed Inspections.

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

A.10.b. Unprogrammed Inspections.

- The seriousness and reliability of any complaint must be thoroughly evaluated by Compliance Supervisors prior to scheduling an inspection, to ensure as far as possible that the complaint reflects a good faith belief that a true hazard exists. Unprogrammed inspections (complaints, fatalities, etc.) will be performed during strikes or labor disputes unless the complaint is handled through a phone/fax/email investigation. (See *Chapter 2, Section E.5.* in this manual)
- If there is a picket line at an establishment, CSHOs must inform the appropriate union official of the reason for the inspection prior to initiating the inspection.

A.11. No Inspection.

If a scheduled inspection cannot be conducted, CSHOs must document the reasons and names of any persons contacted in the case file notes and in the WIN enforcement data system.

B. OPENING CONFERENCE

B.1. Purpose and Scope.

The purpose of the opening conference is to:

- Present credentials.
- Obtain consent for the inspection.
- Request employer and employee representatives.
- State the scope and purpose of the inspection visit
- Explain WISHA and DOSH.
- Explain the compliance role (possibility of citation and penalties).
- Discuss standards, posters and logs.
- Explain the confidentiality of trade secrets.
- Explain the walkaround procedure.
- Request written programs and logs.
- Explain that interviews of employees will be conducted in private.
- Identify any safety rules or PPE issues necessary to conduct the inspection in a safe manner.
- Explain a closing conference will be held.

The opening conference must be kept as brief as possible, normally not to exceed one hour. The CSHO will cover thoroughly each item on the opening conference checklist on the *Inspection Worksheet (1A) (Form F-418-046- 000).* The order in which the items are covered, or the addition of other items, is the responsibility of the CSHO. The CSHO should also explain the purpose of the walk-around and suggest that the employer and employee representative take notes during the inspection process, closing conference and abatement of any hazards found during the walk-around.

If some items on the checklist were discussed with the employer during the request for consent, the CSHO can briefly cover those issues again if any employee representatives participate in the opening conference. The CSHO should also encourage the employer to ask questions about hazard recognition, code application, and how to implement safety code requirements.

Conditions of the worksite must be noted on arrival as well as any changes which may occur during the opening conference. CSHOs must document the items covered during the opening conference, names of representatives involved, and statements made by representatives during the opening conference.

B.2. Abbreviated Opening Conference.
The nature of the inspection may determine the type/length of the opening conference. In some cases such as an imminent danger inspection, an abbreviated opening conference will be necessary.

An abbreviated opening conference may also be conducted whenever a CSHO believes that the circumstances at the worksite indicate that the walkaround begin as promptly as possible. In such cases the opening conference will be limited to the following bare essentials:

- Presenting credentials
- Obtaining consent (inform the employer if an imminent danger exists)
- Scope and purpose of the inspection
- A request for employer and employee representatives
- Any safety precautions the CSHO should observe while at the worksite.

All of the other elements will be fully addressed after the situation that necessitated an abbreviated opening conference has been addressed.

B.3. Inspections with No Entry onto Private Property. For certain violations of procedural requirements discovered without entering an employer's property and not requiring further inspection to investigate, (such as improper notification of asbestos removal or lack of asbestos certification), most of the elements of the opening conference are not applicable. In those instances, the CSHO must still contact the employer, and allow the employer the opportunity to respond. The CSHO must conduct a closing conference per the guidance in *Section D* of this chapter.

B.4. Creating Employer Not on Worksite. When the CSHO, with proper consent from the property owner, discovers hazards created by employers no longer working at the worksite, and not present during the CSHO's walkthrough, the CSHO may open a separate inspection with the creating employer.

It may not be feasible to return to the worksite to conduct an additional walkthrough with the creating employer in some situations, including when the conditions at the worksite have changed since the CSHO observed them, or the creating employer is no longer permitted on the worksite. In these situations, the CSHO will conduct an opening conference with the creating employer and include a review of the information obtained from the worksite walkthrough, and any basis for possible violations found at the worksite.

The employer and employee representatives are still provided an opportunity to respond and to provide additional information. The CSHO must document the specific reasons why it was not feasible to conduct a walk-around with the creating employer.

B.5. Attendance at Opening Conference.

CSHOs must advise employers that employee representatives must be given an opportunity to participate in the inspection process. (See *RCW 49.17.100*)

B.5.a. Determining Whether Employees Are Represented. CSHOs must determine as soon as possible after arrival whether the employees at the worksite are represented. If so, the CSHO must ensure that employee representatives are afforded the opportunity to participate in all phases of the workplace inspection.

B.5.b. Employer Resistance to Employee Representative Participation. If an employer resists or interferes with participation in an inspection by employee representatives and this cannot be resolved by the CSHO, the continued resistance will be construed as a refusal to permit the inspection. The CSHO must contact the Compliance Supervisor in accordance with *Section A.6.* in this chapter

B.5.c. Definition of Employee Representative. For the purpose of this chapter, the term "employee representative" refers to any of the following**:**

- A representative of the certified or recognized bargaining agent
- An employee member of a safety and health committee who has been chosen by the employees (employee committee members or employees at large) as their DOSH representative.
- An individual employee who has been selected as the walkaround representative by the employees of the establishment.

B.5.d. Joint or Separate Conferences. CSHOs must conduct either a joint opening conference or separate conferences with the employer and employee representatives. CSHOs must document the names and titles of everyone present at the opening conference. If a joint or coordinated inspection is conducted involving two or more CSHOs, the names and titles of all CSHOs must be documented in the work notes.

(1) Joint Conference. Whenever practical, a joint opening conference will be held with the employer and the employee representatives.

(2) Separate Conferences with Employer and Employee Representative. Where either party does not wish to have a joint conference, separate conferences may be held for the employer and the employee representatives. A written summary of each conference must be made and attached to the case file.

Where it is determined that separate conferences will unacceptably delay observation or evaluation of workplace safety or health hazards, each conference will be brief and if appropriate, reconvened after inspection of the alleged hazards. A written summary of either or both conferences should be provided to the employer and/or employee representatives upon request.

B.5.e. Construction or Other Multi-employer Sites. For comprehensive inspections at a construction or other multi-employer worksite, CSHOs must ask the superintendent, project manager or other representative of the general or prime contractor to identify the subcontractors or other contractors on the site together with the names of the individuals in charge of their operations. For a partial inspection, not all subcontractors may need to be identified.

(1) CSHOs must request that these individuals be contacted and asked to assemble in the general contractor's office or other suitable location, together with their employee representatives, if any.

(2) The inspection must not be postponed or unreasonably delayed because of the unavailability of one or more representatives. However, a subcontractor who has not been notified at all of the inspection must be notified as soon as the CSHO discovers their presence at the job site.

B. 6. Purpose and Scope of the Inspection.

The employer must be informed of the reason(s) for the inspection. CSHOs must also outline in general terms the scope of the inspection, including private employee interviews, possible expansion of the inspection from partial to comprehensive, physical inspection of the workplace and records, possible referrals, discrimination complaints, and the closing conference(s).

B.6.a. Imminent Danger Situations. When responding to an imminent danger situation, CSHOs are required to get to the location of the alleged hazard(s) as quickly as possible. Under these circumstances, an abbreviated opening conference will be conducted. The employer must be advised that because of the abbreviated nature of the opening conference, there will be a more extensive discussion at the closing conference. See *Chapter 4, Section A,* for imminent danger inspection procedures.

(1) Potential safety and health hazards that may be encountered during the inspection must be identified and appropriate steps taken to provide for the CSHO's personal protection.

(2) The inspection will not be unreasonably delayed to await the arrival of employer or employee representatives. Unreasonable delays must be reported immediately to the Compliance Supervisor.

(3) If personnel at the jobsite refuse to allow the inspection to proceed until employer or employee representatives arrive, CSHOs must follow the procedures in *Section A.6., Refusal to Permit Inspection,* in this chapter.

(4) If the inspection proceeds without an employer representative present, once the imminent danger situation is addressed, the CSHO must use professional judgment to determine whether to continue a comprehensive inspection or to wait for the employer/employer representative's arrival. Generally, CSHOs

should continue an inspection if she/he observed other serious hazards. However, providing the imminent danger has been addressed, CSHOs should stop to conduct a more formal opening conference when the employer/employer representative arrives.

B.6.b. Fatality/Catastrophe Investigations. The employer must be informed that an investigation will be conducted and extensive interviews with witnesses will be necessary. The purpose of an investigation must be explained. See *Chapter 4, Section B* for fatality/catastrophe investigation procedures.

B.6.c. Complaint and Referral Inspections. For a complaint inspection, CSHOs must provide a copy of the complaint(s) to the employer and the employee representatives during the opening conference. The copy of the complaint form provided to the employer must be in accordance with the guidance provided in *Chapter 2, Complaints and Referrals*.

If the inspection is the result of a referral, the CSHO may simply advise the employer that DOSH received a referral. It is not necessary to provide referral copies to employers.

B.6.d. Another State Inspection. In order to open an inspection in another state:

- The CSHO must receive permission from their Compliance Supervisor and Regional Compliance Manager
- The employer must have conducted and completed work in Washington, but no longer has a jobsite in Washington
- The employer must be located in Idaho or Oregon, close to the Washington border

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NOTE: See *Section B.5., Employees of Other Employers* for complaints at multi-employer worksites.

B.6.e. Programmed Inspections. CSHOs should explain to the employer that L&I selects employers for scheduled inspections using objective factors including claims history, injury and/or illness rates, and the hazardousness of the industry.

B.6.f. Follow-up Inspections. CSHOs must explain that any item that had been previously cited will be re-inspected and evaluated for complete abatement of the hazard. See *Chapter 4, Section D* for follow-up inspection procedures. If the follow-up inspection is conducted during an appeal, CSHOs must explain the follow-up will be limited to violations required to be abated during the appeal.

B.6.g. Monitoring Inspections. CSHOs must review previously cited items with the employer to determine the progress of abatement and explain to the employer the reason for the monitoring, e.g., Application for Extension of Abatement Date, variance, or multi-step abatement plan. See *Chapter 4, Section D* for monitoring inspection procedures.

B. 7. Employees of Other Employers.

During the opening conference, CSHOs must determine whether the employees of any other employers are working at the establishment. If these employers may be affected by the inspection, the scope may be expanded to include others or a referral made at the discretion of the CSHO. At multi-employer sites, copies of complaint(s), if applicable, must be provided to all employers affected by the alleged hazard(s), and to the general contractor, or inform the employer(s) that the inspection is the result of a referral.

B. 8. Violations Observed Prior to the Walkaround.

When an apparent violation is observed by a CSHO prior to the walkaround, it must be noted. If the CSHO has not yet entered the worksite, he or she may take photographs of apparent violations that are in "plain view," such as roofers working on a two-story residence without fall protection, or a tractor without a rollover protective structure (ROPS). Once the CSHO enters the worksite, photographs should not be taken until after the opening conference. All apparent violations must be rechecked during the walkaround and cited if appropriate. When possible, serious violations should be rechecked and documented immediately at the beginning of the walkaround.

B. 9. Discuss Correction of Violations.

During the opening conference CSHOs should explain to employers the advantages of immediate abatement and that there are no certification requirements for violations corrected during the inspection. If not corrected during the inspection, employers must return completed Employer Certification of Abatement forms or a letter verifying abatement when hazards are corrected.

CSHOs should offer Warning Tags (form F418-017-000) to employers during the walkaround inspection if violations related to moveable equipment are identified. **CSHOs must not apply the tags to any equipment. This is an employer responsibility.**

B. 10. Handouts and Additional Items.

During the opening conference of every inspection, CSHOs must discuss the availability of the Job Safety and Health Law (F416-081-909) (WISHA) poster, blank OSHA-300 Forms, applicable laws and regulations, and informational handouts and materials with employer and employee representatives. CSHOs must ensure the employer is provided copies of any materials requested and explain how to obtain additional copies. CSHOs must document in the case file handouts and materials provided.

B. 11. Voluntary Compliance Programs. Employers who participate in selected voluntary compliance programs may be exempted from programmed inspections. CSHOs must determine whether the employer falls under such an exemption during the opening conference.

NOTE:

- Where the period between a consultation visit opening conference and closing conference exceeds 30 days, Compliance Supervisors will normally defer a compliance inspection until after the DOSH Consultant's closing conference, if assured by the Consultation Supervisor that the consultation is being conducted properly and at a reasonable pace.

- **Employer Refuses Entry and Then Requests Consultation.** If an employer refuses entry at the time of a compliance inspection, the Compliance Supervisor must notify the Consultation Supervisor of the refusal and ask that if the employer requests a consultation, no response be given until the Compliance Supervisor decides whether to seek a warrant.

B.11.a. Consultation Visit Has Recently Been Conducted or Is In Progress.

CSHOs should ask the employer whether a DOSH consultation visit is in progress or has recently been conducted. (See *Chapter 1, Section D.2.a.* for definition of "in progress.") An employer in a fixed industry who has received a ***comprehensive*** DOSH safety or hygiene consultation visit is deferred from programmed inspections within the same discipline as the comprehensive visit (safety, health or

both) ***at that worksite*** for the next twelve months. This does not include other worksites of the same employer, construction sites or employers who received a limited service onsite consultation visit.

B.11.b. Compliance Inspection May Not Cover Items Under Consultation Abatement Plan. If an employer received a limited service onsite consultation visit (and therefore is not exempt from programmed inspections), or if an unprogrammed compliance inspection will be conducted, CSHOs must determine whether a DOSH Consultant has established any abatement date(s) which has not yet expired for any serious hazard(s). A compliance inspection may not include any item covered by a DOSH Consultant's abatement plan.

B.11.c. Consultation Visit Currently In Progress.

(1) Unprogrammed Inspection to be Conducted.

(a) For *imminent danger, fatality/catastrophe, or accident investigations* the DOSH Consultant must suspend the onsite visit until the compliance inspection is completed. The employer must be advised.

(b) For *complaint, referral, follow-up or monitoring inspections* the DOSH Consultant may either continue the visit in areas of the facility not covered by the compliance inspection, or suspend the consultation visit until the compliance inspection is completed. The employer must be advised.

(2) Programmed Inspection to Be Conducted. CSHOs must contact the Compliance Supervisor, who will contact the Consultation Supervisor to determine whether the consultation visit is comprehensive or limited in scope. If it is comprehensive, the programmed inspection will not be conducted.

(a) If the consultation visit is limited in scope and the DOSH Consultant is actually in the facility, the compliance inspection will be deferred until after the DOSH Consultant's closing conference.

(b) If the DOSH Consultant has left the site but has not yet held a closing conference with the employer, the compliance inspection will be deferred until after the DOSH Consultant's closing conference.

B.11.d. VPP and START Worksites. Inspections at worksites that have been approved under DOSH's Voluntary Protection Program (VPP) and Safety Through Achieving Recognition Together (START) program may be conducted in response to complaints or referrals alleging serious hazards, or when a serious hazard is observed by a CSHO. Inspections at VPP and START worksites will be conducted in response to imminent danger situations, fatalities, catastrophes, or serious injury accidents, especially those requiring hospitalization.

B. 12. Walkaround Representatives.

Individuals who accompany CSHOs during the walkaround portion of an inspection are known as walkaround representatives, and will generally include employer designated and employee designated representatives. CSHOs must document the name(s) and title(s) of all individuals participating in the walkaround inspection in the case file.

B.12.a. Employee Union Representation. During the opening conference, the CHSO must determine if employees are represented by a union. If a union representative

has not been designated or is not available, the CSHO must contact the union in order to identify a representative to participate in the walkaround. The inspection will not be delayed unreasonably to await the arrival of the employee union representative. Questionable circumstances, including delays of more than one hour, must be referred to the Compliance Supervisor. The CSHO must record the extent of the inquiry in the case file. The union representative does not have to participate in the walkaround inspection unless they choose too.

B.12.b. Labor Relations Disputes. CSHOs must not become involved in labor relations disputes between a recognized union and employer or between two or more unions competing for bargaining rights.

B.12.c. Expired Collective Bargaining Agreement. If a union contract has expired, CSHOs should assume that the incumbent union remains as the bargaining agent unless that union is decertified, officially replaced, or has abandoned bargaining agent status.

B.12.d. Safety Committee. The employee members of an established safety committee or the employees at large may have designated an employee representative for safety inspection purposes, or they may designate an employee to accompany the CSHO during a DOSH inspection. The CSHO must identify any such employee representatives and afford them the opportunity to participate in the inspection.

B.12.e. No Certified or Recognized Bargaining Agent. Where employees are not represented by an authorized representative, where there is no established safety committee, or where employees have not chosen or agreed to an employee representative for a walkaround inspection, the CSHO will interview a reasonable number of employees during the walkaround.

B.12.f. Employee Representatives Not Employees of the Employer. Walkaround representatives authorized by employees will usually be employees of the employer. If a non-employee (union official, industrial hygienist, safety engineer, or other experienced safety or health person) is designated by the employees as their representative to accompany a CSHO during an inspection, that person is normally given walkaround rights. Questionable circumstances, including delays of more than one hour, must be referred to the Compliance Supervisor. A non-employee acting as an employee representative must be cautioned by the CSHO not to discuss matters pertaining to operations of the employer, other than those specific to safety and health during the inspection.

B.12.g. More Than One Representative. At establishments where more than one employer is present or in situations where groups of employees have different representatives, it is acceptable to have different employer and employee representatives for different phases of the inspection. More than one employer and/or employee representative may accompany a CSHO throughout or during any phase of an inspection if the CSHO determines that the additional representatives will aid and not interfere with the inspection.

(1) Whenever appropriate to avoid a large group, the CSHO may encourage multiple employers to agree on and choose a limited number of representatives for walkaround purposes. If necessary, employer representatives not on the walkaround can be contacted to participate in particular phases of the inspection.

(2) As an alternative, the CSHO could divide a multi-employer inspection into separate phases; e.g., excavation, steel erection, mechanical, electrical, etc., and encourage different employer representatives to participate in different phases as appropriate.

NOTE: Without regard to the walkaround representative, the CSHO must interview a representative sample of employees at the worksite. The purpose of interviewing employees is to determine if the accident prevention program is effective in practice and to determine if they have safety and health concerns about the workplace.

B.13. Disruptive Conduct.

CSHOs may deny the walkaround opportunity to any person whose conduct interferes with a full and orderly inspection. If disruption or interference occurs, CSHOs must use professional judgment whether to suspend the walkaround or take other action. The Compliance Supervisor must be consulted if a walkaround is suspended.

B.14. Trade Secrets.

CSHOs must ask employers whether an employee representative is authorized to enter any trade secret area(s). If not, CSHOs must consult with a reasonable number of employees who work in the area.

B.15. Plant Layout and Process Flow Charts.

Process flow charts and plant layouts may be requested if relevant to the inspection. If the plant layout and process flow charts are not available, CSHOs should sketch the plant layout as necessary during the course of the initial walkaround, identifying the operations and the relative dimensions of the work area. Distribution of major process equipment, including engineering controls in use should also be included on the sketch.

B.16. Hygiene Inspections.

During a hygiene inspection or, as appropriate, during a safety inspection when evaluating a potential health hazard, CSHOs must briefly examine all health-related workplace records pertinent to the inspection. If a detailed review is necessary, CSHOs may wish to proceed with the initial walkaround and return later to examine records more thoroughly.
Many valuable insights can be obtained from a records review, including:

- Symptomatology which may relate to workplace exposure
- Medical surveillance records
- Frequency of injuries, illnesses or diseases
- Dermatitis
- Personal protective equipment usage
- Monitoring data
- Audiometric test results
- Ventilation tests
- Process flow charts
- A list of hazardous raw, intermediate, and final product materials.

In some plants, sampling for obvious health hazards can be initiated soon after the opening conference. Details of the walkaround can be accomplished while collecting samples.

B.17. Review Written Programs, Injury/Illness Records and Posting Requirements.

B.17.a. Request Written Programs. During the opening conference, CSHOs must request written programs. If the written program documents are not available immediately onsite, CSHOs must ask where required programs and records are kept, and they must be provided **within two business days.** This request and any related follow-up activity must be documented in the case file.

See the table below for specific time frames.

TIME FRAMES		
Pending consent and initiating inspection	1 hour	
OSHA 300	4 hours	Per WAC
Fatals, catastrophes, Imminent danger	24 hours	Initiate inspection
Written Program Requests	2 business days	
Phone fax	5 days	Initial contact

B.17.b Records. CSHOs must do the following when the employer is required to maintain injury and illness records (OSHA 300 and 300A Logs):

- For the OSHA 300, obtain the current year and the completed previous year.
- For the OSHA 300A, obtain the completed previous year.
- Review the records to determine compliance with record keeping requirements and to identify injury and illness trends present in the workplace.

An OSHA 300 with significant deficiencies will be considered as not maintained. Deficiencies must be documented in the case file.

CSHOs are 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 CSHO must begin the walkaround portion of the inspection

B.17.c. Posting. CSHOs must determine whether posting requirements are met. These include but are not limited to the following:

(1) Job Safety and Health Law (F416-081-909) (WISHA) poster informing employees and employers of their rights and obligations under the Act (WAC 296-800-20005).

(2) Annual summary of injuries and illnesses, OSHA 300A, during the months of February through April (WAC 296-27-02105).

(3) Any current Citation and Notice, any verification of abatement by the employer, and any appeal correspondence (WACs 296-900-13015, 15025 and 17015).

(4) Correspondence on requests for abatement date extensions (WACs 296-900-16010, 16020 and 16030).

(5) Application for a variance and related correspondence (WACs 296-900-11005 and 11025).

B.17.d. Evaluation of Employer's Safety and Health Programs. The effectiveness of the employer's safety and health programs, including their Accident Prevention Program (APP) must be evaluated. This evaluation will help to determine the employer's good faith. The review may also reveal elements that should be verified during the walkaround; for instance, if program deficiencies are noted, there may be related serious hazards in the workplace. CSHOs should note any questions about specific items or areas of the site that will be covered during the walkaround. CSHOs must document the program review in the case file. Whenever a violation for program deficiencies is likely to be proposed and cited, the CSHO must obtain a copy of the relevant program.

CSHOs must consider the following when evaluating the employer's safety and health program:

- Evaluate the employer's personal protective equipment program to ensure that it has been certified by the employer and that it conforms to rules requiring the provision and use of PPE.
- To what degree is the employer aware of potential hazards present in the workplace, and any methods in use to control or prevent them?
- What plans and schedules does the employer have to institute, upgrade and maintain engineering and administrative controls
- What is the employer's work practices program?
- To what extent do the employer's program cover precautions to be taken by employees actually or potentially exposed to plant hazards?
- What are the emergency procedures and inspection schedules for emergency personal protective equipment?
- Is there a program for the selection, use and maintenance of routine personal protective equipment?
- What is the overall quality and extent of the education and training program and the degree of employee participation in it?
- Is the employer in compliance with the training requirements of any applicable safety and/or health standard?

The following specific elements of the employer's safety and health program must be evaluated in the level of detail appropriate to the circumstances of the inspection:

- **Comprehensiveness.** Evaluate the degree to which the employer's safety and health program addresses the full range of hazards normally encountered in the employer's operation, including emergency procedures. This is an overall evaluation and must take into account the evaluations of the remaining categories. Indicate whether the program is written.
- **Communication.** Evaluate the employees' awareness and understanding of the employer's safety and health programs. Take into account the methods

by which the program is communicated to them (e.g., oral instructions, booklets, memorandums, posters, etc.). Consider whether safety meetings are held by the employer, their frequency and the persons conducting them (e.g., crew foreman, intermediate lead supervisors, safety director, etc.). The effectiveness of these methods must be considered in the evaluation.

- **Enforcement.** Evaluate the degree to which safety and health rules are actually enforced, taking into account the principal methods used (e.g., warnings, written reprimands, disciplinary action, discharge, etc.) and the consistency and effectiveness of these methods, including employer site visits. Determine whether there is a specific person or staff with assigned safety or health responsibilities and consider the effectiveness of their performance.
- **Safety/Health Training Program.** Evaluate separately any safety and health training programs the employer has. Factors to consider include the need for special training in view of hazards likely to be encountered or specific requirements for such training and the need for ongoing or periodic training or retraining of employees.
- **Investigations.** Evaluate the employer's efforts to conduct accident/injury/illness investigations and indicate whether adequate corrective and preventive actions are taken as a result

B.17.e. Non-fixed Worksites. For non-fixed worksites in high hazard industries (construction, logging, etc.) where there is no "office" area, CSHOs should ask where required programs and records are kept. CSHOs **must** make arrangements for review of documents. This request and any related follow-up activity must be documented in the case file.

C. WALKAROUND INSPECTION

The main purpose of the walkaround inspection is to identify actual or potential safety and/or health hazards in the workplace. CSHOs must conduct inspections in a manner that eliminates unnecessary potential exposure to hazards and minimizes unavoidable personal exposure. CSHOs must document the names and titles of all walkaround participants.

During a walkaround, CSHOs must:

- Become familiar with plant or worksite processes.
- Collect information on hazards.
- Observe employees' activities and interview them as appropriate.
- Document the work activities inspected, hazards involved and violations observed, safety controls implemented, and interviews conducted or relevant statements made.

C.1. Compliance with "Performance Standards."

Relative to the worksite processes and activities, determine whether the employer is in compliance with WISHA standards that have specific performance requirements such as hazard communication and lockout/tagout.

C. 2. Follow-up of Previous Citations.

Identify locations and conditions that were cited during a previous inspection. Include follow-up or monitoring activities as part of the walkaround to ensure proper abatement, or to determine abatement progress, if citations are a final order, or when abatement is required during appeal. CSHOs must document the current status of previously cited items and any actions taken to abate the violations.

Follow-up and monitoring activities do not constitute a separate inspection when they are conducted as part of another investigation or inspection, and a separate inspection report may not be submitted. CSHOs must record all facts that establish failure-to-abate, repeat or willful violations on the appropriate inspection worksheets, as described in *Section C.4. in this chapter.*

C. 3. Severe Weather Conditions.

C.3.a. Work Is Shut Down. If severe weather conditions encountered during some inspection cause workplace activities to shut down, the inspection will be continued at a later time as soon as weather permits.

C.3.b. Work Continues – Inspection Continues. If work continues and a CSHO decides to continue the inspection in spite of bad weather, hazardous conditions created by the weather must be noted since they may be a factor in cited violations and may affect the probability factor in penalty calculations.

C.3.c. Work Continues – Inspection Terminated. If work continues during adverse weather conditions but a CSHO decides that the weather interferes with the effectiveness of the inspection or with his or her safety, it must be terminated and continued when conditions improve.

C.3.d. Advise Employer of Weather-Related Hazards. Regardless of whether a CSHO continues or terminates the inspection, if adverse weather appears to be increasing employees' exposure or potential exposure to serious hazards, the CSHO should bring this to the employer's attention before continuing the inspection or leaving the worksite.

C. 4. Document All Facts That Establish a Violation.

Violations must be brought to the attention of employer and employee representatives at the time they are observed and documented. This can help to secure faster abatement of hazards.

If violations are related to moveable equipment, CSHOs should offer warning tags to the employer. A sample tag is included in the WAC chapter on the L&I website. (See *WAC 296-900-15030, Tag Moveable Equipment*).

NOTE. For complaint inspections, the case file must include documentation addressing the findings of ***all*** complaint allegations. The findings of each allegation must also be provided in a letter to the complainant *(Letter templates are located on the DOSH Intranet).*

C.4.a. Previous L&I Guidance. When an employer claims that he or she either failed to recognize a violation or failed to adequately address a violation because of specific, previous guidance provided by an L&I representative, the CSHO is expected to evaluate that claim using the following procedures.

(1) **If the employer can provide written substantiation** of the claim and the CSHO concludes that the employer was in fact relying upon incorrect guidance from an L&I representative, the condition in question will not be cited. However, the Citation and Notice or letter of inspection results (if no violations are being cited) must include a message indicating that the conditions were not cited because the employer was relying upon previous **written** L&I guidance and directing the employer to comply with the standard in the future.

For example, such a message might read. "*The employer was not cited for the unguarded point of operation on Machine A because the inspection determined that the employer was relying upon guidance given by a previous DOSH inspector. WAC 296-806-20028 requires that the point of operation of Machine A be guarded. The employer is hereby directed to comply with this requirement in the future, and any failure to do so will result in citation and possible monetary penalties in the event of a future inspection.*"

Since the issues will not have been cited as violations, they cannot be used as a basis for failure-to-abate or repeat violations. However, the employer's refusal to comply after being clearly directed to do so can be appropriately considered in relation to evaluating "good faith" and potentially willful behavior.

Follow-up inspections can be conducted to determine if problems that were not cited have been corrected. The CSHO and Compliance Supervisor also can ask for verification that problems have been corrected. Although such issues are not covered by the formal verification of abatement requirements, such inquiries are appropriate in order to determine whether follow-up activity is necessary.

(2) If the employer cannot readily substantiate the claim (if, for example, the employer relied upon an oral answer to a question in an employer workshop or during a previous onsite visit by a consultant or a CSHO), the CSHO is expected to make a reasonable effort to determine the truth of the employer's assertion by contacting the L&I staff involved to confirm or clarify the issue. Any disagreements regarding previous guidance need to be resolved through the Compliance Supervisor and Regional Compliance Manager.

(3) In some cases, the employer may have misunderstood the guidance provided. In such cases, any violations identified must be issued (with appropriate consideration given to "good faith" in calculating any penalty).

(4) When an employer raises such an issue, the employer's assertion may be based on the fact that a CSHO or Consultant was present in the worksite and did not identify the violation. In such cases (whether because circumstances have changed, because the hazard was outside the scope of the previous activity, or even because the CSHO or Consultant simply missed the violation), any violations must be cited.

C.4.b. Use of Inspection, Hazard Documentation Worksheets and Photo ID Form. CSHOs must record, at the time of the inspection, field notes, observations, analyses, and other information that is necessary to establish and document a violation using DOSH forms or worksheets. **CSHOs must document the date and time of alleged violations.**

(1) Because clear and appropriate documentation is required for each instance of an alleged violation, CSHOs should normally use one hazard documentation worksheet to describe each instance as it is noted.

(2) If identical violations of the same standard or of several related standards are noted in one general location in the establishment, and if the documentation is essentially the same, all of those violations may be treated as a single instance description and only one hazard documentation worksheet need be completed for that instance.

(3) Color photographs (digital or 35 mm) used to document violations must be placed on the photo identification form and properly labeled. Labeling information must include the inspection number, citation/item number, date and time, employer name, UBI number, location and description of photo.

(4) Sketches and descriptions that are attached to a worksheet are part of the inspection record and must be noted on the worksheet. The original field notes, as basic documentation of the violation, must be attached to the worksheet and retained in the case file.

(5) Due to public disclosure requirements, all documents created or received must be clearly marked with the receipt date.

C.4.c. Identification and Description of Violation. CSHOs must provide as much detailed information as practical, including documented interviews with employees exposed to the hazard, to establish the specific characteristics of each violation.

NOTE: If the CSHO identifies a potential safety or health violation during the walkaround inspection, the CSHO should interview at least one employee, if possible, who is exposed to the hazard.

(1) Describe the observed hazardous conditions or practices.

For example:

- The facts which constitute a hazardous condition, operation or practice.
- The essential facts as to how and/or why a standard is allegedly violated.
- Specifically identify the hazards to which employees have been or could be exposed.

Describe:

- The type of accident which the violated standard was designed to prevent in this situation, **or**
- The name and exposure level of any contaminant or harmful physical agent to which employees are, have been or could be exposed.

(2) If more than one type of accident or exposure could reasonably be predicted to occur, describe the one which would result in the most serious injury or illness.

C.4.c.(2) **For the type of accident described, include:**

(a) All factors which could significantly affect the nature and severity of the resulting injuries, (e.g., "fall of 20 feet onto protruding rebar;" "fall into water-filled excavation").

(b) Other factors which could affect the probability that an injury would occur, such as:

- Proximity of the workers to the point of danger of the operation.
- Duration and frequency of exposure.
- Stress producing characteristics of the operation (e.g., speed, heat, repetitiveness, noise, position of employee).

(c) For contaminants and physical agents, any additional facts which clarify the nature of employee exposure.

(d) The identification of the equipment and process which poses the hazard(s), i.e., serial numbers, equipment types, trade names, manufacturers, etc. Include a sketch when appropriate.

(e) The specific location of the violation, such as:

- Building No. 3, second floor, column #6.
- Machine Shop, N.E. corner, Department 12.
- Foundry, N.W. corner, shakeout area.

(f) State the nature of the most serious type of injury or illness which is reasonably predictable and could result from the accident or health exposure.

- The entry for a "fall from 20 feet onto protruding rebar" might read "death from multiple injuries." For exposure to asbestos, the entry might read "asbestosis, cancer and death."
- Broad categories of injuries and health effects (such as "electric shock," "burns," or "lacerations") must be qualified to indicate whether the injuries or health effects are major or minor.
- In identifying the illnesses which a standard regulating exposure to an air contaminant or harmful physical agent is designed to prevent in a particular worksite, it may be necessary to consider not only the level of exposure but also the frequency and duration of exposure to the contaminant or agent.

(g) Any specific measurements taken during the inspection (e.g., "20 ft. distance from top of scaffold platform to ground level" "employee standing 2 ft. from unguarded floor edge;" "employee seated 2 ft. from source of metal fumes") which will further document the nature of the hazardous conditions and operations.

- Describe how measurements were taken during the inspection.
- Identify the measuring techniques and equipment used and those who were present; i.e., employee or employer representative who observed the measurements being taken.
- Include calibration dates and description of calibration procedures used, if appropriate.

(h) Exposure facts so as to present a picture of employee exposure to the hazard for each particular occupation, including.

- The occupation and the employer of the exposed employees if the employer is different from the one on the corresponding WISHA-1 Inspection Report.
- The number of exposed employees in that occupation.
- The length of time (duration) that the alleged violation has existed (e.g. 3 months, 1 hour, etc.)
- The frequency that the employees are exposed (e.g., 2 hrs/wk).
- The name, address and phone number of at least one exposed employee in each occupation. If necessary, signed and dated witness statements must be obtained and attached to the worksheet.

EXAMPLE: *A radial arm saw has been on a construction site for 3 months and has never been guarded during that time. All of the employer's 14 carpenters on the job use the saw. One of the carpenters is John Doe. Total use of the saw on a daily basis is approximately 4 hours.*

(i) Any facts which establish that the employer knew of the hazardous condition or could have known of the condition with the exercise of reasonable diligence. Enter any facts which show.

- The employer actually knew of the hazardous condition which constitutes the violation. In this regard, a supervisor represents the employer and supervisory knowledge amounts to employer knowledge.
- The employer could have known of the hazardous condition if all reasonable steps had been taken to identify hazards to which employees may have been exposed.

NOTE. If the CSHO has reason to believe that the violation may be a **willful violation**, facts must be included to show that the employer knew that the condition existed and, in addition, knew that, by law, he/she had to do something to abate the hazard (e.g., the employer was previously cited for the same condition; a CSHO has already told the employer about the requirement; knowledge of the requirement was brought to the employer's attention by an employee safety committee). Also, include facts showing that, even if he/she was not consciously violating DOSH requirements, the employer was aware that the violative condition existed and made no reasonable effort to eliminate it.

(j) Any pertinent employer or employee remarks made during the walkaround and/or the closing conference, especially comments directly related to the instance described.

- Identify by name and title any individual whose comments or statements are recorded. When confidential statements are recorded they should be documented using the confidential statement forms.
- Include employer comments which would be characterized as admissions of the specific violations described.
- Include any other facts which may assist in evaluating the situation or in reconstructing the total picture in preparation for testimony in possible legal actions.
- Include any remarks that you (the CSHO) make, particularly any explanation of abatement dates when necessary (e.g., when an abatement period longer than 5 days is needed for a serious violation, or when an abatement period exceeding 30 days is recommended for any item).

C.4.c. (3) If employee exposure (either to safety or health hazards) is not observed, state facts on which the determination is made that an employee has been or could be exposed.

- State what the employer could have or should have done to be in compliance.
- When violations are grouped, describe the reason for grouping.
- If a specific type of hazard exposure is caused by the combination of violations, describe it in sufficient detail.

(4) If the exposing employer neither created nor controlled the hazard, state the name and relationship of the responsible party; e.g., prime contractor, electrical subcontractor, building owner or equipment lessor.

- Describe any steps taken by the exposing employer to have the condition corrected as described in *Chapter 5, Section H.4., Legitimate Defense to Citation*.

(5) Alleged Violation Description (AVD). When composing the AVD in the WIN system, CSHOs and Compliance Supervisors must ensure the following elements are included in the violation description

- Describe the hazardous condition or practice.
- Include measurements, equipment description, make/model/serial of equipment or tools involved, task being performed, etc.
- Describe the location of the hazardous condition or practice.
- Describe the number and occupations of the employees exposed to the hazardous condition and/or practice.
- Summarize what the safety and health standards require the employer to do for the protection of employees and to abate the hazard.
- If the violation involves incomplete or inadequate written programs, the AVD must specify what was missing from the employer's written programs and why it was not tailored to the business operations.

EXAMPLE AVD – FALL HAZARD: *The employer did not ensure employees were protected from falls of 10 feet or more with a fall restraint or fall arrest system. Three roofing employees were not using fall protection and were exposed to 23 fall hazards while conducting tear-off of the existing roof materials. This hazard was observed at the house located at 1234 Compliance Road, in Seattle, WA.*

EXAMPLE AVD – WRITTEN PROGRAM: *The employer did not ensure the written accident prevention program was tailored to the business operations and hazards involved in that the written program did not address:*

- *Fall hazards*
- *Electrical safety*
- *Ladder safety*
- *Safe use of portable power tools and hand tools*
- *Personal Protective Equipment (PPE) required*
- *The use, care and maintenance of PPE*

C.5. Health (Hygiene) Inspections.

There are special documentation requirements for hygiene inspections. During hygiene inspections, CSHOs must do the following:

C.5.a. Potential Chemical Substance or Physical Hazard Exposure. Record all relevant information concerning potential exposure to chemical substances or physical hazards, such as:

- Symptomatology
- Duration and frequency of the hazard
- Pertinent employee comments
- Sources of potential health hazards
- Location of employees
- Types of engineering controls
- Use of personal protective devices including respirators, ear and eye protection, clothing, etc.

Collect Material Safety Data Sheets (MSDS) where available and appropriate.

C.5.b. Observation of Employee Activity. Observe employee activities throughout the establishment, concentrating particularly on potentially hazardous areas, and:

- Estimate number of employees at each operation to be evaluated, indicating whether they are engaged in stationary or transient activities.
- Interview employees.
- Record the duration and frequency of cyclic work processes, describing potential exposures during each phase of the cycle.

C.5.c. Employer's Occupational Safety and Health Program. Request and evaluate information on the following aspects of the employer's occupational safety and health program (findings must be discussed in detail at the closing conference).

(1) Monitoring. The employer's program for monitoring safety and health hazards in the establishment should include a program for self-inspection.

CSHOs must discuss the employer's maintenance schedules and inspection records. Additional information must be obtained concerning such employer activities such as:

- Sampling and calibration procedures
- Ventilation measurements
- Preventive maintenance programs for engineering controls
- Laboratory services
- Use of industrial hygienists and accredited laboratories.

Compliance with the monitoring requirement of any applicable standard must be determined.

(2) Medical. CSHOs must determine whether the employer provides the employees with replacement and periodic medical examinations. The medical examination protocol must be reviewed to determine the extent of the medical examinations and, if applicable, compliance with the medical surveillance requirements of any applicable standard.

(3) Recordkeeping. CSHOs must determine the extent of the employer's recordkeeping program. This is not to be limited to DOSH-required records, but must be extended to information pertinent to the inspection, such as:

- If records pertaining to employee exposure and medical records are being preserved in accordance with *RCW 49.17.220*, **and**
- Where a specific standard has provisions for employee access to the records, whether the results of environmental measurements and medical examinations are accessible to the affected employees.

(4) Exposure Controls. The employer's compliance program may include engineering, work practice and administrative controls and the use of personal protective equipment. CSHOs must identify as follows:

(a) Engineering Controls. Pertinent engineering controls consist of substitution, isolation, ventilation and equipment modification.

(b) Work Practice and Administrative Controls. These control techniques include personal hygiene, housekeeping practices and rotation of employees.

- There should be a program of employee training and education to use work practice controls effectively. Where pertinent, CSHOs must obtain a detailed description of such controls.
- CSHOs must evaluate the overall effect of such practices and programs, considering the employees' knowledge of their exposures.
- Rotation of employees as an administrative control requires employer knowledge of the extent and duration of exposure.

(5) Regulated Areas. CSHOs must investigate compliance with the requirements for regulated areas as specified by certain standards.

- Regulated areas must be clearly identified and known to all appropriate employees.
- The regulated area designations must be maintained according to the prescribed criteria of the applicable standard.

(6) Emergency Procedures. CSHOs must evaluate the employer's emergency program. When standards provide that specific emergency procedures be developed where certain hazardous substances are handled, the evaluation must determine whether:

- Potential emergency conditions are included in the written plan.
- Emergency conditions have been explained to employees.
- There is a training plan for the protection of affected employees including use and maintenance of personal protective equipment.

Where hazardous substances are handled for which there are no standards requiring emergency procedures, CSHOs must still determine whether adequate procedures have been established.

C. 6. Collecting Samples.

C.6.a. Determining Need for Sampling. Using information collected during the walkaround and from the pre-inspection review, CSHOs must determine as soon as possible after the start of the inspection whether sampling, such as but not limited to air sampling and surface sampling, is required.

C.6.b. Strategy and Procedures.

(1) Developing Strategy. If sampling is necessary, a sampling strategy must be developed by considering potential chemical and physical hazards, number of samples to be taken, and the operations and locations to be sampled.

(a) No Undue Delay. There must not be an undue delay between development of the sampling strategy and the actual sampling, or between receipt of the results of spot or screen sampling and full-shift sampling, when the results indicate its necessity. (See *Chapter 1, Section D.7.e.* for a description of what constitutes advance notice.)

(b) Delay Constituting Advance Notice. If a delay of more than 5 working days is unavoidable, the reasons for the delay must be included in the case file. These situations must be handled following procedures in *Chapter 1, Section D.7.d.* regarding authorized advance notice**.**

(2) Extended Work Shifts: CSHOs can choose one of two approaches for employees who work extended work shifts beyond 8 hours. The choice taken will depend on the nature of the hazardous chemical and the work activity being performed.

- The first approach is to sample what the CSHO believes to be the worst continuous 8-hour work period of the entire extended work shift.
- The second approach is to collect multiple samples over the entire work shift. Sampling is done so that multiple personal samples are collected during the first 8-hour work period and additional samples are collected for the extended work shift. Unless a CSHO is dealing with lead, the employee's exposure in this approach is calculated based upon the worst 8-hours of exposure during the entire work shift. Using this method, the worst 8-hours do not have to be contiguous. (Contact the DOSH technical specialist for lead if dealing with lead samples).

EXAMPLE: *For a 10-hour work shift, following established sampling protocol as per the Chemical Sampling Information (CSI) fil**e**, ten 1-hour samples or five 2-hour samples could be taken and the eight highest 1-hour samples or the four highest 2-hr samples could be used to calculate the employee's 8-hour time weighted average (TWA), which would be compared to the 8-hour TWA-PEL.(See the Chemical Sampling and Analytical Information located on the DOSH Laboratory web site.)*

C.6.c. Sampling Results to Employer and Employee Representative(s). Summaries of sampling results must be provided to the employer and employee representative(s) no later than the closing conference.

For additional information on sampling techniques, contact the DOSH Lab.

C. 7. Taking Photographs and/or Videotapes.

In addition to other documentation to support a violation, digital or film-based photographs and/or videotapes must be taken (for instance, unlabeled containers, equipment without proper guards, etc.). Photographs that support violations must be properly labeled and must be referenced to the corresponding violation using the Photo Identification form. Labeling information must include the inspection number, citation/item number, date and time, employer name, UBI number, location and description of the photo. CSHOs must ensure that any photographs relating to confidential or trade secret information are identified as such. All film, original photographs or discs and CDs with digital images must be retained in the Central Office case file. Videotapes and audiotapes must be properly labeled and stored with the Central Office case file.

C.8. Interviews.

A free and open exchange of information between CSHOs and employees is essential to an effective inspection. Interviews provide an opportunity for employees or other individuals to point out hazardous conditions and, in general, to provide assistance as to what kind of DOSH violations may exist and what abatement action should be taken. Employees may also supply valuable information about 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.

Employee interviews are also an effective means to determine whether advance notice of inspection, when authorized and given under the guidelines of *Chapter 1, Section D.7.,* has adversely affected the inspection conditions, as well as to obtain information regarding the employer's knowledge of workplace conditions or work practices in effect prior to and at the time of the inspection. CSHOs should ask about these issues during employee interviews. CSHOs should also obtain information concerning the presence and/or implementation of a safety and health system (APP) to prevent or control workplace hazards. Pertinent statements by employees or other individuals must be documented to include the name, address and other contact information for the employee or other individual.

- At the beginning of the interview CSHOs should identify themselves to the employee by showing their credentials, and providing 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 DOSH'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 consult with their supervisor.

C.8.a. Purpose and Privacy. The purpose of interviews is to obtain whatever information CSHOs deem necessary or useful in carrying out inspections effectively. *RCW 49.17.070(1)(b)* authorizes CSHOs to question any employee privately during regular working hours in the course of a DOSH inspection. Employers must be informed that employee interviews are private. If an employer objects to private interviews with employees, the CSHO must privately discuss the issue with the employee prior to any decision on how to proceed. The employee must be asked about their personal preference.

If the employee states it is his or her desire to have a company representative present during the interview, the employee must be advised that privacy cannot be afforded in those circumstances. If the employee still wishes to have the company representative present, the interview will be conducted with the selected representative present.

If the employee states to the CSHO at any point before or during the interview that he or she wishes to continue with a private interview, the interview must be conducted privately. If the employer still objects to the private interview, the employer must be advised the objection may be construed as a refusal of entry and must be handled using the procedures in *section A.5.* of this chapter.

In order to minimize disruptions, all parties present during the interview must be advised that L&I is conducting the interview to gather information related to the inspection. Other representatives attending the interview will not be allowed to ask questions or interrupt the questioning of the witness/employee. If any person becomes disruptive during the interview, the person should be warned they are being disruptive to the interview process and L&I may choose to end the interview and issue a subpoena to privately interview the individual. If the disruptions continue, the interview must be terminated and the CSHO must consult with his/her supervisor about whether to seek a subpoena in order to interview the individual.

C.8.b. Individual Interviews. Individual interviews are permissible whether or not there is an employee representative present. If an employee asks that an employee representative be present for the interview, CSHOs must make a reasonable effort to honor the request. Interviews must be kept as brief as possible.

C.8.c. Time and Location. Interviews must be conducted in a reasonable manner and normally during the walkaround; however, they may be conducted at any time during an inspection. If necessary, interviews may be conducted at locations other than the workplace.

C.8.d. Interview Statements. CSHOs must obtain statements from employees or other individuals whenever they determine that it would be useful to adequately document an apparent violation, using the *Statement Form (F416-093-000).* This form must be used for fatalities and catastrophes.

C.8.e. Employee Request for Confidentiality. If the employee or witness indicate they do not wish to be interviewed, unless their identity is confidential, the CSHO must make this notation in his or her notes.

Confidentiality is only initiated by the employee. The CSHO must also ensure that references to an employee that has requested confidentiality in the CSHO's notes, witness statements, etc., be tagged or otherwise identified so they can be redacted in response to a public records request. Note that references may include identifying information in addition to the witness' name.

The CSHO may advise an employee who requests that his or her identity be protected that L&I will not release the employee's identity as part of a public records request unless ordered otherwise by a court or directed by the Office of the Attorney General. The CSHO must make no other promise of confidentiality. Staff conducting accident investigations must make no promises of confidentiality

beyond the protection of employee identity to the extent described on the "*Request for Confidentiality" form (F416-016-000).*

(1) When To Obtain Written Statements. There are several methods of recording interviews, including audio or videotape, or in writing. Following are some examples of situations where CSHOs must normally obtain written statements.

- When there is an actual or potential controversy between the employer and employee as to a material fact concerning a violation.
- When there is a conflict or difference among employee statements as to the facts.
- When there is a potential repeated or willful violation.
- In accident investigations, when attempting to determine whether apparent violation(s) existed at the time of the accident.

(2) Procedure for Written Statements. Interview statements should normally be written in the first person and in the words of the individual. The wording of the statement must be understandable to the individual and reflect only what has been brought out in the interview.

(a) Changes or Corrections. Any changes or corrections must be initialed by the individual. The statement must not be changed, added to or altered in any other way.

(b) Confidentiality and Nondisclosure of Witness Identity. The CSHO must ensure that the individual reads (or has read to them), understands, signs and dates the DOSH "Request for Confidentiality" and "Statement" Forms.

CSHOs must not make promises of confidentiality to any person beyond those promises contained on the printed forms.

(c) Witness Refuses to Sign. If the individual refuses to sign the statement, CSHOs must note the refusal on the statement, and the reasons for the refusal. The statement must nevertheless be read to the individual and an attempt made to obtain agreement. A note that this was done must be included in the case file.

(d) Filing Procedures. Witness statements where the individual will allow disclosure of his/her identity must be included in the inspection file with other violation documentation.

Witness statements where the individual has requested nondisclosure of his/her identity must be stamped "CONFIDENTIAL" and placed in a sealed envelope with other confidential statements. The envelope must be marked "CONFIDENTIAL – EMPLOYEE INTERVIEW STATEMENTS" and clearly labeled with the inspection number, employer name, region number and CSHO ID.

Nothing may be noted in the inspection file that identifies witnesses where nondisclosure of identity has been requested. Names of these types of witnesses must not be indirectly revealed by omitting them where they would otherwise appear, for example, as exposed employees or persons present at the time of an accident.

C.9. Employee Safety & Health Concerns During Walkarounds.

Even when employees are represented on the walkaround, CSHOs must interview any employee who wishes to discuss possible alleged hazards. When an employee expresses new concerns about an alleged hazard, the CSHO must handle it in the following manner:

- The CSHO should investigate the alleged hazards while onsite. CSHOs must record the allegation and findings in the field notes and attempt to inform the employee of the results before leaving the worksite, if possible.
- If the hazards cannot be addressed by the CSHO, (example, employees complain of asbestos issues to Safety Inspector) then the unaddressed hazards must be referred to the CSHO's supervisor.
- If the employee wishes to file a formal complaint, the CSHO must follow the written procedures in *Chapter 2, Complaints and Referrals*, in this manual.

C.10. Employer Abatement Assistance.

C.10.a. Policy. During the walkaround CSHOs must offer appropriate abatement assistance, within their level of training and experience, as to how workplace hazards might be eliminated. Referrals should be made for additional assistance as necessary. The information must provide guidance to the employer in developing acceptable abatement methods or in seeking appropriate professional assistance. CSHOs must not imply DOSH endorsement of any product through the use of specific product names when recommending abatement measures. The issuance of citations must not be delayed by abatement assistance.

C.10.b. Disclaimers. The employer must be informed that:

(1) The employer is not limited to the abatement methods suggested by DOSH

(2) The methods explained are general and may not be effective in all cases, **and**

(3) The employer is responsible for selecting and carrying out an effective abatement method.

C.10.c. Type of Assistance. The type of assistance provided will depend on the needs of the employer and the complexity of the hazard. Where standards specify abatement methods, such as guarding of belts and pulleys, CSHOs must, at a minimum, ensure that the employer is aware of the specifications. For more complex problems, CSHOs must offer general information on types of controls and procedures commonly used to abate the hazard. Alternate methods must be provided whenever possible.

(1) Assistance Provided During An Inspection. CSHOs must use their knowledge and professional experience in providing the employer with abatement assistance during the inspection.

(a) Before leaving an inspection site and preferably during the walkaround when an apparent violation is noted, CSHOs must determine whether the employer wishes to discuss possible means of abating apparent violations. The discussion may continue at the closing conference.

(b) CSHOs must briefly document abatement assistance provided to the employer, or the employer's negative response to the offer of assistance, on the appropriate violation worksheet.

(2) Assistance Provided After an Inspection. If a CSHO cannot provide assistance during an inspection or if the employer has abatement questions after the inspection, the CSHO must ensure that additional information, if available, is obtained and provided as soon as possible to the employer. Any communications with the employer must be documented in the case file. When CSHOs identify workplace hazards during compliance inspections, they are required to offer appropriate abatement assistance to the employer within their level of expertise. In situations where the complexity of corrective methods requires additional expertise and resources beyond DOSH Compliance, the Compliance Supervisor must contact the Technical Services Manager.

C.11. Trade Secrets.

According to *RCW 19.108*, trade secrets are any information that derives independent economic value (actual or potential) from not being generally known or accessible to other persons who can obtain economic value from its disclosure or use and for which the employer has made reasonable efforts to maintain its secrecy. It can be any of the following:

- Formula or recipe
- Pattern
- Process
- Equipment
- List
- Blueprint
- Device
- Collection of information
- Program
- Technique

C.11.a. Preserve Confidentiality. CSHOs and all other L&I staff who work with DOSH inspection records must preserve the confidentiality of all information and investigations that might reveal a trade secret.

C.11.b. Restrictions and Controls. When an employer identifies an operation or condition as a trade secret, it must be treated as such. Information obtained in controlled areas, including all negatives, photographs, videotapes, and DOSH documentation forms, must be labeled as follows:

"ADMINISTRATIVELY CONTROLLED INFORMATION"
"RESTRICTED TRADE INFORMATION"

(1) Nondisclosure. Under *RCW 49.17.200*, all information reported to or obtained by a CSHO in connection with any inspection or other activity which contains or that might reveal a trade secret must be kept confidential. Trade secret information must not be disclosed except to other DOSH officials conducting business authorized under Chapter 49.17 RCW (WISHA).

(2) Penalties for Disclosure. *Chapter 42.52 RCW,* the Ethics in Public Service Act, prohibits disclosure of confidential information. *RCW 42.52.480 and 490* provide civil penalties of up to $5,000 per violation or three times the damages plus costs. *RCW 42.52.520* provides for disciplinary action up to and including dismissal.

(3) Labeling. Trade secret materials must not be labeled using security classification designations such as "Top Secret," "Secret," or "Confidential" unless the trade secrets are also classified by a federal government agency in the interest of national security.

C.11.c. Photographs and Videotapes. If employers object to CSHOs taking photographs and/or videotapes because trade secrets could be disclosed, CSHOs should advise employers of the protection against disclosure provided by *RCW 49.17.200*. If employers still object, CSHOs must contact their Compliance Supervisor for guidance.

C.12. Violations of Laws Enforced by Other Agencies.

If CSHOs observe apparent violations of laws enforced by other government agencies, these must be referred to the appropriate agency. Referrals must be made by completing a Referral Report form. A completed copy must be submitted to the agency by fax or mail and a copy must be maintained in the inspection case file.

D. CLOSING CONFERENCE

D.1. Inspections Requiring Review Prior to Closing.

No closing conference may be conducted with the employer or employee representatives on non- routine inspections until a review has been completed following the instructions in *Chapter 7, Section A, in this manual*. This section also includes a list of "non-routine" inspection types.

D.2. Joint or Separate Conferences.

At the conclusion of an inspection, CSHOs must conduct a face to face closing conference with the employer and employee representatives to discuss any hazards that were identified during the walkaround inspection, citations that are being considered and reasonable abatement dates for citations that may be issued. On multi-employer worksites, CSHOs may decide whether to hold separate closing conferences with each employer representative. A joint closing conference with the employer and the employee representatives must be held whenever practical.

Where either party wishes to have a separate conference or where it is not practical to hold a joint closing conference, separate closing conferences may be held. A written summary of either or both conferences should be provided to the employer and/or employee representatives if they request it. CSHOs must document the names and titles of all individuals present at the closing conference.

NOTE. Telephone closing conferences must only be held as a last resort if a CSHO's attempts to conduct a closing conference in person have failed, and only with the approval of the Regional Compliance Manager. The attempts to conduct a closing conference in person and the fact that the closing was held by telephone must both be documented in the case file.

D.3. Elements of Conference.

CSHOs must describe all violations found during the inspection, applicable standards, and other pertinent issues deemed necessary by the CSHO. Any unusual circumstances noted during the closing conference must be documented in the case file.

The standardized *Closing Conference Highlights form (F418-037-000)* should be used, and a copy should be provided to the employer and employee representatives at the time of the closing conference.

D.3.a. Observed and Documented Violations. One of the primary purposes of the closing conference is to give the employer and employees an understanding of any violations which may be cited. This discussion should be a "recap" of violations pointed out during the walkaround, and will provide an opportunity for the employer and employees to provide additional information related to those or other violations.

NOTE: If the employer states that while the CSHO continued the walkaround, a violation that was observed earlier was fixed, the CSHO must return to that location and personally determine whether the violation is fully corrected.

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(1) CSHOs must inform the employer of any violations that may result in penalties.

(2) Options for hazard correction procedures and interim methods of control must be discussed.

(3) CSHOs must note any employer or employee comments on the violation worksheet and obtain input for establishing correction dates.

(4) Even when an employer is in compliance, sampling results and any recommendations on good safety and health practices must be discussed with the employer and employee representatives.

D.3.b. Additional Information Needed Before Determining Compliance. Since all necessary information (such as sampling results) may not be available at the time of the closing conference, a second closing conference may be held by telephone or in person to inform the employer and the employee representatives whether the establishment is in compliance.

D.3.c. Delayed Closing Conference. When the closing conference is delayed pending receipt of sampling data or for any other reason, the employee representative must be given an opportunity to participate in the delayed conference.

D.3.d. Employer's Safety and Health Program. The strengths and weaknesses of the employer's safety and health program must be discussed at the closing conference.

D.3.e. Advising Employer and Employee Representatives of Rights. Both the employer and the employee representatives must be advised of their right to participate in any subsequent conferences, meetings or discussions, and their appeal rights.

CSHOs must advise employee representatives that:

(1) They have protection against retaliation or discrimination for engaging in protected safety and health activities under *RCW 49.17.160* and *Chapter 296-360 WAC*.

(2) They must be notified by the employer if a notice of appeal is filed.

(3) They have a right to appeal the abatement date only. Appeals must be in writing and filed within 15 working days after the employer's receipt of the citation.

D. 4. Abatement Action.

Employer abatement requirements and DOSH's abatement verification procedures are covered in *Chapter 8, Abatement*. CSHOs must explain the following:

D.4.a. Hazards Not Corrected During Inspection. CSHOs must emphasize that the employer must return a completed Employer Certification of Abatement form or a letter verifying abatement when the hazard is corrected. Failure to do so will result in follow-up action, up to and including a citation and possible penalties. CSHOs must also inform the employer that an appeal does not stay the abatement date for serious, willful, repeat serious, and failure-to-abate serious violations, unless a stay of abatement date is requested and granted according to WAC 296-900-17006, or by the Board of Industrial Insurance Appeals. For any appealed general violation(s) and violations for which a stay of abatement date is granted, this requirement is postponed until a final order is issued for the violation(s).

D.4.b. Employee Interim Protection During Abatement Period. When the citation permits an extended time for abatement, the employer must ensure that employees are adequately protected during this time. For example, the citation may require the immediate use of personal protective equipment by employees while engineering controls are being installed. The employer may be requested to send periodic progress reports on actions to correct these violations.

D.4.c. Abatement Verification Requirements. During the closing conference, CSHOs must thoroughly review the following abatement verification requirements with the employer. **To minimize confusion, the distinction between abatement certification and abatement documentation should be discussed**. (See definitions in *Chapter 8, Section A.3.)*

(1) Abatement certification is required for all violations cited unless abatement is observed by a CSHO onsite, and it is documented in the case file that the violation was corrected during the inspection. CSHOs must review any corrected items with the employer and document the actions taken to abate the violation.

(2) Abatement documentation is required**.** The employer's physical proof of abatement must be submitted along with each willful, each repeated, and each designated serious violation.

(3) If a violation is cited for written program deficiencies, a copy of the written program must be submitted by the employer and reviewed by the CSHO as part of the abatement certification process.

(4) Where abatement periods for citations are expected to exceed 90 calendar days, the requirements for and submission of abatement plans and progress reports must be explained.

(5) If violations related to moveable equipment were identified, the required placement of tags or citation copies under WAC 296-900-15030 must also be discussed, if it has not been discussed during the walkaround portion of the inspection. CSHOs should offer Warning Tags (Form F418-017-000) to the employer if they were not offered during the walkaround.

D.5 Extension of Abatement.

CSHOs must advise employers that abatement dates are established on the basis of information available at the time citations are issued. Employers can request more time to correct violations if they have made a good faith effort to correct the violation, but uncontrollable events or other documented circumstances will prevent the employer from meeting an abatement date, and the 15-working-day appeal period has passed. An extension request must be submitted in writing prior to the end of the abatement period. Information on Applications for Extension of Abatement Dates is included in the Citation and Notice package. (See also *Chapter 8, Section C* and *WAC 296-900-160*.)

D.6. Follow-up Inspection.

CSHOs must explain that if the employer receives a citation, a follow-up inspection may be conducted to verify that the employer:

- Posted the citation as required, and tagged any moveable equipment that was related to a violation.
- Corrected the violation(s) as required in the citation when there is a final order on the violation or when there is a final abatement order and abatement is required during an appeal .
- Adequately protected employees during multi-step or lengthy abatement periods.
- Took appropriate administrative or engineering abatement steps in a timely manner.

The employer also has a continuing responsibility to comply with WISHA regulations. Any new violations discovered during a follow-up inspection will be cited.

D.7. Failure to Abate.

CSHOs must explain that to achieve abatement by the date set in the citation, it is important that corrective efforts be promptly initiated. The employer must be reminded that under WISHA, significant penalties per violation per each day of non-abatement may be assessed if the employer is found during a follow-up or other subsequent inspection to have failed to correct any violations that were not appealed, or have a final abatement order requiring abatement during the appeal, and the abatement date has passed. There is no time limitation for citing a failure-to-abate violation.

D.8 False Information.

CSHOs must explain that if the employer knowingly provides false information related to efforts to correct cited conditions, or in records required to be maintained, or in any other matter related to WISHA, criminal penalties may result (*RCW 49.17.190(2)*).

D.9. Printed Materials and Other Resources.

During the closing conference CSHOs should give the employer any printed materials (WISHA poster, copies of standards, outreach publications, etc.) or other resources (Accident Prevention Program CD, Core Rules CD, website information, etc.) that will help them to create and maintain a safe and healthful work environment. CSHOs should briefly discuss the information and answer any questions. All matters discussed during the closing conference should be documented in the case file, including a note describing printed materials or other resources provided.

D.10. Other DOSH Services and Programs.

CSHOs should briefly explain other DOSH services and programs and provide information to any interested employer. Examples include:

D.10.a. Employer Abatement Assistance. Any questions regarding abatement can be discussed with employers during the closing conference, with more complete information provided as necessary, as soon as possible after completion of the inspection. Employers requesting abatement assistance must be informed that DOSH is willing to work with them even after citations have been issued. In addition, employers must be made aware of the availability of Consultation services. However, CSHOs should offer suggested methods of compliance whenever possible, and not routinely refer employers to DOSH Consultation.

D.10.b. Training and Education Programs. CSHOs should inform employers of training and education programs that are available, including those from DOSH, DOSH's website, the OSHA Training Institute and the University of Washington, and also programs offered by community safety and health organizations, private industry, private safety and health consulting firms, or local educational institutes. Additional information on DOSH's training and Education programs can be found on the L&I website.

D.10.c. Consultation Services

(1) Onsite Consultation. DOSH onsite consultation services are available statewide. The Consultation Program offers a variety of services at no cost to employers. These services include assisting in the development and implementation of an effective safety and health management system, and offering training and education to the employer and employees at the worksite. Smaller businesses in high hazard industries or those involved in hazardous operations receive priority. The Consultation Program is separate from DOSH's enforcement efforts. Consultation does not issue citations or penalties.

(2) Risk Management Services. Risk Management Consultants assist employers through consultations, assessments and implementation plans. They help employers develop their own policies, programs and forms designed to reduce accidents, injuries, claims, premiums and associated costs. They assist employers in developing effective loss control programs with the ultimate goals of lowering workers' compensation costs and improving workplace health and safety for employees. They also educate customers through workshops and outreach activities with business, labor and community groups. This education and assistance enables employers to make informed decisions about human resource management, claim management, safety and health, and best practices for their business.

(3) Voluntary Protection Program (VPP). The Voluntary Protection Program (VPP) is designed to recognize and promote effective safety and health management. A hallmark of VPP is the principle that management, labor, and DOSH can work together in pursuit of a safe and healthy workplace. A VPP participant is an employer who has successfully designed and implemented a health and safety management system at its worksite.

NOTE: See the Voluntary Protection Programs (VPP) Policies and Procedures Manual for additional information.

(4) Safety Through Achieving Recognition Together (START).

- Another program that recognizes employers' efforts to create a safe workplace and exempts them from inspection is the Safety Through Achieving Recognition Together program (START).
- START is designed to provide incentives and support those employers that implement and continuously improve effective safety and health management system(s) at their worksite. START participants are exempted from DOSH programmed inspections.

NOTE: See the *DOSH Consultation Manual* for additional information.

APPENDIX 3A
INFORMATION NEEDED TO OBTAIN AN INSPECTION WARRANT

1. Region Office, telephone number, and name of CSHO Supervisor involved.
2. Name of CSHO attempting inspection and inspection number, if assigned. Identify whether inspection to be conducted included safety items, health items or both.
3. Legal name of establishment and address including city, state and county. Include site location if different from mailing address.
4. Estimated number of employees at inspection site.
5. NAICS Codes and other relevant targeting information.
6. Summary of all facts leading to the refusal of entry or limitation of inspection, including the following:
   a. Date and time of entry.
   b. Date and time of denial.
   c. Stage of denial (entry, opening conference, walkaround, etc.).
   d. Any violation or hazardous conditions observed by the CSHO prior to denial.
7. Narrative of all actions taken by the CSHO leading up to, during, and after the refusal, including the following information.
   a. Full name and title of the person to whom CSHO presented credentials.
   b. Full name and title of person(s) who refused entry.
   c. Reasons stated for the denial by person(s) refusing entry.
   d. Response, if any, by CSHO to the person refusing entry.
   e. Name and address of witnesses to denial of entry.
8. All previous inspection information, including copies of the previous citations.
9. Previous requests for warrants. Attach details, if applicable.
10. As much of the current inspection report as has been completed.
11. Other pertinent information such as description of the workplace; the work process; machinery, tools and materials used; known hazards and injuries associated with the specific manufacturing process or industry.
12. Investigative techniques which will be required during the proposed inspection; e.g., personal sampling, photographs, audio/videotapes, examination of records, access to medical records, etc.

APPENDIX 3A (CONTINUED)
INFORMATION NEEDED TO OBTAIN AN INSPECTION WARRANT

13. The specific reasons for the selection of this establishment for the inspection including proposed scope of the inspection and rationale.

a. Imminent Danger.

(1) Description of alleged imminent danger situation.

(2) Date received and source of information.

(3) Original allegation and copy of typed report, including basis for reasonable expectation of death or serious physical harm and immediacy of danger.

b. Fatality/Catastrophe.

(1) Copy of the completed Fatality/Non-Fatality Report.

(2) Type of accident: (fatality, catastrophe).

(3) Method of accident notification: (phone, e-mail, news, media, employee representative, other – attach copy of the report)

(4) Number of employees involved: (fatalities, injuries, number hospitalized.)

c. Complaint.

(1) A copy of the completed *Alleged Safety or Health Hazards Form (F418-052-000).*

(2) Reasonable grounds for believing that a violation that threatens physical harm or imminent danger exists, including standards that could be violated if the complaint is true and accurate.

(3) Additional information gathered pertaining to complaint evaluation.

d. Referral.

(1) A copy of the completed Alleged Safety or Health Hazards Form (F418-052-000).

(2) Specific description of the hazards observed and the potential injury or illness that may result from the specific hazard.

(3) Specific standards that may be violated.

(4) Number of employees affected by specific hazard.

(5) Corroborative information or other supporting material to demonstrate potential existence of a hazard and employee exposure, if known.

(6) Additional information gathered pertaining to referral evaluation.

APPENDIX 3A (CONTINUED)
INFORMATION NEEDED TO OBTAIN AN INSPECTION WARRANT

e. Programmed.

(1) Scheduled list for general industry, maritime, construction, explosives, electrical utilities.

(2) Scheduled list for hygiene.

(3) Special emphasis program - Special Programs, Local Emphasis Programs, Farm-worker Housing Inspection, etc.

f. Follow-up.

(1) Date of initial inspection.

(2) Details and reasons follow-up was to be conducted.

(3) Copies of previous citations on the basis of which the follow-up was initiated.

(4) Copies of settlement stipulations and final orders, if appropriate.

(5) Previous history of failure to correct, if any.

(6) If on appeal:

(a) Copies of the employer's notice of appeal

(b) Copies of decisions on stay of abatement date request, if any.

g. Monitoring.

(1) Date of original inspection.

(2) Details and reasons monitoring inspection was to be conducted.

(3) Copies of previous citations and/or settlement agreements on the basis of which the monitoring inspection was initiated.

(4) Application for Extension of Abatement Date request, if applicable.

APPENDIX 3B FIVE WARNING SIGNS OF ESCALATING BEHAVIOR	
Warning Signs	***Suggested Responses***
Confusion	
Behavior characterized by bewilderment or distraction. Unsure or uncertain of the next course of action.	• Listen to their concerns. • Ask clarifying questions. • Give them factual information.
Frustration	
Behavior characterized by reaction or resistance to information. Impatience. Feeling a sense of defeat in the attempt of accomplishment. May try to bait you.	• See steps above. • Relocate to quiet location or setting. • Reassure them. • Make a sincere attempt to clarify concerns.
Blame	
Placing responsibility for problems on everyone else. Accusing or holding you responsible. Finding fault or error with the action of others. They may place blame directly on you. **Crossing over to potentially hazardous behavior.**	• See steps above. • Disengage and bring second party into the discussion. • Use teamwork approach. • Draw client back to facts. • Use probing questions. • Create "YES" momentum.
Anger – Judgment call required	
Characterized by a visible change in body posture and disposition. Actions include pounding fists, pointing fingers, shouting or screaming. **This signals very risky behavior.**	• Utilize venting techniques. • Don't offer solutions. • Don't argue with comments made. • **Prepare to evacuate or isolate.** • **Contact supervisor and/or Security.**
Hostility – Judgment call required	
Physical actions or threats which appear imminent. Acts of physical harm or property damage. Out-of-control behavior signals they have crossed over the line.	• **Disengage and evacuate.** • **Attempt to isolate person if it can be done safely.** • **Alert supervisor and contact Security immediately.**

CHAPTER 4
SPECIAL INSPECTION PROCEDURES

A. IMMINENT DANGER

A.1. Imminent Danger Situations.

A.1.a. What Constitutes Imminent Danger. Under the Washington Industrial Safety and Health Act (WISHA), an imminent danger situation exists when any workplace condition or practice could reasonably be expected to cause death or serious physical harm:

- Immediately, **or**
- Before the danger can be eliminated through Division of Occupational Safety and Health (DOSH) enforcement procedures.

NOTE: For a health hazard to be classified as an imminent danger, exposure to a toxic substance or other health hazard must cause such a degree of harm that it shortens life or causes a substantial reduction in physical or mental efficiency, even though the resulting harm may not manifest itself immediately.

A.1.b. Authority to Address Imminent Danger. *RCW 49.17.130(1)* provides authority for Compliance Safety and Health Officers (CSHOs) (and DOSH Consultants) to issue orders of immediate restraint. **The following conditions must be met:**

- It must be observed during an inspection or investigation.
- The CSHO must believe that the employer has violated:
  - Safe place standard requirements *(RCW 49.17.060)*, **or**
  - Another WISHA safety or health standard, **or**
  - The terms of a variance granted by DOSH.
- There must be a substantial probability that death or serious physical harm to an employee could result:
  - Immediately, **or**
  - Before DOSH could ensure elimination of the danger through normal enforcement procedures.

A.1.c Issuing Orders of Immediate Restraint. When an imminent danger situation exists and it is under DOSH jurisdiction, CSHOs must cite the violation. The statute gives DOSH discretion in deciding whether to issue an order immediately restraining the condition, practice, method or process used in the workplace. However, by policy CSHOs (and DOSH Consultants) must issue an order and notice of immediate restraint when an employer cannot or does not voluntarily eliminate the imminent danger situation or remove employees from exposure to the hazard. See *Section A.3.* in this chapter for enforcement procedures, and the DOSH Consultation Manual for consultation procedures.

A.1.d. Order Itself Is Not a Citation. The Order and Notice of Immediate Restraint itself does not constitute a citation of an alleged violation or a notice of assessed penalties. It is an order immediately restraining the hazardous condition, practice, method or process and restrains the employer from permitting employees to work in the area of the danger until it is eliminated.

A.2. Imminent Danger Pre-Inspection Procedures.

A.2.a. When an Imminent Danger Report Is Received by a Field Office. Any allegation of imminent danger received by a Department of Labor and Industries (L&I) office, whether written or oral, must be handled on a highest priority basis. Other commitments, weekends, holidays, leave and other considerations cannot interfere with the prompt and thorough handling of these cases.

(1) Reasonable Basis for Allegation. Compliance Supervisors must immediately determine whether there is a reasonable basis for the allegation.

(2) Selection of CSHO. If the imminent danger allegation appears to have merit, Compliance Supervisors must determine inspection requirements and assign a CSHO to conduct an inspection.

(3) Conducting an Inspection Immediately. Imminent danger reports have the highest inspection priority and must be investigated immediately whenever possible. Except in extraordinary circumstances, the inspection must be conducted no later than the employer's next workday after receipt of the report of imminent danger. The reason for any delay must be documented in the case file.

(4) Advance Notice When Immediate Inspection Cannot Be Made. When an immediate inspection cannot be made, the Compliance Supervisor or CSHO must contact the employer immediately, obtain as many pertinent details as possible and attempt to have any employees affected by the dangerous situation voluntarily removed. A record of what steps, if any, the employer intends to take in order to eliminate the danger must be attached to the case file. This employer contact is considered advance notice, and the inspection must be handled using the procedures in *Chapter 1, Section D.6.,* **and** *Section A.3.b.(2)*in this chapter.

A.2.b. Technical Considerations. The Compliance Supervisor and the CSHO assigned to perform the inspection must review the known facts and decide what technical equipment and personnel may be needed to conduct the inspection. Technical Services should be contacted for assistance as needed. When obtaining special equipment or technical personnel would unduly delay an inspection, it is still advisable to schedule and conduct a preliminary inspection within the time limits given in *Section A.2.a.* in this section above. Special equipment and/or personnel can be brought in later if necessary.

(1) Use of Specialists. In highly complex situations, specialists from other Regions, Central Office, other governmental agencies, or possibly from outside government may be needed. If a decision is made to use specialists, the procedures given in *Chapter 1, Section D.8., Classified and Trade Information*, must be followed. (See *Section B.2.e., Selection of an Investigative Team*, in this chapter, for additional guidance on use of expert assistance.)

(2) Equipment. Equipment to be used must be current in any testing or calibration requirements and be maintained in accordance with the manufacturer's instruction. Contact DOSH Lab staff for questions or assistance related to calibration procedures.

(3) Advance Arrangements for Sample Analysis. If samples are required to determine whether there is an imminent danger situation, rapid analysis is essential. The Compliance Supervisor must make advance arrangements with the DOSH Industrial Hygiene Laboratory using the procedures for priority sample handling.

A.3. Imminent Danger Inspections.

A.3.a. Resolve Imminent Danger First. Any alleged imminent danger situation brought to the attention of or discovered by a CSHO must be inspected immediately, whether or not the inspection was initiated in response to an allegation of imminent danger. Additional inspection activity should take place only after resolution of the imminent danger situation. After an imminent danger situation has been resolved, CSHOs may consider expanding the scope of the inspection based on any new information he or she has become aware of.

A.3.b. Special Circumstances. Any inspection that involves an imminent danger situation must be conducted as expeditiously as possible.

(1) Walkaround Representatives. The opportunity to accompany the CSHO will be offered to employer and employee representatives unless the imminence of the hazard makes it impractical to delay the inspection while waiting for representatives to reach the area.

(2) Advance Notice. *RCW 49.17.130(2)* authorizes advance notice of an inspection of an apparent imminent danger situation to enable the employer to eliminate the dangerous condition as quickly as possible, and to remove any exposed employees. If advance notice is given to the employer, it must also be given to the authorized employee representative. If the inspection is in response to a complaint, advance notice will also be given to the complainant unless such a procedure will cause a delay in speeding the elimination of the hazard.

(3) Refusal to Permit Inspection. If a CSHO is refused entry while attempting to investigate an alleged imminent danger complaint, the CSHO must immediately contact his or her supervisor so that management can discuss the best response to immediately address the hazard including whether to obtain a warrant.

(4) Preemption Question. If the report of imminent danger involves a potential jurisdictional issue with another agency, the guidelines given in *Chapter 1, Section D.9., Preemption/Jurisdiction by another agency*, must be followed.

A.3.c. Employer Must Eliminate the Imminent Danger. As soon as a CSHO determines that an imminent danger situation exists, the employer must be advised and requested to:

- Notify their employees of the danger and
- Remove them from exposure to the danger.

The employer should be encouraged to do whatever is possible to eliminate the danger promptly on a voluntary basis.

(1) Voluntary Elimination of Imminent Danger. An employer may voluntarily and permanently eliminate an imminent danger as soon as it is pointed out. In these cases, imminent danger proceedings will not be used and no Order and Notice of Immediate Restraint or Red Tag (for equipment and machines only) will be issued. However, the violation must still be cited.

(2) What Constitutes Voluntary Elimination? Although there may be instances in which an employer will not be able to eliminate the danger permanently as soon as it is pointed out, CSHOs may still consider that voluntary elimination of the danger has been accomplished when an employer:

(a) Has removed employees from the danger area; ***and***

(b) Has given satisfactory assurance that the dangerous condition will be eliminated before permitting employees to work in the area as evidenced by one of the following:

- After removal of employees, immediate corrective action is taken to bring the dangerous condition, practice, operation or process into compliance so that the dangerous condition is permanently eliminated; ***or***
- The acceptable promise of the employer that permanent corrective action will be taken as soon as possible, ***and either:***
  - Employees will not be permitted to work in the area of the imminent danger until the condition is permanently corrected; ***or***
  - Where personal protective equipment can eliminate the imminent danger, PPE will be issued and its use enforced until the condition is permanently corrected.

NOTE: A promise from an employer is acceptable only in certain limited instances in which the employer has adequately established credibility in the CSHO's professional judgment.

(3) Action When Voluntary Elimination Is Accomplished. If an employer agrees and proceeds to eliminate an imminent danger immediately and permanently as outlined above, CSHOs and any other technical staff present must advise the employer to the maximum extent possible. However, employers are ultimately responsible for determining the manner in which a hazardous condition will be eliminated.

(a) Citation and Notice. If elimination of an imminent danger is achieved voluntarily, CSHOs must document the steps taken on the corresponding violation worksheet. Appropriate citation(s) and penalties must be issued. (See *Chapter 6, Penalties, and Chapter 7, Section C., Writing Alleged Violation Descriptions (AVDs)* in this manual)

(b) Informing Employees. CSHOs must inform affected employees or their authorized representative(s) that although an imminent danger situation existed, the CSHO has determined that the danger no longer exists. Employees or their authorized representatives must also be informed of steps taken or that will be taken by the employer to permanently eliminate the dangerous condition.

A.3.d. Issuing Order and Notice of Immediate Restraint and Red Tag. In every case where an employer either cannot or does not voluntarily eliminate a hazard causing an imminent danger, an Order and Notice of Immediate Restraint (OIR) must be issued. If the immediate restraint order relates to a machine or a piece of equipment, a Red Tag must also be issued.

(1) Notification and Posting. A copy of the immediate restraint order must be given to the employer, and the CSHO must post a copy at or near the place the violation(s) occurred. The CSHO must also inform employees of the order and tell them that they cannot continue any work covered by the order until the hazard is corrected and approved by DOSH Compliance. The OIR must remain in place for the duration of the job or until DOSH Compliance removes it. Other work that is not covered by the restraint order can continue.

(a) Where there is no suitable place for posting the immediate restraint order, CSHOs must ask employers to provide a means for posting.

(b) If there is reason to believe that employees may not see a notice, CSHOs must orally inform affected employees of the location of the immediate restraint order after taking adequate precautions not to be exposed to a danger themselves.

(2) Contents of Immediate Restraint Order. The order must include a description of each violation, the basis for each violation, the standard violated and the conditions under which work can resume. The order must be signed by the CSHO who issued it.

(3) Red Tag. If the immediate restraint order relates to a machine or a piece of equipment, CSHOs must also attach a notice (red tag) to the machine or equipment stating that its use is prohibited until the defect is corrected. The number of the red tag and identification of equipment involved must be recorded on the immediate restraint order and the violation worksheet.

NOTE: Red tags (F418-020-000, can be obtained from Central Office Compliance Operations), attached by CSHOs in relation to immediate restraint orders are different from the warning tags employers can attach to cited moveable equipment under *WAC 296-900-15030, Tag Moveable Equipment*. See *Chapter 3, Section D.4.c., Abatement Verification Requirements,* for more information.

(4) Authority of L&I. If an employer questions a CSHO's authority to issue an immediate restraint order or red tag, the employer must be advised that *RCW 49.17.130* gives L&I jurisdiction to restrain any condition or practice which is an imminent danger to employees.

(5) Refusal to Abide by Order or Red Tag. If a CSHO discovers a refusal to abide by an immediate restraint order or red tag, he or she must immediately inform the Compliance Supervisor. Compliance Supervisors may consult with DOSH Compliance Operations to determine whether a temporary restraining order should be pursued by the Attorney General's Office.

(6) Employer Wishes to Challenge OIR.

(a) Informal Option. If an employer indicates an interest in challenging an OIR, he or she should be notified of the informal option of discussing the issue with the CSHO Supervisor, in addition to the more formal processes described below.

(b) Formal Option. If the employer wishes to use a more formal process (regardless of whether a CSHO or DOSH Consultant issued the OIR), the Regional Compliance Manager will conduct an administrative review. The Regional Compliance Manager must be notified immediately and the employer must be given the opportunity to present his/her rationale for lifting the OIR as rapidly as possible. After reviewing the information as well as any information provided by the CSHO and after consulting with DOSH Compliance Operations as appropriate, the Regional Compliance Manager must issue a written decision lifting, modifying or leaving the OIR in place as originally issued.

(c) Appeal to Superior Court. Because challenging an OIR is not subject to the jurisdiction of the Board of Industrial Insurance Appeals, L&I decisions regarding OIRs can be appealed directly to Superior Court by the employer.

A.3.e. Seeking a Court-Issued Temporary Restraining Order (TRO).

(1) If a Compliance Supervisor believes that a temporary restraining order should be pursued, he/she must promptly discuss the situation with the Regional Compliance Manager.

A.3.e Seeking a Court-Issued Temporary Restraining Order (TRO).(Continued)

(2) Contacting the Office of the Attorney General. If the Regional Compliance Manager authorizes the Compliance Supervisor to pursue a TRO, the Compliance Supervisor must immediately contact the Compliance Operations Manager who will contact the Office of Attorney General. The following information must be provided:

- Name, address and telephone number of the employer.
- Date(s) of inspection.
- A complete copy of the C&N if one has already been issued.
- A complete copy of the OIR including date issued and the name of the CSHO or DOSH Consultant who issued it.
- County where the OIR was violated.
- Date and times when the OIR was violated.
- Person(s) who observed the violations and specific information regarding what each person observed and when it was observed.
- Description of the hazard and an explanation as to why it is a serious hazard.
- Number of employees affected.
- Indication as to whether the hazard has caused any serious injuries or fatalities in the past, and if so when they occurred.
- Indication as to how long the hazard has been in existence.
- Indication as to why the hazard creates an imminent danger.
- Specific description of required abatement.
- Indication as to whether the hazard is primarily mechanical (for example, a missing guard) or a question of process and/or training (for example, failure to use certified asbestos workers in an asbestos abatement project).
- Description of the likely economic impact on the employer that would result from the enforcement of the OIR.

A.4. Imminent Danger Citations & Assessed Penalties.

A.4.a. Citations and Penalties. Imminent danger violations found during DOSH inspections must be cited and penalties assessed. Violations related to imminent danger situations must be classified as serious, willful or repeated with penalties calculated accordingly. Probability for imminent danger situations must be rated as a 3. All other violations discovered during the inspection must be cited and penalties assessed, if appropriate, whether or not they relate to the imminent danger situation.

NOTE: The Regional Compliance Manager or Compliance Operations Manager must immediately inform the Statewide Compliance Manager and the DOSH Assistant Director that a TRO is being pursued.

A.4.b. Citation Clearance When TRO is Pursued. No citation will be issued without prior clearance from the Regional Compliance Manager when a Temporary Restraining Order is being or will be pursued relative to the issuance of an Order and Notice of Immediate Restraint.

A.5. Imminent Danger Follow-Up Inspection.

A.5.a. When There Is a Court Injunction. Where a court has issued an injunction in an imminent danger situation, a follow-up inspection must be assigned immediately after the court order has been issued to determine whether the employer is complying with the terms of the order.

A.5.b. When There Is No Court Action. Where no court proceeding has been initiated because the imminence of the danger has been voluntarily eliminated by the employer, but permanent correction of the condition has not been achieved at the time of the original inspection, appropriate citations must be issued promptly and a follow-up inspection conducted on the day immediately after the time period for abatement has expired.

A.5.c. When There Is Immediate Correction. Where a dangerous condition has been permanently corrected at the time of the original inspection, the Compliance Supervisor will determine whether a follow-up inspection is necessary.

A.6. Resuming Work After Posting an Order and Notice of Immediate Restraint (OIR). If an OIR has been posted at the worksite and the employer has met the specified conditions to correct the hazard, work can resume after approval by DOSH Compliance. The OIR must remain in place for the duration of the job or until DOSH Compliance removes it.

A.7. Removal of Order and Notice of Immediate Restraint (OIR) and Red Tag. If an OIR has been posted at the worksite with a Red Tag attached to machinery or equipment, as soon as the imminent danger situation has been permanently eliminated, the notice and tag will be removed by the CSHO who wrote the notice, when possible, or by another CSHO. Removal of the notice and tag requires a physical visit by the CSHO and may not be removed by any other means.

B. FATALITIES, CATASTROPHES, & ACCIDENTS

B.1. Accidents Must Be Reported & Investigated Promptly.

B.1.a. Policy. All job-related fatalities, catastrophes, and accidents resulting in hospitalizations or other serious injury/illness, however reported to L&I, may be investigated as thoroughly and promptly as possible, including during times that are normally non-working hours for L&I staff, such as evenings, weekends, and holidays (see Appendix 4-D, Hospitalization Injuries – Guidelines for When We Should Inspect). Procedures to follow when reports are received during non-working hours, and procedures to follow when a fatality or catastrophe is potentially job-related, are explained in *Sections B.2.b. and B.6.*, in this chapter.

B.1.b. Definitions. The following definitions apply for purposes in this chapter:

(1) Fatality. An employee death resulting from a work related incident or exposure such as an accident or illness caused by or related to a workplace hazard.

(2) Next of Kin. Individual(s), often a family member, listed as the emergency contact(s) on the victim's employment records; another person identified by the employer if an emergency contact is not identified on the employment records or no such record exist; or a representative designated by the next of kin.

(3) Catastrophe. The hospitalization of two or more employees resulting from a work related incident such as an accident or illness caused by a workplace hazard.

(4) Hospitalization. To be admitted to, a hospital or an equivalent medical facility on an emergent in-patient basis requiring an overnight stay.

B.1.c. Reporting by Employers. Under *296-27-031* employers are required to report to the nearest L&I office in person or by phone (1-800-423-7233) within 8 hours, any employee death or probable death, or the in-patient hospitalization of any employee. A serious violation must be cited for failure to report.

NOTE: If prior to the end of the eight-hour reporting period, DOSH becomes aware of a reportable incident through some source other than an employer report, DOSH will not cite the employer for failure to report. If an employer does not learn about an incident at the time it occurs, he/she must report it to L&I within 8 hours of learning of it.

B.1.d. Reporting Within L&I. When DOSH has jurisdiction, the CSHO or Compliance Supervisor must complete a Fatality/Catastrophe report for every job-related fatality L&I is notified of, and for every catastrophe investigated.

NOTE: If DOSH becomes aware of an incident where a Washington worker is killed on the job while working out of state, a notice should be distributed using the standard fatality notification process, with a note that no inspection is to be conducted due to the event occurring outside the state of Washington. No inspection is to be assigned or otherwise initiated in WIN.

(1) Information to be Provided. As soon as it is reported and verified that a workplace fatality or catastrophe occurred, the CSHO or Compliance Supervisor must immediately report the incident by completing a fatal/non fatal notification form. If all required information is not immediately available, the form must be completed with as much information known at the time and updated when additional information becomes available.

First reports and subsequent follow-up calls must provide as much of the following information as possible:

- Name and location of company.
- Time of accident.
- Type of accident (fire, explosion, building collapse, etc.).
- Number of fatalities.
- Number of persons hospitalized.

- Names of victims.
- Number of persons unaccounted for.
- When DOSH personnel are expected to arrive at the scene.
- Identify who is in charge at scene (if immediately known).

(2) Distribution Process. Regions must immediately e-mail a copy of the Fatality/Catastrophe report to the "LNI DL Fatal" distribution list located in Outlook. NOTE: Reports completed in WIN can be e-mailed directly from the application.

(3) Media Information. It is important that DOSH Compliance Operations receives all pertinent information that can be obtained from newspapers or other sources as soon as possible. Other pertinent facts may not be available at the time of the initial notification. As more facts become available, they can be relayed in subsequent notification.

B. 2. Fatality/Catastrophe Pre-Investigation.

B.2.a. Gathering Information. Compliance Supervisors or other L&I representatives who are notified of an accident involving a fatality or catastrophe must gather all available information prior to scheduling an inspection. If possible, it should be discussed immediately with the person reporting the accident.

- If knowledge of the accident is received through the media or sources other than an employer representative, Compliance Supervisors must determine whether contacting the employer in advance of an inspection will produce more effective results. This contact would be considered advance notice and the procedures in *Chapter 1, Section D.7.* in this manual, would need to be followed.

NOTE: For information needed when a fatality or catastrophe is **potentially** job-related, *see Section B.6* in this chapter.

B.2.b. Reports Received Outside Office Hours. When notice of a workplace fatality or catastrophe is received during what are normally non-working hours, such as evenings, weekends, or holidays, Regional Compliance Managers or Supervisors must obtain as much information as possible to determine whether an investigation should begin immediately.

(1) Immediate Investigation. If a Regional Compliance Manager or Supervisor has determined that an investigation should begin promptly, a CSHO must be assigned and sent to the incident scene as soon as possible, without regard for the time of day or day of the week.

Examples of situations where the investigation should not be delayed until normal working hours resume include but are not limited to:

- An explosion or fire where the scene could change quickly, **or**
- A case where an employer with continuous operations has ceased operations until a DOSH investigation is conducted.

(2) Delayed Investigation. In cases where a Compliance Supervisor has decided to delay the investigation, a CSHO must be assigned and the

investigation started no later than the next regular workday. **The reason for any delays over 24 hours must be approved by the Regional Compliance Manager and documented in the case file.**

NOTE: In cases where a CSHO arrives at an active crime, fire or fatality/catastrophe scene, it is imperative to minimize interference and to avoid unsafe conditions for the CSHO. CSHOs must not enter a crime or fire scene until the law enforcement officer, fire control officer, or other incident commander with active control over the scene indicates they can do so. CSHOs may conduct interviews or use other methods that do not require immediate entry to the site provided they do not interfere with activities at the scene.

B.2.c. Contact with the Employer. On initial contact the employer must be informed that an investigation will be conducted and extensive interviews with witnesses will be necessary. The employer must be notified immediately not to disturb the scene other than necessary for emergency rescue operations, and to secure it until released by an L&I representative. The purpose of an accident investigation must be explained. CSHOs must gather information and collect evidence to determine:

(1) The causes and contributing factors of the accident.

(2) Whether the causes and factors that contributed to the accident were related to violations of WISHA safety or health standards.

(3) What effect any violation(s) of a standard had on the occurrence of the accident.

(4) Whether the hazardous working conditions that led to the accident indicate that WISHA standards should be promulgated or revised to address that type of hazard.

B.2.d. Careful Preparations. Careful preparations are essential to the conduct of a complete and professionally conducted investigation. L&I will often be the subject of public scrutiny in these situations.

B.2.e. Selection of an Investigation Team. If an investigation team composed of experts in specific disciplines is required, the Compliance Supervisor and Regional Compliance Manager must determine the composition of the team, and must delegate an individual to serve as authorized DOSH representative. In cases where an employer's physical location is in a different region from the one where the accident occurred, the Compliance Supervisor in the employer's region must be contacted to coordinate the inspection.

If resources beyond those available within the Region will be required to compose the team, the Regional Compliance Manager must make the necessary arrangements. The team, as directed by the designated representative, must proceed promptly to the scene and will function as a unit in all phases of the investigation until officially directed to return to normal functions. When circumstances require expertise in criminal investigations, staff who has criminal investigation training or experience must be assigned to the team.

B.2.f. Selection of an Individual CSHO. If a Compliance Supervisor determines that an investigative team effort is not required, a CSHO with accident investigation training must be selected by the Compliance Supervisor and sent to the establishment or accident scene as soon as possible, regardless of the time of day or day of week. If a potential criminal violation appears possible, a CSHO who also has criminal investigation training or experience must be assigned, if possible.

B.2.g. Preemption. There may be situations where it is not clear whether DOSH's authority to investigate fatalities or catastrophes has been pre-empted. In these cases the procedures in this manual, *Chapter 1, Section D.9. Preemption/ Jurisdiction by Another Agency*, and the DOSH Administrative Manual must be followed with the following special considerations:

(1) DOSH Jurisdiction Reasonably Certain. If it is reasonably certain that DOSH coverage has not been pre-empted, the Compliance Supervisor must start an investigation at once and not let potential jurisdictional problems interfere with either notification or investigation.

(2) Jurisdiction Uncertain. If regional management cannot resolve a pre-emption problem at the local level, all pertinent information must be relayed to DOSH Compliance Operations Manager, along with additional facts as they become available. A clear interpretation will be provided as soon as possible.

(3) Partial Jurisdiction. If DOSH jurisdiction has been preempted only partially, the investigation will be conducted as usual and all apparent violations must be noted, including those for which jurisdiction has been preempted. A referral must be made to the local office of the appropriate agency for those violations as soon as practical.

(4) No DOSH Jurisdiction. Where prior determinations have been made that DOSH authority is pre-empted, such as coal mine accidents, no investigation will be conducted.

(5) Cooperation with Other Agencies. DOSH investigations are independent of other agencies investigations and are explicitly to determine if occupational safety and health rules have been violated. If other agencies will be involved and are on site, CSHOs and/or the investigative team must work with the other agencies as closely as possible to:

- Obtain all available information concerning the fatality or catastrophe.
- Assist each other in inspection of the accident site.

B.2.h. Equipment. Prior to leaving for the accident scene the team or CSHO must select the equipment and personal protective equipment needed for the investigation. Under no circumstances should DOSH personnel conducting fatality/catastrophe investigations be unprotected against a hazard encountered during the course of an investigation. DOSH personnel must use appropriate personal protective equipment and take all necessary precautions to prevent occupational exposure to potential hazards that may be encountered. See Internal Safety and Health *Policies 8.14, Prohibited Practices, and 8.15, Personal Protective Equipment,* for further information.

NOTE: Emergency testing equipment or special accident investigation instruments or protective clothing need not be set aside in field offices for emergency or accident investigation use only. The equipment can also be used for routine inspections provided it can be made available promptly if needed for fatality or catastrophe investigations.

B.2.i. Other Agency. If another Federal or State agency is responsible for, or is participating in the investigation, Compliance Supervisors must ensure that the CSHO and/or team members are fully instructed in DOSH's relationship with the other agency and each agency's areas of responsibility.

B.3. Collection of Data and Completion of Forms.
Compliance Supervisors must ensure that the accident, victim and inspection screens for each Fatality/Investigation Report are entered in the WIN system within the **first five days** of any fatality investigation. Additions and changes to information initially saved in WIN may be made as the inspection progresses. Compliance Supervisors must ensure that required forms and the accident narrative are completed.

NOTE: Accident investigations that do not meet the definition of a fatality or catastrophe must be classified as a referral.

B.4. Accident Investigation Narrative.
Upon completion of the fatality or catastrophe investigation, the CSHO must write a detailed narrative outlining the causes and contributing factors of the incident. The narrative must be written in the format outlined in *Appendix 4A*. The Compliance Supervisor must review the narrative to ensure the facts and conclusions are defensible and supported by the evidence contained within the inspection report.

NOTE: The narrative must be marked "confidential" and placed in a confidential envelope in the inspection report case file (See *RCW 49.17.260, Statistics—Investigations—Reports).*

B.5. Fatality/Catastrophe/Accident Investigation Procedures.
Every reasonable effort must be made to determine the cause of an accident. The same general policies and inspection procedures contained in *Chapter 3, General Inspection Procedures*, are applicable for the investigation of fatalities and catastrophes, except as otherwise provided in this chapter.

B.5.a. Scope. Fatality and catastrophe investigations must include a complete investigation of the circumstances of the accident, consistent with the purposes outlined in *Section B.1.d., Reporting within L&I*, in this chapter. During investigations which involve potential for criminal violations, emphasis must be placed on determining the "willfulness" of the violation. These investigations may be expanded at the discretion of Compliance Supervisors. If a CSHO and Compliance Supervisor suspect the employer has committed criminal violations (*RCW 49.17.190*), the Regional Compliance Manager must immediately contact the Statewide Compliance Manager and Assistant Director DOSH Central Office management will contact the Attorney General's Office (AGO) for guidance.

B.5.b. When a Comprehensive Inspection Is Performed. Depending on the circumstances surrounding an accident, it may be necessary to conduct a comprehensive inspection of the workplace before, concurrent with, or after the accident investigation. Other areas or operations in the establishment may have hazards similar to those that caused the accident. If so, they must be brought to the employer's attention immediately.

NOTE: If the employer is on a programmed inspection list, a comprehensive inspection may be conducted concurrent with or immediately after the accident investigation.

B.5.c. Abbreviated Opening Conference. In most cases, investigations of fatalities and catastrophes require that CSHOs get to the location of the accident as promptly as possible. CSHOs must reduce the time spent in the opening conference to:

- Identification
- Purpose of the visit
- Obtaining consent
- Request for an escort by employee and employer representatives
- Ascertain safety requirements for the CSHO at the worksite.

CSHOs must inform employers that a records review will be conducted as soon as practical after investigation of the accident. In addition, a more extensive discussion of other opening conference topics will be conducted at the closing conference.

B.5.d. Use of Expert Assistance. As soon as possible after the Team/CSHO has arrived on site, a recommendation must be made to the Compliance Supervisor regarding the need for experts to assist in the technical aspects of the investigation. A decision will be made by the Compliance Supervisor in consultation with the Regional Compliance Manager.

(1) DOSH Experts. If regional management has no knowledge of or cannot locate an expert, DOSH Compliance Operations or Technical Services, may be contacted for information regarding safety and health professionals within DOSH who are experts in their field. Management in the requesting region must contact the appropriate manager in the expert's region or program to request the services of the expert.

Experts will normally be made available by their managers both for investigations of fatalities/catastrophes and for testifying in any subsequent legal proceedings, and/or for providing technical assistance to an investigation. The requesting Regional Compliance Manager must coordinate with the supplying manager to make any necessary arrangements.

(2) Other State Agency. If an expert from another State agency is required, regional management must either contact the appropriate office of the other agency to arrange details, or contact DOSH Compliance Operations to handle the request at the State level. If necessary, a letter to the appropriate State agency will be prepared for the signature of the Assistant Director to confirm telephone requests for such assistance.

B.5.d. Use of Expert Assistance. (Continued)

(3) Outside Experts. Outside experts will be used only when no qualified DOSH or State Agency personnel are available. In general, an "outside expert" is a person from the private sector paid a fee for special expertise. Procedures for identifying and obtaining the services of an outside expert must be coordinated by regional management through DOSH Compliance Operations with assistance from Technical Services, as needed. All agency and state contracting requirements must be followed.

B.5.e. Families of Victims. Family members of workers who are the victim of fatal occupational accidents or illnesses must be contacted at an early point in an investigation, given an opportunity to discuss the circumstances of the accident or illness, and provided timely and accurate information at all stages of the investigation as directed in this chapter. All communication with the next of kin will be documented in the case file.

DOSH representatives may use the following listed letter templates when communicating in writing to victim's families. The letter templates are located on the DOSH shared drive and can be accessed by all CSHOs.

The letter Templates are:

- Regional Compliance Manager Condolence Letter (with 2 enclosures)
  - (Brochure) When a loved one Dies at Work
  - (Information sheet) DOSH Citation and Penalties
- Inspection Findings – No Proposed Citation (with 2 enclosures)
  - (Information Sheet) DOSH Fatality Inspections
  - (Information Sheet) DOSH Citations and Penalties
- Inspection Findings Letter – Proposed Contributing Citations (with 3 enclosures)
  - (Information Sheet) DOSH Fatality Inspections
  - (Information Sheet) DOSH Citations and Penalties
  - Copy of Proposed Penalties (from WIN)
- Inspection Findings Letter – Proposed Non-Contributing Citations(with 3 enclosures)
  - (Information Sheet) DOSH Fatality Inspections
  - (Information Sheet) DOSH Citations and Penalties
  - Copy of Proposed Penalties (from WIN)
- Next of Kin Closure Letter – After Final Order (with 1 enclosure)
  - Final Order Summary Report (from WIN)

NOTE: All of the following require special tact and good judgment on the part of DOSH Representatives. In some situations, these procedures should not be followed to the letter. In some small businesses, the employer, owner, or supervisor may be a relative of the victim. In these circumstances, steps such as issuance of a form letter may not be appropriate without some editing.

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(1) List of Victims and Next-of-Kin. As soon as practical after initiating the investigation, CSHOs must attempt to compile a list of all accident victims and their current addresses, along with names listed in the employer's records as next of kin. Where the CSHO is not able to identify the victim's next-of-kin, all attempts shall be fully documented in the case file.

(2) Initial Communication. Prior to initial communications, DOSH should verify through interviews with the employer and/or local authorities, that the next of kin has been previously notified of the fatality. DOSH should attempt to contact the family via telephone prior to the initial next of kin condolence letter being mailed.

NOTE: During the initial communication with the next of kin, DOSH must determine if it is an appropriate time to explain DOSH's fatality inspection process. If it is not, DOSH will inquire if there might be a better time, and provide the next of kin with contact information. If the next of kin does not wish to speak with DOSH, their wishes should be respected. DOSH representatives involved with the case should be notified, and a notation should be made in the case file.

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(3) Information/Condolence Letter. A letter providing information and expressing condolences should be sent to family member(s) or individuals listed as an emergency contact person(s) in the victims' employment records within 5 working days of the time their identities have been established. These letters are normally signed by the Regional Compliance Manager. *(Letter templates are located on the L&I Intranet).*

(4) Interviews. When CSHOs are taking a statement from families of victims, they must explain that interviews will be kept confidential to the extent allowed by law. These interviews will be handled following the same procedures used for employee interviews. (See *Chapter 3, Section C.8., Interviews,* in this manual). Sensitivity and professionalism is required for these types of interviews. Information received must be carefully evaluated and corroborated during the investigation.

(5) Follow-up Contact. Follow-up contact will be maintained with a key family member or other contact person when requested so that survivors can be kept up-to-date on the status of the investigation. A copy of all citations issued as a result of the accident investigation must be provided to family members within **five** working days of issuance. In the event a press release is planned, DOSH will make every attempt to notify the family by telephone before the information is released to the public.

(6) Release of Information to Family. All DOSH staff are cautioned, if discussing the Washington Public Records Act with a victim's family, not to mislead them about the speed with which they can obtain a copy of disclosable information prior to closing the case file. Staff are further cautioned that the employer's rights must be protected. There should be no premature release of facts or findings during any meeting with non-DOSH personnel before an investigation and any subsequent litigation is completed. After the citation and notice has been sent to the employer the family may request the disclosable portions of the case study. *(*See *RCW 49.17.260, Statistics—Investigations—Reports.)*

(7) Final Order Contact. If citation(s) that are issued due to a fatality related inspection are appealed, the Appeals Section will note on the file to inform Compliance Operations once a final order is issued. Compliance Operations will ensure the appropriate Regional Compliance Manager sends the Next of Kin Closure Letter.

B.5.f. Criminal Penalties. *RCW 49.17.190* provides criminal penalties for an employer who is convicted of having willfully violated a WISHA standard, rule or order when that violation causes the death of an employee. In an investigation of this type, the nature of evidence available is of paramount importance. When possible, CSHOs with criminal investigation training or experience should be assigned at an early stage to assist in developing the case.

There must be an early and close liaison between the CSHO or team leader, the Compliance Supervisor, the Regional Compliance Manager and DOSH Compliance Operations in developing any finding which might involve a violation of *RCW 49.17.190*. DOSH Compliance Operations will contact and coordinate with the Attorney General's Office.

NOTE: DOSH Compliance Operations must review all substantially complete, pre-citation documents in fatality cases, regardless of the violation classification(s). A citation may not be issued until this review is completed and noted in the case file.

B.5.g. Follow-up Inspections and Abatement Verification at Accident Sites.

(1) Due to transient nature of many of the worksites where fatalities occur and because the worksite may be destroyed by the catastrophic event, it is frequently impossible to conduct follow-up inspections. In such cases, the Compliance Supervisor should obtain abatement verification from the employer, along with an assurance that appropriate safety and health programs have been implemented to prevent the hazard(s) from recurring. Where the worksite continues to exist, DOSH will normally conduct a follow-up inspection if serious citations have been issued.

(2) While site closure due to the completion of the cited project is an acceptable method of abatement, it can only be accepted without certification where a CSHO directly verifies that closure; otherwise, certification by the employer is required. Follow-up inspections need not be conducted if the CSHO has verified abatement during the inspection or if the employer has provided other proof of abatement.

B.6. Fatalities Potentially Work-Related.

If it is not known before going to the site of a fatality whether it is work-related, it is important not to make an assignment or open an inspection in the WIN system prior to obtaining more information. After obtaining additional information, one of three options must be used:

- **No inspection is conducted**: Enter data as "no inspection."
- **An inspection is conducted but the fatality is not work-related**: Enter data as a referral.
- **An inspection is conducted and the fatality is work-related**: Enter data as a fatality.

B.6.a. Traffic Accidents, Homicides/Suicides, Aircraft Crashes. In some circumstances such as traffic accidents that occur on public roadways during the performance of work duties, or homicides/suicides at a worksite, a law enforcement agency (LEA) is the primary investigator. The National Transportation Safety Board (NTSB) is the primary investigator of aircraft crashes.

Compliance Supervisors should obtain information about the circumstances of these types of incidents from the investigating agency (i.e., contact with the Washington State Patrol or other investigating officer, or a copy of the law enforcement or NTSB report), and consult with DOSH Compliance Operations to decide whether a DOSH inspection is necessary.

- If an inspection is conducted, it must include a determination of whether the employer has an effective accident prevention program addressing hazards relative to the type of employment in which the fatality occurred. If an inspection is not conducted, the inspection case file must include a note that an LEA or the NTSB is investigating.

NOTE: Vehicle accidents that occur at an employer's worksite would not be considered "traffic accidents" and must be investigated under the procedures described in *Sections B.2* and *B.4*, in this chapter.

B.6.b. Heart Attacks, Natural Causes, Drug Overdoses. Deaths that occur in the workplace and allegedly are due to heart attacks, other natural causes or possible drug overdoses will be assigned for investigation as soon as the Compliance Supervisor considers it necessary, given the facts obtained. The investigation must determine whether additional factors such as electrical shock, falling objects, hazardous atmospheres, poison, a victim's location prior to death, victim's activities prior to death, etc. contributed to the death.

If an inspection is assigned, a death certificate or autopsy report must be obtained to confirm the death was attributed to natural causes or a drug overdose. If the death was due to one of these causes and was not work-related, the fatality investigation may be concluded provided that the search for contributing factors has been performed. However, hazards discovered during the investigation must still be cited.

B.7. Rescue Operations.

DOSH has no authority to direct rescue operations; it is the responsibility of the employer and/or other public agencies. DOSH does have the authority to monitor and inspect the working conditions of covered employees engaged in rescue operations to make certain that all necessary procedures are being taken to protect the lives of the rescuers. Employers must be encouraged to use the personnel and facilities of local fire and police departments for their specialized knowledge and training in rescue operations.

B.7.a. Application of Standards. If rescue work is performed by an employer, WISHA standards are applicable. The employer is required to take steps that are necessary to eliminate, if at all possible, or to minimize recognized hazards likely to cause death or serious physical harm, considering the urgency in a particular rescue operation.

NOTE: For additional guidance on employer obligations during rescue activities, see *WRD 1.45, Voluntary Rescue Activities by Employees*.

B.7.b. Emergency Situations. Emergencies created by fatalities or catastrophes generally necessitate immediate rescue work, firefighting, etc., and any loss of time may increase injuries and/or fatalities. When nonstandard equipment (e.g., tractors or bulldozers without rollover protection) is available for use in an emergency situation, and if its use does not present a serious hazard with a high probability for injury, DOSH will permit its use without citing the employer, rather than cause a delay waiting for equipment which meets WISHA standards. The use of this equipment by private employers must be limited to the actual emergency situation of fighting fire, rescue work, etc. Use in cleanup or reconstruction work warrants the issuance of citations when appropriate.

B.8. Public Information Policy.

The DOSH public information policy regarding response to fatalities and catastrophes is to explain State presence to the news media. It is not to provide a continuing flow of facts, nor to issue periodic updates on the progress of the investigation.

B.8.a. Regional Compliance Manager. The Regional Compliance Manager will normally handle responses to media inquiries in coordination with L&I's Public Affairs Office. Where particularly sensitive investigations are involved, or where difficult information requests are received, the Regional Compliance Manager must contact DOSH Compliance Operations and the Public Affairs Office for advice and guidance. DOSH Compliance Operations may request the help of an L&I information officer and when appropriate, that individual may go to the scene to assist in handling inquiries. The investigation is not to be delayed, however, to await the arrival of an L&I information officer.

B.8.b. L&I Information Officer. The principal role of an L&I information officer at the scene or by telephone is to brief reporters that DOSH has responded and is investigating, and to educate them on the role of DOSH. If a rescue operation is required, the information officer will relay the message that DOSH supports and assists in rescue operations whenever possible, but leaves such operations to the experts.

B.8.c. Releasable Information. If a CSHO is faced with media at an investigation, he or she should immediately refer the reporter to L&I's Public Affairs Office. CSHOs should also contact the Public Affairs Office to alert them that the media was referred to them, and to give the following information:

- CSHO's name, cell phone or pager number.
- Situation – complaint, fatality, catastrophe, etc.
- Employer's name.
- The reporter's name and media outlet.

B.8.d. The Public Affairs Office will confirm to the media that DOSH is investigating, but details about the accident will have to be provided by another entity, such as the coroner's office or fire department. Information such as the identity of the victims will not be provided by L&I).

- The only information CSHOs may provide the media is:
  - Confirmation that DOSH is conducting an investigation
  - An explanation of DOSH's role in workplace safety and health.
  - If necessary, a generic explanation of a DOSH investigation.
- CSHOs should always refer the reporter to the Public Affairs Office during the initial contact because the Public Affairs Office will track the investigation and provide the media with the final report.

C. TEMPORARY WORKER HOUSING INSPECTIONS

C.1. General.

C.1.a. Authority. *Chapters 43.70 RCW, 49.17 RCW and 70.114A RCW* provide authority by way of interagency agreement (memorandum of understanding, or MOU) between the Department of Health (DOH) and the Department of Labor and Industries (L&I) to adopt joint rules for the licensing, operation and inspection of agricultural temporary worker housing (TWH), and the enforcement of those rules. There is no transfer or sub-delegation of DOSH authority or responsibility to DOH from L&I.

The MOU is intended to ensure consistent and coordinated policies, procedures and actions, effective use of resources, minimize duplication of state services, and to ensure that agricultural employers provide safe and healthful places to work and reside for their employees and the employees' families. *The MOU is located on the DOSH Intranet.*

C.1.b. Agricultural Temporary Worker Housing (Definition). For purposes of this chapter, the following definition applies:

Temporary worker housing **or** *housing* **or** *TWH* means a place, area, or piece of land where sleeping places or housing sites are provided by an agricultural employer for his or her agricultural employees or by another person, including a TWH operator, who is providing the accommodations for temporary, seasonal occupancy.

C.1.c. Standards. *WAC 296-307-161, Temporary Worker Housing, and WAC 296-307-163, Cherry Harvest Camps,* apply to the following:

- Bedding
- Beds
- Building requirements & maintenance
- Cooking & food handling facilities
- Cots
- Disease prevention & control
- Electricity & lighting
- First aid & safety

- Hand washing & bathing facilities
- Insect & rodent control
- Laundry facilities
- Personal storage
- Refuse disposal
- Sewage disposal facilities
- Shelter
- Site
- Toilet facilities
- Water supply

NOTE: See *DOSH Directive 33.72* for sheepherder housing inspections guidelines.

C.2. Agricultural TWH Inspection Procedures.

C.2.a. Types of Inspections. Agricultural TWH inspections may include fatality, catastrophe, accident, complaint, referral, follow-up, or programmed inspections. Inspections will be scheduled in accordance with the priorities for efficient use of resources in as outlined in *Chapter 1, Section C.2., Inspection Priorities*, in this manual.

C.2.b. Liaison with Other Agencies. Staff who are involved in the inspection of agricultural TWH are responsible for coordinating with staff of DOH. Every effort must be made to avoid duplication of effort, and to share relevant information as outlined in the Memorandum of Understanding.

C.2.c. Referrals and Complaints. Regions must maintain records on housing inspection referrals and complaints that they receive. Inspections and investigations conducted in response to complaints and referrals must be conducted in accordance with *Chapter 2, Complaints and Referrals*, in this manual. Regions must forward all inspection records related to housing inspections and complaints to DOSH Quality Assurance. If the region maintains a phone log, it must be retained for a period consistent with the records retention policy. DOH referrals must be acted on as promptly as possible, resources permitting. All referrals to L&I will go to the Compliance Supervisor.

C.2.d. Worker Occupied Housing. Generally, inspections will be conducted during a reasonable time of day when agricultural TWH facilities are occupied. Inspections must be scheduled as soon as feasible after workers occupy housing so that when possible, hazards may be corrected early in the work season. Pre-occupancy inspections are normally only conducted to accommodate scheduling difficulties, provided that at the time of the inspection, it is reasonably predictable that workers will imminently occupy the facilities.

(1) Non-English Speaking Employees. Since employees may not speak English or may only speak English as a second language, every effort must be made before the inspection begins to assign a dual language CSHO or to find a person to translate conversations with employees.

(2) Minimize Disruptions. CSHOs must conduct inspections in a manner that minimizes disruptions to the personal lives of those living in the housing facilities. If an occupant of a dwelling unit refuses entry for inspection purposes, CSHOs must not insist on entry and must continue the inspection unless, in the judgment of the CSHO, the lack of access to the dwelling unit involved would substantially reduce the effectiveness of the inspection. In that case, the procedures for refusal of entry must be followed. See the requirements in *Chapter 3, Section A.6., Refusal to Permit Inspections,* in this manual. Refusal of entry procedures also apply in cases where employers refuse entry to the housing facility and/or to the entire farm.

(3) Encourage Correction of Hazards. During inspections, CSHOs must encourage employers to correct hazards as quickly as possible. Particular attention must be paid to identifying instances of failure to correct and violations repeated from season to season. These violations must be cited in accordance with normal procedures.

C.2.e. Primary Concern. In conducting an agricultural TWH inspection, CSHOs must be primarily concerned with those facilities or conditions that most directly relate to employee safety and health. All agricultural TWH inspections must address at least the following:

(1) Site. The location of the site in relation to swamps, pools, sinkholes and other surfaces where water may collect and remain for extended periods. The site must be in a clean and sanitary condition; i.e., free from rubbish, debris, waste paper, garbage, and other refuse.

(2) Shelter. Whether the shelter provides protection against the elements and whether the rooms are used for combined purposes of sleeping, cooking and eating. For rooms used for sleeping purposes, determine the number of occupants and size of the rooms. Determine for all rooms whether there is proper ventilation and screening.

(3) Water Supply. Whether the water supply has been approved by the appropriate local health authority; determine the location of hydrants.

(4) Toilet Facilities. The type, number, location and sanitary conditions of toilet facilities.

(5) Laundry, Hand-washing and Bathing Facilities. The number, locations and conditions of these facilities.

(6) First Aid Facilities. First aid facilities must be readily available.

C.2.f. Dimensions. The relevant dimensions and ratios specified in *WAC 296-307-161, Temporary Worker Housing,* and *WAC 296-307-163, Cherry Harvest Camps,* are mandatory; however, it is inappropriate to cite minor variations from specific dimensions and ratios when a violation does not have an immediate or direct effect on safety and health. In those cases in which the standard itself does not make reference to specific dimensions or ratios but instead uses adequacy as the test for the cited conditions and facilities, the Compliance Supervisor must make a determination as to whether a violation exists on a case-by-case basis considering all relevant factors.

C.3. Documentation for TWH Inspections.

The following facts must be carefully documented:

C.3.a. Dwelling Age. The age of dwelling unit, including additions. For recently built housing, date construction started.

C.3.b. Units and Occupants. The number of dwelling units and number of occupants in each unit.

C.3.c. Site Elements. The approximate size of area in which the housing is located and the distance between dwelling units and water supply, toilets, livestock and service building.

C.3.d. Employer Identity. Usually the grower rather than the crew leader will be the employer of temporary agricultural workers. In many situations both may be the employer for DOSH citation purposes, but citations are normally issued to the grower since that employer is best positioned to correct any DOSH violations. The identity of the employer, nevertheless, is often a complex matter involving numerous criteria, the most important of which is who determines the manner in which workers are to perform their tasks. Other criteria are who pays their wages, who employees consider to be their employer, who has the power to hire and fire, and who establishes wage rates.

C.3.e. Housing Related to Employment. The housing provided or made available by the employer must be related to the employment of the worker. Housing must be treated as employment-related if:

(1) Employers require employees to live in the housing, or

(2) Isolated location or the lack of economically comparable alternative housing makes it a practical necessity to do so, **and/or,**

(3) The housing is provided or made available as a benefit to the employer. Applicable temporary worker housing standards must be enforced if any of the following factors in any given case indicate that operation of the camp is directly related to the employment of its occupants:

(a) Cost of the housing to the employee – is it provided free or at a low rent?

(b) Ownership or control of the housing – is the housing owned or controlled or provided by the employer?

(c) Distance to the worksite from the camp, distance to the worksite from other non-camp residences – is alternative housing accessible (distance, travel, cost, etc.) to the worksite?

(d) The camp's benefit to the employer – does the employer make the camp available in order to ensure that his business is provided with an adequate supply of labor?

(e) Relationship of the camp occupants to the employer – are those living in the camp required to work for the employer upon demand?

D. FOLLOW-UP AND MONITORING INSPECTIONS

D.1. Purpose of Follow-up & Monitoring Inspections.

The primary purpose of a follow-up inspection is to determine whether previously cited violations have been corrected. Monitoring inspections are conducted to ensure that hazards are being corrected and employees are being 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.

D.2. When to Conduct Follow-up or Monitoring Inspections.

Cases involving the following situations are examples of prime candidates for follow-up or monitoring inspections:

- Willful, repeated or serious violations with a gravity of 4, 6 or 9.
- Quantity of serious violations cited.
- Failure to abate previous violations.
- Citations were issued for imminent danger situations.
- Check on status of immediate restraint order or red tag
- Employer exhibits poor attitude or disregard for workplace safety during initial inspection.
- Employer did not return Employer Certification of Abatement
- Fatality and Hospitalizations

D.3. Failure to Abate (FTA).

D.3.a. When a Failure to Abate Exists.

(1) An employer has not corrected a violation that has been cited, or for which a corrective notice has been issued, and there is a final abatement order, and the abatement date has passed.

(2) The employer has not corrected a violation that is covered under a settlement agreement according to the date specified in the agreement.

(3) The employer has not complied with interim measures involved in a long-term abatement plan within the time specified.

NOTE: When there are documented extenuating circumstances, and the employer has exhibited good faith, a late application for extension of abatement date may be considered in accordance with *Chapter 8, Section C.1.b.,* in this manual.

D.3.b. Issuing an FTA Citation. If the cited items have not been abated, a Notification of Failure to Abate Alleged Violation will normally be issued. However, a CSHO must not use a violation under appeal at the time of the subsequent inspection's opening conference as the basis for either an FTA or a repeated violation. This remains true even if the previous citation becomes a final order before the subsequent citation is actually issued. If a subsequent inspection indicates the condition has still not been abated, the Compliance Supervisor should consult DOSH Compliance Operations for further guidance.

D.3.c. Violation Recurs After Abatement. If it is determined that the originally cited violation was abated but then recurred, a citation for a repeated violation may be appropriate. See *Chapter 5, Section C.6.h.* in this manual for more information on repeated versus failure to abate.

D.4. Follow-up & Monitoring Reports.

D.4.a. Documentation of Abatement Observed During Follow-up. CSHOs may use a copy of the previous citation, Corrective Notice of Redetermination (CNR), extension of abatement authorization form, or a copy of the Employer Certification of Abatement form to document abatement observed during a follow-up inspection. CSHOs must write "corrected," "complied," or "C" on the form and sign it, with a brief explanation of the correction for those items found to be abated. This supporting information may also be included in the narrative or in video/audio documentation, provided that basic paper documentation as described above is also provided.

D.4.b. Non-Abatement. In the event that any item has not been abated, complete documentation must be included on the citation.

APPENDIX 4A
ACCIDENT NARRATIVE FORMAT

A detailed narrative is required for each fatality, catastrophe, or other accident investigation. The required narrative must be prepared as follows

Synopsis: Describe the event so the reader is able to obtain the essential facts with a minimum of effort and time. The five W's (who, what, when, where, why) must be included.

Issues: Describe any issues (political, high probability of media interest, or otherwise) applicable to this inspection.

Facts: Briefly describe, in chronological order, the relevant facts, including weather conditions, physical evidence, property damage, etc.

Causes/Probable Causes: Summarize the causes and contributing factors. Include any systematic factors identified by the investigation.

Employer History: Briefly describe the firm. Include type of operation, length of time in business, and file history for the previous three years (i.e., number of inspections, number of alleged violations, and the employer's willingness (or lack of) to make necessary corrections).

Employee History: Include any relevant information such as job duty, length of employment, training, previous work experience, past illnesses, age, etc.

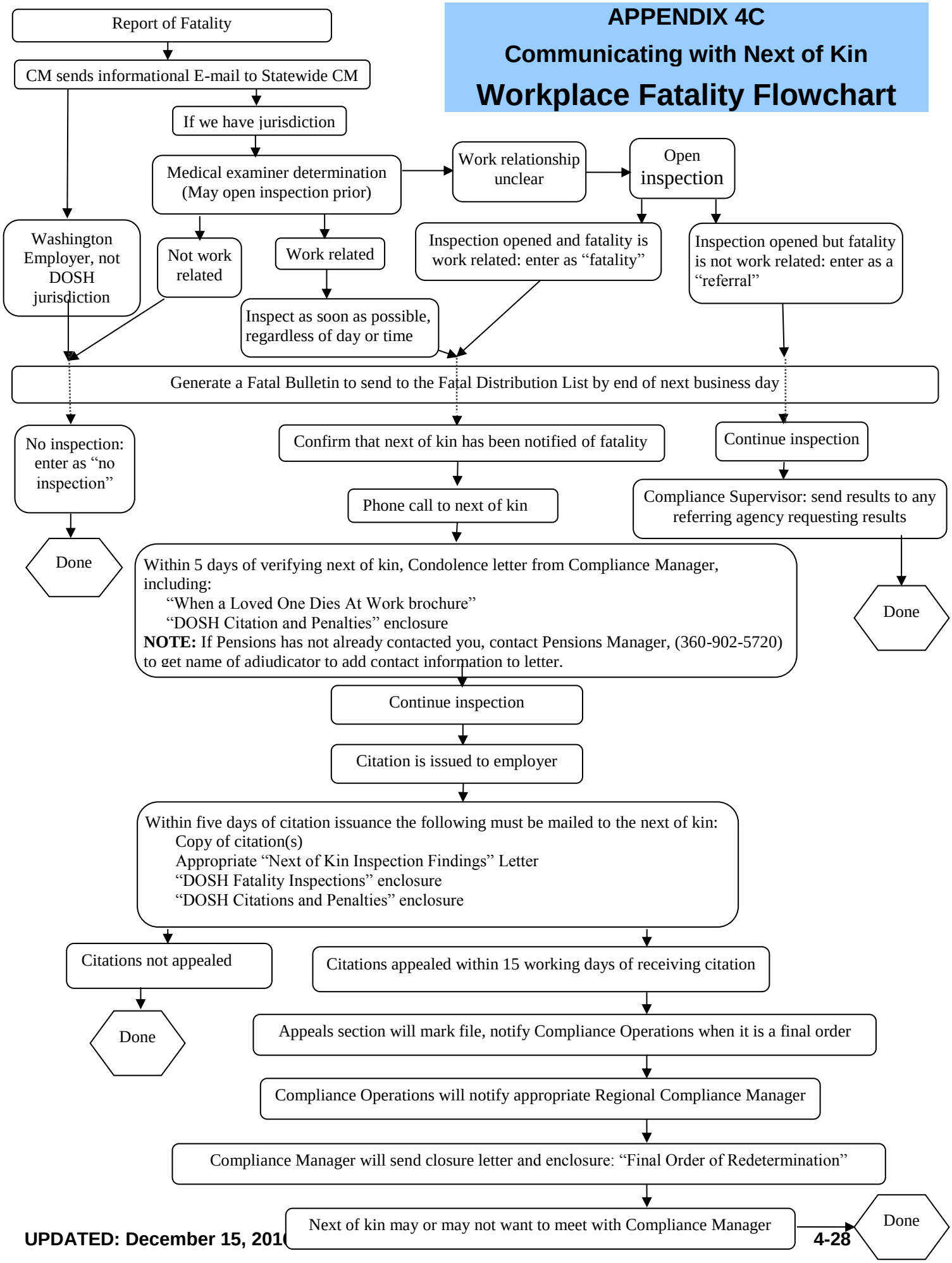
Recommendations: This separate document, a copy of which must be transmitted to DOSH Compliance Operations, reflects any training, equipment needs, standard changes, or other needs identified as a result of the investigation.

When the accident narrative has been completed, the CSHO and Compliance Supervisor must sign and date the narrative, which then becomes a part of the case file. **The narrative must be placed in an envelope and marked "CONFIDENTIAL."** (See *RCW 49.17.260, Statistics—Investigations—Reports*)

APPENDIX 4B
DOSH's BASIC FATALITY INSPECTION COMMUNICATION PROCESS

PHASE	STAGES	ACTIONS
Initial Communication	After accident and within 5 workdays of opening conference	Phone Call to Next of Kin
		Regional Compliance Manager Condolence Letter
Follow-Up Communications	Throughout inspection	Periodic exchange of information with Next of Kin
Post-Inspection Communications		Communicate inspection findings with Next of Kin
	No Proposed Citations	Inspection Findings & Next of Kin Closure Letter – No Proposed Citations
	Confirmation of receipt of citations	Inspection Findings Letter – Proposed Citations
Final Order Contact	Case becomes final order	Next of Kin Closure Letter – Proposed Citations

APPENDIX 4C
Communicating with Next of Kin
Workplace Fatality Flowchart



APPENDIX 4-D

Hospitalization Injuries - Guidelines for When We Should Inspect

Unless extenuating circumstances exist, don't investigate the following:

- Motor Vehicle Accidents investigated by Washington State Patrol or other regulatory enforcement authorities, unless worker protection issues are identified.
- Natural Causes—heart attack or stroke with no direct tie to job duties.
- Secondary infections resulting from a minor injury (cut finger gets infected).
- Events unlikely to reoccur such as infections of previous minor injuries.
- Isolated events such as slipping on ice.

Factors to consider when deciding to investigate:

- Could the hazard still exist and impact other workers?
- Could the hazardous situation reoccur?
- Did the hospitalization occur because of a violation of our rules?
- Was this a catastrophic event that resulted in a traumatic injury?
- For a construction or logging related injury after site activities have ended, visit the home office to review written policies and procedures.

General information:

These investigations are considered referral inspections and are not classified as accident investigations. You must evaluate all Safety and Health policies and procedures that may have contributed to the injury.

If the employer is currently on a scheduled inspection list, and there has not been a visit from DOSH within the past year, then you should conduct a comprehensive inspection. If DOSH has visited within the past year, then a partial investigation can be conducted and expanded per the Compliance Manual direction.

These investigations will be classified in the LINIIS system as referrals and flagged in the WIN system as “hospitalization” inspections.

CHAPTER 5
VIOLATIONS

A. STANDARDS AND REGULATIONS

RCW 49.17.060 states that each employer has a responsibility to comply with the industrial safety and health standards promulgated under WISHA. WISHA standards and regulations are found in Title 296 of the Washington Administrative Code (WAC). The standards are subdivided as shown in the following examples. The most specific portion of the standard is used for citing violations.

Section	296-24-**330**	296-24-**33002**
Sub-section	296-24-330**(1)**	296-24-33002**(2)**
Sub-division	296-24-330(1)**(a)**	296-24-33002(2)**(b)**
Item	296-24-330(1)(a)**(i)**	296-24-33002(2)(b)**(ii)**
Sub-item	296-24-330(1)(a)(i)**(A)**	296-24-33002(2)(b)(ii)**(B)**
Segment	296-24-330(1)(a)(i)(A)**(I)**	296-24-330(1)(a)(i)(A)**(II)**

A.1. Definitions of Horizontal/Vertical Standards & General/Specific Standards.

A.1.a. Horizontal Standards: Apply to all employers covered by WISHA standards unless exempted by a vertical standard or *Chapter 49.17 RCW*. Horizontal standards include**:**

- Chapter 296-24 WAC, General Safety and Health Standards,
- Chapter 296-62 WAC, General Occupational Health Standards, and
- Chapter 296-800 WAC, Safety and Health Core Rules.

All other standards chapters administered by L&I are vertical or administrative standards.

A.1.b. Vertical Standards: Apply to a particular industry or to particular operations, practices, conditions, processes, means, methods, equipment or installations.

Within both *horizontal* and *vertical* standards there are **general** standards and s**pecific** standards.

(1) **General standards** are those which address a category of hazards and whose coverage is not limited to a special set of circumstances; e.g., WAC 296-806-20028, general requirements for point of operation and *WAC 296-62-11019(3), General Spray Booth Construction*.

(2) **Specific standards** are those which are designed to regulate a specific hazard and which set forth the measures that the employer must take to protect employees from that particular hazard; e.g., WAC 296-806-48030, requirements for radial saws, and *WAC 296-62-11019(6), Specific Velocity and Air Flow Requirements*.

A.1.b. Vertical standards: (Continued)

(3) **Administrative standards** found in Chapter 296-900 WAC apply to the following requirements and information regarding administration of the Washington Industrial Safety and Health Act (WISHA), Chapter 49.17 RCW:

- Employer requests for using an alternative to WISHA requirements.
- Workplace inspections conducted by DOSH.
- Citations and penalties for violations of WISHA safety and health requirements.
- How to respond to actions that DOSH may take when requirements have been violated.
- Employer correction of cited violations, and notification to DOSH when the corrections are made.
- Employer obligations to inform employees.
- Reporting alleged safety and health hazards.
- Appeal, stay of abatement date requests, and hearing processes for employers and employees.
- Safety and health investment projects (SHIP).

A.1.c. Deciding Which Standard to Cite. When CSHOs are uncertain whether to cite under a horizontal or a vertical standard when both apply, they should consult with the Compliance Supervisor, Compliance Operations or DOSH Technical Services. The following general guidelines apply:

(1) Vertical Takes Precedence. When a hazard in a particular industry is covered by both a vertical standard and a horizontal standard, the vertical standard will take precedence *unless specific code provisions dictate otherwise*. This is true even if the horizontal standard is more stringent.

NOTE: When the language in a vertical standard **specifically refers to** a horizontal standard (i.e. "in accordance with Chapter 24" or "general safety and health standards to prevail where applicable"), the horizontal standard will be cited, with a reference in the work notes to the vertical standard.

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(2) When Horizontal Standard is More Specific Than Vertical. In situations covered by both a horizontal and a vertical standard where the horizontal standard appears to offer greater protection, the horizontal standard may be cited only if the requirements of the vertical standard *do not address the precise hazard involved*, even though it may address related or similar hazards.

(3) Specific Horizontal Takes Precedence over General Horizontal. When a hazard covered by horizontal standards is covered by both a more general horizontal standard and a more specific horizontal standard, the more specific standard takes precedence. For example, in WAC 296-806-48038 the requirement for point of operation guarding for swing cutoff saws is more specific than and takes precedence over the general machine guarding requirements contained in *WAC 296-806-200* of the Machine Safety rule.

(4) Nature of Activity vs. Nature of General Business. When determining whether a horizontal or a vertical standard is applicable to a work situation, CSHOs must focus attention on the activity in which the employer is engaged at the establishment being inspected rather than the nature of the employer's general business.

A.1.d. Variance from Standard. The employer's requirement to comply with a standard may be modified through granting a variance, as outlined in *RCW 49.17.080. See WAC 296-900-110, Administrative Rules,* and Chapter 6 of the DOSH Administrative Manual, for variance application procedures.

(1) Compliance with Granted Variance or Controlling Standard. An employer will not be subject to citation if the observed condition is in compliance with either a granted variance or the controlling standard. If an employer is not in compliance with the requirements of a variance, a violation of the standard must be cited with a reference in the citation to the variance provision that has not been met.

(2) Variance Application in Process During Apparent Violation. If, during the course of a compliance inspection, a CSHO discovers that an employer has filed an application for a variance regarding a condition which is determined to be an apparent violation of the standard, this must be reported to the Compliance Supervisor who will obtain information concerning the status of the variance request.

A.2. Citing and Referencing the 800-Series Rules.

A.2.a. Citing Bullets. Bullets are found in several existing WISHA standards (the Agriculture Standard and the Respiratory Protection Standard, among others). When referencing bullets (in correspondence, etc.), it may be useful to identify the bullet if there are a number of them (for example, "the third bullet under WAC 296-800-12005 requires….").

To cite a violation from the Core Rules, DOSH staff must record the complete code number. The bullet does not need to be specifically identified – however, when quoting the standard in relation to the described violation, only those portions relevant to the actual circumstances should be quoted.

Separate **bullets** under a section or subsection can be cited separately.

Separately **numbered subsections** are to be treated as separate violations, and normally cited separately, unless they can appropriately be grouped under the existing grouping policy.

A.2.b. Separate Bullets as Single Instances. If a single act by the employer failed to comply with two separate bullets, it is still a single instance (for example, if an employer's on-the-job orientation failed to address two of the required elements, that would be a single instance of insufficient orientation).

A.2.c. Identifying Repeat Violations (previously cited). Repeat violations exist whenever the previous violation under consideration involves a "substantially similar hazard," regardless of the particular code cited. For this reason, violations of the related "parts" in Chapters 296-24 WAC and 296-62 WAC can be the basis for repeat violations cited under Chapter 296-800 WAC. The inspector must determine whether the violation in question represents a "substantially similar hazard" and cite any repeats accordingly.

A.2.d. Identifying Failure-to-Abate Violations. Failure-to-abate violations are appropriate whenever the previous violation has not been corrected as required, regardless of whether the same code was cited in the previous instance. For this reason, the employer's failure to abate violations of the related "parts" in Chapters 296-24 WAC and 296-62 WAC can be cited using the appropriate code in Chapter 296-800 WAC.

B. BASIS OF VIOLATIONS

When a violation is discovered during an inspection, CSHOs must document the violation in accordance with the specific guidance contained within this manual and any other relevant DOSH policies. **This section provides a brief overview of the elements that must be met** and documented in the case file in order to establish the legal basis for the violation. The remainder of the chapter focuses on specific elements that must be considered for different types of violations.

B.1. Overview of Violation Elements.

B.1.a. Hazard. Describe the hazard to which employees are exposed and describe the most serious injury, illness or disease which could reasonably be expected to result from the hazard. If a citation involves a serious violation, staff must also prove that there is a substantial probability that death or serious physical harm could result from the violative condition.

B.1.b. Exposure. Describe how employees were exposed to, or had access to, the violative condition and all facts relied upon to reach the conclusion. The facts relied upon typically involve documentation of the CSHO observations, statements by the exposed employee(s), statements by employee and employer representatives, written statements from other individuals, photographs, written programs and business records, time cards, etc.

B.1.c. Code. State the safety and health rule that applies to the hazard and what elements of the rule requirements were not met. *Section A.1.* in this chapter provides further guidance on determining which standard applies to the hazard.

B.1.d. Knowledge. Describe the facts relied upon to establish that the employer knew or with the exercise of reasonable diligence, could have known of the presence of the hazardous condition.

B.2. Employee Exposure.
An employer in apparent violation of a WISHA standard or safe place provision will be cited only when employee exposure can be established, documented and substantiated.

EXCEPTION: Employee exposure is not required for violations of WACs established under the explosives act *(Chapter 70.74 RCW)* or the asbestos act (*Chapter 49.26 RCW*).

NOTE: *RCW 49.17.020(3) and (4)* define an "employee" and "employer" for purposes of WISHA. Determining who the exposed employees are and who the responsible employer is may be very complex. CSHOs must seek the advice of the Compliance Supervisor, Regional Compliance Manager, or Compliance Operations Manager, when necessary.

B.2.a. Proximity to the Hazard. CSHOs must document the proximity of the workers to the point of danger of the operation or hazard.

B.2.b. Observed Exposure. Employee exposure is established if a CSHO witnesses, observes, or monitors exposure of an employee to a hazardous or suspected hazardous condition during work or work-related activities. Where a standard requires engineering or administrative controls (including work practice controls), employee exposure must be cited regardless of the use of personal protective equipment.

B.2.c. Unobserved Exposure. Where employee exposure is not observed, witnessed, or monitored by a CSHO, employee exposure is established if it is determined through witness statements or other evidence that exposure to a hazardous condition has occurred, continues to occur, or could recur.

(1) In fatality/catastrophe or other "accident investigations, employee exposure is established if a CSHO determines through written statements or other evidence that exposure to a hazardous condition occurred at the time of the accident.

(2) In other circumstances, based on a CSHO's professional judgment and determination, if exposure to hazardous conditions has occurred in the past, such exposure may serve as the basis for a violation when employee exposure has occurred in the previous six months.

B.2.d. Potential Exposure. A citation may be issued when an employee could be exposed to a hazardous condition because of work patterns, past circumstances, or anticipated work requirements, and it is reasonably predictable that employee exposure could occur, such as:

(1) The hazardous condition is an integral part of an employer's recurring operations, and the employer has not established a policy or program to ensure that exposure to the hazardous condition will not recur.

(2) The employer has not taken steps to prevent access to unsafe machinery or equipment which employees may have reason to use.

(3) A safety or health hazard poses a danger to employees simply by employee presence in the area and it is reasonably predictable that an employee could come into the area during the course of work to rest eat, or to enter or exit the premises.

B.2.e. Documenting Employee Exposure.

CSHOs must fully document exposure for every apparent violation. This includes items such as:

- Comments by exposed employees, the employer (particularly the immediate supervisor of exposed employees), other witnesses (especially other employees or members of exposed employees' families).
- Signed statements.
- Photographs and/or video tapes.
- Documents (e.g., autopsy reports, police reports, job specifications, etc.).
- Diagrams and graphic representations.
- Frequency – how long and how often the employees are exposed.

C. TYPES OF VIOLATIONS

C.1. General Violations.

In situations where the most serious injury, illness or disease that would be likely to result from a hazardous condition cannot reasonably be predicted to cause death or serious physical harm to exposed employees, but does have a direct and immediate relationship to their safety and health, any violation(s) cited will be classified as general.

C.2. Serious Violations.

C.2.a. Statutory Provision. *RCW 49.17.180(6)* provides "…a serious violation shall be deemed to exist in a workplace if there is a substantial probability that death or serious physical harm could result from a condition which exists, or from one or more practices, means, methods, operations, or processes which have been adopted or are in use, in such workplace, unless the employer did not, and could not with the exercise of reasonable diligence, know of the presence of the violation."

C.2.b. Four Elements of a Serious Violation. CSHOs must consider the following four elements to determine whether a violation will be classified as serious:

Step 1: Type of Hazardous Exposure(s)
• CSHOs must consider the types of accident or health hazard exposure which the violated standard or the safe place provision is designed to prevent. • CSHOs need not establish the exact way in which an accident would occur. The exposure or potential exposure of an employee is sufficient to establish that an accident or health hazard exposure could occur. • CSHOs must document the manner in which employee are exposed, or potentially exposed to the hazard, and note the facts which could affect the severity of an injury or illness resulting from an accident or health hazard exposure.
Step 2: Most Serious Injury, Illness or Disease Likely to Result
• CSHOs must determine the most serious injury, illness or disease which could reasonably be expected to result from the type of accident or health hazard exposure identified in Step 1. **At this point CSHOs must not consider factors which relate to the probability that an injury or illness will occur.** • For conditions involving exposure to air contaminants or harmful physical agents, CSHOs must consider the concentration levels of a contaminant or physical agent in determining the types of illness or disease which could reasonably result from the condition. A preliminary violation classification must be assigned using the hygiene violation instructions in *Section D* of this chapter.

C.2.b. Four Elements of a Serious Violation. (Continued)

Step 3: Death or Serious Physical Harm
• CSHOs must determine whether the results of an injury, illness or disease identified in Step 2 could include death or serious physical harm. Examples of serious physical harm include but are not limited to: – Impairment of the body where part of the body is made functionally useless or is substantially reduced in efficiency on or off the job. The impairment may be permanent or temporary, chronic or acute. Injuries requiring treatment by a medical doctor would usually be considered serious physical harm – An illness or disease that could shorten life or significantly reduce physical or mental efficiency by inhibiting the normal function of a part of the body.
Step 4: Employer Knowledge
• CSHOs must determine whether the employer knew or with the exercise of reasonable diligence, could have known of the presence of the hazardous condition. • If employer or employee representatives make statements or provide other evidence that demonstrate the employer knew about the presence of hazardous conditions/practices, CSHOs must document the evidence in the case file. • In this regard, a supervisor represents the employer. A supervisor's knowledge of the hazardous condition amounts to employer knowledge. • In cases where an employer may contend that a supervisor's own conduct constitutes an isolated event of employee misconduct which led to willful disregard, CSHOs must attempt to determine the extent to which a supervisor was trained and supervised so as to prevent such conduct, and how the employer enforces the rule. • If, after reasonable attempts to do so, it cannot be determined that an employer has actual knowledge of a hazardous condition, the knowledge requirement is met if a CSHO is satisfied that the employer could have known through the exercise of reasonable diligence. As a general rule, if a CSHO was able to discover a hazardous condition that was not transitory in nature, it can be presumed that the employer could have discovered the same condition through the exercise of reasonable diligence.

C.3. Safe Place Standard Provisions.

RCW 49.17.060(1) requires that each employer "shall furnish to each of his or her employees a place of employment free from recognized hazards that are causing or likely to cause serious injury or death to his or her employees." The safe place provision may be used only when there is no WISHA standard that applies to the particular hazard involved and employees are exposed to a serious hazard.

The evidence necessary to establish each element of a safe place violation must be documented in the inspection case file.

NOTE: WISHA horizontal and vertical standards usually include safe place standard requirements on which to base the violation, for example, WAC 296-800-11005 or WAC 296-78-560. When a citation will be issued based on the safe place provision, and the industry vertical standard does not specifically include a safe place requirement, the hazard will be cited based on the horizontal safe place standard (*WAC 296-800-11005*).

C.3.a. Safe Place Pre-Citation Review. All proposed safe place violations are subject to a pre-citation and in some cases, pre-closing conference review. Compliance Supervisors must ensure that safe place citations are issued only in appropriate circumstances which may require consultation with the Regional Compliance Manager and DOSH Compliance Operations. In all cases where a proposed safe place citation involves a willful violation or a novel or complex use of the standard, a review by the Attorney General's Office **is required** prior to the closing conference. DOSH Compliance Operations will initiate and coordinate AGO review.

C.3.b. Criteria Required to Prove a Safe Place Standard Violation. In general, the Board of Industrial Insurance Appeals and court precedent has established that the following four elements are all necessary to prove a violation of WISHA safe place standards:

(1) The employer failed to keep the workplace free of a hazard to which employees of that employer were exposed, except as explained in section C.3.c.(2) below.

(2) The hazard was recognized.

(3) The hazard was causing or was likely to cause death or serious physical harm.

(4) There was a feasible and effective method to correct the hazard.

C.3.c. Discussion of Safe Place Elements. The four necessary elements of a safe place standard violation are discussed here in greater detail.

(1) A Serious Hazard to Which Employees Were Exposed. A safe place violation must involve both a serious hazard and exposure of employees.

(a) Hazard. A hazard is a danger which threatens physical harm to employees.

- **Not the Lack of a Particular Abatement Method.** In the past some safe place citations have incorrectly alleged that the violation is the failure to implement certain precautions, corrective measures or other abatement steps rather than the failure to prevent or remove the hazard. It must be emphasized that safe place standards do not mandate a particular abatement measure but only require an employer to render the work place free of certain hazards by any feasible and effective means which the employer wishes to utilize.

(1)(a) Hazard (Continued)

In situations where it is difficult to distinguish between a dangerous condition and the lack of an abatement method, CSHOs must consult with the Compliance Supervisor for assistance in articulating the hazard properly. Compliance Supervisors must consult with DOSH Compliance Operations in complex and novel cases or as needed when questions remain.

- **The Hazard Is Not a Particular Accident.** The occurrence of an accident does not necessarily mean that the employer has violated a safe place standard although the accident may be evidence of a hazard. In some cases a safe place standard violation may be unrelated to the accident. Although accident facts may be relevant and must be gathered, the citation must address the hazard in the workplace, not the particular facts of the accident.
- **The Hazard Must Be Reasonably Foreseeable.** The hazard which is cited must be reasonably foreseeable.
  - All the factors which could cause a hazard need not be present in the same place at the same time in order to prove the foreseeable hazard; e.g., an explosion need not be imminent.
  - It is necessary to establish the reasonable foreseeable general workplace hazard, rather than the particular hazard which led to the accident.

(2) The Hazard Must Affect ~~Cited Employer's~~ Employees. The employees exposed to the hazard must either be employees of the cited employer, or under the control of the employer, and the employer must have created the hazard to which the non-employees are exposed. This would also apply to "dual" or "joint" employer relationships where there may be more than one "employer" for purposes of workplace safety and health.

(3) The Hazard Must Be Recognized. Recognition of a hazard can be established on the basis of industry recognition, employer recognition, or "common-sense" recognition. The use of common-sense as the basis for establishing recognition will be limited to special circumstances. Recognition of the hazard must be supported by satisfactory evidence and adequate documentation in the file as follows:

(a) Industry Recognition. A hazard is recognized if the employer's industry recognizes it. Recognition by an industry other than the industry to which the employer belongs is generally insufficient to prove this element of a safe place standard violation. Although evidence of recognition by the employer's specific branch within an industry is preferred, evidence that the employer's industry recognizes the hazard may be sufficient. CSHOs must consult with the Compliance Supervisor on this issue.

(3)(a) Industry Recognition (Continued)

Industry recognition can be established in several ways:

1. Statements by industry safety or health experts which are relevant to the hazard.
2. Evidence of implementation of abatement methods by other members of the industry to deal with the particular hazard.
3. Manufacturer's warnings on equipment which are relevant to the hazard.
4. Statistical or empirical studies conducted by the employer's industry which demonstrate awareness of the hazard. Evidence such as studies conducted by employee representatives, the union or other employees should also be considered if the employer or the industry has been made aware of them.
5. Government and insurance industry studies, if the employer or the employer's industry is familiar with the studies and recognizes their validity.
6. State and local laws or regulations which apply in the jurisdiction where the violation is alleged to have occurred and which currently are enforced against the industry in question. In such cases, however, corroborating evidence of recognition is recommended.
7. In cases where state and local government agencies have codes or regulations covering hazards not addressed by WISHA standards, CSHOs and Compliance Supervisors must determine whether the hazard should be cited under a safe place standard or referred to an appropriate local agency for enforcement.

EXAMPLE: *A safety hazard on a personnel elevator in a factory may be documented during an inspection. It is determined that the hazard is not clearly citable under a safe place standard but there is a local code which addresses this hazard and a local agency actively enforces the code. The situation normally will be referred to the local enforcement agency in lieu of citing a WISHA safe place standard.*

8. Standards issued by the American National Standards Institute (ANSI), the National Fire Protection Association (NFPA), and other private standard-setting organizations, if the relevant industry participated on the committee drafting the standards. Otherwise, private standards will normally be used only as corroborating evidence of recognition. Preambles to these standards which discuss the hazards involved may show hazard recognition as much as or more than the actual standards. It must be emphasized, however, that these private standards cannot be enforced like WISHA standards. They are simply evidence of industry recognition, seriousness of the hazard or feasibility of abatement methods.

(3)(a) Industry Recognition (Continued)

9. The following types of publications, if used only to supplement other evidence which more clearly establishes recognition. Such publications can be relied on only if it is established that they have been widely distributed in general, or in the relevant industry.

- NIOSH criteria documents
- Publications of EPA, the National Cancer Institute, and other agencies
- OSHA or DOSH hazard
- Articles in medical or scientific journals by persons other than those in the industry.

(3)(b) Employer Recognition. A recognized hazard can be established by evidence of actual employer knowledge. Evidence of such recognition may consist of written or oral statements made by the employer or other management or supervisory personnel during or before a DOSH inspection, or instances where employees have clearly called the hazard to the employer's attention.

1. Company memorandums, safety rules, operating manuals or operating procedures, and collective bargaining agreements may reveal the employer's awareness of the hazard. In addition, accident, injury and illness reports prepared for DOSH, Industrial Insurance, or other purposes may show this knowledge.

2. Employee complaints or grievances to supervisory personnel may establish recognition of the hazard, but the evidence should show that the complaints were not merely infrequent, off-hand comments.

3. The employer's own attempts at corrective action may serve as the basis for establishing employer recognition of the hazard if:

- The employer did not adequately continue or maintain the corrective action, or
- The corrective action did not afford any significant protection to the employees

(3)(c) Common-Sense Recognition. If industry or employer recognition of the hazard cannot be established using the criteria above, recognition can still be established if it is concluded that any reasonable person would have recognized the hazard. This theory of recognition will be used only in flagrant cases.

EXAMPLE: *In a general industry situation, a court has held that any reasonable person would recognize that it is hazardous to dump bricks from an unenclosed chute between buildings into an alleyway which is 26 feet below and in which unwarned employees work. (In construction, the safe place standard could not be cited in this situation because WAC 296-155-335 or WAC 296-155-785(1) applies.)*

C.3.c. Discussion of Safe Place Elements (Continued)

(4) The Hazard Was Causing or Was Likely to Cause Death or Serious Physical Harm. This element of a safe place standard violation is identical to the elements of a serious violation. Serious physical harm is defined in *Section C.2.b., Step 3*. This element can be established by showing that:

(a) An actual death or serious injury resulted from the recognized hazard, whether immediately prior to the inspection or at another time and place; or

(b) If an accident occurred, the likely result would be death or serious physical harm

EXAMPLE: *Employees operating the automotive hoist at a tire retailer were not operating the lift in accordance with the manufacturer-provided instructions. Automobiles were being worked on with the lifts not in the full up position. This practice did not allow the safety locks to engage and exposed the employees to death or serious injury.*

(c) In a health context, establishing serious physical harm at the cited levels may be particularly difficult if the illness or disease will require the passage of a substantial period of time to occur. Expert testimony is crucial to establish that serious physical harm will occur for such illnesses and diseases.

(d) It will generally be easier to establish this element for acute illnesses and diseases, since the immediacy of the effects will make the causal relationship clearer. In general, the following elements must be shown to establish that the hazard causes, or is likely to cause, death or serious physical harm when such illness, disease or death will occur only after the passage of a substantial period of time:

1. Regular and continuing employee workplace exposure to the toxic substance at the measured levels could reasonably occur;
   and
2. Illness or disease could reasonably result from regular and continuing employee exposure;
   and
3. If illness or disease does occur, its likely result is death or serious physical harm.

C.3.c. Discussion of Safe Place Elements (Continued)

(5) The Hazard Can Be Corrected by a Feasible and Effective Method.

(a) To establish a safe place standard violation, DOSH must identify a method which is feasible, available and likely to correct the hazard. The information must indicate that the recognized hazard, rather than a particular accident, is preventable.

(b) If the proposed abatement method would eliminate or significantly reduce the hazard beyond whatever measures the employer may be taking, a safe place citation may be issued. A citation may not be issued merely because DOSH knows of an abatement method different from that of the employer, if DOSH's method would not reduce the hazard significantly more than the employer's method. It must also be noted that in some cases only a series of abatement methods will alleviate a hazard. If so, all the abatement methods will be mentioned.

(c) Feasible and effective abatement methods can be established by reference to:

1. The employer's own abatement method which existed prior to the inspection but was not implemented.

2. The implementation of feasible abatement measures by the employer after the accident or inspection.

3. The implementation of abatement measures by other companies.

4. The recommendations by the manufacturer of the hazardous equipment used.

5. Suggested abatement methods contained in trade journals, private standards and individual employer standards. Private standards must not be relied on in a safe place citation as mandating specific abatement methods.

- For example, if an ANSI standard deals with the hazard of exposure to hydrogen sulfide gas and refers to various abatement methods such as the prevention of the buildup of materials which create the gas and the provision of ventilation, the ANSI standard may be used as evidence of the existence of feasible abatement measures.
- The citation for the example given must state that the recognized hazard of exposure to hydrogen sulfide gas was present in the workplace and that a feasible and effective abatement method existed; e.g., preventing the buildup of gas by providing an adequate ventilation system. It would not be correct to issue a citation alleging that the employer failed to prevent the buildup of materials which could create the gas and failed to provide a ventilation system since both of these are abatement methods, not hazards.

C.3.c. (5) The Hazard Can Be Corrected by a Feasible and Effective Method.

6. Evidence provided by expert witnesses which demonstrates the feasibility of the abatement methods. Although it is not necessary to establish that the industry recognizes a particular abatement method, this evidence will be used if available.

C.3.d. Limitations on Use of a Safe Place Standard Citation. Safe place standard citations are to be used only within the guidelines given in this chapter.

(1) Safe Place May Not Be Used When a Specific Standard Applies. Legal precedent establishes that safe place standards may not be used if a specific WISHA standard applies to the hazardous working condition.

(a) Review of Existing Standards. Prior to issuing a citation based on safe place requirements, WISHA standards must be reviewed carefully to determine whether a standard applies to the hazard. If a standard applies it must be cited rather than safe place. Prior to the issuance of a safe place citation, a notation must be made in the inspection case file to indicate that WISHA standards were reviewed and no other standard applies.

(b) Management Consultation. If a CSHO is unsure whether a standard applies, he or she must consult with the Compliance Supervisor. DOSH Compliance Operations will assist Compliance Supervisors in determining applicability of a standard.

(c) When to Cite Safe Place in the Alternative. Safe place may be cited in the alternative when a standard is also cited to cover a situation where there is doubt as to whether the standard applies to the hazard. If the issue of applicability of a specific standard, or the issue of preemption of a safe place violation by a more specific standard is raised, Compliance Supervisors must consult with DOSH Compliance Operations.

(2) Grouping. Safe place standard violations must *not* be grouped together, but *may* be grouped with a related violation of a specific standard.

(3) Strictness of a Standard. Safe place standards will not normally be used to impose a stricter requirement than that required by a standard. For example, if a standard provides for a permissible exposure limit (PEL) of 5 ppm, even if data establishes that a 3 ppm level is a recognized hazard, safe place may not be cited to require that the 3 ppm level be achieved unless the limits are based on different health effects. If a standard has only a time-weighted average (TWA) permissible exposure level (PEL) and the hazard involves exposure above a recognized ceiling level, CSHOs must consult with the Compliance Supervisor, who must discuss any proposed citation with DOSH Compliance Operations.

C.3.d. Limitations on Use of a Safe Place Standard Citation. (Continued)

NOTE: *An exception to this rule may apply if it can be documented that "an employer knows a particular safety or health standard is inadequate to protect his workers against the specific hazard it is intended to address." International Union, U.A.W. v. General Dynamics Land Systems Div., 815 F.2d 1570 (D.C. Cir. 1987). Such cases are subject to pre-citation review.*

(4) **Abatement Methods.** Safe place standards will not normally be used to require an abatement method not set forth in a specific standard. If a toxic substance standard covers engineering control requirements but not requirements for medical surveillance, safe place may not be cited to require medical surveillance.

(5) **"Should" Standards.** If a national consensus standard uses a non-mandatory word such as "should," a safe place violation may not be based *solely* on the national standard. A violation is appropriate if there is evidence other than the existence of the consensus standard that the hazard and the recommended method of abatement are recognized by the industry.

For example, evidence that other employers are complying with the non-mandatory national standard is sufficient to prove both that the hazard is "recognized," and that the method of abatement recommended in the national standard is "feasible." A "should" national standard may be part of the evidence relied upon, but it cannot be the *sole* basis of a safe place violation.

(6) **Hazards Exempted by a Standard.** Safe place standards will not normally be used to cover categories of hazards exempted by a standard. If, however, the exemption is in place because the drafters of the standard (or source document) declined to deal with the exempt category for reasons other than the lack of a hazard, safe place may be cited if all necessary elements for the violation are present.

(7) **Citing a General Standard.** There are a number of general standards which will be considered for citing violations rather than safe place in certain situations, which initially may not appear to be governed by a standard.

(a) If a hazard not covered by a specific standard can be substantially corrected by compliance with a personal protective equipment (PPE) standard, the PPE standard will be cited. In general industry, WAC 296-800-160 may be appropriate where exposure to a hazard may be prevented by wearing PPE.

(b) For a health hazard, the particular toxic substance standards, such as asbestos and coke oven emission, must be cited where appropriate. If those particular standards do not apply, other standards may be applicable. For instance, the air contaminant levels in WAC 296-841 (Table 3) may apply in general industry and construction.

(c) Another standard which may possibly be cited is WAC 296-800-11040, Control of Chemical Agents, which deals with the hazard of a chemical agent in general.

(d) In addition, WAC 296-800-23040 & 23045 may be cited when employees are allowed to consume food or beverages in an area exposed to a toxic material, and WAC 296-800-160 may be cited when toxic materials are absorbed through the skin.

(8) Citing a General Standard

(e) In cases where there is no specific standard, but the employer has recognized the hazard and established rules in the written Accident Prevention Program (APP), but did not effectively supervise and enforce the rules, WAC 296-800-14025 may be cited.

(f) These standards as well as others which may be applicable must be considered carefully before issuing a safe place citation for a health hazard.

(9) Classification of Safe Place Standard Violations.
Only those hazards alleging *serious* violations may be cited under a safe place standard (including willful and/or repeated violations which would otherwise qualify as serious violations, except for their willful or repeated nature). General violations may not be cited based on a safe place standard.

(10) Justification of Safe Place Standard Citations. To ensure that all citations of a safe place standard are fully justified, the evidence necessary to establish each element of a safe place violation must be documented in the inspection case file. This includes all photographs, videotapes, sampling data, witness statements and other documentary and physical evidence necessary to establish the violation. Additional documentation includes a description of a feasible abatement method, why it was common knowledge, why it was detectable, why it was recognized practice and supporting statements or reference materials.

(a) If copies of documents relied on to establish the various safe place elements cannot be obtained before issuing a citation, these documents must be accurately quoted and identified in the inspection case file so they can be obtained later if necessary.

(b) If experts are needed to establish any elements of the violation, the experts must be consulted before the citation is issued and their opinions noted in the case file. The case file must also contain their contact information (addresses, phone numbers and e-mail).

(c) The file must contain a statement that a search has been made of the standards and that no standard applies to the cited condition.

(11) Citation Message When Safe Place Criteria Are Not Met. If a standard does not apply and all criteria for issuing a safe place citation are not met but a CSHO determines that the hazard warrants some type of notification, a message describing the hazard and suggesting corrective action can be included on the citation.

C.4. Willful Violations.

C.4.a. Management & Legal Review of Willful Violations. Prior to advising an employer that a violation will be classified as willful, and prior to the closing conference of any inspection which will result in citation of a willful violation, a substantive review by DOSH management **is required**. DOSH Compliance Operations will initiate and coordinate a review with the Attorney General's Office. See *Chapter 7, Section A.1*. for more information regarding situations requiring a review.

In addition, in cases where due to legal and policy issues it is difficult to determine whether to classify a violation as willful rather than repeated, Compliance Supervisors must consult with DOSH Compliance Operations.

The following definitions and procedures apply whenever a CSHO suspects that a willful violation of WISHA standards may exist:

C.4.b. Intentional Violation or Plain Indifference. A willful violation exists when evidence shows either an intentional violation of WISHA or plain indifference to its requirements.

(1) Intentional and Knowing. The employer committed an intentional and knowing violation if:

(a) An employer representative was aware of the requirements of the Act, or the existence of an applicable standard or regulation, and was also aware of a condition or practice in violation of those requirements, and did not abate the hazard.

(b) An employer representative was not aware of the requirements of the Act or standards, but was aware of a comparable legal requirement (e.g., state or local law) and was also aware of a condition or practice in violation of that requirement, and did not abate the hazard.

(2) Plain Indifference. The employer committed a violation with plain indifference to the law if:

(a) Higher management officials were aware of a DOSH requirement applicable to the company's business but made little or no effort to communicate the requirement to lower level supervisors and employees.

(b) Company officials were aware of a continuing compliance problem but made little or no effort to avoid violations.

EXAMPLE: *Repeated issuance of citations addressing the same or similar conditions.*

C.4.b. Intentional Violation or Plain Indifference. (Continued)

(c) An employer representative was not aware of any legal requirement, but was aware that a condition or practice was hazardous to the safety or health of employees and made little or no effort to determine the extent of the problem or to take corrective action. Knowledge of a hazard may be gained from:

- Insurance company reports
- Safety committee or other internal reports
- The occurrence of injuries, illnesses or disease
- Media coverage
- Complaints of employees or their representatives

(d) In particularly flagrant situations, willfulness can be established despite lack of knowledge of either a legal requirement or the existence of a hazard if circumstances show that the employer would have placed no importance on such knowledge even if he or she had possessed it, or had no concern for the health or safety of employees.

C.4.c. Evil Intent Not Necessary.

It is not necessary that a violation be committed with a bad purpose or an evil intent to be deemed "willful." It is sufficient that the violation was deliberate, voluntary or intentional as distinguished from inadvertent, accidental or ordinarily negligent.

C.4.d. Evidence Indicating Willfulness.

During the inspection, CSHOs must carefully develop and record on the violation worksheet all available evidence that indicates employer awareness of and disregard for statutory obligations or hazardous conditions. Willfulness could exist if an employer is advised by employees or employee representatives of an alleged hazardous condition and the employer makes no reasonable effort to verify and correct the condition. Additional factors which can influence a decision as to whether violations are willful include:

(1) The nature of the employer's business and the knowledge regarding safety and health matters which could reasonably be expected in the industry.

(2) The precautions taken by the employer to limit the hazardous conditions.

(3) The employer's awareness of WISHA and of the responsibility to provide safe and healthful working conditions.

(4) Whether similar violations and/or hazardous conditions have been brought to the attention of the employer.

(5) Whether the nature and extent of the violations disclose a *purposeful disregard* of the employer's responsibility under the WISH Act.

NOTE: It is important to distinguish between the type of "knowledge" required to prove a serious violation, and the "knowledge" required for a willful violation. For a serious violation, it is only necessary to prove that the employer knew, or reasonably should have known, of the hazard and employee exposure to the hazard. For example, in a typical trenching case, this would merely involve knowledge by the employer that they were engaged in the type of work which would require a certain type of trench to be dug, and knowledge that employees would at some point have to enter that trench.

On the other hand, the "knowledge" factor to prove a willful violation requires proof that the employer knew that violations of WISHA rules would be taking place, or acted in reckless disregard to whether violations would be taking place. Using the example of a trenching case, this would involve not only knowledge that a trench was being dug and that employees would be entering the trench, but also knowledge that there was inadequate protection to prevent collapse, as required by the standard.

C.5. Criminal/Willful Violations.

RCW 49.17.190(3) provides that: "Any employer who willfully and knowingly violates the requirements of *RCW 49.17.060*, any safety or health standard promulgated under this chapter, any existing rule or regulation governing the safety or health conditions of employment and adopted by the director, or any order issued granting a variance under RCW 49.17.080 or 49.17.090 and that violation caused death to any employee shall, upon conviction be guilty of a gross misdemeanor and be punished by a fine of not more than one hundred thousand dollars or by imprisonment for not more than six months or by both; except, that if the conviction is for a violation committed after a first conviction of such person, punishment shall be a fine of not more than two hundred thousand dollars or imprisonment for not more than one year, or by both."

C.5.a. Management and Legal Review of All Willful, Potentially Criminal Cases. If the director has reasonable cause to believe that one of the provisions defining a crime has been violated, the director shall make a referral to the county prosecuting attorney. Section C.5.b., below, establishes criminal/willful criteria.

C.5.b. Establishment of Criminal/Willful – Required Elements. In order to establish a criminal/willful violation WISHA must prove that:

(1) The employer violated a WISHA standard.

(2) The violation was willful in nature.

(3) The violation of the standard caused the death of an employee. In order to prove that the violation of the standard caused the death of an employee, there must be evidence in the inspection case file which clearly demonstrates that the violation of the standard was the cause of, or a contributing factor to an employee's death.

C.5.c. Criminal Referral Not Made. When a willful violation is related to a fatality, Compliance Supervisors must ensure that the inspection case file contains succinct documentation if a decision is made **not** to make a criminal referral. The documentation should indicate which required elements of a criminal violation make the case unsuitable for criminal referral.

C.6. Repeated Violations.

An employer may be cited for a repeated violation if:

- The employer has been cited one or more times previously for a *substantially similar hazard,* **and**
- The citation has become a final order.

All repeated violations must be cited based on the nature of the hazardous condition, not just the code being cited.

C.6.a. Identical Standard. Generally, similar conditions can be demonstrated by showing that in both situations the identical standard was violated.

EXCEPTION: Previously a citation was issued for a violation of *WAC 296-800-14020* for not providing on-the-job instructions on the safe use of machine tools. A recent inspection of the same establishment revealed a violation of *WAC 296-800-14020* for not training employees in the proper handling of toxic materials. Although the same standard was involved, the hazardous conditions found were not substantially similar and therefore a repeated violation would not be appropriate.

C.6.b. Different Standards. In some circumstances, similar conditions can be demonstrated when different standards are violated. Although there may be different standards involved, the hazardous conditions found could be substantially similar and therefore a repeated violation would be appropriate.

C.6.c. When to Cite a Repeated Violation.

(1) Time Limitations. A violation will be cited as repeated if:

- The final order for a previous citation issued for a substantially similar hazard was dated no more than three years prior to the employer committing the violation being cited, and
- The previous citation has become a final order by the time of the subsequent inspection's opening conference.

(2) Second Instance Repeated. When a hazard is found during an inspection, and a repeated violation has previously been cited for a substantially similar hazard which meets the above time limitations, the violation may be classified as a second instance repeated violation with a corresponding increase in penalty. (See *Chapter 6*)

(3) Multiple Repeated. When an employer reaches a third time repeat of a hazardous condition, then the Regional Compliance Manager should review the documentation to determine whether a willful citation is supported. The dates and numbers of all prior final orders must be listed on the citation. Follow the requirements in *Section C.4., Willful Violations,* in this chapter, regarding management and legal review of willful violations.

NOTE: *Previous citation* as used here means:

- A citation and notice (C&N) was never appealed and 15 working days have passed since the employer received it.
- A corrective notice of redetermination (CNR) was never appealed and 15 working days have passed since the employer received it.
- An order issued by the Board of Industrial Insurance Appeals or higher court which affirms or modifies (but does not vacate) the violation.
- A Denial of Petition for Review was issued from the Board of Industrial Insurance Appeals.
- A decision issued from a Washington state court.

EXAMPLE: *A programmed inspection is conducted on 12-16-08. A serious hazard is found and cited. Although the employer corrects the hazard at the time of inspection and a CSHO witnesses the correction, the employer appeals the citation. An unprogrammed inspection is conducted on 2-17-09. The CSHO finds a violation involving the same hazard which the employer had previously corrected. Because the original violation is still under appeal, a repeated violation will not be issued. However, if the employer had received and not appealed the original violation within 15 days of receipt, it would be a final order and a repeated violation would be cited.*

EXAMPLE: *An inspection is conducted 2-17-09, and a violation of a particular standard is found. On 10-9-06 a repeated violation of the same standard was cited. The violation found on 2-17-09 may be cited as a second instance repeated violation.*

C.6.d. Employers with Multiple Establishments or Operations. Employers with multiple establishments or operations, or without a fixed site of business, should be considered for statewide repeated violations if appropriate, and after consulting with the Regional Compliance Manager and Compliance Operations.

C.6.e. Different UBIs for Same Company. A business operation that uses different UBIs but is still essentially one company may be cited for repeated violations after review and approval by DOSH Appeals. Compliance Supervisors who identify these types of cases must contact DOSH Compliance Operations for assistance. Factors include but are not limited to**:**

- Substantially similar ownership.
- Same type of business operations.
- Same or similar L&I account number.

C.6.f. Joint Ventures. When several parent companies go together in a "joint venture" to contract or complete a project, the joint venture becomes a separate entity, different from each of the parent companies. Violations cited against the joint venture will be considered only against previous citations issued against the joint venture to be considered a repeat. Parent companies involved in joint ventures are not subject to violations of the joint venture.

C.6.g. Repeated vs. Willful. Repeated violations differ from willful violations in that they may result from an inadvertent, accidental or ordinarily negligent act. A willful violation need not be one for which the employer has been previously cited. Where a repeated violation also meets the criteria for willful, the violation will be cited as willful.

C.6.h. Repeated vs. Failure to Abate. Repeated violations must also be distinguished from a failure to abate.

- If a violation of a previously cited standard is found, but the violation does not involve the same piece of equipment or the same location within an establishment or worksite that was cited previously, the violation may be a repeated one.
- If a violation of a previously cited standard is found on the same piece of equipment or in the same location, and the evidence indicates that the violation has continued uncorrected since the original inspection, there has been a failure to abate.
- If, however, the violation was not continuous; i.e., if it had been corrected and reoccurred, the subsequent reoccurrence is a repeated violation. Where there is no evidence or documentation available to determine whether the violation has continued uncorrected, or whether it has been corrected and subsequently reoccurred, it will be cited as a repeated violation.

NOTE: A failure-to-abate violation may be cited during an appeal when the employer has failed to correct a violation required to be corrected during the appeal and for which a stay of abatement has not been granted by the department or the Board. A repeat violation cannot be cited during an appeal.

For more information see *Chapter 4* regarding follow-up and monitoring inspections, and *Chapter 8* on verification of abatement.

C.6.i. Alleged Violation Description (AVD) and Citation Message. If a repeated violation is cited, CSHOs must ensure the employer is fully informed of the previous violations serving as a basis for the repeat. The date, inspection number, type of all prior violations which were final orders prior to the discovery of the current violation, and the type of final order must be listed on the citation. The "Repeated Violations" citation message on the Edit Violation screen in WIN will be used to input the information on the citation.

C.7. Program Violations.

The employer may elect to include specific written programs in their APP, or cover them in separate policies or documents. All accident prevention programs (APP) must describe in at least a general sense the employer's "total safety program."

In situations where a standard requires specific written programs (hazard communication, respiratory protection, hearing conservation, etc.) those written program violations must be cited using the specific standard, not the APP standard. Applicable DOSH Directives providing guidance on any required written programs must be followed.

General. Program violations are classified **general** when it is documented that the employer does not have a written program or the program is missing one or more element(s), and no related serious hazards exist. No penalty will be assessed for first time general program violations.

Serious. Program violations are classified **serious** when it is documented that the employer does not have a written program or their program has significantly deficient elements **and** at least one documented serious hazard associated with the program deficiency. Use the highest severity from the related violations.

EXAMPLE: *An employer has no written hazard communication program or written APP, and there are serious hazard communication training violations present, but no other violations. Citations issued to the employer would include the training violations (classified as serious) the lack of a written hazard communication program (classified as serious), and the lack of a written APP (classified as general). However, if a serious machine guarding violation was also identified, the lack of a written APP would be classified as serious.*

C.8. De minimis Violations.

De minimis violations are violations of standards which have no direct or immediate effect on employee safety or health. Professional judgment must be used in determining whether noncompliance with a standard constitutes a de minimis violation. CSHOs identifying de minimis violations of a WISHA standard should not cite a violation, but should verbally notify the employer and make a note of the situation in the inspection case file. A message should also be included on the citation or inspection results letter. Criteria for classifying a violation as de minimis are:

C.8.a. Employer Complies with Clear Intent of Standard. An employer complies with the clear intent of a standard but deviates from its particular requirements in a manner that has no direct or immediate effect on employee safety or health. These deviations may involve distance specifications; construction material requirements; use of incorrect color; minor variations from recordkeeping, testing, inspection regulations, or the like.

EXAMPLE 1: *WAC 296-874-40012 requires guarding on all open sides of scaffolds. Where employees are using fall arrest systems in lieu of guarding, often the intent of the standard will be met, and the absence of guarding may be de minimis.*

EXAMPLE 2: *WAC 296-806-45540 requires that mechanical power presses be inspected and tested at least weekly. If the machinery is seldom used, inspection and testing prior to each use is adequate to meet the intent of the standard.*

C.8.b. Employer Complies with Proposed Standard. An employer complies with a proposed standard or amendment or a consensus standard rather than with the standard in effect at the time of the inspection and the employer's action clearly provides equal or greater employee protection or the employer complies with a written interpretation issued by OSHA or DOSH.

C.8.c. Employer Technically Exceeds Standard. An employer's workplace is "state of the art" which is technically beyond the requirements of the applicable standard and provides equivalent or more effective employee safety or health protection.

D. WHEN TO GROUP VIOLATIONS VERSUS WHEN TO COMBINE INSTANCES

D.1. Grouping Violations.

In some circumstances, CSHOs may identify violations of more than one specific code requirement that should be grouped together, rather than cited as separate violations. Grouping, which involves more than one standard, is distinct from combining multiple instances of the same code violation.

The decision whether to group should not be based on the source of potential or actual injury; instead, a grouped violation should describe a single act or failure to act on the part of the employer. See also the *Grouping Decision Matrix at Appendix 5A*.

One of the keys to appropriate grouping is in the identification of violations. In order to group correctly, CSHOs must first ensure that they have identified the most specific citable violations that accurately describe the hazards identified. If specific code requirements have been violated and are being cited, more general code requirements that also reflect the same condition should not be cited.

Grouping occurs for one of three reasons:

D.1.a. The violations are so closely related to one another that a single action by the employer corrects them both (and therefore they logically represent only one violation, although it is described by two or more specific codes).

NOTE: Closely related but distinct violations may work together to increase the risk of a particular injury. In such a case, they would represent separate citable violations unless correcting one of them would correct the others.

D.1.b. When a CSHO determines that two or more general violations, taken together, create a substantial probability of death or serious physical harm, they should be grouped and cited as serious.

D.1.c. When a CSHO documents violations of posting and recordkeeping requirements that involve the OSHA 300A and OSHA 300 forms, the violations will be grouped. The OSHA 300A must be cited first, and the OSHA 300 must be grouped with it.

D.2. Grouping Closely Related Violations.

D.2.a. When One Violation Corrects the Other. CSHOs must group violations, whether classified as serious or general, when they are so closely related that a single action by the employer correcting one of the violations would correct the other(s).

EXAMPLE 1: *Violations of the training requirements of WAC 296-155-24621 and those of WAC 296-800-14020 for initial training of a roofing crew could be abated at the jobsite by the same action on the part of the employer and would appropriately be grouped.*

EXAMPLE 2: *If an employer failed to provide an appropriate respirator to an employee working on a hazardous waste site, a CSHO might cite both the respirator selection requirements of WAC 296-842-130 and the personal protective equipment requirements of WAC 296-843-190. In such a case, the two violations would appropriately be grouped, since both would be corrected by providing an appropriate* respirator, or some other *single corrective action* addressing the hazard.

D.2.b. Closely Related But Cited Separately. Closely related but distinct hazards may work together to increase the risk of a particular injury. In such a case, they would represent *separate* citable violations unless correcting one of them would correct the other(s). The exception is two or more general violations that taken together, create a substantial probability of death or serious physical harm, and therefore should be grouped and cited as *serious.*

EXAMPLE 3:

- *WAC 296-307-08018(2) requires agricultural employers to train employees who will operate tractors in a number of things, including the topographical features of the land where the tractor will be operated.*
- *WAC 296-307-08003 requires the employer to provide a rollover protective structure (ROPS) on most tractors used in agriculture.*

Clearly, both standards are intended to protect the employee from the same hazard of being thrown from or crushed by the tractor in a tractor rollover. But they represent separate requirements, involving separate actions by the employer, which are intentionally designed to provide multiple layers of protection to employees. If both violations are present in a single inspection they must be cited separately.

EXAMPLE 4: *If a CSHO has identified violations of:*

- *WAC 296-800-31030 or 31035 because the exit doors are not of the proper type,*
- *WAC 296-800-31010 because the exits are insufficient for the occupant load, and*
- *WAC 296-800-31050 because the exits are not marked appropriately, although they all relate to the ability of employees to exit the building successfully in the event of an emergency, each represents a separate violation, and should be cited separately. The employer could not correct them all by a single action.*

EXAMPLE 5: *Similarly, if a CSHO has documented violations of:*

- *WAC 296-56-60233 (Part K) because of the lack of a hood on a swing cutoff saw, and*
- *WAC 296-806-48064 because the shaper is not enclosed with a cage or adjustable guard,*

the two violations would be cited separately and not grouped. The employer could not correct them both by a single action. It is not necessary or appropriate to cite WAC 296-806-20040 and WAC 296-806-20028 with general requirements for point-of-operation guarding. General requirements are cited only in relation to a machine for which there is no specific requirement.

EXAMPLE 6: *A bench grinder has three separate violations: (1) missing tongue guard (see WAC 296-806-40508); (2) missing tool rest (see WAC 296-806-40510); (3) missing spindle cover (see WAC 806-40504). The CSHO must cite each of these violations separately.*

Removing equipment (in this case the grinder) from service does not correct the hazard, it abates the violations.

D.2.c. Program Violations – When to Cite Separately and When to Group.

The policies in this section also apply to program violations with the following clarification:

(1) Separate Program Standards. Violations of separate program standards must not normally be grouped with one another or with the accident prevention program standard. If the only problem with the accident prevention program is that it lacks a specific element, such as the hazard communication program, then only the specific element must be cited.

EXAMPLE 7: *If an employer has no accident prevention program, violating WAC 296-800-14005, and also engages in activity requiring a lockout/tagout (energy control) program under Chapter 296-803 WAC, but does not have a lockout/tagout program, CSHOs must cite two* ***separate*** *violations. The same employer's failure to develop and maintain a written hazard communication program, as required by WAC 296-800-17005, would represent yet* ***another separate*** *violation.*

EXAMPLE 8: *If the employer has no written hazard communication program as required by WAC 296-800-17005, fails to provide material safety data sheets required by WAC 296-800-17020, and fails to provide initial training to employees as required by WAC 296-800-17030, each violation must be* ***cited separately****.*

EXAMPLE 9: ***In contrast****, documented violations of WAC 296-800-14005 and of WAC 296-307-030(3) (both of which describe written accident prevention program requirements) for an employer who has operations covered by both the agriculture and the general industry standards* ***would appropriately be grouped****. Normally it is not necessary to cite the specific industry violation if WAC 296-800-14005 is being cited, but in the case of agriculture, it is important to ensure that the vertical standard is also cited if the employer lacks a written program.*

(2) Other Violations Related to Violations of Program Requirements. In cases where violations of a written program requirement relate to other documented violations, CSHOs must not group the program violations with the other documented violations. If a CSHO is merely citing deficiencies in an existing program based solely on the other documented violations, the program violation must not be cited but instead dropped in favor of the more specific violations.

EXAMPLE 10: *If an employer has no written lockout-tagout program as required by WAC 296-803-20005 and a CSHO also documents violations of the requirement in WAC 296-803-50005 to use lockout devices, the program violation would be* ***cited separately*** *from the specific violations of the lockout application requirements.*

EXAMPLE 11: *If an employer violates the written respirator program requirements of WAC 296-842-120 and a CSHO also discovers that the respirator users have not been properly fitted in accordance with WAC 296-842-150, each violation would be* ***cited separately****.*

D.2.d. Factors Not Considered in Grouping. In determining whether to group one or more violations, CSHOs must *not* consider:

- The probability and severity of injury, other than as described in D.2.e. below.
- The employer's ability to pay, which is addressed in the context of employer size in the penalty calculation, and through settlement policies when necessary.
- The employer's demonstrated good faith and/or history, which are each addressed within the penalty calculation.

D.2.e. Grouping General Violations Where Grouping Results in a Serious Violation. When a CSHO determines that two or more **general** violations taken together create a substantial probability of death or serious physical harm, they should be **grouped** and cited as **serious**.

Multiple **serious** violations should **not be grouped** to create a higher gravity serious violation, nor should multiple **general** violations be grouped except when the grouping represents a **serious** violation.

General and serious violations should not be grouped to create a higher gravity serious violation. This does not prevent a CSHO from considering the interplay between related violations in determining probability and severity of each of those violations. The presence of multiple violations may in fact increase the probability and severity of each of those individual violations beyond what would exist if it were the only item being cited.

D.2.f. Calculating Penalties. *(See also Chapter 6)*

(1) For violations grouped in accordance with *Section D.1.* above, the penalty would normally be the same for any one of the violations in the group, or for all of them taken together.

(2) When general violations have been grouped in accordance with *Section D.1*. above, the penalty calculation must reflect the group taken as a whole.

(3) When violations have been grouped in accordance with *Section D.1.* above, penalties must be issued in accordance with *Chapter 6, Section G, Violation of Regulatory Requirements.*

D.2.g. Repeated or Failure-to-Abate (FTA) Violations.
Any repeat or failure-to-abate determination will apply to the entire group. Use the repeated violation that has been cited the most times to determine the repeat level for the grouping. Do not add or multiply the repeat counts for grouped violations.

D.3. Combining Multiple Instances.
Multiple violation instances of a **single standard** having the same classification generally will be combined into one citation item. Normally, different facets of the same standard will also be combined. Each instance of the violation must be listed separately within that item on the citation. General violation instances of a standard may be combined with serious violation instances of the same standard when appropriate.

D.4. When Not to Group or Combine.

D.4.a. Multiple Inspections. Violations discovered during multiple inspections of a single establishment or worksite may not be grouped. Where only one WISHA-1 has been completed, an inspection at the same establishment or worksite will be considered a single inspection even if it continues for a period of more than one day, or is discontinued with the intention of later resuming it.

D.4.b. Separate Establishments of the Same Employer. Separate citations will be issued for each establishment or worksite where inspections are conducted, either simultaneously or at different times. If CSHOs conduct inspections at two establishments belonging to the same employer and instances of the same violation are discovered during each inspection, the violations must not be grouped.

D.4.c. Safe Place Standard. Because a safe place violation covers all aspects of a serious hazard where no standard exists, there will be no grouping of separate safe place violations. This policy, however, does not prohibit grouping a safe place violation with a related violation of a specific standard.

D.4.d. Egregious Violations. Violations which are proposed as instance-by-instance violations are not normally combined or grouped. See *CPL 02-00-080, Handling of Cases to be Proposed for Violation-by-Violation Penalties*, dated October 21, 1990.

NOTE: Except for standards which deal with multiple hazards, the same standard may not be cited more than once on a single citation.

E. VIOLATIONS OF HYGIENE STANDARDS

E. 1. Citation of Ventilation Standards.

In cases where a citation for a violation of a ventilation standard may be appropriate, consideration must be given to standards intended to control exposure to recognized hazardous levels of air contaminants, to prevent fire or explosions, or to regulate operations which may involve confined space or specific hazardous conditions.

E.1.a. Airborne Contaminants. An employer is considered in compliance with the requirement to use feasible controls for employee exposures (such as setting up ventilation of the work) when employee exposure does not exceed appropriate airborne contaminant standards (permissible exposure limits) prescribed in *WAC 296-841-200*. There are specific codes (e.g. asbestos, lead in construction) that require feasible controls before the exposure even begins regardless of the level of exposure.

(1) Where an overexposure to an airborne contaminant is detected, appropriate feasible administrative or engineering controls are required; e.g., *WAC 296-841-200*. In no case will citations be issued that attempt to mitigate exposure by requiring specific volumes of airflow to ventilate these exposures.

(2) Other requirements in health-related ventilation standards must be evaluated without regard to the concentration of airborne contaminants. A citation must be issued when a specific standard has been violated *and* an actual or potential hazard has been documented.

EXCEPTION: Certain standards in maritime and construction specify violations when 10 percent of the LEL is exceeded.

E.1.b. Fire & Explosion Related Ventilation Standards. If 25 percent (10 percent when specified for maritime or construction operations) of the LEL has been exceeded and:

(1) The standard requirements have not been met; the violation normally will be cited as serious.

(2) There is no applicable specific ventilation standard, safe place standards will be cited following *C.3., Safe Place Standard Provisions*, of this chapter.

E.1.c. Environmental Tobacco Smoke (ETS) Violation Classification. For specific information regarding violation classification of Environmental Tobacco Smoke (ETS) see *Chapter 2., Section E.6.a.* in this manual.

E.2. Violations of Chapter 296-817 WAC, Hearing Loss Prevention (Noise).

WISHA rules require employers to evaluate noise where reasonable information indicates exposures equal or exceed 85 dBA TWA_8. For exposures exceeding 85 dBA TWA_8 they must have a Hearing Loss Prevention program including hearing protection, training, audiology, correction of deficiencies and recordkeeping. DOSH enforces the use of feasible noise controls for exposures in excess of the 90 dBA TWA_8.
WISHA standards also require the use of hearing protection and warning signs for exposure to continuous noise exceeding 115 dBA. Hearing protection alone is required for exposure exceeding 140 dBC for impact noise, not exceeding other criteria.

For evaluation of exposures relative to criteria given in the rule, the sampling and analytical error of noise measurement equipment must be considered. DOSH experience indicates that a reasonable estimate of sampling and analytical error for a single sound level reading or dose measurement is 2 dB.

NOTE: Noise in agriculture is covered under *Chapter 296-307 WAC, Part Y-7, Hearing Loss Prevention (Noise)*. The requirements of the agriculture standard are identical to *Chapter 296-817 WAC* and are applied in the same manner.

E.2.a. Whenever noise is investigated as part of an inspection each section of *WAC 296-817-200* should be evaluated for possible violations.

Citations for violations must be from these sections. If the violation involves requirements from sections WAC 296-817-300, 400, or 500, a reference to these sections can be used in the description of the alleged violation. For example,

when an employer does not conduct annual audiograms for employees, the violation is cited under WAC 296-817-20035. The description may read:

Employer did not act to identify deficiencies in their hearing loss prevention program in that annual audiograms were not collected as required in WAC 296-817-40015.

E.2.b. Failure to conduct monitoring as required in *WAC 296-817-20005* will normally be cited where the employer has done no evaluation or when monitoring during the inspection indicates exposures significantly different than the exposure estimate given by the employer (more than 2 dB difference). This violation will typically be considered serious when the employer failed to recognize and react to noise as a hazard or where the difference in exposure estimates may dictate a different selection of hearing protection (DOSH results more than 7 dB greater than employer exposure estimates indicate a significant problem with the employer monitoring).

Monitoring requirements will only be cited when there is a thorough evaluation of noise exposures during the inspection (but other citations are not necessary). If a lack of monitoring is found during the inspection, but the inspection does not address other potentially serious noise issues, a message to the employer may be considered.

Noise exposure estimates by the employer may be inferred from minimum protection provided. (If they provide earplugs with an NRR of 12, then they are indicating an assessment of noise exposures no more than 90 dBA). Where an employer only provides high NRR hearing protection to workers with low or moderate exposures, attention should be given to training and hearing protection use for indications of overprotection resulting in poor use of the hearing protection.

EXAMPLE 1 *– During monitoring for an air contaminant, an inspector takes SLM readings indicating exposures of around 84 dBA* TWA_8 *and observes apparently appropriate hearing protection use. The inspector and their supervisor may decide to not commit Department resources to a comprehensive review of noise in the workplace as there appears to be no serious hazard. However, this sampling would not likely meet the requirements for noise monitoring and a message should be issued to alert the employer of any potentially hazardous noise exposures that need further analysis, such as monitoring.*

EXAMPLE 2 *– An inspector initiates an inspection of noise hazards in a workplace including comprehensive monitoring on two production days. Despite no proactive attempt to assess noise exposures, the employer has implemented a hearing loss prevention program that ensured all exposed employees had hearing protection and audiometric testing on the days of monitoring. From review of the company production logs it is revealed that production on the days when monitoring was conducted was not typical of all production by the company. If the changes in production could reasonably alter exposures such that the employer would be out of compliance with the program that was observed, a citation for lack of monitoring should be issued.*

NOTE: No specifications are given for employer monitoring programs and employers may use methods other than strictly following the specifications in WAC 296-817-300, Noise

Measurement and Computation. In particular, task based sampling and exposure banding techniques can be effective methods for assessing exposures. Employers may also use background information from industry studies in evaluating exposures in their workplace. In general, no monitoring violation should be given when an employer:

- Has made a proactive attempt to assess noise exposures.
- Has identified a specific noise exposure levels for all work reasonably expected to involve noise exposure.
- Has set these levels at or above levels measured by DOSH.

E.2.c Violations of the major hearing loss prevention requirements will normally be separate serious violations. These are:

- *WAC 296-817-20010, Controls*
- *WAC 296-817-20015, Hearing Protection*
- *WAC 296-817-20020, Training*
- *WAC 296-817-20035, Identifying and Correcting Deficiencies*

These items may be considered general when the employer is in partial compliance or for minor exposures.

For example, a complete lack of training for employees may be cited serious. However, if effective training was provided, but the employer had no written description of their training program, then this would be a general violation.

An example of a minor exposure is an office support staff member at a company who must spend two days each year inventorying supplies in a production facility with an exposure of 88 dBA TWA_8. If their normal office workstation has essentially no noise exposure, then any hearing loss prevention program element violations associated only with this employee's exposures may be considered general.

E.2.d. Violations of the remaining hearing loss prevention rule sections will normally be cited general.

- *WAC 296-817-20025, Warning Signs*
- *WAC 296-817-20030, Audiologists*
- *WAC 296-817-20040, Documentation*

E.3. Violations of the Respirator Standard.

E.3.a. Overexposure Does Not Occur. Where an overexposure has not been established:

(1) But an improper type of respirator is being used (e.g., a dust respirator being used to reduce exposure to organic vapors), a citation under *WAC 296-842-13005* will be issued, provided CSHOs document that an overexposure is possible.

(2) And one or more of the other requirements of WAC 296-842-130 is not being met; e.g., an unapproved respirator is being used to reduce exposure to toxic dusts, generally a de minimis violation will be cited. (Note that this policy does *not* include emergency use respirators.) CSHOs must advise employers of the elements of a respirator program that are required under *Chapter 296-842 WAC*.

(3) In *exceptional* circumstances a citation may be warranted if an adverse health condition due to the respirator itself could be supported and

documented. Examples may include a dirty respirator that is causing dermatitis, a worker's health being jeopardized by wearing a respirator due to an inadequately evaluated medical condition, or a significant ingestion hazard created by an improperly cleaned respirator.

E.3.b. Overexposure Does Occur. In cases where an overexposure to an air contaminant has been established, the following principles apply to citations of *Chapter 296-842 WAC.*

(1) *WAC 296-842-130* requires employers to provide respirators. Violations are classified as serious or general based on the particular contaminant(s) that employees are exposed to. CSHOs should refer to the DOSH Chemical and Analytical Sampling Information on the DOSH Lab website or consult with the Compliance Supervisor or DOSH Technical Services for assistance if necessary. Even when using the DOSH Chemical and Analytical Sampling Information for a severity rating, CSHOs must still document the underlying reasons they came to that severity rating.

(2) An acceptable respiratory program includes all of the elements of *Chapter 296-842-220*; however, the standard is structured so that essentially the same requirement is often specified in more than one section. In these cases, the section which most adequately describes the violation must be cited.

E.4. Violations of Air Contaminant Standards.

E.4.a. Requirements Under the Standard.

(1) *WAC 296-841-20005* provides ceiling values and 8-hour time-weighted averages applicable to employee exposure to air contaminants.

(2) *WAC 296-841-20010 (1)* provides that to achieve compliance with those exposure limits, administrative or engineering controls must first be identified and implemented to the extent feasible. When such controls do not achieve full compliance, personal protective equipment must be used. Whenever respirators are used, their use must comply with *Chapter 296-842 WAC*.

(3) *WAC 296-841-20015* provides that when effective engineering controls are not feasible, or while they are being instituted, appropriate respirators must be used.

(4) There may be cases where workplace conditions require that employers provide engineering controls as well as administrative controls (including work practice controls) **and** personal protective equipment. *WAC 296-841-20010(1)* allows employers to implement feasible engineering controls and/or administrative and work practice controls in any combination, provided the selected abatement means eliminates the overexposure.

(5) DOSH staff must use the 1990 NIOSH Pocket Guide for Chemical Hazards for IDLH values, unless values listed in the 1994 or newer editions have achieved industry recognition.

(6) Where engineering and/or administrative controls are feasible but do not, or would not, reduce air contaminant levels below applicable ceiling values or threshold limit values, an employer must nevertheless institute such controls to reduce the exposure levels. In cases where the implementation of all feasible engineering and administrative controls fails to reduce the level of air contaminants below applicable levels, employers must additionally provide personal protective equipment to reduce exposures.

E.4.b. Classification of Violations of Air Contaminant Standards.

Where employees are exposed to a toxic substance in excess of the PEL established by *Chapter 296-841 WAC*, a citation for exceeding the air contaminant standard must be issued. The violation must be classified as serious or general based on the criteria set forth in the Chemical Sampling and Analytical Information located on the DOSH laboratory web page, and also conditions documented at the time of the inspection. Classification of these violations is dependent upon the determination that an illness is reasonably predictable at the measured exposure level.

(1) Classification Considerations. Exposure to regulated substances must be characterized as serious if exposures could cause impairment to the body as described in *Section C.2.b.* of this chapter.

(a) For a substance having an ACGIH Threshold Limit Value (TLV) or a NIOSH recommended value, but no OSHA PEL, a violation for exposure in excess of the recommended value must be cited using *WAC 296-841-20010*.

(b) If an employee is exposed to concentrations of a substance below the PEL, but in excess of a recommended value (e.g., ACGIH TLV or NIOSH recommended value), citations will not normally be issued.

(c) For a substance having an 8-hour PEL with no ceiling PEL but ACGIH or NIOSH has recommended a ceiling value, the case must be referred to Compliance Operations before issuing a citation.

(2) Additive and Synergistic Effects.

(a) Substances which have a known additive effect and, therefore, result in a greater probability/severity of risk when found in combination must be evaluated using the formula in *WAC 296-841-20005(5)*. This formula requires that exposures have an additive effect on the same body organ or system.

(b) If a CSHO suspects that synergistic effects are possible, it must be brought to the attention of the Compliance Supervisor. If it is determined that a synergistic effect exists, the violations must be grouped which will appropriately increase the violation classification, severity and/or the penalty.

E.5. Citing Improper Personal Hygiene Practices. The following guidelines apply when citing absorption and ingestion violations. These violations do not depend on measurements of airborne concentrations, but are normally supported by wipe sampling. Sampling procedures are found at the DOSH Industrial Hygiene Laboratory website.

There are four primary considerations which must be met to support a violation:

- The potential must exist for ingestion or absorption of the toxic material.
- The ingestion or absorption of the material must represent a health hazard.
- The toxic substance must be of such a nature and exist in such quantities as to pose a serious hazard. The substance must be present on surfaces which have hand contact (such as lunch tables, cigarettes, etc.) or on other surfaces which, if contaminated, present the potential for ingestion or absorption of the toxic material (e.g., a water fountain).
- Protective clothing or other abatement methods would be effective in eliminating or significantly reducing exposure.

E.5.a. Ingestion Hazards. A citation under *WAC 296-800-23040* will be issued where there is reasonable probability that in areas where employees consume food or beverages (including drinking fountains), a significant quantity of a toxic material may be ingested and subsequently absorbed.

(1) For citations under *WAC 296-800-23040* wipe sampling results are normally taken to establish the potential for a serious hazard.

(2) For any substance where a serious hazard is determined to exist due to the potential of ingestion or absorption of the substance for reasons other than consumption of contaminated food or drink (e.g., smoking materials contaminated with the toxic substance), a serious violation must be considered under the safe place standard *(WAC 296-800-110).*

E.5.b. Absorption Hazards. A citation for exposure to materials that may be absorbed through the skin or can cause a skin effect (e.g., dermatitis) will be issued where appropriate personal protective clothing is necessary, but is not provided or worn. If a serious skin absorption or dermatitis hazard exists that cannot be eliminated with protective clothing, a safe place violation may be considered. Engineering or administrative (including work practice) controls may be required in these cases to prevent the hazard. See *WAC 296-800-160*.

E.5.c. Wipe Sampling. In general, wipe samples, not measurements for air concentrations, will be necessary to establish the presence of a toxic substance posing a potential absorption or ingestion hazard.

E.5.d. Citation Policy. The following criteria should be considered prior to issuing a citation for ingestion or absorption hazards:

(1) A health risk exists as demonstrated by one of the following:

(a) A potential for an illness, such as dermatitis, and/or

(b) The presence of a toxic substance that may be potentially ingested or absorbed through the skin. (*See the Chemical Sampling and Analytical Information located on the DOSH Laboratory web page*.)

(2) The potential for employee exposure by ingestion or absorption may be established by taking both qualitative and quantitative wipe samples. The substance must be present on surfaces that employees contact (such as lunch tables, water fountains, work areas etc.) or on other surfaces, which, if contaminated, present the potential for ingestion or absorption.

(3) The sampling results must reveal that the substance has properties and exists in quantities that pose a serious hazard.

E.5.e. Biological Monitoring. If an employer has been conducting biological monitoring, CSHOs must evaluate the results of any testing. The results may assist in determining whether a significant quantity of the toxic material is being ingested or absorbed through the skin.

E.6. Classification of Pesticide Hazards. When violations related to pesticide use are being considered, the classification will normally be serious but based on the toxicity of the chemical, volume of use and employee exposure, may be cited as general in some circumstances. CSHOs must use the following guidelines to help make the determination:

E.6.a. What is the EPA toxicity classification on the label (Class 1, 2 or 3)?

E.6.b. What is the type of application (high volume air blast, backpack sprayer, hand sprayer)?

E.6.c. Does the employer have application records to show who handled the pesticides and for how long?

E.6.d. What is the exposure duration? Review the employer's application records to document past employee exposure. Interview employees to determine past and potential exposure.

E.6.e. Has the employer conducted a PPE assessment? Was correct personal protective equipment (PPE) provided and used? Review the employer's PPE assessment to determine if they are following the label requirements.

E.6.f. What is the respiratory protection requirement? Is the employer meeting the requirements of the Respiratory Protection standard (*Chapter 296-842 WAC*)?

E.6.g. Use the Worker Protection Standard (WPS) as it applies. Are employees adequately trained as required by the standard? Are there adequate emergency shower and eye wash facilities available?

E.6.h. Is there any other documentation that supports the classification selected?

F. VIOLATIONS OF THE ABATEMENT VERIFICATION STANDARD

F.1. Employers Are Required to Certify Abatement.
Under the provisions of *WAC 296-900-150*, employers are required to certify in writing when and how all cited violations have been abated. The standard also includes

requirements for employee notification and for tagging moveable equipment that is related to a violation. *(See also Chapter 8 for information on abatement verification.)*

F.2. Employer Requirements to Tag Moveable Equipment.

Only equipment, whether hand-held or not, *which is moved* within the worksite or between worksites is required to be tagged. The tag is intended to provide an interim form of protection to employees through notification for those who may not have knowledge of the citation or the inherent hazardous condition.

CSHOs should make every effort to be as detailed as possible when documenting the initial location where the violation occurred. This documentation is critical to enforcement of the tagging requirement of *WAC 296-900-15030* because the tagging provision is triggered upon *movement* of the equipment.

CSHOs must not apply the tags to any equipment. This is an employer responsibility.

NOTE: Tags required under the abatement verification standard are separate from Red Tags which CSHOs attach to machines or equipment involved in an imminent danger situation. *See Chapter 4, Section A.3. Red Tag procedures.*

F.3. Evidence of Tagging Violations.

Tag-related violations must be observed by a CSHO before a citation is issued for failure to initially tag cited moveable equipment. DOSH must be able to prove the employer's initial failure to act (tag the moveable equipment upon receipt of the citation). Where there is insufficient evidence to support a violation of the employer's initial failure to tag or post the citation on the cited moveable equipment, a citation may be issued for failure to maintain the tag or copy of the citation using *WAC 296-900-15030.*

F.4. Employee Notification Violations.

Like tag-related citations, evidence of an employer's failure to notify employees of abatement activity by posting must be observed at the worksite. Where an employer claims that posting at the location where the violation occurred would ineffectively inform employees *(WAC 296-900-15025),* the employer may:

- Post the abatement activity document(s) or a summary of the document(s) in a location where it will be readily observable by affected employees and their representatives, or
- Communicate fully with affected employees and their representatives about abatement activities in some other manner that is effective.

CSHOs must determine not only whether the document(s) or summaries were appropriately posted but also whether as an alternative, other communication methods such as meetings or employee publications were used.

G. EMPLOYER & EMPLOYEE RESPONSIBILITIES

G.1. Employer Responsibilities.

Each employer is required to provide a safe and healthy workplace free from recognized hazards. *WAC 296-800-110* outlines some of the basic responsibilities, including:

- Providing and using methods to make the workplace safe.

- Prohibiting employees from entering or being in any part of a workplace that is not safe.
- Constructing the workplace so that it is safe.
- Prohibiting alcohol and narcotics from your workplace, and prohibiting employees under the influence of alcohol or narcotics from the worksite.
- Prohibiting employees from using tools, equipment and materials that are not safe.
- Establishing, supervising and enforcing safety rules that are effective in practice.
- Controlling chemical agents.
- Protecting employees from biological agents.

G.2. Employee Responsibilities.

Each employee is responsible for playing an active role in creating a safe and healthy workplace, and complying with applicable safety and health rules. *WAC 296-800-12005* outlines some basic responsibilities, including:

- Studying and following all safety practices that apply to the work being performed.
- Coordinating and cooperating with all other employees to try to eliminate workplace injuries and illnesses.
- Applying the principles of accident prevention to the daily work.
- Using proper safety devices and protective equipment as required by the job or employer.
- Taking care of and wearing all required personal protective equipment (PPE).
- Not wearing torn or loose clothing while working around machinery.
- Promptly reporting hazards, injuries and illnesses to a supervisor.
- Not removing, interfering with or damaging any safety device, work practice, notice or warning provided to make the workplace safe.
- Doing everything reasonably necessary to protect the lives and safety of employees.

NOTE: DOSH does not issue citations to employees.

G.3. Employee Protection from Discrimination.

DOSH protects employees' rights to participate in workplace safety and health activities without fear of being fired or subject to retaliatory or discriminatory action. These laws and regulations can be found in *RCW 49.17.160* and Chapter *296-360* WAC. The *DOSH Discrimination Investigations Manual* includes DOSH's policies and procedures for investigating allegations of WISHA related workplace discrimination.

Employees who believe they are the subject of this type of adverse action have 30 days to file a complaint with the Department. ***It is extremely important for CSHOs and other Department staff who receive oral or written WISHA discrimination complaints to immediately refer the complainant, or forward the written complaint to the Investigations Manager at MS 4600, or (360) 902-5480, or via email.*** There is a 90 day statutory timeline to complete the investigation, make a determination and notify the complainant of the Department's findings.

G.4. Employee Refusal to Comply.

In cases where a CSHO determines that employees are systematically refusing to comply with a standard applicable to their own actions and conduct, the matter must be referred to the Compliance Supervisor for discussion and advice.

G.5. Employer Exercise of Authority.

Employers are responsible for employee compliance with their workplace safety and health rules, and with WISHA standards. CSHOs are expected to obtain enough information to understand whether an employer is using all appropriate authority to ensure compliance with DOSH requirements. The employer's safety and health program must be effective in practice, not merely in theory or outlined on paper.

When issues of employee misconduct or other defenses are raised by an employer, CSHOs must use the following guidance to determine whether the employer has an affirmative defense against a citation. *See Section H.3.a.(2)* for the four elements employers must prove to be exempt from citation in cases where unpreventable employee misconduct allegedly contributed to a violation of WISHA standards.

H. AFFIRMATIVE DEFENSES

H.1. Definition.

An affirmative defense is any matter which, if established by an employer, will excuse the employer from a violation which has otherwise been proved by a CSHO.

H.2. Burden of Proof.

Although affirmative defenses must be proved by an employer at the time of a reassumption hearing, DOSH must have information or evidence and be prepared to respond whenever an employer is *likely to raise, or actually does raise* an argument using this defense.

CSHOs must keep in mind the potential affirmative defenses that an employer may make. During an inspection CSHOs must attempt to gather contrary evidence, if any, when a statement made by the employer raises a defense. CSHOs should bring the documentation of hazards and facts related to possible affirmative defenses to the attention of the Compliance Supervisor.

Where it appears that each and every element of an affirmative defense is present, the Compliance Supervisor may decide that a citation is not warranted. *This determination and supporting rationale must be documented in the case file.* In cases of unpreventable employee misconduct, where an employer has shown that the statutory criteria of *RCW 49.17.120(5)*) are met, a citation must not be issued.

NOTE: All violations involving employee misconduct must be assessed using DOSH Directive 5.10, Unpreventable Employee Misconduct.

H.3. Common Affirmative Defenses.

The following are explanations of the more common affirmative defenses with which CSHOs must become familiar. There are other affirmative defenses besides these, but they are used less frequently, or the facts which can be gathered about them during an inspection are minimal. If a CSHO suspects the defense or if the employer actually raises the unpreventable employee defense the case file must document in detail why the defense is or is not met.

H.3.a. Unpreventable Employee Misconduct or "Isolated Event."

(1) An unpreventable employee misconduct defense may exist when a violative condition was unknown to an employer, and was in violation of an adequate work rule which was effectively communicated to employees and uniformly enforced in a manner effective in practice.

(2) No citation may be issued if there is unpreventable employee misconduct that led to the violation, **and** the employer has shown the existence of ***all four*** of the following elements: *(see RCW 49.17.120(5))*

(a) A thorough safety program which includes work rules, training and equipment designed to prevent the violation.

(b) Adequate communication of the work rules to employees.

(c) Steps to discover and correct violations of the employer's safety rules.

(d) Effective enforcement of its safety program, as written, in practice and not just in theory.

EXAMPLE: *An unguarded table saw is observed during an inspection. The guard is nearby and is reattached while a CSHO watches. Facts which CSHOs should document include:*

- *Who removed the guard and why?*
- *Did the employer know that the guard had been removed?*
- *How long or how often had the saw been used without guards?*
- *Did the employer adequately train employees about safety practices and hazard prevention?*
- *Did the employer have a work rule that the saw guards are not be removed?*
- *How was the work rule communicated?*
- *Was the work rule enforced and how?*
- *What steps did the employer take prior to the inspection to ensure guards were in place (self-inspections?)*

H.3.b. Impossibility.

An impossibility defense may exist when compliance with requirements of a standard is:

(1) Functionally impossible or would prevent performance of required work; and

(2) There are no alternative means of employee protection.

Example: *During the course of an inspection an unguarded table saw is observed. The employer states that the nature of the work makes a guard unworkable. Facts which CSHOs should document include:*

- *Would a guard make performance of the work impossible or merely more difficult?*
- *Could a guard be used part of the time?*
- *Has the employer attempted to use guards?*
- *Has the employer considered alternative means or methods of avoiding or reducing the hazard*?

H.3.c. Greater Hazard.

A greater hazard defense may exist when compliance with a standard would result in greater hazards to employees than non-compliance and:

(1) There are no alternative means of employee protection; and

(2) An application of a variance would be inappropriate

EXAMPLE: *An employer indicates that a saw guard had been removed because it caused particles to be thrown into the operator's face. Facts which CSHOs should consider include:*

- *Was the guard used properly?*
- *Would a different type of guard eliminate the problem?*
- *How often was the operator struck by particles and what kind of injuries resulted?*
- *Would safety glasses, a face mask, or a transparent shelf attached to the saw prevent injury?*
- *Was operator technique at fault and if so, did the employer attempt to correct it?*
- *Was a variance sought?*

H.3.d. Multi-Employer Worksites.

(1) Exposing Employer. On multi-employer worksites, both construction and non-construction, citations normally will be issued to employers whose employees are exposed to hazards.

NOTE: *WRD 27.00, Contractor Responsibilities Under Stute*, provides additional guidance for assessing contractor compliance with WISHA requirements.

(2) Additional Categories of Employers. When appropriate, the following types of employers can be cited, whether or not their own employees are exposed:

(a) Creating Employer. The employer who actually creates the hazard.

(b) Controlling Employer. The employer who is responsible, by contract or through actual practice, for safety and health conditions on the worksite; i.e., the employer who has the authority for ensuring that the hazardous condition is corrected.

(c) Correcting Employer. The employer who has the responsibility for actually correcting the hazard.

(3) Knowledge of Hazardous Condition. It must be shown that each employer to be cited has knowledge of the hazardous condition or could have had such knowledge with the exercise of reasonable diligence.

H.4. Legitimate Defense to Citation.

Prior to issuing citations to an **exposing employer**, it must first be determined by the available facts whether the employer has a legitimate defense to the citation, as set forth below:

- The employer did not create the hazard.
- The employer did not have the responsibility or the authority to have the hazard corrected.
- The employer did not have the ability to correct or remove the hazard.
- The employer can demonstrate that the **creating, the controlling and/or the correcting employers**, as appropriate, have been specifically notified of the hazards to which his/her employees are exposed.
- The employer has instructed his/her employees to recognize the hazard and, where necessary, informed them how to avoid the dangers associated with it.
- Where feasible, an **exposing employer** must have taken appropriate alternative means of protecting employees from the hazard.
- When extreme circumstances justify it, the **exposing employer** must have removed his/her employees from the job.

H.5. Which Employer to Cite.

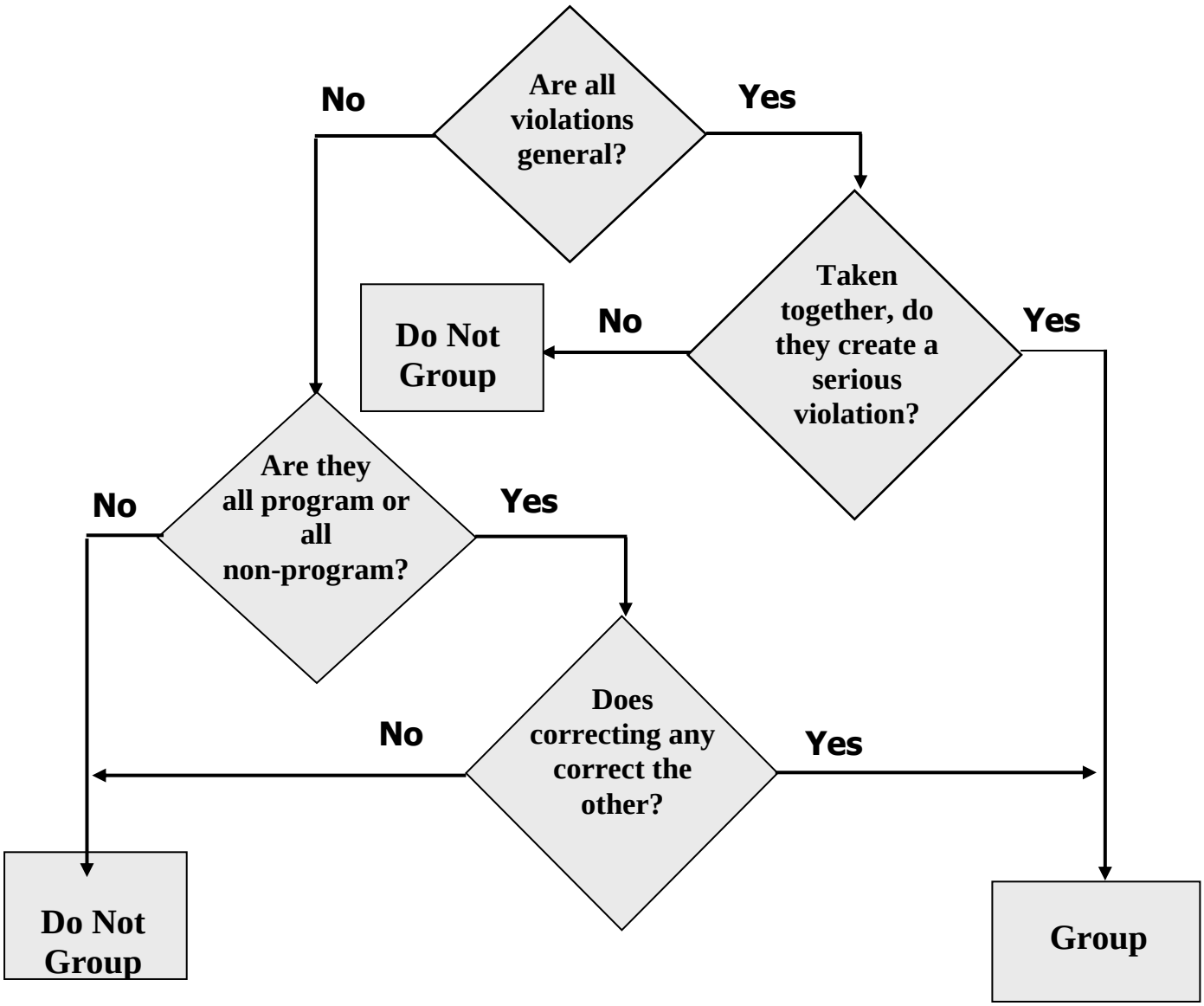
- If an **exposing** employer meets all these defenses, that employer will not be cited.
- If all employers on a worksite with employees exposed to a hazard meet these conditions, then the citation will be issued only to the employers who are responsible for **creating** the hazard and/or who are in the best position to **correct** the hazard or to ensure its correction. In such circumstances the **controlling** employer and/or the **hazard creating** employer will be cited even though no employees of those employers are exposed to the violative condition. ~~*(However, see H.6., below*~~

Penalties for these violations must be appropriately calculated using the exposed employees of *all* employers as the number of employees for probability assessment.

NOTE: Employers are responsible for employee compliance with WISHA standards. The WISH Act (*Chapter 49.17 RCW*) does not provide for the issuance of citations or the assessment of penalties against employees.

(Deleted section H.6, Safe Place Standard Violations)

APPENDIX 5A
GROUPING DECISION MATRIX



CHAPTER 6
PENALTIES

A. PENALTIES FOR WISHA VIOLATIONS

A.1. Civil Penalties.

The civil penalty structure provided under *RCW 49.17.180* is intended to:

- Promote compliance by encouraging employers to prevent hazardous exposures
- Correct violations of minimum safety and health standards adopted pursuant to the Washington Industrial Safety and Health Act (WISHA), before an inspection takes place
- Avoid the risk of preventable injuries or illnesses by using the deterrent effect of penalties.

A.2. Criminal Penalties.

Criminal penalties are imposed by the courts after trials and not by the Department of Labor and Industries (L&I) or the Board of Industrial Insurance Appeals (BIIA).

RCW 49.17.190 provides criminal penalties for:

- Willful violations causing the death of an employee.
- Giving unauthorized advance notice of a WISHA inspection.
- Giving false information related to WISHA requirements.
- Failing to comply with an immediate restraint order.
- Knowingly removing, displacing, damaging or destroying any safety device or safeguard required by DOSH.

B. BASIC PENALTY FACTS

- Unless penalties are mandated by a statute, penalties for **first instance general** violations will not be assessed.
- By statute, a penalty must be assessed when a violation is classified as **serious** or **willful**.
- There is no regulatory requirement to assess a penalty when the violation is **not serious or willful,** except for mandatory penalties for violating posting or similar **statutory** requirements.
- Adjustment factors are applied for faith, size, history, and abatement quick-fix. When applicable, increases to adjusted based penalties for failure-to-abate, repeated and willful violations are applied.
- The minimum civil penalties assessed are:
  - $100 for serious violations
  - $5,000 for willful violations
  - $250 for asbestos good faith inspection violations. This is multiplied by the number of days of actual work done without the good faith inspection.
  - $2,500 per violation for violations contributing to a fatality.

- Asbestos good faith violations are cited general.
  - The minimum penalty for not having an asbestos good faith inspection is $250.
  - If asbestos containing material or presumed asbestos containing material is present, the penalty is calculated by multiplying the number of actual days worked by $250.
  - If asbestos is **not** present, then there is a one-day penalty of $250.

- Penalties for **serious** violations that calculate below $100 will be assessed at the $100 minimum.
- The penalty for **first instance statutory** violations is an adjustable $1,000 penalty.
- See *Chapter 7* in this manual for requirements for pre-citation or pre-closing review of cases with significant penalties (generally considered over $25,000 for a single violation or over $50,000 for the entire citation).

Type	Minimum	Maximum	Note
General	**None, unless statutory**	**$7,000**	• **RCW** 49.17.180(3) sets the maximum penalty for general violations. • DOSH will not assess a penalty for first instance general violations except when it is required by statute (see "Statutory").
Serious	$100	$7,000	• RCW 49.17.180(2) requires a penalty for a serious violation. • The maximum is set by the statute. • The minimum is set by rule.
Willful General	$5,000	$70,000	• RCW 49.17.180(1) requires a penalty for a willful violation • Both the minimum and the maximum are set by the statute.
Willful Serious	$5,000	$70,000	• RCW 49.17.180(1) requires a penalty for a willful violation. • Both the minimum and the maximum are set by the statute.
Repeated Willful	$5,000	$70,000	• RCW 49.17.180(1) requires a penalty for a willful violation. • Both the minimum and the maximum are set by the statute
Repeated Serious	$100 x the repeat factor	$70,000	• RCW 49.17.180(1) sets the maximum penalty for repeated violations. • RCW 49.17.180(2) requires a penalty for serious violations. • The minimum is set by rule.
Repeated General	$100 x the repeat factor	$70,000	• RCW 49.17.180(1) sets the maximum penalty for repeated violations. • A penalty is required by policy. • The minimum is set by rule.
Failure to Abate (FTA) Serious	$500	$7,000 per day	• RCW 49.17.180(4) sets the maximum penalty for each day the violation continues. • RCW 49.17.180(2) requires a penalty for serious violations. • The minimum is set by rule.
Failure to Abate (FTA) General	$500	$7,000 per day	• RCW 49.17.180(4) sets the maximum penalty for each day the violation continues. • A penalty is required by policy. • The minimum is set by rule.
Statutory	$1,000 ($250 per day for asbestos good faith inspection violations, RCW 49.26.016)	$7,000	• RCW 49.17.180(5) and some other statutes require a penalty for violations related to requirements such as posting, reporting, recordkeeping, and employee access to records. These are known as "statutory" violations. • The maximum penalty is set by statute. • The minimum is set by rule.

C. CALCULATING BASE PENALTIES

CSHOs must assess severity and probability when calculating base penalties. The gravity-based penalty is an **unadjusted base penalty** and is calculated from the severity and probability charts.

C.1. Severity Assessment.

The classification of the alleged violation(s) as serious or general is based on the severity of the most serious injury, illness or disease which could *reasonably* be expected to result from a hazardous condition. Use the following chart as a guide.

VIOLATION SEVERITY		
Severity	**Definition**	**Examples**
3	• Death • Injuries involving permanent disability • Chronic, irreversible illness	Death, major amputation (leg, arm, hand), long term major disability, extensive 3rd degree burns, loss of vision in one or both eyes, paralysis, asbestosis, silicosis, and total hearing loss Treated as hospital inpatient including surgery, prosthesis, and/or reconstruction.
2	• Disability of a limited nature • Injuries or reversible illnesses resulting in hospitalization	Broken bones requiring hospitalization or resulting in limited disability, or minor amputation such as part of a finger, or partial loss of hearing.
1	• Injuries or temporary, reversible illnesses resulting in serious physical harm • May require removal from exposure or supportive treatment without hospitalization for recovery	Laceration without hospitalization and no permanent disability, or broken finger or arm not requiring hospitalization.
General	Violations that have a direct or indirect relationship to non-serious injury or illness, or violations of specification requirements that have little impact on safety and health.	Conditions that could cause injury or illness to an employee but would not result in serious physical harm, or treatment beyond first aid.

C.2. Probability Assessment.

Probability assesses the likelihood that an injury or illness will occur based on the workplace conditions and practices.

When assessing probability, start at average and based upon documented factors it can be adjusted up or down. The probability of each violation must be evaluated separately. Conditions, circumstances, and/or practices at the worksite which are relevant to the specific violation must be considered.

- Probability has **no role** in determining the **classification** of a violation.
- Probability **does not** change the severity.
- All factors used in the assessment must be documented in the case file.

C.2.a. Probability Assessment. The probability factor will be rated on a scale of **1** to **3**, with **1** representing the lowest value, and **3** representing the highest value. When assessing probability, **start at average** and adjust up or down based on documented factors. A probability of **2** will normally be issued if relatively low or high probability is not documented. **All factors used to determine probabilities must be documented.**

VIOLATION PROBABILITY		
Probability	**Definition**	**Documented Factors** *(May vary based on situation)*
3	The factors considered indicate the likelihood of injury or illness would be **higher than average**	• Frequency and duration of exposure • Number of employees exposed • Instances or number of times the hazard is identified in the workplace • How close an employee is to the hazard (proximity) • Weather and other working conditions • Employee skill level and training • Employee awareness of the hazard • The pace, speed, and nature of the task or work • Use of personal protective equipment • Other mitigating or contributing circumstances **Mitigating circumstances** (may lower probability) – Specific safety or health instructions in place – Effective training programs, – Evidence of correction underway, – Warning signs and labels or special procedures, – Mandatory administrative controls providing some though not complete protection. **Contributing circumstances** (may raise probability) – Inappropriate or inadequate safety or health instructions – Inadequate or no training Widespread hazardous conditions or faulty equipment with little or no attempt to control them.
2	The factors considered indicate the likelihood of injury or illness would be **average**	
1	The factors considered indicate the likelihood of injury or illness would be **lower than average**	

C.2.b. Imminent Danger. CSHOs must assign a probability value of 3 for hazards determined to be imminent danger. Documentation to support the imminent danger must be included in the case file and be noted in the probability section of the WIN penalty worksheet. *See Chapter 4, Section A*, for definition and procedures for Imminent Danger.

C.3. Gravity Based Penalty.

The gravity of each violation is determined by multiplying a severity factor by a probability factor. Once gravity is calculated, the base penalty is determined by the following scale:

GRAVITY BASED PENALTY – SERIOUS VIOLATIONS (SEVERITY X PROBABILITY = GRAVITY)	
9 High	$7,000
6	$6,000
4	$4,000
3	$3,000
2	$2,000
1 Low	$1,000

C.3.a. General Violation Penalty. A penalty is not applied to first time general violations. A base penalty of $200 is used to calculate the penalty for willful, repeat, or failure to abate general violations.

C.3.b. Statutory Violations. The gravity-based penalty method is not used for statutory violations. See *Section G* in this chapter for information on statutory penalties.

C.4. Gravity Calculations for Combined Instances or Grouped Violations.

Combined multiple instances or grouped violations are normally considered as 1 violation and must be assessed as 1 gravity based penalty. (For guidance on when to combine multiple instances or group violations, see *Chapter 5, Section D* in this manual.)

C.4.a. Combined Multiple Instances. The severity and the probability assessments for combined instances must be based on the instance with the highest gravity. It is not necessary to complete the penalty calculation for each instance or sub-item of the combined violation if it is clear which instance or sub-item will have the highest gravity.

C.4.b. Grouped Violations. For grouped violations, CSHOs must use the following guidelines:

(1) Severity Assessment.

(a) The severity assigned to the grouped violation must be no less than the severity of the most serious injury, illness or disease that could reasonably be expected to result from the employee's exposure to the hazard on any single item.

(b) If a more serious injury, illness or disease is reasonably predictable from the grouped items than from any single violation item, the more serious

injury, illness or disease must serve as the basis for the calculation of the severity factor of the grouped violation.

(2) Probability Assessment.

(a) When assigning the probability of a grouped violation, use the highest probability in the group.

(b) If the overall probability of the occurrence is greater with the grouped violation than with any single violation item, then calculate the greater probability.

C.5. Written Program Violations.

C.5.a. General . Program violations are classified **general** when it is documented that the employer does not have a written program or the program is missing one or more element(s), and no related serious hazards exist. No penalty will be assessed for first time general program violations.

C.5.b. Serious. Program violations are classified **serious** when it is documented that the employer does not have a written program or their program has significantly deficient elements **and** at least one documented serious hazard associated with the program deficiency. Use the highest severity from the related violations.

C.5.c. Probability. Serious program violations will normally be assigned a probability of 1. However, CSHOs may assign a higher probability rating based on the circumstances and facts of the case. **The inspection case file must contain written documentation to justify assigned probabilities other than 1.**

C.6. Employer Immediately Corrects or Initiates Corrective Action.

Penalties must be assessed for an alleged serious violation even if the employer immediately corrects or initiates steps to correct a hazard after a CSHO brings it to their attention.

C.7. Imminent Danger Penalties.

Violations related to imminent danger situations must be classified as serious, willful or repeated, with penalties calculated accordingly. Probability for imminent danger situations must be rated as a 3. Detailed instructions and procedures for handling allegations of imminent danger situations are contained in *Chapter 2* and *Chapter 4* of this manual.

D. STANDARD ADJUSTMENTS TO BASE PENALTIES

In assessing penalties, *RCW 49.17.180(7)* requires L&I to consider the following factors:

- The gravity of the violation.
- The faith of the employer.
- The company size (number of employees nationwide).
- The employer's history.

WAC 296-900-14015 also allows an adjustment for quick-fix of hazards.

Once the gravity based penalty is calculated, it may be **reduced or increased,** depending on the employer's faith, size of business, and history of previous violations. A reduction up to 20% is permitted for faith, up to 70% for size, up to 10% for history, and 15% for abatement quick-fix. Below average ratings for history or faith will increase the gravity based penalty.

IMPORTANT: With the exception of size, no reduction is given for violations classified as willful, repeat, failure to abate, or violations contributing to an inpatient hospitalization with an assigned gravity of 6 or 9, or any violations contributing to a fatality.

- The minimum adjusted penalty for a serious violation = $100.
- A penalty is required by statute for a serious violation. Where adjustments would result in a penalty below the minimum, the minimum will be applied.

The adjustments for size (# of employees nationwide), history and faith are calculated **once for each inspection.**

D.1. Faith.

An employer's level of faith is rated as **good, average, or below average.** Average is the starting point. Justification is required for higher or lower ratings, and must be documented in the case file and on the penalty worksheet in WIN.

CSHOs must rate the employer's faith based on the employer's demonstrated efforts toward compliance with safety and health standards. No *single* factor will be used to determine faith, except for the lack of a written APP. Some of the factors considered are:

- Management's commitment at all levels is apparent.
- Employees are clearly involved in the safety and health programs.
- Safety and health policies are communicated and applied.
- Evidence of an overall safety and health program, including a written accident prevention program (APP), other required written programs, training, etc.
- Employer's computed experience factor

FAITH RATINGS	PENALTY ADJUSTMENT
Good Faith is when the employer demonstrates above average commitment to safety and health, such as: • All required safety and health programs are written and implemented throughout business operations • Taking prompt and effective action on reported hazards • Prior DOSH or private consultations • Annual training as needed • Self-inspections or other efforts to verify safe workplace • Employees demonstrate knowledge of their safety and health program	-20%
Average Faith is when an employer has at least three of the following: • Written accident prevention program • Other written programs as required • Employees receive some form of safety and health training • Required PPE provided per WAC • Safety meetings/committee • Hazard reporting system	None
Below Average Faith is absence of the elements of Good Faith and Average Faith.	+20%

IMPORTANT: No reduction is given for violations classified as willful, repeat, or failure to abate.

D.2. Size of Business.

Larger businesses have greater resources to ensure safety and health at worksites, and therefore do not qualify for penalty reductions based on size. A maximum penalty reduction of 70% is permitted for small businesses. Size of business will be measured on the maximum number of employees at **all** workplaces nationwide, in the previous 12 months. For businesses operating less than one year, base the size on the maximum number of employees since the company has been in business. It may be necessary to obtain or confirm the information from the employer's headquarters.

SIZE OF BUSINESS	
Number of Employees	Penalty Adjustment
1 - 10	-70%
11 - 25	-60%
26 - 100	-40%
101 - 250	-20%
251 or more	None

D.3. History.

The employer's statewide history of previous WISHA violations must be checked for the past three years. Consider only violations that are final orders. Use the table below to calculate any adjustment.

EMPLOYER INSPECTION HISTORY	
History Assessment	**Penalty Adjustment**
Above Average: Previous inspections with less than one serious violation on average and no willful, repeat, or failure to abate violations.	-10%
Average: No previous inspections or inspections with less than two serious violations on average.	None
Below Average: Previous inspections with willful, repeat, or failure to abate violations or inspections with two or more serious violations on average.	+10%

IMPORTANT: No reduction is given for violations classified as willful, repeat, failure to abate, or violations contributing to an inpatient hospitalization with an assigned gravity of 6 or 9, or any violations contributing to a fatality.

D.4. Quick-Fix.
Quick-Fix is an abatement incentive program meant to encourage employers to immediately abate hazards found during a DOSH inspection and thereby quickly corrects the hazardous condition. Quick-Fix does not apply to all violations. It is a corrective action that is permanent and substantial, not temporary or cosmetic (e.g., fabricating a guard for a machine rather than removing an employee from the zone of danger, or other specific measures to abate a violation).

D.4.a. Abatement Quick-Fix Reduction. The employer may receive a 15% penalty reduction for immediate correction of a hazard, provided such corrective action is substantial and not temporary or superficial. The CSHO will document the reason for considering a quick-fix reduction.

D.4.b. Quick-Fix Reductions Shall Apply to:

- Both safety and health violations, provided hazards are immediately abated during the inspection, once identified by the CSHO (e.g., on the day the condition was pointed out to the employer, or within 24 hours of being discovered by the CSHO).
- Violations with a gravity of 4 or lower
- Individual violations, i.e., not to the citation or penalty as a whole.

Example 1: *The employer has an old machine that does not have a guard covering rotating keyways. Within 24 hours of the CSHO pointing out the hazard, the employer had the maintenance person fabricate and install a guard covering the hazardous shafts.*

Example 2: *When notified by a CSHO that the squeeze bottles are insufficient as an eye wash, the employer, within 24 hours of being notified, replaced the chemicals in use with a non-corrosive alternative or installed a suitable eye wash.*

D.4.c. Quick-Fix Reductions Shall Not Apply to:

- Violations classified as willful, repeat, or failure to abate.
- Violations contributing to an inpatient hospitalization or fatality, or to any incidents resulting in serious injuries to employee.
- Blatant violations that are easily corrected or "abated" due to the short-term duration of work at a specific location.

Example: *Employees put on fall protection or hard hats that were readily available at the workplace when the CSHO stated that they were needed.*

Example: *The employer turned on a ventilation system to reduce employee exposure to a hazardous atmosphere when the CSHO asked about the exposures.*

D.5. Ability to Pay. An employer's ability to pay a penalty will not be investigated or considered in determining any penalty reduction.

E. ADDITIONAL ADJUSTMENTS TO BASE PENALTIES

In addition to the standard adjustments for faith, employer size and history, penalties must be adjusted when a violation is cited as **willful, repeated, or failure-to-abate (FTA)**.

E.1. Willful Penalties.

RCW 49.17.180 provides that an employer who willfully violates the WISH Act may be assessed a civil penalty of not more than $70,000, but not less than $5,000, for each violation. A willful violation is a voluntary action done either with intentional disregard of, or plain indifference to, WISHA requirements or employee safety and health.

IMPORTANT: **No reduction is given for good faith, history, or abatement quick-fix**.

E.1.a. Willful Base Penalty and Standard Adjustments. After determining the classification of a serious willful violation, a gravity-based penalty must be calculated with adjustment factors for faith, employer size and history applied. (See *Section C, Calculating base penalties, and Section D, Standard adjustments to base penalties,* in this chapter.)

E.1.b. Willful Serious Violations and Willful Program Violations. The adjusted gravity-based penalty is multiplied by 10.

E.1.c. Willful General and Willful Statutory Violations. A penalty of $5,000 will be assessed for these violations.

E.1.d. Egregious Violations. For exceptionally flagrant cases involving willful violations, an egregious (i.e., violation-by-violation) penalty procedure may be considered. Standard penalty calculations described in *Section C* in this chapter are applied, but instead of grouping or combining violations for penalty purposes, *each instance* of noncompliance is considered a separate violation and a separate penalty is applied.

Criteria for classifying a case as egregious is located in the table below. Additional information can be found in OSHA *CPL 02-00-080, Handling of Cases To Be Proposed for Violation-By-Violation Penalties (Section H.2.a.)*

Only the Director may authorize and approve the assessment of egregious penalties. CSHOs who identify a case which could have egregious violations must notify the Compliance Supervisor and the Regional Compliance Manager immediately. The Regional Compliance Manager must also inform the Statewide Compliance Manager who will coordinate a review with the DOSH Assistant Director, other DOSH management as appropriate, and the Attorney General's Office. The Statewide Compliance Manager and the Assistant Director will also brief the Director as soon as possible.

EGREGIOUS VIOLATION	
If the violation was willful and at least one of the following: • The violations resulted in worker fatalities, a worksite catastrophe, or large number of injuries or illnesses. • The violation resulted in persistently high rates of worker injuries or illnesses. • The employer has an extensive history of prior violations. • The employer has intentionally disregarded its safety and health responsibilities. • The employer's conduct taken as a whole amounts to clear bad faith in the performance of his/her duties. • The employer has committed a large number of violations so as to undermine significantly the effectiveness of any safety and health program that might be in place.	**Then** the adjusted base penalty may be increased with a separate penalty issued for each instance the employer fails to follow a specific requirement.

E.2. Repeated Violation Penalties.

RCW 49.17.180(1) provides that an employer who repeatedly violates the WISH Act may be assessed a civil penalty of not more than $70,000 for each violation. A violation is classified as repeated when the employer has been cited in the last 3 years for a substantially similar hazard. The 3-year period is measured from the date of the final order for each previous citation. This policy also applies to repeated violations of statutory standards (see *Section G* in this chapter).

E.2.a. Repeated Violation Base Penalty and Standard Adjustments. After determining the classification (serious or general) of a repeated violation, a gravity based penalty must be calculated (*Section C*) based on facts noted during the current inspection. Adjustments for faith, employer size and history must be applied, but if they reduce the penalty to under $100, an adjusted base penalty of $100 must be used.

E.2.b. Additional Repeated Violation Adjustments. The adjusted penalty must be multiplied by the factors in the table below

REPEAT VIOLATIONS	
Number of Prior Violations	**Multiplication Factors**
1	x 2
2	x 5
3	x 8
4	x 12
5	x 15

If an employer was cited 3 times for a violation within 3 years prior to the issuance date of the most recent citation, the violation should be reviewed to determine whether a willful citation is appropriate. (See *Chapter 5* for additional information on citing willful violations.)

If an employer was cited 5 times for a violation within 3 years prior to the issuance date of the most recent citation, the violation should be reviewed to determine whether an egregious willful citation is appropriate. For repeats higher than 5 times which do not meet the criteria for egregious, the multiplication factor of 15 will be applied.

IMPORTANT: For repeats of willful violations the repeat adjustment is applied after the willful assessment.

E.2.c. Definition of Final Order. A final order is a decision that is not subject to further review, as the appeal rights have lapsed or been exhausted. An order is "final" if it meets any of the following criteria:

(1) A citation and notice that was never appealed and 15 working days have passed since its receipt by the employer.

(2) A corrective notice of redetermination that was never appealed and 15 working days have passed since its receipt by the employer.

(3) An order issued by the Board of Industrial Insurance Appeals or higher court which affirms or modifies (but does not vacate) the violation.

(4) A Denial of Petition for Review that was issued from the Board of Industrial Insurance Appeals.

(5) A decision issued from a Washington State court and either no further appeal rights remain or have been denied.

E.2.d. Definition of a Final Abatement Order. A final abatement order exists when the requirement to abate a violation is not subject to further review, appeal, or stay consideration and abatement is required.

The requirement to abate a violation is "final" when there is a final order on the violation except for the following circumstances when there is a requirement to abate a violation during appeal:

(1) A serious, willful, repeat serious, or failure to abate serious violation for which no stay of abatement date was requested in a timely appeal of a citation.

(2) A serious, willful, repeat serious, or failure to abate serious violation for which a stay of abatement date request was denied by the department in the corrective notice of redetermination, and the stay request was not renewed in the timely appeal of the corrective notice of redetermination.

(3) A serious, willful, repeat serious, or failure to abate serious violation for which a stay of abatement date request was denied by the Board of Industrial Insurance Appeals.

NOTE: See *Chapter 5, Section C.6., Repeated Violations,* for additional guidance on citing repeated violations.

E.3. Failure to Abate (FTA) Penalties.

A failure-to-abate violation occurs when an employer who has been cited for a WISHA violation fails to correct the violation on time. Certifying corrected violations is covered in WAC 296-900-15005 through 296-900-15030. An FTA violation with penalties will be cited in cases where the initial citation or corrective notice has become a final order, or when there is a final abatement order requiring abatement during appeal, and violations have not been corrected as required.

IMPORTANT: There is no time limitation for citing failure to abate.

RCW 49.17.180(4) gives DOSH the authority to assess a penalty up to $7,000 for each day a violation continues unabated past the abatement date. For FTA violations, the statute allows a penalty potentially higher than the cap of $70,000 for repeated and willful violations. An FTA penalty should usually be penalized higher than a repeat but may be lower than a willful violation.

No reduction in the base penalty is given for good faith, history, or abatement quick-fix.

E.3.a. Abatement During Appeal. Under *RCW 49.17.140(4),* an appeal of any serious, willful, repeat serious, or failure to abate serious violation, does not stay or suspend the employer's requirement to abate the violation unless the employer requests and is granted a stay of abatement by L&I or the Board. When abatement is required during the appeal, the abatement process for these violations will be the same as required for abatement upon a final order.

(1) Abatement is not required during appeal as follows:

- General and repeat general violations are automatically stayed by an appeal, and abatement for these violations is not required until there is a final order.

- When a stay of abatement date for a serious, willful, repeat serious, or failure-to-abate serious violation is granted in the corrective notice of determination, and the employer further appeals the corrective notice of redetermination, abatement is not required until there is a final order.

- When a stay of abatement date for a serious, willful, repeat serious, or failure-to-abate serious violation is granted by the Board of Industrial Insurance Appeals, abatement is not required until there is a final order.

(2) Abatement is required during appeal. Abatement is required for all serious, willful, repeat serious, and failure-to-abate serious violations unless the employer requests a stay of abatement in their notice of appeal of citation and notice.

- Abatement is required by the abatement date listed in the citation and notice for all violations. If these violations are not corrected as required, the employer may be cited for failure to abate these violations during the appeal.

- Abatement is required when a stay of abatement date is denied in the corrective notice of determination, and the employer further appeals the corrective notice of redetermination, but does not renew the stay request in the notice of appeal or the corrective notice of redetermination. If these violations are not corrected as required by the abatement date listed in the corrective notice of determination, the employer may be cited for failure to abate these violations during the appeal.

- Abatement is required when a stay of abatement is denied by the Board of Industrial Insurance Appeals. When a stay request is denied at the Board, the DOSH appeals staff will notify the employer of the required abatement date. If these violations are not corrected as required by the abatement date sent to the employer, the employer may be cited for failure to abate these violations during the appeal.

IMPORTANT: There is no requirement to abate a violation while a stay request is pending.

E.3.b. FTA Violation Base Penalty and Standard Adjustments. As conditions at the worksite may have changed since the initial inspection (number of employees exposed, frequency of use, etc.), based on the facts at the time of re-inspection, CSHOs must calculate a new adjusted base penalty. The faith rating cannot be assessed as "good." All factors related to the adjustments must be documented in the case file.

When the employer has failed to make a good faith effort to abate the violation, multiply the adjusted base penalty by the number of calendar days that the hazard was not corrected. Although not limited by statute, normally, the maximum total assessed penalty for failing to abate a particular violation should not exceed 30 times the amount of the assessed daily penalty.

Apply the following rules:

- Up to-10 days, minimum of 5 days – Compliance Manager approval is required.
- 11 days or more – Statewide Compliance Manager approval is required.

E.3.c. Effect of an Employer Appeal on Abatement Requirements. When an employer appeals an alleged serious, willful, repeat serious, or failure-to-abate serious violation, the employer is required to abate the violations during the appeal, unless the employer requests and is granted a stay of abatement date. When a stay of abatement is granted, the period of abatement for the violations stayed does not start until after the final order has been issued and any further appeal rights have lapsed or been exhausted.

When an employer appeals an alleged general violation, the period for abatement of the items appealed does not start until a final order has been issued and any further appeal rights have lapsed or been exhausted. A citation may not be issued for failure to abate any serious, willful, repeat serious, or failure to abate serious violations for which stay has been granted, and for general violations when the original citation is under appeal.

F. NON-REPORTING AND DISTURBING THE SCENE

RCW 49.17.010 requires all state plans to be equal to or exceed the standards and policies prescribed by the Occupational Safety and Health Act of 1970 (Public Law 91-596, 84 Stat. 1590).

OSHA has penalty policies that address the non-reporting of fatalities, hospitalizations, amputations and losses of an eye, and means to prosecute for disturbing the scene. DOSH must have similar policies and penalties in place in order to be at least as effective as OSHA.

F.1. Non-Reporting.

Under WAC 296-27-031 employers are required to report fatalities, in-patient hospitalizations, amputations, and losses of an eye as the result of work-related incidents. Adjustments for size, history and faith must be applied according to the guidance in this chapter.

F.1.a. Under WAC 296-27-031(1)(a) or (b) employers are required to report to DOSH in person or by phone (1-800-423-7233) within 8 hours, any employee death or probable death, or the in-patient hospitalization of any employee. If employers do not report as required, this is cited as a serious violation using a severity of 3 and probability of 2. Adjustments for size, history and faith must be applied according to the guidance in this chapter.

F.1.b. Under WAC 296-27-031(2), employers are required to report to the nearest L&I office in person or by phone (1-800-423-7233) within 24 hours, any employee amputation or loss of an eye, which does not result in hospitalization.

Non-reporting of:

- **Loss of an eye** is cited as a serious violation using a severity of 3 and probability of 2.
- **Major amputation** is cited as a serious violation using a severity of 3 and probability of 2.
- **Minor amputation** is cited as a serious violation using a severity of 2 and probability of 2.

Adjustments for size, history and faith must be applied according to the guidance in this chapter.

F.1.c The following supporting rationale must be added to the "Documentation" section of the WIN report in the "What was the hazard and location" field:

"DOSH must be able to immediately inspect fatalities, hospitalizations, amputations, and losses of eye to eliminate continued exposure to serious hazards, and to ensure issues are corrected and facts obtained during the inspection are accurate. DOSH must be timely notified of these serious incidents. Civil penalties provide a deterrent to allowing unsafe working conditions by assessing penalties against those who do not comply."

F.1.d. If prior to the end of the reporting period, DOSH becomes aware of an incident through some source other than an employer report, DOSH will not cite the employer for failure to report. If DOSH does not learn about the incident until after the reporting time frame has passed, then a serious violation will be issued.

F.2. Disturbing the Scene.

Under WAC 296-800-32010 the employer must make sure equipment involved in a work-related accident is not moved.

F.2.a. The employer must not move the equipment until a supervisory representative of DOSH releases the equipment, or unless moving the equipment is necessary to remove any victims or prevent further incidents and injuries.

If employers do not maintain the scene as required, this is cited as a serious violation using a severity of 3 and probability of 2. Adjustments for size, history and faith must be applied according to the guidance in this chapter.

F.2.b. The following supporting rationale must be added to the "Documentation section" of the WIN inspection report in the "What was the hazard and location" field:

"Employers must ensure an accident scene is not compromised so that DOSH can obtain an accurate picture of how fatalities, hospitalizations, amputations, and losses of eye occurred. This allows DOSH to correctly identify and eliminate serious hazards and avoid continued employee exposure. Civil penalties provide a deterrent to allowing unsafe working conditions by assessing penalties against those who do not comply."

G. VIOLATION OF STATUTORY REQUIREMENTS

G.1. Posting Requirements.

The WISH Act includes mandatory penalties when employers do not meet statutory requirements for posting. These violations will be classified as general and assessed a $1,000 penalty for each first instance violation. Adjustments for size, history and faith must be applied according to the guidance in this chapter.

Posting requirements include but are not limited to:

G.1.a. Job Safety and Health Law Poster. The employer must display (post) the DOSH Job Safety and Health Law poster as required by *WAC 296-800-20005*.

G.1.b. Annual Summary. The employer must post the summary portion of the OSHA-300A Form during the months of February through April, as required by *WAC 296-27-02105(1)(d).*. For a missing OSHA 300A form, when no recordable injuries or illnesses have occurred at the workplace over the last calendar year, a citation will be issued but the employer will not be penalized for a first time violation.

G.1.c. WISHA Citation. The employer must post any WISHA citation as required by *WAC 296-900-13015*.

G.1.d. Notices Regarding Appeals and Corrective Notices. The employer must immediately post notices and information related to any appeal or stay of abatement date request in the same place where DOSH citation and notices (C&Ns) are posted, as required by *WAC 296-900-17015*.

G.1.e. Variances. The employer must post variance applications, variance determinations, and any notice of a hearing, as required by *WACs 296-900-11005, 11010, 11020 and 11025*.

G.1.f. Applications for Extension of Abatement Date. The employer must post applications for abatement date extensions, notice of a hearing, and notice of a decision, as required by *WACs 296-900-116010, 16020 and 16030*.

G.1.g. Violation Correction. The employer must post a copy of each violation correction document submitted to DOSH or a summary. Inform employees about violation correction, as required by *WAC 296-900-15025.*

G.2. Asbestos.

The Asbestos Act which is administered by DOSH, mandates a penalty of $250 per day for violations of asbestos good faith inspection requirements (*RCW 49.26.016).* as required by *WAC 296-62-07721.*

Appendix 6A
DOSH Penalty Worksheet

Citation # , Item #

General Violations	Serious Violations				Gravity	Statutory	Asbestos
Gravity Based General? ○ Yes ◉ No	Severity:	-- Select One --	Probability:	-- Select One --	N/A	○ Yes ◉ No	◉ No ○ Yes #

Hide Penalty Table

Gravity		Faith			Size					History			Abatement
Value	Base Penalty	Good -20%	Avg 0%	Below +20%	1-10 -70%	11-25 -60%	26-100 -40%	101-250 -20%	251+ 0%	Above -10%	Avg 0%	Below +10%	Quick Fix -15%
N/A	200	-40	0	+40	-140	-120	-80	-40	0	-20	0	+20	0
1	1000	-200	0	+200	-700	-600	-400	-200	0	-100	0	+100	-150
2	2000	-400	0	+400	-1400	-1200	-800	-400	0	-200	0	+200	-300
3	3000	-600	0	+600	-2100	-1800	-1200	-600	0	-300	0	+300	-450
4	4000	-800	0	+800	-2800	-2400	-1600	-800	0	-400	0	+400	-600
6	6000	-1200	0	+1200	-4200	-3600	-2400	-1200	0	-600	0	+600	-900
9	7000	-1400	0	+1400	-4900	-4200	-2800	-1400	0	-700	0	+700	-1050

Adjustment Factors

Faith:	-- Select One --	Size:	1-10	History:	-- Select One --	Quick Fix:	○ Yes ◉ No

Calculations

Base Penalty	Faith	Size	History	Quick Fix	Adjusted Subtotal	Calculated Base	Adjusted Base	Base Applied
$ 0	$ 0	$ 0	$ 0	$ 0	$ 0	$ 0	$ 0	$ 0

Willful, Repeat, and Failure To Abate Factors

Willful	Repeat	Failure To Abate (FTA)	Amount Calculated	Amount Assessed
○ Yes ◉ No -- Select One --	○ Yes ◉ No -- Select One --	○ Yes ◉ No # of Days	$0	$ 0

CHAPTER 7
CITATIONS & INSPECTION CASE FILES

A. PRE-CLOSING AND PRE-CITATION REVIEWS

In certain cases including those described below, Compliance Supervisors must consult with their Regional Compliance Manager and with DOSH Compliance Operations at the earliest possible stage of the inspection or investigation. Some types of cases require management notification and formal review prior to closing, while other types require notification and review prior to citation issuance. Compliance Operations is responsible for contacting and coordinating with the Attorney General's Office.

The notification and/or review process can include (but is not necessarily limited to) the following, based on individual case circumstances:

- Statewide Compliance Manager
- DOSH Assistant Director
- Technical Services Program
- Other DOSH managers
- Director's Office
- Public Affairs Office
- Regional Administrator
- Attorney General's Office
- Federal OSHA
- Governor's Office

A.1. Situations Requiring Review.

a. All fatalities investigated by DOSH (Assistant Director must approve prior to closing conference).

b. All potentially willful and criminal/willful violations (Assistant Director must approve prior to citation issuance).

c. Safe place standard violations, especially those presenting unique or complex questions of law.

d. Cases of significant public concern or media involvement including catastrophes.

e. Complex inter-agency jurisdictional questions or cases involving a law enforcement agency or other public agency.

f. Penalties of $25,000 or more for a single violation, or more than $50,000 for the entire citation.

g. Cases arising under newly promulgated safety and health standards.

h. Cases with Stute violations.

i. Cases that are likely to become major litigation vehicles in the development of WISHA law.

j. Cases having legislative interest or involvement.

k. Cases designated by the DOSH Assistant Director.

l. Violations of Chapter 296-305 WAC, Safety Standards for Fire Fighters: All inspections involving the fire service industry. A review with the Fire Fighter Technical Review Committee should be conducted prior to citation issuance. Exceptions are only approved by the DOSH Assistant Director or the Statewide Compliance Manager.

A.2. Director's Office and Public Affairs Program. The Assistant Director and Statewide Compliance Manager will coordinate a pre-citation briefing for the Director and key Public Affairs staff on high profile and other significant cases. This briefing may be conducted before or after the closing conference depending on the circumstances of the case.

A.3. DOSH Authority.
Nothing in the above procedures will affect DOSH's responsibility and final authority to issue citations.

B. INSPECTION CASE FILE

B.1. Inspection Case File Records.

- *Inspection records* are any physical or electronic records made by a CSHO that concern, relate to, or are part of any inspection; **or** that concern, relate to, or are part of the performance of any official duty. These records are the property of the State of Washington and a part of the case file. Inspection records are not the property of a CSHO and under no circumstances are they to be retained, or to be used for any private purpose.
- All original materials, including photographs, film negatives and digital photo CDs pertinent to the case, must be included in the official case file. All official DOSH case files are maintained in the DOSH Records Center in Central Office. After CSHOs enter inspection and violation data in the WIN enforcement data system and Compliance Supervisors review and approve inspection records and citations if any, Regions must send the **entire** case file to Central Office.
- Only the email documentation that supports the violation must be placed in the case file. Reference the evidence of the discussion in the violation documentation.
- In accordance with the record retention requirements specified by *RCW 40.14.060, Preservation and destruction of public records*, all files will be maintained according to L&I's record retention schedule for inspection files, which is:
  - Inspection file is kept in the DOSH Records Center for two years after the inspection case closed date.
  - Files are sent to archives two years after the inspection case closed date.
  - Files are destroyed six years after the inspection case closed date.
- An inspection case is closed when all appeal actions become a final order, and all violations have been corrected.

B.2. Inspection Case File Order and Content.

B.2.a. CSHOs must ensure the official case file includes all pertinent information and materials in the following order:

(1) WIN Summary

- Bottom of the summary page will be signed and dated by CSHO & Supervisor, and Reviewers when necessary.
- Table of Contents
- IH sampling summary table

(2) WISHA 1A

(3) Legal Documents

- Subpoenas
- Warrants

(4) Sanitized Compliant/Referral-(*founded or unfounded*)

(5) Violation Documentation:

- Photographs (only the photos used for the violation)
- Safety Documentation:
  - WISHA 1C, or equivalent seven questions
  - Field notes
- IH Documentation:
  - Field Notes
  - Sampling and Lab Reports
- Employee Interviews

(6) All Checklists:

- Shape sheet
- Construction
- Crane
- Other

(7) Other Supporting Documentation:

- Case Correspondence
- Technical Drawings-Manufacturer info-Manuals
- ANSI/ASME/NFPA sections used
- MSDS
- Employer APP-written programs
- Employer training records
- Photo CDs (label CD if graphic)
- OIR
- Contracts
- Log books
- Non-CSHO photographs
- Records of employer WISHA inspection history
- OSHA 300A summary, unless it contains confidential information

NOTE: For convenience sake, material may be put in an envelope marked non-confidential

(8) Confidential Envelopes. The envelope must be marked confidential and include a list of the contents. Number the documents in this envelope in case file sequence. The documents that are confidential include those with medical information, attorney client privilege, trade secrets, social security numbers. If you have questions regarding whether something is confidential, please consult with your supervisor. Below are examples of specific documents to include:

- Accident/Complaint/Referral information
- Accident Narrative Format
- Employer's accident investigation report
- FAT/CAT and fatal memo information
- Accident Investigation Worksheet
- Request for Confidentiality Form
- Coroner Report
- Employee medical information
- Law enforcement records
- Documents with employee SSN
- Cassette tapes
- All attorney/client privilege documents
- OSHA 300 Log and 300A summary that includes medical confidential material
- Trade Secret material
- Employer profile information
- All communication with next of kin

(9) Numbering Violations. Be careful to number violations correctly. You must use the following order of priority to correctly sequence your violation and item numbers:

- Repeat Willful Serious
- Willful Serious
- Repeat Willful General
- Willful General
- FTA Serious
- Repeat Serious
- Serious
- FTA General
- Repeat General
- General

Each change in violation type requires new sequencing.

*Example: For an inspection having three **Serious,** one **FTA General**, and two **General** violations, the sequencing is:*

- *Serious 1-1, 1-2, 1-3,*
- *FTA General, 2-1, and*
- *General **3**-1 and 3-2*

B.2.b. When Compliance Operations or Technical Services review an inspection case file, key information involving the disposition of the case must be recorded on the "Compliance Operations/Technical Services Review" form, or equivalent, and maintained in the case file.

B.2.c. For fatalities and hospitalizations, provide specific documentation and reasoning when citations are not issued. For example, if the fatality was due to natural causes per the Medical Examiner, include a statement summarizing that information and reference the death certificate.

B.3. Public Disclosure of Inspection Information.

The information obtained during inspections will be determined as disclosable or non-disclosable on the basis of criteria established in *Chapter 42.56 RCW, Public Records Act*, *and Chapter 49.17 RCW, the Washington Industrial Safety and Health Act (WISHA)*. Requests for release of inspection information must be directed to L&I's Public Records program.

C. WRITING ALLEGED VIOLATION DESCRIPTIONS (AVDs)

C.1. Alleged Violation Descriptions (AVDs)

CSHOs must enter alleged violation description (AVD) language in the WIN system for each violation. It becomes part of the citation and describes specific details about the violation. AVDs should be written in clear specific language.

AVDs generally include the following:

- A summary of what the standard required the employer to do to protect their employee(s).
- How the employer did not meet the standard's requirements.
- How many employee(s) were exposed to the hazard.
- Specific information about the hazard such as: distance from, height of fall, make/model/serial number of machine or tools, task during exposure.
- The specific location of the hazard.
- The most serious injury, illness or disease that would reasonably be expected to result from the hazard.

NOTE: General violations do not require a description of severity in the AVD.

- Do not add requirements that are not included in the standard(s) being cited.
- Do not use abbreviations.
- Do not use acronyms unless they are defined. For example "No personal protective equipment (PPE) was provided"
- Do not include employee names.
- Avoid using the term "failed."
- Use charging language as follows: "The employer did not (have, implement, ensure, provide, enforce, develop, maintain, document, etc.)"

Example 1: *The employer did not maintain an OSHA 300 log in that .....*

Example 2: *The employer did not ensure that all employees were protected from falls in excess of 10 feet by an approved fall protection system in that three employees installing three-tab on the north side of the roof were exposed to an 18 foot fall that could result in serious injuries and or broken bones resulting in hospitalization.*

Example 3: *The employer did not ensure that all power transmission belts and pulleys were guarded to prevent accidental contact in that the power transmission belt and pulley for the Challenger planer, model 6640 with serial #643CHAL333, located in building number 3, second floor, was unguarded exposing three employees to serious pinching/crushing injuries which could result in broken fingers and lacerations.*

Example 4: *The employer did not prevent employees from being exposed to lead at concentrations greater than fifty micrograms per cubic meter of air (50ug/m3) averaged over an 8-hour period. In this case five workers performed torch cutting on lead-based paint using inadequate safe work practices and personal protective equipment and at times no respiratory protection during demolition at the east end of Building C. The lead exposure for the one employee was evaluated by L&I and found to be 2600ug/m3 lead 8-hour TWA. Exposure to these concentrations may lead to convulsions, paralysis, coma, encephalopathy, or death.*

C.2. Citing Alternative Standards.

When it appears that more than one standard is applicable to a given factual situation and that compliance with any of the applicable standards would effectively eliminate the hazard, it is permissible to cite alternative standards using the words "in the alternative." A reference in the citation to each of the standards involved must be accompanied by a separate Alleged Violation Description (AVD) that clearly alleges all of the necessary elements of a violation of that standard. Only one penalty will be assessed for the violative condition.

C.3. Compliance Supervisor's Authority and Responsibility to Review Citations.

C.3.a. Elements of Review. Compliance Supervisors are responsible for ensuring, with regard to all citations, that:

(1) The documentation of the violation supports the citation.

(2) The language of the citation is clear and adequately communicates to the employer a clear description of the hazard (including its location) and employee exposure.

(3) The proper codes were cited.

(4) The penalty was calculated correctly.

C.3.b. Substantial Deficiency Found. If a Compliance Supervisor finds a substantial deficiency in the citation or the documentation (e.g. inappropriate gravity or the documentation does not support the citation), the case file and inspection records in the WIN enforcement data system must be returned to the CSHO with an explanation for modification.

C.3.c. Errors Compliance Supervisors May Correct. Compliance Supervisors may personally correct errors in the following:

- The code cited
- Calculation of penalty assessed, **or**
- Minor inaccuracies in the citation narrative (AVD/variable information) as follows:

(1) Justification in File and Communication to CSHO. Compliance Supervisors must include justification in the case file for each change and must communicate all changes to the CSHO.

(2) Method Used to Make Changes. If the Compliance Supervisor corrects any errors, he or she must draw a single line through the incorrect information in the case file and then write in the correct information. The original recommendations from the CSHO must remain legible, and the Compliance Supervisor must initial each change.

(3) Difference of Opinion Between CSHO and Compliance Supervisor. If the Compliance Supervisor and the CSHO disagree about changes, differences must be resolved through consultation with the Regional Compliance Manager, and if needed, the DOSH Statewide Compliance Manager.

C.3.d. Supplementing the Supporting Documentation. The Compliance Supervisor must not change or modify any supporting documentation, but may supplement with additional supporting documentation.

D. ISSUING CITATIONS

D.1. Templates for Writing Citations.

The enforcement data application in the WISHA Information Network (WIN) contains five different templates for writing citations. Each template is specific to one of five different outcomes that can result from an inspection. Only the necessary pages and/or elements are contained in each packet generated through WIN from inspection data entered by CSHOs and approved by Compliance Supervisors. For example, if an inspection results in no violations pending correction, then the citation packet would not include an Employer Certification of Abatement form. Citation packets will be prepared by the Quality Assurance Program and mailed to employers by Central Office.

The five inspection outcomes are:

- The inspection results in a no violation letter of inspection results.
- The inspection results in violations, no assessed penalty, and hazards pending correction.
- The inspection results in violations, no assessed penalty, and no hazards pending correction.
- The inspection results in violations, an assessed penalty, and hazards pending correction.
- The inspection results in violations, an assessed penalty, and no hazards pending correction.

D.2. Ensuring Correct Issuance and Successful Delivery to Employers.

It is important that citations are issued correctly in the legal name of an employer and that they are delivered successfully. When citations are incorrectly issued or not

received by an employer, DOSH's ability to carry out its mission is hindered. If an employer receives an incorrectly issued citation and then appeals, the citation may be vacated, wasting the CSHO's efforts. Even if an employer does not appeal, L&I's ability to pursue collection of unpaid penalties can be affected. Finally, if citations are not received by an employer, there may be a problem if used as the basis for willful, repeat, or failure to abate violations discovered during later inspections.

D.3. Method of Delivery.

Citations **including** penalties will be sent by certified mail. Citations that **do not include** penalties will be sent by first class mail. The Compliance Supervisor may elect to have the citation served by local law enforcement, outside delivery service, or regional staff. A signed receipt must be obtained whenever possible. All signed receipts of delivery which are received in the regions must be sent to the DOSH Appeals Unit in Central Office. If no receipt is obtained, the circumstances of delivery must be documented in the file.

NOTE: Under no circumstances may L&I staff personally serve citations if an employer has previously displayed acts of hostility against L&I or any L&I employee, or if the citation must be delivered to an employer's private residence.

D.4. Sending Copies of Citations to Employee Representatives.

Copies of citations will be mailed by Central Office to qualified employee representatives who have submitted an application to L&I, and whose application has been granted by L&I as provided in *WAC 296-900-13010*. Individual employees can request a citation copy through L&I's Public Records office, or by calling (360) 902-5553.

D.5. Timeline for Issuing Citations.

RCW 49.17.120 controls the issuing of citations: "...the Director or authorized representative...shall with reasonable promptness issue a citation to the employer...No citation may be issued...after the expiration of six months follows a compliance inspection, investigation, or survey revealing any such violation."

The time that elapses from the completion of an inspection or investigation until CSHOs sign off on an inspection in the WIN system and submit the inspection case file must be kept as short as possible and closely monitored by Compliance Supervisors. The six-month period starts from the time a CSHO reasonably determines that a violation exists (i.e., after all interviews, sampling, lab tests, etc. that support the violation are completed). The six-month date should not be calculated from the date of the closing conference unless the violation in question was determined on that day.

A citation that must be reissued or redelivered is not governed by the statute requiring that a violation be cited within six months of discovery. This requirement applies only to the original issuance of the citation to the legal employer, not its delivery to the employer. For example, if a citation has an incorrect address or the employer refuses service, it can be served on the employer even after six months have elapsed since the violation was discovered. Service may be accomplished by any of the appropriate means described above.

NOTE: If the inspection results include some violations that do not require extensive investigation, and others that do, the cited violations that do not require extensive investigation must be issued promptly. A follow-up inspection can be opened to complete the investigation of the additional hazard(s). In such cases, the employer must be informed of the potential for additional violations and penalties, and of anticipated time frames.

E. AMENDING OR ADMINISTRATIVELY VACATING CITATIONS

E.1. Citation Amendment or Administrative Vacation Justified.

A citation will be replaced by an amended citation or administratively vacated when warranted. These conditions may include the following issues. Compliance Supervisors should contact the Quality Assurance (QA) Supervisor in Tumwater for assistance.

a. Administrative or technical error.

(1) Citation of an incorrect standard.

(2) Incorrect or incomplete description of the alleged violation.

b. Additional facts establish a valid affirmative defense.

c. Additional facts establish that there was no employee exposure to the hazard.

d. Additional facts establish a need for modification of the correction date or penalty, or reclassification of violations.

e. Citation was issued to the wrong employer. A letter must be sent to the employer who erroneously received the citation explaining the citation was issued to the wrong employer and that an amended citation has been issued.

f. Citation delivery cannot be accomplished.

E. 2. Citation Amendment or Administrative Vacation Not Justified.

A citation will not be amended or administratively vacated under certain conditions which include:

a. Valid notice of appeal has already been received.

b. The 15 working day period for filing a notice of appeal has expired and the citation has become a final order.

c. Employee representatives have not been given the opportunity to present their views unless the amendment/vacation involves only an administrative or technical error.

d. Non-substantive editorial or formatting modifications,

E.3. Procedures for Amending or Administratively Vacating Citations

The following procedures are used to amend or administratively vacate citations:

E.3.a. Compliance Supervisor Notifies Quality Assurance. Compliance Supervisors must notify the Quality Assurance Program in Central Office (by phone, e-mail or fax) when a citation needs to be amended or vacated. The Quality Assurance Program will:

- Issue an amended citation, which replaces a previous citation in its entirety, **or**
- If the entire citation is to be withdrawn, administratively vacate the citation.

In the latter case, Compliance Supervisors must follow the procedures below to notify the employer and employee representative as appropriate of the vacated citation.

E.3.b. When Amendments Change Classification of Violations. If a proposed amendment to a citation changes the classification of any violations (e.g., serious to general), the original violations will be replaced with new, appropriate violations on the amended citation.

E.3.c. Elements of an Amended Citation. The amended citation must clearly indicate that:

(1) The employer is obligated under WISHA to post the amended citation until violations have been corrected or for three working days, whichever is longer.

(2) The appeal period for the amended citation will start on the day after receipt by the employer.

(**3)** The employer should discard the original citation.

E.3.d. Citation Vacated in Entirety. When circumstances warrant it, a citation may be administratively vacated in its entirety by the Quality Assurance Program in Central Office. Compliance Supervisors or the Reassumption Hearing Officer must submit justifying documentation for the case file. The following procedures apply:

(1) Letter to Employer. A letter withdrawing the citation must be sent to the employer by the Compliance Supervisor. The letter must refer to the original citation and penalty, state that they are vacated and direct that the letter be posted by the employer for three working days in the same location(s) where the original citation was posted. The letter should direct the employer to discard the original citation.

(2) Copy to Employee or Employee Representative. When applicable to the specific situation including those listed below, a copy of the letter must also be sent to the employee or the employee representative as appropriate.

- An employee representative participated in the walkaround inspection.
- The inspection was in response to a complaint signed by an employee or an employee representative.
- The withdrawal resulted from an informal conference or settlement agreement in which an employee representative exercised the right to
- A qualified employee representative has submitted an application to receive copies of citations issued to the employer.

CHAPTER 8
ABATEMENT

A. ABATEMENT VERIFICATION REQUIREMENTS

WAC 296-900-150, Certifying Violation Corrections, includes requirements that employers must follow if they are cited for a WISHA violation, to ensure that they have abated the cited hazard(s). CSHOs and Compliance Supervisors are responsible for ensuring that violations identified during inspections are verified as corrected.

A.1. Length of Abatement Period.

A.1.a. Shortest Practical Interval. The abatement period must be the shortest interval within which the employer can reasonably be expected to correct the violation. CSHOs must use professional judgment to establish the shortest practical abatement date.

NOTE: Abatement periods exceeding 30 calendar days are not normally necessary, particularly for safety violations. Situations may arise, however, especially for health violations, where extensive structural changes are necessary or where new equipment or parts cannot be delivered within 30 calendar days. When an initial abatement date is granted that is in excess of 30 calendar days, CSHOs must document the reason, if not self-evident, in the case file. Abatement dates in excess of six months must not be granted without prior approval of the Compliance Supervisor.

A.1.b. Number of Days vs. Specific Calendar Date. Although CSHOs must specify the abatement period in "number of days," the WIN data enforcement system calculates a specific calendar date which is printed on the citation. When the abatement period is very short (i.e. five days) the abatement period must be set to allow time for processing and delivery of the citation and the agreed on number of days for abatement.

A.1.c. Abatement Observed by CSHO during Inspection. When abatement is witnessed by a CSHO during an inspection, he or she must document each corrected violation as "Corrected at the Time of Inspection" on the Violation Worksheet, as well as in the WIN enforcement data system. CSHOs must also select the corresponding message on the WIN Violation Report screen, which will then be printed on the citation.

A.2. Employer Abatement Plan and Progress Reports.

For abatement periods greater than 90 calendar days, Compliance Supervisors may require monitoring information from employers. This may include an abatement plan and progress reports. Abatement plans are also referred to as violation correction action plans. Progress reports are not allowed unless an abatement plan is specifically required. The citation must indicate any requirement for abatement plans and progress reports. Abatement plans and progress reports may also be required as part of a settlement agreement. (See *Section B* in this chapter for more information on long term abatement.)

A.3. Verification of Abatement.

A primary responsibility of CSHOs is ensuring that violations identified during inspections are corrected. CSHOs are responsible for determining whether abatement has been completed. Abatement of all violations must be verified through:

- CSHO observation; **or**
- Employer provided **abatement certification**, and additional **abatement documentation** when required by the citation.

Definitions:

- **Abatement Certification.** A brief statement that employers must provide on the Employer Certification of Abatement form, describing when and how abatement was achieved.
- **Abatement Documentation.** Additional documentation the employer is required to submit to ensure abatement is complete. This documentation includes, but is not limited to, copies of written programs, training rosters, photos, videos and receipts for materials and/or labor, etc. When additional abatement documentation is required, the CSHO must ensure the required documentation is listed on the citation and notice.
- **Stay of abatement date.** A stay of abatement date means the employer's requirement to abate or correct the hazard is put on hold or suspended until the appeal is resolved.

A.3.a. Written Program Violations. All violations involving written programs must be verified by having the employer provide a copy of the written program or a copy of revisions to the program. CSHOs must receive and review the written programs before signing the violation off as "complied."

A.3.b. Willful and Repeated Violations. All citations for willful and repeated violations require an employer to provide abatement documentation, such as written, video or photographic evidence of abatement (*see WAC 296-900-15005, Certifying violation correction*).

A.3.c. High Gravity Serious Violations. A high gravity serious violation will have a gravity of 6 or 9. Employers normally will have to provide abatement documentation in addition to abatement certification. If a Compliance Supervisor decides that abatement documentation is not required for a high gravity serious violation, he or she must note the reasoning in the case file.

A.3.d. Moderate to Low Gravity Serious Violations. Normally, moderate to low gravity (1-4) serious violations will not require an employer to provide abatement documentation. However, under the following circumstances, abatement documentation is required:

(1) If an establishment has been cited for a willful violation or a failure-to-abate (FTA) violation, and the citation became an abatement final order in the past three years.

(2) If an employer has been cited for a violation that resulted in a fatality, or an OSHA-300 log entry indicating serious physical illness or injury to an employee

in the past three years. (The violation currently being cited must be similar to the violation cited in connection with the fatality or serious injury or illness.)

A.3.e. Abatement During Inspection. Employers are not required to certify abatement for violations which they promptly abate during the onsite portion of an inspection and whose abatement a CSHO observes. CSHOs should explain this advantage to employers during the opening conference.

A.3.f. Information Missing from Certification. Initial minor non-substantive omissions in abatement certification (e.g., lack of a definitive statement stating that the information being submitted is accurate) should be considered a de minimis violation. If minor deficiencies such as omitting the signature or date exist, the employer should be contacted by telephone to verify that the documents received were the ones they intended to submit. If so, the date stamp of the Field Office can serve as the date on the document. Certification with an omitted signature should be returned to the employer to be signed if determined as beneficial by the Compliance Supervisor.

A.4. Timelines for Employer to Submit Required Material.

A.4.a. Abatement Plans. If an abatement plan is required by the citation, it must be submitted by the employer within 25 calendar days from the abatement final order date.

A.4.b. Progress Reports. CSHOs must include the submission dates for all progress reports in the case file and on the citation using the violation message option in WIN. The initial progress report must be submitted by the employer no sooner than 30 calendar days after the abatement plan is submitted.

A.4.c. Certification and Additional Documentation. Abatement final order citation items require abatement certification by the employer, and additional documentation if required by the citation, within 10 calendar days of the abatement date.

A.4.d. Application for Extension of Abatement Suspends Time Period. Applications for Extension of Abatement Dates received and processed following the procedures in section C will suspend the 10-day time period for receipt of abatement certification for the item for which an extension is requested. The abatement verification standard will not be cited for failure to submit certification within the period. If the Application is denied, the 10-day time period for submission of certification to DOSH begins on the day the employer receives notice of the denial.

A.4.e. CSHO Review of Material Submitted by Employer. Each CSHO must review employer-submitted abatement verification materials as soon as possible but no later than 30 days after receipt.

A.5. Follow-up When Employer Does Not Submit Required Material.

If an employer fails to submit required certification, additional documentation, abatement plans, or progress reports by the due date, a follow-up inspection may be assigned as soon as the abatement period has expired. CSHOs are responsible for monitoring pending abatements, and when a follow-up inspection may be required, they are to report to their supervisor, who makes the decision whether to assign an inspection or not. For follow-ups when abatement is required, when the citation is under appeal, the follow-up must be assigned by the Regional Compliance Manager in coordination with the AGO.

If the Regional Compliance Manager or Supervisor decides not to assign a follow-up inspection, CSHOs must use the following guidelines to follow up with the employer. All communication or attempted communication with the employer must be documented and added to the inspection case file.

A.5.a. Phone Call – No later than two weeks after the due date. If the required material is not received within two weeks of the due date, CSHOs must call the employer and remind him/her of the requirement to submit the material. CSHOs should tell the employer that failure to respond will likely result in a follow-up inspection.

A.5.b. Request Letter – No later than one week after the phone call. If the required material is still not received within a week after the phone call, CSHOs must send a request letter to the employer.

A.5.c. Follow-up Inspection Assigned – No later than one week after the letter. If the required material is still not received within the next week, Compliance Supervisors should normally assign a follow-up inspection.

(1) During the time between the request letter and any further activity, CSHOs should attempt to speak with the employer to determine why he/she has not complied. All communication efforts must be documented in the case file.

(2) If the request letter is returned by the Post Office as undeliverable and phone contact efforts fail, Compliance Supervisors may use their discretion to stop further efforts to locate the employer and document in the case file the reason for no abatement certification.

A.5.d. Follow-up Inspection Assigned - Abatement Required when Citation under Appeal. If the required material is still not received within the next week, the Regional Compliance Manager should determine whether or not to assign a follow-up inspection in coordination with the AGO.

(1) The CSHO should not discuss the merits of the appeal or any violations for which the abatement date was stayed and not currently pending.

(2) If a violation that is required to be abated during appeal is found to be unabated in the follow-up inspection, it will be cited as a failure-to-abate violation.

A.5.e. No Follow-up Inspection Assigned. If a Compliance Supervisor determines that a follow-up inspection will not be conducted, citations for failure to certify or failure to submit documentation, abatement plans or progress reports may still be issued at his/her discretion. All non-follow-up inspection determinations must be approved and documented through a statement in the case file by the Compliance Supervisor.

A.6. Follow-up Visits for Quality Assurance.

Follow-up inspections are sometimes conducted when employers *have* returned written verification of abatement, as a quality assurance measure.

A.6.a. Violation Still Exists After Receipt of Employer Certification. If a violation is found unabated in this type of follow-up, it will be cited as a failure to abate (FTA). In addition, the case should be discussed with DOSH Compliance Operations to determine whether the employer may be subject to criminal penalties (*RCW 49.17.190(2))* for providing false information regarding WISHA requirements. DOSH Compliance Operations will determine whether the case will be referred to the Attorney General's Office.

A.6.b. Later Inspection (Not Follow-up) Shows Hazard Still Exists. If an employer has provided written verification of abatement, and no follow-up inspection is conducted, but a later inspection (i.e., programmed, complaint) shows that the same hazard exists, see *Chapter 5* in this manual for guidance on whether an FTA or repeated violation exists.

A.7. Abatement Verification for Construction Activities.

A.7.a. Site Closure or Project Completion. Construction site closure or hazard removal due to completing the structure or project will only be accepted as abatement without certification if a CSHO physically verifies the site closure. Without CSHO-observed verification, employers must certify to DOSH through submission of abatement certification that hazards have been abated.

A.7.b. Equipment or Program Related Violations Must Be Certified. Equipment-related and all program-related (e.g., crane inspection, HazCom, respirator, training, competent person, qualified persons, etc.) violations always require Employer Certification of Abatement, since they affect an employer's ongoing operations and are not site-specific.

A.7.c. Employer Main Office in Another Region. For situations where the main office of an employer being cited is physically located in another region, the Compliance Supervisor in the region with the inspected work site must notify the Compliance Supervisor in the region with the main office about the citation and communication with the employer. If a follow-up inspection to verify abatement is deemed necessary, the Compliance Supervisors should determine the most efficient and mutually beneficial approach to conducting the inspection.

A.8. Case File Documentation.

A.8.a. File Closed With No Abatement Certification. If a case file is closed without abatement certification, it must be justified through a statement in the case file by the Compliance Supervisor, addressing the reason for accepting each uncertified violation as abated.

A.8.b. No Follow-up Inspection Conducted. If an employer fails to submit required abatement verification materials and it has been determined that a follow-up inspection will not be conducted, the reason must be justified through a statement in the case file by the Compliance Supervisor.

A.8.c. Retain All Documentation. All abatement documentation (photos, employer programs, etc.) must be retained in the original case file located in the DOSH Records Center.

A.9. Effect of Appeal on Abatement Period.

A.9.a. Appeal of Citation.

- When an employer files a timely appeal, the abatement period does not begin to run until the citation has become an abatement final order or when there is a final abatement order requiring abatement during appeal (*RCW 49.17.140*). Follow-up inspections of appealed violations will not normally be conducted for violations under appeal when there is a final abatement order and the violations are required to be abated during the appeal. See Section A.5.d. in this Chapter for additional information. Unprogrammed inspections (i.e. accidents, complaints) will be conducted if necessary and according to DOSH policy.
- In situations when an employee has appealed an abatement date, the employer's abatement requirements remain unchanged. However, the employer is not obligated to abate the violations until after the citation is a final order.

EXCEPTION: If an early abatement date has been designated in the initial citation and the CSHO or Compliance Supervisor believes that the **cited condition presents an imminent danger**, appropriate imminent danger proceedings must be initiated even when the employer has filed an appeal.

A.9.b. Abatement Date Affirmed by Final Order. If an employer appeals an abatement date in good faith, a Failure to Abate Notice will not be issued for the item appealed until a final order affirming an abatement date is entered, the new abatement period, if any, has been completed, and the employer has still failed to abate the violation(s).

A.9.c. No Appeal Filed. When an employer does not appeal, he/she must comply with the abatement date even if it falls within the 15-working-day appeal period. Follow-up inspections may be conducted during this period if deemed necessary and approved by a Compliance Supervisor.

NOTE: Normally, a follow-up inspection would only be conducted in this circumstance if imminent danger conditions exist.

B. FEASIBLE HAZARD CONTROLS & LONG-TERM ABATEMENT PLANS

B.1. Feasible Administrative, Work Practice and Engineering Controls.

When applicable, CSHOs must discuss hazard control methods with employers during the closing conference.

Engineering Controls	Engineering controls consist of substitution, isolation, ventilation and equipment modification.
Administrative Controls	Administrative controls are any procedure that significantly limits daily exposure by control or manipulation of the work schedule or manner in which work is performed. The use of personal protective equipment is *not* considered a means of administrative control. Employee rotation as an administrative control must not be used as a method of complying with the permissible exposure limits (PELs) of carcinogens.
Work Practice Controls	Work practice controls are a type of administrative control where an employer modifies the manner in which an employee performs assigned work. This may result in a reduction of exposure by changing work habits, improving sanitation and hygiene practices, or making other changes in the way the employee performs the job.
Feasibility	Abatement measures required to correct a violation are considered feasible when an employer can accomplish them. CSHOs must inform employers, when appropriate, that a determination will be made as to whether engineering or administrative controls are feasible.
Technical Feasibility	Technical feasibility is the existence of technical methods and materials available or adaptable to specific circumstances that can be applied to cited violations with a reasonable possibility that employee exposure to occupational hazards will be reduced or eliminated.
Economic Feasibility	Economic feasibility means that an employer is financially able to undertake the measures necessary to abate the violations cited.
NOTE: If an employer's level of compliance lags significantly behind that of their industry, claims of economic infeasibility will not be accepted.	

B.1.a. Feasibility Issues.

(1) Documenting Facts. CSHOs must document the underlying facts that give rise to an employer's claim of infeasibility.

(2) Issuance of Citation. When economic infeasibility is claimed CSHOs must inform employers that, although the cost of corrective measures to be taken will generally not be considered as a factor in issuing a citation, it may be considered during an informal reassumption hearing.

(3) Referral to Compliance Supervisor. Serious issues of feasibility should be referred to the Compliance Supervisor for determination. If necessary the Compliance Supervisor may need to visit the worksite with the CSHO.

(4) Determination Involving Engineering or Administrative Controls. The Compliance Supervisor is responsible for making determinations that engineering or administrative controls are or are not feasible.

B.1.b. Reducing Employee Exposure. Whenever feasible engineering, administrative or work practice controls can be used, even if they do not eliminate a hazard or reduce exposure to levels within permissible exposure limits (PELs), they must be used along with personal protective equipment (PPE) to reduce exposure to the lowest practical level.

B.2. Long-Term Abatement Period for Implementation of Engineering Controls. If a long-term abatement period is necessary (where the date is more than one year from the citation issuance date) because of extensive redesign requirements, CSHOs must discuss the situation with the employer at the closing conference and consult with the Compliance Supervisor following the inspection.

The CSHO and the Compliance Supervisor must use their best judgment as to a reasonable abatement date. A specific date for final abatement must, in all cases, be included in the citation. The employer will not be permitted to propose his or her own abatement date in the abatement plan. See *Section A.2.* in this chapter, for more information on abatement plans.

If necessary, an extension application may be submitted later by the employer to modify the abatement date.

C. EMPLOYER REQUESTS FOR ABATEMENT DATE EXTENSIONS

Regulations on Applications for Extensions of Abatement dates are covered in WACs 296-900-16005 through 16030.

C.1. Filing Date.
Applications should be submitted in writing by an employer or his/her representative, and should be received by L&I any time prior to midnight of the abatement date for which an extension is requested.

C.1.a. Verbal Applications. Applications received by telephone or personal non-written communication may be accepted if they meet the timeline for filing and a written request is received within 24 hours after verbal request was made.

C.1.b. Late Applications. A late Application may be accepted if it is received by L&I within five days following the relevant abatement date, and is accompanied by the employer's written statement of exceptional circumstances explaining the delay. A late application will not be accepted if L&I has initiated compliance activity regarding the relevant abatement date prior to receiving the late application for an extension.

C.2. Contents of Application. Applications must include all of the following (WAC 296-900-16005):

- The business name.
- The address of the workplace(s).
- The citation and the correction dates to be extended.

- The new correction date and length of correction period being requested.
- A description of the actions that have been, and are being, taken to meet the correction dates in the Citation and Notice (C&N) or Corrective Notice of Redetermination (CNR).
- Factors preventing correction of violation(s) by the date required.
- The means that will be used to protect employees while the violation is being corrected.
- Certification that the request for correction date extension has been posted, and if appropriate, certification that a copy was delivered to affected employees or their representatives.
- Employer's signature or the signature of the employer's representative.
- Date.

C.3. Receipt of Application and Decision.

After receiving an Application, Compliance Supervisors will make a provisional decision whether to extend the abatement date or deny the application.

C.3.a. Criteria to Grant an Extension.

(1) The employer made a good faith effort to comply with the abatement date(s).

(2) The employer has been unable to comply due to factors beyond his/her control.

(3) The employer has implemented adequate means of protecting employees from the hazard(s) during the abatement period(s).

(4) The employer certifies that he/she has posted a copy of the application and any related documents in a place where employees can see it.

C.3.b. Reasons to Deny an Extension.

(1) Insufficient information.

(2) “Bad faith” or lack of supporting evidence that the employer has attempted to comply with the abatement date(s).

(3) Inability to identify or justify factors which prevent compliance by the abatement date(s).

(4) Untimely submission of the application.

NOTE: The employer should be contacted before issuing a denial. If the information required is still insufficient, the Application may be denied after consultation with the Regional Compliance Manager. Compliance Supervisors must document the reasons for granting or denying an extension in the case file.

C.3.c. Requests for Extensions Greater Than One Year. When an extension request for more than one year beyond the original or most recent abatement date, or an extension request including a long-range multi-step abatement plan is received, the following criteria must be met:

(1) Inspection Conducted. An inspection must be conducted within 15 days of receiving the request to ensure that an extension of the length requested is genuinely necessary, that employees are being protected by alternately effective means, and that the Application has been posted in plain view of employees.

(2) Management Approval Obtained. Approval must be obtained from the Regional Compliance Manager as well as from DOSH Compliance Operations.

(3) Monitoring Inspections. Monitoring inspections must be conducted every six months to ensure the employer's good faith and progress, and, in the case of multi-step abatement plans, that progress report dates are being met.

(4) Progress Reports. The employer must submit quarterly progress reports.

C.4. Issuance and Posting of Notices.

- Within five days of receipt of the Application, and after a decision is made, a notice will be issued and mailed by certified mail to the employer and the employee representative. The notice will:
  - Acknowledge receipt of the Application.
  - Convey the provisional decision.
  - Notify the employer, employees or employee representative of their right to request a hearing.
  - Inform the employer of the requirement to post the notice.
- If a hearing is not requested within ten calendar days of issuing the notice, the provisional determination becomes a final order.

C.5. Request for a Hearing.

C.5.a. Application in Writing. The employer, employee or employee representative may apply in writing to the DOSH Assistant Director.

- The request must be received at the following address within ten calendar days of issuance of the Extension of Abatement Date notice:

Division of Occupational Safety and Health
P.O. Box 44600
Olympia, Washington, 98504-4600

C.5.b. Notice of Hearing. When a hearing request is received, L&I will issue a notice of hearing to the employer and employees. The hearing date must be set so that all parties will receive the notice not less than 20 days in advance of the hearing.

C.5.c. Contents of Notice. The notice must give:

- The date, time, and place of the hearing,
- A general description of the subject matter to be discussed, **and**
- The requirement for posting the notice with the applicable citation.

C.6. Findings and Decision Following a Hearing

C.6.a. The proceedings will be recorded and copies made available to involved parties on request and payment of reasonable costs. A copy must also be placed in the case file.

C.6.b. A second Extension of Abatement Date notice will be issued affirming or modifying the abatement date for which an extension was requested. A copy must be mailed to the employer with the requirement that it be posted with the related citation.

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