Chapter 7

INSPECTION PROCEDURES

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Chapter 7

INSPECTION PROCEDURES

Policy Statement: It is the policy of the Division of Occupational Safety and Health (DOSH), also known as Cal/OSHA or the Division, to conduct inspections of California workplaces in accordance with applicable sections of the California Labor Code (Lab.), Title 8 Safety Orders of the California Code of Regulations (8 CCR), and DOSH's policies and procedures to ensure that employers are providing to employees places of employment, which are free from occupational safety and health hazards.

Purpose: This policy is intended to set forth procedures for DOSH team members to conduct workplace inspections in accordance with applicable laws and regulations, ensuring that employers maintain safe and healthy work environments for employees.

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

- California Labor Code, Sections 6304.3(d), 6307, 6309, 6314, 6314.1, 6317.5, 6317.7, 6320, 6321, and 6322.

General Information on Conducting Inspections:

I. Case File Development

Compliance Safety and Health Officers (CSHOs) must immediately establish upon initiation of an investigation a working case file that includes a case diary log. As documents and evidence are gathered by the CSHOs, they must be tagged, referenced in the diary log, and placed in the case file. If evidence collected does not "fit" in the case file–such as a broken part, it must be kept in a separate, properly tagged and labeled container in a locked evidence room or file cabinet, and referenced or described in the file.

NOTE: Certain evidence must be properly protected once collected to ensure that it is not damaged, altered, or lost. Proper tagging must be done, and "chain of custody" procedures must be followed. This is especially important with certain physical evidence such as samples or damaged machine parts or safety equipment.

CSHOs must record in the case diary log a concise, chronological account of all actions taken from the beginning of the inspection to the closing of the case. CSHOs also must record the major events of the inspection, including, but not limited to, the following:

- Exit conference date
- Site visit days
- Contact by a third party (e.g., attorney or family members of the injured)
- Any sample or evidence that is mailed out for analysis
- Order Prohibiting Use
- Order to Preserve
- Contact with equipment MFG
- Any referrals made to Medical Unit, Bureau of Investigation (BOI), Process Safety Management (PSM), etc.
- When a case is turned in for review
- Any unusual event

II. Conducting Professional and Effective Inspections

While conducting inspections, all CSHOs are expected to carry out their assigned duties in a professional manner and exercise good judgment as an employee of the State of California, a member of DOSH and as a safety and health professional. Conducting effective inspections requires hazard identification, professional evaluation, and accurate documentation of safety and health hazards and violations. DOSH management is aware that inspections may vary considerably in scope and detail, depending upon the circumstances in each case.

III. Completing All Required Forms

CSHOs are required to complete all required compliance inspection forms. These forms must be legibly written and fully completed and placed in the inspection case file in numerical order. See Policy and Procedures (P&P) Chapter 16: *Case File Records Organization*.

All written notes taken by CSHOs during the course of an inspection must be recorded on the Cal/OSHA Form 1AV: *Note Taking Sheet* and must be placed in the inspection file. Any other notes not recorded on Cal/OSHA Form 1AV must be attached to Cal/OSHA Form 1AV and placed in the inspection file.

IV. Inspection Records

A. General Procedures

1. Inspection records are records obtained or created as part of an inspection or investigation.

2. All completed forms, field documentation and notes that are a part of the inspection record must be maintained in the case file. In addition to written documentation, inspection records also include photographs (including digital photographs), negatives of photographs, video recordings, and audio recordings.

3. All inspection records are the property of the State of California and a part of the case file. Inspection records are not property of the CSHOs or any other DOSH personnel, and under no circumstances are they to be retained or to be used for any private purpose.

B. Confidential Records and Documents

Records and documents that are **confidential** must be maintained in the **confidential** section of the inspection file.

V. Complying with Safe and Healthful Work Practices

Prior to arriving at the worksite, the CSHOs assigned to conduct the investigation must bring the appropriate personal protective equipment and other investigative equipment, such as sampling devices, to conduct the investigation.

As in all inspections, 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 (PPE) and take all necessary precautions to avoid and/or prevent occupational exposure to potential hazards that may be encountered.

VI. Determining Inspection/Investigation Priority Categories

A. **General Determination**

1. DOSH's priority system for conducting inspections is determined by Labor Code requirements, federal OSHA mandates, and DOSH's policies and emphasis programs to make the best use of DOSH resources to protect and improve the health and safety of working men and women. DOSH

must ensure that inspections are scheduled within the framework of this policy and that appropriate documentation of scheduling practices is maintained.

2. DOSH must ensure that resources are effectively distributed during inspection activities.

B. **Inspection Priority Criteria**

Generally, priority of accomplishment and of assigning staff resources for inspection categories is shown in Table 1-1 below:

Table 1-1: Inspection Priorities

Priority	Category
First	a. Complaint about, or observance by anyone of, an imminent hazard, b. Fatal injury or illness, c. Accident involving significant print or electronic media attention, or d. Complaint from a state or local prosecutor. ***NOTE:*** Fatalities and complaints alleging imminent hazard, and complaints alleging a serious violation from state or local prosecutors must be investigated within twenty-four (24) hours of receipt.
Second	a. Accident involving a serious injury or illness, b. All formal complaints, non-formal serious complaints (where an inspection is planned) and serious referrals, and c. Follow-up of serious violations. ***NOTES***: • For complaints alleging a hazard where the evidence of the unsafe condition will not continue to exist in the future long enough to be observed by CSHOs adhering to the mandated time limits of three (3) working days and fourteen (14) calendar days for formal serious and formal nonserious complaints, inspection resources must be allocated so as to respond first to those situations in which time is of the essence. • Valid non-formal complaints alleging a serious safety and/or health hazard must be assigned for an on-site inspection. • When the District Manager (DM), Senior Industrial Hygienist Supervisor (SIHS) and/or an authorized designee, which is herein referred to as DM/SIHS/Designee, determines they do

	not have the resources available to timely conduct an on-site inspection in response to the complaint, they must notify their Regional Manager (RM), who must identify if there are additional resources within the region, and if not, can authorize a letter in lieu of an on-site inspection after discussion with the Assistant Deputy Chief of the Enforcement Branch. The DM/SIHS/Designee may implement the option(s) authorized by the Regional Manager, only after receiving approval.
Third	Programmed inspection ***EXCEPTION:*** Programmed inspections are First Priority for District Offices in Region VI (High Hazard Unit), Labor Enforcement Task Force (LETF), and Agricultural Enforcement Task Force and Outreach (AETFO). Programmed inspections for the Mining & Tunneling Unit and Process Safety Management (PSM) are Third Priority after Complaints and Accidents.
Fourth	Satisfactory Response Letter

C. **Types of Inspections**

1. Unprogrammed Inspections

   Inspections scheduled in response to alleged hazardous working conditions identified at a specific worksite are classified as unprogrammed. This type of inspection responds to:

   a. Accident
      See Chapter 3: *Accident Report*, Chapter 14: *Other Types of Inspections*.

   b. Complaint
      See Chapter 2: *Complaint Intake and Processing*.

   c. Referral
      See Chapter 4: *Referral*.

   d. Follow-up
      See Chapter 14: *Other Types of Inspections*.

   NOTE: Every unprogrammed inspection must include an inspection of all employers, whose employees are directly affected by the conditions related to the accident, complaint or referral.

2. Unprogrammed-Related Inspections

    a. An unprogrammed-related inspection is an inspection of an employer who is working at a worksite in which another employer is being inspected by DOSH because of a complaint, accident or referral.

    b. Unprogrammed-related inspections may be initiated when CSHOs observe a hazard to which another employer's employees are exposed at the same worksite, an employee of another employer makes an on-site complaint about other safety or health hazards, or CSHOs determine that an inspection of another employer is necessary.

3. Programmed Inspections

    a. A programmed inspection is an investigation of an employer initiated by DOSH based upon objective criteria.

    b. Employers can be selected for a programmed inspection from any of the following sources:

        i. Asbestos and/or Lead Notification List(s)

        ii. Construction Activity Permittee List

        iii. Regional High Hazard Plan List

        iv. Process Safety Management Inspection Master List

        v. High Hazard Industries List

        vi. Labor Enforcement Task Force Programmed Inspection List(s)

        vii. Division Special Emphasis Program, such as Heat, Silica, Trenching and Excavation

        viii. Mining and Tunneling Mandated Inspection List(s)

            NOTE: Mandated periodic inspections conducted by the Mining and Tunneling Unit of underground mines, surface mines or quarries and tunnels under construction are programmed inspections.

        ix. Any other source developed by DOSH.

4. Programmed-Related Inspections

A programmed-related inspection is an investigation of an employer who is conducting business at a worksite in which another employer is undergoing a programmed inspection.

D. **Effect of an Appeal on Conducting an Inspection**

1. An unprogrammed or programmed inspection must be conducted even if the employer has contested a citation issued by DOSH and the citation is on appeal before the Occupational Safety and Health Appeals Board (OSHAB).

2. If a substantially similar violative condition which is under appeal still exists at the inspected worksite and now presents an imminent hazard to employees, CSHOs must issue an Order Prohibiting Use (OPU) after consultation with the DM/SIHS/Designee, Regional Manager and the Legal Unit (see Chapter 9: *Order Prohibiting Use*).

3. If a substantially similar violative condition which is under appeal still presents a serious hazard to employees, CSHOs must consult with the DM/SIHS/Designee, Regional Manager and the Legal Unit about seeking a temporary restraining order (TRO).

4. If a violative condition which is under appeal is not substantially similar with the violative condition observed and cited by DOSH during a previous inspection, a non-repeat citation may be issued.

Procedures:

I. Preparing for an Inspection

Prior to initiating an inspection, CSHOs must review the nature of the complaint, accident and/or referral, and the type of hazards found in the industry in which the inspection is to be conducted.

It is important that CSHOs adequately prepare for each inspection. Due to the wide variety of industries and associated hazards likely to be encountered, pre-inspection preparation is essential to the performance of a quality inspection.

CSHOs must prepare for their assigned inspections by researching the type of equipment, machinery and/or potential hazards involved in the process that employees are alleged to be exposed to or appear to be involved in the accident that is being investigated.

II. Planning for an Inspection

A. Reviewing Employer's Inspection History

CSHOs must identify and carefully review available data for information relevant to the establishment assigned for inspection. This may include inspection files and other source reference materials relevant to the industry. CSHOs must also perform a five-year establishment search by accessing the OSHA Information System (OIS) database and federal OSHA's Establishment Search webpage. When completing a search, CSHOs must use name variations and address-matching in their establishment search to maximize their efforts due to possible company name changes and status (e.g., LLC, Inc., sole proprietor, etc.).

After carefully reviewing available data, CSHOs are required to print the results of Federal OSHA's Establishment Search report in the OIS, regardless of whether they have been previously inspected, and place it in the case file behind the Cal/OSHA Form 1A: *Opening and Closing Conference Documentation Sheet*.

NOTE: This information shall be used to document the employer's five-year DOSH history, and a potential repeat and/or failure to abate violation, as well as identify the employer's heightened awareness of a hazard and/or standard in order to support a violation classified as willful.

B. Verifying Cooperative Program Participation

CSHOs must verify whether the worksite is participating in a Voluntary Protection Program (VPP), VPP-Construction, Golden Gate, or Safety and Health Achievement Recognition Program (SHARP) exemption program. Programmed Inspection Exemption (PIE) lists must be provided to each Enforcement office by the Consultation Service (see Chapter 28: *Enforcement Support for VPP, Golden State, and Golden Eagle*).

C. Advance Notice of an Inspection is Prohibited in Most Cases

1. CSHOs must not give the employer advance notice that an inspection is to be conducted by DOSH, unless given permission to do so by the Chief of the Division or the Chief's designee.

2. Advance notice may be provided pursuant to Title 8 under the following circumstances:

    a. Situations of apparent imminent danger where prompt abatement is essential.

b. Situations when, to be effective, the inspection must be arranged to assure availability of essential personnel or access to the site, equipment, or process.

c. Other situations where, in the judgment of the Chief or the Chief's designee, the giving of advance notice is advantageous for achieving a thorough inspection.

EXCEPTION: Advance notice cannot be authorized in cases where an inspection or investigation is the result of an employee complaint, except in cases where an imminent danger to the health or safety of an employee or employees exists.

NOTE: CSHOs must contact the Legal Unit to assist in determining whether an imminent danger exists.

3. Requests to provide Advance Notice must be emailed to DM/SIHS/Designee and must summarize the alleged violations and state the reasons for providing advance notice. If the DM/SIHS/Designee agrees, the DM/SIHS/Designee must submit the request to the Regional Manager or the PSM Program Manager, as applicable. After review and approval, the Regional Manager or PSM Program Manager must request authorization from the Chief of the Division or the Chief's designee.

> ***NOTE***: Providing unauthorized advance notice is a crime. Any person who gives advance notice of any inspection to be conducted, without authority from the Chief or the Chief's designee, is guilty of a misdemeanor and shall, upon conviction, be punished by a fine of not more than one thousand dollars ($1,000) or by imprisonment for not more than six months, or by both.

4. When notifying an employer of an inspection in advance, CSHOs must also inform the employer that they must promptly inform the employee representative(s), if any. CSHOs must also confirm that the employer has notified the employer representative, if any, and record this information in the file.

5. The lapse of time between advance notice and the inspection must not exceed a minimum that is consistent with the reason for such notice. In no instance will advance notice be given more than twenty-four (24) hours prior to the scheduled inspection or investigation except in unusual circumstances, where imminent danger exists or where practical considerations mandate a longer period.

6. CSHOs must ensure that the time between the opening conference and the initiation and completion of the walk-around portions of the inspection is brief enough so that the perception is not created that the employer had advance notice of the inspection.

7. Whenever advance notice is given to a non-DOSH employee, other than the employer, CSHOs must give that individual a copy of Cal/OSHA Form 1AN: *Advance Notice Notification*, review it with them, sign the form and include a copy of the form in the file.

D. Requiring Expert Assistance

Prior to initiating and/or during inspections involving specialized worksites or complex hazards, the assistance of a technical expert from within DOSH (e.g., other District Offices in the DOSH's Enforcement Branch, the Research and Standards Unit, Elevator, Pressure Vessel, Crane, Amusement Rides, Medical Unit, or Legal Unit) or from outside of DOSH, like the private sector and federal OSHA, may be needed to effectively conduct the inspection.

1. Prior to initiating and/or during an inspection, CSHOs must consult with and/or ask for assistance from legal experts and/or technical experts of specific safety or health disciplines for the following, but not limited to, inspection cases:

    a. Potential willful violations.

    b. Cases where other enforcement agencies, such as Mine Safety and Health Administration (MSHA), Nuclear Regulatory Commission (NRC) or Department of Transportation (DOT), are inspecting the same employer at the same time as DOSH.

    c. Cases arising under newly promulgated safety and health standards.

    d. Cases of significant public concern such as fatalities and catastrophic events.

    e. Cases which are likely to become major litigation vehicles in the development of DOSH law.

    f. Categories of cases requested by any District Attorney's Office.

    g. Categories of cases that have been identified by federal OSHA as being of significant concern on the national level.

NOTE: The executive branch may request appropriate consultation with the DOSH Legal Unit and/or experts of specific safety or health disciplines in other cases not listed in the above categories.

2. During the inspection, DOSH and outside experts must coordinate their activities with CSHOs conducting the inspection.

   NOTE: Experts hired by DOSH as consultants for the purpose of assisting with the particular inspection must be accompanied at all times by the CSHOs conducting the inspection. All findings, sampling results, conclusions and recommendations of experts must be included in the inspection file.

If such assistance is required, CSHOs must notify the DM/SIHS/Designee of the need for assistance. The DM/SIHS/Designee must then inform the Regional Manager, who will in turn inform the Deputy Chief of Enforcement Branch of the need for expert assistance to be provided.

E. **Bringing Materials and Equipment**

1. Inspection Forms and Employer Handouts

   CSHOs must have all compliance inspection forms and appropriate handouts available in sufficient quantity to conduct the inspection.

2. Sampling Equipment

   CSHOs must ensure that all appropriate sampling equipment to be taken and used at the inspection site is calibrated and in good working order.

   NOTE: If there is a need for special or additional inspection equipment, DM/SIHS/Designee must be consulted to ensure that training in the use and limitation of such equipment has been accomplished prior to the inspection.

3. Wearing Personal Protective Equipment

   CSHOs must ensure that all necessary personal protective equipment (PPE) to be taken and used at the inspection site is ready and in good working order.

   CSHOs must be trained in the proper use and limitations of all PPE, such as hard hats, safety glasses or goggles, safety shoes, coveralls (fire-retardant if necessary), gloves, reflective vests, fall protection respirators and other equipment as necessary to carry out their assigned duties safely.

NOTE: CSHOs must not be assigned to conduct an inspection which requires them to wear a respirator unless they have completed and received clearance of a respirator Medical Evaluation Questionnaire, undergone the applicable qualitative or quantitative fit tests, and have been trained in the proper selection, use, limitations, maintenance and storage or respiratory protection equipment.

III. Determining Scope of Inspection

A. Conducting Comprehensive Inspections

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

B. Conducting Partial Inspections

A partial inspection is one which is limited to an evaluation of part of a worksite (e.g., unit, department, specific process or piece of equipment) for the presence of safety and health hazards.

IV. Initiating Contact with Employer

A. Being Professional

When conducting an inspection, CSHOs must conduct themselves as professionals and be cognizant that they represent the State of California at all times.

B. Considering the Timing of Inspection

Inspections must be conducted during normal business hours of the employer unless special circumstances necessitate otherwise.

NOTE: If severe weather conditions are encountered during an inspection and the worksite is shut down, CSHOs must postpone the inspection and continue when weather permits.

C. Presenting Credentials to Employer

Upon entry to the worksite and during the opening conference, CSHOs must show their State of California photo identification card and DOSH business card.

D. **Obtaining Consent from Employer**

1. CSHOs must obtain consent to conduct an inspection from the person of highest authority, or their designee, for the employer being inspected.

   NOTE: As California worksites are controlled by the federal government, CSHOs must identify themselves to the highest-ranking management official at the site and obtain their consent to conduct an inspection.

2. When a management level or other acceptable employer representative is not present at the worksite, CSHOs must contact the employer by telephone and request consent to conduct the inspection.

   a. If the employer consents to the inspection over the telephone but does not plan to come to the worksite to participate in the inspection, CSHOs must request that the employer designates an individual to accompany CSHOs on the walkaround.

   b. If the employer does consent over the telephone to the inspection but requests that CSHOs wait for the employer's arrival, CSHOs must await the arrival of the employer, or a representative of the employer, but must do so for no more time than is reasonable (e.g., one hour).

   c. If CSHOs cannot reach the employer after making a good faith effort to do so, CSHOs must document the effort made to obtain the employer's consent to conduct the inspection on the Cal/OSHA Form 1A.

   d. If the employer refuses consent to conduct the inspection, CSHOs must consider the employer's response as a refusal of entry.

E. **Refusing Entry of CSHOs**

CSHOs must notify the DM/SIHS/Designee of every refusal of entry. The DM/SIHS/Designee must notify the Legal Unit, through the Regional Manager, of the refusal of entry, and the Legal Unit must provide assistance in obtaining a warrant or in taking other appropriate action (see Chapter 8: *Refusal of Entry and Order to Preserve*).

NOTE: The DM/SIHS/Designee must also notify the Consultation Service's Regional Manager whenever an employer who is participating in either VPP, VPP-Construction, Golden Gate or SHARP refuses entry by Enforcement personnel.

F. **Labor Disputes**

1. If a labor dispute, including work stoppages, strikes or picketing, is encountered at a worksite subject to an unprogrammed or programmed inspection, between the employer and his or her employees, or between two different labor unions competing for the right to represent the employer's employees, CSHOs must notify the DM/SIHS/Designee before attempting to enter the worksite.

2. Programmed inspections may be deferred during a labor dispute and unprogrammed inspections must be conducted with appropriate caution.

V. Conducting Opening Conference

A. **Collecting and Recording Data on Cal/OSHA Form 1A and OSHA Form 1 at the Start of the Opening Conference**

1. CSHOs must **immediately** collect and record data on the Cal/OSHA Form 1A: *Opening and Closing Conference Documentation Sheet* at the start of the opening conference and throughout the inspection. This data is **to be recorded in real time** to ensure the accuracy and completeness of the form before exiting the establishment or place of employment.

2. CSHOs must **immediately** collect and record data on the OSHA Form 1: *Inspection Report* at the start of the opening conference and throughout the inspection. This data is **to be recorded in real time** to ensure the accuracy and completeness of the form before exiting the establishment or place of employment.

   Upon return to the office, CSHOs must **enter the collected data in the OIS within five (5) days** after the opening of the case.

B. **Requesting the Presence of Management and Union Representatives**

An opening conference must be conducted with the employer’s person of highest authority or designee. In locations where employees are represented by a bargaining unit, CSHOs must make every attempt to contact the bargaining unit representative for the location and inform them of their right to participate in the opening conference and inspection process.

1. When it is not possible to hold a joint opening conference, CSHOs must hold separate opening conferences when appropriate.

2. If bargaining unit representatives decline to participate in the opening conference and/or inspection, CSHOs must legibly document the

declination or inability to make contact with a bargaining unit representative in the case file in the comment section of the OSHA Form 1.

EXCEPTION: If an inspection is being conducted because of an **imminent hazard**, CSHOs must, after identifying themselves to the nearest available representative of the employer, ask to be taken to the imminent hazard immediately. After employees have been removed from exposure to the imminent hazard, CSHOs must conduct an opening conference.

C. **Multi-Employer and Dual-Employer Worksites**

For detailed policies and procedures on multi-employer and dual-employer worksites, see Chapter 14: *Other Types of Inspections*.

1. After entering the worksite, CSHOs must make contact with the general contractor's person of highest authority or their designee present at the worksite and ask about the presence of subcontractors and/or temporary agency employees currently working at the worksite on the day of the inspection.

   NOTE: Dual-employer situations, where an employee has two employers at the same time, are different from multi-employer worksites, where two or more employers have workers present, like at a construction site. It is possible, however, to have a dual-employer situation at a multi-employer worksite.

2. CSHOs must notify any subcontractor and/or temporary agency employees working at the worksite that will also be inspected at the opening conference and allow the subcontractor and/or temporary agency employees a reasonable amount of time, but not more than one hour, to provide a representative to attend the opening conference.

D. **Opening Conference Format**

1. At the opening conference, CSHOs must discuss with the employer all items listed on the Cal/OSHA Form 1A and mark an "X" in the appropriate boxes on the form indicating that the particular item was discussed with the employer. CSHOs may choose to use the *Guide to Cal/OSHA* pamphlet as an aid during the opening conference.

   NOTE: An opening conference may be conducted at the employer's worksite with the employer in person or by telephone.

2. During the opening conference, CSHOs must:

a. Show their State of California Identification and exchange business cards with the employer.

b. Explain the purpose and scope of the inspection.

   NOTE: When communicating the purpose and scope of the inspection, CSHOs must take care not to reveal to the employer the identity of the complainant(s) or any of the complaint item(s) because disclosure of the complaint items may identify the complainant to the employer.

c. Explain to the employer the elements of the DOSH program in general terms, and present to the employer any informational materials about the DOSH program.

d. Inform the employer about workers' rights to:

   i. Make a complaint to DOSH about workplace safety and health hazards.

   ii. Be allowed by the employer to participate in the walkaround part of the inspection.

   iii. Be interviewed by CSHOs out of the presence of the employer.

   iv. Be free from being disciplined by the employer for participating in the inspection.

   v. Observe any monitoring or measurement of employee exposure conducted pursuant to a Title 8 Safety Order.

   vi. Be notified of toxic substance exposure.

   vii. Be informed of any corrective action taken.

e. Inform the employer about the inspection walkaround procedures, that employee interviews will be conducted during the walkaround, that photographs of the worksite may be taken during the walkaround, and, if hazards which are violations of Title 8 Safety Orders are observed during the walkaround, that citations classified as regulatory, general, serious, willful, repeat or failure-to-abate must be issued and monetary penalties proposed even if the employer is a public sector entity.

f. At the time of the initial inspection visit, CSHOs must:

   i. Inform the employer that their Injury and Illness Prevention Program (IIPP) will be evaluated for compliance with Title 8.

ii. Request to see the employer's IIPP for review and evaluation.

NOTE: CSHOs must evaluate the IIPP in accordance with the Chapter 13: *Enforcement of Injury and Illness Prevention Program*.

iii. Request and obtain a copy of the IIPP for the case file.

g. Discuss the requirement that every employer must post the Cal/OSHA Poster, also known as the Cal/OSHA Notice of Employee Protections and Obligations, which is entitled "Safety and Health Protection on the Job" (Cal/OSHA Notice), "upon receipt."

NOTE: If the employer does not have a Cal/OSHA Poster posted after CSHOs determine that the employer had received one, CSHOs must cite the employer for a regulatory violation of failure to post the Cal/OSHA Poster (8 CCR Section [§] 340) and provide the employer with a Cal/OSHA Poster.

h. Discuss the requirement that every employer must have workers' compensation insurance for their employees and request the name of their workers compensation carrier and record it on the OSHA Form 1.

i. Explain the Title 8 injury and illness recordkeeping requirements and verify that the employer maintains the OSHA Form 300: *Log of Work-Related Injuries and Illness*, if required to do so by regulation, and has a file of employer reports of employee injuries or illnesses (Cal/OSHA Form 5020: *Employer's Report of Occupational Injury or Illness*, or equivalent).

NOTE: CSHOs must request a copy of the employer's OSHA Form 300 and relevant employer reports of employee injuries and illnesses to review on site and request a copy for the case file. The OSHA Form 300 for the current and prior five (5) years must be placed in the case file for each inspection conducted.

j. Set a timeframe of **no more than three (3) days** for the employer to provide the documents and use the Cal/OSHA Form 1AY: *Document Request* to request documentation from the employer.

k. Ask if the employer has obtained any variances from Title 8 Safety Orders and permits, etc.

l. Ask the employer if any specialized PPE equipment is needed by CSHOs to conduct the inspection.

m. Ask the employer for consent to conduct the inspection and record the name and job title of the person granting consent.

NOTE: If the employer refuses CSHOs entry into the worksite, see Chapter 8.

n. Ask the employer to provide the total number of employees who are employed in the establishment being inspected.

o. Ask the employer to provide, or estimate, the total number of employees who are controlled by the employer nationally.

NOTE:

Abbreviated Opening Conference

When an allegation of a situation involves a place of employment where an **imminent hazard may exist or a fatal work-related accident is reported to DOSH**, CSHOs must conduct an abbreviated opening conference consisting of the following items:

1. Identification of the CSHOs,
2. Explanation of the purpose of the inspection,
3. Request for permission to enter the place of employment from the employer's person of the highest authority or their designee, and
4. Request for an employer and an employee representative, if there is an authorized employee bargaining unit, to accompany CSHOs during the inspection.

A more extensive discussion of other opening conference topics can be conducted at the exit conference after the initial inspection is completed.

VI. Conducting Walkaround

A. Employer Participation in the Walkaround

The walkaround must be conducted with the employer's person of highest authority, or their designee.

B. Employee Participation in the Walkaround

1. If there is an authorized employee bargaining unit representative for the worksite, CSHOs must make every effort to invite the representative to

participate in the walkaround (see Section of V.B. *Requesting the Presence of Management and Union Representatives* of this policy).

2. Where there is no authorized employee bargaining unit representative, CSHOs must interview with a reasonable number of the employer's employees concerning matters of workplace safety and health.

3. CSHOs must inform any authorized employee representative who participates in the walkaround that it is the employer's duty to compensate employees for time spent during the walkaround or during an interview. Inform employees that if the employer denies employees such compensation, a complaint must be filed **within one year** after the occurrence of the denial with the Labor Commissioner's Office (LCO), formerly known as Division of Labor Standards Enforcement (DLSE).

C. **Walkaround Format**

1. Every work site is different, and it is the responsibility of CSHOs to perform a complete and effective walkaround consistent with the scope of the inspection. CSHOs must familiarize themselves with the establishment processes, collect information pertinent to hazards, observe employees' activities, sample and perform monitoring activities (if necessary).

2. CSHOs must also interview a representative number of employees and supervisors and document in the inspection case file the names of everyone interviewed, as well as the names of any employees or supervisors who were asked to be interviewed but decline (see Part C.4.h.ii: *Refusal to be Interviewed* of this section).

3. Expanding Scope from Partial to Comprehensive

   After the opening conference and while conducting the walkaround, CSHOs may expand the scope of an inspection from partial to comprehensive if workplace conditions or employee comments suggest the need for a comprehensive inspection.

   NOTES:
   - A comprehensive inspection shall not be performed at a VPP or SHARP exempt worksite. Inspections at VPP or SHARP exempt worksites shall be limited, as much as possible, to the area of complaint(s) or accident.

   - CSHOs must document the reasons for expanding the scope from partial to comprehensive on the Cal/OSHA Form 1AV: *Note Taking Sheet*.

4. Collecting and Documenting Evidence during an Inspection

   IMPORTANT: CSHOs must thoroughly read **Appendices A**, **B**, and **C** of this policy to review and understand the procedures of collecting and documenting all information and evidence necessary for an effective inspection. (*NOTE*: Parts a through o of this section only summarizes Appendices A and B).

   - Appendix A: *Documenting the Existence of Violation*
   - Appendix B: *Documenting the Classification of Violation*
   - Appendix C: *Documenting the Penalty Adjustment Factors of Violation*

   During the walkaround and the entire course of the inspection, CSHOs must:

   a. Collect and document all the information and evidence necessary for the generation and/or completion of the required, including but not limited to, inspection forms, citations, information memorandums, notices, order to take special action, etc.

   b. Record on the Cal/OSHA Form 1AV all notes, observations, and other information.

      NOTE: CSHOs must include any pertinent employer or employee remarks made during the walkaround and/or the closing conference, especially comments directly related to the instance described.

   c. Evaluate the effectiveness of the employer's Injury and Illness Prevention Program (IIPP), whether in writing or not, in accordance with Chapter 13.

   d. Identify the total number of employees who are covered by the inspection (i.e., number of employees with exposure to area[s] being inspected).

   e. Record on the Cal/OSHA Form 1AV each violation observed/unobserved, and the evidence required to support a citation, including, but not limited to, the following:

      i. Date, time, and location of the observed condition
      ii. Employee(s) exposure (see Appendix A)

      iii. Number of employee(s) exposed to the hazard

iv. Name(s), address(es), phone number(s), and job title(s) for exposed employees(s)

v. Employer-Employee Relationship (see Appendix A)

vi. Employee(s) duration of exposure to the hazard(s) (e.g., 2 hours per week)

vii. Identification of the equipment and process that present hazards (e.g., serial numbers, machinery and equipment types, trade names, manufacturer's information, etc.)

viii. Zone of Danger (see Appendix A)

ix. Elements of a Regulation

CSHOs must determine whether the regulation to be cited applies and whether each required element of the regulation was violated (see Appendix A).

x. Measurements

CSHOs must take the exact measurements of all items associated with the violative condition (e.g., height of guardrails, distance of the belts and pulley drives above the floor level), and results of any sampling obtained from direct reading instrumentation.

NOTE: Use the OSHA Form 94: *Note Taking Sheet* to draw diagrams and identify measurements on the graph side of the form.

CSHOs must not rely solely on non-objective types of "measurements" based on their own visual acuity, sense of smell or hearing to document a violation.

xi. Drawings, sketches and/or diagrams

xii. Employer admissions (see Appendix A)

xiii. Witness's statements (see Appendix A)

xiv. Name, addresses and phone numbers of other people contacted during the inspections, such as the police, coroner, attorney, etc.

xv. All factors pertaining to the violative condition which could significantly affect the classification and severity of the resulting injuries (e.g., fall of 20 feet onto protruding rebar) (see Appendix B)

xvi. Any facts which establish that the employer knew of the hazardous condition or could have known of that condition with the exercise of reasonable diligence

NOTE: For DOSH to be able to present evidence at an informal or pre-hearing conference, or at an administrative hearing that the employer did know, or with the exercise of reasonable diligence, could have known, of the presence of a serious violation, CSHOs must gather evidence of employer knowledge during every inspection and investigation.

f. Document all facts related to the five elements of the independent employee act defense when it becomes evident, either from a statement by the employer or another person during the inspection or from the circumstances surrounding the alleged violations, that the independent employee act defense may be raised by the employer. CSHOs must make their DM/SIHS/Designee aware of all facts supporting an independent employee act defense (see Appendix A).

g. Injury or Illness.

CSHOs must document any injuries or illnesses that are entered on the employer's OSHA Form 300: *Log of Work-Related Injuries and Illnesses* and that relate to the violative condition by including a copy of the OSHA Form 300 and any report concerning the injury or illness generated by the employer (e.g., Cal/OSHA Form 5020: *Employer's Report of Occupational Injury or Illness*, Cal/OSHA Form 5021: *Doctor's First Report of Occupational Injury or Illness*, and accident investigation reports) in the inspection file.

h. Interview Employees/Witnesses/Employers.

CSHOs shall make an effort to audio record all interviews and obtain consent from all individuals being recorded. If any individuals refuse, the interview must not be recorded and CSHOs must instead obtain written statements, using the Cal/OSHA Form 1AW: *Employee/Witness Statement*. If any individuals refuse to provide a written statement, CSHOs must thoroughly and legibly document all statements made by individuals during the interview on the Cal/OSHA Form 1AV: *Note Taking Sheet*.

CSHOs must interview both employees and supervisors to determine the effectiveness of the implementation of their written Injury and Illness Prevention Program (IIPP) as required by the California Labor Code § 6314.5 and in accordance with the written procedures in the Chapter 13.

i. Language Barriers

a) Use of a certified DIR interpreter or contract interpreter.

All CSHOs must make use of appropriate language interpreters when interviewing non-English-speaking injured worker(s) or employee witnesses. Appropriate language interpreters are employees of the Department of Industrial Relations, who have been certified by the Department as bilingual interpreters in the language spoken by the witness, or individuals available in person or by telephone through contractual arrangements between DOSH and a language translation vendor.

b) Prohibition against use of employer or employer representatives as interpreters when interviewing employees during inspections.

Under no circumstances may CSHOs make use of employer's provided services or the employer's representative to interview non-English speaking injured worker(s) or employee witnesses.

c) Use of employer or employer representatives as interpreters when asking employees questions for later scheduling of interview.

While conducting a walkaround inspection, CSHOs may make use of employer's provided services or employer's representative to ask employees for their contact information for later scheduling of interview(s) when appropriate language interpreters can be arranged.

NOTE: This option may only be used when appropriate translation assistance methods are attempted but unsuccessful (e.g., no phone service).

ii. Refusal to Be Interviewed
Even though DOSH has the authority under California Labor Code § 6314 to interview employees and all witnesses to an

accident, some witnesses whom DOSH would like to interview may refuse to give a statement.

a) If a potential witness refuses to give a statement, the CSHOs must immediately notify the DM/SIHS/Designee.

b) The DM/SIHS/Designee, through the Regional Manager, must consult with the Legal Unit about the appropriateness of issuing an administrative subpoena (see Chapter 10: *Subpoenas and Letters Requesting Documents*) to compel the witness to provide a statement.

NOTE: In some instances, even after being served with an administrative subpoena, supervisors or other management personnel may legitimately invoke their Fifth Amendment privilege against self-incrimination in refusing to provide DOSH a statement. The DM/SIHS/Designee must consult with the Legal Unit if a witness invokes the Fifth Amendment to refuse to answer interview questions.

iii. Complaints Not Under DOSH's Jurisdiction

During an interview, employees may report complaints that are not covered under DOSH's jurisdiction, such as no break/ workers' compensation insurance, pesticide-involved concerns, or retaliatory threats from employers, including immigration-related threats.

When notified of such complaints during an interview, CSHOs must record the acquired information of such complaints on Cal/OSHA Form 7: *Notice of Alleged Safety and Health Hazards* and immediately provide the completed Cal/OSHA Form 7 to DM/SIHS/Designee for review. See Chapter 2 and Chapter 4.

i. Verification of Serious Violations Abatement.

CSHOs and their DM/SIHS/Designee are responsible for ensuring that violations identified during inspections are **corrected**. For a complete policy and procedures on abatement, see Chapter 19: *Abatement*.

Abatement of serious violations must be verified through the following:

i. Abatement Observed by CSHOs Within 24 Hours After Violation Is Identified
When the employer abates a serious violation within twenty-four (24) hours of being identified by CSHOs and CSHOs observed that

abatement has occurred during the **on-site portion of the inspection**, CSHOs must document the method of abatement implemented by the employer. CSHOs must complete Cal/OSHA Form 1AD: *Serious Violation(s) Abated During Inspection* and include evidence that demonstrates abatement (e.g., statements, business records, photographs, or video) for review and approval by the DM/SIHS/Designee.

CSHOs must then submit Form 1AD to DM/SIHS/Designee within twenty-four (24) hours of the on-site inspection date when the violation was identified to the employer. For example, if CSHOs identified the violation on Monday at 11:00 AM, the Form 1AD must be submitted to the DM/SIHS/Designee by 11:00 AM of the next day (Tuesday).

NOTE: Temporary removal of an employee from the hazard does not constitute abatement.

ii. Abatement Observed by CSHOs More Than 24 Hours After Violation Is Identified

a) When the employer abates a serious violation more than twenty-four (24) hours after it was identified by CSHOs and CSHOs observed that abatement had occurred on a **subsequential on-site inspection**, CSHOs must document the method of abatement implemented by the employer. CSHOs must complete Cal/OSHA Form 1AD: *Serious Violation(s) Abated During Inspection* and include evidence that demonstrates abatement (e.g., statements, business records, photographs, or video) for review and approval by the DM/SIHS/Designee.

CSHOs must then submit Cal/OSHA Form 1AD to DM/SIHS/Designee within twenty-four (24) hours of the subsequential on-site inspection date when CSHOs observed the abatement. For example, if CSHOs identified the violation on the initial inspection date (December 4, 2025 at 11:00 AM) and the CSHOs returned to the site on December 10, 2025 and observed at 1:00 PM that the violation was abated by the employer, the CSHOs must complete the Cal/OSHA Form 1AD and submit to the DM/SIHS/Designee by 1:00 PM of the next day.

NOTE: Temporary removal of an employee from the hazard does not constitute abatement.

b) The CSHOs must do the following immediately, but no later than five (5) working days, after the DM/SIHS/Designee approve and initial the Cal/OSHA Form 1AD:

1) Prepare and complete the CSHO's portion of the Cal/OSHA Form 161B: *Certification of Abatement of Serious Violations Prior to Issuance of Citations*.

2) Send via certified mail or email the completed Cal/OSHA Form 161B to the employer.

3) Call the employer via telephone, explain the purpose of the Cal/OSHA Form 161B and encourage the employer to complete, sign and return the form by the due date specified on the form.

NOTE: The due date for the employer to return the completed Cal/OSHA Form 161B must not be more than ten (10) working days from the date of issuance. For example, if the issuance date is July 1, the due date is July 15.

4) Document the conversation with the employer, including the date and time of the conversation, on the Cal/OSHA Form 1AV and place it in the case file.

iii. Abatement Information Received by CSHOs More Than 24 Hours After Violation Is Identified but Before Issuance of Citation(s)

When the employer submits to DOSH abatement information/documentation of a serious violation more than twenty-four (24) hours after the violation was identified by CSHOs, **after the on-site portion of the inspection but before issuance of citation(s)**, CSHOs must do the following immediately, but no later than five (5) working days, after receipt of the employer's abatement information/documentation:

a) Review the employer's abatement information/documentation.

b) Prepare and complete the CSHO's portion of the Cal/OSHA Form 161B.

c) Send via certified mail or email the completed Cal/OSHA Form 161B to the employer.

d) Call the employer via telephone, explain the purpose of the Cal/OSHA Form 161B and encourage the employer to

complete, sign and return the form by the due date specified on the form.

NOTE: The due date for the employer to return the completed Cal/OSHA Form 161B must not be more than ten (10) working days from the date of issuance. For example, if the issuance date is July 1, 2026, the due date is July 15, 2026.

e) Document the conversation with the employer, including the date and time of the conversation, on the Cal/OSHA Form 1AV and place it in the case file.

NOTE: Temporary removal of an employee from the hazard does not constitute abatement.

iv. Employer Abatement Assistance

a) CSHOs must offer appropriate abatement assistance during the walkaround to explain how workplace hazards might be eliminated. The information shall provide the employer with guidance to develop acceptable abatement methods or to seek appropriate professional assistance. CSHOs must not imply DOSH endorsement of any product through use of specific product names when recommending abatement measures. The issuance of citations shall not be delayed.

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.

3) The employer is responsible for selecting and carrying out an effective abatement method and maintaining the appropriate documentation.

j. Check if any of the following items are posted at the worksite:

i. Cal/OSHA poster

ii. Previously issued citations (if applicable)

iii. Injury and Illness Annual Summary (from February 1 to April 30)

iv. Notification of Employee Access to Medical and exposure records

v. Permits

vi. Forklift Operating Rules (if applicable)

vii. Notice of Workers' Compensation Carrier and Coverage

viii. Industrial Welfare Commission Poster and

ix. Any other required postings. A complete listing of all State of California required postings is available at http://www.dir.ca.gov/wpnodb.html.

NOTE: If an employer cannot show proof of workers' compensation insurance or has not posted the applicable Industrial Welfare Commission posters, CSHOs must make a referral to LCO.

k. Monitor and record all relevant information concerning potential exposure to chemical substances or physical hazards in accordance with Chapter 12.

l. Evaluate and document in the case file each complaint item to determine if the item exists and if it constitutes violation of a Title 8 Safety Order.

NOTE: CSHOs must not document any observation of a complaint item on the Cal/OSHA Form 1A in order to safeguard the confidentiality of the complainant.

m. Take any pertinent photographs of the worksite, including photographs of any materials, processes or equipment.

i. CSHOs must ensure that the cameras used for obtaining photographic evidence during inspections are properly set up to accurately indicate the date and time each photograph was taken.

ii. CSHOs must print those photographs that support each of the violations observed and make notes identifying what the photographs depict with sufficient detail to prevent any confusion.

iii. All printed photographs, along with the CDs or other digital storage media for the inspection photographs and video recordings, if any, must be placed in the **confidential** section of the case file.

NOTE: Photographs taken by DOSH must be deemed confidential as required pursuant to Labor Code § 6314 and must not be released to the public unless the employer consents to their release.

iv. CSHOs must not photograph materials, processes or equipment which are subject to trade secret protection or which are proprietary unless absolutely necessary and only after permission to do so has been granted by the employer. If such photographs are deemed necessary, CSHOs must contact Legal Unit to discuss how to safeguard the photographs.

v. CSHOs must not enter security areas of the worksite unless absolutely necessary and only after permission to do so has been granted by the employer.

n. Collect pertinent documentary and physical evidence.

i. Collection of Evidence

a) As early as possible during the course of the accident investigation, CSHOs shall determine what, if any, physical evidence must be secured for subsequent inspection and/or analysis. For instance, it may be necessary to conduct analytical tests on piping systems, machinery, equipment, or other items in order to determine the cause of the accident. To facilitate the required testing and analysis, it may be necessary to take physical custody of these items.

b) Prior to taking custody of any physical evidence, approval to do so shall be obtained from the DM/SIHS/Designee and the Regional Manager in consultation with the Legal Unit. Any evidence acquired must be secured and the chain of custody maintained.

NOTE: Whenever evidence is acquired, CSHOs must complete a Cal/OSHA Form 1AZ: *Chain of Custody* and comply with the instructions contained in the form.

c) For larger components that are difficult to handle or to transport, DOSH, through the Legal Unit, may arrange for the joint custody of the item(s) with the employer.

d) If during the inspection, it is necessary to ensure that the worksite, or physical evidence located at the worksite, is preserved until the inspection can be completed, CSHOs must issue an Order to Preserve (see Chapter 8).

ii. Return or Release of Evidence

When the owner, or an owner's representative, of any evidence seized by DOSH requests the return of the evidence, or DOSH elects to return the evidence to the owner or the owner's representative, the DM/SIHS/Designee must, before releasing the evidence, first:

a) Advise the Legal Unit and the BOI that a request for return of the evidence has been received, or that the evidence is no longer needed by the District, and that the District is planning to release the evidence.

b) Determine if any litigation involving DOSH is pending, or is anticipated, which would necessitate DOSH retaining custody of the evidence.

1) If any litigation involving DOSH is pending, the evidence shall not be released.

2) If litigation is pending, but it does not involve DOSH, advise all known litigants in writing that:

i) It is DOSH's intent to release and return the evidence to the owner or the owner's representative, and

ii) Allow all interested parties ten (10) days to request that the evidence not be released but be retained by DOSH.

c) If it cannot be determined that litigation is pending, DOSH shall secure from the owner or the owner's representative a written statement that the owner is unaware of any pending or intended litigation.

d) Document the release of any evidence as follows:

1) A signed receipt for the evidence shall be obtained by DOSH and the receiver shall be given a signed receipt by DOSH, and

2) If any evidence has been destroyed (e.g., during destructive testing) or discarded while in DOSH's custody, a written statement describing the reason(s) why the evidence was destroyed or discarded shall be signed by the DM/SIHS/Designee and the CSHOs who originally took custody of the evidence.

o. Document information obtained during the inspection to support a determination about the employer's penalty adjustment factors (i.e., employer's good faith, size, and history, and the severity, extent and likelihood of the violations in accordance with Appendix C: *Documenting the Penalty Adjustment Factors of a Violation*).

VII. Conducting Exit Conference

A. CSHOs must ALWAYS conduct an exit conference with the employer and employee representative(s) prior to leaving the worksite, jointly or separately, as circumstances dictate.

B. CSHOs must provide the employer or the employer's representative with the following:

1. Preliminary findings about any violations observed during the walkaround.

2. Anticipated date when the closing conference will be held.

3. Information about any recommended interim corrective action(s).

4. Information about possible abatement credit.

5. Information about long-term abatement, if necessary.
6. A completed Cal/OSHA Form 1AY or equivalent form requesting documents (e.g., employer's OSHA Form 300, IIPP, training records, etc.) that may be needed to complete the inspection.

VIII. Preparing Proposal for Enforcement Action

Citation issuance is controlled by the California Labor Code § 6317, with § 6317(a) stating that "…the division…shall with reasonable promptness issue a citation to the employer."

A. DM/SIHS/Designee must closely monitor the time that elapses from the completion of an inspection to the issuance of citation(s) and/or special order, order to take special action, or a notice of no violation, and must make this elapsed time as brief as possible.

B. CSHOs must thoroughly prepare and promptly submit a case file for management review and approval when an inspection is completed.

   The case file must be properly organized and include, but not limited to, all written documentation collected, field notes, audio/video recordings, photographs, samples, employer and employee interviews, employer business records, and all required compliance inspection forms (e.g., Cal/OSHA Form 1A: *Opening and Closing Conference Documentation Sheet*, Cal/OSHA Form 1AW: *Employee/Witness Statement*, Cal/OSHA Form 8: *Order Prohibiting Use*, Cal/OSHA Form 10: *Penalty Worksheet*, and Cal/OSHA Form 2A: *Proposed Enforcement Action Worksheet*) for each proposed citations, notices, and information memorandums.

See Chapter 18: *Citations and Case File Review* and Chapter 16: *Case File Records Organization*.

IX. Conducting Closing Conference

A. CSHOs are not mandated to hold a closing conference when an employer refuses to participate. CSHOs must document in the case file the employer's refusal to participate in the closing conference and the case must be processed as if a closing conference had been held.

   NOTE: The issue date of the citation(s) must be entered in OIS as the closing conference date.

B. The following format contains the essential items CSHOs need to include in a closing conference when a citation, notice, special order or order to take special action will be issued. The order in which the items are covered, or the inclusion of additional items, is the responsibility of the CSHOs. See the respective section entitled *Closing Conference* on the Cal/OSHA Form 1A.

NOTE: A closing conference can be conducted at the employer's worksite or may be conducted with the employer over the telephone.

C. **Prior to conducting a closing conference, CSHOs must**:

1. Notify the employer, or the employer's representative, of the date and time of the closing conference.

2. Include employee representatives at the closing conference, unless the employer objects to their presence.

   NOTE: If the employer objects to the presence of employees at the closing conference, but employee representatives want to participate, CSHOs must conduct a separate closing conference with employee representatives.

D. **During the closing conference, CSHOs must**:

1. Discuss all conditions affecting occupational safety and health which were noted during the initial walkaround, and during any subsequent visits to the worksite, and describe in detail those workplace conditions which DOSH believes represent violations of Title 8 Safety Orders and explain why DOSH believes that they are violations.

   NOTE: CSHOs must discuss their evaluation of the effectiveness of the employer's Injury and Illness Prevention Program (IIPP) even if no IIPP violations were observed.

2. Discuss and explain any citations, notices, special orders, orders to take special action, or information memoranda to the employer, and inform the employer if additional enforcement documents may be forthcoming.

   NOTE: If no citations or notices in lieu of citation are issued, including in cases where only information memorandum is issued, CSHOs must also complete a Cal/OSHA Form 1AX: *Notice of No Violation After Inspection*, obtain DM/SIHS/Designee approval for issuance, and issue the Cal/OSHA Form 1AX to the employer.

3. Discuss and explain the meaning of abatement verification, which includes abatement certification and documentation, to the employer. Inform the employer that abatement verification is required for all citations received, except for any citation with the notation “Corrected During Inspection.” Explain what “Corrected During Inspection” means and the purpose of the Cal/OSHA Form 161A: *Notice of Verification of Abatement of Serious Violations*. A copy of Cal/OSHA Form 161A signed by the CSHOs shall be

provided to the employer for posting in the workplace, in accordance with Labor Code § 6318(b).

4. Discuss the methods to abate the alleged violative conditions referenced in the Citation, Notice, Special Order or Order to Take Special Action, establish dates by when abatement must be completed and explain that, when abatement is complete, the employer must send Cal/OSHA Forms 160: *Employer's Signed Statement of Abatement of Regulatory and/or General Violations* and/or 161: *Employer's Signed Statement of Abatement of Serious Violations* to the issuing District Office verifying that the violative condition has been abated (see Chapter 19).

   NOTE: Explain to the employer that assistance is available from the Consultation Service for employers whose citations are not under appeal or whose appeal proceedings have concluded.

5. Discuss long-term abatement, where abatement periods for citations are expected to exceed ninety (90) calendar days, and the submission and requirements of abatement plans and progress reports.

6. Explain the proposed penalties for each citation item:

   a. How the penalties were calculated,

   b. The adjustment factors which affect calculation of the proposed penalties,

   c. That DOSH will not grant a 50% abatement credit on Serious violations unless the employer either:

      i. Abated the violative condition during the inspection, or

      ii. Will submit a statement signed under the penalty of perjury, along with supporting documentation that the violation has been abated and the documents are received within ten (10) working days of the abatement date.

   d. The penalty for failure to abate the violative condition, and

   e. The penalty for a repeated violation in the future.

7. Explain the requirement that the employer must post a copy of the Citation, Notice, Special Order or Order to Take Special Action at the required location in the worksite and the penalties for failure to post.

8. Inform the employer that he or she may request an informal conference with the DM/SIHS/Designee to discuss the inspection and the enforcement action within ten (10) working days of issuance of the enforcement document.

   NOTE: The employer can request an informal conference with the DM/SIHS/Designee anytime up to, and including, the day of the appeals hearing, if the employer has filed an appeal with the Occupational Safety and Health Appeals Board. See Chapter 25: *Informal and Other Legal Conferences*.

9. Explain to the employer that he or she has the right to contest the enforcement action by filing an appeal with the Occupational Safety and Health Appeals Board in Sacramento within fifteen (15) working days of the receipt of the citation, special order, or order to take special action.

10. Inform the employer that a follow-up inspection of their worksite may be conducted in the future if the Cal/OSHA Forms 160 and/or 161 are not returned to the issuing District Office and for other reasons.

11. Inform the employer that he or she may seek a temporary variance from DOSH or a permanent variance from the Occupational Safety and Health Standards Board and explain the variance process.

    NOTE: If a variance is granted, it cannot be used as a defense to the enforcement action.

12. Remind the employer that he or she is prohibited from discriminating against an employee for making a complaint, or having their labor union representative make a complaint, to DOSH about workplace safety and health hazards, for participating in the walkaround part of the inspection, for being interviewed by CSHOs during the inspection, for participating in the closing conference, or for exercising any other right given to employees by the California Labor Code.

Appendices:

A. Documenting the Existence of Violation
B. Documenting the Classification of Violation
C. Documenting the Penalty Adjustment Factors of Violation

Appendix A

DOCUMENTING THE EXISTENCE OF VIOLATION

It is the policy of DOSH to thoroughly and correctly document the existence of all violations found during a workplace or place of employment inspection.

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

- California Labor Code, Sections 6304, 6304.1, 6304.2, 6314, and 6317.

This appendix outlines the procedures for collecting and documenting essential facts that identify and substantiate a violation. Each alleged violation must be supported with clear and appropriate documentation of evidence and facts collected to issue a citation.

Compliance Safety and Health Officers (CSHOs) must, during the inspection, (1) collect all relevant physical evidence such as, but not limited to, business records, written statements, photographs, videos, or emails that substantiate a violation; (2) document/record all pertinent observations and interviews that substantiate a violation; and (3) determine whether the regulation to be cited applies and whether **each required element of the regulation was violated**.

CSHOs must ensure that the case file contains the evidence and facts to support the following:

A. Establishing and Documenting Employee Exposure

1. Establishing Employee Exposure

   CSHOs must establish that one or more employees were exposed to a hazardous condition resulting from a violation of a Title 8 Safety Order.

   NOTE: Evidence of employee exposure is not required to establish a regulatory violation.

   a. Statute of Limitations

      Employee exposure must have occurred within the six months immediately preceding the issuance of the citation to serve as a basis for a violation. Where there is a continuing violation, this can include the more recent exposures.

EXCEPTION: If the employer fails to report a serious injury or illness or death as required by 8 CCR § 342(a), the time limit for issuing a citation is six months after DOSH learns or shall have reasonably learned of the violative condition.

b. Observed Employee

Employee exposure may be established by CSHOs directly observing or monitoring the employee exposure to a hazardous condition resulting from a violation of a Title 8 Safety Order.

c. Unobserved Employee Exposure

Employee exposure may be established through a combination of witness statements and other evidence of employee exposure to a hazardous condition resulting from a violation of a Title 8 Safety Order.

d. Zone of Danger

CSHOs must establish that the employee(s) came within the "zone of danger" associated with the violative condition, that is, in such proximity to the hazard that there is a reasonable basis to conclude that employee exposure occurred. An employee may come within the zone of danger while:

i. Performing work-related duties,

ii. Pursuing personal activities during work hours, or

iii. Employing normal means of ingress and egress to their workstations.

NOTE: Employee exposure may be established through direct or circumstantial evidence.

2. Documenting Employee Exposure

CSHOs must document employee exposure with evidence sufficient to prove its occurrence by a preponderance of evidence (i.e., the evidence must show it is more likely than not that there was employee exposure). The types of evidence that can show employee exposure include, but are not necessarily limited to, the following:

a. Direct observation by CSHOs.

NOTE: CSHOs must write field notes about their observations as soon as possible.

b. Employer admission (e.g., oral or written statement by an authorized representative of management).

NOTE: CSHOs must obtain a signed written statement whenever possible or write field notes about the employer's admission as soon as possible.

c. Witness statements (e.g., statements by exposed employees, coworkers, union representatives, emergency personnel, family members of exposed employees).

NOTE: CSHOs must obtain a signed written statement or create a voice or video recording whenever possible, or write field notes as soon as possible specifying which persons made which statements.

d. Photographs, video recordings, sketches, measurements, monitoring taken at the site showing exposure to the violative conditions, machinery, or equipment.

e. Documents (e.g., autopsy reports, job duty descriptions for exposed employees, the employer's personnel and safety policies).

B. Establishing and Documenting Employer-Employee Relationship

1. Establishing that the exposed worker was not an independent contractor

The California Supreme Court has articulated a multi-factor test for determining whether a worker is an employee. The principal test is whether the person to whom service is rendered has the right to control the manner and means of accomplishing the desired result. Other factors to be considered include:

a. The right to discharge at will,

b. Whether the worker is engaged in a distinct occupation or business,

c. The skill required in the particular occupation,

d. Whether the worker supplies the tools and the place of work,

e. The length of time for which the services are to be performed,

f. The method of payment, whether by time or by job, and

g. Whether the parties believe they are creating an employer-employee relationship.

If the exposed worker appears to be an independent contractor, CSHOs must contact the Legal Unit to determine jurisdiction.

2. Establishing that the Exposed Worker Was Not a Volunteer

In most cases, DOSH does not have jurisdiction over the health and safety conditions of volunteers, except certain categories of volunteer firefighters. If the exposed worker appears to be a volunteer, CSHOs must contact the Legal Unit to determine jurisdiction.

3. Documenting about the Employer-Employee Relationship

If the employer-employee relationship is questionable and could be a potential issue on appeal, CSHOs must consult with the DM/SIHS/Designee (or, if directed by the DM/SIHS/Designee, with the Regional or District Senior Safety Engineer) on how to investigate and document the employer-employee relationship. Evidence must be collected to prove the relationship by a preponderance of evidence (i.e., the evidence must show it is more likely than not that the worker was an employee of the cited employer). The types of evidence that can show an employer-employee relationship exists include, but are not necessarily limited to, the following:

a. Employer admission (e.g., oral or written statement by a manager).

NOTE: CSHOs must obtain a signed written statement (see Cal/OSHA Form 1AW) or create a voice or video recording whenever possible.

b. Witness statements regarding how work was directed and controlled (e.g., statements by employees or union representatives).

NOTE: CSHOs must obtain a signed written statement or create a voice or video recording whenever possible.

c. Documents (e.g., employment contract, employment manual, pay statements).

4. Considering Whether More Than One Employer May be Cited

At multi-employer worksites and in dual-employer situations, more than one employer may be cited for violation of a Title 8 Safety Order resulting in employee exposure. For guidance on establishing an employer-employee relationship in those settings, consult the following:

a. For Multi-Employer Worksite Inspections, see Chapter 14.

b. For Dual Employer Inspections, see Chapter 14.

C. **Identifying the Regulation That Was Violated**

1. Title 8 Subchapter

   CSHOs must specify which subchapter of Title 8 regulations applies to the type of workplace inspected. If more than subchapter could be applicable, the CSHOs must consult with the DM/SIHS/Designee (or, if directed by the DM/SIHS/Designee, the Regional or District Senior Safety Engineer) to determine which subchapter should be cited.

2. Title 8 Section Number

   CSHOs must ensure that the violation to be cited correctly corresponds to the Title 8 section and subsection numbers that apply to the violation.

3. Exceptions in the Regulation

   CSHOs must ensure that any exceptions in the regulation to be cited do not apply, and if necessary, must document evidence to rebut application of the exception.

D. **Documenting Elements of the Violation**

During the course of each inspection, CSHOs must identify each observed and unobserved workplace hazard, or condition, which is a violation of a Title 8 Safety Order by documenting each descriptive element of the violation to be cited on the Cal/OSHA Form 1AV: *Note Taking Sheet*.

EXAMPLE: Elements of a Violation

The 8 CCR § 3382(a) states in part that: "Employees (Element 1) working (Element 2) in locations where there is the risk of receiving eye injuries such as punctures, abrasion, contusions, or burns (Element 3) as a result of contact with flying particles, hazardous substances, projections or injurious light rays (Element 4) which are inherent in the work or environment (Element 5), shall be safeguarded by means of face or eye protection (Element 6)."

ELEMENTS		EVIDENCE COLLECTED DURING THE INSPECTION AND PLACED IN THE CASE FILE
1	Employees	Observed three employees in the service garage area of the establishment; Employer acknowledged they were his employees and provided the names and address of each employee.
2	Working	Observed the three employees working in the garage area. Interviewed all three employees on their job duties and safety equipment provided, adding water to batteries and changing/adding oil. No safety equipment provided, such as gloves, masks, safety glasses, etc.
3	Location with risk of eye injuries, e.g.	Working around batteries and motor oil.
	• Puncture	N/A
	• Abrasion	N/A
	• Contusions	N/A
	• Burns	H_2SO_4 (battery) – Employer provided a copy of Manufactures Instruction Manual – it states caution when adding water to battery – release of H_2SO_4 acid – burns.
4	As a result of contact with:	
	• Flying particles	N/A
	• Hazardous Substances	H_2SO_4 (battery)
	• Projections, or	N/A
	• Injurious light rays	N/A
5	Inherent in the:	
	• Work or	Oils and acids/Obtained copies of Safety Data Sheets.
	• Environment	Used in the garage statements from the employer and employees.
6	Shall be safeguarded by means of face protection or eye protection	No goggles, eye protection or face shields protection provided to employees – See statements from employees and employer.

E. Ruling Out the "Independent Employee Act" Affirmative Defense

An employer may assert one or more affirmative defenses that the employer shall not be held responsible for a violation for which DOSH cited the employer. If each element of the affirmative defense is established by the employer during an administrative hearing, the citation will be vacated. One of the most common affirmative defenses is the Independent Employee Act Defense.

1. Elements of the Independent Employee Act Defense

    a. The employee was experienced in the job being performed,

    b. The employer had a well-devised safety program that included training employees in matters of safety respective to their particular job assignments,

    c. The employer effectively enforced the safety program,

    d. The employer enforced a policy sanctioning employees who violated the safety program, and

    e. The employee caused a safety infraction that he or she knew violated the employer's safety requirement.

2. Establishing and Documenting the Lack of an Independent Employee Act

    a. CSHOs must document all facts related to the five elements of the independent employee act defense when it becomes evident, either from a statement by the employer or another person during the inspection or from the circumstances surrounding the alleged violations, that the independent employee act defense may become an issue in the case. CSHOs must make the DM/SIHS/Designee aware of all facts potentially supporting an independent employee act defense.

    b. Even though establishing the five elements of the independent employee act defense is the employer's responsibility, CSHOs must be prepared to respond when the employer raises the defense at an informal conference, pre-hearing conference, or administrative hearing.

    c. If the DM/SIHS/Designee believes that a citation should not be issued because the employer to be cited can establish all five elements of independent employee act defense, the DM/SIHS/Designee must consult with, and receive concurrence from, the Regional Manager and the Legal Unit before making a final determination not to issue, or to withdraw, the citation.

F. Verifying or Ruling Out the Application of a Variance

1. CSHOs must not cite an employer for a condition that is in compliance with a temporary variance granted by DOSH or with a permanent variance granted by the Occupational Safety and Health Standards Board.

2. If the employer states that the conditions being investigated comply with a temporary or permanent variance, the DM/SIHS/Designee must contact Headquarters to verify this statement. If a variance has not been granted or does not apply, CSHOs may proceed with the citation.

Appendix B

DOCUMENTING THE CLASSIFICATION OF VIOLATION

It is the policy of DOSH to thoroughly collect sufficient evidence to correctly classify all violations found during a workplace or place of employment inspection.

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

- California Labor Code Sections 6302(h) and (i), 6432, and 9061, and Title 8 of the California Code of Regulations Section 334.

This appendix outlines the procedures for determining violation classification associated with each proposed violation. It also provides definitions of violation classification and outlines the processes for assessing, and evaluating evidence and facts collected during a workplace inspection to determine violation classification. This includes, but is not limited to, information and physical evidence obtained from employer, employee and management interviews, other governmental agencies' records and reports related to occupational injury, illness, or disease. These processes/procedures collectively inform the determination of violation classification for each proposed violation.

CSHOs must, during inspections, gather all pertinent evidence, including, but not limited to, business records, written statements, photographs, videos, emails, broken guards, damaged PPE, etc., that substantiate the classification of a violation. Additionally, they must document and record all relevant observations and interviews supporting the classification of a violation. CSHOs must utilize and complete all applicable DOSH forms to document and record pertinent observations, interviews, other evidence, notes, or materials regarding violation classification. All factors used in determining the classification of a violation must be documented and placed in the case file.

CSHOs must ensure that the case file contains evidence and facts to support the following:

A. **Documenting the Classification of a Violation as Regulatory**

A violation shall be classified as "regulatory" if it (1) pertains to a permit, posting, reporting, or recordkeeping requirement established by regulation or statute, and (2) is not classified as General or Serious.

EXAMPLE: The failure of an employer to obtain a required permit, post a citation, post the required poster, keep required records, or report an industrial accident.

B. Documenting the Classification of a Violation as General

A violation shall be classified as “general” if the violation (1) has a direct relationship to the occupational safety and health of employees, and (2) is specifically determined not to be of a serious nature. In other words, the violation could result in an injury or illness to an employee but cannot be classified as Serious.

C. Documenting the Classification of a Violation as Serious

A violation is presumed to be “serious” if CSHOs can show there is “*a realistic possibility that death or serious physical harm could result from the actual hazard created by the violation*” (Labor Code § 6432[a]). An employer can rebut this presumption by showing that the employer “*did not know and could not, with the exercise of reasonable diligence, have known of the presence of the violation*” (Labor Code § 6432[c]).

1. Realistic possibility

   The term “realistic possibility” means “a prediction clearly within the bounds of human reason, not pure speculation.” DOSH must provide a valid evidentiary foundation for the “realistic possibility.” The Appeals Board has held that this foundation can be provided by testimony from CSHOs based on “expertise on the subject, reasonably specific scientific evidence, experience-based rationale, or generally accepted empirical evidence.”

   NOTE: Under Labor Code § 6432(g), CSHOs are deemed “competent” (i.e., qualified) to testify about each element of a serious violation if their Division-mandated training is current.

   The Appeals Board has held that DOSH may assume a worst case scenario in evaluating whether a violation is serious. Lack of an actual accident is immaterial to this determination, but the fact of an accident is relevant and would tend to prove the realistic nature of the hazard.

2. Death

   The term "death" refers to the death of an employee.

3. Serious physical harm

   The term “serious physical harm” means “*any injury or illness, specific or cumulative, occurring in the place of employment or in connection with any employment, that results in any of the following:*” (Labor Code § 6432[e]):

a. *Inpatient hospitalization for purposes other than medical observation.*

b. *The loss of any member of the body.*

c. *Any serious degree of permanent disfigurement.*

d. *Impairment sufficient to cause a part of the body or the function of an organ to become permanently and significantly reduced in efficiency on or off the job, including, but not limited to, depending on the severity:*

- Second-degree or worse burns,
- Crushing injuries including internal injuries even though skin surface may be intact,
- Respiratory illnesses, or
- Broken bones.

Serious physical harm may be caused by a single, repetitive practice, means, method, operation, or process (Labor Code § 6432[f]).

The Appeals Board has upheld serious citations in cases where the record contained evidence that the injuries and illnesses listed below could result from the cited hazard. However, regardless of whether one of these categories of injuries and illnesses could result from a violation being investigated, CSHOs must still analyze the potential for serious physical harm on a case-by-case basis:

- Head injury, concussion, or brain injury.
- Deep lacerations.
- Cancer.
- Human immunodeficiency virus (HIV/AIDS), hepatitis B virus (HBV), or hepatitis C virus (HCV).
- Loss of dexterity, weakness and numbness.
- Vision or hearing loss.

4. Actual hazard created by the violation

CSHOs must be able to describe and document the “actual hazard” created by the violation and explain how an employee could die or be

seriously physically harmed as a result of that hazard. Just pointing to the existence of a violation is not sufficient.

EXAMPLE: A violation involving the lack of a required enclosure for energized electrical wires can create an "actual hazard" that could result in death or serious physical harm if it is possible for an employee to come into contact with the energized wires. In contrast, this violation does not create an "actual hazard" that could result in death or serious physical harm if the wires are fully insulated.

5. Special serious violations

    a. Carcinogens Generally, a violation involving the use of a carcinogen as defined in 8 CCR § 330(f) must be cited as serious, unless lack of employer knowledge can be established. However, if the violation is minor and resulted in no substantial health hazard, CSHOs must consult with the DM/SIHS/Designee or the Regional or District Senior Safety Engineer to determine the appropriate classification of the violation.

    b. Tower Cranes

        For serious violations involving tower cranes, see Chapter 36: *Tower Crane Erection and Operating Permits*.

6. Employer knowledge

    a. Rebutting the presumption that a violation is serious by showing lack of employer knowledge

        An employer can rebut the presumption that a violation is serious and establish that a violation is not serious by showing that the employer "*did not know and could not, with the exercise of reasonable diligence, have known of the presence of the violation*." The employer may rebut the presumption by showing <u>both</u> of the following:

        i. *The employer took all the steps a reasonable and responsible employer in like circumstances shall be expected to take, before the violation occurred, to anticipate and prevent the violation, taking into consideration the severity of the harm that could be expected to occur and the likelihood of that harm occurring in connection with the work activity during which the violation occurred* (Labor Code § 6432[c]).

Factors relevant to determining the above include, but are not limited to, the following factors listed in subsection (b) of Labor Code § 6432:

a) *Training for employees and supervisors relevant to preventing employee exposure to the hazard or to similar hazards.*

b) *Procedures for discovering, controlling access to, and correcting the hazard or similar hazards.*

c) *Supervision of employees exposed or potentially exposed to the hazard.*

d) *Procedures for communicating to employees about the employer's health and safety rules and programs.*

e) *Information that the employer wishes to provide, at any time before citations are issued, including, any of the following:*

1) *The employer's explanation of the circumstances surrounding the alleged violative events.*

2) *Why the employer believes a serious violation does not exist.*

3) *Why the employer believes its actions related to the alleged violative events were reasonable and responsible so as to rebut the presumption that a violation is serious.*

4) *Any other information that the employer wishes to provide to the Division.*

ii. *The employer took effective action to eliminate employee exposure to the hazard created by the violation as soon as the violation was discovered* (Labor Code § 6432[c]).

b. Investigating employer knowledge

Although the employer bears the burden of proving the lack of employer knowledge of a serious violation, CSHOs must still gather evidence of employer knowledge during every inspection or investigation of a serious violation. There are two types of employer knowledge:

i. *Actual knowledge*: The employer actually knew of the violative condition.

Knowledge of a violative condition by a foreman, supervisor, manager, or owner constitutes employer knowledge.

ii. *Constructive knowledge*: The employer could have known of the violative condition through reasonable diligence, in other words, a degree of care or attention as might be expected from an employer of ordinary prudence and activity.

Generally, if a violative condition is discovered that had existed for a significant period of time, CSHOs can assume that the employer could have discovered the condition through the exercise of reasonable diligence. Even if a particular violative condition had existed for only a short time, if information acquired during the inspection reveals that the same condition was a typical, frequent, or recurrent practice, the employer can be assumed to have constructive knowledge of the violation.

In contrast, if a violative condition had recently occurred as a result of employee misconduct and been in existence for only a brief period of time, the employer may not have constructive knowledge of the violation.

If unsure about employer knowledge, CSHOs must discuss their findings with the DM/SIHS/Designee or the Regional or District Senior Safety Engineer and continue to investigate as much as possible to establish constructive knowledge and a serious violation.

7. Notice of intent to classify as serious (Cal/OSHA Form 1BY)

a. Purpose

Before issuing a citation for a serious violation, CSHOs must deliver to the employer a Cal/OSHA Form 1BY: *Notice of Intent to Classify as Serious*. The purpose of the Cal/OSHA Form 1BY process is to clearly communicate to the employer that DOSH believes there is a serious violation and to give the employer an opportunity to show why a serious violation does not exist.

b. Content

The Cal/OSHA Form 1BY must contain the alleged violation descriptions ("AVD") DOSH intends to cite as serious and must clearly solicit the information specified in Part 6.a. above (Labor Code § 6432[b]). The AVD shall be limited to the charging language. All Title 8 regulations that might reasonably be cited based on the AVD language shall be listed below the AVD language as “possible violated

regulations." If there is more than one alleged serious violation, a separate Cal/OSHA Form 1BY notice must be prepared for each violation.

c. Delivery time

CSHOs must deliver the Cal/OSHA Form 1BY as soon as possible to allow sufficient time to consider the employer's response. At the very latest, the notice must be delivered to the employer not less than 15 calendar days prior to the citation being issued (Labor Code § 6432[b][2]).

d. Delivery methods

CSHOs must identify the best way or ways to deliver the Cal/OSHA Form 1BY to ensure that the employer has at least 15 calendar days to review and respond to it. The notice can be delivered using one or a combination of the following methods:

i. Regular mail

ii. Certified mail

iii. Fax

iv. Overnight delivery

v. Personal delivery

vi. Email

Whichever method or methods are used, CSHOs must verify that the employer received or should have received the notice. If the employer cannot be reached, CSHOs must still deliver the notice far enough in advance to give the employer at least 15 calendar days to review and respond to it before the citation is issued.

e. Documentation

A copy of the Cal/OSHA Form 1BY must be retained in the inspection file.

8. Review of employer's response to the Cal/OSHA Form 1BY

CSHOs must review the employer's response to the Cal/OSHA Form 1BY as discussed below, while keeping in mind the importance of issuing

citations in a timely fashion and issuing within the six-month time limit. If an employer makes a request to respond to the Cal/OSHA Form 1BY after the response date specified in the notice, CSHOs must inform the employer that no extension can be granted.

a. Timely written response

   If the employer responds in writing to the Cal/OSHA Form 1BY within the response time specified in the notice, CSHOs must consider the information contained in the response and, if warranted, make changes to the citation based on the information provided by the employer.

b. Timely oral response

   If the employer makes a request to respond orally to the Cal/OSHA Form 1BY notice within the response time specified in the notice, CSHOs must accommodate the request but also inform the employer that because the investigation is still open, any information or statements the employer provides could potentially be used to support citations issued against the employer.

   Regardless of whether the employer responds orally, the employer retains the right to respond in writing within the response time specified in the notice.

c. No response

   If the employer does not respond, CSHOs must issue the citation after the response time specified in the notice has expired.

D. Documenting the Classification of a Violation as Repeat

1. Definition of “Repeat Violation” (8 CCR § 334[d])

   (d) Repeat Violation - is a violation where the employer has abated or indicated abatement of an earlier violation occurring within the state for which a citation was issued, and upon later inspection, the Division finds a violation of a substantially similar regulatory requirement and issues a citation within a period of five years immediately following the latest of: (1) the date of the final order affirming the existence of the previous violation cited in the underlying citation; or (2) the date on which the underlying citation became final by operation of law. For violations other than those classified as repeat regulatory, the subsequent violation must involve essentially similar conditions or hazards.

2. Determining Whether a Violation Is a Repeat Violation

    a. CSHOs must check the employer's prior citation history. The previous violation must have occurred in California.

    b. The new violation must occur within five (5) years immediately following the latest of: *"(1) the date of the final order affirming the existence of the previous violation cited in the underlying citation; or (2) the date on which the underlying citation became final by operation of law*."

        i. If the previous citation was appealed, CSHOs must determine the date of the final order affirming the existence of the previous violation. The date of a final order affirming the existence of a violation means:

            a) The 35th day after the date on which an administrative law judge issued a decision or order affirming the existence of the violation, unless a Petition for Reconsideration or Order of Reconsideration was filed with or by OSHAB, or

            b) If a Petition for Reconsideration or Order of Reconsideration was filed, the 35th day after the date on which OSHAB issued its decision or order affirming the existence of the violation, unless a petition for writ of mandate was filed in superior court and the superior court stayed the final order of OSHAB, or

            c) If a petition for writ of mandate was filed in superior court and the superior court stayed the final order of OSHAB, the date on which the superior court issued a decision affirming the existence of the violation. (If the decision of the superior court was appealed, please contact the Legal Unit.)

        ii. If the previous citation was not appealed, CSHOs must determine the date on which the underlying citation became final by operation of law, which means the 15th working day after the employer received the citation issued by DOSH.

    c. The employer must have abated or indicated abatement of the previous violation.

        NOTE: If the employer has not abated the previous violation, CSHOs must consider whether to classify the violation as a failure-to-abate violation.

d. The new violation must involve the violation of a substantially similar regulatory requirement, which means the citation for the first violation placed the employer on notice of the need to take steps to prevent the second violation. CSHOs must therefore consider the substance of the regulatory requirement, not just the section number or subsection.

e. Violations classified and documented as repeat must be further classified and documented as repeat regulatory, repeat general, or repeat serious.

NOTE: The classification of a repeat general or repeat serious violation may differ from the classification of the previous violation, depending on the circumstances of the two cases.

f. If the violation is to be classified as repeat general or repeat serious, the new violation must involve essentially similar conditions or hazards as the previous violation.

g. A copy of the previous citation and a copy of the signed Cal/OSHA Forms 160, 161, 161A, or 161B must be retained in the inspection file. If the previous citation was issued out-of-District, CSHOs must obtain a copy of the citation and a copy of the signed Cal/OSHA Forms 160, 161, 161A, or 161B from the issuing District Office.

E. Documenting the Classification of a Violation as Willful

A violation shall be classified as "willful" if evidence shows one of the following (see 8 CCR § 334[e]): (1) the employer knew the provisions of the cited regulation and intentionally violated them, or (2) the employer had actual knowledge of an unsafe or hazardous condition and made no reasonable effort to correct it.

During the inspection, CSHOs must document all evidence that indicate employer actual and/or constructive knowledge of unsafe or hazardous conditions in the workplace or place of work.

1. Analyzing and determining whether a violation is willful

   a. Evidence Indicating Willfulness

      Willfulness could exist if an employer is advised by employees or employee representatives of an alleged hazardous condition/work practice and the employer makes no reasonable effort to verify and correct the hazardous condition/work practice. Additional factors to consider whether violations are willful include:

i. The nature of the employer's business and the knowledge regarding safety and health matters which could reasonably be expected in the industry.

ii. The precautions taken by the employer to limit the hazardous conditions.

iii. The employer's awareness of the Labor Laws of California and of their responsibility to provide safe and healthful working conditions.

iv. Whether similar violations and/or hazardous conditions or work practices have been brought to the attention of the employer.

v. Whether the nature and extent of the violations disclose a purposeful disregard of the employer's responsibility under the California Occupational Safety and Health Act of 1973.

b. Willful Package

Whenever CSHOs suspect a willful violation exists, CSHOs must as soon as possible prepare a confidential willful analysis package for review by the DM/SIHS/Designee, Regional Managers and Legal Unit. The willful analysis package must include at minimum, but is not limited to, the following:

i. A completed Willful Classification Analysis Worksheet, attached with a Memorandum Requesting Case Review by Legal Unit.

ii. A completed Proposed Enforcement Action worksheet, indicating the type of willful (e.g., willful regulatory, willful general, or willful serious). See Chapter 18.

iii. A copy of the contents currently in the working inspection case file (e.g., statements, interviews, photographs, videos, business documents, etc.).

2. Pre-issuance evidentiary review

a. DM/SIHS/Designee review

Prior to issuing any willful regulatory, willful general or willful serious citation, the DM/SIHS/Designee must:

i. Review the documentation generated by CSHOs to support the issuance of a willful citation and determine if the documentation

in the case file provides evidence establishing each element of a willful violation, and

ii. Ensure that all of the relevant materials are sent to the Regional Manager and the Legal Unit within required time frames (see Part e of this section).

iii. Confidentiality

The willful classification analysis worksheet must be maintained in the **confidential** section of the case file and must not be distributed to employers, employees, or third parties. The instructions provided by the Legal Unit and all draft and completed versions of the analysis are confidential communications intended for use by the Legal Unit and the DM/SIHS/Designee in advising CSHOs on the appropriate classification of a violation, in anticipation of litigation, to prepare for hearing, and/or to make settlement offers that are fair and equitable to both the employer and DOSH.

b. Legal Unit review

i. *Scope of Legal Unit review*. A Legal Unit attorney must review the willful classification analysis and district case file documentation to determine the sufficiency of the evidence supporting each element of the willful violation based on general legal principles and applicable case law.

ii. *Meetings*. If requested by any party, the DM/SIHS/Designee, CSHOs, and Legal Unit attorney shall meet to review the evidence supporting the willful violation.

c. Documentation

If necessary, the Legal Unit attorney shall request additional documentation from the DM/SIHS/Designee to support one or more elements of the willful violation. The DM/SIHS/Designee must provide the requested documentation as soon as possible to allow the attorney to complete the legal review.

d. Written legal opinion

Upon completion of legal review, the Legal Unit attorney must prepare a written opinion regarding the sufficiency of the evidence supporting

the willful violation and send a summary of that opinion to the Regional Manager as confidential communication.

NOTE: If possible, the Legal Unit attorney assigned to conduct pre-issuance evidentiary review of the willful violation shall be assigned to represent DOSH if the employer appeals the citation.

e. Time frames

   i. The DM/SIHS/Designee, through Regional Manager, must forward the case file to the Legal Unit as soon as possible, but no later than 90 days after the opening conference for review.

   ii. The Legal Unit attorney must complete review of the evidentiary foundation for a willful violation as soon as possible, but no later than at least one month prior to the date of planned citation issuance.

NOTE: Time frames may be modified, but only under exigent circumstances.

Appendix C

DOCUMENTING THE PENALTY ADJUSTMENT FACTORS OF VIOLATION

It is the policy of DOSH to thoroughly and accurately assess civil penalties for violations identified during inspections in accordance with 8 CCR § 335 and 336.

This appendix outlines the procedures for determining civil penalties associated with each proposed violation. It also provides definitions of adjustment factors and outlines the processes for assessing, and evaluating evidence and facts collected during a workplace inspection to determine civil penalties. This includes, but is not limited to, information and physical evidence obtained from employer, employee and management interviews, other governmental agencies' records and reports related to occupational injury, illness, or disease. These processes/procedures collectively inform the determination of civil penalties for each proposed violation.

CSHOs must ensure that the case file contains the evidence and facts to support the "Base Gravity Penalty" and the "Standard Adjustment to the Base Gravity Penalty" of each proposed violation.

A. **Documenting the Base Gravity of a Violation**

CSHOs must establish the degree of gravity of violations from findings and evidence obtained during the inspection, from DOSH's files and records, and other records of governmental agencies pertaining to occupational injury, illness or disease. The degree of gravity of violations is determined by assessing and evaluating the severity, the extent and the likelihood of the violations.

1. Determining the Severity of the Violation

a. Regulatory Violation

No adjustment is made for a regulatory violation based on gravity; therefore, none of the criteria on which gravity is based need to be determined and documented.

b. General Violation

i. Health

When the safety order violated pertains to employee illness or disease, severity is based upon the degree of discomfort,

temporary disability, and time lost from normal activity (including work) that an employee is likely to suffer as a result of occupational illness or disease that could result from the violation. Severity is rated as follows:

- LOW: No time lost from work or normal activity, or minimum discomfort
- MEDIUM: Loss of a part or all of a day from work or normal activity including time or medical attention; or moderate temporary discomfort
- HIGH: Loss of more than one day from regular work or normal activity including time for medical attention, or considerable temporary discomfort

ii. Safety

When the safety order violated does not pertain to employee illness or disease, severity is based on the type and amount of medical treatment likely to be required or which would be appropriate for the type of injury that would most likely result from the violation. Depending on such treatment, severity is rated as follows:

- LOW: Requiring first aid only
- MEDIUM: Requiring medical attention but not more than 24-hour hospitalization
- HIGH: Requiring more than 24-hour hospitalization

CSHOs must determine and document the potential consequences of the illness, disease or injury that an employee would most likely suffer as result of the violation, and rate the severity of the violation accordingly. If necessary, CSHOs must consult with the DM/SIHS/Designee (or, if directed by the DM/SIHS/Designee, with the Regional or District Senior Safety Engineer, or obtain advice from the Research and Standards or Medical Unit staff) on how to rate the severity of a violation.

c. Serious Violation

The severity of a serious violation is considered to be HIGH.

2. Determining the Extent of the Violation

   a. Health

      When the safety order violated pertains to employee illness or disease, Extent is based on the number of employees exposed as follows:

      - LOW: 1 to 5 employees
      - MEDIUM: 6 to 25 employees
      - HIGH: 26 or more employees

      CSHOs must determine and document the number of employees exposed to the hazard created by the violation during the previous six (6) months, through direct evidence of exposure as well as through analysis and documentation of employees working under similar or identical hazardous working conditions as other employees.

   b. Safety

      When the safety order violated does not pertain to employee illness or disease, extent is based on the degree to which the safety order was violated. CSHOs must determine and document the degree to which the safety order was violated by determining how widespread the violation is at the inspected workplace, by determining the ratio of the number of violations of the particular safety order to the number of possibilities for a violation of that safety order at the inspected workplace. Based on this determination, extent is rated as follows:

      - LOW: When an isolated violation of the safety order occurs, or less than 15% of the units are in violation
      - MEDIUM: When occasional violation of the safety order occurs, or 15 – 50% of the units are in violation
      - HIGH: When numerous violations of safety order occur, or more than 50% of the units are in violation

      NOTE: For safety violations of programmatic requirements (i.e., failure to have a required program), or for situations where the safety violation pertains to the only unit that existed in the workplace, the extent must be rated HIGH.

3. Determining the Likelihood of the Violation

   Likelihood is the probability that injury, illness, or disease will occur as a result of the violative condition.

   CSHOs must establish the likelihood of a violation by obtaining evidence to support the following criteria:

   a. The number of employees exposed to the violative condition.

   b. The extent to which the violation has in the past resulted in injury or illness to the employees of the inspected workplace or to industry in general, as shown by experience, available statistics, or records.

   Depending on evidence to support the above two criteria, CSHOs must rate Likelihood as Low, Moderate, or High. If necessary, CSHOs must consult with the DM/SIHS/Designee (or, if directed by the DM/SIHS/Designee, with the Regional or District Senior Safety Engineer) on how to rate the likelihood of a violation.

B. Documenting the Standard Adjustments to Base Penalties

1. Evaluating the Size of the Business of the Employer

   The size of the business of the employer is based upon the number of individuals employed nationwide at the time of the inspection. Size of the business is evaluated based upon the following classifications of the number of people employed, along with the corresponding adjustment factors:

   - 10 or fewer employees: 40% of the Gravity-based penalty is subtracted
   - 11 to 25 employees: 30% of the Gravity-based penalty is subtracted
   - 26 to 60 employees: 20% of the Gravity-based penalty is subtracted
   - 61 to 100 employees: 10% of the Gravity-based penalty is subtracted
   - More than 100 employees: No adjustment is made

CSHOs must accurately determine and document in the case file the size of the employer.

2. Documenting the Good Faith of the Employer

The good faith of the employer is based upon the quality and extent of the safety program the employer has in effect and operating. It includes the employer's awareness of the DOSH, and any indications of the employer's desire to comply with the Act by specific displays of accomplishments. Depending on such safety programs and the efforts of the employer to comply with the Act, good faith is rated as:

- GOOD: Effective safety program - 30% of the Gravity-based penalty is subtracted
- FAIR: Average safety program - 15% of the Gravity-based penalty is subtracted
- POOR: No effective safety program - No adjustment is made

CSHOs must rate the good faith of the employer by obtaining **evidence** to support the following:

a. Employer's (i.e., management's) awareness of DOSH

b. Any indications of the **employer's desire** to comply with the Act by specific displays of accomplishments. Some factors to consider, including, but not limited to, the following:

i. Development, implementation and maintenance of an effective and operational safety and health program (see Chapter 13).

ii. Management's commitment to safety and health at all levels.

iii. Safety and health policies are communicated and applied.

iv. Employees are involved in the development of safety and health programs.

v. Reduction in Ex Mod rates.

vi. Development, implementation and maintenance of an effective and operational health and safety training of employees and managers.

***NOTE*: No single factor** will be used to determine the employer's good faith.

If necessary, CSHOs must consult with the DM/SIHS/Designee (or, if directed by the DM/SIHS/Designee, with the Regional or District Senior Safety Engineer) on how to rate the good faith of the employer.

3. Documenting the History of Previous Violations

The employer's history is determined by examining and evaluating the employer's previous citation(s) records within the last three (3) years from the date the inspection is opened.

a. CSHOs must perform an establishment search by accessing the OIS database and federal OSHA's Establishment Search webpage. When conducting the search, CSHOs must use name variations and address-matching in their establishment search to maximize their efforts due to possible company name changes and status (e.g., LLC, Inc., sole proprietor, etc.).

b. The results of federal OSHA's Establishment Search report must be placed in the case file, regardless of whether the employer has been previously inspected.

c. Depending on such records, the history of previous violations is rated as follows (along with the corresponding adjustment factors):

• GOOD:	No serious, repeat or willful violations and less than one general or regulatory violation per 100 employees	-	10% of the Gravity-based penalty is subtracted
• FAIR:	No serious, repeat or willful violations and less than twenty (20) general or regulatory violations per 100 employees	-	5% of the Gravity-based penalty is subtracted
• POOR:	A serious, repeat or willful violation or more than twenty (20) general or regulatory violations per 100 employees	-	No adjustment is made