Chapter 16

CASE FILE RECORDS ORGANIZATION

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Chapter 16

CASE FILE RECORDS ORGANIZATION

Policy Statement: It is the policy of the Division of Occupational Safety and Health (DOSH), also known as Cal/OSHA or the Division, to standardize all inspection case files to ensure that all DOSH Enforcement case files are consistent across all regions and that all violations are properly documented.

Purpose: This policy is intended to set forth procedures for DOSH team members to maintain uniform inspection case files, ensuring that the establishment, content, organization and processing of all DOSH inspection case files are consistent across all regions and that all violations are properly documented. The following procedures on case file organization shall be followed by all DOSH enforcement and administrative team members.

Authority: Not applicable.

Procedures:

I. Case File Documentation

A. General Inspection Case File Records

Inspection records are any physical or electronic records made by Compliance Safety and Health Officers (CSHOs) that concern, relate to, or are part of any inspection; or that concern, relate to, or are part of the performance of any official duty.

1. 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.

2. All original materials, including photographs and electronic records related to the case, must be included in the official case file. All pertinent emails must be placed in the case file, including emails to and/or from external stakeholders.

B. **Inspection Case File Records**

DOSH enforcement files containing all original documents and evidence must be filed and maintained in the same manner throughout all regions of the State.

1. "Open" Inspection Case Files

   All "Open" case files must be filed together regardless of how they originated (e.g., general inspection, referral, complaint, accident/fatality). There must be no grouping, arrangement or segregation of "open" case files by Safety, Health, CSHOs, or any other criterion.

   NOTE: *Closed Case File* – An inspection case file is closed when citations become final order of the Occupational Safety and Health Appeals Board (OSHAB) or by operation of law if the employer does not appeal and all violations have been abated and fully paid. The district offices shall allow sufficient time for the employer to appeal and for the appeal to be perfected before closing a case file.

2. "Closed" Inspection Case Files

   All "Closed" safety and health case files must be filed together according to the parameters of this policy in a separate location from "Open" files. There must be no grouping, arrangement, or segregation of "closed" case files by Safety, Health, CSHOs, or any other criterion.

C. **Inspection Case File Folder Usage and Supply Maintenance**

1. All DOSH case files must be filed in letter-sized case file folders. All documents must be affixed to the folder with standard fasteners.

2. All case files must be filed in four-part folders.

3. The Regional Manager (RM) in each region is responsible for ensuring that a sufficient supply of letter-sized and four-part folders are provided for each field office in that region.

D. **Establishment Names and Addresses**

It is DOSH's policy to standardize all establishment names and addresses in order to compile an accurate citation history for a particular establishment. All Regional Managers, DM/SIHS/Designee (District Manager [DM], Senior Industrial Hygienist Supervisor [SIHS], and/or an authorized designee), compliance personnel and office support staff must ensure that case files are properly labelled, and the contents are organized in accordance with this

policy and Appendix I: *Establishment Names and Addresses* of DOSH's Policy and Procedure Manual.

E. **Filing Sequence**

All case files must be filed in alphabetical order by employer/company name or numerically, as appropriate. For example: The "3M Company" shall be filed before the "100 ABC Company."

II. Case File Content, Order and Organization

A. **Case File Development**

Upon initiation of an inspection, CSHOs must immediately establish a working case file that includes a case diary log. In the case diary log CSHOs must record a concise, chronological account of all actions taken from the beginning of the inspection to the closing of the case.

As documents and evidence are gathered by CSHOs, they must be tagged, referenced in the case diary log and placed in the case file.

1. If evidence collected does not "fit" in the case file (e.g., a broken machine part), it must be kept in a separate container that is properly tagged and labeled; stored in a locked evidence room or file cabinet; and referenced or described in the file.

2. 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.

B. **Inspection Case File Content**

1. **At a minimum, case files must answer the following questions for the reviewer: Who? What? Where? When? Why? And how?**

   NOTE: The reviewer of the case files may include DM/SIHS/Designee, Regional Manager, Assistant Deputy Chief, Deputy Chief, DOSH Legal Team, or Administrative Law Judge.

2. The case file must consist of, but not limited to, all required OSHA Information System (OIS) forms, DOSH forms, checklists, case diary log, accident narrative, citations, penalty assessment documents, file notes, employee and management interviews, emails, photographs, hearing

documents, and all evidence and documentation gathered during the inspection in support of the findings and conclusions.

3. Documentation and collection/preservation of evidence is critical for all inspections. Every finding or fact must be supported by documentation, which includes an inspector's firsthand observation as an eyewitness at the inspected site. Documentation is vital to the defense of any actions taken by DOSH as a result of the CSHOs' findings.

4. The nature and type of evidence/documentation needed varies with each case. The case-file reviewer may want to picture exactly what the CSHOs saw and did at the time of the inspections. Therefore, documented evidence must be contained in the case file to allow the reviewer to be aware of the situation that existed at the time of the CSHOs' inspections.

5. If DOSH violations are determined and citations are issued, the case file must contain evidence that:

    a. A standard, regulation, or statute applies to the hazard in question.

    b. The employer has violated the standard, statute or regulation in question.

    c. The employer has actual or constructive knowledge of violative conditions.

    d. An employee of the employer is exposed to violative conditions. Each cited standard is applicable to the employer.

C. **Inspection Case File Documentation Order and Organization**

1. The case file will consist of four (4) sections:

    a. *Section 1*: Case Diary Log/Appeals Boards and DOSH Administrative Documents

    b. *Section 2*: DOSH Non-Confidential Documents

    c. *Section 3*: Employers' Non-Confidential Documents

    d. *Section 4*: Confidential Documents and Materials

***NOTE*:**
To ensure uniform casework and presentation across all District Offices, the following DOSH forms have been **standardized** and are to be used **exclusively as displayed below**.

- **These forms are NOT to be modified.**
- **No other forms are to be created or used in case files without prior approval from Enforcement Branch Headquarters.**

Any suggested changes to existing forms or suggestions for additional forms shall be forwarded to the **Enforcement Branch Headquarters**.

2. ***Section 1*: Case Diary Log/Appeals Boards and DOSH Administrative Documents**

   Section 1 of the case file folder shall contain the following documents, with the Case Diary Log placed at the top and followed by all other documents that are placed in reverse chronological order, with the most recently received document placed on top.

   a. Case Diary Log
   b. Summons
   c. Subpoena
   d. Final Order
   e. Other Contest Documents
   f. Post Citation Forms, Correspondence and Documentation
   g. Citation(s) and the postal "green card" which is confirmation of citation delivery and receipt
   h. Penalty Payment Report
   i. Abatement Letters
   j. Appeal documentation – Notice of Contest, Settlement Agreement, Decision, Orders, etc.
   k. Amended Citations
   l. Informal Conference Letter to Employer
   m. Employer's proof of notification to employees of informal conference

3. ***Section 2*: DOSH Non-Confidential Documents**

   Section 2 of the case file folder shall contain non-confidential DOSH generated and/or collected records.

   a. Applicable non-confidential DOSH forms filed in numerical order:

i. OSHA Form 1: *Inspection Report*
ii. Cal/OSHA Form 1A: *Opening and Closing Conference Documentation Sheet*
iii. Employer's DOSH Inspection History
iv. Cal/OSHA Form 1AN: *Advanced Notice Notification*
v. Cal/OSHA Form 1AV: *Note Taking Sheet* (Used to record sketches, diagrams, measurements, etc.)
vi. Cal/OSHA Form 1AW: *Employer/Employee/Witness Statement*- (Redact personal information)
vii. Cal/OSHA Form 1AX: *Notice of No Violation After Inspection*
viii. Cal/OSHA Form 1AY: *Document Request*
ix. Cal/OSHA Form 1AZ: *Chain of Custody*
x. Cal/OSHA Form 2: *Amended Citation(s)*
xi. Cal/OSHA Form 2: *Citation and Notification of Penalty*
xii. Cal/OSHA Form 2A: *Proposed Enforcement Action Worksheet* (For each violation)
xiii. Cal/OSHA Form 2X: *Declaration of Service*
xiv. Cal/OSHA Form 3: *Special Order*
xv. Cal/OSHA Form 4: *Notice*
xvi. Cal/OSHA Form 5: *Information Memorandum*
xvii. Cal/OSHA Form 6: *Order to Take Special Action*
xviii. Cal/OSHA Form 8: *Order Prohibiting Use*
xix. Cal/OSHA Form 10: *Completion of Proposed Penalty Worksheet*
xx. Cal/OSHA Form 24B: *Subpoena and Subpoena Duces Tecum*
xxi. Cal/OSHA Form 24C: *Subpoena*
xxii. Cal/OSHA Form 25A: *Order to Preserve*
xxiii. Cal/OSHA Form 45-1: *IIPP Evaluation Worksheet*
xxiv. Cal/OSHA Form 91: *Air Sampling Report*
xxv. Cal/OSHA Form 92: *Noise Survey Report*
xxvi. Cal/OSHA Form 93: *Direct Reading Report*
xxvii. Cal/OSHA Form 98: *Screening Report*
xxviii. Other Cal/OSHA Sampling Forms without numbers
xxix. Sample documents, field notes and Lab results documents
xxx. Cal/OSHA Form 160: *Employer's Signed Statement of Abatement of Regulatory and/or General Violations*
xxxi. Cal/OSHA Form 161: *Employer's Signed Statement of Abatement of Serious Violations*
xxxii. Cal/OSHA Form 161A: *Notice of Verification of Abatement of Serious Violations*
xxxiii. Cal/OSHA Form 161B: *Certification of Abatement of Serious Violations Prior to Issuance of Citations*
xxxiv. Cal/OSHA Form 170A: *Accident Investigation – Narrative Summary*

xxxv. Cal/OSHA Form 170B: *Notice of No Accident-Related Violation*
xxxvi. Cal/OSHA Form 170C: *Notice of Accident-Related Violation*

b. Other non-confidential supporting documents without a DOSH form number shall be filed in reverse chronological order, with most recently received or completed document on top:

i. Obtained from the Manufacturer – Equipment specifications, identification numbers
ii. Obtained from the Manufacturer – Equipment parts
iii. Obtained from the Manufacturer – Manufacturer's operator manuals for machinery, vehicles, tools, materials and equipment
iv. Checklists and other worksheets completed by CSHOs
v. Applicable standards
vi. Case Correspondence (includes relevant non-confidential/non-atty privilege emails)
vii. Compliance Operations/Technical Review (where required)
viii. Technical Drawings – Manufacturer Information Manuals
ix. ANSI/ASME/NFPA sections used
x. Safety Data Sheets (SDS)

4. ***Section 3*: Employers' Non-Confidential Documents**

Section 3 of the case file folder shall contain employers' non-confidential records.

a. Employer Photographs/Videos/CD's provided to DOSH by the employer
b. Employer Policies, Procedures, Equipment Manuals, Equipment Specifications, Contracts, etc.
c. Employer investigative reports and Accident Investigation Intake Sheet
d. Involved personnel job descriptions
e. Personnel training records
f. Employer training or safety manuals
g. Pertinent management policies and procedures related to a proposed violation
h. Provided by the employer – equipment specifications, identification numbers
i. Provided by the employer – equipment parts
j. Equipment maintenance records or operating log
k. Equipment, purchase or repair records
l. Provided by the employer – manufacturer's operator manuals for machinery, vehicles, tools, materials and equipment

m. Employer's IIPP-written program and other written health and safety programs
n. Logbooks
o. Any other non-confidential supporting documents

5. ***Section 4*: Confidential Documents and Materials**

Section 4 of the case file folder shall contain **confidential** records. Documents that are confidential include, but are not limited to, those with medical information, attorney client privilege, trade secrets, social security numbers, personal information (e.g., home address and phone numbers).

Section 4 shall have two coversheets: (1) one coversheet labelled "Documents Under this Tab are Confidential – DO NOT RELEASE," and (2) another labelled "Attorney-Client Privilege – DO NOT RELEASE."

NOTE: If CSHOs have questions regarding whether something is confidential, consult with their DM/SIHS/Designee.

Below are examples of specific documents to include in Section 4 of the case file folder:

a. DOSH accident and complaint intake sheets and other records related to the complainant
b. Cal/OSHA Form 7: *Notice of Alleged Safety and Health Hazards*
c. Cal/OSHA Form 36: *Accident Report*
d. DOSH Letters/Emails to the complainant
e. Notes of telephonic calls with the complainant
f. Photographs/Videos/CDs taken by DOSH staff
g. Trade Secret Materials
h. Documents with employee's or other person's Social Security Numbers
i. All attorney/client privilege documents and emails
j. OSHA Forms 300 and 300A summary that includes medical confidential materials
k. All communication with next of kin and family contact letters
l. Employee medical information
m. Cal/OSHA Form 1AW: *Employer/Employee/Witness Statement* – with personal information
n. Medical information and reports
o. Police/Law Enforcement report/records
p. Fire Department reports
q. Autopsy reports/Coroner report
r. EMT reports
s. Case correspondence (includes relevant confidential/attorney privilege emails and/or documents)
t. Other confidential supporting documents

u. List of names, addresses, telephone numbers of all witnesses
v. Informal conference notes and forms

NOTE: All attorney-client documents, correspondence, emails, etc. must be placed behind the tab labelled "Attorney-Client Privilege – DO NOT RELEASE" in the confidential section of the case file.

III. Case File and Proposed Citation Submittal to Management for Review and Approval

The DM/SIHS/Designee is responsible for monitoring, reviewing and approving the work of all inspections before the issuance of any enforcement action, including citations and closure of an inspection. See Policy and Procedures (P&P) Chapter 18: *Citation and Case File Review*.

A. **Timely Case File and Citation Submittal**

1. The time that elapses from the completion of an inspection and the submittal of the inspection case file with or without proposed citations must be kept as short as possible (i.e., 60 days to 120 days, depending on the difficulty and complexity of the case).

2. CSHO must incorporate time for:

   a. DOSH management review of the proposed Cal/OSHA Form 1BY: *Notice of Intent to Classify as Serious*.

   b. Issuance of the Cal/OSHA Form 1BY via mail or email to the employer.

   c. Employer review of the Cal/OSHA Form 1BY and written response to DOSH (15 calendar days).

   d. CSHOs and DOSH management review of the employer's written response to the Cal/OSHA Form 1BY.

   e. Case files organization in the manner outlined in this policy and procedure.

   f. Management feedback and request for more evidence, corrections, and/or rewrite, etc.

   g. Management review and approval to issue citations and/or notices timely.

This ensures that proposed citations and/or notices can be reviewed and approved for issuance by management in a timely manner, not to exceed the statute of limitations, which is six (6) months.

3. CSHOs must notify DM/SIHS/Designee of any case that will require more than 120 days to complete. This notification must be made before the 120 days have elapsed.

4. CSHOs must not issue any final enforcement actions, such as, but not limited to, case closure, issuance of citations, notices, orders, information memorandums, etc. without the DM/SIHS/Designee review and approval, and in some cases, the review and/or approval of the Regional Manager, Assistant Deputy Chief, Deputy Chief and/or Legal Unit.

B. **Management Case File Review**

The DM/SIHS/Designee must review the work of all assigned CSHOs to ensure the following:

1. Proper investigative techniques are being utilized,

2. Proper evidence and documentation are gathered,

3. All findings and conclusions are substantiated,

4. Accident narratives are properly written, and

5. The case files are finalized in a timely manner to avoid conflict with the statute of limitations.

For more information on case file review, see Chapter 18.