

CHAPTER III

GENERAL INSPECTION PROCEDURES

A. Compliance Officer Responsibilities.

1. The primary responsibility of the Compliance Officer (CO) is to carry out the mandate given to the Environment Department Secretary, namely, "to assure so far as possible every working man and woman in the State safe and healthful working conditions..." To accomplish this mandate, the Occupational Health and Safety Bureau employs a wide variety of programs and initiatives, one of which is enforcement of standards through the conduct of effective inspections to determine whether employers are:
 - a. Furnishing places of employment free from recognized hazards that are causing or are likely to cause death or serious physical harm to their employees, and
 - b. Complying with safety and health standards and regulations promulgated under the Act.
2. The conduct of effective inspections requires identification, professional evaluation, and accurate reporting of safety and health conditions and practices. Inspections may vary considerably in scope and detail, depending upon the circumstances in each case.

B. Preparation.

1. General Planning. It is important that the CO spend an adequate amount of time preparing for an inspection.
 - a. CO's shall plan individual work schedules in advance in coordination with or as directed by the Compliance Manager. The work schedules should reflect the priorities as established in Chapter II of this manual.
 - b. Prior to inspection of an establishment, the CO should familiarize him/herself with the establishment's operation and determine which standards are pertinent. The CO may consult with the Compliance Manager and with other personnel with the necessary expertise in the industry to be inspected.
 - c. Data available at the office shall be reviewed for information relevant to the establishments scheduled for inspection. These may include inspection files, other establishment files, and reference materials. When CO's need additional information concerning the type of industry to be inspected, the Compliance Manager shall be consulted.
2. Preinspection Planning. Due to the wide variety of industries and associated hazards likely to be encountered, preinspection

preparation is essential to the conduct of a quality inspection. The CO shall carefully review:

- a. All pertinent information contained in the establishment file and appropriate reference sources, to become knowledgeable in the potential hazards and industrial processes that may be encountered, and shall identify the personal protective equipment necessary for protection against these anticipated hazards.
 - b. Appropriate standards and sampling methods, and, based on experience and information on file concerning the establishment, shall select the instruments and equipment that will be needed for the inspection, and prepare them according to the standard methods of sampling and calibration.
 - c. Compliance Officers shall at no time enter any environment which requires the use of Self Contained Breathing Apparatus or other supplied air respirators.
 - d. Compliance Officers may be assigned to carry a supplied air escape pack for entry into worksites where IDLH conditions might develop under abnormal conditions.
3. Preinspection Warrants. The Bureau is authorized to seek a warrant in advance of an attempted inspection if circumstances are such that preinspection warrant is desirable or necessary.

Although Bureau policy is generally not to seek warrants without evidence that the employer is likely to refuse entry, the Compliance Manager may, on a case-by-case basis, seek compulsory process in advance of an attempt to inspect or investigate whenever circumstances indicate the desirability of such warrants.

NOTE: Examples of such circumstances would be evidence of being denied entry in previous inspections, awareness that a job will only last a short time, or that job processes will be changing rapidly, or the Compliance Manager has reasonable grounds to believe that entry will be denied and that the employer may seek to obscure evidence following the denial.

4. Inspection Materials and Equipment. The CO shall have all report forms and handouts available in sufficient quantity to conduct the inspection, and will have all assigned personal protective equipment available for use in serviceable condition.
- a. If, based on the preinspection review, or upon facts discovered at the worksite, a need for unassigned personal protective equipment is identified, the supervisor shall ensure that any required equipment is provided. Prior to the inspection, the Compliance

Manager shall ensure that the CO has been trained in the uses and limitations of such equipment.

- b. Unless an exception is authorized by the supervisor because of the nature of the worksite (e.g., a worksite where no overhead hazards, no eye hazards, and/or no foot hazards are likely to be present), approved hard hats, approved safety glasses with permanently or rigidly attached side shields and approved safety shoes shall be worn by CO's on the walkaround phase of all inspections. This will set an example for industry, and provide minimum acceptable protection for the CO.
 - c. Inspections involving the use of negative pressure respirators shall not be assigned without the CO's having had an adequate quantitative fit test within the last year. Since respirators with tight-fitting face pieces require the skin to be clean shaven at the points where sealing occurs, CO's assigned to conduct inspections which involve the use of such respirators shall not have interfering facial hair.
 - d. If there is a need for special or additional inspection equipment, the supervisor shall be consulted to ensure that training in the use and limitation of such equipment has been accomplished prior to the inspection. The supervisor shall ensure that a review or recheck in the use of all equipment is given to the CO at least once a year.
5. Expert Assistance. The Compliance Manager shall arrange for a specialist from within the Division to assist in an inspection or investigation when the need for such expertise is identified. If Division specialists are not available, or when otherwise desirable, the Compliance Manager shall arrange for the services of qualified consultants.
- a. Expert assistance may be necessary during inspections for the implementation of engineering or administrative controls involving, but not limited to, noise, air contaminants, complicated machine guarding, and construction.
 - b. Division specialists may accompany the CO or perform their tasks separately. Outside consultants must be accompanied by a CO. Division specialists and outside consultants shall be briefed on the purpose of the inspection and personal protective equipment shall be utilized.
 - c. All data, conclusions, and recommendations from the assigned specialists shall be made part of the inspection report, including information on any resultant actions.

6. Safety and Health Rules of the Employer. The CO shall comply with all safety and health rules and practices at the establishment, and shall wear or use the safety clothing or protective equipment required by OSHA standards or by the employer for the protection of employees.
7. Immunization and Other Special Entrance Requirements. Many pharmaceutical firms, medical research laboratories, and hospitals have areas which have special entrance requirements. These requirements may include proof of up-to-date immunization and the use of respirators, special clothing, or other protective devices or equipment.
 - a. The CO will not enter any area where special entrance restrictions apply until the required precautions have been taken. It shall be ascertained prior to inspection, if possible, if an establishment has areas with immunization or other special entrance requirements. If the CO cannot make this determination, he/she may telephone the establishment using the following procedures. Such communication will NOT be considered advance notice.
 - (1) Telephone as far in advance of the proposed inspection date as possible, so the employer cannot determine a time relationship between the communication and a possible future inspection.
 - (2) State the purpose of the inquiry, and that an inspection may be scheduled in the future. Do not give a specific date.
 - (3) Determine the type of immunization(s) and/or special precautions required, and the building or area which has restricted access.
 - b. If immunization is required, the Compliance Manager shall ensure that the inspecting CO has the proper immunization and that any required incubation or waiting period is met prior to the inspection. Those immunizations necessary to complete inspections will be provided by the Bureau.
8. Personal Security Clearance. Some establishments have areas which contain material or processes which are classified by the U.S. Government in the interest of national security. Whenever an inspection is scheduled for an establishment containing classified areas, the Compliance Manager shall assign a CO who has the appropriate security clearances. The Bureau Chief shall ensure that an adequate number of CO's with appropriate security clearances are available.
 - a. Clearance Procedures. Appropriate U.S. Department or agency security clearances, such as those required by the Department of Energy (DOE), may be required both at civilian establishments with Government contracts

requiring security areas, and at Government installations that have civilian contractor operations.

- (1) The Compliance Manager shall select the individual CO's who require security clearances.
- (2) The Compliance Manager and the Bureau Chief shall review at least annually, the security clearance needs of the Bureau.
- (3) If the Bureau does not have CO's with the proper clearance, and an inspection must be conducted of an establishment, the case shall be referred to the OSHA Regional Office for investigation.

b. Employer Resistance. For worksites with limited areas subject to DOD security regulations, where the CO does not have the necessary clearance requirements, the employer shall be asked to immediately contact the cognizant DOD Regional Industrial Security Office, and shall make arrangements which allow the CO to complete the investigation or inspection without breaching security requirements. Resistance to CO's with the proper clearances which can be telephonically checked shall constitute an unwarranted resistance and shall be immediately brought to the attention of the Compliance Manager.

c. Classified Information and Trade Secrets. Any classified information and/or personal knowledge of such information by OHSB personnel shall be handled in accordance with the regulations of the responsible agency. The collection of such information, and the number of exposed personnel shall be limited to the minimum necessary for the conduct of such compliance activities.

C. Advance Notice of Inspections.

1. Policy. Section 50-9-24(k) of the Act and 11 NMAC 5.1.21.B contain a general prohibition against the giving of advance notice of inspections, except as authorized by the Director.

a. The Occupational Health and Safety Act regulates many conditions which are subject to speedy alteration and disguise by employers. To forestall such changes in worksite conditions, the Act prohibits unauthorized advance notice, and authorizes the Division's representative to enter worksites "without delay" in order to preserve the element of surprise.

b. There may be occasions when advance notice is necessary to conduct an effective investigation. These occasions are narrow exceptions to the statutory prohibition against advance notice.

- c. Advance notice of inspections may be given only in the following situations:
- (1) In cases of apparent imminent danger, to enable the employer to correct the danger as quickly as possible;
 - (2) When the inspection can most effectively be conducted after regular business hours, or when special preparations are necessary;
 - (3) To ensure the presence of employer and employee representatives, or other appropriate personnel who, as determined by the Compliance Manager, are needed to aid in the inspection; and
 - (4) When the Compliance Manager determines that giving advance notice would enhance the probability of an effective and thorough inspection; e.g., in complex fatality investigations.
- d. Advance notice exists whenever the Compliance Manager sets up a specific date or time with the employer for the CO to begin an inspection, or to continue an inspection that was interrupted or delayed more than 5 working days. It generally does not include nonspecific indications of potential future inspections.
- (1) Although advance notice normally does not exist after the CO has arrived at the worksite, presented credentials, and announced the inspection, many causes can serve to delay or interrupt the continued conduct of the inspection. For example, the employer representative on site may request a delay of entry pending the return of the president or some other higher ranking official, or sampling may have to be delayed for some reason after completion of the initial walkaround.
 - (a) Such delays shall be as short as possible. If an employer's (or an employee representative's) request for delay appears reasonable, the CO may delay or interrupt the inspection for up to an hour. The Compliance Manager shall be contacted if the delay lasts or is anticipated to last longer than 1 hour.
 - (b) The Compliance Manager shall decide whether the circumstances justify a delay of more than 1 hour, and, if so, for how long. If the delay appears reasonable, the inspection may be delayed or interrupted for the time judged necessary, but in no case for longer than 5 working days, except as indicated in C.1.d.(3).

- (c) In cases where screening sampling is performed and laboratory analysis of the samples is required, there shall normally be no more than 5 working days between receipt of screening results and the onset of full-shift sampling.
 - (d) The inspection shall be resumed as soon as reasonably possible. Delays or interruptions of less than 5 working days shall not require implementation of advance notice procedures.
- (2) If the employer or the employee representative requests a delay which the Compliance Manager believes is unreasonable or without sufficient justification (e.g., too long, not in good faith, etc.), or if the delay requested is for more than 5 working days, except as indicated in C.1.d.(3), the CO shall inform the requester that agency policy does not allow for such a delay. If the employer representative continues to insist on the delay, the situation shall be treated as a refusal of entry, and shall be handled in accordance with the procedures in D.1.d.(1).
- (3) In unusual circumstances, the Compliance Manager may decide that a delay of more than 5 working days is necessary; e.g., the process to be samples may not be activated within that time or compliance personnel may not be available in the office because of higher priority demands. Any situation involving a delay of more than 5 working days, whatever the justification, shall be handled as advance notice, and must be approved by the Director. In such cases, the procedures in C.2 shall be observed in addition to the following:
- (a) The CO shall determine whether employees at the worksite are represented by a labor organization or a safety committee, and, if so, who the authorized representative of employees is.
 - (b) The CO shall notify the employee representative of the delay as promptly as possible, and shall keep the representative informed of future appointments or other arrangements for resuming the inspection.
 - (c) If more than one employer is at the worksite, authorized employee representatives of all such employers shall be notified of the delay as promptly as possible, and kept informed of arrangements for resuming the inspection.

- (d) The CO may request the employer(s) to inform the employee representatives of the delay, and to notify them promptly when arrangements have been made to resume the inspection.
 - (e) If there is no authorized representative of employees, the procedures in C.2.h shall be followed.
- 2. Procedures. In the situations described in C.1.c. and d.(3), advance notice may be given by the CO only after authorization by the Compliance Manager. In cases of apparent imminent danger, however, advance notice may be given by the CO without such authorization, if the Compliance Manager is not immediately available. The Compliance Manager shall be notified as soon as possible, and kept apprised of all details.
 - a. If it is decided to provide advance notice, the CO shall do so by telephone or other appropriate contact. This contact normally shall be made not more than 24 hours prior to the inspection. Documentation of the conditions requiring advance notice and the procedures followed, shall be included in the case file.
 - b. If advance notice is to be given at a construction or other multi-employer site, the CO shall contact the general contractor. If there are two or more general contractors, all shall be contacted. The general contractor shall be informed of the responsibility of advising all subcontractors on the site of the inspection.
 - c. During the telephone contact with the employer, the CO shall identify him/herself, explain the purpose of the inspection, state when the inspection is expected to be conducted, ascertain the employer's normal business hours, and whether special protective equipment or precautions are required. If security clearances or immunizations are necessary, the Compliance Manager shall be notified.
 - d. An important purpose of advance notice is to make arrangements for the presence of employer and employee representatives to aid in the conduct of an effective and thorough inspection. A responsible management official shall be requested to assist in the inspection. The CO shall advise the employer that the Act and OHSR 106 require that an employer representative be given an opportunity to participate in the inspection.
 - e. The CO shall determine if employees at the establishment are represented by a labor organization(s), and if there is a safety committee with employee representatives. The CO shall advise the employer that, when advance notice is given, it is the employer's responsibility to

notify the authorized employee representative(s) promptly of the inspection.

- f. If a general contractor is contacted, it shall be pointed out that it is that contractor's responsibility to instruct each subcontractor of the obligation to notify employee representatives promptly of the inspection.
- g. If the employer requests and furnishes the identity of the representative, the CO shall promptly inform the employee representative of the inspection, and shall provide any other necessary information.
- h. The advance notice requirement with respect to employees applies only if there is a known representative authorized by employees, such as a labor organization or a safety committee with employee representatives. If there is no authorized employee representative or if it cannot be determined with reasonable certainty who the representative is, the CO shall consult with a reasonable number of employees during the inspection to determine the impact or possible adverse effects of the advance notice.

D. Conduct of the Inspection.

- 1. Entry of the Workplace. The CO shall enter the establishment to be inspected with an attitude reflecting a professional, balanced, and thorough concern for safety and health.
 - a. Time of Inspection. Inspections shall be made during regular working hours of the establishment except when special circumstances indicate otherwise. The Compliance Manager shall be contacted before entry during other than normal working hours, except where obtaining approval would cause undue delay.
 - b. Severe Weather Conditions. If severe weather conditions encountered during an inspection cause workplace activities to shut down, the inspection shall be continued at a later time, as soon as weather permits.
 - (1) If work continues during adverse weather conditions but the CO decides that the weather interferes with the effectiveness of the inspection, it shall be terminated and continued when conditions improve.
 - (2) If work continues and the CO decides to continue the inspection in spite of bad weather, hazardous conditions created by the weather shall be noted, since they may be the subject of later citation.
 - c. Presenting Credentials. At the beginning of the inspection, the CO shall attempt to locate the owner, operator, or agent in charge at the workplace, and

present credentials. On construction sites, this will most often be the representative of the general contractor. In the following circumstances, the CO shall:

- (1) When the person in charge is not present at the beginning of the inspection, the CO shall identify the top management official. This person may be the foreman, leadman, gang boss, or senior member of the crew.
- (2) When neither the person in charge nor a management official is present, contact the employer by telephone and request the presence of the owner, operator, or management official. The inspection shall not be delayed unreasonably to await the arrival of the employer representative. This delay shall not normally exceed one hour.
- (3) If the person in charge at the workplace cannot be determined by (1) or (2) above, the CO shall record the extent of the inquiry in the case file and proceed with the physical inspection after contacting the supervisor. If the person in charge arrives during the inspection, an abbreviated opening conference shall be held, and the person shall be informed of the status of the inspection and included in the continued walkaround.
- (4) When an inspection is scheduled for a military base or other Federal facility, the CO shall contact the Compliance Manager for instructions on the protocol to be followed.
- (5) On multi-employer sites, the superintendent, project manager, or other representative of the general or prime contractor shall be asked to identify the subcontractors or other contractors on the site together with the names of the individuals in charge of their operations.
 - (a) The CO shall then request that these individuals be contacted and asked to assemble in the general contractor's office or other suitable location, together with their employee representatives, if any.
 - (b) The inspection shall not be postponed or unreasonably delayed because of the unavailability of one or more representatives.
 - (c) If a Federal contracting agency representative is onsite, the general contractor shall be asked to contact the representative, advising him or her of the

inspection and extending an invitation to attend the opening conference and to participate in the inspection.

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

NOTE: On a Federal government facilities and certain state-funded projects, the following guidelines do not apply. Instead, a representative of the controlling authority shall be informed of the contractor's refusal and asked to take appropriate action to obtain cooperation.

- (1) Refusal of Entry or Inspection. The CO shall not engage in argument concerning refusal. When the employer refuses to permit entry upon being presented proper credentials or allows entry but then refuses to permit or hinders their inspection in some way, a tactful attempt shall be made to obtain as much information as possible about the establishment.
- (a) If the employer refuses to allow an inspection of the establishment to proceed, the CO shall leave the premises and immediately report the refusal to the supervisor.
- (b) If the employer raises no objection to the inspection of portions of the workplace, the CO, after informing the supervisor of the partial refusal, shall normally continue the inspection, confining it to the portions concerning which the employer has raised no objections.
- (c) In either case the CO shall advise the employer that the refusal will be reported to the supervisor and that the agency may take further action, including obtaining legal process.
- (2) Questionable Refusal. When permission to enter or inspect is not clearly given the CO shall make an effort to clarify the employer's intent.

- (a) If there is doubt as to whether the employer intends to permit an inspection, the CO shall not proceed but shall contact the supervisor immediately. When the employer's intent is clarified, the CO shall either conduct the inspection or proceed as outlined in D.1.d.(1).
 - (b) When the employer hesitates or leaves for a period of time so that permission is not clearly given within one hour of initial entry, the CO shall contact the supervisor, who shall decide whether or not permission is being refused.
 - 1 The CO may answer reasonable questions presented by the employer; e.g., the scope of the inspection, purpose, anticipated length.
 - 2 The CO shall avoid giving any impression of unyielding insistence or intimidation concerning the right to inspect.
 - (c) If it becomes clear that the employer is refusing permission to enter, the CO shall leave the establishment and contact the supervisor.
- (3) Employer Interference. Where entry has been allowed but the employer interferes with or limits any important aspects of the inspection, the CO shall immediately contact the supervisor for instructions on whether or not to consider this action as a refusal. Examples of interference are refusals to permit the walkaround, the examination of records essential to the inspection, the taking of essential photographs, the inspection of a particular part of the premises, indispensable employee interviews, or the refusal to allow attachment of sampling devices.
- (4) Obtaining Inspection Order. If it is determined, upon refusal of entry or upon refusal to produce required evidence, that a warrant will be sought, the Compliance Manager shall proceed according to guidelines and procedures established in the Division for warrant applications.
- (a) With the approval of the Bureau Chief and the Director, the Compliance Manager may initiate the process for obtaining a warrant.
 - (b) If the warrant is to be obtained the Compliance Manager shall transmit in writing to the

Department's Legal Office the following information:

- 1 Name of CO attempting inspection and inspection number, if assigned. Identify whether the inspection included safety items, health items, or both.
- 2 Information on name of the individual barring entry or limiting the inspection and his/her position with the company.
- 3 Legal name of establishment and address including city, State, and county. Include site location if it is different from the mailing address.
- 4 Estimated number of employees at inspection site.
- 5 SIC Code and high hazard ranking for that specific industry, as obtained from statistics provided by the National Office.
- 6 Summary of all facts leading to the refusal of entry or limitation of inspection, including the following:
 - a Date and time of entry.
 - b Date and time of denial.
 - c State of denial (entry, opening conference, walkaround, etc.)
- 7 Narrative of actions taken by the CO leading up to, during and after refusal including the following information:
 - a Full name and title of the person to whom CO presented credentials.
 - b Full name and title of person(s) who refused entry.
 - c Reasons stated for the denial by person(s) refusing entry.
 - d Response, if any, by CO to c above.
 - e Names and titles of witnesses to the denial of entry.

- 8 Previous inspection information, including copies of previous citations, if any.
- 9 Previous requests for warrants. Attach details, if applicable.
- 10 As much of the current inspection report as has been completed.
- 11 If a construction site involving work under contract from any agency of the state or Federal Government, the name of the agency, the date of the contract, and the type of work involved, if known.
- 12 Other pertinent information such as description of the workplace; the work process; machinery, tools and materials used; known hazards and injuries associated with the specific manufacturing process or industry.
- 13 Investigative techniques which will be required during the proposed inspection; e.g., personal sampling, photographs, examination of records, access to medical records, etc.
- 14 The specific reasons for the selection of this establishment for the inspection including proposed scope of the inspection and the rationale:
- a Imminent Danger.
- ! Description of alleged imminent danger situation.
 - ! Date received and source of information.
 - ! Original allegation and copy of report, including basis reasonable expectation of death or serious physical harm and immediacy of danger.
 - ! Whether all current imminent danger processing procedures have been followed.
- b Fatality/Catastrophe.

- ! Type of accident--Fatality or catastrophe.
- ! Method of accident Notification--telephone, news media (attach copy of report), employee representative, other.
- ! Number of employees involved--fatalities, injuries, number hospitalized.

c Complaint.

- ! Copy of original complaint.
- ! Reasonable grounds for believing that a violation that threatens physical harm or imminent danger exists, including copies of standards that could be violated if the complaint is true and accurate.
- ! Whether current complaint processing procedures have been followed.
- ! Additional information pertaining to complaint evaluation.

d Referral.

- ! Original referral and copy of completed Referral Form, OSHA-90.
- ! Specific description of the hazards observed and the potential injury or illness that may result from the specific hazard.
- ! Specific standards that may be violated.
- ! Number of employees affected by the specific hazard.
- ! Corroborative information or other supporting material to

demonstrate potential existence of a hazard and employee exposure, if known.

! Whether current referral processing procedures have been followed.

! Additional information gathered pertaining to referral evaluation.

e Programmed.

! Identify whether inspection is high rate safety--general industry, construction, or target health inspection.

! Discuss method of selecting establishment for inspection.

f Followup.

! Date of initial inspection.

! Details and reasons followup was to be conducted.

! Copies of previous citations on the basis of which the followup was initiated.

! Copies of settlement stipulations and final orders, if appropriate.

! Previous history of failure to correct, if any.

g Monitoring.

! Date of original inspection.

! Details and reasons monitoring inspection was to be conducted.

! Copies of previous citations on the basis of which the monitoring inspection was initiated.

! PMA request, if applicable.

- (6) Compulsory Process. When a court order or warrant is obtained requiring an employer to allow an inspection, the CO is authorized to conduct the inspection in accordance with the provisions of the court order or warrant. All questions from the employer concerning reasonableness of any aspect of an inspection conducted pursuant to compulsory process shall be referred to the Compliance Manager.
- (7) Action to be Taken Upon Receipt of Inspection Order. The inspection will normally begin within 24 hours of receipt of the inspection order or of the date authorized by the inspection order for the initiation of the inspection. Any conflict with this requirement shall be resolved by the Compliance Manager.
- (a) The CSHO shall serve a copy of the compulsory process on the employer and make a separate notation as to the time, place, name and job title of the individual served.
 - (b) Each order will have a return of service page on which the CO shall enter the dates of the inspection and the circumstances under which the warrant was served and the inspection was made pursuant to the order. Upon completion of the inspection, the CO will complete and sign this form and return it to the Compliance Manager.
 - (c) If physical resistance or interference by the employer is anticipated, appropriate action shall be determined. This action may include arranging for a State Police Officer or Deputy Sheriff to accompany the inspector.
- (8) Refused Entry or Interference With a Compulsory Process. When an apparent refusal to permit entry or inspection is encountered upon presenting the compulsory process, the CO shall specifically inquire whether the employer is refusing to comply with the compulsory process.
- (a) If the employer refuses to comply or if consent is not clearly given (for example, the employer expresses an objection to the inspection), the CO shall not attempt to conduct the inspection but shall leave the premises and contact the supervisor concerning further action. The CO shall make notations (including all possible witnesses to the refusal or interference) and fully report all relevant facts.

- (b) The Compliance Manager shall contact both the Bureau Chief and the Legal Office, either orally or in writing, as appropriate, concerning the refusal to comply or the interference.
 - (c) The Bureau Chief, jointly with the Department Attorney, shall decide what further action shall be taken.
- e. Forcible Interference with Conduct of Inspection or Other Official Duties. Whenever an OHSB official or employee encounters forcible resistance, opposition, interference, etc., or is assaulted or threatened with assault while engaged in the performance of official duties, all investigative activity shall cease.
 - (1) The supervisor shall be advised by the most expeditious means. Upon receiving a report of such forcible interference, the Compliance Manager or Supervisor shall immediately notify the Bureau Chief.
 - (2) Types of Interference. Although the employer is legally entitled to refuse permission to conduct an inspection without a warrant, the Act does not permit forcible conduct against the CO. The following illustrates the type of forcible conduct which shall be immediately reported to the supervisor:
 - (a) Anyone physically holding, grabbing, pushing, shoving, or in any way limiting the official's or employee's freedom of action or choice of action. The threat of any action which limits freedom of action or choice of action is included.
 - (b) Anyone striking, kicking, or in any way inflicting or attempting to inflict injury, pain or shock on the official or employee. The threat of such actions is included as is oral abuse which menaces or causes concern for the official's or employee's personal safety.
 - (c) Anyone assaulting or threatening the official or employee with a weapon of any kind. The handling or display of weapons in a menacing manner is included.
- f. Release for Entry. The CO shall not sign any form or release or agree to any waiver. This includes any employer forms concerned with trade secret information.

- (1) If the employer requires that a release be signed before entering the establishment, the CO shall inform the employer of the Secretary's authority under Section 50-9-10 of the Act. If the employer still insists on the signing of a release, the CO shall suspend the inspection and report the matter promptly to the supervisor who shall decide if the situation is to be treated as a refusal of entry.
 - (2) The CO may sign a visitor's register, plant pass, or any other book or form used by the establishment to control the entry and movement of persons upon its premises, so long as such signature does not constitute any form of a release or waiver of prosecution or liability under the Act.
 - (3) In case of any doubt, the CO shall consult with the supervisor before signing any document other than those described in the preceding paragraph.
- g. Bankrupt or Out of Business. If the establishment scheduled for inspection is found to have ceased business and there is no known successor, the CO shall report the facts to the supervisor. If an employer, although adjudicated bankrupt, is continuing to operate on the date of the scheduled inspection, the inspection shall proceed. An employer must comply with the Act until the day the business actually ceases to operate.
- h. Strike or Labor Dispute. Plants or establishments may be inspected regardless of the existence of labor disputes involving work stoppages, strikes or picketing. If the CO identifies an unanticipated labor dispute at a proposed inspection site, the supervisor shall be consulted before any contact is made.
- (1) Programmed Inspections. As a rule, programmed inspections will be deferred during a strike or labor dispute, either between a recognized union and the employer or between two unions competing for bargaining rights in the establishment.
 - (2) Unprogrammed Inspections. As a rule, unprogrammed inspections (complaints, fatalities, etc.) will be performed during strikes or labor disputes. However, the seriousness and reliability of any complaint shall be thoroughly investigated by the supervisor prior to scheduling an inspection to ensure as far as possible that the complaint reflects a good faith belief that a true hazard exists and is not merely an attempt to harass the employer or to gain a bargaining advantage for labor. If there is a picket line at the establishment, the CO shall inform the appropriate union official of the reason for the inspection prior to initiating the inspection.

- i. No inspection. If a scheduled inspection cannot be conducted, the CO shall document the reasons for not conducting the inspection, and shall include the names of persons contacted on the OSHA-1A form to be included in the case file.
2. Employee Participation. COs shall determine as soon as possible after arrival whether the employees at the worksite to be inspected are represented and, if so, shall ensure that employee representatives are afforded the opportunity to participate in all phases of the workplace inspection. The CO shall advise the employer that Section 50-9-10(c) of the Act and 11 NMAC 5.1.21.D require that an employee representative be given an opportunity to participate in the inspection. If an employer resists or interferes with participation by employee representatives in an inspection and this cannot be resolved by the CO, the employer shall be informed of the right of the employee representative to participate. Continued resistance by the employer shall be construed as a refusal to permit the inspection and the supervisor shall be contacted.

NOTE: For the purpose of this chapter, the term "employee representative" refers to (1) a representative of the certified or recognized bargaining agent, or, if none, (2) an employee member of a safety and health committee who has been chosen by the employees (employee committee members or employees at large) as their OHSB representative, or (3) an individual employee who has been selected as the walkaround representative by the employees of the establishment.

3. Opening Conference. The CO shall inform the employer of the purpose of the inspection and shall obtain the employer's consent to include participation of an employee representative, when appropriate. The opening conference shall be kept as brief as possible, normally not to exceed one hour. Conditions of the worksite shall be noted upon arrival as well as any changes which may occur during the opening conference. Pursuant to 11 NMAC 5.1.21.D, the employer and the employee representatives shall be informed of the opportunity to participate in the physical inspection of the workplace.

NOTE: An abbreviated opening conference shall be conducted whenever the CO believes that the circumstances at the worksite dictate that the walkaround begin as promptly as possible. In such cases the opening conference shall be limited to the bare essentials; namely, identification, purpose of the visit, and a request for employer and employee representatives. The other elements shall be fully addressed in the closing conference.

- a. Purpose of the Inspection. The employer shall be informed as to the reason for the inspection as follows:
- (1) Imminent Danger Situations. When responding to an alleged imminent danger situation, the CO is required to get to the location of the alleged hazard(s) as quickly as possible. Under these circumstances, an expedited opening conference shall be conducted by limiting activities to presenting credentials and explaining the nature, scope, and purpose of the inspection.
 - (a) Potential safety and health hazards that may be encountered during the inspection shall be identified and appropriate steps taken to provide for personal protection.
 - (b) The presence of employer and employee representatives shall be requested; however, the inspection shall not be unreasonably delayed to await their arrival.
 - (c) The employer shall be advised that, because of the abbreviated nature of the opening conference, there will be a more extensive discussion at the closing conference.
 - (d) Unreasonable delays shall be reported immediately to the supervisor.
 - (2) Fatality/Catastrophe Investigations. The employer shall be informed that an investigation will be conducted and extensive interviews with witnesses will be necessary. The purpose of an accident investigation shall be explained, namely, to determine:
 - (a) The cause of the accident.
 - (b) Whether a violation of OSHA safety or health standards occurred.
 - (c) What effect the standard violation had on the occurrence of the accident.
 - (d) If OHSB standards should be revised to correct the hazardous working condition that led to the accident.
 - (3) Complaint Investigations. For a complaint investigation, the CO shall provide a copy of the complaint(s) to the employer and the employee representatives during the opening conference.
 - (4) Referral Investigations. During the opening conference of a referral investigation, the CO shall inform the employer that the investigation is

a result of a referral (e.g., from another agency, from a previous OHSB inspection or in response to specific evidence of probable violations at a worksite).

b. Health Inspections. During a health inspection or, as appropriate, during a safety inspection when evaluating potential health hazards, the CO shall include in the opening conference the following additional procedures:

- (1) Request process flow charts and plant layouts relevant to the inspection. If the plant layout and process flow charts are not available, sketch a plant layout as necessary during the course of the initial walkaround, identifying the operations and the relative dimensions of the work area. Distribution of major process equipment, including engineering controls in use, shall also be included on the sketch.
- (2) Make a brief examination of all workplace records pertinent to the inspection.
 - (a) If detailed review is necessary, the CO may wish to proceed with the initial walkaround and return later to examine the records more thoroughly.
 - (b) Many valuable insights can be obtained from an examination of required and other records (e.g., symptomatology which may relate to workplace exposure, frequency of injuries or illnesses, dermatitis, personal protective equipment usage, monitoring data, audiometric test results, ventilation tests, process flow charts and a list of hazardous raw, intermediate, and final product materials) to ensure a more effective inspection and such an examination shall not be omitted if it can be done.
 - (c) In some plants, sampling for obvious health hazards can be initiated soon after the opening conference. Details of the walkaround can be accomplished while collecting the samples.

c. Attendance At Opening Conference. The CO shall conduct a joint opening conference or separate conferences as follows:

- (1) Joint Conference. Whenever practicable, a joint opening conference shall be held with the employer and the employee representatives (if there is an employee representative as defined in D.2. of this chapter).

- (2) Separate Conferences. Where either party chooses not to have a joint conference, separate conferences shall be held for the employer and the employee representatives. A written summary of each conference shall be made and attached to the case file. A copy of the written summaries will be available from the Compliance Manager upon request by the employer or the employee representative. Where it is determined that separate conference will unacceptably delay observation or evaluation of the workplace safety or health hazards, each conference shall be brief, and if appropriate, reconvened after the inspection of the alleged hazards.
- d. Scope. The CO shall outline in general terms the scope of the inspection, including private employee interviews, physical inspection of the workplace and records, possible referrals, discrimination complaints, and the closing conference(s).
- e. Handouts and Additional Items. During the opening conference of every inspection, the CO shall provide:
- (1) The employer representatives with copies of the Employee Information Poster, blank OSHA-200 Forms, a copy of the standards, copies of other applicable laws and regulations, and informational handouts and materials. The CSHO shall also inform the employer representatives of procedures for obtaining additional copies of any materials of which the CO may not have a sufficient quantity on hand.
- (2) The employee representatives with a copy of the standards, upon request, copies of other applicable laws and regulations, and informational handouts and materials. The CO shall also inform them that additional copies and other materials can be obtained from the Bureau's Office when the CO has an insufficient number on hand.
- f. Program Mix. The CO shall briefly indicate that OHSB shares the employer's goal of reducing workplace injuries and illnesses, that the agency is developing a variety of different cooperative approaches which are designed to assist the employer in achieving this goal, and that a more detailed discussion will take place during the closing conference.
- g. Forms Completion. The CO shall obtain available information for the OSHA-1 and other appropriate forms and complete applicable sections during the opening conference.

h. Employees of Other Employers. During the opening conference, the CO shall determine whether the employees of any other employers are working at the establishment.

(1) If there are such employees and any questions arise as to whether their employers should be included in the inspection, the CO shall contact the supervisor to ascertain whether additional inspections shall be conducted and what limitations there may be to such inspection activity.

(a) All high rate employers potentially present at any scheduled worksite normally shall be included within the scope of the inspection, except as indicated in (b) and (c) below. Thus, for example, all construction contractors working at a manufacturing establishment scheduled for inspection are to be included in the inspection assignment.

(b) When, however, the criteria given in Chapter IX, B.2.b.(1)(d), are met, a CO referral may be made and an inspection conducted under the guidelines outlined in Chapter IX.

(c) When a construction operation is too large to be efficiently handled during the inspection of the programmed manufacturing establishment, the operation shall be treated as follows:

1 If violations of OHSB standards are evident at the time of the inspection, a referral for inspection at a later time, in accordance with Chapter IX, B.

2 If no violations of OHSB standards are readily apparent, the operation will be placed on the construction worksite list for the following cycle and treated as any other construction site on that list.

(d) At multiemployer sites, copies of complaint(s), if applicable, shall be provided to all employers affected by the alleged hazard(s), and to the general contractor.

(2) If additional inspections are authorized, both employer and employee representatives of the other employers shall be invited to the opening conference. The inspection shall not be delayed to wait for these employer or employee representatives longer than would be reasonably necessary for either to arrive.

(3) If the site is a multi-employer site, such as construction, the CO shall determine during the opening conference who is responsible for providing common services available to all employees on site; e.g., sanitation, first aid, handrails, etc. It shall be pointed out to all contractors that, apart from any arrangements that may have been made, each employer remains responsible for his or her own employees.

i. Consultations. The CO shall ascertain at the opening conference whether an OHSB consultant is presently inspecting the facility or whether the facility has received an inspection exemption through consultation under procedures currently in effect.

(1) An on-site consultation visit already in progress has priority over programmed inspections, except for critical inspections as determined by the Bureau Chief. Thus, if such a consultant is in the facility and the CO is on a programmed inspection, the CO shall leave the premises and notify the supervisor.

NOTE: If the consultation visit has been a comprehensive one, the consultant shall be considered on-site if the employer is still within the correction period set by the consultant. For correction periods longer than 30 days from the employer's receipt of the consultants report, however, the Bureau Chief may determine that the inspection is to be conducted.

(2) If the inspection is scheduled for a multi-employer worksite, such as a construction site, the following guidelines apply.

(a) If the general contractor has invited the consultant on site, the entire worksite shall be deferred.

(b) If the consultant has been invited by one of the subcontractors, and the scope of the consultant's visit is limited to the operations of that one subcontractor, the inspection of the entire worksite shall not be deferred; the subcontractor who has invited the consultant to visit, however, shall be excluded from the scope of the inspection.

(3) If a followup inspection or an imminent danger, fatality/catastrophe, complaint or referral investigation is to be conducted, the inspection

shall not be deferred, but its scope shall be limited to the areas required to conduct the investigation. The employer and consultant shall be advised that the consultant must interrupt the onsite visit until the compliance inspection shall have been completed.

- (4) When a consultant is on site at the time of an attempted compliance inspection and the inspection is to be deferred, the establishment may be rescheduled.
 - (5) If the employer is participating in the Inspection Exemption through Consultation Program, current procedures shall be followed for the granting of the exemption and the scheduling of future inspections. The CO shall contact the Compliance Manager who shall confirm that the employer is currently participating in the program.
 - (5) If the employer is participating in the Inspection Exemption through Consultation Program, current procedures shall be followed for the granting of the exemption and the scheduling of future inspections. The CO shall contact the Compliance Manager who shall confirm that the employer is currently participating in the program.
 - (6) If an employer refuses entry at the time of a compliance inspection, the Bureau Chief shall notify the Consultation Manager of the refusal and request that no response to a consultation request received from that employer be given until the Compliance Manager decides whether to seek an inspection order. The Bureau Chief shall inform the Consultation Manager as soon as possible after the resolution of the warrant issue so that a consultation visit may be conducted.
 - (7) The employer has no obligation to inform the CO of a prior consultative visit. If, however, a copy of the consultant's report is provided and the CO identifies serious hazards during the walkaround which were previously identified by the consultant, citations shall be issued for such violations.
- j. Other Opening Conference Topics. The CO shall determine at the beginning of the opening conference:
- (1) Legislative Limitations. Whether or not the employer is covered by any of the exemptions or limitations noted in the Chapter II.
 - (2) Employer Name. What the correct legal name of the employer is, what type of legal entity it is, and whether it is a subsidiary of any other business

entity.

- (3) Coverage. What facts show that the employer is covered under the Act.
 - (4) Trade Secrets. Whether the employer wishes to identify areas in the establishment which contain or might reveal trade secrets. If trade secrets are identified, the CO will explain that OHSB is required by law to preserve the confidentiality of all information which might reveal a trade secret. If there is no reason to question such identification, information obtained in such areas, including all negatives, prints or photographs, and environmental samples shall be labeled "confidential-trade secrets" and shall not be disclosed except in accordance with the provisions of Section 50-9-21(c) NMSA 1978. The CO shall explain to the employer what provisions are in effect to afford protection to trade secret information.
 - (5) Photographs. Whether the employer has any objection to taking photographs as permitted by 11 NMAC 5.1.21.C. If the employer does object, the CO shall continue the inspection to the extent possible without taking photographs. The CO shall endeavor to ascertain the reason for such refusal and report it to the Compliance Manager. If the CO feels the inspection can be completed without photographs, none should be taken. Without photographs, any violations observed will have to be adequately documented, such as through employer and employee statements.
 - (6) Potential Hazards. Whether there are any safety and health hazards to which the walkaround party may be exposed during the inspection. The CO shall ensure that all members of the inspection party are advised as to the appropriate personal protective equipment that is required based on this information.
4. Records Review. The CO shall review the employers injury and illness records. This review is to identify any significant patterns of injuries and illnesses, identify particular safety or health hazards in the workplace, and to assure the records are accurate.
- a. Verification of Records. The CO shall verify the accuracy of the OSHA-200 logs by carefully checking them against workers' compensation first reports of injury or OSHA-101s and first aid records, when such first aid records are no more detailed than the type of information contained in the OSHA-101. It may also be appropriate to check OSHA-200 logs against more detailed

first aid and medical records located at the establishment or at other locations.

NOTE: Access to the more detailed first aid and/or medical records may require a written medical access order or the express consent of each employee with a medical record. Such records may be sought in cases where there is evidence of widespread recordkeeping violations.

(1) These documents must be examined carefully to ensure that all work-related injuries and illnesses are being properly recorded on the OSHA-200.

(a) If time allows, all workers' compensation first reports of injury or the OSHA-101s and first aid records shall be reviewed to determine if:

1 Treatment was given that could qualify as medical treatment;

2 There were any lost time injuries or injuries that resulted in restricted work activities or transfer to another job;

3 Any injuries resulted in loss of consciousness;

4 Any illnesses were diagnosed; or

5 Anything else that would indicate that a recordable injury or illness occurred.

(b) If all reports cannot be examined, a representative sample shall be extracted for closer review as indicated in the preceding subsection.

(c) If any cases noted under (a) are found, the OSHA-200 shall be checked to ensure that they have been properly recorded.

(2) The company representative responsible for maintaining injury and illness records shall be interviewed to determine what the company's recording policy is. This individual shall be identified in the case file.

(3) Injury and illness records shall be reviewed and verified with employee representatives or other informed employees.

b. Illnesses. A CSHO conducting a safety inspection shall

make note of any significant recorded illnesses and submit a health referral if appropriate. The employer and the employee representatives shall be advised of the possibility of a referral health inspection.

5. Walkaround Representatives. Those representatives designated to accompany the CO during the walkaround are considered walkaround representatives.

a. Employer Representatives. Anyone designated by the employer as a representative is acceptable. In cases of isolated or remote locations, the senior supervisor, foreman, gang boss or head technician onsite at the time of inspection is the employer representative. Subject to the guidelines given in D.6.e, every reasonable effort shall be made to afford general walkaround rights to every employer representative on a multi-employer worksite.

b. Employee Representatives. Subject to the guidelines in D.6.e, one or more employee representatives shall be given an opportunity to accompany the CO during the walkaround phase of the inspection to provide appropriate involvement of employees in the physical inspection of their own places of employment and to give them an opportunity to point out hazardous conditions. 11 NMAC 5.1.21.D gives the CO authority to resolve disputes as to who represents the employees for walkaround purposes. The following guidelines shall be utilized for determining employee representatives:

(1) Employees Represented by a Certified or Recognized Bargaining Agent. During the opening conference, the highest ranking union official or union employee representative shall designate who will participate in the walkaround.

(2) Safety Committee. The employee members of an established plant safety committee or the employees at large may have designated an employee representative for OHSB inspection purposes or agreed to accept as their representative the employee designated by the committee to accompany the CO during an OHSB inspection.

(3) No Certified or Recognized Bargaining Agent. Where employees are not represented by an authorized representative, where there is no established safety committee, or where employees have not chosen or agreed to an employee representative for OHSB inspection purposes whether or not there is a safety committee, the CO shall determine if any other employees would suitably represent the interests of employees on the walkaround.

(a) If selection of such employee representatives

is impractical, the inspection shall be conducted without an accompanying employee representative; and the CO shall consult with a reasonable number of employees during the walkaround in accordance with the provisions of 11 NMAC 5.1.21.D and Section 50-9-10 of the Act.

- (b) Employees selected for interviewing shall include individuals judged knowledgeable about the area or process being inspected.

6. Special Situations.

a. Preemption by Another Agency. Section 50-9-23 states that the OHS Act does not apply to working conditions over which other agencies exercise statutory responsibility. To preclude as much as possible any misunderstanding with other agencies and to avoid consequent adverse actions by employers (or agencies) the Compliance Manager shall observe the following guidelines whenever a situation arises involving a possible preemption of jurisdiction question:

- (1) The Compliance Manager shall be alert to potential conflicts with other agencies at all times. If a question arises, usually upon receipt of a complaint, referral, or other inquiry, the OSHA Directives System shall be consulted immediately to determine if the issue has been addressed there in a Memorandum of Understanding or other agreement with the agency involved.
- (2) If not, the Compliance Manager shall consult with the Area or Regional Office to obtain clarification on the issue.
- (3) At times an inspection may have already begun when the Section 50-9-23 question arises. In such cases the CO shall interrupt the inspection and contact the supervisor for guidance.
- (4) If, following an inspection, there remains any doubt as to jurisdiction, the proposed citation and penalty shall be cleared with the legal office prior to issuance.
- (5) If it is determined that OHSB does not have jurisdiction, the case shall be referred to the appropriate agency if there is reason to believe that violations may exist.

b. Labor Relations Disputes. The CO shall not become involved in labor relations disputes either between a recognized union and the employer or between two or more unions competing for bargaining rights. However, if

there is a recognized union, the highest ranking official available will designate the authorized walkaround representative even though another union may be seeking recognition.

- c. Expired Collective Bargaining Agreement. When a union contract has expired, the CO shall assume that the incumbent union remains as the bargaining agent unless that union is decertified, officially replaced, or has abandoned bargaining agent status.
- d. Employee Representatives Not Employees of the Employer. Walkaround representatives authorized by employees will usually be employees of the employer. If, however, a non-employee (union official, industrial hygienist, safety engineer, or other experienced safety or health person) is designated by the employees as their representative to accompany the CO during the inspection, such a person normally shall be accorded walkaround rights. Questionable circumstances, including delays of more than one hour, shall be referred to the supervisor. A non-employee representative shall be cautioned by the CO not to discuss matters pertaining to operations of the employer during the inspection.
- e. More Than One Representative. At establishments where more than one employer is present or in situations where groups of employees have different representatives, it is acceptable to have a different employer/employee representative for different phases of the inspection. More than one employer and/or employee representative may accompany the CO throughout or during any phase of an inspection if the CO determines that such additional representatives will aid and not interfere with the inspection.
 - (1) Whenever appropriate to avoid a large group, the CSHO shall encourage multiple employers to agree upon and choose a limited number of representatives for walkaround accompaniment purposes. If necessary, during the inspection, employer representatives not on the walkaround shall be contacted to participate in particular phases of the inspection.
 - (2) As an alternative, the CSHO shall divide a multi-employer inspection into separate phases; e.g., excavation, steel erection, mechanical, electrical, etc., and encourage different employer representatives to participate in different phases, as appropriate.
 - (3) The same principles shall govern the selection of employee representatives when several are involved.

- f. Disruptive Conduct. The CO may deny the right of accompaniment to any person whose conduct interferes with a full or orderly inspection. If disruption or interference occurs, the CO shall use professional judgement as to whether to suspend the walkaround or take other action. The supervisor shall be consulted if the walkaround is suspended. The employee representative shall be advised that during the inspection matters unrelated to the inspection shall not be discussed with employees.
 - g. Trade Secrets. The CO shall ascertain from the employer if the employee representative is authorized to enter any trade secret area(s). If not, the CO shall consult with a reasonable number of employees who work in the area.
 - h. Classified Areas. In areas containing information classified by an agency of the U.S. Government in the interest of national security, only persons authorized to have access to such information may accompany a CO. The CO must have the proper security clearances to enter these areas.
 - i. Apparent Violations Observed Prior to the Walkaround. When an apparent violation is observed by the CO prior to the walkaround, it shall be noted. All such apparent violations shall be rechecked during the walkaround and cited if appropriate. When possible, serious violations shall be rechecked and documented immediately at the commencement of the walkaround.
 - j. Use of Tape Recorders. The use of tape recorders during the required conferences may inhibit the free exchange of information, and care shall be exercised in their use. Tape recorders may be used by the CO only after authorization by the supervisor.
 - (1) The use of tape recorders may be authorized whenever circumstances justify it, such as where there is conflicting evidence indicating that the preservation of statements is advisable or where securing signed statements from affected employees will delay the expeditious completion of the investigation.
 - (2) The tape recorder shall not be used in locations where it may be hazardous.
 - (3) If the employer, employer representative, affected employees, or any other witnesses object to recording their statements during any part of the investigation, the inspection shall be continued without the tape recorder.
7. Inspection of Records and Posting. Every inspection of an

employer required to keep injury and illness records, including followup inspections, shall include an examination and verification of such records. Examination of other records and of the posting requirements shall be performed as appropriate in accordance with current procedures.

a. Records. The CO shall comply with the records review procedures that follow for all inspections, programmed or unprogrammed, of employers required to keep the records in question. Findings shall be documented in the case file.

(1) Injury and Illness Records. All injury and illness records required by 11 NMAC 5.1.16 shall be examined. Medical and first aid records may also be reviewed under a written medical access order.

NOTE: The CO shall not request access to the Bureau of Labor Statistics survey questionnaire (OSHA-200s) or even ask if the employer has participated in the survey program.

(2) Hazard Communication. For all safety and health inspections, the CO shall determine if the employer is covered by the hazard communication standard. If so, the CSHO shall ensure that the applicable requirements of 29 CFR 1910.1200 have been met and that the program is effective. (See OSHA Instruction CPL 2-2.38B.) To ensure that the employer has an effective hazard communication program, the following shall be performed.

(a) The CSHO shall confirm his/her analysis regarding recordkeeping and training by conducting employee interviews and documenting their responses in the case file.

(b) During the walkaround inspection, the CSHO shall confirm compliance with the following elements of the hazard communication standard:

1 The existence of a written hazard communication program.

2 The required list of hazardous chemicals.

3 The existence of and reliance upon hazard determination procedures.

4 The existence and availability of material safety data sheets in the work area.

- 5 Inplant and shipped container labeling programs.
- 6 The effectiveness of required training.

(3) Access to Employee Exposure and Medical Records. During all inspections, when designated by the supervisor, the CO shall determine if applicable exposure and medical records are being maintained in accordance with the medical surveillance recordkeeping requirements of applicable standards or 29 CFR 1910.20. CO access to the employee medical records is authorized for the limited purpose of verifying employer compliance with those requirements. Review of the content of such medical records may require a written access order or express employee consent.

(4) Other Records. Any other records which fall within the scope of the inspection and which are related directly to the purpose of the inspection shall be examined. These may include, but are not limited to:

- (a) Required certification records properly completed and any available equipment inspection and maintenance records;
- (b) Medical surveillance or monitoring records, employee exposure records and other medical records not falling under D.7.a.(3).

NOTE: Whenever circumstances indicate or whenever assigned by their supervisors, adequately cross-trained COs conducting a safety inspection shall also conduct a survey of records required by various health standards to be maintained by the employer. These required records may be evaluated by the CO at the site or may be copied for examination by the health staff.

(c) Safety committee minutes; checklists; records of inspections conducted by plant safety and health committees, insurance companies, or consultants; if voluntarily supplied by the employer.

(d) Variance documentation.

b. Posting. The CO shall determine if posting requirements are met in accordance with 11 NMAC 5.1.16 and 11 NMAC 5.1.17. These include, but are not limited to:

- (1) OHSB poster informing employees of their rights and obligations under the Act.

- (2) Log and Summary of Occupational Injuries and Illnesses during the month of February.
- (3) Current citations, if any.
- (4) Petitions for Modification of Abatement Date (PMAs).

c. Additional Information to Supplement Records Review. It is OHSB policy that all safety and health inspections include an entry into and survey of the workplace. The information gathered during this survey will supplement the records review and serve to confirm or revise the determination as to whether the inspection's scope should be expanded.

- (1) Accordingly, for all safety and health inspections, the CO shall review the employer's overall safety and health management program and specific programs such as those related to personal protective equipment and respiratory protection to evaluate their effectiveness and identify deficiencies.
- (2) This review shall include a survey of the workplace, focusing on any high hazard areas. This survey will normally be conducted in conjunction with the walkaround inspection.
- (3) Observed violations shall be documented and cited appropriately.

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

a. General Procedures. It is essential during the walkaround portion of every inspection for the CO to:

- (1) Become familiar with plant processes, collect information on hazards, observe employees' activities and interview them as appropriate.
 - (a) For health inspections, a preliminary tour of the establishment normally shall be accomplished before any decision to conduct an in-depth industrial hygiene investigation.
 - (b) Such a preliminary walkaround shall survey existing engineering controls and collect screening samples, when appropriate, to determine the need for full-scale sampling.

inspection:

- a Comprehensiveness. Evaluate the degree to which the employer's safety and health program addresses the full range of hazards normally encountered in the employer's operations. This is an overall evaluation and shall take into account the evaluations of the remaining categories. Indicate whether the program is written.

- b Communication. Evaluate the employees' awareness of and access to the safety and health program, taking into account the principal means by which the program is communicated to them (e.g., oral instructions, booklets, memorandums, posters, etc.) Consider whether safety meetings are held by the employer, their frequency and the persons conducting them (e.g., crew foreman, intermediate level supervisors, safety director, etc.) The effectiveness of these means shall be considered in the evaluation.

- c Enforcement. Evaluate the degree to which safety and health rules are actually enforced, taking into account the principal methods used (e.g., warnings, written reprimands, disciplinary action, discharge, etc.) and the effectiveness of these methods. Determine whether there is a staff (or one specific person) with assigned safety or health responsibilities and consider the effectiveness of the staff's performance.

- d Safety/Health Training Program. Evaluate separately any safety and health training programs the employer has. Factors to be considered include the need for special training in view of the hazards likely to be encountered or of specific requirements for such training and the need for

ongoing or periodic training or retraining of employees.

e Investigations. Evaluate the employer's efforts to make accident/injury/illness investigations and indicate whether adequate corrective and preventive actions are taken as a result.

(3) Record all facts pertinent to an apparent violation on the appropriate compliance worksheets. Apparent violations shall be brought to the attention of employer and employee representatives at the time they are documented.

(a) All notes, observations, analysis, and other information shall be either recorded on the worksheet or attached to it.

1 Because this documentation is required for each instance of an alleged violation, the CO shall normally use one worksheet to describe each instance as it is noted.

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

3 Photographs, sketches, and descriptions that are attached to the worksheet are part of the inspection record and shall be noted on the form. The original field notes, as a basic documentation of the violation, shall be attached to the worksheet and retained in the case file.

(b) The CO shall provide as much detailed information as practical to establish the specific characteristics of each violation as follows:

1 Describe the observed hazardous conditions or practices (i.e., the facts which constitute a hazardous condition, operation or practice and the essential facts as to how and/or why a standard is allegedly violated).

Specifically identify the hazards to which employees have been or could be exposed. Describe the type of accident which the violated standard was designed to prevent in this situation, or note the name and exposure level of any contaminant or harmful physical agent to which employees are, have been or could be exposed. If more than one type of accident or exposure could reasonably be predicted to occur, describe the one which would result in the most serious injury or illness. For the type of accident described, include:

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

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

! Proximity of the workers to the point of danger of the operation.

! Stress producing characteristics of the operation (e.g., speed, heat repetitiveness, noise, position of employee).

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

d The identification of the equipment and process which pose the hazards; i.e., serial numbers, equipment types, trade names, manufacturers, etc. Include a sketch when appropriate.

e The specific location of the violation; e.g.:

! Building No. 3, second floor, column no. 6.

- ! Machine Shop, N.E. corner,
Department 12.
- ! Foundry, N.W. Corner,
shakeout area.

f State the nature of the more serious types of injury or illness which it is reasonably predictable could result from the accident or health exposure.

! Thus, the entry for the "fall from 20 feet onto protruding rebar" might reach "death from multiple injuries." For exposure to asbestos, the entry might read "asbestosis, cancer and death."

! Broad categories of injuries and health effects (such as "electric shock," "burns," or "lacerations") shall be qualified to indicate whether the injuries or health effects are major or minor.

! In identifying the illnesses which a standard regulating exposure to an air contaminant or harmful physical agent is designed to prevent in a particular worksite, it may be necessary to consider not only the level of exposure but also the frequency and duration of exposure to the contaminant or agent.

g Evaluate the probability of an injury and explain the selection of probability and severity factors.

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

hazardous conditions and operations.

! Describe how measurements were taken during the inspection.

! Identify the measuring techniques and equipment used and those who were present; i.e., employee or employer representative who observed the measurements being taken.

! Include calibration dates and description of calibration procedures used, if appropriate.

i Exposure facts so to present a picture of employee exposure to the hazard for each particular occupation, including:

! The occupation and the employer of the exposed employees if the employer is different from the one on the corresponding OSHA-1.

! The number of exposed employees in that occupation.

! The length of time that the alleged violation has existed.

! The duration and frequency that the employees are exposed (e.g., 2 hrs./wk).

! The name, address (with zip code) and telephone number of at least one exposed employee in each occupation. If necessary, signed and dated witness statements shall be obtained and attached to the workplace.

j 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. Enter

any facts which show that:

- ! The employer actually knew of the hazardous condition which constitutes the violation. In this regard, a supervisor represents the employer and supervisor knowledge amounts to employer knowledge.

- ! The employer could have known of the hazardous condition if all reasonable steps had been taken to identify hazards to which employees may have been exposed. As a general rule, the CO can presume that the employer could have discovered the condition through the exercise of reasonable diligence.

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

effort to eliminate it.

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

! Include employer comments which may be characterized as admissions of the specific violations described.

! Include any other facts which may assist in evaluating the situation or in reconstructing the total picture in preparation for testimony in possible legal actions.

! Include any additional comments (by the CO), particularly any explanation of abatement of dates when necessary (e.g., when longer than 5 days for a serious violation or when an abatement period exceeding 30 days is recommended for an item).

2 If employee exposure (either to safety or health hazards) is not observed, state facts on which the determination is made that an employee has been or could be exposed. In appropriate cases, state what the employer could have or should have done to be in compliance. When violations are grouped, describe the reason for grouping. If a specific type of hazard exposure is caused by the combination of violations, describe it in sufficient detail.

3 If the cited employer neither created nor controlled the violative condition, state the name and relationship of the responsible party; e.g., prime contractor, electrical subcontractor, building owner or equipment lessor. Describe any steps taken by the cited employer to have the condition corrected.

- b. Health Inspections. There are special documentation requirements for health inspections. During such inspections, the CO shall:
- (1) Record all relevant information concerning potential exposure to chemical substances or physical hazards such as symptomatology, duration and frequency of the hazard, pertinent employee comments, sources of potential health hazards, locations of employees pertinent to the inspection, types of engineering controls, use of personal protective devices including respirators, ear and eye protection, clothing, etc.; and collect Material Safety Data Sheets where available and appropriate.
 - (2) Observe employee activities throughout the establishment, concentrating particularly on potentially hazardous areas, and
 - (a) Estimate numbers of employees at each operation to be evaluated, indicating whether they are engaged in stationary or transient activities.
 - (b) Interview employees.
 - (c) Record the duration and frequency of cyclic work processes, describing potential exposures during each phase of the cycle.
 - (3) Request and evaluate information on the following aspects of the employer's occupational safety and health program (Findings shall be discussed in detail at the closing conference.):
 - (a) Monitoring. The employer's program for monitoring safety and health hazards in the establishment should include a program for self-inspection. The CO shall discuss the employer's maintenance schedules and inspection records. Additional information shall be obtained concerning such employer activities as sampling and calibration procedures, ventilation measurements, preventive maintenance programs for engineering controls, laboratory services, use of industrial hygienists and accredited laboratories. Compliance with the monitoring requirement of any applicable standard shall be determined.
 - (b) Medical. The CO shall determine whether the employer provides the employees with preplacement and periodic medical

examinations. The medical examination protocol shall be requested to determine the extent of the medical examinations and, if applicable, compliance with the medical surveillance requirements of any applicable standard.

(c) Recordkeeping. The CO shall determine the extent of the employer's recordkeeping program. This is not to be limited to OSHA-required records, but shall be extended to information pertinent to the inspection such as:

- 1 If records pertaining to employee exposure and medical records are being preserved in accordance with 29 CFR 1910.20, and
- 2 Where a specific standard has provisions for employee access to the records, whether the results of environmental measurements and medical examinations are accessible to the affected employees.

(d) Compliance. The employer's compliance program may include engineering, work practice and administrative controls and the use of personal protective equipment. The CO shall identify as follows:

- 1 Engineering Controls. Pertinent engineering controls consist of substitution, isolation, ventilation and equipment modification.
- 2 Work Practice and Administrative Controls. These control techniques include personal hygiene, housekeeping practices and rotation of employees.
 - a There should be a program of employee training and education to utilize work practice controls effectively. Where pertinent, the CO shall obtain a detailed description of such controls.
 - b The CO shall evaluate the overall effect of such practices and programs, considering the employees' knowledge of their exposures.
 - c Rotation of employees as an

administrative control requires employer knowledge of the extent and duration of exposure.

- 3 Personal Protective Equipment. An effective personal protective equipment program should exist in the plant. A detailed evaluation of the program shall be made to determine compliance with the specific standards which require the use of protective equipment (e.g., 29 CFR 1910.95, 1910.132, 1910.134).
- (e) Regulated Areas. The CO shall investigate compliance with the requirements for regulated areas as specified by certain standards.
 - 1 Regulated areas must be clearly identified and known to all appropriate employees.
 - 2 The regulated area designations must be maintained according to the prescribed criteria of the applicable standard.
- (f) Emergency Procedures. The CO shall evaluate the employer's emergency program.
 - 1 When standards provide that specific emergency procedures be developed where certain hazardous substances are handled, the evaluation shall determine if:
 - a Potential emergency conditions are included in the written plan.
 - b Emergency conditions have been explained to employees.
 - c There is a training scheme for the protection of affected employees including use and maintenance of personal protective equipment.
 - 2 Where hazardous substances are handled for which there are no standards requiring emergency procedures, the CO shall, nevertheless, determine if such procedures have been established.
- (4) Collecting Samples. The CO shall determine as soon as possible after the start of the inspection whether sampling is required by utilizing the

information collected during the walkaround and from the preinspection review.

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

1 There shall be no undue delay between development of the sampling strategy and the actual sampling or between receipt of the results of spot or screen sampling and full-shift sampling, when the results indicate its necessity.

2 If a delay of more than 5 working days is unavoidable, the reasons for the delay shall be included in the case file. Such situations shall be handled in accordance with C.1.d.(3).

(b) When work schedules other than the usual 8-hour day are encountered; e.g., 4 10-hour day per week, the following procedures shall be used when the standard itself does not cover such exposures:

1 Sampling for 8-hour exposure levels shall be performed as usual; separate sampling shall be conducted to determine any additional exposure beyond the 8 hours.

2 The results from the 8-hour sampling shall be compared to the Permissible Exposure Level (PEL) to determine whether or not an overexposure exists.

3 If it appears that the 8-hour exposure limits do not provide adequate protection from health hazards when longer workday schedules are used, the CO shall contact the compliance Manager for additional instructions on further sampling that may be indicated as well as for guidance on evaluation of sampling data.

(c) If either the employer or the employee representative requests sampling results, summaries of the results shall be provided to the requesting representative as soon as practicable after consultation with the supervisor.

- c. Taking Photographs. Photographs shall be taken whenever the CO judges there is a need. Developed photographs shall be properly labeled and placed in the case file.

NOTE: The CO shall ensure that using flash or spark-producing equipment will not be hazardous and that employees are not unexpectedly startled by the use of flash equipment.

- d. Employee Interviews. A free and open exchange of information between the CO and employees is essential to an effective inspection. Interviews provide an opportunity for employees to point out hazardous conditions and, in general, to provide assistance as to what violations of the Act may exist and what abatement action should be taken.

(1) Purpose. Section 50-9-10 of the Act authorizes the CO to question any employee privately during regular working hours in the course of an OSHA inspection. The purpose of such interviews is to obtain whatever information the CO deems necessary or useful in carrying out the inspection effectively. Such interviews, however shall be conducted within reasonable limits and in a reasonable manner and shall be kept as brief as possible. Individual interviews are authorized even when there is an employee representative.

(2) Employee Right of Complaint. Even when employees are represented on the walkaround, the CO may consult with any employee who desires to discuss a possible violation. Upon receipt of such information, the CO shall investigate the alleged violation, where possible, and record the findings. If a written complaint is received, the written response procedures in Chapter 9 shall be followed.

(a) 11 NMAC 5.1.20 affords any employee an opportunity to bring any condition believed to violate a standard or Section 50-9-5A of the Act to the attention of the CO during an inspection.

(b) In certain instances, the employer and/or the employee walkaround representative may not be able to provide all the necessary information regarding an accident or possible violation. The CO shall consult with employee while conducting the walkaround inspection and shall arrange for interviews, where these are considered useful, with employees who may have knowledge of pertinent facts.

(3) Time and Location. Interviews normally will be conducted during the walkaround; however, they may

be conducted at any time during an inspection.

- (a) Workplace. If requested by the employee and considered useful by the CO, additional consultation shall be scheduled at a mutually convenient time. In retail or service establishments or in continuous production operations (e.g., assembly line), interviews shall be scheduled to afford minimum interference with the employee's duties and the employer's business operations.
 - (b) Other than Workplace. Interviews may be held at the employee's home, the ED's District Office, or at any other suitable place in the community where privacy can be maintained.
- (4) Privacy. At the time of the interview employee shall be asked if they desire the interview to be in private. Whenever an employee expresses a preference that an interview be held in private, the CO shall make a reasonable effort to honor that request. Even in the absence of such a request, every reasonable effort shall be made to conduct interviews with employees in private.

NOTE: "In private" refers to the exclusion of the employer representative, not the employee representative unless the employee expresses a desire to be interviewed out of hearing of both the employer and the employee representatives.

- (5) Interview Statements. Interview statements shall be obtained whenever the CO determines that such statements would be useful in documenting adequately an apparent violation.
- (a) Interviews shall normally be written, and the employee shall be encouraged to sign and date the statement. The statement shall also include the following: " I request that my statement be held confidential to the extent allowed by law." The individual, however, may waive confidentiality. Following are some examples of situations where the CO shall normally obtain written statements:
 - 1 When there is an actual or potential controversy between the employer and employee as to a material fact concerning a violation.
 - 2 When there is a conflict or difference among statements as to the facts.

3 When there is a potential willful or repeated violation.

4 In accident investigations, when attempting to determine if apparent violation(s) existed at the time of the accident.

(b) Interview statements shall normally be written in the first person and in the language of the employee. The wording of the statement shall be understandable to the employee and reflect only what has been brought out in the interview.

1 Any changes or corrections shall be initiated by the employee; otherwise, the statement shall not be changed, added to or altered in any way.

2 The statements shall end with wording such as: "I have read the above, and it is true to the best of my knowledge." The employee shall sign and date the statement and the CO shall then sign it as a witness.

3 If the employee refuses to sign the statement, the CO shall note such refusal on the statement. The statement shall, nevertheless, be read to the employee and an attempt made to obtain agreement. A note that this was done shall be entered into the case file.

(c) If the employee interview has been recorded, the conversation shall be transcribed; the transcription shall meet the requirements of D.8.d.(5)(a) and (b).

e. Special Circumstances.

(1) Trade Secrets. Trade secrets are matters that are not of public or general knowledge. A trade secret is any confidential formula, patten, process, equipment, list, blueprint, device or compilation of information used in the employer's business which gives an advantage over competitors who do not know or use it.

(a) Policy. It is essential to the effective enforcement of the Act that the CO and all OHSB personnel preserve the confidentiality of all information and investigations which might reveal a trade secret.

- (b) Restrictions and Controls. When the employer identifies an operation or condition as a trade secret, it shall be treated as such. Information obtained in such areas, including all negatives, photographs and OSHA documentation forms shall be labeled "Confidential--Trade Secret." Under Section 50-9-21 of the Act, all information reported to or obtained by a CO in connection with any inspection or other activity which contains or which might reveal a trade secret shall be kept confidential. Such information shall not be disclosed except to their OHSB officials concerned with the enforcement of the Act or, when relevant, in any proceeding under the Act.
 - (c) Photographs. If the employer objects to the taking of photographs because trade secrets would or may be disclosed, the CO should advise the employer of the protection against such disclosure afforded by Section 50-9-21(c)(1) of the Act and 11 NMAC 5.1.21.F. If the employer still objects, the CO shall contact the supervisor.
- (2) Areas Requiring Immunization. If, during an inspection, a nonimmunized CO encounters an area requiring immunization, the CO shall not enter that area but shall note a description of the area, immunization required, employees exposed, location and other pertinent information in the case file.
- (a) Nonimmunized CO. The CO shall consult with the supervisor about scheduling a properly immunized CO for an immediate or later inspection, as applicable. The CO shall then complete the inspection of all other areas of the establishment.
 - (b) Nonimmunized Walkaround Representative. If, during an inspection, a properly immunized CO finds that walkaround representatives of employers and employees are not properly immunized and, therefore, not authorized in the area, a reasonable number of employees and the supervisor of that area shall be consulted concerning workplace health and safety. (See B.7. for additional information.)
- (3) Violations of Other Laws. If a CO observes apparent violations of laws enforced by other government agencies, such cases shall be referred to the appropriate agency.

9. Closing Conference. At the conclusion of an inspection, the CO shall conduct a closing conference with the employer and the employee representatives. (On multi-employer worksites, the CO shall decide whether separate closing conferences will be held with each employer representative.) A joint closing conference shall be held with the employer and the employee representatives whenever practicable. Where either party wishes to have a separate conference or where it is not practical to hold a joint closing conference, separate closing conferences shall be held. A written summary of each written summaries will be available from the Compliance Manager upon request by the employer or the employee representatives. The closing conference may be conducted on site or by telephone as deemed appropriate by the CO.
- a. General. The CO shall describe the apparent violations found during the inspection and indicate the applicable sections of the standards which may have been violated. During the closing conference, both the employer and the employee representatives shall be advised of their rights to participate in any subsequent conferences, meetings or discussions, and their contest rights.
- (1) Since the CO may not have sample results prior to the first closing conference, a second closing conference shall be held by telephone or in person to inform the employer and the employee representatives whether the establishment is in compliance.
 - (a) If the results indicate noncompliance, apparent violations, correction procedures, and interim methods of control shall be discussed.
 - (b) Even if the employer is in compliance, sample results which equal or exceed 50 percent of the permissible exposure limit and any recommendations of the CO on good safety and health practices shall be discussed with the employer and the employee representatives.
 - (2) When closing conferences are delayed pending receipt of sampling data or for any other reason, the employee representative shall be afforded an opportunity to participate in such delayed conferences.
 - (3) The strengths and weaknesses of the employer's occupational safety and health program shall be discussed at the closing conference.
 - (4) During the discussion of apparent violations the CO shall note any comments on the OSHA-1B and obtain input for establishing correction dates.

- (5) The CO shall advise the employee representatives that:
 - (a) Under 11 NMAC 5.5.502 of the Occupational Health and Safety Review Commission regulations, if the employer contests, the employees have a right to elect "party status" before the Review Commission.
 - (b) They must be notified by the employer if a notice of contest is filed.
 - (c) They have rights under Section 50-9-25 of the Act.
 - (d) They have a right to contest the abatement date. (See D.9.b.(4)(a)2.) Such contest must be in writing and must be filed within 15 working days after receipt of the citation.

b. Specific. During the closing conference the CO shall give the employer the publication, "Closing Conference Guide," which explains the responsibilities and courses of action available to the employer if a citation is received. The CO shall then briefly discuss the information in the booklet and answer any questions. All matters discussed during the closing conference shall be documented in the case file, including a note describing printed materials distributed.

- (1) Citation Issued. If citations are issued, the original shall be sent to the employer representative at the establishment. In the case of a nonfixed worksite, the original normally shall be sent to the employer's headquarters with instructions to post a copy at the worksite. If it is clear that the employer representative at the worksite does not receive mail deliveries or will not be at the site at the time of delivery, the circumstances shall be documented in the case file; and the original shall be sent to the location designated as most appropriate by the employer representative at the site. In addition, copies shall be sent to any other employer representatives as requested by the attending employer representative. If the employer is located on a military base or other federal government facility, copies of the citation shall be sent to the base commander or other government officer in charge in accordance with established protocol.

NOTE: The original citation shall be sent by certified mail, return receipt requested in accordance with Section

50-9-17(a) of the Act.

- (2) Cover Letter. A Cover Letter informing the employer of the right to an informal administrative review and of the requirement that any Notice of Intent to Contest must be in writing shall be sent with each copy of the citation.
- (3) Citation Posting. The citation or a copy of it must be posed at or near the place where each violation occurred to inform the employees of hazards to which they may be exposed. If, because of the nature of the employer's operation, it is not practical to post the citation at or near the place where each violation occurred, the citation must be posted in a prominent place where it will be readily observed by all affected employees. The citation must remain posted for 3 working days or until the violation is corrected, whichever is longer.
 - (a) If the citation is amended as a result of an informal conference or other procedure, a copy of the amended citation must be posted along with a copy of the original citation.
 - (b) Even if contested, a copy of the citation still must be posted.
 - (c) If there is an authorized employee representative at the establishment, copies of the original citation and any subsequent citation amendments shall be sent to that representative as soon as possible after receipt of these documents by the employer. Citations shall also be mailed to any employee upon request.
- (4) Complying with Citation and Notification of Penalty. If the employer does not contest the citation and the penalty and it becomes a final order, then:
 - (a) The cited conditions must be abated by the dates set in the citation, and
 - (b) The penalty must be paid if one was proposed.
- (5) Contesting Citation and Notification of Penalty. The CO shall advise the employer that the citation, the penalty and/or the abatement date may be contested if, and good faith, the employer does NOT agree to the citation, penalty or abatement date.
 - (a) Notice of Contest. The CO shall tell the employer that, in order to contest, the Compliance Manager must be notified in

writing within 15 working days after receipt of the citation and notification of penalty.

(Working days are Monday through Friday, excluding Federal and State holidays.) It shall be emphasized that a notice of intent to contest given orally will not satisfy this requirement to give written notification.

NOTE: The written notification must be postmarked no later than the 15th working day after receipt of the citation.

1 Employer Contest. This written notification, called a Notice of Contest, must clearly state what is being contested--which item of the citation, the penalty, the correction date, or any combination.

a If the employer wishes only a later abatement date and there is a valid reason, the Compliance Manager should be contacted. The Compliance Manager may issue an amended citation changing an abatement date prior to the expiration of the 15-working-day period without the employer's filing a contest.

b If the employer contests only the penalty or only some of the citation items, all uncontested items must still be abated by the dates indicated on the citation and the corresponding penalties paid within 15 days of notification.

2 Employee Contest. The CO shall indicate that the Act provides that employees or their authorized representative(s) have the right to contest in writing any or all of the abatement dates set for a violation if they believe the date(s) to be unreasonable.

(b) Contest Process. The CO shall explain that, when the Notice of Contest is properly filed, the Compliance Manager is required to forward the case to an independent agency, the Occupational Health and Safety Review Commission (the Review Commission) at which time the case is docketed.

- 1 The Review Commission will inform the employer of the procedural requirements which must be observed throughout the proceedings.
 - 2 An informal administrative review will be scheduled to be heard before the Bureau Chief or other appropriate Department official.
- (6) Informal Discussion. The CO shall advise those attending the closing conference.
- (a) That a request for an informal conference with the Compliance Manager is available. The informal conference provides an opportunity to:
 - 1 Obtain a more complete understanding of the specific safety or health standard which apply;
 - 2 Discuss ways to correct the apparent violations;
 - 3 Discuss questions concerning proposed penalties;
 - 4 Discuss problems with proposed abatement dates;
 - 5 Discuss problems concerning employee safety and health practices;
 - 6 Learn more of other OHSB program and services available;
 - 7 Obtain answers to other questions.
 - (b) That, if a citation is issued, an informal discussion or the request for one does not extend the 15-working-day period in which the employer or the employee representative may contest.
 - (c) That an oral statement of disagreement with or intent to contest a citation, penalty or abatement date during an informal discussion will not take the place of the required written notice of intent to contest.
 - (d) That the employer representative(s) have the right to participate in any informal administrative review.

- (7) Penalties. The CO shall explain that penalties must be paid within 15 working days after the employer received the citation and notification of penalty. If, however, the employer contests the citation and/or the penalty in good faith, the penalties need not be paid for those items contested until a final decision is made.
- (8) Abatement Action. The CO shall explain the following:
- (a) For violations the employer does not contest, the employer is expected to notify the Compliance Manager promptly by letter that the cited conditions have been corrected by the abatement date set in the citation. Failure to do so may trigger a followup inspection. The notification must explain the specific action taken with regard to each violation and the approximate date the corrective action was completed.
 - (b) When the citation permits an extended time for abatement, the employer must ensure that employees are adequately protected during this time. For example, the citation may require the immediate use of personal protective equipment by employees while engineering controls are being installed. The employer may be requested to sent periodic progress reports on actions to correct these violations.
- (9) Petition for Modification of Abatement Date. The CO shall advise the employer that abatement dates are established on the basis of the information available at the time the citations are issued. When uncontrollable events or other circumstances prevent the employer from meeting an abatement date and the 15-working-day contest period has expired, a petition may be submitted in writing for modification of the abatement date. Details may be obtained from the Compliance Manager.
- (10) Followup Inspection. The CO shall explain that:
- (a) If the employer receives a citation, a followup inspection may be conducted to verify that the employer has:
 - 1 Posted the citation as required.
 - 2 Corrected the violations as required in the citation.
 - 3 Adequately protected the employees

during multi-step or lengthy abatement periods.

4 Taken appropriate administrative or engineering abatement steps in a timely manner.

(b) The employer also has a continuing responsibility to comply with the Act. Any new violations discovered during a followup inspection will be cited.

- (11) Failure to Abate. The CO shall explain that to achieve abatement by the date set forth in the citation, it is important that corrective efforts be promptly initiated. The employer shall be reminded that, under the Act, additional penalties of up to \$7,000 per day per violation may be proposed if the employer is found during a followup inspection to have failed to abate by the time required on the OSHA-2 any violations which have not been contested.
- (12) False Information. The CO shall explain that, if the employer knowingly provides false information relating to effort to correct cited conditions or in records required to be maintained or in any other matter related to the Act, criminal penalties are specified in the Act.
- (13) Employee Discrimination. The CO shall emphasize that the Act prohibits employers from discharging or discriminating in any way against an employee who has exercised any right under the Act, including the right to make safety or health complaints or to request an OHSB inspection. Complaints from employees who believe they have been discriminated against will be evaluated by OHSB. If the investigation discloses a probable violation of employee rights, OHSB may initiate legal action on behalf of employees whose rights have been violated.
- (14) Variance. The CO shall explain that the Act permits, and the agency encourages, the employer to apply to OHSB for a temporary variance from a newly promulgated standard if the employer is unable to comply by the effective date because of the unavailability of materials, equipment, or technical unavailability of materials, equipment, or technical personnel. The employer also is encouraged to apply for permanent variance from a standard if the employer believes that the facilities or methods of operation at the establishments under consideration are at least as safe and healthful as would be ensured by the OSHA

standard. All variance applications must be submitted in writing and must include all applicable items specified in 11 NMAC 5.1.18. More complete information on variances may be obtained from the Compliance Manager.

- (15) SBA Loans. If asked by the employer, the CO shall explain that SBA does not currently provide either direct or guaranteed loans for OHSB compliance.
- (16) Referral Inspection. When applicable, the CO shall explain that apparent serious violations which have been observed during the inspection, but which are not within the scope of the COs expertise, will be subject to referral to the supervisor and, as a result, additional inspections may be scheduled at a later date.
- (17) Consultative Services. The CO shall explain thoroughly the consultative services available to the employer, including confidentiality provisions, safety and health program assistance, training and education service and the inspection exemption program. Onsite consultation may be sought concerning any and all citation items that have become final orders as well as items not involving citations. Such consultation may be of help when specialized or extensive abatement measures appear to be required.
- (18) Other Services and Programs. The CO shall briefly explain the various other services and programs currently in effect in the agency. Examples are the following:
 - (a) Exemption through Consultation. This program is designed for those employers who want to cooperate with the Bureau to demonstrate the importance of functioning internal safety and health systems for the prevention of injuries and illnesses. OHSB encourages program participants to set realistic goals for the elimination or reduction of workplace hazards and for improved safety and health planning and programming. Participation in this program shall not in any way diminish existing employer or employee rights and responsibilities under the Act.
 - (b) Employer Abatement Assistance. The employer shall be made aware in greater detail of OHSB's commitment to aid as much as practicable in the process of correcting workplace hazards. Any questions regarding abatement can be discussed with the employer during the closing conference with more

complete information provided as necessary as soon as possible after the completion of the inspection.

- (c) Training and Education Programs. The CO shall inform the employer of any OHSB-funded training and education programs that are available, including those from the OSHA Training Institute and those from "New Directions" grantees.

E. Abatement.

1. Period. The abatement period shall be the shortest interval within which the employer can reasonably be expected to correct the violation. An abatement date shall be set forth in the citation as a specific date, not a number of days. When the abatement period is very short (i.e., 5 working days or less) and it is uncertain when the employer will receive the citation, the abatement date shall be set so as to follow for a mail delay and the agreed-upon abatement time. When abatement is witnessed by the CO during the inspection, the abatement period shall be "Corrected During Inspection" of the citation.
2. Reasonable Abatement Date. The establishment of an abatement date requires the exercise of maximum professional judgement on the part of the CO.
 - a. The exercise of this judgement shall be based on data found during the inspection and/or whatever subsequent information gathering is deemed necessary. In all cases, the employer shall be asked for any available information relative to the time required to accomplish abatement and/or any factors unique to the employer's operation which may have an effect on the time needed for abatement.
 - b. All pertinent factors shall be considered in determining what is a reasonable period. The following considerations may be useful in arriving at a decision.
 - (1) The gravity of the alleged violation.
 - (2) The availability of needed equipment, material, and/or personnel.
 - (3) The time required for delivery, installation, modification or construction.
 - (4) Training of personnel.
3. Abatement Periods Exceeding 30 Calendar Days. Abatement periods exceeding 30 calendar days should not normally be necessary, particularly for safety violations. Situations may arise, however, especially for health violations, where

additional time is required; e.g., a condition where extensive structural changes are necessary or where new equipment or parts cannot be delivered within 30 calendar days. When an initial abatement date is granted that is in excess of 30 calendar days, the reason shall be documented in the case file. Initial abatement dates in excess of one year from the citation issuance date may not be granted by the Compliance Manager without prior approval of the Bureau Chief.

4. Verification of Abatement. Abatement verification shall follow the provisions of 29 CFR 1903.19, as adopted in 11 NMAC 5.1.25.
5. Effect of Contest Upon Abatement Period. In situations where an employer contests either the period set for abatement or the citation itself, the abatement period set for abatement or the citation itself, the abatement period generally shall be considered not to have begun until there has been an affirmation of the citation and abatement period. In accordance with the act, the abatement period begins when a final order of the Review Commission is issued, and this abatement period is not tolled while an appeal is ongoing unless the employer has been granted a stay by the court. In situations where there is an employee contest of the abatement date, the abatement requirements of the citation remain unchanged.
 - a. Where the Review Commission or a court alters the abatement period, the abatement period as altered shall be the applicable abatement period.
 - b. Where an employer has contested only the amount of the proposed penalty, the abatement period continues to run unaffected by the contest.
 - c. Where the employer does not contest, he must abide by the date set forth in the citation even if such date is within the 15-day notice of contest period. Therefore, when the abatement period designated in the citation is 15 days or less and a notice of contest has not been filed, a followup inspection of the worksite may be conducted for purposes of determining whether abatement has been achieved within the time period set forth in the citation. A failure to abate citation may be issued on the basis of the CO's findings.
 - d. Where the employer has filed a notice of contest to the initial citation within the proper contest period, the abatement period does not begin to run until the entry

of a final Review Commission order. Under these circumstances, any followup inspection within the contest period shall be discontinued and a failure to abate citation shall not be issued.

NOTE: There is no exception to the above rule. If an early abatement date has been designated in the initial citation and it is the opinion of the CO and/or the Compliance Manager that a situation classified as imminent danger is presented by the cited condition, appropriate imminent danger proceedings may be initiated not withstanding the filing of a notice of contest by the employer.

6. Feasible Administrative, Work Practice and Engineering Controls in Health Inspections. Where applicable (generally, during health inspections), the CO shall discuss control methodology with the employer during the closing conference.
 - a. Engineering Controls. Engineering controls consist of substitution, isolation, ventilation and equipment modification.
 - (1) Substitution may involve process change, equipment replacement or material substitution.
 - (2) Isolation results in the reduction of the hazard by providing a barrier around the material, equipment, process or employee. This barrier may consist of a physical separation or isolation by distance.
 - (3) Ventilation controls are more fully discussed in the Industrial Hygiene Technical Manual, OSHA Instruction CPL 2-2.20B.
 - (4) Equipment modification will result in increased performance or change in character, such as the application of sound absorbent material.
 - b. Administrative Controls. Any procedures which significantly limit daily exposure by control or manipulation of the work schedule or manner in which work is performed is considered a means of administrative control. The use of personal protective equipment is not considered a means of administrative control.
 - c. Work Practice Controls. Work practice controls are a type of administrative controls by which the employer modifies the manner in which the employee performs assigned work. Such modification may result in a reduction of exposure through such methods as changing work habits, improving sanitation and hygiene practices, or making other changes in the way the employee performs

the job.

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

(1) Types of Feasibility. In general there are two types of feasibility determinations that OHSB must make with regard to potential abatement methods. Each will be discussed separately.

(2) Technical Feasibility. Technical feasibility is the existence of technical know-how as to materials and methods available or adaptable to specific circumstances which can be applied to cited violations with a reasonable possibility that employee exposure to occupational hazards will be reduced.

(a) Sources which can provide information useful in making this determination are the following:

- 1 Similar situations observed elsewhere where adequate engineering controls do, in fact, reduce employee exposure.
- 2 Written source materials or conference presentations that indicate that equipment and designs are available to reduce employee exposure in similar situations.
- 3 Studies by a qualified consulting firm, professional engineer, industrial hygienist, or insurance carrier that show engineering controls are technically feasible.
- 4 Studies and materials collected and prepared by the Directorate of Compliance Programs, the Directorate of Technical Support and/or the Assistant Regional Administrator for Technical Support.
- 5 Equipment catalogs and suppliers that indicate engineering controls are technically feasible and are available.
- 6 Information provided by other government agencies when their regulations apply to the operations

involved and which may affect or limit the design or type of controls that may be used for abatement.

- (b) OHSB's experience indicates that feasible engineering or administrative controls exist for most hazardous exposures.
 - (c) The Compliance Manager is responsible for making determinations that engineering or administrative controls are not feasible.
- (3) Economic Feasibility. Economic feasibility means that the employer is financially able to undertake the measures necessary to abate the citations received. The CO shall inform the employer that, although the cost of corrective measures to be taken will generally not be considered as a factor in the issuance of a citation, it will be considered during an informal conference or during settlement negotiations.
- (a) If the cost of implementing effective engineering, administrative, or work practice controls or some combination of such controls, would seriously jeopardize the employer's financial condition so as to result in the probable shut down of the establishment or a substantial part of it, an extended abatement date shall be set when postponement of the capital expenditures would have a beneficial effect on the financial performance of the employer.
 - (b) If the employer raises the issue that the company has other establishments or other locations within the same establishment with equipment or processes which, although not cited as a result of the present inspection, nevertheless would require the same abatement measures as those under citation, the economic feasibility determination shall not be limited to the cited items alone. In such cases, although the employer will be required to abate the cited items within the time allowed for abatement, the opportunity to include both the cited and the additional items in a long-range abatement plan shall be offered.
 - (c) When additional time cannot be expected to solve the employer's financial infeasibility problem, the Compliance Manager shall refer the problem to the Bureau Chief.

e. Reducing Employee Exposure. Wherever feasible

engineering, administrative or work practice controls can be instituted even though they are not sufficient to reduce exposure to or below the permissible exposure limit (PEL), nonetheless, they shall be required in conjunction with personal protective equipment to reduce exposure to the lowest practical level.

7. Long-term Abatement Date for Implementation of Feasible Engineering Controls. Long -term abatement is abatement which will be completed more than one year from the citation issuance date. In situations where it is difficult to set a specific abatement date when the citation is originally issued; e.g., because of extensive redesign requirements consequent upon the employer's decision to implement feasible engineering controls and uncertainty as to when the job can be finished. The CO shall discuss the problem with the employer at the closing conference and, in appropriate cases, shall encourage the employer to seek a future informal discussion with the Compliance Manager when further information is available.

a. Final Abatement Date. The CO and the Compliance Manager shall make their best judgement as to a reasonable abatement date. A specific date for final abatement shall, in all cases, be included in the citation. The employer shall not be permitted to propose an abatement plan setting his own abatement dates. If necessary, an appropriate petition may be submitted later by the employer to the Compliance Manager to modify the abatement date.

b. Employer Abatement Plan. The employer is required to submit an abatement plan outlining the anticipated long-term abatement procedures.

(1) Such a plan may be submitted for consideration by the Compliance Manager before setting the citation abatement date.

(a) In that case, the citation may be delayed for a brief period with a notation explaining the delay placed in the case file.

(b) If it appears that the citation might be delayed beyond 6 months from the date of alleged violation, the citation shall be issued prior to full consideration of the plan; but the employer shall be given the opportunity to provide as much input as practicable in the setting of the abatement period.

(2) Whether or not a plan is submitted before issuing a citation, a requirement for the submission of an abatement plan shall be provided for in the citation in addition to a final abatement date.

- (3) When the plan is submitted, if the engineering or administrative corrections proposed by the employer appear to be all that are feasible based on the current technology, this fact may be stipulated and agreed to between OHSB and the employer.
 - (a) Such an agreement shall permit assurances in advance to the employer that the establishment will be in compliance where the provisions of the plan are fully implemented.
 - (b) It shall be made clear in the agreement that the employer is not relieved from instituting further engineering (or administrative) controls as they become technically feasible, if it is likely that such further controls will lower employee exposure when exposure without personal protective equipment (PPE) remains over the PEL.
 - (c) In all situations where an agreement is proposed, the advice of the legal office shall be sought on the legal implementation.

8. Multistep Abatement. Citations with multistep abatement periods normally will be issued only in those situations in which ultimate abatement will require the implementation of feasible engineering controls, as distinguished from feasible administrative controls or the use of PPE. Multistep abatements shall be based on the conditions cited and related feasibility considerations. A step-by-step program for abatement provides a tool for the CO to monitor abatement progress after a citation has been issued, for the employer to make abatement decisions and to set up schedules efficiently, and for the employees to understand the changes being made to the working environment.

b. Interim and Long-range Abatement. When the cited employer is found to have no effective personal protection program, in addition to long-term abatement through the use of feasible administrative or engineering controls, proper abatement will include a short-term requirements that appropriate PPE be provided.

- (1) The Compliance Manager, in issuing the citation, shall set a short-range abatement date for prompt temporary protection to employees pending formulation and implementation of long-range feasible engineering and/or administrative controls. Short-range administrative controls and PPE shall be specified in the citation as the interim protection.
- (2) If it has been determined that the employer will use engineering controls to achieve abatement, a

specific date shall be set by which the employer can reasonably be expected to implement engineering controls, including enough time for the development of engineering plans and designs for such controls, as well as necessary construction or installation time.

c. Considerations. In providing for multistep abatement the following factors shall be taken into consideration:

- (1) In general, engineering controls afford the best protection to employees, and the employer shall be required to utilize such controls in all instances to the extent feasible. The noise standards and 29 CFR 1910.1000 require the use of either engineering or administrative controls if any such controls are to be used in preference to respirators and other personal protective equipment. In certain circumstances, administrative controls can be successful in controlling employee exposure to contaminants; e.g., maintenance operations involving toxic substances can sometimes be performed at night in the absence of the usual production staff.

NOTE: Employee rotation is an administrative control that OHSB prohibits as a method of complying with the permissible exposure limits of carcinogens.

- (2) Economic feasibility is a major issue to be considered when imposing such controls. Requirements that would threaten the economic viability of an entire industry cannot be considered economically feasible under the OSH Act.
- (3) OHSB may decide not to require engineering controls for abatement but to allow the use of PPE to abate the violation, at least until such time as engineering controls become a less significant burden for the company when the following conditions are met:
 - (a) If significant reconstruction of a single establishment involving a capital expenditure which would seriously jeopardize the financial condition of the company is the only method whereby the employer could achieve effective engineering controls;
 - (b) If there are no feasible administrative or work practice controls; and
 - (c) If adequate personal protective equipment or devices are available.

- (4) Proper evaluation of the economic feasibility of engineering or administrative controls does not require the Compliance Manager to understand all available economic information before deciding that the issue of potential economic infeasibility is involved. It is sufficient that the employer produce evidence of economic hardship adequate to convince the Compliance Manager that abatement by such controls would involve considerable financial difficulty.
- (5) Whenever an employer complains that an unbearable economic burden would result from implementation of engineering or administrative controls, the Compliance Manager shall request evidence from the employer.
 - (a) Such evidence shall address the reasonableness of the estimated costs of engineering or administrative controls, including installation, maintenance, and lost productivity, whenever applicable, as well as the progress of the employer compared to that of the industry in installing such controls.
 - (b) The relative costs of engineering or administrative controls versus PPE may also be provided. Such comparisons shall take replacement costs into account.
- (6) The Compliance Manager shall discuss the problem with the Bureau Chief, whenever appropriate. The Bureau Chief shall determine whether engineering controls are economically infeasible.
- (7) In those limited situations where there are no feasible engineering or administrative controls, full abatement can be allowed by PPE.

9. Petitions for Modification of Abatement Date (PMA). OHSRC rules, 11 NMAC 5.5.303 governs the disposition of PMAs. If the employer requests additional abatement time after the 15-working-day contest period has passed, the procedures given in 11 NMAC 5.5.303 shall apply.

F. Employer Abatement Assistance.

1. Policy. COs shall offer appropriate abatement assistance during the walkaround as to how workplace hazards might be eliminated. The information shall provide guidance to the employer in developing acceptable abatement methods or in seeking appropriate professional assistance.
2. Type of Assistance. The type of abatement assistance provided will depend on the needs of the employer and the complexity of the hazard. Where standards specify abatement methods, such

as guarding of belts and pulleys, the CO shall, at a minimum, ensure that the employer is aware of the specifications. For more complex problems, the CO shall offer general information on types of controls or procedures commonly used to abate the hazard. Alternative methods shall be provided whenever possible.

3. Disclaimers. The employer shall be informed that:
 - a. The employer is not limited to the abatement methods suggested by the CO,
 - b. The methods explained are general and may not be effective in all cases; and
 - c. The employer is responsible for selecting and carrying out an effective abatement method.
4. Procedures. Information to assist the employer in identifying possible methods of abatement for alleged violations shall be provided to the employer as it becomes available or necessary. The issuance of citations shall not be delayed.
 - a. Assistance Provided During An Inspection. COs shall utilize their knowledge and professional experience in providing the employer with abatement assistance during the inspection.
 - (1) Before leaving an inspection site and, preferably, during the walkaround when an apparent violation is noted, COs shall determine whether the employer wishes to discuss possible means of abating apparent violations. The discussion may continue at the closing conference.
 - (2) COs shall briefly document abatement information provided to the employer or the employer's negative response to the offer of assistance on the OHSB Field Worksheet.
 - b. Assistance Provided After An Inspection. If a CO cannot provide assistance during an inspection or if the employer has abatement questions after the inspection, the Compliance Manager shall ensure that additional information, if available, is obtained and provided as soon as possible to the employer. Any communications with the employer shall be documented in the case file.
5. Services Available to Employers. Employers requesting abatement assistance shall be informed that OHSB is willing to work with them even after citations have been issued. In addition, the employer shall be made aware of the availability onsite consultation and other technical services offered by the state.

G. Informal Discussion.

1. General. The employer, any affected employee or the employee representative may request an informal discussion with the Compliance Manager.

NOTE: An informal conference may not be scheduled after receipt of a written Notice of Contest without prior approval of the Legal Office. If the intent to contest is not clear, the Compliance Manager shall contact the employer for clarification.

2. Procedures. Whenever an informal conference is requested by the employer, an affected employee or the employee representative, the Compliance Manager shall ascertain whether the request is for a discussion or a settlement negotiation.
 - a. If the request is intended to be for an Informal Administrative Review as provided by the Rules and Procedure of the Review Commission, the request will be forwarded to the Review Commission as a Notice of Contest.
 - b. If the request is not intended as a notice of contest, a mutually agreeable time and place for the discussion will be arranged. The requesting party will be advised that the request for an informal discussion does not extend the time period allowed to contest the citation, and a settlement of the citation cannot be made of the informal discussion.
3. Discussion. The discussion shall include any relevant matters including citations, safety and health programs, conduct of the inspection, means of correction, and penalties, in accordance with the following:
 - (a) OSHA representatives shall make every effort to assist both the employer and the affected employees and/or their representatives to improve safety and health in the workplace.
 - (b) At the conclusion of the discussion the main issues and potential courses of action shall be summarized. A written summary of the informal discussion shall be placed in the case file.

H. Followup Inspections.

1. Inspection Procedures. The primary purpose of a followup inspection is to determine if the previously cited violations have been corrected. There shall be no additional inspection activity unless, in the judgement of the CO, there have been significant changes in the workplace which warrant further inspection activity. In such a case, the supervisor shall be consulted.
2. Failure to Abate. A failure to abate exists when the employer

has not corrected a violation for which a citation has been issued or has not complied with interim measures involved in a multistep abatement within the time given.

a. Initial Followup. The initial followup is the first followup inspection after issuance of the citation.

- (1) If a violation is found not to have been abated, the CO shall inform the employer that the employer is subject to a Notification of Failure to Abate Alleged Violation and proposed additional daily penalties while such failure or violation continues.
- (2) Failure to comply with enforceable interim abatement dates involving multistep abatement shall be subject to a Notification of Failure to Abate Alleged Violation.
- (3) Where the employer has implemented some controls, but other technology was available which would have brought the levels of airborne concentrations or noise to within the regulatory requirements, a Notification of Failure to Abate Alleged Violation normally shall be issued.
- (4) Where an apparent failure to abate by means of engineering controls is found to be due to technical infeasibility, no failure to abate notice shall be issued; however, if proper administrative controls, work practices or personal protective equipment are not utilized, a Notification of Failure to Abate Alleged Violation shall be issued.

b. Second Followup. Any subsequent followup after the initial followup dealing with the same violations is a second followup.

- (1) After the Notification of Failure to Abate Alleged Violation has been issued, the Compliance Manager shall allow a reasonable time for abatement of the violation before conducting a second followup. If the employer contests the proposed additional daily penalties, a followup inspection shall still be scheduled to ensure correction of the original violation.
- (2) If a second followup inspection reveals the employer still has not corrected the original violations, a second Notification of Failure to Abate Alleged Violation with additional daily penalties shall be issued if the Compliance Manager believes it to be appropriate. If a Notification of Failure to Abate Alleged Violation and additional daily penalties are not to be proposed, the Compliance Manager shall contact the Legal

Office to determine whether Willful violations should be issued or prosecution in District Court should commence.

3. Reports. The correction of violations shall be documented in the narrative portion of the case file.
 - a. Proper Documentation. The correction circumstances observed by the CO shall be specifically described, including any applicable dimensions, materials, specifications, personal protective equipment, engineering controls, measurements or readings, or other conditions. Brief terms such as "corrected" or "in compliance" will be accepted as proper documentation for violations having been corrected. When appropriate, this written description shall be supplemented by a photograph to illustrate correction circumstances.
 - b. Sampling. The CO conducting a followup inspection to determine compliance with violations of air contaminants and noise standards shall decide whether sampling is necessary, and if so, what kind; i.e., spot sampling, short-term sampling or full-shift sampling. If there is reasonable probability of an issuance of a Notification of Failure to Abate Alleged Violation, full-shift sampling is required.
 - c. Narrative. The CO shall include in the narrative the findings pursuant to the inspection, along with recommendations for action. In order to reach a valid conclusion when recommending action, it is important to have all the pertinent factors available in an organized manner.
 - d. Failure to Abate. In the event that any item has not been abated, complete documentation shall be included on an OHSB Field Worksheet.
4. Followup Files. The followup inspection reports shall be included with the original (parent) case file.

I. Conduct of Monitoring Inspection (PMAs and Long-Term Abatement).

1. General. An inspection shall be classified as a monitoring inspection when a safety/health inspection is conducted for one or more of the following purposes:
 - a. To determine the progress an employer is making toward final correction.
 - b. To ensure that the target dates of a multistep abatement plan are being met.
 - c. To ensure that an employer's petition for the modification of abatement dates is made in true and good faith and that the employer has attempted to implement

- necessary controls as expeditiously as possible.
- d. To ensure that the employees are being properly protected until final controls are implemented.
 - e. To ensure that the terms of a permanent variance are being carried out.
 - f. To provide abatement assistance for items under citation.
2. Procedures. Monitoring inspections shall be conducted in the same manner as followup inspections as described in H.